

HONORABLE EDWARD F. SHEA

Michael A. Patterson, WSBA No. 7976
Sarah S. Mack, WSBA No. 32853
PATTERSON BUCHANAN
FOBES & LEITCH, INC., P.S.
2112 Third Avenue, Suite 500
Seattle, WA 98121
Tel. 206.462.6700
Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

BRADLEY N. THOMA, a single
person,

Plaintiff,

vs.

CITY OF SPOKANE, a municipal
corporation in and for the State of
Washington; and ANNE E.
KIRKPATRICK, a single person,

Defendants.

Case No. CV-12-156-EFS

DEFENDANTS' STATEMENT
OF DISPUTED MATERIAL
FACTS PURSUANT TO LR 56.1

COME NOW Defendants, by and through their undersigned counsel, and
hereby submit this Statement of Disputed Material Facts pursuant to LR 56.1 as
follows:

1 1. Plaintiff's Fact #14 – Plaintiff mischaracterizes the statement made by
2 Lieutenant Craig Meidl. The document speaks for itself. Contrary to
3 Plaintiff's assertion that Lt. Meidl "acknowledged" the City was looking
4 at an accommodation issue, the record demonstrates that Plaintiff
5 Thoma was raising the accommodation issue and asking the City to
6 consider what he phrased as accommodations should his driver's license
get revoked. Lt. Meidl acknowledged that Plaintiff was raising the
request at the time. *Declaration of Susan Nelson* (hereinafter "*Nelson*
Dec."), **Ex. L** at COS000102-103.

7 2. Plaintiff's Fact #16 – Plaintiff mischaracterizes RCW 46.20.720(3).
8 The statute speaks for itself. Contrary to Plaintiff's assertion that
9 ignition interlock driver's licenses ("IIDLs") do "not apply to work
10 vehicles owned by an employer," the cited portion of the statute sets
forth specific situations where such devices are not required as follows:

11 (3) The department shall require that, after any applicable
12 period of suspension, revocation, or denial of driving
13 privileges, a person may drive only a motor vehicle
14 equipped with a functioning ignition interlock device if
15 the person is convicted of a violation of RCW [46.61.502](#)
16 or [46.61.504](#) or an equivalent local or out-of-state statute
17 or ordinance. The department shall require that a person
18 may drive only a motor vehicle equipped with a
19 functioning ignition interlock device if the person is
convicted of a violation of RCW [46.61.5249](#) or
[46.61.500](#) and is required under RCW [46.61.5249](#)(4) or
[46.61.500](#)(3) (a) or (b) to install an ignition interlock
device on all vehicles operated by the person.

20 The department may waive the requirement for the use of
21 such a device if it concludes that such devices are not
22 reasonably available in the local area. The installation of
23 an ignition interlock device is not necessary on vehicles
24 owned, leased, or rented by a person's employer and on
25 those vehicles whose care and/or maintenance is the
temporary responsibility of the employer, and driven at

1 the direction of a person's employer as a requirement of
 2 employment during working hours. The person must
 3 provide the department with a declaration pursuant to
 4 RCW [9A.72.085](#) from his or her employer stating that the
 5 person's employment requires the person to operate a
 6 vehicle owned by the employer or other persons during
 7 working hours. However, when the employer's vehicle
 8 is assigned exclusively to the restricted driver and used
 9 solely for commuting to and from employment, the
 10 employer exemption does not apply.

11 RCW 46.20.720(3).

- 12 3. Plaintiff's Fact #19 – Contrary to Plaintiff's assertion that Dr. Hart
 13 "previously examined Sgt. Thoma," Dr. Hart's letter simply states that
 14 he has examined and diagnosed Mr. Thoma, without any reference to
 15 the date or time period of examination. The letter speaks for itself.
 16 *Nelson Dec.*, **Ex. O.**
- 17 4. Plaintiff's Fact #21 – Plaintiff mischaracterizes the statement made by
 18 former Chief Anne Kirkpatrick during Sgt. Thoma's *Loudermill*
 19 hearing. The document speaks for itself. Contrary to Plaintiff's
 20 assertion that Chief Kirkpatrick "acknowledged her perception" that
 21 Sgt. Thoma suffered from alcoholism, the record demonstrates simply
 22 that she was acknowledging his assertion that he suffered from such a
 23 disease, and that she would "assume" he suffered from alcoholism for
 24 the sake of discussion. *Nelson Dec.*, **Ex. N at COS000029** ("I cannot
 25 maintain your employment, disability or not."), **Ex. P at COS000018**
 ("I have assumed that you do suffer from alcoholism and that such
 alcoholism is a disability."), and **Ex. Q at COS001559-1561.**
5. Plaintiff's Fact #23 – Contrary to Plaintiff's assertion that "Defendants,
 at all times material hereto, were aware other law enforcement agencies
 in Washington have signed waivers for the IIDL requirement," the
 documents at **Ex. R** do not support that contention. The documents
 contained at **Ex. R** appear to be part of the State of Washington's
 Human Rights Commission file for Mr. Thoma, which file was not

1 provided to Defendants until after Mr. Thoma's lawsuit was filed.
 2 *Nelson Dec.*, **Ex. R**; *Declaration of Sarah S. Mack* (hereinafter "*Mack*
 3 *Dec.*" at ¶¶ 2-3 and **Ex. 1**; and Docket #4 (*Complaint* filed 2/28/2012).
 4 Moreover, these documents appear to have been provided to the HRC
 5 from sources other than the Defendants. *Mack Dec.*, **Ex. 2**.
 6 Accordingly, the documents do not support Plaintiff's contention that
 "Defendants, at all times material hereto, were aware other law
 enforcement agencies in Washington have signed waivers for the IIDL
 requirement."

- 7 6. Plaintiff's Fact #24 – Contrary to Plaintiff's assertion that Defendants
 8 previously "accommodated" other Spokane police officers who had
 9 been arrested and charged with DUIs, the documents at **Ex. S** do not
 10 support that contention. The documents contained at **Ex. S** do not
 11 reflect disability accommodations in any manner. The documents speak
 12 for themselves. Moreover, Plaintiff has not previously produced the
 13 documents at **Ex. S** in discovery, and Defendants do not waive any
 14 objection to admissibility based on a failure to identify such documents
 in their Initial Disclosures or discovery responses. *See Mack*
Declaration in Support of Opposition to Motion to Seal at ¶ 5.
- 15 7. Plaintiff's Fact #25 – Contrary to Plaintiff's assertion that Defendants'
 16 offer to reinstate him did not guarantee that he would be reinstated with
 17 full seniority, Defendants clarified that he would have been returned to a
 18 commissioned position in the rank of Detective, and the documents do
 not reflect a discussion regarding seniority at all. *Nelson Dec.*, **Ex. P** at
COS000019, Ex. Q at **COS001566-1574** and **Ex. T**.
- 19 8. Plaintiff's Fact #26 – Defendants object to Plaintiff's characterization of
 20 the statements written by former Chief Kirkpatrick. Contrary to
 21 Plaintiff's assertion that Chief Kirkpatrick laid off and "threatened" that
 22 Plaintiff would be terminated because he requested to consult with a
 23 civil attorney, **Ex. P** reflects Chief Kirkpatrick's recitation of the history
 24 of the matter leading up to termination, and that Plaintiff was provided
 25 time to determine whether he wanted to accept the City's offer to place
 him in layoff status for a certain period of time or accept termination for

his inability to perform the essential functions of his job. *Nelson Dec.*, **Ex. P.**

9. Plaintiff's Fact #33 – Contrary to Plaintiff's assertion that Defendants' offer to reinstate him did not guarantee that he would immediately return to a commissioned status, Defendants clarified that he would have been returned to a commissioned position in the rank of Detective upon the completion of his deferred prosecution requirements, including the return of an unencumbered driver's license. *Nelson Dec.*, **Ex. P at COS000019, Ex. Q at COS001566-1574 and Ex. T.**

10. Plaintiff's Fact #36 – Defendants object to Plaintiff's characterization of the statements written by former Chief Kirkpatrick. Contrary to Plaintiff's assertion that Chief Kirkpatrick terminated Plaintiff because of the interlock device requirement, Chief Kirkpatrick was clear that she intended to terminate Plaintiff because he was "not qualified to perform the essential functions of [his] position, either with or without reasonable accommodation" and because he did not accept the offered layoff position. *Nelson Dec.*, **Ex. N at COS000030 and Ex. P at COS000019.**

DATED this 25th day of February, 2013.

PATTERSON BUCHANAN
FOBES & LEITCH, INC., P.S.

By: /s/ Sarah S. Mack
Michael A. Patterson, WSBA No. 7976
Sarah S. Mack, WSBA No. 32853
2112 Third Ave, Suite 500
Seattle, WA 98121
Phone: (206) 462-6700
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the date provided below I served the foregoing **Statement of Disputed Material Facts** via the Court's electronic CM/ECF filing system, which will provide notice to the following individual(s):

Robert A. Dunn
Susan S. Nelson
Dunn & Black PS
111 North Post
Suite 300
Spokane, WA 99201
(509) 455-8711
bdunn@dunnandblack.com
snelson@dunnandblack.com
Attorneys for Plaintiff

Nancy Isserlis
Office of the City Attorney
808 W. Spokane Falls Boulevard
Room 550
Spokane, WA 99201-3326
(509) 625-6225
nisserlis@spokanecity.org
Attorney for Defendants

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Seattle, Washington, on February 25, 2013.

/s/ Sarah S. Mack
Sarah S. Mack, WSBA No. 32853