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**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

SCOTT SMITH,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION, an agency of the State of
Washington; WASHINGTON STATE OFFICE
OF FINANCIAL MANAGEMENT in the
OFFICE OF THE GOVERNOR, an agency of the
State of Washington,

Defendants.

No.

**COMPLAINT FOR
WHISTLEBLOWER RETALIATION,
WRONGFUL TERMINATION, AND
NEGLIGENCE**

DEMAND FOR JURY TRIAL

I. INTRODUCTION

This is a Complaint against the Washington State Department of Transportation (“WSDOT” or “Department”) and the Washington State Office of Financial Management (“OFM”) in the Office of the Governor for whistleblower retaliation, wrongful termination, and negligence. Plaintiff Scott Smith (“Mr. Smith” or “Plaintiff”) was improperly pressured for political purposes by WSDOT and OFM to change his estimates of fuel costs to fit the political narrative from the Governor that the state’s “cap and invest” program under the Climate Commitment Act was

1 costing consumers little or nothing at the gas pump. When he refused to do so, WSDOT and OFM
2 retaliated against him in several ways culminating in his constructive discharge. These retaliatory
3 actions give rise to statutory and common-law causes of action, including wrongful termination
4 and negligence.

5 II. PARTIES

6 1. Plaintiff is a natural person and at all times relevant to this action was domiciled in Thurston
7 County, in the State of Washington, and an employee of the Department.

8 2. Defendant WSDOT is an agency of the State of Washington pursuant to RCW 47.01.011.

9 3. Defendant OFM operates within the Office of the Governor as an agency of the State of
10 Washington pursuant to RCW 43.41.050.

11 III. JURISDICTION AND VENUE

12 4. The Superior Court of Thurston County has jurisdiction under Chapter 2.08 RCW.

13 5. Venue in Thurston County is appropriate under RCW 4.92.010.

14 IV. STATEMENT OF FACTS

15 A. Plaintiff Refuses to “Jimmy the Numbers”

16 6. Mr. Smith is an economist with decades of experience whose primary responsibility at
17 WSDOT was as the sole fuel consumption, price, and revenue estimator for the state government.

18 7. In early 2023, Mr. Smith began to review data inputs to fuel-price estimates as part of his
19 duties as staff to the Transportation Revenue Forecast Council (“TRFC”), reviews he had
20 conducted for several years prior.

21 8. Pursuant to RCW 82.33.040 *as-written prior to a 2023 amendment*, “to promote the free
22 flow of information and to promote legislative input in the preparation of forecasts, immediate
23 access to all information relating to economic and revenue forecasts shall be available to the
24

1 economic and revenue forecast work group, hereby created. Revenue collection information shall
2 be available to the economic and revenue forecast work group the first business day following the
3 conclusion of each collection period.”

4 9. Prior to the 2023 amendment, the TRFC membership included the executive head or
5 chairperson of the Department of Revenue, OFM, the Legislative Evaluation and Accountability
6 Program Committee, and the House Ways and Means Committee.

7 10. As he prepared estimates for the forecast for the March 2023 Report (“March 2023
8 Report”)([https://ofm.wa.gov/sites/default/files/public/budget/info/transpo/March2023VolumnII.p](https://ofm.wa.gov/sites/default/files/public/budget/info/transpo/March2023VolumnII.pdf)
9 [df](https://ofm.wa.gov/sites/default/files/public/budget/info/transpo/March2023VolumnII.pdf)), Plaintiff identified the portion of per-gallon price increases resulting from the Governor’s cap-
10 and-invest program, implemented pursuant to the Climate Commitment Act (“cap-and-trade
11 program”) that was to be publicly disclosed in the forecast.

12 11. Ultimately, based on comprehensive scientific and technical analysis, Mr. Smith concluded
13 that the per-gallon cost of the cap-and-trade program fell roughly within the forty (40) to fifty (50)
14 cent range – a far greater burden on consumers (drivers, homeowners, etc.) than the “pennies” the
15 Governor had claimed it would cost. In January of 2023, Plaintiff included those estimates within
16 the overall fuel price analysis he prepared for the March 2023 Report.

17 12. On January 18, 2023, Plaintiff met with Mr. Nguyen Dang (his temporary supervisor), who
18 informed Plaintiff that “management would prefer” that he **not** include in the overall gas price
19 estimates the per-gallon cost impacts of the cap-and-trade program to be listed as part of the March
20 2023 Report. Plaintiff reasonably understood “management” to include Ms. Amber Coulson, the
21 Department’s financial and planning manager, and Mr. Erik Hansen of OFM.

22 13. Plaintiff replied that under no circumstances would he “jimmy the numbers” and exclude
23 the cost impacts of the cap-and-trade program. As Plaintiff put in his Whistleblower Report
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1 (“Whistleblower Report”) to the state auditor: “The fact that carbon taxes raise the cost of gasoline
2 is a matter of 6th grade math. The incidence (who the cost ultimately falls on) is usually assumed
3 to be 100 percent on the consumer. This is the logic employed by the U.S. Energy Information
4 Administration. Further, S&P [Global Ratings] displays a line-item cost per gallon in their Oil
5 Price Information Report, a summary of wholesale fuel prices by location.”

6 14. At a subsequent meeting a few days later, Plaintiff told Dang to “tell Amber [Coulson] that
7 this [is] whistleblower stuff” – thus alerting Dang and Coulson that Plaintiff was henceforth a
8 “whistleblower” under RCW 42.40.020(10), that he understood what they were asking of him was
9 improper, and that he was prepared to invoke any and all of his rights and responsibilities under
10 Chapter 42.40 RCW (“State Employee Whistleblower Protection”).

11 15. At a third meeting, Dang repeated management’s preference that he and his colleagues
12 omit cap-and-trade-related price impacts from any publicly disclosed or disclosable document.
13 Plaintiff again refused.

14 16. Dang informed Plaintiff that he had discussed the issue with the Department’s Coulson,
15 and in particular, his conversation in which Plaintiff had stated, “this is whistleblower stuff,” who
16 told Dang to inform Plaintiff that “if [he] ha[s] a problem, take it to HR.”

17 17. Plaintiff continued to refuse to take any part in this official scheme to withhold from
18 disclosure numbers to which the public is fully entitled. In furtherance of this official scheme,
19 Plaintiff and other Department employees were instructed not to create public records regarding
20 the impact of the cap-and-trade program on fuel prices.

21 18. Subsequently, the March 2023 Report was released with Plaintiff’s numbers included,
22 without the changes that Dang stated were “preferred by management.”

1 19. On March 27, 2023, Amber Coulson called Plaintiff and told him that Erik Hansen with
2 OFM had complained about Plaintiff and, in particular, said that he should be clearing "any
3 surprises" with him prior to issuing his estimate. This was a significant change in the process for
4 formulating economic analyses that Plaintiff had used in the course of his duties prior to January
5 2023.

6 **B. Defendants Retaliate Against Plaintiff for his Refusal to "Jimmy the Numbers"**

7 20. Following Plaintiff's refusal to omit the impact of the cap-and-trade program from the
8 March 2023 Report, OFM and WSDOT undertook several actions in retaliation for his refusal to
9 "jimmy the numbers."

10 21. First, Defendants coordinated to support the passage of legislation that eliminated
11 Plaintiff's position. HB 1838 was introduced in the legislature on February 1, 2023. The bill was
12 supported by OFM and WSDOT. The bill had the effect of eliminating Plaintiff's position and
13 transferring it to another agency effective in 2025. Following testimony in committee by
14 representatives of OFM, including Erik Hansen, the bill passed the legislature and was signed into
15 law by the Governor.

16 22. Second, Plaintiff's duties changed in that he was required to begin to clear "any surprises"
17 regarding the release of any information with Hansen at OFM prior to its release to the rest of the
18 TRFC. This step was contrary to prior practice.

19 23. Third, Plaintiff was denied basic software upgrades so that were necessary for his position.

20 24. Fourth, the Department attempted to change and backdate his performance evaluations,
21 which prior to this had been uniformly positive and included no substantive criticisms, but was
22 mostly "exceeds expectations" across the board.

1 25. Fifth, Plaintiff was denied a promotion as a permanent hire for his supervisor's position
2 that he applied for since the position was unfilled, and he was performing many of the duties of
3 the position.

4 26. Sixth, the Department instead assigned a new supervisor, who scaled down or eliminated
5 the bulk of his preexisting responsibilities.

6 27. Seventh, Plaintiff's supervisor denied a request for Plaintiff to work out of state virtually,
7 which other WSDOT employees were permitted to do post-pandemic. Plaintiff's supervisor denied
8 the request on the grounds that he would need to meet in person with him. The supervisor then
9 failed to attend the only in-person meeting that he scheduled with Plaintiff.

10 28. Eighth, Plaintiff requested leave to visit his elderly mother in Louisiana for Thanksgiving.
11 He requested to be allowed to telecommute from an out-of-state duty station for one meeting and
12 was willing to attend the meeting while on leave. The Department refused this request and instead
13 mandated that Plaintiff attend the meeting remotely from Olympia. This was despite the fact that
14 since the onset of the COVID-19 pandemic, almost all division staff had been – and continued to
15 through the entire period in question – working remotely and there would be no difference in
16 Plaintiff's participation in the meeting from Olympia versus Louisiana.

17 29. Ninth, following the multiple retaliatory acts described above, Plaintiff was constructively
18 discharged on November 2, 2023.

19 **C. Plaintiff Files Report Under Whistleblower Protection Laws**

20 30. On November 2, 2023, the State Auditor acknowledged receipt of Plaintiff's
21 Whistleblower Report, alleging the same pattern of misconduct and retaliation now set forth in this
22 Complaint.

1 31. The State Auditor’s Office acknowledged receipt and sent notice that it would not proceed
2 on his claims.

3 32. On November 30, 2023, Plaintiff filed a notice of tort claim form with the Department of
4 Enterprise Services as required under RCW 4.92.100.

5 33. More than sixty (60) days have elapsed since that date.

6 34. With no further administrative or other avenues for relief available, Plaintiff hereby files
7 this lawsuit.

8 V. CLAIMS

9 A. Whistleblower Retaliation in Violation of Chapter 42.40 RCW Against Both Defendants

10 35. Plaintiff realleges the preceding paragraphs and incorporates them by reference in this
11 cause of action.

12 36. The State Employee Whistleblower Protection Act, Chapter 42.40 RCW, provides an
13 avenue for state employees to report suspected improper governmental action, and prohibits
14 retaliation against anyone filing a whistleblower complaint.

15 37. RCW 42.40.020 defines “improper governmental action,” in pertinent part, as:

16 “any action by an employee undertaken in the performance of the employee's official duties:

17 (iv) Which is gross mismanagement;

18 (v) Which prevents the dissemination of scientific opinion or alters technical findings without
19 scientifically valid justification unless state law or a common law privilege prohibits
20 disclosure.”

21 38. RCW 42.40.020 defines “gross mismanagement” as “the exercise of management
22 responsibilities in a manner grossly deviating from the standard of care or competence that a
23 reasonable person would observe in the same situation.”

1 39. Defendants engaged in improper governmental action by pressuring Plaintiff to change his
2 fuel price forecasts for political reasons. This constituted “gross mismanagement.” Or, in the
3 alternative, one or more of the Defendants engaged in “alter[ing] technical findings without
4 scientifically valid justification” and pressured the Plaintiff to accept these altered technical
5 findings.

6 40. Defendants’ pattern and practice of retaliation against Plaintiff in response to his refusal to
7 partake in an official and coordinated effort to keep the actual per-gallon cost of the cap-and-trade
8 program hidden from public view violates several provisions of RCW 42.40.050, which lists
9 prohibited retaliatory acts against whistleblowers – including employees the employer *perceives*
10 as whistleblowers.

11 41. Specifically, Plaintiff alleges the following as retaliatory acts:

12 *(a) Frequent staff changes.*

- 13 a. Plaintiff was assigned either no supervisor or a temporary supervisor and
14 periodically performed the duties of that position in addition to his own.

15 *(b) Refusal to assign meaningful work.*

- 16 a. Plaintiff was gradually given fewer assignments, despite his expertise in the field
17 of economic analysis – especially in the energy and transportation sectors.
- 18 b. Plaintiff was required to have his work reviewed by an employee of Defendant
19 OFM, Erik Hansen, prior to sharing it with the TRFC – though Plaintiff did not
20 ultimately comply with this requirement.
- 21 c. Defendant WSDOT refused to approve basic software upgrades provided to other
22 staff that Plaintiff required for his work.

23 *(c) Unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance*
24 *evaluations.*

- 1 a. Prior to his disagreement over management’s efforts to “jimmy the numbers,”
2 Plaintiff received only positive formal reviews of his work performance.
3 b. Management changed or attempted to change one of these performance evaluations
4 by backdating it more than a year after he refused to change his estimates for
5 political purposes.

6 *(d) Dismissal.*

- 7 a. Defendants worked in collaboration to request and support the passage of HB 1838,
8 which eliminated Plaintiff’s position and transferred it to another agency in 2025.
9 Around April of 2023, Plaintiff was informed that his position would be eliminated
10 as a result of the passage of HB 1838, effectively forcing him into early retirement.
11 b. As a result of all the retaliatory measures outlined in this Complaint, Plaintiff was
12 constructively discharged on November 2, 2023.

13 *(e) A supervisor or superior behaving in or encouraging coworkers to behave in a hostile
14 manner toward the whistleblower.*

- 15 a. Defendant WSDOT refused to approve leave scheduled for November of 2023 for
16 Plaintiff to visit his elderly mother out of state.

17 *(f) A change in the physical location of the employee’s workplace or a change in the basic
18 nature of the employee’s job, if either are in opposition to the employee’s expressed wish.*

- 19 a. Despite the standard practice for most employees to work remotely during the entire
20 period in question, after Plaintiff refused to back down from his insistence on
21 including the price impacts of the cap-and-trade program on the cost of gas in his
22 per-gallon calculations, Defendants forced him – and apparently only him – to step
23 away from his remote office in order to meet with his supervisor in person.
24 b. The supervisor claimed he preferred in-person meetings, but it does not appear that
he regularly scheduled these with anyone not perceived to be a whistleblower.

1 (g) Any other action that is inconsistent compared to actions taken before the employee
2 engaged in conduct protected by this chapter, or compared to other employees who have
not engaged in conduct protected by this chapter.

3 a. Plaintiff was denied a promotion.

4 42. Under RCW 42.40.050 any person who is a whistleblower, as defined in RCW 42.40.020,
5 and who has been subjected to workplace reprisal or retaliatory action, is presumed to have
6 established a cause of action for the remedies provided under Chapter 49.60 RCW.

7 43. Plaintiff suffered damages to be proven at trial as a result of this statutory violation.

8 **B. Whistleblower Retaliation in Violation of Chapter 49.60 RCW**

9 44. Plaintiff realleges the preceding paragraphs and incorporates them by reference in this
10 cause of action.

11 45. Defendants' retaliatory acts against Plaintiff were "unfair practices" under RCW 49.60.210
12 – a provision of the RCW's civil-rights chapter – which identifies such practices as
13 "discriminat[ion] against any person because he or she has opposed any practices forbidden by
14 this chapter."

15 46. These unfair practices culminated in Plaintiff's wrongful termination, resulting in real and
16 calculable emotional and pecuniary harms.

17 47. Defendants' unfair practices against Plaintiff violated RCW 49.60.210(2), which provides
18 that "[i]t is an unfair practice for a government agency or government manager or supervisor to
19 retaliate against a whistleblower as defined in chapter 42.40 RCW."

20 48. Plaintiff was properly *perceived* as a "whistleblower" under Chapter 42.40 RCW at all
21 times pertinent to this cause of action, during which Defendants continued their campaign of
22 retaliation against him, culminating in his constructive dismissal.

23 49. Plaintiff's ultimate dismissal is therefore wrongful as a matter of statutory law—
24 specifically via the interplay between RCW 42.40.050 and RCW 49.60.210(2).

1 50. Plaintiff suffered damages to be proven at trial as a result of this statutory violation.

2 **C. Wrongful Termination Against Defendant WSDOT**

3 51. Plaintiff realleges the preceding paragraphs and incorporates them by reference in this
4 cause of action.

5 52. RCW 82.33.040 (economic forecasting) and RCW 42.40.010 (whistleblower protections)
6 establish that Defendant’s termination of Plaintiff was in clear contravention of public policy.

7 53. His termination “contravenes a clear mandate of public policy” in favor of the public’s
8 having access to transparent calculations on the impact of legislation to their pocketbooks. RCW
9 82.33.040 (as unamended, 2023) (“To promote the free flow of information and to promote
10 legislative input in the preparation of forecasts, immediate access to all information relating to
11 economic and revenue forecasts shall be available to the economic and revenue forecast work
12 group, hereby created. Revenue collection information shall be available to the economic and
13 revenue forecast work group the first business day following the conclusion of each collection
14 period.”).

15 54. Further burgeoning the clear-public-policy exception are the strong public interests behind
16 the whistleblower laws themselves, including RCW 42.40.010’s declaration that “[i]t is the policy
17 of the legislature that employees should be encouraged to disclose, to the extent not expressly
18 prohibited by law, improper governmental actions, and it is the intent of the legislature to protect
19 the rights of state employees making these disclosures, regardless of whether an investigation is
20 initiated under RCW 42.40.040.” In a similar vein, it would “jeopardize the public policy” behind
21 the cap-and-trade program to hide the full impact of the numbers from the public.

1 55. Plaintiff's termination, and the conditions under which it occurred, will severely discourage
2 future conduct intended to make transparent disclosures to the public under RCW 82.33.040, and
3 therefore jeopardizes public policy.

4 56. Plaintiff's termination was caused by his preceding efforts to disclose facts to which the
5 public has a statutory right to access, review, and consider under RCW 82.33.040, as well as under
6 the Public Records Act. Defendants cannot offer any overriding justification for the dismissal.

7 57. Plaintiff suffered damages to be proven at trial as a result of this statutory violation.

8 **D. Negligent Breach of the Duty to Refrain From Retaliatory Action**

9 58. Plaintiff realleges the preceding paragraphs and incorporates them by reference in this
10 cause of action.

11 59. On the basis of these above claims, Defendant WSDOT at all times had a statutory duty to
12 refrain from taking retaliatory action against Plaintiff for the latter's whistleblowing efforts.

13 60. The elements of negligence in Washington are straightforward, requiring the plaintiff(s) to
14 demonstrate that defendant(s) (1) owed them a duty of care, either common-law or statutory; that
15 (2) the defendant(s) breached that duty; and that (3) the injuries the plaintiff(s) sustained were a
16 proximate result of defendant(s') negligent conduct. *Pedroza v. Bryant*, 101 Wash.2d 226, 228,
17 677 P.2d 166 (1984). The standard of conduct required of a reasonable person or entity may be
18 prescribed by legislative enactment. *Young v. Caravan Corp.*, 99 Wash.2d 655, 659, 663 P.2d 834,
19 672 P.2d 1267 (1983).

20 61. As a public employee, Plaintiff had a statutory right under RCW 42.40.010 to blow the
21 whistle on real or suspected official misconduct. Defendant WSDOT, in turn, had a statutory duty
22 to refrain from taking retaliatory action in response to Plaintiff's bona fide whistleblowing
23 activities.

1 62. Defendant breached this duty in several independent and interlinked respects:

- 2 1. Actions in violation of Chapter 42.40 RCW, as described in the first preceding
3 cause of action.
- 4 2. Actions in violation of Chapter 49.60 RCW, as described in the second preceding
5 cause of action.
- 6 3. Wrongful termination, as described in the third preceding cause of action.

7 63. Such breaches of duty foreseeably and proximately contributed to Plaintiff's injuries, for
8 which the below relief is requested.

9 **VI. REQUESTED RELIEF**

10 64. Plaintiff respectfully requests that the Court provide the following relief, as authorized
11 under RCW 42.40.050, which provides that "[a]ny person who is a whistleblower . . . and who has
12 been subjected to workplace reprisal or retaliatory action is presumed to have established a cause
13 of action for the remedies provided under chapter 49.60 RCW." RCW 49.60.030(2), in turn,
14 declares that "[a]ny person deeming himself or herself injured by any act in violation of this chapter
15 shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to
16 recover the actual damages sustained by the person, or both, together with the cost of suit including
17 reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United
18 States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988
19 (42 U.S.C. Sec. 3601 et seq.)."

20 65. Award Plaintiff damages in an amount to be proven at trial suffered as a result of the causes
21 of action identified in this Complaint, including retaliatory action against a whistleblower,
22 wrongful termination, and negligence, as well as his constructive termination. This figure includes,
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1 but is not limited to, his annual salary, benefits, and pension contributions, as well as reputational
2 harm and other damages the Court deems appropriate;

3 66. Require Defendants pay punitive damages in order to dissuade other agencies from
4 engaging in similarly egregious conduct in the future;

5 67. Award Plaintiff all costs, including reasonable attorney's fees, incurred in connection with
6 this action;

7 68. Award any other relief as the Court deems just.

8 DATED this 5th day of March, 2024.

9
10
11 /s/ Jackson Maynard
12 JACKSON WILDER MAYNARD, JR.
13 WSBA No. 43481
14 CITIZEN ACTION DEFENSE FUND
15 111 21st Ave SW
16 Olympia WA 98501
17 (850) 519-3495

18 /s/ Sam Spiegelman
19 SAM SPIEGELMAN
20 WSBA No. 58212
21 CITIZEN ACTION DEFENSE FUND
22 111 21st Ave SW
23 Olympia, WA 98501
24 (201) 314-9505

Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I, Jackson Maynard, hereby declare under penalty of perjury under the laws of the State
3 of Washington that I am causing a true and correct copy of the foregoing Complaint to be served
4 via legal messenger on March 5, 2024, to Defendants at:

5 ROBERT FERGUSON
6 Office of Attorney General
7 1125 Washington Street SE
8 Olympia, WA 98501
9 *Legal Designee and Counsel*
10 *for State Defendants*

11 ROGER MILLAR, Secretary
12 Washington State Department of Transportation
13 310 Maple Park Ave SE
14 Olympia, WA 98504

15 DAVID SCHUMACHER, Director
16 Office of Financial Management
17 302 Sid Snyder Ave SW
18 Olympia, WA 98504

19 DATED this 5th day of March, 2024.

20 */s/ Jackson Maynard*
21 _____
22 JACKSON WILDER MAYNARD, JR.
23 WSBA No. 43481
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