JULIE DALESSIO, Plaintiff-Appellant,

v.

UNIVERSITY OF WASHINGTON, a Washington Public Corporation; et al.,

Defendants-Appellees.

No. 19-35675

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED

OCT 30 2020

MOLLY C. DWYER, CLERK U.S. COURT OF APPEALS

D.C. No. 2:17-cv-00642-MJP Western District of Washington, Seattle

ORDER

Before: THOMAS, Chief Judge, and HAWKINS and McKEOWN, Circuit Judges.

The panel votes to deny the petition for rehearing.

The full court has been advised of the petition for rehearing and rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

NOT FOR PUBLICATION

FILED

AUG 10 2020

MOLLY C. DWYER, CLERK U.S. COURT OF APPEALS

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JULIE DALESSIO, Plaintiff-Appellant,

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MEMORANDUM*

Appeal from the United States District Court for the Western District of Washington Marsha J. Pechman, District Judge, Presiding

Submitted August 4, 2020** San Francisco, California

Before: THOMAS, Chief Judge, and HAWKINS and McKEOWN, Circuit Judges.

Julie Dalessio appeals the district court's grant of summary judgment and denial of a motion for reconsideration arising out of public records requests to the University of Washington ("UW") under Washington's Public Records Act. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

*This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

We review de novo the grant of summary judgment. See Clicks Billiards Inc. v. Sixshooters, Inc., 251 F.3d 1252, 1257 (9th Cir.2001). The district court properly granted summary judgment on Dalessio's breach of contract claim against UW, because it was timed barred, see RCW 4.16.040(1) (statute of limitations for a claim on a written contract is six years), and the discovery rule does not apply. See 1000 Va. Ltd. P'ship v. Vertecs Corp., 146 P.3d 423, 430–32 (Wash. 2006) (en banc) (applying the discovery rule narrowly to construction contracts where latent defects are alleged).

The district court did not err in granting summary judgment on Dalessio's constitutional claims under 42 U.S.C. § 1983. A violation of § 1983 requires proof that "(1) the defendants acting under color of state law (2) deprived plaintiffs of rights secured by the Constitution or federal statutes." Gibson v. United States, 781 F.2d 1334, 1338 (9th Cir. 1986). There is no proof defendants violated Dalessio's Fourth or Fourteenth Amendment rights. See City of Ontario, Cal. v. Quon, 560 U.S. 746, 761 (2010) (no Fourth Amendment violation where there were "reasonable grounds for suspecting that the search [was] necessary for a noninvestigatory work-related purpose" (internal quotation marks and citation omitted)); Daniels v. Williams, 474 U.S. 327, 332 (1986) (negligent conduct by a state official does not constitute deprivation under the Due Process Clause); Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981) (in absence of personal participation, § 1983 liability exists where an actor "set[s] in motion a series of acts by others which the actor knows or reasonably should know

would cause others to inflict the constitutional injury" (internal quotation marks and citation omitted)).

With respect to the release of Dalessio's health and medical information, a § 1983 claim cannot be sustained under the ADA or HIPAA. See *Vinson v. Thomas*, 288 F.3d 1145, 1155–56 (9th Cir. 2002) ("[A] comprehensive remedial scheme for the enforcement of a statutory right creates a presumption that Congress intended to foreclose resort to more general remedial schemes to vindicate that right." (internal quotation marks and citation omitted)). A constitutional right to privacy does not reach every disclosure of personal information. See Paul v. Davis, 424 U.S. 693, 713 (1976).

The district court properly granted summary judgment on Dalessio's common law tort claim, because defendants were entitled to good faith immunity under RCW § 42.56.060. See Whaley v. State, Dep't of Soc. & Health Servs., 956 P.2d 1100, 1106 (Wash. App. 1998).

The district court did not err in granting summary judgment on Dalessio's claims for injunctive and declaratory relief. Dalessio failed to show that she has "a well-grounded fear of immediate invasion" of "a clear legal or equitable right," Wash. Fed. Of State Emps., Council 28 v. State of Washington, 665 P.2d 1337, 1343 (Wash. 1983) (en banc) (citation omitted), and a declaratory judgment would not resolve an "autonomous and independent dispute" of "vital importance" L.A. Cty. Bar Ass'n v. Eu, 979 F.2d 697, 703 (9th Cir. 1992) (citation omitted).

Finally, because the district court was not presented with newly-discovered evidence and did not commit clear error, it was not an abuse of discretion to deny the motion for reconsideration. See 389 Orange St. Partners v. Arnold, 179 F.3d 656, 661, 665 (9th Cir. 1999).

AFFIRMED.

Filed 07/09/19

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JULIE DALESSIO,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON, et al.,

Defendants.

CASE NO. C17-642 MJP

ORDER DENYING MOTION FOR RECONSIDERATION AND MOTION TO AMEND COMPLAINT

The above-entitled Court, having received and reviewed Plaintiff's Motion for Reconsideration and Motion to Amend Complaint (Dkt. No. 184), Defendants' Opposition (Dkt. No. 186), all attached declarations and exhibits, and relevant portions of the record, rules as follows:

IT IS ORDERED that the motion for reconsideration is DENIED.

IT IS FURTHER ORDERED that the motion to amend the complaint is DENIED.

Background

Plaintiff, originally appearing pro se, filed a complaint in state court alleging invasion of privacy, public records violations, breach of contract, defamation/libel, discrimination/retaliation and negligence. (Dkt. No. 1-1.) The matter was removed by Defendants to federal court in April 2017. (Dkt. No. 1.) In January 2018, counsel was appointed to represent Plaintiff (Dkt. No. 67) and an amended complaint was filed, now alleging violations of 42 U.S.C. § 1983 (Fourth and Fourteenth Amendments),

breach of contract, and public disclosure of private facts. (Dkt. No. 82.)

Over the course of two summary judgment motions filed by Defendants, Plaintiff was challenged to produce both facts and law to support her claims. This Court found deficiencies in both areas – a portion of her claims were dismissed in February 2019 (Dkt. No. 153) and the remainder of her case was dismissed in its entirety in June 2019. (Dkt. No. 176.) Plaintiff has filed a motion to reconsider (1) the order denying her motion to reconsider the partial granting of Defendant's first summary judgment motion (Dkt. No. 160) and (2) the order and judgment granting Defendant's second summary judgment motion and dismissing her case. (Dkt. Nos. 176, 177.) Additionally, she has requested leave to file an amended complaint.

Discussion

Local Rule 7(h) ("Motions for Reconsideration") states:

(1) Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.

The motion shall be filed within 14 days following the finding of the order to which it relates. LCR 7(h)(2).

In keeping with the filing deadline announced at LCR 7(h)(2), that portion of Plaintiff's motion seeking reconsideration of the order at Dkt. No. 160 will be summarily denied. That order was issued on March 15, 2019 and the 14-day deadline has long expired.

Furthermore, that order was already a denial of a motion for reconsideration (improperly characterized as a "Motion for Relief Pursuant to FRCP 60(a)"); Plaintiff's only legitimate recourse is an appeal to the Ninth Circuit Court of Appeals.

Regarding that portion of Plaintiff's motion for reconsideration which is addressed to the Order Granting Defendants' Second Motion for Summary Judgment (Dkt. No. 176), the Court finds that motion for reconsideration was timely filed. Plaintiff claims both legal error and new facts in justification of her position that the Court ruled improperly against her.

Turning first to her allegations of "new evidence," Plaintiff asserts that evidence which was produced in April 2019 pursuant to a public records request from "Public Records News Media" (found at Dkt. Nos. 172, 173, and 174) constitutes "new facts" justifying a reconsideration of the Court's dismissal of Plaintiff's suit. The argument is not meritorious.

In the first place, the evidence was in the possession of Plaintiff's acquaintance Terrilyn Heggins (a/k/a "Public Records News Media") as of April 10, 2019. See Dkt. No. 173, Decl. of Heggins at ¶ 6. Plaintiff indicates that she received the information "[o]n or about the end of April 2019" and did not provide it to her attorney until a month later. Dkt. No. 174, Decl. of Dalessio at ¶¶ 2, 4.[1] This in no way comports with the requirement of a showing that the new facts "could

[1] Plaintiff provides no explanation of either the two-week delay in receiving the information from Ms. Heggins or the one-month delay in delivering it to her counsel.

not have been brought to [the Court's] attention earlier with reasonable diligence."

In the second place, the evidence Plaintiff seeks to use to justify her reconsideration request is (as Defendants point out) "entirely separate from the public records requests and responses at issue in this lawsuit." The allegations in Plaintiff's suit involve material produced in 2015 and 2016; Plaintiff's attempt to use documents produced three years after that, with no opportunity for Defendants to test its relevance or authenticity through discovery or deposition, is not a proper litigation tactic.

Finally, even if the documents presented by Plaintiff as "new facts" were admissible and adjudged relevant to her allegations, their legal impact is non-existent; i.e., they would have made no difference in the Court's ruling. The Court has previously announced that it would assess the viability of Plaintiff's claims to a violation of her constitutional right to privacy on the basis of a legal standard which tests whether any of the information produced was "shocking, "degrading," "egregious," "humiliating," or "flagrant." Dkt. No. 176 at 8-9. The information contained in Plaintiff's "new evidence" is the same kind of personal information which, the Court has already ruled, satisfies none of those standards. The fact that the information was allegedly produced to an acquaintance of Plaintiff's (acting, in all likelihood, at Plaintiff's behest) renders it even less qualified to establish her claims than the information produced to her neighbor Mr. Betz.

Furthermore, it is apparent that Plaintiff seeks to introduce this evidence as further proof of a "pattern or practice" on the part of the University and its

employees which, according to her theory of the case, elevates the Defendants' conduct above the mere negligence which qualifies them for immunity from liability. As the Court pointed out previously, Plaintiff still has not adduced statistical evidence of any sort which might tend to prove that the three instances (Mr. Betz, herself, and now Ms. Heggins) of which she has evidence constitute a sufficient percentage of the University's total records production to constitute a "pattern or practice." Nor has she ever cited to persuasive legal authority that evidence of a "pattern or practice" would raise any of the Defendants' conduct above simple negligence. Id. at 14.

Turning to the allegations of legal error on the Court's part, Plaintiff continues to argue that Defendants' production of information from the Disability Services Office and her employee benefits records was improper. Having already found that Defendants' searches of files and documents in possession of the University were conducted in the course of "responding to a legitimate PRA request" pursuant to a "legitimate 'noninvestigatory work-related purpose'" (and thus not a Fourth Amendment violation; see id. at 9), the Court sees no legal authority cited in Plaintiff's reconsideration request tending to establish that such a finding was in error.

It now appears that Plaintiff is maintaining that the Court erred by "overlook[ing] that Ms. Dalessio's claims describe violations of Title I of the Americans with Disabilities Act (ADA)." Dkt. No. 184, Motion at 6. The Court understood that Plaintiff was citing to alleged ADA violations in attempting to establish her § 1983 claims and addressed the ineffectuality of that

argument with case law "which holds that § 1983 is not available to vindicate rights under the ADA." Dkt. No. 176 at 6 (citations omitted). Plaintiff cites case law from a 2009 Supreme Court case in opposition to that finding, case law which was clearly capable of being brought to the Court's attention in her original briefing. This is not proper argument on reconsideration and merely constitutes an improper "second bite at the apple" not permitted at this juncture. Aronson v. Dog Eat Dog Films, Inc., 738 F.Supp. 2d 1104, 1118 (W.D. Wash. 2010).

Plaintiff alleges error in that "[t]his court only considered 9 pages of personal and confidential information given to Betz, and overlooked many others." Motion at 8. She neglects to mention that this was the very information cited by her attorney as "[t]he evidence... already in the record identifying Plaintiff's protected health information that was produced pursuant to the PRA to David Betz." Dkt. No. 130 at 5. The additional information cited by Plaintiff was available to her at the time her briefing was filed, and at the time her attorney presented oral argument on her behalf; it was not cited in either instance and may not properly be cited in a motion for reconsideration as it did not form a part of the Court's analysis or ruling.

Regarding Plaintiff's motion to amend: Plaintiff alleges that her "tort claims can be cured by naming the University of Washington and justice so requires this court give leave to amend her complaint." She asserts that UW was "inadvertently omitted from her first amended complaint" and would not be prejudiced by being added at this point. Motion at 8. Firstly, UW was not omitted from her first amended

complaint; the University is named in the case caption and as the sole defendant on Plaintiff's sixth cause of action for breach of contract. Dkt. No. 82 at ¶¶ 183-190. Because that was the only claim in which the institution was named as a defendant, it was dismissed from the lawsuit when that claim was found to be barred by the statute of limitations. Dkt. No. 153, Order at 12. Plaintiff's failure to name UW as a defendant on any of her other claims cannot be cured at this point. Nor does Plaintiff explain how adding UW would overcome the good-faith immunity already found to shield the remaining Defendants from state tort liability. RCW 42.56.060; Dkt. No. 153 at 10 and Dkt. No. 176 at 11.

Conclusion

Plaintiff presents neither new facts nor proof of legal error which could not, with reasonable diligence, have been produced during the briefing and oral argument on Defendant's second summary judgment motion. Her attempt to invite reconsideration of the Court's ruling on Defendant's first summary judgment request is untimely and improper. Neither is she entitled, at this point, to amend her complaint further.

Plaintiff's motion for reconsideration and motion to amend her complaint are DENIED.

The clerk is ordered to provide copies of this order to Plaintiff and to all counsel.

Dated July 9, 2019.

s/Marsha J. Pechman

United States Senior District Judge

Filed 06/07/19

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JULIE DALESSIO,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON, et al.,

Defendants.

CASE NO. C17-642 MJP

ORDER GRANTING DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT

The above-entitled Court, having received and reviewed:

1. Defendants' Second Motion for Summary Judgment (Dkt. No. 161),

2. Plaintiff's Response to Defendants' Second Motion for Summary Judgment (Dkt. No. 162),

3. Defendants' Reply in Support of Second Motion for Summary Judgment (Dkt. No.163),

4. Plaintiff's Objection to New Evidence (Dkt. No. 165) and Defendants' Response to Plaintiff's Objection (Dkt. No. 166), all attached declarations and exhibits, and relevant portions of the record, rules as follows: IT IS ORDERED that Plaintiff's Objection to New Evidence is DENIED.

IT IS FURTHER ORDERED that Defendants' motion for summary judgment is GRANTED; the remainder of Plaintiff's claims are DISMISSED with prejudice.

Background

The following are undisputed facts: Plaintiff was employed by the University of Washington ("UW") as a Clinical Technologist in the Department of Laboratory Medicine from 1987 until her resignation in 2003. On September 16, 2015, UW's Office of Public Records ("OPR") received a records request from David Betz under the Public Records Act (RCW 42.56; "PRA") for "all records maintained by the University of Washington relating or pertaining to Julie Dalessio." (Dkt. No. 82 at 5, ¶ 29.) In response, Defendant and OPR Compliance Analyst Alison Swenson released two installments of redacted records to Betz. UW released a total of 370 pages of documents to Betz; although there were many redactions, Plaintiff's Social Security number ("SSN") was not redacted from two of the pages; there were also instances of unredacted addresses, telephone numbers and birthdates. Additionally, there was information in the documents which Plaintiff alleges was personal medical information protected under the Health Information Portability and Accountability Act ("HIPAA") and the Americans with Disabilities Act ("ADA"). (Dkt. Nos. 30-1, 30-2.)

Following Betz's request, Plaintiff submitted her own PRA request to UW for the information which was released to Betz. (Id. at ¶ 33.) On April 16, 2016, upon receipt of the documents released to Betz under the PRA, Plaintiff became aware that of the unredacted information of which she now complains.

On November 9, 2016, Plaintiff submitted a second PRA request for "a digital copy of my departmental personnel file, along with any other computer or paper files that might contain records of inquiries

concerning my employment at the uw [sic], since my resignation in January 2003." (Dkt. No. 29, Decl. of Palmer, Ex. A.) Those documents were provided (to Plaintiff only) in two installments on January 26 and February 15, 2017. (Id. at 3-4.)

Additionally, Plaintiff requested and received, pursuant to the PRA, documents regarding other UW employees which she claims also contain confidential health information. Dkt. No. 37, Exs. 5-7.

Plaintiff's amended complaint, filed by her appointed counsel, originally named as defendants: the University of Washington; Alison Swenson, OPR Compliance Analyst; Eliza Saunders, Director of UW Office of Public Records; Perry Tapper, UW Public Records Compliance Officer; Andrew Palmer, OPR Compliance Analyst; and Does 1 – 12 (unnamed officials in various UW departments). (Dkt. No. 82, ¶¶ 98-203.) Plaintiff claimed violations of her federal constitutional rights (§ 1983), breach of contract, and liability under the "common law tort" of public disclosure of private facts. In addition to economic, compensatory, and punitive damages, she also sought declaratory, equitable, and injunctive relief, as well as attorney's fees and costs. (Id. at ¶¶ 98-203, et seq.)

In October of 2018, Defendants filed their first motion for summary judgment. (Dkt. No. 119.) The Court partially granted and partially denied that motion, dismissing (1) all the "Doe Defendants" and UW; (2) Plaintiff's claims for breach of contract, along with her request for declaratory and injunctive relief; and (3) the portion of Plaintiff's § 1983 and state law claims related to disclosure of her "personal information" (SSN, address, birthdate, etc.). See Dkt. No. 153,

Order on Defendants' Motion for Summary Judgment. In an order addressing both sides' requests for reconsideration/clarification, the Court suspended the case schedule in order to permit Defendants to file the instant motion, a second motion for summary judgment addressing the issues remaining in the case. (Dkt. No. 160, at 8-9.)

Discussion

I. Standard of review

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim in the case on which the nonmoving party has the burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1985).

There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) (non-moving party must present specific, significant probative evidence, not simply "some metaphysical doubt."); Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 253 (1986); T.W. Elec. Service Inc. v. Pacific Electrical Contractors Association, 809 F.2d 626, 630 (9th Cir. 1987).

The Court turns first to Plaintiff's "Objection to New Evidence in Defendants' Reply to Second Motion for Summary Judgment." (Dkt. No. 165.)

II. Motion to strike

Attached as Exhibit A to Defendants' reply brief were excerpts from discovery responses from the UW and Defendant Swenson, along with transmittal letters confirming that what Defendants Palmer and Swenson had requested during their document search concerning Plaintiff were "employment records" not "personal patient medical records." (Dkt. No. 164, Decl. of Freeman, Ex. A) The evidence was produced to rebut Plaintiff's assertion in her response that Defendants had searched her medical records and produced protected information from that allegedly improper source.

Plaintiff objects to the introduction of this "new evidence" for the first time in Defendants' Reply. It is not a well-taken objection. In the first place, the information was produced in response to Plaintiff's argument that documents might have been pulled from "patient" records related to her medical treatment. See Dkt. No. 162 at 14-16. It is beyond question that Defendants are permitted to respond to arguments made by Plaintiff in her responsive briefing; to fail to respond would be to concede the merit of the argument. Just as obviously, the rebutting party has the right to present evidence in support of whatever response it chooses to make.

Secondly, this evidence was excerpted from discovery responses produced to Plaintiff in August of 2018. See Dkt. No. 164-1 at 9. Both sides have previously filed the exhibit to which Plaintiff now

objects. See Dkt. Nos. 136-1, 113 at 9, 113-12, and 108-3. Plaintiff cannot maintain that she was surprised by the evidence and it was entirely proper for Defendants to adduce it in this context.

Plaintiff's objection to the "new evidence" is DENIED.

III. Summary judgment motion

The remainder of the Court's order addresses the arguments of the parties presented in response to the issues outlined by the Court in its previous order.

a) Are Plaintiff's allegations concerning the disclosure of medical information and alleged violations of HIPAA and the ADA eligible for relief under § 1983?

Plaintiff's § 1983 claims regarding the production of "protected" health/medical information fail on two grounds.

First, even assuming for the sake of argument that the evidence Plaintiff has presented was sufficient to support her claim of production of privileged medical information to a third party, and even assuming arguendo that the production of such information was a violation of HIPAA or the ADA, this would still not suffice to form the basis of a § 1983 claim. Her attempts to argue otherwise are futile.

Despite the Court's admonitions to the contrary in the order on Defendant's first summary judgment motion (see Dkt. No. 153 at 7-8), Plaintiff continues to confuse her "right to privacy" with her constitutional rights. While there is some overlap, they are not the same thing, and establishing that one or more governmental actors have negligently done something which compromises the former does not automatically mean that Plaintiff's constitutional rights

have been violated. Much more is required, and Plaintiff's proof fails to rise to that higher standard. Case law abounds which holds that § 1983 is not available to vindicate rights under the ADA (Vinson v. Thomas, 288 F.3d 1145, 1155-56 (9th Cir. 2002)[2]; Okwu v. McKim, 682 F.3d 842, 846 (9th Cir. 2012)[3]; see also Iceberg v. Martin, 2017 WL 396438 at *8 (WAWD, C15- 1232JLR)) or HIPAA (Nickler v. County of Clark, 752 F.App'x 427, 429 (9th Cir. 2018)[4].

Plaintiff attempts to circumvent this prohibition by arguing that the restrictions of HIPAA and the ADA "define the contours" of the constitutional right to privacy that she is vindicating through her lawsuit. Dkt. No. 162, Response at 8. But ultimately it is just another way of attempting to assert that these statutory schemes (which have their own remedial engines) create rights which are enforceable under §

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[2] "[A] comprehensive remedial scheme for the enforcement of a statutory right creates a presumption that Congress intended to foreclose resort to more general remedial schemes to vindicate that right." (citations omitted)... We therefore join the Fifth, Eighth, and Eleventh Circuits and hold that a plaintiff cannot bring an action under 42 U.S.C. § 1983 against a State official in her individual capacity to vindicate rights created by Title II of the ADA..."

[3] "By drafting a comprehensive remedial scheme for employer's violations of ADA Title I, Congress manifested an intent to preclude § 1983 remedies. See 42 U.S.C. § 12117... We are not free to interpret § 1983 in a way that provides a substitute remedy that Congress never provided."

[4] To the extent that [Plaintiff] raises a claim based on an alleged Health Insurance Portability and Accountability Act (HIPAA) violation, that claim fails because there is no private right of action under HIPAA, (citation omitted), and [Plaintiff] has not shown that Congress's enactment of HIPAA "create[d] new rights enforceable under § 1983 . . . in clear and unambiguous terms. (citations omitted.)"

1983; in fact, Plaintiff states at one point that "[she] is referring to HIPAA and the ADA to define what privacy rights are afforded to her by the U.S. Constitution." Id. This is exactly what the case law says those statutes do not do.

Nor does Plaintiff produce case law to support her position. She cites to a case in support of her argument that HIPAA and the ADA can be used to "define the 'contours' of rights to privacy under the Fourth or Fourteenth Amendment" (Castro v. County of Los Angeles, 833 F.3d 1060, 1067 (9th Cir. 2016)), but Castro is a prisoner rights case concerning the right to be free from violence at the hands of other inmates; the case has nothing to do with HIPAA or the ADA or a constitutional right to privacy.

She quotes from another Ninth Circuit ruling which found that "the statute[5] is of relevance in determining what privacy... public personnel expected to have." Nicholas v. Wallenstein, 266 F.3d 1083, 1088 (9th Cir. 2011). In the first place, the case is concerned with the limitations on privacy expectations created by the statute (i.e., that a prison nurse was not exempt from production of information the public had a right to access under Washington's Public Disclosure Act). In the second place, the holding was addressed to privacy rights, not constitutional rights; another example of Plaintiff mistaking one for the other.

An Eighth Circuit case from 2002 articulates best (1) the reason why not every violation of a person's privacy is a constitutional violation and (2) the nature of the threshold which Plaintiff is required to cross to

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[5] The statute, this Court notes, was Washington's Public Disclosure Act, not HIPAA or the ADA.

establish that a violation of her privacy reaches "constitutional" dimensions:

Not every disclosure of personal information will implicate the constitutional right to privacy,... and the Supreme Court has cautioned against unwarranted expansion of the right: "The personal rights found in [the] guarantee of personal privacy must be limited to those which are 'fundamental' or 'implicit within the concept of ordered liberty' ...." (citations omitted) "The Due Process Clause 'does not purport to supplant traditional tort law in laying down rules of conduct to regulate liabilities for injuries that attend living together in society ....'" (citations omitted). See also Eagle, 88 F.3d at 627 ("We must constantly remain aware, however, that the Constitution does not provide a remedy for every wrong that occurs in society.").

In accordance with these principles, we have consistently held that to violate the constitutional right of privacy "the information disclosed must be either a shocking degradation or an egregious humiliation ...to further some specific state interest, or a flagrant breach of a pledge of confidentiality which was instrumental in obtaining the personal information." Alexander, 993 F.2d at 1350 (citation omitted).

Cooksey v. Boyer, 289 F.3d 513, 515-16 (8th Cir. 2002). None of the information concerning Plaintiff which appears in any document she has produced as evidence can be described as "shocking," "degrading," "egregious," "humiliating," or "flagrant." Even if she could establish that "protected" health information about her was transmitted to a third party, she has failed as a matter

of law to establish that the information was of such an extreme nature that it rose to the level of violation of a constitutional right.

Plaintiff also grounds her argument alleging a 4th Amendment "unreasonable search and seizure" on HIPAA and the ADA, arguing that since those statutes require "segregation" of protected information, the fact that some of that information allegedly appeared in the Defendants' document productions means that the mandatory security was breached; i.e., Defendants "searched" this segregated material and "unreasonably" seized it. Response at 14- 16. The cases cited supra (Vinson, Okwu, and Nickler) continue to stand as a barrier to any argument that an alleged HIPAA/ADA violation can somehow be leveraged into a constitutional violation or a § 1983 claim. Furthermore, the Court has already ruled that the conduct alleged here, "responding to a legitimate PRA request[,] falls into the category of a legitimate 'noninvestigatory work-related purpose' and that Plaintiff's Fourth Amendment rights have not been violated by Defendants' conduct." Dkt. No. 153 at 9 (citing City of Ontario v. Quon, 560 U.S. 746 (2010)). This ruling is applicable to all the information produced by Defendants of which Plaintiff complains. It is the law of the case that no Fourth Amendment violation occurred during the course of conduct which is the subject of this lawsuit.

The second ground on which Plaintiff's claim fails is the assertion that the disclosure of her own personal health/medical information to her created a breach of her constitutional protections. This issue is covered in more depth below; suffice it to say that Plaintiff has failed to establish that delivering privileged

information to a requester at that person's request violates the requester's constitutional rights in any fashion.

b) Do Defendants' immunity defenses apply equally to Plaintiff's allegations concerning the disclosure of medical information and alleged violations of HIPAA and the ADA?

Regarding the qualified immunity defense applicable to Plaintiff's federal claims, and quoting from the order on Defendants' first summary judgment motion:

Determining whether an official is entitled to summary judgment based on the affirmative defense of qualified immunity requires applying a three-part test. First, the court must ask whether "[t]aken in the light most favorable to the party asserting the injury, [] the facts alleged show the officer's conduct violated a constitutional right?" If the answer is no, the officer is entitled to qualified immunity.

Dkt. No. 153 at 9-10 (quoting Skoog v. County of Clackamas, 469 F.3d 1221, 1229 (9th Cir. 2006)(emphasis supplied)). As in the previous summary judgment motion, the Court has settled that issue at the first question. Since Plaintiff has failed to establish the violation of a constitutional right stemming from the conduct of any of the Defendants, they are all entitled to qualified immunity.

Plaintiff and Defendants expend a considerable amount of briefing arguing whether the disclosures to which Plaintiff objects were "negligent" – the violation of a constitutional right requires direct and intentional action and the Constitution does not protect against negligent conduct by government officials. Daniels v. Williams, 474 U.S. 327, 331 (1986).

Defendants argue that, even if privileged information concerning Plaintiff was produced, it was done so inadvertently, and they are guilty of negligence at worst. Plaintiff argues that her evidence of production of "protected" information – regarding herself and third parties – to both herself and Betz establishes evidence of a "pattern and practice" by UW which she argues (with no citation to case authority) "rise[s] above mere negligence." Response at 12.

Because Plaintiff has failed to establish the violation of a constitutional right on which to ground her federal claims, the Court need not and does not reach the issue of whether Defendants' conduct was more than merely negligent. Without the violation of a constitutional right, Defendants are entitled to qualified immunity, and the issue of their mens rea is immaterial.

Regarding the immunity defense applicable to Plaintiff's state claim, the law states:

No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter.

RCW § 42.56.060. The Court previously found, based on Defendants' declarations, that there was sufficient circumstantial evidence to support findings of good faith on all the part of all Defendants. Dkt. No. 153 at 10-11. (See Deschamps v. Sheriff's Office, 123

Wn.App. 551, 559 (2004).[6] Plaintiff produced no evidence to the contrary in the most recent round of briefing[7] and the Court finds no reason to disturb its original finding of "good faith" on the part of all the individual Defendants. Having so ruled, Defendants are entitled to immunity from Plaintiff's state law cause of action as well.

c) Is Plaintiff entitled to relief under any federal or state cause of action for the release of any of her protected information to herself, or are her claims limited to the release of information to third parties?

Plaintiff attempts to fashion an argument that somehow the production of her own information to her "destroyed" its protected character. She cites to a Supreme Court case for the proposition that "once there is disclosure, the information belongs to the public" (Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157, 174 (2004)), but the case does not

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[6] '"The standard definition of good faith is a state of mind indicating honesty and lawfulness of purpose." Whaley v. Dep't. of Soc. & Health Serv., 90 Wn. App. 658, 669, 956 P.2d 1100 (1998) (citing Tank v. State Farm Fire & Cas. Co., 105 Wn.2d 381, 385, 715 P.2d 1133 (1986)[further citations omitted]... We examine good faith by considering all the relevant circumstances. Whaley, 90 Wn. App. at 669. Further, 'a traditional negligence standard--based on what the [employee or entity] reasonably should have known--is not used to determine whether immunity will attach.' Whaley, 90 Wn. App. at 668-69. And '[a]lthough good faith is usually a question of fact, it may be resolved on summary judgment where no reasonable minds could differ on the question.' Marthaller, 94 Wn. App. at 916." Deschamps v. Sheriff's Office, 123 Wn. App. 551, 559 (2004)

[7] Plaintiff does interpose a provision in Washington law which states that the State of Washington is liable for damages for the tortious conduct of its employees (RCW 4.92.090), but the State of Washington is no longer a defendant in this case and the statute is inapplicable to the individual defendants.

involve disclosure of privileged information to the person who held the privilege. She also quotes from a U.S. District Court case which held that "[u]nder the public-domain doctrine, materials normally immunized from disclosure under FOIA lose their protective cloak once disclosed and preserved in a permanent public record" (Muslim Advocates v. U.S. Dept. of Justice, 833 F.Supp. 2d 92, 99 (D.C. Cir. 2011)), but (1) this is not a FOIA case and (2) Plaintiff has failed to identify anything disclosed about her which is now "preserved in a permanent public record" (in Muslim Advocates, the court was referring to an official government document).

Defendants cite Muslim Advocates for the holding that "a plaintiff asserting that information has been previously disclosed bears the initial burden of pointing to specific information in the public domain that duplicates that being withheld." Id. (quoting Public Citizen v. Dept. of State, 11 F.3d 198, 201 (D.C. Cir. 1993). Because Muslim Advocates is a FOIA case where the Defendant was fighting to withhold information, it is not on all fours with this case, but it does make the point that, if Plaintiff is claiming that her privileged information is now part of the "public record," it is her burden to point to where in the public domain the information can be found. Without evidence that it has been made available publicly, not even the material produced to Betz qualifies as "in the public domain;" the information produced to her unquestionably does not fall into that category.

Plaintiff has no grounds upon which to assert a federal or state cause of action on the basis of information regarding her which was produced to her at her own request.

d) Does Plaintiff have standing to sue for the release of any information regarding third parties which has been produced to her?

Plaintiff herself makes it clear that she has not cited to this information because she believes she has standing to assert liability for its production. Response at 23-24. It is, in her mind, circumstantial evidence supporting her position that the production of her protected information is part of a "pattern or practice" by the UW which demonstrates that the production of her information was not "merely" negligence on Defendants' part, but something greater and more culpable.

It is a non-meritorious argument. First of all, the information she cites as allegedly "protected information"[8] once again fails to meet the threshold requirements ("shocking," "degrading," "egregious," "humiliating," or "flagrant") for violation of a constitutional right.

Second, she presents no evidence (by way of expert testimony or otherwise) that the sampling of third party information which she presents is statistically

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[8] 1. An "Activity Prescription Form" regarding modified duty which lists activity limitations due to a workplace injury to the subject's right shoulder. Dkt. No. 37-5 at 3.

2. A portion of an email from a UW Disability Services Consultant identifying an accommodation being made to an employee; there is nothing in the document concerning physical or medical condition. Dkt. No. 37-5 at 20.

3. A fax from a UW "Leave Specialist" at UW Medical Center Human Resources to a Dr. Schwarz listing physical restrictions for an employee and asking for clarification about the amount of weight she can lift, carry or push with her left hand; while the information regarding the subject's left hand is arguably privileged, it is de miminis to say the least. Dkt. No. 37-5 at 22.

significant; i.e., represents a sufficiently large enough percentage of UW's total annual PRA production to legally constitute proof of a "pattern or practice" (a term for which Plaintiff provides no legal definition).

Third, Plaintiff has no legal authority supporting her argument that proof of a "pattern or practice" suffices to lift Defendants' conduct above mere "negligence" and thus render them ineligible for the protections of qualified immunity. The case she does cite (Board of Comm'rs of Bryan County v. Brown, 520 U.S. 397 (1997)) is an "excessive force" case where the question was whether to hold the county liable for the actions of one officer and the issue was whether the claimant had shown a lack of training by the municipality. ("[T]he existence of a pattern of tortious conduct by inadequately trained employees may tend to show that the lack of proper training, rather than a one-time negligent administration of the program..."; Id. at 407-08). But Plaintiff has never alleged a claim of "improper or inadequate training" as a cause of action against any of the Defendants; it appears nowhere in her amended complaint. And the Bryan County case does not stand for the principle that "a pattern of tortious conduct" somehow elevates the alleged behavior above the realm of negligence; "lack of proper training" itself is a form of negligence.

Finally, the evidence Plaintiff presents regarding production of the information concerning the third parties was neither assembled nor produced by any of the Defendants to this lawsuit. It constitutes no proof of liability regarding the individuals she has chosen to sue. It is the conclusion of this Court that this evidence avails Plaintiff nothing in terms of

establishing her right to proceed on the causes of action she has asserted in this litigation.

Conclusion

Defendants have definitively demonstrated that there are no outstanding issues of disputed material fact before the Court and that they are entitled to dismissal of the federal and state claims regarding their production of privileged medical/health information concerning Plaintiff. Their conduct entails no violations of Plaintiff's constitutional rights, and all the Defendants are entitled for immunity under state and federal law. Summary judgment is GRANTED as to the remainder of Plaintiff's claims and her case is hereby DISMISSED with prejudice.

The clerk is ordered to provide copies of this order to all counsel. Dated June 7, 2019.

S/ Marsha J. Pechman

Document 153 Filed 02/11/19

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JULIE DALESSIO,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON, et al.,

Defendants.

CASE NO. C17-642 MJP

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The above-entitled Court, having received and reviewed:

1. Defendants' Motion for Summary Judgment Dismissal of Plaintiff's First Amended Complaint (Dkt. No. 119),

2. Plaintiff's Response to Defendants' Motion for Summary Judgment (Dkt. No. 130),

3. Defendants' Reply re Motion for Summary Judgment (Dkt. No. 132),

4. Plaintiff's Objection to New Argument in Defendant's Reply to Summary Judgment (Dkt. No. 134),

all attached declarations and exhibits, and relevant portions of the record, rules as follows:

IT IS ORDERED that Defendants' motion is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that Plaintiff's § 1983 claims against all Defendants regarding the publication of her Social Security number and other personal data (date of birth, telephone number, address, e-mail address) are DISMISSED with prejudice.

IT IS FURTHER ORDERED that Plaintiff's cause of action for breach of contract is DISMISSED with prejudice.

IT IS FURTHER ORDERED that Plaintiff's claims for injunctive and declaratory relief are DISMISSED with prejudice.

IT IS FURTHER ORDERED that Plaintiff's claims against the Doe defendants are DISMISSED with prejudice.

IT IS FURTHER ORDERED that the remainder of Defendants' motion is DENIED.

IT IS FURTHER ORDERED that Plaintiff's motion to strike the new arguments asserted in Defendants' reply brief is GRANTED.

Background

The following facts are undisputed: Plaintiff was employed by Defendant University of Washington ("UW") as a Clinical Technologist in the Department of Laboratory Medicine from 1987 until her resignation in 2003. On September 16, 2015, UW's Office of Public Records ("OPR") received a records request from an individual named David Betz under the Public Records Act (RCW 42.56 et seq.; "PRA") for "all records maintained by the University of Washington relating or pertaining to Julie Dalessio." (Dkt. No. 82 at 5, ¶ 29.)

In response, Defendant and OPR Compliance Analyst Alison Swenson produced two installments of redacted records to Betz. UW released 370 pages of documents to Betz; although there were many redactions (and over 100 pages of documents exempted under the PRA which were not provided at all), Plaintiff's Social Security number ("SSN") was not redacted from two of the pages; Plaintiff further

alleges (and Defendants do not deny) that personal information such as her date of birth, telephone number, home address, and email address were not completely redacted. Additionally, there was information in the documents which Plaintiff alleges was personal medical information protected under the Health Information Portability and Accountability Act ("HIPAA") and the Americans with Disabilities Act ("ADA").[9] (Dkt. Nos. 30-1, 30-2.)

Following Betz's request, Plaintiff submitted her own PRA request to UW for the information which was released to Betz. (Id. at ¶ 33.) On April 16, 2016, upon receipt of the documents released to Betz under the PRA, Plaintiff became aware of the unredacted information of which she now complains.

On November 9, 2016, Plaintiff submitted a second PRA request for "a digital copy of my departmental personnel file, along with any other computer or paper files that might contain records of inquiries concerning my employment at the uw [sic], since my resignation in January 2003." (Dkt. No. 29, Decl. of Palmer, Ex. A.) Those documents were provided (to Plaintiff only) in two installments on January 26 and February 15, 2017. (Id. at 3-4.)

Plaintiff's amended complaint, filed by her appointed counsel, names as defendants:

• University of Washington (breach of contract claim only)

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[9] UW disputes that (1) the information Plaintiff claims was "protected health information" was protected under HIPAA or the ADA, or that (2) releasing it creates a § 1983 cause of action for Plaintiff. This argument appeared for the first time in Defendants' reply brief. See discussion of "Plaintiff's medical information claims" infra.

• Alison Swenson, OPR Compliance Analyst (§ 1983 claims for violation of Plaintiff's 4th and 14th Amendment rights, and the tort of public disclosure of private facts)[10]

• Eliza Saunders, Director of UW Office of Public Records; Perry Tapper, UW Public Records Compliance Officer; and Andrew Palmer, OPR Compliance Analyst (§ 1983 claims for violation of Plaintiff's 4th and 14th Amendment rights, and the tort of public disclosure of private facts)2

• Does 1 – 12, unnamed officials in various UW departments (§ 1983 claims for violation of Plaintiff's Fourth and Fourteenth Amendment rights, and the tort of public disclosure of private facts)[11]

(Dkt. No. 82, ¶¶ 98-203.) In addition to economic, compensatory, and punitive damages, Plaintiff also seeks declaratory, equitable, and injunctive relief, as well as attorney's fees and costs.

Discussion

The legal issues presented and properly briefed by this motion are:

1. Did the disclosure of Plaintiff's SSN and personal information[12] in response to Betz's

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[10] Defendants argue (and Plaintiff does not dispute) that Plaintiff's claims against all individual Defendants but Swenson are based on the UW's production of documents to her personally, or for failures to adequately supervise Swenson's production of documents to Betz. (See Dkt. No. 82, ¶¶ 47, 49.)

[11] The Does have been named based on allegations that they collected the documents which were assembled and redacted by Swenson and transmitted to Betz and to Plaintiff. (Id. at ¶ 39.)

[12] The Court refers here to the information concerning Plaintiff's DOB, home address, etc; not the disclosure of "medical and health information" of which Plaintiff also complains.

PRA request amount to a violation of Plaintiff's constitutional rights? NO.

2. Even if the answer to #1 were "YES," are Defendants entitled to immunity from liability under federal and state law? YES.

I. Standard of review

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R.

Civ. P. 56(a). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim in the case on which the nonmoving party has the burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1985).

There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the non moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) (nonmoving party must present specific, significant probative evidence, not simply "some metaphysical doubt."); Fed. R. Civ. P.

56(e). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 253 (1986); T.W. Elec. Service Inc. v. Pacific Electrical Contractors Association, 809 F.2d 626, 630 (9th Cir. 1987).

II. Constitutional privacy rights

A violation of 42 U.S.C. § 1983 requires proof that "(1) the defendants acting under color of state law (2) deprived plaintiffs of rights secured by the Constitution or federal statutes." Gibson v. United States, 781 F.2d 1334, 1338 (9th Cir. 1986). It is undisputed that Defendants, employees of a state university releasing documents pursuant to the PRA, were acting under color of state law. Plaintiff bases her "deprivation of rights" claims on purported violations of the U.S. Constitution: specifically, the Fourth Amendment (Dkt. No. 82, ¶¶ 98-119) and Fourteenth Amendments. (Id., ¶¶ 147-165.)

a. Inadvertence and constitutional rights

The Court has no doubt that Defendant Swenson's failure to delete some references to

Plaintiff's SSN and other personal data in the 370 pages of documents was inadvertent; at worst, an act of negligence. Plaintiff does not attempt to ascribe or prove malicious intent on Defendants' part; in fact, she acknowledges that the release of any private information to Betz was accidental. (See Dkt. No. 37, Decl. of Dalessio at 2.[13])

The Supreme Court has made it clear that "negligent conduct by a state official, even though causing injury," is not grounds for finding a deprivation of a

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[13] "I first contacted UW Office of Public Records (Dkt. 30-9 p.2) expecting that the UW would want to mitigate damages, to at least assure me that this would not be repeated, that these PRs containing my Social Security Number, Date of birth, Name change information, Employee Id #, health related information, financial information, and a selection of defamatory documents would be properly redacted, and hoped that UW would request that my neighbor, Betz (who is an attorney) destroy all copies of personal, confidential information that he was mistakenly provided." (Dkt. No. 37, Decl. of Dalessio at 2; emphasis supplied.)

constitutional right. Daniels v. Williams, 474 U.S. 327, 31 (1986). The Daniels court ruled that the Constitution is intended as a bulwark against abuses of power, governmental power "used for purposes of oppression," and that

[f]ar from an abuse of power, lack of due care suggests no more than a failure to measure up to the conduct of a reasonable person. To hold that injury caused by such conduct is a deprivation within the meaning of the Fourteenth Amendment would trivialize the centuries-old principle of due process of law.

Id. at 332. The Constitution was not intended "to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society." Id.

Regarding the remaining named Defendants (other than Swenson), there is no proof that any of them had any involvement with the production of Plaintiff's records to Betz, beyond (1) supervisory responsibility over Swenson or (2) general managerial responsibility for the policies and procedures concerning production of records and files pursuant to document requests. Their immunity from liability derives from (1) the general absence of a violation of a "constitutional" right (as discussed supra) and (2) the lack of any proximate causation traceable to them which resulted in an injury to Plaintiff.[14]

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[14] Contrary to what Defendants argue, it is not necessary to prove "personal participation" by a defendant to establish the required causation. "The requisite causal connection can be established not only by some kind of direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or

The Doe Defendants, who apparently are named because they were in the chain of production of the documents eventually delivered to Betz, are even further insulated from liability. These unnamed defendants were acting in response to appropriate requests from a university official who was in turn responding to a legitimate PRA request. Again, Plaintiff produces no evidence that any of the unnamed Defendants had either an intention to violate her constitutional rights, nor any knowledge or reason to know that protected information contained in the documents they were producing would inadvertently be disclosed to an improper recipient.

b. The "constitutional right to privacy"

The Court agrees with Defendants that Plaintiff has confused her privacy interests with

her constitutional rights.

It is not in dispute that a person has a privacy interest in avoiding the public disclosure of personal matters, and that SSNs [sic] are recognized as sensitive and highly confidential. See In re Crawford, 194 F.3d 954, 958 (9th Cir. 1999); see generally Doyle v. Wilson, 529 F. Supp. 1343, 1348 (D. Del. 1982). Even so, a privacy interest and a sensitive or highly confidential designation are not the same as having a constitutional right to privacy.

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reasonably should know would cause others to inflict the constitutional injury." Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). The actor's (Swenson's) conduct was negligent at most, and there is no proof offered that she was habitually derelict in her duties, so it is not surprising that Plaintiff offers no proof that the other named Defendants "knew or should have known" that the information would be inadvertently disclosed.

Mallak v. Aitkin County, 9 F. Supp. 3d 1046, 1063 (D. Minn. 2014)(emphasis in original). To be fair, this is a fluid and not entirely well-defined area of the law, but the Court has no difficulty finding that the conduct of which Plaintiff complains falls well outside of any violation of privacy rights that rise to the level of a constitutional infringement.

Privacy interests, the right of citizens to not have certain kinds of personal information involuntarily disseminated to the public, overlap to a limited extent with the protections of the Constitution. The Ninth Circuit has held that "the indiscriminate public disclosure of SSNs, especially when accompanied by names and addresses, may implicate the constitutional right to informational privacy." Ferm v. United States Trustee (In re Crawford), 194 F.3d 954, 958 (9th Cir. 1999)(emphasis supplied). "The right to informational privacy, however, is not absolute; rather, it is a conditional right..." Id. (citing Doe v. Attorney General, 941 F.2d 780, 796 (9th Cir. 1991)).[15]

Plaintiff has offered no evidence that the dissemination of her SSN was "indiscriminate"[16] (and

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[15] Other circuits draw the distinction between privacy interests and constitutional rights even more tightly. The Sixth Circuit holds that the constitutional protection afforded the disclosure of personal information is a "narrowly tailored right, limited to circumstances where the information disclosed was particularly sensitive and the persons to whom it was disclosed were particularly dangerous vis-à-vis the plaintiffs. We cannot conclude the social security numbers and birth dates are tantamount to the sensitive information" previously held entitled to constitutional protection. Barber v. Overton, 496 F.3d 449, 456 (6th Cir. 2007)(emphasis in original).

[16] It is evident from Plaintiff's briefing that she considers the release of her personal information – and information allegedly regarding third parties – to herself to be part of a pattern or practice of improper

even if she had, the most the Ninth Circuit would concede is that such a practice "may" implicate a constitutional right). The inadvertence of the disclosure, coupled with the many examples of redaction in the materials which were produced, further compels a ruling that whatever incursion into Plaintiff's privacy may have occurred here, it does not rise to the level of the violation of a constitutional right.

Additionally, the Court notes that Plaintiff cites no legal authority for the proposition that a University employee, accessing the files of a former employee in response to a valid records request, is engaging in conduct which implicates an unreasonable "search and seizure" under the Fourth Amendment. Even more intrusive records searches (e.g., into the text messages on a work phone) have been found non-violative of the Fourth Amendment. "The search was justified at its inception because there were 'reasonable grounds for suspecting that the search [was] necessary for a noninvestigatory work-related purpose.'" City of Ontario v. Quon, 560 U.S. 746, 761 (2010)(internal citation omitted). It is the finding of this Court that responding to a legitimate PRA request falls into the category of a legitimate "noninvestigatory work-related purpose" and that

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conduct by Defendants, but she produces no legal authority for this theory and the Court knows of none. Defendants did not move for dismissal on this basis so this order will not rule definitively on that theory, except to indicate that the Court did not consider that evidence when analyzing whether the incidents complained of by Plaintiff represent indiscriminate or otherwise illegal conduct, or amount to a "policy or practice" which infringes the Constitution.

Plaintiff's Fourth Amendment rights have not been violated by Defendants' conduct.

III. Immunity defenses

a. Qualified immunity (federal)

In light of this Court's ruling that Plaintiff has not succeeded in establishing the violation

of a constitutional right, the qualified immunity analysis becomes very simple. The Ninth Circuit's test for qualified immunity lays out the following steps:

Determining whether an official is entitled to summary judgment based on the affirmative defense of qualified immunity requires applying a three-part test. First, the court must ask whether "[t]aken in the light most favorable to the party asserting the injury, [] the facts alleged show the officer's conduct violated a constitutional right?" If the answer is no, the officer is entitled to qualified immunity. If the answer is yes, the court must proceed to the next question: whether the right was clearly established at the time the officer acted. That is, "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." If the answer is no, the officer is entitled to qualified immunity. If the answer is yes, the court must answer the final question: whether the officer could have believed, "reasonably but mistakenly . . . that his or her conduct did not violate a clearly established constitutional right." If the answer is yes, the officer is entitled to qualified immunity. If the answer is no, he is not. Skoog v. County of Clackamas, 469 F.3d 1221, 1229 (9th Cir. 2006)(emphasis supplied). The Court need not take its analysis any further than the first question: none of

the Defendants' actions in this lawsuit violated Plaintiff's constitutional rights, therefore they are uniformly entitled to qualified immunity.

b. Qualified immunity (state)

Washington's PRA contains the following provision:

No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter.

RCW § 42.56.060. Defendants interpose this as a defense to Plaintiff's seventh cause of action, the common law tort of public disclosure of private facts. (Dkt. No. 82, ¶¶ 191-201.)

Plaintiff makes two arguments in response to this, one of which is non-meritorious ab initio and another for which she at least has some legal authority. First, she argues that, because Defendants did not comply with the law by releasing her SSN, they did not act in good faith. She cites no authority for this proposition and the Court rejects it.

Secondly, she cites case law that it is Defendants' burden to establish facts which are within Defendants' personal knowledge (e.g., the state of mind of Defendant Swenson). Gomez v. Toledo, 446 U.S. 635, 641 (1980). Defendants, for reasons best known to them, fail to include any representation in Defendant Swenson's declaration (Dkt. No. 30) that she was "attempting in good faith" to discharge her duties under the PRA and UW's policies.

In the absence of that, the Court refers to her detailed account of (1) the training she received in responding to PRA requests, (2) the number of PRA requests she processed in 2015 (the year Betz made his request), and (3) the fact that, in responding to Betz's request, she heavily redacted the material she produced and "created an exemption log regarding 101 pages determined to be wholly exempt from disclosure under the Public Records Act." (Id. at ¶¶ 3, 5, and 6.) There is case law in Washington which permits a finding on summary judgment of good faith where a defendant has made "a prima facie showing of good faith in her declaration and [] there was nothing in the record that suggested that the [defendant] acted with improper purpose." Marthaller v. King County Hosp., 94 Wn.App. 911, 916-17 (1999). The Court finds that Defendant Swenson's declaration satisfies that standard and further finds on that basis that Swenson is entitled to immunity under RCW 42.56.060.

The Courts enters a similar finding as regards Defendant Andrew Palmer (the UW Compliance Analyst who, as mentioned supra, simply produced Plaintiff's departmental file for her at her request; see AC at ¶ 49). Palmer avers that he "interpreted [Plaintiff's] request as a former employee's request for her own file, meaning it would not be redacted." (Dkt. No. 29, Decl. of Palmer at ¶ 5.) Plaintiff presents neither statutory nor case authority that this is not in compliance with the state of the law regarding production of documents under the PRA, and Palmer is entitled to immunity based on the state statute, for the same reasons as Swenson.

Regarding the remaining named Defendants – Saunders and Tapper – the Court makes a similar

finding of good faith based on their declarations (Dkt. Nos. 120 and 121), which detail their responsibilities for implementing, overseeing, and improving the system by which UW complies with the PRA, as well as their lack of any personal involvement in the production of the records to either Betz or Plaintiff herself. The evidence concerning them is completely lacking anything to suggest they operated with an improper purpose. Plaintiff having come forward with nothing more than the inadvertent production of some of her private information, these Defendants will be held immune from liability in accordance with RCW § 42.56.060.[17]

IV. Breach of contract claim

Plaintiff has asserted a breach of contract claim against UW only, alleging that among the material produced were documents which were supposed to have been removed from her "official personnel file and from all Department of Laboratory Medicine files" pursuant to a 2003 settlement agreement. (AC at ¶¶ 183-190.) She alleges that these "private and confidential documents" were disclosed through PRA requests to "Betz and others" (it is not specified who the "others" were; the Court speculates that Plaintiff refers to the records produced to her at her own request). (Id. at ¶ 190.)

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[17] Some portion of Plaintiff's legal theory is based on allegations that all the Defendants "devised, implemented, enforced, encouraged, [and/or] sanctioned" policies and practices which violated Plaintiff's constitutional rights.
(See AC at ¶ 158.) Aside from the isolated incident to which she was subject, she produces no proof of any policies or practices which support that allegation and cannot attach liability to any of the Defendants on this basis.

Plaintiff's claim is subject to a statute of limitations defense. Under Washington law, the limitations period for all contract claims is six years (RCW 4.16.040). Fatal to Plaintiff's cause of action, the limitations clock on a contract claim starts ticking from the date of the accrual of the claim; there is no "discovery rule" in this state as far as breach of (the majority of) contract claims are concerned.[18] Therefore, the latest date upon which Plaintiff could have sued under this cause of action was in 2009.

Plaintiff cites Washington case law which appears to suggest that a "discovery rule" is permissible in Washington contract cases. Cambridge Townhomes, LLC v. Pacific Star Roofing, Inc., 166 Wn.2d 475, 485 (2009). But the case cited for that proposition by the Washington Supreme Court very specifically limits application of the discovery rule to "breach of construction contracts where latent defects are alleged." 1000 Va. Ltd. P'ship v. Vertecs, 158 Wn.2d 566, 582 (2006)(emphasis supplied). This case does not involve construction contracts or latent defects. If a breach of Plaintiff's Settlement Agreement with UW occurred, it occurred at the point that UW failed to

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[18] The statute of limitations for an action upon a written contract is six years. RCW 4.16.040(1). "Statutes of limitations do not begin to run until a cause of action accrues." 1000 Va. Ltd. P'ship, 158 Wn.2d at 575 (citing RCW 4.16.005). A cause of action usually accrues "when the party has the right to apply to a court for relief." Id. "Under the discovery rule, a cause of action does not accrue — and as a result the statute of limitations does not begin to run — until the plaintiff knows, or has reason to know, the factual basis for the cause of action." Bowles v. Dep't of Ret. Sys., 121 Wn.2d 52, 79-80, 847 P.2d 440 (1993).
Our Supreme Court "has consistently held that accrual of a contract action occurs on breach." 1000 Va. Ltd. P'ship, 158 Wn.2d at 576. (Kinney v. Cook, 150 Wn. App. 187, 192-93 (2009).)

remove the documents from her file as required by the agreement; i.e., in 2003. Defendants are correct – Plaintiff is barred from bringing this claim by the statute of limitations.

V. Injunctive and declaratory relief

Injunctive relief is appropriate only where Plaintiff has a "well-grounded fear" of immediate invasion of the rights she is suing to protect. WFSE v. State of Washington, 99 Wn.2d 878, 888 (1983). Plaintiff alleges, without any supporting evidence, that she has a "credible fear of her medical and health information being produced again by Defendants." (Response at 24.) She also says that she is entitled to enjoin Defendants from producing her full name and corresponding birthdate (citing Article I, Section 7 of the Washington State Constitution), but Defendants have never argued that they had a right under the PRA to disclose that information. Defendants are entitled as a matter of law to have Plaintiff's request for injunctive relief dismissed.

Regarding her request for declaratory relief, Plaintiff again presents arguments that imply that Defendants have taken a position that they had a right to divulge the information regarding which she has sued them. ("At no time have Defendants stated they would stop producing Ms. Dalessio's private health and medical information to others." Id.) Defendants have never claimed that they were entitled to disclose any information which is exempted from production by the PRA or otherwise prohibited; their position has consistently been that whatever information was produced improperly was produced inadvertently, not according to any policy or belief that they were entitled to do so.

A request for declaratory relief should be dismissed if it is "duplicative of existing claims." Englewood Lending, Inc. v. G&G Coachella Invs., 651 F.Supp.2d 1141, 1145 (C.D.Cal. 2009). Should Plaintiff prevail on any of her claims, there is no need to "declare" that Defendants' conduct was illegal; it is merely redundant. Her request for declaratory relief will be dismissed.

VI. Plaintiff's medical information claims

Even a cursory reading of Plaintiff's complaint makes it clear that she is suing Defendants for more than just the release of two SSN's and some personal information. The complaint is replete with allegations that the documents produced to both Betz and herself contained medical/health information that Plaintiff believes is protected from disclosure by both HIPAA and the ADA. (See AC at ¶¶ 36, 50, 65, 72, 83, 84, 87, 157, 167, 194.)

However, Defendants' opening brief is solely concerned with the release of the SSN's – there is not a single mention of medical or health information in their initial arguments. Plaintiff seizes upon this in her response, pointing out that (even if the Court were to accept Defendants' summary judgment arguments and dismiss the claims they were attacking) Plaintiff would still have her claims regarding the disclosure of the medical/health information. In their reply brief, Defendants attempt to rebut the medical/health information claims, arguing that (1) the information is not the kind protected from disclosure (or is illegible in the documents they produced) and (2) there are no § 1983 claims available under HIPAA or the ADA.

Unsurprisingly, Plaintiff filed a surreply to strike this new argument. "It is well established that new arguments and evidence presented for the first time in a Reply are waived." Docusign, Inc. v. Sertifi, Inc., 468 F.Supp.2d 1305 1307 (W.D.Wash. 2006)(citing U.S. v. Patterson, 230 F.3d 1168, 1172 (9th Cir. 2000). The motion is well-taken; the argument is untimely and will be stricken.

Conclusion

Regarding Plaintiff's claim that the inadvertent disclosure of her SSN and other personal data amounted to a violation of her rights under the U.S. Constitution, the Court finds that there are no disputed issues of material fact and that Defendants are entitled to summary judgment as a matter of law. The portion of Plaintiff's lawsuit will be dismissed with prejudice. Her breach of contract claim is barred by the applicable statute of limitations, and she has established no legal basis for her requests for injunctive or declaratory relief; those claims will also be dismissed with prejudice. The unnamed Doe Defendants, alleged only to have produced documents as they were required to do by state law and university policy, will be dismissed.

Defendants' untimely attempt to rebut Plaintiff's claims regarding her medical/health information will be stricken. The Court expresses its doubts about the viability of those claims, as well as Plaintiff's claims that the disclosure of her personal information to her, plus the alleged disclosure of information concerning third parties, is actionable, but as Defendants made no motion in that regard, a ruling on that portion of Plaintiff's lawsuit awaits another day. The Court also notes that Plaintiff has, as of yet, offered no evidence

that the conduct of which she complains has resulted in any legally-cognizable damages, but again this portion of Plaintiff's proof was not challenged by Defendants.

The clerk is ordered to provide copies of this order to all counsel. Dated February 11, 2019. ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 16

S/ Marsha J. Pechman

United States Senior District Judge

Document 80 Filed 04/06/18

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JULIE DALESSIO,

Plaintiff, v.

UNIVERSITY OF WASHINGTON, et al.,

Defendants.

The Court, having received and reviewed:

CASE NO. C17-642 MJP ORDER ON MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

1. Plaintiff's Motion for Leave to File Amended Complaint (Dkt. No. 74),
2. Defendant University of Washington's Response to Plaintiff's Motion for Leave to File Amended Complaint (Dkt. No. 75),
3. Plaintiff's Reply in Support of Motion for Leave to File Amended Complaint (Dkt. No. 77),

all attached declarations and exhibits, and relevant portions of the record, rules as follows: IT IS ORDERED that the motion is GRANTED IN PART and DENIED IN PART.

Plaintiff will be permitted to file her amended complaint as proposed with the exception of the allegations and claims concerning the acts of counsel (and counsel's staff) for the Defendant University of Washington. Ms. Freeman, Mr. Chen, and Ms. Walker may not be added as defendants in the amended pleading.

IT IS FURTHER ORDERED that Plaintiff file her First Amended Complaint (revised as per this order) by no later than April 13, 2018.

Discussion

Counsel was appointed to represent Plaintiff on January 19, 2018. (Dkt. No. 67.) One of new-appointed counsel's first acts was to submit a motion for leave to file an amended complaint. The proposed amended complaint (1) eliminates claims related to Plaintiffs' pre- 2003 employment, as well as claims under FERPA, FOIA and the Public Records Act and claims for defamation, libel and RCW 40.14 privacy; (2) re-alleges Plaintiff's breach of contract claim; and (3) adds new claims against nineteen new parties, including four named University of Washington ("UW") employees, twelve unidentified UW employees, three litigation attorneys/staff, and a claim for punitive damages. (Dkt. No. 74-1.)

Defendant UW opposes the addition of both the new claims and the new parties. As regards all claims and parties except those related to the litigation attorneys and their staff, the Court is satisfied that the amended complaint is timely, not unduly prejudicial and is being brought in good faith. Plaintiff will be permitted to file an amended complaint as to those claims and parties.

The Court agrees with Defendant, however, that litigation counsel and their staff are entitled to absolute immunity and are not properly added as defendants to this action. There is longstanding precedent for the absolute immunity of attorneys and any personnel "who perform official functions in the judicial process" from § 1983 liability. Briscoe v. LaHue, 460 U.S. 325, 334 (1983). Plaintiff attempts to fit her claims against UW's counsel and their staff into an exception carved out for the performance of "administrative duties." Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993). The Court is not persuaded.

While defense counsel described the publication of the information which forms the basis of Plaintiff's claim against UW's counsel and staff as "an inadvertent administrative error" (Dkt. No. 76, Decl. of Freeman at ¶ 9), that does not convert the production of evidence in the course of litigation into an "administrative duty." It is part and parcel of the performance of "official duties in the judicial process" and as such is entitled to the absolute immunity which is accorded counsel (and their staff) in this process.

Plaintiff is directed to file an amended complaint, revised in accordance with this order, no later than April 13, 2018.

The clerk is ordered to provide copies of this order to all counsel. Dated: April 6, 2018.

S/ The Honorable Marsha J. Pechman United States Senior District Court Judge

Document 81 Filed 04/12/18

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON

JULIE DALESSIO, an individual, Plaintiff,

v.

UNIVERSITY OF WASHINGTON, a Washington Public Corporation; Eliza Saunders, Director of the Office of Public Records, in her personal and official capacity; Alison Swenson, Compliance Analyst, in her personal capacity; Perry Tapper, Public Records Compliance Officer, in his personal capacity; Andrew Palmer, Compliance Analyst, in his personal capacity; Jayne Freeman, a Special Assistant Attorney General, in her personal and official capacity; Derek Chen, an attorney working under the Special Assistant Attorney General, in his personal and official capacity; LaHoma Walker, a Legal Assistant working under Special Assistant Attorney General, in her personal and official capacity; John or Jane Does 1-12, in his or her personal capacity,

Defendants.

No. 2:17-cv-00642-MJP

First Amended Complaint Jury Trial Requested

Plaintiff Julie Dalessio alleges for her Complaint against collectively the Defendants on personal knowledge as to her own activities, and to information and belief as to the activities of others, as follows:

I. Introduction

1. Pursuant to 42 U.S.C § 1983, Plaintiff alleges the deprivation of rights guaranteed to her by the Fourth,

Fifth and Fourteenth Amendments of the United States Constitution. She seeks declaratory relief, equitable relief, damages, attorney's fees and litigation expenses/costs.

II. Jurisdiction

2. This case arises under the United States and Washington Constitutions and 42 U.S.C. §1983.

3. This court has jurisdiction by virtue of 28 U.S.C. §§ 1331, 1343, 1443 and 1446. Further this Court has jurisdiction to issue declaratory relief under 28 U.S.C. §§ 2201 and 2202. This Court has supplemental or pendant jurisdiction over Washington State claims made under 28 U.S.C. § 1367(a) and in particular Washington State claims made against the University of Washington. The University of Washington has consented to federal court jurisdiction for purposes of considering the issues of common law privacy violations, breach of contract, libel, civil rights violations, and injunctive relief raised in this action.

4. Venue is proper in this Court under 28 U.S.C § 1391(b)(2) because the University of Washington maintains all or substantially all of the records at issue in Seattle Washington, or because Seattle is where the decision was made to wrongfully produce the records at issue.

III. Parties

5. Plaintiff Julie Dalessio ("Dalessio"), is a former a former classified staff employee of
the University of Washington, and at all relevant times a resident of the state of Washington.

6. Defendant University of Washington ("UW") is a Washington public corporation.

7. Defendant Eliza Saunders ("Saunders"), is an individual UW official serving as a Director of the Office of Public Records at the UW's Office of Public Records and Open Public Meetings. Defendant Saunders is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in her personal and official capacities. In all of her actions and omissions alleged herein, Defendant Saunders was acting under the color of state law.

8. Defendant Perry Tapper ("Tapper"), is an individual UW official serving as a Public Records Compliance Officer at the UW's Office of Public Records and Open Public Meetings. Defendant Tapper is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his personal capacity. In all of his actions and omissions alleged herein, Defendant Tapper was acting under the color of state law.

9. Defendant Andrew Palmer ("Palmer"), is an individual UW official serving as a Compliance Analyst at the UW's Office of Public Records and Open Public Meetings. Defendant Palmer is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his personal capacity. In all of his actions and omissions alleged herein, Defendant Palmer was acting under the color of state law.

10. Defendant Alison Swenson ("Swenson") is an individual UW official serving as a Compliance Analyst at the UW's Office of Public Records and Open Public Meetings. Defendant Swenson is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in her personal capacity. In all of her

actions and omissions alleged herein, Defendant Swenson was acting under the color of state law.

11. [Stricken] Defendant Jayne Freeman ("Freeman") is an individual contracted Special

15 Assistant Attorney General with the Office of the Washington State Attorney General to provide legal services to Defendant UW. Defendant Freeman is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in her personal capacity. In all of her actions and omissions alleged herein, Defendant Freeman was acting under the color of state law.

12. [Stricken] Defendant Derek Chen ("Chen") is an individual attorney working under the Special Assistant Attorney General with the Office of the Washington State Attorney General to provide legal services to Defendant UW. Defendant Chen is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his personal capacity. In all of his actions and omissions alleged herein, Defendant Chen was acting under the color of state law.

13. [Stricken] Defendant LaHoma Walker ("Walker") is an individual legal assistant

working under the Special Assistant Attorney General with the Office of the Washington State

Attorney General to provide legal services to Defendant UW. Defendant Walker is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in her personal capacity. In all of his

actions and omissions alleged herein, Defendant Walker was acting under the color of state law.

14. Defendant John or Jane Doe 1 ("Doe 1") is believed to be an individual UW official serving at the UW's Department of Laboratory Medicine. Defendant

Doe 1 is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his/her personal capacity. In all of his/her actions and omissions alleged herein, Defendant Doe 1 was acting under the color of state law.

15. Defendant John or Jane Doe 2 ("Doe 2") is believed to be an individual UW official serving at the UW's Department of Laboratory Medicine. Defendant Doe 2 is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his/her personal capacity. In all of his/her actions and omissions alleged herein, Defendant Doe 2 was acting under the color of state law.

16. Defendant John or Jane Doe 3 ("Doe 3") is believed to be an individual UW official of state law.

17. Defendant John or Jane Doe 4 ("Doe 4") is believed to be an individual UW official serving at the UW's Department of Human Resources of UW Medicine. Defendant Doe 4 is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his/her personal capacity.In all of his/her actions and omissions alleged herein, Defendant Doe 4 was acting under the color of state law.

18. Defendant John or Jane Doe 5 ("Doe 5") is believed to be an individual UW official serving at the UW's Department of Human Resources of UW Medicine. Defendant Doe 5 is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his/her personal capacity.

In all of his/her actions and omissions alleged herein, Defendant Doe 5 was acting under the color of state law.

19. Defendant John or Jane Doe 6 ("Doe 6") is believed to be an individual UW official serving at the UW's Department of Payroll Services. Defendant Doe 6 is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his/her personal capacity. In all of his/her actions and omissions alleged herein, Defendant Doe 6 was acting under the color of state law.

20. Defendant John or Jane Doe 7 ("Doe 7") is believed to be an individual UW official serving at the UW's Office of Finance and Administration. Defendant Doe 7 is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his/her personal capacity. In all of his/her actions and omissions alleged herein, Defendant Doe 7 was acting under the color of state law.

21. Defendant John or Jane Doe 8 ("Doe 8") is believed to be an individual UW official serving at the UW's Office of Records Management Services. Defendant Doe 8 is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his/her personal capacity. In all of his/her actions and omissions alleged herein, Defendant Doe 8 was acting under the color of state law.

22. Defendant John or Jane Doe 9 ("Doe 9") is believed to be an individual UW official serving at the UW's Department of Legal and Business Affairs of UW Medicine. Defendant Doe

9 is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his/her personal capacity. In all of his/her actions and omissions alleged herein, Defendant Doe 8 was acting under the color of state law.

23. Defendant John or Jane Doe 10 ("Doe 10") is believed to be an individual UW official serving at the UW's Office of Chief Health System Officer of UW Medicine. Defendant Doe 10 is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his/her personal capacity. In all of his/her actions and omissions alleged herein, Defendant Doe 10 was acting under the color of state law.

24. Defendant John or Jane Doe 11 ("Doe 11") is believed to be an individual UW official serving at the UW's Department of Records and Management Services at UW Medicine.

Defendant Doe 11 is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his/her personal capacity. In all of his/her actions and omissions alleged herein, Defendant Doe 11 was acting under the color of state law.

25. Defendant John or Jane Doe 12 ("Doe 12") is believed to be an individual UW official serving at the UW's Office of Disability Services. Defendant Doe 12 is a "person" as that term is used in 42 U.S.C. § 1983 and is being sued in his/her personal capacity. In all of his/her actions and omissions alleged herein, Defendant Doe 12 was acting under the color of state law.

IV. Facts

26. Defendant UW's Office of Public Records and Open Public Meetings oversees UW's compliance with the Washington Public Records Act, RCW 42.56.001, et. seq. ("PRA").

27. David Betz ("Betz") is an individual who from 2005-16 lived in an adjacent property to Dalessio.

28. In May 2015, Betz sued Dalessio in King County Superior Court claiming that when Dalessio built a fence, it was on Betz's property. The case number is 15-2-17152-9.

29. On September 16, 2015, while litigation was still on-going, Betz made a request under the PRA to Defendant UW for "all records maintained by the University of Washington relating or pertaining to Julie Dalessio." In making the PRA request, Betz used Dalessio's student email address, jdaless@u.washington.edu, as a tool to identify Dalessio. Dalessio received the email address, jdaless@u.washington.edu, while she was a student at UW obtaining her Master's Degree in Laboratory Medicine.

30. On November 10, 2015, Defendant Swenson responded to Betz's request made under the PRA and verified that for this installment of documents "the appropriate redactions" were made according to the PRA. The bases for the redactions are: FERPA Student Privacy 20 U.S.C. § 1232; RCW 42.56.050 Invasion of Privacy; RCW 42.56.070(1) Other Statute; RCW 42.56.230(3) Employee Privacy; RCW 42.56.230(3) Taxpayer Information; RCW 42.56.230(3) Employee Information.

31. On December 04, 2015, Defendant Swenson responded to Betz's request made under

the PRA and again verified that for this second and final installment of documents "made the appropriate redactions and/or exemptions" according to the PRA. The bases for the redactions or exemptions, according to Defendant Swenson are the following: FERPA Student Privacy 20 U.S.C. § 1232; HIPAA 40 C.F.R. Part 160, 164; RCW 42.56.050 Invasion of Privacy; RCW 42.56.070(1) Other Statute; RCW 42.56.230(3) Employee Privacy; RCW 42.56.230(3) Employee Performance Evaluation; RCW 42.56.230(3) Taxpayer Information; RCW 42.56.250(2) Employment Application; RCW 42.56.230(3) Employee Information; RCW 70.02.020 Medical

32. On or around March 22, 2016, Betz revealed in discovery that he had obtained records from Defendant UW that he planned to use as evidence against Ms. Dalessio in his adverse possession lawsuit. When filed with the King County Superior Court these documents would become public record that Dalessio would have no control over.

33. When Dalessio learned of Betz's PRA request, she immediately became concerned for the security of her private information held by Defendant UW, and consequently made her own PRA request to Defendant UW for a copy of the records that Betz received from his PRA request. Dalessio's request was designated as PR-2016-00218 by Defendant UW.

34. On or around April 10, 2016, Dalessio received a disc containing PR-2016-00218, records responsive to her "public records request for a copy of the records released for PR 2015-

00570."

35. From the documentation provided, it appears that Defendant Swenson produced the records to both PRA requests: Dalessio's PRA request PR-2016-00218; Betz's PRA request PR 2015-00570.

36. In response to Dalessio's PRA request number PR-2016-00218, in relevant part,

Defendant Swenson produced the following private, confidential, personal information about

Dalessio to Betz: Dalessio's social security number; Dalessio's date of birth, Dalessio's place of birth; Dalessio's personal home address; Dalessio's personal phone number; Dalessio's personal email address; Dalessio's employee identification number; Dalessio's payroll records; Dalessio's protected health information under both federal laws the Health Insurance Portability and Accountability Act ("HIPAA"), and the Americans with Disabilities Act ("ADA"); Dalessio's requests for accommodation under the ADA; comments by other employees about Dalessio's disabilities; Dalessio's employee job classification and salary and benefits information; Dalessio's employment security records; Dalessio's job performance evaluations and allegations related to alleged misconduct; Dalessio's work and leave records; Dalessio's previous legal surnames; Dalessio's signature. These records are personally identifiable, private and confidential which could lead to identity theft.

37. On April 17, 2016, out of fear that her private, confidential, personal information was

unlawfully being disclosed to known and unknown third parties Dalessio contacted Defendant Swenson

by email and Defendant UW's Office of Public Records by United States Postal Service alerting them that Betz "was given confidential information, including my social security number and date of birth along with the other health and personnel related, confidential, exempt information."

38. On April 27, 2016, Dalessio did receive a response from Defendant Swenson which only attached Betz's original request, PR 2015-00570, and did not address Dalessio's stated concerns about her private confidential information.

39. A request summary report, generated on April 10, 2017, appears to identify persons employed by Defendant UW who searched for and transmitted documents to Defendant UW's Office of Public Records and Open Public Meetings that were produced in response to request PR 2015-00570 submitted by Betz. The request summary report identifies Defendant UW employees who helped fulfill request PR 2015-00570. It believed that the persons who were involved in assisting Defendant UW's Office of Public Records and Public Meetings Act: Doe 1; Doe 2; Doe 3; Doe 4; Doe 5; Doe 6; Doe 7; Doe 8; Doe 9; Doe 10; Doe 11; Doe 12.

40. It is under personal belief that Defendant Tapper approved Defendant Swenson's production of documents before it was released to either Betz or Dalessio through requests PR-2016-00218 and PR 2015-00570. The belief is based upon the fact that the initial "PMT" appeared on the request summary report for PR 2015-00570, and also because Defendant

Swenson identified Defendant Tapper as her Supervisor at the time the requests were made.

41. On May 20, 2016, Dalessio made a telephone call to Defendant UW's Office of Public Records and Open Public Meetings and spoke with Defendant Tapper following-up on Dalessio's April 17, 2016 communications to Defendant Swenson and Defendant UW that went unanswered about Dalessio's private and confidential information unlawfully being disclosed via the Public Records Act. Defendant Tapper Dalessio did not respond to Dalessio's concern directly, but stated Defendant UW's Office of Public Records and Open Public Meetings does not respond to requests for information. Further, Defendant Tapper made Dalessio believe that the only way she could receive a response from Defendant UW's Office of Public Records and Open Public Meetings would be to submit a PRA request.

42. It is under belief that Defendant Saunders acted as the Director of the UW Office of Public Records And Open Meetings throughout these occurrences. It is believed she was instrumental in the oversight and implementation of relevant Public Records Act disclosures.

43. On October 14, 2016, Dalessio made a telephone call to Defendant UW's Office of Ombudsman speaking to Ombud Chuck Sloane ("Sloane"). Dalessio conveyed to Sloane her fears about her private and confidential information unlawfully being disclosed via PRA requests.

Sloane referred Dalessio to the Office of the Attorney General – University of Washington and Washington Department of Enterprise Services. Defendant UW has its own division of the Washington Department of Enterprise Services known as UW Department of Risk Services.

44. On October 21, 2016, Dalessio filed claims with both Defendant UW Department of Risk Services, and Washington Department of Enterprise Services. The claims gave legal notice to both entities that Dalessio was legally wronged by Defendant UW's production of documents under the PRA to Betz's request because of: privacy violations, reputation injured, and claimed actual damages including mental pain and suffering, and breach of contract. Dalessio made both of these notices of claims pursuant to RCW 4.92.100.

45. On or about October 2016, Dalessio contacted Office of the Attorney General at the University of Washington and spoke with Assistant Attorney General Rob Kosin ("Kosin"). Kosin told Dalessio that there was nothing he could do.

46. On personal belief, Dalessio feared many departments within Defendant UW were disclosing or could possibly disclose Dalessio's personal, private information, based upon the unlawful PRA disclosure to Betz.

47. On November 09, 2016, Dalessio submitted a PRA request to Defendant UW's Office of Public Records and Open Public Meetings. Defendant UW designated this request as PR-

2016-00760. This request sought "a digital copy of [Dalessio's] departmental personnel file, along with any other computer or paper files that might contain records of inquiries concerning [Dalessio's] employment at the UW since [Dalessio's] resignation in 2003. [Dalessio] is also requesting any other records of departmental communications, concerning [Dalessio's]employment with the UW, including phone logs, calendars, and emails exchanged ith human resources, former supervisor Rhoda Ashley Morrow or others concerning [Dalessio]." Dalessio also asked UW to contact her if it needed clarification about the scope or meaning of her request.

48. On February 02, 2017, Defendant UW denied Dalessio's October 21, 2016 notice of claim.

49. On or about February 2017, Dalessio received the final of two installments of documents responsive to her request PR-2016-00760. Defendant Palmer was the person who produced both installments of records to Dalessio. It believed that the persons involved in assisting Defendant UW's Office of Public Records and Public Meetings Act include: Doe 1; Doe 2; Doe 3; Doe 4; Doe 5; Doe 6; Doe 7; Doe 8; Doe 9; Doe 10; Doe 11; Doe 12.

50. In response to Dalessio's PRA request number PR-2016-00760, in relevant part, Defendant Palmer produced the following private, confidential, personal information about Dalessio: Dalessio's social security number; Dalessio's date of birth, Dalessio's place of birth;

address; Dalessio's employee identification number; Dalessio's payroll records; Dalessio's protected health information under both federal laws the Health Insurance Portability and Accountability Act ("HIPAA"), and the Americans with Disabilities Act ("ADA"); Dalessio's requests for accommodations under the ADA; comments by other employees about Dalessio's disabilities; Dalessio's employee job classification and salary and benefits information; Dalessio's employment security records; Dalessio's job performance evaluations and allegations related to alleged misconduct; Dalessio's work and leave records; Dalessio's previous legal surnames; Dalessio's signature; thirty-seven (37) copies of letters supposed to be taken out of Dalessio's file pursuant to the 2003 settlement agreement between Defendant UW and Dalessio; Dalessio's cognitive job analysis; Dalessio's psychiatric notes; intimate personal information about Dalessio's home life; a document wrongfully implying Dalessio taking medications to combat a disease. These records are personally identifiable, private and confidential which could lead to identity theft.

51. Some of the medical information produced in response to PRA request PR-2016-00760 was, at the time, unknown to even Dalessio herself. Dalessio only learned of some of this medical information through the production of documents to PR-2016-00760.

52. The "Request Summary Report" associated with PR 2016-00760 [Dkt. 42] indicates 1431 pages of documents were withheld from the documents provided to Dalessio in this PRA request, even though

this PR 2016-00760 did not include any indication that any other documents were withheld, or descriptions of documents withheld, as required under the PRA.

53. On March 28, 2017, Dalessio filed this current action in King County Superior Court, as case number 17-2-07812-3 SEA.

54. [Stricken] On April 10, 2017, Defendant Freeman filed a notice of appearance in King County Superior Court as attorney of record for Defendant UW.

55. On April 24, 2017, Defendant UW filed a notice of removal of this case to United States District Court for the Western District of Washington and consented to jurisdiction over all the claims in this action.

56. [Stricken] On May 25, 2017, Dalessio had a joint-telephonic conference with Defendant Freeman and Defendant Chen regarding this current action, in the United States District Court for the Western District of Washington. In this telephonic conference Dalessio expressed serious concern about the safety and security of her private information while presenting evidence to this Court about the claims listed in the original complaint. Dalessio suggested that both parties use descriptions of her private and confidential information, in accordance with the Federal Rules of Evidence, rather than filing the complete unredacted documents. Defendant Freeman told Dalessio that she would have to think about how Dalessio's private and confidential information would be filed and presented to this Court.

57. [Stricken] On or about May 25, 2017, Dalessio served requests for admissions to Defendant Freeman, pursuant to Rule 36 of the Federal Rules of

Civil Procedure, asking Defendant UW to admit to descriptions of information contained in the public records produced by Defendant UW.

58. [Stricken] Defendant UW made objections to each and every request for admission that Dalessio made.

59. [Stricken] At no time did either Defendant Freeman or Defendant Chen follow-up with Ms. Dalessio to try to find a strategy of how to submit the evidence to the Court, while protecting Dalessio's private and confidential information.

60. [Stricken] On August 24, 2017 Defendant UW filed a motion summary judgment in this action, through its attorney of record Defendant Freeman. Defendant Freeman signed the motion for summary judgment.

61. [Stricken] Through PACER CM/ECF system, Dalessio received the summary judgment in her email at 10:00 AM on August 24, 2017.

62. [Stricken] On August 24, 2017, courts documents indicate Defendant Freeman entered the Declaration of Alison Swenson into PACER CM/ECF system at 10:13 AM. Dalessio's email Notice of Electronic Filing states the document was filed at 10:13 AM.

63. [Stricken] There are multiple facts that indicate Defendant Freeman entered Defendant Swenson's Declaration into PACER CM/ECF system. First, Defendant Swenson's Declaration is not signed by either Defendant Freeman, Defendant Chen, or any attorney. Second, the caption for the Defendant Swenson's Declaration states it is "in support of Defendant's Motion for Summary Judgment." Third, the Notice of Electronic Filing for Defendant Swenson's Declaration states that the transaction was "entered by Freeman, Jayne."

64. [Stricken] Defendant Chen's Declaration in Docket 40 of this lawsuit states: "Counsel for Defendant then made additional redactions using black boxes for purposes of filing the subject documents in court, some of which had writing describing what was underneath the redaction, pursuant to WDLC 5.2(a)."

65. Defendant Swenson's Declaration and exhibits states that attached to it is Betz's PRA request numbered PR 2015-00570. According to the Declaration Defendant Swenson made on redaction, prior to the electronic filing with the Court, but it is incomprehensible what was redacted. Defendant Swenson and whomever filed the declaration with the court left most if not all of Dalessio's private and confidential information, open and available to the public including: Dalessio's social security number; Dalessio's date of birth, Dalessio's place of birth; Dalessio's personal home address; Dalessio's personal phone number; Dalessio's personal email address; Dalessio's employee identification number; Dalessio's payroll records; Dalessio's protected health information under both federal laws the Health Insurance Portability and Accountability Act ("HIPAA"), and the Americans with Disabilities Act ("ADA"); Dalessio's requests for accommodation under the ADA; comments by other employees about Dalessio's disabilities; Dalessio's employee job classification and salary and benefits information; Dalessio's employment security records; Dalessio's job performance evaluations and allegations related to

alleged misconduct; Dalessio's work and leave records; Dalessio's previous legal surnames; Dalessio's signature. These records are personally identifiable, and contain private and confidential which could lead to identity theft.

66. Defendant Swenson's Declaration and exhibits, as it was filed with this Court, violated Local Court Rule 5.2 because it did not fully redact Dalessio's social security number and date of birth before being entered with the PACER CM/ECF system.

67. [Stricken] On August 27, 2017, Dalessio emailed Ms. Laurie Cuaresma, Courtroom Deputy to Honorable Judge Martinez, and expressed that Dalessio felt re-violated by the Defendant Swenson's Declaration and exhibits that "publicly re-disseminat[e] personal, confidential, and statutorily exempt information including my date of birth, personal uw student/alumni email, health information etc, as described in my complaint." Defendants Freeman, Chen and Walker were carbon copied to this email.

68. [Stricken] On August 28, 2017, Ms. Cuaresma responded by email and stated that upon review of the Defendant Swenson's Declaration and exhibits, "one exhibit contains information that should have been redacted" and was immediately sealed. Ms. Cuaresma directed Defendant to re-file the exhibit with the appropriate redactions.

69. [Stricken] On August 29, 2017, Dalessio for the second time emailed Ms. Cuaresma,
to express a separate exhibit contained her unredacted date of birth. Defendants Freeman, Chen and Walker were carbon copied to this email.

70. [Stricken] On August 30, 2017, Ms. Cuaresma responded by email for the second
time and stated that upon further review, "the Court had identified several pages that still
contained Ms. Dalessio's social security number, as well as her date of birth," which immediately
sealed.

71. [Stricken] On August 30, 2017, Dalessio emailed Defendants Freeman, Chen and
Walker and asked to discuss how to file these records under seal pursuant to Local Court Rule
5(g).

72. [Partially Stricken] On September 01, 2017, Defendant Freeman again entered
Swenson's Exhibit A containing the entire contents of PR 2015-00570 into the CM/ECF system as Dkts. 32, 33, 34. This disclosure by Defendant Freeman, in relevant part, disclosed to the public the following private, confidential, personal information about Dalessio: Dalessio's place of birth; Dalessio's personal home address; Dalessio's personal phone number; Dalessio's
personal email address; Dalessio's employee identification number; Dalessio's payroll records Dalessio's protected health information under both federal laws the Health Insurance Portability and

Accountability Act ("HIPAA"), and the Americans with Disabilities Act ("ADA");

Dalessio's requests for accommodation under the ADA; comments by other employees about

Dalessio's disabilities; Dalessio's employee job classification and salary and benefits

allegations related to alleged misconduct; Dalessio's work and leave records; Dalessio's previous legal surnames; Dalessio's signature. These records are personally identifiable, private and confidential which could lead to identity theft.

73. [Stricken] Defendants Freeman, Chen and Walker never responded to Dalessio's

request to discuss how to file the records under seal pursuant to Local Court Rule 5(g).

74. On September 05, 2018, Dalessio filed a Motion to Seal exhibits from Defendant Swenson's Declaration that contained Dalessio's private and confidential information. The Court

subsequently sealed several of the exhibits in their entirety.

75. Dalessio has suffered economically, physically and emotionally from these

disclosures. Furthermore, since this information was made public she may suffer harm at any

time in the future because of this harm.

76. Economically, Dalessio has been harmed by the disclosure of her private andconfidential information because the disclosure of her private and confidential information. First,

Dalessio had to pay an attorney King County Superior Court case number 15-2-17152-9, against Betz, to

review Dalessio's PRA request PR-2016-00218; Betz's PRA request PR 2015-00570.

Second, Dalessio paid the attorney to perform a legal analysis of the laws governing private and confidential information to determine if she was legally harmed by this disclosure. Third,Dalessio had to pay the attorney in case King County Superior Court case number 15-2-17152-9 to make legal filings to protect her private and confidential information from becoming part or the public court record. Fourth, Dalessio has had to pay for legal consultation fees in connection with the disclosure her private and confidential information. Fifth, Dalessio has had to pay court costs associated with this present action. All of these costs were incurred in Dalessio trying to remove her private and confidential information from the public record.

77. Physically, Dalessio has been harmed by the disclosure of her private and confidential information because she is allergic to plastics. Contact with any type of plastics results in inflammation and lasting pain. Because of these disclosures, Dalessio has had to use the telephone to make phone calls, computers to write letters, a printer to print documents, among other types of plastics, all to try to remove her private and confidential information from the public record, in amounts to be determined by jury at trial.

78. Emotionally, Dalessio has been harmed by the disclosure of her private and confidential information. Dalessio has suffered from sleep disturbances, agitation, traumatic

stress, lack of appetite, sadness, embarrassment, worry, humiliation, in amounts to be determined by the jury at trial.

79. The University of Washington has a pattern and practice of disclosing private and confidential information in the disclosure of documents in response to PRA requests.

80. Dalessio, herself, has received documents under the PRA, from other requests she made, which contain private and confidential information about third parties: PR 2017-00357; PR 2017-00358; PR 2017-00359; PR 2017-00822; PR 2017-00803; PR 2017-00836; PR 2017-00738; PR 2017-00737.

81. Records produced by Defendant UW to Dalessio for PRA request PR 2017-00357, in relevant part contains, a current UW Virology employee's work location, payroll records, work and leave records, Date of birth, place of birth, employee identification number, personal phone number, W4 information, signature, retirement and insurance information, employee job classification and salary information, email regarding lack of qualifications for job, documents clearly marked as "confidential." These records are personally identifiable, private and confidential which could lead to identity theft. The included inventory of documents withheld includes performance evaluations and application materials. It is under belief, that Lynn O'Shea who is a UW official serving as a Compliance Analyst at the UW's Office of

Public Records and Open Public Meetings participated in the disclosure of these records.

82. Records produced by Defendant UW to Dalessio for PRA request PR 2017-00358, in relevant part, contains a current UW Virology employee's work location, employee identification number, payroll records, work and leave records, Date of birth, place of birth, disability status, Investment program enrollment, retirement information, Declaration of marriage/Same Sex Domestic Partnership, dependent daughter, Long Term Disability Insurance Enrollment, height, weight, signature, immigrant status, "Affirmative Action Data" race, origin, physical, sensory, mental impairment, veteran status, test scores, test questions, on the job accident reports, INS I-94 departure record, admission #, INS employee authorization (expired), Family Medical Leave documentation, documents clearly marked as "confidential." These records are personally identifiable, private and confidential which could lead to identity theft. This PR also contained a document relating to a "request for criminal conviction record information from the Washington State Patrol" "pursuant to the Child/Adult Abuse Information Act." This PR did not contain any listing of any documents withheld. It is under belief, that Lynn O'Shea who is a UW official serving as a Compliance Analyst at the UW's Office of Public Records and Open Public Meetings, participated this PRA request.

83. Records produced by Defendant UW to Dalessio for PRA request PR 2017-00359, in

relevant part contains documents produced to this request ten (10) current or former UW employees that appear to be clients of the UW Disability Service Office. The produced records, in relevant part, identify: locations, employee identification numbers, job classification and salary information, payroll records, work and leave records, FMLA documentation, Retirement pension benefits information, signatures, Date of birth, place of birth, disability status, protected health information under both federal laws the Health Insurance Portability and Accountability Act ("HIPAA"), and the Americans with Disabilities Act ("ADA") and RCW 51.28.070 "Information contained in the claim files and records of injured workers," tobacco use, Insurance claim numbers, Insurance policy numbers, medical and dental plan information, signatures, spouse's name, date of marriage, number of dependents, birth certificates, form 1040, employee evaluations, personal email addresses, requests for accommodation under the ADA; comments by other employees about disabilities; medical testing results, documents clearly marked as "confidential." It is under belief, that Lynn O'Shea who is a UW official serving as a Compliance Analyst at the UW's Office of Public Records and Open Public Meetings, participated this PRA request.

84. Records produced by Defendant UW to Dalessio for PRA request PR 2017-00822, in relevant part contains documents produced to this request four (4) former UW Virology employees. The produced records, in relevant part, identify: employee identification numbers,

dates of birth, places of birth, previous surnames, race, ethnicity, disability handicap status, veteran status, work and leave records and FMLA records, classification and salary records, pension benefit records, payroll records, personal phone numbers, protected health information under both federal laws the Health Insurance Portability and Accountability Act ("HIPAA"), and the Americans with Disabilities Act ("ADA") and RCW 51.28.070 "Information contained in the claim files and records of injured workers," student identification numbers, performance evaluations, workplace accident reports, insurance information, tobacco use, marital status, height, weight. It is under belief, that Lynn O'Shea who is a UW official serving as a Compliance Analyst at the UW's Office of Public Records and Open Public Meetings, participated this PRA request.

85. Records produced by Defendant UW to Dalessio for PRA request PR 2017-00803, in relevant part contains, personal residential address, personal cell phone number, personal email address. These records are personally identifiable, private and confidential which indicates safety and privacy concerns, and could lead to identity theft. It is under belief, that Meg McGough who is a UW official serving as a Compliance Officer at the UW's Office of Public Records and Open Public Meetings, participated this PRA request.

86. Records produced by Defendant UW to Dalessio for PRA request PR 2017-00836, in relevant part contains, employee ID number, personal residential address, personal phone number,

date of birth, place of birth, personal biography, curriculum vitae, personal email address, student email address, salary and benefits information, application materials, performance evaluation, personal emails, disparaging emails, Homeland Security employment eligibility verification (date of birth, citizenship, signature), passport, bank information, documents clearly marked as "confidential" or "disclosure prohibited." These records are personally identifiable, private and confidential which could lead to identity theft. It is under belief, that Meg McGough who is a UW official serving as a Compliance Officer at the UW's Office of Public Records and Open Public Meetings, participated this PRA request.

87. Records produced by Defendant UW to Dalessio for PRA request PR 2017-00738, in relevant part, contains social security number, dates of birth, personal residential address, employee identification number, payroll records, insurance, retirement benefit information, personal email addresses, employment security information, documents clearly marked as "confidential," protected health information under both federal laws the Health Insurance Portability and Accountability Act ("HIPAA"), and the Americans with Disabilities Act ("ADA"), L & I claim number, letters implying improper use of controlled substances or other alleged misconduct, many invalid waivers, and financial information. These records are

personally identifiable, private and confidential which could lead to stigmatization and/or identity theft. It is under belief, that Meg McGough who is a UW official serving as a Compliance Officer at the UW's Office of Public Records and Open Public Meetings, participated this PRA request.

88. PR 2017-00737, in relevant part contains, an "Internal Audit Memorandum" written by Defendant UW, and dated March 2, 2004. The contents of the memo concern violations of the Fair Labor Standards Act 29 CFR 791.2 by Defendant UW, with a December 18, 2002 fax attached containing a July 15, 1997 letter to Dalessio regarding payment for work outside of her job classification. Dalessio's personal information is the only personally identifiable information not redacted in the memo. These records are personally identifiable, private and confidential which could lead to identity theft. It is under belief, that Kathleen Burns who is a UW official serving as a Compliance Analyst at the UW's Office of Public Records and Open Public Meetings, participated this PRA request.

89. As a pattern and practice, Defendant UW discloses personally identifiable information through disclosures made pursuant to the Washington Public Records Act. These disclosures contain private and confidential, which could lead to identity theft and safety concerns.

90. It is under belief, that multiple employees of the UW's of Public Records and Open Public Meetings review each production of documents to ensure

compliance with the Washington Public Records Act and applicable laws.

91. In 2003, Dalessio and Defendant UW signed a Settlement Agreement relating to her employment relationship with UW.

92. On or about January 08, 2003 the contract was executed by both Dalessio and Defendant UW.

93. Dalessio performed or substantially performed all of the significant things that the settlement agreement required her to do. Defendant UW has never complained that Dalessio did not satisfy the terms of the 2003 Settlement Agreement.

94. In a paragraph two (2), of the terms of the 2003 Settlement Agreement, imposed upon UW an affirmative duty to remove certain specified files from Dalessio's "official Personnel Department file and from all Department of Laboratory Medicine files."

95. In response to PRA request PR 2016-00760, Defendant UW produced the certain specified files that it had a duty to remove from Dalessio's personnel and Laboratory Medicine files, in violation of the 2003 Settlement Agreement.

96. Dalessio's privacy was harmed because Defendant UW failed to remove the certain specified documents from Dalessio's official Personnel Department file and from all Department of Laboratory Medicine files. 97. Under belief, the certain specified documents produced in response to PRA request PR 2016-00760, unlawfully came from Dalessio's official Personnel Department file and from all Department of Laboratory Medicine files, violating the terms of the 2003 settlement agreement.

FIRST CAUSE OF ACTION

42 U.S.C. § 1983

Substantive Due Process:

Fourteenth Amendment to the United States Constitution

Against Defendants Saunders, Swenson, Tapper, Palmer, Does 1-12

98. Plaintiff incorporates by reference paragraphs 1 through 97 as fully set forth herein. 99. Under the Fourteenth Amendment to the United States Constitution, Dalessio has a

protected privacy interest in "avoiding disclosure of personal matters." In re Crawford, 194 F. 3d 954, 958 (9th Cir. 1999).

100. The acts of Defendants were taken under the color of state law.

101. Defendants are legally required to comply with the principle of substantive due process arising out of the Fourteenth Amendments to the United States Constitution.

102. Substantive Due Process protects an "individua['s] interest in avoiding disclosure of personal matters." In re Crawford, 194 F. 3d 954, 958 (9th Cir. 1999).

103. Defendants are legally required to comply with Health Information Portability and Accountability Act, 42 U.S.C. § 1320d–6(a)(3) which states violation occurs when a person knowingly "discloses individually identifiable health information to another person."

104. Pursuant to 45 CFR § 164.512(a) a covered entity may only disclose protected health information "to

the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law."

105. Defendants had an obligation to adopt policies, procedures, and safeguards to prevent unauthorized access to Dalessio's medical records, pursuant to 42 U.S.C. § 1320d-6(a)(3) and 45 CFR § 164.512(a).

106. Defendants are legally required to comply with the Americans With Disabilities Act,
42 U.S.C. § 12112(d)(3)(B) and 42 U.S.C. § 12112(d)(4)(C) requires that medical records be kept separately from nonconfidential information, and that access to confidential files be limited.

Defendants had an obligation to ensure that your medical records remained confidential and were not commingled with other records which then could be produced to unauthorized individuals in response to PRA requests.

107. Defendants had an obligation to adopt policies, procedures, and safeguards to prevent unauthorized access to Dalessio's medical records, pursuant to 42 U.S.C. § 12112(d)(3)(B) and 42 U.S.C. § 12112(d)(4)(C).

108. Defendants are legally required to comply with disclosure requirements and exemptions of the Washington Public Records Act ("PRA"), RCW 42.56.001, et. seq. The PRA expressly prohibits the disclosure of: 1. Social security numbers, RCW 42.56.230(3), RCW 42.56.230(5), RCW 42.56.230(7)(a), RCW 42.56.250(4); 2. Any record used to prove identity,

age, residential address, social security number, or other personal information, RCW

42.56.230(7)(a); 3. Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy, RCW 42.56.230(3). In addition, the PRA RCW 42.56.070(1) prohibits disclosure of information that is exempted under other statutes, specifically; 1. Information contained in the claim files and records of injured workers, RCW 51.28.070; 2. Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another organization for operational, research, or evaluation purposes are exempt from disclosure under this chapter, RCW 42.56.410;

3. Preliminary drafts, note, recommendations, intra-agency memorandums in which opinions are expressed or policies formulated or recommended RCW 42.56.280; 4. Health care information, RCW 70.02.

109. Dalessio had a right to expect that Defendants would comply with the law to protect

her private and confidential information from disclosure. Dalessio has a constitutionally protected right "in avoiding disclosure of personal matters." In re Crawford, 194 F. 3d 954, 958 (9th Cir. 1999).

110. Dalessio had a right not to have her private and confidential information collected in absence of evidence of criminal wrongdoing as a part of her right to privacy and right to be left

alone and the liberty interests created by state and federal law, and the principle of substantive

due process found in the Fourteenth Amendment to the United States Constitution.

111. Defendants also deprived Dalessio of substantive due process by arbitrary and capricious government action which was not rationally related to a legitimate government interest. Dalessio's liberty rights include deprivation of her reputation, the possibility of identity theft, and her personal safety and security, thereby violating Dalessio's right to due process under the Fourteenth Amendment of the United States Constitution.

112. Defendants damaged Dalessio's standing in the community and/or imposed the disclosure of her private and confidential information that affects her safety and security, and forecloses her freedom to conduct her private affairs in private and as she sees fit.

113. As a direct and proximate result of defendants' unlawful acts, Dalessio has suffered economic harm.

114. As a direct and proximate cause of defendants' unlawful acts, Dalessio has suffered physical harm.

115. As a direct and proximate result of defendants' unlawful acts, Dalessio has suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult in amounts to be determined at the jury trial.

116. Dalessio seeks equitable relief in the form of having her private and confidential information redacted or destroyed from Defendant UW.

117. Dalessio seeks equitable relief in the form of Defendant UW providing a complete list of every person(s), business, entity, governmental

organization who received a copy of Dalessio's records unlawfully.

118. Dalessio seeks recovery of all equitable relief, compensatory damages, and punitive damages as provided by law, in addition to reimbursement of her reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988 and 28 U.S.C. § 1927, if appropriate.

119. Defendants' conduct toward Dalessio demonstrated a wanton, reckless, or callous indifference to the constitutional rights of Dalessio, which warrants an imposition of punitive damages in such amounts as the jury may deem appropriate to deter future violations.

[Stricken] SECOND CAUSE OF ACTION

42 U.S.C. § 1983

Substantive Due Process:

Fifth and Fourteenth Amendments to the United States Constitution

Against Defendants Freeman, Chen, Walker

120. [Stricken] Plaintiff incorporates by reference paragraphs 1 through 97 as fully set

forth herein.

121. [Stricken] Under the Fifth and Fourteenth Amendments to the United States

Constitution, Dalessio has a protected privacy interest in "avoiding disclosure of personal matters." In re Crawford, 194 F. 3d 954, 958 (9th Cir. 1999).

122. [Stricken] The acts of Defendants were taken under the color of state law.

123. [Stricken] Defendants are legally required to comply with the principle of substantive due process

arising out of the Fifth and Fourteenth Amendments to the United States Constitution.

124. [Stricken] Substantive Due Process protects an "individua['s] interest in avoiding disclosure of personal matters." In re Crawford, 194 F. 3d 954, 958 (9th Cir. 1999).

125. [Stricken] Defendants are legally required to comply with Health Information Portability and Accountability Act, 42 U.S.C. § 1320d–6(a)(3) which states violation occurs when a person knowingly "discloses individually identifiable health information to another person."

126. [Stricken] Pursuant to 45 CFR § 164.512(a) a covered entity may only disclose protected health information "to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law."

127. [Stricken] Defendants had an obligation to adopt policies, procedures, and safeguards to prevent unauthorized access to Dalessio's medical records, pursuant to 42 U.S.C. § 1320d-6(a)(3) and 45 CFR § 164.512(a).

disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law."

129. [Stricken] The Office of the Washington Attorney General is statutorily mandated to provide legal advice to Defendant UW.

130. [Stricken] Pursuant to 45 C.F.R. Parts 160 and 164, Defendant UW is a hybrid

covered entity and the Office of the Washington Attorney General is a business associate of the

University when it provides legal services that require the use or disclosure of private health information. When the Office of the Washington Attorney General, in its role as a business associate, contracts with another lawyer to provide legal services for the University as a Special Assistant Attorney General, the Office of the Washington Attorney General is required to ensure that the Special Assistant Attorney General maintains the security and confidentiality of protected health information.

131. [Stricken] According to the contract appointing the Special Assistant Attorney General as Defendant Freeman, the Special Assistant Attorney General shall not use or disclose Protected Health Information ("PHI") received from the University or the Office of the Washington Attorney General in any manner that would constitute a violation of federal law, the Health Insurance Portability and Accountability Act of 1996 and any regulations enacted pursuant to its provisions ("HIPAA Standards") and applicable provisions of Washington state law. The Special Assistant Attorney General shall ensure that its employees, contractors, and agents use or disclose PHI received from, or created or received on behalf of Defendant UW or Office of Washington Attorney General in accordance with the provisions of this Agreement and federal and state law. The Special Assistant Attorney General shall not use or disclose Private Health Information in any manner other than permitted or required by Defendant UW or the Office of the Washington Attorney General for the purpose

of accomplishing services on behalf of Defendant UW or the Office of the Washington Attorney General.

132. [Stricken] Also, according to the contract appointing the Special Assistant Attorney General as Defendant Freeman, the Special Assistant Attorney General agrees that it will implement all appropriate safeguards to prevent the inappropriate use or disclosure of Private Health Information pursuant to the terms and conditions of this Agreement. To the extent the Special Assistant Attorney General carries out Defendant UW's obligations under HIPAA Privacy, Breach Notifications, Security, and Enforcement Rules and regulations, the Special Assistant Attorney General shall comply with the requirements of such Rules and regulations that apply to Defendant UW in the performance of such obligations.

133. [Stricken] Defendants are legally required to comply with the court rules when practicing in court. United States District Court for the Western District of Washington's Local Court Rule 5.2 expressly prohibits the filing of documents in the PACER CM/ECF system without first redacting social security numbers, birth dates and financial accounting information.

134. [Stricken] Defendants had an obligation to adopt policies, procedures, and safeguards to prevent court filings without the mandatory redactions of social security numbers, birth dates, and financial accounting information in accordance with LCR 5.2.

135. [Stricken] Dalessio's substantive due process rights were violated when Defendants Freeman, Chen and Walker entered unredacted documents in dockets 30-1, 30-2, 32, 33, 34 because these filings made Dalessio's private and confidential information public because documents filed with the PACER CM/ECF system are public documents that are widely available.

136. [Stricken] Dalessio had a right to expect that Defendants would comply with the law to protect her private and confidential information from disclosure. Dalessio has a constitutionally protected right "in avoiding disclosure of personal matters." In re Crawford, 194 F. 3d 954, 958 (9th Cir. 1999).

137. [Stricken] Dalessio had a right not to have her private and confidential information collected in absence of evidence of criminal wrongdoing as a part of her right to privacy and right to be left alone and the liberty interests created by state and federal law, and the principle of substantive due process found in the Fourteenth Amendment to the United States Constitution.

138. [Stricken] Defendants also deprived Dalessio of substantive due process by arbitrary and capricious government action which was not rationally related to a legitimate government interest. Dalessio's liberty rights include deprivation of her reputation, the possibility of identity theft, and her personal safety and security, thereby violating

Dalessio's right to due process under the Fourteenth Amendment of the United States Constitution.

139. [Stricken] Defendants damaged Dalessio's standing in the community and/or imposed the disclosure of her private and confidential information that affects her safety and security, and forecloses her freedom to conduct her private affairs in private and as she sees fit.

140. [Stricken] As a direct and proximate result of defendants' unlawful acts, Dalessio has suffered economic harm.

141. [Stricken] As a direct and proximate cause of defendants' unlawful acts, Dalessio has suffered physical harm.

142. [Stricken] As a direct and proximate result of defendants' unlawful acts, Dalessio has suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult in amounts to be determined at the jury trial.

143. [Stricken] Dalessio seeks equitable relief in the form of having her private and confidential information redacted or destroyed from Defendants Freeman, Chen and Walker's records.

144. [Stricken] Dalessio seeks equitable relief in the form of Defendants Freeman, Chen and Walker permanently sealing Dalessio's court records that were ordered sealed in Docket 51.

145. [Stricken] Dalessio seeks recovery of all equitable relief, compensatory damages, and punitive damages as provided by law, in addition to reimbursement of her reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988 and 28 U.S.C. § 1927, if appropriate.

146. [Stricken] Defendants' conduct toward Dalessio demonstrated a wanton, reckless, or callous indifference to the constitutional rights of Dalessio, which warrants an imposition of punitive damages in such amounts as the jury may deem appropriate to deter future violations.

THIRD CAUSE OF ACTION 42 U.S.C. § 1983
Fourth Amendment
of the United States Constitution
Against Defendants Saunders, Swenson, Tapper, Palmer, Does 1-12

147. Plaintiff incorporates by reference paragraphs 1 through 97 as fully set forth herein.

148. The Fourth Amendments to the United States Constitution, protects against unreasonable searches and seizures.

149. The acts of Defendants were taken under the color of state law.

150. Government institutions searching employees medical files can be considered searches under the Fourth Amendment to the United States Constitution. Norman-Bloodsaw v. Lawrence Berkeley Laboratory, 135 F. 3d 1260, 1269 (9th Cir. 1998).

151. By Defendants searching Dalessio's personnel file, laboratory medical file, and disability services file, Defendants violated Dalessio's right to be free from unreasonable searches and seizures and to be secure in her person, house, papers and effects in violation of Article I, Section 7 of the Washington Constitution, as well as in violation of the Fourth Amendment of the United States Constitution.

152. It is under belief that Defendants Saunders, Tapper, Swenson, Palmer and Does 1-12 encouraged, sanctioned, and ratified a practice of searching and producing documents out of personnel files, laboratory medical file, and disability services file, violating Dalessio's right to be free from unreasonable searches and seizures and to be secure in her person, house, papers and effects in violation of Article I, Section 7 of the Washington Constitution, as well as in violation of the Fourth Amendment of the United States Constitution, made applicable to the State of Washington through the Fourteenth Amendment and made actionable by 42 U.S.C. § 1983.

153. Defendants are legally required to comply with Health Information Portability and Accountability Act, 42 U.S.C. § 1320d–6(a)(3) which states violation occurs when a person knowingly "discloses individually identifiable health information to another person."

154. Pursuant to 45 CFR § 164.512(a) a covered entity may only disclose protected health information "to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law."

155. Defendants are legally required to comply with the Americans With Disabilities Act,
42 U.S.C. § 12112(d)(3)(B) and 42 U.S.C. § 12112(d)(4)(C) requires that medical records be kept separately from nonconfidential information, and that access to confidential files be limited.

Defendants had an obligation to ensure that your medical records remained confidential and were not

commingled with other records which then could be produced to unauthorized individuals in response to PRA requests.

156. Defendants had an obligation to adopt policies, procedures, and safeguards to prevent unauthorized access to Dalessio's medical records, pursuant to 42 U.S.C. § 12112(d)(3)(B) and 42 U.S.C. § 12112(d)(4)(C).

157. Defendants had no legal authority to make searches under the PRA for Protected Health Information under HIPAA, or protected medical documents and requests for accommodations under the Americans with Disabilities Act, in violation of Article I, Section 7 of the Washington Constitution, as well as in violation of the Fourth Amendment of the United States Constitution, made applicable to the State of Washington through the Fourteenth Amendment and made actionable by 42 U.S.C. § 1983.

158. It is under belief, that Defendants' constitutional abuses and violations were and are directly caused by policies, practices and/or customs devised, implemented enforced, encouraged, sanctioned, by Defendants Saunders, Tapper, Swenson, Palmer and Does 1-12.

159. As a direct and proximate result of defendants' unlawful acts, Dalessio has suffered economic harm.

160. As a direct and proximate cause of defendants' unlawful acts, Dalessio has suffered physical harm.

161. As a direct and proximate result of defendants' unlawful acts, Dalessio has suffered outrage, betrayal, offense, indignity, embarrassment,

humiliation, injury and insult in amounts to be determined at the jury trial.

164. Dalessio seeks recovery of all equitable relief, compensatory damages, and punitive damages as provided by law, in addition to reimbursement of her reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988 and 28 U.S.C. § 1927, if appropriate.

165. Defendants' conduct toward Dalessio demonstrated a wanton, reckless, or callous indifference to the constitutional rights of Dalessio, which warrants an imposition of punitive damages in such amounts as the jury may deem appropriate to deter future violations.

FOURTH CAUSE OF ACTION Declaratory Judgment, 28 U.S.C. §2201, et. seq.

Against Defendants UW, Saunders, Swenson, Tapper, Palmer, Does 1-12

166. Plaintiff incorporates paragraphs 1 through 97 as set forth herein.

167. Defendants violated Dalessio's substantive due process rights when it/they unlawfully disclosed private and confidential information about her to third parties including, but not limited to: Dalessio's social security number; Dalessio's date of birth, Dalessio's place of birth; Dalessio's personal home address; Dalessio's personal phone number; Dalessio's personal email address; Dalessio's employee identification number; Dalessio's payroll records; Dalessio's protected health information under both federal laws the Health Insurance Portability and Accountability Act ("HIPAA"), and the Americans with Disabilities Act ("ADA"); Dalessio's requests for

accommodation under the ADA; comments by other employees about Dalessio's disabilities; Dalessio's employee job classification and salary and benefits information; Dalessio's employment security records; Dalessio's job performance evaluations and allegations related to alleged misconduct; Dalessio's work and leave records; Dalessio's previous legal surnames; Dalessio's signature.

168. Defendants violated Dalessio's Fourth Amendment rights when it/they unreasonably searched Dalessio's personnel file, laboratory medical file, and disability services file, Defendants violated Dalessio's right to be free from unreasonable searches and seizures and to be secure in her person, house, papers and effects in violation of Article I, Section 7 of the Washington Constitution, as well as in violation of the Fourth Amendment of the United States Constitution.

169. Dalessio is entitled to an order from the Court that Defendants violated her substantive due process rights.

170. Dalessio is entitled to an order form the Court that Defendants violated her Fourth Amendment rights.

171. Dalessio seeks equitable relief in the form of having her records deleted from her file, pursuant to the 2003 settlement agreement and other legal authority.

172. Dalessio also seeks training and accountability for the invasion of her civil liberties and others.

173. Dalessio seeks equitable relief in the form of providing training in the protection of

private and confidential information, especially in the areas of: employee personnel files, disability services files, medical records, social security numbers and dates of birth.

174. Dalessio is entitled to reasonable attorney's fees and costs pursuant to 42. U.S.C. § 1988 and 28 U.S.C. § 1927, if appropriate.

[Stricken] FIFTH CAUSE OF ACTION Declaratory Judgment, 28 U.S.C. §2201, et. seq.

Against Defendants Freeman, Chen, Walker

175. [Stricken] Plaintiff incorporates paragraphs 1 through 97 as set forth herein.

176. [Stricken] Defendants violated Dalessio's substantive due process rights when it/they unlawfully disclosed private and confidential information about her to third parties including, but not limited to: Dalessio's social security number; Dalessio's date of birth, Dalessio's place of birth; Dalessio's personal home address; Dalessio's personal phone number; Dalessio's personal email address; Dalessio's employee identification number; Dalessio's payroll records; Dalessio's protected health information under both federal laws the Health Insurance Portability and Accountability Act ("HIPAA"), and the Americans with Disabilities Act ("ADA"); Dalessio's requests for accommodation under the ADA; comments by other employees about Dalessio's disabilities; Dalessio's employee job classification and salary and benefits information; Dalessio's employment security records; Dalessio's job performance evaluations and allegations related to alleged misconduct; Dalessio's work and leave

records; Dalessio's previous legal surnames; Dalessio's signature.

177. [Stricken] Dalessio is entitled to an order from the Court that Defendants violated her substantive due process rights.[8]

178. [Stricken] Dalessio is entitled to an order form the Court that Defendants violated her Fourth Amendment rights.

179. [Stricken] Dalessio seeks equitable relief in the form of having her records deleted from her file, pursuant to the 2003 settlement agreement and other legal authority.

180. [Stricken] Dalessio also seeks training and accountability for the invasion of her civil liberties and others.

181. [Stricken] Dalessio seeks equitable relief in the form of providing training in the protection of private and confidential information, especially in the areas of: employee personnel files, disability services files, medical records, social security numbers and dates of birth.

182. [Stricken] Dalessio is entitled to reasonable attorney's fees and costs pursuant to 42. U.S.C. § 1988 and 28 U.S.C. § 1927, if appropriate.

SIXTH CAUSE OF ACTION Breach of Contract Against Defendant UW

183. Plaintiff incorporates paragraphs 1 through 97 as set forth herein.

184. Dalessio and Defendant UW entered into a contract/settlement agreement in 2003.

185. Defendant UW breached this 2003 contract/settlement agreement by failing to remove certain specific documents from Dalessio's official personnel file and from all Department of Labaorary Medicine files.

186. On January 10, 2003 Dalessio was told by Washington Assistant Attorney General Jeffrey Davis that the documents in question have collected and sequestered pursuant to the 2003 contract/settlement agreement.

187. On or about February 2017, Dalessio received documents to her PRA request PR 2016-00760. In those documents were documents from her personnel file and from the Department of Laboratory Medicine files. This is when Dalessio first learned of Defendant UW's breach of the 2003 contract/settlement agreement.

188. Dalessio performed her duties under the 2003 contract/settlement agreement. At no time did Defendant UW notify Dalessio that she did not satisfy the terms of the 2003 contract/settlement agreement.

189. Dalessio suffered actual and foreseeable damages a result of Defendant UW's breach.

190. But for Defendant UW's breach of the 2003 contract/settlement agreement, many of the private and confidential documents disclosed concerning Dalessio through PRA requests to Betz and others, would have not occurred.

SEVENTH CAUSE OF ACTION Common Law Tort Public Disclosure of Private Facts

Against Defendants Saunders, Swenson, Tapper, Palmer, Does 1-12

191. Plaintiff incorporates paragraphs 1 through 97 as set forth herein.

192. Washington case law recognizes the common law tort of public disclosure of private facts. See e.g. Hearst v. Hoppe, 90 Wn.2d 123, 135 (1978).

193. At all relevant times, Dalessio was a resident of the State of Washington.

194. Defendants gave publicity to matters pertaining to Dalessio's private life by disclosing through the PRA her: Dalessio's social security number; Dalessio's date of birth, Dalessio's place of birth; Dalessio's personal home address; Dalessio's personal phone number; Dalessio's personal email address; Dalessio's employee identification number; Dalessio's payroll records; Dalessio's protected health information under both federal laws the Health Insurance Portability and Accountability Act ("HIPAA"), and the Americans with Disabilities Act ("ADA"); Dalessio's requests for accommodation under the ADA; comments by other employees about Dalessio's disabilities; Dalessio's employee job classification and salary and benefits information; Dalessio's employment security records; Dalessio's job performance evaluations and allegations related to alleged misconduct; Dalessio's work and leave records; Dalessio's previous legal surnames; Dalessio's signature.

195. Disclosing information, listed in paragraph 192 of this complaint, through the PRA would be highly offensive to a reasonable person.

196. None of the information listed in paragraph 192 of this complaint is of legitimate concern to the public.

197. The disclosure of the documents through the PRA is a public disclosure.

198. As a direct and proximate result of defendants' unlawful acts, Dalessio has suffered economic harm.

199. As a direct and proximate cause of defendants' unlawful acts, Dalessio has suffered physical harm.

200. As a direct and proximate result of defendants' unlawful acts, Dalessio has suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult in amounts to be determined at the jury trial.

201. Defendants' conduct toward Dalessio demonstrated a wanton, reckless, or callous indifference to the constitutional rights of Dalessio, which warrants an imposition of punitive damages in such amounts as the jury may deem appropriate to deter future violations.

EIGHTH CAUSE OF ACTION Injunctive Relief Against Defendants Saunders, Swenson, Tapper, Palmer, Does 1-12

200. Plaintiff incorporates paragraphs 1 through 97 as set forth herein.

201. Dalessio has a constitutionally protected expectation of privacy in personal identifying information based on Article 1, Section 7 of the Washington State Constitution.

202. Dalessio's personal identifying information is exempt from disclosure under the PRA. Disclosure of Dalessio's identifying information would not be in the public interest, and would continue to substantially and irreparably damage Dalessio and her privacy interest.

203. Dalessio has no other adequate remedy at law. The PRA, RCW 42.56.540, allows a

Court to enjoin the release of public records when the release would clearly not be in the public interest and would substantially and irreparably damage any person. Final injunctive relief is necessary to protect Dalessio from the release of exempt private information.

V. Prayer for Relief

Wherefore, Plaintiff Dalessio prays for judgment against the defendants as follows:

1. Economic damages in an amount to be determined at trial;

2. Compensatory damages in an amount to be determined at trial;

3. All available equitable relief and damages in amounts to be determined at trial;

4. Punitive damages consistent with the claims above against defendants in amounts to be

determined at trial;

5. Reasonable attorney's fees and litigation expenses/costs herein, including expert witness and expenses, consistent with the claims above against defendants; and

6. Grant other relief as just and proper.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL.

DATED this 12th day of March, 2018

Law Office of Joseph Thomas

___/s/ Joseph Thomas_____ Joseph Thomas, WSBA 49532

Law Office of Joseph Thomas 14625 SE 176th St., Apt. N101 Renton, Washington Phone (206)390-8848

Filed 4/24/2017

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

JULIE DALESSIO, an individual, Plaintiff,

v.

UNIVERSITY OF WASHINGTON,

Defendant.

NOTICE OF REMOVAL KCSC Case No. 17-2-07812-3 SEA

The Honorable Susan Amini

TO: CLERK OF THE COURT,

AND TO: JULIE DALESSIO, an individual, Plaintiff; pro se

COMES NOW the Defendant, University of Washington, by and through its attorneys of record, and hereby remove to the U.S. District Court, Western District of Washington at Seattle, the State court action described below.

1. On or about March 30, 2017, the Plaintiff, Julie Dalessio , commenced an action in the Superior Court of the State of Washington in and for KING, captioned Julie Dalessio v. University of Washington (hereinafter "Complaint"). A true and correct copy of the Complaint is attached to this Notice of Removal and marked as Exhibit A. A copy of the Complaint is also included in the documents submitted with the Verification of Counsel. In this Complaint, Plaintiff

alleges claims arising under the following law of the United States:

a. 45 CFR Parts 160 & 164 (HIPPA) (complaint, ¶5.1(a))

b. 20 U.S.C. § 1232g(a)(4) and 34 CFR Part 99 (FERPA)(Complaint ¶5.1(a))

c. 5 U.S.C. § 552(b)(6) (Freedom of Information Act)(FOIA)(Complaint

¶5.1(l))

d. 42 U.S.C. § 2000e (Title VII of the Civil Rights Act)(section 704(a))

(Complaint ¶5.4(d), 7.5)

e. 42 U.S.C. §12101 (Americans with Disabilities Act) (ADA)(Complaint, ¶¶5.4(d), 7.5).

f. 42. U.S.C. §1983 (Complaint, ¶5.4(h), 7.5).

g. 42 U.S.C §1981 (Complaint, ¶5.4(k)).

2. Pursuant to 28 U.S.C. §1367, the district court shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

3. With the filing of this Notice of Removal with the U.S. District Court, the Defendants will pay the $400 Federal Court filing and removal fee.

4. Because this matter is subject to nondiscretionary removal to the U.S. District Court, and this Notice of Removal has been timely filed, the instant lawsuit which is filed in the King County Superior Court – the

county Superior Court embraced by the District Court for the Western District of Washington – should be immediately removed to the District Court.

DATED: April 24, 2017

KEATING, BUCKLIN & McCORMACK, INC., P.S.

By: /s/ Jayne L. Freeman

Jayne L. Freeman, WSBA #24318

Special Assistant Attorney General for Defendant University of Washington

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Filed April 3, 2017
Cause No. 17-2-07812-3
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

JULIE DALESSIO, an individual
Plaintiff
V.
THE UNIVERSITY OF WASHINGTON
Defendant

COMPLAINT FOR
INVASION OF PRIVACY/ PUBLIC RECORDS VIOLATIONS; BREACH OF CONTRACT; DEFAMATION/LIBEL; DISCRIMINATION/ RETALIATION; NEGLIGENCE

COMES NOW Plaintiff, J DALESSIO, FOR cause of action against the University of Washington, COMPLAINS, states and alleges as follows:

Introduction

On or around April 9, 2016, Plaintiff discovered that The University of Washington was releasing exempt, confidential, identifying, personal, and libelous records relating to her employment with the University of Washington. The Plaintiff has suffered great hardship due to the negligence of the University of Washington in improperly securing and recklessly releasing Plaintiff's employee records to the public.

STATUTORY PROVISIONS

42 U.S.C. § 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, . . ."

42 U.S.C. § 2000e–5. Enforcement provisions

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may

include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

42 U.S.C. § 12101

Findings and purpose (a) Findings

The Congress finds that—

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with dis- abilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation,

institutionalization, health serv- ices, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal re- course to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, in- cluding outright intentional exclusion, the discriminatory effects of architectural, trans- portation, and communication barriers, over- protective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with dis- abilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding indi- viduals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice de- nies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in

unnecessary expenses resulting from dependency and non- productivity.

(b) Purpose

It is the purpose of this chapter—

(1) to provide a clear and comprehensive national mandate for the elimination of dis- crimination against individuals with disabilities;

(2) to provide clear, strong, consistent, en- forceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of indi- viduals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 U.S.C. § 12112

(a) General rule: No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction: As used in subsection (a) of this section, the term "discriminate against a qualified individual on the basis of disability" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(d)(3) A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—(A) all entering employees are subjected to such an examination regardless of disability;(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—(i)

supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and(C) the results of such examination are used only in accordance with this sub-chapter. (4)(C) Information obtained under subparagraph(B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

42 U.S.C. § 12117. Enforcement(a) Powers, remedies, and procedures: The powers, remedies, and procedures set forth in sections 2000e–4, 2000e–5, 2000e–6, 2000e–8, and2000e–9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

RCW 42.56.050 Invasion of privacy, when.
A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The

provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

RCW 42.56.060 Disclaimer of public liability.

No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter.

RCW 26.44.060

Immunity from civil or criminal liability—Confidential communications not violated—Actions against state not affected—False report, penalty.

(1)(a) Except as provided in (b) of this subsection, any person participating in good faith in the making of a report pursuant to this chapter, testifying as to alleged child abuse or neglect in a judicial proceeding, or otherwise providing information or assistance, including medical evaluations or consultations, in connection with a report, investigation, or legal intervention pursuant to a good faith report of child abuse or neglect shall in so doing be immune from any civil or criminal liability arising out of such reporting or testifying under any law of this state or its political subdivisions.

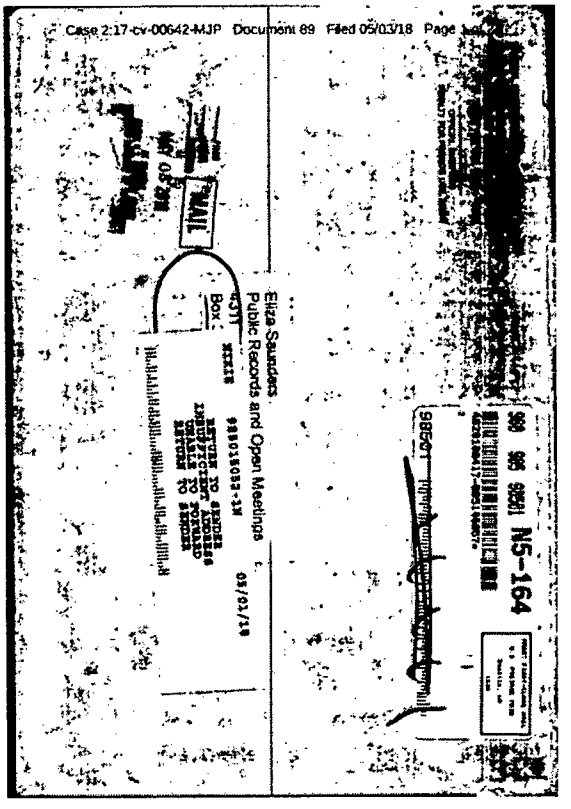
(b) A person convicted of a violation of subsection (4) of this section shall not be immune from liability under (a) of this subsection.

(2) An administrator of a hospital or similar institution or any physician licensed pursuant to chapters 18.71 or 18.57 RCW taking a child into custody pursuant to RCW 26.44.056 shall not be subject to criminal or civil liability for such taking into custody.

(3) Conduct conforming with the reporting requirements of this chapter shall not be deemed a violation of the confidential communication privilege of RCW 5.60.060 (3) and (4), 18.53.200 and 18.83.110. Nothing in this chapter shall be construed as to supersede or abridge remedies provided in chapter 4.92 RCW.

(4) A person who, intentionally and in bad faith, knowingly makes a false report of alleged abuse or neglect shall be guilty of a misdemeanor punishable in accordance with RCW 9A.20.021.

(5) A person who, in good faith and without gross negligence, cooperates in an investigation arising as a result of a report made pursuant to this chapter, shall not be subject to civil liability arising out of his or her cooperation. This subsection does not apply to a person who caused or allowed the child abuse or neglect to occur.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Eliza Saunders
Public Records and Open Meetings
05/01/18
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