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7  
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9  
10 **IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON**

11 CHARLES “DOUG” MAYO,

12 Plaintiff,

13 v.

14 CITY OF YAKIMA, Washington,  
15 TONY O’ROURKE, in his individual  
individual capacity; and, DEBBIE COOK, in her  
individual capacity,

16 Defendants.

**NO. 1:16-cv-3092**

**COMPLAINT AND DEMAND  
FOR TRIAL BY JURY**

17  
18 Charles “Doug” Mayo, by and through his attorneys, now alleges:

19 **I. PARTIES AND JURISDICTION**

1           1. Defendant, CITY OF YAKIMA, WASHINGTON (“City”) is a local  
2 government municipality and a Washington municipal corporation.

3           2. Defendant, TONY O’ROURKE (“Mr. O’Rourke”), was Yakima’s City  
4 Manager during the timeframe relevant to this lawsuit. Mr. O’Rourke is being sued  
5 in his individual capacity as he, at all relevant times hereto, (a) knew that Mr. Mayo  
6 was a classified employee; (b) knew that Mr. Mayo was protected under the City’s  
7 Civil Service rules; and (c) knowingly and intentionally denied Mr. Mayo his Civil  
8 Service rule protections and the Constitutionally protected property right to  
9 continued employment associated therewith. Mr. O’Rourke’s refusal to follow the  
10 Civil Service rules in regards to Mr. Mayo’s employment has no legal or factual  
11 justification.

12           3. Defendant, DEBBIE COOK (“Ms. Cook”), was the City’s Director of  
13 Utilities and Engineering during the timeframe relevant to this lawsuit. Ms. Cook  
14 is being sued in her individual capacity as she, at all relevant times hereto, (a) knew  
15 that Mr. Mayo was a classified employee; (b) knew that Mr. Mayo was protected  
16 under the City’s Civil Service rules; and (c) knowingly and intentionally denied Mr.  
17 Mayo his Civil Service rule protections and the Constitutionally protected property  
18 right to continued employment associated therewith. Ms. Cook’s refusal to follow  
19 the Civil Service rules in regards to Mr. Mayo’s employment has no legal or factual  
20 justification.

1 4. Plaintiff, CHARLES “DOUG” MAYO (“Mr. Mayo”) was an employee  
2 of the City at all times relevant to this lawsuit. Mr. Mayo resides in this district.

3 5. All acts complained of occurred within the Eastern District of  
4 Washington.

5 6. The Federal Court for the Eastern District of Washington has personal  
6 jurisdiction over the parties and subject matter jurisdiction for the claims in this  
7 complaint pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367(a), 42 U.S.C. § 1983,  
8 and, 29 U.S.C. §§ 1161–1169.

9 7. Venue is proper in the Eastern District of Washington under 28 U.S.C.  
10 § 1391(b) because the acts and omissions complained herein occurred in the District  
11 and the Defendant conducts business there.

12 **II. INTRADISTRICT ASSIGNMENT**

13 8. This action arose in Yakima County, Washington; therefore, pursuant  
14 to local rules it should be assigned to the Yakima Division of the Eastern District  
15 of Washington.

16 **III. FACTS**

17 9. Plaintiff re-alleges the above paragraphs.

18 10. Doug Mayo’s career with the City of Yakima, Washington began on  
19 June 1, 1991. Mr. Mayo worked his way up through the ranks to become the  
20

1 Wastewater Division Manager on April 1, 1999 and the City Engineer on January  
2 9, 2008.

3 11. Within Article XV of Yakima’s City Charter, titled “Civil Service,” it  
4 describes the City’s Civil Service system as “a system of personnel administration  
5 based on merit principles and governing the appointment, promotion, transfer,  
6 layoff, removal, discipline and welfare of its employees, and other incidents of city  
7 employment.”

8 12. Article XV of the City Charter, § 6, provides:

9 The classified civil service and provisions of this Article shall be  
10 applicable to and shall include all employees of the city except the  
following:

- 11 (a) Officers elected by the people and persons appointed to fill  
12 vacancies in elective offices.
- 13 (b) Members of boards and commissions and the City Manager;
- 14 (c) Employees under civil service coverage within the police and fire  
departments;
- 15 (d) All department heads; one confidential secretary and one  
16 administrative assistant for the City Manager;
- 17 (e) Judges, City Attorney and all assistant city attorneys;
- 18 (f) Persons employed in a professional or scientific capacity to make  
19 or conduct a temporary and special inquiry, investigation, or  
20 examination on behalf of the City Council or a committee thereof, or  
by authority of the City Manager.

1 13. As set forth within the City Charter, “Department Heads” include but  
2 are not limited to Yakima’s Chief of Police, Yakima’s Fire Chief, Yakima’s  
3 Director of Community Development, and Yakima’s Director of Utilities and  
4 Engineering.

5 14. The City Engineer is not a Department Head under the City Charter.

6 15. As the City Engineer, Mr. Mayo was a “classified service” employee  
7 under the City Charter.

8 16. As a “classified service employee,” Mr. Mayo was afforded protection  
9 under the City’s Civil Service system.

10 17. The Civil Service protections afforded to Mr. Mayo include, without  
11 limitation, those set out in City Charter, Article XV, § 10 which provides:

12 No person in the classified civil service who has been permanently  
13 appointed or inducted into civil service under provisions of this Article,  
14 shall be removed, suspended, or demoted except for cause, and only  
15 upon written accusation of the appointing power or any citizen or  
16 taxpayer; a written statement of which accusation, in general terms,  
17 shall be served upon the accused; and a duplicate filed with the  
18 commission.

16 18. The City’s Civil Service Rules set forth the process to be followed in  
17 the event the City seeks to eliminate a “classified employee’s” position.

18 19. Those steps include, without limitation, the City notifying the Civil  
19 Service Commission of the number of positions and classifications designated for  
20 reduction in force and ensuring that the reduction is conducted in a manner that

1 would allow the classified service employee to move back to his or her previously  
2 held position.

3 20. Under the Civil Service Rules, if the City promoted a classified  
4 employee out of his classified service position and that employee subsequently  
5 experienced performance issues, or said employee's position was eliminated, then  
6 that employee would be offered the opportunity to move back to his classified  
7 service position.

8 21. Should Yakima's City Charter's terms differ from the terms of the  
9 Civil Service Rules then the terms of Yakima's City Charter, Article XV, govern.

10 22. City Charter, Article XV, § 5, allows the City's Civil Service  
11 Commission to make "rules and regulations" that are "not inconsistent" with the  
12 City Charter.

13 23. K. Adams served as the City Engineer before Mr. Mayo occupied the  
14 City Engineer position.

15 24. K. Adams served as a classified employee throughout his entire tenure  
16 as the City Engineer.

17 25. The City's budget cycle runs on a calendar year with budget  
18 preparation beginning in the May timeframe. By mid-October, the City Council  
19 customarily gets its first look at the budget. Hearings then follow and the final  
20 budget is adopted by the City Council during the mid-December timeframe.

1 26. If the City decides to eliminate an employment position, then that  
2 position is reflected in the City's budget.

3 27. In the 2012 timeframe, Mr. O'Rourke asked City employees to  
4 volunteer to give up their deferred compensation. The City's deferred compensation  
5 program allows employees to direct pre-tax wages to the City's ICMA Retirement  
6 Plan. The City's deferred compensation program was a primary retirement plan  
7 for City employees.

8 28. City employees objected to Mr. O'Rourke's proposal that they  
9 voluntarily relinquish their deferred compensation.

10 29. Upon learning that City employees were not willing to voluntarily  
11 relinquish their deferred compensation, Mr. O'Rourke approached former City  
12 Human Resources Department Head Colleen Chapin and expressed frustration that  
13 employees were not volunteering to give up their deferred compensation. Mr.  
14 O'Rourke said words to the effect that "if people don't volunteer to give up their  
15 deferred comp I'll find another way."

16 30. Certain City employees, including Ms. Chapin, discussed Mr.  
17 O'Rourke's proposal during various Division Manager meetings.

18 31. A Division Manager is a supervisory employee who reports to a  
19 Department Head.

1 32. Yakima’s City Charter, Article XV, § 6, states that a Department Head  
2 is not a classified service position.

3 33. At those Division Manager meetings, some Division Managers,  
4 including Ms. Chapin, expressed fear that their refusal to give up deferred  
5 compensation would cause Mr. O’Rourke to take adverse action against them.

6 34. Concerned about whether they could be retaliated against due to their  
7 opposition to Mr. O’Rourke’s request, the Division Managers researched whether  
8 they held Civil Service protected positions.

9 35. That research, which included a review of the City Charter, Article  
10 XV, § 6, revealed that Division managers held Civil Service covered positions. This  
11 was also subsequently confirmed by City Attorney, Jim Mitchell.

12 36. Mr. Mitchell further stated that if a position was not expressly listed as  
13 Civil Service exempt pursuant to City Charter, Article XV, § 6 then that position  
14 was a “classified service” position.

15 37. In addition to the City’s deferred compensation program, Mr.  
16 O’Rourke also disfavored the City’s “longevity for years of service” program.  
17 Broadly stated, the program incentivized employee loyalty with the City. Under  
18 the program, the City gives its employees an additional stipend for every year  
19 beyond five years they work at the City. The longevity payment amounts increase  
20 every five years. By way of example, if an employee worked for the City for over



1 24 years then the employee's longevity payment would be 10% of that employee's  
2 salary. The longevity payment is paid to the employee in semi-annual payments.

3 38. Mr. O'Rourke expressed his disapproval with the longevity program. He  
4 repeatedly told Ms. Chapin that he did not like the program given that it favored  
5 employees who had too much seniority with the City. Mr. O'Rourke said words to  
6 the effect, "[P]eople should not be awarded for staying longer in an organization."

7 39. Mr. O'Rourke also made it clear to Ms. Chapin that he wanted to  
8 eliminate the Civil Service program. Ms. Chapin advised Mr. O'Rourke that  
9 eliminating the Civil Service program would require re-writing the City Charter - -  
10 a task that would require approval of the City of Yakima's citizens, through a vote  
11 of the people.

12 40. Ms. Chapin told Mr. O'Rourke that if Civil Service was eliminated  
13 then matters such as employee wages, hours and working conditions could not  
14 unilaterally be modified or eliminated by the City Manager but would instead need  
15 to be negotiated as a part of the Collective Bargaining process.

16 41. Within the first few months of Debbie Cook becoming employed with  
17 the City, she approached Debbie Korvar, the City's Civil Service Chief Examiner,  
18 and Ms. Chapin, with the proposal that certain job descriptions in the Engineering  
19 Department be modified or revised. During that meeting, Ms. Cook made clear that

1 she wanted to reclassify certain Engineering Department employees to eliminate  
2 their jobs.

3 42. When confronted with such a job elimination proposal, it is Human  
4 Resources' practice to inform the Division Manager of the applicable rules that  
5 must be followed. As the Human Resources Department Head, Ms. Chapin  
6 informed Ms. Cook that Ms. Cook needed to comply with the City's Civil Service  
7 Rules before eliminating any non-Department Head position in the City's  
8 Engineering Department.

9 43. During his employment with the City, Mr. Mayo was never formally  
10 or informally disciplined.

11 44. During his employment with the City, the City never received a  
12 substantiated citizen complaint regarding Mr. Mayo.

13 45. During his employment with the City, Mr. Mayo never received a poor  
14 performance review.

15 46. On June 20, 2013, at approximately 4:00 PM Mr. Mayo was  
16 summoned to a meeting with Mr. O'Rourke, Ms. Cook, and Mr. Mitchell.

17 47. At that meeting, Mr. O'Rourke informed Mr. Mayo that Mr. Mayo's  
18 position was terminated, effective immediately. Mr. O'Rourke explained that "the  
19 budget" was the reason for Mr. Mayo's termination.

1 48. This announcement came as a complete shock to Mr. Mayo. At no time  
2 had Mr. Mayo been informed that his City Engineer position had been designated  
3 as a reduction in force position. Mr. Mayo had received no notice that the City  
4 Council and/or Civils Service Commission had approved the removal of the City  
5 Engineer position.

6 49. Upon information and belief, at no time prior to June 20, 2013, did Mr.  
7 O'Rourke tell the City Council and/or Civil Service Commission that he intended  
8 to eliminate the City Engineer position.

9 50. The City's 2012 budget does not designate, label, cite, or otherwise  
10 identify the elimination, or the proposed elimination, of the City Engineer position.

11 51. The City's 2013 budget does not designate, label, cite or otherwise  
12 identify the elimination, or the proposed elimination, of the City Engineer position.

13 52. The City's 2014 budget does not designate, label, cite or otherwise  
14 identify the elimination, or the proposed elimination, of the City Engineer position.

15 53. The City's Civil Service Examiner was never informed of Mr.  
16 O'Rourke's decision to eliminate the City Engineer position before June 20, 2013.

17 54. Mr. O'Rourke knowingly and intentionally did not follow the Civil  
18 Service Rules in terminating Mr. Mayo's employment with the City.

19 55. Ms. Cook knowingly and intentionally did not follow the Civil Service  
20 Rules in terminating Mr. Mayo's employment with the City.

1 56. The City never eliminated the City Engineer position. After Mr.  
2 Mayo's termination, public works bids and questions continued to be directed to  
3 the City Engineer's office with Ms. Cook signing documents as the City Engineer.

4 57. At the June 20, 2013 meeting in which Mr. Mayo was terminated, Mr.  
5 O'Rourke presented Mr. Mayo with two documents.

6 58. The first document, consistent with Mr. O'Rourke's "budget"  
7 explanation, informed Mr. Mayo that his position was being terminated, effective  
8 immediately, because Mr. O'Rourke determined that doing so was "in the best  
9 financial interest of the City." This document, dated June 20, 2013, further promised  
10 that Mr. Mayo would receive a notice informing him of his rights under COBRA.

11 59. Mr. Mayo never received any notice that complied with COBRA's  
12 statutory requirements.

13 60. Mr. Mayo's personnel file contains no post-June 20, 2013 COBRA  
14 notice.

15 61. The second document Mr. O'Rourke presented to Mr. Mayo was a  
16 document titled "Separation Agreement." The "Separation Agreement" provided  
17 three months' compensation and benefits should Mr. Mayo promise not to sue the  
18 City for, among other things, violating the federal Age Discrimination in  
19 Employment Act and its state law equivalent, RCW 49.60. The "Separation  
20 Agreement" document in, paragraph 9, contained a clause attesting that Mr. Mayo

1 was given the opportunity to have his attorney review the agreement.  
2 Notwithstanding paragraph 9, Mr. O'Rourke demanded, right then and there at the  
3 June 20, 2013 meeting, that Mr. Mayo sign the document.

4 62. At that June 20, 2013, meeting Mr. Mayo asked Mr. O'Rourke for  
5 permission to remain at work an additional two weeks. Mr. O'Rourke agreed and  
6 further stated that the "Separation Agreement" remained in effect.

7 63. Mr. Mayo, was 61 years old on June 20, 2013.

8 64. Mr. O'Rourke's stated "budget" and "financial reasons" justification  
9 for Mr. Mayo's termination is a pre-textual statement designed to mask illegal  
10 discrimination.

11 65. Undisputedly, the City was not experiencing "budget" or "financial"  
12 difficulties to warrant or otherwise justify the elimination of the City Engineer  
13 position.

14 66. The City's 2013 budget, page 11, identifies five positions designated  
15 for elimination. The City Engineer position, the job held by Mr. Mayo, is not one  
16 of those positions.

17 67. The City's 2013 budget, page 27, reflects a net gain of 6.75 positions.

18 68. The City's 2013 budget, pages 34 and 35, references the City  
19 departments expected to go over budget. Mr. Mayo's department, the City  
20 Engineering Department, is not on that list.

1           69. The City's 2013 budget forecasts that the City Engineering  
2 Department would save the City \$20,377.00. Nowhere in that budget forecast does  
3 it reference or take into account the elimination of Mr. Mayo's job.

4           70. City records reveal that the City gave at least 50 pay increases, ranging  
5 from promotions to scheduled salary step increases, to employees similarly situated  
6 to Mr. Mayo during calendar year 2013. Mr. O'Rourke personally signed many of  
7 those promotional and/or step increases.

8           71. The City's pay ordinance reflects the vast majority of City employees  
9 received, or will receive, pay increases for 2015, 2016, and 2017.

10           72. Following Mr. Mayo's termination, Mr. O'Rourke acquired authority  
11 to provide non-represented staff a 5% pay increase.

12           73. On June 24, 2013, at 8:40 AM Mr. Mayo emailed his fellow employees  
13 informing them that "in a continuing effort to reduce personnel costs, the position  
14 of City Engineer will be/has been eliminated."

15           74. On June 24, 2013, at 9:23 AM Debbie Cook forwarded Mr. Mayo's  
16 8:40 AM email to Jim Mitchell and wrote "hmmm... he didn't even keep it quiet  
17 (but he didn't send it to me either... I got it from one of my staff). Tool."

18           75. Mr. Mitchell replied to Ms. Cook's email as follows: "Ex-stink-shun!!!  
19 ;)"

1 76. On June 24, 2013, an email was circulated inviting Mr. Mayo's co-  
2 workers to meet Mr. Mayo for cake on June 28<sup>th</sup> to celebrate his career with the  
3 City.

4 77. Ms. Cook agreed to bake Mr. Mayo's goodbye cake.

5 78. Emails exchanged between Ms. Cook and Mr. Mitchell mocked Mr.  
6 Mayo and his June 28<sup>th</sup> goodbye party. A sampling of those messages were as  
7 follows:

- 8 • In response to learning that Ms. Cook agreed to make the cake Mr.  
9 Mitchell wrote "OMG, you're making the cake!! Poetic justice.  
10 Yes, Mammoth uddertaking for sure."
- 11 • Mr. Mitchell suggested that Ms. Cook bake a cake "of a dead  
12 mammoth with his [Mayo's] face on it".
- 13 • Ms. Cook, in response, wrote "he does like chocolate so I was  
14 thinking perhaps a pile of mammoth shit happy tails [sic] to you,  
15 let's try... not to meet... a again."

16 79. On June 24, 2013 at 2:08 PM Mr. O'Rourke responded to Mr. Mayo's  
17 June 24, 203 8:40 AM email stating, in full:

18 Doug,

19 The public broadcast of your retirement is not consistent with our  
20 discussion, last Thursday, of your future plans. Apparently you  
21 made the decision in absence of our previously agreed to follow-  
22 up discussion, and therefore, anything that we discussed is now a  
moot point. Please forward your formal retirement request to my  
office by end of business today.

Thank you,

1 Tony

2 80. Mr. O'Rourke then withdrew the "Separation Agreement" even though  
3 the Separation Agreement contained no confidentiality provision and Mr. Mayo  
4 breached no part of it.

5 81. Shortly after the June 24, 2013 meeting Mr. Mayo asked Ms. Cook how  
6 long she had been aware of the plan to terminate him. Ms. Cook replied "only a day  
7 or so."

8 82. Ms. Cook's statement to Mr. Mayo was inaccurate for in May 2013 Ms.  
9 Cook and Mr. Mitchell discussed Mr. Mayo's termination, in writing, and in doing  
10 so stated that Mr. Mayo's termination was because Mr. Mayo's "old, feeble, and...  
11 ice age hey-day has long passed."

12 83. Page 50 of City of Yakima Public Disclosure Request 831 contains a  
13 text message exchange between Ms. Cook and Mr. Mitchell. That text message  
14 exchange, which occurred weeks before Mr. Mayo was fired went as follows:

15 Debbie Cook: Just got an email from Doug requesting  
16 to be included in my Monday staff meeting w/Dave &  
17 Scott. That will be a too little/too late waste of  
18 time. Oh well...I think there are only 3 Mondays left  
19 in is city life span.

20 Jim Mitchell: ...actually only 2.

21 Debbie Cook: Lol it's about to become extinct.

22 Debbie Cook: It's sad...but even after my very public  
"engineering" bitch slap this morning it didn't bother  
to try to take control.

Debbie Cook: today - now - told him I was going to be



1 gone tomorrow, but was going to come anyway. So,  
2 good, [redacted] meat evening!

3 Jim Mitchell: It's old, feeble, and it's ice age hey-day  
4 has long passed....

5 84. That same text message exchange references “Tony’s hit list.”

6 85. As of June, 2013, Mr. Mayo was the oldest Division Manager  
7 employed by the City and the second oldest City employee.

8 86. Mr. Mayo was 61 years old at the time he was terminated and had been  
9 a City employee for 22.5 years.

#### 10 **IV. CAUSES OF ACTION**

##### 11 **CAUSE OF ACTION NO. 1 – VIOLATION OF THE WASHINGTON LAW 12 AGAINST DISCRIMINATION – AGE DISCRIMINATION - CITY**

13 87. An age discrimination claim under the Washington Law Against  
14 Discrimination (“WLAD”) requires that the plaintiff show: “(1) That defendant  
15 terminated plaintiff; and, (2) That plaintiff’s age was a substantial factor in  
16 defendant’s decision to terminate.” *See* Washington Pattern Jury Instruction  
17 (“WPI”) 330.01.

18 88. “Substantial factor” means a significant motivating factor in bringing  
19 about the employer's decision. “Substantial factor” does not mean the only factor or  
20 the main factor in the challenged act or decision. WPI 330.01.01.

21 89. Mr. Mayo’s age was a substantial factor in his termination because (a)  
22 Mr. Mayo was 61 years of age at the time of his termination (b) Mr. Mayo, by virtue

1 of his seniority with the City received a substantial longevity payment through the  
2 City which made him a target for elimination by Mr. O'Rourke; (c) Ms. Cook and  
3 Mr. Mitchell exchanged emails stating that Mr. Mayo's employment was  
4 terminated because his "old, feeble, and... ice age hey-day has long passed;" and  
5 (d) he was instructed to sign a "Separation Agreement" which provided for the  
6 payment of money in exchange for not bringing an age discrimination suit. The  
7 Separation Agreement was retracted by Mr. O'Rourke.

8 90. Mr. O'Rourke's stated reason for terminating Mr. Mayo is further  
9 called into doubt given that he approved over 50 pay raises shortly before and after  
10 Mr. Mayo's termination. Further, the elimination of Mr. Mayo's job did not  
11 comport with the City's budgetary process or the Civil Service Rules.

12 91. As a result of the City's actions, Mr. Mayo has been damaged in an  
13 amount to be proven at trial.

14 **CAUSE OF ACTION NO. 2 – VIOLATION OF THE**  
15 **CONSOLIDATED OMNIBUS RECONCILIATION ACT, 29 U.S.C. §§**  
16 **1161–1169, (“COBRA”) - CITY**

17 92. The Consolidated Omnibus Reconciliation Act, 29 U.S.C. §§ 1161–  
18 1169, (“COBRA”), requires, *inter alia*, that an employer provide an employee with  
19 written notice of his or her right to continue health coverage upon termination of  
20 employment. This notice is commonly referred to as a COBRA “election notice.”

1 93. The COBRA statute requires that a beneficiary (i.e. employee) receive  
2 an “election notice” of his or her option to continue on his or her employer’s health  
3 care plan and that said notice be received within 41 days of a “qualifying event.” A  
4 “qualifying event” includes an employee’s without cause termination.

5 94. The COBRA “election notice” must inform the employee of the  
6 qualifying event, identify the qualified beneficiaries, explain the employee’s right  
7 to elect coverage, specify the date coverage will cease, describe how to elect to  
8 continue coverage, explain the consequences should coverage be elected or waived,  
9 explain the type of coverage available and timeframe by which such coverage is  
10 available, explain how continuation coverage may terminate early, and inform the  
11 employee of the premium payment requirements.

12 95. Courts may award a statutory \$110.00/day penalty for each day that  
13 the employer violates COBRA by, *inter alia*, failing to give the required notices.

14 96. The City violated COBRA by failing to provide Mr. Mayo with a  
15 COBRA election notice following termination of his employment.

16 97. As such, Mr. Mayo has been damaged in an amount to be proven at  
17 trial.

1 **CAUSE OF ACTION NO. 3 – VIOLATION OF 42 U.S.C. § 1983 – CITY,**  
2 **O’ROURKE, & COOK**

3 98. The Civil Rights Act (42 U.S.C. §1983) authorizes an individual to  
4 bring suit against “any person” who, acting under the color of law, deprives the  
5 individual of his or her federal, Constitutional or statutory rights.

6 99. At some or all times relevant to this action, each of the individual  
7 defendants, Ms. Cook and Mr. O’Rourke, were acting in his or her official capacity.  
8 At some point, each of the defendants were also acting in his or her personal  
9 capacity, in that he or she personally participated in, expressly or tacitly authorized,  
10 or was deliberately indifferent with respect to the conduct described herein.

11 100. The City, Ms. Cook and Mr. O’Rourke are “persons” within the  
12 meaning of 42 U.S.C. §1983. All actions taken by defendants City, Ms. Cook, and  
13 Mr. O’Rourke, in relation to Mr. Mayo, were taken under the color of law.

14 101. All actions taken by the City in relation to Mr. Mayo were also taken  
15 pursuant to a governmental policy or custom in that (a) these actions were taken  
16 pursuant to a long-standing practice or custom of the City; (b) these actions were  
17 taken by one or more City officials with final policymaking authority, such as these  
18 actions constituted an act of official government policy; and/or, (c) these actions  
19 were ratified by one or more City officials with final policymaking authority.  
20

1           102. Without limitation, the “long-standing practice or custom” of the City  
2 included the City’s awareness that Mr. O’Rourke and Ms. Cook’s terminated Mr.  
3 Mayo’s employment in knowing disregard of Mr. Mayo’s Civil Service protections.  
4 The City was informed, in writing, via (at least) Mr. Mayo’s Notice of Tort Claim,  
5 that Mr. O’Rourke’s and Ms. Cook’s conduct violated Mr. Mayo’s Constitutional  
6 rights and the Civil Service protections.

7           103. Upon information and belief, City officials with policy making  
8 authority ratified Mr. Mayo’s unlawful termination even though said officials knew,  
9 through Jim Mitchell and the City Charter, that Mr. Mayo was a classified employee  
10 and that Mr. Mayo’s termination did not comport with the Civil Service rules.

11           104. The City further ratified Mr. O’Rourke’s and Ms. Cook’s conduct by  
12 failing to take any steps to remedy the above-referenced misconduct, re-instate Mr.  
13 Mayo’s employment, and hold Mr. O’Rourke and Ms. Cook accountable for their  
14 knowing violations of Mr. Mayo’s Constitutional rights.

15           105. By their conduct described herein, the City, Cook and O’Rourke were  
16 motivated by evil motive or intent, and acted in a matter which involved a reckless  
17 and callous disregard of Mr. Mayo’s federal Constitutional rights under the  
18 Fourteenth Amendment.

19           106. There is no adequate state law remedy available for Mr. Mayo to  
20 vindicate the violation of his federal Constitutional rights described herein.

1           107. Under the Fourteenth Amendment of the United States Constitution, a  
2 public employer may not deprive a public employee of the employee's  
3 Constitutionally protected property interest in his public employment without due  
4 process of law.

5           108. Mr. Mayo had a Constitutionally protected property interest in his  
6 public employment as the City Engineer given that that position was not an "at will"  
7 position but a position covered under the Civil Service Rules and/or related  
8 practices such as the long-standing City practice which allowed employees  
9 promoted out of Civil Service positions into non-classified positions to be given the  
10 opportunity to move back into the classified service should performance reasons or  
11 financial reasons necessitate such a move.

12           109. Mr. Mayo had a legitimate expectation of continued employment  
13 arising out of his and the City's course of dealing, understandings, as well as the  
14 City's Civil Service rules, policies, and practices relating thereto.

15           110. The defendants deprived Mr. Mayo of his Constitutionally protected  
16 property interest in his public employment as the City Engineer without due process  
17 of law by (a) terminating Mr. Mayo's employment as the City Engineer without due  
18 process of any kind including, without limitation, compliance with the processes,  
19 practices, and requirements set forth in the City's Charter (Article XV) and the  
20 City's Civil Service Rules; and (b) engaging in outrageous conduct as described

1 herein including, but not limited to, the knowing and intentional disregard of the  
2 Civil Service protections inuring to Mr. Mayo.

3 111. By their actions described herein the City, Ms. Cook and Mr.  
4 O'Rourke violated clearly established Constitutional rights of which a reasonable  
5 person would have been aware of at the time these actions were taken by the  
6 individual defendants.

7 112. Ms. Cook and Mr. O'Rourke knowingly, intentionally, and in their  
8 individual capacities deprived Mr. Mayo of that property right by knowingly and  
9 intentionally and willfully not following the City's Civil Service rule, policies,  
10 procedures, and practices relating thereto.

11 113. The City, Mr. O'Rourke and Ms. Cook's conduct is arbitrary,  
12 capricious, irrational, grossly negligent, and deliberately indifferent to Mr. Mayo as  
13 their conduct failed to serve any legitimate purpose and their conduct was not  
14 objectively reasonable given the clearly established Civil Service rule protections  
15 inuring to Mr. Mayo's job. A reasonable official would have known that his or her  
16 acts were violating a clearly established Constitutional right. Instead, defendants  
17 Mr. O'Rourke and Ms. Cook set in motion a series of acts that said individuals  
18 knew, or reasonably should have known, caused the infliction of a Constitutional  
19 injury and the City knowingly and intentionally ratified those acts.

1  
2 **CAUSE OF ACTION NO. 4 – CIVIL CONSPIRACY – COOK &**  
3 **O’ROURKE**

4 114. Under the common law of the State of Washington a civil conspiracy  
5 occurs when (1) two or more people combine to accomplish an unlawful purpose,  
6 or combine to accomplish a lawful purpose by unlawful means; and, (2) the  
7 conspirators entered into an agreement to accomplish the conspiracy.

8 115. A claim under section 42 U.S.C. § 1985(3) requires a plaintiff to allege  
9 and prove: (1) conspiracy, (2) for the purpose of depriving, either directly or  
10 indirectly, any person or class of persons of the equal protection of the laws, or of  
11 equal privileges and immunities under the laws, and (3) an act in furtherance of the  
12 conspiracy; (4) whereby a person is either injured in his person or property or  
13 deprived of any right or privilege of a citizen of the United States.

14 116. To bring a 42 U.S.C § 1983 conspiracy claim a plaintiff must show (1)  
15 a combination of two or more persons, (2) who, by some concerted action, intend  
16 to accomplish some unlawful objective, (3) for the purpose of harming another, and  
17 (4) which results in damage.

18 117. Ms. Cook and Mr. O’Rourke combined to terminate Mr. Mayo’s  
19 employment in violation of Mr. Mayo’s Constitutional rights thereby depriving Mr.  
20 Mayo, a person who at age 61 is a member of a protected class, of a property right



1 to his continued employment with the City. Through their actions, Ms. Cook and  
2 Mr. O'Rourke together set out to accomplish this unlawful purpose through  
3 unlawful means.

4 118. Ms. Cook and Mr. O'Rourke agreed to enter into this conspiracy to  
5 terminate Mr. Mayo's employment as demonstrated by the conduct described  
6 herein.

7 119. Mr. Mayo was damaged, harmed, and injured as a result of Ms. Cook  
8 and Mr. O'Rourke's civil conspiracy and is entitled to damages in an amount to be  
9 proven at trial.

10 **CAUSE OF ACTION NO. 5 – BREACH OF CONTRACT – CITY**

11 120. As a general rule “a claimant suing for breach of an employment  
12 relationship controlled by the civil service statutes and regulations must exhaust the  
13 procedures and remedies set forth therein.” *Stearns-Groseclose v. Chelan Cty.*  
14 *Sheriff's Dep't*, No. CV-04-0312-RHW, 2006 WL 195788, at \*13 (E.D. Wash. Jan.  
15 17, 2006).

16 121. However, “[a]n exception to the exhaustion requirement exists for  
17 wrongful discharge as against public policy and employment discrimination and  
18 retaliation claims.” *Id.*

19 122. The City Charter, Article XV, § 6 does not list Division Managers as  
20 a classified service exempt position.

1 123. The City Charter, Article XV, § 6 does not list the City Engineer as a  
2 classified service exempt position.

3 124. Accordingly, Mr. Mayo, as City Engineer, was a classified service  
4 employee who, in turn, was entitled to the contractual protections set forth in the  
5 City Charter, Article XV.

6 125. City Charter, Article XV, § 10, provides, in relevant part, that:

7 No person in the classified civil service who has been permanently  
8 appointed or inducted into civil service under provisions of this Article,  
9 shall be removed, suspended, or demoted except for cause, and only  
10 upon written accusation of the appointing power or any citizen or  
taxpayer; a written statement of which accusation, in general terms,  
shall be served upon the accused; and a duplicate filed with the  
commission.

11 126. The City did not terminate Mr. Mayo for cause.

12 127. The City did not follow any of the processes in Article XV, § 10, in  
13 terminating Mr. Mayo's employment.

14 128. The City Charter, Article XV, § 17, provides, in part, that "such rules  
15 and regulations" may "be prescribed by the [civil service] commission."

16 129. The above-referenced rules include, the City of Yakima "Civil Service  
17 Rules and Regulations" which is viewable at  
18 <https://www.yakimawa.gov/services/hr/files/Charter-Civil-Service-Rules-2.pdf>

1 130. Chapter IX of the above-referenced Civil Service Rules and  
2 Regulations sets out the process and procedure by which disciplinary action is  
3 imposed on a classified service employee.

4 131. The City did not follow the provisions of Chapter IX in terminating  
5 Mr. Mayo's employment.

6 132. Chapter XI of the Civil Service Rules and Regulations sets out the  
7 process and procedure by which classified service employees are separated from  
8 the service through reductions in force.

9 133. The City did not follow the provisions of Chapter XI in terminating  
10 Mr. Mayo's employment.

11 134. The City's failure to follow the provisions in the City Charter, Article  
12 XV, and the Civil Service Rules and Regulations constitutes a breach of contract  
13 with Mr. Mayo.

14 135. Since Mr. Mayo alleges that his discharge was on account of his age  
15 and/or in violation of the Fourteenth Amendment of the U.S. Constitution, he does  
16 not need to exhaust the administrative remedies contained in the Civil Service Rules  
17 and/or City Charter. *Stearns-Groseclose v. Chelan Cty. Sheriff's Dep't*, No. CV-04-  
18 0312-RHW, 2006 WL 195788, at \*13 (E.D. Wash. Jan. 17, 2006).

19 136. The City's breach of the City Charter and Civil Service Rules caused  
20 Mr. Mayo damage in an amount that will be established at trial.

1 **V. PRAYER FOR RELIEF**

2 Plaintiff respectfully prays for:

3 A. Compensation for all injury and damages suffered by Mr. Mayo  
4 including, but not limited to, both economic and non-economic damages, in the  
5 amount to be proven at trial including back pay, front pay, pre and post judgment  
6 interest, lost benefits of employment, adverse tax consequences of any award for  
7 economic damages pursuant to Chapter RCW 49.60 et seq., liquidated damages  
8 under both federal and Washington law, and general damages relating to emotional  
9 distress and mental anguish damages as provided by law.

10 B. Plaintiff's reasonable attorneys, expert fees, and costs, pursuant to  
11 COBRA, the WLAD, 42 U.S.C. § 1988, and as otherwise provided by law as well  
12 as the *private attorney general* theory of recovery of reasonable attorney fees and  
13 costs in employment related cases.

14 C. For such other and further relief as this Court deems just and equitable.

15 Respectfully submitted this 23rd day of May 2016.

16 /s Matthew Crotty  
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