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Original Filed

MAY 31 2019

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

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

CASH KRAMER,

Plaintiff,

vs.

QWEST CORPORATION in its
corporate capacity, and TY
LEMASTER individually,

Defendants.

Case No. **19202427-32**
**COMPLAINT & DEMAND FOR
JURY TRIAL**

The Plaintiff, CASH KRAMER, by and through MATTHEW Z. CROTTY,
CROTTY & SON LAW FIRM, PLLC, MICHAEL B. LOVE, of MICHAEL LOVE
LAW, PLLC, and THOMAS G. JARRARD, LAW OFFICE OF THOMAS
JARRARD, PLLC, complain of Defendants and alleges as follows:

I. PARTIES, JURISDICTION, & VENUE

1 Defendant Qwest Corporation. At no time did any customer of Defendant Qwest
2 Corporation complain of Plaintiff's workplace performance.

3 9. Indeed, Plaintiff's job performance during that 17 year timeframe was, at
4 a minimum, satisfactory for he received routine pay increases and bonuses and did not
5 receive any form of written discipline until after the events of February 23, 2017.
6

7 10. On February 23, 2017, Plaintiff, through no fault of his own, was
8 electrocuted while at work. Plaintiff was hospitalized, nearly died (he was told that
9 his heart had stopped and that he had suffered a head injury), and, following that injury
10 made a workers' compensation claim through the Washington State Department of
11 Labor and Industries (L&I). The event of February 23, 2017, caused Plaintiff injuries
12 that affected Plaintiff's ability to hear, ability to sleep, ability to concentrate, ability
13 to think, ability to work and, in addition, gave Plaintiff headaches.
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16 11. A government investigation subsequently determined that faulty
17 equipment of the Defendant Qwest Corporation caused Plaintiff's injury.
18

19 12. In mid-March 2017 Plaintiff returned to work in a light duty capacity
20 where upon he would work four hours per day. However, Plaintiff's disability,
21 specifically the ability to concentrate and headaches, prevented him from working that
22 schedule which, in turn, caused Plaintiff to leave the workplace to further treat the
23 injury.
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1 13. Plaintiff having to leave the workplace caused Defendant Qwest
2 Corporation to continue to pay the L&I expenses associated with Plaintiff's injury.

3 14. On or around September of 2017, Plaintiff traveled to his work site at
4 1020 Cataldo Street in Spokane, WA in order to get paperwork needed to refinance
5 his house. While at the office Plaintiff, as a joke, placed a poster of Johnny Cash (the
6 deceased rock star) giving the middle finger, on his chair.
7

8 15. On September 19, 2017, i.e. shortly after the above-referenced Johnny
9 Cash poster incident, Bill Anderson and Aitor Lacambra, two managers of Defendant,
10 visited Plaintiff at his (Plaintiff's) house - - - a house that sits on approximately 10
11 acres of land in a rural part of Spokane County. Mr. Anderson and Mr. Lacambra
12 report to Defendant Tyler Lemaster.
13

14 16. When Mr. Anderson and Mr. Lacambra arrived at Plaintiff's house
15 Plaintiff was outside exercising his Second Amendment rights, i.e. target practicing
16 by shooting his gun at a target on his own property.
17

18 17. Plaintiff saw Mr. Anderson and Mr. Lacambra approach, cleared his gun,
19 and greeted those individuals. Plaintiff then passed the gun that he was shooting to
20 Mr. Lacambra. Mr. Lacambra examined the rifle, looked through its scope, and said
21 words to the effect of "cool." The rifle was then passed to Mr. Anderson who also
22 examined the rifle. Plaintiff asked Mr. Anderson and Mr. Lacambra if they wanted to
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1 shoot the gun. Both declined. Mr. Anderson and Mr. Lacambra told Plaintiff that they
2 were there to get his badge and keys. Plaintiff tried to find both items, found the keys,
3 did not find the badge, and told Mr. Anderson and Mr. Lacambra that the badge was
4 likely in Plaintiff's work truck, which was located at the Defendant Qwest
5 Corporation's Cataldo facility.
6

7 18. Mr. Anderson and Mr. Lacambra then departed Plaintiff's property.
8

9 19. Mr. Anderson and Mr. Lacambra told Defendant Lemaster that they
10 found Plaintiff using his (Plaintiff's) firearms when they arrived at Plaintiff's
11 property.
12

13 20. Upon information and belief, Defendant Lemaster told Mr. Anderson and
14 Mr. Lacambra to file a police report against Plaintiff.

15 21. On September 19, 2017, at around 3:50 PM, Mr. Anderson contacted the
16 Spokane County Sheriff's Office (SCSO) to report "suspicious circumstances"
17 regarding Plaintiff.
18

19 22. The SCSO investigated Mr. Anderson's report, and, in doing so,
20 interviewed both Mr. Lacambra and Mr. Anderson who, in turn, told the investigating
21 officer that at no time did either one of those individuals feel threatened by Plaintiff.
22 On September 26, 2017, the SCSO closed its investigation and found that no probable
23 cause existed to charge Plaintiff with any crime. The SCSO police report did, however,
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1 make reference to Plaintiff's "mental illness."

2 23. Upon information and belief Defendant Lemaster learned that the SCSO
3 closed its investigation (in Plaintiff's favor), was angry about the result, and, in turn,
4 directed Mr. Anderson and Mr. Lacambra to file a separate report with corporate
5 security.
6

7 24. Upon information and belief, the report that Mr. Anderson and Mr.
8 Lacambra made to corporate security contradicts the statements they made to the
9 SCSO regarding Plaintiff.
10

11 25. At no time, between the September 19, 2017, incident and Plaintiff's June
12 11, 2018, termination (more on that below) did Defendant Qwest Corporation inform
13 Plaintiff that Plaintiff was barred from entering Defendant Qwest Corporation's
14 workplace or Defendant's property.
15

16 26. Beginning in November 2017, and ending in February 2018, Defendant
17 Qwest Corporation (or Defendant's agent i.e., Sedgwick CMS and/or Allsup) would
18 either ask Plaintiff (or ask Plaintiff's agent), if Plaintiff wanted to apply for and receive
19 Social Security Disability (SSDI) benefits. And each time Defendant Qwest
20 Corporation (or Defendant's agent) asked Plaintiff (or Plaintiff's agent) this question
21 Plaintiff responded "no" and further indicated a desire to return to work once he was
22 healed.
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1 27. Upon information and belief, Defendant Qwest Corporation would have
2 saved money had Plaintiff received SSDI benefits in lieu of L&I benefits.

3 28. In early June 2018 Plaintiff informed his union that he was ready to return
4 to work on a light duty basis. The union then informed the Defendant Qwest
5 Corporation that Plaintiff wanted to come back to work.

7 29. Within days of doing so Plaintiff took, and passed, a company required
8 driving test. The Defendant Qwest Corporation was aware that Plaintiff had passed
9 the driving test through its agent Sedgwick CMS, but never contacted Plaintiff for the
10 purpose of looking into bringing him back to work in some capacity.

11 30. Instead, on June 11, 2018, Sue Anderson, an employee of Defendant,
12 called Plaintiff and told Plaintiff that he was fired on the pretext that Plaintiff
13 allegedly violated Defendant's "Workplace Violence and Weapon's Policy" despite
14 the fact the policy was not violated and did not apply to Plaintiff on his own property
15 lawfully possessing and discharging firearms that he owned.

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19 **III. CAUSES OF ACTION**

20 31. Plaintiff incorporates the above paragraphs as if pled verbatim herein.

21
22 **(Count One – Violation of the Washington Law Against**
23 **Discrimination (WLAD) RCW 49.60.180 Discrimination and**
24 **Failure to Accommodate**

25 **(ALL DEFENDANTS)**

1
2 32. The WLAD requires equal employment opportunities for individuals
3 with actual disabilities, perceived disabilities, and a record of disability and prohibits
4 employers from discriminating against a qualified individual regarding any terms,
5 conditions, or privileges of employment.
6

7 33. The WLAD “by its very terms, contemplates individual supervisor
8 liability and “a supervisor acting in the interest of an employer who employs eight
9 or more people can be held individually liable for his or her discriminatory acts.”
10 *Brown v. Scott Paper Worldwide Co.*, 143 Wn.2d 349, 358 (2001).
11

12 34. A person bringing a disability discrimination claim under the WLAD
13 must “show that he was (1) disabled, (2) subject to an adverse employment action,
14 (3) doing satisfactory work, and (4) discharged under circumstances that raise a
15 reasonable inference of unlawful discrimination.” *Scholz v. Washington State Patrol*,
16 416 P.3d 1261, 1268 (Wash. Ct. App. 2018).
17
18

19 35. Plaintiff was disabled given his injuries which, in turn, affected the
20 major life activities of hearing, sleeping, concentrating, thinking, memory and
21 working.
22

23 36. Additionally, Plaintiff also had a record of being impaired given the
24 Department of Labor & Industries’ finding vis-à-vis his workplace injury.
25

1 37. Further, upon information and belief, Defendants regarded or otherwise
2 perceived Plaintiff as disabled insofar as Defendants did not believe that Plaintiff
3 had fully recovered from his injury nor would he ever be able to fully recover from
4 said injury. Moreover, Defendant believed that Plaintiff suffered from a “mental
5 illness” and that he was prone to the potential for violence both on-duty and off-duty
6 and therefore did not want to bring him back to work or otherwise reinstate him
7 because of unwarranted and unjustified fears or stereotypes associated with disabled
8 persons or persons regarded as or perceived as being otherwise disabled who are not
9 disabled. This was confirmed by Defendant Qwest’s in house counsel Mark E.
10 Nollan who expressed concern over Plaintiff coming back to work and being
11 unsupervised while in the home of Qwest customers based upon the alleged actions
12 of Plaintiff while he was on his own property and lawfully possessing, owning and
13 discharging a firearm while Mr. Anderson and Mr. Lacambra were present on his
14 property with his express or implied permission. Mr. Nollan confirmed that the
15 company could not take the risk and assume that type of liability in the event an
16 incident occurred inside the home of one of its customers.
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22 38. Plaintiff was subjected to the adverse employment action of
23 termination, and other discriminatory acts by all Defendants.
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25 39. Plaintiff was doing satisfactory work for Defendant Qwest Corporation.

1 40. And Plaintiff was discharged under circumstances, which are described
2 above, that raise an inference of discrimination.

3 41. First, Plaintiff never violated Defendant Qwest Corporation's policy.
4 That policy generally bars employees from bringing weapons onto company
5 property; it does not bar an employee from lawfully discharging his or her weapons
6 at his or her residence.
7

8 42. Second, Defendant Qwest Corporation's "Workplace Violence &
9 Weapons" policy prohibits threats of violence on company property and Plaintiff
10 never made a threat of violence to anyone, much less to anyone while on company
11 property.
12

13 43. Third, had Defendants been so concerned about Plaintiff's alleged
14 propensity toward violence or "threats" then Defendants would have either
15 terminated Plaintiff back in September 2017 or informed Plaintiff, in writing, to
16 cease going on to company property. Defendants did neither.
17

18 44. Fourth, the inconsistencies between the company-internal report Mr.
19 Anderson and Mr. Lacambra made (which accused Plaintiff of being a threat or a
20 perceived threat) and the police report (which found that Plaintiff was not a threat)
21 give rise to an inference of discrimination.
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1 45. Fifth, the close proximity between Plaintiff exercising, in early June
2 2018, his lawful right to return to work following disability recovery, and his June
3 11, 2018, termination (for something that occurred in September 2017) gives rise to
4 an inference of discrimination.
5

6 46. Sixth, Defendant Qwest Corporation utilizes a “corrective action
7 process” so as to allow an employee the opportunity to correct workplace
8 performance deficiencies. Yet Defendants disregarded that policy as it relates
9 Plaintiff and instead summarily terminated a 17 year employee with a near-spotless
10 record.
11

12 47. Taken together, or in isolation, the above-referenced circumstantial
13 evidence makes clear that Defendants did not want to re-employ a disabled (or
14 perceived to be disabled) employee and undergo the time and expense associated
15 with retraining him and/or accommodating his disabilities. Accordingly, Defendant
16 Qwest Corporation (a sophisticated company whose management level employees
17 are trained to not write down or otherwise reveal the real (discriminatory) reasons
18 for firing someone) and the other Defendants made up a reason to fire him and that
19 reason is a cover up for discrimination.
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23 48. Additionally, upon being put on simple notice of Plaintiff wanting to
24 return to work on a light duty basis and having passed a company driving test this
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1 triggered Defendant Qwest Corporation's obligation to engage in the *interactive*
2 *process* to contact Plaintiff and begin the process of looking within its workforce for
3 any light duty work that Plaintiff would be able to perform. By failing to do so,
4 Defendant Qwest Corporation also violated its obligation under the law relating to
5 reasonable accommodation.
6

7 49. Defendants' actions have caused Plaintiff damages in an amount to be
8 proven at trial.
9

10 **(Count Two – Wrongful Discharge in Violation of a Recognized Public Policy**
11 **– Exercising a Legal Right or Privilege.)**

12 **(ALL DEFENDANTS)**

13 50. Plaintiff incorporates the above paragraphs as pled verbatim herein.

14 51. In *Thompson v. St. Regis Paper Co.*, the Court adopted the tort of
15 wrongful discharge in violation of public policy as a narrow exception to the at-will
16 employment doctrine. 102 Wn.2d 219, 232-33 (1984).
17

18 52. In cases following *Thompson*, the Court acknowledged that public
19 policy tort claims generally arise in four areas: "(1) where the discharge was a result
20 of refusing to commit an illegal act, (2) where the discharge resulted due to the
21 employee performing a public duty or obligation, (3) where the discharge resulted
22 because the employee exercised a legal right or privilege, and (4) where the
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1 discharge was premised on employee ‘whistleblowing activity.’” *Dicomes v. State*,
2 113 Wn.2d 612, 618 (1989).

3 53. The Washington Supreme Court has allowed a plaintiff to sue, for
4 wrongful discharge in violation of public policy, his or her former supervisors in
5 their individual capacities. *Roberts v. Dudley*, 140 Wn.2d 58, 61 (2000); *Lindsey*
6 *Organik Techs., Inc.*, 1999 WL 239469 *4 (1999) (rejecting individual defendants’
7 argument that “they cannot be held personally liable on Lindsey’s claims for
8 wrongful discharge.”
9
10

11 54. Here, Plaintiff exercised his legal Constitutional Second and Fourteenth
12 Amendment right to use his firearms on his own property and Defendants used
13 Plaintiff’s exercise of that legal right not only as a pretext to fire Plaintiff on account
14 of his disability but, additionally, in retaliation for exercising his Second
15 Amendment and Fourteenth Amendment Rights under the United States
16 Constitution and Washington Law.
17
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19 55. Plaintiff has the burden to show at the first step that his “discharge may
20 have been motivated by reasons that contravene a clear mandate of public policy.”
21 *Thompson*, 102 Wn.2d at 232. “The question of what constitutes a clear mandate of
22 public policy is one of law” and can be established by prior judicial decisions or
23 constitutional, statutory, or regulatory provisions or schemes.” *Dicomes*, 113 Wn.2d
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1 at 617. Here, Plaintiff was exercising a legal right or privilege by lawfully possessing
2 and using a firearm on his own property for target practice.

3 56. If Plaintiff satisfied the first step he is then obligated at the second step
4 to show that the public-policy-linked conduct was a “significant factor” in the
5 decision to discharge the worker. *Wilmot v. Kaiser Aluminum & Chemical Corp.*,
6 118 Wn.2d 46, 75 (1991). The Plaintiff must establish a prima facie case by
7 producing evidence that the public-policy-linked conduct was a cause of the firing,
8 and may do so by circumstantial evidence. *Id.* at 70. If the Plaintiff succeeds in
9 presenting a prima facie case, the burden then shifts to the employer to “articulate a
10 legitimate non-pre-textual non-retaliatory reason for the discharge.” If the
11 Defendant articulates such a reason, the burden shifts back to the Plaintiff either to
12 show “that the reason is pre-textual, or by showing that although the employer’s
13 stated reason is legitimate, the [public-policy-linked conduct] was nevertheless a
14 substantial factor motivating the employer to discharge the worker.” *Id.* at 73.

15 57. Here, there is both circumstantial and direct evidence that Plaintiff’s
16 public-policy-linked conduct was the cause of his dismissal because his termination
17 was premised on an alleged violation of the Defendant’s Workplace Violence
18

1 Prevention Policy even though (a) that policy did not apply to Plaintiff's off-work
2 conduct and (b) Plaintiff did not violate the policy.¹

3 58. Defendant's actions have caused Plaintiff damages in amount to be
4 proven at trial.

6 **(Count Three – Invasion of Privacy/False Light Disclosure)**

7 **(ALL DEFENDANTS)**

8 59. Plaintiff incorporates the above paragraphs as pled verbatim herein.

9
10 60. The Defendants, by their conduct as alleged herein, wrongfully
11 interfered with and invaded Plaintiff's right to privacy of his private affairs and
12 concerns in such a manner as to be highly offensive and objectionable to any
13 reasonable person and did so by disclosing publicly matters which were private as
14 to Plaintiff's personal, employment and work history.

15
16 61. In addition, the Defendants invaded Plaintiff's right to privacy by
17 recklessly and/or intentionally disregarding the falsity of matters which they
18 publicized in such an unreasonable and objectionable manner as to place Plaintiff in
19 a false light, which was highly offensive and exposed Plaintiff to calumny and
20
21
22 ridicule.

23
24 ¹ As it relates to the wrongful discharge claim, Plaintiff is also incorporating into this separate
25 claim the public policies set forth in his first claim for damages under CHAPTER 49.60 RCW.
COMPLAINT & DEMAND FOR JURY TRIAL - 15

1 62. As a direct and proximate result of Defendants' misconduct, Plaintiff
2 suffered damages, including emotional and mental distress, for which he is seeking
3 to be compensated in an amount to be proven at the time of trial.

4
5 **IV. PRAYER FOR RELIEF**

6 Plaintiff respectfully seeks:

- 7 A. All damages allowed under the law including front pay, back pay, pre-
8 judgment interest, adverse tax consequences, and general damages.
9 B. Attorneys' fees, costs, and litigation expenses as allowed under RCW
10 49.48.030 and 49.60.030(2).
11 C. A declaration that Defendants violated the WLAD and civil law.
12 D. All other relief that is just and equitable.

13
14 DATED this May 31st, 2019.

15
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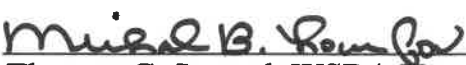
23 MICHAEL LOVE LAW, PLLC

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