BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In re the Matter of Enforcement Action Against AARON REARDON, Respondent.	PDC CASE NO: 12-160 RESPONDENT'S REPLY RE PDC'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS AND IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT

TO: THE WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION; and

TO: ASSISTANT ATTORNEY GENERAL, CHAD STANDIFER.

REPLY

A. THE PDC'S ATTEMPT TO IMPOSE PENALTIES ENACTED AFTER ALLEGED ACTS VIOLATES THE WASHINGTON STATE AND FEDERAL CONSTITUTIONAL PROHIBITIONS ON EX POST FACTO LAWS

The PDC staff states in their response that the ex post facto prohibition found in the United States Constitution and the Washington State Constitution only applies to laws inflicting criminal punishment. *State v. Ward,* 123 Wn.2d 488, 499, 869 P2d 1062 (1994). "Both the United States and the Washington Constitutions prohibit the use of increased

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penalties to punish acts that occurred before the effective dates of the increase." *Ludeman v. State, Dep't of Health*, 89 Wash. App. 751, 763, 951 P.2d 266, 271 (1997). *Ludeman* is an administrative proceedings case. Therefore, Division I of the Court of Appeals of the State of Washington sets out that ex post facto is applicable to administrative cases where punishment and penalties are increased after the commission of an act.

The PDC staff errors in its assertion that only criminal laws and criminal acts are impacted by the prohibition against ex post facto laws. In *State v. Schmidt*, the Washington State Supreme Court affirmed the understanding of the Washington State Division II Court of Appeals, stating, "The majority opinion of the Court of Appeals in *State v. Schmidt* began with the correct premise that ex post facto prohibitions apply only to statutes which are "criminal" or "punitive." (Emphasis ours). *State v. Schmidt*, 143 Wash. 2d 658, 674, 23 P.3d 462, 471 (2001). The use of the word "or" by both the Washington State Supreme Court and Division II Court of Appeals in the *Schmidt* case is significant because it clearly means that statutes which are punitive in nature are prohibited by the ex post facto rule in addition to criminal statutes. The PDC staff's reliance on blanket statements that only criminal statutes can be prohibited ignores the use of the disjunctive word "or" and effectively ignores laws which are ***punitive*** in nature, the second category of laws which violate the prohibition on ex post facto laws.

Moreover, the PDC staff's citation of the *Ward* case negated the true issue of ex post facto before the court. In *Ward* the question of ex post facto is the prospective application of a new statutory requirement (which did not exist at the time of the offense) placed on persons found to have particular legal status (sex offender). The court determined that requiring a person who had been earlier found guilty of a sex offense to prospectively register as a sex offender did violate the defendants constitutional right as the imposition of the statute applied

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prospectively and not retroactively. Further the court determined the prospective registration was not "punitive."

The PDC staff argues "Respondent's reliance on the ex post facto prohibition is misplaced in this administrative proceeding, in which only remedial penalties attach to his statutory violation." As a result, the PDC staff contends that exercising jurisdiction under 42.17A is their right as the statute applies retroactively and the enforcement of the statute as re-codified is appropriate because it allows for remedial measures and its "retroactive application would further its remedial purpose." As the foundation for their argument, the PDC staff cite in their reply *State v. Pillatos,*159 Wn.2d 459, 472, 150 P.3d 1130 (2007), *Haddenham v. State.* 87 Wn.2d 145, 148, 550 P.2d (1976), and *In re F.D. Processing,* 119 Wn.2d 452, 462-63, 832 P.2d 1303 (1992). Here, the PDC staff negates the consistent view of the court in their citations which undermine their foundational argument.

In *Pillatos,* the question of ex post facto centered on the efficacy of notice offered to the defendant and the substance of existing law at the time of the offense in comparison to subsequent statutory changes.

"We conclude that the procedural changes wrought by Laws of 2005, chapter 68 do not resemble the sort of retroactive statutes which have been found in the past to offend our constitutions. All of these defendants had warning of the risk of an exceptional sentence. At the time all of these defendants committed the crimes set forth above, Washington had a seemingly valid exceptional sentencing system which gave fair notice of the risk of receiving such a sentence."

The court determined that at the time of the act, defendants had notice that the State could impose exceptional sentences under current law. Further, the court determined that the

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authority to impose exceptional sentences was not inconsistent with the new authority granted under the SRA.

Therefore, retroactive application of the SRA to the defendants' cases in question was found constitutional because the defendant knew at the time of the act that the state could impose "exceptional sentences" and the later change in law did not change the level of the potential punishment.

In *Haddenham*, the court clarified two question of ex post facto. 1. "specific legislative intent," Did the legislature intend retroactive application? And, 2. Did retroactive application result in the deprivation of rights?

To answer the first question, the court found that the legislature specifically intended the legislation to be retroactive in its application as cited in the act. "*149 Our result is buttressed by the fact that although the act was not to be effective until July 1, 1974, the legislature specifically provided that coverage was to be extended under the act to anyone injured as the result of a criminal act on or after January 1, 1972. RCW 7.68.160."

Second, in determining whether or not retroactive application resulted in a deprivation rights, the court analyzed the origin of the law and clearly distinguished a statutory right and constitutional right. "[3] The second issue raised on appeal is whether the retroactive application of the remedial provisions of the crime victim's compensation act unconstitutionally deprives plaintiffs of their right to sue the state. Prior to the legislature's abolition of the doctrine of sovereign immunity, tort claimants had no right to sue the state. Kelso v. Tacoma, 63 Wn.2d 913, 390 P.2d 2 (1964); Kilbourn v. Seattle, 43 Wn.2d 373, 261 P.2d 407 (1953). The plaintiffs' right to sue the state for the state's tortious conduct is therefore a matter of legislative grace. See Const. art. 2, § 26. In enacting the crime victims

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compensation act, the legislature expressly withdrew its consent to be sued for injury or death as a consequence of a criminal act."

The court clarified that plaintiff's rights were statutorily based. Plaintiff's assertion that retroactivity resulted in a deprivation of plaintiff's rights was unfounded as the plaintiff's right to sue the state was a "matter of legislative grace." As such, the state could freely give or take away this right. Therefore, the options afforded the plaintiff were statutory – *not constitutional* – and were freely determinable by the state.

Here, the legislature afforded no statutory right to the PDC staff to retroactively apply RCW 42.17A as they freely felt when the legislature specifically cited January 1, 2012 as the effective date of RCW 42.17A .

In *Re F.D. Processing, Inc.,* with regards to the question of ex post facto, the court applied a three part test to determine the constitutionality of retroactive enforcement of state legislation. 1. Is there specific legislative intent that the statue is to apply retroactively? 2. Is the retroactive application of the statute curative and/or remedial? 3. If the statute is remedial, does retroactive application enforcement affect a vested right?

1. Legislative Intent

Again, the court determined a statute must directly contain specific legislative language that the legislature intended retroactivity. The court noted that "It indicates that the Legislature is correcting what was previously missing, but it does not state that the Legislature specifically intended retroactivity." This statement clearly negates the PDC staff's argument that "Retroactive application of the penalty authority furthers the remedial purpose of the campaign finance laws, to ensure those who violate the law adjust their conduct to avoid future violations." In fact, through the PDC staff's own statement, the PDC argues the intent of RCW 42.17A is prospective, noting the intent of the change in the law is

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to encourage those under to whom it applies to "adjust their conduct to avoid future violations."

RCW 42.17A legislative intent specifically states the statute shall take effect January1, 2012. Nowhere does the statute contain the requisite, specific, retroactive language and/or legislative intent argued by the PDC staff.

2. Curative/Remedial:

The court clearly states that a statute is "curative only if it clarifies or technically corrects an ambiguous statute." On its face, it is clear that RCW 42.17A is not curative of RCW 42.17 and PDC staff make no attempt to assert otherwise. In fact, the PDC argues "The statutory amendment to former RCW 42.17.395 merely *bettered* a remedy available to the Commission, by increasing the penalty authority to a maximum of $10,000.00." The PDC staff clearly states that RCW 42.17A was not intended to correct nor did it correct a defect in existing law. Rather, they seek ex post facto application of RCW 42.17A because it provides them greater, "bettered" penalty authority.

Regarding the second question as to the remedial nature of the statue, "[a]n amendment is deemed remedial and applied retroactively when it relates to practice, procedure *463 or remedies, and does not affect a substantive or vested right." Here again, the PDC staff do not argue that retroactive application relates to practice, procedure or remedy. Rather, the PDC staff argues retroactive application of increased penalty authority – not granted by statute at the time of the alleged offense. *In Re F.D. Processing, Inc.*

On its face their argument is that RCW 42.17 was neither ambiguous nor defective, nor was the re-codification aimed to cure an ambiguity or defect in the law; or remedy past practices or procedures. The PDC staff plainly seeks – for punitive purposes only – to

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retroactively apply their increased penalty authority granted under RCW 42.17A prior to the effective date which the legislature specifically intended.

3. Infringement upon a vested right:

The PDC staff's central argument is that their right to apply, ex post facto, RCW 42.17A to 2011 alleged violations because retroactive application does not affect a substantive vested right of the Respondent. Here, the court was also clear, "As indicated above, a remedial statute cannot be retroactively applied if it affects a vested right. *See Miebach*, 102 Wn.2d at 180-81 (declining to retroactively apply RCW 6.24.145, despite the statute's remedial aspect, when doing so would impinge upon a vested right). A vested right involves "more than ... a mere expectation"; the right must have become "a title, legal or equitable, to the present or future enjoyment of property".

PDC staff assert that retroactive application of RCW 42.17A infringes on no vested right of the Respondent. To justify their position and attempt to minimize the true impact of their actions, PDC staff narrowly focuses their response to RCW 42.17A.755.

However, even this narrow argument fails. There can be no dispute that RCW 42.17A.755 is a punitive statute. What the PDC staff parses as "bettering" a remedy is clearly an increase in punitive sanctions. Black's Law Dictionary defines Punitive as "Inflicting a Penalty, having the character of punishment or penalty" and further describes punishment as "Any fine, penalty, or confinement inflicted upon a person by the authority of the law". RCW 42.17A.755 (enacted January 1, 2012) bluntly provides that "The commission may assess a penalty" when describing punishment authority.

RCW 42.17.395 specifically sets the amount of property the PDC was authorized to collect in the event the Commission determined a violation of RCW 42.17.130 had occurred at no more than "$4,200.00." As noted by the court, a vested right is "more than ... a mere

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expectation"; the right must have become "a title, legal or equitable, to the present or future enjoyment of property". Because the statute specifically states the total amount of property one who is found to have violated the statute would be required to forfeit, the PDC staff's attempt to assert retroactive control over property in excess of the amount is an attempt to take Respondent's legal property and to restrict Respondent's present and future enjoyment of his property in excess of their legal authority, thereby adversely affecting Respondent's "vested right.".

Furthermore, ex post facto application of RCW 42.17A additionally infringes upon Respondents constitutionally vested rights as retroactive application of this statute violates the Washington State and United States Constitutions' prohibitions against ex post facto punishment in addition to violating Respondent's Constitutional Rights to due process and fundamental fairness as the violations and punishment the PDC staff is alleging under the 2011 law is now potentially criminal in nature with significantly increased penalties for fines and/or jail and/or prison time.

The prohibition against ex post facto laws is implicated anytime a law increases the penalties or punishment of an act that occurred prior to that law being enacted. Where Courts have found that ex post facto is not implicated, the fact patterns have always reflected laws that place a restriction on future acts. For example and by way of explanation, a newly enacted law that required persons who had previously been found to have violated campaign rules to disclose such information in their future official voters pamphlet statement would likely not violate the prohibition against ex post facto laws because it places a restriction or requirement on future acts rather than an increased punishment faced by the Respondent.

Here, Respondent's alleged acts occurred in 2011 and the maximum punishment that Respondent faced for the alleged acts at the time that they were alleged to have occurred

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under RCW 42.17.395 is $4,200.00. Yet, RCW 42.17A, which went into effect January 1, 2012, well after the dates of the allegations, increases the monetary punishment from a maximum $4,200.00 penalty to a maximum penalty of $10,000.00.

Additionally, as cited in Respondent's motion for summary judgment, the PDC staff seeks to exercise jurisdiction under RCW 42.17A. As noted, RCW 42.17A (et seq. .105; .750; .755.; .760. .765) did not take effect until after January 1, 2012. In their response, the PDC staff fails to address the fact that RCW 42.17A allows for the application of RCW 42.17A.750 to the allegations made against Respondent. RCW 42.17A.750 took effect in January of 2012 and now potentially makes the alleged violations criminal in nature and punishable by a misdemeanor, gross misdemeanor and/or a felony. *See RCW 42.17A.750 (2)(a)(b)(c).* The allegations against Respondent were not criminal and they were not punishable by a misdemeanor, gross misdemeanor and/or a felony when they were alleged to have occurred in 2011 under the 2011 statute RCW 42.17.395. Therefore, the PDC staff's assertion that RCW 42.17A applies retroactively ***significantly*** changes the nature and punishment of the 2011 allegations against Respondent Reardon from civil to potentially criminal. The PDC staff conveniently fails to mention this extremely important and significant change to RCW 42.17A in their response.

Therefore, on its face, the application of RCW 42.17A violates the Washington State and United States Constitutions' prohibition against ex post facto punishment in addition to violating Respondent's Constitutional Rights to due process and fundamental fairness as the violations and punishment that the PDC staff is alleging under the 2012 law is now potentially criminal in nature with significantly increased penalties for fines and/or jail and/or prison time.

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Under the reasoning of the PDC staff, a State law enacted in 2012 retroactively applies to acts prior to its enactment and increases the penalty authority from $4,200.00 up to $1,000,000.00; it now makes prior civil punitive violations criminally punishable and, according to the PDC staff, it still does not violate the Constitutional prohibition against ex post facto laws because the issue is "remedial in nature" and part of an "administrative proceeding."

B. UNDER THE APA, THE UNITED STATES AND WASHINGTON STATE CONSTITUTIONS THE PDC IS REQUIRED TO SERVE THE RESPONDENT WITH NOTICE OF VIOLATIONS AND PENALTIES THAT ARE ACCURATE, FREE FROM DEFECTS AND MISLEADING STATUTES

In their response, the PDC staff states "The Notice of Charges issued by the Commission Staff complies with all the requirements of the due process and the APA, RCW 34.05, and the 14th Amendment to the United States and Washington State Constitutions. The PDC staff also asserts in their response that "the Respondent was properly notified of his potential violations and has a full opportunity to present his objections through the adjudication of this matter."

The PDC staff continues on page four, lines 21-24 in their response "While the Notice of Charges references RCW 42.17A.555, the document includes an explanatory footnote disclosing the recodification of former RCW 42.17.130." R-Ex 1. The PDC staff then states "As the Respondent appears to have been confused by this footnote, Commission Staff now state unequivocally that former RCW 42.17.130 is the applicable statutory provision. The Respondent, however, has demonstrated no prejudice resulting from this ***alleged ambiguity*** in the Notice of Charges."

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Either the PDC staff still does not understand their own statutes or they are playing fast and loose with the Respondent's life, checkbook and his ability to defend himself from a moving target. At exactly what point was the PDC staff going to disclose this "alleged ambiguity" to the Respondent and the Commission? Does anyone really believe that the PDC staff was going to disclose their "alleged ambiguity" while they were collecting $10,000.00 in penalties from the Respondent? Or, perhaps the PDC staff was going to disclose this "alleged ambiguity" during the Respondent's hearing? Or, perhaps after they refer this matter for criminal charges and punishment after collecting $10,000.00 from him?

The Notice of Administrative Charges, R-Ex. 1, is defective and is not reasonably calculated under all the circumstances written to apprise the Respondent of the pendency of the action and afford him an opportunity to present his objections as required by the law. *In re Bush*, 164 Wn2d 697, 704, 193 P.3d 103 (2008) (citation omitted); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950); and *State v. Nelson*, 158 Wn.2d 699, 703, 147 P.3d 553 (2006).

The Notice of Administrative Charges, R-Ex. 1, states on page one, under paragraph I. Jurisdiction, that "The PDC has jurisdiction over this proceeding pursuant to Chapter 42.17A RCW. Under paragraph II. Allegations, R-Ex. 1 the "PDC staff alleges that Aaron Reardon, former Snohomish County Executive, violated RCW 42.17A.555 (footnote 1)..." Footnote 1 on page one of R-Ex. 1 states "Effective January 1, 2012, RCW 42.17.130 was re-codified as RCW 42.17A.555. **Alleged use of facilities of a public office or agency on or *after* January 1, 2012 are therefore governed under RCW 42.17A."** Clearly, the Legislature intended to make RCW 42.17A operate prospectively and did not intend to make RCW 42.17A retroactive as the PDC staff attempts to argue in their response. Therefore, the PDC staff was legislatively mandated to cite RCW 42.17 and all relevant penalty provisions in

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effect in 2011. Instead, the PDC staff cites the 2012 law Chapter 42.17A under Jurisdiction and RCW 42.17A.555 under Allegations which, as previously discussed above, creates a whole new range of penalties, crimes and punishment.

Furthermore, the two (2) page Enforcement Hearing Notice, also marked as R-Ex.1 setting out the first Hearing Date of February 25, 2016, states that the Respondent violated RCW 42.17.130 which is the opposite of the five (5) page Notice of Administrative Charges. So either the PDC staff knew that the law had substantively and significantly changed and was intentionally trying to hoodwink the Respondent into paying an additional $5,800.00 penalty and unknowingly faces criminal punishment or they are oblivious to their own laws. In either case, there is no way that the Respondent was afforded due process by being reasonably informed and appraised of the applicable law in effect in 2011. The PDC staff cannot now sua sponte, without Legislative and/or Commission authority, apply RCW 42.17A retroactively and simply state no harm no foul after the Respondent has had to spend his own money to hire an attorney to defend himself from the PDC staff's specious Notice of Administrative Charges.

RESPONDENT IS PREJUDICED BY DEFECTIVE NOTICE, DENIAL OF DUE PROCESS AND THE APPEARANCE OF FAIRNESS

The Respondent has already been financially impacted by requiring the assistance of legal counsel to defend himself from the PDC staff's misleading, deceptive and spurious Notices. The prejudicial harm that has already been caused to the Respondent cannot be cured by simply amending the Notices and continuing the hearing. Either the PDC staff knew that their Notices were defective or they certainly should have known. Either way, the Respondent has been unduly prejudiced and harmed by the PDC staff's sua sponte use of their own statutes as a sword against the Respondent. Moreover, everyone is severely prejudiced when

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the staff of governmental agencies fails to follow basic fundamental due process and fairness protocols. The only cure for this type of governmental abuse is the dismissal of PDC 12-160.

THE PDC STAFF RESPONSE FAILS TO DEMONSTRATE A GENUINE ISSUE OF MATERIAL FACT AND RESPONDENT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW

Throughout the Response to Respondent's Motion to Dismiss and in the Alternative Motion for Summary Judgment, the PDC staff misstates or misrepresents its own investigation in an attempt to create an issue of material fact. The PDC staff attempts to confuse the issue of material fact with mere supposition. The PDC staff further argues that because Respondent Reardon objects to the allegations contained within the notice of Administrative Charges, Respondent concedes that issues of material fact remain in dispute. This premise is false on its face. Respondent's motion that no issues of material fact are in dispute is premised on the facts contained within the audio interviews obtained during the PDC staff's own investigation. The PDC staff's allegations are not material fact. A material fact is one upon which the outcome of the case depends, in whole or in part. *Morris v. McNicol, 83 Wn.2d 491, 494, 519 P.2d 7 (1974).* The facts exist in the evidence collected and offered by the PDC staff and in the evidence offered by Respondent. Respondent's dispute of the allegations does not equate to the existence of a dispute of genuine issue of material fact because allegations are not facts.

USE OF COUNTY FACILITIES

1. No issues of material fact are in dispute regarding the PDC's allegations that Reardon used his county office in furtherance of his 2011 campaign. In their response to Respondent's motion for summary judgment, the PDC staff again cites facts that two of

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Reardon's staff, "Nancy Peinecke and Gary Haakenson, confirmed observing Mr. Underwood meeting with Mr. Reardon in his office." However, the PDC staff's response conveniently leaves out essential information contained within the interview of both of these parties that refutes PDC staff allegations. Both Gary Haakenson and Nancy Peinecke informed PDC staff they never witnessed Reardon discuss his 2011 campaign with Mr. Underwood. In fact, audio interviews from every employee interviewed in the Snohomish County Executive Office informed PDC staff that none of them ever witnessed Reardon conduct or discuss campaign related activities and unequivocally state that no campaigning of any kind ever took place in the office. Finally, in addition to Mr. Underwood and Respondent Reardon, Nancy Peinecke informed PDC staff that Reardon would leave the office to meet with Mr. Underwood off the Snohomish County Government campus to meet or discuss campaign-related issues.

A careful comparison of the recorded audio interviews with witnesses Peinecke, Haakenson, Underwood and Reardon reveals that, in fact, there is no genuine issue of material fact and Respondent is entitled to Judgment as a Matter of Law.

HIRING OF KEVIN HULTEN

2. No issues of material fact are in dispute regarding the PDC's allegations that Reardon hired Kevin Hulten outside of normal practice as an Executive Analyst or to work on Reardon's campaign. In their reply, the PDC staff cites information from their investigation that Hulten engaged in "extensive opposition research against Mike Hope, Mr. Reardon's 2011 re-election opponent." The PDC notes that "He (Reardon) does not contest" this fact.

Again, the PDC conveniently neglects to inform the Commission that their investigative reports and interviews accompanying Respondent's Motion to Dismiss and Summary Judgment Motion reveals that Hulten informed the PDC staff that he offered on his own to volunteer on Reardon's campaign – as is his right – and because as a current employee

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in the Executive's office, Hulten indicated he "felt" he had a personal, vested interest in Reardon being re-elected. Moreover, Hulten additionally informed the PDC his activities ***were done without Reardon's knowledge or direction and that Reardon was unaware of these activities.***

Lastly, the PDC staff provide no evidence which disputes this assertion or supports their allegation against Respondent Reardon nor does the PDC staff dispute the evidence of Amy Ockerlander's statement to the Washington State Patrol that she knowingly could not meet the requirements of her role in the Executive Office once she became a Duvall City Councilmember and she was "relieved" to be transferred to a different department in Snohomish County.

Thus, a careful comparison of the recorded audio interviews with witnesses Peinecke and Haakenson, as well as statements made by both Hulten and Ockerlander, reveal that, in fact, there are no genuine issues of material fact and Respondent is entitled to Judgment as a Matter of Law.

USE OF COUNTY CELL PHONE

3. No issues of material fact are in dispute regarding the PDC staff's allegations that Reardon used his county issued cell phone to make and receive campaign-related calls and to send and receive campaign related texts. Here, again, the PDC staff attempts to equate Respondent's dispute of staff allegations as a dispute of issues of material fact. Going further, PDC staff falsely asserts Respondent failed to address the use of his office cell phone and, that as a consequence, Respondent's failure to address the use of the cell phone creates disputed issue of material fact. However, PDC staff contradicts their own assertion in their response by noting that Respondent informed PDC staff that "he routinely solicited opinions from consultants on issues relating to the county that were not campaign related." Further, the

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PDC staff characterizes Respondent as "relying almost entirely on his own self serving statements." However, as noted in Respondent's motion for summary judgment, the PDC staff provides no evidence or facts to the contrary. Nor does PDC staff provide any evidence that support their allegation.

As such, there are no issues of material fact in dispute. Respondent is entitled to Judgment as a Matter of Law.

In conclusion, there are no issues of material fact in dispute. Once the moving party has met its burden, the non-moving party must produce concrete evidence that shows genuine disputes of fact; it may not rely on mere allegations. *Anderson v. Libby, Inc., 477 U.S. 24, 249-250, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).* PDC staff rely on mere supposition to support their allegations. Moreover, the PDC staff relies on their own mere allegations to support their argument that a genuine issues of material fact is in dispute. The PDC staff has failed to produce any credible evidence to defeat Respondent's Summary Judgment Motion. Therefore, Respondent is entitled to Judgment as a matter of law.

DATED this day of March 21ST, 2016

JOHANSON LAW GROUP, INC.

Respectfully Submitted,

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STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

In the Matter of Enforcement Action Against: Aaron Reardon, Respondent.	PDC CASE NO. 12-160 COMMISSION STAFF'S RESPONSE TO MOTION TO DISMISS AND ALTERNATIVE MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Commission Staff will demonstrate at hearing that the Respondent, Aaron Reardon, committed multiple violations of former RCW 42.17.130 when he: 1) used his county cell phone and office in furtherance of his re-election campaign for Snohomish County Executive; and 2) hired employee Kevin Hulten who likewise used county resources in furtherance of that campaign. The Respondent has moved to dismiss this matter on the theory he has been prejudiced by the charging document issued in this matter. The Respondent has failed to demonstrate any prejudice, as he has been adequately notified of the alleged statutory violations. In the alternative, the Respondent asks for summary judgment in his favor, but has failed to carry his burden of showing the absence of disputed issues of material fact and that he is entitled to judgment as a matter of law. The Respondent's motion should be denied in its entirety, and this matter should proceed to hearing.

II. BRIEF STATEMENT OF FACTS

A. Procedural History

On December 2, 2015, Commission Staff issued a Notice of Administrative Charges (Notice of Charges) in this matter. Respondent's Motion to Dismiss and in the Alternative

Motion for Summary Judgment (Respondent's Motion), R-Exhibit (R-Ex) 1.[1] The Notice of Charges alleges the Respondent is in violation of RCW 42.17A.555. The Notice of Charges, however, includes a footnote wherein it is clearly explained that effective January 1, 2012, RCW 42.17.130 was re-codified as RCW 42.17A.555. *Id.* Additionally, on December 2, 2015, an Enforcement Hearing Notice was issued, also indicating that effective January 1, 2012, RCW 42.17.130 was re-codified as RCW 42.17A.555. *Id.* That hearing notice also indicated the Commission's penalty authority is up to $10,000. *Id.* The hearing is currently scheduled for April 28-29, 2016.

B. Aaron Reardon's Misuse Of His County Cell Phone And Office

Aaron Reardon hired Colby Underwood as a campaign consultant for his 2011 re-election effort. Reardon ROI, Exs. 8-9. Mr. Underwood was not under contract with the county, nor was he paid by the county. Reardon ROI, Exs. 8, 16. He was on contract with the Reardon campaign to "perform consulting work for the [c]ampaign in providing fundraising support and other consulting services." Reardon ROI, Ex. 18 at 1. Mr. Reardon's campaign reported expenditures totaling $41,417.92 to Colby Underwood Consulting. Reardon ROI, Ex. 20. Mr. Reardon's campaign also reported making expenditures to political consultant TR Strategies, LLP totaling $129,220.02, to campaign media specialist Fletcher Rowley, Inc. totaling $81,639.92., and to consultant Zachary Shelton totaling $17,608.76. Reardon ROI, Exs. 17, 19-20.

Between December 2010 and November 2011, Mr. Reardon used his county-issued cell phone to make and receive 3,019 minutes of telephone calls, and send or receive 1,186 text messages, to Colby Underwood and other campaign consultants he was working with, including Terry Thompson of TR Strategies, John Rowley of Fletcher Rowley, Inc., and

[1] All exhibits cited can be found attached to the Respondent's Motion, or as attached to this Response. In conjunction with this Response, staff is providing its Report of Investigation and attached exhibits in the Aaron Reardon and Kevin Hulten matters. The exhibits will be cited herein as R-Ex. __, Reardon ROI, Ex. __,or Hulten ROI, Ex. __.

Zachary Shelton. Reardon ROI, Exs. 1-4, 17, 19-20, 26-29. Some of these calls resulted in an overcharge fee of $141.25, which was billed to, and paid by, Snohomish County. Reardon ROI, Exs. 28-29. On approximately 56 separate occasions between January and October 2011, Mr. Reardon met with Mr. Underwood. Reardon ROI, Exs. 5, 21-22. Snohomish County employee Nancy Peinecke, who was responsible for maintaining Aaron Reardon's county calendar, confirmed Aaron Reardon met with Mr. Underwood at his county office. Reardon ROI, Ex. 10. Gary Haakenson, then the Snohomish Deputy County Executive, also observed Aaron Reardon meeting with Mr. Underwood in Mr. Reardon's office. Reardon ROI, Ex. 11.

C. Aaron Reardon's Hiring Of Kevin Hulten

Aaron Reardon hired Kevin Hulten to work as an Executive Analyst with Snohomish County on January 18, 2011. Reardon ROI, Ex. 25. According to his job description, the basic function of Mr. Hulten's job as Executive Analyst was to "review and track items submitted by county departments to the Executive's Office which required Executive and/or Council approval." *Id.* at 4. His direct supervisor, Gary Haakenson, described the position as, "working primarily on constituent and legislative issues on behalf of the Executive's Office." *Id.* at 3. Mr. Hulten was a management exempt employee, but his normal working hours were considered to be between 8:00 and 5:00 p.m. *Id.* at 1.

Documents from Kevin Hulten's Snohomish County issued laptop show that between February and October 2011, Mr. Hulten used his county issued computer to engage in extensive opposition research against Mike Hope, Mr. Reardon's 2011 re-election opponent. Reardon ROI, Ex. 24. As noted on the document properties, this work was done during what would be considered normal working hours. *Id.* These documents included draft letters of complaint to the Public Disclosure Commission and other agencies against Mike Hope. *Id.* These documents were found as a result of a search of Kevin Hulten's laptop by Snohomish County officials. Hulten ROI, Ex. 5.

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III. ISSUES

1) Should this matter be dismissed, where the Respondent was properly notified of his alleged violations of RCW 42.17 and misstates the penalty authority of the Commission?

2) Is the Respondent entitled to summary judgment, where he has failed to meet his burden of establishing no disputed issues of material facts remain in this matter?

IV. ARGUMENT

A. The Respondent's Motion To Dismiss Should Be Denied

1. The Respondent was properly notified of his alleged violations of former RCW 42.17.130.

The Notice of Charges issued by Commission Staff complies with all requirements of due process and the Administrative Procedure Act (APA), RCW 34.05. Due process, required by both the 14th Amendment to the United States Constitution and article I, section 3 of the Washington Constitution, requires "notice and an opportunity to be heard." *In re Bush*, 164 Wn.2d 697, 704, 193 P.3d 103 (2008) (citation omitted). Notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950); *State v. Nelson*, 158 Wn.2d 699, 703, 147 P.3d 553 (2006).

Here, the Respondent was properly notified of his potential violations, and has a full opportunity to present his objections through the adjudication of this matter. Mr. Reardon has been charged with violating former RCW 42.17.130, the statutory provision in effect at the time of the alleged violations. While the Notice of Charges references RCW 42.17A.555, the document includes an explanatory footnote disclosing the recodification of former RCW 42.17.130. R-Ex. 1. As the Respondent appears to have been confused by this footnote, Commission Staff now state unequivocally that former RCW 42.17.130 is the applicable statutory provision. The Respondent,

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however, has demonstrated no prejudice resulting from this alleged ambiguity in the Notice of Charges.

Under the APA, when notifying someone of potential statutory allegations, only a short and plain statement of the matters asserted by the agency, and the legal authority and jurisdiction under which the hearing is to be held, is required. RCW 34.05.434(2). Strict rules of pleading do not apply to a contested case under the APA, although undue surprise and prejudice should be avoided. *City of Marysville v. Puget Sound Air Pollution Control Agency*, 104 Wn.2d 115, 119–20, 702 P.2d 469 (1985). Here, the pertinent statutory language of former RCW 42.17.130 was not altered by the 2012 recodification. RCW 42.17.130 was amended, effective January 1, 2012, as follows:

> No elective official nor any employee of his ~~(([or her]))~~ or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:
>
> (1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view
>
> (2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;
>
> (3) Activities which are part of the normal and regular conduct of the office or agency.
>
> <u>(4) This section does not apply to any person who is a state officer or state employee as defined in RCW 42.52.010.</u>

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Laws of 2010, ch. 204, § 701. The Legislature separately recodified RCW 42.17.130 as RCW 42.17A.555, effective January 1, 2012, pursuant to the Laws of 2010, ch. 204, § 1102.

These minor changes to RCW 42.17.130 have no relevance to this proceeding, and the Respondent has not argued to the contrary. Put simply, where this matter has yet to proceed to hearing, the Respondent can show no prejudice or undue surprise as a result of any confusion relating to the inclusion of RCW 42.17A.555 in the Notice of Charges.

2. The Commission may levy a penalty of up to $10,000 in this matter.

a. Applying the Commission's current penalty authority here is a proper retroactive application of a remedial statutory amendment.

The Commission's penalty authority was increased from $4,200 to $10,000 as a result of an amendment to former RCW 42.17.395(4). Former RCW 42.17.395(4), was amended as follows, effective January 1, 2012:

> (4) The person against whom an order is directed under this section shall be designated as the respondent. The order may require the respondent to cease and desist from the activity that constitutes a violation and in addition, or alternatively, may impose one or more of the remedies provided in RCW 42.17A.750 ((~~(2) through (5)~~)) (1) (b) through (e). ((~~No individual penalty assessed by the commission may exceed one thousand seven hundred dollars, and in any case where multiple violations are involved in a single complaint or hearing, the maximum aggregate penalty may not exceed four thousand two hundred~~)) The commission may assess a penalty in an amount not to exceed ten thousand dollars.

Laws of 2011, ch. 145, § 7. RCW 42.17.395 was separately recodified by the Legislature as RCW 42.17A.755, effective January 1, 2012, pursuant to the Laws of 2010, ch. 204, § 1102. The Respondent argues the Commission's penalty authority is limited to $4,200 in this matter based on ex post facto considerations. He is wrong.

First, the ex post facto prohibition found in the United States Constitution and the Washington Constitution applies only to laws inflicting *criminal punishment*. *State v. Ward*, 123 Wn.2d 488, 499, 869 P.2d 1062 (1994). Thus, the Respondent's reliance on the ex post facto prohibition is misplaced in this administrative proceeding, in which only remedial penalties attach to his statutory violations.

Second, while the general rule is that statutes are presumed to operate prospectively, a statute will be deemed to apply retroactively if it is remedial in nature and retroactive application would further its remedial purpose. *Macumber v. Shafer,* 96 Wn.2d 568, 570, 637 P.2d 645 (1981). Remedial statutes are generally enforced as soon as they are effective, "even if they relate to transactions predating their enactment." *State v. Pillatos*, 159 Wn.2d 459, 472, 150 P.3d 1130 (2007). A statute is remedial if it relates to "practice, procedure or **remedies**, and does not affect a substantive or vested right." *In re F.D. Processing, Inc.,* 119 Wn.2d 452, 462–63, 832 P.2d 1303 (1992) (Emphasis added) (quoting *In re Mota,* 114 Wn.2d 465, 471, 788 P.2d 538 (1990)). Remedial statutes generally "afford a remedy, or **better or forward remedies already existing** for the enforcement of rights and the redress of injuries." *Haddenham v. State,* 87 Wn.2d 145, 148, 550 P.2d 9 (1976) (Emphasis added).

The above described cases establish that the increased penalty authority granted by the Commission in 2012 may be applied retroactively. The statutory amendment to former RCW 42.17.395 merely *bettered* a remedy available to the Commission, by increasing the penalty authority to a maximum of $10,000. This amendment had no affect on the rights of either the Respondent or others who violated former RCW 42.17 prior to 2012. Retroactive application of the penalty authority furthers the remedial purpose of the campaign finance laws, to ensure those who violate the law adjust their conduct to avoid future violations. The Commission is therefore at liberty to levy a penalty of up to $10,000 in this matter.

b. A dismissal of this proceeding is unwarranted, regardless of whether the Commission deems its penalty authority is limited to $4,200 here.

Even if the Commission were to determine no more than a $4,200 penalty is authorized, the Respondent will have suffered no prejudice justifying dismissal of this action. An agency's failure to give timely and adequate notice of an issue may result in the hearing being delayed, not dismissed. *See, e.g., McDaniel v. Dep't of Soc. & Health Servs.*, 51 Wn. App. 893, 897–98, 756 P.2d 143 (1988). Here, because the matter has not proceeded to hearing, a dismissal is

entirely unnecessary. The Commission will have an opportunity to clarify the limit of its penalty authority in this matter in advance of the hearing. The Respondent will then have ample time to make any adjustments to his defense as he deems necessary. At most, the hearing should be continued, although the Respondent should be required to make some showing that more time is needed to prepare for the scheduled hearing which is still several weeks away.

B. The Respondent Has Failed To Meet His Burden On Summary Judgment

1. Standard of review on summary judgment.

Summary judgment is proper if (1) there is no genuine issue of material fact, (2) reasonable persons could reach but one conclusion, and (3) the moving party is entitled to judgment as a matter of law. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000); CR 56(c). A material fact is one upon which the outcome of the case depends, in whole or in part. *Morris v. McNicol*, 83 Wn.2d 491, 494, 519 P.2d 7 (1974).

The moving party bears the initial burden of demonstrating the absence of a genuine issue of fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Once the moving party has met its burden, the non-moving party must produce concrete evidence that shows genuine disputes of fact; it may not rely on allegations. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

Here, there are material disputed facts about Aaron Reardon's extensive use of his county issued cell phone for campaign purposes, as well as his use of his office to meet with political consultant Colby Underwood in furtherance of his 2011 re-election campaign. Additionally, facts are in dispute about Mr. Reardon's hiring of Kevin Hulten, who spent a significant amount of county time in furtherance of that same campaign. Summary judgment in favor of the Respondent is therefore not appropriate.

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2. Disputed issues of material fact exist regarding the Respondent's extensive use of his county cell phone and office in furtherance of his campaign.

In arguing that he is entitled to summary judgment in relation to his alleged improper use of his county cell phone and office, the Respondent relies almost entirely on his own self-serving statements. Specifically, Mr. Reardon argues that during his investigative interview, he stated he could not recall making campaign calls on his work phone in 2011. Respondent's Motion at 22. The uncontroverted documentation, however, establishes that between December 2010 and November 2011, Mr. Reardon used his county-issued cell phone to make and receive 3,019 minutes of telephone calls, and send or receive 1,186 text messages, to several campaign consultants. Reardon ROI, Exs. 1-4, 17, 19, 20, 26-29. The Respondent does not address this evidence, which alone creates disputed issues of material fact.

During 2011, Mr. Reardon's own campaign reported expenditures to campaign consultants totaling thousands of dollars. Reardon ROI, Exs. 17, 19-20. None of the consultants, including Colby Underwood, had official business with Snohomish County. Reardon ROI, Ex. 16. The telephone calls made and received on his county cell phone in the year leading up to the election alone equate to over 50 hours. Aaron Reardon would nevertheless have the Commission believe that at the same time he was paying these consultants thousands of dollars to work on his campaign, none of his telephone discussions related to that campaign. Further seeking to justify this use of his county cell phone, Mr. Reardon argues he routinely solicited opinions from these consultants on issues relating to the county that were not campaign related. Respondent's Motion at 22. Yet, Commission Staff analyzed Mr. Reardon's phone calls prior to the election season, and discovered *only 16 phone calls* involved these consultants between November 2008 and December 2010. Reardon ROI at 6, Exs. 26-28. Mr. Reardon does not address why individuals with whom he rarely spoke prior to an election year became such valuable resources on non-campaign county issues at the same he was running for re-election.

With regard to the use of his office, two Snohomish County employees who worked closely with Aaron Reardon, Nancy Peinecke and Gary Haakenson, confirmed observing Mr. Underwood meeting with Mr. Reardon in his county office. Reardon ROI, Exs. 10-11. When interviewed during staff's investigation, Mr. Reardon also confirmed he met with Colby Underwood in his office, although he claims none of those approximately 56 meetings in 2011 were related to his campaign. Reardon ROI, Ex. 9. In the absence of Mr. Underwood having any official role with the county, this volume of meetings is at a minimum highly questionable.

The Respondent's explanations concerning the use of his county cell phone and office strain credulity, and must be scrutinized by this tribunal more closely. In sum, the conflicting evidence submitted by the parties shows that disputed issues of material fact remain, and dictate that summary judgment in favor of the Respondent be denied so this matter may proceed to hearing.

3. Disputed issues of material fact exist regarding Kevin Hulten's misuse of county resources in furtherance of the Respondent's campaign.

The Respondent relies entirely on Mr. Hulten's own self-serving statements in arguing Mr. Hulten was not misusing county resources in furtherance of the Aaron Reardon campaign. He does not contest, however, that Mr. Hulten engaged in extensive opposition research against Mike Hope, Mr. Reardon's 2011 re-election opponent. Reardon ROI, Ex. 24. Rather, he points to Kevin Hulten's explanation that any documents relating to Mr. Reardon's campaign were not located on Mr. Hulten's county issued computer. Respondent's Motion at 21.

Contrary to Mr. Hulten's explanation, these documents were in fact found on his Snohomish County issued laptop, as confirmed by Snohomish County officials. Hulten ROI, Ex. 5. Further, this research was conducted during Mr. Hulten's normal working hours. *Id.* In light of the conflicting explanations regarding Mr. Hulten's misuse of county resources,

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summary judgment in Mr. Reardon's favor would be improper as disputed issues of material fact remain.

V. CONCLUSION

For the reasons discussed above, the Commission Staff respectfully requests the Commission deny the Respondent's Motion. The Respondent was properly notified of his alleged violation of former RCW 42.17.130, and is being given ample opportunity to be heard through this adjudication. Further, as disputed issues of material fact remain between the parties, the Respondent has not carried his burden of demonstrating he is entitled to judgment as a matter of law. This matter should proceed to hearing, at which the Commission may levy a penalty of up to $10,000 should the Respondent be found to have violated former RCW 42.17.130.

DATED this 16th day of March, 2016.

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PROOF OF SERVICE

I certify that I served a true and correct copy of this document on counsel of record on the date below pursuant to the parties' electronic service agreement to:

Jim Johanson
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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 17th day of March, 2016, at Olympia, Washington.

STACY HIATT, Legal Assistant

BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In re the Matter of Enforcement Action Against AARON REARDON, Respondent.	PDC CASE NO: 12-160 RESPONDENT'S MOTION TO DISMISS AND IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT

TO: THE WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION; and

TO: ASSISTANT ATTORNEY GENERAL, CHAD STANDIFER.

A. MOTION TO DISMISS PDC COMPLAINT 12-160 AS IT IS STATUTORILY DEFECTIVE

Revised Code of Washington RCW 42.17 (et seq. 360; .390; 395; .397, .400) governs statutory violations and the Public Disclosure Commission's (PDC) penalty authority ***prior*** to January 1, 2012. RCW 42.17.395(4) states that "No individual penalty assessed by the commission may exceed one thousand seven hundred dollars, and in any case where multiple violations are involved in a single complaint or hearing, the maximum aggregate penalty may not exceed four thousand two hundred dollars."

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RCW 42.17A (et seq. 105; .750; .755; .760. .765) became effective January 1, 2012, and governs statutory violations which occur on and after the effective date of this law. RCW 42.17A states "The commission may assess a penalty in an amount not to exceed ten thousand dollars."

Here, the PDC alleges that Aaron Reardon (Reardon) violated RCW 42.17A.555 in 2011. See PDC's Enforcement Hearing Notice dated December 2, 2015 and Notice of Administrative Charges II. Allegations paragraph 2 dated December 2, 2015 and signed by Executive Director Evelyn Fielding Lopez attached as **R-Exhibit 1**. The PDC should have alleged violations under the 2011 law in effect at the time of the alleged campaign violations.

Additionally, the PDC seeks to enforce penalty authority under 42.17A.555, which became effective on January 1, 2012. Because the PDC alleges Reardon committed violations in 2011 under RCW 42.17A.555, the penalty authority granted to the PDC under RCW 42.17A is not applicable as the law was not in effect until January 1, 2012. See PDC Memorandum dated September 19, 2012 and accompanying Chart regarding comparison of Cases Enforcing RCW 42.17 and RCW 42.17A attached as **R-Exhibit 2.**

Furthermore, RCW 42.17A.555 effective January 1, 2012 added additional statutory language that was not contained in the applicable 2011 statute under RCW 42.17.130.

Therefore, PDC Complaint Number 12-160 is defective and must be dismissed with prejudice since the applicable law governing PDC 12-160 is RCW 42.17 et seq. and Reardon was denied his due process right and right to fairness as a result of the PDC serving Reardon with a defective Enforcement Hearing Notice and Notice of Administrative Charges (Complaint).

In addition to the above referenced statutory defects and denial of Reardon's due process right to proper notice and right to fairness which requires him to be fully informed

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with the correct and accurate statutes alleged in the PDC Complaint. Reardon additionally advances the following arguments for dismissal of PDC 12-160.

B. THE PDC SEEKS TO APPLY 42.17A.555 AND 42.17A.755 EX-POST-FACTO IN VIOLATION OF THE U.S. AND WASHINGTON STATE CONSTITUTIONS

The Ex Post Facto clauses of the federal and state constitutions forbid the State from enacting any law which imposes punishment for an act which was not punishable when committed or increases the quantum of punishment annexed to the crime when it was committed. State v. Ward, 123 Wash. 2d 488, 496, 869 P.2d 1062, 1067 (1994). The mark of an Ex Post Facto law is the imposition of what can fairly be designated punishment for past acts. State v. Schmidt, 143 Wash. 2d 658, 673, 23 P.3d 462, 470 (2001). As applied, the PDC's attempt to charge and punish Reardon for alleged conduct that occurred during 2010 and 2011 with laws that were substantively updated in 2012 is a violation of the prohibition against ex post facto laws.

Prior to January 1, 2012, the PDC's penalty and sanctions authority for violations occurring under RCW 42.17 were limited to a $1,700.00 fine per violation or a maximum penalty of $4,200.00 for multiple violations. On January 1, 2012, that authority was raised to a $10,000.00 fine for a single violation or a maximum punitive fine of $10,000.00 for multiple violations.

In its Enforcement Hearing Notice the PDC lists its authority to hold the enforcement hearing as existing under RCW 42.17A.105, 42.17A.110, and 42.17A.755. However, none of the aforementioned statutes permit the PDC to hold a hearing or impose punishment or sanctions for conduct which occurred prior to 2012. As the aforementioned Washington State Supreme Court cases clearly illustrate, the PDC cannot apply laws ex post factor to Reardon

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and cannot impose 2012 punishments to alleged misconduct/violations prior to January 1, 2012.

C. THE PDC'S ENFORCEMENT HEARING NOTICE AND NOTICE OF ADMINISTRATIVE CHARGES DO NOT PROVIDE ADEQUATE AND/OR SUFFICIENT NOTICE AS TO THE RESPONDENT AS MANDATED BY RCW 34.05.434 AND VIOLATES HIS RIGHTS TO DUE PROCESS AND FAIRNESS

In the Administrative Procedure Act notice of hearing section, an agency is required to give certain information to all parties. US W. Commc'ns, Inc. v. Washington Utilities & Transp. Comm'n, 134 Wash. 2d 74, 110, 949 P.2d 1337, 1355 (1997). RCW 34.05.434(2) mandates that the notice shall include: (emphasis ours), and goes on to list nine criteria that any notice of hearing must include in order to be sufficient. Subsections 2(f) and (g) are of particular importance in this case. Subsection 2(f) requires a statement of legal authority and jurisdiction under which the hearing is to be held and Section 2(g) requires a reference to the particular sections of the statutes and rules involved. Adequate notice requires that the Respondent be given accurate, sufficient and adequate notice of the elements of the alleged violations as well as an accurate statements of and references to the legal authority supporting the possible punishment and sanctions for the alleged violations.

Here, the PDC Enforcement Hearing Notice notified Reardon that "The Commission has the authority to assess a penalty of up to $10,000.00". This is patently untrue. Nowhere in the Notice of Administrative Charges or the Enforcement Hearing Notice is Reardon made aware of the section or rule under which the Commission is seeking to impose penalties. Nor does the PDC inform the Reardon of any section that permits the PDC to impose penalties. Because the PDC does not give notice of the statute or rule granting the body authority to

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hold hearings and issue and enforce an order and punishment, Reardon has not been given proper notice and the charges against him should be dismissed.

Additionally the PDC Commission's Notice of Administrative Charges and Enforcement Hearing Notice, **R-Exhibit 1**, do not adequately or accurately state the Commission's jurisdictional authority over the Administrative Charges or the Respondent. The RCW sections cited did not exist at the time of the alleged conduct. Moreover in the Section II, Allegations or the Notice of Administrative Charges the PDC alleges that "[Respondent] violated RCW 42.17A.555", yet in the Enforcement Hearing Notice the PDC states that "The Public Disclosure Commission will hold an enforcement hearing concerning the allegation that [Respondent] violated RCW 42.17.130". These RCWs are not one and the same, and the PDC's interchangeable use of each clearly demonstrates that the PDC itself is unsure of under which section Reardon is being charged. With the PDC itself unsure of the basis of its authority, Reardon has no chance of being properly notified of the nine criteria that a notice must include.

D. IN THE ADDITION TO AND/OR THE ALTERNATIVE TO REARDON'S MOTION TO DISMISS-- SUMMARY JUDGMENT

In the event that the Commission does not dismiss Reardon's complaint based on the above statutory notice defects contained in the PDC's Enforcement Hearing Notice and Complaint, Reardon alternatively argues that Summary Judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). When the pleadings, depositions, admissions, and declarations considered by the tribunal do not create a genuine issue of material fact between the parties, the moving party is entitled to summary judgment. Ferrin v. Donnellefeld, 74 Wash.2d 283,

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284, 444 P.2d 70 (1968). A Court may grant summary judgment only if reasonable persons could reach but one conclusion from all the evidence. Vallandigham v. Clover Park Sch. Dist. No. 400, 154 Wn.2d 16, 26, 109 P.3d 805 (2005). The Court views the evidence in the light most favorable to the nonmoving party. Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008).

The moving party bears the burden of demonstrating by a preponderance of the evidence that there is no genuine issue of material fact. Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990). Once the moving party has met its burden of offering factual evidence, the burden shifts to the non-moving party to come forth with specific facts showing there is a genuine issue for trial. Rangers, 164 Wn.2d at 552. The party opposing a Motion for Summary Judgment may not rest on mere allegations in the pleadings or mere assertions of conclusions in the declarations, but must set forth specific facts showing that there is a genuine issue for trial. W.G. Platts v. Platts, 73 Wash.2d 434, 442, 438 P.2d 867 (1968). If the non-moving party does not respond with evidence setting forth specific facts indicating a material issue of fact remains, summary judgment should be entered. CR 56(e).

ALLEGED ADMINISTRATIVE VIOLATIONS

1. The PDC staff alleges Mr. Reardon violated 42.17A.555 (A statute enacted in 2012) by using Snohomish County facilities to assist his 2011 re-election campaign.

REFERENCE ATTACHED **R-EXHIBIT 6** – PDC INTERVIEW WITH TAMARA DUTTON SUMMARY

On September 10, 2015 PDC Investigator William Lemp (Lemp) interviewed Tamara Dutton (Dutton) and Dutton consented to the interview being recorded. Lemp subsequently

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created an investigative report submitted as Exhibit 6 in which he summarizes his interview with Dutton.

The summary created by Lemp indicates Dutton stated that "Reardon discussed campaign related issues with her and was on the phone discussing campaign issues, not necessarily in the office. However, Reardon was on county time and did not take vacation time to conduct campaign business." Dutton further stated that she believed a political consultant from Tennessee had visited Reardon on several occasions in Reardon's office for campaign purposes on county time. Lemp asked Dutton if she was present when Reardon spoke to the consultant on his work phone or from his office. "Dutton responded by stating she did not know."

During the recorded interview, Dutton stated that she generally discussed Reardon's campaign with him in his office or out of the office during work hours. Dutton was asked in particular about Reardon's 2011 re-election campaign and she stated that she spoke to him infrequently in his office. Dutton stated she called Reardon one afternoon around 2:30pm with him and asked "What are you doing?" Dutton stated Reardon replied "I'm out doorbelling."

R-EXHIBIT 6(A) WASHINGTON STATE PATROL INTERVIEW – TAMARA DUTTON

On November 1, 2011, The Washington State Patrol (WSP) interviewed Tamara Dutton as a part of a criminal investigation into her allegations that Reardon misused public funds.

Dutton informed the WSP that she had not been with Reardon in the Snohomish County Executive's office since 2009. Furthermore, Dutton informed the WSP that she had placed a call to Reardon five (5) months prior to the interview date of November 1, 2011

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during the day. Dutton states that she asked Reardon what he was doing and he replied "doorbelling." Dutton made no additional statements to the WSP regarding Reardon's 2011 campaign in the interview.

Here, the facts clearly indicate that Dutton's 2011 interview with the WSP wholly contradicts her 2015 statement to Lemp when she states that she met with Reardon during 2011 in his office to discuss his campaign. Moreover, it is clear that the content of the conversation Dutton states having with Reardon is not campaign related. Reardon simply answered Dutton's question that he was currently out of the office doing a campaign activity. Dutton and Lemp infer that because Reardon was out of the office campaigning in the middle of the day during "work hours," that this is somehow in violation of RCW 42.17.130.

RCW 42.17.130 prohibits the use of public facilities and equipment for the purposes of campaigning. Moreover, no Washington State statute or Snohomish County Policy in existence prohibits an elected county official from campaigning outside the office between 8:00 am and 5:00 pm during which would be considered "normal business hours."

All elected county employees are paid a salary in accordance with the Salary Commission as directed by the Snohomish County Charter. No elected official in Snohomish County receives vacation days, sick days, over time or compensatory time. Additionally, no elected official is required to submit leave slips of any kind.

In conclusion, Dutton's interview with Lemp should be not be considered as it provides no facts to support the allegation that Mr. Reardon violated 42.17A.555 by using Snohomish County facilities to assist his 2011 re-election campaign.

R-EXHIBIT 8 – PDC INTERVIEW WITH COLBY UNDERWOOD

On September 10, 2015 PDC Investigator William Lemp (Lemp) interviewed Colby Underwood (Underwood) and Underwood consented to the interview being recorded. Lemp

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created an investigative report submitted as Exhibit 8 in which he summarizes his interview with Underwood.

The summary created by Lemp indicates Underwood stated that "no campaigning was discussed in the Executive's office." Moreover, Lemp indicates "Underwood said sometimes he would meet Reardon at his county office and they would walk down, off county property to a Starbucks, Reardon's home or other places to discuss campaign issues." The recorded interview supports this portion of the Lemp summary and clearly indicates that at no time did Underwood meet with Reardon in the Snohomish County Executive's office to discuss campaign matters.

In conclusion, PDC investigative staff provide no facts from Mr. Underwood to support the allegation that Mr. Reardon violated 42.17A.555 by using Snohomish County facilities to assist his 2011 re-election campaign.

R-EXHIBIT 9 – PDC INTERVIEW WITH AARON REARDON

On October 23, 2015 Lemp interviewed Aaron Reardon and Reardon consented to the interview being recorded. Lemp created an investigative report submitted as Exhibit 9 in which he summarizes his interview with Reardon.

In his summary, Lemp states that "Reardon was asked about the dates on his county executive calendar between July 5, 2011 and October 27, 2011, where Colby Underwood's calendars also show meeting with Reardon during the same period. Reardon stated the meetings could have taken place in his office, however if they were campaign related the meeting would have been off campus or at his house or other locations."

Lemp's summary further states that Lemp asked Reardon if "any of Underwood's meetings with him were for county business." To which Reardon replied "Yes." Lemp alleges in his summary that Reardon stated "Underwood had been an advisor, he was not an

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employee or staff member for the county, however Underwood was on contract to Snohomish County during the 10 years Reardon was the county Executive."

Here, the facts clearly show that the assertion made by Lemp in his summary that Reardon claimed Underwood to be on contract with Snohomish County is false. At no time during the recorded interview did Reardon make such a statement. In fact it is clearly audible in the recording of the interview that Reardon did not claim Underwood was on contract with Snohomish County. The accusation contained in the Lemp summary is false and is without any factual merit. Moreover, Lemp's false statement is used in such a manner as to imply Reardon intentionally lied to the investigator in an attempt to deceive.

Moreover, the Lemp summary alleges Underwood stated he had no "official business" with Snohomish County. However, it is clear in the audio recording of the interviews with both Underwood and Reardon, that they met and discussed issues directly related to Reardon's role as the Snohomish County Executive such as transportation, economic development, the environment, Snohomish County and regional policies. The discussions of these county related issues affirm the statements made by both Reardon and Underwood that Underwood did not only work as a consultant on the Reardon re-election campaign, but also that Underwood was an "advisor" to Reardon on county related issues in Reardon's capacity as the Snohomish County Executive.

Nothing in state law prohibits an elected official from meeting with anyone in the official's office so long as the meeting is not about prohibited topics such as a campaign. Both Underwood and Reardon informed the investigator that the campaign was only discussed off campus. Furthermore, nothing in state law prohibits an elected official from calendaring any type of meeting.

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In conclusion, no facts exist to support the allegation that Mr. Reardon violated 42.17A.555 by using Snohomish County facilities to assist his 2011 re-election campaign.

R EXHIBIT 10 – PDC INTERVIEW WITH NANCY PEINECKE

On October 30, 2015 Lemp interviewed Nancy Peinecke (Peinecke) and Peinecke consented to the interview being recorded. Lemp created an investigative report submitted as Exhibit 10 in which he summarizes his interview with Peinecke.

Peinecke worked as Reardon's executive administrative assistant from January 2006 thru March 2012. In his summary, Lemp states that "Peinecke would occasionally see Underwood meet with Reardon in his office, however most of the time they would go off campus, especially if it was to discuss campaign business." "Peinecke did not know what Reardon and Underwood discussed in Reardon's office."

Here during the recorded interview, Peinecke informed Lemp that she was aware that Reardon and Underwood had a varying relationship on different subject matters and that Reardon would instruct her whether or not the meeting was of a subject matter to be held in the office or whether the meeting was of a subject matter which would require it to be held "off site." Furthermore, Peinecke informed Lemp that staff were directed to refer any calls that came into the office regarding the campaign to a campaign number. Lastly, Peinecke stressed that Reardon was always very "careful" and "consciences" about campaign related activities and that she never saw anything of the sort. If she had, she would have reported the activities.

Therefore, no facts exist that Reardon violated any laws arising out of Lemp's interview with Peinecke.

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R-EXHIBIT 10(A) - WASHINGTON STATE PATROL INTERVIEW – NANCY PEINECKE

In January 2012, The Washington State Patrol (WSP) interviewed Nancy Peinecke as a part of a criminal investigation into allegations of misuse of public funds.

Peinecke was asked about allegations of campaign related activities in the Snohomish County Executive Office. Peinecke informed WSP that she had never witnessed any campaign related activities in the office. Peinecke informed WSP that Reardon kept campaign related activities separate from the office. Moreover, Peinecke informed WSP that all calls into the office regarding the 2011 campaign were referred to a separate number or website.

In conclusion, Peinecke provides no facts to support the allegation that Mr. Reardon violated 42.17A.555 by using Snohomish County facilities to assist his 2011 re-election campaign.

R-EXHIBIT 11 – PDC INTERVIEW WITH GARY HAAKENSON

On November 3, 2015 Lemp interviewed Gary Haakenson (Haakenson) and Haakenson consented to the interview being recorded. Lemp created an investigative report submitted as Exhibit 11 in which he summarizes his interview with Haakenson.

In his summary, Lemp states Haakenson had seen Underwood in the building but that was not unusual. Lemp further writes that Haakenson states he had seen Underwood in Reardon's office but he was not aware of what was being discussed.

During the recorded interview, Haakenson informed Lemp that Reardon was upfront with the executive office staff that campaigning wasn't discussed nor was it done in the office. Moreover, Haakenson informed Lemp he had never witnessed any campaign related activity in the office saying "None of that went on that I could see."

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R-EXHIBIT 11(A) - WASHINGTON STATE PATROL INTERVIEW – GARY HAAKENSON

In January 2012, The Washington State Patrol (WSP) interviewed Gary Haakenson as a part of a criminal investigation into allegations of Reardon's misuse of public funds.

Haakenson was asked about allegations of campaign related activities in the Snohomish County Executive Office. Haakenson informed WSP that he had never witnessed any campaign related activities in the office.

In conclusion, Haakenson provides absolutely no facts to support the allegation that Mr. Reardon violated 42.17A.555 by using Snohomish County facilities to assist his 2011 re-election campaign.

R-EXHIBIT 12 – PDC INTERVIEW WITH BRIAN PARRY

On November 3, 2015 Lemp interviewed Brian Parry (Parry). Parry did not consent to being recorded. Lemp created an investigative report submitted as Exhibit 12 in which he summarizes his interview with Parry.

Lemp summarized that Parry stated "he saw Underwood in Reardon's office on occasion. However did not know what they discussed, Parry believed it pertained to CB5 – environmental issues and possibly the Cathcart facility."

R-EXHIBIT 12(A) - WASHINGTON STATE PATROL INTERVIEW – BRIAN PARRY

In January 2012, The Washington State Patrol (WSP) interviewed Brian Parry as a part of a criminal investigation into allegations of misuse of public funds.

Parry was asked about allegations of campaign related activities in the Snohomish County Executive Office. Parry informed WSP that he had never witnessed any campaign related activities in the office.

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In conclusion, Parry provides no facts to support the allegation that Mr. Reardon violated 42.17A.555 by using Snohomish County facilities to assist his 2011 re-election campaign.

2. The PDC staff alleges Mr. Reardon, outside of normal practice, hired Kevin Hulten as an Executive Analyst to research and analyze issues confronting the county and to report on those issues, when in fact, Mr. Hulten spent a significant amount of his county compensated time working on Mr. Reardon's Campaign.

NOTICE OF ADMINISTRATIVE CHARGES – CITATION OF FACTS

Paragraph Number 7 in the "Citation of Facts" contained within the "notice of Administrative Charges, PDC staff state that "Mr. Reardon only hired one other individual during his tenure as County Executive." This statement is patently false and appears without substantiating evidence in any exhibit provided by the PDC.

Reardon was the Snohomish County Executive from January 1, 2004 thru May 31, 2013. During that time Reardon personally hired more than 20 people during his tenure. Reardon, recruited, interviewed and hired for all positions within the executive office as well as department directors and exempt at-will project managers.

R- EXHIBIT 6 – PDC INTERVIEW WITH TAMARA DUTTON

During the interview with Lemp, Dutton stated that she knew Kevin Hulten (Hulten), that Reardon hired Hulten to do "dirty work" on Reardon's 2011 campaign. Dutton further stated that Hulten created the blog post "Clowns at midnight" and other websites attacking her and Reardon's opponent.

Here, Dutton refers to "Clowns at Midnight" as an electioneering tool created in 2011. However, records indicate that "Clowns at Midnight" was a blog post created in 2012 and contained a single post criticizing local media coverage of the WSP investigation into

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Reardon. Dutton provided no examples or evidence supporting her allegations that Reardon hired Hulten as an Executive analyst to do "dirty work" on his 2011 re-election campaign.

R-EXHIBIT 6(A) - WASHINGTON STATE PATROL INTERVIEW – TAMARA DUTTON

During the interview with the WSP on November 1, 2011, Dutton stated no personal knowledge of Hulten. Dutton indicated knowing of Hulten only through what she read in the local paper. During the interview Dutton only recognized Hulten's name after being told by a Detective with the WSP that the subject of the articles she referenced reading was Hulten.

In conclusion, Dutton provides no facts to support the allegation that Mr. Reardon, outside of normal practice, hired Kevin Hulten as an Executive Analyst to research and analyze issues confronting the county and to report on those issues, when in fact, Mr. Hulten spent a significant amount of his county compensated time working on Mr. Reardon's Campaign.

R EXHIBIT 8 – PDC INTERVIEW WITH COLBY UNDERWOOD

During the interview with Lemp, Underwood stated that he had never met Hulten. Further, Underwood stated that he had very little contact with Hulten outside of exchanging a couple emails to his private email address.

In conclusion, PDC staff provides no facts to support the allegation that Mr. Reardon, outside of normal practice, hired Kevin Hulten as an Executive Analyst to research and analyze issues confronting the county and to report on those issues, when in fact, Mr. Hulten spent a significant amount of his county compensated time working on Mr. Reardon's Campaign.

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R EXHIBIT 9 – PDC INTERVIEW WITH AARON REARDON

During his interview with Lemp, Reardon was asked why the previous Executive Analyst was terminated, and Hulten was hired immediately. Reardon informed Lemp that the previous analyst was not terminated; she was transferred to a position in Surface Water Management. Reardon clarified that the previous analyst had become a councilmember for the City of Duvall while employed in the Executive Office. Reardon further informed Lemp he foresaw a conflict between the employee working for him in the Executive Office and executing her role as a Duvall City Councilmember. Reardon informed Lemp he did not want a City Councilmember on his staff.

Reardon went on to inform Lemp his decision to hire Hulten for the open position was based on a recommendation by State Senator Steve Hobbs, for whom Hulten was currently employed as a Legislative Analyst.

Lemp asked Reardon if Hulten was hired as an Executive Analyst or as a campaign staff member on Reardon's 2011 re-election campaign. Reardon informed Lemp Hulten was hired as an Executive Analyst.

Lemp asked Reardon if he prevented Hulten from being reprimanded or corrected in the office. Reardon said he did not and that any assertions that he did was "news to me."

In conclusion, PDC staff provides no facts to support the allegation that Mr. Reardon, outside of normal practice, hired Kevin Hulten as an Executive Analyst to research and analyze issues confronting the county and to report on those issues, when in fact, Mr. Hulten spent a significant amount of his county compensated time working on Mr. Reardon's Campaign.

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R EXHIBIT 13 - WASHINGTON STATE PATROL INTERVIEW – AMY OCKERLANDER

During her interview with the WSP, Amy Ockerlander (Ockerlander) who held the position of Executive Analyst prior to Hulten, informed the Detective that as an Executive Analyst her immediate supervisor was project based depending on the project she was assigned to manage.

Ockerlander also informed WSP that as a City Councilmember she had new constraints placed on her schedule. And, as a result she was no longer able to attend many of the evening meetings that her position in the Executive Office required. Ockerlander informed the WSP that she suspected her transfer was due to her unavailability caused by her new role as a city councilmember. Moreover, Ockerlander explained that while she did not appreciate the manner in which she was told of her transfer, she was "relieved" because she had begun looking for more challenging employment elsewhere.

In conclusion, PDC staff provides no facts to support the allegation that Mr. Reardon, outside of normal practice, hired Kevin Hulten as an Executive Analyst to research and analyze issues confronting the county and to report on those issues, when in fact, Mr. Hulten spent a significant amount of his county compensated time working on Mr. Reardon's Campaign.

R EXHIBIT 10 – PDC INTERVIEW WITH NANCY PEINECKE

During her interview with Lemp, Peinecke informed Lemp that she knew Hulten from her dealings with Senator Hobb's office where Hulten served as Senator Hobbs Legislative Assistant. Peinecke stated that the process used to hire Hulten consisted of more than one interview. Peinecke informed Lemp that Reardon also knew Hulten as a Legislative Assistant to Senator Steve Hobbs. Peinecke stated that the procedure to hire Hulten was consistent with

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previous Executive Office hiring's as the position was Exempt and the Executive could "hire and fire as he pleases."

Peinecke stated that she was aware that Hulten was hired to be a legislative liaison between the Executive Office and the State Legislature. Peinecke indicated she believed that Hulten believed himself to be "above menial tasks." Moreover, Peinecke stated she believed Hulten struggled with authority. Peinecke also stated "he thought he reported only to Reardon." Peinecke stated that the Executive Office is a team and Hulten struggled to perform. Peinecke referred to Hulten as "mysterious."

Peinecke concluded that she never saw Hulten conduct any type of campaign related activity in the office. Had she witnessed such behavior, she would have reported it.

In conclusion, PDC staff provides no facts to support the allegation that Mr. Reardon, outside of normal practice, hired Kevin Hulten as an Executive Analyst to research and analyze issues confronting the county and to report on those issues, when in fact, Mr. Hulten spent a significant amount of his county compensated time working on Mr. Reardon's Campaign.

R EXHIBIT 11 – PDC INTERVIEW WITH GARY HAAKENSON

During his interview, Haakenson informed Lemp Reardon only hired two employees while Haakenson was the Deputy Executive under Reardon between July 2010 and May 31, 2013. Haakenson informed Lemp Hulten was hired by Reardon in January 2011 (5 months after Haakenson's arrival to the county.) Haakenson informed Lemp that Reardon transferred Ockerlander because he desired a change. Haakenson informed Lemp Reardon hired Hulten because he wanted someone "more inclined to work with the Legislature and on policy issues. Haakenson stated that both Ockerlander and Hulten were at-will employees.

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Haakenson informed Lemp that Hulten was responsible for working with the legislature, conducting lobbying activities in Olympia and Washington D.C. and answering constituent concerns. Haakenson informed Lemp that Reardon gave direction to Hulten with regards to what Hulten needed to accomplish in Olympia in his capacity as legislative liaison. Haakenson indicated he felt Hulten had problems with attitude and that he did not fit with the rest of the workers in the Executive's office.

Haakenson informed Lemp Hulten believed he reported to Reardon, "Aaron to his credit would come down and say this is what he's supposed to be working on. Then I would hold his feet to the fire and he would go to Aaron and complain. It was like this ya know." Haakenson also stated the Hulten was allowed to work a flex schedule which allowed him to occasionally work from home. Haakenson informed Lemp that "Amy (who held the position prior to Hulten) was a little bit the same way."

Haakenson informed Lemp people in their 30's people have a different work attitude and appear more in touch, more in tune and more willing to work from home or other places because they can do more with their computer.

Lemp stated it looks as if Hulten was hired strictly to run Reardon's campaign from the office. Haakenson replied "I don't have any information or belief that that was necessarily true. I just don't."

Lemp asked Haakenson if Reardon protected Hulten from reprimands. Haakenson indicated he did reprimand Hulten and that Reardon shared his frustration. Haakenson indicated that Hulten was a "very sensitive" person and that Hulten would often complain to Reardon about Haakenson. Haakenson opined that he thought Reardon did not fire Hulten because Hulten was Reardon's hire, Reardon felt strongly about Hulten's abilities and that

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Reardon was weary of the potential for negative press of firing a staff member during an election year.

In conclusion, PDC staff provides no facts to support the allegation that Mr. Reardon, outside of normal practice, hired Kevin Hulten as an Executive Analyst to research and analyze issues confronting the county and to report on those issues, when in fact, Mr. Hulten spent a significant amount of his county compensated time working on Mr. Reardon's Campaign.

R EXHIBIT 12 – PDC INTERVIEW WITH BRIAN PARRY

According to the summary of the interview between Parry and Lemp, Parry stated he did not know why Ockerlander was transferred. However, Parry gave his thoughts on the matter stating that Ockerlander was on a city council and members of the Executive's Office had to be available 24/7.

Moreover, Parry stated that he did occasionally work with Hulten. "Parry would give Hulten guidance on how to move forward on a project. Parry further stated that Hulten's supervisor was project driven, depending on the project Hulten was working, would determine who Hulten reported to at that time, it was project based."

In conclusion, PDC staff provides no facts to support the allegation that Mr. Reardon, outside of normal practice, hired Kevin Hulten as an Executive Analyst to research and analyze issues confronting the county and to report on those issues, when in fact, Mr. Hulten spent a significant amount of his county compensated time working on Mr. Reardon's Campaign.

PDC 13-031 – KEVIN HULTEN

The PDC alleges that Hulten spent a "considerable amount of time" engaged in activities intended to benefit Reardon's 2011 re-election campaign. PDC staff alleges that

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Hulten engaged in this activity in his county office, using county equipment and with Reardon's knowledge, permission and/or direction.

The PDC staff identified the information they believe Hulten developed while at work and on his county as being stored in Hulten's personal document "drop box" which is stored in a "cloud." Hulten informed the PDC in his formal response that this information was stored in his personal "drop box" and never on county equipment. Furthermore, Hulten insists that he utilized the "drop box" to save a variety of documents including work product, which he would access at both his home and office. Hulten also informed the PDC that information contained within the drop box that was not related to work was not accessed from his work computer or while he was in the office.

Moreover, Hulten informed the PDC that he offered to volunteer on Reardon's campaign as is his right and because as a current employee in the Executive's office, Hulten had a personal, vested interest in Reardon being re-elected. Hulten further informed the PDC that any and all volunteer activities took place away from the office.

Lastly, Hulten informed the PDC that he collected information on Reardon's opponent as well as activities Reardon's opponent was involved in on his own time and without Reardon's knowledge or direction. Hulten informed the PDC staff that Reardon was unaware of these activities. Hulten indicated he did occasionally provide Reardon with information he had obtained if he believed it was important for Reardon to know or if Reardon requested information that Hulten had previously shared with others.

In conclusion, PDC staff provides no facts to support the allegation that Mr. Reardon, outside of normal practice, hired Kevin Hulten as an Executive Analyst to research and analyze issues confronting the county and to report on those issues, when in fact, Mr. Hulten

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spent a significant amount of his county compensated time working on Mr. Reardon's Campaign.

3. PDC staff alleges Mr. Reardon use his county issued cell phone to make and receive campaign related calls and to send and receive campaign related texts; and used his office to meet with his political consultants.

R EXHIBIT 9 – PDC INTERVIEW WITH AARON REARDON

During his interview with Reardon, Lemp asked Reardon to describe the nature of the conversations he had with persons who Reardon employed as campaign consultants during the 2011 campaign.

Here, Reardon informed Lemp that he spoke often with persons he hired as consultants on his campaign about issues germane to his occupation as Snohomish County Executive throughout the year. Reardon indicated he had known the parties for more than a decade and had developed relationships that went beyond the campaign or campaign cycle. Reardon indicated he solicited the opinions, guidance and feedback from these parties on a variety of issues such as transportation, economic development, environmental policy, bills in Olympia and what other similar governments and government leaders are doing around the country.

Mr. Reardon stated that he could not recall making any campaign related calls from his work phone in 2011 and that the conversations and subject matter was appropriate.

In conclusion, PDC staff provides no facts to support the allegation that Mr. Reardon used his county issued cell phone to make and receive campaign related calls and to send and receive campaign related texts; and used his office to meet with his political consultants.

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R EXHIBIT 8 – PDC INTERVIEW WITH COLBY UNDERWOOD

During his interview with the PDC staff, Underwood informed Lemp that he had a "dynamic relationship" with the Executive. Underwood informed Lemp that he held a position on Reardon's "Kitchen Cabinet" and served as an "advisor" to Reardon on a variety of issues related to Reardon's role as County Executive. Underwood informed Lemp that he would often speak with the executive on matters of Snohomish County policy, regional policy, economic development, the environment and business. Underwood informed Lemp that Reardon always gave him the number at which Reardon could be reached and that Reardon was very clear about which number to use.

Lemp indicated that during the interview he showed Underwood a copy of Reardon's 2011 telephone log from his office cell phone and that Underwood was unable to identify any particular call or what a particular call may have entailed. Underwood stated during the interview that at this point in time (more than 4 years later) he didn't recall which of Reardon' phone numbers were personal or for work.

In conclusion, PDC staff provides no facts to support the allegation that Mr. Reardon used his county issued cell phone to make and receive campaign related calls and to send and receive campaign related texts; and use his office to meet with his political consultants.

DATED this day of March 10th, 2016

JOHANSON LAW GROUP, INC.

Respectfully Submitted,

Jim Johanson, WSBA #18072
Attorney for Respondent, Aaron Reardon

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