

FILED

SEP - 4 2015

Superior Court
Linda Myhre Enlow
Thurston County Clerk

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
THURSTON COUNTY

DONALD L. GILLESPIE,

Plaintiff,

v.

STATE OF WASHINGTON,

Defendant.

15-2-01725-7

Case No.: _____

**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

I. PARTIES

1.1 Plaintiff Donald L. Gillespie (“Mr. Gillespie” or “plaintiff”) is a resident of Kitsap County, Washington. Mr. Gillespie brings a whistleblower retaliation claim pursuant to RCW 42.40, *et seq.* and RCW 49.60.210, and a claim for invasion of privacy.

1.2 Defendant State of Washington (“Washington State,” “State,” or “defendant”) is a State within the United States of America.

1.3 The Washington State Department of Transportation (“WSDOT”) is an agency of the State and runs the ferry system (“Ferries”) among other things.

1.4 The State Auditor’s Office (“SAO”) is an agency of the State, and is responsible for administering the state whistleblower law (RCW 42.40) among other

1 things.

2 **II. JURISDICTION AND VENUE**

3 2.1 This Court has jurisdiction over this matter pursuant to RCW 4.28.020
4 and RCW 4.92.010.

5 **III. FACTS**

6 3.1 Mr. Gillespie is a long-term employee of the Ferries who assisted in the
7 submission of a whistleblower complaint that was delivered to the SAO in May 2008
8 (the "whistleblower complaint").

9 3.2 The whistleblower complaint package included a handwritten
10 "Whistleblower Reporting Form," which was authored by Mr. Gillespie. Mr. Gillespie
11 did not sign the whistleblower complaint or the form. It was signed by a third person
12 ("John Doe") (together the "whistleblowers").

13 3.3 The whistleblower complaint was submitted to the SAO with the intent
14 that the whistleblowers would remain anonymous. Under Washington law (RCW
15 42.40.040(2)), the identity or identifying characteristics of a whistleblower are
16 confidential at all times unless the whistleblower consents to disclosure by written
17 waiver or by acknowledging his or her identity in a claim against the state for
18 retaliation. Mr. Gillespie did not authorize release of his identity or identifying
19 characteristics in 2008, 2009, 2010, 2011, 2012, or 2013. Mr. Gillespie did not consent
20 to disclosure by written waiver, and nor did John Doe.

21 3.4 The substance of the whistleblower complaint was that co-worker Jack
22 Nannery was committing fraud by stealing time from the State by leaving work early
23 to coach a high school baseball team, and using an agency vehicle to attend practices
24 and ballgames.

25

1 3.5 The complaint was investigated by the SAO. In May 2009, the SAO
2 issued a report finding that Mr. Nannery had engaged in improper governmental
3 action. Ferries management perceived that Steve Chaussee was one of the
4 whistleblowers and demoted him in September 2009. Mr. Chaussee filed a
5 whistleblower retaliation lawsuit against the state under RCW 42.40 as a “perceived”
6 whistleblower, and on March 26, 2015, a jury awarded him \$1 million in emotional
7 harm damages for whistleblower retaliation.

8 3.6 On February 28, 2013, as a part of the summary judgment motion filed
9 by the State seeking to dismiss the *Chaussee v. State* case, Vern Day filed a
10 Declaration on behalf of the State, which included as an exhibit the handwritten
11 “Whistleblower Reporting Form,” which was authored by Mr. Gillespie.

12 3.7 Sometime after the filing of the Day Declaration, Mr. Chaussee
13 informed Mr. Gillespie that the declaration contained the handwritten “Whistleblower
14 Reporting Form,” which he could tell was authored by Mr. Gillespie, because Mr.
15 Chaussee recognized his handwriting. This was the first time that Mr. Gillespie had
16 notice that the handwritten “Whistleblower Reporting Form” had been transmitted to
17 his management at WSDOT.

18 3.8 The State did not file the handwritten “Whistleblower Reporting Form”
19 under seal in the public court file. Any citizen has the right to review any document in
20 the public court file.

21 3.9 The State provided a copy of the handwritten “Whistleblower
22 Reporting Form” to Mr. Chaussee in discovery, and it was not stamped as confidential
23 under the protective order, which was in effect at the time.

24 3.10 The SAO improperly and wrongfully released the handwritten
25 “Whistleblower Reporting Form” to WSDOT. The handwritten “Whistleblower

1 Reporting Form” was reviewed by Kathleen Flynn Mahaffey, Paul Brodeur, Jackie
2 Beddo, RJ Kelly, and others at WSDOT. On information and belief, the handwritten
3 “Whistleblower Reporting Form” was given to Jack Nannery. Each of the persons
4 identified by name in this paragraph knew that the handwritten “Whistleblower
5 Reporting Form” was authored by Mr. Gillespie. The release and transmittal of the
6 handwritten “Whistleblower Reporting Form” by SAO to WSDOT was a violation of
7 state law. The circulation of the handwritten “Whistleblower Reporting Form” at
8 WSDOT was a violation of state law. The filing of the handwritten “Whistleblower
9 Reporting Form” into the public court file was a violation of state law.

10 3.11 At trial, Mr. Day stated that he knew that Mr. Gillespie was the
11 whistleblower, and that he knew that as a fact since June 2009.

12 Q. And whose handwriting did you perceive it was when you saw this?

13 A. Mr. Gillespie’s.

14 Q. And this is in June of 2009, correct?

15 A. Yes.

16 Day Trial Testimony in *Chaussee v. State* at 18:6-10.

17
18 3.12 No one in Ferries management told Mr. Gillespie that the handwritten
19 “Whistleblower Reporting Form” had been released to WSDOT.

20 3.13 No one at the Ferries or at WSDOT told the SAO that the handwritten
21 “Whistleblower Reporting Form” had been released in violation of the law.

22 3.14 No one at the Ferries or at WSDOT sought to keep the handwritten
23 “Whistleblower Reporting Form” confidential, or sought to destroy it, or sought to
24 limit its dissemination.
25

1 3.15 From the time he assisted in the 2008 filing of the handwritten
2 “Whistleblower Reporting Form” Mr. Gillespie lived in fear of retaliation. He
3 experienced emotional harm from 2008 forward, but did not understand that he was
4 being retaliated against for being perceived as a whistleblower until he was given
5 notice of the Day declaration filing by Mr. Chaussee.

6 3.16 Mr. Gillespie experienced damage to his reputation, and he was treated
7 like he could do nothing right by his management. Some examples of the
8 mistreatment perpetrated by management following the whistleblower complaint are
9 as follows:

- 10 • The lock shop, where Mr. Gillespie worked, and the carpenter shop were
11 separated;
- 12 • Mr. Gillespie was no longer allowed to work as temporary foreman, lead man,
13 or perform other work at the carpenter shop as he had done before, resulting in
14 a minimum 70% reduction in his overtime pay;
- 15 • These changes also decreased chances for promotion, as Mr. Gillespie no
16 longer had supervisory experience opportunities. Meanwhile, less experienced
17 employees were allowed to fill these temporary opportunities;
- 18 • Mr. Gillespie was treated with animosity by management.

19 These adverse changes were made by his supervisors, while Jack Nannery, the subject
20 of the whistleblower complaint, was moved by management to the more lucrative
21 carpenter shop position, which permitted him to receive extensive overtime.

22 3.17 Prior to filing this lawsuit, Mr. Gillespie timely filed an administrative
23 claim with the Office of Financial Management and waited the required time before
24 filing in Thurston County Superior Court. The content of the administrative claim
25 met the requirements of RCW 4.92.100.

 3.18 Mr. Gillespie has suffered loss of enjoyment of life, pain and suffering,
 mental anguish, emotional distress, injury to reputation, and humiliation.

 3.19 Mr. Gillespie has suffered lost wages in the form of front and back pay,
 and emotional harm proximately caused by the acts of the defendant and its agents.

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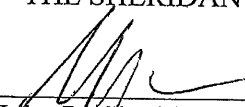
jury fee as required by law.

DATED this 4th day of September, 2015.

THE SHERIDAN LAW FIRM, P.S.

By: _____

for


John P. Sheridan, WSBA # 21473
Hoge Building, Suite 1200
705 Second Avenue
Seattle, WA 98104
Phone: 206-381-5949 / Fax: 206-447-9206
Email: jack@sheridanlawfirm.com
Attorneys for Plaintiff

*Mark Rose
WSBA 41916*