

No. 76065-3-I

DIVISION I, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

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MARIA LUISA JOHNSON, CARMELIA DAVIS-RAINES,  
CHERYL MUSKELLY, PAULINE ROBINSON, ELAINE SEAY-  
DAVIS, TONI WILLIAMSON, and LYNDIA JONES,

Plaintiffs/Appellants,

v.

CITY OF SEATTLE,

Defendant/Respondent.

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ON APPEAL FROM KING COUNTY SUPERIOR COURT  
(Hon. Suzanne Parisien)

Case No. 15-2-03013-2 SEA

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**BRIEF OF APPELLANTS**

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## I. INTRODUCTION

This case involves seven Plaintiffs claiming that race and age were substantial factors in employment actions taken by Seattle Public Utilities (“SPU”). Six of the Plaintiffs are African American. One is Filipino American. Five of the Plaintiffs also claim retaliation under the WLAD owing to a petition they signed expressing concerns about “the intent of [a new] policy and the impact of its implementation on the African American workers working for City of Seattle,” stating it was “of great concern that the City ... would institute a new policy ... and make these policies retro-active.” Ex. 46. The petition claimed the related disciplinary investigations by the City were “punitive, arbitrary and direct violation of our union contract that adversely affect communities of color who have had a long work history of employment with the City.” “[R]acism is often unintentional, institutional, or unconscious.” *State v. Saintcalle*, 178 Wn.2d 34, 49, 309 P.3d 326 (2013) (lead opinion). The City conducted no investigation in response to this petition.

All of Plaintiffs’ claims derive from the disciplinary actions that SPU took against the Plaintiffs, after it received the petition, for allegedly violating established procedures—working on their own utility accounts and the accounts of friends, family, and coworkers in the course of their

employment as Utility Account Representatives (“UARs”) at SPU’s customer call center. SPU disciplined the Plaintiffs despite the fact that most of the conduct occurred years earlier (as early as 2001) and SPU knew it lacked adequate procedures and training at that time and that Plaintiffs’ conduct was consistent with past practice and the treatment of other customers’ accounts.

The case was tried to a jury, which returned a verdict for Defendant. This appeal is based on erroneous rulings made at trial and chiefly during jury selection.

The need for the jury to understand implicit bias is recognized by sociologists and by many courts, but not by the trial court nor currently by Washington appellate courts. Implicit bias in the jury and in the case was not addressed by the trial court over Plaintiffs’ objections, which were omissions central to the legal error in this case.

First, over Plaintiffs’ objection, the venire lacked diversity and was not representative of the population of King County or the Plaintiffs, resulting in a jury with no African Americans after the court denied Plaintiffs’ request to reconstitute the jury pool with a more diverse venire. Second, the jury was composed of an elite cross section of the citizenry because the court struck all workers who would not be paid if they sat on the jury rather than creating a trial schedule that would permit more

diverse participation. Third, having created an environment that lacked diversity, the court excluded the testimony of expert witness Dr. Greenwald, who would have injected an understanding of implicit bias in the jury and in the work environment to the trial—much needed given the jury composition, which contained no African Americans. Fourth, immediately after telling the jury that the case “involves allegations of race discrimination,” the judge commented, “That is something -- that is certainly something that is very much in the forefront in the media right now. There is a lot going on in our country,” and then said “to the extent that again, this is a civil case” the flyer on mass incarceration and disproportionality that two jurors received “may not be relevant at all.” Fifth, the court excluded three potential jurors for cause without sufficient basis. Sixth, the Court excluded two jury instructions, which would have provoked juror introspection regarding implicit bias, and a third, which is given in the 8<sup>th</sup> Circuit, which would have explained that false testimony can be used to prove discrimination; all three were critical instructions, especially in light of the absence of African American jurors on the panel.

For these reasons and the additional errors outlined below, the Plaintiffs were prejudiced and a new trial is warranted.

## II. ASSIGNMENTS OF ERROR

### A. Assignments of Error

1. The court erred in denying Plaintiffs' request to reconstitute the jury pool to establish a more diverse venire that was more representative of the Plaintiffs, resulting in a jury that was approximately 20% non-Caucasian and lacked any African-Americans for a case alleging race discrimination by six African-Americans. RP (8/15 PM Rawlins) 2-5.<sup>1</sup>
2. The trial court erred in systematically excluding all workers who would not be paid if they sat on the jury rather than creating a trial schedule that would permit more diverse participation, resulting in a less economically diverse cross section of the citizenry. RP (8/15 PM Rawlins) 4-5, 15; RP (8/15 AM) 38, 48.
3. Having created an environment that lacked diversity, the trial court erred in excluding the expert testimony of Dr. Anthony Greenwald, who would have educated the jury on implicit bias—much needed given the jury's composition and the comments made by counsel and the court. RP (8/15 PM Rawlins) 5; CP 5846; RP (8/5) 5-6.

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<sup>1</sup> The trial in this matter was transcribed by two court reporters, Kimberly Girgus and Dolores Rawlins, who divided the morning and afternoon sessions, but covered different sessions each day. Girgus filed her report of proceedings paginated individually as to each date, re-starting each day at page 1; while Rawlins filed report of proceedings for each of her half-days paginated consecutively across the all of the dates she reported, *i.e.*, running from page 1 through 1308. When citing to Ms. Rawlins' 1,308-page compilation, Plaintiffs reference Rawlins by name.

4. The trial court erred in commenting to the venire about a two-page flyer handed out to two members of the venire, which the court said “talks about the issues of mass incarceration and disproportionality affecting really our criminal justice system,” and in further commenting that “this case does involve allegations of race discrimination. That is something -- that is certainly something that is very much in the forefront in the media right now. There is a lot going on in our country. To the extent that, again, this is a civil case[,] [t]he issue ... raised in this flyer may not be relevant at all to you[.]” RP (8/15 PM Rawlins) at 23-24.

5. The trial court erred in excluding potential jurors number 11, 8, and 53 for cause without sufficient basis. RP (8/16 AM Rawlins) 121-29.

6. The trial court erred in excluding two jury instructions, which would have provoked juror introspection about implicit bias, and a third, which would have explained that false testimony can be used to prove discrimination. RP (9/12) 14-15; *see* CP 709 (Instruction No. 3); CP 711 (Instruction No. 4); and CP 720 (Instruction No. 13), attached at Appendix 1-4.

7. The trial court erred in permitting the testimony of a late-disclosed “expert” on call centers without requiring the Defendant to comply with the local rule in terms of opinion disclosure or to permit Plaintiffs to obtain related documents and to depose the expert, and in permitting the

testimony, which amounted to junk science, lacked relevance, and was prejudicial. RP (9/6 AM) 11-12; RP (9/6 PM Rawlins) 1050.

8. The trial erred in admitting Exhibits 497, 498, 499, 501, and 502, as ER 1006 summaries. RP (9/1 AM Rawlins) 911, 970; RP (9/6 AM) 50, 53-54, 57. *See* Exhibits attached at Appendix 5-18.

9. Based on the many errors presented, the trial court erred in denying the motion for new trial. CP 5870-71.

**B. Issues Pertaining to Assignments of Error**

1. Is there “constitutional value in having diverse juries,” and does the trial court enjoy flexibility to foster a diverse venire and jury?

2. Does state law prohibit the Court from excluding citizens from jury service “on account of . . . economic status”?

3. Under the circumstances presented, did the court abuse its discretion in excluding Dr. Greenwald’s opinion testimony concerning implicit bias?

4. In making comments about the content of the flyer, including the distinction offered that “to the extent... this as a civil case” alleging race discrimination, the flyer “may not be relevant,” did the Court charge the jury “with respect to matters of fact” or “comment thereon”?

5. Is the legal standard for challenging a potential juror for cause, “would you want you on the jury if you were me?”

6. Were Plaintiffs able to adequately argue their theory of the case, and the jury adequately informed on the law, absent Plaintiffs' proposed Instruction No. 3, 4, and 13?
7. Under CR 26(b)(5), were Plaintiffs entitled to "[d]iscovery of facts known and opinions held by experts" and if such discovery is not allowed, to exclusion of the expert?
8. Was the court's admission of Exhibits 497, 498, 499, 501, and 502 under ER 1006 based on untenable grounds or on a misapprehension of the legal issues?
9. Does the cumulative effect of many errors warrant a new trial?

### **III. STATEMENT OF THE CASE**

#### **A. SPU knew that it lacked adequate procedures and training for employees, promulgated new policies and procedures, then disciplined Plaintiffs for alleged policy violations**

In January 2009, Ray Hoffman was made acting Director of SPU. RP (8/18 AM Rawlins) 270. Guillemette Regan was Director of Corporate Policy and Performance at the time before becoming SPU's Director for Risk and Quality Assurance in January 2011. RP (8/31 PM Rawlins) 858.

Near the end of 2010, through the daily reconciliation process for SPU's Consolidated Customer Service System ("CCSS")—the accounting system for customer utilities used by SPU and Seattle City Light—the utility became aware that an employee in the Engineering Unit, Joe Phan,

had entered “false cash payments on his own utility accounts.” Ex. 155, at 21; RP (8/17 AM) 46-47. On December 7, 2010, SPU reported to the Seattle City Auditor about Phan and a second SPU employee who utilized her access rights to CCSS to make inappropriate transactions. Ex. 33. The City Auditor’s office then became involved in “an SPU customer adjustments fraud investigation”<sup>2</sup> and reviewed data for “suspected employee fraud,” from which it concluded that Phan used his CCSS user ID to make false cash payments totaling \$1,049.49 for utility accounts connected to his properties. Ex. 115. The City Auditor’s office sent a memo about the Phan fraud investigation to Ms. Regan on February 4, 2011, in which the Auditor’s Office wrote, “Per SPU policy, employees should not be entering any transactions to their own accounts and certainly not posting payments.” Ex. 115. Guillemette Regan, SPU’s former Director of Corporate Policy and Performance, in response to the City Auditor’s statement, wrote, “I don’t believe we have an actual policy. ... If there is a policy, I would love to see it.” *See* Ex. 115 at [GR1].

The next month, March 2011, SPU drafted a policy, CS-106, which stated on its face it was “new” and did not supersede any prior policy. Ex. 130; RP (8/17 AM) 117-18; Ex. 345. The policy stated its purpose as follows: “This policy establishes employee expectations related

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<sup>2</sup> RP (8/16 PM) 55, 58, 60-61; Exs. 129, 24; RP (8/31 PM Rawlins) 874.



to performing transactions involving customer accounts in conformance with SMC 4.16.070” (the Code of Ethics). Ex. 130. The policy barred employees from performing account transactions involving themselves or people they know. *Id.* That same month, Debra Russell, the Director of the Customer Response branch and head of SPU’s Call Center, emailed Labor Relations Coordinator Charlene MacMillan-Davis: “What do you think about adding to the UAR [Utility Account Representative] Expectations the information that employees should not access their own utility accounts?” MacMillan-Davis replied, “Let’s not do it just yet. With everything else going on related to this, I think it would be best to handle that separately. We can - and should - add it once we have a comprehensive approach to managing it.” Ex. 36. The multi-page UAR Expectations issued to employees in January 2010 had no such provision. *See* Ex. 140; RP (8/17 PM Rawlins) 182-188.

On April 15, 2011, SPU put out a press release announcing it had fired the two employees who the City Auditor helped investigate, emphasizing “[r]evenue losses to the utility are estimated to be less than \$2,000.” Ex. 271. The press release noted an investigation was still ongoing and that Director Hoffman said the utility was “hiring an independent investigator to aid in the inquiry.” *Id.* The Seattle Times

published an article based on the press release the same day. RP (8/17 AM) 97.

The Director of SPU, Ray Hoffman, admits that for years the utility lacked adequate internal controls and that by early 2011, he knew of “concerns expressed by the State [Auditor] as to internal controls set for CCSS at SPU.” RP (8/17 AM) 94. Guillemette Regan met with the City and State Auditors in April 2011, at which time Regan confirmed, “Customer Service has a distinct lack of documented policies.” Ex. 270 at 3; RP (8/25 AM) 75. In that same meeting, Regan told the City and State Auditors “she [was] hoping to hire a CFE [Certified Fraud Examiner] in about three weeks.” *Id.* There was also discussion in the meeting about the City’s discovery that the CCSS system “does not retain the User ID” if someone enters a negative number to zero out a transaction, for example, to reverse a water shut off fee. *See id.*; Ex. 25; RP (8/17 AM) at 66; Ex. 28. That glitch, which the City Auditor called a “significant CCSS internal controls weakness,” would not be fixed for another year. Ex. 28; RP (8/18 PM) 64-67, 72.

At the end of May 2011, Ms. Regan and others from SPU met with the City Auditors, in addition to the contracted forensic accountant, Linda Saunders, CFE. *See* Ex. 629 at 1. In the May meeting, Ms. Regan relayed information she had obtained relevant to SPU’s investigations, including

that “there is no actual policy against canceling payment plans and then re-establishing new plans .... [M]any UARs do this.” Ex. 629, at 2. Regan “commented that SPU may not have sufficient grounds to terminate employees for canceling and resetting payment plans (i. e., creating rolling payment plans) for other employees because it has been a past practice tacitly allowed by Call Center management.” *Id.* Regan also reported that she had been informed “UARs can and do frequently waive a customer’s late fees in exchange for a promise for payment of an outstanding balance,” and that “UARs ... have been unofficially given the authority to do this and there are no written policies discussing this topic or setting any limits.” *Id.*, at 3.

Despite the fact that Regan told the State and City auditors SPU was hiring an outside investigator to review the issues, Ex. 270 at 3, and the utility publicized this claim through a press release, Ex. 271, the Certified Fraud Examiner who SPU hired, Linda Saunders, had her contract terminated in June 2011, only weeks after it began. *See* RP (8/22 AM) 18, 20-21, 23. Saunders was ordered by Regan “to stop work, shred the documents, and send the city an invoice for work completed.” *Id.*; Ex. 120. The utility did not hire another CFE to replace Saunders; instead it kept the investigation in-house, assigning the job to Ms. Regan, who was not an auditor and had no background in forensic accounting. RP (5/17

PM Rawlins) 200-201; RP (5/18 AM Rawlins) 346. The City Auditor documented that Regan reported using “anecdotal information linking individuals to other individuals,” and told the City Auditor that “she believe[d] there are groups of employees clustered by race (African American, Filipino American, White American) who exchange favors for others” of the same race. Ex. 1, at 2-3. Under oath, Regan denied she ever said such a thing, and when she was asked in her deposition if any of the Plaintiffs sitting across from her were African-American or Asian, she denied even being able to discern race, testifying, “I don’t know.” RP (8/25 AM) 53-54, 58, 61.

In June 2011, SPU was pilloried by the Seattle Times under the headline, “Audit questions \$24.7 million in billing cuts to Seattle Utility customers.” RP (8/17 PM Rawlins) 208-09. The \$24.7 million that the State Auditor said in its audit “may have gone missing,” and which was discussed in the Seattle Times article, were unrelated to SPU employees accessing their own accounts. *Id.* Then, in the “last couple months” of 2011, SPU management learned about gross misconduct by a former SPU employee, which resulted in another damning headline, “Former City employee arrested in one million dollar theft from Seattle Public

Utilities.”<sup>3</sup> In the wake of such bad press, management issued the discipline given to the Plaintiffs, which it publicized to divert attention from management’s failures. *See* Ex. 294 (publicizing “termination of eight SPU employees and the suspension of 15 others.”).

In disciplining the Plaintiffs, management ignored SPU’s lack of clear procedures. By July 22, 2011, the City Auditor had developed a list of observations it had made as of that time, which it stated, in part:

- “There appears to be a need for improved and ongoing training for the staff of the SPU Combined Utility Call Center.” Ex. 41, at 3.
- “At the start of this review, it appeared to be common practice for Customer Service employees to handle utility transactions for coworkers, including setting up payment plans, handling energy grant referrals, etc.” Ex. 41 at 7; RP (8/17 AM) 42-43;
- “[T]here was no documented policy within the CCSS policies and procedures manual that stated employees were not allowed to enter transactions on their own utility accounts,” and “SPU’s senior management established a new policy covering this issue ... in April of 2011” Ex. 41, at 3; RP (8/17 AM) 31-34;
- “[E]mployees with access ... had to sign a confidentiality agreement form, but the agreement doesn’t prohibit employees from working on their own accounts or the -- or the accounts of friends and family” RP (8/17 AM) 35; Ex. 41 at 3;
- “[C]all center UARS ... can waive late fees, \$10 fees in exchange for a delinquent customer’s promise to pay their outstanding balance” RP (8/17 AM) 39-40;
- “UARs can allow customers to repeatedly cancel and re-establish payment plans” and there is “no minimum balance threshold requirement for a delinquent customer to be eligible for a payment

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<sup>3</sup> RP (8/17 PM Rawlins) 208-211.

plan. And the recommendation is that a requirement for a minimum outstanding balance should be established.” RP (8/17 AM) 41; Ex. 41 at 6;<sup>4</sup>

A few days after drafting this list, the City Auditor’s office met to discuss its “strategy for drafting a memo on CCSS Transaction Controls.” Ex. 272, at 1. The memo “would be a procedural review of the CCSS transaction procedures,” and Dave Jones, the City Auditor, felt his office already had conducted enough “audit fieldwork ... to draft such a memo.” *Id.* However, the City Auditor’s office discussed “concerns about issuing a controls memo over CCSS Transactions while SPU is in the middle of an investigation” and how it did not “want to jeopardize the results of the investigation in any way.” *Id.*, at 2. Notes of the meeting state, “We discussed the question of waiting to issue a controls memo until SPU has had time to complete their employee investigation project, but decided against this.” *Id.*

The next month, August 2011, the City Council was “applying some pressure” to the City Auditor’s office to complete the “‘controls memo’ highlighting the internal control weaknesses with the CCSS transaction processes ... as soon as possible.” Ex. 285, at 3. Still, the City Auditor’s report was not released until April 29, 2014, more than two and

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<sup>4</sup> *Accord* Ex. 285 at 2 (“the CCSS Manual section addressing payment plans does not indicate any restriction on the number of payment plans that a customer can have per year”). “SPU revised its payment plan policy at the beginning of 2013 to prohibit due date extensions without receiving payment of additional funds.” Ex. 273, at 3.

a half years later, even though “most of [the] work was completed by March of 2012.” RP (8/17 AM) 62-63; Ex. 155 at 2. In February 2012, the City Auditor agreed to stop “serving in a quality assurance type role for the SPU CCSS Investigation project,” and Ms. Regan wrote the City Auditor to confirm that “SPU ... felt that the work the City Auditor is undertaking in 2012 overlaps too much with [SPU’s] continued investigations into CCSS billing system transactions and would benefit from greater separation in order to avoid conflict or risk to the outcomes of the investigations.” Exs. 144-145. Between the time the City Auditor stepped back from its investigation and when it finally issued its report in April 2014, all of SPU’s disciplinary actions were taken against the Plaintiffs. *See* Exs. 88, 100, 96-97, 104, 92, 111, and 468.

It was not until July 2012 that SPU rolled out a new procedure with training to change the practices among its workforce, writing in the talking points, “it means that sometimes completing an account request will take longer than it used to” and “a bit more effort.” Ex. 133. The Call Center was already busy, “as calls came in ... one right after another.... As soon as you hung up, you would get another call within a matter of seconds.” RP (8/22 PM) 403-404.

In December 2012, five of the Plaintiffs, along with six other African-American employees from the call center, signed a Petition of Solidarity, stating in relevant part,

With the new efforts by the City of Seattle Human Resources Department to enforce the new policy title ‘Customer Utility Account Transactions’ we have concerns over the intent of this policy and the impact of its implementation on the African American workers working for City of Seattle. ... It is of great concern that the City of Seattle Human Resources Department would institute a new policy ... and make these policies retro-active.

Creating a new policy that allows the City of Seattle to investigate employee’s activities for the past 10 years is punitive! Employees, who engaged in the actions that are now deemed to be infractions of employment, should be ‘Grandfathered in’ and not investigated and judged for actions that were not infractions of employment at the time they were implemented.

We are asking for a Moratorium on terminations and investigations, a review of all employees terminated for this policy and bring them back to work based on ‘Past Practice’ and the commitment to support the ‘Just Cause’ clause in the Union Contract that would allow employees to a process before termination. We have provided this petition to the Seattle/King County Branch NAACP and the United Black Christian Clergy, to present to you because of our concern for how the City of Seattle specifically Seattle Public Utilities Contact Center investigations are punitive, arbitrary and a direct violation of our union contract that adversely affect communities of color who have had a long work history of employment with the City of Seattle.

Ex. 46.

SPU Director Hoffman testified that he was “aware of the composition of the contact center ha[ving] a higher than proportional



percentage of employees who were people of color,” RP (8/17 AM) 100, and that he was forwarded the petition well before taking any disciplinary actions against the Plaintiffs. RP (8/17 PM Rawlins) 224, 228. However, in response to the petition, Hoffman and the City conducted no investigation into the alleged impact on African-Americans. *See* RP (8/17 PM Rawlins) 225-29.

Before SPU could take disciplinary actions that included suspensions without pay and terminations, employees had the right to meet in a Loudermill hearing with Director Hoffman, who acknowledged he then had the chance “look at their color of their skin and ... note that they weren't Caucasian,” and would then “decide whether to support or modify the [disciplinary] recommendation” given to him by the Customer Service Branch Director Susan Sanchez. RP (8/17 PM Rawlins) 213, 220, 281. For example, a white UAR, Debra Warren, was recommended for termination, but Hoffman gave her a 30-day suspension. *See* Ex. 497. Records of the City Auditor show how similar Ms. Warren’s conduct was to the conduct of Plaintiff Johnson, who SPU terminated.

Findings Summary, CCSS data mining  
Mary Denzel, May 22, 2012

**People who worked on their own accounts**

Name/dept	Analytics Questions	Action	Date (approximate)	\$
Luisa Johnson/SPU	16 (pmnt arr own acct) 17 (canceled “ own acct)	Made and canceled payment arrangements on spouse’s account	2005, 2006, 2008 (2), 2010	116.46, 155.5, 241.8, 199.02, 299.99
Debra Warren/SPU	16 (pmnt arr own acct) 17 (canceled “ own acct)	Payment arrangement to spouse’s acct Cancel pmnt arr to spouse’s account	2002, 2007, 2009, 2010	47.37, 143.69, 121.76, 162.37, 141.06, 230.01, 139.54, 140.05, 121.76

*See* Ex. 1, at 4.

Nick Pealy was a Deputy Director of Field Operations and Maintenance who reported directly to Director Hoffman. RP (8/17 PM Rawlins) 202-03. Both Director Hoffman and Pealy are Caucasian. *Id.* In 2011, Hoffman became aware that Pealy “had engaged in serious misconduct... with subordinate women” involving “improper conduct with female subordinates.” *Id.*; RP (8/18 AM Rawlins) 353. Pealy was not fired or given a letter documenting that Hoffman would have fired him. RP (8/17 PM Rawlins) 202-03. Instead, Hoffman and SPU gave him a \$70,000 settlement package and a letter of reference, in stark contrast to the discipline meted out to Plaintiffs. *See* RP (8/18 AM Rawlins) 353-54.

All of the persons SPU terminated were over 40 years old,<sup>5</sup> and SPU Director Hoffman was recorded telling others that he believed the call center’s “longest term employees did not have the enthusiasm and commitment necessary to provide the desired response.” Ex. 641 at 2; RP (8/17 AM) 100-103.

## **B. Jury Selection and Trial**

### **1. The Court Denied Plaintiffs’ Request for a New Venire**

The U.S. Census Bureau reports for 2015 that 61.7% of the population of King County was “White alone, not Hispanic or Latino,” and 6.8 % was “Black or African American alone.” CP 5965. The venire

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<sup>5</sup> *See* Ex. 496; RP (8/24 AM) 62.

in this case included 100 potential jurors, of which 2 were African American, making it 2% African American. CP 5662.

After the court began to screen and rule on hardships for two panels of prospective jurors (approximately 78 jurors), the court estimated it had 37 jurors remaining in the venire. *See* RP (8/15 AM) 42, 48-49.

After the lunch break, and before the bailiff brought in a third group of prospective jurors for screening of hardships, Plaintiffs' counsel objected that the panel appeared to be "pretty much all Caucasian folks." RP (Rawlins 8/15 PM) at 2. In so objecting, Plaintiffs' counsel read into the record the following passage from *State v. Saintcalle*, 178 Wn.2d 19:

Justice Wiggins wrote, 'For a practical standpoint, studies suggest that to compare the diverse jury, all-white jurors tend to spend less time deliberating, make more errors and consider fewer perspectives.' That is from the [Equal] Justice [Initiative] Report [at 6, 40-41]. He writes: 'In contrast, diverse juries were significantly more able to assess reliability and credibility and avoid presumptions of guilt and fairly judge criminally accused in a criminal case. By every deliberation measure heterogeneous groups outperformed homogeneous groups.' These studies seem to confirm what seems obvious from reflection: A more diverse group of juries has a result of [fairer] trials.

*Id.*, at 2-3.

Plaintiffs proposed the Court pick a new panel to achieve "something more representative of the group," "better diversity," stating "we should be thinking about ... creative ways to let [those who cannot afford] to be on the juries" to participate, such as having trial only two

days a week, so jurors could still work and be paid and “[s]o that the juries aren’t made up of Microsoft and Boeing engineers, which is really what we have.” RP (8/15 PM Rawlins) at 3-4. The court responded, “I agree,” noting that litigation was already pending “for lack of effective jury pay... [t]hat leads to the problems that we have.” *Id.* The court stated, “we need to be thinking of more creative things[,] [b]ut today, right now, sitting where I am, I can’t do anything. I can’t empanel a new jury. I certainly can’t ask folks to do it just two days a week. I hear what you are saying.” *Id.*

After Plaintiffs objected to the lack of a diverse jury, the court excused an additional 8 jurors for financial hardships, which it described as, “If you work for ... an employer that does not compensate you, that – and missing that money would mean that you couldn’t pay your primary bills. Your rent. Your utilities. Your food. That’s a hardship. Having less money at the end of the month for, you know, discretionary spending, not a hardship.” *See* RP (8/15 PM Rawlins) 12-13, 15, 18-22; *and* RP (8/15 AM) at 43-44. In total, the Court excused 22 jurors based on financial hardship.<sup>6</sup> After ruling on hardships, there remained 38 potential jurors for

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<sup>6</sup> *See* RP (8/15 AM) 38 (excusing **11** jurors for financial hardship: nos. 4, 10, 17, 18, 20, 44, 43, 41, 35, 45, 59); *accord id.*, at 24, 26-29, 31-33, 35, 37; *see also* RP (8/15 AM) 46-48 (excusing **3** jurors for financial hardship: nos. 76, 69, 66); RP (8/15 PM Rawlins) 12-13, 15 (excusing **2** jurors for financial hardship: nos. 88, 90); *and* (8/15 PM Rawlins) 18-22 (excusing **6** jurors for financial hardship: nos. 3, 7, 15, 25, 60, 73).

voir dire by counsel, including one African-American, Juror No. 91, who was too high in the jury pool to be seated. *See* RP (8/15 PM Rawlins) 5, 22, 33-34.<sup>7</sup>

Of the 38 persons remaining in the venire, only eight answered in the affirmative when asked whether they identify as “non-Caucasian.” RP (8/15 PM Rawlins) at 22, 33-34. With 8 of 38 so identifying, the venire was little more than 20% non-Caucasian. *Id.* The eight non-Caucasian jurors further identified themselves as “Portuguese and Hawaiian” (No. 32); “Half white, half Mexican” (No. 52); “Vietnamese” (No. 57); “Mexican American” (No. 63); “East Indian” (No. 65); “Asian” (No. 80); “Quarter Puerto Rican and an 8th Indian and the rest white” (No. 84); and “African American” (No. 91). *Id.*, at 33-34.

Three of these jurors, those identifying as Vietnamese, Mexican American, and East Indian, were seated and sworn to serve on the jury of twelve and two alternates. (8/16 AM) 131-34. No African-Americans were included in the jury; nor did the jury include anyone whose service would be a hardship if they were not paid during the trial. CP 5662.

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<sup>7</sup> When objecting to the lack of diversity in the venire, Plaintiffs’ counsel noted that “down past a certain point there is no meaningful way to get to them, even if they are persons of color.” RP (8/15 PM Rawlins) at 3. In this case, no juror past Juror No. 79 was called to the jury box. RP (8/16 AM Rawlins) 133-34.

**2. The Court Commented To The Jury That Allegations of Race Discrimination Are “Certainly Something That Is Very Much In The Forefront In The Media,” Saying “There Is A Lot Going On In The Country”**

During voir dire, before the court introduced the parties and their attorneys to the jury or gave the jury other information about the case for which it was empaneled, the Honorable Suzanne R. Parisien asked the venire if any jurors received a leaflet outside called “A Jury of Peers,” which two jurors acknowledged they had received--though one said he had not read it. RP (8/15 PM Rawlins) 23. The court then commented, in part:

You don’t have to read it. I am not telling you what you have to read. I want to discuss it real quickly. Some folks have been handing these out, newsletters, two-pages. It talks about the issues of mass incarceration and disproportionality affecting really our criminal justice system. But I wanted to point that out that this case does involve allegations of race discrimination. That is something -- that is certainly something that is very much in the forefront in the media right now. There is a lot going on in our country. To the extent that, again, this is a civil case. The issue is [sic] raised in this flyer may not be relevant at all to you, but in the event that it brings up things for you around these topics, feel free, the attorneys might explore it with you, they might not....

*Id.* at 23-24.

**3. The Court Declined to Reconsider Its Exclusion of Expert Testimony About Implicit Bias and Did Not Allow Plaintiffs To Read from the *Saintcalle* Opinion, While Defendant’s Counsel Repeatedly Remarked About “White Guilt”**

Defendant filed a motion in limine to exclude testimony by a prominent expert on implicit bias, Dr. Anthony Greenwald, which

Plaintiffs opposed. *See* CP 356 (Pls.’ Opp.); CP 317 (Greenwald’s Expert Report). In granting the motion, the court stated:

I’m familiar with Dr. Greenwald’s work. ... And I certainly find the results of the work, his studies that’s been done on implicit bias to be very compelling and worthwhile and troubling, the results. That said, I am not going to allow him to testify at trial.

I do understand, you know, and also appreciate [the] *State versus Saintcalle* opinion, last year -- or 2014, dealing with, you know, the issue of implicit bias, and how important it is for courts to deal with it, and I – it’s a priority of this court, but I don’t believe the way to do it is through expert testimony of this type in a discrimination case. I find that his opinions are grounded in methods and procedures of science; that is not my issue at all. The issue that the court has is that these are generalized opinions that are not tied to the specific facts of this case. And I believe that that would be confusing and misleading for the jury.

RP (8/5) 5-6.

During jury selection, after Plaintiffs objected to the lack of diversity in the venire, they asked the court to reconsider excluding Dr. Greenwald from testifying, arguing “it is right along Justice Wiggins’ statements” in *Saintcalle*. (8/15 PM Rawlins) 5. The court declined, stating, “I don’t believe that Dr. Greenwald’s opinions not play [sic] in this”. *Id.* As described in his report, Dr. Greenwald could have educated the jury about how implicit biases “indicat[e] ‘automatic preferences’ (e.g., for White relative to Black Americans).” CP 323.

Not long after that, Plaintiffs’ counsel attempted to read the same portion of the *Saintcalle* opinion that he had read to the Court to the

venire, at the start of voir dire. *Id.*, at 34-35. Defendant objected, leading to a sidebar and to the court sustaining Defendant's objection to Plaintiffs reading from the opinion without attributing the source. *Id.*, at 74-75.

The predominantly white jury was repeatedly asked by Defendant's counsel, a black woman, if they "feel guilty for being white." RP (8/15 PM Rawlins) 63, 105.<sup>8</sup> Turning the concept of implicit bias on its head counsel asked who would start the mostly African-American Plaintiffs "ahead at th[e] point of zero proof because of your concerns about implicit bias or guilt...?"

Such theme continued in opening statement, when counsel for SPU said that Plaintiffs "are trying to use their race and their age as an excuse," and began to quote Dr. Martin Luther King's "I have a dream" speech, drawing an objection that was sustained; followed by a remark about "Mr. Sheridan's efforts to make you feel guilty because you are not African-American." RP (8/16 PM) 25. Counsel went on to tell the jury in opening:

Plaintiffs are going to throw a lot of documents and other evidence at you during this trial. And in doing so they are going to try and make you feel guilty because you are not African-American.

*Id.*, at 50-51.

The attack was objected to and sustained, but Defendants did not

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<sup>8</sup> The Court should take judicial notice of the fact that SPU's counsel, Portia Moore, identifies as black; she lists many professional recognitions on her law firm's website, including her being "named one of the 'Most Influential Black Lawyers.'"



relent, telling the jury moments later, “Do not let the plaintiffs distract you or make you feel guilty.” *Id.* While an objection was again sustained, Defendant persisted with the attack, telling the jury “do not allow them to use their race or age as an excuse for not doing the right thing. There are plenty of legitimate cases of discrimination and retaliation in a workplace —” leading to Plaintiffs’ third sustained objection. *Id.*, at 51-52.

#### **IV. ARGUMENT**

##### **A. Standard of Review**

Challenges to the venire process, the decision to grant a particular challenge for cause, evidentiary rulings, and the refusal to give a requested instruction are all reviewed for abuse of discretion. *State v. Clark*, 167 Wn. App. 667, 674, 274 P.3d 1058 (2012); *State v. Demery*, 144 Wn.2d 753, 758, 30 P.3d 1278 (2001); *State v. Wilson*, 141 Wn. App. 597, 606, 171 P.3d 501 (2007); *Bulzomi v. Dep’t of Labor & Indus.*, 72 Wn. App. 522, 526, 864 P.2d 996 (1994). “A trial court abuses its discretion when its decision or order is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons.” *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 860, 281 P.3d 289 (2012). The denial of a motion for a new trial is also reviewed for abuse of discretion.<sup>9</sup> “The test for determining such an abuse of discretion is whether such a feeling

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<sup>9</sup> *Hickok-Knight v. Wal-Mart Stores, Inc.*, 170 Wn. App. 279, 324, 284 P.3d 749 (2012), *review denied*, 176 Wn.2d 1014 (2013).

of prejudice [has] been engendered or located in the minds of the jury as to prevent [the] litigant from having a fair trial.”<sup>10</sup> “The cumulative effect of many errors may sustain [Plaintiffs’] motion for a new trial even if, individually, any one of them might not.”<sup>11</sup>

**B. The Trial Court Erred In Failing To Reconstitute The Jury Pool to Achieve Greater Diversity In The Venire And On The Jury, Resulting In A Venire And A Jury That Was Substantially More Caucasian Than The County’s Population**

“Under the laws of Washington, the right to a jury trial includes the right to an unbiased and unprejudiced jury.” *State v. Davis*, 141 Wn.2d 798, 824–25, 10 P.3d 977 (2000). Justin Wiggins in *State v. Saintcalle*, 178 Wn.2d 34, 49, 309 P.3d 326 (2013) (lead opinion) writes “there is constitutional value in having diverse juries.... Article I, section 21 of our state constitution declares, ‘The right of trial by jury shall remain inviolate.’” *Id.*

“[T]he term ‘jury’ has been variously defined as ‘twelve good men and true,’ ‘neighbors and equals,’ ‘peers’ of the parties to the litigation.” *State v. McDowell*, 61 Wash. 398, 400–02, 112 P. 521 (1911). The U.S. Census Bureau reports for 2015 that 61.7% of the population of King County was “White alone, not Hispanic or Latino” and 6.8 % was “Black

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<sup>10</sup> *Collins v. Clark County Fire Dist. No. 5*, 155 Wn. App. 48, 81, 231 P.3d 1211 (2010), quoting *Aluminum Co. of Am. v. Aetna Cas. & Sur. Co.*, 140 Wn.2d 517, 537, 998 P.2d 856 (2000).

<sup>11</sup> *Storey v. Storey*, 21 Wn. App. 370, 374 (1978).

or African American alone.” CP 5965. Yet, the 38-person venire in this case was 79% Caucasian (with only 8 persons identified as “non-Caucasian”). *See* RP (8/15 PM Rawlins) at 22, 33-34.

“If we allow the systematic removal of minority jurors, we create a badge of inferiority, cheapening the value of the jury verdict.” *Saintcalle*, 178 Wn.2d at 50. “[F]undamental to our democracy is that all citizens have the opportunity to participate in the organs of government, including the jury.” *Id.* Moreover, “diverse juries [a]re significantly more able to assess reliability and credibility” with “studies confirm[ing] what seems obvious from reflection: more diverse juries result in fairer trials.” *Id.*; *and id.* at 101 (Gonzalez, J. concurring) (“inclusion and diversity is highly beneficial, advancing fairness and the appearance of fairness, and promoting more effective and reflective juries. ... ‘[T]hey can correct each other’s mistaken notions, broaden each other’s perspectives, and suggest different ways of looking at the evidence.’”). There are experiences unique to African Americans, which Caucasians and other minorities do not experience. For example, there is a phrase called driving while black.

Young African–American males frequently report being stopped and detained for reasons that are superficially pretextual. Even affluent people of color, who drive expensive or late-model cars, often report being stopped by law enforcement officers because of their race. This practice has become so prevalent that the actual justification for such detentions has become widely known as ‘Driving While Black (D.W.B.).’

*State v. Valentine*, 132 Wn.2d 1, 28, n.1 (1997) (Sanders, J., dissenting).

Caucasians and many other minorities have not experienced the driving while black phenomenon, which is one of those life experiences that affects how one connects the dots when given certain facts, and in evaluating this case, the jury lacked the diversity of life experiences needed to give this case fair consideration—they could not connect the dots based on their life experiences. It appears, given only three hours of deliberation for seven separate Plaintiffs, CP 646, the jury made presumptions favoring the Caucasian witnesses, even in the face of their mendacity, and against the Plaintiffs, which prevented them from being fair.

Justice Wiggins aptly writes, “[N]ow is the time to begin the task of formulating a new, functional method to prevent racial bias in jury selection” and “[w]e have a lot of flexibility to do so.” *Saintcalle*, 178 Wn.2d at 51-52. The trial court acknowledged “the problems that we have,” but incorrectly assessed, “I can’t do anything. I can’t empanel a new jury. I certainly can’t ask folks to do it just two days a week. I hear what you are saying.” RP (8/15 PM Rawlins) at 3-4. Thus, the court recognized there was a problem, but failed to take any action to remedy the issue for an untenable reason—claiming it lacked the ability to do anything differently.

“Trial courts have the inherent authority to control and manage their calendars, proceedings, and parties.” *State v. Gassman*, 175 Wn.2d 208, 211, 283 P.3d 1113 (2012). *See, e.g., State v. Perkins*, 2 Wn. App. 910, 919, 471 P.2d 131 (1970) (stating “court could have ... excused the remaining members of the jury panel who were present in the courtroom when the incident occurred and obtained a new panel of jurors from the presiding judge’s department”); *State v. Bird*, 136 Wn. App. 127, 134, 148 P.3d 1058 (2006) (“The objection was timely made and allowed the trial court to correct its error by seating a new venire for jury selection”). Thus, in response to Plaintiffs’ objection about the lack of diversity in the venire, the court abused its discretion when it recognized there was a problem yet failed to take any action to remedy the problem.

**C. The Court Erred In Excluding All Persons Who Would Not Be Paid During Jury Duty Rather Than Alter the Trial Schedule**

RCW 2.36.080(3) provides, “A citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin, or economic status.” The jury is to be drawn at random “from fair cross section of the population of the area served by the court.” RCW 2.36.080(1). Over Plaintiffs’ objection, the jury was not representative of the population, lacking persons whose service would be a hardship because they would not be paid during the trial. *See* CP 5662; CP 5695.

Justice Wiggins' lead opinion in *Saintcalle* relies heavily on the report of Equal Justice Initiative, "Illegal Racial Discrimination in Jury Selection: A Continuing Legacy" (August 2010), available at <http://eji.org/sites/default/files/illegal-racial-discrimination-in-jury-selection.pdf>. See *Saintcalle*, 178 Wn.2d at 45, 50, 53, n.7; see also *id.*, (Gonzalez, J., concurring) at 89, 92-93, 106. One of the twelve recommendations made in the Equal Justice Initiative report is for the courts to "provide support and assistance to ensure that low-income residents ... and others who are frequently excluded from jury service because of their economic, employment, or family status have an opportunity to serve." Equal Justice Initiative Report, at 8, 49 ("Exclusion of individuals in this category has a heightened adverse impact on communities of color, whose members disproportionately are low-income wage earners. ... Eliminating economic barriers to jury service is absolutely critical to ensure that juries are representative and fair."); see also *Thiel v. S. Pac. Co.*, 328 U.S. 217, 223, 66 S. Ct. 984, 90 L. Ed. 1181 (1946) (holding that low-wage workers "cannot be . . . systemically excluded in whole or in part without doing violence to the democratic nature of the jury system").

Again, the trial court recognized "the problems that we have," yet took no action to remedy the issue, rejecting the alternative trial schedule

Plaintiffs proposed to mitigate the financial hardship to low-wage workers. *See* RP (8/15 PM Rawlins) at 3-4. As a result, Plaintiffs were denied a jury drawn from a fair cross section of the citizenry, as jurors were excluded owing to their economic status in violation of RCW 2.36.080(3).

**D. The Error In The Court's Exclusion of Dr. Greenwald's Testimony Regarding Implicit Bias On The Liability Issue Was Magnified By Its Failure To Take Any Action To Remedy The Lack of Diversity In The Venire**

Under the WLAD, it is recognized that discrimination cases are difficult to prove. *See Hill v. BCTI Income Fund-I*, 144 Wn.2d 172, 179, 23 P.3d 440 (2001) (direct, smoking gun evidence of discriminatory animus is rare, since “[t]here will seldom be ‘eyewitness’ testimony as to the employer’s mental processes, and employers infrequently announce their bad motives orally or in writing”). Moreover, it is recognized that the WLAD must be liberally construed to achieve its objective of eradicating discrimination. RCW 49.60.020; *see Martini v. Boeing Co.*, 137 Wn.2d 357, 364, 971 P.2d 45 (1999) (WLAD mandates liberal construction, and embodies a public policy of the ‘highest priority’).

Plaintiffs sought the testimony of Greenwald, a prominent expert in the area of implied bias. To ensure the admissibility of his testimony, Plaintiffs modeled his potential testimony in accordance with federal case law, which approved his testimony. *See Samaha v. Washington State Dep't*

*of Transp.*, No. CV-10-175-RMP, 2012 WL 11091843, at \*1 (E.D. Wash. Jan. 3, 2012)s; *and compare with* CP 317-335.

The jury contained no African Americans, excluded lower income working people, and excluded other potential jurors whose life experiences may have been more diverse than the life experiences of other jurors. Beyond understanding how Plaintiffs' race played a substantial factor in SPU's actions, the need for the jury to understand implicit bias in order to make a careful and fair decision, putting aside unconscious assumptions that disfavor African-Americans like the Plaintiffs, was even more important in this setting than in other cases. Defendant's repeated comments that Plaintiffs were trying only "to make you feel guilty because you are not African-American," RP (8/16 PM) 25, did not aid the effort at minimizing the jury's unconscious automatic assumptions, nor lessen the need for education on implicit bias. Since no other action was taken to address the problems with the jury's composition, refusing to give instructions to address the implicit bias against which the Plaintiffs were up against, Dr. Greenwald's testimony became even more crucial to a fair trial, yet was excluded. The court again erred, prejudicing the Plaintiffs and warranting a new trial.



**E. The Trial Court Improperly Commented On Matters of Fact**

The Washington State Constitution provides, “Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.” Const. art. IV, § 16; *see also State v. Becker*, 132 Wn.2d 54, 64, 935 P.2d 1321 (1997) (stating Section 16 “prohibits a judge from conveying to the jury his or her personal attitudes toward the merits of the case”); *State v. Painter*, 27 Wn. App. 708, 713–14, 620 P.2d 1001 (1980) (stating that the Constitution “prohibits a comment on the evidence if it conveys or indicates to the jury a personal opinion or view of the trial judge regarding the credibility, weight, or sufficiency of some evidence introduced at trial”). “The determination of a prohibited comment depends upon the facts and circumstances of each case.” *Painter*, 27 Wn. App. at 713–14.

The court commented to the venire that “this case does involve allegations of race discrimination. That is something -- that is certainly something that is very much in the forefront in the media right now. There is a lot going on in our country. To the extent that, again, this is a *civil* case[,] [t]he issue[s] ... raised in this flyer may not be relevant at all to you,” implying that issues of systemic racism that manifest in the criminal justice system or which are “in the forefront of the media right now,” were not relevant to the jury’s consideration of Plaintiffs’ civil rights case.

The purpose of prohibiting judicial comments on the evidence is to prevent the trial judge's opinion from influencing the jury. ... The constitution has made the jury the sole judge of the weight of the testimony and of the credibility of the witnesses, and it is a fact well and universally known by courts and practitioners that the ordinary juror is always anxious to obtain the opinion of the court on matters which are submitted to his discretion, and that such opinion, if known to the juror, has a great influence upon the final determination of the issues.

*State v. Lane*, 125 Wn.2d 825, 838, 889 P.2d 929 (1995) (internal quotations and citations omitted).

Even if the evidence commented upon is undisputed, or 'overwhelming,' a comment by the trial court, in violation of the constitutional injunction, is reversible error unless it is apparent that the remark could not have influenced the jury.

*State v. Lampshire*, 74 Wn.2d 888, 892, 447 P.2d 727 (1968); *State v. Walters*, 7 Wash. 246, 250, 34 P. 938 (1893) ("It is not the quantum of any particular comment, but all comment whatever, that is inhibited by the constitution.... All remarks and observations as to the facts before the jury are positively prohibited, and if any such are made the judgment will be reversed, unless the appellate court can see that the accused was no wise prejudiced thereby.")

The Court's comments were improper, violative of the Constitution, and presumptively prejudicial to Plaintiffs, as they implicitly conveyed to the jury the personal opinion of the judge regarding the lack of any relationship between Plaintiffs' civil rights claims and the issues of

systemic and institutional racism that result in disproportionate sentences for African American criminal defendants. Plaintiffs' claims include allegations that, similar to black criminal defendants, Plaintiffs received disproportionate discipline (suspensions and terminations).

The presumption of guilt and dangerousness assigned to African Americans has made minority communities particularly vulnerable to the unfair administration of criminal justice. Numerous studies have demonstrated that white subjects have strong unconscious associations between blackness and criminality. Implicit biases have been shown to affect policing... and all aspects of the criminal justice system—leading to higher rates of childhood suspension, expulsion, and arrest at school; disproportionate contact with the juvenile justice system; harsher charging decisions and disadvantaged plea negotiations; a greater likelihood of being denied bail and diversion; [and] an increased risk of wrongful convictions and unfair sentences....

CP 5649 (quoting Equal Justice Initiative, *Presumption of Guilt*, available at <http://eji.org/racial-justice/presumption-guilt>).

Dr. Greenwald's report describes how "employers purport to evaluate employees according to facially neutral criteria and often strive to apply those criteria in an evenhanded way," but "if they have knowledge of the race... their judgments could possibly be affected by cognitive biases that are triggered by that knowledge ... oblivious to the way in which the application of neutral performance criteria... is skewed by [their] unconscious stereotypes... affecting decisions whether to ... discipline, ... allocate rewards and benefits, or terminate the relationship

altogether. The potential for these types of cognitive mechanisms to play a role would be greatest when assessments have an important subjective component—and especially where employers are making complex, multifactorial, discretionary judgments about ongoing workplace performance.” CP 328. Greenwald’s testimony would have helped answer the question, “Why were these black employees targeted and treated so harshly?”

In deciding discipline, Director Hoffman used multi-factored subjective assessments, *see, e.g.*, RP (8/18 AM Rawlins) 308 (considering, for example, “contributions to the Department” and if the employee is “contrite”) resulting in leniency in sentencing white women like Debra Warren, in spite of the recommendation Hoffman received for Warren to be fired; while Hoffman did not use his discretion to give similar leniency to non-Caucasians like Plaintiffs Johnson and Williamson, who he terminated. *See* Ex. 497; RP (8/17 PM Rawlins) 213, 220, 281.

Thus, the court’s comments about Plaintiffs’ allegations of “race discrimination, ... something that is very much in the forefront in the media right now,” and concerning the flyer on mass incarceration and disproportionality, which court said “may not be relevant at all” “to the extent that again, this is a civil case,” improperly touched on matters of

fact in violation of Art. IV, § 16. For this additional reason, the judgment should be reversed.

**F. Potential Jurors 11, 8, And 53 Were Excused Based Upon The Wrong Legal Standard**

The court granted three challenges for cause of jurors who made statements supportive of the Plaintiffs, but agreed that they would follow the court's instructions. In determining a challenge for cause, "[a] juror is not disqualified because he holds certain preconceived ideas, provided he can put these notions aside and decide the case on the basis of the evidence given at the trial and the law as given him by the court." *State v. White*, 60 Wn.2d 551, 569, 374 P.2d 942 (1962), *cert. denied* 375 U.S. 883, 84 S.Ct. 154, 11 L.Ed.2d 113 (1963); *accord State v. Noltie*, 116 Wn.2d 831, 839, 809 P.2d 190 (1991) ("equivocal answers alone do not require a juror to be removed when challenged for cause, rather, the question is whether a juror with preconceived ideas can set them aside").

RCW 4.44.190 addresses challenges for actual bias and it provides, in relevant part: "[O]n the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he or she may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the

issue impartially.” *Id.*

Juror No. 11 showed a willingness to be fair and to deliberate. See RP (8/16 AM Rawlins) 125-26. Yet, the court excluded Juror No. 11 simply because defense counsel obtained an affirmative answer to the question, “If you were in my spot, representing SPU, would you have concerns about having yourself on a jury?” *Id.* at 126. The same process and standard was followed for Juror No. 8, even though Plaintiffs’ counsel objected to the improper question. *Id.* at 44-46. That juror expressed that she had life experiences that may have expanded the diverse views required to make for a fair trial:

A JUROR: You know, I have been 40 years steeped in the racial politics and have a very strong feeling about the non-white struggle in this country. It is really hard to put aside so many close friends, so many stories that resonate in my life to put that aside to be absolutely unbiased --

*Id.* at 46. The trial court and defense counsel followed the same process to exclude Juror No. 53 who admitted that the defense may not want him on the case, but also stated, “I think that both sides equally need to prove their case.” *Id.* at 48-51.

The legal standard for challenging a potential juror for cause is not “would you want you on the jury if you were me?” That is not the law, and given the jury composition, which was already compromised, the exclusion of these potential jurors was prejudicial, because the life

experiences of these jurors may have added to the jury's understanding of discrimination, and aided them in connecting the dots.

**G. The Trial Court Erred In Refusing To Give Plaintiffs' Proposed Jury Instructions No. 3, 4, and 13**

Jury instructions are sufficient when they allow parties to argue their theory of the case, are not misleading, and, when taken as a whole, inform the jury of the applicable law. *Farah v. Hertz Transporting, Inc.*, 196 Wn. App. 171, 177, 383 P.3d 552 (2016) .

**1. The Implicit Bias Instructions Were Necessary**

Our Supreme Court recognizes the pervasiveness of implicit bias. *See Saintcalle*, 178 Wn.2d at 46 (“[W]e all live our lives with stereotypes that are ingrained and often unconscious, implicit biases that endure despite our best efforts to eliminate them.”), *quoted by In re Marriage of Black*, \_\_\_ Wn.2d \_\_\_, 392 P.3d 1041, 1052 (2017). “The general findings, confirmed by hundreds of articles in peer-reviewed scientific journals are that ‘[i]mplicit biases—by which we mean implicit attitudes and stereotypes—are both pervasive (most individuals show evidence of some biases), and large in magnitude, statistically speaking. In other words, we are not, on average or generally, cognitively colorblind.’ ” *Saintcalle*, 178 Wn.2d at 46 (citations omitted). “To put it simply, good people often

discriminate, and they often discriminate without being aware of it.” *Id.*, at 48.

Plaintiffs proposed two jury instructions, No. 3 and 4, each of which would have informed the jury about the social science establishing “that all of us may be affected by implicit biases” and instructed the jury “to test what might be reflexive unconscious responses” and to “critically evaluate the evidence and resist any urge to reach a verdict influenced by stereotypes, generalizations, or implicit biases.” *See* instructions attached at Appendix 1-3. The court refused to give both of the instructions on implied bias, just as it excluded the expert testimony by Dr. Greenwald, which would have similarly educated the jury about implied bias. *See id.*; RP (9/12) 14-15; CP 709 (Instruction No. 3); CP 711 (Instruction No. 4); RP (8/15 PM Rawlins) 5. The court’s failure to instruct the jury on implied bias meant the jury was left uninformed of the Supreme Court’s recognition and concern with implicit bias, as laid out in *Saintcalle*, prejudicing Plaintiffs who are each targets of such unconscious biases.

## **2. The Pretext Instruction Was Necessary**

The pretext instruction Plaintiffs proposed “is an accurate statement of the law.” *Compare* Appendix 4 (CP 720) *with Farah*, 196 Wn. App. at 177. While the Court in *Farah* held that such instruction “would have been appropriate but was not necessary,” here the instruction



was necessary. Given the lack of diversity of the panel, the exclusion of implied bias evidence and jury instructions, and the errors that followed, failure to give the instruction was error. This case was filled with evidence showing that the basis for SPU's actions and its managers were not credible, but without a means to connect the dots, the long list of lies proves nothing more than City's managers are liars. The pretext instruction would have helped the jury connect the dots to a discriminatory motive. In contrast, "[w]here ... a jury is not informed that they are allowed to make an inference [of discrimination based on evidence of pretext], they will not make it." T. Devine, Jr., "The Critical Effect of a Pretext Jury Instruction," 80 Den.U.L.Rev. 549 (2003). "It does not denigrate the intelligence of our jurors to suggest that they need some instruction in the permissibility of drawing that inference." *Ratliff v. City of Gainesville*, 256 F.3d 355, 361 n.7 (5th Cir. 2001).

Plaintiffs were prejudiced by the court's refusal to give Plaintiffs' proposed Instruction No. 13 at Appendix 4.

**H. The Trial Court Failed to Properly Apply ER 1006 to Defendant's Exhibits 497, 498, 499, 501, and 502**

At trial, Defendant offered a number of charts purporting to be summaries of voluminous writings under ER 1006. *See* Exhibits 497, 498, 499, 501, and 502, attached at Appendix 5-18. Plaintiff filed detailed

objections to the alleged summaries, which the court overruled without explanation. *See* CP 936-44; CP 901-08; RP (9/1 AM Rawlins) 909, 911 (“I am confident that they are proper under 1006”; “it satisfies [ER] 1006, it is going to be admitted”). Where the ruling is based on untenable grounds, or “the trial court based its evidentiary ruling on an incomplete legal analysis or a misapprehension of legal issues, the ruling may be an abuse of discretion.”<sup>12</sup> The trial court here so erred. ER 1006 provides:

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

*Id.*

“The burden is on the proponent to give the notice required by the rule; the opposing party does not waive the objection by failing to ask for the original materials during discovery.” Karl B. Tegland, 5C Wash. Prac., Evidence Law and Practice § 1006.4 (5th ed.), *citing Square Liner 360, Inc. v. Chisum*, 691 F.2d 362 (8th Cir.1982). “Summaries of documentary evidence are admissible into evidence if the source documents are themselves admissible and if the jury’s convenience would be served.” *State v. Marshall*, 25 Wn. App. 240, 243 (1980). “A summary of

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<sup>12</sup> *State v. McComas*, 186 Wn. App. 307, 312, 345 P.3d 36 (2015).

inadmissible hearsay evidence is as inadmissible over objection as is the underlying inadmissible hearsay data it summarizes.” *Pollock v. Pollock*, 7 Wn. App. 394, 405, 499 P.2d 231, 238 (1972). “Assuming the originals would be admissible and not objectionable as hearsay or under some other rule, the summary is not objectionable as hearsay.” Karl B. Tegland, 5C Wash. Prac., Evidence Law and Practice § 1006.6 (5th ed.).

Although the plain language of ER 1006 restricts its application to summaries of “voluminous writings, recordings, or photographs,” SPU failed to present documentation supporting facts allegedly summarized in each of its ER 1006 exhibits. As one example, for Arece Hampton, the summary in Ex. 501 states “1. No trans on own acct; 2. Reviewed trans related to shut off.” [sic]. See Appendix 11. Yet, in the “backup documents” for the summary that Defendant provided, there were only three pages of underlying data regarding Arece Hampton and they only contained only information on his name, gender, EEO category, age, dates of employment, job title and work department. CP 906, ¶ 15.

Ex. 498 was a one-person chart—not voluminous in any formulation. See Appendix 7. The document lists 1 person, Michael Mannery, who the document purports is the only “SPU Employee[] Who Received a Written Reprimand for Making Improper Transactions to Utility Accounts.” *Id.* The alleged summary states under “Activity on

Account”: “1. No trans on own acct; 2. Adj, svc orders, and notes on dad's acct; 3. 4 svc orders on brother's acct (also SPU emp).”). Ex. 498, Appendix 7. As to the second paragraph, the small investigative file for Mannery that was produced disclosed that he made 7 service orders on his father’s account; a fact left undisclosed in the summary. CP 904-905, ¶ 10. The so-called summary also failed to disclose the investigative finding that “One transaction also violated SPU Policy CS-106 soon after that policy’s wide dissemination and discussion,” which allegedly was an aggravating factor according to SPU management. *Id.* Exhibit 498 should not have been admitted unless “the summary is accurate.” 5C Wash. Prac., Evidence Law and Practice § 1006.3 (5th ed.), *citing Needham v. White Laboratories, Inc.*, 639 F.2d 394 (7th Cir.1981) and *U.S. v. Scales*, 594 F.2d 558 (6th Cir. 1979). The material omissions to the summary made it misleading and inaccurate. Moreover, the seven pages of investigative records regarding Mannery that Exhibit 498 purports to summarize were not “voluminous.” See CP 904, ¶ 10. For that additional reason, admission of the document was improper under ER 1006.

Ex. 497, Appendix 5-6, was similarly objectionable as it was misleading in its alleged summary of the discipline imposed on various employees. The document states, for example, that Tanisha Wagner, was “Suspended 30 days,” when in fact documentation of her discipline stated

that she was given a “thirty (30) day suspension, in lieu of termination, on the condition that she enter into a last chance agreement.” CP 902, ¶ 3. Not all employees had such conditions imposed as part of their discipline, yet the chart failed to capture the distinction. *See id.*, ¶¶ 4-8. As described, the Court failed to properly apply ER 1006, abusing its discretion.

**I. The Trial Court Abused Its Discretion In Permitting the Testimony of a Late-Disclosed “Expert” On Call Centers Without Requiring Defendant to Comply With the Local Rule In Terms of Opinion Disclosure Or To Permit Plaintiff To Obtain Related Documents and To Depose the Expert**

“The purpose of discovery is to provide a mechanism for making relevant information available to the litigants. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation.”

*Washington State Physicians Ins. Exch. & Ass’n v. Fisons Corp.*, 122

Wn.2d 299, 341, 858 P.2d 1054 (1993). The discovery rules “make a trial less a game of blindman’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.” *Id.*, at 342.

Under CR 26(b)(5), a party is entitled to ‘[d]iscovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial.’ Exclusion of the expert's testimony is an appropriate sanction for failure to timely disclose such information. *See e.g., Stevens v. Gordon*, 118 Wn. App. 43, 49, 74 P.3d 653 (2003); *Detwiler v. Gall, Landau & Young Const. Co.*, 42 Wn. App. 567, 572–73, 712 P.2d 316 (1986).

*Wuth ex rel. Kessler v. Lab. Corp. of Am.*, 189 Wn. App. 660, 696, n.11,

359 P.3d 841 (2015), *review denied sub nom. Wuth v. Lab. Corp. of Am.*, 185 Wn.2d 1007, 366 P.3d 1244 (2016).

Under King County Local Court Rule 26(k), the deadline for disclosing expert witnesses and to provide “[a] summary of the expert’s opinions and the basis therefore and a brief description of the expert’s qualifications,” was February 3, 2016 for “primary witnesses” and March 21, 2016 for “additional witnesses.” CP 1; KCLCR 26(k)(3)(C).

On May 23, 2016, the discovery cutoff date, *id.*, Defendant served a “second amended” primary witness disclosure, listing as Witness No. 84, “Expert from COPC, Inc. ... Winter Park, Florida,” stating, “An individual from COPC, Inc. will provide expert testimony regarding call center standards and expectations.” CP 5824. No information was provided about the individual, their qualifications, opinions, or the basis for their opinions. *Id.* Nor did Defendant provide any expert report or supplement its answers to Plaintiffs’ discovery requests, which asked Defendant to “produce any resumes and qualifications of any and all experts who will testify at trial, and summarize each opinion”; “produce all reports prepared by any and all expert witnesses you expect to call to testify at the trial of this action;” and to “produce all documents which any expert ... has consulted or reviewed as a result or in preparation of this litigation.” CP 5662, ¶ 6; CP 5678-79 (discovery requests); and RP (9/6

PM Rawlins) 1050, 1052 (testifying to receiving “metrics ... from SPU” along with many other documents).

At trial, Plaintiffs objected to Defendant presenting testimony by the expert in the absence of Plaintiffs receiving a proper expert disclosure, telling the Court:

We were told on Friday [September 2] that an expert by the name of Kathleen Jezierski is testifying today [September 6] on the general subject matter of running a Call Center I suppose. We want to object to her testimony. That it’s in violation of the King County Local Rule.... [I]t’s an expert witness that should have been disclosed back in February or at least disclosed in March, but wasn’t disclosed to the last day before the cutoff. And in terms of the disclosure it’s supposed to contain under the rule a summary of the expert’s opinion and a basis -- and the basis therefore, and a brief description of the qualifications. So there was no such summary. There was no such explanation. And so this was a clear violation of the Local Rule.... So then under the Civil Rule we had also submitted RFP’s, which are also attached here, way back in 2015. And under the Civil Rule 26(e) they were supposed to have provided us a supplement. So, which they did not.

... So I proposed to the defense that they provide me with all the documents they should have provided me with, and that I be permitted to depose the witness tonight before she can testify tomorrow, and then bring anything to the Court’s attention. But I think there’s a definite violation of the rules, and even though she was disclosed there is no way to know if she is actually going to be called until they list her because we have all listed many more witnesses than we are calling. ...

RP (9/6 AM) 7-9.

The court, in response, ignored counsel’s statement that no disclosure was made until the discovery cutoff date, and that he was not

told until “Friday [September 2] that an expert by the name of Kathleen Jezierski” would be testifying, finding in relevant part:

I don’t see any violation. ... It’s been more than three months that you have known that she may testify, and certainly you could have deposed her at any time, I’m sure. ... I certainly don’t see any rule violation, local or state. ... [T]here is no reports to give you that you haven’t been given, and they told you what she would testify to with Call Center standards. ... It says here on 84, an individual from COPD will provide expert testimony regarding Call Center standards and Expectations. That’s pretty specific.

RP (9/6 AM) 11-12.

The court’s findings that there was no violation of the rules and that the disclosure given was “pretty specific” is not well grounded and is an abuse of discretion. The “appellate court may independently review the evidence to determine whether a violation of the certification rule occurred.” *Fisons*, 122 Wn.2d at 346. Plaintiffs countered, “the rules require more,” “that the burden is not on us,” and that “the rule requires that she actually tell us her opinions. My guess is she is going to give four or five points that we haven’t heard.” RP (9/6 AM) 11-12. The court replied, “Right. And you could have deposed her, if you wanted to,” failing to acknowledge Plaintiffs’ request to depose her the evening before she testifies. *Id.*

In *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 220 P.3d 191 (2009), the Court wrote, in relevant part, “[t]he discovery requested should



have been given to Magaña in a timely manner. Magaña need not have continually requested more discovery and updates on existing requests. Additionally, Magaña should not have needed to file a motion for an order to compel Hyundai to produce the documents Hyundai was required to produce by the discovery requests themselves....” *Id.*, at 588; *see also Fisons*, 122 Wn.2d at 342, 345-46 (holding that CR 26(g) creates an “affirmative duty” to comply with the spirit and purpose of the discovery rules, that “[c]onduct is to be measured against the spirit and purpose of the rules,” and that if the rules are violated “sanctions are mandated”).

With Defendant having violated the discovery rules, the court abused its discretion in failing to award sanctions necessary to “insure that the wrongdoer does not profit from the wrong,” at a minimum, a proper disclosure of the expert’s qualifications, opinions and an opportunity to depose her before she testified at trial. *See id.*, at 356. Instead, Plaintiffs had to cross-examine the expert “cold.”

“Evidentiary rules provide significant protection against unreliable, untested, or junk science.” *Anderson v. Akzo Nobel Coatings, Inc.*, 172 Wn.2d 593, 606, 260 P.3d 857 (2011). Jezierski’s testimony should have been excluded. She had never testified as an expert witness before, she drew her opinions from her own company’s database, and her opinions were either novel scientific opinions or junk science. *See* RP (9/6 PM

Rawlins) 1048-50. They were inadmissible under ER 701 and *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923); not relevant and prejudicial under ER 402 and 403. In any event, Plaintiffs were prejudiced by her testimony, and by the court's unwillingness to provide any remedy for the late disclosure. *See Jones v. City of Seattle*, 179 Wn.2d 322, 345, 314 P.3d 380 (2013) (*Burnet* requires that a trial court consider lesser sanctions that compensate the opposing party for the effects of the discovery failings).

**J. Based On The Cumulative Effect of the Court's Errors, The Motion For New Trial Should Have Been Granted**

The cumulative effects of the trial court's errors outlined in this brief supported the motion for new trial, which should have been granted.

**V. ATTORNEY FEES AND COSTS**

Assuming Plaintiffs prevail, they request they be awarded attorney fees for this appeal under RCW 49.60.030(2), and that costs of the appeal be awarded in accordance with the Rules of Appellate Procedure. *See, e.g., Martini v. Boeing Co.*, 88 Wn. App. 442, 470, 945 P.2d 248 (1997).

**VI. CONCLUSION**

For all of the foregoing reasons, the judgment should be reversed and the case remanded for a new trial.

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Respectfully submitted this 19th day of May, 2017.

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## DECLARATION OF SERVICE

Mark Rose states and declares as follows:

1. On May 19, 2017, I caused to be delivered a copy of the Brief of Appellants to be delivered via the Court's electronic delivery service to:

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\_\_\_\_\_  
s/Mark Rose  
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# APPENDIX

INSTRUCTION NO. \_\_\_\_

(PROPOSED) INSTRUCTION NO. 3

Our system of justice depends on the willingness and ability of judges like me and jurors like you to make careful and fair decisions. To reach a fair decision, it's important to put aside our automatic assumptions, called stereotypes or biases. Sometimes to do this, we all have to look at our thinking to be sure we are not unknowingly reacting to stereotypes or jumping to conclusions. Social scientists and neuroscientists studying the way our brains work have shown that, for all of us, our judgments are influenced by our backgrounds, experience, and stereotypes we've learned. Our first responses are like reflexes, and just like our knee reflexes, they are quick and automatic. Often, without our conscious awareness, these quick responses may mean that hidden biases influence how we judge people and even how we remember evidence or make judgments.

It is not enough to tell ourselves or the lawyers and judge during jury selection that we are open-minded. To reach a decision in this case it's important to be more reflective.

Social science research has taught us some ways to be more careful in our thinking about individuals and evidence:

- ▶ Take all the time you need to test what might be reflexive unconscious responses and to think carefully and consciously about the evidence.
- ▶ Focus on individual facts, don't jump to conclusions, which may often be biased by stereotypes.
- ▶ Try putting yourself in the other person's place.

1       ► Ask yourself whether your opinion of the parties or witnesses or of the case would  
2       be different if the people presenting looked different, if they belonged to a different  
3       group?

4       You must each decide this case individually, but you should do so only after listening  
5       to and considering the opinions of the other jurors, who may have different backgrounds.  
6       Working together, a fair result can be achieved.  
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22       Draft of “Achieving Impartial Jury” Instruction, Criminal Justice Section of the American Bar  
23       Association, Panel Presentation, American Bar Association Annual Meeting, San Francisco,  
24       August 9, 2013, retrieved from  
25       [http://www.americanbar.org/content/dam/aba/events/criminal\\_justice/annual2013/Implicit\\_Bias\\_aijpanel.doc](http://www.americanbar.org/content/dam/aba/events/criminal_justice/annual2013/Implicit_Bias_aijpanel.doc) , August 23, 2013

*And see State v. Saintcalle*, 178 Wn.2d 34 (2013)

1 **INSTRUCTION NO.**

2 **(PROPOSED) INSTRUCTION NO. 4**

3 As we discussed in jury selection, growing scientific research indicates each one of us  
4 has “implicit biases,” or hidden feelings, perceptions, fears and stereotypes in our  
5 subconscious. These hidden thoughts often impact how we remember what we see and hear,  
6 and how we make important decisions. While it is difficult to control one’s subconscious  
7 thoughts, being aware of these hidden biases can help counteract them. As a result, I ask you  
8 to recognize that all of us may be affected by implicit biases in the decisions that we make.  
9 Because you are making very important decisions in this case, I strongly encourage you to  
10 critically evaluate the evidence and resist any urge to reach a verdict influenced by stereotypes,  
11 generalizations, or implicit biases.  
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24 Judge Mark W. Bennett, Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The  
25 Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed  
Solutions, 4 Harv. L. & Pol’y Rev. 149-169, 169, FN 85 (2010)



INSTRUCTION NO. \_\_\_\_

(PROPOSED) INSTRUCTION NO. 13

You may find that a plaintiff's age and/or race was a substantial factor in the defendant's decision to suspend, terminate, place on administrative leave, or threaten that plaintiff with suspension or termination if it has been proved that the defendants' stated reasons for either of the decisions are not the real reasons, but are a pretext to hide age and/or race discrimination.

8th Circuit's Model Jury Instruction 5.20.

[http://juryinstructions.ca8.uscourts.gov/civil\\_instructions.htm](http://juryinstructions.ca8.uscourts.gov/civil_instructions.htm); Townsend v. Lumbermens Mut. Cas. Co., 294 F.3d 1232, 1241 (10th Cir. 2002) ("hold[ing] that in cases such as this, a trial court must instruct jurors that if they disbelieve an employer's proffered explanation they may—but need not—infer that the employer's true motive was discriminatory"; and that the refusal to give an instruction identical to the 8th Circuit Court of Appeals' Model Instruction was not harmless error); *discussing with approval* Smith v. Borough of Wilkinsburg, 147 F.3d 272, 280 (3rd Cir. 1998) ("It is difficult to understand what end is served by reversing the grant of summary judgment for the employer on the ground that the jury is entitled to infer discrimination from pretext ... if the jurors are never informed that they may do so.") *and* Cabrera v. Jakobovitz, 24 F.3d 372, 382 (2nd Cir.), *cert. denied*, 513 U.S. 876, 115 S.Ct. 205, 130 L.Ed.2d 135 (1994). The Supreme Court of Iowa has likewise held that "[i]f a plaintiff ... presents evidence of pretext, failure to provide a pretext instruction will result in prejudice." Deboom v. Raining Rose, Inc., 772 N.W.2d 1, 11 (Iowa 2009).

SPU CCSS Investigation (2001-2013)  
ER 1006 Summary No. 2: **SUSPENSIONS**

**SPU Employees SUSPENDED for Making Improper Financial Adjustments to Utility Accounts**

	Name	Gender	EEO Cat. / Race	Age on 2/1/11	Date Employ Started	Date Employ Ceased	Job Title on/about 2/1/11	Dept	Discipline Rec	Discipline Imposed	Date Discipline Imposed	Activity on Account
1	Bird, Eric Anthony	Male	Black/African American	38	10/15/2008	1/9/2014	Manager2, Utils	WS360	Demotion	Suspended 20 Days	10/24/12	1. 1 trans on sister's acct; 2. Requested trans on own and family acct; (girlfriend) from another EE.
2	Coffin, Jennifer Rebecca	Female	White	42	8/19/2002	1/31/2012	Util Act Rep I	WS340	Suspension 30 Days	Suspended 30 Days	12/01/11	pyars and notes on own acct.
3	Davis-Raines, Carmelia	Female	Black/African American	51	6/27/1988	N/A	Util Act Rep II	WS340	Suspension 3 Days	Suspended 1 Day	10/17/13	1. 80 pyars (67 failed); 2. Trans on own acct (svc orders, ucbcust, uchrst, ucraddr).
4	Dorsey, Judith C	Female	Two or More Races (Black)	58	6/8/2001	N/A	Util Act Rep II	WS340	Suspension 30 Days	Suspended 15 Days	07/25/13	1. 1 late fee adj, notes, and svc orders; 2. pyar and misc on daughter's acct; 3. Trans on DP acct; 4. DP benefit ineligibility.
5	Flores, Teresa Christine	Female	American Indian/ Alaska Native	55	5/23/1994	N/A	Admin Spec I-BU	WS340	Suspension 1 Day	Suspended 1 Day	07/25/13	1. MISD to sister's acct; 2. UDP at EE address doesn't match application.
6	Haythorne, June A	Female	Black/African American	58	8/1/2001	N/A	Util Act Rep II	WS340	Termination	Suspended 21 Days	12/10/13	1. Sister works for CAMP as CSR in energy assist; 2. Many PYARs & misc trans on own and family
7	Holmes, Mark	Male	Black/African American	51	6/2/1992	N/A	Act Exec	WS360	Suspension 10 day	Suspended 10 Days	01/27/14	1. \$241.00 adj to correct an error though no note; 2. 2 svc ords; 3. Many PYARs & adj by others for EE; 4. Req trans by EE in 2013.
8	Jones, Lynda R	Female	Black/African American	45	8/19/2002	N/A	Util Act Rep I	WS340	Suspension 3 Days	Suspended 1 Day	07/25/13	1. MISD on daughter's acct; 2. Misc entries on son's and daughter's accts.
9	Lea, Mark William	Male	Asian	40	4/23/2001	N/A	Util Act Rep I	WS340	Suspension 3 Days	Suspended 1 Day	08/15/13	1. 1 late fee adj; 2. 3 svc orders, 1 svc on own acct; 3. 2 notes on mother's acct, one is a credit.
10	Mack, Terrance D	Male	Black/African American	49	8/19/2002	4/24/2014	Util Act Rep I	WS340	Termination	Suspended 30 Days	07/30/13	1. 1 adj own acct (xtra G); 2. 4 svc orders; ucbcust etc.; and name change to initials TDM; 3. 4 svc orders, etc to T Flores when living with; 4. 1 svc, 1 CoAp, 2 ucbcust on son's acct.
11	Mason, Maryam P	Female	Black/African American	36	10/6/2004	N/A	Mgmt Sys Analyst	WS320	Suspension 20 Days	Suspended 5 Days	10/30/13	1. 2 pyars on brother's acct; 2. Svc orders own/related accts 3. Some activity done for testing purposes (\$137).
12	Monroe, Kimberly L	Female	Black/African American	50	5/27/1998	N/A	Util Act Rep II	WS340	Termination	Suspended 30 Days	07/10/13	1. 3 late fee adj; 2. 4 pyars own acct in brother's name; 3. 1 pyar for sister.

SPU CCSS Investigation (2001-2013)  
ER 1006 Summary No. 2: **SUSPENSIONS**

**SPU Employees SUSPENDED for Making Improper Financial Adjustments to Utility Accounts**

	Name	Gender	EEO Cat. / Race	Age on 2/1/11	Date Employ Started	Date Employ Ceased	Job Title on/about 2/1/11	Dept	Discipline Rec	Discipline Imposed	Date Discipline Imposed	Activity on Account
13	Quartimon, Sherellis S	Female	Black/African American	41	9/21/1992	N/A	Util Act Rep I	WS340	Suspension 1 Day	Suspended 1 Day	04/29/14	1. Many adjs and 159 pyars on own acct (3/02 to 1/13) all but 4 failed; 2. Trans on her own acct and sister's acct.
14	Seay-Davis, Elaine L	Female	Black/African American	60	11/1/1994	10/8/2013	Util Act Rep II	WS340	Termination	Suspended if not retired	01/28/14	1. ucbcust, ucrtely entry to own acct; 2. Entries on family's and friend's accts incl 9 pyars.
15	Thompson, Ariska P	Female	Black/African American	49	7/29/1991	N/A	Util Svc Rep	WS360	Termination	Suspended 10 Days	11/01/13	1. No entries to own acct; 2. ucrtely on daughter's acct; 3. 50 trans for co-worker who did 18 for her.
16	Wagner, Tanisha	Female	Black/African American	27	11/7/2007	N/A	Util Act Rep I	WS340	Termination	Suspended 30 Days	07/30/13	1. 1 misd and pyars own acct; 2. 2 adj and multiple pyars on mother's acct; 3. Almost 2 yrs of ineligible DP benefits.
17	Warren, Debra L	Female	White	56	8/15/1990	N/A	Util Act Rep II	WS340	Termination	Suspended 30 Days	07/31/13	1. pyars and paid specials to own acct; 2. Notes and misc other trans for son and in-laws.
18	Wright, Gerold P (Pierre)	Male	Black/African American	38	6/6/2001	N/A	Util Svc Rep	WS360	Termination	Suspended 30 Days	12/11/13	1. No utility acct in EE's name; 2. Trans on mother's, co-worker's, and friend's accts.

**Total Number of SPU Employees Suspended: 18**

SPU CCSS Investigation (2001-2013)  
ER 106 Summary No. 3: **WRITTEN REPRIMANDS**

**SPU Employees Receiving a WRITTEN REPRIMAND for Making Improper Financial Adjustments to Utility Accounts**

	Name	Gender	EEO Cat. / Race	Date of Birth	Age on 2/1/11	Date Employ Started	Date Employ Ceased	Job Title on/about 2/1/11	Dept	Discipline Rec	Discipline Imposed	Date Discipline Imposed	Activity on Account
1	Mannery, Michael V	Male	White	1/13/1963	48	9/1/1994	N/A	Solid Wst Fld Rep Supv	WS360	Written Reprimand	Written Reprimand	06/20/13	1. No trans on own acct; 2. Adj, svc orders, and notes on dad's acct; 3. 4 svc orders on brother's acct (also SPU emp).

**Total Number of SPU Employees Receiving a Written Reprimand: 1**

SPU CCSS Investigation (2001-2013)  
ER 1006 Summary No. 4: **VERBAL WARNINGS**

**Ex. 499**

**SPU Employees Given a VERBAL WARNING for Making Improper Financial Adjustments to Utility Accounts**

	Name	Gender	EEO Cat. / Race	Age on 2/1/11	Date Employ Started	Date Employ Ceased	Job Title on/about 2/1/11	Dept	Discipline Rec	Discipline Imposed	Date Discipline Imposed	Activity on Account
1	Baladad, Roman A III	Male	Asian	37	9/14/1993	N/A	Util Act Rep I	WS340	Verbal Warning	Verbal Warning	04/04/13	1. ucbcust and ucrtel entries for self and parents; 2. Garbage can size change for parents.
2	Cainglet, Angel	Male	Hawaiian / Other Pac Islander	29	11/7/2007	N/A	Util Act Rep I	WS340	Verbal Warning	Verbal Warning	04/04/13	ucbcust table trans and 1 svc order.
3	Moreland, Rebra J	Female	Black/African American	60	1/10/1996	N/A	Util Act Rep Supv II	WS340	Verbal Warning	Verbal Warning	04/04/13	1. Notes, svc orders, tele, ucbcust on own acct; 2. Note on mother's acct.
4	Oliver, Steven F	Male	White	57	7/27/2005	1/26/2016	Util Act Rep Supv II	WS340	Verbal Warning	Verbal Warning	04/04/13	1. ucracct entry to own acct; 2. ucrchst entry to DP's acct.

**Total Number of SPU Employees Receiving a Verbal Warning: 4**

SPU CCSS Investigation (2001-2013)  
ER 1006 Summary No. 6: No Improper Transactions

**SPU Employees Who Made No Improper Transactions or Financial Adjustments to Utility Accounts**

	Name	Gender	EEO Cat. / Race	Age on 2/1/11	Date Employ Started	Date Employ Ceased	Job Title on/about 2/1/11	Dept	Discipline Rec	Discipline Imposed	Date Discipline Imposed	Activity on Account	Report Bates Number(s)	Discipline Docs Bates Number(s)
1	Afework, Asamenech	Female	Black/African American	59	5/4/1992	N/A	Actg Tech III-BU	WS225	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
2	Akramoff, Sharon A	Female	White	51	1/18/2012	N/A	Manager3,Fin, Bud,&Actg	WS330	No Account	No Account	N/A	No Account	No Account	No Account
3	Allen, Pamela	Female	Two or More Races (Hispanic)	40	1/9/2012	7/3/2013	Util Act Rep I	WS340	No Activity	No Activity	N/A	1. No EE acct; 2. No user ID activity at EE address.	No Activity	No Activity
4	Anderson, Sherry Gay	Female	White	64	7/13/1987	12/3/2012	Solid Wst Fld Rep,Lead	WS360	No Account	No Account	N/A	No Account	No Account	No Account
5	Andrews, Lynn L	Female	White	60	2/13/2002	8/21/2015	Mgmt Sysys Anlyst,Sr	WS320	No Account	No Account	N/A	No Account	No Account	No Account
6	Archer, Shirley Jean	Female	White	49	10/15/2008	10/23/2013	Util Act Rep I	WS340	No Activity	No Activity	N/A	No trans on own acct; no current Seattle acct.	No Activity	No Activity
7	Barrera, Anthony J	Male	Asian	38	6/6/2001	N/A	Util Act Rep I	WS340	No Account	No Account	N/A	No Account	No Account	No Account
8	Bingaman, Jeffery S	Male	White	46	2/23/1990	N/A	Act Exec	WS360	No Account	No Account	N/A	No Account	No Account	No Account
9	Bolden, Nathaniel	Male	Black/African American	60	12/13/1990	N/A	Solid Wst Fld Rep,Lead	WS360	No Activity	No Activity	N/A	No trans on own acct.	No Activity	No Activity
10	Bonfrisco, Amy S	Female	White	33	8/6/2008	N/A	Util Hearing Ofer	WS310	No Account	No Account	N/A	No Account	No Account	No Account
11	Brandon, Wayne L	Male	Black/African American	34	6/29/2011	N/A	Util Act Rep Trne	WS340	No Activity	No Activity	N/A	1. No trans on own acct; 2. Mother, Toni L Jones, also works in call center.	No Activity	No Activity
12	Brueske, Barbara M	Female	White	54	10/6/2004	N/A	Util Act Rep II	WS340	No Account	No Account	N/A	No Account	No Account	No Account
13	Charles, Marion V	Female	Black/African American	53	6/9/2010	N/A	Util Acts Supv	WS330	No Activity	No Activity	N/A	No trans on own acct.	No Activity	No Activity
14	Chea, Phanny	Female	Asian	41	6/24/2004	N/A	Mgmt Sysys Anlyst,Asst	WS330	No Account	No Account	N/A	No Account	No Account	No Account
15	Claxton, Mervin L	Male	Black/African American	35	11/10/1999	N/A	Solid Wst Fld Rep II	WS360	No Activity	No Activity	N/A	1. No trans on own acct; 2. All family accts have bad debt; 3. Lots of trans for co-workers in same group.	No Activity	No Activity
16	Clement, Diane Kay	Female	White	47	6/18/2003	N/A	Util Act Rep Supv II	WS340	No Activity	No Activity	N/A	1. No EE acct; 2. No trans on family accts.	No Activity	No Activity
17	Costales, Editha Mary	Female	Hawaiian/ Other Pac Islander	38	10/25/2004	N/A	Util Svc Rep	WS360	No Activity	No Activity	N/A	No trans on own acct.	No Activity	No Activity
18	Crippen, Luke A	Male	White	25	11/9/2011	6/14/2016	Actg Tech II-BU	WS330	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
19	Damron, Edwin J	Male	White	60	11/21/1979	12/18/2012	Actg Tech I-BU	WS330	No Account	No Account	N/A	No Account	No Account	No Account

SPU CCSS Investigation (2001-2013)  
ER 1006 Summary No. 6: No Improper Transactions

**SPU Employees Who Made No Improper Transactions or Financial Adjustments to Utility Accounts**

	Name	Gender	EEO Cat. / Race	Age on 2/1/11	Date Employ Started	Date Employ Ceased	Job Title on/about 2/1/11	Dept	Discipline Rec	Discipline Imposed	Date Discipline Imposed	Activity on Account	Report Bates Number(s)	Discipline Docs Bates Number(s)
20	Davis, Henry Lee	Male	Black/African American	49	8/26/1995	N/A	Solid Wst Fld Rep II	WS360	No Activity	No Activity	N/A	No trans on own acct.	No Activity	No Activity
21	Davis, Mark	Male	Black/African American	52	10/8/1979	N/A	Util Act Rep I	WS340	No Account	No Account	N/A	No Account	No Account	No Account
22	Donohue, Sharon K	Female	White	53	5/6/1987	7/14/2015	Util Act Rep I	WS340	No Account	No Account	N/A	No Account	No Account	No Account
23	Downing II, W Kirk	Male	White	55	6/4/1992	9/4/2015	Util Act Rep II	WS340	No Account	No Account	N/A	No Account	No Account	No Account
24	Dudley, Beth Shurre	Female	White	42	8/14/2006	9/10/2013	Util Act Rep I	WS340	No Account	No Account	N/A	No Account	No Account	No Account
25	Dunmore, Statial C	Female	Black/African American	40	6/14/2006	N/A	Opns Response Cntr Op	WS632	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
26	Eastwood Jr, Robert	Male	Asian	54	6/13/1983	N/A	Util Svc Inspector,Sr	WS360	No Activity	No Activity	N/A	1. No EE acct; 2. No trans on friends/family accts.	No Activity	No Activity
27	Eaton, Alan R	Male	White	44	3/1/1990	N/A	Info Technol Prof C-BU	WS224	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
28	Ellis, Judy P	Female	Black/African American	33	6/29/2011	N/A	Util Act Rep Trne	WS340	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
29	Ellis, Rommell A	Male	Black/African American	44	6/20/2001	N/A	Scale Attendant	WS645	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
30	English, John A	Male	White	52	5/22/1991	N/A	Solid Wst Fld Rep II	WS360	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
31	Enriquez, Rodney C	Male	Asian	49	3/28/1988	N/A	Meter Reader Supv	WS330	No Activity	No Activity	N/A	1. Goodby to cubs note made pre-dating audit period; No other activity on own/friends/family accts.	No Activity	No Activity
32	Evans, Linda D	Female	Black/African American	61	2/22/2000	7/8/2015	Admin Spec I-BU	WS360	No Activity	No Activity	N/A	1. No EE acct; 2. No trans on family accts.	No Activity	No Activity
33	Flowers, Beverly Faye	Female	Black/African American	46	12/9/1998	N/A	Util Act Rep Supv II	WS340	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
34	Forrester, Pamela	Female	White	40	10/15/1997	5/5/2015	Civil Engrng Spec,Sr	TR551	No Account	No Account	N/A	No Account	No Account	No Account
35	Frank, Diane Elizabeth	Female	White	62	3/17/1986	N/A	Info Technol Prof C-BU	WS242	No Activity	No Activity	N/A	1. No trans on own acct; 2. EE initial DOH 3/17/86; 3. Rehired 5/17/06.	No Activity	No Activity
36	Franklin, Andre L	Male	Black/African American	29	10/19/2005	N/A	Pntr	WS393	No Activity	No Activity	N/A	1. No trans on own/friends/family accts; 2. Ex-SPU, now HSD; 3. Rasheena Hibbler is DP.	No Activity	No Activity

SPU CCSS Investigation (2001-2013)  
ER 1006 Summary No. 6: No Improper Transactions

**SPU Employees Who Made No Improper Transactions or Financial Adjustments to Utility Accounts**

	Name	Gender	EEO Cat. / Race	Age on 2/1/11	Date Employ Started	Date Employ Ceased	Job Title on/about 2/1/11	Dept	Discipline Rec	Discipline Imposed	Date Discipline Imposed	Activity on Account	Report Bates Number(s)	Discipline Docs Bates Number(s)
37	Furutani, Sharon	Female	Two or More Races (Asian)	61	1/25/1980	5/6/2014	Actg Tech II-BU	WS330	No Account	No Account	N/A	No Account	No Account	No Account
38	Galando, Gina Maria	Female	White	45	4/15/1996	N/A	Civil Engrng Spec,Assoc	WS692	No Account	No Account	N/A	No Account	No Account	No Account
39	Gallegos, Natalie	Female	Hispanic or Latino	38	4/20/1998	N/A	Cust Svc Rep	L0463	No Activity	No Activity	N/A	1. EE transferred to SCL; 2. User ID analysis looks fine.	No Activity	No Activity
40	Gann, Tamina L	Female	White	31	9/26/2005	N/A	Meter Reader	WS330	No Account	No Account	N/A	No Account	No Account	No Account
41	Garcia, Gerardo A	Male	Hispanic or Latino	37	1/7/1998	N/A	Wtr Pipe CC-WDMII	WS657	No Activity	No Activity	N/A	1. No EE acct; 2. No trans on friends/family accts.	No Activity	No Activity
42	Gray, Shepperd J	Male	White	38	2/15/1995	N/A	Util Svc Inspector	WS360	No Account	No Account	N/A	No Account	No Account	No Account
43	Gregg, Terri E	Female	White	49	8/2/1989	N/A	Strat Advsr1,CSPI&	WS756	No Activity	No Activity	N/A	1. No EE acct; 2. No trans on friends/family accts.	No Activity	No Activity
44	Hamilton, Tracy Jo	Female	White	48	8/6/1992	N/A	Util Act Rep II	WS340	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
45	Hampton, Arece J	Male	Black/African American	53	7/12/2001	N/A	Plng&Dev Spec II	WS340	No Activity	No Activity	N/A	1. No trans on own acct; 2. Reviewed trans related to shut off.	No Activity	No Activity
46	Hanson, Linda S	Female	White	56	5/5/1976	N/A	Util Act Rep I	WS340	No Account	No Account	N/A	No Account	No Account	No Account
47	Harms, William M (Mike)	Male	White	57	9/28/1988	N/A	Manager2,Utills	WS362	No Account	No Account	N/A	No Account	No Account	No Account
48	Harris, Alma G (Gene)	Female	Black/African American	60	11/4/1980	N/A	Admin Spec II-BU	WS360	No Activity	No Activity	N/A	1. No trans on own acct; 2. Was getting UDP though not qualified, removed in 2013.	No Activity	No Activity
49	Harris, Anthony	Male	Black/African American	53	4/15/1992	N/A	Admin Spec II-BU	WS246	No Activity	No Activity	N/A	"test" svc order, during training; EE is an IT admin; CCSS access locked as of 12/20/11, deleted in 2012.	No Activity	No Activity
50	Harris, Veronica	Female	Black/African American	42	3/9/2009	N/A	Manager1,Fin, Bud,&Actg	WS225	No Account	No Account	N/A	No Account	No Account	No Account
51	Harvey, Warrenette R	Female	White	61	8/9/1989	1/29/2013	Util Act Rep I	WS340	No Account	No Account	N/A	No Account	No Account	No Account
52	Hau, Tung S	Male	Asian	37	9/10/2001	N/A	Meter Reader	WS330	No Activity	No Activity	N/A	1. No trans on ee's acct; 2. No friends/family accts.	No Activity	No Activity
53	Hendrickson, Kimberly A	Female	White	38	12/19/1994	N/A	Util Svc Rep	WS360	No Account	No Account	N/A	No Account	No Account	No Account
54	Herrick, John R	Male	White	64	6/16/1988	2/3/2014	Solid Wst Fld Rep Supv	WS360	No Account	No Account	N/A	No Account	No Account	No Account
55	Hibbler, Rasheena Lynette	Female	Black/African American	29	6/30/1997	12/26/2012	Util Act Rep Trne	WS340	No Activity	No Activity	N/A	1. No trans on own acct; 2. DP of Andre Franklin (ex-SPU, now HSD).	No Activity	No Activity
56	Hillis, Linda G	Female	Hispanic or Latino	63	2/2/1990	1/4/2011	Util Act Rep II	WS340	No Account	No Account	N/A	No Account	No Account	No Account



SPU CCSS Investigation (2001-2013)  
ER 1006 Summary No. 6: No Improper Transactions

**SPU Employees Who Made No Improper Transactions or Financial Adjustments to Utility Accounts**

	Name	Gender	EEO Cat. / Race	Age on 2/1/11	Date Employ Started	Date Employ Ceased	Job Title on/about 2/1/11	Dept	Discipline Rec	Discipline Imposed	Date Discipline Imposed	Activity on Account	Report Bates Number(s)	Discipline Docs Bates Number(s)
57	Hoffman, Audrey E	Female	White	54	8/19/2002	5/5/2015	Util Act Rep II	WS340	No Account	No Account	N/A	No Account	No Account	No Account
58	Hooks, Jeffrey P	Male	White	57	11/10/1986	10/18/2012	Util Act Rep II	WS340	No Activity	No Activity	N/A	1. No EE acct; 2. No trans on parent's acct; 3. Doesn't appear to be a City ee any	No Activity	No Activity
59	Horton-Lamping, Enna Louise	Female	Black/African American	48	8/1/1989	N/A	Disposal CC I	WS643	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
60	Howard, Sonya Euniece	Female	Two or More Races (Black)	40	7/27/2005	N/A	Util Act Rep II	WS340	No Activity	No Activity	N/A	1. No EE acct; 2. No trans on friends/family accts.	No Activity	No Activity
61	Hughes, Thomas	Male	White	47	1/31/2005	N/A	Util Act Rep I	WS340	No Account	No Account	N/A	No Account	No Account	No Account
62	Igama, Gredia Grecia (Gigi)	Female	Asian	45	9/14/1998	N/A	Util Svc Rep	WS360	No Account	No Account	N/A	No Account	No Account	No Account
63	Iranon, Philip A	Male	Hawaiian / Other Pac Islander	63	7/24/1985	3/1/2011	Util Act Rep I	WS340	No Account	No Account	N/A	No Account	No Account	No Account
64	Jackson, Marcus L	Male	Black/African American	37	9/26/2001	N/A	Manager2,Utills	WS360	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
65	Jacobs III, John P	Male	White	67	10/16/1970	N/A	Meter Reader,Sr	WS330	No Activity	No Activity	N/A	1. No trans on ee's acct; 2. No friends/family accts.	No Activity	No Activity
66	Jeffries, Nicole J	Female	Black/African American	37	5/30/2002	12/21/2012	Actg Tech II-BU	WS330	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
67	Johnson, Carolyn	Female	Black/African American	54	2/28/2001	N/A	Real Property Agent,Sr	WS260	No Activity	No Activity	N/A	1. No trans on own acct (rental property); 2. No friends/family accts.	No Activity	No Activity
68	Johnson, Kimberly	Female	Black/African American	50	8/14/2006	N/A	Cust Svc Rep	WS340	No Account	No Account	N/A	No Account	No Account	No Account
69	Jones, Cheryl L	Female	Black/African American	57	12/10/1979	N/A	Util Svc Rep	WS360	No Account	No Account	N/A	No Account	No Account	No Account
70	Jones, Kevin J	Male	White	37	8/26/2002	N/A	Actg Tech II-BU	WS330	No Activity	No Activity	N/A	No trans on own or friends/family accts.	No Activity	No Activity
71	Kain, Elizabeth C	Female	White	59	6/29/1979	N/A	Grants& Contracts Spec	WS740	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
72	King, Brenda I	Female	White	45	6/24/1992	N/A	Solid Wst Fld Rep II	WS360	No Account	No Account	N/A	No Account	No Account	No Account
73	Lager, Margie D	Female	White	56	1/12/1994	N/A	Wtr Meter Repairer,Sr	WS655	No Activity	No Activity	N/A	1. No trans on prior acct; 2. No friends/family accts.	No Activity	No Activity
74	Llarenas, Teresita	Female	Asian	55	7/10/1989	2/29/2016	Util Act Rep I	WS340	No Account	No Account	N/A	No Account	No Account	No Account
75	Loyd, Geraldine	Female	Black/African American	57	6/30/1981	N/A	Util Act Rep I	WS340	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
76	Mannery, David T	Male	White	42	8/21/1989	N/A	Act Exec	WS360	No Activity	No Activity	N/A	1. No EE acct; 2. No trans on friends/family accts.	No Activity	No Activity

SPU CCSS Investigation (2001-2013)  
ER 1006 Summary No. 6: No Improper Transactions

**SPU Employees Who Made No Improper Transactions or Financial Adjustments to Utility Accounts**

	Name	Gender	EEO Cat. / Race	Age on 2/1/11	Date Employ Started	Date Employ Ceased	Job Title on/about 2/1/11	Dept	Discipline Rec	Discipline Imposed	Date Discipline Imposed	Activity on Account	Report Bates Number(s)	Discipline Docs Bates Number(s)
77	Mannery, Trina Linn	Female	White	42	11/1/1999	N/A	Util Acts Supv	WS330	No Activity	No Activity	N/A	1. No trans own acct; 2. No friends/family accts.	No Activity	No Activity
78	Mar, Michael K	Male	Asian	52	10/22/1980	6/7/2011	Manager3,Fin, Bud,&Actg	WS330	No Account	No Account	N/A	No Account	No Account	No Account
79	Marks, Stephanie Francesca	Female	Black/African American	26	7/27/2005	10/25/2011	Util Act Rep I	WS340	No Activity	No Activity	N/A	1. No trans own acct; 2. No friends/family accts.	No Activity	No Activity
80	Marshall, David A	Male	White	51	10/9/2000	N/A	Util Act Rep Supv II	WS340	No Activity	No Activity	N/A	1. No EE acct; 2. No trans on friends/family accts.	No Activity	No Activity
81	Mathisen, Cheryl	Female	White	57	8/14/2000	N/A	Util Svc Rep	WS360	No Account	No Account	N/A	No Account	No Account	No Account
82	McCall, Patrick M	Male	White	36	6/11/2008	N/A	Mgmt Sys Anlyst,Sr	WS320	No Account	No Account	N/A	No Account	No Account	No Account
83	McClain, Evelyn A	Female	Black/African American	61	5/27/1974	11/9/2010	Util Act Rep I	WS340	No Activity	No Activity	N/A	1. No trans own acct; 2. No friends/family accts; 3. Lots of trans on other EEs' accts.	No Activity	No Activity
84	McGrew, Karen L	Female	White	57	7/5/1989	5/5/2015	Act Exec	WS360	No Account	No Account	N/A	No Account	No Account	No Account
85	Mendoza, Ryan B	Male	Asian	28	5/30/2007	N/A	Wtr Pipe Wkr	WS656	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
86	Milbourn, Virginia L	Female	White	65	10/24/1988	2/12/2016	Admin Spec II-BU	WS360	No Account	No Account	N/A	No Account	No Account	No Account
87	Minto, Michelle J	Female	White	27	6/20/2001	N/A	Rec Leader	K1727	No Activity	No Activity	N/A	1. No trans own acct; 2. No friends/family accts.	No Activity	No Activity
88	Mitchell, Juion J	Male	Black/African American	32	1/4/2012	7/11/2014	Util Act Rep I	WS340	No Account	No Account	N/A	No Account	No Account	No Account
89	Moe, Jason A	Male	White	38	6/1/1998	5/29/2012	Util Act Rep II	WS340	No Account	No Account	N/A	No Account	No Account	No Account
90	Monroe, Aloncita K	Female	Two or More Races (Black)	47	4/29/1998	6/6/2013	Admin Spec I-BU	WS310	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
91	Navarro, Venus Eileen C	Female	Asian	31	10/15/2008	N/A	Util Act Rep I	WS340	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
92	Nicdao, Helen Woo	Female	Asian	49	3/12/1986	N/A	Warehouser, Chief	D3309	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
93	Otte, Jimmy L	Male	White	55	6/20/1990	N/A	Act Exec	WS360	No Account	No Account	N/A	No Account	No Account	No Account
94	Parker, Cheryl Ann	Female	Black/African American	58	3/23/1992	N/A	Act Exec	WS360	No Activity	No Activity	N/A	1. No trans on own acct; 2. Numerous trans by other EEs.	No Activity	No Activity
95	Pavel, Ward B	Male	White	50	8/30/1989	9/9/2014	Manager1,Utills	WS360	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
96	Payne, Pamela W	Female	Black/African American	40	6/29/2011	N/A	Util Act Rep Trne	WS340	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
97	Philips, Christine	Female	White	57	4/14/1975	2/1/2016	Mgmt Sys Anlyst	WS260	No Account	No Account	N/A	No Account	No Account	No Account

SPU CCSS Investigation (2001-2013)  
ER 1006 Summary No. 6: No Improper Transactions

**SPU Employees Who Made No Improper Transactions or Financial Adjustments to Utility Accounts**

	Name	Gender	EEO Cat. / Race	Age on 2/1/11	Date Employ Started	Date Employ Ceased	Job Title on/about 2/1/11	Dept	Discipline Rec	Discipline Imposed	Date Discipline Imposed	Activity on Account	Report Bates Number(s)	Discipline Docs Bates Number(s)
98	Prappas, Angela Marie	Female	White	36	3/3/1999	7/17/2012	Actg Tech I-BU	WS330	No Activity	No Activity	N/A	1. No trans by EE on own acct (in DPs name); 2. No friends/family accts.	No Activity	No Activity
99	Prewitt, Cheryl	Female	Black/African American	52	7/27/2005	N/A	Actg Tech II-BU	WS330	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
100	Pupo, Joanne	Female	White	52	6/1/1998	N/A	Meter Reader,Sr	WS330	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
101	Renter, Angela D	Female	Not Specified	36	9/27/1995	N/A	Util Svc Rep	WS360	No Activity	No Activity	N/A	1. No acct in EE or spouse's name; 2. No trans on friends/family accts.	No Activity	No Activity
102	Roberson, James V (Vic)	Male	Black/African American	51	1/29/1990	N/A	Executive2	WS360	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
103	Rogers, Rebecca L	Female	Not Specified	46	8/19/1991	N/A	Util Act Rep II	WS340	No Account	No Account	N/A	No Account	No Account	No Account
104	Romulo-Gutierrez, Mariano	Male	Asian	44	7/6/1993	N/A	Util Svc Inspector,Sr	WS360	No Account	No Account	N/A	No Account	No Account	No Account
105	Russell, Debra	Female	American Indian/ Alaska Native	59	6/24/2009	6/2/2015	Executive2	WS340	No Account	No Account	N/A	No Account	No Account	No Account
106	Russell, Peter Mark	Male	Black/African American	50	7/16/1984	N/A	Solid Wst Fld Rep,Lead	WS360	No Activity	No Activity	N/A	1. No trans on own acct; No friends/family accts.	No Activity	No Activity
107	Ryan, Paul E	Male	White	46	7/27/2005	N/A	Util Act Rep II	WS340	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
108	Sager, Bradley Allen	Male	White	52	8/15/1994	N/A	Act Exec	WS360	No Account	No Account	N/A	No Account	No Account	No Account
109	Santiago, Rita Lliana	Female	Hispanic or Latino	55	3/4/1999	N/A	Admin Staff Asst	WS310	No Activity	No Activity	N/A	1. No acct in EE's name; 2. No activity on friends/family accts.	No Activity	No Activity
110	Sato, Michele N	Female	Asian	46	7/17/1989	6/17/2014	Util Act Rep I	WS340	No Activity	No Activity	N/A	1. No acct in EE's name; 2. No activity on friends/family accts.	No Activity	No Activity
111	Schwedas, Daniela M	Female	White	61	4/5/1999	4/5/2016	Admin Spec III-BU	WS360	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
112	Shashidhar, Bobby	Female	Asian	41	6/11/2010	1/1/2013	Mgmt Sysys Anlyst	WS740	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
113	Shaw, Mariliza R	Female	Black/African American	46	10/31/1988	N/A	Util Svc Inspector	WS360	No Activity	No Activity	N/A	1. No acct in EE's name; 2. No trans on friends/family accts.	No Activity	No Activity
114	Sinner, Robin L	Female	White	48	1/17/1987	N/A	Actg Tech III-BU	WS330	No Activity	No Activity	N/A	1. No trans own acct; 2. No friends/family accts.	No Activity	No Activity
115	Sippy, Shobha	Female	Asian	54	6/27/2007	N/A	Util Act Rep II	WS340	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
116	Smith, James W	Male	White	57	9/22/1987	5/10/2016	Actg Tech II-BU	WS330	No Account	No Account	N/A	No Account	No Account	No Account

SPU CCSS Investigation (2001-2013)  
ER 1006 Summary No. 6: No Improper Transactions

**SPU Employees Who Made No Improper Transactions or Financial Adjustments to Utility Accounts**

	Name	Gender	EEO Cat. / Race	Age on 2/1/11	Date Employ Started	Date Employ Ceased	Job Title on/about 2/1/11	Dept	Discipline Rec	Discipline Imposed	Date Discipline Imposed	Activity on Account	Report Bates Number(s)	Discipline Docs Bates Number(s)
117	Sok, Reth (Reta)	Female	Asian	29	6/30/1997	N/A	Meter Reader	WS330	No Activity	No Activity	N/A	1. No trans on own/friends/family accts; 2. Orig DOH 6/30/97, left 1/1/99, rehired 11/13/02.	No Activity	No Activity
118	Sprinkle, Helen	Female	Hispanic or Latino	51	8/18/1986	1/26/2016	Util Act Rep II	WS340	No Account	No Account	N/A	No Account	No Account	No Account
119	Stockwell, Troy Eugene	Male	White	33	7/6/1999	N/A	Meter Reader,Sr	WS330	No Account	No Account	N/A	No Account	No Account	No Account
120	Stotler, Russell Louis	Male	Asian	53	8/25/1992	N/A	Meter Reader	WS330	No Account	No Account	N/A	No Account	No Account	No Account
121	Stuart, Tonya	Female	White	35	1/4/2012	7/6/2013	Util Act Rep I	WS340	No Activity	No Activity	N/A	No trans on own/friends/family accts .	No Activity	No Activity
122	Taylor, Latosha V	Female	Black/African American	33	6/30/1997	N/A	Act Exec	WS360	No Activity	No Activity	N/A	1. No trans on own acct; 2. Numerous trans by other EEs on behalf of EE and her family.	No Activity	No Activity
123	Thielen, Catherine D	Female	Two or More Races (White)	40	4/6/1992	N/A	Util Act Rep II	WS340	No Activity	No Activity	N/A	1. No acct in EE name; 2. Unclear about family accts but no activity on accts checked.	No Activity	No Activity
124	Thwing, Michael	Male	White	44	8/30/2000	N/A	Util Act Rep II	WS340	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
125	Tolliver, Karen E	Female	White	59	7/5/1985	3/1/2012	Solid Wst Fld Rep II	WS360	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
126	Tran, Ken C	Female	Asian	37	2/28/2001	N/A	Ofc/Maint Aide	WS340	No Activity	No Activity	N/A	1. No trans on own/friends/family accts;	No Activity	No Activity
127	Tran, Van Thai Thi (Samantha)	Female	Asian	33	8/30/2000	N/A	Util Act Rep II	WS340	No Account	No Account	N/A	No Account	No Account	No Account
128	Truelove, Kerry Alvin	Male	White	39	6/27/2007	1/1/2016	Util Act Rep I	WS340	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
129	Tsoming, Frankie R	Female	Asian	60	4/17/1978	4/7/2015	Util Act Rep I	WS340	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
130	Tufts, Linda Mc Kee	Female	White	61	3/28/1990	N/A	Util Act Rep I	WS340	No Activity	No Activity	N/A	1. No acct in EE's name; 2. No trans on friends/family accts.	No Activity	No Activity
131	Volpone, Kenneth Robert	Male	White	45	4/17/1990	N/A	Util Svc Inspector	WS360	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
132	Ward, James M	Male	Black/African American	47	5/16/2007	N/A	Mgmt Sysys Anlyst	WS740	No Account	No Account	N/A	No Account	No Account	No Account
133	Ware, Mary Christine	Female	White	58	8/26/1991	N/A	Manager2, General Govt	WS320	No Activity	No Activity	N/A	1. No trans on own/friends/family accts; 2. Acct under spouse's (Robert) name.	No Activity	No Activity
134	Whitaker, Junko	Female	Two or More Races (Asian)	58	3/15/1990	4/7/2015	Manager2,Utills	WS360	No Activity	No Activity	N/A	1. No trans on own/friends/family accts; 2. No unusual activity by others.	No Activity	No Activity
135	White, Wendy Lee	Female	White	51	2/8/1990	N/A	Util Act Rep II	WS340	No Activity	No Activity	N/A	No trans on own/friends/family accts.	No Activity	No Activity
136	Wong, Kami C	Female	Asian	47	11/28/1990	N/A	Act Exec	WS360	No Activity	No Activity	N/A	1. No trans own acct; 2. Mother rcvd \$120 late fee MISD from others.	No Activity	No Activity

SPU CCSS Investigation (2001-2013)  
ER 1006 Summary No. 6: **No Improper Transactions**

**SPU Employees Who Made No Improper Transactions or Financial Adjustments to Utility Accounts**

	Name	Gender	EEO Cat. / Race	Age on 2/1/11	Date Employ Started	Date Employ Ceased	Job Title on/about 2/1/11	Dept	Discipline Rec	Discipline Imposed	Date Discipline Imposed	Activity on Account	Report Bates Number(s)	Discipline Docs Bates Number(s)
137	Wrice, Cynthia M	Female	Black/African American	61	6/7/2007	N/A	Admin Spec I- BU	WS310	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
138	Yates, R Keith	Male	White	55	11/1/1985	N/A	Util Svc Inspector	WS360	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
139	Yusaf, Obed N	Male	Asian	50	1/6/1999	N/A	Util Svc Rep	WS360	No Activity	No Activity	N/A	1. No trans on own acct; 2. No friends/family accts.	No Activity	No Activity
140	Zukaitis, Stephen J	Male	White	56	10/27/1986	9/3/2013	Wtr Meter Repairer,Sr	WS655	No Activity	No Activity	N/A	1. No utility acct in EEs name; 2. No activity by EE on friends/family accts.	No Activity	No Activity

**Total Number of SPU Employees Who Made No Improper Transactions or Financial Adjustments on Utility Account: 140**

ER 1006 Summary No. 7: **SPU Employees Who LEFT OR RETIRED Before Discipline Imposed****SPU Employees Who Left or Retired Before Discipline Imposed**

	Name	Gender	EEO Cat./ Race	Age on 2/1/11	Date Employ Started	Date Employ Ceased	Job Title on/about 2/1/11	Dept	Discipline Rec	Discipline Imposed	Date Discipline Imposed	Activity on Account
1	Blaser, Philip F	Male	White	60	12/19/1983	3/1/2011	Util Act Rep Supv II	WS340	None	Retired	N/A	Trans on ucbcust, ucrtel, and svc orders his and a family member acct.
2	Carbonell, Roy Icaro	Male	Hawaiian/ Other Pac Islander	32	8/13/2001	N/A	Elecl Svc Rep	WS340	None	Transf to SCL	N/A	1. Emp transferred to SCL Sept 2011; 2. 4 PYARs, numerous other trans, and acct name changes.
3	Daye, Eddie Carolynn	Female	Black/African American	67	8/3/1988	4/3/2012	Util Act Rep I	WS340	None	Retired	Unknown	Numerous trans by emp on accts where she lived and those of family members and prior roomates.
4	Dixon, Patricia L	Female	Black/African American	59	11/29/1995	10/14/2012	Util Act Rep I	WS340	None	Retired	Unknown	2 adj and 15 PYAR trans, misc svc orders, and other trans for friends and family.
5	Johnson, Joyce M	Female	Black/African American	63	7/1/1968	12/31/2012	Util Act Rep I	WS340	None	Retired	N/A	1. \$16 MISD on granddaughter's acct; 2. 2 RAPS entries own acct (2001 & 2002); 3. Numerous trans for other employees.
6	Lea, Robinn D	Female	Two or More Races (White)	57	9/19/1984	11/6/2012	Util Act Rep II	WS340	None	Retired	Unknown	1. No acct in EE or spouse's name; 2. 2 svc orders on son's acct.
7	Lindsey, David R	Male	White	64	10/4/1988	9/2/2013	Util Act Rep I	WS340	None	Retired	Unknown	1. No acct in EE or spouse's name; 2. 6 pyars and one adj on daughter's acct.

SPU CCSS Investigation (2001-2013)

ER 1006 Summary No. 7: **SPU Employees Who LEFT OR RETIRED Before Discipline Imposed**

**SPU Employees Who Left or Retired Before Discipline Imposed**

8	Lodge, Diane L	Female	White	60	2/15/1978	2/1/2013	Solid Wst Fld Rep II	WS360	None	Retired	N/A	1 svc order own acct.
9	Madsen, Bruce A	Male	White	53	7/31/1978	6/2/2011	Util Acts Supv	WS330	None	Retired	N/A	UBCUST trans on own and father's accts.
10	Mar (f.k.a. Rohr-Mar), Mary E	Female	White	56	1/17/1979	12/11/2012	Util Act Rep I	WS340	None	Resigned	N/A	1. Acct in spouse's name; 2. Note/comment on prem 218525 for move.
11	McClure, Enjolia Wayne	Female	Black/African American	30	6/27/2007	9/11/2012	Util Act Rep II	WS340	Termination Draft ltr	Retired	N/A	1. EE address same as mothers; 2. Acct in mothers's name (Barbara McClure-Blair); 3. Low income rate and energy grants.
12	Mirasol, Daneka	Female	Black/African American	34	10/15/1997	2/29/2012	Util Act Rep I	WS340	None	Resigned	N/A	2 svc orders on mother's acct to replace cans.
13	Phillips, Sheila M	Female	Black/African American	58	8/19/2002	1/13/2016	Cust Svc Rep	WS340	None	Transf to SCL	N/A	1. Several pyars and 1 svc order on own acct; 2. pyars on father's and brother's acct; 3. MISD \$7.80 on father's acct (Curtis
14	Robinson, Pauline	Female	Black/African American	60	8/29/1990	7/2/2013	Util Act Rep I	WS340	Suspension 30 Days Draft ltr	Retired	N/A	1. uebcust, tele entries on own acct; 2. 2 pyars on friend; several on daughter's accts;
15	Tracy, Patsy Lee	Female	Black/African American	58	6/1/1981	9/24/2012	Util Act Rep II	WS340	None	Resigned	N/A	1. Adjs for one daughter; 2. PYAR for another daughter; 3. Notes for mother.

**Total Number of SPU Employees Who Made Improper Transactions or Financial Adjustments on Utility Accounts But Left or Retired Before Discipline Was Imposed: 15**