

1 THE HONORABLE KARENA KIRKENDOLL  
2 Defendants' Motion for Summary Judgement  
3 Hearing date and time: Friday, October 22, 2021 at 9 a.m.  
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6

7 IN THE SUPERIOR COURT OF WASHINGTON IN AND  
8 FOR PIERCE COUNTY

9 GILLIAN MARSHALL,

10 Plaintiff,

11 vs.

12 THE STATE OF WASHINGTON,  
13 UNIVERSITY OF WASHINGTON, a State  
14 Agency, DIANE YOUNG, individually,  
15 JILL PURDY, individually, and MARK  
16 PAGANO, individually,

17 Defendants.  
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Case No.: 19-2-11120-3

PLAINTIFF GILLIAN MARSHALL'S  
RESPONSE TO DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT

PLAINTIFF'S RESPONSE TO  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT- 0

SHERIDAN LAW FIRM, P.S.  
Hoge Building, Suite 1200  
705 Second Avenue  
Seattle, WA 98104  
Tel: 206-381-5949 Fax: 206-447-9206

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**I. INTRODUCTION**

As has become routine in this case, the defendants, this time in the introduction of their summary judgment motion, misstate the law by relying on dicta from a 2000, 4<sup>th</sup> Circuit affirmance of a summary judgment dismissal in an employment case brought under federal and North Carolina law, when in fact, at summary judgment in Washington, in cases brought under the Washington Law Against Discrimination (WLAD), the standard is that “summary judgment to an employer is seldom appropriate in the WLAD cases because of the difficulty of proving a discriminatory motivation. *Scrivener v. Clark Coll.*, 181 Wash. 2d 439, 445, 334 P.3d 541, 545 (2014); *Sangster v. Albertson's, Inc.*, 99 Wash.App. 156, 160, 991 P.2d 674 (2000) (summary judgment should rarely be granted in employment discrimination cases).

The mantra repeated in the defendants’ summary judgment motion, stated in the introduction and throughout the brief, is that the UW-Tacoma Social Work and Criminal Justice Unit (SWCJ) denied Black American Dr. Gillian Marshall tenure and promotion because she was a poor teacher. The defense should have added, “the discriminatory decision of SWCJ faculty was rubber stamped by UW-Tacoma management.” Also, the defense should have pointed out that this allegation was supported by arguably negative anonymous student evaluations in three classes out of five she taught since her arrival in 2015. The mantra also ignores very positive peer evaluations by senior faculty who are trained in conducting teacher evaluations. Unlike the white SWCJ faculty who did not observe her teaching, the three faculty who evaluated Dr. Marshall favorably did observe her teaching, but their input was ignored by SWCJ and UW-Tacoma management. The

1 mantra is no more than a pretext for the white faculty's and white management's  
2 discriminatory, retaliatory and hostile misconduct, which is in violation of the WLAD.

3 Like the image of an ostrich with its head in the sand, the defense brief, like UW-  
4 Tacoma management, ignores the reality and long history of racism at UW-Tacoma that  
5 has existed for more than a decade, which systematically excludes black faculty from being  
6 granted tenure and promotion, and creates a racially hostile environment for faculty of  
7 color perpetrated by some of the white faculty and rubber stamped by management. The  
8 evidence in the light most favorable to the plaintiff is that reports of serious campus-wide  
9 racism have been received by top management at UW-Tacoma, in this case, Chancellor  
10 Mark Pagano and Vice Chancellor Jill Purdy, and then have been ignored and suppressed  
11 by Pagano and Purdy so that, in this case, the predominately white faculty at SWCJ could  
12 engage in, without accountability, discriminatory, retaliatory, and racially hostile  
13 misconduct directed at Dr. Marshall, all of which was led by white Director Diane Young.  
14 This small white faculty group at SWCJ of less than six senior faculty members  
15 systematically sabotaged Dr. Marshall's career. Under *Scrivner*, this case must go to a jury.  
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17  
18 The defendants' motion should be denied in its entirety.

## 19 II. FACTS

### 20 A. Racism Has Been Rampant At UW-Tacoma For More Than A Decade And 21 Management Knew And Aided And Abetted In The Continuous 22 Discrimination And Harassment of Faculty of Color

23 Dr. Marshall was hired as an assistant professor at the SWCJ unit on the UW-  
24 Tacoma campus. Marshall Dec., Exhibit 1 (2019 Sworn Tort Claim) at page 2. She didn't  
25 know that UW-Tacoma had a dark history of racism directed against faculty of color. *Id.* at

1 Appendix 1-16.

2 UW-Tacoma Professor Chris Knaus is a “race scholar,” which means his research  
3 specifically focuses on identifying structural racism in educational systems; he is also a  
4 “critical race practitioner,” meaning he is a scholar of “critical race theory.” Knaus Dec. at  
5 ¶¶ 2-3. His work examines how systems of oppression and ideas of learning intentionally  
6 silence communities of color, including communities on college campuses. *Id.* at ¶ 4. He  
7 notes that “[m]ost major universities like UW only have a small handful of Black tenured  
8 full professors, and even fewer that are Black women . . . UW-Tacoma, which has  
9 roughly 360 fulltime faculty” has only “[two] Black tenured full professors.” *Id.* at ¶6. He  
10 notes that, “[a]s one goes up the academic trajectory, the fewer people of color, and  
11 especially Black women. *Id.*

13 Dr. Knaus co-authored a 2016 report on “Developing a Race and Equity Agenda  
14 for the UW-Tacoma campus.” *Id.* Ex. 1. The executive summary outlines some of the  
15 realities for persons of color: barriers, a passive aggressive local culture at UW-Tacoma,  
16 faculty and leadership who ignore research in this area, and the failure to address racial  
17 exclusion and oppression. *Id.*, Ex. 1 at 1. The report admonishes that giving lip service to  
18 “diversity” and “inclusivity” fails to recognize and address the “hostile racial climate [at  
19 UW-Tacoma] that is consistently described through numerous UW reports, and actually  
20 “contributes to this hostile climate.” *Id.*, Ex. 1 at 1. The report goes on to say that “merely  
21 changing policies is insufficient to address the large context of racism within higher  
22 education and at worst, it supports racism and racial oppression. *Id.*, Ex. 1 at 4.

25 This report was shared with Chancellor Mark Pagano and none of the

1 recommendations have been implemented in full. Knaus Dec. at ¶14. Vice Chancellor  
2 Melissa Lavitt brought up this report to Pagano, but he took it personally and had difficulty  
3 talking about race. 10/07/21 Lavitt 1<sup>st</sup> Supp. Dec. at ¶ 4.

4 On March 23, 2017, a UW-Tacoma climate survey was completed in draft and sent  
5 to Chancellor Pagano; the survey was funded by UW-Tacoma; Dr. Lavitt spoke to  
6 Chancellor Pagano about the survey; he stopped it from going further saying that he  
7 wanted to wait for a big climate study being done by UW Seattle. 10/07/21 Lavitt Supp.  
8 Dec., ¶ 5, Ex. 3.

9  
10 The 2017 UW-Tacoma climate survey was important because its purpose was to  
11 document the experiences of UW-Tacoma faculty of color. 10/7/21 Kimi Ginn Dec. at ¶ 1.  
12 The survey found that, “the 24 faculty members [of color] interviewed reported  
13 experiencing a hostile racial climate at UW-Tacoma.” Ginn Dec., Ex. 1 at 2. The survey  
14 also found that the “UW-Tacoma faculty of color characterized this climate as being  
15 pervasive and existing for at least 10 years.” *Id.* The survey reported “issues with white  
16 faculty, feeling marginalized and unwelcomed, feelings of disrespect and devaluing as it  
17 related to women of color. . . . struggling to get paid.” *Id.* at 2-3.

18  
19 Finally, another area of discontentment and concern is the inequity in the  
20 tenure process. As it was consistently cited, there existed a double standard  
21 with regard to how White faculty members were awarded tenure versus how  
22 faculty of color members were awarded tenure. Faculty of color working  
23 toward tenure were expected to publish more, especially single-author  
24 books, and produce numerous articles in peer-reviewed, prestigious  
25 journals. On top of these ambitious expectations, the research produced by  
faculty of color was often perceived as questionable by their colleagues and  
directors. Taken together this meant that faculty of color did more work,  
received less pay and had higher expectations for promotions, tenure and  
annual reviews compared with their White colleagues.

1 Nearly all faculty of color on campus, especially women of color,  
2 mentioned challenges related to compensation. They reported being paid far  
3 less than their White male colleagues were paid. These faculty members  
often discussed feeling undervalued and frustrated by this lack of  
compensation.

4 *Id.* at 3-4. UW-Tacoma faculty of color “think the campus is merely paying ‘lip service’ to  
5 these issues” and “those interviewed shared that both faculty of color and students of color  
6 experience the reality of marginalization and exposure to a racially hostile campus  
7 environment.” *Id.* at 4.

8 This is the reality that Dr. Marshall innocently entered in 2015.

9  
10 **B. By All measures, Plaintiff Dr. Gillian Marshall Is An Excellent Teacher And  
An Outstanding Scholar**

11 **1. The Faculty Code Supports Tenure For Faculty Who Focus On  
12 Diversity And Who Are Outstanding In Their Scholarship**

13 Plaintiff’s witness on the ins and outs of the Faculty Code is attorney and professor  
14 Mike Townsend, who as Secretary of the Faculty, provides advice to the faculty and to the  
15 administration, and acts as sort of a librarian chronicling past actions to help guide faculty  
16 and the administration with decision-making today. See Townsend Dep. at 1-14. He  
17 doesn’t represent individuals or the University in his job. *Id.* at 33-34.

18  
19 Dr. Townsend states that the Faculty Code is treated as binding on faculty and  
20 administration. *Id.* at 14:4-18. When pointed to ¶ 24-32 of the Code, which provides that  
21 “In accord with the University’s expressed commitment to excellence and equity, any  
22 contributions in scholarship and research, teaching, and service that address diversity and  
23 equal opportunity shall be included and considered among the professional and scholarly  
24 qualifications for appointment and promotion outlined below.” He noted that this is an  
25

1 important section of the Code. *Id.* at 18:6-20:20.

2 Dr. Marshall's NIH research grant addressed issues of diversity.

3 Dr. Townsend also confirmed that appointment to the rank of associate professor  
4 requires a record of substantial success in teaching and/or research and that both teaching  
5 and research are required, "except that in unusual cases an outstanding record in one  
6 of these activities may be considered sufficient." *Id.* at 23:3-18. See also, 09/24/21  
7 Purdy SJ Dec., Ex. B at ¶ 24-34.

## 9 2. Research Grants and Scholarship

10 Dr. Marshall came to UW-Tacoma as the Principal Investigator (PI) managing a  
11 +\$1 million grant funded by the National Institute of Health (NIH). Marshall Dec., Ex. 4  
12 (unredacted T&P File) at #12915. The NIH grant is called a K Award, or a K01. Grants,  
13 especially ones of this size and prestige are important. They bring money and prestige to  
14 the university. Townsend Dep. at 26:20-27:4. "Faculty research is highly valued as it tends  
15 to elevate the campus profile, and it is significant that Dr. Marshall's research brought in  
16 federal grant money, and faculty of color receiving NIH grant money signals that the  
17 campus is doing important work and is able to attract and retain talented faculty. 10/11/20  
18 Lavitt Dec. at ¶¶28-29. "Dr. Marshall was on track to bring national recognition for the  
19 research she was doing with elders and socio-economic status." *Id.* It's amazing that Dr.  
20 Marshall got such a prestigious award as an assistant professor: "less than one percent of  
21 social workers across the nation get a K Award." 9/24/21 Peterson SJ Dec., Ex. 1 at 12:20-  
22 23. The K Award is a career development award that allows the recipient to protect her  
23 time so she can focus on augmenting her research agenda. The recipient has mentors  
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1 around the country with whom she meets, and she presents at national and international  
2 conferences; she can also take related classes. *Id.* at 12:8-19. Grants require an application,  
3 and Dr. Marshall’s application clearly impressed NIH to grant this award and to make her  
4 the sole PI. Marshall Dec., Ex. 4 (unredacted T&P File) at #12913-12917.

5 Diane Young told UCIRO Investigator Louie, “[SWCJ] never had a PI like Dr.  
6 Marshall.” Louie Dep. at 150:8. She’s right. A quick survey of the white SWCJ faculty  
7 **who voted against Dr. Marshall’s tenure and promotion** shows that none of them had  
8 comparable grants and none of them were made principal investigators for any large grant:  
9 SWCJ Full Professor **Charles Emlet** obtained small awards worth a few thousand dollars  
10 over many years and he was PI on some of the smaller grants although he did work as an  
11 investigator on other grants in which the PI worked outside of UW-Tacoma (Sheridan Dec.  
12 Ex. 2); SWCJ Full Professor **Erin Casey** received a few thousand dollars in grants over a  
13 long time frame and apparently was never a PI although she worked as an investigator for  
14 other PIs (Sheridan Dec. Ex. 3); In his long career Full Professor **Rich Furman** received a  
15 few thousand dollars in small grants with one grant for \$171,000 in which he was the PI,  
16 all long before coming to UW-Tacoma (Sheridan Dec. Ex. 4); SWCJ Associate Professor  
17 **Jeff Cohen** received a few thousand dollars in grants and apparently was never a PI  
18 (Sheridan Dec. Ex. 5); SWCJ Associate Professor **Eric Madfis** received zero dollars in  
19 grants (Sheridan Dec. Ex. 232); SWCJ Associate Professor **Michelle Garner** received a  
20 few thousand dollars in grants and apparently was never a PI although she worked as an  
21 investigator for other PIs (Sheridan Dec. Ex. 6); and we have no information on Associate  
22 Professor **Randy Meyers** (no resume available). SWCJ Full Professor **Diane Young** did  
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1 not vote (she abstained) from the tenure vote, but she apparently worked on two grants in  
2 her career totaling \$41,000 (Sheridan Dec. Ex. 7). None of these awards, which were  
3 given to the SWCJ faculty who voted against Dr. Marshall's tenure, stand out, but in  
4 comparison, Dr. Marshall's K Award stands out, which is the meaning of "Outstanding."  
5 <https://www.merriam-webster.com/dictionary/outstanding>

6         Despite the outstanding nature and content of the Marshall K Award, the  
7 defendants challenged the quality of Dr. Marshall's scholarship. They did so with comfort  
8 knowing that their criticisms coming from Diane Young and from the white SWCJ faculty  
9 would be public but the accolades coming from the four "external evaluators" would  
10 remain unknown to Dr. Marshall and the public as a matter of UW policy.

11         Associate Professor Jeff Cohen's October 9, 2020, Tenure Review Committee  
12 letter states, "The committee is in agreement in its determination that Dr. Marshall's record  
13 of research does not meet the Faculty Code's threshold of "outstanding" needed to  
14 outweigh what are very clear deficiencies in the area of teaching, which is a vital aspect of  
15 faculty responsibilities at UW-Tacoma." Marshall Dec., Ex. 4 at #12901.

16         In Vice Chancellor Jill Purdy's February 1, 2021 letter against granting tenure, she  
17 wrote, "[t]he voting faculty note that Dr. Marshall's research is centered on secondary data  
18 analysis, which is not well aligned with the community-engaged mission of the school and  
19 campus," and she concluded, "we do not find this to be an "unusual case" in which an  
20 outstanding record in either teaching or research may be considered sufficient for  
21 promotion, as per FCG 24-34A(2)." *Id.* at #12848 and #12850 (Pagano's concurrence).

22         In December 2020, the UW Appointment, Promotion and Tenure Committee  
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1 (ATP) parroted Cohen’s letter finding: “[t]he voting faculty note that Dr. Marshall’s  
2 research is centered on secondary data analysis, which is not well aligned with the  
3 community-engaged mission of the school and campus” and he concluded, “we do not find  
4 this to be an “unusual case” in which an outstanding record in either teaching or research  
5 may be considered sufficient for promotion, as per FCG 24-34A(2).” *Id.* at 12848.

6 The issue of “outstanding” only applies if Dr. Marshall is deficient in teaching  
7 (which she is not), but this information assumes she is and shows that even if she is  
8 deficient in teaching, her research is outstanding.  
9

10 In April 2018, the reappointment committee found Dr. Marshall’s research to be  
11 “outstanding.” *Id.* at #13026. Her work was so extraordinary that in June 2020, Dr.  
12 Marshall was “invited by the National Institute of Health (NIH) to serve as an early grant  
13 reviewer for a study section which speaks to the high visibility of your work.” *Id.* at #13052.

14 Thankfully, the Court ordered the defendants to produce redacted copies of the four  
15 external reviewers (redacting names and other identifying information), which they did a  
16 few weeks ago. Here they are.  
17

18 On September 8, 2020, External Reviewer No. 1 says it: “The quality of her work is  
19 outstanding.” *Id.* at #12955. No. 1 also noted that she publishes at a high rate in “impactful  
20 journals, and states, “With unwavering certainty, Dr. Marshall will continue to be recognized  
21 for her research through publications and grants. She far exceeds other scholars who are  
22 broadly in aging and health at the same point in their careers.” *Id.* at #12959. No. 1 goes on to  
23 write:  
24

25 What makes Dr. Marshall's research trajectory even more impressive is the  
commitment that the National Institutes of Health (NIH) has invested in her

1 and her work. Any award by NIH indicates that Dr. Marshall is recognized as  
2 an excellent researcher with an agenda that is and will continue to make a  
3 difference, and in her case, in the lives of older adults. To receive a K01 award  
4 followed by a Loan Repayment Award followed by an Administrative  
5 Supplement is no small feat. It is quite extraordinary. It takes focus,  
6 commitment, critical thinking and a solid research plan to even be considered  
7 let alone be awarded funding . . . it is widely recognized and accepted that the  
8 research and training associated with the grant takes priority over all other  
9 responsibilities as evidenced by her scholarship record.

10 In addition to her impressive funding record, Dr. Marshall has disseminated her  
11 research broadly at 13 conferences in her time at the University of Washington  
12 Tacoma which demonstrates her interdisciplinary focus, at gerontological,  
13 public health, and social work conferences.

14 *Id.* at #12955-56.

15 External Reviewer No. 2 also writes a glowing evaluation of Dr. Marshall's work  
16 noting that, "Dr. Marshall's program of research is noteworthy for highlighting personal,  
17 interpersonal, and structural factors that collectively influence health and well-being. Her focus  
18 on older Black adults is especially appropriate given their heightened and lifelong exposures to  
19 environmental circumstances and psychosocial stressors (e.g., higher rates of poverty,  
20 discrimination, reduced access to care) that are significant risks for poor physical and mental  
21 health outcomes." *Id.* at #12957. No. 2 also notes that,

22 Dr. Marshall's research is distinctive from typical research on health  
23 disparities in that her work seeks to understand both proximal and distal  
24 factors associated with adverse health outcomes and identify the causal  
25 pathways that link behavioral, social, and structural determinants of health.  
Doing so, effectively re-conceptualizes health disparities as health  
inequities (i.e., avoidable and unjust inequalities) and underscores the  
systemic and structural features and circumstances that produce and  
maintain poor health and adverse health outcomes among socially  
disadvantaged groups.

*Id.* at #12958. No. 2 writes, "It is particularly noteworthy that she **stands out** as one of few  
scholars from a school of social work to be awarded a K Award. In addition, she has been

1 accorded the distinction of being selected an Early Career Reviewer for the Social Sciences  
2 and Population Study Section of the National Institute on Aging.” *Id.* at #12958.

3 On August 17, 2020, External Reviewer No. 3 wrote, “Dr. Marshall’s [] quantity and  
4 quality of work place her in the top 10-15% of Assistant Professors in gerontology across the  
5 social and behavioral sciences. Her record is similar to those of Assistant Professors at research  
6 intensive universities who are promoted to Associate Professor with tenure.”

7 On August 16, 2020, External Reviewer No. 4 wrote, “Dr. Marshall has advanced  
8 scholarship on the intersection between aging, ethnicity, financial equity, and mental health, an  
9 area that is contemporary and much needed in gerontological research I know many young  
10 scholars who have applied for K01 awards, Dr. Marshall . . . is the only one I am aware of who  
11 successfully obtained this prestigious award.” *Id.* at #12964. No. 4 also writes, “She is the sole  
12 author of a paper published in *Social Work*, the most widely-disseminated journal in social  
13 work that reaches thousands of practitioners and academicians. She also is the first author of  
14 nine publications. Her scholarship has been broadly distributed in well-known journals that  
15 should target those who can benefit most from her research.” *Id.* at #12964-5.

16 If one ignores the biased noise from the small group of white tenured faculty at  
17 SWCJ (and the sound of management’s rubber stamps supporting them), and if one listens  
18 instead to the writings of the objective scholars, then only one conclusion can be reached:  
19 Dr. Marshall’s work is nothing less than outstanding.

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22 **3. Dr. Marshall’s Teaching is Excellent**

23 Dr. Beth Kalikoff has been the Director of the Center for Teaching and Learning  
24 on the UW Seattle campus, since 2010 until she left in 2021. Kalikoff Dec. ¶ 4. The Center  
25 collaborates primarily with faculty members, graduate teaching assistants, and graduate

1 instructors to advance evidence-based teaching at UW. *Id.* at ¶ 5 (she describes in detail the  
2 meaning of evidence-based teaching at ¶¶ 6-8). She has sat on many hiring and promotion  
3 committees and provided peer reviews of faculty at UW-Tacoma and has published on  
4 evidence-based assessment of faculty teaching, and directed the research, writing, and  
5 revision of the Guide for Evaluating Teaching that is currently used at UW. *Id.* at ¶¶ 9-10.

6 Dr. Kalikoff was made aware of the defendants' focus on anonymous student  
7 evaluations as a means for determining Dr. Marshall's teaching performance, and their  
8 written evaluations of Dr. Marshall's teaching in which Dr. Young, Dr. Lazzari, Dr.  
9 Cohen, Dr. Dierwechter, and Dr. Purdy relied on the student evaluations and discounted  
10 the importance of Dr. Kalikoff's evaluations (and evaluations submitted by Julia Aguirre  
11 and Deirdre Raynor) of Dr. Marshall's teaching, because Dr. Kalikoff and the other  
12 evaluators are not social workers working the SWCJ unit. *Id.* at ¶¶ 15-19. Dr. Kalikoff  
13 rebuts as follows.  
14

15 As to discounting her and other's reviews, the student criticisms were not about Dr.  
16 Marshall's expertise in social work—only about the delivery (i.e. disorganized and  
17 unprepared), so Dr. Kalikoff was properly assessing teacher ability. *Id.* at ¶ 15. Also, "it's a  
18 legitimate professional and academic practice to seek peer review from teaching scholars  
19 beyond one's own discipline." *Id.* at ¶ 20. She notes that, "[r]esearch on student evaluations  
20 of faculty teaching indicate that women, Black faculty, Latinx faculty, and especially,  
21 women of color often receive lower student ratings and harsher student comments than  
22 other instructors," and that "substantial success" in teaching does not mean perfection."  
23  
24 *Id.* at ¶ 42.  
25

1 Fundamentally, “it is a misuse [of student evaluations] to have students evaluate the  
2 performance of their instructors;” and “student assessments of instructor performance is  
3 asking them to do something outside their expertise.” *Id.* at ¶¶ 28-29. “Students don't know  
4 what good teaching looks like. They know what they like.” *Id.* at ¶ 37. She also wrote,  
5 “don’t hold the instructor responsible for implicit bias [by students]. *Id.* at ¶ 39. **Peer**  
6 **review and self-assessment should be how we judge a faculty's performance.”** *Id.* at ¶  
7 36. Dr. Marshall was evaluated four times.

9 In March 2017, Dr. Julia Aguirre observed Dr. Marshall teach the 500-level class  
10 called, “Human Behavior and the Social Environment,” and then she wrote to Tom Diehm  
11 (SWCP interim director) with her findings. 10/11/21 Aguirre Dec., Ex. 1. She found “Dr.  
12 Marshall’s instruction . . . is an exemplary model for faculty to learn from.” Ex. 1 at  
13 MAR0145.

14 On March 24, 2018, Dr. Kalikoff observed Dr. Marshall teach the 500-level class  
15 called, “Human Behavior and the Social Environment,” and then she wrote to SWCJ  
16 Director Diane Young with her findings. Kalikoff Dec. ¶11, Ex. 2. Dr. Kalikoff stated, “I  
17 was impressed by her care, clarity, and transparency of the course materials. I was  
18 impressed by [her] expertise in course design and high-impact alternatives to traditional  
19 lecture.” *Id.* at 1. She found Dr. Marshall to be “well organized, collegial, and well  
20 prepared.” *Id.* at 4.

22 Dr. Kalikoff evaluated Dr. Marshall again on January 17, 2019, and again found  
23 her teaching of the 500-level course to be positive stating, “I admire the thoughtful and  
24 meaningful ways you used the full class session to introduce the students to each other, to  
25

1 the course, and to the profession.” *Id.* at 12, Ex. 3.

2 On November 14, 2019, Dr. Deirdre Raynor evaluated Dr. Marshall’s teaching at a  
3 100-level class, “Introduction to Social Work.” Marshall Dec., Ex. 4 at #12983. Dr.  
4 Raynor “enjoyed and applauded Dr. Marshall for her empathy and the patience she  
5 demonstrates through her interactions with students one on one, in small groups, and  
6 during the larger class discussion . . . . the class was organized, and Dr. Marshall  
7 established a strong community of scholars.” *Id.* The white faculty in SWCJ never  
8 attended her classes. Also, if they wanted more evidence of teaching, they could have  
9 reviewed her Case Western student evaluations which they considered at the time of hiring.  
10 Marshall Dec., Ex. 1 at UW00009442-9445.

12 **C. Adverse Employment Actions for Summary Judgment**

13 The reappointment incidents, merit pay denials, and failure to grant tenure were all  
14 improperly supported by the defendants’ reliance on anonymous student evaluations and  
15 not on peer evaluations.

16  
17 In 2017 and 2018, some of the SWCJ white faculty voted against Dr. Marshall’s  
18 reappointment based on negative student evaluations in the 500-level class, which in 2017,  
19 resulted in her having to go up again the following year, 10/7/21 Lavitt Supp. Dec. at ¶¶ 8-  
20 10, Exs. 4, 5, 6. In 2018, the SWCJ white faculty voted against Dr. Marshall’s  
21 reappointment, but were overruled after Dr. Marshall sent an email to Purdy and Pagano  
22 asserting discrimination. Marshall Dec., Ex. 6. The denial of tenure is documented  
23 elsewhere and is also based on the negative student evaluations in the 500-level class. The  
24 non-meritorious findings in 2017 and 2018, were improperly supported by the negative  
25

1 student evaluations in the 500-level class. See Marshall Dec., Ex. 4 at #13036. 13035,  
2 13037, 13040; compare #13040 and 1350. (Diane voted no, majority of faculty yes)  
3 approved #13051, 13054.

4 For the tenure review, Dr. Marshall was not permitted to have on her committee  
5 faculty outside of SWCJ allegedly owing to a Faculty Code change. But Sarah Hampson,  
6 who is white, was permitted to have an outside committee member even though her  
7 committee was working under the same version of the Faculty Code.

8  
9 Despite Dr. Young's criticism of Dr. Marshall's low scores by anonymous  
10 students, she lobbied against reappointment in 2018. Marshall Dec., Ex. 7 (#8755-58). In  
11 contrast Dr. Young took a much softer approach to Faculty Member X (defendant has  
12 stamped the relevant document as confidential), who is not black, who was treated better.

13 **D. Acts After August 15, 2018, Can Be Viewed As Disparate Treatment And**  
14 **WLAD Retaliation**

15 On August 15, 2018, Dr. Marshall went to UCIRO to report race discrimination by  
16 Dr. Diane Young. Sheridan Dec. Exhibit 1 (Louie Dep. at Ex. 1). Investigator Beth Louie  
17 found no discrimination, but neither did she know that there were reports like the one co-  
18 authored by Chris Knaus, which depicted racial hostility at UW-Tacoma. Sheridan Dec.,  
19 Ex. 1 Louie Dep. at 221:3-29:23. Nor did anyone tell her about those issues; she did not  
20 even know the races of the SWCJ faculty she interviewed by phone. *Id.* at 30:20-31:14.

21  
22 **E. Dr. Marshall Has Endured A Hostile Work Environment Since 2015, Which**  
23 **Goes To The Present**

24 Bullying is a fact in this case and in academia in general. Plaintiff hired Dr. Leah  
25 Hollis EdD to explain bullying in this case. She notes that Dr. Young has power and is in a



1 position to bully Dr. Marshall. Hollis Dec., Ex. 1 at 4. She explains that Dr. Young  
2 enhanced her power by supporting the bringing in of a black faculty with cash, but money  
3 did not buy equity for Dr. Marshall. *Id.* at 8. She notes that, “[t]ypical of tactics bullies use,  
4 Dr. Young and the department were particularly selective in their review of Dr. Marshall’s  
5 achievement to deny her tenure.” *Id.* at 11. She notes that the 500-level teaching only  
6 amounts to 3% of her time. *Id.* “Instead of celebrating over 97% of successful research,  
7 service, and teaching in other courses, the department is influenced by a powerful bully,  
8 Dr. Young.” *Id.* at 12. As to students, she notes that “students automatically question  
9 [faculty] competence based on race and gender. *Id.* at 14. She goes on to say, the “student  
10 evaluation process is flawed at best given the power that students wield as ‘clients’ and the  
11 increased risk for faculty of color to receive poor evaluations.” *Id.* at 15.

13           The harassment began in 2015, near the time Dr. Young told Dr. Marshall that she  
14 was being deceptive. Marshall Dec., Ex. 2 at 7. The harassment happened almost daily.  
15 The 2019 tort claim outlines many of the hostile actions taken by Young at first, and then  
16 including the white SWCP faculty and management as they got more involved. See Exhibit  
17 2. It’s impossible to list every incident, but the tort claim is a good start. To document how  
18 the harassment and discrimination wore her down, she completed emotional harm charts  
19 that show non-medical damages caused by the wrongful acts of the defendants. Marshall  
20 Dec., Ex. 5 (see narratives). The chart parallels WPI 330.81. The narrative explains the  
21 cause of her distress. Dr. Marshall also produced a detailed list of harassment that she  
22 documented in response to interrogatories. *Id.* Ex.3. In an effort to nail down dates for  
23 each act and to provide a one sentence explanation of the documents listed in her initial  
24  
25

1 answer, she has created a mark-up that provides such information. *Id.* at Ex. 8.

2 **F. Good Fit And Collegiality**

3 Being a “good fit” and “collegiality” are code for discrimination and are direct  
4 evidence of discriminatory intent. “Coded language includes statements about collegiality  
5 and fit; these are usually applied within a context of questioning whether a potential hire or  
6 candidate for tenure/promotion is a good ‘fit’ within a department.” Knaus Dec. at ¶ 10;  
7 101120 Lavitt Dec. at ¶ 39 (“fit” is often code for policies that perpetuate bias and reduce  
8 the likelihood of hiring diverse faculty). “The UW, and UW-Tacoma . . . have instituted  
9 implicit bias training for faculty that specifically cautions faculty and administrators from  
10 using such coded language in considering candidates, but the use of such remains  
11 commonplace.” Knaus Dec. at ¶ 10.

13 In October 2018, during a special meeting called by Dr. Young and the SWCJ  
14 faculty, excluding Dr. Marshall, to discuss the reappointment policies and practice  
15 following Jill Purdy’s overruling of SWCJ faculty’s recommendation to not grant  
16 reappointment to Dr. Marshall. Jill Purdy suggested to the white faculty present that the  
17 SWCJ faculty should “create policies with criteria to assess collegiality. 10/11/20 Lavitt  
18 Dec. at ¶¶37-39; 10/7/21 Lavitt 1<sup>st</sup> Supp. Dec. at ¶¶ 2-3. Purdy admitted this to UCIRO  
19 Investigator Beth Louie that she told the white faculty it’s “important for the department to  
20 develop standards of collegiality so this doesn’t happen.” Louie Dep. at 94-95:3.

22 SWCJ Tenured Faculty Rich Furman admitted to attending the October 2018  
23 meeting but denied that Jill Purdy had talked about “collegiality” or “good fit.” Furman  
24 Dep. at 10:5-13:17. Similarly, SWCJ Full Professor Charles Emlet denied that Purdy had  
25

1 discussed “collegiality” or “good fit” with the SWCJ faculty. Emlet Dep. at 30:22-31:14  
2 (no, not to my recollection).

3 Jill Purdy is not the only manager to make a statement showing her discriminatory  
4 predilections. In another discussion with Dr. Lavitt involving hiring more persons of color,  
5 Chancellor Pagano said to Vice Chancellor Lavitt, “why can’t we find a good one?” Dr.  
6 Lavitt took that to mean a good person of color. 10/7/21 Lavitt 1<sup>st</sup> Supp. Dec., ¶ 6.

7  
8 As to Diane Young, Purdy also told Louie that she had “not seen or heard anything  
9 from Diane Young that is overtly racist.” *Id.* at 84:17-24. The implication being that Diane  
10 Young’s racism is not out in the open.

### 11 III. ARGUMENT

#### 12 A. The Summary Judgment Standard And Prima Facie Case

13 “Because of the difficulty of proving a discriminatory motivation, summary  
14 judgment for an employer is seldom appropriate in the employment discrimination  
15 context.” *Cornwell v. Microsoft Corp.*, 192Wn.2d 403, 411; 430 P.3d 229, 233–34 (2018)  
16 (quotation marks and citations omitted); *Mikkelsen v. Public Utility District No. 1 of*  
17 *Kittitas County*, 189 Wash.2d 516, 527, 404 P.3d 464 (2017). In evaluating a summary  
18 judgment motion, the Court must “consider all facts and make all reasonable factual  
19 inferences in the light most favorable to the nonmoving party.” *Id. quoting, Scrivener v.*  
20 *Clark Coll.*, 181 Wash. 2d 439, 444, 334 P.3d 541, 545 (2014). The *Scrivener* Court  
21 clearly sets out the summary judgment burden: “An employee does not *need* to disprove  
22 each of the employer's articulated reasons to satisfy the pretext burden of production. Our  
23 case law clearly establishes that it is the plaintiff's burden at trial to prove that  
24  
25

1 discrimination was a substantial factor in an adverse employment action, not the only  
2 motivating factor.” *Scrivener v. Clark Coll.*, 181 Wash. at 447(citation omitted). The  
3 Court concluded, “An employer may be motivated by multiple purposes, both legitimate  
4 and illegitimate, when making employment decisions and still be liable under the WLAD.”

5 *Id.* The same analysis applies here.

6 In these cases, plaintiff’s proof must almost always, “be shown by circumstantial  
7 evidence, since the employer is not apt to announce retaliation as his motive.” *Cornwell v.*  
8 *Microsoft Corp.*, at 234, quoting, *Wilmot v. Kaiser Alum. & Chem. Corp.*, 118 Wash.2d 46,  
9 69, 821 P.2d 18 (1991) (which is a wrongful discharge case) (quoting 1 Lex K. Larson,  
10 Unjust Dismissal § 6.05[5], at 6-51 (1988) ); see also *Currier v. Northland Servs., Inc.*,  
11 182 Wash. App. 733, 746-47, 332 P.3d 1006 (2014) (because employers rarely will reveal  
12 they are motivated by retaliation, plaintiffs ordinarily must resort to circumstantial  
13 evidence to demonstrate retaliatory purpose).

14 Here, plaintiff has direct evidence supporting all three claims because Jill Purdy’s  
15 “good fit” and “collegiality” comments are direct evidence of discrimination. “Evidence  
16 of a racially motivated employment decision *may* be direct (for example, discriminatory  
17 statements by a decision-maker).” *Dumont v. City of Seattle*, 148 Wash. App. 850, 868,  
18 200 P.3d 764, 772 (2009). Also, there is mendacity in the denials of Emlet and Furman.

19 The factfinder's disbelief of the reasons put forward by the defendant  
20 (particularly if disbelief is accompanied by a suspicion of mendacity) may,  
21 together with the elements of the prima facie case, suffice to show  
22 intentional discrimination. Thus, rejection of the defendant's proffered  
23 reasons will *permit* the trier of fact to infer the ultimate fact of intentional  
24 discrimination.

25 *Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 133, 147, 120 S. Ct. 2097, 2108, 147

1 L. Ed. 2d 105 (2000).

2 **B. Plaintiff's Disparate Treatment Claim Must Go To The Jury**

3 To prevail at trial, Dr. Marshall must show that the State took one or more adverse  
4 actions against her, and that race was a substantial factor in the decision. WPI 330.01;  
5 *Scrivener v. Clark College*, at 444. "An adverse employment action is one that materially  
6 affects the terms, conditions or privileges of employment." WPI 330.01.02. An action  
7 must involve a change in employment that is more than an inconvenience or alteration of  
8 one's job responsibilities. *Boyd v. State*, 187 Wn.App. at 11–12; *Kirby v. City of Tacoma*,  
9 124 Wn.App. 454, 98 P.3d 827 (2004). However, the distinction between an adverse  
10 employment action and a mere "inconvenience" or "alterations of one's job  
11 responsibilities" is not a bright line. See *Alonso v. Qwest Commc'ns Co., LLC*, 178  
12 Wn.App. 734, 747, 315 P.3d 610 (2013) (whether loss of certain van and cellular phone  
13 benefits constituted adverse employment action is an issue of fact for the jury); *Davis v. W.*  
14 *One Auto Grp.*, 140 Wn.App. 449, 166 P.3d 807 (2007) (failure to give plaintiff same  
15 recognition as employee of the month, such as posting his picture or letting him drive the  
16 car of his choice, was sufficient to state a claim). See, WPI 330.01.02 comment.

17 Here, there are contested issues of fact pertaining to the incidents listed above.  
18 They are adverse employment actions, and they go to the jury.

19 **C. Plaintiff's Retaliation Claim Must Go To The Jury**

20 "[A]n employee who opposes employment practices reasonably believed to be  
21 discriminatory is protected by the "opposition clause" whether or not the practice is  
22 actually discriminatory.'" *Renz v. Spokane Eye Clinic, P.S.*, 114 Wn. App. 611, 619, 60  
23  
24  
25

1 P.3d 106 (2002) (quoting *Graves v. Dep't of Game*, 76 Wn. App. 705, 712, 887 P.2d 424  
2 (1994)); accord incorporating the “reasonable belief” standard based on WPI 330.05). “The  
3 term ‘oppose,’ is undefined in the statute, but carries its ordinary meaning: ‘to confront  
4 with hard or searching questions or objections’ and ‘to offer resistance to, contend against,  
5 or forcefully withstand.’” *Lodis v. Corbis Holdings, Inc.*, 172 Wn. App. 835, 848, 292 P.3d  
6 779 (2013) (quoting Webster's Third New International Dictionary 1583 (2002)).

7  
8 The term “adverse” means unfavorable or disadvantageous. An employment action  
9 is adverse if it is harmful to the point that it would dissuade a reasonable employee from  
10 making a complaint of *retaliation*. Whether a particular action is adverse is judged from  
11 the perspective of a reasonable person in the plaintiff's position. WPI 330.06. *Burlington N.*  
12 *& Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68, 126 S.Ct. 2405, 165 L.Ed. 2d 345 (2006) (an  
13 adverse employment action is one that would dissuade a reasonable worker from making  
14 or supporting a charge of discrimination). Any action listed for disparate treatment applies  
15 here after August 15, 2018, as do some of the hostile work environment facts.

16  
17 Based on the record, there are contested issues of fact that require a jury decide.

18 **D. Plaintiff's Hostile Work Environment Claim Must Go To The Jury**

19 To prove harassment, plaintiff must prove the following four elements:

- 20 (1) the harassment was unwelcome,  
21  
22 (2) the harassment was because plaintiff was a member of a protected class,  
23  
24 (3) the harassment affected the terms and conditions of employment, and  
25  
(4) the harassment is imputable to the employer.

1 The third element is satisfied if the harassment is sufficiently pervasive so as to  
2 alter the conditions of employment and create an abusive working environment, ...  
to be determined with regard to the totality of the circumstances.

3 *Loeffelholz v. Univ. of Washington*, 175 Wash. 2d 264, 275, 285 P.3d 854, 859 (2012)  
4 (quotation marks omitted); *Glasgow v. Ga.-Pac. Corp.*, 103 Wash.2d 401, 406-07, 693  
5 P.2d 708 (1985)); WPI 330.23. “The standard for linking discriminatory acts together in  
6 the hostile work environment context is not high. The acts must have some relationship to  
7 each other to constitute part of the same hostile work environment claim.” *Loeffelholz v.*  
8 *Univ. of Washington*, at 276.

9  
10 There is extensive evidence that plaintiff was in an abusive work environment.  
11 This goes to the jury.

#### 12 IV. CONCLUSION

13 For the aforementioned reasons, Defendant’s Motion for Summary Judgment  
14 should be denied.

15 Dated this 11<sup>th</sup> Day of October 2021.

16 THE SHERIDAN LAW FIRM, P.S

17  
18 By: /s/John P. Sheridan

19 John P. Sheridan, WSBA No. 21473  
20 Hoge Building, Suite 1200  
21 705 Second Avenue  
22 Seattle, WA 98104  
23 Phone: 206-381-5949  
24 Fax: 206-447-9206  
25 [jack@sheridanlawfirm.com](mailto:jack@sheridanlawfirm.com)  
*Attorney for Plaintiff*

**CERTIFICATE OF SERVICE**

I, Tony Dondero, certify that on October 11, 2021, I served the document to which this Certificate is attached to the party listed below in the manner shown.

Mary Crego Peterson, WSBA #31593  
Jake Ewart, WSBA #38655  
Hillis Clark Martin & Peterson  
999 Third Avenue, Suite 4600  
Seattle, WA 98104-3188  
Tel: 206-623-1745  
Fax: 206-623-7789  
Attorneys for Defendant State of  
Washington

- By United States Mail
- By Legal Messenger
- By Facsimile
- By Overnight Fed Ex Delivery
- By Electronic Mail To:

[mary.peterson@hcmp.com](mailto:mary.peterson@hcmp.com)  
[jake.ewart@hcmp.com](mailto:jake.ewart@hcmp.com)

Dated this 11th day of October, 2021.

s/Tony Dondero  
Tony Dondero, Legal Assistant