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

HO-CHUAN CHEN and HOSSEIN
BARAHIMI,

Plaintiffs,

v.

LINDA DOUGHERTY; JENNIFER
LINDWALL; MATTHEW NOLAN;
and KING COUNTY,

Defendants.

NO.

COMPLAINT FOR RETALIATION
FOR EXERCISE OF FIRST
AMENDMENT RIGHTS, FOR
DAMAGES AND FOR INJUNCTIVE
RELIEF

For their Complaint, plaintiffs Ho-Chuan Chen and Hossein Barahimi allege as follows:

1. This Complaint seeks redress for a pattern of retaliation, discrimination, and abuse of official authority carried out by defendant supervisory employees of the King County Department of Transportation, Road Services Division. Plaintiffs are King County employees who are members of the Travel Forecasting and Data Management (TFDM) Group, which has responsibility for travel forecast model development, developing travel forecasts for comprehensive plan, road projects, and other travel forecasting applications, and working to ensure consistency among County travel forecasting applications. Beginning in 2000 and continuing thereafter, plaintiffs and their TFDM Group raised a

1 series of issues and concerns regarding the use of flawed, questionable, and non-standard
2 methodology by another work group within the County's Road Services Division, the
3 Transportation Concurrency Management (TCM) Group, with respect to traffic
4 "concurrency" decisions made by the TCM Group. Plaintiffs informed TCM and
5 defendants that the concurrency program failed to follow Federal Highway Administration
6 (FHWA) guidelines as provided for in the King County Code, that defendants had failed to
7 implement recommendations by the County Auditor to correct deficiencies previously
8 identified with respect to concurrency decisionmaking, that false information had been
9 presented to the County Council, and that a concurrency decision for a development
10 proposal known as Redmond Ridge East was based on fatally flawed changes in the
11 concurrency model and/or applications of the model.
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14 Plaintiffs fully documented their issues and concerns. Plaintiffs presented their
15 issues and concerns through appropriate channels within the King County Department of
16 Transportation. Plaintiffs sought to have their issues and concerns addressed, and the
17 documented flaws in the decisionmaking process corrected, so that defendant King County
18 would be making accurate and defensible concurrency decisions in compliance with the
19 King County Code and other law. The matters on which plaintiffs spoke out within King
20 County are matters of legitimate and substantial public concern.
21

22 Defendants did not react well to plaintiffs' statements and efforts. Rather than
23 address the issues and concerns raised by plaintiffs, and rather than correct the improper
24 and illegal conduct which plaintiffs brought to their attention, defendants instead have tried
25 to shoot the messengers. Defendants undertook a concerted pattern of retaliation and
26 discrimination against plaintiffs, using the familiar means employed by managers who
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1 abuse their authority to attack employees who speak out to identify improper practices and
2 wrongdoing: assignment of the employees' work to others; exclusion of the employees
3 from meetings and information; poisoning the reputation of the employees in the
4 workplace to isolate them; issuing false and unwarranted discipline; issuing false and
5 unjustified poor performance evaluations; conducting biased investigation of complaints
6 passed off as fair and "independent;" and, ultimately, employment termination supported
7 by false justifications to cover up the course of retaliation.
8

9 Plaintiffs' internal complaints have not succeeded in holding those responsible for
10 this abusive behavior accountable, nor have they succeeded in bringing an end to the
11 abusive and wrongful conduct. Those goals, therefore, must be carried through in this
12 judicial action.
13

14 I. PARTIES

15 2. Plaintiff Ho-Chuan Chen was at all times pertinent herein up to January,
16 2004, employed as Supervisor, Travel Forecasting and Data Management Group, CIP and
17 Planning Section, Road Services Division, King County Department of Transportation,
18 King County.
19

20 3. Plaintiff Hossein Barahimi was at all times pertinent to this complaint up to
21 January, 2004 employed as Program Manager, Travel Model Applications, Travel
22 Forecasting and Data Management Group, CIP and Planning Section, Road Services
23 Division, King County Department of Transportation, King County.
24

25 4. Defendant Linda Dougherty at all times pertinent to this complaint is and
26 was employed as Director, Road Services Division, King County Department of
27 Transportation. Defendant Dougherty directly supervises defendant Lindwall, and has
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1 supervisory control and authority with respect to plaintiffs. Plaintiffs' claims against
2 defendant Dougherty are brought against said defendant in her individual and official
3 capacities.
4

5 5. Defendant Jennifer Lindwall is and was employed at all time pertinent to
6 this Complaint as Section Manager, CIP and Planning Section, Road Services Division,
7 King County Department of Transportation. Defendant Lindwall was plaintiffs'
8 supervisor. Defendant Lindwall was the direct supervisor of plaintiff Chen, and had
9 supervisory authority over plaintiff Barahimi. Plaintiffs' claims against defendant
10 Lindwall are brought against said defendant in her individual and official capacities.
11

12 6. Defendant Matthew Nolan at all times pertinent to this Complaint was
13 employed as Managing Engineer, Engineering Service Section, Road Services Division,
14 King County Department of Transportation. Plaintiffs' claims against defendant Nolan are
15 brought against said defendant in his individual and official capacities.
16

17 7. Defendant King County is a municipal government and the employer of
18 plaintiffs and all individual defendants named herein. Defendant King County is
19 responsible for the official actions of the individual defendants, is responsible for the
20 actions and failures to act of the individual defendants taken pursuant to usual County
21 custom and practice, is responsible for the actions and failures of the individual defendants
22 within the scope of their employment and authority as employees of defendant King
23 County, and is responsible for its own actions.
24

25 II. VENUE AND JURISDICTION

26 8. Claims of the individual plaintiffs exceed \$75,000 for each plaintiff.
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1 14. Beginning in 2000, plaintiffs and the other members of the TFDM Group
2 became aware that the TCM Group was not correctly applying the concurrency model, was
3 modifying the model without validating the modifications to the standards specified in the
4 King County Code, and was not implementing the recommendations made by the King
5 County Auditor in 1999. Plaintiffs communicated their information and concerns to their
6 supervisors and to the appropriate employees with responsibility for making and
7 overseeing concurrency determinations. The matters on which plaintiffs communicated are
8 matters of legitimate and substantial public importance.
9

10 15. On September 25, 2001, plaintiffs and other members of TFDM met with
11 defendant Lindwall to raise concerns regarding various actions and failures to act on the
12 part of TCM. The TFDM attendees explained to defendant Lindwall that they did not
13 agree with TCM's methodology and were concerned that they would not be able to defend
14 it. The matters raised by plaintiffs and TFDM at this meeting are matters of legitimate and
15 substantial public interest.
16

17 16. One of the concurrency decisions before the County, and which came to the
18 attention of plaintiffs and the TFDM Group, was the determination for a proposed
19 development in the "Bear Creek" area of King County near Redmond, known as
20 "Redmond Ridge East." Plaintiffs reviewed the TCM model which was used as a base for
21 Redmond Ridge East.
22

23 17. On February 20, 2002, plaintiffs attended a meeting with other members of
24 the TFDM Group, members of the TCM Group, Richard Warren, Supervisor of the
25 concurrency program, and defendant Lindwall. One of the topics discussed at the meeting
26 was that the TCM model would not include growth in Snohomish County. Richard Warren
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1 stated that this decision was due to time constraints, and that all of the Bear Creek area
2 (including the proposed Redmond Ridge East development) was already identified as
3 “red,” meaning that it was out of compliance such that new land use proposals could not
4 pass the concurrency test.
5

6 18. Approximately two weeks after that meeting plaintiff Barahimi was
7 informed that the “UPD zones” in the Bear Creek area (which include the proposed
8 Redmond Ridge East development) were “green,” meaning that concurrency certificates
9 certifying that a proposed development met concurrency requirements could be issued
10 within the Bear Creek area. This information was contrary to that presented by Richard
11 Warren at the meeting on February 20, 2002.
12

13 19. On March 8, 2002, plaintiff Barahimi sent Richard Warren an e-mail
14 message, with copies to all TCM and TFDM staff in attendance at the February 20, 2002
15 meeting, pointing out the discrepancy between what Mr. Warren stated at the meeting and
16 the information learned the day before by plaintiff Barahimi. Plaintiff Barahimi’s message
17 reasserted the TFDM Group’s prior recommendation that the TCM Group follow standard
18 modeling procedures for use in making concurrency determinations.
19

20 20. Mr. Warren did not respond to plaintiff Barahimi’s message. Mr. Warren
21 communicated with defendant Lindwall regarding the message.
22

23 21. In 2001, defendant Nolan hired a consultant on behalf of King County to do
24 travel forecasting for the Woodinville-Duvall Road (WDR) road improvement project.
25 The purpose of this work was to use a travel model to analyze and determine whether the
26 roadway should be improved to three or five lanes. The TFDM Group provided comments
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1 on the project's scope of work, and recommended that the consultant follow national
2 standards and practices for its travel forecasting work.

3
4 22. On June 25, 2002, there was a travel modeling meeting for the WDR
5 project. Plaintiff Barahimi and two other members of TFDM were in attendance at the
6 meeting. Defendant Nolan distributed or directed the distribution of minutes of the
7 meeting. None of the TFDM Group members who attended the meeting received the
8 minutes. The meeting minutes identified the TFDM participants as attendees, and
9 indicated that copies of the minutes were sent to all attendees. This information was false.

10
11 23. In October, 2002, the TFDM Group was requested to review a draft report
12 of the travel forecasting work done by the consultant. The TFDM Group found that the
13 methodologies used by the consultant were not consistent with national or local practice.
14 Plaintiffs raised their concerns regarding the consultant's work, but defendant Nolan stated
15 that he wanted to use the consultant's model regardless of the improper methodologies
16 identified by TFDM.

17
18 24. After the TFDM had provided comments regarding the consultant's work on
19 the WDR project, defendant Nolan complained to plaintiffs' supervisor that plaintiffs were
20 "difficult to work with." The matters on which plaintiffs had provided comment are
21 matters of legitimate and substantial public interest.

22
23 25. A meeting invitation was sent out on or about January 8, 2003, for a WDR
24 travel forecasting discussion by or at the direction of defendant Nolan. The e-mail
25 invitation included plaintiffs' names as persons to whom the invitation was sent, but in fact
26 the invitation was not sent to plaintiffs. This was done by or at the direction of defendant
27 Nolan. Defendant Nolan's deceptive action was intended to create a false impression on
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1 the part of plaintiffs' co-workers and supervisors that plaintiffs were acting irresponsibly
2 by failing to attend a meeting to which they had been invited.

3
4 26. A meeting pertaining to WDR travel forecasting was held on January 9,
5 2003. In the meeting, the conclusion was reached that certain travel forecasting needed to
6 be discussed further internally. Defendant Nolan issued or directed the issuance of a
7 meeting summary which stated incorrectly that agreement had been reached to use the
8 consultant's model for the intersections in question.

9
10 27. Project managers employed by defendant King County for projects known
11 as the Benson Road and Carr Road projects hired outside consultants to do travel
12 forecasting, in violation of defendant King County's agreement with plaintiffs' union
13 regarding the contracting out of work that could be done by King County employees such
14 as plaintiffs.

15
16 28. On December 10, 2002, Fay Schafi, Senior Traffic Engineer for defendant
17 King County, asked plaintiffs Chen and Barahimi to join a meeting that already was in
18 progress regarding travel forecasting issues for the Benson Road and Carr Road projects.
19 At the meeting it was discussed that one of the outside consultants hired by King County
20 had determined that work done by the other outside consultant hired by the County was
21 incorrect. Plaintiffs recommended the use of the King County travel model for the task,
22 and offered to do the work for the project.

23
24 29. Defendant Nolan invited TFDM staff to a meeting pertaining to the Benson
25 Road and Carr Road projects. Defendant Nolan thereafter notified TFDM staff only that
26 the meeting had been cancelled, but in fact the meeting occurred in the absence of and
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1 without the knowledge of TFDM staff. At the meeting, decisions were made to not have
2 TFDM work on the project and to ignore TFDM's recommendations.

3
4 30. On January 9, 2003, plaintiff Chen sent an e-mail message to defendant
5 Nolan expressing concerns regarding defendant Nolan's actions in not providing meeting
6 minutes to TFDM, falsely identifying TFDM as recipients of the meeting minutes,
7 complaining about plaintiffs being difficult to work with to plaintiffs' supervisor Lindwall
8 rather than considering the substance of plaintiffs' statements, sending a meeting invitation
9 which falsely identified plaintiffs as invitees, failing to inform TFDM of travel forecasting
10 needs for the Benson Road and Carr Road projects for which outside consultants were
11 hired, and sending plaintiffs a meeting cancellation notice for a meeting that was held but
12 excluded plaintiffs.

13
14 31. Defendant Nolan did not respond to plaintiff Chen's e-mail.

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16 32. On January 15, 2003, defendant Lindwall met with plaintiffs and with Jay
17 Osborne, Project Program Analyst. Defendant Lindwall directed plaintiff Chen to not
18 communicate by e-mail. Plaintiffs explained that this was not a communication issue as
19 stated by defendant Lindwall, that plaintiff Chen's message to defendant Nolan was not a
20 "threat" as stated by defendant Lindwall, and that defendant Nolan had not responded to
21 address the issues of unfair treatment and deceptive conduct in which defendant Nolan had
22 engaged.

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24 33. In February, 2003, defendant Lindwall directed TFDM to provide a detailed
25 work program. There was no legitimate business justification for this requirement. The
26 purpose of the requirement was to punish and retaliate against plaintiffs for having raised
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1 concerns regarding improper governmental practices and actions as identified in this
2 complaint.

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4 34. In December, 2002, TCM was involved in development of a new travel time
5 model. Model development is the main responsibility of TFDM, which has the most
6 expertise and experience in travel forecasting within KCDOT. Plaintiff Chen possesses
7 specialized knowledge of travel time models. Plaintiffs and TFDM Group were excluded
8 from this model development by defendant Lindwall. Defendant Lindwall excluded
9 plaintiffs for no legitimate governmental reason, but rather to retaliate against plaintiffs for
10 having challenged actions and raised concerns as identified in this complaint with respect
11 to matters of legitimate and substantial public interest.
12

13 35. In January, 2003, a Concurrency Transportation Advisory Committee
14 technical review panel was established to provide guidance to TCM regarding travel time
15 model development. TFDM was not informed of the formation of this technical panel,
16 even though TFDM had the greatest expertise in this field within King County. Defendant
17 Lindwall excluded plaintiffs from this committee in retaliation for plaintiffs'
18 communications on matters of legitimate and substantial public interest.
19

20 36. Defendant Lindwall acted systematically to not assign work to TFDM and
21 to not provide TFDM the opportunity to lead projects. Plaintiffs and TFDM were singled
22 out for this adverse treatment.
23

24 37. Defendant Lindwall and others excluded plaintiffs and TFDM from
25 involvement in reviewing the TCM processes, work and results after TFDM had pointed
26 out that TCM's processes and assumptions were flawed.
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1 38. Defendant Lindwall hired an outside consultant to resolve what she
2 identified as “personality” and “communication” issues between TFDM and TCM. The
3 consultant concluded that the problems were the result of confusion over roles and
4 responsibilities rather than “personality” or “communication” issues. Defendant Lindwall
5 did not follow her consultant’s recommendations.
6

7 39. Defendant Lindwall excluded TFDM from participation in work pertaining
8 to the Regional Transportation Improvement District.
9

10 40. Defendant Lindwall excluded plaintiffs and TFDM from participation in
11 Roads Strategic Plan development.
12

13 41. At a meeting regarding the Redmond Ridge East proposal attended by
14 plaintiffs, defendant Dougherty, and other King County employees, Richard Warren
15 informed the persons attending the meeting that the concurrency model assumed 1700
16 vehicles per direction for Novelty Hill Road, one of the roads affected by the proposed
17 Redmond Ridge East development. Mr. Warren also stated that Snohomish County growth
18 was not included in the concurrency model. On February 6, 2003, plaintiff Chen sent an e-
19 mail communication to defendant Dougherty and others, stating that the Novelty Hill Road
20 capacity identified by Mr. Warren was not reasonable and reaffirming concerns and issues
21 previously communicated by TFDM to defendant Lindwall and Mr. Warren. Plaintiff
22 Chen made recommendations to fix the assumptions and processes of the concurrency
23 model and requested a response.
24

25 42. On February 28, 2003, plaintiffs and three other members of the TFDM
26 Group filed a whistleblower complaint with defendant King County. The complaint was
27 amended on June 11, 2003.
28

1 43. On April 10, 2003, plaintiffs Chen, Barahimi, and TFDM staff wrote to
2 King County Executive Ron Sims to bring to Executive Sims' attention a fatal flaw in the
3 processes used by the King County Transportation Concurrency Program, and in particular
4 the processes used to issue a concurrency certificate for 1508 single-family units for the
5 Redmond Ridge East development proposal.
6

7 44. On May 1, 2003, defendant Dougherty wrote a letter to plaintiff Chen.
8 Defendant Dougherty's letter reprimanded plaintiff Chen for having performed his job
9 responsibilities in a proper and professional manner and for having spoken out on matters
10 of legitimate and substantial public concern.
11

12 45. On May 5, 2003, plaintiffs and TFDM staff filed a complaint with defendant
13 King County regarding retaliatory conduct by defendant Lindwall against plaintiffs.
14

15 46. On May 21, 2003, plaintiffs and TFDM staff filed a retaliation complaint
16 against defendant Dougherty with defendant King County. This complaint alleged that
17 defendant Dougherty retaliated against plaintiff Chen for having identified serious flaws in
18 the concurrency program.
19

20 47. On or about June 4, 2003, plaintiffs filed a complaint dated May 8, 2003
21 with the King County Office of Civil Rights, alleging discriminatory and retaliatory
22 conduct on the part of defendants Lindwall and Nolan.
23

24 48. Defendant King County did not conduct fair investigations with respect to
25 plaintiffs' whistleblower and retaliation complaints. King County purported to conduct or
26 obtain "independent" reviews of the complaints, but instead worked closely with the
27 persons whose wrongful conduct was identified in the complaints to respond to the
28 complaints. King County hired an outside consultant to respond to one of the complaints.

1 This consultant failed to inquire into and investigate several of the matters which were the
2 subjects of the complaints, and instead focused her investigation on compiling the claims
3 made by the respondents against plaintiff Chen.
4

5 49. On September 25, 2003, defendant Dougherty issued layoff notices to
6 plaintiffs Chen and Barahimi. Defendant Lindwall participated in the actions and decisions
7 that were the subject of these notices. The notices stated false and untenable reasons for
8 the decision to lay off plaintiffs Chen and Barahimi. The real reason for the decisions was
9 to retaliate against plaintiffs for speaking out on issues of legitimate and substantial public
10 interest, and to retaliate against plaintiffs for having engaged in the protected activity of
11 filing whistleblower, discrimination, and retaliation complaints.
12

13 50. Defendants Lindwall and Dougherty worked together to retaliate against
14 plaintiffs for having spoken out on issues of legitimate and substantial public importance,
15 and for having filed whistleblower, discrimination, and retaliation complaints. Defendant
16 Dougherty had actual knowledge of defendant Lindwall's retaliatory conduct, and
17 approved defendant Lindwall's wrongful actions.
18

19 51. On October 15, 2003, defendant Lindwall issued a performance evaluation
20 to plaintiff Chen. The evaluation was unfavorable. Plaintiff Chen's prior evaluations are
21 much more favorable, because the prior evaluations accurately and properly reflected
22 plaintiff Chen's performance. Defendant Lindwall issued a less favorable evaluation to
23 retaliate against plaintiff Chen for having exercised his First Amendment rights to raise
24 issues of legitimate and substantial public interest and to file complaints challenging
25 defendant Lindwall's discriminatory and retaliatory conduct.
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1 52. Plaintiffs Chen and Barahimi were the only employees within the entire
2 King County Department of Transportation targeted by the layoff notices. Defendants’
3 layoff scheme did not promote any legitimate governmental interest, and was carried out in
4 violation of defendant King County’s labor agreement with plaintiffs’ union regarding
5 layoffs and “bumping.”
6

7 53. Defendant King County’s unlawful layoff scheme was put into effect in
8 January, 2004. Pursuant to this scheme, plaintiff Barahimi now has the position of
9 Transportation Planner III, with responsibility for the County’s non-motorized plan and
10 other planning duties. Pursuant to the County’s unlawful layoff scheme, plaintiff Chen,
11 Transportation Planner IV (supervisor), now has been demoted to the position of
12 Transportation Planner II, under the supervision of an employee who “bumped” plaintiff
13 Chen but does not have the qualifications to perform plaintiff Chen’s former position.
14

15 54. The actions and failures to act of defendants as alleged herein have caused
16 harm to the careers and reputations of plaintiffs, have caused economic harm to the
17 plaintiffs including lost future wages, and have caused emotional distress to be suffered by
18 the plaintiffs.
19

20 55. The actions and failures to act of defendants Dougherty, Lindwall and
21 Nolan as alleged herein were malicious and/or in reckless disregard of the rights of
22 plaintiffs Chen and Barahimi.
23

24 IV. FIRST CLAIM: RETALIATION IN VIOLATION
25 OF THE FIRST AMENDMENT

26 56. Defendants have retaliated against plaintiffs for plaintiffs’ statements made
27 in the course of plaintiffs’ work on matters of legitimate and substantial public interest.
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1 57. Defendants' retaliatory actions violate plaintiffs' rights protected by the
2 First Amendment to the United States Constitution, and by 42 U.S.C. § 1983.

3
4 V. SECOND CLAIM: RETALIATION IN VIOLATION OF
5 THE LAW AGAINST DISCRIMINATION

6 58. Plaintiffs' civil rights complaint, as described in paragraph 47 above, was
7 filed in opposition to practices forbidden by chapter 49.60 RCW.

8 59. Defendants retaliated against plaintiffs for filing their civil rights complaint.

9 60. Defendants' retaliatory conduct constitutes unfair practices within the
10 meaning of RCW 49.60.210 and violates plaintiffs' rights as otherwise protected by
11 chapter 49.60 RCW.

12 VI. THIRD CLAIM: ADVERSE EMPLOYMENT ACTION
13 IN VIOLATION OF PUBLIC POLICY

14 61. Plaintiffs reallege and incorporate by this reference the allegations set forth
15 in paragraphs 1 through 60 above.

16 62. The layoffs of plaintiffs Chen and Barahimi were contrary to the public
17 policy of Washington, including but not limited to the policies of RCW 42.23.070(1) and
18 the King County Code.

19
20 VII. FOURTH CLAIM: BREACH OF COLLECTIVE BARGAINING AGREEMENT

21 63. Defendants' actions in contracting out work that could have been done by
22 plaintiffs and the TFDM Group without notice to that group and to their union, and
23 allowing an employee outside plaintiff Chen's unit to "bump" plaintiff Chen to a lower
24 position, violated the collective bargaining agreement between defendant King County and
25 the International Federation of Professional and Technical Engineers, Local 17.

26 64. Plaintiffs are members of Local 17.

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Dated this _____ day of April, 2004.

Respectfully submitted,

GENDLER & MANN, LLP

By: _____

Michael W. Gendler
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