

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WASHINGTON

**Dustin Canfield and Darrik Gregg v. Grant County Sheriff's Office, a
Division of Grant County; and Grant County, a legal organized
county existing under the laws of the State of Washington; Tom
Jones, individually; and Ryan Rectenwald, individually**

Canfield · No. 2:24-CV-0098-TOR · Decided January 26, 2026

SUMMARY

The document is an order addressing Defendants’ motion for summary judgment and Plaintiffs’ motion to supplement authorities in an employment-related civil rights action. The court grants the motion to supplement in part and grants summary judgment in part, concluding that Dustin Canfield presented sufficient factual disputes regarding protected speech, adverse employment action, and causation, while Darrik Gregg did not establish sufficient facts to proceed on his First Amendment retaliation claim. The opinion also addresses compelled speech or silence and municipal liability under Monell.

CASE DETAILS

COURT	United States District Court for the Eastern District of Washington
JURISDICTION	United States District Court for the Eastern District of Washington
DECIDED	January 26, 2026
DOCKET	2:24-CV-0098-TOR
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved for summary judgment in an action asserting First Amendment claims under 42 U.S.C. § 1983, wrongful discharge in violation of Washington public policy, and intentional infliction of emotional distress. Plaintiffs also moved to supplement their authorities.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court views the evidence in the light most favorable to the nonmoving party and determines whether reasonable minds could differ on factual issues relevant to the claims.

PRECEDENTIAL VALUE	unpublished district court order; nonprecedential
PARTIES	Dustin Canfield, Darrik Gregg v. Grant County Sheriff's Office, a Division of Grant County, Grant County, Tom Jones, individually, Ryan Rectenwald, individually

TOPICS

summary judgment

first amendment

section 1983

wrongful termination

civil procedure

PRACTICE AREAS

constitutional law

civil rights

employment law

municipal law

civil procedure

QUESTIONS PRESENTED

1. Whether plaintiffs presented a genuine dispute of material fact on their First Amendment retaliation claims under 42 U.S.C. § 1983.
2. Whether Canfield's speech was made as a private citizen rather than pursuant to his official duties.
3. Whether Gregg's speech was protected speech and whether he suffered an adverse employment action.
4. Whether plaintiffs established a basis for municipal liability under Monell.
5. Whether qualified immunity barred Canfield's individual-officer First Amendment claim.
6. Whether plaintiffs' resignations and alleged workplace conditions supported wrongful discharge in violation of Washington public policy and constructive discharge.
7. Whether plaintiffs presented sufficient evidence of extreme and outrageous conduct, intent, and severe emotional distress to maintain an IIED claim.
8. Whether plaintiffs should be permitted to supplement their authorities.

HOLDINGS

1. The motion to supplement was granted in part because the parties had agreed to stipulate to the authorities, but the court refused to permit an additional paragraph that presented new argument rather than authorities.
2. Summary judgment was denied because Canfield presented genuine disputes concerning whether he spoke as a private citizen, whether defendants took adverse employment action, and whether his speech substantially motivated the alleged retaliatory conduct.
3. Summary judgment was granted on Gregg's First Amendment claim because he did not establish a genuine dispute that he spoke as a private citizen or that he suffered an adverse employment action.
4. Canfield could not base his § 1983 First Amendment claim on compelled speech or silence because plaintiffs did not show a required message or silence, a predetermined penalty for noncompliance, or clearly established law placing the alleged conduct beyond debate.

5. Summary judgment was granted to Grant County on the § 1983 claim because plaintiffs did not present evidence of deliberate municipal action, a policy or custom causing the constitutional injury, or a basis for liability beyond the conduct of individual employees.
6. Summary judgment was denied on qualified immunity because Canfield presented evidence supporting a First Amendment violation and identified sufficiently relevant, preexisting precedent to create a factual dispute concerning whether the right was clearly established in 2021.
7. Summary judgment was denied on plaintiffs' wrongful-discharge claims because the evidence created a factual dispute about whether the alleged retaliation for reporting misconduct was a significant factor in the resignations and whether the working conditions were intolerable.
8. Canfield could not rely on constructive discharge as an adverse employment action for his § 1983 claim because the alleged conditions did not meet the heightened standard requiring extraordinary and egregious deterioration of working conditions.
9. Summary judgment was granted on plaintiffs' IIED claim because the alleged conduct was not sufficiently extreme and outrageous, and plaintiffs did not present evidence from which reasonable minds could differ concerning intent or severe emotional distress.

KEY QUOTATIONS

“In the interest of justice and because the parties agreed previously to stipulate to this section, the Court will allow the supplemental authorities but not the additional paragraph under the “Need for Supplementation” section.” (at 2)

“To establish a prima facie First Amendment retaliation claim, the plaintiff must prove that ‘(1) []he engaged in protected speech; (2) the defendants took an adverse employment action against h[im]; and (3) h[is] speech was a substantial or motivating factor for the adverse employment action.’” (at 10)

“The question of whether the working conditions were intolerable is one for the trier of fact, unless there is no competent evidence to establish a claim of constructive discharge.” (at 29)

“Constructive discharge requires that working conditions deteriorate, as a result of [the adverse employment action(s)], to the point that they become sufficiently extraordinary and egregious to overcome the normal motivation of a competent, diligent, and reasonable employee to remain on the job to earn a livelihood and to serve his or her employer.” (at 37)

FACTUAL BACKGROUND

Canfield and Gregg were Chief Deputies employed by the Grant County Sheriff's Office. Canfield raised concerns to Sheriff Tom Jones about Chief Deputy Ken Jones's allegedly improper use of leave and related tax fraud, and he also discussed the concerns with people outside the workplace; Gregg primarily asked superiors and coworkers about the status of an internal investigation. After the concerns were raised, plaintiffs alleged that they were confronted in meetings, told not to discuss the matter, excluded from meetings, subjected to changes in their work environment, and pressured to show loyalty. Canfield resigned on September 20, 2021, and Gregg resigned on October 18, 2021.

PROCEDURAL HISTORY

Plaintiffs, former Chief Deputies in the Grant County Sheriff's Office, alleged that they suffered retaliation and constructive discharge after raising concerns about alleged leave and tax fraud by another employee. Defendants moved for summary judgment, and plaintiffs moved to supplement authorities. The court granted both motions in part, dismissed the IIED claim, the municipal § 1983 claim, and Gregg's First Amendment claim with prejudice, while allowing Canfield's individual-officer First Amendment claim and both plaintiffs' wrongful-discharge claims to proceed.

DISPOSITION

other

CASES CITED

- Gausvik v. Perez, 239 F. Supp. 2d 1108, 1112 (E.D. Wash. 2002)
- Doe v. Colville Sch. Dist. No. 115, 2012 WL 554430, at *3 (E.D. Wash. Feb. 21, 2012)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 251, 257 (1986)
- Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)
- T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630-31 (9th Cir. 1987)
- Nigro v. Sears, Roebuck & Co., 784 F.3d 495, 497 (9th Cir. 2015)
- Horton by Horton v. City of Santa Maria, 915 F.3d 592, 599, 602-03 (9th Cir. 2019)
- Dodge v. Evergreen Sch. Dist. #114, 56 F.4th 767, 776-77 (9th Cir. 2022)
- Howard v. City of Coos Bay, 871 F.3d 1032, 1044 (9th Cir. 2017)
- Jensen v. Brown, 131 F.4th 677, 688-90 (9th Cir. 2025)
- Ariz. Students' Ass'n v. Ariz. Bd. of Regents, 824 F.3d 858, 870 (9th Cir. 2016)
- Eng v. Cooley, 552 F.3d 1062, 1074 (9th Cir. 2009)
- Pickering v. Bd. of Ed., 391 U.S. 563, 568 (1968)
- Johnson v. Poway Unified Sch. Dist., 658 F.3d 954, 961 (9th Cir. 2011)
- Lane v. Franks, 573 U.S. 228, 241 (2014)
- Johnson v. Multnomah County, 48 F.3d 420, 422 (9th Cir. 1995)
- Dahlia v. Rodriguez, 735 F.3d 1060, 1074-75 (9th Cir. 2013)
- Garcetti v. Ceballos, 547 U.S. 410, 421 (2006)
- Robinson v. York, 566 F.3d 817, 823-24 (9th Cir. 2009)
- 303 Creative LLC v. Elenis, 600 U.S. 570, 586 (2023)
- Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc., 487 U.S. 781, 797 (1988)
- Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 694 (1978)
- Bd. of Cty. Comm'rs v. Brown, 520 U.S. 397, 415 (1997)
- Est. of Nelson by & through Nelson v. Chelan Cnty., 2024 WL 1705923, at *15 (E.D. Wash. Apr. 19, 2024)
- Dougherty v. City of Covina, 654 F.3d 892, 900 (9th Cir. 2011)

- City of Oklahoma City v. Tuttle, 471 U.S. 808, 810 (1985)
- Pearson v. Callahan, 555 U.S. 223, 231-32 (2009)
- Villanueva v. California, 986 F.3d 1158, 1165 (9th Cir. 2021)
- D.C. v. Wesby, 583 U.S. 48, 63 (2018)
- Martin v. Gonzaga Univ., 191 Wash. 2d 712, 722-23 (2018)
- Danny v. Laidlaw Transit Servs., Inc., 165 Wash. 2d 200, 207 (2008)
- Rose v. Anderson Hay & Grain Co., 184 Wash. 2d 268, 276 (2015)
- Gardner v. Loomis Armored Inc., 128 Wash. 2d 931, 936 (1996)
- Suarez v. State, 3 Wash. 3d 404, 430 (2024)
- Snyder v. Med. Serv. Corp. of E. Washington, 145 Wash. 2d 233, 238 (2001)
- Bulaich v. AT & T Info. Sys., 113 Wash. 2d 254, 261 (1989)
- Townsend v. Walla Walla Sch. Dist., 147 Wash. App. 620, 627 (2008)
- Peiffer v. Pro-Cut Concrete Cutting & Breaking Inc., 6 Wash. App. 2d 803, 829 (2018)
- Haubry v. Snow, 106 Wash. App. 666, 677-78 (2001)
- Allstot v. Edwards, 116 Wash. App. 424, 433 (2003)
- Barnett v. Sequim Valley Ranch, LLC, 174 Wash. App. 475, 485 (2013)
- Travis v. Tacoma Pub. Sch. Dist., 120 Wash. App. 542, 551 (2004)
- Burch v. City of Chubbuck, 146 F.4th 822, 838 (9th Cir. 2025)
- Poland v. Chertoff, 494 F.3d 1174, 1184 (9th Cir. 2007)
- Pettis v. State, 98 Wash. App. 553, 563 (1999)
- Rice v. Janovich, 109 Wash. 2d 48, 61 (1987)
- Strong v. Terrell, 147 Wash. App. 376, 385 (2008)
- Dicomes v. State, 113 Wash. 2d 612, 630 (1989)
- Grimsby v. Samson, 85 Wash. 2d 52, 59 (1975)
- Christian v. Tohmeh, 191 Wash. App. 709, 736 (2015)
- Kloepfel v. Bokor, 149 Wash. 2d 192, 194-95, 202-03 (2003)
- Zink v. City of Mesa, 17 Wash. App. 2d 701, 715 (2021)
- Kirby v. City of Tacoma, 124 Wash. App. 454, 474 (2004)

OPINION

1 2 3 4 5 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WASHINGTON 6 7
DUSTIN CANFIELD and DARRIK GREGG, NO. 2:24-CV-0098-TOR 8 Plaintiffs, ORDER ON
DEFENDANTS' 9 MOTION FOR SUMMARY v. JUDGMENT 10 GRANT COUNTY
SHERIFF'S 11 OFFICE, a Division of Grant County; and GRANT COUNTY, a legal 12
organized county existing under the laws of the State of Washington; 13 TOM JONES,
individually; and RYAN RECTENWALD, 14 individually, 15 Defendants.

16 BEFORE THE COURT are Defendants' Motion for Summary Judgment 17 (ECF No. 37) and Plaintiffs' Motion to Supplement Authorities (ECF No. 50). 18 These matters were submitted for consideration without oral argument.

The Court 19 has reviewed the record and files herein and is fully informed. For the reasons 20 discussed below, Defendants' Motion for Summary Judgment (ECF No. 37) is 1 GRANTED in part and Plaintiffs' Motion to Supplement Authorities (ECF No. 2 50) is GRANTED in part. 3 BACKGROUND 4 This case arises out of claims including wrongful discharge in violation of 5 Washington public policy, intentional infliction of emotional distress ("IIED"), and 6 First Amendment violations under 42 U.S.C. § 1983.

ECF Nos. 1-22 at 24-29. On 7 November 10, 2025, Defendants moved for Summary Judgment. ECF No. 37. On 8 December 5, 2025, Plaintiffs filed a Motion to Supplement Authorities. ECF No. 9 50. 10 Plaintiffs' claims arise out of allegations from their prior employment as 11 Chief Deputies in the Grant County Sheriff's Office. ECF Nos. 38 at 1; 47 at 2-3. 12 The claims involve allegations of Chief Deputy Ken Jones committing fraud by 13 incorrectly taking leave time.

ECF Nos. 48 at 4; 52 at 7-8. 14 In addition to working at Grant County Sheriff's Office, the Sheriff, Tom 15 Jones and Chief Deputy Ken Jones both were working for Seattle's Finest. ECF 16 No. 46 at 2. Plaintiff Dustin Canfield brought to the Sheriff, Tom Jones, concerns 17 about Chief Deputy Ken Jones's potential illegal leave use from his work at 18 Seattle's Finest resulting in tax fraud claims.

ECF Nos. 48 at 4; 52 at 7-8. Plaintiff 19 Dustin Canfield asked to meet with the Sheriff, Tom Jones, at Grant County Park 20 to tell him that he was informed by "some non-exempt commissioner officers" that 1 Chief Deputy Ken Jones's leave use and income were inconsistent. ECF Nos. 38 2 at 2; 48 at 3-4. 3 After it was brought to the Sheriff's attention, he reviewed available 4 information but concluded that it did not require further action.

ECF No. 52 at 9. 5 The Sheriff told Canfield the same thing. Id. On May 18, 2021, Defendant 6 Undersheriff Rectenwald spoke with Canfield to address the issue that Canfield did 7 not follow the chain of command when he failed to come to him with this issue. 8 ECF No. 52 at 11. 9 On August 11, 2021, a meeting was held at Tracy Williams' house. ECF 10 No. 52 at 19- 21.

At this meeting, the issue regarding the complaint was 11 addressed. Id. Plaintiffs, Canfield and Gregg, allege that it was "uncomfortable" 12 and "Canfield was made to tell everybody why he was there." ECF No. 52 at 20. 13 Allegedly, the Sheriff did not believe Canfield wished to have his name as 14 confidential, however, Canfield's father states he asked to keep it confidential.

15 ECF No. 52 at 22-23. 16 Employees recall the office environment changing, including closed-door 17 meetings, tension and "silos" within the office. ECF No. 52 at 12. Plaintiffs allege 18

closed door meetings and meetings about the alleged illegal acts where employees 19 were asked to not speak on the matter. ECF Nos. 43 at 18; 43-5 at 7; 52 at 26, 19- 20 20.

Plaintiff Gregg received instructions from Rectenwald to not talk about outside 1 employment. ECF No. 52 at 14. 2 On September 20, 2021, Plaintiff Canfield resigned. ECF No. 52 at 28. The 3 Sheriff brought this concern of Canfield's resignation to Gregg, inquiring about 4 why this was not brought to his attention. ECF No. 41-2 at 111-112.

On October 5 18, 2021, Plaintiff Gregg resigned. ECF No. 52 at 32. Additional relevant facts 6 will be provided in the analysis. 7 DISCUSSION 8 MOTION TO SUPPLEMENT AUTHORITIES 9 On December 5, 2025, Plaintiffs filed a Motion to Supplement Authorities. 10 ECF No. 50. These authorities include citations to cases about suppressed silence 11 and suppressed speech.

ECF No. 50 at 3. Plaintiffs' brief continues that 12 Defendants did not effectively raise arguments against their suppressed silence 13 claim. ECF No. 50 at 2. Defendants agreed to stipulate to the authorities but not 14 to the contextual paragraph arguing that they did not raise this issue. ECF No. 54. 15 Defendants continue that they did not follow the local rules and do not meet the 16 standard to allow for the supplementation of authorities and arguments after their 17 response.

ECF No. 54. 18 In Plaintiffs' reply, they argue that they argue a compelled speech claim that 19 was not addressed in Defendants' Motion for Summary Judgment. ECF No. 60 at 20 2. Defendants disagree on this argument, and Plaintiffs filed this motion in 1 response because they could not agree to complete stipulation. *Id.* Plaintiffs allege 2 the portion was accidentally deleted before submission.

ECF Nos. 50 at 2; 54-1 at 3 5. 4 In the interest of justice and because the parties agreed previously to 5 stipulate to this section, the Court will allow the supplemental authorities but not 6 the additional paragraph under the "Need for Supplementation" section. This 7 section provides arguments rather than authorities on the relevant issues. See 8 *Gausvik v. Perez*, 239 F. Supp. 2d 1108, 1112 (E.D.

Wash. 2002) (disregarding 9 new arguments not filed with the original response); *Doe v. Colville Sch. Dist.* No. 10 115, 2012 WL 554430, at *3 (E.D. Wash. Feb. 21, 2012) (Defendants stated a 11 valid reason for denying a supplemental affidavit and Plaintiffs did not provide a 12 legitimate excuse for the late submission). While Plaintiffs did provide an excuse, 13 Defendants established a fair reason to deny this because there are new arguments 14 from their original reply.

ECF No. 54. Therefore, the Court grants this motion in 15 part. 16 MOTION FOR SUMMARY JUDGMENT 17 Federal Rule of Civil Procedure Rule 56, governing summary judgment, 18 provides "[t]he court shall grant summary judgment if the movant shows that there 19 is no

genuine dispute as to any material fact and the movant is entitled to judgment 20 as a matter of law.” FED.

R. CIV. P. 56. A material fact is one that “might affect 1 the outcome of the suit.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 2 (1986). “A material fact is ‘genuine’...if the evidence is such that a reasonable 3 jury could return a verdict for the nonmoving party.” *Id.* The burden initially rests 4 with the moving party; however, once that burden is met, it shifts to the non- 5 moving party.

Id. at 257. 6 “[S]ummary judgment should be granted where the evidence is such that it 7 ‘would require a directed verdict for the moving party.’” *Anderson*, 477 U.S. 242, 8 251 (1986) (quoting *Sartor v. Arkansas Gas Corp.*, 321 U.S. 620, 624 (1944)). 9 Additionally, if “the nonmoving party has failed to make a sufficient showing on 10 an essential element of her case with respect to which she has the burden of proof” 11 then the moving party is “entitled to a judgment as a matter of law.” *Celotex Corp. 12 v. Catrett*, 477 U.S. 317, 323 (1986) (quoting FED.

R. CIV. P. 56). 13 The Court “must view the evidence in the light most favorable to the 14 nonmoving party.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 15 626, 630 (9th Cir. 1987). In other words, if the moving party provides direct 16 evidence that conflicts with the non-moving party’s direct evidence, the court 17 “must assume the truth of the evidence set forth by the nonmoving party with 18 respect to that fact.” *T.W.*

Elec. Serv., Inc., 809 F.2d at 631. A “district court can 19 disregard a self-serving declaration that states only conclusions and not facts that 20 would be admissible evidence [,]” however, a “district court may not disregard a 1 piece of evidence at the summary judgment stage solely based on its self-serving 2 nature.” *Nigro v. Sears, Roebuck & Co.*, 784 F.3d 495, 497 (9th Cir.

2015) 3 (citation omitted). Additionally, the Court shall state the reasons for granting or 4 denying the motion on the record. FED. R. CIV. P. 56. 5 On November 10, 2025, Defendants filed a Motion for Summary judgment. 6 ECF No. 37. Defendants request the Court to grant the motion and to dismiss 7 Plaintiffs’ claims in their entirety. ECF No. 37 at 18. 8 FIRST AMENDMENT VIOLATION UNDER 42 U.S.C § 1983 9 Defendants argue that they did not violate Plaintiffs’ First Amendment right, 10 and therefore, qualified immunity applies and bars this claim.

ECF No. 37 at 8-9. 11 Defendants argue that qualified immunity precludes Plaintiffs claim under 42 12 U.S.C. § 1983 for First Amendment retaliation against Jones and Rectenwald. 13 ECF No. 37 at 8. Nevertheless, Defendants contend no First Amendment violation 14 occurred. *Id.* Defendants support this by stating that Plaintiffs spoke as public 15 employees, they did not suffer adverse employment action, nor were any alleged 16 adverse actions motivated by protected activity conducted by the Plaintiffs.

ECF 17 No. 37 at 11-14. Defendants continue that the law was not clearly established for 18 every reasonable official to know that the conduct was unconstitutional. ECF No. 19 37 at 14-15. Therefore, Defendants argue that Plaintiff's claims should be 20 dismissed. ECF No. 37 at 18. 1 For a plaintiff to bring a § 1983 claim against a municipality or an individual 2 officer, a constitutional or federal right must be violated.

Horton by Horton v. City 3 of Santa Maria, 915 F.3d 592, 602–03, 599 (9th Cir. 2019). 4 “To establish a prima facie First Amendment retaliation claim, the plaintiff 5 must prove that ‘(1) []he engaged in protected speech; (2) the defendants took an 6 adverse employment action against h[im]; and (3) h[is] speech was a substantial or 7 motivating factor for the adverse employment action.’” Dodge v. Evergreen Sch.

8 Dist. #114, 56 F.4th 767, 776 (9th Cir. 2022) (quoting Howard v. City of Coos Bay, 9 871 F.3d 1032, 1044 (9th Cir. 2017)). During the pleading state, the complaint 10 must allege “plausible circumstances connecting the defendant's retaliatory intent 11 to the suppressive conduct.” Jensen v. Brown, 131 F.4th 677, 690 (9th Cir. 2025) 12 (quoting Ariz. Students' Ass'n v. Ariz. Bd. of Regents, 824 F.3d 858, 870 (9th Cir.

13 2016)). Once these elements are established, then the burden of evidence and 14 persuasion shifts to the defendant. Id. The defendant is required to provide 15 evidence “show that the balance of interests justified their adverse employment 16 decision.” Dodge, 56 F.4th at 776 (quoting Eng v. Cooley, 552 F.3d 1062, 1074 17 (9th Cir. 2009)).

In other words, if a defendant shows there is a legitimate 18 administrative reason or interest in the suppression of speech that outweighs the 19 plaintiff's First Amendment protection, then there is not a prima facie case for 20 1 retaliation. Dodge, 56 F.4th at 776–77 (citing Pickering v. Bd. of Ed., 391 U.S. 2 563, 568 (1968)). 3 A. Protected Speech 4 To determine whether a public employee has engaged in protected speech is 5 dependent on two questions: “(1) whether he ‘spoke on a matter of public 6 concern,’ and (2) whether he ‘spoke as a private citizen or public employee.’” 7 Dodge v. Evergreen Sch.

Dist. #114, 56 F.4th 767, 777 (9th Cir. 2022) (quoting 8 Johnson v. Poway Unified Sch. Dist., 658 F.3d 954, 961 (9th Cir. 2011)). 9 Speech on a public matter is broadly defined. Dodge, 56 F.4th at 777 10 (citation omitted). If it could be determined as a matter associating with 11 “‘political, social, or other concern to the community,’ or when it ‘is a subject of 12 legitimate news interest’” then it could be determined as speech of a public issue.

13 Dodge, 56 F.4th at 777 (quoting Lane v. Franks, 573 U.S. 228, 241 (2014)). When 14 deciding whether speech is on a public matter, the Court considers the “content, 15 form, and context of a given statement, as revealed by the whole record.” Dodge, 16 56 F.4th at 777 (quoting Johnson v.

Multnomah County, 48 F.3d 420, 422 (9th Cir. 17 1995)). None of these factors are dispositive, however, content is the main factor 18 to consider.

Dodge, 56 F.4th at 777. 19 First, plaintiffs must allege facts that support a First Amendment violation, 20 which requires facts that they engaged in protected speech. Defendants do not 1 argue that Plaintiffs did not speak on a public matter but rather that Plaintiffs spoke 2 as public employees not as private citizens. ECF No. 37 at 10. 3 Second, Plaintiffs must allege facts that support they spoke as private 4 citizens rather than as public employees.

An individual is speaking as a public 5 employee when they are speaking on matters regarding their official duties. Jensen 6 v. Brown, 131 F.4th 677, 688 (9th Cir. 2025) (citing Garcetti v. Ceballos, 547 U.S. 7 410, 421 (2006)).

Under Dahlia, the Court considered: (1) if the “employee 8 confined his communications to his chain of command” (2) “the subject matter of 9 the communication” and (3) whether the public employee spoke “in direct 10 contravention of his supervisor’s orders.” Dahlia v. Rodriguez, 735 F.3d 1060, 11 1074 (9th Cir. 2013).

However, when there are genuine and material disputes 12 regarding Plaintiffs’ job duties, scope, or content, then this a question of fact, and 13 the court must reserve judgment until after fact-finding. Robinson v. York, 566 14 F.3d 817, 823–24 (9th Cir. 2009) (citation omitted). 15 Plaintiffs state that under Dahlia, Plaintiffs did report their concerns to 16 people outside of the workplace.

ECF No. 49 at 9; Dahlia v. Rodriguez, 735 F.3d 17 1060 (9th Cir. 2013). Furthermore, they use Dahlia to support that speech 18 regarding “corruption or systematic abuse” is not likely to be considered within the 19 job duties. Id.; Dahlia, 735 F.3d at 1075. Plaintiffs state that they both “spoke 20 about taxpayer fraud in the Grant County Sheriff’s Office, and insistence on fraud 1 being properly investigated.” ECF No. 49 at 7.

As a reminder, the Court will only 2 consider facts not alleged legal conclusions. See Nigro v. Sears, Roebuck & Co., 3 784 F.3d 495, 497 (9th Cir. 2015). 4 I. Canfield 5 Considering the first factor under Dahlia, Canfield spoke to the Sheriff who 6 was above but still in his chain of command. ECF No. 52 at 3-4; Dahlia v. 7 Rodriguez, 735 F.3d 1060, 1074 (9th Cir.

2013). However, Canfield also spoke to 8 his father, Garth Dano, the Prosecuting Attorney for Grant County, Chief Deputy 9 Joe Kriete, and Tracy Williams, lead administrative assistant for the Grant County 10 Sheriff’s Office. ECF No. 52 at 7. Speaking on the matter with people outside his 11 chain of command and his workplace supports that he was speaking as a citizen.

12 Dahlia v. Rodriguez, 735 F.3d 1060, 1074 (9th Cir. 2013) (“If however a public 13 employee takes his job concerns to persons outside the work place in addition to 14 raising them up the chain

of command at his workplace, then those external 15 communications are ordinarily not made as an employee, but as a citizen.”) 16 (quoting *Davis v. McKinney*, 518 F.3d 304, 313 (5th Cir.

2008)). In support of the 17 third factor, speaking with others regarding this matter also evidenced that 18 Canfield went against superior’s requests to not speak further on the issue. 19 Additionally, Canfield spoke about alleged illegal conduct within the 20 Sheriff’s office which falls in line with corruption and systematic abuse. *Dahlia v. 1 Rodriguez*, 735 F.3d 1060, 1075 (9th Cir.

2013) (“[I]f a public employee raises 2 within the department broad concerns about corruption or systemic abuse, it is 3 unlikely that such complaints can reasonably be classified as being within the job 4 duties of an average public employee, except when the employee’s regular job 5 duties involve investigating such conduct.”). 6 Lastly, Undersheriff Rectenwald met with Canfield to discuss his failure to 7 follow the chain of command and come to him with the issue.

ECF No. 52 at 11. 8 Additionally, at the August 11 meeting, Canfield was put on the spot and asked to 9 explain why everyone was there. ECF No. 52 at 19-22; *Dahlia v. Rodriguez*, 735 10 F.3d 1060, 1075 (9th Cir. 2013) (“the fact that an employee is threatened or 11 harassed by his superiors for engaging in a particular type of speech provides 12 strong evidence that the act of speech was not, as a ‘practical’ matter, within the 13 employee’s job duties”) (citation omitted).

While these incidents may not rise to 14 the level of harassment or threats, the sensitive subject matter that Canfield had to 15 speak on against his fellow co-worker in front of his co-workers is at least 16 inappropriate.

For these reasons, Plaintiffs allege disputed material facts that 17 support Canfield’s communication was as a private citizen and therefore protected 18 speech. 19 Defendants claim that Plaintiffs did not properly allege that Plaintiff 20 Canfield’s father was threatened as a retaliatory conduct in Canfield’s deposition. 1 ECF No. 51 at 1-2.

However, in Plaintiff’s First Amended Complaint, it states that 2 the retaliation it references this allegation. ECF No. 1-22 at 27. Furthermore, it is 3 described in Canfield and his father’s declarations with the letter attached. ECF 4 Nos. 45 at 7-9; 42 at 33; 42-8 at 2-8. While Plaintiffs did not allege this letter to a 5 specific question in his deposition, it is in other forms.

Regardless of whether 6 Canfield’s father’s letter should be addressed, there are enough other facts to 7 support that Canfield was speaking as a private citizen. 8 2. Gregg 9 Gregg spoke within his chain of command to others in the workplace. ECF 10 No. 43 at 11, 13-14. Gregg inquired whether an internal investigation was going to 11 occur to his superiors.

Id. Gregg alleged to speak to other co-workers including 12 Canfield and Joe Kriete. ECF No. 43 at 13. 13 The subject matter was regarding procedures within the workplace. *Jensen 14 v. Brown*, 131 F.4th 677, 688 (9th Cir. 2025) (stating that an individual is speaking 15 as a public employee

when they are speaking on matters regarding their official 16 duties) (citing *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006)).

The difference 17 between Gregg and Canfield is that Canfield brought the allegation and concern of 18 corruption about another employee to the Sheriff in an outside work meeting and 19 environment. Additionally, Canfield spoke to many others in and outside the 20 workplace.

However, Gregg inquired about the status of an internal investigation 1 to his superiors and co-workers. He was not, for the alleged first time, bringing 2 these allegations to others. While this investigation regarded possible illegal 3 matters, it was about concerns within his workplace. 4 Gregg alleged that he was in multiple meetings about the issue and was 5 requested to stop speaking on the matter.

ECF Nos. 43 at 18; 43-5 at 7. Gregg 6 states on October 4, 2021, with the Sheriff, Undersheriff Rectenwald, Chief 7 Deputy Ken Jones and Chief Deputy Joe Kriete and Tracy Williams. ECF No. 43 8 at 17-18. He states that the Sheriff brought up the allegation and that he 9 investigated and did not want anyone to talk about it. ECF No. 43 at 18; 52 at 19- 10 20.

Gregg states the Sheriff stated how he was “butting heads” with Ken Jones. 11 Id. Gregg furthers that the Sheriff told the group, “I appointed you to your 12 positions, and if you don’t want to be in your place, just raise your hand and I will 13 get you replaced.” ECF No. 43 at 18. Gregg was asked why he did not bring up 14 Canfield’s resignation and whether he trusted them.

ECF No. 52 at 26; 43 at 15- 15 16. Additionally, Gregg received upset or angry communication regarding his own 16 resignation, however, this is not directly in response to his speech. ECF No. 43 at 17 21; 52 at 26. These meetings and statements do not rise to the level of harassment 18 and threats. Furthermore, while Gregg spoke to a couple of others, it is unclear 19 whether he contravened his superior’s orders and continued to speak on it to 20 1 others.

These facts, in favor of the non-moving party, do not show a genuine 2 dispute of fact that Plaintiff Gregg was speaking as private citizen. 3 Plaintiffs allege that the August 11th meeting supports that Gregg and 4 Canfield spoke as private citizens, however, this was not proposed or formed by 5 Gregg or Canfield. ECF No. 49 at 7-9. Canfield was asked to speak but this does 6 not show him “bringing claims” outside the chain but rather this action was set 7 forth by the Sheriff.

Additionally, Plaintiffs do not allege that Gregg spoke during 8 the meeting. Therefore, this argument fails, and Plaintiffs did not allege facts that 9 Gregg spoke as a private citizen. 10 a. Compelled Speech/Silence 11 Plaintiffs supplemented authorities regarding compelled silence and speech. 12 ECF No. 50. Plaintiffs allege compelled silence and speech in their Complaint, 13 which violates the First Amendment.

ECF No. 1-22. Defendants did not directly 14 argue that Plaintiffs did not make a compelled speech claim. However, they claim 15 that Plaintiffs did not argue a First Amendment violation. ECF No. 37 at 8-11. 16 Nevertheless, the elements they dispute constitute a First Amendment retaliation 17 claim. Id. 18 Under the First Amendment, “the government may not compel a person to 19 speak its own preferred messages.

303 Creative LLC v. Elenis, 600 U.S. 570, 586 20 (2023). Compelled speech and silence are not distinctive. Riley v. Nat'l Fed'n of 1 the Blind of N. Carolina, Inc., 487 U.S. 781, 797 (1988). Typically, we see these 2 claims about government policies or statutes. See 303 Creative LLC, 600 U.S. at 3 586. That element of penalization for failure to adhere to the policy or statute is 4 typically a part of the claim.

However, Plaintiffs did not allege there was a statute 5 or policy within the municipality that requires this alleged compelled speech of 6 silence. Similarly, as will be discussed, the municipality cannot be liable for 7 Defendants Rectenwald's and Jones's conduct unless it meets the requirements 8 under Monell. Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658 9 (1978).

10 Plaintiffs did not allege facts that specific speech or silence was a 11 requirement. Plaintiffs allege Defendants Rectenwald and Jones asked for silence. 12 ECF No. 52 at 19-22. However, Plaintiffs did not allege facts that Plaintiffs were 13 forced or compelled to speak or stay silent or compelled.

In other words, there was 14 not a predisposed penalty or punishment for speaking or staying silent. For 15 example, Canfield was asked to speak on the matter at the August 11th meeting but 16 did not allege facts that he was required to speak for a specific viewpoint or 17 message. See generally 303 Creative LLC v. Elenis; ECF Nos. 41-1 at 116-17; 52 18 at 19-22.

He did not receive punishment for his speech content at that meeting. 19 However, he was asked not to speak on the matter and “quash rumors.” Id. He did 20 not receive a predisposed punishment for this beyond an alleged shift in work 1 environment and alleged legal violations such as constructive termination. 2 However, it is unclear how constructive termination could be considered a 3 punishment or penalty that would compel speech because of its indirect nature.

4 For similar reasons, Plaintiffs did not allege facts to support Gregg's 5 allegation of compelled speech or silence. Gregg was asked not to speak on the 6 matter but does not allege facts that he was compelled not to speak, as he inquired 7 about the investigation. Additionally, he did not receive a penalty or punishment 8 as a result. He was in meeting about speaking about it and was told that he could 9 be replaced, but that did not result in a termination because Plaintiff Gregg 10 resigned.

ECF No. 43 at 18. For the same reasons, constructive discharge is insufficient. Even more, this claim would not survive under qualified immunity because Plaintiffs did not allege how this law or right was established at the time of the conduct. Defendants argue that Plaintiff's complaint references state protections, when federal protections are required under a § 1983 claim.

ECF No. 37 at 9. However, as established, Plaintiffs provided sufficient evidence of a First Amendment violation and referenced First Amendment protections in their complaint and in their response. ECF No. 1-22 at 24-30. B. Adverse Employment Action Next, Plaintiffs must show that an adverse employment action resulted. "To constitute an adverse employment action, a government act of retaliation need not be severe and it need not be of a certain kind." *Jensen v. Brown*, 131 F.4th 677, 3 689 (9th Cir.

2025) (quoting *Coszalter v. City of Salem*, 320 F.3d 968, 975 (9th 4 Cir. 2003)). Minor acts of retaliation can support a claim for a violation of the First Amendment. *Jensen*, 131 F.4th at 689 (citation omitted). In other words, the court considers whether the actions would "reasonably likely to deter" employees from "engaging in speech protected under the First Amendment." *Jensen*, 131 8 F.4th at 689 (quoting *Coszalter*, 320 F.3d at 976-77).

Importantly, "[t]he goal is to prevent, or redress, actions by a government employer that 'chill the exercise of protected' First Amendment rights." *Coszalter v. City of Salem*, 320 F.3d 968, 11 974-75 (9th Cir. 2003) (quoting *Rutan v. Republican Party*, 497 U.S. 62, 73 12 (1990)). Plaintiffs argue that both were "reprimanded, placed in hostile situations, ordered to stop talking, ordered to band with Defendants and protect a Chief Deputy believed to be engaged in timecard fraud." ECF No. 49 at 13.

The August 11th meeting would reasonably deter Canfield from engaging in protected speech. ECF No. 52 at 19-20. While the Sheriff alleges his intent was open discussions, Canfield was discovered as the worker who brought the issue to light and was asked to speak on it in front of his coworkers and superiors. ECF 20 No. 52 at 19-21.

For example, in *Allen v. Scribner*, 812 F.2d 426, 428 (1987), the 1 plaintiff was reassigned to a different position and "harassed in retaliation" of his 2 speech to the press and this constituted an adverse employment action. 3 Additionally, Canfield states he was removed from supervising other people and 4 was not included in closed-door meetings. ECF No. 41-1 at 120.

Therefore, these 5 facts are sufficient to show a genuine dispute in material fact about whether these 6 actions constitute adverse employment actions. 7 Even though Gregg did not allege a genuine dispute of material facts that he 8 spoke as a public citizen, Plaintiff Gregg does not provide sufficient facts for 9 adverse employment action. He states his job was threatened but the alleged threat 10 states that he was told he could be replaced if he did not want to be there.

ECF No. 11 43 at 18. This does not pose an adverse employment action. At best, Gregg 12 alleges being excluded from meetings, but this does not rise to the level of an 13 adverse employment action alone. Gregg did not receive a bad evaluation, 14 received less pay, or was reassigned.

Therefore, Plaintiff Gregg cannot meet the 15 requirement to survive summary judgment. 16 C. Causation of Adverse Employment Action 17 The Ninth Circuit provided three ways for a plaintiff to evidence that 18 retaliation was a substantial or motivating factor of the alleged adverse 19 employment actions: (1) the plaintiff can show that the closeness in time in which 20 the protected occurred (2) the plaintiff can show that “his employer expressed 1 opposition to his speech, either to him or to others”, (3) the plaintiff can show that 2 “his employer's proffered explanations for the adverse employment action were 3 false and pre-textual.” *Coszalter v. City of Salem*, 320 F.3d 968, 977 (9th Cir.

4 2003) (citing *Keyser v. Sacramento City Unified School District*, 265 F.3d 741 (9th 5 Cir. 2001)). However, not much direct evidence is required to prove this element. 6 *Burch v. City of Chubbuck*, 146 F.4th 822, 838 (9th Cir. 2025). 7 Similarly, the August 11th meeting and constant discussions on the topic of 8 the alleged fraud was after Plaintiff brought the concern to the Sheriff.

ECF No. 9 52 at 19-21. Furthermore, these discussions were in response to that based on the 10 subject matter. Additionally, from August 11th to the end of his employment after 11 his September resignation, Canfield states he was removed from meetings and 12 supervision of others after the concern was brought to the attention of the Sheriff. 13 ECF No. 41-1 at 120; *Coszalter v. City of Salem*, 320 F.3d 968, 977 (9th Cir.

2003) 14 (“Depending on the circumstances, three to eight months is easily within a time 15 range that can support an inference of retaliation.”). This also shows that his 16 superiors were in opposition of speech. Considering the evidence in favor of the 17 non-moving party, there is a genuine dispute of material fact and summary 18 judgment is improper. 19 D. Monell 20 Under § 1983, municipalities may be liable “for constitutional injuries 1 pursuant to (1) an official policy; (2) a pervasive practice or custom; (3) a failure to 2 train, supervise, or discipline; or (4) a decision or act by a final policymaker.” 3 *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 602–03 (9th Cir.

2019). 4 This requires the plaintiff showing that there was “deliberate action attributable to 5 the municipality [that] directly caused a deprivation of federal rights.” *Horton*, 915 6 F.3d at 603 (quoting *Bd. of Cty. Comm'rs v. Brown*, 520 U.S. 397, 415 (1997)). 7 However, they are not liable under respondeat superior. *Id.* at 603. Specifically, 8 “a local government may not be sued under § 1983 for an injury inflicted solely by 9 its employees or agents.

Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 694 (1978). 11 Monell requires that a Plaintiff shows: “(1) he or she had a constitutional 12 right of which he was deprived; (2) the municipality had a policy; (3) the policy 13 amounts to deliberate indifference to his constitutional right; and (4) ‘the policy is 14 the moving force behind the constitutional violation.’” Est. of Nelson by & 15 through Nelson v. Chelan Cnty., 2024 WL 1705923, at *15 (E.D.

Wash. Apr. 19, 16 2024) (citing Dougherty v. City of Covina, 654 F.3d 892, 900 (9th Cir. 2011)). 17 Defendants claim that Plaintiffs’ claims cannot survive under Monell. 18 Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658 (1978); ECF No. 19 37 at 15. Plaintiffs state they meet the elements required under Monell based on 20 other parts of their brief.

ECF No. 49 at 16. Plaintiffs contend that the First 1 Amendment violation led to threats and intimidation, “that Grant County had 2 policies intended to protect whistleblowers and prohibit nepotism” but did not 3 enforce them with the Sheriff and Defendants failure to protect whistleblowers and 4 the suppression of speech, led to “deliberate indifference to Plaintiffs’ First 5 Amendment rights” and that failure to enforce policies to protect was the “force 6 behind the constitutional violation.” ECF No. 49 at 16-17.

7 As discussed, the constitutional right is the right under the First Amendment. 8 The policies in question include the whistleblowers protection and to “prohibit 9 nepotism.” ECF No. 49 at 16-17. Defendants state these are Grant County’s 10 policies not the Sheriff’s office. ECF No. 54. 11 Plaintiffs did not directly cite whistleblower protection or the nepotism 12 prohibition but are alleged in ECF Nos. 41-1 at 10; 42-10 at 4.

However, Plaintiffs 13 did not cite facts about how the municipality failed beyond the officer’s actions for 14 failure to implement specific policies. Specifically, Plaintiffs did not allege a 15 deliberate action by the municipality, or even that this policy led to the indifference 16 of Canfield’s First Amendment right other than alleging legal conclusions.

ECF 17 No. 49 at 16-17. Importantly, “municipal liability could not be premised on the 18 mere fact that the municipality employed the offending official.” City of 19 Oklahoma City v. Tuttle, 471 U.S. 808, 810 (1985).

As a result, Plaintiffs did not 20 1 allege a genuine dispute of material fact for a § 1983 claim against the 2 municipality. Summary judgment is proper. 3 E. Qualified Immunity 4 Defendants contend that qualified immunity applies, and therefore the claim 5 does not hold. ECF No. 37 at 8-9.

However, as was discussed, Plaintiffs allege 6 facts to support a First Amendment violation. Plaintiffs respond that all the 7 elements are met, and qualified immunity does not preclude Plaintiffs claims 8 because there was a constitutional violation. ECF No. 49 at 5. 9 If a plaintiff

brings § 1983 claims against an individual officer, it must exhibit two things. “(1) a federal right has been violated and (2) the right was clearly established at the time of the violation.” Horton, 915 F.3d at 599 (quoting Pearson v. Callahan, 555 U.S. 223, 232 (2009)).

To allege that a law or right was clearly established, it must “at the time of the officer's conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful.” Villanueva v. California, 986 F.3d 1158, 1165 (9th Cir. 2021) (citing D.C. v. Wesby, 583 U.S. 48, 63 (2008)). “While there does not have to be a case directly on point, existing precedent must place the lawfulness of the [conduct] beyond debate.” Villanueva, 986 F.3d at 1165 (citing D.C. v. Wesby, 583 U.S. 48, 63 (2018)) (internal quotations omitted).

Plaintiffs cite Pearson v. Callahan, 555 U.S. 223, 231 (2009) and Cuevas v. City of Tulare, 107 F.4th 894, 898, (9th Cir. 2024). ECF No. 49 at 17. Plaintiffs alleges that their brief addressed these requirements, however, the Court would like more explanation and citations to argue against this argument rather than referencing previous arguments.

Defendants replies that Plaintiffs must cite case law to support that the specific conduct clearly would constitute illegal action. ECF No. 51 at 10. Plaintiffs’ cited cases are not relevant to the facts beyond the rules. Plaintiff cited cases regarding officers in fourth amendment violations. Pearson v. Callahan, 555 U.S. 223, 231 (2009); Cuevas v. City of Tulare, 107 F.4th 894, 898, 11 (9th Cir.

2024). Regardless, the Court must determine whether Plaintiffs provided a dispute of material facts regarding whether this was right was sufficient clear. These allegations occurred in 2021; therefore, precedent must be at the time of the alleged conduct. Plaintiff uses Dahilia and Garcetti to support the fact that Plaintiffs speech was protected.

ECF No. 49 5-9. These cases were published in 2013 and 2006 respectively. As discussed, these cases analyze what is considered protected speech in a similar context and for First Amendment retaliation. Therefore, while the case is not on point, it does not need to be. Additionally, Plaintiffs cite to cases where bringing up alleged illegalities within the government is was considered protected speech.

ECF No. 49 at 6 (citing Connick v. Myers, 461 U.S. 138, 148 2 (1983)). This case was established well before 2021. Plaintiffs provided relevant case law and therefore, summary judgment is improper. **WRONGFUL DISCHARGE IN VIOLATION OF WASHINGTON PUBLIC POLICY** Generally, Washington employees are considered “at will” and may be terminated or quit at any time for any reason.

Martin v. Gonzaga Univ., 191 Wash. 2d 712, 722–23 (2018). A wrongful discharge claim is a common law “narrow exception to the terminable-at-will doctrine.” Danny v. Laidlaw Transit Servs., Inc., 165 Wash. 2d 200, 207 (2008) (citation omitted). A wrongful discharge claim is

recognized in four scenarios: 12 (1) where employees are fired for refusing to commit an illegal act; (2) where employees are fired for performing a public duty or 13 obligation, such as serving jury duty; (3) where employees are fired for exercising a legal right or privilege, such as filing workers' 14 compensation claims; and (4) where employees are fired in retaliation for reporting employer misconduct, i.e., whistleblowing.

15 16 *Rose v. Anderson Hay & Grain Co.*, 184 Wash. 2d 268, 276 (2015) (quoting 17 *Gardner v. Loomis Armored Inc.*, 128 Wash. 2d 931, 936 (1996)); *Martin*, 191 18 Wash. 2d at 723. 19 In addition to establishing whether a claim falls within one of the four 20 scenarios, the plaintiff is required to “identify the recognized public policy and 1 demonstrate that the employer contravened that policy by terminating the 2 employee.” *Rose*, 184 Wash. 2d at 276.

This is a two-step process. *Suarez v. 3 State*, 3 Wash. 3d 404, 430 (2024). First, the policy must be “manifested in the 4 constitution, statute, regulatory provision, or court decision.” *Id.* Second, the 5 conduct at issue with the public policy must be “a ‘significant factor’ in the 6 decision to terminate the worker.” *Id.* Once that burden is met then the employer 7 must prove the dismissal was for reasons other than reasons that the employee 8 alleged.

Martin, 191 Wash. 2d at 723 (citations omitted). 9 Furthermore, under Washington Law, wrongful discharge is either 10 constructive or express, however, this type of discharge does not become a 11 separate cause of action. *Snyder v. Med. Serv. Corp. of E. Washington*, 145 Wash. 12 2d 233, 238 (2001). “[C]onstructive discharge occurs ‘[w]here an employer 13 deliberately makes an employee's working conditions intolerable and thereby 14 forces him to quit his job.’” *Bulaich v. AT & T Info.*

Sys., 113 Wash. 2d 254, 261 15 (1989) (quoting *Barrett v. Weyerhaeuser Co. Severance Pay Plan*, 40 Wash. App. 16 630, 631 (1985)) (internal quotations omitted). The presumption is that when an 17 employee resigns it is voluntary, but an employee can rebut this presumption with 18 facts evidencing the resignation was either “prompted by duress or an employer's 19 oppressive actions.” *Townsend v. Walla Walla Sch.*

Dist., 147 Wash. App. 620, 20 627 (2008) (citation omitted). 1 On that note, courts typically review constructive discharge elements and 2 wrongful termination elements separately. *Peiffer v. Pro-Cut Concrete Cutting & 3 Breaking Inc.*, 6 Wash. App. 2d 803, 829 (2018). Elements of constructive 4 discharge are: 5 (1) the employer deliberately made working conditions intolerable, (2) a reasonable person in the employee's position would be forced to 6 resign, (3) the employee resigned because of the intolerable condition and not for any other reason, and (4) the employee suffered damages as 7 a result of being forced to resign.

8 *Peiffer*, 6 Wash. App. 2d at 829 (2018). “The question of whether the 9 working conditions were intolerable is one for the trier of fact, unless there is no 10 competent evidence to establish a claim

of constructive discharge.” *Haubry v. 11 Snow*, 106 Wash. App. 666, 677 (2001). Intolerable work conditions may be 12 shown “by demonstrating aggravating circumstances or a continuous pattern of 13 discriminatory treatment.” *Allstot v. Edwards*, 116 Wash. App.

424, 433 (2003) 14 (citation omitted). “This is an objective standard and an ‘employee’s subjective 15 belief that he had no choice but to resign is irrelevant.” *Barnett v. Sequim Valley 16 Ranch, LLC*, 174 Wash. App. 475, 485 (2013) (quoting *Travis v. Tacoma Pub. Sch. 17 Dist.*, 120 Wash. App. 542, 551 (2004)). 18 Defendants argue that because Plaintiffs resigned from their positions, they 19 must prove constructive discharge.

ECF No. 37 at 17. Defendants continue that 20 Plaintiffs have not provided or identified sufficient evidence to support a finding of 1 “intolerable conditions.” *Id.* Therefore, this claim should be dismissed. Plaintiffs 2 argue that they were constructively discharged from their positions because the 3 Sheriff gave orders to Plaintiffs such as to not speak on the matter, speak falsely, 4 and show loyalty.

ECF No. 49 at 19. 5 Plaintiffs provide facts to support the contention that there is a question of 6 whether the work conditions are intolerable. Canfield states he was in a meeting 7 where this issue was brought up and Ken Jones “yelled and pounded fist on the 8 table.” ECF No. 42 at 21. Additionally, Canfield’s father received an 9 inappropriate letter from Ken Jones asking him not to speak on it.

ECF Nos. 45 at 10 7-8; 42 at 33; 42-8 at 2-8. Canfield’s supervision role was removed, and he was 11 not involved in meetings. ECF No. 42 at 27. Canfield was asked to speak up in 12 front of co-workers about a sensitive topic but then asked not to speak on the 13 allegations. ECF No. 52 at 19-20. 14 Gregg states that there in late May and June of 2021, the office environment 15 “deteriorated” and there were many “closed door meetings” where he was 16 “excluded.” ECF No. 43 at 9.

Gregg alleges Rectenwald and the Sheriff 17 demanded that Gregg be loyal to them. ECF No. 43 at 15. Gregg furthers that the 18 Sheriff would “stay in his office and not interact with anyone” and “would not 19 look, talk and be around [Canfield] after giving his notice.” ECF No. 43 at 16. 20 1 Additionally, Gregg states that Ken Jones was often gone leaving Gregg with more 2 assignments and work to “an overwhelming degree.” ECF No. 43 at 16.

3 Considering the reaction to Canfield bringing allegations, the subsequent 4 August 11th meeting, and the facts provided, there is a question of fact regarding 5 whether these facts constitute an intolerable condition. Similarly for Gregg, the 6 August 11th meeting, additional work, exclusion from meetings, and meetings 7 asked not to speak on the issue creates a question of fact.

As the Washington 8 Court of Appeals, Division One stated, “[w]hile it may be a difficult burden for 9 [Plaintiffs] to prove that the conditions were ‘intolerable’ at trial”, there is at least a 10

question of fact. *Haubry v. Snow*, 106 Wash. App. 666, 678 (2001).

Therefore, 11 summary judgment is improper. 12 Defendants argue that a higher standard is required under *Burch v. City of Chubbuck*, 146 F.4th 822 (9th Cir. 2025). ECF No. 37 at 11-14. 14 Constructive discharge requires that working conditions deteriorate, as a result of [the adverse employment action(s)], to the point that they 15 become sufficiently extraordinary and egregious to overcome the normal motivation of a competent, diligent, and reasonable employee 16 to remain on the job to earn a livelihood and to serve his or her employer.

17 18 *Burch v. City of Chubbuck*, 146 F.4th 822, 838 (9th Cir. 2025) (quoting 19 *Poland v. Chertoff*, 494 F.3d 1174, 1184 (9th Cir. 2007) (quotations omitted). As 20 the Ninth Circuit stated, it is not easy to meet “because ‘federal antidiscrimination 1 policies are better served when the employee and employer attack discrimination 2 within their existing employment relationship, rather than when the employee 3 walks away and then later litigates whether his employment situation was 4 intolerable.’” *Burch v. City of Chubbuck*, 146 F.4th 822, 838 (9th Cir.

2025) 5 (quoting *Poland v. Chertoff*, 494 F.3d 1174, 1184 (9th Cir. 2007)). Regardless of 6 the focus on discrimination, the higher standard still stands. 7 As discussed, there are other adverse actions that suffice to survive summary 8 judgment for Canfield other than constructive discharge. Nevertheless, Defendant 9 is correct that under *Burch* Plaintiffs did not allege a genuine dispute of material 10 facts to support the higher standard.

Burch v. City of Chubbuck, 146 F.4th 822, 11 838 (9th Cir. 2025). For example, in *Burch*, duties being transferred and reduced 12 decision-making duties did not meet the required standard. *Id.* Therefore, Plaintiff 13 Canfield cannot use constructive discharge as an adverse employment action under 14 his § 1983 claim. 15 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS 16 The elements required for a claim of intentional infliction of emotional 17 distress include: “(1) extreme and outrageous conduct, (2) intentional or reckless 18 infliction of emotional distress, and (3) actual resulting severe emotional distress.” 19 *Pettis v. State*, 98 Wash. App.

553, 563 (1999) (citing *Rice v. Janovich*, 109 Wash. 20 2d 48, 61 (1987)). “Although these elements are generally factual questions for the 1 jury, a trial court faced with a summary judgment motion must first determine 2 whether reasonable minds could differ on whether the conduct was sufficiently 3 extreme to result in liability.” *Strong v. Terrell*, 147 Wash. App.

376, 385 (2008) 4 (citing *Robel v. Roundup Corp.*, 148 Wash. 2d 35, 51 (2002)). 5 Defendants argue that Plaintiffs do not provide sufficient evidence to show 6 extreme and outrageous conduct, intent, or actual severe distress. ECF No. 37 at 7 17.

However, Plaintiffs argue that they did provide sufficient facts. ECF No. 49 at 8 20-21. 9 A. Extreme and Outrageous Conduct 10 To show extreme and outrageous conduct, the behavior must be “so 11 outrageous in character, and so extreme in degree, as to go beyond all possible 12

bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Pettis v. State*, 98 Wash. App. 553, 563 (1999) (quoting 14 *Dicomes v. State*, 113 Wash. 2d 612, 630 (1989)) (internal quotations omitted).

15 The required emotional distress must not be from embarrassment or humiliation. 16 *Pettis v. State*, 98 Wash. App. 553, 563 (1999) (citing *Dicomes*, 113 Wash. 2d at 17 630). “[M]ere insults, indignities, threats, annoyances, petty oppressions, or other 18 trivialities” are not enough.

Snyder v. Med. Serv. Corp. of E. Wash., 98 Wash. 19 App. 315, 321–22 (1999), *aff’d sub nom. Snyder v. Med. Serv. Corp. of E. Washington*, 145 Wash. 2d 233 (2001) (quoting *Grimsby v. Samson*, 85 Wash. 2d 1 52, 59 (1975)). Furthermore, people “must necessarily be hardened to a certain 2 degree of rough language, unkindness and lack of consideration.” *Id.* at 322 3 (quoting *Grimsby*, 85 Wash. 2d at 59).

The outrageous standard is high and not 4 easy to meet. *Christian v. Tohmeh*, 191 Wash. App. 709, 736 (2015) (citations 5 omitted). 6 Plaintiffs respond that the Sheriff’s and Undersheriff’s conduct against 7 Plaintiffs for Plaintiffs goal to seek the truth was extreme and outrageous. ECF 8 No. 49 at 20. Plaintiffs further that “denying Plaintiff Canfield whistleblower 9 protection, suppressing Plaintiff’s speech and association rights both on the job and 10 within the community at large (quash rumors)” as support.

ECF No. 49 at 20. 11 However, these statements contain conclusory statements regarding legal claims. 12 The Court cannot consider legal conclusions but may consider facts. Nevertheless, 13 Plaintiffs add that threatening Canfield’s father and Gregg’s job are also extreme 14 and outrageous. ECF No. 19 at 20. Canfield’s father’s letter from Ken Jones 15 states that he should “walk away.” ECF No. 45 at 8.

16 While these actions may be unfair or inappropriate, they do not rise to the 17 level of extreme and outrageous behavior. *Snyder*, 98 Wash. App. at 321–22 18 (stating “[m]ere insults, indignities, threats, annoyances, petty oppressions, or other 19 trivialities” are not enough) (quoting *Grimsby*, 85 Wash. 2d at 59). 20 1 For example, in *Kloepfel v. Bokor*, 149 Wash. 2d 192, 194 (2003), *Kloepfel* 2 sued *Bokor* for IIED because he violated his no contact order, called her home 3 phone 640 times, work phone 100 times, and threatened to kill her.

As a result, the 4 Court found “[n]o rational person could endure the constant harassment suffered 5 by *Kloepfel* without suffering severe emotional distress.” *Kloepfel v. Bokor*, 149 6 Wash. 2d 192, 202 (2003). 7 In *Haubry v. Snow*, 106 Wash. App. 666, 672; 680-81 (2001), the court 8 found similar when *Haubry* alleged that Dr. *Snow* touched her inappropriately 9 during her employment with him.

For example, he inappropriately commented on 10 her outfits, rubbed her legs and thighs multiple times, and placed his body against 11 hers among many other unwanted advances. *Haubry v.*

Snow, 106 Wash. App. 12 666, 672 (2001). 13 In Synder, the Court did not find sufficient facts for IIED when “Ms. Hall 14 insulted, threatened, annoyed, showed unkindness, and acted with a callous lack of 15 consideration.” Snyder, 98 Wash. App. at 322.

16 For the initial determination, these facts do not show that reasonable minds 17 could differ on whether the conduct was extreme and outrageous. Therefore, 18 summary judgment is proper. 19 B. Intent 20 Plaintiffs alleges that Defendants the Sheriff and Undersheriff intended or 1 recklessly “was designed to[] and did inflict severe emotional distress.” ECF No. 2 49 at 20.

Plaintiffs cite the August 11th meeting, and the alleged threat to 3 Canfield’s father and Gregg’s job. Id. 4 Plaintiff does not allege facts to support that reasonable minds could differ 5 on whether Defendants had intent or knew to a substantial certainty that severe 6 emotional distress would occur. It may be true that Defendants likely knew to a 7 substantial certainty that the meetings and requests to stop talking about the 8 allegations with letters and out-of-work meetings where Canfield is required to 9 speak on a sensitive matter against superiors in front of other employees could lead 10 to emotional distress for Plaintiff Canfield.

ECF No. 52 at 19-20. However, 11 whether they knew it would lead to severe emotional distress is unlikely. See 12 Snyder, 98 Wash. App. at 321–22. 13 For similar reasons, stating Gregg can be replaced is not sufficient to support 14 reasonable minds could differ on Defendants recognizing to a substantial certainty 15 that severe emotional distress would occur for Gregg.

ECF No. 43 at 18. 16 Therefore, Plaintiffs did not provide sufficient facts where reasonable minds could 17 differ to survive summary judgment. 18 C. Severe Emotional Distress 19 Emotional distress alone may include “all highly unpleasant mental 20 reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, 1 chagrin, disappointment, worry, and nausea.” Kloepfel v. Bokor, 149 Wash. 2d 2 192, 203 (2003) (citing RESTATEMENT (SECOND) OF TORTS § 46 (1965) CMT.

J 3 (A.L.I. 1965)). Severe emotional distress must not be “transient and trivial” but 4 instead a level of distress “that no reasonable man could be expected to endure it.” 5 Kloepfel v. Bokor, 149 Wash. 2d 192, 203 (2003) (quoting Id.). 6 Plaintiffs support claims of severe emotional distress by citing August 11, 7 2021, Canfield’s father, and Gregg’s distress confirmed by former Undersheriff 8 Dave Ponzoo.

ECF No. 49 at 21. Canfield’s father states that Canfield was upset 9 by the letter he received and that he did not recognize Canfield as the same person 10 since resignation. ECF No. 45 at 9. Gregg states that he was “devasted because 11 [he] knew [he] had to resign.” ECF No. 43 at 19. 12 Plaintiffs did not allege facts of sufficient severe emotional distress where 13 reasonable minds would differ.

For example, in *Kloepfel*, she experienced 14 “nervousness, sleeplessness, hyper-vigilance, and stomach upset”. *Kloepfel v. Bokor*, 149 Wash. 2d 192, 194-95 (2003). The numerous phone calls “disturbed 16 her privacy” and Bokor’s conduct “made it impossible for her to carry on a normal 17 dating relationship.” *Kloepfel*, 149 Wash. 2d at 194-95. Furthermore, the fact 18 there was sufficient evidence for outrageous and extreme conduct made this 19 finding easier.

Id. at 202 (citing *Carmody v. Trianon Co.*, 7 Wash. 2d 226, 235 20 (1941)) (stating that when the plaintiff received such a beating, that anyone would 1 suffer insult and humiliation). Even more, while it is not dispositive, allegations 2 do not show ongoing distress or severity where Plaintiffs sought professional aid. 3 *Zink v. City of Mesa*, 17 Wash. App. 2d 701, 715 (2021) (stating the plaintiff’s 4 claim for IIED failed because it did not show ongoing distress or that it led to the 5 plaintiff seeking any form of professional support).

As a result, summary 6 judgment is proper. 7 Plaintiffs allege the emotional distress they faced led them to leave their law 8 enforcement careers. ECF No. 49 at 21. However, as the Washington Appellate 9 Court, Division Two stated, “[n]or do threats to terminate or to suspend constitute 10 outrageous conduct in light of *Dicomes*, where not even actual termination 11 constituted outrageous conduct.” *Kirby v. City of Tacoma*, 124 Wash. App.

454, 12 474 (2004). Even if this was sufficient, Plaintiffs did not allege sufficient facts for 13 outrageous and extreme behavior to survive summary judgment. 14 ACCORDINGLY, IT IS HEREBY ORDERED: 15 1. Defendants’ Motion for Summary Judgment (ECF No. 37) is 16 GRANTED in part. 17 a. Plaintiffs’ claim of Intentional Infliction of Emotional Distress, 42 18 U.S.C. § 1983 claim against Defendant Grant County, and Plaintiff 19 Gregg’s claim of First Amendment Violation under 42 U.S.C. § 20 1983 are DIMISSED with prejudice.

1 1. Plaintiff Canfield may not base his 42 U.S.C. § 1983 claim 2 on a theory of constructive discharge as an adverse 3 employment action or his First Amendment violation under 4 a theory of compelled silence/speech. 5 b. Plaintiffs’ claims for Wrongful Termination in Violation of Public 6 Policy and Plaintiff Canfield’s claim of First Amendment 7 Violation under 42 U.S.C. § 1983 against Defendants Rectenwald 8 and Jones remain.

9 2. Plaintiffs’ Motion to Supplement Authorities (ECF No. 50) is 10 GRANTED in part. 11 The District Court Executive is directed to enter this Order and furnish copies to counsel. 13 DATED January 26, 2026. <> United States District Judge 16 17 18 19 20