

October 8, 2021

Via Hand Delivery

Ann Pitsnogle
Executive Assistant/Claims Agent
Spokane Regional Health District
1101 W. College Avenue, Suite 330
Spokane, WA 99201

Re: Dr. Bob Lutz and Spokane Regional Health District – Tort Claim

Dear Ms. Pitsnogle:

Lee & Hayes, P.C. represents Dr. Bob Lutz, who was fired by Ms. Amelia Clark on October 29, 2020. That termination was purportedly confirmed on November 5, 2020, by vote of the Board of the Spokane Regional Health District. As discussed below and in the attachments supplied, SRHD's termination of Dr. Lutz violated both federal and Washington law. To the extent required to do so by applicable law, Dr. Lutz provides this amended claim statement (modifying paragraph 68 of Attachment 1) to the Spokane Regional Health District.

Pursuant to RCW 4.96.020 please find and take notice of information provided by my client, Dr. Bob Lutz for claim of damages due to the tortious conduct by Amelia Clark, Administrator, and the Spokane Regional Health District.

1. CLAIMANT:

Name:	Dr. Bob Lutz
Date of Birth:	9 July 1962
Contact Information:	LEE & HAYES, PC Attn: Robert J. Carlson Caleb Hatch 601 W. Riverside Ave., Ste. 1400 Spokane WA 99201 (509) 324-9256 Caleb.Hatch@leehayes.com

2. DESCRIPTION CONDUCT/CIRCUMSTANCES CAUSED INJURY/DAMAGE:

A comprehensive description of the conduct and circumstances giving rise to this claim is provided as Attachment 1, “Administrative Claim Attachment 2021.10.07.”

3. DESCRIPTION OF INJURY/DAMAGE

A preliminary economic loss report, dated as of February 28, 2021, is provided as Attachment 2. As indicated therein, Dr. Lutz claims at least \$1,428,127 in economic damages for SRHD’s wrongful termination. Dr. Lutz also claims non-economic damage for defamation, emotional distress, mental anguish, and injury to professional reputation. Further, Dr. Lutz claim for reasonable attorneys’ fees, expert fees, costs, prejudgment interest, and an award for adverse tax consequences in amounts to be determined.

4. STATEMENT OF TIME/PLACE OF INJURY/DAMAGE:

See Attachment 1.

5. NAMES/CONTACT INFORMATION (if known) OF PERSONS INVOLVED:

Dr. Bob Lutz:	514 W. 27 th Ave, Spokane WA 99203
Amelia Clark:	1101 West college Avenue, Spokane WA 99201
Ben Wick:	1101 W. College Avenue, Spokane WA 99201
Michelle Fossum:	1101 W. College Avenue, Spokane WA 99201
Josh Kerns:	1101 W. College Avenue, Spokane WA 99201
Mary Kuney:	1101 W. College Avenue, Spokane WA 99201
Al French:	1101 W. College Avenue, Spokane WA 99201
Betsy Wilkerson:	1101 W. College Avenue, Spokane WA 99201
Breean Beggs:	1101 W. College Avenue, Spokane WA 99201



Karen Stratton: 1101 W. College Avenue, Spokane WA 99201

Ben Wick: 1101 W. College Avenue, Spokane WA 99201

Kevin Freeman: 1101 W. College Avenue, Spokane WA 99201

Jason Kinley: 1101 W. College Avenue, Spokane WA 99201

Chuck Hafner: 1101 W. College Avenue, Spokane WA 99201
(Deceased)

Andrea Frostad: 1101 W. College Avenue, Spokane WA 99201

Linda Thompson: 1101 W. College Avenue, Spokane WA 99201

6. STATEMENT OF AMOUNT OF DAMAGES CLAIMED

See Attachment 2.

7. ACTUAL RESIDENCE OF CLAIMANT

514 W. 27th Ave, Spokane WA 99203

Very truly yours,

LEE & HAYES, P.C.

A handwritten signature in blue ink, appearing to read "Robert J. Carlson".

Robert J. Carlson

(206) 876-6029

Carlson@leehayes.com

c: Heather Yakely
Michelle Fossum
Dr. Bob Lutz

SPOKANE REGIONAL HEALTH DISTRICT ADMINISTRATIVE CLAIM

To:

Spokane Regional Health District
1101 W. College Ave.
Spokane, WA 99201
Phone: 509.324.1500

Pursuant to Chapter 4.96 RCW, Claimant Robert B. Lutz, M.D., through his counsel, hereby submits to the Spokane Regional Health District this administrative claim for damages and other relief.

CLAIMANT INFORMATION

(1) Claimant's name: Lutz Robert B.
(Last Name) (First) (Middle) (Date of Birth: mm/dd/yyyy)

(2) Current residential address: Contact through Counsel at address below.

(3) Mailing address (if different): c/o Lee & Hayes P.C. 601 W. Riverside Suite 1400 Spokane, WA 99201
City Zip Code

(4) Residential address for *Six Months* prior to the date of the incident (if different from current address):
City Zip Code

(5) Claimant's daytime phone numbers: Claimant may be contacted through counsel at (509) 324-9256
Home Business Cell

(6) Claimant's e-mail address: Claimant may be contacted through counsel at: Carlson@LeeHayes.com and Caleb.Hatch@LeeHayes.com

INCIDENT INFORMATION *Wrongful Termination and Defamation - see Claim Description Attached*

(7) Date of Incident: _____ Time: _____ ☐ a.m. ☐ p.m. (check one)
(mm/dd/yyyy)

(8) If the incident occurred over a period of time, date of first and last occurrences:
From: _____ Time: _____ ☐ a.m. ☐ p.m. (check one)
(mm/dd/yyyy)

To: _____ Time: _____ ☐ a.m. ☐ p.m. (check one)
(mm/dd/yyyy)

(9) Location of incident: _____
(state and county) (city if applicable) (place where occurred)

(10) If the incident occurred on a street or highway: _____
(name of street/highway) (mile post) (at intersection with or nearest intersecting street)

(11) SRHD employee(s) alleged responsible for damage/injury: *See attachment for information on Items (11)-(15)*

(12) Names, address, and telephone numbers of all persons involved in, or witness to, this incident:

(13) Names, address, and telephone numbers of all SRHD employee(s) having knowledge about this incident:

(14) Names, addresses, and telephone numbers of all individuals not already identified in (11) and (12) above that have knowledge regarding the liability issues involved in this incident, or knowledge of the claimant's resulting damages. Please include a brief description as to the nature and extent of each person's knowledge. Attach additional sheets if necessary.

(15) Describe the cause of the injury or damages. Explain the extent of property loss or medical, physical, or mental injuries. Attach additional sheets if necessary.

A comprehensive description of the cause of Claimant's losses and damages is attached.

(16) Has the incident been reported to law enforcement, safety or security personnel? If so, when and to whom?

(17) Names, addresses and telephone numbers of treating medical providers. Attach copies of all medical reports and billings.

(18) Please attach documents which support the claim's allegations.


(19) I claim damages from SRHD in the sum of \$ Ongoing

(20) If you are injured, are you a Medicare beneficiary? ☐ Yes ☒ No (check one), if Yes, please provide Medicare # _____

(21) If your claim involves a motor vehicle accident, complete, sign and include the attached vehicle collision form. **N/A**

(22) If you are presenting a personal injury claim, complete, sign and include the attached Medical Release form.

DATED this 8th day of October, 2021.

By: 
Robert J. Carlson, WSBA # 18455
Caleb A. Hatch, WSBA # 51292
601 W. Riverside Ave., Ste. 1400
Spokane, WA 99201
Telephone: (509) 324-9256
Email: carlson@LeeHayes.com
Email: Caleb.Hatch@LeeHayes.com

Attorneys for Claimant

AMENDED ATTACHMENT 1

FACTS

1. In 2004, Dr. Lutz moved to Spokane From Tucson, AZ, where he had attended the University of Arizona as one of the founding fellows in an emerging field of medicine – integrative medicine, that looks to combine the best of conventional western medicine with other fields, such as TCM, manual medicine, Naturopathy, and other disciplines. While at the University of Arizona Dr. Lutz also pursued his Masters in Public Health, with a focus on Epidemiology.

2. Dr. Lutz’ professional career has been one of service – first for the United States with the US Marine Corps, during which time he was recognized by receiving the National Defense Service Medal, the Southwest Asia Service Medal with 2 bronze stars, the Kuwait Liberation Medal Sea Service Deployment Ribbon with Bronze Star/Fleet Marine Force Ribbon Combat Action, Ribbon, and a Navy Commendation Medal for service during Operations Desert Shield and Desert Storm.

3. Upon completion of a Family Medicine Residency and Sports Medicine Fellowship, Dr. Lutz received Board Certification, which he currently maintains, and a Certificate of Added Qualification in the latter.

Spokane Regional Health District.

4. Spokane Regional Health District is one of 35 local public health agencies serving Washington state's 39 counties. The agency was originally established as the Spokane County Health District in January 1970, when the City of Spokane and Spokane County merged their health departments. In 1994, the agency’s official name was changed to Spokane Regional Health District to reflect the increased scope of public health services and geographic coverage.

5. The SRHD is run by the Spokane Regional Health District Board of Health (“SRHD Board”) whose primary purpose is to act as the governing body of the SRHD and, among other things, “to create and promote prudent public health policy within the Spokane area health district.” The SRHD Board has a governance function for the agency, but it does not establish or direct public health policy for Spokane County.

6. In 2016, with the resignation of the previous SRHD health officer, the SRHD Board created a “transition committee” to explore a new leadership structure. transition committee presented a new organizational structure to the SRHD Board, and it was adopted and implemented through a change in SRHD’s bylaws. As part of this change, the transitional committee proposed to change the SRHD Board’s existing bylaws to allow the Administrator to solely hire and fire the Health Officer. This proposal was not supported, however, and while the Administrator was given this authority, the decision had to be approved by the SRHD Board.

7. Per the preexisting bylaws, the SRHD Board was to be comprised of 12 members appointed as follows:

Three (3) Spokane County Commissioners

Three (3) elected officials from the City of Spokane

Two (2) elected officials from the City of Spokane Valley

One (1) elected official acting as a representative from the remaining incorporated cities and towns of the District and

Three (3) at-large citizen members appointed by the Spokane County Commissioners

8. SRHD’s bylaws did not require that anyone with medical or public health experience must be on the Board, despite one of its primary purposes being to “to create and promote prudent public health policy within the Spokane area health district.”

9. At the time of his appointment, none of the SRHD Board members had any medical or public health knowledge. During his eight years of service as a local Board of Health

member, he was the only member with any such knowledge or training. After Dr. Lutz was hired the SRHD Board continued to be a body of elected officials and their surrogates, the latter being appointed solely by County Commissioners. Per RCW 70.05.050, the Local Health Officer (LHO) was required to be “trained and experienced in public health.”

10. Because of the governance and administrative structure of SRHD, the LHO was the only person required to have public health training and knowledge, and therefore the only person with any background in safeguarding the public’s health. This was true the entire time Dr. Lutz served as the LHO. The LHO’s role was thus critical given the political nature of the SRHD’s governing Board.

11. The SRHD bylaws also provided that an administrator should be the director of the SRHD and report to the SRHD Board. This Administrative Officer (“AO”) serves “at the pleasure of the Board” and also serves as the Executive Secretary of the Board.

12. Regarding duties of the LHO, the SRHD bylaws state:

Article VI – District Health Office (RCW 70.05.070) – The District Health Officer shall perform such duties as are provided by law and directed by the Administrator. He/she shall be responsible to the Administrator for his/her official actions.

13. The bylaws contain no further directions, clarifications or instructions concerning how the AO is to monitor, supervise or interact with the LHO. Nor do the bylaws (or any directives of the SRHD Board) address the interaction between the LHO’s statutory public health duties and the supervisory authority granted to the AO. In contrast to the AO, who serves at “the pleasure of the Board,” the bylaws as well as RCW 70.05.050 require a public hearing and SRHD Board approval prior to the LHO’s termination.

Dr. Lutz’ Role at SRHD

14. On or about May 15, 2017, Dr. Lutz was hired by the SRHD Board to serve as the LHO. Dr. Lutz had dedicated his professional life to advancing health and public health issues,

so this was his “dream job.” Dr. Lutz’ job duties and responsibilities as LHO were not set by the SRHD Board; instead, they were detailed by the Washington State Legislature: RCW 70.05.070; WAC 246-101-505; and WAC 246-100-036.

15. One significance of the fact that Dr. Lutz’ LHO job duties were statutorily prescribed is that neither the SRHD Board nor other employees it hired had the authority to restrict or limit Dr. Lutz’ performance of these duties and obligations.

Dr. Lutz’ Job Performance from May 2017 – September 16, 2019

16. Dr. Lutz received an interim performance evaluation in January 2018 by his supervisor, Torney Smith. Dr. Lutz received high marks across the board, with Mr. Smith finding that Dr. Lutz exceeded nominal requirements in all areas.

17. Dr. Lutz’ most recent performance evaluation occurred on November 19, 2018. The rating system ranged from Exceptional, Achieves, Growth, and Unsatisfactory. Mr. Smith found that of the eighteen evaluated areas, Dr. Lutz had met goals and was rated as “Achieves” in sixteen. He was assessed as “Exceptional” in two areas (“Communication” and “Shares job knowledge with co-workers”). Regarding “areas of improvement,” Mr. Smith advised Dr. Lutz to focus more on working through managers, as opposed to communicating directly to staff.

18. Dr. Lutz was and has a take-charge personality. When faced with a public health issue, he acts swiftly and promptly to “get the job done.” This at times gave rise to resentment within the entrenched SRHD bureaucracy.

19. Advocacy to benefit the public health was more to Dr. Lutz than his job, it was a passion. Thus, to the extent he had an opinion on a public health related issue, and a platform to express that view, he would do so. In particular, when asked or if an opportunity was presented, Dr. Lutz would author Op-Ed pieces for publication in the Spokane Region. Despite Dr. Lutz’ right and obligation as the LHO to engage in such advocacy, his views often met with resistance

and at times outright hostility by some SRHD Board members, SRHD staff and other elected officials in the region.

20. For example, as a veteran, medical doctor and public health official, Dr. Lutz knew first-hand the public health and safety issues surrounding guns and gun violence. While Dr. Lutz acknowledged the political impact of gun issues, as a public health advocate he was concerned with threats to public health and safety from gun violence. To that end, he was a frequent and passionate advocate for gun safety. However, Dr. Lutz' expression of his views on the issue were sometimes unpopular with the staff at SRHD, as well as certain Board members. Dr. Lutz was formally counseled by his supervisor in February 2019 to refrain from addressing gun violence or gun safety and instructed that Dr. Lutz would need to obtain approval from the SRHD Board before doing so further.

Amelia Clark Hired as Administrative Officer

21. In 2019, SRHD began the process for locating a new AO largely without the help or involvement of Dr. Lutz. Despite the fact that the Board expected the AO and LHO to work closely and harmoniously together, Dr. Lutz did not participate in the interview process.

22. In August 2019, Amelia Clark was hired by the SRHD Board to act as the SRHD's AO. This decision was contrary to recommendations provided by SRHD and community members who participated in the interview process.

23. In early 2020, Dr. Lutz met with AO Clark to review the LHO's professional goals for 2020, with the intent of informing Ms. Clark at the start of the year what Dr. Lutz would be focusing on, including the improvement of health for the homeless and within correction centers, and working toward a better "internal method of communication" within SRHD. Ms. Clark did not provide any feedback at that initial meeting other than that she was

supportive of Dr. Lutz’ planned goals and strategy. Ms. Clark raised no performance issues or concerns.

SRHD and Dr. Lutz’ Response to COVID-19

24. Dr. Lutz’ implementation of his 2020 goals took a dramatic turn when in February 2020, the nation was hit with the first wave of the COVID-19 pandemic. Washington was the first state to have a recorded case of COVID-19, and the Spokane area was front and center in the battle when on February 24, 2020, four passengers from a Princess Cruise were transferred to the Sacred Heart Special Pathogens Unit under federal isolation. Dr. Lutz, as LHO, was required to allow the patients into Spokane County.

25. A few days later, on February 29, 2020, Gov. Jay Inslee declared a statewide emergency due to the spread of coronavirus (COVID-19).

26. Early in the pandemic, and continuing throughout Dr. Lutz’ tenure with the SRHD, there was a significant disconnect in the eyes of the public and some SRHD Board members regarding what Dr. Lutz could and could not do as the LHO in response to COVID-19. While Dr. Lutz had a significant amount of discretion as LHO, many of the decisions, statements and actions he would later take were driven by directives from the state and federal governments. At times, while Dr. Lutz was the effective “face” of the Spokane Region’s COVID-19 response, he would be publicly criticized by elected officials, business leaders and community members for actions he took in carrying out his duties as LHO. Undeterred, Dr. Lutz always looked to medical science and data to guide him in carrying out his prime directive – promote the public’s health.

Tension Arises Between Dr. Lutz' Science- and Medical-Based Decisions and Opinions of Elected Officials and Business Leaders.

27. Almost immediately after Governor Inslee's COVID-19 declaration, decisions and actions taken by Dr. Lutz to protect the public's health were met with resistance, as many had economic and social impacts on the businesses and citizens of the Spokane Region.

28. In March 2020, Dr. Lutz and SRHD were faced with the first real publicly-facing decision that would impact many – the Washington State Middle School Basketball Championships, traditionally held in Spokane at the Spokane Convention Center and other locations. This event draws 500 youth teams from across the state and the Pacific Northwest, was expected to attract approximately 15,000 athletes and families to Spokane, and to serve as a major economic resource for Spokane, especially for the hospitality industry. Based on risks to public health, including bringing thousands of people to Spokane from across the Pacific Northwest, Dr. Lutz was forced to cancel this event, which was not viewed favorably by local officials.

29. For example, Kate Hudson, Visit Spokane spokeswoman, said the cancellation would have a devastating economic impact on Spokane, which Spokane Mayor Nadine Woodward echoed in a news conference the same day. Dr. Lutz also received negative comments from certain SRHD Board members about the economic impact Dr. Lutz' order was having on the community and questions were raised about the then upcoming men's NCAA basketball tournament, scheduled to be hosted by Gonzaga University. The message these officials were sending to Dr. Lutz was that regional economic impacts should be a primary factor in his public health decisions.

30. One March 17, 2020, local elected officials in the Spokane region declared states of emergency after Spokane's first COVID-19 case was reported on March 14, 2020. On March 20, 2020, Dr. Lutz also signed a Declaration of Public Health Emergency on behalf of SRHD.

31. On March 20, 2020, Dr. Lutz took another COVID-19 preventive measure as the LHO when he issued a directive regarding closing playgrounds. According to Dr. Lutz:

“It is important that you and your families stay healthy by getting outdoors, playing and using the green space our parks provide,” explained Dr. Lutz. “We do need to continue to take the steps necessary by practicing social distancing and limiting our exposure to public places where the virus can be transmitted, and that includes play structures and equipment.”

32. Again, Dr. Lutz received push-back from certain SRHD Board members regarding this decision, lobbying for him to reopen the playgrounds, despite Dr. Lutz’ opinion as LHO that they had to be closed to address public health concerns raised by the potential rapid spread of the virus.

33. On March 23, 2020, Governor Inslee issued Washington’s “Stay Home Stay Safe” Proclamation. The ramifications of this Proclamation were discussed at the next SRHD Board meeting, but rather than discussing public-health related issues surrounding this Proclamation, the SRHD Board focused solely on economic and other impacts of the Order.

34. As part of the regional emergency response to COVID-19, there were weekly EOC meetings at the Fire Training center, each of which began with an update by Dr. Lutz about the pandemic status. The audience included SRHD Board members and other elected officials, later expanding to others in the business and health care community. Frequently throughout this time period attendees offered comments that the economy was suffering unnecessarily as a result of the Governor’s Proclamation and Spokane health orders. Arguments were made that Spokane had not seen the level of cases as in western Washington, that it was a different situation in Spokane, and it should not be punished for what was happening elsewhere. Despite this pushback and implicit pressure, Dr. Lutz continued to monitor Spokane’s local/regional cases and support the Governor’s Proclamation.

The Push to Phase 2

35. On May 4, 2020, Governor Inslee released Washington's Phase Approach to reopening. Governor Inslee initially placed Spokane in the most restrictive Phase 1. Almost immediately, local elected officials, including ~~some~~ SRHD Board members, began to pressure for moving Spokane to Phase 2. This was done directly to Governor Inslee and not through Dr. Lutz, but again the emphasis was on economic concerns rather than public health. Gov. Inslee balked when local Spokane officials pressed him to allow Spokane County to reopen the economy separate from the timeline he laid out for the rest of the state. Mayor Woodward called the State's benchmark "unrealistic." Along with other local leaders, Mayor Woodward claimed the area's data supported a relaxation of restrictions and reopening of the local economy by entering Phase 2 of the state plan ahead of schedule. According to Mayor Woodward, Dr. Lutz had been less enthusiastic than elected officials in pushing for a reopening, but Woodward said he remained involved in the process and "guides us during a health pandemic."

36. The first set of criteria for counties to apply for a variance for Phase 2 was limited to communities with a population less than 75,000 and no cases over the preceding 2 weeks, criteria met by only 5 counties. Even though Spokane County could not meet these criteria, Dr. Lutz was pressured by Commissioner French, acting as the chair of the Board of County Commissioners, to immediately apply for a variance. When this topic was brought up at the EOC, Dr. Lutz explained there were no criteria for larger counties to obtain a Phase 2 variance. Spokane did not have a significant number of cases at the time, thus Commissioner French's focus was on the economic impact of staying in Phase 1. This perspective was shared by most of the elected officials who attended the EOC meeting around this time.

37. In response, Dr. Lutz discussed a variance request with the Governor's Eastern Washington representative, Adam McDaniel. Mr. McDaniel acknowledged that there was no

process as yet defined, and stated that a request by Spokane to go to Phase 2 at the time would be refused. Nonetheless, Dr. Lutz decided to proceed as urged by French and others to request a variance under the belief that the process would serve to demonstrate to Spokane elected officials the need to follow DOH and Governor protocols, as well as to start collecting materials and data that would possibly be used when subsequent criteria were released.

38. As expected, Governor Inslee rejected the request on May 14, 2020. Also as expected, the Governor's action was not received well by French and Woodward, as reflected by comments they made at EOC meetings. Consistent with their view, Spokane County Sheriff Ozzie Knezovich stressed the importance of reopening the county soon: "Last night, I had a conversation with a group of business owners that represent our restaurants and their message was clear: We won't survive another two weeks." This was a common theme throughout the spring and summer of 2020 – elected officials at the EOC meetings would direct criticism to Governor Inslee and indirectly to Dr. Lutz, because he was often tasked with implementing directives and orders issued by DOH and the Governor's office.

39. On May 19, 2020, the Governor announced expanded county variance criteria. Immediately, Commissioner French stated: "We want to be in Phase 2 before Memorial Day Weekend." Completely bypassing the SRHD and Dr. Lutz, Commissioner French and his fellow county commissioners passed a resolution on May 19, 2020 and penned a letter to the governor requesting that Spokane County be moved immediately into Phase 2.

40. Dr. Lutz was told by Commissioner French and others that he needed to apply for a variance immediately. Commissioner French asked Dr. Lutz how long it would take to pull the materials together and was unhappy when told it would take a few days. Dr. Lutz and the SRHD team worked through the weekend to pull all materials together with staff having to defer other responsibilities to comply with Commissioner French's demand. Given it was coming from the

Chair of the Board of County Commissioners, and its role on the local Board of Health, this was perceived as an “order” that was not questioned by the AO, when made aware of the challenging timeframe.

41. Application for the variance required Dr. Lutz to submit a signed letter of recommendation to the SRHD Board to proceed with a request for a variance. This was of such priority that an emergency SRHD Board meeting was called to formally start the process. This was not discussed with all SRHD Board members, specifically the appointed members, and one, Chuck Hafner, was so upset with the process that he resigned (only to be subsequently reappointed by Commissioner Kuney). Mr. Hafner said that as a previous elected official on the SRHD Board and past chair, he had been more involved, but instead, this was now a County Commissioner-driven process

42. On May 20, 2020, Dr. Lutz as LHO issued a directive regarding face coverings. Again, this public health decision was not supported by some members of the SRHD Board and other elected officials. This was primarily manifested by lack of mask wearing at meetings and no real enforcement at any level of local government.

43. On May 23, 2020, Spokane’s request for a variance to move to Phase 2 was approved. Once the variance was approved, some officials began an immediate push to move to Phase 3 as soon as possible. Elected officials, including certain members of the SRHD Board, were quoted in the media as supporting moving forward within a three-week timeframe identified as the minimum needed between phases.

George Floyd, Racism, Public Health and Free Speech

44. On May 25, 2020, after the killing of George Floyd, Dr. Lutz authored an Op-Ed piece about structural racism and forwarded it to SRHD’s public information officer, who reviewed and edited the piece and forwarded it to Ms. Clark.

45. Dr. Lutz believed there was a strong link between structural racism and public health and his article was an attempt to advance that issue. SRHD informed Dr. Lutz it would not approve this for publication with no explanation as to why. No further information was provided at that time.

46. On May 31, 2020, Dr. Lutz participated in a George Floyd – Black Lives Matter march, believing it a public health issue deserving his participation, and in doing so, he took appropriate precautions against COVID-19 spread (face covering; physical distancing).

47. Soon after, Ms. Clark told Dr. Lutz “the Board” was not happy with his participation. Of note, Secretary of Health John Wiesman issued a statement consistent with Dr. Lutz’ view:

“While more recently, we have taken intentional action to address the root causes of health inequities, including structural racism and other forms of oppression, there is still a lot of work to do,” Wiesman said in a media statement. “Public health must continue to respond and lead with racial equity and social justice. Racism is a public health threat that can’t be ignored. And leading with racial equity and social justice requires us to prioritize the health and well-being of historically marginalized and oppressed communities — including Black, Indigenous and People of Color, individuals with disabilities and the LGBTQ+ community, to name a few.”

48. Despite the clear public health aspects of Dr. Lutz’ Op-Ed draft and his participation in the march, some members of the SRHD Board were not pleased and voiced displeasure for Dr. Lutz taking this public health stance and action. The message was clear to Dr. Lutz - certain SRHD Board members were not happy with his race-related public health actions and attempted to intervene to get him to stop.

49. In fact, Ms. Clark documented a meeting she had with Dr. Lutz where he was advised of the concerns SRHD Board members had about him attending the “peaceful race protest.” In attempt to chill his right of free speech, Ms. Clark instructed Dr. Lutz to separate his personal views from actions connected to SRHD.

50. In early June 2020, Dr. Lutz evaluated the medical science and available data and determined that it was safe and appropriate to reopen the region's outdoor play equipment. Ms. Clark questioned his decision, even going to Secretary of Health Wiesman on the issue. In response to Dr. Lutz' decision, Ms. Clark flatly told him "it was not the right move." However, as the decision to reopen outdoor playgrounds fell squarely within the purview of the LHO, the decision stood. Ms. Clark made clear that she resented Dr. Lutz' decision and how it was conveyed to the public.

June 2020 Push to Phase 3 and Reopen Economy - Dr. Lutz Goes Against Desire of County Commissioners and Declines to Recommend Spokane Advance to "Phase 3" - Political Pressure Mounts to Fire Dr. Lutz

51. In early June 2020, SRHD Board members were receiving complaints from voters about Dr. Lutz and his COVID-19 related actions. One voter asked Commissioner French why Dr. Lutz has more power than the Board of County Commissioners. In another complaint, Commissioner French was told Dr. Lutz was "destroying business" and "must be gone now." Commissioner French caused these emails to be sent to Ms. Clark at SRHD, without copying Dr. Lutz. On information and belief, Commissioner French (and others) wanted Dr. Lutz fired because, as LHO, his COVID-19 response actions were not in alignment with the economic and political views of certain SRHD Board members.

52. By mid-June 2020 there was mounting pressure on Dr. Lutz from a number of fronts, including certain members of the SRHD Board and the Mayor of Spokane, to move to Phase 3. As reported in the local media at the time, "elected leaders in Spokane County are pushing for a move into Phase 3 of reopening, despite the county's health officer expressing that the area isn't ready to move forward."

53. At this time there was also concern about the possibility of moving back from Phase 2 to Phase 1. Dr. Lutz made clear on several occasions in early June 2020 that while he

felt there was a low risk of moving back to Phase 1, he did not feel the data existed to move to Phase 3 and was skeptical about Spokane moving forward to Phase 3 soon.

54. Dr. Lutz was then summoned to a meeting on June 15, 2020, with Ms. Clark, SRHD Board Chair Wick and SRHD Vice Chair Kuney. Dr. Lutz thought the purpose was to discuss open issues, but the meeting turned out to be a type of ad-hoc performance review.

55. Dr. Lutz had received no performance evaluation since Ms. Clark started, nor had there been any formal complaints or criticisms concerning his job performance during that time. Because Dr. Lutz had just publicly stated he felt the data did not warrant moving to Phase 3, the timing of this “performance evaluation” was suspect.

56. Although Dr. Lutz was not advised that the purpose of the meeting was to review his performance, Ms. Clark came prepared with notes citing specific dates and issues. She accused Dr. Lutz of lacking integrity, having poor communication skills and a passive-aggressive approach. Neither Mayor Wick nor Commissioner Kuney offered any commentary or suggestions. Feeling abused, Dr. Lutz asked rhetorically if this was the best organization for him, to which Ms. Clark replied that was his decision. Dr. Lutz stated that he would give it consideration and get back to them in a week.

57. The next day, after the surprise “job performance” meeting, and ignoring the public statement of Dr. Lutz regarding the current situation and moving to Phase 3, on June 16, 2020, the Spokane County Board of Commissioners passed a unanimous resolution approving the drafting and signing of a letter to Dr. Lutz. The resolution urged him “to begin the process of allowing Spokane County to move to Phase 3.”

58. No members of the Spokane County Board of Commissioners were willing to discuss with Dr. Lutz the steps for transition to Phase 3, either in their capacity as Commissioners or as members of the SRHD Board. Instead, Al French, Josh Kerns, and Mary

Kuney sent Dr. Lutz a letter on June 17, 2020, asking that he “take immediate action to protect not only the health and safety of Spokane County residents, but also the health of our region’s economy.”

59. Under the Governor’s protocol, any request to move between phases had to be initiated by the LHO. With this request SRHD Board members asked Dr. Lutz to favor the economy over his public health duties, contrary to Washington law.

60. Addressing the economic impacts of the COVID-19 response was left to the sound discretion of elected officials, who possessed numerous mechanisms to accomplish this. In contrast, the LHO’s role is narrow, but the LHO’s task is critically important: to protect the public health.

61. After careful consideration of the request, weighing all available medical and scientific data and statistics, on June 18, 2020, Dr. Lutz declined to initiate a request to move to Phase 3 because the relevant metrics were not met. According to Dr. Lutz:

I, along with the county’s Board of Health, share our community’s desire to move forward, to further open businesses and to bring life closer to normal. But, at the same time, we have to show patience, resiliency and mindfulness by remaining steady. We’re at a critical time, where deviating from a calibrated and methodical approach will undermine the progress we’ve made so far.

62. During this time Ms. Clark prepared a formal Performance Improvement Plan (PIP) and sent a draft of the same to Mr. Wick and Ms. Kuney for review and comment. Thereafter, Mr. Wick advised Ms. Clark that after he had spoken to SRHD’s counsel and Ms. Kuney, they decided not to proceed with a PIP for Dr. Lutz.

63. One common concern with providing an employee targeted for termination with a PIP is the “risk” that the employee complies with the PIP, thereby effectively preventing termination.

64. When Dr. Lutz requested this draft PIP under Washington's Public Records Act, SRHD objected to its production, in part citing to the attorney work-product doctrine. The attorney work-product doctrine applies when a document is prepared at the direction of counsel in anticipation of litigation, so it is apparent that SRHD was planning to fire Dr. Lutz in June 2020 and was gearing up for litigation.

65. On June 24, 2020, Dr. Lutz had a follow up meeting with Ms. Clark, Ms. Kuney and Mr. Wick. During this meeting, Dr. Lutz stated that he had given much thought to continuing his position at SRHD, and advised he wanted to move forward. During this session and the follow-up, no performance plan was discussed. Dr. Lutz suggested the use of a professional facilitator to improve his communication with Ms. Clark, but Commissioner Kuney said as two adult professionals, Dr. Lutz and Ms. Clark should be able to work things out, citing the cost of a facilitator as not a good use of public funds. The only action item agreed to was restarting weekly one-on-one meetings between Ms. Clark and Dr. Lutz.

66. Unbeknownst to Dr. Lutz, Ms. Clark prepared and circulated several draft documents to the SRHD Human Resources department, Ms. Kuney and Mr. Wick, and among these were draft documents including a performance improvement plan. While these draft documents were prepared by Ms. Clark for submission to Dr. Lutz, and ostensibly copied to Mr. Wick, Ms. Kuney and Dr. Lutz' "personnel file," they were never given to Dr. Lutz nor placed in his file.

67. A further intrusion of politics into public health needs at this time is illustrated by the following incident. On about the 30th of June 2020, SRHD staff alerted Dr. Lutz to an individual living unhoused who had tested positive for COVID-19 during an emergency department visit for severe alcohol intoxication. This individual did not meet criteria for hospital admission for COVID-19, and because SRHD staff were aware that he often slept in a shelter,

they were concerned that he would infect others in the shelter. The same individual was seen in another hospital emergency department on July 2, 2020, and though requested to self-isolate he again refused. Dr. Lutz worked with SRHD staff in an unsuccessful attempt to find an isolation site for the individual. At that point, Dr. Lutz contacted the Director of the Spokane County Jail and in coordination with the Chief Medical Officer of Sacred Heart Hospital, the agreement was made to isolate the gentleman at the Spokane County Jail. Dr. Lutz' actions and efforts were not well-received by the Board of County Commissioners, which issued a statement to that effect and essentially critical of Dr. Lutz' efforts, which were to protect the health of the community.

68. On July 17, 2020, an anti-mask protest occurred outside of SRHD offices that moved to Dr. Lutz' home that afternoon. Dr. Lutz was afforded a large police presence throughout the protest; but, no elected official or SRHD Board member made any comment, raised any concern, or issued any condemnation with respect to the anti-mask protest at Dr. Lutz' home.

Pressure on Dr. Lutz Regarding Reopening Schools

69. The issue of whether and how Spokane area schools were to reopen in the fall of 2020 was a hotly debated and contentious issue for many.

70. On August 3, 2020, Dr. Lutz, based on State DOH guidelines, strongly recommended that area schools begin their 2020-2021 academic year remotely.

71. On August 7, 2020, Ms. Clark again considered issuing Dr. Lutz a Performance Improvement Plan, the same one she considered giving him in June. As before, Ms. Clark elected not to provide this document to Dr. Lutz.

Racism and Public Health Inequity

72. On July 25, 2020, the SRHD Board passed a resolution aimed at breaking the cycle of health inequity.

73. In furtherance of this resolution, and in furtherance of duties as LHO, Dr. Lutz published an Op-Ed on August 9, 2020 entitled “COVID has exposed structural racism in public health system.” This Op-Ed was revised from the original that had been previously submitted, but not permitted to be published by Ms. Clark so as to capture the Board resolution. Now approved by Ms. Clark, in the final paragraph, Dr. Lutz stated:

COVID-19 has revealed Black and Brown lives matter. The Spokane County Board of Health’s RESOLUTION #20-07: ADOPTING A SPOKANE REGIONAL HEALTH DISTRICT HEALTH EQUITY RESPONSE to address racism and health inequities serves as a message to the entire community. We cannot accept the status quo. We need to acknowledge our history and actively dismantle underlying structural racism that prevents every member of our society from achieving their potential.

74. Dr. Lutz learned that Mr. Wick and Ms. Kuney questioned why Dr. Lutz had written about racism. Rather, they believed a more important topic was his decision around school reopening. Dr. Lutz told Ms. Clark of his concern that these communications by SRHD Board members were an attempt to put political pressure on him. Dr. Lutz told Ms. Clark that he could and would also write a piece on education and thought co-authoring it with Maria Howard, PhD, who facilitated SRHD’s ethics committee, would be a great opportunity of explaining the decision-making and inherent ethical tension behind it. Ms. Clark agreed to allow Dr. Lutz to write this piece.

75. After the Op-Ed on education was published on August 23, 2020, having gone through the regular process of review by the Communications Director and approval by the Administrator, Dr. Lutz received an email from Ms. Clark asking if the Op-Ed had in fact been published. Dr. Lutz stated it had been published, and that Ms. Clark had reviewed and approved its publishing. Ms. Clark replied that she had misunderstood its authorship and thought it was

only coming from Dr. Howard. She wrote Dr. Lutz that “Board is unhappy with your Op-Ed pieces” and that SRHD needed to get out of politics. Ms. Clark told Dr. Lutz she did not want him writing further Op-Eds.

76. During a heated Board of Health Executive Committee meeting on September 17, 2020, it was agreed that Dr. Lutz could continue to write Op-Ed pieces, so long as there was a disclaimer to the effect it represented solely Dr. Lutz’ opinion and not that of SRHD or its Board.

Dr. Lutz States Current Data May Require a Return to Phase 2.

77. On October 14, 2020, just two weeks before he was fired, Dr. Lutz made statements to the press about the possible need to move back a phase due to recent COVID-19 data:

“The data are not going in the right direction,” Lutz said. “We are seeing an increase in cases throughout the county from multiple sources which tells me people are not distancing, not wearing masks when they should, getting together when they shouldn’t, and not taking the threat of COVID-19 seriously.”

78. That same day, October 14, 2020, Commissioner Kuney related a complaint she had received from a constituent about Dr. Lutz possibly sending Spokane back a phase, asking whether the Board of County Commissioners could do anything and asked if someone would stand up to this guy. “Where are elected representatives pushing back on this guy,” the constituent asked. Commissioner Kuney promptly sent this “complaint” to Ms. Clark.

October 29, 2020 -- SRHD Board Executive Session

79. Unbeknownst to Dr. Lutz, and just two weeks after stating he may need to move Spokane back to Phase 2, the SRHD Board met with Ms. Clark and legal counsel concerning his job.

80. As SRHD claims this meeting was covered by the attorney-client privilege, little is known about why the meeting was called, who called the meeting, and what event or events precipitated its calling. It is likely the meeting was called to further discuss terminating Dr. Lutz.

81. Dr. Lutz' personnel file contains no performance evaluations from Ms. Clark, and the only one that is in his file was the favorable evaluation provided in late 2018.

82. Other than Ms. Clark's "personal file" she maintained on Dr. Lutz, including select meeting notes and copies of select emails between Dr. Lutz and others, nothing in Dr. Lutz' personnel file suggests he was on the verge of being terminated for performance issues. It is unknown when and why Ms. Clark began tracking Dr. Lutz' emails and keeping notes on him.

83. There appears to have been disagreement amongst the SRHD Board members on how to proceed, and confusion on behalf of Ms. Clark concerning what she was authorized and instructed to do.

84. What is known is that a Performance Improvement Plan was discussed, and at least some SRHD Board members left the meeting with the understanding that Dr. Lutz would be presented with a PIP. Ms. Clark, however, left the meeting believing she had the authority to either provide a PIP to Dr. Lutz or terminate him. To that end, as she had in June, Ms. Clark prepared a PIP and warning letter, which she planned on reviewing with Dr. Lutz later that day. However, she also prepared a Separation Agreement. To date, neither any Board member nor Ms. Clark has explained who authorized this Separation Agreement, including the offer of \$53,408.85 to Dr. Lutz in exchange for a full release of claims and confidentiality.

Ms. Clark Fires Dr. Lutz

85. On October 28, 2020, Ms. Clark contacted Dr. Lutz to inform him she was unable to meet the morning of October 29, 2020, for their regular one-on-one meeting. Rather, she requested they meet after the Board meeting scheduled for that afternoon. Dr. Lutz was scheduled to teach an introduction to public health class to nursing students at Gonzaga University immediately after the meeting and let Ms. Clark know they could forego their meeting, which was not an uncommon practice. She insisted they meet that afternoon, refusing to

state why this meeting was imperative. Ms. Clark asked Dr. Lutz when the class ended and told him to come to the office upon its conclusion. Upon his arrival to the office, he was greeted by Ben Wick in the Administration Office.

86. At no point did Ms. Clark discuss a PIP, but instead read a list of alleged performance deficiencies, including events that had occurred months earlier. These included an email directed to elected officials concerning an article on child access to guns programs around suicide prevention, a priority of Dr. Lutz and within his role and responsibilities as LHO. Dr. Lutz realized Ms. Clark wanted him gone and Board member Wick said nothing that contradicted this belief.

87. At this meeting there was no discussion of a SRHD Board vote, no discussion of a warning letter and no discussion of any PIP. Further, at no point was Dr. Lutz told that he was being placed on administrative leave, as Ms. Clark later claimed. Rather, Ms. Clark told Dr. Lutz that he was fired “effective immediately” and demanded his keys, laptop, credentials and all other SRHD materials. Dr. Lutz was also handed a Separation Agreement that had been prepared ahead of the meeting and was told he had until 4:00 pm the next day to sign it. Dr. Lutz was allowed to say goodbye to his assistant, and then was escorted out of the building. SRHD’s attorney, Michelle Folsom, confirmed in email that same day that Dr. Lutz had been fired.

Reaction to Dr. Lutz’ Termination

88. The next day, October 30, 2020, at 7:47 am, Ms. Clark sent an e-mail to SRHD staff, stating: “Yesterday, October 29 was Bob Lutz’ last day at the Health District,” directly refuting a claim later made by Ms. Clark that Dr. Lutz was on “administrative leave.”

89. Later that day, in what was described as a chaotic news conference, Ms. Clark refused to say whether Dr. Lutz was fired, or he resigned. But she did state there was not

currently a health officer in charge of the district, and she would look for a contract worker to immediately replace Dr. Lutz.

90. Some elected officials, including some SRHD Board members, appeared pleased with the news, making public comments shedding light on what Dr. Lutz believes is the real reason behind his termination – political and economic issues relating to SRHD’s COVID-19 response. When asked about the timing of the decision to remove Dr. Lutz in the middle of a pandemic, Board member Al French told the press:

You know, there's a lot of opinions around the timing of this, and there's a lot of angst in the community about why [the county] hasn't moved further, why have we not moved faster. There are a lot of families that are struggling. You know, until, at the national level, we get some kind of stimulus package and stuff... there's a lot of folks that are really hurting," *French said*. "We just, as the Board of County Commissioners, we just have the food bank, another \$2.5 million to address food sustainability. We're doing things for rent assistance. This is unique times, so we're doing what we can to help those in our community, especially those that are struggling the most.

SRHD Tries to Revise and Recharacterize Termination

91. Recognizing that Ms. Clark lacked the legal authority to fire Dr. Lutz – something that could be done only by the SRHD Board with proper notice and hearing – Ms. Clark, through counsel, attempted to revise history and characterize Dr. Lutz’ status as “administrative leave,” despite the fact she had stated specially he was fired “effective immediately” on October 29 and told staff his last day was October 29.

92. A few days later, on November 2, 2020, Dr. Lutz was advised that the SRHD Board was set to meet sometime later that week and vote on his termination. This was odd, given that Ms. Clark had already fired him and stated that Dr. Lutz was no longer SRHD’s LHO as of October 29, 2020.

93. Dr. Lutz responded by pointing out proper procedures had to be followed for any hearing, including seven days’ notice under Washington’s Administrative Procedures Act

(WAPA) and other WAPA procedural requirements. The SRHD Board replied that the WAPA did not apply, and it would proceed with the hearing on November 5, 2020. Dr. Lutz thus received fewer than 48-hours' notice.

94. Further compounding the procedural problems with the Board's "hearing" was the fact that only Dr. Lutz and Ms. Clark were permitted to speak, and neither could ask questions of each other or any SRHD Board member. No witnesses were allowed, there was no testimony provided under oath, and no cross examination was allowed.

95. Under the hearing process demanded by the Board, both Ms. Clark and Dr. Lutz were required to submit voluminous materials immediately ahead of the noon deadline on November 5, 2020, which was just hours before the scheduled hearing.

November 5, 2020, Public Hearing Regarding Dr. Lutz

96. The "hearing" was a hearing in name only. A majority of the SRHD Board had decided well before November 5 they did not want Dr. Lutz as LHO.

97. This hearing was merely an after-the-fact procedural attempt to ratify Ms. Clark's illegal October 29 termination, and deflect criticism directed at Ms. Clark and the Board.

98. Through the course of the hearing, it was clear that few, if any, SRHD Board members had read Dr. Lutz' submission, as most questions did not take his written responses and documents into consideration.

99. Another odd feature of this "hearing" was that few questions were directed to Ms. Clark asking her about Dr. Lutz' responses to her performance allegations.

100. The SRHD Board also received hundreds of documents from Ms. Clark after the deadline for submission.

101. Neither Dr. Lutz nor his counsel were permitted to ask any questions or present any witness testimony.

102. After statements from both Ms. Clark and Dr. Lutz, and a period for questions, the SRHD Board adjourned to a lengthy Executive Session.

103. Immediately upon reconvening, Commissioner French read a lengthy statement in support of his motion to ratify termination of Dr. Lutz. The votes cast by the twelve-member Board largely followed political lines. The motion passed 8-4:

Those voting to terminate Dr. Lutz

County Commissioners:

Josh Kerns - Republican

Mary Kuney - Republican

Al French - Republican

Spokane Valley:

Ben Wick - Republican

Linda Thompson – Republican

Millwood:

Kevin Freeman – Unknown party affiliation

Community Appointment:

Andrea Frostad – (Appointed by Republican Al French in 2018)

Chuck Hafner – (Re-appointed by Republican Mary Kuney September 2019)

Those who voted to retain Dr. Lutz

City Council Members:

Betsy Wilkerson - Democrat

Breean Beggs - Democrat

Karen Stratton – Democrat

Community Appointment:

Dr. Jason Kinley - Republican

104. Nadine Woodward, Mayor of the City of Spokane, summarized the political and economic motivation underlying Dr. Lutz’ termination. Immediately upon hearing the news that the termination of Dr. Lutz had been confirmed by the SRHD Board. Mayor Woodward stated:

“Everything changed with the progression to Phase 2 and we have been stuck in the same place ever since. Important community decisions are being made by a single entity.” “My initial reaction when I first heard the news was *it’s the best news I’ve*

heard in a long time and that I support Administrator Clark’s decision. Here’s why I reacted that way – I, like most in our community, am frustrated. Frustrated that we have not progressed faster in our effort to limit the speed of the virus, *take smart and measured steps to reopen the economy*, and be a model for the rest of our state, region and country. So I think it is time to take a different approach.”

Significant Community Support for Dr. Lutz

105. The support for Dr. Lutz in the community was immense.

106. For example, Seventeen Spokane County school superintendents submitted a statement of appreciation for Dr. Lutz to the SRHD Board.

107. More than thirty-three faculty members of the Gonzaga University Department of Chemistry & Biochemistry, Biology and Physics signed a letter in support of Dr. Lutz and asked “that the Spokane Regional Health District reconsider their decision to force his resignation.”

108. SRHD union members (which comprise most of the SRHD employees), and their unions, in a formal statement of support for Dr. Lutz, stated “Dr. Lutz was a well-respected leader at SRHD and has been a shining light for SRHD staff during this extremely difficult time for public health care workers. Members working under his leadership have witnessed his integrity, intelligence, and concern for the well-being of others. He knows all the staff by name and consistently goes out of his way to make sure staff have the tools and support necessary to perform their jobs with confidence.”

DR. LUTZ’ CLAIMS AGAINST SRHD

Based upon the conduct of SRHD as summarized above, Dr. Lutz notifies SRHD of tort claims against SRHD, as follows:

Wrongful Termination in Violation of SRHD’s Bylaws, RCW 70.05, and Washington’s Administrative Procedures Act

109. RCW 70.05.050 states that “No term of office shall be established for the local health officer but the local health officer shall not be removed until after notice is given, and an

opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal.”

110. Consistent with this statutory mandate, SRHD’s by-laws confirm the SRHD Board has the sole authority to terminate the District Health Officer. Article IV of SRHD’s bylaws, section 3, provides: “The Board of Health shall approve the appointment and termination of a District Health Officer.”

111. Dr. Lutz was hired as SRHD’s District Health Officer by the SRHD Board on or about May 17, 2017. Dr. Lutz reasonably relied upon both the SRHD’s bylaws and RCW 70.05 in accepting this position.

112. On October 29, 2020, without warning, notice, hearing or vote of the SRHD Board, Amelia Clark summarily terminated Dr. Lutz as SRHD’s District Health Officer, “effective immediately,” leaving SRHD with no District Health Officer.

113. In an effort to ratify Ms. Clark’s termination of Dr. Lutz, the SRHD Board hastily scheduled a public hearing for November 5, 2020, providing Dr. Lutz with less than 48-hours’ notice.

114. The Board ordered that Dr. Lutz had only 30 minutes at the hearing to present his position. Dr. Lutz was not permitted to ask any questions of Ms. Clark, or any Board member, or to examine any other witness. No testimony was given under oath.

115. Dr. Lutz objected to the purported hearing, asserting that a proper hearing was governed by Washington’s Administrative Procedures Act (“WAPA”), RCW 34.05, which, among other things, required at least 7-days’ notice.

116. SRHD maintained the WAPA did not apply and proceeded with the November 5, 2020, “hearing” as scheduled.

117. Ms. Clark's summary termination of Dr. Lutz on October 29, 2020 was illegal and in violation of RCW 70.05 and SRHD's bylaws.

118. The after-the-fact attempt by the SRHD Board to confirm the termination was ineffective and the November 5, 2020, hearing was conducted in violation of the WAPA.

119. As a result of this unlawful conduct, Dr. Lutz is entitled to immediate reinstatement to his position as District Health Officer, together with all damages he incurred as a result of SRHD's wrongful termination, including direct and consequential damages, pain and suffering, and attorney fees and costs, all in an amount to be determined.

Wrongful Termination in Violation of RCW 70.05 and RCW 42.30.110

120. The SRHD Board met in an executive session on October 29, 2020, to discuss the employment of Dr. Lutz.

121. To date, SRHD and the Board have refused to disclose what was discussed during this session, including whether any official actions or decisions were taken with respect to Dr. Lutz.

122. If any official actions, decisions or votes were taken with respect to the continued employment of Dr. Lutz during the October 29, 2020, including authorizing Ms. Clark to terminate Dr. Lutz' employment, such action was illegal and invalid under Washington law, including RCW 70.05.050, RCW 42.30.110 and RCW 34.05.

123. To the extent Dr. Lutz' termination is based in any way on decisions, votes or directives given by the SRHD Board during the October 29, 2020 executive session, Dr. Lutz is entitled to immediate reinstatement to his position as District Health Officer, together with all damages he incurred as a result of SRHD's wrongful termination, including direct and consequential damages, pain and suffering, and attorney fees and costs, all in an amount to be determined.

Wrongful Termination – Lack of Just Cause

124. As the SRHD's District Health Officer, Dr. Lutz' job duties and responsibilities were defined by state law, including in RCW 70.05.070, WAC 246-101-505 and WAC 246-100-036.

125. RCW 70.05.050, states in relevant part: "No term of office shall be established for the local health officer but the local health officer shall not be removed until after notice is given, and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal."

126. SRHD's bylaws, in Article IV, confirm that the authority of the District Board of Health "shall be as prescribed by the laws of the State of Washington," and specifically references RCW 70.05.

127. Section 3 of Article IV states that "The Board of Health shall approve the appointment and termination of a District Health Officer." In contrast to the District Health Officer, the SRHD bylaws provide that the Administrator "shall serve at the pleasure of the Board."

128. Taken together, RCW 70.05. and SRHD's bylaws created a reasonable expectation that Dr. Lutz could only be terminated for just cause after notice and hearing before the SRHD Board.

129. The SRHD's Board lacked just cause or legal justification to terminate Dr. Lutz as the SRHD's District Health Officer.

130. The SRHD's Board's termination of Dr. Lutz was wrongful and in violation of Washington law.

131. As a result of his wrongful termination, Dr. Lutz is entitled to immediate reinstatement to his position as District Health Officer, together with all damages he incurred as

a result of SRHD's wrongful termination, including direct and consequential damages, pain and suffering, and attorney fees and costs, all in an amount to be determined.

Wrongful Discharge in Violation of Public Policy

132. The Washington legislature has mandated that protecting and promoting public health is a strong public policy.

133. As part of effectuating that mandate, the Washington legislature created local health districts and empowered local health officers to carry out the important function of safeguarding public health.

134. The critically important function of a local health officer to make decisions solely in the interest of public health, undeterred by political or economic pressures, is vital to advance the public health.

135. If local health officers, such as Dr. Lutz, are not free to exercise their sound medical and public health judgment in protecting and promoting public health without political and economic pressure, it would jeopardize the strong public policy underlying public health.

136. Dr. Lutz made decisions and statements, drafted documents and took actions, which in his judgment as the SRHD's local health officer were in the best interest of public health. Some of these actions did not align with views of members of the SRHD Board and other elected officials in the region, which ultimately resulted in Dr. Lutz' termination from the SRHD.

137. The SRHD's purported reasons for terminating were pretextual and it cannot offer a legitimate justification for Dr. Lutz' termination.

138. As a result of his wrongful termination, Dr. Lutz is entitled to immediate reinstatement to his position as District Health Officer, together with all damages he incurred as

a result of SRHD's wrongful termination, including direct and consequential damages, pain and suffering, and attorney fees and costs, all in an amount to be determined.

Wrongful Termination in Violation of Substantive and Procedural Due Process Rights of the Fifth and Fourteenth Amendments to the U.S. Constitution, 42 U.S.C. § 1983, and Wash. Const. Article 1, Section 3.

139. SRHD, by the acts of its agents, wrongfully terminated and retaliated against Dr. Lutz in violation of his substantive and procedural due process rights under the 5th and 14th Amendments to the U.S. Constitution, 42 U.S.C. § 1983 and Article 1, section 3 of the Washington Constitution.

140. As a result of his wrongful termination and retaliation, Dr. Lutz is entitled to immediate reinstatement to his position as District Health Officer, together with all damages he incurred as a result of SRHD's actions, including direct and consequential damages, pain and suffering, and attorney fees and costs, all in an amount to be determined.

Wrongful Termination in Violation of Free Speech Rights of the 1st Amendment to the U.S. Constitution, 42 U.S.C. § 1983, and Wash. Const. Article 1, Section 4.

141. SRHD, by the acts of its agents, wrongfully terminated and retaliated against Dr. Lutz in violation of his free speech rights under the 1st Amendment to the U.S. Constitution, 42 U.S.C. § 1983 and Article 1, section 4 of the Washington Constitution.

142. As a result of his wrongful termination and retaliation, Dr. Lutz is entitled to immediate reinstatement to his position as District Health Officer, together with all damages he incurred as a result of SRHD's actions, including direct and consequential damages, pain and suffering, and attorney fees and costs, all in an amount to be determined.

Defamation

143. SRHD, by the acts of its agents, perpetuated and aided in the defamation of Dr. Lutz by negligently making unprivileged false and untruthful statements about his ethics, professionalism, misappropriation of public funds and the performance of his job.

144. As a result of the false and defamatory statements, Dr. Lutz is entitled to all resulting damages he incurred as a result of SRHD's actions, including direct and consequential damages, pain and suffering, and attorney fees and costs, all in an amount to be determined.

Robert B. Lutz

Economic Loss Analysis

Spokane Regional Health District (SRHD)

Schedule 1**PRELIMINARY****GENERAL INFORMATION**

Date of Loss	29-Oct-20
Present Value Date	28-Feb-21
Date of Birth	9-Jul-62
Age at Date of Loss	58.30
Worklife Expectancy	6.7 Yrs
Expected Retirement	Age 65

LOST EARNINGS INFORMATION

Date of Loss	29-Oct-20		
Earnings Base	\$	222,348	Schedule 2
Mitigation Base	\$	180,000	Schedule 3
Growth Rate		2.50%	Schedule 4
Discount Rate		0.40%	Schedule 4

Loss Period (Year)	Age	Expected Annual Earnings	No. of Months	Annual Earnings	Less Mitigation Earnings	Lost Annual Earnings	Plus Future Retirement Benefits	Employer Provided Insurance Benefits	Net Lost Earnings & Benefits	Present Value
		Schedule 2		Calculated	Schedule 3	Calculated		Schedule 2	Calculated	Calculated
2020	58	222,348	2.0	37,058	-	37,058	In Progress	2,680	39,738	39,738
2021	59	222,348	2.0	37,058	30,000	7,058		-	7,058	7,058

Total Past Lost Wages & Insurance Benefits**\$ 7,058**

2021	59	222,348	10.0	185,290	150,000	35,290		-	35,290	35,220
2022	60	227,907	12.0	227,907	-	227,907		13,396	241,303	239,862
2023	61	233,605	12.0	233,605	-	233,605		13,396	247,001	244,548
2024	62	239,445	12.0	239,445	-	239,445		13,396	252,841	249,333
2025	63	245,431	12.0	245,431	-	245,431		13,396	258,827	254,219
2026	64	251,567	12.0	251,567	-	251,567		13,396	264,963	259,209
2027	65	257,856	6.0	128,928	-	128,928		13,396	142,324	138,678

Total Future Lost Wages & Insurance Benefits**\$ 1,421,069****Total Lost Wages & Insurance Benefits**

\$ 1,586,289	\$ 180,000	\$ 1,406,289	\$ 83,056	\$ 1,489,345	\$ 1,428,127
--------------	------------	--------------	-----------	--------------	--------------

Prepared by Todd A. Carlson, CPA/ABV

Robert B. Lutz
Earnings and Benefits Base Analysis
Spokane Regional Health District (SRHD)
Schedule 2

PRELIMINARY

Annual Earnings
Spokane Regional Health District (SRHD)

Date of Loss of Employment	29-Oct-20
----------------------------	-----------

Annual Gross Wages Earned - ACTUAL		Gross Earnings		Average Monthly	Source
2017	Partial Year	\$ 72,520	Start Date Jun-16-2017	\$ 11,157	Form W-2
2018	Annual	139,220		11,602	Form W-2
2019	Annual	\$ 197,269		16,439	Form W-2
2020	Partial Year	185,287	Jan-Oct 2020	18,529	Pay Stub
2020	Partial Year	3,286	Nov-1 to Nov-05-2020	NA	Pay Stub
Annualized 2020	USE	\$ 222,348		\$ 18,529	Calculated

Employer Provided Insurance Benefits

Medical, Dental, Disability Insurance Premiums		Annual	Monthly	Source
Annual Benefit Base Cost	2019	\$ 16,743	\$ 1,395	Form W2, Box 12b, Code DD
Annual Benefit Base Cost	Jan-Oct 2020	\$ 13,396 10 Mos	\$ 1,340	Pay Stub

Annual Future Increase	Above	<u>In Progress</u>
------------------------	-------	--------------------

Robert B. Lutz
Mitigation Earnings Analysis
Spokane Regional Health District (SRHD)
Schedule 3

PRELIMINARY

Mitigation Earnings

		Annual Salary	Monthly Rate	Semi-Monthly Rate	Reference
Appointment Period					
State of Washington, Department of Health, COVID-19 Medical Advisor	Dec-16-2020 Dec-31-2021	\$ 180,000.00	\$ 15,000.00	\$ 7,500.00	Letter Dated Dec-08-2020

Employer Provided Insurance Benefits

	Source
State of Washington, Department of Health, COVID-19 Medical Advisor	
Eligibility for medical benefits effective Jan-01-2021	Letter Dated Dec-08-2020

Note:
Subsequent to Dec-31-2021, employer provided insurance benefits are undetermined and will be supplemented if further information becomes known or available prior to trial.

Robert B. Lutz

Growth & Discount Rates

Schedule 4**PRELIMINARY****Wage Growth Rates**

Year	Avg Annual CPI - W	
1986	0.7	1
1987	4.5	2
1988	4.3	3
1989	4.7	4
1990	6.1	5
1991	2.8	6
1992	2.9	7
1993	2.6	8
1994	2.7	9
1995	2.5	10
1996	3.3	11
1997	1.5	12
1998	1.6	13
1999	2.8	14
2000	3.4	15
2001	1.3	16
2002	2.5	17
2003	1.9	18
2004	3.5	19
2005	3.4	20
2006	2.4	21
2007	4.4	22
2008	-0.6	23
2009	3.5	24
2010	1.7	25
2011	3.3	26
2012	1.7	27
2013	1.5	28
2014	0.2	29
2015	0.3	30
2016	2.0	31
2017	1.6	32
2018	1.5	33
2019	1.6	34

Average	2.47	2.50%
		USE

US Treasury Yields**As of Release February-26-2021**

Maturity	Yield
3 Mo	0.040
6 Mo	0.050
1 Year	0.080
3 Year	0.300
5 Year	0.750
7 Year	1.150
10 Year	NA
20 Year	NA

Average	0.395	0.40%
		USE

Sources:

CPI-W, Bureau of Labor Statistics

Federal Reserve Statistical Release, H-15