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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KAREN L. REED and MICHAEL F.
REED,

Plaintiff,

v.

CITY OF VANCOUVER,
WASHINGTON, et al.

Defendant.

CASE NO. C19-5182 RJB

ORDER GRANTING MOTIONS
FOR SUMMARY JUDGMENT

This matter comes before the Court on Defendant Eric Holmes’s Motion for Summary Judgment (Dkt. 32), Defendant Bronson Potter’s Motion for Summary Judgment (Dkt. 36), and Defendant Jonathan Young’s Motion for Summary Judgment (Dkt. 44). The motions for summary judgment and materials filed in support of and in opposition thereto are similar and frequently identical.¹ The Court has considered the motions, materials filed in support of and in

¹ The file is replete with duplicative briefings and records. To simplify citations, this order generally refrains from string citations and refers primarily to the instant motions, responses, and replies, each of which frequently cite to various other records and declarations for factual support, which the Court has reviewed.

1 opposition thereto, and the remaining record herein. For the reasons set forth below, the instant
2 motions for summary judgment should be granted.

3 **I. RELEVANT FACTS AND PROCEDURAL HISTORY**

4 **A. FACTS**

5 Plaintiff Karen Reed (“Ms. Reed”) makes four claims against Defendants Eric Holmes
6 (Mr. Holmes), Bronson Potter (“Mr. Potter), and Jonathan Young (“Mr. Young”): fraud in the
7 inducement, intentional interference with business relationship, outrage, and intentional infliction
8 of emotional distress. Dkt. 7, at 10–13. Plaintiff Michael Reed (“Mr. Reed”), Ms. Reed’s spouse,
9 claims loss of consortium against Mr. Holmes, Mr. Potter, and Mr. Young. Dkt. 7, at 13–14.

10 Ms. Reed alleges that she is a disabled employee whose disability was not effectively
11 accommodated by her employer, Defendant City of Vancouver (“City”). Ms. Reed has chronic
12 back, hip, and leg pain apparently related to spinal surgeries. Dkt. 7, at 3. Mr. Holmes has been
13 the City Manager for the City of Vancouver since 2010. Dkt. 60, at 4. Mr. Potter was the City
14 Attorney for the City from August 2014 to 2019 (now retired). Dkts. 36, at 4; and 37, at 4. In
15 2015, Mr. Young was the Chief Assistant City Attorney for the City (now the City Attorney).
16 Dkts. 44, at 4; and 45, at 4.

17 In the fall of 2015, Ms. Reed applied for a position as Assistant City Attorney III with the
18 City. Dkt. 58. Mr. Young was part of a team that interviewed applicants, including Ms. Reed.
19 Dkt. 44, at 4. Mr. Potter apparently wanted to hire Ms. Reed to help work on an upcoming
20 EFSEC (Energy Facility Site Evaluation Council) hearing. Dkt. 60, at 5. On January 13, 2016,
21 Mr. Young and Mr. Potter called Ms. Reed to offer her an assistant city attorney position. Dkt.
22 44, at 4. During the phone call, Ms. Reed requested a disability accommodation allowing her to
23 telecommute 50% of the time. Dkt. 58, at 4. Mr. Young and Mr. Potter did not approve or deny
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1 her request and explained that there was an accommodation process in place at the City. Dkt. 60,
2 at 4. Ms. Reed was informed that she should work with Debby Watts (“Ms. Watts”) in Human
3 Resources (“HR”) to process her request. Dkt. 60, at 4.

4 Ms. Reed applied for accommodations through HR and enclosed a letter from her doctor
5 recommending that she be allowed to work from home 50% of the time, change positions, and
6 take rest breaks every hour for five minutes. Dkt. 60, at 4–5. Ms. Watts apparently shared the
7 accommodation and application materials with Mr. Young and Mr. Potter. Dkt. 60, at 5.

8 Before the accommodation request was processed, Ms. Reed requested a written offer
9 from the City. Dkt. 32, at 4. On January 20, 2016, Ms. Reed received a letter of offer from the
10 City signed by Mr. Holmes. Dkts. 60, at 6; and 61-4. The letter indicated a tentative start date of
11 February 16, 2016, and provided that “[t]his offer of employment is contingent on ...
12 confirmation that you are able to perform the essential duties of the job with or without
13 reasonable accommodation.” Dkt. 61-4, at 2.

14 Ms. Reed’s resume, submitted with her application, indicated that she was employed by
15 Ring Bender. Dkt. 60, at 5. After receiving the letter of offer, Ms. Reed gave notice and
16 terminated her employment with Ring Bender. Dkt. 60, at 6. Ms. Reed alleges that, “[h]ad she
17 been told that a 50% telecommute accommodation was not possible at any time before she
18 resigned from Ring Bender, she would have terminated discussions about a position with the
19 City and stayed at Ring Bender.” Dkt. 60, at 6. Ms. Reed indicated at deposition that she had
20 terminated negotiations for another position with a different employer when it became clear that
21 telecommuting would not be possible. Dkt. 60, at 6.

22 On February 22, 2016, Mr. Young sent Ms. Reed an email detailing the accommodations
23 offered. Dkt. 61-16, at 3–4. The email provided to Ms. Reed the following accommodations:
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- 1 • Your choice of workstations types (standard desk, standup work
2 station, treadmill).
- 3 • The ability to use of [*sic*] your own prescribed chair in the office.
- 4 • The ability to change physical positions and have reasonable
5 intermittent breaks throughout the day.
- 6 • We are not able to provide you with telecommuting 50% of the
7 time because of the need to be in the office to meet with clients and
8 the request related to some degree to the distance of your
9 commute. However, if there is travel needed during work hours,
10 such as the upcoming EFSEC Oil Terminal hearing in Olympia,
11 the city will be flexible on providing you with reasonable
12 additional time for travel. Additionally, we acknowledge the
13 cumulative effects the amount of driving may have on you and are
14 able to offer you the option of one of the following work
15 schedules:
 - 16 ▪ A traditional 5-8 work schedule,
 - 17 ▪ A 9/80 work schedule, or
 - 18 ▪ A 4-10 work schedule.

19 In the event that you select the 9/80 or 4/10 schedule, you may
20 adjust your flex day forward or backward up to 3 working days
21 from your usual flex day. The City Attorney may approve moving
22 a flex day forward or backward more than 3 days. (Also, following
23 our conversation with Debby Watts, you telephoned back and
24 asked if you select one of the three schedules above and find that it
is too physically taxing, if we can allow you to switch to one of the
other schedules listed above. Confirming my response – yes, this is
fine.)

Please think over the options above and let me know your decision.

Dkt. 61-16, at 3–4.

Ms. Reed apparently responded indicating her schedule preference and requesting to start as soon as possible. Dkt. 61-16, at 2. Ms. Reed “accepted the limited accommodations offered by the City and started her position at the City on February 24, 2016, hoping that she would be able to manage her pain.” Dkt. 60, at 6. Despite the February 22, 2016 email denying her

1 telecommuting request, Ms. Reed contends that she “first learned that the City believed that the
2 essential functions of my position would not allow me to work from home when I received a
3 letter from Debby Watts on March 8, 2017.” Dkt. 62, at 2, ¶ 7.

4 Ms. Reed began working with Mr. Potter on preparations for the EFSEC hearing shortly
5 after beginning her employment with the City. Dkt. 44, at 10. Within approximately three weeks
6 of starting at the City, Ms. Reed apparently experienced a high increase in her pain level and
7 uncontrollable muscle spasms. Dkt. 60, at 6–7. Ms. Reed alleges that, because of the City’s
8 refusal to grant her a 50% telecommute accommodation, she suffered severely. Dkt. 62, at 2–3.
9 Additionally, Ms. Reed allegedly told Mr. Young that she would need paralegal support at the
10 EFSEC hearing, in part to help with physical tasks. Dkt. 58, at 7. When Ms. Reed was not given
11 paralegal support, she informed Mr. Young that her husband, Mr. Reed, would have to go with
12 her to Olympia to help her with physical tasks. Dkt. 58, at 7.

13 Mr. Potter apparently found Ms. Reed’s work deficient. Dkt. 44, at 10–11. On September
14 9, 2016, Ms. Reed, Mr. Young, and Mr. Potter held a meeting to discuss Ms. Reed’s performance
15 and probationary employment, criticizing her performance and work for the EFSEC project. Dkt.
16 58, at 8. Ms. Reed was informed that Mr. Young and Mr. Potter would be meeting with HR as to
17 her performance. Dkt. 58, at 21.

18 On October 14, 2016, Mr. Potter and Mr. Young met with HR and implemented a
19 Performance Improvement Plan (“PIP”) (Dkt. 61-22) for Ms. Reed. Dkt. 44, at 12. Ms. Reed
20 provides that she was so concerned about her work performance that she tried to reduce her
21 medications while at work and, on October 3, 2016, submitted a revised medication disclosure
22 form. Dkt. 58 at 8–9. When the reduced medication caused an increase in Ms. Reed’s symptoms,
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1 she informed Mr. Young that she was again taking her prior medication dosages at work. Dkt.
2 58, at 8–9.

3 Mr. Young advised Ms. Reed that he intended to present her with a PIP and scheduled a
4 time to meet with her and HR on October 21, 2016. Dkt. 44, at 12. Ms. Reed apparently did not
5 meet with Mr. Young and HR as planned. Dkt. 44, at 12. On October 19, 2016, Ms. Reed’s
6 doctor determined that she needed a medical leave of up to six months due to the severe and
7 rapid deterioration of her health while working at the City without a telecommuting
8 accommodation. Dkts. 58, at 9; and 66, at 4, ¶ 10.

9 On October 20, 2016, Ms. Reed submitted from her doctor a request for a six-month full-
10 time leave of absence for medical reasons. Dkts. 44, at 12–13; and 58, at 9. Ms. Reed’s doctor
11 apparently never released Ms. Reed to return to work. Dkt. 44, at 13. Defendants provide that,
12 “[a]s a result, in July 2017, eight months after she started her medical leave, the City determined
13 that her request for an indefinite leave of absence was not a reasonable accommodation and her
14 employment was terminated.” Dkt. 44, at 13. Ms. Reed apparently remains unable to work and
15 receives Social Security disability benefits. Dkt. 58, at 3.

16 B. PROCEDURAL HISTORY

17 Ms. Reed filed a complaint in this case on March 8, 2019. Dkt. 1. An amended operative
18 complaint was filed on March 29, 2019. Dkt. 7. On May 14, 2020, Mr. Holmes filed a Motion
19 for Summary Judgment requesting dismissal of all of Plaintiffs’ claims against him. Dkt. 32.
20 Plaintiffs filed a response. Dkt. 60. Mr. Holmes filed a reply. Dkt. 70.

21 Mr. Potter filed a Motion for Summary Judgment requesting dismissal of all of Plaintiffs’
22 claims against him. Dkt. 36. Plaintiffs filed a response. Dkt. 59. Mr. Potter filed a reply. Dkt. 71.

1 Mr. Young filed a Motion for Summary Judgment requesting dismissal of all of
2 Plaintiffs' claims against him. Dkt. 44. Plaintiffs filed a response. Dkt. 58. Mr. Young filed a
3 reply. Dkt. 72.

4 The instant motions for summary judgment were renoted for July 3, 2020. Dkt. 57.

5 **C. ORGANIZATION OF OPINION**

6 Below, the pending motions are discussed together. This order first discusses summary
7 judgment standards. Second, the application of state law. Third, Ms. Reed's fraud in the
8 inducement claim. Fourth, Ms. Reed's intentional interference with a business relationship claim.
9 Fifth, Ms. Reed's outrage claim. Sixth, Ms. Reed's intentional infliction of emotional distress
10 claim. Finally, Mr. Reed's loss of consortium claim.

11 **II. DISCUSSION**

12 **A. SUMMARY JUDGMENT STANDARD**

13 Summary judgment is proper only if the pleadings, the discovery and disclosure materials
14 on file, and any affidavits show that there is no genuine issue as to any material fact and that the
15 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party is
16 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient
17 showing on an essential element of a claim in the case on which the nonmoving party has the
18 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue of
19 fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for
20 the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
21 (1986) (nonmoving party must present specific, significant probative evidence, not simply "some
22 metaphysical doubt."). *See also* Fed. R. Civ. P. 56(d). Conversely, a genuine dispute over a
23 material fact exists if there is sufficient evidence supporting the claimed factual dispute,
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1 requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby,*
2 *Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors*
3 *Association*, 809 F.2d 626, 630 (9th Cir. 1987).

4 A determination of the existence of a material fact is often a close question. The court
5 must consider the substantive evidentiary burden that the nonmoving party must meet at trial –
6 e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254, *T.W. Elect.*
7 *Service Inc.*, 809 F.2d at 630. The court must resolve any factual issues of controversy in favor
8 of the nonmoving party only when the facts specifically attested by that party contradict facts
9 specifically attested by the moving party. The nonmoving party may not merely state that it will
10 discredit the moving party’s evidence at trial, in the hopes that evidence can be developed at trial
11 to support the claim. *T.W. Elect. Service Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*).
12 Conclusory, non-specific statements in affidavits are not sufficient, and “missing facts” will not
13 be “presumed.” *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888–89 (1990).

14 **B. WASHINGTON STATE SUBSTANTIVE LAW APPLIES**

15 Under the rule of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), federal courts sitting in
16 diversity jurisdiction apply state substantive law and federal procedural law to state law claims.
17 *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415, 427 (1996).

18 **C. FRAUD IN THE INDUCEMENT CLAIM**

19 Under Washington law, the nine elements of a fraud claim are as follows: (1)
20 representation of an existing fact; (2) materiality; (3) falsity; (4) the speaker's knowledge of its
21 falsity; (5) intent of the speaker that it should be acted upon by the plaintiff; (6) plaintiff's
22 ignorance of its falsity; (7) plaintiff's reliance on the truth of the representation; (8) plaintiff's
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1 right to rely upon it; and (9) damages suffered by the plaintiff. *Adams v. King Cty.*, 164 Wn.2d
2 640, 662 (2008) (citing *Stiley v. Block*, 130 Wn.2d 486, 505 (1996)).

3 “A claim of fraudulent inducement requires proof of all nine elements of fraud.” *JZK,*
4 *Inc. v. Coverdale*, 192 Wn. App. 1022, at *11 (2016) (citing *Petersen v. Turnbull*, 68 Wn.2d 231,
5 235 (1966); *Webster v. L. Romano Eng'g Corp.*, 178 Wash. 118, 120–21 (1934)). “A party
6 claiming the elements of fraud must prove each of the nine elements ... by clear, cogent, and
7 convincing evidence.” *JZK, Inc.*, 192 Wn. App. 1022, at *11 (citing *Kirkham v. Smith*, 106 Wn.
8 App. 177, 183 (2001)).

9 The statute of limitations for fraud and fraudulent inducement is three years; the cause of
10 action is not deemed to have accrued until the discovery by the aggrieved party of the facts
11 constituting the fraud. RCW 4.16.080(4); *see also Putzier v. Ace Hardware Corp.*, 50 F. Supp.
12 3d 964, 980 (N.D. Ill. 2014) (“Under Washington law, [plaintiffs] must have commenced their
13 fraud and fraudulent inducement actions within three years of the alleged fraud.”). Actual
14 discovery is not required if the party could have discovered the fraud with due diligence. *Hudson*
15 *v. Condon*, 101 Wn. App. 866, 875 (2000). Courts “infer actual knowledge of fraud if the
16 aggrieved party, through due diligence, could have discovered it The plaintiff need not be
17 aware of the full extent of the damages; knowledge of some actual, appreciable damage is
18 sufficient to begin the running of the statute of limitations.” *Id.* (citing *First Maryland Leasecorp*
19 *v. Rothstein*, 72 Wn. App. 278, 283 (1993); *Green v. A.P.C. (American Pharm. Co.)*, 136 Wn.2d.
20 87, 96–97 (1998); *Zaleck v. Everett Clinic*, 60 Wn. App. 107, 112 (1991)). “While the
21 determination of when a plaintiff suffered actual damage is a question of fact, the issue can be
22 decided as a matter of law if reasonable minds could reach but one conclusion.” *Hudson*, 101
23 Wn. App. at 875.

1 Ms. Reed claims that the defendants did not tell her that she would not be able to
2 telecommute 50% of the time prior to the time that she resigned from Ring Bender, an omission
3 of information constituting a fraud. Plaintiffs contend that “[t]he information that a 50%
4 telecommute was not possible was withheld ... to induce Ms. Reed to resign from her prior
5 position and work for the City[.]” Dkt. 58, at 15. Ms. Reed further contends that she “first
6 learned that the City believed that the essential functions of my position would not allow me to
7 work from home when I received a letter from Debby Watts on March 8, 2017” (Dkt. 62, at 2, ¶
8 7). However, Ms. Reed does not deny receiving the February 22, 2016 email rejecting her 50%
9 telecommute request (see Dkt. 7, at 3–4, ¶ 18) and she does not explain (nor provide supporting
10 legal authority) how the February 22, 2016 email did not alert her to the alleged omission of
11 information that she would not be allowed an accommodation to telecommute 50% of the time.
12 The February 22, 2016 email clearly and unequivocally informed Ms. Reed that she would not
13 be given a 50% telecommuting accommodation. *See* Dkt. 61-16, at 3 (“We are not able to
14 provide you with telecommuting 50% of the time because of the need to be in the office to meet
15 with clients and the request related to some degree to the distance of your commute.”). To the
16 extent that the defendants’ conduct constituted any fraud, Ms. Reed’s claim accrued on February
17 22, 2016, when she received an email informing her that her 50% telecommute accommodation
18 request was denied.

19 Ms. Reed’s fraud in the inducement claim accrued on February 22, 2016; she thus needed
20 to assert the claim no later than February 22, 2019. Ms. Reed did not file her fraud in the
21 inducement claim until March 8, 2019. Therefore, Ms. Reed’s fraud in the inducement claim
22 against Mr. Holmes, Mr. Potter, and Mr. Young is time-barred and should be dismissed.
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1 The instant motions for summary judgment argue that Ms. Reed’s fraud in inducement
2 claim should be dismissed even if it were timely filed. The Court need not consider that issue.

3 **D. INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONSHIP CLAIM**

4 Under Washington law,

5 [t]o prove tortious interference, the plaintiff must produce evidence
6 sufficient to support all the following findings: (1) the existence of
7 a valid contractual relationship or business expectancy; (2) the
8 defendant's knowledge of and intentional interference with that
9 relationship or expectancy; (3) a breach or termination of that
10 relationship or expectancy induced or caused by the interference;
11 (4) an improper purpose or the use of improper means by the
12 defendant that caused the interference; and (5) resultant damage.

13 *Tamosaitis v. Bechtel Nat., Inc.*, 182 Wn. App. 241, 248 (2014) (quotation omitted).

14 The statute of limitations on a tort claim of intentional interference with a business
15 expectancy is three years. RCW 4.16.080(2) (establishing the limitations period for common law
16 torts not specifically enumerated in other limitations sections); *City of Seattle v. Blume*, 134
17 Wn.2d 243, 251 (1997) (citing *Calbom v. Knudtson*, 65 Wn.2d 157, 161 (1964)). The statute of
18 limitations does not begin to run until the cause of action has accrued. RCW 4.16.005. “As a
19 general principle, a statutory limitation period commences and a cause of action accrues when a
20 party has the right to seek relief in the courts.” *First Maryland Leasecorp v. Rothstein*, 72 Wn.
21 App. 278, 282 (1993).

22 Ms. Reed argues that the defendants “had a duty as part of the good faith negotiations
23 regarding Ms. Reed’s hiring to disclose to her that a 50% telecommute accommodation was not
24 possible because of the essential functions of her job.” Dkt. 58, at 16. Similar to the argument
above in § II(C), Ms. Reed contends that her intentional interference with a business relationship
claim did not accrue until March 8, 2017, when she received a letter from Ms. Watts. Dkt. 60, at
14–15. The Court disagrees.

1 To the extent that defendants failed to disclose to Ms. Reed that her 50% telecommute
2 accommodation was not possible because of the essential functions of her job, Ms. Reed's claim
3 accrued on February 22, 2016, when Ms. Reed received the email denying her accommodation
4 request. Ms. Reed thus needed to assert her intentional interference with a business relationship
5 claim no later than February 22, 2019. Ms. Reed did not file her intentional interference with a
6 business relationship claim until March 8, 2019. Therefore, Ms. Reed's intentional interference
7 with a business relationship claim against Mr. Holmes, Mr. Potter, and Mr. Young is time-barred
8 and should be dismissed.

9 The instant motions for summary judgment argue that Ms. Reed's intentional interference
10 with a business relationship claim should be dismissed even if it were timely filed. The Court
11 need not consider that issue.

12 **E. OUTRAGE CLAIM**

13 The elements of outrage are "(1) extreme and outrageous conduct; (2) intentional or reckless
14 infliction of emotional distress; and (3) severe emotional distress on the part of the plaintiff." *Reid v.*
15 *Pierce County*, 136 Wn.2d 195, 202, 961 P.2d 333 (1998). Outrageous and extreme conduct is
16 conduct that is "so outrageous in character, and so extreme in degree, as to go beyond all possible
17 bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."
18 *Grimsby v. Samson*, 85 Wn.2d 52, 59 (1975) (internal citation omitted). A "recitation of the facts to
19 an average member of the community would arouse his resentment against the actor and lead him to
20 exclaim 'Outrageous!'" *Reid*, 136 Wn.2d at 201-02. The tort of outrage "does not extend to mere
21 insults, indignities, threats, annoyances, petty oppressions, or other trivialities." In this area plaintiffs
22 must necessarily be hardened to a certain degree of rough language, unkindness and lack of
23 consideration." *Grimsby*, 85 Wn.2d at 59 (quoting Restatement (Second) of Torts § 46, cmt. d).

1 Ms. Reed has not alleged nor shown conduct that would establish an outrage claim.

2 Therefore, Ms. Reed's outrage claim against Mr. Holmes, Mr. Potter, and Mr. Young should be
3 dismissed.

4 **F. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

5 "A plaintiff may recover for negligent infliction of emotional distress if she proves duty,
6 breach, proximate cause, damage, and 'objective symptomatology.'" *Kumar v. Gate Gourmet*
7 *Inc.*, 180 Wn.2d 481, 505 (2014) (quoting *Strong v. Terrell*, 147 Wn. App. 376, 387 (2008)).
8 Washington courts have "recognized that actions based on mental distress must be subject to
9 limitation by the courts, and [they] ha[ve] concluded that the proper limitation is a balance of
10 risk against utility." *Kumar*, 180 Wn.2d at 505. A "defendant's obligation to refrain from
11 particular conduct is owed only to those who are *foreseeably* endangered by the conduct and
12 only with respect to those risks or hazards whose likelihood made the conduct unreasonably
13 dangerous." *Strong v. Terrell*, 147 Wn. App. 376, 387–88, 195 P.3d 977 (2008) (emphasis in
14 original) (citation and quotation omitted). "Conduct is unreasonably dangerous when its risks
15 outweigh its utility." *Id.* (citations omitted). Additionally, "a plaintiff's emotional response must
16 be reasonable under the circumstances." *Hegel v. McMahon*, 136 Wn.2d 122, 132 (1998) (citing
17 *Hunsley v. Giard*, 87 Wn.2d 424, 436 (1976)).

18 Ms. Reed has not alleged nor shown conduct by defendants with risks and hazards whose
19 likelihood made the conduct unreasonably dangerous. Ms. Reed has not shown that defendants
20 were aware of or intended any conduct that was foreseeably unreasonably dangerous. Even
21 viewing all facts in Ms. Reed's favor, Ms. Reed has not shown that the risk of Defendants'
22 conduct far outweighed its utility. Therefore, Ms. Reed's intentional infliction of emotional
23 distress claim against Mr. Holmes, Mr. Potter, and Mr. Young should be dismissed.

1 Dated this 13th day of July, 2020.

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3 ROBERT J. BRYAN
4 United States District Judge

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