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RECEIVED
FEB 1 2017
OFFICE OF THE CITY ATTORNEY

CITY OF SPOKANE ETHICS COMMISSION

ALEXANDER J. SHOGAN, JR.

Complainant,

vs.

**DAVID CONDON, MAYOR OF THE
CITY OF SPOKANE,**

Respondent.

DECLARATION OF JAMES B.
KING

James B. King, under the penalty of perjury under the laws of the State of Washington,
states and declares as follows:

1. I am over 18 years of age, competent to be a witness herein and make the
statements contained in this declaration on personal knowledge.

2. Attached to this declaration as Exhibit A is a copy of the article from the
Wednesday, November 25, 2015, issue of the *The Spokesman-Review* alluded to by Citizen
Shogan in his "CLARIFIED" Sworn Complaint dated December 22, 2016, which forms the
basis for at least one of Citizen Shogan's ethics complaints against Mayor Condon.

3. In the article, council President Stuckart claims he was "lied to" by City
Administrator Theresa Saunders just before the September 22, 2015, news conference
announcing the resignation of former Chief Straub.

DECLARATION OF JAMES B. KING- page 1

Evans, Craven & Lackie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

1 4. In the same article, council president Stuckart is quoted as asking the rhetorical
2 question, "Why did the Mayor lie in the press conference?"

3 5. The rhetorical question regarding the September 22, 2015, press conference is
4 tethered by the author of the article, to Mayor Condon's statement at the September 22, 2015,
5 press conference that " . . . Condon told reporters there were no complaints of sexual
6 harassment lodged against Straub."
7

8 6. This claim, now proffered by Citizen Shogan in his latest salvo to the Ethics
9 Commission, simply recycles complaints previously adjudicated by the Ethics Commission by
10 Jamie Pendleton and Mara Spitzer as well as by Citizen Shogan. (A copy of the Pendleton
11 Complaint is attached as Exhibit B and a copy of the Spitzer Complaint is attached as Exhibit
12 C.)
13
14

15 7. In the Pendleton Complaint, Pendleton alleged as follows:

16 Mayor David Condon knowingly withheld allegations of sexual harassment by
17 former Police Chief Frank Straub against another city employee. This
18 information was not made public until after David Condon had won re-election.
19 The dishonesty by omission of the whole truth while campaigning for re-
20 election constitutes an action adverse to the interests of the City by withholding
21 information pertinent to voters.

22 8. The Pendleton complaint likewise charged as follows:

23 In public remarks on September 22 [2015] David Condon denied that any
24 complaint of sexual harassment was made. This is blatant dishonesty relevant
25 to Spokane voters in an election.

26 9. Pendleton claimed that this alleged transgression on the part of the Mayor
27 violated Spokane Municipal Code Section 1.04A.030, Section N.
28

1 10. In support of his allegations, Pendleton cited directly to the September 22, 2015,
2 press conference in which Mayor Condon stated as part of his announcement of Straub's
3 departure that there had been no official filings regarding sexual harassment by Monique Cotton
4 or anyone else.
5

6 11. On January 27, 2016, the Spokane Ethics Commission, by a vote of 4 to 1, ruled
7 as follows:
8

9 The Complaint, however, asserts facts, that even if true, potentially would not
10 constitute a violation of the Code of Ethics or would be a de minimus (sic)
11 violation.

12 12. Accordingly, the Commission dismissed the Pendleton Complaint finding that
13 the alleged violation was a minor or de minimus violation as alleged.

14 13. The Ethics Commission also addressed identical allegations to those contained
15 in Citizen Shogan "Clarified" Complaint, specifically, the complaint of Mara Spitzer.

16 14. In her Complaint, Ms. Spitzer alleged as follows:
17

18 Regarding SMC 1.04A.030 - Section N. In public remarks on September 22,
19 2015, David Condon denied that any complaint of sexual harassment was made.
20 This is blatant dishonesty relevant to Spokane voters in an election.

21 15. On January 27, 2016, the Ethics Commission likewise dismissed the Spitzer
22 Complaint.

23 16. Citizen Shogan's latest complaint is his third attempt and now the fifth time the
24 same exact statements at the September 22, 2015, press conference by Mayor Condon have
25 been brought before the Ethics Commission.
26
27
28

1 17. Mayor Condon has previously filed a Motion to Dismiss the last iteration of
2 Citizen Shogan's Complaint and incorporates by reference the arguments and exhibits
3 contained therein.

4 18. Under Spokane Municipal Code Section 1.04A.110D (1), the Ethics
5 Commission may dismiss a complaint based on any of the following grounds:

6 c. The alleged violation is a minor or de minimis violation;

7 d. The complaint . . . is, on its face, frivolous, groundless or brought for
8 purposes of harassment; . . .
9

10 19. Spokane Municipal Code Section 1.04A.110 states that the investigation of
11 complaints shall be completed by the Ethics Commission and written findings and conclusions
12 prepared within 60 days of the date of the Complaint.
13
14

15 20. The Ethics Commission's Code of Ethics Handbook in the section entitled
16 *Complaint Process* states that an additional basis for dismissing an ethics complaints includes
17 the matter being moot.
18

19 21. Mr. Shogan's Complaint regarding the Mayor's answers and responses at the
20 press conference of September 22, 2015, has been litigated and relitigated before this body. It
21 has been litigated before a Washington State Superior Court judge in connection with the
22 effort to recall Mayor Condon, and the facts remain the same.
23

24 22. Mayor Condon truthfully responded to an inquiry at the time of the September
25 22, 2015, press conference that Monique Cotton had not made any complaint of sexual
26 harassment involving Frank Straub. In fact, the facts are undisputed that Ms. Cotton stated
27 that she would not make a complaint against Former Chief Straub, that she would not
28

29
30 DECLARATION OF JAMES B. KING- page 4

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Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

1 participate in any investigation involving Former Chief Straub's relationship with her, and that
2 anything and everything that she communicated to Mayor Condon in the Spring 2015 had to
3 remain confidential, a condition that the Mayor accepted.

4
5 23. Spokane Municipal Code Section 01.04A.030 provides as follows:

6 I. Disclosure of Confidential Information

7 1. Disclosure of Confidential Information

8 No City officer or employee shall, except as required or reasonably
9 believed to be required for the performance of his/her duties, disclose
10 confidential information gained by reason of his/her official position or
11 use such information for his/her own personal interest. "Confidential
12 information" is all information, whether transmitted orally or in writing,
13 that the employee has been informed, is aware, or has reason to believe
14 is intended to be used only for city purposes, is not intended for public
15 disclosure, or is otherwise of such a nature that it is not, at the time, a
16 matter of public record or public knowledge.

17
18 2. Confidential information includes, but is not limited to, personal
19 information regarding City officials and employees; . . . including the
20 identity of persons filing complaints; . . . opinions . . . concerning city
21 policies and actions. . .

22
23 24. For the reasons stated herein, the Commission should dismiss Citizen Shogan's
24 Complaint with prejudice.

25
26 DATED at Spokane, Washington this 1 day of February, 2017.

27
28 By  _____
29 James B. King, WSBA #8723

1 **CERTIFICATE OF SERVICE**

2 Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury
3 under the laws of the State of Washington, that on the 1 day of February, 2017, the
4 foregoing was delivered to the following persons in the manner indicated:

5 Alexander J. Shogan, Jr.
6 5726 N. Sutherlin Street
7 Spokane, WA 99205

VIA REGULAR MAIL []
VIA CERTIFIED MAIL []
VIA FACSIMILE []
HAND DELIVERED []
VIA EMAIL ☒

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11 2-1-17 / Spokane, WA
12 (Date/Place)
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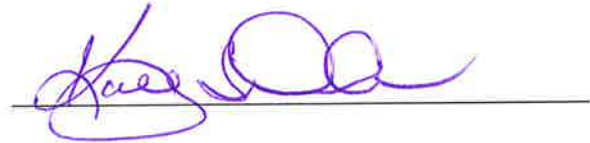
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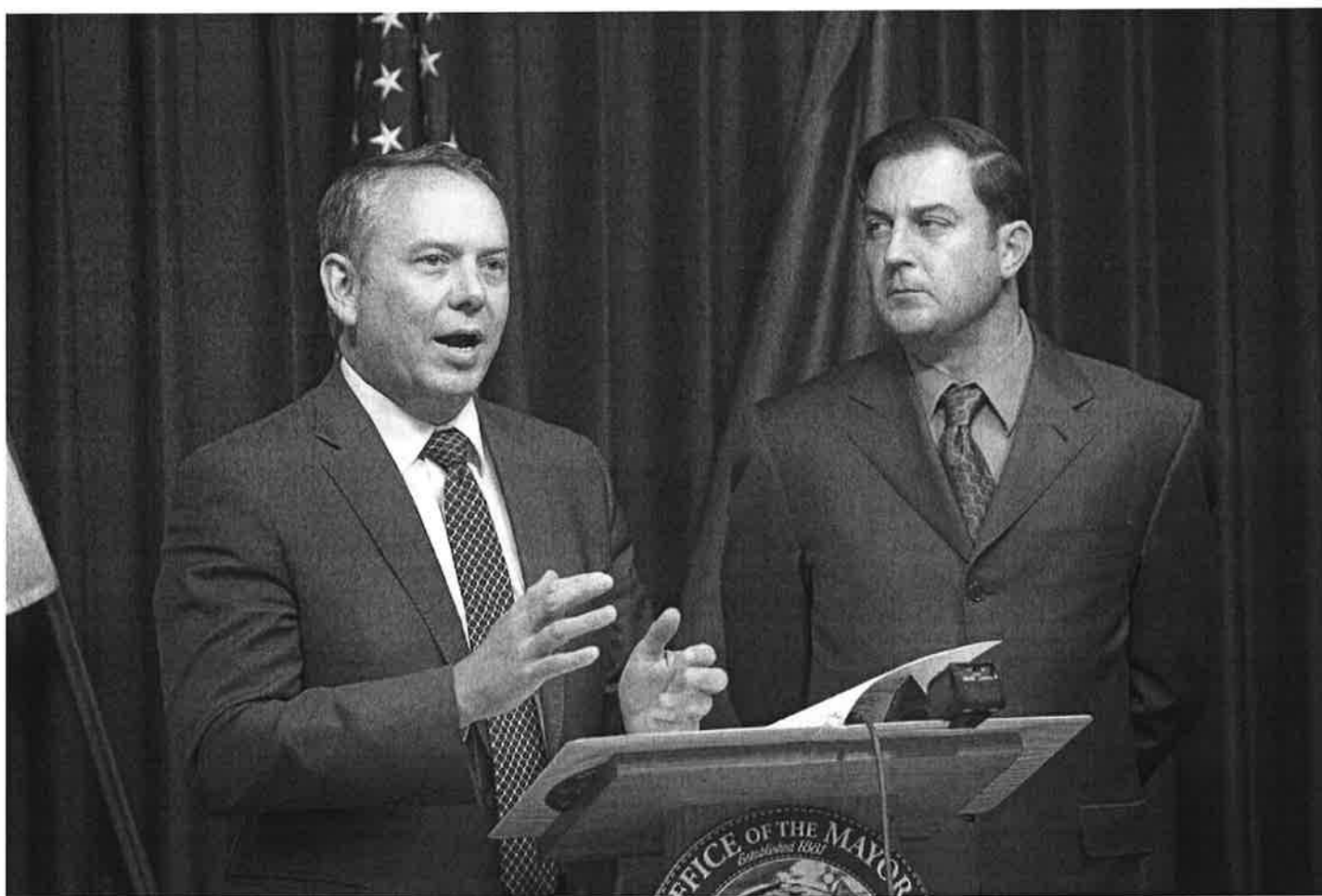
EXHIBIT A

THE SPOKESMAN-REVIEW

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Stuckart: Mayor Condon lied about sexual harassment claim

WEDNESDAY, NOV. 25, 2015, 9:24 P.M.



Spokane Mayor David Condon, left, with City Council President Ben Stuckart, announce the resignation of Spokane Police Chief Frank Straub during a press conference, Tuesday, Sept. 22, 2015, at Spokane City Hall. (Colin Mulvany / The Spokesman-Review)



By **Nicholas Deshais** ☐

nickd@spokesman.com

(509) 459-5440

Spokane City Council President Ben Stuckart said he is “severely disappointed” in Mayor David Condon for the handling of allegations of sexual harassment against former police Chief Frank Straub, saying he can’t trust Condon or members of his Cabinet after being “lied to.”

Stuckart is “working on a draft of a letter with a very long list of questions” for Condon. Some of those questions raise concerns about the timing of records released this week that show that Condon knew in April the police chief had been accused of harassment.

If the mayor doesn’t sufficiently answer the questions, Stuckart said he’s considering an independent investigation by the City Council into the actions of the mayor and city administration.

“When did they know they had these documents and why are they being released now and not when the records request went out?” Stuckart said of requests made by The Spokesman-Review on Aug. 21, which were filled Tuesday. “They took over three months to produce these documents, which they obviously knew they had.”

The accusations of sexual harassment came from former police spokesman Monique Cotton, who told Condon and City Administrator Theresa Sanders in April that Straub had “grabbed her ass, tried to kiss her.” Cotton was hurriedly transferred to the parks department following the accusations.

Since then, the city’s reasoning for the transfer has changed as information has slowly come out of City Hall. First, her transfer was described as an advancement that required an “enticement” of a \$10,000 pay raise to persuade Cotton to move. Now, Condon describes the secrecy that surrounded the transfer as a way to protect Cotton and honor her request for privacy.

“Ms. Cotton raised concerns in April and made it very clear at that time that she did not want to pursue a formal complaint or investigation,” Condon said in a statement. “Had we aired this publicly sooner that would have meant going back on my word to Ms. Cotton and bringing more hurt and stress to an already difficult situation.”

Brian Coddington, the mayor’s spokesman, said Sanders investigated Cotton’s allegations but produced “no written report or findings.”

“There was no discipline from it,” Coddington said of the investigation.

According to the city’s policies, when a supervisor is notified of alleged sexual harassment, they must follow a prescribed set of steps. First, they must document and report the incident to the department head, investigate the complaint, take “appropriate corrective action,” forward the results of the investigation to the Human Resources department and provide official findings to the victim.

Mary Schultz, Straub’s attorney, said Straub “absolutely” denies sexually harassing Cotton.

“Mayor Condon assures us that he will continue to protect the feelings of an accuser who won’t allow their claims to be investigated, and throw our city police chief under the bus instead,” Schultz said in an email. “And he will continue to extend this same opportunity to any police department employee who approaches him with similar accusations. So everyone just line up. Now that’s the kind of leadership Spokane needs.”

Condon forced Straub to resign in late September, saying the Lieutenants and Captains Association had raised questions about his leadership. Straub filed a \$4 million claim for violation of due process.



The mayor's reasoning – trying to avoid hurting Cotton – did not calm Stuckart, who said he was “lied to” by Sanders in the moments before the Sept. 22 news conference announcing Straub's forced resignation.

“I asked her point-blank, is there anything that's going to come out in a public records request that's going to bite us? She said no,” Stuckart said. At that news conference, Condon told reporters there were no complaints of sexual harassment lodged against Straub.

“Why did the mayor lie in the press conference? Why did Theresa lie to me?” Stuckart said. Earlier this month, the city's Ethics Commission ruled that Sanders violated the city's ethics code by lying about the reason for Cotton's transfer.

Stuckart has called for Straub's immediate resignation. After being removed from his post leading the police department, Straub was moved to the city attorney's office, where he is “producing work,” according to Coddington, the mayor's spokesman. Straub remains on the city's payroll as the highest-paid employee, at nearly \$180,000 a year.

“He's providing resources and continuity to some of the criminal justice work,” Coddington said. “He's reporting to Gloria Ochoa. He produced a report within the last 10 days.”

Coddington did not provide the report when it was requested.

Stuckart, the only official elected citywide in Spokane other than the mayor, also suggested there were “political calculations” to not only the timing of the release of documents but also why Condon kept Straub in office after hearing of the sexual harassment allegations in April.

✕ “April was before the filing deadline,” Stuckart said, referring to a deadline Condon's potential opponents faced if they chose to run against him. Stuckart considered challenging Condon, but decided

against it. Democratic state Rep. Marcus Riccelli also considered a run. Instead, political newcomer Shar Lichty ran against Condon with little institutional support and poor results.

“The public deserved to know this in April, not now,” Stuckart said. “These documents were released after the election for a reason.”

Bob Dunn, Cotton’s attorney, acknowledged that Cotton wanted the situation kept out of public view.

“Monique has not wanted to be above the radar. The marching orders that I’ve had from April was to keep this off the front page and to make sure that we got this resolved without her being in the limelight,” Dunn said. “I respected that. It’s not necessarily the way I thought it should go down.”

Dunn said he counseled Cotton against such an approach, to no avail.

“There are leaks over at City Hall like a dike. You can put a finger in an information hole, but it’s going to pop out someplace,” he said. “She felt that if she went to the right people and dealt with it quietly and low-key, it would just go away.”

Dunn said the city has yet to “reimburse” Cotton for legal and counseling fees, which he said amount to \$13,276. He said he has been “hamstrung” in pursuing the fees because Cotton does not want to file a claim against the city, which is a public document.

“I’m like a chained dog,” Dunn said. “I think there’s a lot more to talk about, but right now I’m hamstrung. I know she’s got more of a story to tell. My view is that she needs to tell her story.”



PUBLISHED: NOV. 25, 2015, 9:24 P.M.

Tags: [David Condon](#), [Frank Straub](#), [Monique Cotton](#), [Spokane City Council](#), [Spokane Police Department](#)

[There are 209 comments on this story »](#)

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EXHIBIT B

CITY OF SPOKANE ETHICS COMMISSION ETHICS COMPLAINT FORM

Please review the City of Spokane's Code of Ethics – Chapter 1.04A S.SMC – before completing this complaint form. When you have completed this form, submit it to:

City of Spokane Ethics Commission

Attention: Rebecca Riedinger

Office of the City Attorney

5th Floor Municipal Building

W. 808 Spokane Falls Blvd.

Spokane, WA 99201

or at: riedinger@spokanecity.org

Pursuant to the City of Spokane's Code of Ethics, I am filing a complaint regarding conduct which I believe constitutes a violation of the City's Code of Ethics.

Name, position, and department of person(s) I believe to have violated the Code of Ethics:

Name: **David Condon**

Position/Title: **Mayor**

Nature of Code of Ethics violation:

What specific provision of SMC 1.04A.030 do you believe has been violated?

Section A - General Prohibition Against Conflicts of Interest: ...no current City officer shall have an interest that might be seen as adverse to the interests of the City.

Section N - Commission of Acts of Moral Turpitude or Dishonesty Prohibited.

Describe in as much detail as possible the alleged Code of Ethics violation conduct. Attach additional sheets of paper, if necessary. Please include all documentation you believe demonstrates a violation. Your description should include the date, location and frequency of the alleged violation.

Regarding SMC 1.04A.030 – Section A:

Mayor David Condon knowingly withheld allegations of sexual harassment by former Police Chief Frank Straub against another city employee. This information was not made public until after David Condon had won re-election. The dishonesty by omission of the whole truth while campaigning for re-election constitutes an action adverse to the interests of the City by withholding information pertinent to voters.

The timing of these revelations present a clear conflict of interest since these allegations speak to David Condon's integrity in discharging the duties of the Mayor's Office in the eyes of Spokane's constituency.

Regarding SMC 1.04A.030 – Section N:

In public remarks on September 22 David Condon denied that any complaint of sexual harassment was made. This is blatant dishonesty relevant to Spokane voters in an election.

Names and positions of the persons who may have witnessed the event:

These allegations were made public by the Mayor's Office on Tuesday, November 24th, 2015.

Evidence or documentation

Please list any evidence or documentation that would support your allegation of a Code of Ethics violation. Indicate whether you can personally provide that information.

This evidence is public record in a city publication.

"Condon himself denied that any complaints of sexual harassment had been filed against the former chief when he announced Straub's departure on Sept. 22 [2015]. "The issue that you speak of, there has been no official filings of anything," -Mayor David Condon

<http://www.inlander.com/Bloglander/archives/2015/11/24/alleged-sexual-harassment-public-records-and-mayor-condons-re-election>

Complainant Declaration

I declare under penalty of perjury of the laws of the State of Washington that to the best of my knowledge, information, and belief formed after reasonable reflection, the information in the complaint is true and correct.

JAMIE PENDLETON

Complainant's Signature Date

Date and Place (e.g. City, State)

11/30/2015 SPOKANE, WA

Name (please print): JAMIE PENDLETON

Address: P.O. BOX 1888 VERADALE WA 99037

Phone Number(s): 208-918-1045

E-Mail Address: BABYFACE @ DJBABYFACE.COM

EXHIBIT C

RECEIVED

DEC 08 2015

CITY CLERK'S OFFICE

CITY OF SPOKANE ETHICS COMMISSION

ETHICS COMPLAINT FORM

Please review the City of Spokane's Code of Ethics – Chapter 1.04A SMC – before completing this complaint form. When you have completed this form, submit it to: DEC 08 2015

RECEIVED

OFFICE OF THE CITY ATTORNEY

City of Spokane Ethics Commission
Attention: Rebecca Riedinger
Office of the City Attorney
5th Floor Municipal Building
W. 808 Spokane Falls Blvd.
Spokane, WA 99201

or at: rriedinger@spokanecity.org

Pursuant to the City of Spokane's Code of Ethics, I am filing a complaint regarding conduct which I believe constitutes a violation of the City's Code of Ethics.

Name, position, and department of person(s) I believe to have violated the Code of Ethics:

Name: David Condon

Position/Title: Mayor

Nature of Code of Ethics violation:

What specific provision of SMC 1.04A.030 do you believe has been violated?

Section A - General Prohibition Against Conflicts of Interest
no current city officer shall have an interest that might be seen as
adverse to the City's interests of the City.
Section N - Commission of Acts of Moral Turpitude or Dishonesty Prohibited.

Describe in as much detail as possible the alleged Code of Ethics violation conduct.

Attach additional sheets of paper, if necessary. Please include all documentation you believe demonstrates a violation. Your description should include the date, location and frequency of the alleged violation.

Spitzer / Condon ¹

2015-12

Regarding SMC 1.04A:030 - Section N: In public remarks on September 22, 2015 David Condon denied that any complaint of sexual harassment was made. This is blatant dishonesty relevant to Spokane voters in an election.

Regarding SMC 1.04A:030 - Section A: Mayor David Condon knowingly withheld allegations of sexual harassment by former Police Chief Frank Straub against another city employee. This information was not made public until after David Condon had won re-election. The dishonesty by omission of the whole truth while campaigning for re-election constitutes an action adverse to the interests of the city by withholding information pertinent to voters. The timing of these revelations present a clear conflict of interest since these allegations speak to David Condon's integrity in discharging the duties of the Mayor of Spokane. Names and positions of the persons who may have witnessed the event: office in the eyes of Spokane's constituency.

These Allegations were made public by the Mayor's Office on Tuesday, November 24th, 2015

Evidence or documentation

Please list any evidence or documentation that would support your allegation of a Code of Ethics violation. Indicate whether you can personally provide that information.

This evidence is public record in a city publication.

"Condon himself denied any complaints of sexual harassment had been filed against the former chief when he announced Straub's departure on Sept. 22, 2015. The issue that you speak of, there has been no official filings of anything, Mayor David Condon.

Complainant Declaration

I declare under penalty of perjury of the laws of the State of Washington that to the best of my knowledge, information, and belief formed after reasonable reflection, the information in the complaint is true and correct.

Mara Spitzer
Complainant's Signature

December 8th, 2015
Date

Date and Place (e.g. City, State)

Spokane, WA

Name (please print): Mara Spitzer

Address: 1010 S. Rockwood Blvd. #316

Phone Number(s): 509-565-0418

E-Mail Address: mara.spitzer@gmail.com