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5 FEB 11 2025

6 TIMOTHY W. FITZGERALD
7 SPOKANE COUNTY CLERK

8 SUPERIOR COURT OF WASHINGTON IN AND FOR SPOKANE COUNTY

9 CITY OF SPOKANE VALLEY, a municipal
10 corporation,

11 Plaintiff,

12 v.

13 ALBERT W. MERKEL, an individual,

14 Defendant.

15 25200710-32
16 NO.

17 SUMMONS

18 TO: THE DEFENDANT, ALBERT W. MERKEL.

19 A lawsuit has been started against you in the above-entitled court by City of Spokane
20 Valley ("Plaintiff"). Plaintiff's claims are stated in the written Complaint (the "Complaint"), a
21 copy of which is served upon you with this Summons.

22 In order to defend against this lawsuit, you must respond to the Complaint by stating
23 your defense in writing, and serve a copy upon the undersigned attorneys for the Plaintiff
24 within twenty (20) days after the service of this Summons, excluding the day of service, if
25 served within the State of Washington; or within sixty (60) days after service upon you,
exclusive the day of service, if served outside the State of Washington, or a default judgment
may be entered against you without notice. A default judgment is one where the Plaintiff is

SUMMONS: 1

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 entitled to what it asks for because you have not responded. If you serve a notice of appearance
2 on the undersigned attorneys, you are entitled to notice before a default judgment may be
3 entered.

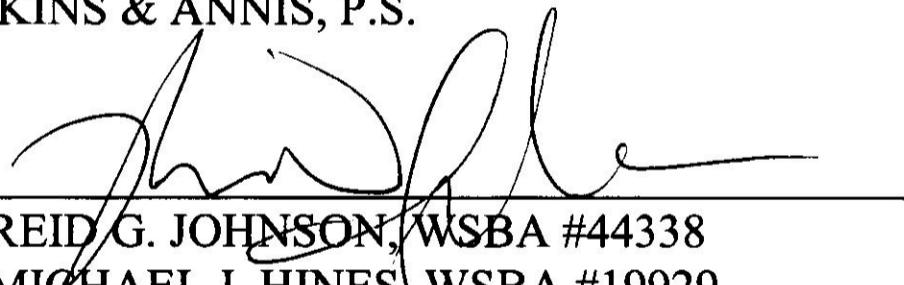
4 You may demand that the Plaintiff file this lawsuit with the court. If you do so, the
5 demand must be in writing and must be served upon the Plaintiff. Within fourteen (14) days
6 after you serve the demand, the Plaintiff must file this lawsuit with the court, or the service on
7 you of this Summons and Complaint will be void.

8 If you wish to seek the advice of an attorney in this matter, you should do so promptly
9 so that your written response, if any, may be served on time.

10 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the
11 State of Washington.

12 Dated this 11th day of February, 2025.

13 LUKINS & ANNIS, P.S.

14 By 

15 REID G. JOHNSON, WSBA #44338

16 MICHAEL J. HINES, WSBA #19929

17 ZAINE M. YZAGUIRRE, WSBA #58265

18 *Attorneys for Plaintiff City of Spokane Valley*

19 SUMMONS: 2

20 LAW OFFICES OF
21 LUKINS & ANNIS, PS
22 A PROFESSIONAL SERVICE CORPORATION
23 717 W Sprague Ave., Suite 1600
24 Spokane, WA 99201
25 Telephone: (509) 455-9555
Fax: (509) 747-2323

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SUPERIOR COURT OF WASHINGTON IN AND FOR SPOKANE COUNTY

CITY OF SPOKANE VALLEY, a municipal
corporation,

Plaintiff,

v.

ALBERT W. MERKEL, an individual,

Defendant.

NO. 25200710-32

COMPLAINT

COMES NOW Plaintiff City of Spokane Valley, by and through its counsel of record, Lukins & Annis, P.S., and for cause of action against Defendant Albert W. Merkel, alleges as follows:

I. PARTIES

1.1 Plaintiff City of Spokane Valley (the "City") is a municipal corporation, organized under the laws of the State of Washington located in Spokane County.

1.2 Defendant Albert W. Merkel ("Defendant") is and at all relevant times was an individual residing in Spokane County and is an elected member of the City of Spokane Valley City Council (the "City Council").

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LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

II. JURISDICTION AND VENUE

2.1 This Court has original jurisdiction over this matter pursuant to RCW 2.08.010.

2.2 Jurisdiction and venue are proper in Spokane County, Washington pursuant to RCW 4.12.020 and RCW 4.12.025 because Defendant is a public officer for the City and Defendant resides in Spokane County.

III. FACTUAL BACKGROUND

A. The City Governance Manual

3.1 Per the authority granted by RCW 35A.13.230 and RCW 35A.11.020, the City, through the City Council, has long maintained a Governance Manual that contains rules governing, among other things, the conduct of City Councilmembers in performing the functions of their office. The Governance Manual is periodically reviewed and updates are made as the Council majority determines appropriate. The Governance Manual has been in place throughout Defendant's entire tenure as a City Councilmember.

3.2 The City Governance Manual provides:

As Councilmembers of the City of Spokane Valley, we agree that the Governance Manual (Manual) outlines the rules by which we agree to adhere in order to successfully and efficiently conduct city business. (p. 3)

3.3 The City Governance Manual further provides:

The City acknowledges the importance of complying with the Open Public Meetings Act and the Public Records Act: "The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." RCW 42.30.010 and 42.56.030. (p. 4)

3.4 Chapter 3 of the City Governance Manual addresses citizen contacts and interactions outside of a council meeting, including contact on social media. Specifically, Chapter 3, Subsection A.4 provides:

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LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2222

1 Councilmembers shall comply with the City Councilmember Social Media Policy
2 which is attached hereto as Appendix H and wholly incorporated herein. (p. 44)

3 3.5 Chapter 5 of the City Governance Manual addresses the City Council Conduct
4 Standard and Enforcement procedures, including with regard to social media conduct. Chapter
5, Subsection A of the City Governance Manual provides:

6 In order to foster an environment of ethical and professional conduct by all
7 Councilmembers, the Council has adopted the following process to be implemented
8 in the event a Councilmember(s) is alleged to have violated a provision of:
9
10 ...
11

12 (3) the Social Media Policy attached as Appendix H to this Governance
13 Manual;
14
15 ...
16

17 (9) other applicable laws and/or regulations governing the conduct of the
18 Councilmembers in their capacity as elected public officials.
19
20 (p. 55)

21 3.6 Chapter 5 of the City Governance Manual also provides:

22 3.6.1 All Councilmembers must abide by the above-identified Council
23 Conduct Standards. Any Councilmember alleged to have violated the Council
24 Conduct Standards is subject to the below enforcement provisions. (p. 55)

25 3.6.2 If a Councilmember does not cease conduct that has been deemed in
26 violation of the Council Conduct Standards, then the Council may direct city
27 administration to pursue legal action to prevent ongoing violations, provided
28 such an action is not prohibited by applicable law. (p. 61)

29 3.7 Finally, the Councilmember Social Media Policy (Appendix H to the City
30 Governance Manual), which has been in place throughout Defendant's entire tenure, requires
31 Councilmembers to establish and use an official City Councilmember account in order to discuss
32 City business or the performance of their office on social media. The Social Media Policy
33 provides, in relevant part:
34
35

36 COMPLAINT: 3

37 LAW OFFICES OF
38 LUKINS & ANNIS, PS
39 A PROFESSIONAL SERVICE CORPORATION
40 717 W Sprague Ave., Suite 1600
41 Spokane, WA 99201
42 Telephone: (509) 455-9555
43 Fax: (509) 747-2323

- 1 1. Before setting up a social media account on any given platform, you must
2 receive written verification from the city's IT manager that the social media
3 platform is sufficiently compatible with the city's social media archiving
4 platform to assure that all content, including posts and comments, is archived
5 for public records retention
- 6 2. Create the account using your @SpokaneValleyWA.gov email alias. On
7 Facebook, per Facebook policy, create a 'page' from your personal 'profile'.
8
- 9 3. When creating Councilmember accounts, include:
10
 - Title including your official role of "Councilmember" in the name (Ex.
11 Councilmember first last name)
 - Category of "Government Official"
 - Identifiable, official Councilmember photo (can be provided by city staff)
 - Disclaimer, "All content is mine and does not represent that the views of
12 the Spokane Valley City Council or City of Spokane Valley.
13 . . .
14**Councilmembers who maintain a personal or campaign social media account
15 shall:**
16 ...
17

18 3. **Not write posts on personal or campaign accounts that relate to the
19 conduct of city government or the performance of your office.** Merely
20 posting Council agendas or information regarding city events or providing
21 general information regarding the City's activities is not conducting city
22 business and will not convert your personal post or the posts of others into
23 public records. Personal communications that are not related to the conduct
24 of government or the performance of your office are not public records.
25 **However, if you use your personal account to transact city business, any
posts or comments generated in doing so may be public records.** (pp. 81-
83) (emphasis added)

3.8 Thus, the Social Media Policy allows Councilmembers to make social media posts
and comments regarding City business while using official Councilmember accounts that comply
with the policy by, among other things, being established with their official City email account.
However, the Social Media Policy precludes Councilmembers from posting about City business
on (1) their personal social media accounts, and (2) other persons' social media accounts using
their official Councilmember accounts.

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LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 the Councilmember's personal social media account. The purpose of this policy is to ensure that
2 public records created by a Councilmember's social media use are preserved and able to be
3 produced as required by the Washington Public Records Act.

4 **B. Complaint Regarding Defendants' Social Media Activity**

5 3.9 On or about January 2, 2024, Defendant took his oath of office to, among other
6 things, uphold the laws and regulations of the State of Washington and City of Spokane Valley.

7 3.10 Before taking his oath of office, City administration informed Defendant of the
8 Social Media Policy and the requirement that he establish official Councilmember social media
9 accounts using his official City-issued email address for those social media platforms, if any, on
10 which he intends to discuss City business or perform any function of his office.

11 3.11 Both before and after Defendant took his oath of office, City administration
12 provided Defendant with training regarding the Washington Public Records Act and specifically
13 informed him that, as a Councilmember, any social media content he creates regarding City
14 business or the performance of his office would likely be public records subject to the
15 Washington Public Records Act. City administration also advised Defendant on multiple
16 occasions of: (1) the importance of preserving such content so it can be produced in response to
17 third party public records requests in compliance with the Washington Public Records Act, and
18 (2) the high risk of steep monetary penalties being assessed against the City if he failed to
19 preserve all public records and produce those that are responsive to public records requests.

20 3.12 Defendant told City administration that "I'll take that risk," refused to establish
21 an official Councilmember account, and began using his personal Nextdoor and other social
22 media accounts to regularly post about City business and the performance of the City's
23 representatives, communicate with the public regarding issues and business coming in front of
24
25

COMPLAINT: 5

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 City Council for official action, solicit feedback to guide his decisions as a Councilmember, and
2 otherwise perform his Councilmember functions.

3 3.13 In early 2024, the City began receiving multiple public records requests for
4 content on Defendant's personal social media accounts, including but not limited to Nextdoor,
5 regarding City business.

6 3.14 Defendant refused to provide the requested records in response to these public
7 record requests.

8 3.15 In response to Defendant's refusal, City administration repeatedly requested
9 Defendant produce the responsive records and reminded him of the legal risks to which he was
10 exposing the City.

11 3.16 Instead of producing the records, Defendant insisted on submitting legally
12 deficient *Nissen* declarations stating he did not have "public records" in his possession.
13 Defendant continued this pattern despite being informed several times by City administration
14 that such declarations do not satisfy his or the City's obligations under the Washington Public
15 Records Act and his actions expose the City to liability.

16 3.17 On or about June 11, 2024, Councilmember Jessica Yaeger of the City Council
17 submitted a written complaint to City Manager John Hohman, pursuant to Chapter 5 of the City
18 Governance Manual, alleging that Defendant had violated the City Council's Conduct Standards
19 by failing to comply with the Councilmember Social Media Policy (Appendix H to the City
20 Governance Manual) with regard to his personal account on the social media platform Nextdoor.

21 3.18 Specifically, the complaint alleged that Defendant was using his personal
22 Nextdoor account to conduct and/or transact City business by, *inter alia*, conducting citizen polls
23 about City actions and proposals, providing opinions on various City initiatives, surveying
24 citizens on public issues related to the City Council's agenda, and engaging in discourse with
25 citizens about City business, which he intended to (and did) present at City Council meetings.

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LAW OFFICES OF
LUKINS & ANNIS, PS
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717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 3.19 The complaint also alleged that Defendant was editing and deleting social media
2 posts and comments made on his personal Nextdoor account, including deleting posts and
3 comments made by other members of the public.

4 3.20 On or about August 1, 2024, Councilmember Yaeger submitted a supplemental
5 written complaint to City Manager Hohman clarifying that Defendant's conduct also violated
6 RCW 42.56 (the Washington Public Record Acts) and RCW 40.14 (Preservation & Destruction
7 of Public Records) with regard to his personal Nextdoor account.

8 3.21 The written complaint, dated June 11, 2024, and the supplemental complaint,
9 dated August 1, 2024, are hereinafter collectively referred to as the "Yaeger Complaint."

10 **C. The City Investigation Regarding the Yeager Complaint**

11 3.22 Pursuant to Chapter 5 of the City Governance Manual, the City retained an
12 independent investigator to investigate the alleged violations of the Councilmember Social Media
13 Policy and to issue a written report determining whether the alleged conduct occurred and
14 whether Defendant had violated the City Governance Manual.

15 3.23 The City retained Ms. Rebecca Dean as its Independent Investigator. Ms. Dean is
16 a licensed attorney engaged in investigation practice and has been retained by both private
17 businesses and government agencies throughout the State of Washington to investigate
18 workplace conduct, ethical standards, and regulations disputes. Ms. Dean is also a resident of
19 King County, Washington and has no social relationships with any City official or employee.

20 3.24 Ms. Dean's investigation included, among other things, reviewing over 350
21 screenshots taken of Defendant's private Nextdoor account, conducting legal research related to
22 RCW 42.56 (the Washington Public Record Acts) and RCW 40.14 (Preservation & Destruction
23 of Public Records), reviewing the City Governance Manual, and analyzing relevant authorities
24 covering the above-referenced statutes.

25
COMPLAINT: 7

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 3.25 Following her investigation, Ms. Dean prepared and submitted her investigative
2 report, dated September 3, 2024, regarding the Yaeger Complaint's allegations against Defendant
3 (the "Investigative Report"). Attached hereto as **Exhibit A** is a true and correct copy of the
4 Investigative Report, which is incorporated herein by reference.

5 3.26 Among other things, the Investigative Report determined that: (1) Defendant's
6 activity on his personal Nextdoor account violates the Councilmember Social Media Policy, (2)
7 Defendant's social media posts and comments regarding City business on his personal Nextdoor
8 account more likely than not constitute public records, (3) Defendant violated the Washington
9 Public Record Act by refusing to search, segregate, and produce social medial posts and
10 comments to his personal Nextdoor account in response to multiple public records requests
11 received by the City, and (4) Defendant violated the Washington Public Record Act by
12 submitting deficient *Nissen* declarations in response to multiple public records requests received
13 by the City.

14 3.27 In light of the Investigative Report, on September 25, 2024, City administration
15 sent Defendant a letter yet again demanding he: (1) provide the City with all posts and
16 communications from his personal Nextdoor account and any other social media accounts he
17 used for City business so the City could ensure compliance with the Washington Public Records
18 Act, and (2) comply with the Social Media Policy.

19 3.28 Defendant refused to comply with both demands.

20 **D. Hearing Examiner Confirms the Investigator's Findings**

21 3.29 Pursuant to Chapter 5 of the City Governance Manual, Defendant challenged the
22 Investigative Report and requested that the City conduct a hearing before a hearing examiner to
23 determine whether any violation(s) occurred and provide recommended corrective action.

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LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 3.30 On or about October 24, 2024, City Hearing Examiner Andrew L. Kottkamp
2 conducted an open record public hearing concerning the Yaeger Complaint and Investigative
3 Report.

4 3.31 Following testimony from multiple witnesses, Hearing Examiner Kottkamp
5 entered Findings of Fact, Conclusions of Law, Decision, and Recommended Corrective Action
6 on or about December 13, 2024 (the “Hearing Examiner’s Decision”). Attached hereto as **Exhibit**
7 **B** is a true and correct copy of the Hearing Examiner’s Decision, which is incorporated herein
8 by reference.

9 3.32 The Hearing Examiner’s Decision concluded, among other things, that: (1)
10 Defendant’s use of his personal Nextdoor account to conduct business relating to the City
11 violated the City Council’s Conduct Standards and Councilmember Social Media Policy, (2)
12 Defendant’s failure and/or refusal to search, segregate, and produce social medial posts and
13 comments to his personal Nextdoor account in response to multiple public records requests
14 received by the City violated the City Council’s Conduct Standards and Councilmember Social
15 Media Policy, and (3) Defendant’s failure and/or refusal to submit proper *Nissen* declarations in
16 response to multiple public records requests received by the City violated the City Council’s
17 Conduct Standards.

18 3.33 The Hearing Examiner’s Decision also found that Defendant should be subject to
19 corrective action.

20 **E. Post-Investigation Demands for Public Records**

21 3.34 On or about December 19, 2024, the City Council adopted Resolution No. 24-015
22 formally censuring and removing Defendant from his committee assignment as a result of the
23 violations upheld by Hearing Examiner Kottkamp.

24 3.35 In a letter dated December 23, 2024, City Manager Hohman demanded that
25 Defendant produce all content posted to his Nextdoor accounts, including his personal Nextdoor

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LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
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Fax: (509) 747-2323

1 account, to enable the City to complete its responses to multiple pending public records requests
2 and remain in compliance with the Public Records Act. City Manager Hohman demanded
3 complete production by no later than close of business on Friday, January 10, 2025.

4 3.36 In response, Defendant agreed “under protest” to sign up to Nextdoor using his
5 city email account and back up the account with the City’s Page Freezer program, which is meant
6 to archive social media activity and allow the City to more easily compile public records.
7 However, he did not produce complete records from his personal Nextdoor account because his
8 account was suspended at the time and he lost access.

9 3.37 Because Defendant no longer had access to his account, the City was willing to
10 accept a backup file from Nextdoor to at least partially comply with its obligations under the
11 Public Records Act unless and until Defendant could obtain complete records. Throughout the
12 City’s communications with Defendant, its representatives repeatedly informed Mr. Merkel that
13 this information was required to limit the City’s exposure to Public Records Act liability.

14 3.38 On January 28, 2025, Defendant provided the backup file for his personal
15 Nextdoor account to the City. However, on the same date, he informed the City that Nextdoor
16 restored his personal account in full, allowing Defendant full access to all of his personal
17 Nextdoor records. Further, the Nextdoor account that was linked to Defendant’s City email
18 address was deactivated by either Defendant or Nextdoor, leaving only his personal Nextdoor
19 account active.

20 3.39 Upon review of Defendant’s personal Nextdoor backup file, the City discovered
21 it was insufficient for the City to comply with the Public Records Act because it was not in its
22 original native format and therefore did not provide the entire record of Defendant’s
23 communications. For example, it provided the date and text of Defendant’s posts, but not the
24 context in which the posts/comments were made, nor did it include any photographs, polls, or
25 interactive discussions related to the primary posts, which were known to exist. Importantly, for

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LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
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Fax: (509) 747-2323

1 posts Defendant made on third parties' Nextdoor pages, it does not identify on whose pages they
2 were posted, whether any individual post was commenting on another's post or, if so, the post it
3 was commenting on, or comments responding to Defendant's posts. Thus, it does not constitute
4 a true copy of the public records and does not accurately depict the nature and scope of the
5 communications contained therein.

6 3.40 Given that Defendant's full personal Nextdoor account had been restored,
7 however, Defendant regained and now maintains full access to all such records. Accordingly, the
8 City demanded that Defendant provide screen shots or other documents that fully and accurately
9 depict all communications that discuss city business or were made in performance of his duties
10 as an elected official from January 1, 2024, to the present.

11 3.41 The City also requested that Defendant complete amended *Nissen* declarations for
12 the deficient declarations he previously issued to the City, as both the Investigator and the
13 Hearing Examiner concluded that the declarations he previously provided were not compliant
14 with the Public Records Act. These *Nissen* declarations pertained to his social media
15 communications as well as non-social media records such as emails from his personal accounts,
16 text messages from his personal cell phone, and other notes/memoranda.

17 3.42 The City also informed Defendant that he continues to be in violation of the
18 Governance Manual, Appendix H, § 3, because he continues to make social media posts on his
19 personal Nextdoor account related to the conduct of City business and the performance of his
20 office. These posts showed that Defendant frequently conducted citizen polls about City actions
21 and/or proposals, provided opinions of various City initiatives, surveyed citizens on public issues
22 on the Council's agenda, reprimanded the official actions of city officials and staff, discussed his
23 own performance of his official duties, among other city business all while an elected
24 councilmember. The City demanded that Defendant immediately cease and desist from making
25

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LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 any such communications on any social media account/page, including Nextdoor, that is not set
2 up as an official Councilmember social media account per the Governance Manual, Appendix H.

3 3.43 However, Defendant has failed to comply with the majority of the demands from
4 the City, all of which were made to ensure the City complied with its legal obligations under the
5 Public Records Act.

6 3.44 Defendant continues to deny that his social media posts and comments constitute
7 public records, and he has failed to produce screen shots, sufficient account access, or other
8 documents that fully and accurately depict all communications that discuss city business or
9 performance of Defendant's office as an elected government official from January 1, 2024, to
10 the present. Specifically, Defendant has failed to produce posts and comments that he makes on
11 third parties' social media pages regarding City/Council business.

12 3.45 Defendant has failed to provide all necessary amended *Nissen* declarations that
13 comply with the Public Records Act.

14 3.46 On information and belief, Defendant has failed to produce non-social media
15 records regarding City or Council business, such as emails from his personal accounts, text
16 messages from his personal cell phone, and other notes/memoranda.

17 3.47 Defendant continues to be in violation of the Governance Manual, Appendix H, §
18 3, because he continues to make social media posts on his personal Nextdoor account related to
19 the conduct of City business and the performance of his office.

20 3.48 The City has taken all actions within its authority to obtain compliance from
21 Defendant to ensure that the City complies with its obligations under the Public Records Act.

22 **IV. CAUSES OF ACTION:**

23 **FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT**

24 4.1 Plaintiff re-alleges and incorporates the preceding paragraphs by reference as if
25 fully set forth herein.

COMPLAINT: 12

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LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
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1 4.2 A dispute has arisen between the City on the one hand, and Defendant on the other
2 hand, as to whether: (1) Defendant's social media profile page and communications regarding
3 City business or the performance of his elected office on social media constitute public records;
4 (2) Defendant's posts on third-parties' social media pages that discuss City business or the
5 performance of his elected office constitute public records; (3) text messages on Defendant's
6 personal cell phone regarding City business or the performance of his elected office are public
7 records; (4) emails to and from Defendant's personal email address(es) regarding City business
8 or the performance of his elected office are public records; (5) Defendant's personal memoranda
9 regarding City business or the performance of his elected office are public records; and (6)
10 Defendant is obligated to preserve these records and produce those responsive to public records
11 requests in order for the City to comply with the Public Records Act.

12 4.3 The dispute herein is actual, concrete, and touches and affects the parties' rights
13 and relations.

14 4.4 Per RCW 7.24 et seq., the parties' rights should be declared and set forth by the
15 Court.

16 4.5 The City is entitled to a declaratory judgment stating, including but not limited to,
17 the following: that Defendant's social media profile page and communications regarding City
18 business or the performance of his office or are otherwise made to further performance of his
19 office constitute public records, his posts on third-parties' social media pages regarding City
20 business or performance of his office or are otherwise made to further performance of his office
21 constitute public records, text messages on Defendant's personal cell phone regarding City
22 business or the performance of his office or are otherwise made to further performance of his office
23 constitute public records, emails to and from Defendant's personal email address(es)
24 regarding City business or the performance of his office or are otherwise made to further
25 performance of his office constitute public records, Defendant's personal memoranda regarding

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LAW OFFICES OF
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1 City business or the performance of his office or are otherwise made to further performance of
2 his office constitute public records, and that the Public Records Act requires Defendant to
3 preserve these records and provide the City with those records that are responsive to public
4 records requests.

5 **V. SECOND CAUSE OF ACTION: WRIT OF MANDAMUS**

6 5.1 Plaintiff re-alleges and incorporates the preceding paragraphs by reference as if
7 fully set forth herein.

8 5.2 Defendant is an elected member of the City Council. As a Councilmember,
9 Defendant has a clear duty to comply with the City's Governance Manual, including the Social
10 Media Policy contained in Appendix H.

11 5.3 The City has no plain, speedy, and adequate remedy available to enforce the
12 requirements of the Governance Manual, as all efforts to obtain compliance have been exhausted.

13 5.4 The City is beneficially interested in the issuance of the writ to ensure compliance
14 with the Governance Manual from all Councilmembers and to ensure its own compliance with
15 the Washington Public Records Act.

16 5.5 Accordingly, the City is entitled to a writ of mandamus ordering Defendant to
17 comply with the City's Governance Manual, namely, the Social Media Policy contained in
18 Appendix H.

19 5.6 The City is entitled to such a writ requiring Defendant to do, including but not
20 limited to, the following:

21 5.6.1 Restrict social media discussions regarding City business or the
22 performance of his office, or which are otherwise made to further
23 performance of his office, to official councilmember social media
24 accounts compliant with the Governance Manual.

25
COMPLAINT: 14

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 5.6.2 Not discuss City business or the performance of his office or otherwise
2 make statements in furtherance of the performance of his office on his
3 personal social media profile pages.

4 5.6.3 Not use his personal social media to post regarding City business or the
5 performance of his office on other persons' social media pages.

6 **VI. THIRD CAUSE OF ACTION: INJUNCTIVE RELIEF**

7 6.1 Plaintiff re-alleges and incorporates the preceding paragraphs by reference as if
8 fully set forth herein.

9 6.2 Legal remedies do not provide adequate remedies protecting Plaintiff from
10 liability under the Washington Public Records Act arising from Defendant's conduct described
11 above in Plaintiff's Complaint.

12 6.3 Pursuant to RCW 7.40 *et. seq.*, and CR 65, Plaintiff is entitled to injunctive
13 relief including, but not limited to, requiring that Defendant do the following:

14 6.3.1 Preserve, in native format, all posts, comments, and responses he has
15 made, makes, received, or receives during his term in office on personal
16 social media platforms, including but not limited to Nextdoor, on his
17 personal page(s) and posts made on other persons' social media pages
18 regarding City business or the performance of his office or are otherwise
19 made to further performance of his office that are created during his
20 term in office, and make them available to the City for production to the
21 extent they have been or are requested via third party public records
22 requests.

23 6.3.2 Retrieve and preserve, in native format, all posts, comments, and
24 responses thereto that he has made or received during his term in office

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1 using personal social media platforms, including but not limited to
2 Nextdoor, regarding City business or the performance of his office or
3 which were otherwise made to further performance of his office that
4 have been deleted from his or others social media pages to the extent he
5 is able and they were created during his term in office, and make them
6 available to the City for production to the extent they are or have been
7 requested via third party public records requests.

8 6.3.3 Preserve, in native format, all text messages, emails, and social media
9 direct messages from his personal devices/accounts regarding City
10 business or the performance of his office or which were otherwise made
11 to further performance of his office during his term as a Councilmember,
12 and make the same available to the City for production to the extent they
13 are responsive to public records requests received or that are received in
14 the future.

15 6.3.4 Preserve personal memoranda Defendant created or creates during his
16 term in office that are or are related to City business or the performance
17 of his officer or were otherwise made to further the performance of his
18 office, and make them available to the City for production to the extent
19 they are responsive to third party public records requests and were in his
20 possession at the time the City received the request.

21 6.3.5 To the extent the responsive records outlined above are not available,
22 produce truthful and legally sufficient *Nissen* declarations that contain
23 reasonably detailed, nonconclusory facts that attest to the nature and
24 extent of Defendant's search for all past and future public records
25 requests.

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VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff City of Spokane Valley prays for relief as follows:

1. For entry of an Order declaring, including but not limited to, the following: (a) content and communications on Defendant's personal social media accounts relating to City business or the performance of his office or which were otherwise made to further the performance of his office as an elected government official constitute public records; (b) Defendant's posts and comments on third-parties' social media pages regarding City business or the performance of his office or which were otherwise made to further the performance of his office as an elected government official constitute public records; (c) text messages on Defendant's personal cell phone regarding City business or the performance of his office or which were otherwise made to further the performance of his office as an elected government official constitute public records; (d) emails to and from Defendant's personal email address(es) regarding City business or the performance of his office or which were otherwise made to further the performance of his office as an elected government official constitute public records; (e) Defendant's personal memoranda regarding City business or the performance of his office or which were otherwise made to further the performance of his office as an elected government official constitute public records; and (f) that the Public Records Act requires Defendant to preserve all such records, and make them available to the City for production to the extent they are responsive to third party public records requests.

2. For entry of a writ of mandamus ordering Defendant to fully comply with the City Governance Manual, namely, Appendix H (Social Media Policy), with such a writ requiring Defendant to do, including but not limited to, the following:

a. Restrict social media discussions regarding City business or the performance of his office, or which otherwise further the performance of his office, to

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official councilmember social media accounts compliant with the Governance Manual;

- b. Not discuss City business or write posts/comments that relate to the conduct of City business or the performance of Defendant's office, or which otherwise further the performance of his office, on his personal social media accounts; and
- c. Not use personal social media accounts to communicate regarding City business or the performance of his office or which otherwise further the performance of his office on other persons' social media pages.

3. For an injunction requiring Defendant to do, including but not limited to, the following:

- a. Preserve, in native format, all posts/comments he has made, makes, received, or receives during his term in office via personal social media platforms, including but not limited to Nextdoor, on his own page(s) and posts/comments made on other persons' social media pages that relate to City business or the performance of his office or which otherwise further the performance of his office, and make them available to the City for production to the extent they have been or are requested via third party public records request.
- b. To the extent Defendant is able, (i) retrieve and preserve, in native format, all posts/comments that he has made or received during his term in office on personal social media platforms, including but not limited to Nextdoor, that regard City business or the performance of his office or which otherwise further the performance of his office and have been deleted from his or others social media pages, and (ii) make them available to the City for production to

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Fax: (509) 747-2323

the extent they are or have been requested via third party public records requests.

c. Preserve, in native format, all text messages, emails, and social media direct messages from his personal devices/accounts regarding City business or the performance of his office, or were otherwise made to further the performance of his office, that were or are created during his term of office, and make them available to the City for production to the extent they are responsive to third party public records requests.

d. Produce all personal memoranda he created or creates during his term in office that are related to City business or the performance of his office or were otherwise made to further the performance of his office to the extent they are responsive to third party public records requests and in his possession at the time the City received or receives the request.

e. To the extent the responsive records outlined above are not available, they produce truthful and legally valid *Nissen* declarations that contain reasonably detailed, nonconclusory facts that attest to the nature and extent of Defendant's search for all past and future public records requests.

4. For the right to amend this Complaint upon the discovery of additional allegations, causes of action, and/or damages; and

5. Award of such other relief, at law or in equity, as the Court deems just and equitable.

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DATED this 11th day of February, 2025.

LUKINS & ANNIS, P.S.

By:

REID G. JOHNSON, WSBA #44338
MICHAEL J. HINES, WSBA #19929
ZAINE M. YZAGUIRRE, WSBA #58265

Attorneys for the City of Spokane Valley

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