

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

CLEO SUBIDO)
3213 Harbor Ave SW)
Unit 116)
Seattle, WA 98126)

Plaintiff,)

v.)

THE DISTRICT OF COLUMBIA,)

Serve:)

Mayor Muriel Bowser)
1350 Pennsylvania Avenue, NW)
Washington, DC 20004)

Serve:)

Attorney General Brian Schwalb)
400 6th Street, NW)
Washington, DC 20001)

OFFICE OF UNIFIED COMMUNICATIONS,)

Serve:)

Acting Director Heather McGaffin)
2720 Martin Luther King Jr Avenue, SE)
Washington, DC 20032)

Serve:)

Attorney General Brian Schwalb)
400 6th Street, NW)
Washington, DC 20001)

and)

DC FIRE AND EMERGENCY MEDICAL)
SERVICES DEPARTMENT)

Serve:)

Fire and EMS Chief John Donnelly)
2000 14th Street, NW, 5th Floor)
Washington, DC 20009)

Serve:)

Attorney General Brian Schwalb)
400 6th Street, NW)

Civil Action No. _____

JURY TRIAL DEMANDED

Washington, DC 20001)
)
 MURIEL BOWSER, Individually and in)
 her Official Capacity as Mayor for the)
 District of Columbia)
)
Serve:)
 Mayor Muriel Bowser)
 1350 Pennsylvania Avenue, NW)
 Washington, DC 20004)
)
Serve:)
 Attorney General Brian Schwalb)
 400 6th Street, NW)
 Washington, DC 20001)
)
 Defendants.)
)

COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF

INTRODUCTION

Plaintiff, Cleo Subido, by and through her undersigned counsel based, on her experiences, the investigation of counsel, and on information and belief, alleges as follows:

1. This is an action to redress violations of the D.C. Whistleblower Protection Act, D.C. Code § 1-615.51 *et seq.* (“DCWPA”). Ms. Subido’s employer, the District of Columbia, retaliated against her after she disclosed irregularities, violations of laws and regulations, gross mismanagement, waste, fraud, and abuse, and threats to the health and safety of the public concerning the manner in which the District of Columbia’s Office of Unified Communications (“OUC”) operated. Following repeated failures by the District of Columbia’s 911 emergency response system to appropriately respond to emergency calls, Ms. Subido began instituting desperately needed changes at OUC to bring practices in compliance with national standards. Moreover, Ms. Subido fully cooperated with an external audit by the Office of the DC Auditor, sought to increase accountability and

transparency to the OUC by processing FOIA requests made under D.C. Code § 2-532 and by truthfully responding to approved media inquiries, and brought to the attention of her staff and superiors, including Chris Geldart, then-Deputy Mayor and Ms. Subido's first-line supervisor, as well as the D.C. Council, deep and at times fatal flaws in OUC's operations. Under Ms. Subido's leadership, OUC saw drastic improvements in response times to emergency calls and leaders in the field agreed the changes she implemented were highly effective. As a result of Ms. Subido's efforts to address and correct OUC's systematic failures and bring the OUC in compliance with requirements set forth in the governing law, to increase transparency and accountability at OUC, and her refusal to sweep OUC's failings under the rug, Mayor Bowser scuttled Ms. Subido's anticipated promotion to OUC's permanent Director, and instead demoted her. After OUC's operations reverted to unsafe practices following Ms. Subido's demotion from Interim Director, and amid increasing public support for Ms. Subido's return to OUC—or other involvement in oversight of OUC—Mayor Bowser inexplicably placed Ms. Subido on administrative leave. Then, shortly after Ms. Subido put Defendants on notice of her concern that Defendants' violated the law, Defendants terminated her employment, despite her demonstrated contributions to improving emergency communication operations, and her widespread support from the community, members of the Council, and from the Fire and EMS chiefs. Defendants' actions were intended to silence Ms. Subido and deter others from raising and/or addressing similar concerns.

2. Ms. Subido seeks all relief available to her under DCWPA, including: reinstatement to the position she would have held had Defendants not retaliated against her; recovery of all lost wages, salary, and employment benefits; pre-and post-judgment interest;

injunctive relief; attorneys' fees and costs; compensatory damages; and all other appropriate compensatory and equitable relief, including any other compensation or benefit denied or lost due to Defendants' unlawful termination in violation of the DCWPA.

THE PARTIES

3. At all times relevant to this complaint, Plaintiff Cleo Subido was an adult resident of the District of Columbia and was an employee within the meaning and protections of the DCWPA, D.C. Code § 1-615.52.
4. Defendant, District of Columbia (also "the District") is the municipal government of the District of Columbia. It operates Defendant OUC and Defendant DC Fire and Emergency Medical Services Department ("FEMS"), and is capable, along with its sub-agencies OUC and FEMS, of being sued under the DCWPA as a municipal corporation capable of being sued under D.C. Code §1-102.
5. Muriel Bowser is named as a Defendant individually, pursuant to D.C. Code § 1-615.54, and in her official capacity as Mayor. At all times relevant, Mayor Bowser was a supervisor within the meaning of the DCWPA, D.C. Code § 1-615.52.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this Complaint pursuant to D.C. Code §§ 1-615.54 (a)(1) and 11-921.
7. Personal jurisdiction over the defendants is proper pursuant to D.C. Code § 13-423.

8. Venue is proper as the violations of law alleged herein occurred in the District of Columbia, and at all times relevant, Plaintiff was employed in the District of Columbia by the government of the District of Columbia.

FACTS GIVING RISE TO PLAINTIFF'S CLAIM FOR RELIEF

Office of Unified Communications

9. The Office of Unified Communication (“OUC”) is a subordinate agency under the D.C. Mayor, within the executive branch of government. D.C. Code § 1–327.52. Its mandate is to “centralize the customer service functions and activities of the District government’s 911, 311, and 727-1000 systems, and other facilities for emergency, non-emergency, and citizen service calls, and be responsible for the operation and maintenance of the District government’s radio technology and call center technology.” *Id.* This role includes fielding emergency and non-emergency calls and responding by appropriately dispatching services, including emergency services such as law enforcement, fire, and paramedic services.
10. As OUC describes itself, it is “the communications lifeline for the nation’s capital” and states that its telecommunicators are the first, first responders and serve as the gateway to emergency and non-emergency services in the District. OUC is intended to provide “accurate, professional, and expedited service” to those requiring emergency and non-emergency services in the District of Columbia.
11. OUC is headed by a Director appointed by the District of Columbia Mayor.
12. In order to facilitate effective coordination and management of emergency and non-emergency calls, the D.C. Code tasks OUC with “develop[ing] and enforc[ing] policy directives and standards” for operations of communications systems and other resources

“needed to support the functions of the Office.” D.C. Code § 1-327.54. The law also requires a “robust program of training for all employees” that “aligns with standards established by national public safety associations,” and includes training on “cardiopulmonary resuscitation” and “stress management.” *Id.*

13. The National Fire Protection Association (“NFPA”), the National Emergency Number Association (“NENA”), and the Association of Public-Safety Communications Officials International (“APCO”), provide national standards for emergency call performance, including standards for time to answer a call and time from answering a call to dispatch, staffing requirements, and training requirements.
14. OUC practices and procedures are expected to be consistent with national standards.
15. With respect to timing requirements for answering calls, NFPA and NENA standards require calls to be answered within 15 seconds, 90% of the time, and within 20 seconds 95% of the time.
16. With respect to timing requirements from the time a call is answered to the time responding units are notified, NFPA requires notification to units within 60 seconds of answering the call 90% of time for the highest priority emergency events.
17. APCO and NENA also have set forth recommended minimum training guidelines and note that telecommunicators must also receive regular supplemental training. The minimum training requirements set forth by APCO and NENA, many of which are expressly codified in the D.C. Code establishing OUC, include training on roles and responsibilities, legal concepts, interpersonal communications, emergency communications technology, call processing, emergency management, radio

communication, stress management, quality assurance, and on-the-job training to include topics such as geography and FOIA requirements.

18. NENA has developed a complex formula by which it can provide optimal staffing requirements based on a variety of factors including call volume and population. APCO similarly provides a mechanism by which it recommends appropriate staffing levels. Additionally, the National Incident Management System sets forth supervisory requirements, including that a supervisor should supervise between two and eight people at any given time.
19. Despite its well-intentioned and critically important mission, OUC has a long and troubled record of failures, where delays in 911 response times, mishandling of telephone calls, routing to incorrect addresses, and/or routing incorrect services have resulted in many unnecessary fatalities in the District, particularly among the most vulnerable populations.
20. After her election in 2015, Mayor Bowser and the District failed to take any action to address the serious and significant problems facing OUC. The lack of corrective action from her administration exacerbated OUC's problems and has heightened the frequency of OUC's failures in recent years.
21. In 2016, Mayor Bowser appointed Karima Holmes as Director of OUC.
22. As a direct result of OUC's deficiencies, and the Mayor and her administration's refusal to address OUC's failures, those seeking emergency services in the District years have in recent years died after botched handling of emergency calls and an appropriate response consistent with national standards may have been life-saving.

23. For example, in August 2019, a fire broke out in a row house and a police officer called for immediate help. In response to the communication, it took OUC more than four minutes to dispatch emergency responders, far more than the sixty seconds, nationally accepted as the standard. As a result of the fire, two individuals lost their lives, including a nine-year-old boy.
24. In testimony to the D.C. Council, Regina-Carmen Page recounted her experience with OUC. When Ms. Page's ill neighbor, Natalie Larmon, was unresponsive, Ms. Page called 911, and the dispatcher indicated emergency services were on the way. Approximately thirty minutes later, after no assistance arrived, Ms. Page again dialed 911. Ultimately, responders arrived more than forty minutes after Ms. Page initially placed an emergency call, at which time Ms. Larmon was pronounced dead.
25. In June 2020, the thirteen-year-old daughter of Sheila Shepperd called 911 because her mother had collapsed. Records demonstrate that she provided the correct address in the northeast quadrant of the city, but the OUC telecommunicator erroneously entered the address as being in the northwest quadrant of the city. As a result of the error, first responders did not arrive at the correct residence for more than twenty minutes after the initial emergency call was placed. Ms. Sheppard was later pronounced dead.
26. On or around May 17, 2020, an OUC telecommunicator responding to a distress call concerning a newborn failed to follow OUC's address verification policy and, as a result, sent FEMS to the wrong address. Additionally, the call taker failed to provide appropriate life-saving pre-arrival instruction to the caller. When first responders finally arrived at the correct address over thirty minutes following the call's commencement, the newborn was in cardiac arrest.

27. In August 2020, three men boating on the Potomac made a maritime distress call, which was routed through OUC. Instead of directing emergency services to the Potomac River as it should have, OUC incorrectly dispatched fireboats and police harbor patrol units to the *Anacostia* River, which is more than five miles from the Potomac River where the distress call originated. The dead bodies of the three boaters were later found in the Potomac River.
28. Under Mayor Bowser’s leadership, Defendants repeatedly sought to conceal errors and mismanagement by OUC and to downplay serious, life-threatening—and often fatal—mistakes.
29. For example, in response to the house fire incident in 2019, then-Director Holmes staunchly defended the handling of the emergency call and asserted that the four minutes it took for OUC to dispatch responders—four times longer than the national standard—was “as fast as we could.”
30. When asked by a D.C. Council Member why a fire engine couldn’t immediately be sent in response to a fire, then-Director Holmes stated that the “dispatcher was not clear what type of fire it was” and suggested obtaining details about the fire was a reasonable justification for delaying dispatch in an emergency.
31. Mayor Bowser also repeatedly defended OUC and praised then-Director Holmes after then-Director Holmes stood by the actions of OUC. For example, shortly after the 2019 house fire incident, Mayor Bowser stated that D.C. residents were “lucky to have Karima Holmes run our 911 call center.”
32. Additionally, leadership often sought to circumvent FOIA requests without a legitimate justification, and refused to make information publically available.

33. As errors continued, and the death count caused by the errors rose, pressure mounted by D.C. residents and ultimately, the D.C. Council, for an audit of OUC to be conducted.
34. Initially, both Mayor Bowser and then-Director Holmes vehemently opposed the audit, suggesting that it was unnecessary.
35. Ultimately, in the Fall of 2020, the Office of the D.C. Auditor (“ODCA”), an independent agency, announced it would be conducting a formal review of OUC. At the time, D.C. Auditor Kathleen Patterson stated the purpose of the review was to “evaluate the effectiveness of OUC’s 911 Operations Division against national standards, review a sample of 911 call recording and data, evaluate OUC culture and training, review OUC’s technological capabilities, and review OUC’s internal investigations of past incidents.”
36. Shortly after the announcement that an audit would be conducted, in December 2020, then-Director Holmes announced her resignation, effective January 2021, prior to the commencement of the audit. At the time, Mayor Bowser continued to heap praise on then-Director Holmes’s work and told reporters that she was not considering making major changes to OUC despite the numerous mishaps.

Ms. Subido’s Qualifications and Background

37. Ms. Subido began her career in public safety as an Emergency 911 dispatcher for the Seattle Police Department (“SPD”) starting in or about 1989. During her tenure with the police department, Ms. Subido excelled in her position and was promoted to SPD’s Training Supervisor.
38. After her exemplary service with the SPD, Ms. Subido became the Seattle King County Emergency Medical Services Program Administrator, a position she held for 18 years. In

that capacity, she was focused on issues of public health equity and social justice as related to EMS, 911 and public safety response.

39. While at Public Health Seattle and King County, she managed the project for the development and revision of, and subsequently managed the use of, the Emergency Medical Triage program, Criteria Based Dispatch (“CBD”), a 911 triage program which became widely renowned as the premier and most effective emergency communications triage program. Localities across the nation, and even internationally, adopted CBD, and Ms. Subido regularly provided training on the use of CBD, as she was considered the leading expert on the program.
40. Ms. Subido first came to work for the District of Columbia via a recommendation by former DC Fire Chief Gregory Dean, who had worked with Ms. Subido during his 44 years as a firefighter in Seattle, including his last ten years in Seattle as Fire Chief prior to joining the DC Fire and Emergency Medical Services Department (“FEMS” or “DC FEMS”). Chief Dean was aware of Ms. Subido’s stellar qualifications and track record of success, and thought she was the best candidate to bring effective change to the troubled OUC, which had been plagued by documented failures to properly respond to emergency calls.
41. Upon his appointment by Mayor Bowser, Chief Dean discovered that OUC was using a program called “Medical Priorities,” which did not meet the needs of the fire program and was not comparable to the state-of-the-art CBD program used in Seattle and elsewhere. More than that, DC’s license to use “Medical Priorities” had been revoked because it was not using it properly. Chief Dean thus sought a license for CBD, and

hired Ms. Subido to train DC personnel on how to use it, as she had successfully done for numerous localities around the country.

42. Based on Chief Dean's recommendation, Ms. Subido travelled to DC for approximately one month in 2019 to conduct trainings, during which time a position opened for the Chief of the Office of Professional Standards and Development ("OPSD") within OUC. She applied and was accepted to the position.

43. Ms. Subido began her employment as Chief of OPSD in January 2020.

44. As Chief of OPSD, she reported directly to then-Director Holmes. Ms. Subido's responsibilities included providing training for all new employees, as well as education and developmental training for other employees, from frontline call takers to executive management.

Appointment and Tenure as Interim Director

45. Following former-Director Holmes's resignation, Ms. Subido became OUC's Interim Director on or about January 22, 2021, and served in that capacity until on or around March 2, 2022, when Mayor Bowser announced her reappointment of former-Director Holmes as OUC's Interim Director.

46. At all times during her tenure as Interim Director, Ms. Subido's first line supervisor was Deputy Mayor Chris Geldart.

47. Upon assuming the Interim Director position, Ms. Subido was astonished to discover problems at OUC that were worse than previously publicized, and which exceeded any she had seen in her previous 31 years of experience as a public safety professional.

48. As Interim Director, Ms. Subido started by conducting her own internal audit of OUC. She found that OUC was understaffed and that staff lacked adequate supervision, that

absenteeism was extreme, and that staff lacked adequate training. She also found that OUC was using outdated technology.

49. Through her audit, Ms. Subido further uncovered issues related to OUC's chronic failures in timely answering calls, its failure to track complaints accurately, and its refusal to release 911 audio.
50. Ultimately, Ms. Subido concluded that both staffing levels and supervisory ratios, training, and dispatch times did not align with national standards.
51. Ms. Subido provided her conclusions to Deputy Mayor Geldart, both verbally during their regularly scheduled monthly meetings, and in a memorandum she produced and delivered to Deputy Mayor Geldart in or around May 2021, and again, in or around July 2021. In at least one meeting in the Spring of 2021, Deputy Mayor Geldart warned Ms. Subido to tread carefully and not pursue her concerns as it would upset Mayor Bowser and would likely result in Mayor Bowser firing Ms. Subido.
52. Moreover, Ms. Subido discovered through her audit that data about OUC's performance reported under then-Director Holmes was inaccurate. Ms. Subido informed Deputy Mayor Geldart that, although OUC had reported figures related to OUC's performance to the Mayor and the Council, the numbers reported were inaccurate and inflated because of the prior administration's instructions on how to measure speed to answer. Specifically, the time was not being recorded from the time the call was first placed, meaning when the call hit the network trunk or as soon as the last "1" of "911" was dialed, as it should have been in order to accurately assess the speed to answer.
53. Ms. Subido took immediate action to correct the speed to answer calculations that had previously been designed to inflate OUC's performance and misleadingly suggest that

OUC was timely responding to emergency calls on a more frequent basis than was actually the case. Ms. Subido wrote to the Deputy Mayor that she had “taken steps to record the correct calculation,” and further noted that she would “need to update the response to the auditors” to reflect a more accurate speed.

54. Ms. Subido ultimately provided the DC Auditor corrected “speed to answer” times, which were included in the external audit of OUC.
55. Ms. Subido also realized that telecommunicators were not properly responding to abandoned calls. With respect to the abandoned calls, Ms. Subido realized that telecommunicators were not calling back numbers where the call was abandoned or the caller hung up. Given that individuals are often in life-threatening situations when dialing 911, industry standard requires telecommunicators promptly return abandoned calls.
56. With respect to OUC’s failure to adequately track complaints, Ms. Subido noted the process for tracking complaints was “incomplete and not formalized,” leading to inaccurate reporting on the numbers and types of complaints received.
57. With respect to OUC’s failure to release 911 audio, Ms. Subido expressly noted OUC’s “policy of declining to release 911 call audio,” and noted that such a policy was “unusual for a communications center.” Ms. Subido further wrote that she was “undertaking to change this practice to an expectation of transparency when release is in the public interest.” Ms. Subido also discovered that OUC was denying approximately 80% of the Freedom of Information Act (“FOIA”), D.C. requests it received, and that the purported justifications for doing so often lacked a legitimate basis, about which she was particularly concerned. Ms. Subido was concerned that OUC had been withholding

information it was required to provide pursuant to applicable law including D.C. Code §§ 2-532, *et seq.*

58. In order to increase transparency and accountability, Ms. Subido instructed staff to comply with D.C. Code § 2-532, *et seq.*, and release documents in accordance with applicable statutes.
59. With respect to OUC's inadequate staffing and supervision, Ms. Subido raised concerns that the supervisor to direct report ratio was "two or three times" above the recommended ratio, and a single supervisor was typically managing between 15 and 20 staff, which inhibited their ability to ensure quality control and provide appropriate oversight. Specifically, Ms. Subido wrote in her memorandum to Deputy Mayor Geldart that the failure to adhere to national standards led to "frequent missing or overlooking of errors that supervisors should be catching, as well as challenges in enforcing our policies."
60. Additionally, Ms. Subido used the tools provided by NENA and APCO to calculate the staffing needs required to meet national standards and determined that, during the day, at least eighteen people should be manning communication lines, approximately triple the number of staff typically working at any given time. Thus, there existed insufficient staffing levels to provide adequate communications coverage.
61. Errors resulted from OUC's lack of staffing and insufficient oversight. In addition to the high-profile errors discussed above where fatalities were involved, Ms. Subido realized that similar errors were being made on a daily basis. In fact, Ms. Subido documented at least 10 instances in one day where OUC sent responders to the wrong address. Comparatively, Ms. Subido could recollect only one similar incident during her 13 years with SPD.

62. In response, Ms. Subido implemented scheduling changes, which were consistent with both the national standards and CBA requirements, and which allowed for break times that ensured communication lines maintained adequate staffing.
63. Ms. Subido also immediately increased training requirements and developed training for “cardiac arrest, trails, water access areas, NTL, identifying emergencies, crisis communications and more.” Ms. Subido further increased the requirement for training in geography from 16 hours for new employees to 160 hours for new employees, and worked to provide employees with tours of district highways, roads, and routes to “improve [] employees’ knowledge of the best way to ascertain caller location and dispatch resources in those areas.”
64. In addition to internally implementing changes at OUC to comply with DC law and national standards, as well as raising her concerns about safety and mismanagement, both internally to OUC employees and to Deputy Mayor Geldart, Ms. Subido also communicated her concerns publicly to the media and in testimony to the D.C. Council, after which the Mayor’s office made clear to Ms. Subido that it disapproved of such communications.
65. When she was approved to speak with press and media by the Mayor’s Office of Communications, Ms. Subido provided truthful and transparent responses to inquiries. For example, in March 2021, shortly after assuming the OUC Interim Director position, Ms. Subido candidly acknowledged to News 4 that “[a]bout 40% of the time, though, the problem with getting the address was on us.”
66. Thereafter, several months into Ms. Subido’s tenure as OUC’s Interim Director, the Office of Communications stopped granting Ms. Subido permission to communicate with

press or media, in an effort to silence her and quell her attempts to increase public transparency and public acknowledgment of OUC's shortfalls and need for improvement.

67. When Ms. Subido sent out an email to staff in July 2021 announcing that, because of staffing problems, there would be mandatory overtime, even on scheduled days off, and that any additional leave would be restricted until October, the memo was immediately leaked to the press—though not by Ms. Subido—and thus became public knowledge.
68. Deputy Mayor Geldart told Ms. Subido that Mayor Bowser was upset Ms. Subido's email sharing her serious staffing concerns at OUC was leaked and made public.
69. Ms. Subido also repeatedly testified candidly to the D.C. Council about the issues facing OUC, including sharing with the Council her concerns about staffing at OUC after the leaked email received significant publicity.
70. Shortly after Ms. Subido's email raising staffing concerns and detailing some of her efforts to bring staffing levels into compliance with national standards was leaked and made public, Mayor Bowser refused to express support for Ms. Subido as a candidate for permanent Director, telling reporters that she was "still searching for a director." The Office of Communications did not permit Ms. Subido to provide comment on the same story.
71. Based on her communications with the Deputy Mayor, Ms. Subido also understood that the Mayor was unhappy that Ms. Subido provided such comprehensive and accurate information to the D.C. Council regarding the failure to adequately staff the communication lines. Following this testimony, the Mayor's office began to isolate Ms. Subido and refused to engage in meaningful communication with her. For example, the Deputy Mayor began cancelling their regularly scheduled meetings.

72. Ms. Subido’s actions to address OUC’s serious failings yielded positive results, with increased transparency and drastically fewer errors.
73. One reporter investigated and tracked OUC’s errors and found 17 serious errors between February 2020 and July 2021, or an average of more than one per month. Between July 2021 and February 2022, during Ms. Subido’s tenure as OUC’s Interim Director, the same reporter found only one error.
74. During her tenure as Interim Director, Ms. Subido received significant praise from the public, as well as DC Auditor Kathleen Patterson, for her efforts to enact change and remedy OUC’s shortcomings.
75. Council members were also impressed by Ms. Subido’s contributions to OUC. Ward 6 Councilmember and Council Chair for Public Safety Charles Allen explicitly praised Ms. Subido for the improvements she made to OUC’s operations.
76. Reporter and public safety advocate Dave Statter said of Ms. Subido:
- “Cleo Subido came in during a pandemic. As interim director, having no support from Mayor Bowser and Deputy Mayor Geldart and somehow made enormous changes trying to revamp this organization. She moved the ball forward.”

DC Auditor Report

77. Simultaneously to Ms. Subido identifying and raising concerns, and taking steps to bring OUC practices into compliance with D.C. laws, regulations, and corresponding national standards, the D.C. Auditor commenced the audit that was commissioned prior to Ms. Subido’s assumption of the OUC Interim Director role, and which encompassed the 2019-2020 time period, prior to Ms. Subido’s tenure as Interim Director.

78. When the external audit took place shortly after Ms. Subido became OUC's Interim Director in early 2021, Ms. Subido declared an open access policy, as she believed the external audit was an important check on the practices of OUC and that the results would lead to positive change. She gave auditors access to anything they wanted to see, told her chiefs to do the same, and encouraged employees to meet with auditors while on duty.
79. When Ms. Subido informed the Deputy Mayor that she was giving the auditors free reign, he reiterated to her that the Mayor's office was unhappy that the audit was being conducted.
80. On October 19, 2021, the external audit commissioned by the DC Auditor was released.
81. The audit's findings were consistent with the concerns Ms. Subido raised about OUC's deficiencies.
82. Specifically, the audit found: inadequate oversight of call-taking and dispatch operations at OUC; inconsistent or ineffective use of CBD scripted call-handling protocols by OUC's call-takers, made evident by improvised questioning of 911 callers by OUC call-takers; inconsistent use of Location Determining Locations ("LDTs") by OUC call-takers to locate 911 callers or confirm the locations of reported events; an over-complicated "event type" selection process for complaints about OUC's performance; and inconsistent follow-up on results of OUC quality assurance reviews.
83. The audit also found that, during calendar years 2019 and 2020—during former-Director Holmes's tenure—OUC was not in compliance with national standards for time to answer 911 calls. Specifically, in 2019, OUC was noncompliant with the 90th percentile time requirement for seven months out of the year, and noncompliant with the 20-second answer, 95th percentile time requirement in any month except February 2019. In 2020,

OUC was noncompliant with the 15-second answer, 90th percentile requirement for two months out of the year, and was noncompliant with the 20-second answer, 95th percentile requirement for six months out of the year.

84. Further, the audit found that, for 2019 and 2020, OUC was not compliant with the 60-second answer to notification requirement in any month during 2019 and 2020.

85. In her cover letter conveying the damning audit report to Mayor Bowser and the D.C. Council, DC Auditor Kathleen Patterson expressed appreciation for OUC's cooperation in conducting the audit, and specifically drew attention to Ms. Subido's written comments, including noting areas where Ms. Subido had undertaken reform efforts.

86. In Ms. Subido's written response to Auditor Patterson, she conveyed that, while OUC's frequency of abandoned calls—calls to 911 that did not get answered before the caller disconnected—were unacceptably high upon her assumption of the Interim Director position, she had implemented training and supervisory reinforcement that had drastically reduced the number of unanswered calls. Further, Ms. Subido noted that she had made progress on improving the accuracy of OUC call takers' location determination by deploying RapidSOS location determining technology. Finally, Ms. Subido responded to the audit's findings, indicating agreement therewith that, in 2019 and 2020, prior to Ms. Subido's tenure, OUC's failings included OUC call-takers failing to effectively engage with 911 callers and provide timely, accurate responses, and OUC call-takers failing to accurately identify locations to which emergency services were needed. Ms. Subido noted that OUC's performance in these areas were significantly improved in 2021 under her leadership, and publicly shared with Auditor Patterson her plans for continuing to improve OUC's performance in these areas in the future, which included providing OUC

employees additional and continuous training, aided in part by the observations of trained quality specialists Ms. Subido brought in to work alongside OUC's call-takers and evaluate those areas where training was most needed.

Non-Promotion and Transfer to DC FEMS

87. When former-Director Holmes departed in January 2021 and Ms. Subido became Interim Director, it was announced that DC would be undertaking a nation-wide search for a new Director.
88. During the time Ms. Subido was Interim Director, she was given the impression by multiple people, including and especially Deputy Mayor Geldart, that she would be appointed permanent OUC Director.
89. Ms. Subido was also given repeated assurances that she would be appointed permanent OUC director by the Police Chief, Fire Chief, Chief of Staff in the Fire Department, Chief of FEMS, and FEMS Chief of Staff Amy Mauro (who has recently resigned her position), all of whom supported her appointment to the Director position.
90. However, on February 23, 2022, Mayor Bowser announced that Ms. Holmes would return as OUC Director, and installed her as Interim Director pending confirmation by the DC Council.
91. The public, community associations and organizations, and even DC Councilmembers expressed shock and outrage about the Mayor's decision. Ward 6 councilmember Charles Allen stated that he was surprised that Ms. Subido was not appointed to the Director position and expressed concern that, under Ms. Holmes, there would be a "backslide on the improvements" made under Ms. Subido's leadership. Similarly, At-Large council member Robert White stated he was "concerned that [Ms.] Holmes is

being reappointed... [u]nder her leadership, there's been unacceptable and dangerous behavior" including the "fail[ure] to meet national standards when it came to answering priority calls for fire and emergency medical services in a timely manner," and that, under Ms. Holmes' direction, "OUC call-takers did not use new technologies to locate and confirm the location of reported events which proved deadly."

92. Employees also expressed dismay at Mayor Bowser's decision. After learning that Ms. Subido was not selected for the Director position, one employee penned a lengthy email thanking Ms. Subido for, among other things, "changing the culture of the agency as a whole...[a]nswering more calls in the history of the agency, with less waiting time, less call drop in 10-15 years...making us less in the news than the previous administration [sic] combined...putting the agency first than any self interest."

93. FEMS Chief Donnelly noted that Ms. Subido's "leadership [at OUC] resulted in... an improved call to answer time for all 911 calls, and an improvement in monitoring of our dispatch channels."

94. At the time Ms. Holmes was selected for the OUC Director position rather than Ms. Subido, Ms. Subido was not provided any explanation for the Mayor's decision.

95. After Ms. Holmes's return was announced, OUC offered to create a position for Subido so that she would stay on, but, when it became clear to Ms. Subido that the position would have no real authority and in effect be a demotion, she declined.

96. Ms. Subido was then offered a new position within DC FEMS and was asked to write a job or position description ("PD") because the Fire Chief, John Donnelly, wanted her to encumber a new position acting as liaison between FEMS and OUC and where she would also provide oversight and quality control to OUC.

97. Ms. Subido created the job description according to Chief Donnelly's wishes and, after sending it to FEMS Chief of Staff Amy Mauro, Ms. Subido learned of resistance from the Mayor's office to her encumbering such a position that would have so much oversight over OUC. Ultimately, no action was taken on implementing the PD that Ms. Subido was asked to prepare and the position was never created.
98. FEMS then moved Ms. Subido into an open position and changed the grade. Her title was Emergency Communications Chief, and she was responsible for the fire dispatchers, essentially serving as a *de facto* liaison between FEMS and OUC, and overseeing communication between FEMS and OUC.
99. When Ms. Subido began working at DC FEMS, on or around March 22, 2022, Ms. Subido attended a meeting with Chief Donnelly. During a private conversation during the meeting, Chief Donnelly suggested he understood Ms. Subido was not selected for the OUC Director position because of the attention she drew to OUC's failures during her tenure as OUC's Interim Director.
100. In her new position, Ms. Subido continued to raise concerns about the failings at OUC. Ms. Subido learned that Ms. Holmes quickly reversed many of the policies and practices Ms. Subido had implemented, as well as the staffing decisions Ms. Subido had made, which were critical to bringing OUC into compliance with national standards.
101. Following her departure from OUC, employees at OUC frequently contacted Ms. Subido with concerns about specific communications or circumstances that OUC mishandled, and requested Ms. Subido's advice on how to address such situations.
102. In verbal communications and emails, Ms. Subido also disclosed her ongoing concerns to Chief Donnelly, including the refusal by the Mayor's office to take any

meaningful action to address failings that were causing unnecessary deaths. Ms. Subido complained that during her tenure as Interim Director she was pressured to “withhold things and to put a spin on things I knew were not true.”

103. In one email to Chief Donnelly, Ms. Subido expressed her shock at how the administration was so “unwilling to do what it needed to fix a dire situation” and she explained that “it was clear that no matter what fact or evidence I brought forward, the response was merely that we were seen as a premier 911 center and there’s nothing to see here.” Ms. Subido continued to explain that in her 32-year career in emergency services she had “worked with large, medium, and small [communications] centers all [over] the nation and internationally....This was the worst [she had] ever seen”.

104. Ms. Subido also reiterated her concerns about the staffing levels, explaining “[t]he fact that they understaff all the time brings so much pressure on the people that are there to work twice as hard. That is why we have so many errors. The call takers are exhausted.”

105. Ms. Subido expressly notified Chief Donnelly that, in her role at FEMS, she listened to radio communications between emergency responders and OUC call-takers, by which she observed multiple OUC errors “five or six [times] a day, including blown addresses that we were never told about to investigate...[t]he people that work there are very well aware of the many mistakes that happen every day” but she noted “the public knows about very few of them.” Ms. Subido expressed that, because she no longer served as Interim Director, she felt helpless to prevent the reversion to practices and policies that were inconsistent with national standards.

106. Ms. Subido also raised concerns directly to OUC. When she learned of errors at OUC, such as through direct observation listening to radio communications between OUC and emergency responders, she contacted Heather McGaffin, then-Deputy Director at OUC (now Acting Director of OUC), to inform her of the errors. An appropriate OUC response to such reports about OUC errors would be to list the error in the complaint database, investigate the error, and respond with the findings. However, it became clear that Ms. McGaffin either was not appropriately logging complaints, or was attempting to justify the action and minimize the error. For example, on one occasion, Ms. Subido raised to OUC her concern that OUC did not send a medic to a call where CPR was in progress on an infant. Instead, OUC sent a rescue squad, trained to break into locked vehicles or buildings, without a medic. Rather than investigate the source of the error and address how to prevent such an error from occurring again, OUC instead sought to justify sending a rescue squad instead of a medic unit by misconstruing the statements made by the caller.

107. Ms. Subido also made multiple efforts to speak with Ms. Holmes about her concerns, but her efforts were futile. Ms. Subido explained to Chief Donnelly that, under the current leadership, OUC did not “want to admit that they don’t know what they’re doing.”

108. Ultimately, Ms. Subido met with Chief Donnelly and discussed her frustration with OUC’s failure to adequately respond to and address the inexcusable errors that continued. During the meeting, Chief Donnelly stated that, during a meeting with Mayor Bowser, she threateningly told him that FEMS employees, including Ms. Subido, should not make complaints about OUC. Chief Donnelly suggested that, in light of the Mayor’s

warning, and because Ms. Subido's efforts to raise the continuing failures of OUC were futile in any event, Ms. Subido cease her efforts and stop disclosing, attempting to address, and drawing attention to OUC's continuing failures.

109. Ms. Subido feared that rolling back the changes she instituted at OUC would prove harmful, or even fatal, to DC citizens and, under Mayor Bowser and Ms. Holmes' leadership and reversal of the changes Ms. Subido instituted while OUC Interim Director, Ms. Subido's fears were realized.

110. In July 2022, an emergency call was placed to OUC because a newborn baby was in cardiac arrest. OUC dispatched responders to the wrong address resulting in a delay of arrival of first responders. Records show that, seven minutes after dispatching responders, the call taker noticed the error and corrected it in one system but not the system notifying responders of the location. Ultimately, it took over nine minutes for first responders to arrive on the scene. The baby was pronounced dead upon arrival at the hospital. Instead of taking responsibility for the error, OUC instead sought to minimize it by stating that the two addresses are "just around the corner from each other."

111. Just one month later, in August 2022, OUC received an emergency call that a three-month-old baby was left in a hot car. It took more than thirteen minutes for emergency responders to arrive on the scene after confusion by dispatchers resulted in initially cancelling the call for service. The three-month-old died. Deputy Mayor Geldart stated that the time it took dispatchers to arrive was "outside the norm of what we would expect" and that ideally an "ambulance would be there within two minutes for something like this."

112. At least one news outlet, WUSA9, reported that, during Ms. Holmes' tenure as Interim Director beginning in March 2022, five DC residents had died after calling OUC and while waiting for the arrival of first responders. Ms. Holmes again doubled down on the appropriateness of OUC's actions, telling WUSA9 "[w]e don't make as many mistakes as it seems...911 is not broken."
113. On September 27, 2022, Auditor Patterson submitted an update to the D.C. Council on the status of the October 2021 audit recommendations. Auditor Patterson noted that, at the time of the audit, OUC, then headed by Ms. Subido, "appeared committed to addressing the major issues." Auditor Patterson positively referenced Ms. Subido's response to the audit, which generally agreed with the audit's findings. Auditor Patterson then explained that, since that time, the majority of which occurred during Ms. Holmes' tenure as Acting Director, "reforms appeared to have stalled." Specifically, among other things, Auditor Patterson expressed confusion and concern that OUC had not addressed issues with proper training and supervision, that OUC failed to comply with the recommendation that additional supervisors be added to each shift, and that OUC did not provide its supervisors with the recommended training.
114. Both Chief Donnelly and Deputy Mayor Geldart expressed support for transitioning dispatch responsibility to FEMS, which would provide Ms. Subido more control and oversight over emergency communications. In fact, Deputy Mayor Geldart publicly spoke about the plan, telling the Washington Post in August 2022 that "the city has been considering asking the fire department to take over dispatch responsibilities from OUC employees." Auditor Patterson also endorsed this proposal in September 2022, after Ms. Subido had been demoted and reassigned to FEMS. Auditor Patterson

encouraged the Mayor's office to consider moving the dispatching duties to FEMS, given OUC's "apparent reluctance to move forward with [the audit's] recommendations to improve dispatch with the current structure."

115. Additionally, Chief Donnelly asked Ms. Subido to draft operational plans for a proposed FEMS dispatch center, and how it would theoretically work with the current OUC dispatch call center. Ms. Subido completed the proposal and presented it to the executive staff. Her plan was well received, and the FEMS executive leadership was looking forward to moving the proposal forward.

116. Ms. Holmes also expressed to Ms. Subido her support for moving some of the dispatching operations to FEMS under Ms. Subido's supervision.

117. Mayor Bowser, however, publicly refused to consider a plan to move dispatch responsibilities to FEMS at the time that Ms. Subido was working for FEMS, insisting instead that such duties remain with OUC. Privately, Chief Donnelly told Ms. Subido that he met with Mayor Bowser, and that the Mayor was furious at the suggestion removing duties from OUC and reassigning them to FEMS and Ms. Subido. Mayor Bowser made clear to Chief Donnelly that the proposed change would not happen under her term and while Ms. Subido worked at FEMS.

Forced Administrative Leave, Investigation, and Termination

118. As a result of the increase of OUC's mistakes and fatal errors under Interim Director Holmes in 2022, as well as the release of the DC Auditor's findings that OUC was not complying with the audit's recommendations under the leadership of Interim-Director Holmes, public opposition to Ms. Holmes's confirmation as Director grew rapidly in the Fall of 2022.

119. By the beginning of November 2022, it became clear that it would be difficult to obtain the support needed to confirm Ms. Holmes as Director. The D.C. Council was scheduled to vote on the nomination of Ms. Holmes to Director on December 6, 2022.

120. Then, in or about early November 2022, Defendants placed Ms. Subido on administrative leave for unspecified reasons. Specifically, on or around November 4, 2022, Chief Donnelly walked into Ms. Subido's office unscheduled and notified her that she was being placed on administrative leave effective immediately. Chief Donnelly then handed her a letter stating vaguely that she was being placed on administrative leave because she was being investigated by OUC. The letter did not provide any information about the basis for the investigation. Chief Donnelly confirmed that he was unaware of the specific allegations that under investigation by OUC, but shared his belief they were unsubstantiated. He informed Ms. Subido that she was required to turn in all credentials and Agency property, and that her access to Agency systems and email would be immediately cut off.

121. On December 7, 2022, counsel for Ms. Subido sent a letter to Camille Glover, General Counsel for OUC, and Rudy Chounoune Jr., General Counsel for DC FEMS, by both certified mail and electronic mail. The letter notified Defendants that Ms. Subido had retained counsel to represent her and alleged that the actions taken against her violated the DCWPA.

122. On December 9, 2022, Mr. Chounoune acknowledged receipt of the December 7, 2022 letter.

123. On Friday, January 13, 2023, Deborah Bonsack, Human Resources, called Ms. Subido to notify her that she was being terminated from her employment. On the telephone call, Ms. Bonsack did not provide any reason for the termination.
124. By letter, dated January 13, 2023, Chief Donnelly terminated Ms. Subido's employment referencing the pending investigations and purported unspecified conduct.
125. The decision to terminate Ms. Subido was made prior to interviewing Ms. Subido about any alleged concerns, and prior to the conclusion of any alleged investigations.
126. By letter dated February 22, 2023, the DC Office of Unemployment Compensation Benefits approved Ms. Subido for unemployment benefits. In response to Ms. Subido's application for unemployment, Defendants again generally asserted she was terminated because of conduct, but again failed to identify any specific conduct at issue. The DC Office of Unemployment Compensation Benefits found that Defendants "did not provide proof of misconduct" and provided no evidence that Ms. Subido "engaged in misconduct."

**FIRST CAUSE OF ACTION:
RETALIATION IN VIOLATION OF THE DCWPA**

127. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs in support of her claims under the DCWPA.
128. The DCWPA prohibits retaliation "against an employee because of the employee's protected disclosure [to a supervisor or public body] or because of an employee's refusal to comply with an illegal order." D.C. Code § 1-615.52-53(a).
129. Protected disclosures include disclosures made by an employee, including to a supervisor or a public body, that the employee reasonably believes evidences a substantial and specific danger to the public health and safety, violations of federal, state,

or local law, rule, or regulation, gross mismanagement, and/or gross misuse or waste of public resources or funds. D.C. Code § 1-615.52(6).

130. Employees also have the “right to freely express opinions on all public issues, the right to disclose corruption, dishonesty, incompetence, or administrative failures, [and] the right to communicate freely and openly with members of the D.C. Council.” D.C. Code §§ 1-615.58(1), 1-615.58(3).

131. As set forth herein, Plaintiff was an employee within the meaning of the DCWPA. D.C. Code § 1-615.52(3).

132. Mayor Bowser, Deputy Mayor Geldart, and Chief Donnelly are supervisors within the meaning of the DCWPA. D.C. Code § 1-615.52(8).

133. The D.C. Council is a public body within the meaning of the DCWPA. D.C. Code § 1-615.52(7).

134. Ms. Subido made protected disclosures when she disclosed and/or attempted to disclose OUC’s errors, OUC’s failure to comply with requirements of the D.C. Code and national standards, and OUC practices that posed substantial risk to public safety to, *inter alia*, Deputy Mayor Geldart, Chief Donnelly, Mayor Bowser, the DC Auditor, the DC Council, and Deputy Director McGaffin.

135. Ms. Subido reasonably believed that her disclosures evidenced a substantial and specific danger to the public health and safety, violations of federal, state, or local law, rule, or regulation, gross mismanagement, and/or gross misuse or waste of public resources or funds.

136. Defendants were well-aware of Ms. Subido’s protected disclosures, as she communicated or attempted to communicate her concerns directly to Deputy Mayor

Geldart, Chief Donnelly, OUC Deputy Director McGaffin, as well as publicly, including to the DC Auditor and the DC Council.

137. Despite the demonstrable progress Ms. Subido made towards addressing OUC's deficiencies and reducing its rate of failure during her tenure as OUC's Interim Director, and despite public support for Ms. Subido's elevation to OUC Director, Defendants declined to promote Ms. Subido and, instead of appointing Ms. Subido to be OUC's Director, demoted her and returned Ms. Subido's embattled predecessor, Karima Holmes, to the OUC Interim Director position. This retaliatory action constitutes a violation of the DCWPA. D.C. Code §§ 1-615.52, *et seq.*

138. Ms. Subido's protected disclosures and protected activity was a factor in her non-promotion and demotion. Defendants would not have demoted Ms. Subido if Ms. Subido had not made protected disclosures under the DCWPA.

139. Although, following her demotion at OUC, Ms. Subido continued to perform a vital public service in an exemplary and effective manner for the District as FEMS Liaison to OUC, Defendants placed Ms. Subido on administrative leave without providing her any reason, opened an investigation purportedly about Ms. Subido based on unspecified conduct, and ultimately terminated Ms. Subido's employment prior to the conclusion of any investigation and without even conducting an interview with her. This retaliatory action constitutes a violation of the DCWPA. D.C. Code §§ 1-615.52, *et seq.*

140. Ms. Subido's protected disclosures and protected activity were factors in Defendants placing her on administrative leave, opening an investigation about her, and terminating her employment. Defendants would not have placed Ms. Subido on

administrative leave, begun investigating her, and/or terminated her if Ms. Subido had not made protected disclosures under the DCWPA.

141. As a direct result of Defendant's unlawful actions, Ms. Subido suffered economic harm in the form of lost wages, employment benefits, and other incidental financial damages. The precise amount of economic damages will be determined at trial. As a further direct and proximate result of Defendant's unlawful conduct, Ms. Subido has suffered, *inter alia*, emotional harm, damage to her professional reputation, humiliation, pain, suffering, and loss of enjoyment of life.

**SECOND CAUSE OF ACTION:
RETALIATORY HARASSMENT IN VIOLATION OF THE DCWPA**

142. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs in support of her claims under the DCWPA.

143. The DCWPA prohibits retaliation "against an employee because of the employee's protected disclosure [to a supervisor or public body] or because of an employee's refusal to comply with an illegal order." D.C. Code § 1-615.52-53(a).

144. Protected disclosures include disclosures made by an employee, including to a supervisor or a public body, that the employee reasonably believes evidences a substantial and specific danger to the public health and safety, violations of federal, state, or local law, rule, or regulation, gross mismanagement, and/or gross misuse or waste of public resources or funds. D.C. Code § 1-615.52(6).

145. Employees also have the "right to freely express opinions on all public issues, the right to disclose corruption, dishonesty, incompetence, or administrative failures, [and] the right to communicate freely and openly with members of the D.C. Council." D.C. Code §§ 1-615.58(1), (3).

146. Ms. Subido made protected disclosures when she disclosed and/or attempted to disclose OUC's errors, OUC's failure to comply with requirements of the D.C. Code and national standards, and OUC practices that posed substantial risk to public safety to, *inter alia*, Deputy Mayor Geldart, Chief Donnelly, Mayor Bowser, the DC Auditor, the DC Council, and Deputy Director McGaffin
147. Retaliation includes harassment by subjecting an employee to "excessive scrutiny, because of the employee's protected disclosures and/or activity, and/or because of the employee's perceived protected disclosures and/or activity. *See McCall v. D.C. Hous. Auth.*, 126 A.3d 701, 707 (D.C. 2015); D.C. Code § 1-615.52(a)(5)(A); D.C. Code § 1-615.52(a)(9).
148. Defendants demoted Ms. Subido, placed her on administrative leave without providing her any reason, opened an investigation purportedly about Ms. Subido without providing specifics of the alleged conduct, and ultimately terminated Ms. Subido's employment prior to the conclusion of any investigation and without even conducting an interview with her. These retaliatory actions constitute one violation of unlawful retaliatory harassment under the DCWPA. D.C. Code § 1-615.52 *et seq.*
149. Defendants' decision to demote Ms. Subido, place her on administrative leave, open an unfounded investigation about her, and terminate her employment, amounted to a campaign of harassment to retaliate against her for making protected disclosures. Defendants would not have demoted Ms. Subido, placed her on administrative leave, opened an investigation into her, or terminated her absent her protected disclosures and/or protected activity.

150. As a direct result of Defendant's unlawful actions, Ms. Subido suffered economic harm in the form of lost wages, employment benefits, and other incidental financial damages. The precise amount of economic damages will be determined at trial. As a further direct and proximate result of Defendant's unlawful conduct, Ms. Subido has suffered, *inter alia*, emotional harm, damage to her professional reputation, humiliation, pain, suffering, and loss of enjoyment of life.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment and the following relief, as entitled under D.C. Code § 1-615.54

- A. Declaratory judgment that the Defendant violated the DCWPA;
- B. All appropriate injunctive relief, including an Order that Defendant permanently ensure OUC is compliant with national guidelines and appropriately responsive to the needs of the citizens of the District of Columbia;
- C. Reinstatement of Plaintiff to her employment with the District of Columbia;
- D. Restoration of Plaintiff's lost benefits;
- E. Back pay and interest on back pay;
- F. Compensatory damages;
- G. Statutory fine of \$10,000 for each Defendant;
- H. Appropriate disciplinary action for the retaliating officials;
- I. Reasonable attorneys' fees and costs; and
- J. Such other relief as the Court deems proper and equitable, and as the nature of this cause of action may require.

DEMAND FOR A JURY TRIAL

Plaintiff demands a jury trial as to all issues so triable.

Dated: March 2, 2023

Respectfully submitted,



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