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Appellate Case No.: 70831-7-I

**IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON DIVISION ONE**

Appeal from Case No.: 12-2-02451-9

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH**

The Honorable Commissioner Tracy Waggoner presided 08/09/2013

The Honorable Judge George Bowen presided 08/28/2013

STACEY KINCHEN

Appellant,

V.

AMIN KORAYTEM

Respondent

REPLY BRIEF OF APPELLANT

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APPELLANT'S BRIEF
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COURT OF APPEALS
DIVISION ONE
STATE OF WASHINGTON

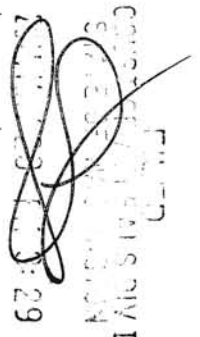


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I. REPLY

REGARDING OBJECTION AND MOTION TO STRIKE:

On April 16, 2014 Kinchen filed a Motion to Strike Koraytem's brief in whole or in part and a Motion to Present Attorney's Fee Agreement, Payment Information, Affidavit and CD of Report Proceedings. (APP. at Ex. A, Ex. B and Ex. C).

On April 22, 2014 Commissioner Masako Kanazawa denied Kinchen's Motion stating:

As to Kinchen's motion to strike, the panel of judges considering this case can decide whether any portion of Koraytem's brief should or should not be considered. Citing: Engstrom v. Goodman, 166 Wn. App. 905, 909 n.2, 271 P.3d 959 (2012) ("So long as there is an opportunity (as there was here) to include argument in the party's brief, the brief is the appropriate vehicle for pointing out allegedly extraneous materials – not a separate motion to strike."). Kinchen's RAP 9.11 motion presents no analysis on the six elements of the rule to demonstrate why this Court should take the attached document and CD as additional evidence. In fact, Kinchen states "all issues Kinchen raised in this review [are] in the file and in the record as Kinchen raised the issues in the Motion to Vacate and Motion for revision hearings."

(1.) Kinchen was not barred from striking Koraytem's Brief in a separate Motion.

In Engstrom v. Goodman, 166 Wn. App. 905, 909 n.2, 271 P.3d 959 (2012) that Commissioner Masako Kanazawa cited, it did not bar Kinchen from striking Koraytem's Brief in a separate Motion.

Kinchen contends that the Engstrom Court more so discussed that "a motion or order to strike is not a motion or order to seal or destroy." In fact that court held:

I. REPLY (CONTINUED)

- (i) *The court did not abuse its discretion by striking the declarations.*

*"A motion or order to strike is not a motion or order to seal or destroy." Court records can be sealed in some circumstances using the procedures in GR 15. But they cannot be destroyed unless destruction is expressly permitted by statute. GR 15(h). The rules make no provision for having documents "removed." By "striking" 963*963 the declarations, the court merely declared them inadmissible as evidence, with the effect that they would not be considered in support of Engstrom's motion to strike the request for trial de novo.*

Kinchen contends that his Motion to Strike could have been granted ruling that the portions of Koraytem's Brief that Kinchen argued will not be considered by the panel of judges considering this case. This could have saved Kinchen a great deal of time from arguing unnecessary issues and the panel of judges from considering unnecessary issues.

- (ii) *See, Hirata v. Evergreen State Limited Partnership No. 5, 124 Wash. App. 631, 103 P. 3d 812, Wash. App. Div. 1, 2004. December 13, 2004.*

*Where Outback's Motion to Strike Section A of Respondent's Statement of the case was granted. Section A was not supported by the record designed by the parties on review. RAP 10.3(b)(incorporating RAP 10.3(a)(4)); Citing, *Northlake Marine Works v. Seattle*, 70 Wash. App. 491, 513, 857 P.2d 283 (1993).*

- (2.) **Kinchen should be allowed to present Attorney's Fees Agreement, Payment Information, Affidavit and CD of Report Proceedings for this review.**

I. REPLY (CONTINUED)

Commissioner Masako Kanazawa contends that Kinchen's **RAP 9.11** motion presents no analysis on the six elements of the rule to demonstrate why this Court should take the attached document and CD as additional evidence.

- (i) ***The appellate court may direct that additional evidence on the merits of the case be taken before the decision of a case on review if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court. RAP Rule 9.11(a)***

Kinchen contends that he meets all six criteria's of **RAP Rule 9.11(a)**. Kinchen contends that he meets the criteria of **9.11(a)(1)** because Koraytem opened the door to the argument that Kinchen purposely waited 1 year before filing his Motion to Vacate. **(Brief of Koraytem at P. 13-14)**.

Kinchen contends that for this court to deny him the opportunity to fairly rebut Koraytem's issue raised, by presenting the documents needed that show that Kinchen hired Attorney Raymond Gessel to represent him in the Motion to Vacate and was therefore out of his hands would be a great miscarriage of justice.

I. REPLY (CONTINUED)

Kinchen contends that he meets the criteria of **RAP Rule 9.11(a)(3)** as the record fails to show this evidence because this is Koraytem's first time raising this issue or if raised in trial court Kinchen was prevented from presenting the evidence because of Koraytem's lack of service of his response to Kinchen's Motion to Vacate.

REGARDING CASE:

This case that's before the above-entitled court is about whether Amin Koraytem mailed Stacey Kinchen a statement within 14 days of Kinchen moving out of Koraytem's rental town home, whether Koraytem served Kinchen with a Three Day Notice prior to filing his Unlawful Detainer Action, whether Koraytem properly served Kinchen with Summons and Complaint after converting his Unlawful Detainer Action into a Civil Action, whether Snohomish County Superior Court had jurisdiction, whether Koraytem properly served Kinchen with Notice to Convert Unlawful Detainer Action into Civil Action, whether Koraytem credited Kinchen for all of Kinchen's deposits at the time of obtaining his judgment in Snohomish County Superior Court, and whether Koraytem's attorney, James Hawes committed fraudulent acts and misrepresentations to obtain Koraytem's judgment.

REGARDING KORAYTEM'S BRIEF:

However; Koraytem's opposing brief failed to meet the criteria's required to argue the issues that Kinchen presented for review.

I. REPLY (CONTINUED)

Kinchen contends that Koraytem's opposing brief is all over the place and difficult to understand what he's actually arguing at times as Koraytem first raised new issues and arguments for the first time that he failed to raised and argue at trial court level during the Motion to Vacate Judgment and the Motion for Revision.

In Koraytem's opposing brief he argued and presented issues regarding the scope of this review that has already been ruled on by Commissioner, Mary Neel where he failed to object. Koraytem argued and raised issues regarding the timely filing of Kinchen's Motion to Vacate and Bankruptcy filings that are irrelevant and has no bearings in this case whatsoever.

Kinchen contends that Koraytem failed to assign Assignment of Error for his arguments, the majority being pages 1 through 20 that made it very difficult to know which issue that he was arguing that Kinchen presented.

Kinchen contends that all of Koraytem's arguments and issues raised that **do not** contain Assignment of Error as well as issues raised that has already been ruled on **should not** be considered in this review.

- (3.) **Koraytem's arguments and issues must be within the Scope of Kinchen's Motion to Vacate Judgment heard on August 9, 2013 and Motion for Revision heard on August 28, 2013.**

Kinchen contends that he filed his Motion for Revision based on **LCR 53.2** and **RCW 2.24.050.**

I. REPLY (CONTINUED)

Kinchen contends that Koraytem's arguments and issues raised must be within the Scope of Kinchen's Motion to Vacate Judgment heard on August 9, 2013 and Motion for Revision heard on August 28, 2013.

Kinchen further contends that Koraytem is barred from raising any new issues in this review that he did not raise in the Motion to Vacate Judgment and Motion for Revision hearings.

- (i) *All of the acts and proceedings of court commissioners hereunder shall be subject to revision by the superior court. Any party in interest may have such revision upon demand made by written motion, filed with the clerk of the superior court, within ten days after the entry of any order or judgment of the court commissioner. Such revision shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner, and unless a demand for revision is made within ten days from the entry of the order or judgment of the court commissioner, the orders and judgments shall be and become the orders and judgments of the superior court, and appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge. RCW 2.24.050.*

See In re the Marriage of Lela L. Moody, Respondent, and Homer, 976 P.2d 1240 (1999), 137 Wash.2d 979

Where Homer filed a motion for revision by a superior court judge, pursuant to CR 53.2(e) and RCW 2.24.050. In the revision proceeding, Homer attempted to raise new issues and offer new evidence, claiming fraud on the part of Lela and her attorney and illegality of the decree of legal separation and property settlement agreement. The superior court judge refused to permit the additional evidence and refused to consider the new issues, holding that review on a motion for revision was limited to review on the existing record. The superior court judge then agreed with the court commissioner and denied the motion .

I. REPLY (CONTINUED)

Homer appealed. The commissioner of the Court of Appeals affirmed on a motion on the merits, and Homer's motion to modify that ruling was denied by the Court of Appeals. Homer then petitioned for review, and The Supreme Court granted the petition.

The Supreme Court held that the superior court judge correctly refused to consider the new issues and new evidence offered on the motion for revision.

- (ii.) *The appellate court may refuse to review any claim of error which was not raised in the trial court. RAP 2.5(a).*

See State v. Grimes, 165 Wn. App. 172.

This court held that Grimes cannot raise this issue for the first time on appeal because he failed to object to the instruction at trial.

See also Smith v. Shannon, 666 P. 2d 351, for more discussion on this issue.

Regarding Introduction

(Brief of Koraytem at P. 1, § B at P. 2, § C at P. 2 and § D at P. 2):

- (4.) **Koraytem's Brief, Arguments and Statements do not meet the requirements of RAP Rule 10.3(a) and RAP Rule 10.3 (b).**

Kinchen contends that Koraytem's Brief, Arguments and Statements **do not** meet the requirements of **RAP Rule 10.3(a)** and **RAP Rule 10.3 (b)** as he **did not** seek review of the issues raised, **do not** assign Assignment of Error and **do not** answer and or relate to the issues Kinchen presented for review.

I. REPLY (CONTINUED)

- (i.) *A separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error. RAP 10.3(a).*
- (ii.) *If a respondent is also seeking review, the brief of respondent must state the assignments of error and the issues pertaining to those assignments of error presented for review by respondent and include argument of those issues. RAP 10.3(b).*

See City of Seattle v. Crispin, 149 Wash.2d 896, 71 P.3d 208, Wash., 2003. June 19, 2003.

Where the City argued that Crispin's failure to appeal the 1997 interpretation should not allow him to relitigate the issue, since a proper LUPA appeal was not pursued. The Court held that the City did not timely identify the issue for our review as required by RAP 10.3(a) or RAP 10.3(b).

- (iii.) *The Brief of Respondent should conform to section (a) and answer the Brief of Appellant or Petitioner. RAP 10.3(b).*

See Litho Color, Inc. v. Pacific Employers Ins. Co., 98 Wash.App. 286, 991 P.2d 638, Wash.App. Div. 1, 1999. September 20, 1999 (Approx. 16 pages)

This court held that Sanctions under RAP 10.7 may well be appropriate for counsel who neglect to meet the requirements of RAP 10.3. Citing: Hurlbert v. Gordon, 64 Wash.App. 386, 824 P.2d 1238, review denied, 119 Wash.2d 1015, 833 P.2d 1389 (1992)

- (5.) **Koraytem is barred from raising the issue regarding the Scope of Review of this review.**

Kinchen contends that Koraytem is barred from raising the issue regarding the Scope of Review of this review as Koraytem has raised throughout his entire Brief as Koraytem ***did not*** file an answer by ***November 21, 2013*** as Commissioner, Mary Neel ordered.

I. REPLY (CONTINUED)

More so; Koraytem ***did not*** object timely by Motion to Modify Commissioner, Mary Neel's order within ***30 days, December 6, 2013***, pursuant to ***RAP 17.7***.

- (i) ***An aggrieved person may object to a ruling of a commissioner or clerk, including transfer of the case to the Court of Appeals under rule 17.2(c), only by a motion to modify the ruling directed to the judges of the court served by the commissioner or clerk. The motion to modify the ruling must be served on all persons entitled to notice of the original motion and filed in the appellate court not later than 30 days after the ruling is filed. A motion to the Justices in the Supreme Court will be decided by a panel of five Justices unless the court directs a hearing by the court en banc. RAP 17.7.***

See Detention of Broer v. State, 93 Wash. App. 852, 957 P.2d 281, Wash. App. Div. 1, 1998., June 15, 1998.

Where Broer sought review of four orders. But the court commissioner's ruling narrowed the court review to the contempt order and the order directing the mental examination. This court held, if an aggrieved party fails to seek modification of a commissioner's ruling within the time permitted by RAP 17.7, the ruling becomes a final decision of this court. Because neither party sought review of the commissioner's ruling directing the mental examination and the contempt order.

Citing: Kramer v. J.I. Case Mfg. Co., 62 Wash.App. 544, 547, 815 P.2d 798 (1991); Gould v. Mutual Life Ins. Co., 37 Wash.App. 756, 758, 683 P.2d 207 (1984).

Regarding Response to Assignments of Error/Statement of Issues (Brief of Koraytem at P. 2-4):

- (6.) **Koraytem's issues raised are new issues that weren't raised in trial court**

I. REPLY (CONTINUED)

Kinchen contends that Koraytem's issues raised are new issues that weren't raised in trial court.

Kinchen further contend that Koraytem's issues raised do not answer and relate to the issues Kinchen presented for review.

- (i) *See Wachovia SBA Lending v. Kraft, 138 Wash. App. 854, 158 P.3d 1271, Wash. App. Div. 2, 2007. May 30, 2007.*

*Where Wachovia alleged unjust enrichment. But it does not explain how, if at all, that action bears on the present appeal. Accordingly, we do not consider it. See RAP 10.3(b); Citing: *State v. Dennison, 115 Wash.2d 609, 629, 801 P.2d 193 (1990).**

**Regarding Legal Authority and Argument, Summary
(Brief of Koraytem at P. 11-12),**

- (7) **Kinchen's Motion for Order Vacating Judgment was the appropriate vehicle for asking for relief due to the circumstances as many of Kinchen's issues raised weren't discovered until long after the Summary of Judgment making it impossible to address the issues on appeal.**

Here Koraytem contends that Kinchen's Assignments of Error and Statement of Issues cited should not be considered because they were raised or should have been raised in the Motion for Summary of Judgment and therefore should have been raised in an appeal of the Order on Summary of Judgment.

I. REPLY (CONTINUED)

Kinchen contends that the Motion for order Vacating Judgment was the appropriate vehicle for asking for relief because many of Kinchen's issues weren't discovered until long after Koraytem's Summary of Judgment making it impossible to address the issues on appeal.

- (i) *On August 7, 2013, Kinchen discovered that he was never served with Declarations and Notices at ("CP") # 19, P. 312-319. (Declaration P. 3, ("CP") at # 63, P. 185-187).*
- (ii) *On August 7, 2013, Kinchen discovered that he was never served with Koraytem's Calendar Note and Motion to Convert Unlawful Detainer into Civil Action at ("CP") at # 28, P. 288-289. (Declaration P. 3, ("CP") at # 63, P. 185-187).*
- (iii) *On August 12, 2013, Kinchen discovered that Koraytem failed to credit Kinchen for all of Kinchen's deposits and Koraytem's attorney, James Hawes fraudulently, intentionally, misrepresented the facts stating Koraytem had credit Kinchen for all of his deposits. (Declaration P. 2 at ("CP") at # 66, P. 71-170).*

Kinchen contends that some of Koraytem arguments are repeated issues that's been raised within his brief along with new issues raised for the first time which Koraytem is barred from raising.

Here Koraytem raises repeated issues regarding the scope of review which he's barred from raising as discussed above.

Here Koraytem's arguments fail to answer and relate to Kinchen issues raised as well.

- (i) *See Tyner v. State, 137 Wash. App. 545, 154 P.3d 920, Wash. App. Div. 2, 2007. March 13, 2007.*

I. REPLY (CONTINUED)

DSHS cross-appeals the trial court's order denying defendants' motion to strike attachments to affidavit of Paul Lindenmuth. Because DSHS fails to assign error or provide any argument on this issue, we do not address it. RAP 10.3(b).

- (ii.) *See Hough v. Ballard, 108 Wash. App. 272, 31 P.3d 6, Wash. App. Div. 2, 2001. August 31, 2001.*

This court held, if an aggrieved party fails to seek modification of a court commissioner's ruling within the time permitted, the ruling becomes a final decision of the court. RAP 17.7.

Regarding Legal Authority and Argument, Standard on Review (Brief of Koraytem at P. 12-13):

- (8.) **Kinchen's case and Assignments of Error is not a matter of error of law and is based on the grounds set forth in CR 60(b).**

Here, Koraytem contends that Kinchen's case is a matter of error of law that should have been address on appeal. Citing *Port of Port Angeles v. CMC Real Estate Corp. , 114 Wash. 2d 670, 673, 790 P. 2d 145 (Wa. 05/03/1990)*.

Kinchen contends that his Assignments of Error is not a matter of error of law. In Koraytem's own case law cited above it distinguishes the difference between error of law and irregularity.

- (i.) *"An error of law is committed when the court, either upon motion of one of the parties or upon its own motion, makes some erroneous order or ruling on some question of law which is properly before it and within its jurisdiction.*

Examples of error of law are: erroneous rulings on motions and demurrers directed to pleadings; rulings on qualifications of a juror or the admissibility of evidence; and other matters of like character made in the course of an action.

I. REPLY (CONTINUED)

Kinchen contends that the examples set forth above do not apply to Kinchen's case or Kinchen's Assignments of Error.

(ii) *"An irregularity is defined to be the want of adherence to some prescribed rule or mode of proceeding; and it consists either in omitting to do something that is necessary for the due and orderly conducting of a suit, or doing it in an unseasonable time or improper manner."*

Kinchen contends that the above example would apply to his case and Assignments of Error in regards to **Issue 2.5** of his Opening Brief of Appellant (Amended), where Commissioner Tracy Waggoner abused her discretion in rendering her ruling after asking Amin Koraytem's attorney, James Hawes if any credits had been applied to the current Judgment regarding **RCW 59.18.280. ("RP") at P. 13-14.**

See also *In re Ellern*, 23 Wn.2d 219, 222, 160 P.2d 639 (1945).

Where court on hearing of insanity complaint against petitioner ignored petitioner's demand for a jury and adjudicated petitioner to be an insane person, court did more than commit a mere "error of law", and action of court amounted to an "irregularity" authorizing relief by petition to vacate judgment, notwithstanding that petitioner might have appealed.

Regarding CR 60 Motions
(Brief of Koraytem P. 13-14, § A at P. 14, § C at P. 14-15, § D at P. 16, § E at P. 16-17, § G at P. 17-18, § H at P. 18, § I at P. 18-19, § J at P. 19, § K at P. 19).

(9.) **Koraytem issues raised are irrelevant to this review and he do not show what bearing his issues raised has in this review.**

I. REPLY (CONTINUED)

Kinchen contends the majority of Koraytem issues raised are irrelevant to this review and he do not show what bearing his issues raised has in this review.

Such as Koraytem's argument on CR 60(a). Kinchen contends that he filed his Motion to Vacate Judgment pursuant to the provisions of CR 60(b) not CR 60(a). Kinchen contends there's no relevance.

- (i) *See Wachovia SBA Lending v. Kraft, 138 Wash. App. 854, 158 P.3d 1271, Wash. App. Div. 2, 2007. May 30, 2007, for more discussion on this issue.*

Where Wachovia alleged unjust enrichment. But it does not explain how, if at all, that action bears on the present appeal. Accordingly, we do not consider it. See RAP 10.3(b); Citing: *State v. Dennison*, 115 Wash.2d 609, 629, 801 P.2d 193 (1990).

(Brief of Koraytem § B at P. 14, § F at P. 16-17, § I at P. 19-20, § D at P. 41-42 and § F – P. 44-45).

- (10.) **Koraytem's arguments, and statements regarding Kinchen's bankruptcies etc. are inflammatory argument that are irrelevant in this review as it has no bearing on this review.**

Kinchen contends that Koraytem's arguments, and statements regarding Kinchen's bankruptcies etc. are irrelevant in this review as it has no bearing on this review as well.

Kinchen further contends that Koraytem's arguments and statements are inflammatory arguments and is meant nothing more than to poison the minds of the Commissioners and or Judges considering this review.

I. REPLY (CONTINUED)

Even Judge Timothy W. Dore of the U.S. Bankruptcy Court told Koraytem in open court that it doesn't matter what kind of relief Kinchen seeks in the state court and appellant court. It has no bearing on the bankruptcy proceeding because it's Kinchen's right to seek whatever kind of relief he wants.

- (i) *See State of Washington v. Michael John Pierce, 280 P. 3d 1158 (2012).*

Where this court held, that prosecutor's argument was an improper inflammatory appeal to the jury. The court reversed on this basis.

REGARDING WITHHELD PAYMENT OF RENT
(Brief of Koraytem P. 16-17):

- (11) **Kinchen did not withhold payment of rent without good cause.**

Kinchen contends that he gave Koraytem notice that he was moving in a letter dated January 18, 2012. **("CP") at # 16, P. 323-346.**

However; Koraytem and his attorney, James Hawes refuses to acknowledge Kinchen's Notice to Move.

In that letter , Kinchen indicated that he had already moved most of his belongings, and that he would pay any remaining rent upon move out. Kinchen also included in the letter the amount of \$1,500.00 deposits that Koraytem was holding for him.

Further, Kinchen contends that Koraytem was aware that Kinchen was moving at the time the lease expired on August 7, 2011 because Kinchen elected not to sign another with Koraytem because he was getting another job in another county. **(See Kinchen's job offer at ("CP") at # 16, P. 323-346).**

I. REPLY (CONTINUED)

REGARDING WRIT (Brief of Koraytem P. 17):

- (12.) **Kinchen did not fail to move out and no Writ was served upon Kinchen.**

Koraytem contends that Kinchen failed to move out and a Writ was issued.

Kinchen contends that he had moved long time prior to any Writ would have been issued. Further, Koraytem's allegations are fraudulent, misleading and misrepresentations. (See Sherriff's Return on Writ of Restitution ("CP") at # 26, P. 296-301). (APP. at Ex. D)

REGARDING IRREGULARITY IN OBTAINING JUDGMENT (Brief of Koraytem P. 18-19):

- (13.) **There were irregularity in obtaining Judgment.**

Koraytem contends that there were no irregularity in obtaining his Judgment.

Kinchen contends that lack of notice of Three Day Notice, lack of notice of Summons and Complaint, lack of notice of Motion to Convert Unlawful Detainer Action to Civil Action, failure to return or credit deposits, failure to mail statement are all irregularities in obtaining judgment.

REGARDING EFFECT UPON KORAYTEM (Brief of Koraytem P. 19-20):

- (14.) **Any effect, if any at all is Koraytem's own fault.**

Koraytem contends that he will incur substantial prejudice if this relief is granted.

I. REPLY (CONTINUED)

Kinchen contends that any effect, if any that Koraytem may incur is his own fault due to his fraudulent acts and misrepresentations. Further, Koraytem never once tried to settle this case whatsoever. He could have agreed to credit Kinchen the difference of his deposits but didn't. Koraytem still argues that he credited Kinchen all of his deposits which is fraudulent.

REGARDING KINCHEN'S ADDRESS OF RECORD

(Brief of Koraytem P. 23):

- (15.) Kinchen not providing Koraytem with a mailing address was not intentional as Kinchen wasn't aware that there was a need to provide a mailing address.

Koraytem contends that Kinchen failed to provide mailing address as the only address of record he had was P.O. Box 1597, Mukilteo, WA 98275.

Kinchen contends that at the time he moved from the address 2109 127th PL SE, Unit # B, Everett, WA 98208 Kinchen's P.O. Box 1597, Mukilteo, WA 98275 remained open until April 30, 2012, 55 days. (See P.O. Box Payment History Report at ("CP") at # 62, P. 188-197). Kinchen never received any correspondence whatsoever from Koraytem regarding statement or Civil Action. Further, Kinchen did not know that he needed to provide a mailing address as it's been undisputed that on March 6, 2012 the issue of possession was settled. (Brief of Koraytem P. 25). Koraytem did not file his Motion to Convert until May 10, 2012, 65 days later.

- (16.) Issue 2.4 (Pertaining to Error 2.4): Snohomish County Superior Court Lacked subject matter jurisdiction to grant Motion to Convert Case to Civil Action, grant Summary Judgment and impose attorney fees and awards. (Brief of Koraytem P. 31-34).

I. REPLY (CONTINUED)

Koraytem contends that the Unlawful Detainer Summons is an instrument that is dated, specifying a deadline by which an answer is due, and the document become stale if unable to be served timely, 7 days in advance of the response date in an Unlawful Detainer Action.

Further, Koraytem contends in all other respect the Summons remained identical to all prior versions. ***(Brief of Koraytem at P. 32).***

Kinchen contends that's the issue regarding Koraytem's Summons served upon Kinchen. It remained the same as all other versions as it failed to notify Kinchen that a Civil Action had been started against Kinchen for (Breach of Contract). (Brief of Koraytem at P. 18).

When Kinchen was served with the Unlawful Detainer Summons, Kinchen did nothing with it because Kinchen thought it was pertaining to the Unlawful Detainer Action that had just been settled. Kinchen contends that Koraytem's Unlawful Detainer Summons violated Kinchen Fourteenth Amendment to the United States Constitution regarding Due Process of Notice.

Fourteenth Amendment to the United States Constitution Procedural Due Process:

When the government seeks to burden a person's protected liberty interest or property interest, the Supreme Court has held that procedural due process requires that, at a minimum, the government provide the person notice, an opportunity to be heard at an oral hearing, and a decision by a neutral decision maker.

A party may raise the following claimed errors for the first time in the appellate court: (3) manifest error affecting a constitutional right. RAP Rule 2.5(a).

Koraytem contends that the allegations in the complaint remained unchanged.

I. REPLY (CONTINUED)

Kinchen contends that Koraytem's statement is false, misleading and misrepresented. In Koraytem's Unlawful Detainer Action the issue was Possession where as in Koraytem's Civil Action, the issue was Breach of Contract. Two total different issues

- (17.) **Issue 2.5 (Pertaining to Error 2.5):** Commissioner Tracy Waggoner eroded (sic) and abused her discretion in rendering her ruling after asking Amin Koraytem's attorney, James Hawes if any credits had been applied to the current judgment regarding RCW 59.18.280. ("RP") at P. 13-14. (Brief of Koraytem P. 34-36)

Here, Koraytem argues the provisions of the statute RCW

59.18.310.

It's unknown to Kinchen for the reasons that Koraytem argues the provisions of RCW 59.18.310 as its irrelevant to Kinchen's issues presented for review. Kinchen contends that he never raised a issue where RCW 59.18.310 is concerned. Kinchen contends that if it was included within a argument or issue, it was not to be part of his issues presented for review.

- (18.) **Issue 2.9 (Pertaining to Error 2.9):** Attorney James Hawes committed fraudulent acts and grossly misled the Snohomish County Superior Court with his misrepresentations, interpretations and statements.

Koraytem contends that Kinchen failed to demonstrate that any of the allegations of fraud are connected to entry of the order on Summary Judgment, or the order on the Motion for Revision.

Kinchen contends that Attorney James Hawes fraudulent acts are connected to Koraytem's Summary of Judgment and the Judgment obtained on August 28, 2013 in the amount of \$3,641.20.

I. REPLY (CONTINUED)

On March 13, 2012, Koraytem's attorney, James Hawes filed a Declaration of Service of Third Amended Summons, Complaint, Payment or Sworn Statement Request. **("CP") at # 27, P. 290-295. (APP. at Ex. E).**

Kinchen contends that Attorney James Hawes's Declaration is fraudulent as Attorney James Hawes never served Kinchen with a Complaint.

On May 10, 2012, Koraytem's attorney, James Hawes filed a Calendar Note on Motion to Convert Unlawful Detainer Case to Civil Case. Attorney James Hawes listed Motion; Declaration, Calendar Note and Proposed Order as documents that were mailed. Attorney James Hawes signed the Certificate of Service by Mail that he mailed the document. **("CP") at # 28, P. 288-289. (APP. at Ex. F).**

Kinchen contends that Attorney James Hawes's Calendar Note is fraudulent as Attorney James Hawes never filed a Proposed Order in this case. The record do not show any Proposed Orders filed by Attorney James Hawes at all.

On June 25, 2012, Koraytem's attorney, James Hawes filed a Declaration of Mailing of Calendar Note, Motion for Summary Judgment, Declaration of Amin Koraytem in Support of Plaintiff's Motion for Summary Judgment, Declaration of Attorney Fees, and Proposed Order on Plaintiff's Motion for Summary Judgment. **("CP") at # 31, P. 283-284. (APP. at Ex. G).**

I. REPLY (CONTINUED)

Kinchen contends that Koraytem's Declaration of Mailing is fraudulent as Kinchen never got served with a Proposed Order on Summary of Judgment and the record do not show that a Proposed Order on Summary of Judgment was ever filed by Koraytem.

On June 25, 2012, Koraytem's attorney, James Hawes filed a Declaration of Attorney Fees, stating that his regular hourly fee is \$285.00 per hour. ***("CP") at # 32, P. 278-282. (APP. at Ex. H).***

On August 16, 2013, Koraytem's attorney, James Hawes filed Plaintiff's Responsive Brief Re: Motion to Vacate Judgment where Attorney James Hawes stated that his regular hourly fee is \$295.00 per hour. ***P. 9 at ("CP") at # 64, P. 175-184. (APP. at Ex. I).***

On August 23, 2013, Koraytem's attorney, James Hawes filed Plaintiff's Responsive Brief Re: Defendant's Motion for revision where Attorney James Hawes stated that his regular hourly fee is \$295.00 per hour. ***P. 12 at ("CP") at # 70, P. 35-61. (APP. at Ex. J).***

Kinchen contends that Attorney James Hawes, attorney fees above are fraudulent. Further, Kinchen contends that Koraytem and his attorney, James Hawes is using the current judgment to do nothing more than to rob Kinchen and Snohomish County Superior Court allowed it.

Kinchen contends that he raises this issue because Koraytem obtained a supplemental judgment in the amount of \$3,641.20 in Snohomish County Superior Court during Kinchen's Motion for Revision in which Kinchen is appealing as well.

I. REPLY (CONTINUED)

Further, Koraytem obtained that supplemental judgments within the fraudulent pleadings. Further, Koraytem is requesting relief for attorney fees in this action as well that should be denied.

Kinchen contends that the provisions of the lease is reasonable attorney fees. (“CP”) at 16, P. 323-346. Kinchen contends that over \$8,000.00 in attorney fees isn’t reasonable when the attorney fees is more than the judgment itself.

For the reasons presented above, the Snohomish County Superior Court’s August 9, 2013, Order Denying Stacey Kinchen’s Motion for Order Vacating Judgment should be reversed.

Accordingly, the Snohomish County Superior Court’s August 28, 2013, Order Denying Stacey Kinchen’s Motion for Revision and awarding attorney fees in the amount of \$3,641.20 should be reversed.

Finally, this court should dismiss Amin Koraytem case for his fraudulent acts.

Dated this 19th day of May, 2014.


Stacey Kinchen, Appellant

APPENDIX A-J

EXHIBIT

A

FEE AGREEMENT

AUGUST 15, 2012

FEE AGREEMENT
(TIME/FIXED FEE)

Date: 15 Aug 2012

Parties: Raymond V. Gessel, Attorney-At-Law (referred to in this agreement as "Law Firm") and Stacey A. Kinchen (referred to in this agreement as "Client" regardless of whether there is one or more client).

Purpose: Client has a matter that requires legal representation. Client wishes to hire the Law Firm to provide that legal representation.

AGREEMENT: For valuable consideration, the parties agree as follows:

1. Engagement. The client hereby engages the Law Firm to represent client in the following matter (if the client is hiring the Law Firm for more than one matter, a separate fee agreement must be used): Motion to Vacate Judgment
2. Services to be rendered: The Law Firm will provide legal counsel, advice and advocacy as necessary to represent the client in the matter identified above. The client understands and agrees that no guarantee of a result has or can be given and that the advice and counsel provided to the client is based upon the Law Firm's legal opinion determined from review of the current state of the law governing this matter.
3. Pre-paid Funds: The Client agrees that it will provide the following pre-payment as indicated below, at the date and time specified. (sections not checked do not apply)


Retainer: Client will pay to the Law Firm not later than 15 Aug 2012 a Retainer of \$1,000.00. The term "Retainer" refers to an amount paid to the Law Firm which is non-refundable regardless of the time spent on the matter and is paid to ensure that the Law Firm will be available to represent the client in this matter, subject to payment of future fees. The Client understands that the Retainer is immediately earned when paid and that the Retainer will be paid directly into the Attorney's Business Account. For information regarding any fixed fee being charged, see section 4, "Fixed Fee". In the event our relationship is terminated before the agreed-upon legal services have been completed, you may or may not have a right to a refund of a portion of the fee. Client may also, at Attorney's request, be required to replenish retainer.

Advance Fee Deposit: Client will pay to the Law Firm not later _____ an Advance Fee Deposit of \$_____. The Term "Advance Fee Deposit" refers to an amount paid to the Law Firm that is placed into the Law Firm's Trust Account to secure payment of the Law Firm's Fees by the Client. Upon the billing to the Client, the Law Firm is entitled to the Fees contained in the trust account to the extent of the billing. Upon the Law Firm's demand, Client shall replenish the amount to be held in trust to the amount set forth in this

Superior Court. The Law Firm is entitled to an Attorneys' Lien on all of the Client Property in The Law Firm's possession to secure such payment.

Executed this 16th day of August, 2012. (Client's Signature below acknowledges receipt of a copy of this agreement).

"Client"


Stacey A. Kinchen

"Law Firm"

By: 
Raymond V. Gessel

EXHIBIT

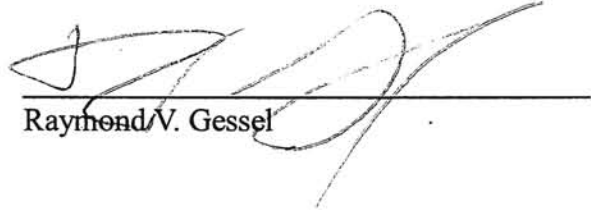
B

PAYMENT TO ATTORNEY

AUGUST 15, 2012

15 Aug 2012

The undersigned hereby acknowledges receipt of the \$1,000.00 retainer required from Stacey A. Kinchen, paid in cash.



Raymond V. Gessel

EXHIBIT

C

PAYMENT TO ATTORNEY

AUGUST 16, 2012

RECEIPT FOR FUNDS

Raymond V. Gessel, Attorney at Law, hereby acknowledges receipt of \$ 500.00
from Stacey Kinchen as a retainer on his account.

Dated: 8-16-12

Connor R. Gessel
Connor R. Gessel, for Raymond V. Gessel

EXHIBIT

D

SHERIFF'S RETURN ON

WRIT OF RESTITUTION

MARCH 21, 2012

FILED

2012 MAR 21 AM 8:45

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



CL15469943

IN THE SUPERIOR COURT FOR SNOHOMISH COUNTY, WASHINGTON

AMIN KORAYTEM,

PLAINTIFF(S)

CAUSE NO. 12 2 02451 9

VS

**SHERIFF'S RETURN ON
WRIT OF RESTITUTION**

STACEY A KINCHEN AND JANE DOE OCCUPANT,
DEFENDANT(S)

I, SHERIFF JOHN LOVICK OF SNOHOMISH COUNTY, STATE OF WASHINGTON, DO HEREBY CERTIFY AND RETURN THAT THE ANNEXED WRIT OF RESTITUTION AND REQUEST FOR STORAGE OF PERSONAL PROPERTY CAME INTO MY HANDS ON 3/13/2012 AND THAT I POSTED THE SAME ON 3/14/2012, AT 9:20 AM, ON THE DEFENDANT(S) NAMED IN SAID WRIT AT 2109 127TH PL SE UNIT B, EVERETT, WASHINGTON, AND

ON 3/20/2012 I WAS ADVISED THE DEFENDANT(S) HAD MOVED AND TO TAKE NO FURTHER ACTION. I, THEREFORE, RETURN SAID WRIT OF RESTITUTION TO THE ABOVE ENTITLED COURT.

DATED 3/20/2012

JOHN LOVICK, SHERIFF
SNOHOMISH, WASHINGTON

CIVIL DEPUTY BLAKE #4107

DOCKET# 12001381

SERVICE FEES: Return (\$23.00) Service (\$154.00) Mileage (\$30.00) Total: \$207.00

EXHIBIT

E

DECLARATION OF SERVICE

MARCH 13, 2012

FILED

MAR 13 2012

SONYA KRASKI
SNOHOMISH COUNTY CLERK
EX-OFFICIO CLERK OF COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

AMIN KORAYTEM)	NO. 12 2 02451 9
Plaintiff,)	
)	DECLARATION OF SERVICE OF:
vs.)	Third Amended SUMMONS, COMPLAINT,
)	PAYMENT OR SWORN STATEMENT
STACEY A. KINCHEN and)	REQUEST;
JANE DOE OCCUPANT)	
)	
)	
Defendants.)	

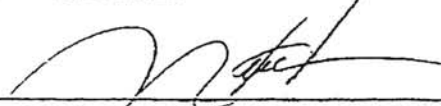
James R. Hawes, being first duly sworn, on oath, deposes and says: That I am now and all times herein a citizen of the United States and resident of the State of Washington, over the age of eighteen, not a party to or interested in the above entitled action and competent to be a witness therein.

That on March 6, 2012, at 11:25 a.m., at: Mission Building, 3000 Rockefeller Avenue, Everett WA 98201, Snohomish County, affiant duly served upon STACEY A. KINCHEN in person, the above-described documents by handing to STACEY A. KIN with one true copy of the above described documents.

Affiant further states that he is informed and believes, and therefore alleges that the defendant is not in the military service of the United States.

VERIFICATION

I certify under penalty of perjury under the Laws of the State of Washington, that I have read the above statements, know their contents, and believe them to be true and correct. Signed at Edmonds, WASHINGTON, on this date: March 6, 2012.



 Signature
 Print Name: James R. Hawes

27

FILE COPY

EXHIBIT A

EXHIBIT

F

CALENDAR NOTE

MAY 10, 2012



CL15483597

FILED

2012 MAY 10 AM 10: 50

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

**SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY**

AMIN KORAYTEM

Plaintiff/Petitioner(s)

vs.

STACEY A. KINCHEN and
JANE DOE OCCUPANT

Defendant/Respondent(s)

CASE NO. 12 2 02451 9

CALENDAR NOTE: (NTC)

CIVIL MOTIONS -
COMMISSIONER CALENDARS

Unless otherwise provided by applicable rule or statute,
this form and the motion must be filed with the Clerk not
later than five (5) court days preceding the date
requested. CR 6(d)

TO: The Clerk of Court:

**COURT COMMISSIONER
CIVIL CALENDAR**

Tuesday through Friday @ 10:30 a.m.
Department A - 1st Floor

Date requested: _____
(mm/dd/yyyy)

May 22, 2012

Nature of hearing: MOTION TO CONVERT
UNLAWFUL DETAINER CASE TO CIVIL
CASE

(Confirm hearing at 425-388-3587)

**COURT COMMISSIONER
GUARDIANSHIP/PROBATE CALENDAR**

Thursday @ 9:00 a.m. OR Friday @ 9:30 a.m.
Department D - 1st Floor

Date requested: _____
(mm/dd/yyyy)

Nature of hearing: _____

(Confirm hearing at 425-388-3587)

Please note that these calendars are limited to 12 matters per calendar. Parties for cases noted on the calendar in excess of the 12 matter limit will be notified at the time of confirmation and will be required to re-note the motion or submit to an agreed continuance date.

If noting a presentation, or if a particular Court Commissioner has already heard a recent motion in the matter, please indicate that Court Commissioner's name here: _____

WARNING: The moving party MUST CONFIRM by calling 425-388-3587 two (2) court days prior to the hearing BEFORE 12:00 noon, in order for the matter to be heard.

Failure to notify the Court of a continuance or strike may result in sanctions and/or terms. SCLCR 7(b)(2)(H).

This form cannot be used for trial settings. SCLMAR 2.1 40(b).
See below for other confirmation and noting information.

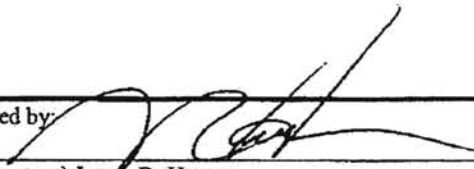
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CERTIFICATE OF SERVICE BY MAIL:

I hereby certify that a copy of this document and all documents listed below have been mailed to the attorneys/parties listed below, postage prepaid on the:

Noted by:



(Signature) James R. Hawes

(Printed name)

WSBA 11684

WSBA#

Date (mm/dd/yyyy): May 10, 2012



(Signature)

Autumn A. Hawes

(Printed name)

Attorney for: (CHECK ONE)

Petitioner/Plaintiff Respondent/Defendant

Pro Se

Please print the names, addresses etc. of all other attorneys in this case and/or all other parties requiring notice.

Stacey A. Kinchen
PO Box 1597
Mukilteo WA 98275

Defendant, pro se

List all documents mailed: Motion; Declaration, Calendar note, proposed Order

EXHIBIT

G

DECLARATION OF MAILING

JUNE 25, 2012

FILED

2012 JUN 25 PM 12:41

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

AMIN KORAYTEM,

Plaintiffs,

NO.: 12 2 02451 9

DECLARATION OF MAILING:
CALENDAR NOTE, MOTION FOR SUMMARY
JUDGMENT, DECLARATION OF AMIN
KORAYTEM IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT,
DECLARATION OF ATTORNEY FEES, and
PROPOSED ORDER ON PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

STACEY A. KINCHEN,

Defendants.

STATE OF WASHINGTON)

)ss

COUNTY OF SNOHOMISH)

1. CHRISTINA NELSON, being first duly sworn on oath, deposes and says that I am a citizen of the United States, over the age of eighteen years and competent to be a witness in the above entitled matter. On June 22, 2012, I deposited in the United States mail at Everett, Washington, postage prepaid, 1 copy of each CALENDAR NOTE, MOTION FOR SUMMARY JUDGMENT, DECLARATION OF AMIN KORAYTEM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, DECLARATION OF ATTORNEY FEES, and PROPOSED ORDER ON PLAINTIFF'S MOTION

DECLARATION OF MAILING

- Page 1 of 2-

ORIGINAL

LAW OFFICES OF
CHRISTENSEN & HAWES, INC., P.S.
A PROFESSIONAL SERVICE CORPORATION
3102 Rockefeller Avenue
Everett, Washington 98201-4029
425.258.4464

31

EXHIBIT

H

DECLARATION OF JAMES HAWES

REGARDING ATTORNEY FEES

JUNE 25, 2012

FILED

2012 JUN 25 PM 12:41

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

AMIN KORAYTEM,

NO.: 12 2 02451 9

Plaintiffs,

DECLARATION OF
ATTORNEY FEES

vs.

STACEY A. KINCHEN and
JANE DOE OCCUPANT,

Defendants.

DECLARATION

I declare under penalty of perjury as defined by the laws of the State of Washington that the attached billing statements are a true and correct statement of time spent upon this matter at my regular hourly fee of \$285.00 per hour, and \$142.50 per hour for paralegal services.

Signed at Everett Washington this date: June 20, 2010

James R. Hawes, WSBA #11684

ORIGINAL

EXHIBIT

I

PLAINTIFF'S RESPONSIVE BRIEF RE:

MOTION TO VACATE JUDGMENT

AUGUST 16, 2013

1 history in the bankruptcy court, and surely would or should have sought guidance about the due
2 diligence requirement for filing the Motion to Vacate the Judgment. There is no excuse for the
3 unreasonable delay in filing this motion. Tegland would agree:

4 The one-year provision is regarded as fixing the outer-most limit in time for the making of
5 the motion. If the grounds of the motion are sooner discovered, vacation may be denied
6 if there is an unreasonable delay in making the motion, even though a year has not yet
7 elapsed. Lockett v Boeing Co., 98 Wash. App. 307, 989 P.2d 1144 (Div 1 1999).
8 Civil Procedure, Karl b. Tegland, Volume 14 of Washington Practice at p. 619.

9 While unavoidable casualty, misfortune, or "any other reason." may not have a specific one-year
10 limitation, the time limit is still a *reasonable* time.

11 (3.) **EFFECT UPON PLAINTIFF.** Plaintiff will incur substantial prejudice if this relief is
12 granted. Plaintiff has already incurred costs for 4 garnishments, attorney fees in this court and
13 in Bankruptcy court. The bankruptcy court is the best place to handle this, and has already
14 shown its frustration with the conduct of the Defendant, and given him several "second
15 chances", to the point that justice required firm action by the court, and the same was given.

16 4. **Relief Requested.** The Defendant's motion should be denied and fees assessed
17 against him in an amount not less than his past and present garnishment costs \$1,141,20, and
18 attorney fees.

19 The undersigned Attorney verifies that he estimates that the sum of 8.5 hours of time will
20 be spent through the hearing on this matter. Due to Defendant's untimely service of his Motion
21 to Stay Enforcement of Judgment, counsel appeared in court twice, to learn the motion not
22 scheduled, and a subsequent hearing not confirmed, after preparing a response and being
23 served with a calendar Note. My usual and accustomed hourly rate is \$295.00 hour. That rate
24 is at or below the prevailing market rate for attorneys with comparable experience in this area.

25 Plaintiff's Responsive
Brief Re: MOTION TO VACATE JUDGMENT

FRAUD

LAW OFFICES OF
CHRISTENSEN & HAWES, INC., P.S.
A PROFESSIONAL SERVICE CORPORATION
3102 Rockefeller Avenue
Everett, Washington 98201-4029
425 258 4454

64

EXHIBIT

J

PLAINTIFF'S RESPONSIVE BRIEF RE:
DEFENDANT'S MOTION FOR REVISION
AUGUST 23, 2013

1 standard as an attorney. Batten v. Abrams, 28 Wn. App. 737, 739 n.1, 626 P.2d 984, review
2 denied, 95 Wn.2d 1033 (1981).

3 **Relief Requested.** The Defendant's motion should be denied and attorney fees
4 assessed against him pursuant to the lease provision #16 providing reasonable attorney fees for
5 an amount not less than his past and present garnishment costs \$1,141.20, and attorney fees.

6 The undersigned Attorney verifies that he estimates that the sum of 8.5 hours of time will
7 be spent through the hearing on this matter. Due to Defendant's untimely service of his Motion
8 to Stay Enforcement of Judgment, counsel appeared in court twice, to learn the motion was not
9 scheduled, and a subsequent hearing not confirmed, after preparing a response and being
10 served with a calendar Note. My usual and accustomed hourly rate is \$295.00 hour. That rate
11 is at or below the prevailing market rate for attorneys with comparable experience in this area.

12 Accordingly, Plaintiff requests fees to respond to this matter that arose out of the neglect of
13 Defendant in the amount of \$2,500.00, and Writ costs of \$1,141.30, totaling \$3,641.20.

14 If the court determines to allow the Defendant to be heard on the merits of their case, it is
15 requested that they be ordered to pay Plaintiff's attorney's fees as a pre-condition to being able
16 to file an answer. Judgment should enter against the Defendants for Plaintiff's attorney's fees
17 and costs, payable within two weeks of this hearing and failing to pay the same timely should be
18 cause for the motion herein to be dismissed without further notice, with judgment for the fees
19 awarded herein remaining, bearing interest at the statutory rate.

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23 Plaintiff's Responsive
Brief Re: DEFENDANT'S MOTION FOR REVISION

24 - Page 12 -

70
LAW OFFICES OF
CHRISTENSEN & HAWES, INC., P.S.
A PROFESSIONAL SERVICE CORPORATION
3102 Rockefeller Avenue
Everett, Washington 98201-4029
425.258.4464

FRAUD