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STATE OF WASHINGTON
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CLERK

Supreme Court No. 101966-1
(Court of Appeals, Division I No. 84565-9-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

EMILIO M. KOSROVANI,

Appellant,

v.

ROGER JOBS MOTORS, INC.,

Respondent.

OPPOSITION OF RESPONDENT TO APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

Whatcom County Superior Court Cause No. 18-2-02112-37

Elizabeth Berman Lovell, WSBA No. 46428
Wilson Smith Cochran Dickerson
1000 Second Avenue, Suite 2050
Seattle, WA 98164
Phone: (206) 452-8934
Facsimile: (206)623-9273
Attorney for Respondent Roger Jobs Motors, Inc.

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CASES

Kosrovani v. Roger Jobs Motors, Inc., 198 Wn.2d 1033, 501 P.3d 129 (2022).. 11

1. IDENTITY OF RESPONDING PARTY

Respondent Roger Jobs Motors, Inc. ("RJM") opposes Emilio Kosrovani's Petition for Discretionary Review ("Petition").

2. STATEMENT OF RELIEF SOUGHT

RJM asks this Court to deny the Petition for Discretionary Review because Kosrovani improperly seeks review of matters which have already been fully and finally adjudicated on appeal.

3. INTRODUCTION

Appellant Emilio Kosrovani continues to beat the proverbial dead horse in petitioning the Court for discretionary review of issues which were fully and finally decided after this Court denied review of his first appeal, No. 80400-6-I ("*Kosrovani I*").

> On the merits of Kosrovani's appeal of [the settlement enforcement] order, we conclude the trial court did not err in deeming the settlement agreement enforceable. Because that agreement requires Kosrovani to withdraw his appeal, his

> challenge to the summary judgment dismissal of his lawsuit against RJM is moot. We affirm the order enforcing the settlement agreement and dismiss the remaining appeal as moot.

Kosrovani I at 1-2.

Emilio Kosrovani's lawsuit against RJM remains dismissed after this Court entered its January 5, 2022 order denying review of the Court of Appeals' order affirming the trial court's orders denying and/or striking Kosrovani's and Hansen's various motions in *Kosrovani I*. The Court of Appeals subsequently mandated the matter to the trial court for its conclusion. Each issue for which Kosrovani now seeks review was previously resolved in *Kosrovani I*—1) whether the superior court had jurisdiction to enforce the parties' settlement agreement; 2) whether the appellate court should set aside the settlement enforcement order; and 3) whether the appellate court must review the summary judgment dismissal and set it aside as void. The mandate from the Court of Appeals terminated review of the matter and that should have ended the litigation.

But it didn't. Kosrovani refused to accept this Court already ruled on all issues relevant to his appeal. In this latest appeal, Kosrovani repeats arguments made in his numerous pleadings to every level of court in this state attempting to revive claims which he settled, agreed to dismiss, and subsequently litigated to a final appellate decision which terminated review.[1]

4. FACTS RELEVANT TO PETITION

On July 6, 2021, the Court of Appeals filed an unpublished decision in *Kosrovani I* (the "Decision"), holding Kosrovani entered into a valid CR 2A agreement which required withdrawal of his summary judgment appeal and dismissal of the underlying lawsuit. *See Kosrovani*, Wash. Supreme Court No. 101463-5, Respondent's Appendix, dated December 2, 2022, at A003-A013 (*Kosrovani,* Wash. Ct. App. No. 80400-6-I, Unpublished Opinion, dated July 6, 2021). It identified

[1] Kosrovani, as counsel for his girlfriend Laurel Hansen, improperly submitted a separate Petition for Discretionary Review on Ms. Hansen's behalf. It is equally without merit.

specific bases why the lower court properly enforced the CR 2A agreement:

1. "His signature on the agreement indicates his assent to its terms. The absence of his counsel's signature does not render the agreement unenforceable." *Id*. at A010.

2. "Kosrovani's execution of the release was the required performance of his promise in the settlement agreement. His failure to execute the release breached that promise." *Id.* at A011.

3. "It is undisputed that Kosrovani agreed to dismiss his lawsuit against RJM and to withdraw his appeal as a part of the settlement. This language supports the conclusion that Kosrovani agreed to execute a general release; a dismissal with prejudice has the legal effect of precluding future claims. Condon v. Condon, 177 Wn.2d at 164. The trial court thus had the authority to compel Kosrovani to execute a general release." *Id.* at A012.

The court also retroactively granted the trial court permission to formally enter the order enforcing settlement. *Id.* at A007-A008, A013. Because the appellate court upheld enforcement of the settlement agreement, it did not reach other issues of the consolidated appeal—whether the trial court 1) properly granted summary judgment, 2) properly denied Kosrovani's motion for recusal, and 3) properly struck portions of

Kosrovani's expert's declaration. *Id.* at A013. The court determined those issues on appeal were moot. *Id.*

Kosrovani petitioned this Court for review and on January 5, 2022, it was denied. 198 Wn.2d 1033 (2022). On January 24, 2022, the Court of Appeals mandated the case to the superior court. After the Supreme Court denied review and the Mandate issued, there was no longer a controversy related to Kosrovani's causes of action.

On April 4, 2022, the court considered RJM's motion to authorize release of Kosrovani's settlement funds from the court register—the final, and solely ministerial act left to conclude the litigation. *See* Appendix to Opposition of Respondent to Appellant's Petition for Discretionary Review ("Resp't App.") at A001-A004. Kosrovani opposed the motion and filed numerous cross motions on his own behalf as well as on behalf of his client-girlfriend, non-party Laurel Hansen ("Kosrovani's motions"). Resp't App. at A005-A052. In those cross-motions, Kosrovani attempted to relitigate issues already

decided by the Court of Appeals and for which the Supreme Court denied review. *Id.* Specifically, Kosrovani asked the trial court to:

1. Rescind the CR 2A agreement and invalidate the order enforcing it (Issues #3-4 in *Kosrovani I*; Issues #1-3 of *Kosrovani II*);
2. Join Ms. Hansen to the already-dismissed lawsuit (Issue #3-5 of *Kosrovani I*; Issue #3 of *Kosrovani II* and Issue #1 of Hansen's briefing on *Kosrovani II*); and
3. Allow Ms. Hansen to intervene in the already-dismissed lawsuit (Issues #3-5 of *Kosrovani I*; Issue #1 of Hansen's briefing on *Kosrovani II).*

Id. The trial court properly ruled Kosrovani's motions were not well-founded in fact or law because the Court of Appeals affirmed the trial court's ruling enforcing the settlement agreement and the Supreme Court denied review. *See Kosrovani*, Wash. Supreme Court No. 101463-5, Respondent's

Appendix, dated December 2, 2022, at A020-A024 (Order Denying Plaintiff's Cross-Motion for Rescission and to Vacate Order and Motion for Joinder and Striking Plaintiff's Motion for Change of Venue, and Non-Party Hansen's Motion for Intervention, Mandamus, and Declaratory Relief, dated April 8, 2022).

On May 2, 2022, Kosrovani petitioned this Court for direct review. On October 12, 2022, this Court denied direct review and transferred the appeal to the Court of Appeals.

On March 13, 2023, the Court of Appeals denied Kosrovani's appeal and affirmed the trial court's orders. *See Kosrovani*, Wash. Ct. App. No. 84565-9-I, Unpublished Opinion, dated March 13, 2023. In its decision, the Court of Appeals noted all issues for which Kosrovani sought review had already been decided in *Kosrovani I*. *Id.* Specifically, it reiterated its earlier holding that the trial court did not err in enforcing the parties' settlement agreement or not joining Ms. Hansen in the suit because the court had jurisdiction over the

controversy, had already fully decided the issues on appeal, and Ms. Hansen had already been adjudged a non-party in this matter. *Id*. at 2.

Kosrovani now again seeks review from this Court that is unwarranted because it is not supported by the record or law. *See* Kosrovani's Petition for Review. Kosrovani impermissibly assigns error for controversies which were previously decided and are no longer at issue.

5. GROUNDS FOR RELIEF AND ARGUMENT

The Court of Appeals made a full and final determination in *Kosrovani I* which this Court declined to review. "The trial court did not err in granting RJM's motion to enforce the CR 2A agreement and ordering Kosrovani to sign the amended 'Release and Settlement of Claims' and to dismiss his claims." *See Kosrovani,* Wash. Ct. App. No. 80400-6-I, Unpublished Opinion, dated July 6, 2021.

And in this second appeal, the Court of Appeals relied on its previous decision terminating review. "As we held in our

July 2019 decision in Kosrovani, No. 80400-6-I, the superior court did, indeed, have the authority to enter the disputed order. Accordingly, Kosrovani's assertions of error pertaining to the superior court's authority are without merit." Unpublished Opinion at 10 (March 13, 2023). Because the decision of the Court of Appeals became the decision terminating review and concluding this litigation, it is binding on all courts in subsequent appeals. "Our decision in Kosrovani, No. 80400-6-I, is ***dispositive***." Unpublished Opinion at 13 (March 13, 2023) (bold and italic emphasis added). That decision fully and finally resolved the issue of whether Kosrovani could maintain his lawsuit and/or claims against RJM. "On appeal, we concluded that the settlement agreement rendered moot Kosrovani's challenge to the summary judgment dismissal of his lawsuit against RJM. Accordingly, we dismissed that portion of the appeal. *See* Kosrovani, No. 80400-6-I, slip op. at 1-2." Unpublished Opinion at 14 (March 13, 2023).

> In affirming the superior court's enforcement order, we rejected Kosrovani's assertion that the settlement agreement was unenforceable without nonparty Hansen's signature. Kosrovani, No. 80400-6-I, slip op. at 8.… Our Supreme Court denied Kosrovani's petition for review and ***we thereafter issued a mandate concluding the action***.

Unpublished Opinion at 14 (March 13, 2023) (italic and bold emphasis added).

The Court of Appeals' footnote in its decision denying Kosrovani's second appeal leaves no room for doubt that *Kosrovani I* fully resolved all issues on appeal and requiring dismissal of the lawsuit.

> ***Our decision in Kosrovani, No. 80400-6-I, slip op. at 8, provided final resolution of these issues***. Nevertheless, it appears that Kosrovani believes he may perpetually challenge the final determinations of Washington courts. However, "[a]n appeal from the denial of a CR 60(b) motion is not a substitute for an appeal and is limited to the propriety of the denial, not the impropriety of the underlying order." J.M.R., 160 Wn. App. at 938 n.4. Kosrovani may not challenge the superior court's enforcement order on appeal from the court's denial of his CR 60(b) motion to vacate that order.
>
> Moreover, "[u]nder the doctrine of 'law of the case,' . . . the parties, the trial court, and this court

> are bound by the holdings of the court on a prior appeal until such time as they are 'authoritatively overruled.'" Greene v. Rothschild, 68 Wn.2d 1, 10, 414 P.2d 1013 (1966) (quoting Adamson v. Traylor, 66 Wn.2d 338, 339, 402 P.2d 499 (1965)). Accordingly, ***questions that we decided in a prior opinion "'will not again be considered on a subsequent appeal if there is no substantial change in the evidence.'"*** Folsom v. County of Spokane, 111 Wn.2d 256, 263, 759 P.2d 1196 (1988) (quoting Adamson, 66 Wn.2d at 339). Such is the case here.

Unpublished Opinion fn. 8 at 15-16 (March 13, 2023) (bold and italic emphasis added). The Supreme Court denied review of *Kosrovani I*. 198 Wn.2d 1033, 501 P.3d 129 (2022). The Court of Appeals mandated the matter to the trial court. *See Kosrovani,* Wash. Ct. App. No. 80400-6-I, Mandate, dated January 24, 2022. That decision became the law of the case and cannot be reviewed.

That denial of review should have put an end to Kosrovani's perpetual cycle of appeal. His claims were fully and finally resolved when this Court determined the settlement agreement was enforceable and required dismissal of the appeal

and lawsuit. The fact that Kosrovani improperly brought additional motions after the matter was mandated to the superior court did not make those motions appropriate or permissible.

RJM's motion for a ministerial order did not provide any basis under which Kosrovani could file his motions seeking any relief. His Petition confirms even his understanding that the appellate courts previously ruled upon all issues related to his appeal. *See* Kosrovani's Petition for Review. *Kosrovani II* is premised upon his mistaken belief that Kosrovani's dissatisfaction with the outcome of *Kosrovani I* forms the basis for another appeal on the same (already resolved) issues.

The issues Kosrovani raised in the *Kosrovani II* motions were moot from their inception and subject to stare decisis and collateral estoppel because they were previously ruled upon by the trial court and decided by the appellate courts. They were improperly brought and the appellate court properly affirmed

the trial court's orders denying and/or striking Kosrovani's motions.

6. CONCLUSION

RJM respectfully requests that the Court deny Kosrovani's Petition for Review.

I certify that this document contains 1,987 words, excluding parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 5th day of June, 2023.

By: *s/Elizabeth Berman Lovell*

Elizabeth Berman Lovell, WSBA No. 46428
Wilson Smith Cochran Dickerson
1000 Second Avenue, Suite 2050
Seattle, WA 98104
Phone: (206) 452-8934
Fax: (206) 623-9273
Email: bermanlovell@wscd.com
Attorney for Respondent Roger Jobs Motors, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the below date I caused to be electronically filed with the Supreme Court of the State of Washington, and arranged for service of a true and correct copy of the foregoing Opposition of Respondent to Appellant's Petition for Discretionary Review upon the following:

Emilio M. Kosrovani
PO Box 3102
Bellingham, WA 98227
(X) Via U.S. Mail (courtesy copy)
(X) Via Email/Electronic Filing Portal:
emiliolawoffice@yahoo.com

SIGNED this 5th day of June, 2023, at Seattle, Washington.

_*s/Yana Strelyuk*_____________
Yana Strelyuk, Legal Assistant

WILSON SMITH COCHRAN DICKERSON

June 05, 2023 - 2:13 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	101,966-1
Appellate Court Case Title:	Emilio M. Kosrovani v. Roger Jobs Motors, Inc.
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The following documents have been uploaded:

- 1019661_Answer_Reply_20230605141120SC452963_3043.pdf
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- donohue@wscd.com
- emiliolawoffice@yahoo.com

Comments:

Sender Name: Elizabeth Berman Lovell - Email: bermanlovell@wscd.com
Address:
1000 SECOND AVENUE
SUITE 2050
SEATTLE, WA, 98104-3629
Phone: 206-623-4100

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Supreme Court No. 101966-1
(Court of Appeals, Division I No. 84565-9-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

EMILIO M. KOSROVANI,

Appellant,

v.

ROGER JOBS MOTORS, INC.,

Respondent.

APPENDIX TO OPPOSITION OF RESPONDENT TO APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

Whatcom County Superior Court Cause No. 18-2-02112-37

Elizabeth Berman Lovell, WSBA No. 46428
Wilson Smith Cochran Dickerson
1000 Second Avenue, Suite 2050
Seattle, WA 98164
Phone: (206) 452-8934
Facsimile: (206)623-9273
Attorney for Respondent Roger Jobs Motors, Inc.

INDEX TO APPENDIX:

DOCUMENT TITLE	DATE	APPENDIX PAGE NO.
1. Defendant's Motion to Release Funds from Court Registry and Conclude Lawsuit	02/09/2022	A001-A004
2. Response in Opposition to Defendant's Motion for Disbursement of Funds and Cross-Motion for Rescission of Contract and Vacation of Settlement Enforcement Order	03/21/2022	A005-A021
3. Motion for Joinder of Laurel Hansen as Co-Plaintiff	03/21/2022	A022-A035
4. Motion for Intervention, Issuance of Writ of Mandamus, and for Declaratory Relief	03/21/2022	A036-A052

RESPECTFULLY SUBMITTED this 5th day of June, 2023.

By: *s/Elizabeth Berman Lovell*____________

Elizabeth Berman Lovell, WSBA No. 46428
Wilson Smith Cochran Dickerson
1000 Second Avenue, Suite 2050
Seattle, WA 98104
Phone: (206) 452-8934
Fax: (206) 623-9273
Email: bermanlovell@wscd.com
Attorney for Respondent Roger Jobs Motors, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the below date I caused to be electronically filed with the Supreme Court of the State of Washington, and arranged for service of a true and correct copy of the foregoing Appendix to Opposition of Respondent to Appellant's Petition for Discretionary Review upon the following:

Emilio M. Kosrovani
PO Box 3102
Bellingham, WA 98227
(X) Via U.S. Mail (courtesy copy)
(X) Via Email/Electronic Filing Portal:
emiliolawoffice@yahoo.com

SIGNED this 5th day of June, 2023, at Seattle, Washington.

_*s/Yana Strelyuk*_____________
Yana Strelyuk, Legal Assistant

JUDGE LEE GROCHMAL
Hearing Date: March 4, 2022
With Oral Argument: 1:30 p.m.

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

EMILIO M. KOSROVANI, Plaintiff, vs. ROGER JOBS MOTORS, INC. dba ROGER JOBS AUDI, VW, PORSCHE dba AUDI BELLINGHAM, Defendants.	No. 18-2-02112-37 DEFENDANT'S MOTION TO RELEASE FUNDS FROM COURT REGISTRY AND CONCLUDE LAWSUIT

I. RELIEF REQUESTED

COMES NOW, Defendant Roger Jobs Motors, Inc and moves this court for an order releasing settlement funds from the court register and concluding this matter. Plaintiff Emilio Kosrovani's ("Kosrovani's") appeals to this State's courts have been exhausted and have provided finality on all matters claimed in his Complaint.

II. STATEMENT OF FACTS [1]

In November 2018, Kosrovani filed a lawsuit alleging personal injuries he allegedly suffered in November 2015 while visiting Roger Jobs Motors in Bellingham, Washington. *See* Complaint, filed 11/9/2018. His Complaint was dismissed via summary judgment in March

[1] All facts asserted are supported by the Declaration of Elizabeth Berman Lovell and its attached exhibits unless otherwise indicated.

WILSON SMITH COCHRAN DICKERSON
1000 SECOND AVENUE, SUITE 2050
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 623-4100
FAX: (206) 623-9273

2019 and reconsideration was denied in July 2019. *See* 3/8/19 and 7/30/19 Orders. In August 2019, Kosrovani appealed the summary judgment dismissal of his lawsuit. *See* Notice of Appeal, filed 8/28/19.

In December 2019, parties engaged in settlement negotiations. The parties reached a settlement and Kosrovani signed a CR 2A settlement agreement. Kosrovani failed to perform according to the terms of the agreement. In February 2020, Roger Jobs moved this court to enforce the settlement agreement. *See* Motion to Enforce, filed 2/10/20. The court granted Roger Jobs' Motion, but Kosrovani refused to sign the settlement release or accept tender of the settlement funds. *See* 2/28/20 Order. The Court orally authorized Roger Jobs to deposit the settlement funds with the Whatcom County Superior Court. Kosrovani appealed the court's order enforcing the settlement agreement. The Court of Appeals accepted review of the second appeal and consolidated the two matters. Kosrovani pursued his appeals and parties briefed all matters on appeal.

In July 2021, the Court of Appeals affirmed the lower court's enforcement of the settlement agreement and decided that the underlying appeal on summary judgment was rendered moot. The court denied reconsideration. Kosrovani petitioned the State Supreme Court for review. On January 5, 2022 his petition for review was denied. On January 24, 2022, the Court of Appeals issued a mandate returning the matter to Superior Court jurisdiction for further proceedings consistent with its decision. The sole remaining issues pursuant to the mandate are the release of Kosrovani's settlement funds and formal conclusion of this litigation.

III. ISSUE PRESENTED

1. Should this court release the settlement funds to Kosrovani because he has exhausted his avenues of appeal in this state's court? **YES**.
2. Should proceedings be concluded and this case closed? **YES**.

WILSON SMITH COCHRAN DICKERSON
1000 SECOND AVENUE, SUITE 2050
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 623-4100
FAX: (206) 623-9273

IV. EVIDENCE RELIED UPON

Defendant relies upon the Declaration of Elizabeth Berman Lovell and exhibits attached thereto, together with the records and pleadings on file in this matter.

V. ARGUMENT AND AUTHORITY

Disputed funds which are the subject of litigation may be deposited in the court register upon an order of the court. The funds may not be removed from the register absent an order of the court.

> When it is admitted by the pleading or examination of a party, that the party possesses or has control of any money, or other thing capable of delivery, which being the subject of the litigation, is held by him or her as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court.

RCW 4.44.480.

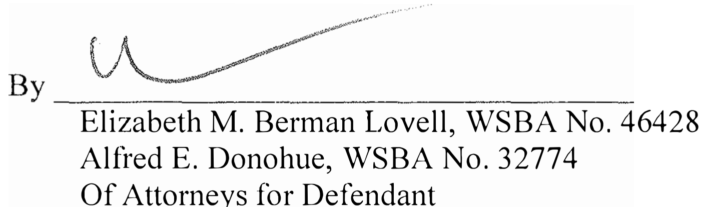
Here, the court authorized the deposit of Kosrovani's settlement funds. This state's highest court denied Kosrovani's Petition for Review on the issues of settlement enforcement and summary judgment dismissal of his Complaint. The Court of Appeals mandated this matter to the Superior Court for further proceedings. The only further proceedings appropriate in this matter are to order release of Kosrovani's settlement funds and to close this case.

VI. CONCLUSION

This court should GRANT Roger Jobs Motors' motion to order release of Kosrovani's settlement funds and close this matter, bringing it to a full and final conclusion.

DATED this 9th day of February, 2022.

WILSON SMITH COCHRAN DICKERSON



By ______________________________
Elizabeth M. Berman Lovell, WSBA No. 46428
Alfred E. Donohue, WSBA No. 32774
Of Attorneys for Defendant

WILSON SMITH COCHRAN DICKERSON
1000 SECOND AVENUE, SUITE 2050
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 623-4100
FAX: (206) 623-9273

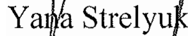
1 **CERTIFICATE OF SERVICE**

2

3 The undersigned certifies that under penalty of perjury under the laws of the State of Washington that on the below date I caused to be served the foregoing document on:

4 **Attorney/Pro Se Plaintiff**
Emilio M. Kosrovani
5 PO Box 3102
Bellingham, WA 98227
6 (X) Via U.S. Mail
( ) Via Facsimile
7 ( ) Via Hand Delivery
(X) Via Email, per e-service agreement: emiliolawoffice@yahoo.com
8

9

10 **SIGNED** this  day of February, 2022, at Seattle, Washington.

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12 Yana Strelyuk

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WILSON SMITH COCHRAN DICKERSON
1000 SECOND AVENUE, SUITE 2050
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 623-4100
FAX: (206) 623-9273

The Honorable Judge Lee Grochmal
Hearing Date: April 4, 2022
Time: 8:30 A.M.

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

EMILIO M. KOSROVANI, a single individual Plaintiff, v. ROGER JOBS MOTORS, INC. dba ROGER JOBS AUDI, VW, PORSCHE dba AUDI BELLINGHAM, Defendant.	No: 18-2-02112-37 RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR DISBURSEMENT OF FUNDS AND CROSS-MOTION FOR RESCISSION OF CONTRACT AND VACATION OF SETTLEMENT ENFORCEMENT ORDER

PLAINTIFF EMILIO M. KOSROVANI responds in opposition to Defendant's Motion for Disbursement of Funds and moves the court for an order approving rescission of settlement contract, and pursuant to CR 60(b)(3), (b)(6), and (b)(11), for an order vacating the order entered February 28, 2020 enforcing a disputed settlement agreement.

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

I. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

This case was commenced on November 9, 2018 by way of a Summons and Complaint wherein Kosrovani averred causes of action for negligence and premises liability arising from injuries consisting in traumatic brain injury suffered at the premises of Defendant on November 16, 2015. His cohabitant and domestic partner of 29 (now 32) years, Laurel Hansen, made averments of compensation for services rendered, loss of income, and loss of consortium in the same complaint. Decl. Kosrovani, Exh. A. Roger Jobs Motors was served on January 14, 2019. Before the close of pleadings, on February 1, 2019, it moved for summary judgment. Kosrovani initially moved for continuance, then moved for recusal of the judge based on her actual bias and lack of impartiality. The recusal motion was denied. Thereafter, without an opportunity to conduct any pending discovery, on March 8, 2019 the court entered an order granting summary judgment against Hansen dismissing her claims. On March 15, 2019, it entered another order dismissing all of Kosrovani's claims.

Kosrovani appealed the dismissal orders on his own behalf, and on behalf of Hansen, vehemently maintaining that the judge who dismissed their claims, Judge Raquel Montoya-Lewis, was severely biased against them, prejudged their case, made numerous findings of fact lacking in evidence, made multiple errors of law, both procedural and substantive, and that they were denied their Due Process rights, right of access to the courts, and their right to a fair tribunal. Kosrovani supported his allegations of bias by evidence produced, citing at least 18 instances of judicial acts intended to oppress, persecute, and denigrate them, and deny them of their day in court. Decl. Kosrovani, Exh. B and C. The judge evinced hatred, abomination, severe prejudice and clear intent to railroad them out of court. She was in a hurry to do so in

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

order to clear the docket within the three weeks that she had control of the case after the retirement of Judge Charles Snyder and the appointment of Judge Grochmal.

The reasons for such odious conduct were clear to Kosrovani and Hansen. They have to do with the combined effect of Kosrovani being *pro se* and the unwritten court rule, "Slam the pro se!", his minority status, the dark color of his skin, his ethnicity, foreign origin, age, stature, weak voice, and mild demeanor, his lack of connection to the local bar, lack of indicia of power, influence, and wealth, the judge's lack of impartiality and severe pro-defense bias, the prominence of Roger Jobs Motors in the Bellingham community, its role as employer and producer of tax revenue, its representation by a large law firm in Seattle, and the defense attorney's misconduct consisting in her making egregiously gross misrepresentations together with her unctuous manner of ingratiating herself with the judge. Both dismissal orders were appealed to the Court of Appeals.

While the appeal was pending, but before it was perfected, Judge Montoya-Lewis was appointed to the State Supreme Court. In view of the strong sentiment of the Court of Appeals to protect the honor and reputation of Judge Montoya-Lewis, to avoid causing her embarrassment, and to preclude offence to the higher judiciary, and cognizant ot the pre-existing bias of that Court against pro se plaintiff-appellants, Kosrovani reasoned that it would be impossible to prevail in the appeal. Decl. Kosrovani, Exh. D.

He then hired an attorney, arranged a mediation, and allowed his attorney to negotiate a tentative settlement pending his submission of first party claims to his and Hansen's insurers. He reasoned that if coverage is granted he would tender the lawsuit to the insurers and if tender is denied conclude the settlement and proceed with arbitration with the insurer as to his damages

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

1 above the settlement amount. While those claims were being processed, Roger Jobs prematurely
2 brought a motion to enforce the settlement.
3 Kosrovani opposed the enforcement motion on numerous grounds, *inter alia*, disputing
4 the agreement's existence and purport, contesting its validity and enforceability, questioning the
5 court's jurisdiction in entering orders while the appeal was pending, pointing to (i) the
6 document's conditionality and the failure of the condition to obtain, (ii) the court's failure to
7 adhere to the summary judgment process, (iii) lack of consideration for a modified release, and
8 (iv) the lack of a signature endorsement of the agreement by his attorney and by Hansen. Decl.
9 Kosrovani, Exh. E.
10 In keeping with this court's goal to end the litigation, rid itself of the case and clear the
11 docket, to railroad *pro se* plaintiffs such as Kosrovani, to appease the defense, and to gratify
12 Roger Jobs Motors, this court failed to hold a full evidentiary hearing as was required by law,
13 ignored Kosrovani's multiple arguments based on contract law and major case law, ignored his
14 testimony that the agreement is tentative pending tender of the case to his and Hansen's first
15 party insurers, interpreted the contract in a way that is clearly in derogation of its plain language,
16 ignored the nonfulfillment of CR 2A's criterion that there be a "proceeding in a cause,"
17 misinterpreted CR 2A as not requiring the signature of the attorney representing a party, denied
18 Kosrovani the opportunity to present evidence from his and Hansen's insurers on
19 reconsideration, failed to heed Kosrovani's claim that he lacked authority to sign an agreement
20 that materially affected the claims of Hansen in the lawsuit, and ruled that a modified release
21 document that Kosrovani had never seen or negotiated, let alone consented to, when he signed
22 the agreement is part of the agreement.
23

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

On February 28, 2020, the court entered an order enforcing the settlement agreement. Decl. Kosrovani, Exh. F

At the hearing, the court ordered Hansen away from the gallery, denying Hansen, in contravention of CJC 2.6(a), the chance to present oral testimony. It did so at the behest of the defense counsel. Based on the conclusion that it lacks authority due to the pending appeal, the court struck Kosrovani's motion for leave to amend the complaint to join Hansen as a party co-plaintiff. Decl. Kosrovani, Exh. G.

Consistent with a provision in the agreement calling for confidentiality of its terms, the court granted Defendant's motion to seal exhibits of the declaration of its counsel containing the settlement agreement and the release. The latter, the court found, contains the material terms of the agreement that are to be kept confidential. Decl. Kosrovani, Exh H.

Thereafter, Defendant violated the court's order to seal, failing to have the clerk of the court seal the documents containing the material terms of the agreement. It thereby failed to honor the confidentiality clause of the agreement, and breached that agreement. It filed the Order enforcing settlement together with a modified release that contains all the confidential terms of the settlement agreement. It also failed to immediately seal the Exhibits to its defense counsel's declaration that the court had ordered to be sealed. Decl. Kosrovani, Exh. J.

In July, 2020, after the Clerk brought it to Defendant's counsel's attention that the document remains unsealed, Defendant caused it to be sealed. But it went on to affix to its response brief, filed in breach of RAP 10.3(a)(8) in the Court of Appeals, a copy of the check it had issued to deposit funds in the registry of the court. Decl. Kosrovani, Exh I. The amount of the settlement being a key material term, Defendant thus repeated and continued its breach of the confidentiality clause of the settlement agreement and the breach of the violation of the court's

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

order to seal. In addition, Defendant failed to take any measures to prevent the Court of Appeals from disclosing the confidential material terms, including the settlement amount, in its Opinion.

Kosrovani did not sign either the modified Release or the Order enforcing the settlement. Nor did he dismiss the lawsuit or withdraw the pending appeal. Instead, he appealed the orders issued on February 28, 2020, contesting the existence, validity, and enforceability of the settlement agreement and the order enforcing the agreement, based on multiple assignments of error, including lack of jurisdiction of this court due to the failure of Roger Jobs Motors to seek permission of the appellate court before obtaining the order. He also appealed the Order Striking Motion for Leave to Amend.

Given to bias, prejudice, and a fervor to discard the case and shield Judge Montoya-Lewis, the Court of Appeals issued a memorandum opinion (hereafter "Opinion" appended as Exh. M in Decl. Kosrovani) in which it ignored settled law on the voidness of orders entered by a court lacking authority and, eschewing a line of precedent, "retroactively" granted this court jurisdiction to enter the Order enforcing the settlement. It ignored Kosrovani's argument that the voidness of the summary judgment due to lack of impartiality of the trial court and violation of Due Process rendered the subsequent settlement void. In addition, ignoring its own precedent and plain facts to the contrary, it even held that Kosrovani "directly settled with" Roger Jobs Motors at mediation, even though he was represented by an attorney and neither met nor communicated with Roger Jobs' principal or its defense counsel. It found that the settlement moots and renders nonreviewable the two summary judgment orders dated March 8th and March 15th, 2019 dismissing Hansen's and Kosrovani's causes of action for *inter alia*, loss of consortium and personal injuries. Decl. Kosrovani, Exh. N.

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

Kosrovani petitioned to the State Supreme Court. Decl. Kosrovani, Exh D. But as expected, that Court denied review. Decl. Kosrovani, Exh. O. The Court of Appeals thereafter routinely issued its mandate. Decl. Kosrovani, Exh. P.

Defendant is now attempting to enforce the settlement in accord with the mandate without even bothering to introduce the Opinion as part of its motion papers. Defendant's motion is thereby deficient and Defendant fails to meet its burden of proof. Any action of this court must be consistent with the mandate and the Opinion to which it refers.

The argument forthwith does not challenge the findings of the trial court made heretofore or the terms of the mandate and Opinion of the appellate court. It assumes the validity of the settlement agreement. Assuming its existence and validity, issues discussed below remain.

II. EVIDENCE RELIED UPON

This Response and Cross-Motion is based on the Declaration of Emilio M. Kosrovani in Support of Cross-Motion for Rescission of Contract, Vacation of Settlement Enforcement Order, Change of Venue, and for Joinder of Laurel Hansen, including Exh. A through S, the Declaration of Laurel Hansen in Support of Motion for Intervention, Writ of Mandamus, and for Declaratory Relief, and the files and records herein.

III. ARGUMENT AND AUTHORITY

1. Response to Defendant's Motion and Cross-Motion to Rescind Settlement Contract and Vacate Settlement Enforcement Order of February 28, 2020.

A. DEFENDANT'S ATTEMPT TO SPECIFICALLY ENFORCE A SETTLEMENT CONTRACT IS A PROCEEDING IN EQUITY.

Specific performance is an extraordinary remedy developed in courts of equity. De Wolf, D., 25 Wash. Prac., Contract Law and Practice, sec. 15:3 (3rd ed., 2021). It rests in the sound discretion of the court, which discretion is to be exercised in accordance with general principles

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

of equity jurisprudence. *Id.* The party seeking the relief must have acted in good faith, come into equity with clean hands, and do what is just and equitable to the other party. *Id.*

Consequently, actions for specific performance are subject to equitable defenses, which include equitable estoppel and unclean hands. *Id.* at sec. 15:7. In addition, the remedy of specific performance will be denied where performance is impossible. *Id.*

"'[E]quitable doctrines grew naturally out of the humane desire to relieve [parties] under special circumstances from the harshness of strict legal rules." *Kingery v. Dep't of Labor & Indus.*, 132 Wn.2d 162, 173-74, 937 P.2d 565 (1997). When fashioning equitable remedies, trial court's aim is to "do substantial justice to the parties." *Esmieu v. Hsieh*, 92 Wn.2d 530, 535, 598 P.2d 1369 (1979).

Whether a party is entitled to an equitable remedy is a question of law. *Niemann v. Vaughn Cmty Church*, 154 Wn.2d 365, 374, 113 P.3d 463 (2005).

B. PROCEEDINGS TO VACATE A JUDGMENT OR ORDER ARE EQUITABLE IN NATURE.

Proceedings to vacate judgments are equitable in nature and the court should exercise its authority liberally to "preserve substantial rights and do justice between parties." *In re Marriage of Hardt*, 39 Wn.App. 493, 693 P.2d 1396 (1985) quoting *Haller v. Wallis*, 89 Wn.2d 539, 543, 573 P.2d 1372 (1978).

To vacate an order under CR 60(b)(11), any extraordinary circumstances must either be an irregularity extraneous to the court's action or go to the question of the regularity of the proceedings. *Tatham v. Rogers*, 170 Wn.App. 76, 100, 283 P.3d 583 (2012). An irregularity is extraneous to the proceedings when, *inter alia*, "an unforeseen event occurs after proceedings

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

1 conclude." *Cf. In re Marriage of Knies*, 96 Wn.App. 243, 979 P.2d 482 (1999)(applying CR
2 60(b)(11) when obligor's source of income changed, circumventing settlement agreement).
3 Where a *material* term of a settlement agreement has been breached, "extraordinary
4 circumstances" exist warranting the vacation of the agreement under CR 60(b)(11). Thus, in *In*
5 *re Marriage of Thurston*, 92 Wn. App. 494, 496-97, 963 P.2d 947 (1998), the court vacated a
6 dissolution decree when one party refused to transfer a partnership interest as required in the
7 settlement enforced by the decree. Because failure of the transfer would "throw the whole
8 settlement out," it was a material condition of the settlement and presented an extraordinary
9 circumstance supporting vacation." *Id.*, at 503-04. As is argued below, Defendant has breached
10 a material term of the settlement agreement subsequent to the proceedings to enforce it and
11 Plaintiff is entitled to the vacation of the order enforcing that agreement.
12 Under CR 60(b)(3) newly discovered evidence may be sufficient to vacate a judgment.
13 As argued below, the failure of Defendant to preserve confidentiality of the agreement
14 constitutes "newly discovered evidence" entitling plaintiff to move under CR 60(b)(3) for
15 vacation of the settlement enforcement order.
16 Under CR 60(b)(6), where "it is no longer equitable that the judgment have prospective
17 application," relief from it may be obtained. As argued below, in view of the failure of the Court
18 of Appeals to review the dismissal of Hansen's claims, it is not equitable that the settlement
19 enforcement order have prospective application as it would result in the forfeiture of her claims.
20 **C. THE SETTLEMENT AGREEMENT IS AN EXECUTORY ACCORD.**
21 In Washington, "a settlement agreement is presumed to be an *executory accord*, not a
22 substituted contract." *Rosen v. Ascentry Technologies, Inc.*, 143 Wn.App. 364, 370, 177 P.3d
23 765 (Div. 1, 2008), citing *Buob v. Feenaughty Mach. Co.*, 191 Wash. 477, 71 P.2d 559

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

(1937)(emphasis supplied). Full satisfaction by way of performance of the accord is necessary to bar the action upon the original claim. *Id.,* citing *Buob,* at 491. "Unless there is clear evidence that the accord itself was intended as the satisfaction, it must be presumed that the parties contemplated *the performance of the accord* as the satisfaction." *Id.*, at 370-71, citing 29 Richard A. Lord, Williston on Contracts sec. 73-37 at 397 (4th ed. 2003)(emphasis added). To overcome the presumption that a settlement agreement is an executory accord, the parties' intent to do so *must be clear*. *Id.*, at 371, citing *Rogers v. City of Spokane*, 9 Wash. 168, 174, 37 P. 300 (1894)(emphasis supplied).

D. THE LANGUAGE OF THE SETTLEMENT AGREEMENT MANIFESTS OBJECTIVE EVIDENCE THAT IT IS AN ACCORD REQUIRING DISMISSAL OF SUIT UPON ACTUAL PAYMENT, NOT THE MERE PROMISE TO PAY.

The parties' settlement agreement only provides that Kosrovani is to dismiss the lawsuit and withdraw the appeal *upon receipt of payment*. Thus, the agreement is not at all clear that Kosrovani is releasing his claim in exchange for Roger Jobs Motors' mere *promise* to pay. The agreement's language is, in fact, to the contrary. As in *Rosen*, "Rosen was required to dismiss his original lawsuit only upon 'receipt of the Settlement Payment ...'" *Rosen*, at 372. As held therein, "[t]o overcome the presumption that the agreement was an executory accord, the parties' intent to do so must be be 'clearly shown,' and here it was not." *Id.*.

E. A PARTY IS ENTITLED TO WITHOLD PERFORMANCE AND RESCIND UPON BREACH OF THE EXECUTORY ACCORD BY THE OTHER PARTY.

An executory accord is a contract. "A party is barred from enforcing a contract that it has materially breached." *Id.* at 369, citing *Bailie Communications, Ltd. v. Trend Bus. Sys.*, 53 Wn.App. 77, 81, 765 P.2d 339 (1988); *Group Health Cooperative v. Coon*, 4 Wn.App.2d 737, 747-48, 23 P.3d 906 (2018). The injured party may either sue for total breach or rescind and

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

obtain restitution. *Id.*, citing Restatement (Second) of Contracts, sec. 241 cmt. *e* (1981). As a presumed executory accord and not a substituted contract, the parties' settlement agreement never extinguished Plaintiff's tort claims, nor those of Hansen. Its breach, thus, does not leave Plaintiff restricted only to a remedy in contract. As explained in *Rosen*,

> [W]ith an executory accord, pending full performance of the accord, ..., the original claim is merely suspended. It is not discharged until the promised performance is complete. Breach of the accord empowers the claimant with the choice of enforcing the accord or the original claim.

Rosen, at 370, quoting 13 Sarah H. Jenkins, *Corbin on Contracts*, sec 69.1 at 278 (rev. ed. 2003).

As explained below, Defendant has not discharged its duties under the settlement agreement and has breached the agreement, entitling Plaintiff to rescind.

F. DEFENDANT HAS NOT DISCHARGED ITS DUTIES BY PERFORMANCE UNDER THE SETTLEMENT AGREEMENT.

Defendant has not discharged its duties by performing the contract. Nothing less than full performance effects a discharge; any defect in performance, even an insubstantial one, prevents discharge. Restatement (Second) of Contracts, sec. 235, comment a (1981). Under the settlement agreement, Defendant has the duty to tender payment to Plaintiff and to hold the terms of the agreement confidential. It has done neither. No evidence of tender has been presented in its motion or supporting declaration and Defendant has itself admitted therein that its placement of funds in the court's registry was pursuant to RCW 4.44.480. Def's Motion, at 3. No inscription in the check itself signifies that it is for the benefit of Plaintiff. The statute applies only "when it is admitted by the pleading or examination of a party that the party *possesses* or *has control* of ... money." (Emphasis supplied.) Mere placement of funds in the court's registry

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

is not tender. The funds are merely held in *custodia legis* "subject to the further direction of the court." *Maybee v. Marhart*, 110 Wn. 2d 902, 904, 757 P.2d 967 (1988).

Moreover, Defendant has willfully breached the confidentiality provision of the agreement. It has acted in bad faith and has unclean hands.

G. THE MATTER OF DEFENDANT'S BREACH OF CONFIDENTIALITY AND VIOLATION OF THE SEAL ORDER AROSE SUBSEQUENT TO THE SETTLEMENT ENFORCEMENT ORDER AND IS NOT WITHIN THE SCOPE OF THE MANDATE.

In general, RAP 12.2 governs post-mandate proceedings and allows trial courts to "hear and decide postjudgment motions otherwise authorized by statute or court rule *so long as those motions do not challenge issues already decided by the appellate court*." (Emphasis added.) "The mandate does not restrict the trial court from addressing new issues based on events occurring since the original decision or considering new evidence in reconsidering an issue that has been mandated." Appellate Practice Deskbook, sec. 20.8(2), citing *inter alia*, *State v. Barberio*, 121 Wn.2d 48, 846 P.2d 519 (1993)(court may reconsider exceptional sentence upon resentencing) and *Bour v. Johnson*, 80 Wn App. 643, 910 P.2d 548 (1996)(lack of subject matter jurisdiction properly raised on remand).

The issue of Defendant's breach of the agreement's confidentiality clause and violation of the order to seal was discovered long after Kosrovani had filed his Notice of Appeal on April 13, 2020. Decl. Kosrovani. It was not a part of the proceedings addressing the validity and enforceability of the agreement. Thus, it could not be raised on appeal and was not a matter raised. Accordingly, the scope of the mandate and the memorandum Opinion does not include it or extend to it.

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

H. THE CONFIDENTIALITY CLAUSE OF THE SETTLEMENT AGREEMENT IS A MATERIAL TERM OF THAT AGREEMENT.

The Opinion of the Court of Appeals found that the settlement agreement contained "the following other agreed terms and conditions: ... (3) confidentiality of the settlement agreement." Decl. Kosrovani, Exh. M, at 3. It thus held that a *material term* of the settlement agreement of December 18, 2019 was its provision of confidentiality of its terms. Defendant admits that confidentiality was part of the agreement. Decl. Berman Lovell in Support of Defendant's Motion to Seal, at 1.

Plaintiff has attested that the confidentiality clause of the agreement is in the handwriting of his former attorney, Chalmers Johnson, who represented him at mediation. Decl. Kosrovani. He has attested that, after conferring with his attorney at mediation, the provision was inserted at his request on his behalf. Decl. Kosrovani. He has further attested that he relied on the provision in deciding to enter into the contract and viewed it as a benefit that he justifiably expected from the transaction. Decl. Kosrovani. The evidence shows the materiality of the term.

I. RESCISSION IS THE PROPER REMEDY FOR DEFENDANT'S BREACH OF CONFIDENTIALITY AND VIOLATION OF THE COURT'S ORDER.

A breach of a material of term of a contract is ground for remedies for breach. Damages for Defendant's breach herein are "irreparable damages," defined *inter alia* as "damages for which no certain standard exists for measurement" or "wrongs of a repeated and continuing character." Black's Law Dictionary, Sixth Ed. (1994). Defendant's breach is irreversible for the reason that the documents which contain the material terms of the contract have been made public record and remain accessible to everyone. Defendant cannot undo its breach.

The remedy of specific performance will ... be denied where performance is impossible. De Wolf, D., 25 Wash. Prac., Contract Law and Practice, sec. 15:3 (3rd ed.)(2021), citing

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

Morrisey v. Strom, 57 Wash. 487, 107 P. 191 (1910). Having made the terms public and disclosed them to the entire world, it is now impossible for Defendant to perform under the settlement agreement.

Plaintiff is entitled to rescission due to Defendant's breach. He is not seeking monetary damages or other remedies in contract, but instead a rescissionary remedy.. Pursuant to *Rosen*, he moves the court for an order approving rescission of the settlement agreement of December 18, 2019 and vacating the enforcement order of February 28, 2020. .

J. PUBLIC POLICY FAVORING FINALITY OF SETTLEMENTS DOES NOT PRECLUDE REVIVAL OF ORIGINAL CLAIMS WHERE BREACH HAS OCCURRED.

Defendant is expected to argue that this court has already found that the parties' settlement agreement is enforceable under CR 2A and that such an agreement affords a degree of finality that may not be overcome.

The *Rosen* court recognized that settlements under CR 2A give certainty and finality in settlements and compromises. *Rosen*, at 372. It held, however, that

> [t]his does not mean ... that courts must interpret settlement agreements to forever bar the revival of original claims even if the settlement agreement is breached. The presumption in Washington is that a settlement agreement is an executory accord and this presumption may be overcome only by a clear showing that the parties intended the agreement to be a substituted contract.

Id., at 373.

In considering the policy favoring finality of settlements, it should also be reminded that a competing public policy favors just compensation for tort victims. "The law strongly favors the just compensation of accident victims." *Carlton v. Finch*, 84 Wn.2d 140, 524 P.2d 898 (1974). The right to be indemnified for personal injuries is a substantial property right...." *Hunter v. North Mason High School.*, 85 Wash.2d 810, 814, 539 P.2d 845 (1975).

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

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K. SPECIFIC ENFORCEMENT OF THE SETTLEMENT AGREEMENT MAY NOT BE HAD ABSENT THE ASSENT OF HANSEN, IN CIRCUMSTANCES WHERE IT WOULD RESULT IN THE EXTINGUISHMENT OF HER CLAIMS.

3 "[W]here the decree of specific performance would require an act or assent of a person
4 not a party to the contract, the court will ordinarily not order specific performance." De Wolf,
5 D., 25 Wash. Prac., Contract Law and Practice, sec. 15:3 (3rd ed.)(2021), citing *Carson v. Isabel*
6 *Apartments, Inc.*, 20 Wn.App. 293, 579 P.2d 1027 (1978). Moreover, specific performance will
7 be refused if "the relief would cause unreasonable hardship or loss to ... third persons, or the
8 exchange is grossly inadequate." *Id.*, citing *inter alia*, *Nelson v. Nelson*, 57 Wn.2d 3231, 356
9 P.2d 730 (1960) and Restatement (Second) of Contracts, sec. 364 (1981).

10 Hansen has had claims for loss of income, compensation for services rendered, and loss
11 of consortium since the inception of this lawsuit. Decl. Kosrovani, Exh. A. Her claims were
12 brought in equity. They were supported by declarations, written briefs, and orally argued by
13 Kosrovani, acting as attorney, on her behalf. She has been the real party in interest with respect
14 to her claims. Kosrovani has only been the nominal party named in the complaint.

15 Hansen's claims were litigated to judgment and dismissed in summary judgment
16 proceedings. A subsequent amendment of the complaint was never served and did not take
17 effect under CR 5(a); it thus had no effect on her already adjudicated causes of action. The
18 Court of Appeals declined review of the dismissal of her claims, but ruled that the settlement
19 agreement of December 18, 2019 does not extinguish her claims and she is free to assert them in
20 court. Decl. Kosrovani, Exh. M, at 9.

21 Hansen has never assented to the settlement agreement, has opposed it from the start, and
22 does not assent to its enforcement. Decl. Hansen. The specific enforcement of the settlement
23 agreement would be inequitable, unfair, unjust, and unconscionable, as it would inflict extreme

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

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and undue hardship on Hansen. Defendant is seeking to take inequitable advantage of Hansen and quash her rights and access to the court. Though she is not bound by the settlement, enforcement would have the effect of leaving Hansen with no remedy at law or in equity as her claims could no longer be brought due to the lapse of the statute of limitations and the preclusive effect of judgments under res judicata.

Equity abhors forfeiture. Under CR 60(b)(6), it is no longer equitable that the enforcement order have prospective application.". Relief here can only be achieved by the vacation of the order enforcing settlement. *Ebsary v. Pioneer Human Services*, 59 Wn.App. 218, 796 P.2d 769 (1990).

L. DEFENDANT HAS WAIVED THE AGREEMENT'S REQUIREMENT OF A RELEASE BY PLAINTIFF.

Having disputed the existence and validity of the settlement agreement, Plaintiff withheld signing the modified Release. However, the court entered the order enforcing without his signature and Defendant failed to take further action. Defendant has by words and conduct waived the term or condition of the agreement having to do with the Release. Its motion for disbursement of funds does not condition disbursement upon the execution of a Release. It has thus changed position with respect to the Release and waived the condition.

CONCLUSION

Specific enforcement of an agreement is a proceeding in equity requiring that the party seeking enforcement come to court with clean hands and do what is just and equitable to the other party and to nonparties who would be materially affected by the enforcement. Neither can take place in the context herein. The settlement agreement of December 18, 2019 is an

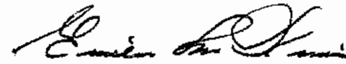
EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

executory accord that has been willfully and materially breached by Defendant entitling Plaintiff the right to withhold performance and rescind. Plaintiff has done so and has elected to move for an order approving the rescission and vacating the order enforcing settlement. Such rescission and vacation would enable him to petition the Court of Appeals to review his original claims whose dismissal the appellate court declined to review.

Specific enforcement would also be in derogation of the rights and interests of Hansen, a real party in interest as to certain claims brought in this lawsuit, as it would summarily extinguish her claims and preclude her from bringing the same claims in a new action due to the effect of the res judicata and lapse of the statute of limitations period.

For the foregoing reasons and arguments Plaintiff requests that the court deny Defendant's Motion to Disburse Funds, enter an order approving Plaintiff's rescission of the settlement contract, and vacate and set aside the Order Granting Motion to Enforce Settlement.

Respectfully Submitted this 21st day of March, 2022.



Emilio M. Kosrovani, WSBA #33762
Plaintiff *pro se*, and as attorney for
Laurel Hansen

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

The Honorable Judge Lee Grochmal
Hearing Date: April 4, 2022
Time: 8:30 A.M.

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

EMILIO M. KOSROVANI, a single individual Plaintiff, v. ROGER JOBS MOTORS, INC. dba ROGER JOBS AUDI, VW, PORSCHE dba AUDI BELLINGHAM, Defendant.	No: 18-2-02112-37 MOTION FOR JOINDER OF LAUREL HANSEN AS CO-PLAINTIFF

PLAINTIFF EMILIO M. KOSROVANI, attorney for LAUREL HANSEN, a real party in interest as to certain causes of action herein, moves the court, pursuant to CR 19 and CR 20(a), for an Order joining her as co-Plaintiff in this action

I. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND
(Note: Statement of Facts is substantially similar to the Statement in Hansen's Motion for Intervention filed contemporaneously.)

This case was commenced on November 9, 2018 by way of a Summons and Complaint wherein Kosrovani averred causes of action for negligence and premises liability arising from

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

1 traumatic brain injury suffered at the premises of Defendant on November 16, 2015. His
2 cohabitant and domestic partner of 29 (now 32) years, Laurel Hansen, made averments of
3 compensation for services rendered, loss of income, and loss of consortium in the same complaint.
4 Decl. Hansen, Exh. A. Roger Jobs Motors was served on January 14, 2019. Before the close of
5 pleadings, on February 1, 2019, it moved for summary judgment.

6 On March 8, 2019, the court held a separate hearing addressing Hansen's claims. The
7 court permitted Kosrovani, as attorney, to present briefing and argue the matter on behalf of
8 Hansen. It entered an order granting summary judgment against Hansen dismissing her claim for
9 loss of consortium. Decl. Hansen, Exh. B. The court did not address Hansen's claims for
10 compensation for services rendered and loss of income. On March 15, 2019, it entered another
11 order dismissing all of Kosrovani's claims.

12 Kosrovani appealed the dismissal orders on his own behalf, and on behalf of Hansen,
13 While the appeal was pending, Kosrovani hired an attorney, Chalmers Johnson, G.S. Jones, P.S.,
14 to represent him. Hansen was not represented by said counsel. Kosrovani arranged a mediation,
15 and allowed his attorney to negotiate a tentative settlement, pending his submission of first party
16 claims to his and Hansen's insurers. Hansen did not participate in the mediation. Nor did
17 Kosrovani represent her at the mediation. At the close of mediation, a "Memorandum" was signed
18 by Kosrovani, but not his attorney, conditionally agreeing to settle his claims pending review and
19 acceptance of a release. The "Memorandum" refers not just to "parties" but to "claimants."
20 Though Hansen has been a claimant all along, she did not sign the "Memorandum" and opposed
21 any settlement of her claims. Decl. Hansen, Exh. E.

22 While the insurance claims were being processed, Roger Jobs prematurely brought a
23 motion to enforce the settlement. Kosrovani opposed the motion and cross-moved for leave to

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

amend his complaint. Kosrovani opposed the enforcement motion on numerous grounds, *inter alia,* that the Memorandum's lack of a signature endorsement by Hansen rendered it void. Decl. Kosrovani, Exh. E. He also argued that he lacked authority to sign an agreement that materially affected the claims of Hansen in the lawsuit, that Hansen is an indispensible party without whom the matter may not be adjudicated, and that under *Ebsary v. Pioneer Home Services*, 59 Wn.App. 218, 796 P.2d 769 (1990) the agreement is null and void and must be vacated as its enforcement would result in forfeiture and the extinguishment of Hansen's claims. He moved, pursuant to CR 15(a) and CR 17(a), for joinder of Hansen as party co-plaintiff based on the fact that she is a real party in interest with respect to her causes of action.

On February 28, 2020, the court entered an order enforcing the settlement agreement. Decl. Hansen, Exh. F. On the same date, it entered an Order Striking Plaintiff's Motion for Leave to Amend. Decl. Hansen, Exh. G. It did so on the ground that it lacks authority to enter the sought order given the appeal pending in the Court of Appeals. Neither order makes any reference to Hansen. At the hearing, the court ordered Hansen away from the gallery, denying her, in contravention of CJC 2.6(a), the right to present oral testimony. It did so at the behest of defense counsel.

Kosrovani and Hansen jointly appealed the court's orders. In a memorandum Opinion, the Court of Appeals declined to review the summary judgment dismissals of March 8th and 15th, 2019, holding that the settlement is enforceable and moots the review of those judgments. Referring to Hansen as Kosrovani's "domestic partner," Opinion, at 2, it ruled that:

> There is no dispute that the CR 2A settlement agreement does not extinguish [Hansen's} potential claims. Her signature is not required to make the settlement enforceable as against Kosrovani.

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

Opinion, at 8. Decl. Hansen, Exh. J. The Court of Appeals overlooked the plain fact that, as argued in the Brief of Appellant, Decl. Hansen, Exh. H, that Hansen's claims were actual pleaded claims and that her cause of action for loss of consortium has been adjudicated on the merits by the trial court at summary judgment and merged into that judgment. At any rate, the ruling implies that Hansen is not bound by the disposition of Kosrovani's claims on March 15, 2019 or thereafter in settlement.

Kosrovani petitioned to the State Supreme Court. Decl. Kosrovani, Exh D But as expected, that Court denied review. Decl. Kosrovani, Exh. O. The Court of Appeals thereafter routinely issued its mandate. Decl. Kosrovani, Exh. P.

Defendant is now attempting to enforce the settlement as against both Kosrovani and Hansen purportedly in accord with the mandate of the Court of Appeals. It seeks to disburse the settlement amount only to Kosrovani and conclude the lawsuit. It is thereby attempting to take advantage of Hansen to bury her claims and bar her access to the court even though Hansen's claims, per the Opinion of the Court of Appeals, have not been extinguished and the settlement agreement is not enforceable as against her.

II. ARGUMENT AND AUTHORITY

A. CR 19 AND CR 20 GOVERN JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION AND PERMISSIVE JOINDER

CR 19(a), governing joinder by right, provides in pertinent part as follows:

> **(a) Persons to Be Joined if Feasible.**
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> A person ... shall be joined in an action if
>
> (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject matter of the action and is so situated that the disposition of the action in the

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

1 person's absence may as a practical matter impair or impede the person's ability to protect that interest....

2

If the person has not been so joined, the court shall order that the person be made a party.

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4 CR 20, allowing permissive joinder, provides in pertinent part as follows:

5 **(a) Permissive Joinder.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of these person will arise in the action:

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8 **B. JOINDER UNDER CR 19 REQUIRES A DETERMINATION OF WHETHER A PARTY IS NEEDED FOR JUST ADJUDICATION.**

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10 The analysis of CR 19 requires an initial determination of whether a party is needed for just adjudication. *Matter of Johns-Manville*, 99 Wn.2d 193, 197, 660 P.2d 271 (1983). If it is not feasible to join the absent party then "the court must determine whether [the absent party] is indispensible." *Id.* For this determination, a court must decide "whether 'in equity and good conscience' the action should proceed." *Id.* The doctrine of indispensability is ... founded on basic equitable considerations." *Cathcart-Maltby-Clearview Comm. Council v. Snohomish Cty,* 98 Wn.2d 201, 207, 634 P.2d 853 (1981)(holding that in action based on county decision owners of rezoned property are indispensible parties).

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18 As argued below, the situation herein presents a peculiar set of facts and circumstance that warrant joinder of Hansen, as she is the real party in interest as to certain cause of action herein, her claims have been asserted in the timely filed complaint, prayers for relief have been averred, and she is so situated that the disposition of this matter in her absence impairs or impedes her ability to protect her interest. Analogous to the owners in *Cathcart-Malby*, she is the owner of

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EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

those causes of actions. Hence, she is needed for just adjudication of the matter herein and is indispensible.

C. PERMISSIVE JOINDER UNDER CR 20 IS APPROPRIATE WHERE PERSONS ASSERT A RIGHT TO RELIEF ARISING FROM THE SAME OCCURRENCE.

Permissive joinder is driven by judicial economy and liberally allowed when a plaintiff seeks to join a person who asserts the right to relief from the same occurrence or transaction. Here, Kosrovani seeks to join Hansen whose injury derives from Kosrovani's personal injury.

D. HANSEN HAS HAD CLAIMS SINCE THE INCEPTION OF THE SUIT THAT HAVE NEITHER BEEN ENTIRELY ADJUDICATED ON THE MERITS BY THE TRIAL COURT NOR REVIEWED BY THE COURT OF APPEALS.

Hansen has had claims for compensation for services rendered, loss of income, and loss of consortium in the lawsuit. Though she was not formally named as "Plaintiff" in the suit, her claims were pleaded in the complaint filed by Kosrovani. The claims were brought pursuant to RCW 4.08.030, which provides that "[e]ither spouse or either domestic partner may sue on behalf of the community" but leaves the term 'domestic partner' undefined. Kosrovani has attested that his election to not name Hansen as a party plaintiff was "an honest mistake," "a legal error." His reliance on that statute misled him to file the suit naming only himself as plaintiff.

The claims and causes of action for injuries and monetary loss suffered by Laurel Hansen were *specifically* pleaded. They were pleaded under the title, "Fourth Cause of Action: Loss of Consortium and Other Claims of Hansen.". The complaint identifies Hansen as "a foreseeable ***plaintiff*** to whom Defendants owed a duty of reasonable care." (emphasis added). It explicitly attributes the enumerated causes to Hansen, referring to them as "Hansen's claim." The prayers in the complaint *specifically* ask for relief for Hansen in the form of "an award of special damages in favor of Hansen… for Hansen's medical expenses, wage loss, and other economic loss" and "as

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

compensation for the care she has provided to Plaintiff." They further *specifically* ask for "an award of general damages in favor of Hansen ... for Hansen's loss of consortium, mental anguish, and emotional distress." Moreover, these claims were supported by declarations filed by Hansen individually, and by Hansen and Kosrovani jointly, and by the submission of a "Response in Opposition to Defendant's Motion for Summary Judgment as to Hansen's Claims," which addressed all of her claims. Hansen has filed additional Declarations attesting to the fact that she is the owner of these claims.

E. HANSEN HAS BEEN A REAL PARTY IN INTEREST AS TO HER CAUSES OF ACTION AND ENTITLED TO JOINDER IN THE SUIT AS PARTY CO-PLAINTIFF.

The status of Hansen throughout this action is analogous to that of beneficiaries in a wrongful death action brought by a personal representative of the estate on their behalf. Under the wrongful death statute, RCW 4.20.020, only a personal representative may bring such a suit. In such an action the personal representative is merely a *statutory agent* or *trustee* acting in favor of the beneficiaries. The action is brought *for the benefit of* the beneficiaries. They are the real parties in interest and have vested rights under the statute for compensation from the wrongdoer. *Wood v. Dunlop*, 83 Wn.2d 719, 724-25, 521 P.2d 1177 (1974). The personal representative has only a nominal interest in the suit. He is only the nominal party, not the real party in interest. See also *Huntington v. Samaritan Hosp.*, 101 Wn.2d 466, 680 P.2d 58 (1984)(Dissenting opinion of Judge Rosellini).

Hansen is the real party in interest with respect to the three causes of action that belong to her, namely, loss of income, compensation for services rendered, and loss of consortium. She is someone whose identity has been pleaded and who has had pleaded claims in the lawsuit from its inception. She is the real party in interest as to those claims.

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

As a real party in interest, Hansen has been entitled to joinder since the inception of the lawsuit. Courts have been lenient in permitting joinder of a real party in interest. "As long as no prejudice is shown, the real party in interest may be added at any time, even after trial." *Rinke v. Johns-Manville Corp.*, 47 Wn.App. 222, 734 P.2d 533, 537 (1987). CR 17(a) states, "[e]very action shall be prosecuted in the name of the real party in interest." It further provides that "joinder ... shall have the same effect as if the action had been commenced in the name of the real party in interest." "[A] mistake can be an 'honest mistake' or an 'understandable mistake' even though the plaintiff could have ascertained the proper party who should sue or the proper method in which to sue." *Rinke,* at 734 P.2d 538.

As argued below, the rule does *not* imply that the failure to prosecute an action in the name of the real party in interest deprives that party of that status or of his or her interest.

F. ANY DEFECTS OR INADEQUACIES OF THE COMPLAINT WERE WAIVED BY DEFENDANT WHEN THEY WERE LITIGATED TO SUMMARY JUDGMENT.

Under CR 15(b), where issues are tried by express or implied consent, the issues "shall be treated in all respects as if they had been raised in the pleadings." *Reagan v. Newton, M.D.*, 7 Wn. App. 2d 281, 463 P.3d 411 (2019). Any defects in the complaint were waived by Defendant when it first raised the substantive issues relating to loss of consortium and argued them before the court and tried the matter to judgment. In so doing, it manifested consent to litigate the issue by addressing it in its moving papers. CR 15(b); *Reagan* at 463 P.3d 425. When a claim has been argued on the merits, "summary judgment proceedings amount[] to a trial of the claim by implication under CR 15(b)." *Id.*. See also, *Reichelt*, at 768 (Court erred in holding that the inadequacies of complaint preclude the consideration of claim); *Burchfiel v. Boeing Corp.*, 149

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

Wn.App. 468,295-96, 205 P.3d 145 (2009)(Defects in pleading loss of consortium remedied by prayers for damages).

G. ROGER JOBS MOTORS' ANSWER TO THE COMPLAINT LACKS ANY AFFIRMATIVE DEFENSES AS TO HANSEN'S STANDING, STATUS, AND THE STATUTE OF LIMITATIONS.

Defendant's Answer to Complaint lacks any affirmative defenses as to Hansen's standing, status, and whether her claims are barred by the statute of limitations. No affirmative defenses as to statute of limitations with respect to any of the causes have been asserted therein.

The statute of limitations defense is "not self-executing." A defendant must raise the statute in its answer, CR 8(c), and the failure to do so in a timely manner results in a waiver of the defense. *Davis v. Nielson*, 9 Wn.App. 864, 876, 515 P.2d 995 (1973). As such, any such defenses as to Hansen's claims have been waived by Defendant.

H. HANSEN'S SUBSTANTIVE CLAIMS HAVE BEEN BROUGHT IN EQUITY.

Hansen's position throughout the suit has been that (i) notwithstanding the procedural and permissive RCW 4.08.030, there does not exist a statute that restricts loss of consortium claims in a tort action to only married persons and those with registered partnerships, (2) her claim for loss of consortium was brought *in equity* based principally on her committed intimate relationship that has lasted continuously over 30 years, (3) the committed intimate relationship doctrine is an equitable doctrine, (4) the common law governs loss of consortium and it is evolving and in transition, and (5) her two other claims besides loss of consortium do not require a married status or registration of partnership.

Hansen's claim for loss of consortium was adjudicated on the merits and dismissed, with prejudice, at summary judgment. This claim thus merged into the judgment entered March 8th,

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

2019. The court apparently left her other two causes of action unaddressed. However, the court dismissed all remaining claims by means of its order on summary judgment on March 15, 2019.

I. POST-JUDGMENT JOINDER OF A REAL PARTY INTEREST HAS LONG BEEN RECOGNIZED IN THE LAW OF THIS STATE.

The postjudgment joinder of a real party in interest has long been the normal practice in this state. *Schroeder v. Hotel Comm'l Co.*, 84 Wash. 685, 694-95, 147 P. 417 (1915). Thus, in *Fox v. Sackman*, 22 Wn.App. 707, 591 P. 2d 855 (1979) the court held that the real party in interest rule was intended to avoid a technicality's interference with the merits of the case and to prevent forfeiture when a determination of the proper party is difficult or when an understandable mistake has been made. See also *Sidis v. Rosaia*, 170 Wash. 587, 17 P.2d 37 (1932)("[T]he law looks beneath the apparent and beholds the real."); *Carle v. Earth Stove, Inc.*, 35 Wn.App. 903, 670 P.2d 1086 (1983); *Betchard-Clayton, Inc. v. King*, 41 Wn.App. 887, 894-95, 707 P.2d 1361 (1985).

J. HANSEN'S CLAIMS HAVE BEEN SEPARATE, INDEPENDENT, AND NONDERIVATIVE CLAIMS UNAFFECTED BY THE SETTLEMENT.

Hansen's claims are *separate* and *independent* claims. In an action for loss of consortium, "[t]he claimant suffers an *original* injury that is the subject of the action. ... [T]he injury rather than the claim is derivative." *Reichelt v. Johns Manville Corp.*, 107 Wn.2d 761, 733 P.2d 530 (1987). A loss of consortium is a personal injury.

As the Court of Appeals Opinion implies, Hansen's independent and nonderivative claims were not affected by the settlement agreement. Consequently, Hansen is not bound by the disposition of Kosrovani's claims in the settlement enforcement proceedings. This comports with *Reichelt v. Johns Manville Corp.*, 107 Wn.2d 761, 733 P.2d 530 (1987) and *Hooper v. Yakima County*, 79 Wn.App. 770, 775-76, 904 P.2d 1193 (1995). Hansen is not bound by the settlement.

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

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2 **K. HANSEN'S CAUSES OF ACTION HAVE NOT BEEN AFFECTED BY THE AMENDED COMPLAINT AND THEY MERGED INTO FINAL JUDGMENT.**

3

4 By the time Kosrovani amended his Complaint, Hansen's claims had been dismissed by

5 summary judgment entered March 8, 20219 and had merged into that judgment. The amendment

6 of the complaint thus did not affect those claims. Moreover, as acknowledged by Defendant in

7 written pleadings before this court, Decl. Hansen, Exh. C, the Amended Complaint was never

8 served. Since service was never perfected pursuant to CR 15(a) and CR 5, it did not take effect.

9 A final judgment is "such a judgment as at once puts an end to the action by declaring that

10 the plaintiff has or has not entitled himself to the remedy for which he sues." *Reif v. La Follette*,

11 19 Wn.2d 366, 370, 142 P.2d 1015 (1943). "A final judgment is cognizable for the purposes of

12 appeal if it finally determines the rights of the parties in the action and is not subject to de novo

13 review at a later hearing in the same case." *Wlasluk v. Whirlpool Corp*., 76 Wn.App. 250, 255,

14 884 P.2d 13 (1994). Here, the summary judgment entered March 15, 2019 was the final judgment

15 in the case. It dismissed "all remaining claims." The Court of Appeals accepted review under

16 RAP 2.2(a)(1) governing final judgments.

17 "Any order failing to qualify under [CR 54(b)] is subject to revision at any time prior to the

18 entry of final judgment adjudicating the entire action." *Schiffman v. Hanson Excavating Co., Inc.*

19 82 Wn.2d 681, 513 P.2d 29 (1973). The summary judgment order of March 8, 2019 dismissing

20 Hansen's cause for loss of consortium was never revised. It thus merged into the final judgment.

21 **L. HANSEN'S CLAIMS MAY ONLY BE PRESERVED IF HER JOINDER IS PERMITTED IN THIS SUIT.**

22 The relation back provision of the CR 17(a) has been allowed by most courts in situations

23 where there has been an "honest mistake" or an "understandable mistake" in naming an improper

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

party and where the interests of the real party in interest has been contemplated from the beginning of the suit. *Reichelt* at 534 P.2d 538. "The relation back provision is intended to insure against forfeiture and injustice." *Id.* (citations omitted).

In circumstances such as this where an honest legal mistake has been made, as the analysis of the court in *Rinke, supra*, at 535-36 shows, the relation back provision of CR 17(a) governs. Thus, "the purpose of the suit was clear from its inception," *id.* at 734 P.2d 539, and joinder would not be "an attempt to insert a new party or a new claim," *id.,* but to "correct the record to reflect how the reality of how the parties view the case." *Id.*

Failure to allow joinder of Hansen, would subject Hansen's claim to permanent extinguishment and forfeiture, as any subsequent filing in a new action would likely be met with the assertion of the defenses of res judicata and the lapse of statute of limitations.

M. THE STATUTE OF LIMITATIONS HAS BEEN MET BY THE LITIGATION HERETOFORE AND HANSEN IS ENTITLED TO EQUITABLE TOLLING.

In Washington, the statute of limitation for a cause of action is met and its applicability ceases when a claim is brought. Thus, as held in *Wallace v. Evans*, 131 Wn.2d 572, 579, 934 P.2d 662 (1997), "because the action was filed within the applicable limitations period, the statute of limitation does not actually apply." Hansen's claims have been timely brought on November 9, 2018, within three years of November 16, 2015, the date of Kosrovani's injury

Defendant is expected to argue that Hansen was not a named party in the suit, the court never took personal jurisdiction over her, and that her causes of action are therefore time-barred. But, as argued in sec. G above, Defendant may not argue as such as it has waived any such defense by failing to raise the statute of limitations in its Answer to Complaint.

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

Moreover, a nonparty may still be within a superior court's jurisdiction, *State v. Breazeale*, 99 Wn.App. 400, 405, 994 P.2d 254 (2000), in particular if "she asks the court to grant affirmative relief, or otherwise consents, expressly or impliedly, to the court's exercising jurisdiction." *In re Marriage of Steele*, 90 Wn.App. 992, 997-98, 957 P.2d 247 (1998). Hansen did ask the court for affirmative relief by way of the complaint and impliedly consented to the court's exercise of jurisdiction. She consented once again when Kosrovani moved to amend his complaint to join her as co-plaintiff.

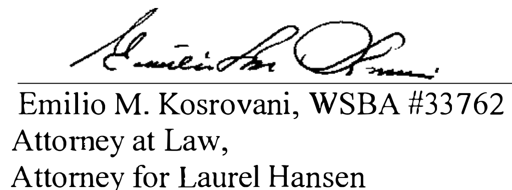
In addition, Washington "allows equitable tolling when justice requires." *Douchette v. Bethel School Dist. No. 403*, 117 Wn.2d 805, 812, 818 P.2d 1362 (1991), *review denied*, 127 Wn. 2d 1002, 898 P.2d 307 (1995).. "[E]quitable tolling is appropriate when consistent with both the purpose of the statute providing for the cause of action and the purpose of the statute of limitations." *Id.*

Hansen is entitled to equitable tolling as the purpose of both the statute of limitations, which is to give timely notice to defendants of the claim and prevent a party from sleeping on his rights, and that of her causes of action, which is to provide just compensation for personal injury and pecuniary loss, have been met.

N. JUSTICE, EQUITABLE CONSIDERATIONS, AND THE NECESSITIES OF THE CASE REQUIRE JOINDER.

It is uncontroverted that Hansen did not participate in a mediation with Roger Jobs Motors, did not sign a settlement agreement, and did not approve of or otherwise consent to a settlement. Analogous to a minor beneficiary in a wrongful death suit whose claims have been settled by the personal representative without his consent and without court approval, Hansen's causes of action would be extinguished, without her approval and consent, if the court enforces the

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

1 purported settlement of December 18, 2019. This works a "forfeiture and an injustice," *Rinke,*
2 *supra*, and deprives her of the right to have her claims adjudicated by the Court of Appeals.
3 As held in *Ebsary v. Pioneer Human Services*, 59 Wn. App. 218, 796 P.2d 769 (1990) a
4 settlement and release encompassing the claims of a person not represented in the settlement and
5 having the effect of extinguishing that person's claims is null and void. Though the
6 unrepresented persons in *Ebsary* were named parties, it is extremely plausible to infer that the
7 ruling would have been the same had they been real parties in interest not joined in the action
8 brought by the personal representative as nominal plaintiff on their behalf.
9 In sum, nonjoinder would be severely prejudicial to Hansen as it would extinguish her
10 claims and effect a forfeiture.
11
12 **CONCLUSION**
13 Hansen is a real party in interest as to her causes of action and entitled to joinder herein.
14 She has had pleaded claims since the inception of this suit and her claims have not been fully
15 adjudicated, reviewed, or settled. The status of her rights and claims remains undecided. Any
16 order enforcing the settlement in the absence of Hansen is in derogation of Hansen's rights and
17 would effect a forfeiture as it would summarily extinguish her pending claims.
18 The court is asked to allow joinder and address Hansen's claims in equity..
19 Respectfully Submitted this 21st day of March, 2022.
20
21 
Emilio M. Kosrovani, WSBA #33762
22 Attorney at Law,
Attorney for Laurel Hansen
23

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

The Honorable Judge Lee Grochmal
Hearing Date: April 4, 2022
Time: 8:30 A.M.

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

EMILIO M. KOSROVANI, a single individual Plaintiff, v. ROGER JOBS MOTORS, INC. dba ROGER JOBS AUDI, VW, PORSCHE dba AUDI BELLINGHAM, Defendant.	No: 18-2-02112-37 MOTION FOR INTERVENTION, ISSUANCE OF WRIT OF MANDAMUS, AND FOR DECLARATORY RELIEF

LAUREL HANSEN, a real party in interest as to certain causes of action herein, moves the court, pursuant to CR 24(a) and (b) for an Order permitting her to intervene in this action, and, if granted, pursuant to RCW 7.16.150 through .170 for issuance of a Writ of Mandamus enjoining the Court of Appeals to review the summary judgment dismissal of her claims, or under RCW 7.24.050 for declaratory relief determining that (a) the causes of action for compensation for services rendered, loss of income, and loss of consortium are Hansen's claims and causes, belong to her, and were brought on her behalf; (b) they were timely brought and have not been

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

extinguished by the statute of limitations, and Hansen is entitled to equitable tolling of the statute; (c) they were not extinguished by any court action or any act on the part of Kosrovani, including his alleged entry into a settlement agreement with Roger Jobs Motors, (d) they have neither been fully adjudicated nor reviewed; and that (e) Hansen is entitled to joinder as co-Plaintiff herein and proceed with her claims and causes of action in this court and in the Court of Appeals;.

I. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND (Note: Statement of Facts is substantially similar to the Statement in Plaintiff's Motion for Joinder of Laurel Hansen.)

This case was commenced on November 9, 2018 by way of a Summons and Complaint wherein Kosrovani averred causes of action for negligence and premises liability arising from traumatic brain injury suffered at the premises of Defendant on November 16, 2015. His cohabitant and domestic partner of 29 (now 32) years, Laurel Hansen, made averments of compensation for services rendered, loss of income, and loss of consortium in the same complaint. Decl. Hansen, Exh. A. Roger Jobs Motors was served on January 14, 2019. Before the close of pleadings, on February 1, 2019, it moved for summary judgment.

On March 8, 2019, the court held a separate hearing addressing Hansen's claims. The court permitted Kosrovani, as attorney, to present briefing and argue the matter on behalf of Hansen. It entered an order granting summary judgment against Hansen dismissing her claim for loss of consortium. Decl. Hansen, Exh. B. The court did not address Hansen's claims for compensation for services rendered and loss of income. On March 15, 2019, it entered another order dismissing all of Kosrovani's claims.

Kosrovani appealed the dismissal orders on his own behalf, and on behalf of Hansen, While the appeal was pending, Kosrovani hired an attorney, Chalmers Johnson, G.S. Jones, P.S., to represent him. Hansen was not represented by said counsel. Kosrovani arranged a mediation,

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

and allowed his attorney to negotiate a tentative settlement, pending his submission of first party claims to his and Hansen's insurers. Hansen did not participate in the mediation. Nor did Kosrovani represent her at the mediation. At the close of mediation, a "Memorandum" was signed by Kosrovani, but not his attorney, conditionally agreeing to settle his claims pending review and acceptance of a release. The "Memorandum" refers not just to "parties" but to "claimants." Though Hansen has been a claimant all along, she did not sign the "Memorandum" and opposed any settlement of her claims. Decl. Hansen, Exh. E.

While the insurance claims were being processed, Roger Jobs prematurely brought a motion to enforce the settlement. Kosrovani opposed the motion and cross-moved for leave to amend his complaint. Kosrovani opposed the enforcement motion on numerous grounds, *inter alia,* that the Memorandum's lack of a signature endorsement by Hansen rendered it void. Decl. Kosrovani, Exh. E. He also argued that he lacked authority to sign an agreement that materially affected the claims of Hansen in the lawsuit, that Hansen is an indispensible party without whom the matter may not be adjudicated, and that under *Ebsary v. Pioneer Home Services*, 59 Wn.App. 218, 796 P.2d 769 (1990) the agreement is null and void and must be vacated as its enforcement would result in forfeiture and the extinguishment of Hansen's claims. He moved, pursuant to CR 15(a) and CR 17(a), for joinder of Hansen as party co-plaintiff based on the fact that she is a real party in interest with respect to her causes of action.

On February 28, 2020, the court entered an order enforcing the settlement agreement. Decl. Hansen, Exh. F. On the same date, it entered an Order Striking Plaintiff's Motion for Leave to Amend. Decl. Hansen, Exh. G. It did so on the ground that it lacks authority to enter the sought order given the appeal pending in the Court of Appeals. Neither order makes any reference to Hansen. At the hearing, the court ordered Hansen away from the gallery, denying her, in

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

1 contravention of CJC 2.6(a), the right to present oral testimony. It did so at the behest of defense
2 counsel.
3 Kosrovani and Hansen jointly appealed the court's orders. In a memorandum Opinion, the
4 Court of Appeals declined to review the summary judgment dismissals of March 8th and 15th,
5 2019, holding that the settlement is enforceable and moots the review of those judgments.
6 Referring to Hansen as Kosrovani's "domestic partner," Opinion, at 2, it ruled that:

7 There is no dispute that the CR 2A settlement agreement does not extinguish
[Hansen's} potential claims. Her signature is not required to make the
8 settlement enforceable as against Kosrovani.
9
Opinion, at 8. Decl. Hansen, Exh. J. The Court of Appeals overlooked the plain fact that, as
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argued in the Brief of Appellant, Decl. Hansen, Exh. H, Hansen's claims were actual pleaded
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claims and that her cause of action for loss of consortium has been adjudicated on the merits by
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the trial court at summary judgment and merged into that judgment.
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Kosrovani petitioned to the State Supreme Court. Decl. Kosrovani, Exh D But as
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expected, that Court denied review. Decl. Kosrovani, Exh. O. The Court of Appeals thereafter
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EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

II. ARGUMENT AND AUTHORITY

1. Motion to Intervene.

A. CR 24 GOVERNS INTERVENTION BY RIGHT AND PERMISSIVE INTERVENTION.

CR 24(a), governing intervention by right, provides in pertinent part that

> [u]pon timely application anyone shall be permitted to intervene in an action:
>
> ....
>
> (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the person is so situated that the disposition of the action may as a practical matter impair or impede the person's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

CR 24(b), allowing permissive intervention, provides in pertinent part as follows:

> Upon timely application, anyone may be permitted to intervene in an action:
>
> (2) When an applicant's claim or defense and the main action have a question of law or fact in common.

The Supreme Court of our state has held that it liberally construes these rules in favor of intervention. *Loveless v. Yantis*, 82 Wn.2d 754, 759, 513 P.2d 1023 (1973). It also has held that "[a] proper determination of the sufficiency of the claimed 'interest' of a particular intervenor cannot be made in vacuum, out of the context in which the claim is asserted." *American Discount Corp. v. Saratoga West, Inc.* 81 Wn.2d 34, 499 P.2d 869 (1972).

As argued below, the context herein presents a peculiar set of facts and circumstance that require this court to consider the equities involved and make a determination. Intervention as a matter of right should be granted as Hansen is the real party in interest as to certain cause of action herein, her claims have been asserted in the timely filed complaint and prayed for relief, and Defendant has had notice of her claim and litigated them to judgment.

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

B. HANSEN HAS HAD CLAIMS SINCE THE INCEPTION OF THE SUIT THAT HAVE NEITHER BEEN ENTIRELY ADJUDICATED ON THE MERITS BY THE TRIAL COURT NOR REVIEWED BY THE COURT OF APPEALS.

Hansen has had claims for compensation for services rendered, loss of income, and loss of consortium in the lawsuit. Though she was not formally named as "Plaintiff" in the suit, her claims were pleaded in the complaint filed by Kosrovani. The claims were brought pursuant to RCW 4.08.030, which provides that "[e]ither spouse or either domestic partner may sue on behalf of the community" but leaves the term 'domestic partner' undefined. Kosrovani has attested that his election to not name Hansen as a party plaintiff was "an honest mistake," "a legal error." His reliance on that statute misled him to file the suit naming only himself as plaintiff.

The claims and causes of action for injuries and monetary loss suffered by Laurel Hansen were *specifically* pleaded. They were pleaded under the title, "Fourth Cause of Action: Loss of Consortium and Other Claims of Hansen.". The complaint identifies Hansen as "a foreseeable ***plaintiff*** to whom Defendants owed a duty of reasonable care." (emphasis added). It explicitly attributes the enumerated causes to Hansen, referring to them as "Hansen's claim." The prayers in the complaint *specifically* ask for relief for Hansen in the form of "an award of special damages in favor of Hansen... for Hansen's medical expenses, wage loss, and other economic loss" and "as compensation for the care she has provided to Plaintiff." They further *specifically* ask for "an award of general damages in favor of Hansen ... for Hansen's loss of consortium, mental anguish, and emotional distress." Defendant, thus, has had ample notice of her claim and cannot in any way claim prejudice due to lack of notice.

Moreover, these claims were supported by declarations filed by Hansen individually, and by Hansen and Kosrovani jointly, and by the submission of a "Response in Opposition to Defendant's Motion for Summary Judgment as to Hansen's Claims," which addressed all of her

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

claims. Hansen has filed additional Declarations attesting to the fact that she is the owner of these claims. Decl. Hansen, para. 7 and Exh. D.

C. HANSEN HAS BEEN A REAL PARTY IN INTEREST AS TO HER CAUSES OF ACTION AND ENTITLED TO JOINDER IN THE SUIT AS PARTY CO-PLAINTIFF.

The status of Hansen throughout this action is analogous to that of beneficiaries in a wrongful death action brought by a personal representative of the estate on their behalf. Under the wrongful death statute, RCW 4.20.020, only a personal representative may bring such a suit. In such an action the personal representative is merely a *statutory agent* or *trustee* acting in favor of the beneficiaries. The action is brought *for the benefit of* the beneficiaries. They are the real parties in interest and have vested rights under the statute for compensation from the wrongdoer. *Wood v. Dunlop*, 83 Wn.2d 719, 724-25, 521 P.2d 1177 (1974). The personal representative has only a nominal interest in the suit. He is only the nominal party, not the real party in interest. See also *Huntington v. Samaritan Hosp.*, 101 Wn.2d 466, 680 P.2d 58 (1984)(Dissenting opinion of Judge Rosellini).

Hansen is the real party in interest with respect to the three causes of action that belong to her, namely, loss of income, compensation for services rendered, and loss of consortium. She is someone whose identity has been pleaded and who has had pleaded claims in the lawsuit from its inception. She is the real party in interest as to those claims.

As a real party in interest, Hansen has been entitled to joinder since the inception of the lawsuit. Courts have been lenient in permitting joinder of a real party in interest. "As long as no prejudice is shown, the real party in interest may be added at any time, even after trial." *Rinke v. Johns-Manville Corp.*, 47 Wn.App. 222, 734 P.2d 533, 537 (1987). CR 17(a) states, "[e]very action shall be prosecuted in the name of the real party in interest." It further provides that

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

"joinder … shall have the same effect as if the action had been commenced in the name of the real party in interest." "[A] mistake can be an 'honest mistake' or an 'understandable mistake' even though the plaintiff could have ascertained the proper party who should sue or the proper method in which to sue." *Rinke,* at 734 P.2d 538.

As argued below, the rule does *not* imply that the failure to prosecute an action in the name of the real party in interest deprives that party of that status or of his or her interest.

D. ANY DEFECTS OR INADEQUACIES OF THE COMPLAINT WERE WAIVED BY DEFENDANT WHEN THEY WERE LITIGATED TO SUMMARY JUDGMENT.

Under CR 15(b), where issues are tried by express or implied consent, the issues "shall be treated in all respects as if they had been raised in the pleadings." *Reagan v. Newton, M.D.*, 7 Wn. App. 2d 281, 463 P.3d 411 (2019). Any defects in the complaint were waived by Defendant when it first raised the substantive issues relating to loss of consortium and argued them before the court and tried the matter to judgment. In so doing, it manifested consent to litigate the issue by addressing it in its moving papers. CR 15(b); *Reagan* at 463 P.3d 425. When a claim has been argued on the merits, "summary judgment proceedings amount[] to a trial of the claim by implication under CR 15(b)." *Id.*. See also, *Reichelt*, at 768 (Court erred in holding that the inadequacies of complaint preclude the consideration of claim); *Burchfiel v. Boeing Corp.*, 149 Wn.App. 468,295-96, 205 P.3d 145 (2009)(Defects in pleading remedied by prayers for damages).

E. ROGER JOBS MOTORS' ANSWER TO THE COMPLAINT LACKS ANY AFFIRMATIVE DEFENSES AS TO HANSEN'S STANDING OR STATUS AND AS TO WHETHER HER CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Defendant's Answer to Complaint lacks any affirmative defenses as to Hansen's claims, standing, status, and whether her claims are barred by the statute of limitations. As such any defense as to these matter with respect to Hansen have been waived by Defendant.

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

F. HANSEN'S SUBSTANTIVE CLAIMS HAVE BEEN BROUGHT IN EQUITY.

Hansen's position throughout the suit has been that (i) notwithstanding the procedural and permissive RCW 4.08.030, there does not exist a statute that restricts loss of consortium claims in a tort action to only married persons and those with registered partnerships, (2) her claim for loss of consortium was brought *in equity* based principally on her committed intimate relationship that has lasted continuously over 30 years, (3) the committed intimate relationship doctrine is an equitable doctrine, (4) the common law governs loss of consortium and it is evolving and in transition, and (5) her two other claims besides loss of consortium do not require a married status or registration of partnership.

Hansen's claim for loss of consortium was adjudicated on the merits and dismissed, with prejudice, at summary judgment. This claim thus merged into the judgment entered March 8th, 2019. The court apparently left her other two causes of action unaddressed. However, the court dismissed all remaining claims by means of its order on summary judgment on March 15, 2019.

G. POST-JUDGMENT JOINDER OF A REAL PARTY INTEREST HAS LONG BEEN RECOGNIZED IN THE LAW OF THIS STATE.

The postjudgment joinder of a real party in interest has long been the normal practice in this state. *Schroeder v. Hotel Comm'l Co.*, 84 Wash. 685, 694-95, 147 P. 417 (1915). Thus, in *Fox v. Sackman*, 22 Wn.App. 707, 591 P. 2d 855 (1979) the court held that the real party in interest rule was intended to avoid a technicality's interference with the merits of the case and to prevent forfeiture when a determination of the proper party is difficult or when an understandable mistake has been made. See also *Sidis v. Rosaia*, 170 Wash. 587, 17 P.2d 37 (1932)("[T]he law looks beneath the apparent and beholds the real."); *Carle v. Earth Stove, Inc.*, 35 Wn.App. 903, 670 P.2d 1086 (1983)(holding that adding insurer who had exercised substantial control of the

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

action is appropriate after judgment); *Betchard-Clayton, Inc. v. King*, 41 Wn.App. 887, 894-95, 707 P.2d 1361 (1985). As in *Carle*, Hansen has had substantial control over her causes of action. Decl. Hansen, Exh. D.

H. HANSEN'S CLAIMS HAVE BEEN SEPARATE, INDEPENDENT, AND NONDERIVATIVE CLAIMS UNAFFECTED BY THE SETTLEMENT.

Hansen's claims are *separate* and *independent* claims. In an action for loss of consortium, "[t]he claimant suffers an *original* injury that is the subject of the action. ... [T]he injury rather than the claim is derivative." *Reichelt v. Johns Manville Corp.*, 107 Wn.2d 761, 733 P.2d 530 (1987). A loss of consortium is a personal injury.

As the Court of Appeals Opinion implies, Hansen's independent and nonderivative claims were not affected by the settlement agreement. Consequently, Hansen is not bound by the disposition of Kosrovani's claims in the settlement enforcement proceedings. This comports with *Reichelt v. Johns Manville Corp.*, 107 Wn.2d 761, 733 P.2d 530 (1987) and *Hooper v. Yakima County*, 79 Wn.App. 770, 775-76, 904 P.2d 1193 (1995).

I. HANSEN'S CAUSES OF ACTION HAVE NOT BEEN AFFECTED BY THE AMENDED COMPLAINT AND THEY MERGED INTO FINAL JUDGMENT.

By the time Kosrovani amended his Complaint, Hansen's claims had been dismissed by sununary judgment entered March 8, 20219 and had merged into that judgment. The amendment of the complaint thus did not affect those claims. Moreover, as acknowledged by Defendant in written pleadings before this court, Decl. Hansen, Exh. C, the Amended Complaint was never served. Since service was never perfected pursuant to CR 15(a) and CR 5, it did not take effect.

A final judgment is "such a judgment as at once puts an end to the action by declaring that the plaintiff has or has not entitled himself to the remedy for which he sues." *Reif v. La Follette*, 19 Wn.2d 366, 370, 142 P.2d 1015 (1943). "A final judgment is cognizable for the purposes of

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

appeal if it finally determines the rights of the parties in the action and is not subject to de novo review at a later hearing in the same case." *Wlasluk v. Whirlpool Corp.*, 76 Wn.App. 250, 255, 884 P.2d 13 (1994). Here, the summary judgment entered March 15, 2019 was the final judgment in the case. It dismissed "all remaining claims." The Court of Appeals accepted review under RAP 2.2(a)(1) governing final judgments.

"Any order failing to qualify under [CR 54(b)] is subject to revision at any time prior to the entry of final judgment adjudicating the entire action." *Schiffman v. Hanson Excavating Co., Inc.* 82 Wn.2d 681, 513 P.2d 29 (1973). The summary judgment order of March 8, 2019 dismissing Hansen's cause for loss of consortium was never revised. It thus merged into the final judgment.

J. HANSEN'S CLAIMS MAY ONLY BE PRESERVED IF HER JOINDER OR INTERVENTION IS PERMITTED IN THIS SUIT.

The relation back provision of the CR 17(a) has been allowed by most courts in situations where there has been an "honest mistake" or an "understandable mistake" in naming an improper party and where the interests of the real party in interest has been contemplated from the beginning of the suit. *Reichelt* at 534 P.2d 538. "The relation back provision is intended to insure against forfeiture and injustice." *Id.* (citations omitted).

In circumstances such as this where an honest legal mistake has been made, as the analysis of the court in *Rinke, supra*, at 535-36 shows, the relation back provision of CR 17(a) governs. Thus, "the purpose of the suit was clear from its inception," *id.* at 734 P.2d 539, and joinder would not be "an attempt to insert a new party or a new claim," *Id.,* but to "correct the record to reflect how the reality of how the parties view the case." *Id.*

Failure to allow intervention by or joinder of Hansen, would subject Hansen's claim to

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

permanent extinguishment and forfeiture, as any subsequent filing in a new action would likely be met with the assertion of the defenses of res judicata and the lapse of statute of limitations.

K. THE STATUTE OF LIMITATIONS HAS BEEN MET BY THE LITIGATION HERETOFORE AND HANSEN IS ENTITLED TO EQUITABLE TOLLING.

In Washington, the statute of limitation for a cause of action is met and its applicability ceases when a claim is brought. Thus, as held in *Wallace v. Evans*, 131 Wn.2d 572, 579, 934 P.2d 662 (1997), "because the action was filed within the applicable limitations period, the statute of limitation does not actually apply." Hansen's claims have been timely brought on November 9, 2018, within three years of November 16, 2015, the date of Kosrovani's injury

Defendant is expected to argue that Hansen was not a named party in the suit, the court never took personal jurisdiction over her, and that her causes of action are therefore time-barred. But Defendant may not argue as such as it has waived any such defense by failing to raise the statute of limitations in its Answer to Complaint. CR 8(c), The statute of limitations defense is "not self-executing." The failure to raise it in a timely manner results in waiver of the defense. *Davis v. Nielson*, 9 Wn.App. 864, 876, 515 P.2d 995 (1973). As such, any such defense has been waived by Defendant.

Moreover, a nonparty may still be within a superior court's jurisdiction, *State v. Breazeale*, 99 Wn.App. 400, 405, 994 P.2d 254 (2000), in particular if "she asks the court to grant affirmative relief, or otherwise consents, expressly or impliedly, to the court's exercising jurisdiction." *In re Marriage of Steele*, 90 Wn.App. 992, 997-98, 957 P.2d 247 (1998). Hansen did ask the court for affirmative relief by way of the complaint and impliedly consented to the court's exercise of jurisdiction. She consented once again when Kosrovani moved to amend his complaint to join her as co-plaintiff.

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

In addition, Washington "allows equitable tolling when justice requires." *Douchette v. Bethel School Dist. No. 403*, 117 Wn.2d 805, 812, 818 P.2d 1362 (1991), *review denied*, 127 Wn. 2d 1002, 898 P.2d 307 (1995).. "[E]quitable tolling is appropriate when consistent with both the purpose of the statute providing for the cause of action and the purpose of the statute of limitations." *Id.*

Hansen is entitled to equitable tolling as the purpose of both the statute of limitations, which is to give timely notice to defendants of the claim and prevent a party from sleeping on his rights, and that of her causes of action, which is to provide just compensation for personal injury and pecuniary loss, have been met.

L. JUSTICE, EQUITABLE CONSIDERATIONS, AND THE NECESSITIES OF THE CASE REQUIRE ALLOWANCE OF INTERVENTION OR JOINDER.

It is uncontroverted that Hansen did not participate in a mediation with Roger Jobs Motors, did not sign a settlement agreement, and did not approve of or otherwise consent to a settlement. Analogous to a minor beneficiary in a wrongful death suit whose claims have been settled by the personal representative without his consent and without court approval, Hansen's causes of action would be extinguished, without her approval and consent, if the court enforces the purported settlement of December 18, 2019. This works a "forfeiture and an injustice," *Rinke, supra*, and deprives her of the right to have her claims adjudicated by the Court of Appeals.

As held in *Ebsary v. Pioneer Human Services*, 59 Wn. App. 218, 796 P.2d 769 (1990) a settlement and release encompassing the claims of a person not represented in the settlement and having the effect of extinguishing that person's claims is null and void. Though the unrepresented persons in *Ebsary* were named parties, it is extremely plausible to infer that the

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

ruling would have been the same had they been real parties in interest not joined in the action brought by the personal representative as nominal plaintiff on their behalf.

In sum, denial of intervention or nonjoinder would be severely prejudicial to Hansen as it would extinguish her claims and effect a forfeiture.

2. Application for Writ of Mandamus.

If intervention is allowed, Hansen herewith applies under RCW 7.16.150 *et seq.* for the issuance of a writ of mandamus directing the appellate court to review the dismissal of her claims at summary judgment.

A. RCW 7.16.150 et seq. GOVERN PROCEEDINGS IN THE ISSUANCE OF WRIT OF MANDAMUS.

A writ of mandamus may be used to require a state officer to perform a clear duty. *Gerberding v. Munro*, 134 Wn.2d 188, 195, 949 P.2d 1366 (1998). Under RCW 7.16.160,

> [i]t may be issued by any court ... to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust, station, or to compel the admission of a party to the use and enjoyment a right ... to which the party is entitled, and from which the party is unlawfully precluded ...

Under RCW 7.16.170,

> [t]he writ must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It must be issued upon affidavit on the application of a party beneficially interested.

B. THIS COURT HAS JURISDICTION TO ISSUE A WRIT OF MANDAMUS.

"Unlike the extraordinary writs superseded by RAP 2.1, the RAP do not supersede the use of writ proceedings originating in superior court (*e.g.*, those described in Chapter 7.16 RCW)." Washington Appellate Practice Deskbook, vol. II, at sec. 4.2(3)(c), citing *Delaney v. Bd. of Spokane Cnty. Comm'rs*, 161 Wn.2d 249, 164 P.3d 1290 (2007). Article IV, sec. 6, of the State Constitution also authorizes superior courts to issue writs, including writs of mandamus.

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

1
C. THE STATE SUPREME COURT'S EXERCISE OF ORIGINAL JURISDICTION IS IN PRACTICE RESTRICTED TO LIMITED CIRCUMSTANCES.
2
3 Though the State Supreme Court has original, but nonexclusive, jurisdiction in the
4 issuance of writs, it has not adopted a strict rule about when it will exercise its original
5 jurisdiction. It is less likely to exercise such jurisdiction if the case involves private rights. *State*
6 *ex rel Malmo v. Case*, 25 Wn.2d 118, 122-23, 169 P.2d 123 (1946). In particular, the Court has
7 refused to exercise its original jurisdiction when the action presents issues of fact and it ordinarily
8 transfers such cases to the superior courts for fact finding. Washington Appellate Practice
9 Deskbook, vol. II, at sec. 22.(5), citing *State v. Clausen*, 139 Wash. 389, 390, 214 P.63 (1923).

10
11 **D. WITHOUT THE ISSUANCE OF A WRIT BY THIS COURT HANSEN HAS NO REMEDY AT LAW AS SHE WOULD NOT BE ABLE TO OBTAIN THE WRIT FROM THE SUPREME COURT, AND A NEW ACTION WOULD LIKELY BE BARRED BY CLAIM PRECLUSION AND LAPSE OF THE STATUTE OF LIMITATIONS.**
12
13 The adjudication of Hansen's claim involves finding of facts. Because the State Supreme
14 Court is unlikely to consider the issuance of a writ and is likely to transfer her case to this court,
15 Hansen has no plain, speedy, and adequate remedy but to apply to this court for its issuance.
16 Under RCW 7.16.160, "the writ *must* be issued in cases where there is not a plain, speedy and
17 adequate remedy in the ordinary course of law." (Emphasis added.)
18 **3. Petition for Declaratory Judgment Under RCW 7.24.050**
19 Hansen further seeks a declaratory judgment under RCW 7.24.050 determining that (i) the
20 causes of action for compensation for services rendered, loss of income, and loss of consortium
21 are her claims, belong to her, and were actually brought on her behalf, (ii) they were timely
22 brought and have not been extinguished by the lapse of the statute of limitations, (iii) they have
23 neither been fully adjudicated and remain viable, (iv) they have not been extinguished by the

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

settlement agreement of December 18, 2019 between Emilio Kosrovani, Plaintiff herein, and Defendant Roger Jobs Motors, Inc., and that (v) she is entitled to join this action as co-plaintiff.

A. THIS COURT HAS AUTHORITY TO DETERMINE HANSEN'S STATUS, RIGHTS, AND LEGAL RELATION TO PLAINTIFF'S LAWSUIT HEREIN.

RCW 7.24.050 states that

> [c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.

The statute applies these powers to

> any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

B. THE DECLARATORY JUDGMENT ACT IS APPLICABLE TO HANSEN AS SHE HAS NO REMEDY AT LAW.

Our State Supreme Court has "limited the operation of the uniform declaratory judgment act to cases where there is no satisfactory remedy at law available." *Hawk v. Mayer*, 36 Wn.2d 858, 866, 220 P.2d 885 (1950); *Kahin v. Lewis*, 42 Wn.2d 897, 902, 259 P.2d 420 (1953)("where there is no adequate remedy at law").

Here, Hansen has no clear and adequate remedy at law. Her causes of action for loss of income, compensation for services rendered, and loss of consortium have not been fully adjudicated on the merits by the trial court, the Court of Appeals has declined to review their dismissal, and the State Supreme Court has declined review of the Court of Appeals decision.

CONCLUSION

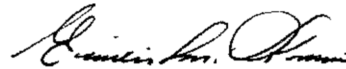
Hansen is a real party in interest as to her causes of action and entitled to intervene herein. She has had pleaded claims since the inception of this suit and her claims have not been fully

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

adjudicated, reviewed, or settled. The status of her rights and claims remains undecided. Any order enforcing the settlement in the absence of Hansen is in derogation of Hansen's rights and would effect a forfeiture as it would summarily extinguishes her pending claims.

The court is asked to address Hansen's claims in equity, grant intervention, issue a writ, and grant the sought declaratory relief.

DATED THIS 21st day of March, 2022.



Emilio M. Kosrovani, WSBA #33762,
Attorney at Law,
Attorney for Laurel Hansen

EMILIO M. KOSROVANI
Attorney at Law
P.O. BOX 3102
Bellingham, Washington 98227
(360)647-4433

WILSON SMITH COCHRAN DICKERSON

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