

SUPREME COURT NO. 694138  
COURT OF APPEALS NO.: 89867-7

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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JACKSON MIKA,

Plaintiff/Respondent/Petitioner,

v.

JBC ENTERTAINMENT HOLDINGS INC., a corporation doing business  
in the State of Washington; JBC OF SEATTLE, WA, INC., a Washington  
business, a subsidiary of JBC ENTERTAINMENT HOLDINGS INC.;  
MARQUIS HOLMES, an individual, dba BOSS LIFE  
ENTERTAINMENT; JANE DOE, husband and wife, and their  
community; GREG STEVENS, an individual, husband and wife, and their  
community; TONY HUMPHREYS, husband and wife, and their  
community,

Defendants/Appellants/Respondents.

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RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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## **I. IDENTITY OF RESPONDENT**

Respondent Greg Stevens is a defendant before the King County Superior Court and the appellant before Division I of the Washington State Court of Appeals.

## **II. CITATION TO COURT OF APPEALS DECISION**

Mr. Stevens requests that the Supreme Court deny review of the unpublished opinion of Division One of the Court of Appeals, *Mika v. Stevens, et. al*, Docket No. 69413-8-1 (Appendix A), filed December 23, 2013, reversing the trial court's denial of Mr. Stevens's Motion for Summary Judgment by the King County Superior Court based on a lack of jurisdiction.

## **III. ISSUE PRESENTED FOR REVIEW**

Whether this Court should deny Plaintiff/Petitioner Jackson Mika's Petition for Review, where:

1. Mr. Mika cannot show any issue of "substantial public interest" under RAP 13.4(b)(4);
2. The Court of Appeals decision that Mr. Mika asks the Supreme Court to review was unpublished and therefore does not constitute precedent that may be cited in any court of this state;
3. Mr. Mika's Petition for Review raises an argument that he never argued below;

4. Mr. Mika asserts that the Court of Appeals failed to consider an argument, but even if the Court of Appeals had done so, it would have reached the same result; and
5. The Court of Appeals properly reviewed the trial court's order on summary judgment de novo.

#### **IV. STATEMENT OF THE CASE**

##### **A. Mr. Mika complains of a gunshot wound occurring at Jillian's Billiards Club in Seattle, Washington.**

Mr. Mika claims he sustained a gunshot wound on March 21, 2010 at Jillian's Billiards Club (Jillian's) on Westlake Avenue in Seattle, Washington. Appendix B, Cited Clerk's Papers, CP 24, ¶¶ 24-25. Mr. Mika posits Jillian's should have had heightened security in place that evening because Jillian's was playing "hip hop" music and should have foreseen a more violent crowd. CP 26 (¶ 31). Mr. Mika alleged negligence against multiple defendants, including the restaurant, JBC of Seattle, Inc., d/b/a Jillian's Billiards Club, and the parent company, JBC Entertainment, Inc. *Id.*

Mika moved to amend the complaint in February of 2012, adding Greg Stevens and Tony Humphreys as defendants. At the time of Mr. Mika's claimed injury, Mr. Stevens was a resident of Kentucky and later moved to the State of Nevada. Jillian's was owned and operated by defendant JBC of Seattle, a Delaware corporation. CP 97 (¶ 5). JBC of

Seattle was owned by defendant JBC Entertainment, a Delaware corporation headquartered in Kentucky. *Id.* (¶ 6). Mr. Stevens was a corporate officer at JBC Entertainment, the parent. CP 96 (¶¶ 1-2). JBC Entertainment partially owned seven restaurants around the country. CP 116 (5:20-23).

**B. Mr. Stevens had no involvement in the incident that led to Mr. Mika's claimed injury.**

Mr. Stevens did not establish or oversee policy for security at JBC, nationally or in Seattle. Mr. Stevens was responsible for JBC Entertainment's overall profitability, not the day-to-day operations of the subsidiary companies running various restaurants around the country. CP 97-98 (¶ 8). Mr. Stevens relied heavily on corporate staff, regional managers, general managers, and finally restaurant-level management to run those business operations at the parent and subsidiary companies. *Id.* (¶ 8); CP 123-126. Mr. Stevens's authority to hire, fire, and train employees extended only to corporate employees at JBC Entertainment, not employees at subsidiary companies like JBC of Seattle. CP 98 (¶ 9); CP 117-18. The record is undisputed that he was not responsible for either (a) JBC of Seattle's policies and procedure, or (b) any security policies. CP 98 (¶ 10); CP 131.

The President and Chief Operating Officer of JBC Entertainment, Mr. Tyler Warfield, oversaw the subsidiary companies' operations.

CP 140-41 (dep. pp. 14, 40). Events at Jillian's were organized at the local level and typically involved corporate events with companies like Microsoft. CP 121-22. That is, Mr. Stevens had no hand in organizing or approving events at Jillian's. *Id.*

One of the assistant managers at Jillian's, defendant Michael Knudsen, arranged the event on the evening in question with a outside promoter, Marquis Holmes, but Mr. Knudsen never informed any of his supervisors. CP 148 (dep. pp. 32-33). He had been told not to host events without a supervisor's approval, but he did so anyway. CP 148, 318-19 (¶¶ 14-15). Accordingly, this information was not passed up the corporate chain of command. CP 129, 148. That is, even if Mr. Stevens had been responsible for events at Jillian's, he did not know beforehand that Jillian's was hosting an unauthorized event. *Id.*

**C. To the trial court, Mr. Mika argued exclusively, and erroneously, that Mr. Stevens had submitted himself to Washington jurisdiction because he set security policy at JBC of Seattle.**

Defendant's Stevens moved for summary judgment in May of 2012, challenging the exercise of jurisdiction over him. Mr. Mika argued in response that Mr. Stevens had subjected himself to Washington State jurisdiction by setting security policy at the Seattle Jillian's thereby failing to prevent Mr. Mika's injuries. Appendix C, Plaintiff's Response to Motion for Summary Judgment. His briefing before the trial court argues



purposeful availment, alleging Mr. Stevens's involvement in setting a policy for security at Jillian's:

Purposeful availment analysis examines whether the defendant's contacts with the forum are attributable to his own actions or are solely the actions of the plaintiff. *Sinatra v. National Enquirer*, 854 F.2d 1191, 1195 (9th Cir. 1988).

To show purposeful availment, a plaintiff must show that the defendant 'engage[d] in some form of affirmative conduct allowing or promoting the transaction of business within the forum state.' *Gray & Co. v. Firstenberg Machinery Co.*, 19 913 F.2d 758, 760 (9th Cir.1990)

Defendant Stevens's directives regarding "faux" security to attract upscale patrons is affirmative conduct was designed to conduct business in Washington state and increase profit.

*Id.* Plaintiff Response Brief p. 14.

Mr. Mika then argued that Mr. Stevens's act of setting Jillian's security policy satisfied minimum contact analysis:

The quality and nature of Defendant Stevens contact with this state involved needlessly endangering Washington citizens for the sake of increased profits derived from Washington citizens. The courts have exercised jurisdiction where the defendant has purposefully availed itself of the state's markets and derived a financial benefit from this market. (See *Grange Ins. Ass'n v. State*, 110 Wn. 2d 752, 757 P.2d 933 (1988); *Raymond v. Robinson*, 104 Wn. App. 627, 638, 15 P.3d 697, 702 (2001)) . . .

*Id.* CP 529, Plaintiff Response Brief p. 15.

The Supreme Court pointed out in *Nixon v. Cohn*, 62 Wn. 2d 987, 385 P.2d 305 (Wash. 1063), that, where damages result from the negligence of the defendant, the injury occurring in the state is an inseparable part of the 'tortious

act,' as that term is used in the statute. Here, the negligent act of directing that there be no security at JBC Entertainment nightclubs may have occurred outside Washington State, but the injury indisputably happened in Washington.

CP 530-31, Plaintiff Response Brief pp. 16-17.

Regardless of the argument in favor the court's exercise of jurisdiction presented by Mr. Mika's counsel, the supporting factual basis was the supposed act of Mr. Stevens setting police for security at Jillian's.

The trial court accepted that plaintiff had met the burden of making a prima facie showing of this basic tenet – that Mr. Stevens had participated in planning the security in place when plaintiff was injured. At no point did Mr. Mika argue to the trial court that Mr. Stevens's motion failed because he admitted to visiting the State of Washington on approximately six occasions in a 10 year period.

Division I of the Court of Appeals granted discretionary review, finding that Mr. Mika had cited to no fact that supported his argument that Stevens had helped set security at Jillian's in Seattle.

**D. The Court of Appeals reversed the trial court's denial of summary judgment addressing precisely the arguments raised by Mr. Mika before the trial court and before the Court of Appeals.**

Before the Court of Appeals, Mr. Mika's counsel abandoned his arguments to the trial court in favor of arguing that Mr. Stevens's later involvement in the sale of JBC Entertainment subjected him to

Washington jurisdiction. However, in its December 23, 2013 decision, the Court of Appeals addressed both of Mr. Mika's arguments. Division I addressed Mr. Mika's argument to the trial court directly:

At oral argument, Mika emphasized that Stevens had testified in his deposition that security at Jillian's was not necessary, suggesting Stevens admitted having a role in setting the security policy and thus constituting a basis for long-arm jurisdiction based on tortious conduct. Even if we were to consider this argument, which is not argued in Mika's response brief, the record on appeal does not include the portion of the deposition at which Stevens initially made such a statement, so we are unable to examine the context of such a statement. The record before us reflects only that Stevens testified he did not believe video surveillance was necessary. Stevens's counsel asked Stevens at the end of the deposition to clarify whether he thought other security measures were necessary, and Stevens responded that the overall safety of the patrons at Jillian's was important. Given Stevens's unrebutted testimony that he had no responsibility for creating or implementing any of the safety policies or procedures, Stevens's comments on the security policies do not create a genuine issue of material fact that he committed tortious conduct, thus subjecting himself to personal jurisdiction under the long-arm statute.

Appendix A: *Mika v. Stevens*, December 23, 2013, slip opinion, p. 10.

Mr. Mika argued to the Court of Appeals that Mr. Stevens's involvement in the sale of JBC Entertainment in 2012 was a basis for jurisdiction: The court also address this contention:

Whether we look to Stevens's alleged involvement in creation or implementation of Jillian's safety policy or to Stevens's involvement in the sale of JBC of Seattle to Gameworks, neither is sufficient under the long-arm statute to confer personal jurisdiction over Stevens.

*Id.*, p. 9.

Mika's tort claim would necessarily arise from Stevens' alleged failure to provide adequate security at Jillian's and not from the subsequent sale of JBC of Seattle. The only cause of action alleged against Stevens individually are negligent hiring, negligent supervision, ordinary negligence, and negligent infliction of emotional distress. All of these claims arise out of a theory that in his capacity as chief executive officer and chief financial officer of JBC Holdings, Stevens failed to provide adequate security at Jillian's.

*Id.*, p. 11. The Court of Appeals noted that regardless of the theory, Mr. Mika had failed to provide an adequate record to defeat summary judgment and support jurisdiction.

## V. ARGUMENT

**A. Mr. Mika's petition does not specify any ground for discretionary review under RAP 13.4(b)(1)-(3), in essence pleading that this Court should grant review pursuant to RAP 13.4(b)(4) based on an argument raised for the first time.**

RAP 13.4(b), which governs this Court's grant or denial of petitions for review, provides:

**Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court *only*: (1) If the decision of the Court of Appeals is in conflict with the decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with the decision of another division of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b) (emphasis added).

Mr. Mika does not claim that the decision of the Court of Appeals is in direct conflict with the decision of this Court or another division of the Court of Appeals or specify in their statement of the issues any published opinion as being in direct conflict with this case. RAP 13.4(b)(1)-(2). Nor does Mika assert that this case involves a significant question of law under the Constitution of the State of Washington or of the United States. Neither the words “Constitution” nor “Constitutional” appear anywhere in the petition, and there is no argument that either the Washington or United States Constitution is implicated here. RAP 13.4(b)(3). Mr. Mika asserts only that his petition involves an issue of substantial public interest that should be determined by this Court, RAP13.4(b)(4), even though the Court of Appeals decision is unpublished, and Mr. Mika otherwise makes no compelling case to invoke this Court’s exercise of discretionary review.

In essence, Mr. Mika merely wants to correct a perceived error by the Court of Appeals, which is not a ground for review.

RAP 13.4(b) says nothing in its criteria about correcting isolated instances of injustice. This is because the Supreme Court, in passing upon petitions for review, is not operating as a court of error. Rather, it is functioning as the highest policy-making judicial body of the state. ...

The Supreme Court’s view in evaluating petitions is global

in nature. Consequently, the primary focus of a petition for review should be on why there is a compelling need to have the issue or issues presented decided generally. The significance of the issues must be shown to transcend the particular application of the law in question.

*Wash. Appellate Prac. Deskbook* §27.11 (1998).

Mr. Mika's argument boils down to this: The Court of Appeals failed to consider an unstated argument that Mr. Stevens did not meet his burden on summary judgment before the trial court, because Mr. Stevens failed to explain why approximately six visits to Washington State over a 10 year period did not raise an issue of fact regarding his challenge to the Court's jurisdiction in the case.

This argument falls by its own weight. It is directed at a dispute over the record in this case, with no precedential value considering the claimed procedural errors of the appellate court. Mr. Mika falls well short of establishing a "compelling need to have the issue or issues presented globally." *Id.* In fact, Mr. Mika raises his core argument for the first time in this petition, pointing to nothing in the record that shows that he ever made that argument either to the trial court or to the Court of Appeals.

**B. Mr. Mika's Petition fails to note that the argument he now advances to this Court was not raised before either the trial court or the Court of Appeals.**

RAP 2.5(a) provides that an appellate court may refuse to review

any claim or error which was not raised in the trial court. RAP 2.5(a). A failure to preserve a claim or error by presenting it first to the trial court generally means the issue is waived. While an appellate court retains the discretion whether to consider an issue raised for the first time on appeal, such discretion is rarely exercised. *Karlberg v. Otten*, 167 Wn. App. 522, 531-32, 280 P.3d 1123 (2012), citing *Bellevue Sch. Dist. No. 405 v. Lee*, 70 Wn.2d 947, 950, 425 P.2d 902 (1967).

Mr. Mika argues that under *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989) (overruled on other grounds), Mr. Stevens raised issues of fact when he admitted to visiting Washington approximately six times within a 10-year period. However, Mr. Mika never offered this argument before the trial court or the Court of Appeals. Appendix C, CP 515; Plaintiff Response to Summary Judgment; Appendix D, *Mika v. Stevens*, et. al, Court of Appeals, Respondent's Brief.

Had he done so, Mr. Stevens would have argued that the record clearly established that these visits had nothing to do with the security policy at Jillian's in Seattle, and the court could therefore draw no permissible inference material to its analysis of Mr. Mika's jurisdictional claims. The policy requiring that arguments be raised before the trial court give the opposing party notice to rebut the argument and to allow the trial court to rule. Neither Mr. Stevens nor the Court of Appeals was

given an opportunity to do so with regard to Mr. Mika's new theory.

**C. Mr. Stevens's declaration stating that he had been to Washington approximately six times in a 10-year period would not raise an issue of fact as to Mika's theories on jurisdiction.**

Mr. Mika erroneously assumes that Mr. Stevens's statement that he visited Washington approximately six times in a ten year period would raise an issue of fact and thereby defeat his challenge to the court's exercise of jurisdiction over him. The argument fails because the record clearly explains that these visits had nothing to do with security at Jillian's in Seattle, which is Mr. Mika's principal claim in the case. The argument also fails to apply the law governing the exercise of general or specific jurisdiction. A cursory understanding of each could confirm that six visits to a state over a 10-year period does not establish jurisdiction for a tort claim unrelated to those visits.

General personal jurisdiction exists where a defendant's contacts with a foreign state are so substantial, continuous and systematic as to render the defendant essentially at home there. *Goodyear v. Dunlop Tires Operation, S.A. v. Brown*, 564 U.S. \_\_\_\_, 131 S.Ct. 2846, 2851; 180 L.Ed.2d 796 (2011). The test for general jurisdiction is "an exacting standard, as it should be, because a finding of general jurisdiction permits a defendant to be hauled into court in the foreign state for any of its



activities anywhere in the world.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004). Even a showing that a defendant has systematic business contacts with the forum is insufficient. *Bancroft & Masters, Inc. v. August Nat’l., Inc.*, 223 F.3d 1082, 1085-86 (9th Cir. 2000). The plaintiff must show that the defendant’s activities transcend doing business “with” the forum state such that it is fair to say that it is actually doing business “in” the forum state. *See* RCW 4.28.080(10); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417-18, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984). Furthermore, the plaintiff must demonstrate that a non-resident defendant was carrying on substantial and continuous business **when plaintiff was injured**. *See IM EX Trading Co. v. Rand*, 92 Wn. App. 529, 537, 963 P.2d 952 (1998), *rev. denied*, 137 Wn.2d 1023, 980 P.2d 1280 (1989) (emphasis added).

Exercising specific personal jurisdiction requires a case-by-case analysis of whether an individual defendant has sufficient minimum contact with the foreign state. *Freestonal Partners, L.P. v. MKA Real Estate Opportunity Fund I, LLC*, 155 Wn. App. 643, 653, 230 P.3d 625 (2010). Washington courts may exercise specific personal jurisdiction over a non-resident defendant when the defendant’s contacts actually give rise to the cause of action. RCW 4.28.185; *CTVC of Haw Co. v. Shinawatra*, 82 Wn. App. 699, 709, 919 P.2d 1243 (1996), *rev. denied* 131

Wn.2d 1020, 937 P.2d 1102 (1997). Mr. Mika must prove that exercise of jurisdiction satisfies constitutional due process by demonstrating:

- (1) The nonresident defendant or foreign corporation must **purposefully** do some act or consummate some transaction in the forum state;
- (2) the cause of action must **arise** from, or be **connected** with, such act or transaction; and
- (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the **quality, nature, and extent of the activity in the forum state**, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

*SeaHAVN, Ltd. v. Glitnir Bank*, 154 Wash. App. 550, 564, 226 P.3d 141 (2010) (emphasis added).

Under either analysis, six visits in a 10-year period to a foreign state unrelated to the tort claim does not establish an issue of fact as to jurisdiction. The record before the Court of Appeals is clear that Mr. Stevens did not take part in setting policy regarding security and was not involved in the event that led to Mr. Mika's injuries.

The Court of Appeals held:

There is no indication in the record that Stevens was involved with any of the allegedly tortuous conduct. Stevens, as chief executive officer and chief financial officer, was responsible for the overall profitability of JBC Holdings, not day-to-day operations, including policies and procedures. While he had knowledge of some of the safety and security policies, there is no evidence in the record that

Stevens was personally responsible for creating or implementing the policies. Stevens testified that “in a raw context, the ‘policies and procedures’ it’s my expectation that Tyler [Warfield] is managing those, and overseeing, and making sure that we’re adhering to those.

*Mika*, 69413-8-I, slip op. at 9-10.

Mr. Mika argues for an inference regarding Mr. Stevens’s visits that leads to no material fact regarding the court’s exercise of jurisdiction.

In matters of proof, the existence of facts may not be inferred from mere possibilities. *Mejin v. Seattle*, 40 Wn. App. 414, 421, 698 P.2d 615 (1985) (quoting *Sanchez v. Haddocks*, 95 Wn.2d 593, 599, 627 P.2d 1312 (1981)). This is precisely what Mr. Mika seeks by raising this new argument now – the speculation that the visits possibly raise issues of fact, not any showing that they actually create an inference of material fact.

The statement does not establish general jurisdiction over Mr. Stevens. The visits, by themselves, do not establish Mr. Stevens was a resident of the State of Washington. It is undisputed that he was a resident of Kentucky and then Nevada. The visits establish only that he does not reside in Washington and visited only sporadically. The Court cannot find that the visits alone establish general jurisdiction.

Nor does this evidence establish specific jurisdiction. Mr. Mika cannot show that the cause of action would “arise from” or “be connected with” these visits. Mr. Stevens was not involved in the event at which

Mr. Mika was injured and did not set security policy. Therefore, none of the visits were related to the event when Mr. Mika was injured. None of the trips were related to setting security policies, which is the underlying theory of Mr. Stevens's liability. There is no material fact that can be inferred from these visits.

**D. The Court of Appeals in its unpublished opinion performed a de novo review and found that Mr. Mika failed to present evidence establishing jurisdiction.**

Mr. Stevens asked Division I to apply de novo review just as Mr. Mika demands in the present Petition for Review. The Court of Appeals was also well aware that Mr. Mika had the burden of establishing jurisdictional facts with prima facie evidence. *Mika*, slip op. at 5-6 (citing *CTVC of Hawaii*, 82 Wn. App. at 707-08). The Court of Appeals even noted Mr. Stevens's admission that he had visited Washington on six prior occasions. *Id.* at 6. In so doing, the Court of Appeals reviewed the evidence before the trial court and specifically found no evidence that would establish a *prima facie* case supporting jurisdiction. The Court of Appeals in fact exercised de novo review by considering not only Mr. Mika's arguments on appeal, but the arguments emphasized in response to summary judgment before the trial court. The Court of Appeals noted:

Mika has failed to set forth any evidence whatsoever that Stevens engaged in substantial and continuous business in Washington. Stevens had traveled to Washington approximately six times and has no other contacts with the

state. Because the Washington court may not exercise general personal jurisdiction over Stevens, Mika must put forth prima facie evidence of specific evidence via the longarm statute.

*Mika*, slip op. at 6.

The Court of Appeals in fact did engage in a de novo review and simply found the record provided by Mr. Mika wanting. Mr. Mika provided no facts showing Mr. Stevens's involvement in setting security policies or in the event that led to Mr. Mika's injuries in March 2010. Not only was the Court of Appeals correct in this assessment, but its review also turns on the specific record on this case, with no precedential value to other cases involving challenges to personal jurisdiction.

## **VI. CONCLUSION**

Defendant/Respondent Greg Stevens respectfully asks that the court deny Mr. Mika's Petition for Review. Mr. Mika fails to establish any of the bases for Supreme Court review listed under RAP 13.4(b). Mr. Mika seeks Supreme Court review based on a supposed "substantial public interest" under RAP 13.4(b)(4), but for two reasons, no such substantial public interest exists. First, the Court of Appeals' December 23, 2013 decision is unpublished, so that it affects only the parties to this action, not the public at large. Second, content of the Court of Appeals' decision and the record before this Court show that the decision was correct on its merits. Mr. Mika complains that the Court of Appeals failed

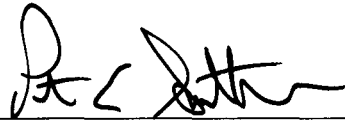
to perform a de novo review, but the Court of Appeals' decision shows that the court did perform a de novo review. The court found that the record before the trial court and the arguments made by Mr. Mika did not establish a prima facie case supporting jurisdiction. Mr. Stevens had no role in the March 21, 2010 incident in which Mr. Mika was injured, nor involvement in the setting of security policy at JBC in effect at the time of that incident. Mr. Mika, at no point in the record, rebuts this contention, instead relying on conjecture and argument that Mr. Stevens had a role in these policies, thereby subjecting himself to jurisdiction in the State of Washington.

Mr. Mika only now complains that the court failed to consider whether Mr. Stevens's statement that he had visited Washington approximately six times over a 10-year period would therefore give inference in establishing jurisdiction. However, there is no indication in the record that plaintiff made this argument to the trial court, let alone to the Court of Appeals. In any case, in its decision the Court of Appeals clearly made note of Mr. Stevens's statement that he had visited Washington approximately six times in a 10-year period. Mr. Mika cannot complain that the court failed to consider an argument that was neither raised before the trial court nor the Court of Appeals.

Finally, the Court of Appeals was correct in its decision reversing the order of the trial court. Mr. Mika failed to establish genuine factual disputes as to the court's jurisdiction over Mr. Stevens. The Court of Appeals' decision correctly noted a lack of such evidence on the record before it. The Court of Appeals' decision is unpublished and therefore cannot have any broad application; that decision does not conflict with other decisions of the Court of Appeals or this Court.

Respectfully submitted this 24 day of February, 2014.

LEE SMART, P.S., INC.

By:   
Jeffrey P. Downer, WSBA No. 12625  
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and Tony Humphreys

**CERTIFICATE OF SERVICE**

I, the undersigned, certify under penalty of perjury and the laws of the State of Washington that on February 24, 2014, I caused service of Respondents' Answer to Petition for Review in the Washington State Supreme Court via ABC Legal Messengers, Inc., to:

Mr. Howard Phillips  
Phillips Law LLC  
3815 S. Othello St., #100-353  
Seattle, WA 98118

Ms. Catherine C. Clark  
The Law Office of Catherine C. Clark PLLC  
701 5th Avenue, Suite 4785  
Seattle, WA 98104-7063

  
Michelle A. Davidson, Legal Assistant



# **APPENDIX**

# **EXHIBIT A**

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

JACKSON MIKA, )  
)  
Respondent, )  
)  
v. )  
)  
GREG STEVENS, an individual, )  
husband and wife, and their )  
community, )  
)  
Appellant, )  
)  
JBC ENTERTAINMENT HOLDINGS, )  
INC., a corporation doing business )  
In the state of Washington; JBC OF )  
SEATTLE, WA, INC., a Washington )  
business, a subsidiary of JBC )  
Entertainment Holdings, Inc.; )  
GEMINI INVESTORS III, L.P., an entity, )  
owner of JBC ENTERTAINMENT )  
HOLDINGS INC.; ALPHA CAPITAL )  
PARTNER, LTD., an entity, owner of )  
JBC ENTERTAINMENT HOLDINGS, )  
INC.; GAMEWORKS ENTERTAINMENT )  
LLC, a corporation doing business in )  
the state of Washington; MARQUIS )  
HOLMES, an individual, dba BOSS LIFE )  
ENTERTAINMENT, JANE DOE, )  
husband and wife, and their community; )  
TONY HUMPHREYS, an individual, )  
husband and wife, and their community, )  
)  
Defendants. )  
)

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No. 69413-8-1

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2013 DEC 23 AM 10:49

UNPUBLISHED OPINION

FILED: December 23, 2013

VERELLEN, J. — Jackson Mika filed a negligence action after suffering a gunshot wound at Jillian's Billiards Club. Mika named Greg Stevens individually, as one of the corporate officers of Jillian's parent company, JBC Entertainment Holdings, Inc. We granted Stevens's motion for discretionary review of the trial court's denial of Stevens's motion for summary judgment based on lack of personal jurisdiction. Because Mika has not set forth prima facie evidence of either an act or transaction by Stevens within Washington out of which his negligence claims arise, we reverse the trial court's conclusion that it could exercise personal jurisdiction over Stevens.

#### FACTS

Jackson Mika suffered a gunshot wound on March 21, 2010 at Jillian's Billiards Club in Seattle. Along with other defendants not involved in this appeal, Mika sued JBC of Seattle, the entity that owned and operated Jillian's Billiards Club; JBC Entertainment Holdings, Inc. (JBC Holdings); Gemini Investors and Alpha Capital Partners, Ltd, two of the three owners of JBC Holdings; and Greg Stevens, the chief financial officer, chief executive officer, and third owner of JBC Holdings. Mika alleged that Stevens individually, along with the other corporate defendants, was negligent in failing to provide appropriate security policies at Jillian's.

a. Stevens's Motion for Summary Judgment Dismissal Based on Lack of Personal Jurisdiction

On May 29, 2012, Stevens moved for summary judgment based on lack of personal jurisdiction. In March 2010, the time of the accident at Jillian's, Stevens lived in Kentucky, but he has since moved to Nevada. His declaration submitted in support of his motion stated he never lived in Washington, never had an office or a mailing

address in Washington, and did not possess a bank account or any other personal or real property in the state. He has traveled to Washington approximately six times in the last decade.

Stevens's declaration also stated that JBC of Seattle, not JBC Holdings, was responsible for the control and operation of Jillian's. As the chief executive officer and chief financial officer of JBC Holdings, Stevens was responsible for the company's overall profitability, not the day-to-day operations of the subsidiary companies.<sup>1</sup> Stevens had no hiring and firing authority for employees at subsidiary companies, nor was he responsible for the policies and procedures in place at Jillian's. Nor was Stevens involved in organizing or approving events at Jillian's. Tyler Warfield, the chief operating officer of JBC Holdings, was responsible for day-to-day oversight of JBC's subsidiaries, including Jillian's.

Mika's opposition to Stevens's motion stated the court could exercise personal jurisdiction over Stevens because he had a personal role in setting security for the event at which Mika was injured. The court heard oral argument and denied Stevens's motion.<sup>2</sup> We granted Stevens's motion for discretionary review on February 22, 2013, determining the trial court had committed probable error under RAP 2.3(b)(2).

**b. The Subsequent Sale of JBC of Seattle**

Before Stevens filed his motion for summary judgment, Mika had deposed Stevens twice. At the second deposition, on December 20, 2011, Mika's counsel

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<sup>1</sup> JBC Holdings owns various restaurants and other entertainment venues around the country.

<sup>2</sup> The court's order denying Stevens's motion for summary judgment also stated "the Defendant, Greg Stevens is subject to personal jurisdiction in this Court." Clerk's Papers at 506.

questioned Stevens about the sale of JBC of Seattle to Gameworks, which closed on October 14, 2011. Stevens testified that JBC Holdings was “Gemini’s investment,” but that the sale “would not have happened without my saying, yeah, I agree this is something that we should be doing.”<sup>3</sup> Mika’s counsel did not ask follow-up questions to determine whether Stevens was a co-owner of JBC Holdings.

On January 17, 2013, Mika deposed Gemini’s CR 30(b)(6) witness, Matthew Keis. Keis testified that Gemini owned about 40 percent of JBC Holdings, that Stevens owned about 49 percent, and Alpha Capital the remaining 11 percent. Keis further testified that Stevens worked closely on the sale of JBC of Seattle and other properties of JBC Holdings to Gameworks, and was responsible for negotiation of many of the sale’s terms. Stevens’s name appears on the bill of sale of JBC of Seattle to Gameworks.<sup>4</sup> This transaction, evidence of which was not before this court when we granted discretionary review, is the sole basis for Mika’s argument in his response brief that a Washington court may exercise personal jurisdiction over Stevens.

#### DISCUSSION

Washington courts may exercise either general or specific personal jurisdiction over a nonresident defendant.<sup>5</sup> A state court’s assertion of general or specific

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<sup>3</sup> Clerk’s Papers at 483.

<sup>4</sup> We granted discretionary review on February 22, 2013. The deposition in which Mika learned of Stevens’s ownership interest took place on January 17, 2013, just over a month before the order granting review. Stevens argues that Mika’s raising the issue of the sale and Stevens’s ownership interest is, in essence, raising new evidence on appeal. Mika did not file anything after January 17, 2013 in superior court to request a continuance or leave to file an amended complaint, or to supplement the record in this court pursuant to RAP 9.11.

<sup>5</sup> CTVC of Hawaii Co., Ltd. v. Shinawatra, 82 Wn. App. 699, 708, 919 P.2d 1243 (1996).

jurisdiction over a foreign defendant is subject to review for compatibility with the Fourteenth Amendment's due process clause.<sup>6</sup> Under International Shoe Co. v. State of Washington, Office of Unemployment Compensation and Placement, a party has the burden of establishing certain minimum contacts between the defendant and Washington such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.<sup>7</sup>

The requirements of International Shoe must be met as to each defendant over whom a state court asserts jurisdiction.<sup>8</sup> Where an individual who is also an officer of a corporation subject to Washington jurisdiction challenges the existence of personal jurisdiction, courts must ensure that exercise of jurisdiction is based on sufficient minimum contacts of the individual, not the entity.<sup>9</sup>

Where a dispute about personal jurisdiction is before the trial court in a summary judgment motion, we apply traditional CR 56 de novo review.<sup>10</sup> We consider the facts and reasonable inferences to be drawn therefrom in the light most favorable to the

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<sup>6</sup> Goodyear Dunlop Tires Operations, S.A. v. Brown, \_\_\_ U.S. \_\_\_, 131 S. Ct. 2846, 2850, 180 L. Ed. 2d 796 (2011).

<sup>7</sup> 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945); see also Freestone Capital Partners L.P. v. MKA Real Estate Opportunity Fund I, LLC, 155 Wn. App. 643, 654, 230 P.3d 625 (2010).

<sup>8</sup> Rush v. Savchuk, 444 U.S. 320, 332, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980); Huebner v. Sales Promotion, Inc., 38 Wn. App. 66, 70-71, 684 P.2d 752 (1984).

<sup>9</sup> See Huebner, 38 Wn. App. at 72-73.

<sup>10</sup> CTVC of Hawaii, 82 Wn. App. at 707-08.

nonmoving party.<sup>11</sup> The plaintiff has the burden of establishing that jurisdiction exists and need only establish a prima facie case.<sup>12</sup>

General jurisdiction exists if a nonresident defendant is transacting substantial and continuous business of such character as to give rise to a legal obligation, regardless of whether the cause of action is related to the defendant's contacts with Washington.<sup>13</sup> The plaintiff must show that a defendant's activities constitute doing business in the forum state.<sup>14</sup> Mika has failed to set forth any evidence whatsoever that Stevens engaged in substantial and continuous business in Washington. Stevens has traveled to Washington approximately six times and has no other contacts with the state. Because a Washington court may not exercise general personal jurisdiction over Stevens, Mika must put forth prima facie evidence of specific jurisdiction via the long-arm statute.

A Washington court may exercise specific personal jurisdiction over a nonresident defendant when the defendant's limited contacts give rise to the cause of action.<sup>15</sup> Washington's long-arm statute provides in part:

(1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person . . . to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:

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<sup>11</sup> Id. at 708.

<sup>12</sup> Id.

<sup>13</sup> MBM Fisheries, Inc. v. Bollinger Mach. Shop & Shipyard, Inc., 60 Wn. App. 414, 418, 804 P.2d 627 (1991).

<sup>14</sup> Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 417-18, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984).

<sup>15</sup> RCW 4.28.185; MBM Fisheries, 60 Wn. App. at 422-23.



(a) The transaction of any business within this state;

(b) The commission of a tortious act within this state;

....

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.<sup>[16]</sup>

To satisfy the requirements of due process, a Washington court may exercise specific personal jurisdiction over a foreign entity only when, in addition to the requisites of the long-arm statute, the following elements are satisfied:

“(1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.”<sup>[17]</sup>

The quality and nature of a defendant’s activities determine whether the contact is sufficient, not the “number of acts or mechanical standards.”<sup>18</sup> This requirement “ensures that a defendant will not be haled into a jurisdiction solely as a result of ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts.”<sup>19</sup>

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<sup>16</sup> RCW 4.28.185.

<sup>17</sup> CTVC of Hawaii, 82 Wn. App. at 709-10 (quoting Shute v. Carnival Cruise Lines, 113 Wn.2d 763, 767, 783 P.2d 78 (1989)); see also Bartusch v. Oregon State Bd. of Higher Educ., 131 Wn. App. 298, 306, 126 P.3d 840 (2006).

<sup>18</sup> Freestone Capital, 155 Wn. App. at 653 (quoting Perry v. Hamilton, 51 Wn. App. 936, 940, 756 P.2d 150 (1988)).

<sup>19</sup> Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

Stevens argues that Mika has failed to provide prima facie evidence supporting specific personal jurisdiction. In Mika's opposition to Stevens's motion for summary judgment, Mika argued Stevens committed tortious conduct by failing to provide reasonably safe premises for Jillian's patrons and failing to have a robust security policy.

However, the sole argument advanced in Mika's response brief is that the new evidence obtained after Stevens filed his motion for discretionary review, but a month prior to this court granting review, warrants a remand to the trial court to allow additional motion practice. Mika contends the new evidence, that Stevens was also a shareholder of JBC Holdings as well as the chief executive officer and chief financial officer, implicates Stevens in the allegedly fraudulent sale of JBC of Seattle to Gameworks while Mika's lawsuit was pending.<sup>20</sup> At oral argument, Mika focused upon Stevens's alleged responsibility for the security policy at Jillian's.

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<sup>20</sup> Specifically, paragraph 33 in Mika's first amended complaint contends that Gemini and Gameworks participated in that sale and deprived JBC Holdings of an asset Mika might be able to pursue upon entry of a favorable judgment. Although the complaint contained allegations of fraudulent transfer against Gemini and Gameworks, Mika did not allege a fraudulent transfer cause of action against Stevens. We recognize that at the time Mika filed his complaint, he did not know of Stevens's role as 49 percent shareholder. However, even after Mika discovered this, he did not request leave to file an amended complaint and add the fraudulent transfer claim against Stevens.

We also note that the trial court has already determined the sale of JBC of Seattle to Gameworks was a bona fide business transaction. When Gemini moved for dismissal from the case on summary judgment, the trial court granted the motion because the sale was an arms-length transaction and Gemini had no liability as a result. Keis, Gemini's managing director, testified the sale of JBC Holdings' assets was necessitated by JBC Holdings' failure to generate sufficient cash flow to meet its financial obligations. The proceeds from the sale went to JBC Holdings' secured creditors and to windup of the corporation. The proceeds of the asset sale did not satisfy the outstanding debt, and the remaining balance was satisfied through collection of shareholder guarantees. Finally, none of the proceeds from the asset sale were

Whether we look to Stevens's alleged involvement in creation or implementation of Jillian's safety policies or to Stevens's involvement in the sale of JBC of Seattle to Gameworks, neither is sufficient under the long-arm statute to confer personal jurisdiction over Stevens.

a. Commission of Tortious Conduct Within Washington

Mika argued Stevens committed tortious conduct by failing to provide reasonably safe premises for Jillian's patrons and failing to have a robust security policy, thereby satisfying RCW 4.28.185(1)(b). A tortious act occurs in Washington when the injury occurs within the state.<sup>21</sup> An injury "occurs" in Washington for purposes of the long-arm statute "if the last event necessary to make the defendant liable for the alleged tort occurred in Washington."<sup>22</sup> "Jurisdiction may be asserted where a defendant's out-of-state conduct causes harm in the forum state."<sup>23</sup>

There is no indication in the record that Stevens was involved with any of the allegedly tortious conduct. Stevens, as chief executive officer and chief financial officer, was responsible for the overall profitability of JBC Holdings, not day-to-day operations, including policies and procedures. While he had knowledge of some of the safety and security policies, there is no evidence in the record that Stevens was personally responsible for creating or implementing the policies.<sup>24</sup> Stevens testified that "[i]n a

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distributed to the owners of JBC Holdings. The trial court declined Stevens's late attempt to join in the motions of Gemini and Gameworks.

<sup>21</sup> Grange Ins. Ass'n v. State, 110 Wn.2d 752, 757, 757 P.2d 933 (1988).

<sup>22</sup> MBM Fisheries, 60 Wn. App. at 425.

<sup>23</sup> Huebner, 38 Wn. App. at 72.

<sup>24</sup> Rather, chief operations officer Tyler Warfield was responsible for safety and security policies. Indeed, Mika's own safety expert focused on the actions of Warfield,

broad context, the quote, 'policy and procedures,' it's my expectation that Tyler [Warfield] is managing those, and overseeing, and making sure that we're adhering to those."<sup>25</sup>

At oral argument, Mika emphasized that Stevens had testified in his deposition that security at Jillian's was not necessary, suggesting Stevens admitted having a role in setting the security policy and thus constituting a basis for long-arm jurisdiction based on tortious conduct. Even if we were to consider this argument, which is not argued in Mika's response brief, the record on appeal does not include the portion of the deposition in which Stevens initially made such a statement, so we are unable to examine the context of such a statement. The record before us reflects only that Stevens testified he did not believe video surveillance was necessary. Stevens's counsel asked Stevens at the end of the deposition to clarify whether he thought other security measures were necessary, and Stevens responded that the overall safety of the patrons at Jillian's was important. Given Stevens's unrebutted testimony that he had no responsibility for creating or implementing any of the safety policies or procedures, Stevens's comments on the security policies do not create a genuine issue of material fact that he committed tortious conduct, thus subjecting himself to personal jurisdiction under the long-arm statute.

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of JBC Entertainment in general, and of Michael Knudsen, the manager on duty at Jillian's at the time of the shooting.

<sup>25</sup> Clerk's Papers at 131. This testimony is consistent with Warfield's, who testified that as president and chief operations officer, he "[o]versees[s] essentially, all operations, and that would encompass operations and marketing, purchasing, everything that kind of helps the clubs run." Clerk's Papers at 140. With regard to the safety policies at JBC Seattle, Warfield testified he was familiar with them.

b. Transaction of Business Within Washington

Mika also alleges that Stevens's participation in the sale of JBC of Seattle to Gameworks satisfies RCW 4.28.185(1)(a). While Stevens participated in the sale of an asset located in Washington, RCW 4.28.185(1) and (3) require the plaintiff's claim to arise from the act that subjects a defendant to litigation in the state.

Mika's tort claims would necessarily arise from Stevens's alleged failure to provide adequate security at Jillian's and not from the subsequent sale of JBC of Seattle. The only causes of action alleged against Stevens individually are negligent hiring, negligent supervision, ordinary negligence, and negligent infliction of emotional distress.<sup>26</sup> All of these claims arise out of the theory that in his capacity as chief executive officer and chief financial officer of JBC Holdings, Stevens failed to provide adequate security at Jillian's. The new evidence about Stevens's status as an owner of JBC Holdings does not change Mika's theories of tort liability against Stevens, which relate only to Stevens's role as chief executive officer and chief financial officer. Mika's tort claims do not arise out of Stevens's involvement in the sale of JBC of Seattle.

c. Due Process

The assertion of long-arm jurisdiction against Stevens would also offend due process standards. As with the long-arm statute, due process considerations require the defendant's contacts to actually give rise to the cause of action.<sup>27</sup> If a plaintiff cannot show a purposeful act or consummation of some transaction in the forum state,

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<sup>26</sup> As discussed above in footnote 20, Mika did not allege a claim of fraudulent transfer against Stevens.

<sup>27</sup> CTVC of Hawaii, 82 Wn. App. at 709.

as well as a connection between the act or transaction and the cause of action, due process prevents the exercise of personal jurisdiction over the defendant.<sup>28</sup>

Mika again relies on one act, the sale of JBC of Seattle to Gameworks, to support his argument that Stevens purposefully did some act or consummated some transaction within the forum state. While Mika recognizes that execution of a contract with a Washington resident alone is not sufficient to fulfill the purposeful act requirement,<sup>29</sup> Mika does not point to any evidence in the record to suggest that the sale was anything more than execution of a bona fide contract between Gameworks, a foreign corporation, and JBC Holdings, a foreign corporation, for the sale of JBC of Seattle, a Washington business entity with assets in Washington.<sup>30</sup>

A court must examine the nature of the contractual relationship, including prior negotiations and contemplated future consequences, along with the actual course of dealing and specific terms of the contract, to determine whether that contract can be the basis for exercise of personal jurisdiction.<sup>31</sup> While the evidence establishes that Stevens took the lead in negotiating and executing the sale of JBC of Seattle, there is

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<sup>28</sup> If the plaintiff does satisfy both elements of the due process test, the burden shifts to the defendant to present a compelling argument as to why the exercise of jurisdiction would be unreasonable. Burger King Corp., 471 U.S. at 476-77.

<sup>29</sup> Precision Laboratory Plastics, Inc. v. Micro Test, Inc., 96 Wn. App. 721, 727, 981 P.2d 454 (1999).

<sup>30</sup> Mika also contends that subjecting Stevens to the jurisdiction of a Washington court would not offend traditional notions of fair play because Stevens gave misleading testimony about his ownership interest in JBC Holdings. While Stevens's deposition testimony that JBC Holdings was Gemini's investment was arguably incomplete, he also testified that others needed his approval for a sale. This testimony does not amount to fraud, either upon Mika or upon the court.

<sup>31</sup> Precision Laboratory, 96 Wn. App. at 726-27 (discussing the "purposeful transaction" element of the due process analysis where a contract is at issue).

no indication that his individual activity took place in Washington or created any ongoing relationships and obligations to Washington citizens.<sup>32</sup>

Mika argues that “[i]t is axiomatic that the asset Stevens conveyed ‘post-tort’ to Gameworks is the situs of the negligence and consequent injury to the Plaintiff.”<sup>33</sup> But Mika provides no persuasive argument or evidence to establish that his negligence claims arise from, or bear relationship to, the sale of JBC of Seattle to Gameworks.

Mika does not set forth *prima facie* evidence of an act or transaction by Stevens within Washington state out of which Mika’s tort claims arise. Mika does not make any showing that Stevens was responsible for the safety policy at Jillian’s, nor that his involvement in the post-tort sale had any relationship to Mika’s tort claims. There is no genuine issue of material fact.

We reverse the trial court order denying Stevens’s motion for summary judgment based on lack of personal jurisdiction, and remand with direction to dismiss Stevens from the lawsuit.

Stevens requests attorney fees under RCW 4.28.185(5). An award of attorney fees under the long-arm statute is discretionary.<sup>34</sup> “Where the defendant obtains a ruling that personal jurisdiction under the long-arm statute does not lie, the court may award up

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<sup>32</sup> See Huebner, 38 Wn. App. at 70-73 (personal jurisdiction existed over employees of corporation where those employees had personally negotiated rental agreements with Washington residents and had personally engaged in the offer and sale of unregistered franchises within Washington); Precision Laboratory, 96 Wn. App. at 726-27 (personal jurisdiction based on a contract satisfied due process where contract contemplated future consequences between Washington corporation and foreign corporation and created ongoing obligations between the two entities).

<sup>33</sup> Respondent’s Br. at 11.

<sup>34</sup> RCW 4.28.185(5); Payne v. Saberhagen Holdings, Inc., 147 Wn. App. 17, 36, 190 P.3d 102 (2008).

to the amount of attorney fees that defendant would have incurred had the jurisdictional defense been presented as soon as the grounds for it became available.”<sup>35</sup> We remand to the trial court to determine appropriate attorney fees under RCW 4.28.185(5) both in the trial court and on appeal.<sup>36</sup>

WE CONCUR:

Leppelwick, J.

Veulken, J.

Becker, J.

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<sup>35</sup> Hewitt v. Hewitt, 78 Wn. App. at 447, 456-57, 896 P.2d 1312 (1995).

<sup>36</sup> Scott Fetzer Co. v. Weeks, 122 Wn.2d 141, 149, 859 P.2d 1210 (1993) (remanding to the trial court to determine an appropriate award of fees and to determine “what, if any, award [defendant] is entitled to for its appellate efforts” (quoting Scott Fetzer Co. v. Weeks, 114 Wn.2d 109, 124-25, 786 P.2d 265 (1990))).



# **EXHIBIT B**

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JUDGE PALMER ROBINSON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

**JACKSON MIKA**

Plaintiffs,

v.

**JBC ENTERTAINMENT HOLDINGS INC., a Corporation doing business in the State of Washington; JBC OF SEATTLE, WA, INC., a Washington business, a subsidiary of JBC ENTERTAINMENT HOLDINGS INC.; GEMINI INVESTORS, an entity, owner of JBC ENTERTAINMENT HOLDINGS INC.; ALPHA CAPITAL PARTNERS, LTD., an entity, owner of JBC ENTERTAINMENT HOLDINGS INC.; GAMEWORKS ENTERTAINMENT LLC, a Corporation doing business in the State of Washington; MICHAEL B. KNUDSEN, an individual, Husband and wife, and their community; MARQUIS HOLMES, an individual, dba. BOSS LIFE ENTERTAINMENT, JANE DOE, Husband and wife, and their community, GREG STEVENS, an individual, Husband and wife, and their community; TONY HUMPHREYS, Husband and wife, and their community,**

Defendants.

**CAUSE NO. 11-2-02108-4 SEA**

**FIRST AMENDED COMPLAINT FOR DAMAGES FOR PERSONAL INJURIES**

**FIRST AMENDED COMPLAINT FOR DAMAGES FOR PERSONAL INJURIES**  
PAGE - 1

**PHILLIPS LAW LLC**  
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COMES NOW the plaintiff and for claims against the Defendants state:

**I. PARTIES**

1. Plaintiff, Jackson Mika is a resident of King County, Washington.
2. Defendant JBC Entertainment Holdings Inc., the corporate owner of JBC of Seattle, WA, Inc. at the time of subject incident, is and was at all times material hereto, a foreign corporation doing business in Seattle, King County, Washington.
3. Defendant Gameworks Entertainment LLC, the new corporate owner and operator of JBC of Seattle, WA, Inc., is and was at all times material hereto, a foreign corporation doing business in Seattle, King County, Washington.
4. Defendant JBC of Seattle, WA, Inc., is and was at all times material hereto, a business operating in Seattle, King County, Washington.
5. Defendant Gemini Investors, is and was at all times material hereto, the owner of JBC Entertainment Holdings Inc. at the time of the subject incident.
6. Defendant Michael Knudsen, a managing employee of JBC of Seattle, WA, Inc., is a resident of King County, Washington.
7. Defendants Michael Knudsen, and Jane Doe Knudsen are husband and wife and comprise a marital community under the laws of the State of Washington. All acts herein alleged to have been performed by Defendant Michael Knudsen, were performed on behalf of, and for the benefit of the Knudsen marital community.
8. At all times material hereto, Defendant Michael Knudsen and Jane Doe Knudsen were residents of King County, Washington.
9. Defendant Michael Knudsen is in the process of being dismissed from this action pending order to grant Motion to Dismiss.
10. Defendant Marquis Holmes, a Promoter, is a resident of King County,

Page 20

1 Washington.

2 11. Defendants Marquis Holmes and Jane Doe Holmes are husband and wife and  
3 comprise a marital community under the laws of the State of Washington. All  
4 acts herein alleged to have been performed by Defendant Marquis Holmes, were  
5 performed on behalf of, and for the benefit of the Holmes marital community.

6 12. At all times material hereto, Defendant Marquis Holmes and Jane Doe Holmes  
7 were residents of King County, Washington.

8 13. Defendant Greg Stevens, CEO and CFO of JBC Entertainment Holdings Inc. and  
9 JBC of Seattle, WA, Inc., is believed to be currently a resident of Washoe County,  
10 Nevada.

11 14. Defendants Greg Stevens, and Jane Doe Stevens are husband and wife and  
12 comprise a marital community believed to be under the laws of the State of  
13 Kentucky. All acts herein alleged to have been performed by defendant Greg  
14 Stevens, were performed on behalf of, and for the benefit of the Stevens marital  
15 community.

16 15. At all times material hereto, Defendant Greg Stevens and Jane Doe Stevens  
17 believed to have been residents of Jefferson County, Kentucky until the end of  
18 year 2012 when they believed to have moved to Washoe County, Nevada.

19 16. Defendant Tony Humphreys, Managing Employee of JBC Entertainment  
20 Holdings Inc., is believed to be a resident of King County, Washington.

21 17. Defendants Tony Humphreys and Jane Doe Humphreys are husband and wife and  
22 comprise a marital community under the laws of the State of Washington. All acts  
23 herein alleged to have been performed by defendant Tony Humphreys, were  
24 performed on behalf of, and for the benefit of the Humphreys marital community.  
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- 18. At all times material hereto, Defendant Tony Humphreys and Jane Doe Humphreys believed to have been residents of King County, Washington.
- 19. The Registered Agent for JBC of Seattle, WA, Inc. is C T Corporation System, 1801 West Bay Dr. NW. Ste. 206, Olympia, WA 98502.
- 20. The Registered Agent for Gameworks Entertainment LLC is INCORP Services, Inc., 2360 Corporate Circle, Ste. 400, Henderson, NV 89074-7739. The corporation is believed to have no registered agent filed with the State of Washington.
- 21. Counsel on record for JBC of Seattle, WA, Inc. and JBC Entertainment Holdings, Inc. is Jeffrey W. Daly, Preg O'Donnell & Gillett PLLC, 1800 Ninth Ave., Suite 1500, Seattle, WA 98101-1340.

**II. JURISDICTION AND VENUE**

- 22. This court has jurisdiction over the defendants because the defendants were at all relevant times doing business, in Washington and/or were residents of the State of Washington.
- 23. King County is proper venue pursuant to RCW 4.12.020 because the shooting incident resulting in the injury to the plaintiff, alleged in the Complaint took place in King County, Washington.

**III. FACTS**

- 24. On March 21, 2010, the plaintiff, Jackson Mika was attending a birthday party for his fiancée at Jillian's Billiards Nightclub, registered in the State of Washington as JBC of Seattle, WA, Inc. He arrived at Jillian's a few minutes

1 prior to buying a drink. He was allowed to enter the night club by merely showing  
2 his identification. The Plaintiff was standing near one of the dance floors. The  
3 night club was unusually packed with patrons. Hip Hop music was playing, and  
4 the patrons were expecting to see a celebrity rapper named "Lloyd". The club has  
5 a large area for playing billiards and upstairs and downstairs dance floors. Several  
6 arguments and fights were occurring upstairs. As security employees ran upstairs  
7 to stop fights, a shot rang out.  
8

9  
10 25. Plaintiff Jackson Mika was moving away from the fighting and began to run with  
11 the other patrons when he heard a shot. He later realized when he got into his car,  
12 that he had been shot.

13 26. The Plaintiff drove himself to Harborview Medical Center for emergency care. He  
14 had a gunshot entry wound in his right buttock and exit wound in his groin. A  
15 spent bullet was found on a short stairway inside Jillian's.

16  
17 27. It was discovered that Plaintiff had sustained a rectal injury, a transection of his  
18 prostate, urethral injury, a pubic ramus fracture, and a spermatic cord injury. The  
19 bullet struck his colon, prostate, and urethra requiring extensive surgeries and a  
20 colostomy bag and Foley Cather for an extended period of time.

21 28. Defendant, JBC Entertainment Holdings Inc., was, at the time of the subject  
22 shooting incident, the corporate owner of Jillian's Billiards Nightclub, registered  
23 as JBC of Seattle, WA, Inc., located in Seattle Washington, and is liable to the  
24 Plaintiff for the acts and omissions of its employees and agents.  
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29. Defendant Gemini Investors is, or was at the time of the shooting incident, the owner of JBC Entertainment Holdings Inc., and are liable to the Plaintiff for the acts and omissions of its employees and agents.

30. Defendant Gameworks Entertainment LLC has acquired Jillian's Billiards Nightclub, registered as JBC of Seattle, WA, Inc., with full knowledge of this action. By purchasing the property named in this action, Gameworks Entertainment have acquired this action and is liable to the Plaintiff for the acts and omissions of the employees and agents of JBC of Seattle, WA, Inc..

31. On March 21, 2010, Defendants JBC Entertainment Holdings Inc., JBC of Seattle, WA, Inc., Gemini Investors, Marquis Holmes dba/ Boss Life Entertainment, Gregory Stevens, Tony Humphreys, John Doe Corporation, and or John and Jane Doe, negligently and carelessly created and/or allowed to exist an unsafe and unsecured premises, which Defendants knew, or in the exercise of ordinary and reasonable care should have known, to be an unsafe and dangerous condition. Defendants, in the exercise of reasonable care, should have enhanced security, such as "wandering" for firearms, given the large number of hip hop/rap patrons in order to keep the Plaintiff safe. Defendant's failure to enact security precautions, control access to the nightclub, and take other reasonable security measures created the risk to plaintiff and to other patrons to be harmed by the criminal conduct of another person.

Page 24

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32. Defendant JBC Entertainment Holdings Inc., Defendant JBC of Seattle, WA, Inc. Defendant Greg Stevens, and Defendant Tony Humphreys failed to prepare and file annual Written Safety Plans with the City of Seattle, a violation of Seattle Municipal Court, 10.11.015, a class 1 civil infraction. Furthermore, defendants were negligent in obtaining insufficient liability insurance, in establishing security policies, and in hiring managing employees with inadequate experience. The failure to file annual Written Safety Plan with the City of Seattle, the failure to take other reasonable security measures, the failure to hire qualified managing employees, and the failure to properly supervise employees created the risk to Plaintiff to be harmed by the criminal conduct of another person.

33. Defendant Gemini Investors engaged in post tort activity of gutting JBC Entertainment Holdings, Inc. assets, including Jillian's Billiards Nightclub of Seattle named in this action, in order to avoid paying actual or potential liability for the harm to Plaintiff which is a conduct that will independently support disregard of the corporate entity. The decision to sell the assets and the negotiations related to the sales were conducted internally by Gemini Investors. The actions of Gemini Investors described above clearly shows that the private equity firm has ownership position of Defendant JBC Entertainment Holdings, Inc. and its stores with control over JBC Entertainment's decision-making and operations, and therefore, Gemini Investors is liable to the Plaintiff for the acts



1 and omissions of Defendant JBC Entertainment Holdings, Inc.'s employees and  
2 agents.

3  
4 34. Injuries to the Plaintiff were caused by the negligence of the Defendants JBC  
5 Entertainment Holdings Inc., JBC of Seattle, WA, Inc., Gemini Investors,  
6 Gameworks Entertainment LLC, Gregory Stevens, Tony Humphreys, Marquis  
7 Holmes dba/Boss Life Entertainment in the following particulars:

- 8 a) Negligent Hiring  
9 b) Negligent Supervision  
10 c) Inadequate Security  
11 d) Improper Instruction and Training  
12 e) Negligent Infliction of Emotional Distress  
13

14 35. Defendants Gregory Stevens, Tony Humphreys, and Marquis Holmes each  
15 individually and intentionally engaged in extreme and outrageous conduct as  
16 noted above. This conduct recklessly caused severe emotional distress to  
17 Plaintiff.  
18

19 36. Plaintiff reserves the right to assert additional particulars of the negligence of  
20 Defendants pending discovery.

21 37. Each of the above acts caused Plaintiff some harm, but said damages are difficult  
22 to apportion. Defendants are successive and concurrent tortfeasors and therefore  
23 are jointly and severally liable for the damages sustained by Plaintiff that  
24 defendants cannot apportion.  
25  
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**V. INJURIES**

38. As a direct and proximate result of the Defendants' negligence Plaintiff has suffered severe and permanent harm, entitling Plaintiff to recover special and general damages. The full extent of Plaintiff's permanent injuries is presently undetermined.

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**VI. DAMAGES**

39. As a direct and proximate result of the negligence of Defendants, Plaintiff has incurred medical expenses in the past and will in the future. At the time of Plaintiff's injury, he was gainfully employed and, as a direct result of his injuries, he has sustained a wage loss in the past and will in the future. Plaintiff has suffered pain and impairment of earning capacity in the past and will in the future. The full extent of the permanent impairment to Plaintiff's wage earning capacity is presently undetermined.

19 **WHEREFORE**, the Plaintiff respectfully demands judgment against the defendants, and  
20 each of them for the following relief, together with plaintiff's taxable costs, and reasonable  
21 attorney fees, interest calculated at the maximum amount.

- 22  
23 A. Plaintiff's General damages in an amount to be proven at trial;  
24 B. Plaintiff's Special Damages in amount to be proven at trial;  
25 C. Wage loss, pain, anxiety, emotional distress, physical and psychological  
26

1 trauma, and suffering of the plaintiff;

2 D. Disability and Disfigurement;

3 E. Enjoyment of Life;

4 F. Such any other relief as the Court deems appropriate, just and equitable  
5 under the circumstances.  
6

7 **LIMITED PHYSICIAN/PATIENT WAIVER**

8 Plaintiff hereby waives the physician-patient privilege ONLY to the extent required by  
9 RCW 5.60.060. as limited by the plaintiff's constitutional rights of privacy, contractual right of  
10 privacy, and the ethical obligation of physician's and attorneys not to engage in *ex parte* contact  
11 between a treating physician and a patient's legal adversaries. This waiver does not authorize a  
12 health care provider to communicate with any defendant or agent of defendants, unless  
13 specifically authorized by plaintiff's counsel (as a stipulation to produce medical records) or in  
14 the presence of plaintiff's counsel (as in a deposition). Such waiver is to be effective eighty-nine  
15 days from the date this Complaint is filed.  
16  
17

18 DATED this 2nd day of February, 2011.  
19

20 **PHILLIPS LAW LLC**

21  
22 s/ Howard L. Phillips

23 Howard L. Phillips, WSBA # 17937  
24 Attorney for Plaintiff  
25  
26

**FIRST AMENDED COMPLAINT FOR  
DAMAGES FOR PERSONAL INJURIES  
PAGE - 10**

Mika v. JBC Entertainment et. al.

**PHILLIPS LAW LLC**  
3815 S. Othello St. #100-353  
Seattle, WA 98148  
Phone: (206) 725-0912  
Fax: (206) 397-3253

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CASE NUMBER: 11-2-02108-4 SEA

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Hon. Michael C. Hayden

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JACKSON MIKA,

Plaintiff,

vs.

JBC ENTERTAINMENT HOLDINGS INC.,  
a corporation doing business in the State of  
Washington; JBC OF SEATTLE, WA, INC.,  
a Washington business, a subsidiary of JBC  
Entertainment Holdings Inc.; GEMINI  
INVESTORS, an entity, owner of JBC  
Entertainment Holdings Inc.; ALPHA  
CAPITAL PARTNERS, LTD., an entity,  
owner of JBC Entertainment Holdings Inc.;  
GAMEWORKS ENTERTAINMENT LLC, a  
corporation doing business in the State of  
Washington; MICHAEL B. KNUDSEN, an  
individual, husband and wife, and their  
community; MARQUIS HOLMES, an  
individual, dba BOSS LIFE  
ENTERTAINMENT, JANE DOE, husband  
and wife, and their community, GREG  
STEVENS, an individual, husband and wife,  
and their community; TONY HUMPHREYS,  
husband and wife, and their community,

Defendants.

No. 11-2-02108-4 SEA

DECLARATION OF GREGORY  
STEVENS IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT OF  
DISMISSAL FOR LACK OF  
PERSONAL JURISDICTION AND FOR  
REASONABLE ATTORNEY FEES  
AND COSTS UNDER RCW 4.28.185

Gregory Stevens states and declares as follows:

1. I was the Secretary and one of the Directors of Defendant JBC Entertainment Holdings, Inc. I am also named as a Defendant in the above-captioned matter. I am over the

DEC. OF STEVENS IN SUPPORT OF MOTION FOR  
SUMM. JUDG. OF DISMISSAL FOR LACK OF  
PERSONAL JURIS. AND FOR REASONABLE  
ATTORNEY FEES & COSTS UNDER RCW 4.28.185 - 1  
Revised Stevens Decl-1.doc

LEE SMART

PS., Inc. - Pacific Northwest Law Offices

1800 One Convention Place • 701 Pike Street • Seattle - WA • 98101-3929  
Tel. 206.624.7990 • Toll Free 877.624.7990 • Fax 206.624.5944

1 age of eighteen years, am competent to testify, and make the following statements based on my  
2 personal knowledge.

3 2. In March 2010, I lived in Louisville, Kentucky and worked in the corporate  
4 office of JBC Entertainment. Since that time, I have moved to Reno, Nevada.

5 3. I have never lived in Washington or had a Washington office or mailing address.  
6 I have not paid taxes in Washington other than routine sales or hotel taxes, etc. I have never  
7 insured any Washington resident, or any Washington property or risk. I do not have a bank  
8 account or any other personal or real property in Washington. Although I have traveled to  
9 Washington in the past decade, I have only done so on approximately a half-dozen occasions.

10 4. I have never contacted Mr. Jackson Mika, who I have been told lives in  
11 Washington. Nor has he contacted me for any reason.

12 5. In March 2010, Jillian's Billiards Club of Seattle, WA was wholly owned and  
13 operated by Defendant JBC of Seattle, WA, Inc. ("JBC of Seattle"). JBC of Seattle was  
14 responsible for the control and operation of the Jillian's in Seattle. JBC of Seattle was  
15 incorporated in Delaware.

16 6. In March 2010, JBC of Seattle was a wholly owned subsidiary of Defendant  
17 JBC Entertainment Holdings, Inc. ("JBC Entertainment"). JBC Entertainment was also  
18 incorporated in Delaware.

19 7. JBC of Seattle operated the Jillian's in Seattle before I became a corporate  
20 officer of JBC Entertainment.

21 8. In my role as a corporate officer of JBC Entertainment, I was responsible for the  
22 company's overall profitability, not the day-to-day operations of the subsidiary companies  
23 running various restaurant establishments around the country. Rather, the President and Chief  
24 Operating Officer of JBC Entertainment, Mr. Tyler Warfield, handled the day-to-day oversight  
25

1 of those companies. I relied heavily on corporate staff, regional managers, general managers,  
2 and finally restaurant-level managers and assistant managers to run the various levels of those  
3 business operations at the parent and subsidiary companies.

4 9. My authority to hire, fire, and train employees extended only to corporate  
5 employees at JBC Entertainment, not employees at subsidiary companies like JBC of Seattle.

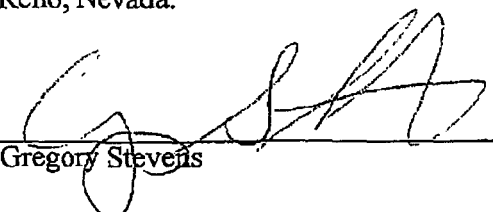
6 10. I was not responsible for JBC of Seattle's policies and procedures.

7 11. Plaintiff's counsel has taken my deposition twice in this case, and both were  
8 outside the State of Washington. The first deposition was in San Francisco, California, while I  
9 was there on business. The second deposition occurred on December 20, 2011, by  
10 videoconference from Reno, Nevada, where I live. These depositions were both held out-of-  
11 state because it was inconvenient and expensive for me to travel to Washington, and I had no  
12 reason otherwise to be present in Washington.

13 12. I was served the summons and first amended complaint while I was at my home  
14 in Reno, Nevada.

15 I declare under the penalty of perjury under the laws of the State of Washington that the  
16 foregoing is true and correct to the best of my knowledge.

17 DATED this 17<sup>th</sup> day of May, 2012 in Reno, Nevada.

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Gregory Stevens

1 setting their kind of goals and objectives. And I also  
2 serve in the capacity of Chief Financial Officer.

3 Q. So you're the CFO, as well?

4 A. Yeah.

5 Q. And you said portfolios. What do you mean?

6 A. JBC Entertainment has investments in a number  
7 of locations like this.

8 Q. I'm sorry, you were speaking of portfolios.

9 By portfolios, you mean the other properties  
10 that you own?

11 A. That's correct; yes. JBC Entertainment makes  
12 investments in restaurants and operations like this.

13 Q. When you say investments, you mean own, or are  
14 there other investors, as well?

15 A. There are other investors, as well.

16 Q. In each store?

17 A. No. In each of the stores that we currently  
18 have, there's one single investor, which is JBC  
19 Entertainment.

20 Q. And how many stores are there?

21 A. We operate seven locations under JBC  
22 Entertainment.

23 Q. And do you operate other entities, other than  
24 those seven, under JBC Entertainment?

25 A. No, not under JBC Entertainment.

1 do and --

2 Q. So basically you delegate that responsibility  
3 to hiring; is that right?

4 A. No. Again, you know, we have a very small  
5 Corporate staff. When I'm indicating that I have, as a  
6 CEO, the area of responsibility of hiring, it's just  
7 for that Corporate staff.

8 Q. For instance, we spoke to one of your  
9 managers, Mr. Balcom. And I believe he was hired  
10 recently; is that right? Or --

11 A. Mr. Balcom began his employment with Jillian's  
12 in Seattle, I believe, around February or March of last  
13 year.

14 Q. Would he be one of the Corporate types that  
15 you would hire?

16 A. No, that's not a Corporate employee.

17 Q. Oh, I see.

18 A. Mr. Balcom is an employee of the Seattle  
19 location. I would not have been involved in his hiring  
20 at all.

21 Q. And who would?

22 A. That would have been orchestrated by Tyler  
23 Warfield, primarily.

24 Q. And can you maybe explain how that works? How  
25 Mr. Warfield would be --



1           A. Yes and no. I would be conjecturing. I truly  
2 just allow him to do it. So I would imagine, if you  
3 want me to conjecture, I would be --

4           Q. No, I do not want you to conjecture.

5                    But I would like to know what you know about  
6 the hiring of Mr. Balcom and other people in his type  
7 of position?

8           A. Really, I don't mean to be vague on this, but  
9 very little. I completely kind of allow Tyler the full  
10 reign of making that happen, if you will.

11          Q. Okay.

12          A. So I don't get involved at all, except that he  
13 and I would have a philosophical understanding of the  
14 basic type of individual that we would be looking for.

15          Q. And where is Mr. Tyler located?

16          A. Louisville, Kentucky.

17          Q. In Louisville, Kentucky.

18                    He works out of the same Corporate office as  
19 you?

20          A. Yes.

21          Q. And your duties as CFO -- when you say CFO,  
22 are you speaking of the overarching CFO of all the  
23 Jillian's that come under JBC Entertainment, or are you  
24 just speaking of Corporate?

25          A. Ultimately, the performance of each of those

1 people to go, relax and just have fun.

2           And, you know, specific to the Seattle  
3 location, the primary kind of hook, if you will, for  
4 that is offering upscale billiards; a place for people  
5 to come and just, you know, play some pool and relax  
6 over some food and drink, and just enjoy each other.

7           The complement to that is a restaurant that  
8 offers sports viewing. That's an important piece of  
9 that business in Seattle, and, as you may have observed  
10 here, as well, for us here in San Francisco and all our  
11 locations.

12           The target is kind of towards a -- it's a  
13 broad demographic, if you will. We're trying to be  
14 accessible. The whole point of the name Jillian's is  
15 to make it a female-friendly and female kind of focused  
16 offering, and we're trying to attract, you know...

17           In the Seattle location, for example, we have  
18 a game room. So it's everything from families that  
19 might want to come in with the young kids to hang out  
20 for a little bit, to young adults who might want to  
21 come after work and just have something to eat; to what  
22 really is the biggest piece of our business, which is  
23 corporate parties and corporate events, bringing folks  
24 in like Microsoft or the Microsoft Foundation, or other  
25 large corporations where they have team-building

1 opportunities, or just want to get out with their  
2 employees and allow them the opportunity just to enjoy  
3 each other.

4 Q. And what do you call those kinds of events?  
5 What I'm getting at is, are those called promotions?  
6 Are they called special events? What does your  
7 corporation call them?

8 A. We just call them events.

9 Q. Just events?

10 A. Yeah.

11 Q. And are those organized at the local level, or  
12 are they organized at the Corporate level?

13 A. They're entirely organized at the local level.

14 In each one of our locations, we will ask the  
15 location to hire, and specifically dedicate, an  
16 employee to going out and bringing those types of  
17 events to us.

18 Q. Okay.

19 A. They are sales individuals.

20 Q. They'll go out, like to Microsoft or someone  
21 else, to seek out an opportunity for them to have an  
22 event at your place?

23 A. Yes.

24 Q. Are you aware of any Washington State Liquor  
25 Control Board violations or complaints made against the

1           So it's this one, Seattle, the Universal  
2 Studios location. The operation we have in Pasadena,  
3 which is not a Jillian's, it's a Jake's. The  
4 Manchester, New Hampshire location. I think that's it.

5           Q. And would he be the person who does the hiring  
6 and firing at the local level?

7           A. Not necessarily. He's not going to get  
8 involved with hiring the staff of a location; that's  
9 not what his role is. He, more often than not, won't  
10 even get involved with hiring some of the management  
11 team. That will be delegated to the general manager of  
12 the properties.

13           Where Tony will get involved is hiring general  
14 managers, together with Tyler.

15           Q. So he would have been involved in the hiring  
16 of Mr. Balcom?

17           A. He would have been. More likely at Tyler's  
18 direction, but I'm not 100 percent certain how Tyler  
19 manages the process.

20           Q. And I've been kind of asking the questions  
21 around the edges, but maybe you can describe to me the  
22 structure.

23           You speak of different teams and different  
24 locations; not a full-blown layout, but maybe  
25 succinctly describe to me the structures, starting with

1 your position, and then who would be responsible to you  
2 further down the line, and how that kind of works.

3 Do you understand?

4 A. Um-hmm.

5 Q. Okay.

6 A. But I have to draw a line. Because I think  
7 what you're asking is for kind of a connection between  
8 two different groups, if you will.

9 So let me start with the Corporate structure.  
10 And I won't go through -- I mean, there's not that many  
11 people, but I don't think you're asking me for all the  
12 staff level roles.

13 So you've got me and Tyler. I kind of view me  
14 and Tyler as a partnership; but effectively, he would  
15 report to me directly. I don't exercise that  
16 authority, because we see kind of very similar  
17 philosophically how things need to be done, so he runs  
18 fairly independent of me.

19 And then Tony would report directly to Tyler.

20 Q. Okay.

21 A. And effectively, that's the kind of the  
22 Corporate leadership. There's IT people and staff  
23 accountants. I'm happy to talk about that if you need  
24 to.

25 Q. No.

1           A. Then you drop the line to the locations.

2           So there's a general manager here in  
3 San Francisco, for example. That general manager will  
4 talk primarily to Tony as often as needed; "Hey, I've  
5 got Oracle coming in next week. I'm expecting a  
6 thousand people a day for the next five days, you know.  
7 Help me think about how I should be planning my kitchen  
8 and staffing this thing," and things along those lines.  
9 That's the type of daily interaction that would be  
10 happening.

11           But Tony's responsibility isn't just thinking  
12 that day ahead, but thinking forward for them, as well.  
13 "Hey, Christmas is coming up. Are you working with  
14 your event sales people to be out there talking to  
15 companies for Christmas parties? They should be  
16 booking now." Those kind of conversations.

17           So that's the interaction between the two, if  
18 you will.

19           And then here in the location, or in any of  
20 the other locations, there's, you know, a management  
21 team. And that management team is going to be led by a  
22 general manager -- Mr. Balcom in Seattle -- and  
23 comprised of some assistant managers. And the number  
24 of and the titles of those assistant managers is  
25 dependent on the type of operation.

1           This location, for example, has -- and I can't  
2 tell you the exact number -- but a relatively small  
3 management team. It's an easy operation. We have, you  
4 know, kind of a fine dining restaurant operation with a  
5 small billiard entertainment component.

6           So we'll have a general manager, a couple of  
7 assistant managers that will run the floor, a kitchen  
8 manager and an event sales manager, and that would be  
9 the team.

10           Our Universal Studios location -- which has  
11 upscale bowling, a nice video arcade room, and a  
12 restaurant -- would have similar management positions,  
13 but would also have an amusement manager who's  
14 responsibility would be to keep the bowling lanes  
15 operational, and staff the bowling side of the  
16 business.

17           They would have an additional event sales  
18 person because there's so much event business down  
19 there with the studios that we need to have more than  
20 one down there. And then you have the staff underneath  
21 that, obviously.

22           Does that help?

23           Q. I think so.

24           The event sales manager --

25           A. Yes?

1 question for me to answer it the way you've asked it.

2 I don't want to be misleading with my answers.

3 BY MR. PHILLIPS:

4 Q. I understand.

5 Who is ultimately responsible for dictating  
6 the policies and procedures to be followed by  
7 JBC Seattle?

8 A. In a broad context, the quote, "policy and  
9 procedures," it's my expectation that Tyler is managing  
10 those, and overseeing, and making sure that we're  
11 adhering to those.

12 But that doesn't mean that Tyler's  
13 responsibility is to make sure that every burger that's  
14 presented every day is presented, you know, 100 percent  
15 within the context of whatever our spec is for that  
16 burger. There's just no ability to do that.

17 So I don't know if that answers your question.

18 Q. Well, there are levels. I think at the very  
19 beginning of our discussion you talked about you were  
20 the person responsible for, I believe -- correct me if  
21 I'm wrong -- the strategic type of decisions and that  
22 sort of thing; is that right?

23 A. That's correct. So if there's something  
24 that's going to fundamentally change the nature of that  
25 location -- for example, we just remodeled this.



Page 13

1 [sic] how that is. I mean, he's -- he's on the  
 2 finance side. I mean, so I don't know corporately  
 3 how it's all structured. But I -- I believe it's  
 4 "Holding," but I -- but I'm not positive the exact  
 5 legal name of the entity.  
 6 Q. Okay. I'm sorry but I have to go just  
 7 back; I just thought of something. The case where  
 8 the sexual harassment case is, that's in King  
 9 County, Washington?  
 10 A. I'm not sure. Perhaps yes. I -- I believe.  
 11 I'm not -- I'm not sure exactly where it's filed  
 12 though.  
 13 Q. Okay.  
 14 A. Just Seattle, to my knowledge.  
 15 Q. I'm sorry. I didn't mean to --  
 16 A. That's okay.  
 17 Q. -- take us aside.  
 18 And you had mentioned Greg Stevens. He's  
 19 the C -- CEO; is that right?  
 20 A. Correct.  
 21 Q. And CFO, as well, you said?  
 22 A. Correct.  
 23 Q. And -- and what is -- what is your role,  
 24 sir?  
 25 A. President/COO.

Page 14

1 Q. And what are your duties and  
 2 responsibilities as President/COO?  
 3 A. Oversee, essentially, all operations, and  
 4 that would encompass operations and marketing,  
 5 purchasing, everything that kind of helps the clubs  
 6 run.  
 7 Q. Okay. Kind of running the business?  
 8 A. Correct.  
 9 Q. Okay. And who is Tony Humphreys?  
 10 A. He was my regional director on the --  
 11 director of operations on the West Coast plus our  
 12 Manchester location.  
 13 Q. You said "was"?  
 14 A. Yes.  
 15 Q. Is he -- is he currently?  
 16 A. No.  
 17 Q. He's no longer?  
 18 A. No.  
 19 Q. When was he let go?  
 20 A. It -- when the company sold five  
 21 properties, then he -- his services, nor mine, were  
 22 no longer needed.  
 23 Q. Oh, yours either?  
 24 A. Correct.  
 25 Q. So you're no longer employed there;

Page 15

1 is...  
 2 A. No, sir.  
 3 Q. Oh, okay. You mentioned five companies  
 4 being sold. What five companies?  
 5 A. Five -- five properties.  
 6 Q. Five properties, I'm sorry.  
 7 A. Seattle, Universal, San Francisco,  
 8 Chesapeake and Jake's Billiards in Pasadena.  
 9 Q. Okay. Do you know why they were sold?  
 10 A. No. I mean, outside of it was -- there  
 11 was -- outside of Greg informing me, before he  
 12 moved to Reno, that he had struck a deal with this  
 13 acquiring company.  
 14 Q. And that acquiring company is --  
 15 A. I be --  
 16 Q. -- GameWorks?  
 17 A. I believe; yes.  
 18 Q. Okay. And you're no longer part of that  
 19 JBC Entertainment?  
 20 A. No.  
 21 Q. Okay. And when did -- when did this  
 22 happen, sir?  
 23 A. I think it went final a month ago maybe,  
 24 maybe a month and a half. I'm not -- I'm not  
 25 entirely sure. Maybe closer to a month and a half.

Page 16

1 Q. Okay. And do you know where the  
 2 transaction was actually done; was it in -- here in  
 3 Kentucky or was it...  
 4 A. I -- I don't know.  
 5 Q. You have no information about the sale or  
 6 anything like that?  
 7 A. No.  
 8 Q. Just Greg informed you, "I maybe struck a  
 9 deal"?  
 10 A. Yes.  
 11 Q. Whilst -- while he's going out the door to  
 12 Reno?  
 13 A. Yes.  
 14 Q. Okay. Tony Humphreys, do you know  
 15 where he is?  
 16 A. Seattle, I assume.  
 17 Q. Okay. So have you had any contact with  
 18 Mr. Humphreys since the -- the sale?  
 19 A. No.  
 20 Q. Okay. Well, what was his position in -- in  
 21 Seattle, what was he doing?  
 22 A. He was director of operations. He  
 23 oversaw the -- the West Coast properties --  
 24 Q. Okay.  
 25 A. -- plus the Manchester property in New

Page 37

1 So -- but you started off as a billiard --  
 2 billiard club -- billiard hall kind of club in New  
 3 York?  
 4 A. In Boston --  
 5 Q. Boston.  
 6 A. -- is where it started; yes.  
 7 Q. Boston. Right.  
 8 A. Years and years ago, yeah. I mean,  
 9 the -- the genesis of Jillian's was to start off as  
 10 kind of an upscale billiards place; yes.  
 11 Q. Right. And -- but the Jillian's of Seattle,  
 12 I'm cer -- I know you've been there, they have a  
 13 dance floor at the -- at the north end and that sort  
 14 of thing; is that right?  
 15 A. The -- it's a dining area that they -- that  
 16 they use for dance late at night; yes.  
 17 Q. Okay.  
 18 A. Later in the night.  
 19 Q. That later in the night, you mean they --  
 20 they moved -- act -- it's actually a dining area,  
 21 they move the chairs off, and that sort of thing; is  
 22 that right?  
 23 A. Right.  
 24 Q. Okay. And then it becomes a dance  
 25 floor?

Page 38

1 A. Correct.  
 2 Q. All right. Okay. I'm assuming that  
 3 you've had the opportunity to review the discovery;  
 4 by "discovery" I mean police reports, e-mail, and  
 5 that sort of thing that's been generated by this  
 6 case?  
 7 A. Correct.  
 8 Q. Okay. You had mentioned the police  
 9 report that you received earlier on, you and Ms.  
 10 Ritzi. And did you -- have you reviewed any other  
 11 police reports other than that one?  
 12 A. Not that I'm aware of.  
 13 Q. Okay.  
 14 A. Or I recall.  
 15 Q. Okay. And e-mails, you received e-mails  
 16 or reviewed e-mails involving -- immediately after  
 17 and then shortly thereafter the...  
 18 A. Yeah, if there were e-mails sent; yes. I  
 19 mean, it was -- it was such -- the way that the  
 20 information was coming in, it was a lot of live  
 21 conversation, too, just trying to -- to collect  
 22 information as quickly as possible to understand  
 23 what went on.  
 24 Q. Okay. And you also received Michael  
 25 Knudsen's statement, did you?

Page 39

1 A. I received so -- I believe so. I --  
 2 Q. Or a --  
 3 A. There was a lot of sta -- there was a lot  
 4 of statements.  
 5 Q. Well, I mean a written state -- I'm sorry.  
 6 A. Yes. There was a lot of written  
 7 statements.  
 8 Q. Right.  
 9 A. From -- from a lot of employees. And I --  
 10 I -- I'm assuming Michael's was part of that. As I  
 11 sit here right now, to specifically say I remember  
 12 his, I -- I can pull his out of the group, I -- I --  
 13 I'm -- I'm struggling with that right at --  
 14 Q. Okay.  
 15 A. -- this moment.  
 16 Q. That's fine. That's fine.  
 17 But you did receive -- in other words, I'm just  
 18 visualizing your corporate structure.  
 19 A. Yes.  
 20 Q. Since you're the CEO -- COO, then  
 21 basically information would be funneled to you --  
 22 A. Yes.  
 23 Q. -- and then that you would determine at  
 24 that point what to do with that information; is  
 25 that --

Page 40

1 A. Correct.  
 2 Q. -- right? Okay.  
 3 And part of your duties as the President/COO  
 4 was to -- you're basically, ultimately, responsible  
 5 for the day-to-day operations at your -- at your  
 6 locations; is that right?  
 7 A. Yes.  
 8 Q. Okay. So it fair to say that you are  
 9 familiar with the policies regarding the security  
 10 at -- at your facilities, in particular, JBC Seattle?  
 11 A. Yes.  
 12 Q. Okay. Now JBC of Seattle has only -- has  
 13 on-site security employee -- on-site -- I don't want  
 14 to use the word "security," you-guys -- door --  
 15 door host employees; is that right?  
 16 A. Correct.  
 17 Q. You don't use independent contractors?  
 18 A. No.  
 19 Q. Okay. And are you familiar with the door  
 20 host or the security that was in place at JBC  
 21 Seattle on March 20th through March 21st, 2010?  
 22 A. Am I familiar with the -- the people  
 23 themselves or --  
 24 Q. Are --  
 25 A. -- the deployment?

Page 30

1 sign your interrogatories; is that right?  
 2 A. I'm sorry?  
 3 Q. Do you remember signing your  
 4 interrogatories? Or did you sign your  
 5 interrogatories? Do you know what interrogatories are?  
 6 A. No, sir.  
 7 Q. Did you receive any paperwork from your  
 8 attorney where you answered those questions that were  
 9 presented by the plaintiff?  
 10 A. Yes.  
 11 Q. Okay. Do you remember answering that Brock  
 12 Robinson was in charge of security? Is that right?  
 13 A. Yes. Correct.  
 14 Q. And that, for the night in question, you  
 15 recall a conversation between Brock Robinson, Papa  
 16 Black and "myself" that included a decision to have  
 17 extra security personnel that night due to the size of  
 18 the anticipated crowd? Do you remember that answer?  
 19 A. Yes.  
 20 Q. Do you stand by that answer?  
 21 A. Yes.  
 22 Q. How large a crowd did you anticipate?  
 23 A. Approximately 500 guests.  
 24 Q. Do you know how many people actually showed  
 25 up?

Page 31

1 A. I do not.  
 2 Q. Do you remember if you -- well, let me back  
 3 up. So the anticipated crowd was just not anticipated  
 4 by you, but it was also known to the employees that  
 5 there would be a large crowd that night; is that right?  
 6 MR. SIMMONS: Object to form.  
 7 A. Correct.  
 8 Q. (BY MR. PHILLIPS) Did you inform them of  
 9 that?  
 10 A. Yes.  
 11 Q. Did you also inform -- do you know an  
 12 employee by the name of Spencer Lane?  
 13 A. Yes.  
 14 Q. Did you inform Mr. Lane that they expect to  
 15 have a large crowd that night?  
 16 A. I imagine I would have. I don't remember  
 17 that conversation in particular, but I imagine I would  
 18 have.  
 19 Q. Okay. Do you remember if you ran out of  
 20 liquor that night?  
 21 A. We did not.  
 22 Q. You had mentioned Marquis Holmes as Papa  
 23 Black. Are you familiar with Boss Life Promotions?  
 24 A. Yes.  
 25 Q. How are you familiar with Boss Life

Page 32

1 Promotions?  
 2 A. Through Marquis Holmes.  
 3 Q. Maybe you can explain what you mean. How?  
 4 A. To the best of my knowledge, they're  
 5 affiliated. I don't know anything beyond that.  
 6 Q. Do you know if Mr. Holmes owns Boss Light  
 7 Promotions?  
 8 A. I do not.  
 9 Q. Have you ever met Mr. Marquis Holmes?  
 10 A. Yes.  
 11 Q. How many times?  
 12 A. Twice.  
 13 Q. What were the circumstances --  
 14 A. -- approached me in regards to holding this  
 15 event, the promotion. The second was on that evening.  
 16 Q. I'm sorry. We kind of froze out on the  
 17 first. Could you maybe answer that first part again?  
 18 A. The first time would be when he approached me  
 19 in the club about holding this event.  
 20 Q. And how did that happen?  
 21 A. He approached me inside the club and brought  
 22 to my attention that he was looking to hold an event.  
 23 Q. Okay. And it was inside the club. Did you  
 24 meet in the office? Were you at the bar? What  
 25 happened?

Page 33

1 A. In the front of the club near the front desk.  
 2 Q. Okay. Was this during the day or during the  
 3 evening or what time?  
 4 A. Afternoon.  
 5 Q. And was he with anyone when he approached  
 6 you?  
 7 A. No.  
 8 Q. Can you tell me something about that  
 9 conversation, please?  
 10 MR. SIMMONS: Object to form.  
 11 A. He asked me if I was interested in holding  
 12 this promotion with him, and that was pretty much it.  
 13 Q. (BY MR. PHILLIPS) And what did you tell him?  
 14 A. I said, "Absolutely."  
 15 Q. And when did this conversation occur?  
 16 A. One to two weeks prior to this event.  
 17 Q. One to two weeks prior to the March 20th  
 18 event?  
 19 A. Correct.  
 20 Q. When you told them you were interested, did  
 21 you inform any of your supervisors that that  
 22 arrangement had been made?  
 23 A. I did not.  
 24 Q. Was there any written documentation of that  
 25 agreement?

9 (Pages 30 to 33)

Moburg & Associates 206-622-3110  
2033 Sixth Ave., Ste. 826

Court Reporters  
Seattle, WA 98121

1 orchestrated with guidance, to the point of saying,  
2 "Hey, if you're going to run a concert, then these are  
3 the base expectations, and this is what we need to put  
4 in place to make sure it's run effectively."

5 Q. Can I take it, then, that you were unaware of  
6 the promotion that was alleged to have occurred on  
7 March 20th, 2010?

8 A. Oh, entirely; absolutely.

9 Q. Could you speak for Tyler? Are you speaking  
10 for yourself, personally, or are you also speaking for  
11 Tyler?

12 A. I can only speak for myself, personally.

13 I can tell you I would expect that Tyler  
14 didn't have a clue, but you'd have to ask him the  
15 question.

16 Q. And I guess that would be because then the  
17 person would have had to contact Tyler, like you're  
18 talking about the South Carolina thing, and they would  
19 have to make arrangements?

20 A. Yes.

21 Q. So you're not aware that extra security was  
22 apparently hired -- not hired, but was on-scene? Extra  
23 security that was provided by Boss Life? Are you  
24 familiar with that?

25 A. No.

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Hon. Michael C. Hayden

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JACKSON MIKA,

Plaintiff,

vs.

JBC ENTERTAINMENT HOLDINGS INC.,  
a corporation doing business in the State of  
Washington; JBC OF SEATTLE, WA, INC.,  
a Washington business, a subsidiary of JBC  
Entertainment Holdings Inc.; GEMINI  
INVESTORS, an entity, owner of JBC  
Entertainment Holdings Inc.; ALPHA  
CAPITAL PARTNERS, LTD., an entity,  
owner of JBC Entertainment Holdings Inc.;  
GAMEWORKS ENTERTAINMENT LLC, a  
corporation doing business in the State of  
Washington; MICHAEL B. KNUDSEN, an  
individual, husband and wife, and their  
community; MARQUIS HOLMES, an  
individual, dba BOSS LIFE  
ENTERTAINMENT, JANE DOE, husband  
and wife, and their community, GREG  
STEVENS, an individual, husband and wife,  
and their community; TONY HUMPHREYS,  
husband and wife, and their community,

Defendants.

No. 11-2-02108-4 SEA

DECLARATION OF TONY  
HUMPHREYS

I, Tony Humphreys, declare as follows:

1. I am over 18 years old and otherwise competent to testify. I am a named  
defendant in Plaintiff's Amended Complaint in the above-captioned action. I make the

DECLARATION OF TONY HUMPHREYS - 1  
5426165.doc

LEE SMART

P.S., Inc. - Pacific Northwest Law Offices

1800 One Convention Place - 701 Pike Street - Seattle - WA - 98101-3929  
Tel. 206.624.7990 - Toll Free 877.624.7990 - Fax 206.624.5944

1 following declaration in support of a motion to dismiss the action against me and my wife, as  
2 well as against Greg Stevens and his marital community, and I base my statements upon my  
3 personal knowledge.

4           2. I was not present on March 20-21, 2010 when plaintiff alleges he suffered a  
5 gunshot wound while on the premise of Jillian's Billiards Club in Seattle. Though neither of us  
6 were present, plaintiff alleges that Mr. Stevens and I are responsible for allowing the gunman  
7 on the premises and not preventing the shooting. Neither Mr. Stevens nor I have any  
8 knowledge of the identity of the gunman or the participants in the fight that broke out on the  
9 night in question.

10           3. In 2002, JBC Entertainment Holdings hired me as regional director or "Regional  
11 Manager" (hereinafter "JBC Entertainment"). I was an employee during my nine years at JBC  
12 Entertainment and I left that employment in October 2011. I was not a shareholder of JBC  
13 Entertainment, nor was I an officer of JBC Entertainment.

14           4. I was never an employee, officer or shareholder in JBC of Seattle, WA, Inc.  
15 ("Jillian's"). Jillian's and JBC Entertainment are distinct corporations.

16           5. My duties throughout my employment at JBC Entertainment remained  
17 essentially the same. I was responsible for oversight of six different establishments, including  
18 Jillian's in Seattle. These included establishments in San Francisco, Universal City, CA,  
19 Pasadena, CA, Peoria, IL, and Manchester, NH. These restaurants offered food and drink in  
20 addition to billiards, video games, televised sporting events, and at times dancing, with music  
21 played by a disc jockey. Very rarely, JBC will also host live entertainment.

22           6. My role was to monitor the work of the general managers to ensure that the  
23 establishments remained profitable. A general manager reported to me regarding their profit-

24  
25  
DECLARATION OF TONY HUMPHREYS - 2  
5126165.doc

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1 and-loss statements, inventories, sales and employee salaries. But I did not act as a hands-on  
2 manager of any of these establishments. My role would best be equated to that of an auditor.

3 7. All six of the restaurants under my oversight were managed by a general  
4 manager who was the employee of that particular establishment. Each general manager was  
5 directly responsible for all club operations including but not limited to hiring and supervision of  
6 managers, staff and financial accountability. It was the general manager's duty to staff each  
7 work shift, including morning, day and evening. It was the general manager's duty to hire  
8 support staff, including servers, bartenders and security or a door host when necessary. The  
9 GM was also responsible to ensure that the bar was in compliance with local and state  
10 ordinances, including state liquor regulations.

11 8. The assistant unit manager worked under the supervision of the general manager  
12 and would be in charge of particular shifts (such as evening or daytime) and would be tasked  
13 with other roles at the discretion of the general manager. The AUM would ensure that  
14 inventories were sufficient. He would assist in managing employees and training servers and  
15 other employees in their jobs. The AUM reported to the manager and not to me as the regional  
16 director.

17 9. Contrary to plaintiff's allegations, neither I nor Greg Stevens hired Mr.  
18 Knudsen. The general manager at Jillian's at that time was Richard Coleman. Mr. Coleman  
19 was followed at GM by Chris Young who was an interim manager before JBC hired a  
20 permanent replacement later in 2010. Mr. Coleman was the General Manager in April 2009  
21 when he hired Michael Knudsen as the Assistant Unit Manager. While I spoke with Michael  
22 Knudsen for perhaps 20 minutes during his job interview, my role was simply as an advisor to  
23 Richard Coleman. It was Mr. Coleman's decision as to whether to hire Mr. Knudsen. In fact,  
24 Mr. Knudsen had a history of restaurant and tavern employment that suited the specific duties  
25

DECLARATION OF TONY HUMPHREYS - 3  
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1 of an AUM at Jillian's. He could learn from the general manager while he undertook the duties  
2 of managing a single work shift, five days per week.

3 10. JBC Entertainment's Human Resources Department provided candidates for  
4 employment at JBC and at local establishments. Richard Coleman, Chris Young and Michael  
5 Knudsen were all first vetted through the JBC Human Resources Department. The general  
6 managers were all given the duty of hiring and staffing the restaurant under their charge. This  
7 included personnel who worked as security or "Door Host." While I understand that at the  
8 March 20, 2010 event, Brock Robinson and three other employees of Jillian's worked as door  
9 hosts, I was not involved in the hiring or training of any of these individuals.

10 11. It was also Richard Coleman's responsibility to train Michael Knudsen in the  
11 details of running the local establishment. During his employment, Michael Knudsen reported  
12 directly to Mr. Coleman and then to Chris Young after Mr. Coleman left the employ of  
13 Jillian's.

14 12. It would also be the general manager's duty to ensure the club was in  
15 compliance with state and local ordinances, whatever they may be. I understand that there is  
16 criticism of Jillian's management in that no security plan was submitted in accordance with  
17 Seattle City ordinances. That is precisely the type of detail that would fall within the general  
18 manager's responsibilities.

19 13. I often travelled to one of the various JBC establishments under my purview.  
20 On these trips, I would meet with the general managers to discuss specific problems and to  
21 informally inspect the restaurants. In the course of these visits, I would sometimes talk to other  
22 employees as well, but these visits were never planned or scheduled.

23 14. In one such visit, I met with Jillian's staff in Seattle in early March 2010. I had  
24 planned to travel out-of-state for a vacation in a few days and wanted to discuss operations with  
25



1 the interim manager, Chris Young, before leaving. I met with Mr. Young as well as the  
2 assistant, Michael Knudsen, and other people in management. At that meeting, I instructed that  
3 there would be no promotions while I was on vacation. This would include any promotion in  
4 which JBC would be a partner with an independent promoter or other third party. I am aware  
5 that Mr. Knudsen clearly understood my instructions given his testimony in this lawsuit.

6  
7 15. Approximately a week or so later, in or around March 17, 2010, Katie  
8 Benjamin, who was an event coordinator at Jillian's, called me to discuss just such a planned  
9 promotion. She proposed to throw what she termed a VIP "birthday party" on Saturday,  
10 night, March 21, 2010. In cooperation with KUBE Radio, Jillian's would set aside a room for a  
11 Rap music performer named Lloyd and invite the general public to attend. I later learned that  
12 this proposed promotion was first relayed to Ms. Benjamin by Michael Knudsen.

13 16. I instructed Katie in no uncertain terms that this "birthday party" would not go  
14 forward. Jillian's had no idea of the individual character or competency of these outside  
15 interests. There was no assurance that the outside interests would help in—or take any  
16 responsibility for—any aspect of managing the crowd or other considerations in such an event.  
17 Jillian's would have no opportunity to control the size or character of the clientele coming to  
18 the establishment that night. As Michael Knudsen was the manager on duty at the time I  
19 spoken with her, I told Katie that she was to inform Michael Knudsen immediately that this  
20 promotion was not to go forward. Thus, I in fact told Mr. Knudsen twice not to go forward  
21 with the promotion. Again, as I understand his testimony in this case, Michael Knudsen admits  
22 that he disregarded these instructions in allowing the promotion to go forward.

23 17. Promotions at Jillian's and other JBC establishments rarely involve a joint event  
24 with an outside promoter. The typical event at JBC restaurants involves a corporate client who  
25 throws an employee party. The corporate employees can enjoy the various games, food, drinks,


1 and perhaps even dancing hosted by a disc jockey or DJ. In any given evening, the DJ would  
2 play an assortment of popular dance music, anything from 60's rock and roll to disco to Rap.  
3 Most of these promotions are arranged locally and not at the national level with JBC  
4 Entertainment. Other forms of promotions include working with a charity, allowing the charity  
5 to keep a portion of the gate, while patrons typically enjoyed music and games at JBC.  
6

7 18. While I had authority to reject proposed promotions at any of the six  
8 establishments within my area, I rarely had to exercise that authority. The promotions were  
9 typically presented to me by the general manager, and rarely would the promotions involve an  
10 outside promoter. In those rare instances that an outside promoter was used, it was done after  
11 careful planning, the duties of the promoter and JBC clearly specified, and assurance of the  
12 promoter's qualifications and reliability.

13 19. I have never been informed that any previous event at Jillian's in Seattle had  
14 involved an injury to a patron.

15 I declare that the forgoing is true and correct to the best of my knowledge.

16 SIGNED under penalty of perjury and the laws of the State of Washington this 12<sup>th</sup>  
17 day of June, 2012, at Seattle, Washington.

18   
19 Anthony "Tony" Humphreys  
20  
21  
22  
23  
24  
25

# **EXHIBIT C**

FILED

12 JUL 09 AM 10:34

KING COUNTY  
Judge Michael C. Hayden  
Hearing July 20, 2012, 10:00 AM  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 11-2-02108-4 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

**JACKSON MIKA**

Plaintiffs,

vs.

No. 11-2-02108-4 SEA

**JBC ENTERTAINMENT HOLDINGS INC., a Corporation doing business in the State of Washington; JBC OF SEATTLE, WA, INC., a Washington business, a subsidiary of JBC ENTERTAINMENT HOLDINGS INC.; GEMINI INVESTORS III, L.P., an entity, owner of JBC ENTERTAINMENT HOLDINGS INC.; ALPHA CAPITAL PARTNERS, LTD., an entity, owner of JBC ENTERTAINMENT HOLDINGS INC.; GAMEWORKS ENTERTAINMENT LLC, a Corporation doing business in the State of Washington; MARQUIS HOLMES, an individual, dba. BOSS LIFE ENTERTAINMENT, JANE DOE, Husband and wife, and their community, GREG STEVENS, an individual, Husband and wife, and their community; TONY HUMPHREYS, an individual, Husband and wife, and their community.**

**PLAINTIFF'S RESPONSE TO DEFENDANT STEVEN'S MOTION FOR SUMMARY JUDGMENT OF DISMISSAL FOR LACK OF PERSONAL JURISDICTION AND FOR REASONABLE ATTORNEY FEES AND COSTS UNDER RCW 4.20 8.185**

Defendants.

I. RELIEF REQUESTED

DEFENDANT JACKSON MIKA, responds and moves the court for an order which provides the following relief:

RESPONSE TO MOTION FOR JURISDICTION  
SUMMARY JUDGMENT - 1

PHILLIPS LAW LLC  
3815 S. Othello St., Suite 100-353  
Seattle, WA 98118  
(206) 725-0912, Fax (206) 397-3253

1 Deny the Defendant's Motion for Summary Judgment of dismissal for lack of personal  
2 jurisdiction and for reasonable attorney fees and costs.

3  
4 **II. STATEMENT OF FACTS**

5 The defendant, Mr. Stevens, was not merely a corporate officer of JBC Entertainment, the  
6 corporate owner of JBC of Seattle, he was the Chief Executive Officer (CEO) and Chief  
7 Financial Officer (CFO). He decided that visible "security" in place would not attract the up  
8 scale executive business person he wanted to frequent his clubs. He issued the directives that led  
9 to a culture so lax on security that for years the Jillian's of Seattle continuously violated the  
10 Seattle Nightclub Safety Code. Therefore, there was little to no actual security in place the night  
11 Mika was shot.  
12

13 Defendant Stevens began working at JBC Entertainment in December 2006. [56/10] Mr.  
14 Stevens personally promulgated the security policies to all the subsidiary nightclubs to include  
15 JBC of Seattle. During his deposition, Mr. Stevens stated that he first came to the Seattle  
16 location in June or July 2007. [Stevens Deposition Page 16, line 22] Jillian's of Seattle  
17 (hereinafter Jillian's) was sold to GameWorks Entertainment Corporation and JBC  
18 Entertainment was financially gutted. Defendant Stevens is now a corporate officer for  
19 GameWorks, the new owner of Jillian's of Seattle. [Humphreys 11, 2-8]  
20

21 **Service of process**

22 The Long Arm Statute requires that an individual nonresident be served at his home. At  
23 the time of his telephonic second deposition, Stevens was apparently already located in Reno  
24 Nevada. He did not testify to this relocation at his deposition. Steven's was served in his home  
25  
26

1 even though he had acquired a post office box for his mail, after an investigator retained by the  
2 plaintiff, found the location of his residence and served him with the Amended Complaint and  
3 Summons. [See Declaration of Krisztina Phillips]  
4

#### 5 **Surveillance Cameras**

6 When Defendant Stevens visited Jillian's of Seattle club, he didn't notice that there were  
7 no surveillance cameras at this facility. He testified that he didn't see it necessary to even look  
8 for "that because it's not a component of my concern in the way we operate our business". [Page  
9 17, Line 9-11] He didn't believe surveillance cameras were necessary. [Page 17, Line 18-23]  
10 The question was posed to defendant Stevens, so, security would be a non-necessity, to which  
11 Stevens responded, "Yeah, I don't -- you know, security is a non-necessity. I mean, you see what  
12 we have here. I mean, I would have zero concern from a security perspective". [18 line 6]  
13

14 We know that Stevens is personally responsible for this policy, in part, because defendant  
15 Humphreys testified during his deposition that he disagreed with Stevens statement that security  
16 is a "non-necessity"; Humphreys had not heard Stevens make this statement [Humphreys 51, 12-  
17 18] Humphreys agreed that there is no such employee position "security" and that the "door  
18 host" do no wear a uniform identifying themselves as "security" [ 52, 9 -53, 9] In addition,  
19 Humphreys testified that JBC Entertainment does not hire independent contractors as "security"  
20 personnel. [53, 23-25]  
21

#### 22 **"Security" a Non-Necessity**

23 Defendant Stevens was asked who would have been in charge of security at the Seattle  
24 location the night Jackson Mika was shot.  
25  
26

1 “ We don't have, quote, "security" as a employee position. We would, at best, have door  
2 hosts to greet our guests and to do the proper screening of guests coming through,  
3 primarily associated with liquor license compliance on age, and things along those lines.  
4 So the answer to your question is no, I would have no understanding or knowledge of  
5 who would have been, quote, "responsible" for the door host schedule that day”. [Page 38,  
6 Lines 13-22]

7 In addition, he testified that he would expect the “door host” to be uniformly dressed but  
8 without any identification that they were there for the security of the patrons. [39,11]

9 Furthermore he explained;

10 “ I'm familiar with what you're asking, but no, that would not be -- our presentation isn't --  
11 if I had people with "Security" on the back of this restaurant, every executive  
12 businessman that would be coming across the street wouldn't be certain of -- it's a  
13 different presentation for what we are and what we offer to our guests. So I wouldn't have  
14 an expectation that we would have that.” [Page 39, Line 14-21]

15 When he was asked about the corporate policy regarding preventing violence, his  
16 response was, “we respond to[it]”. [Page 44 line ]11. He explained that,

17 “ In our day-to-day operation, we don't have an expectation that violence is, you know,  
18 present inside of our facilities. So our guidance to our door hosts is what to do to react to,  
19 and our management team is to react to a situation, but not to monitor and, you know,  
20 kind of look out for random acts of violence. I mean, it's going to happen, maybe, in any  
21 type of operation. But our training needs to be what do you do when that happens? How  
22 do you make sure that the security and the safety of our guests is going to be maintained  
23 if, you know, a fight breaks out, or some patron does something stupid with a bottle or  
24 whatever in our facility? What do you do in that situation? ” [Page 44 Lines 18-25, Page  
25 45 Lines 1-5]

26 “When you look at an operation like this, we serve a very broad range of different, you  
27 know, clients and guests on a regular basis. So, yeah, I mean, I do look at my business  
28 analogous to a casual dining-type restaurant operation in some respects. I mean, that's  
29 who I'm trying to be accessible to on a daily basis, is somebody who's just going to come  
30 in on a daily basis and have a bite to eat and have some fun.” ( EMPHASIS ADDED)  
31 [Page 45 line 15-24]

1 On the night that Mika was shot, the regular DJ, T-Bone was playing hip hop and RAP  
2 dance music. [Knudsen 48,17] Stevens testified that “Hip-hop and rap have become a lot more  
3 mainstream lately. So as part of our musical offering. [See FCA Report 22] “we recognize that,  
4 you know hip hop and rap are going to be the kind of components of our offering in musical  
5 play” [46, line10-15]  
6

7 **Seattle Nightclub Safety Code**

8 Defendant Stevens was asked if there are municipal ordinances or statutory  
9 requirements of a particular state or city involving one of his stores, was he cognizant of whether  
10 his clubs comply with those or does anyone report to him any noncompliance? Stevens testified  
11 in answering. “Yes.” [49/22] He was asked whether he had received any noncompliance reports  
12 regarding Jillian’s. He answered, “No”.. [49/25] Seattle has a municipal code implemented to  
13 prevent nightclub violence. Defendant Stevens then went on to explain,  
14

15 But when you say, "clubs such as Jillian's," I don't know what category that they would  
16 provide whatever training you're discussing as applicable to an upscale billiards club, if  
17 you will. It would strike me as something that would be more applicable to a dance-  
18 oriented, you know, urban nightclub downtown, or kind of a biker bar, for example. But  
19 that's not what we are, so I don't know that they provide something specifically to our  
20 type of offering.” [Page 51 Lines 10-20]

21 Stevens testified that he was familiar with the Jillian’s of Seattle floor plan, and that he  
22 was familiar with the Mayor’s room<sup>1</sup> and he was able to describe in detail the layout of the club  
23 [52, 5-25, 53, 1-19]

24 **San Francisco**



1 It was reasonably foreseeable that a person could bring a firearm into Jillian's and shoot  
2 Jackson Mika. Defendant Stevens' deposition was held in San Francisco at another Jillian's  
3 nightclub. Stevens acknowledged during his deposition that there was a "drive by" shooting. He  
4 testified that people were "walking by" and some guy drove by in a limo and fired into some  
5 folks walking on the street.  
6

7 Defendant Stevens was either being untruthful in his account or he failed to investigate a  
8 fatal incident occurring in front of his nightclub. He failed to modify the policy of "non-security"  
9 for the sake of profit, when a little investigation would have revealed to him that it is likely that  
10 the shooter in San Francisco, just three years before Mika was shot, was leaving the Jillian's of  
11 San Francisco club after being inside about two hours, and after a fight turned into a full brawl.  
12 [SF Gate Article, Exh. 84] The local news agency reported that the driver of the limousine  
13 reported to the police that the shooter was one of the patrons he dropped off at Jillian's of San  
14 Francisco a couple hours earlier that he told the police he was returning to pick up the patrons.  
15 The driver, reported to the police that, (similar to the Seattle shooting), the shooting followed a  
16 fist fight among a few people that within seconds grew into a brawl involving dozens of people.  
17 He reported that he left the scene when the men he had dropped off at Jillian's earlier, who were  
18 involved in the brawl jumped in and told him to drive off. [SF Gate News, [http:  
19 www.sfgate.com](http://www.sfgate.com)]  
20  
21

22 Defendant Stevens incredulously testified that he just thought that it was "coincidental"  
23 that the shooting happened outside his facility. [55/21] He testified that he was unaware of all the  
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26 <sup>1</sup> The Mayor's Room is where the dance floor is located and where witnesses believe the shot was fired.

1 violent acts where SPD was called to Jillian's of Seattle, such as assaults. [See SPD Calls for  
2 Service Report attached as an exhibit 10]

3  
4 **Policies and Procedures**

5 Defendant Humphreys, the Regional Director of JBC Entertainment agreed during his  
6 deposition that Jillian's of Seattle would not generate its own policies. He testified that JBC of  
7 Seattle receives information and policies from JBC Entertainment, the parent, [24, 15-21]

8 Tyler Warfield, the alleged President of JBC Entertainment was surprised when he was  
9 informed that the company had sold five properties and that his services were no longer needed.  
10 [Warfield 14, 20-22] Stevens admitted that he is the one is responsible to the "strategic type"  
11 decisions. If there was something "fundamental" change at a location " [T]hat's not going to  
12 happen without my involvement..." [Stevens 77, 24-25, 78, 1]

13  
14 **Facebook**

15 Defendant Stevens acknowledge that he "anticipates" his managers to use Facebook to  
16 interact with their friends and fans. [63,1-2] He testified that he would have " expectation" and  
17 he would do whatever he needed to do to get the word out that this (an event) is "happening at  
18 my location". There was a mass marketing of the Lloyd event to include the use of Face book.  
19 Because of this effective marketing, Jillian's was "packed" with a line of potential patrons  
20 formed outside the entry. [Alefaio 45, 18-25]

21  
22 **III. STATEMENT OF THE ISSUE**

23  
24 Should Plaintiff's motion for Summary Judgment be denied as a matter of law because  
25 this court has personal jurisdiction, general and specific, over the defendant Greg Stevens.  
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IV. EVIDENCE RELIED UPON

This motion is based on the records and pleadings contained herein. .

Greg Steven Deposition, (09/30/2011)	Tyler Warfield Deposition
Daniel Kennedy Report	Krisztina Phillips Declaration
Urologist Report	Chante Alefaio Deposition
SF Gate Article	Thomas Balcom Deposition
Anthony Humphreys Deposition	

V. LEGAL AUTHORITY AND ARGUMENT

Defendant Stevens' motion is made and should be denied because when viewed in light most favorable to the plaintiff, there is a genuine issue of material fact that this court has personal jurisdiction over Defendant Stevens.

Summary judgment should only be granted when the evidence viewed in the light most favorable to the non-moving party presents no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56; *Marquis v. Spokane*, 130 Wn.2d 97, 922 P.2d 43 (1996). Summary Judgment should be granted only if the pleadings, affidavits, depositions and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c); *Bales v Underwood*, 62 Wn. 2d 195, 381 P.2d 966 (1963) The Court should consider the material evidence and all reasonable inferences there from most favorably to the non-moving party and, when so considered, if reasonable persons might reach different conclusions, the motion should be denied. *Id.*; *Wood v Seattle*, 57 Wn. 2d 469, 358 P.2nd 140 (1960). The Plaintiff provides ample evidence to demonstrate that there exist material facts supporting this court's jurisdiction over this defendant.

1 Under the authority set forth herein, the defendant's motion for summary judgment should be  
2 denied.

3  
4 **The Long Arm Statute**, Washington Revised Code § 4.28.185 provides in part;

5 (1) Any person, whether or not a citizen or resident of this state, who in person or through  
6 an agent does any of the acts in this section enumerated, thereby submits said person, and,  
7 if an individual, his or her personal representative, to the jurisdiction of the courts of this  
8 state as to any cause of action arising from the doing of any of said acts:

- 9 (a) The transaction of any business within this state;  
10 (b) The commission of a tortious act within this state;  
11 (c) The ownership, use, or possession of any property whether real or personal  
12 situated in this state;

13 Analysis of jurisdiction under the Washington long-arm statute involves two issues: (1)  
14 does the statutory language purport to extend jurisdiction, and (2) would imposing jurisdiction  
15 violate constitutional principles. *Grange Ins. Assoc. v. Idaho*, 110 Wn..2d 752, 756, 757 P.2d 933  
16 (1988).

17 Under the long-arm statute, Washington courts may assert jurisdiction over nonresident  
18 individuals and foreign corporations to the extent permitted by due process requirements, except  
19 where limited by the terms of the statute. *Werner v. Werner*, 84 Wn..2d 360, 364, 526 P.2d 370  
20 (1974). In the context of this case, the statutory and constitutional standards merge into a single  
21 due process test. *Shute v. Carnival Cruise Lines*, 863 F.2d 1437 (9th Cir.1988). To evaluate  
22 whether long-arm jurisdiction exists, courts examine three factors: (1) whether the party  
23 purposefully committed some act or consummated some transaction in the state; (2) whether the  
24 cause of action arose from, or was connected with, the act or transaction; and (3) whether the  
25 exercise of jurisdiction would offend traditional notions of fair play and substantial justice, with  
26 the focus being on the quality and nature of the act occurring within the forum state. *Bartusch v.*

1 *Oregon State Bd. of Higher Educ.* 131 W. App. 298, 126 P.3d 840 (2006) Exercise of  
2 jurisdiction, under the long-arm statute, must not offend traditional notions of fair play and  
3 substantial justice in light of the quality, nature, and extent of the defendant's activity in the state,  
4 the relative convenience of the parties, the benefits and protection of the laws afforded the  
5 respective parties, and the basic equities of the situation. *Raymond v. Robinson* (2001) 104 Wn.  
6 App. 627, 15 P.3d 697

8 It was intent of the legislature, in enacting this statute, to assert jurisdiction of courts of  
9 this state over nonresident defendant to extent permitted by due process clause of Federal  
10 Constitution, except as limited by terms of the statute. *Tyee Const. Co. v. Dulien Steel Products,*  
11 *Inc., of Wn.* (1963) 62 Wn..2d 106, 381 P.2d 245. Importantly and most germane defendant  
12 Stevens, this statute is to be liberally applied to obviate mischief intended to be remedied by it.  
13 *Harrison v. Puga* 4 Wn.App. 52, 480 P.2d 247. (1971 The Long-arm jurisdiction standards are  
14 less stringent than those necessary to establish general jurisdiction. *Bartusch v. Oregon State*  
15 *Bd. of Higher Educ.* (2006) 131 Wn. App. 298, 126 P.3d 840.

17 A Washington citizen/victim such a Jackson Mika should not be unnecessarily compelled  
18 to pursue his remedy elsewhere against a nonresident defendant who, have transacted business  
19 involving in this state, but not residing here. The touchstone of constitutional validity of RCW  
20 4.28.185 is whether defendant's contacts in Washington in the transaction of the business  
21 involved are sufficiently substantial to show that he has undertaken 'some act by which the  
22 defendant purposefully avails itself of the privilege of conducting activities within the forum  
23 State, thus invoking the benefits and protections of its laws.' *Hanson v. Denckla*, 357 U.S. 235,  
24  
25  
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1 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958) It is recognized that the transaction of  
2 particular business, such as defendant Stevens directing a non-security policy, may involve  
3 contacts in more than one state. However, the rule requirements are met in the state in which suit  
4 is brought if there be sufficient substantial contacts in that state to meet the purposeful activity  
5 test even though there are also contacts elsewhere.

### 7 **Due Process**

8 Federal due process requires that a nonresident defendant have minimum contacts with  
9 the forum state of a nature that the exercise of personal jurisdiction does not offend traditional  
10 notions of fair play and substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310,  
11 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945). The constitutional test may be satisfied in two ways.  
12 If the defendant has “substantial” or “continuous and systematic” contacts with the forum state, a  
13 court within the forum would have general jurisdiction over the defendant. If general jurisdiction  
14 is not present, but there is a strong relationship between the quality of the defendant's forum  
15 contacts and the cause of action, a court may have limited personal jurisdiction over the  
16 defendant. *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 839 (9th Cir.1986).

17 Courts consider seven factors when determining whether the exercise of jurisdiction  
18 comports with traditional notions of fair play and substantial justice, and is therefore reasonable:  
19 (1) the extent of a defendant's purposeful interjection; (2) the burden on the defendant in  
20 defending in the forum; (3) the extent of conflict with the sovereignty of the defendant's state;  
21 (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution  
22 of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and  
23  
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26

1 effective relief, and (7) the existence of an alternative forum. State of Washington, Dept. of  
2 Revenue v. WWW.Dirtcheapcig.com, Inc., W.D.Wash..2003, 260 F.Supp.2d 1048.

3  
4 (1)There can be no doubt that Stevens purposefully and intentionally directed a non-  
5 security policy to draw a more upscale clientele and thereby increase profit; (2) the defendant  
6 Stevens is being represented by Capitol, a national insurance company ; (3) there is no conflict  
7 with the sovereignty of Kentucky or Nevada; (4) the Plaintiff, Jackson Mika is a life-long  
8 resident of this state who was tragically injured because of the negligence of Defendant Stevens;  
9 Washington has a substantial interest in providing for its injured citizens; (5) indisputably the  
10 most efficient resolution of the controversy s within this State; Jackson Mika is an individual  
11 who has been unemployed due to his injuries, (7) no alternative forum exist. (See *Harrison v.*  
12 *Puga*, 4 Wn.. App. 52, 66-67, 480 P.2d 247, 256-57 (1971))

#### 14 **Employee/Fiduciary Shield Doctrine**

15  
16 The fact that Stevens claims that he was merely a corporate officer is of no moment in the  
17 specific and general jurisdiction analysis. The mere fact that natural non-resident defendants  
18 took actions constituting sufficient contacts with the state on behalf of a corporate employer will  
19 not shield those individuals from being subjected to jurisdiction under the fiduciary shield  
20 doctrine. *Allstar Mktg. Group, LLC v. Your Store Online, LLC*, 666 F. Supp. 2d 1109 (C.D. Cal.  
21 2009) The fiduciary shield doctrine protects individuals from being subject to jurisdiction solely  
22 on the basis of their employer’s minimum contacts within a given jurisdiction. In other words,  
23 ‘[t]he mere fact that a corporation is subject to local jurisdiction does not necessarily mean its  
24 nonresident officers, directors, agents, and employees are suable locally as well. *Winery v.*

25  
26  
RESPONSE TO MOTION FOR JURISDICTION  
SUMMARY JUDGMENT - 12

PHILLIPS LAW LLC  
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1 *Graham*, No. C 06-3618 MHP, 2007 WL 963252, (N.D.Cal. Mar.2007) Under the fiduciary  
2 shield doctrine, a person's mere association with a corporation that causes injury in the forum  
3 state is not sufficient in itself to permit that forum to assert jurisdiction over the person. *Weller v.*  
4 *Cromwell Oil Co.*, 504 F.2d 927 (6th Cir.1974). The mere fact that the defendant took actions  
5 constituting sufficient contacts with the state on behalf of a corporate employer, however, will  
6 not shield the individuals from being subjected to jurisdiction. (EMPHASIS ADDED) See  
7 *Calder v. Jones*, 465 U.S. 783, 789-90, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984)

8  
9 The defendant Stevens is correct that his contacts with Washington are not to be judged  
10 according to the corporate activities here. On the other hand, his status as CE and CFO does not  
11 somehow insulate him from personal jurisdiction. The suggestion that employees who act in  
12 their official capacity are somehow shielded from suit in their individual capacity should be  
13 rejected. (See *Allstar Mktg. Group, LLC v. Your Store Online, LLC*, 666 F. Supp. 2d 1109, 1119-  
14 20 (C.D. Cal. 2009) There is no bar to exercising personal jurisdiction over officers and  
15 employees of a non-resident corporation if they had the requisite minimum contacts. *Calder v.*  
16 *Jones*, 465 U.S. 783, 790, 104 S.Ct. 1482, 1487, 79 L.Ed.2d 804 (1984).

### 19 **Purposeful Availment**

20 An objective test is used to determine jurisdiction: Should the defendant, based upon his  
21 contact with the forum state, reasonably anticipate being haled into court there. *Huebner v. Sales*  
22 *Promotion, Inc.*, 38 Wn.App. 66, 684 P.2d 752 (1984), *review denied*, 103 Wash.2d 1018, *cert.*  
23 *denied*, 474 U.S. 818, 106 S.Ct. 64, 88 L.Ed.2d 52 (1985). A nonresident defendant must  
24 purposefully avail itself of the privilege of conducting activities within the forum state, thereby  
25  
26



1 invoking the benefits and protections of its laws. *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct.  
2 1228, 1239, 2 L.Ed.2d 1283 (1958). *Does 1--9 v. Compcare, Inc.*, 52 Wn.App. 688, 697 (1988).

3 The *Does* court stated another way, there must exist a substantial connection between the  
4 defendant and the forum state which comes about by an action of the defendant purposefully  
5 directed toward the forum state. *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 107  
6 S.Ct. 1026, 1033, 94 L.Ed.2d 92 (1987) In this case, defendant Stevens directed that the  
7 nightclubs would have “door host” with not identifiable clothing indicating them to be security.  
8 In addition, he directed that patron safety would be considered “ after the fact” and door host are  
9 to escort patrons safely from the club. His policies put in place a corporate culture that ignored  
10 “security” and led to continuous violation of the Seattle Nightclub Safety Code, 10.11. This  
11 culture also led to the hiring and supervision of Assistant Manager Knudsen, who had no  
12 experience, and no idea how to provide a safe and secure facility to Jillian’s patrons during an  
13 event such as occurred when Mika was shot.

14 “Purposeful availment analysis examines whether the defendant's contacts with the forum  
15 are attributable to his own actions or are solely the actions of the plaintiff.” *Sinatra v. National*  
16 *Enquirer*, 854 F.2d 1191, 1195 (9th Cir.1988). To show purposeful availment, a plaintiff must  
17 show that the defendant “engage[d] in some form of affirmative conduct allowing or promoting  
18 the transaction of business within the forum state.” *Gray & Co. v. Firstenberg Machinery Co.*,  
19 913 F.2d 758, 760 (9th Cir.1990) Defendant Stevens’ directives regarding “faux” security to  
20 attract upscale patrons is affirmative conduct was designed to conduct business in Washington  
21 state and increase profit.

22 The ‘purposeful availment’ requirement ensures that a defendant will not be haled into a  
23 jurisdiction solely as a result of ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts, ... or of the  
24 ‘unilateral activity of another party r a third person ...’ ”). A defendant's contacts must be such  
25 that he should “reasonably anticipate being haled into court there.” *World-Wide Volkswagen v.*  
26

RESPONSE TO MOTION FOR JURISDICTION  
SUMMARY JUDGMENT - 14

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1 *Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). It is not unreasonable that  
2 defendant Stevens reasonably should anticipate being haled in to Washington court, in fact, given  
3 his directives and policy of profit over security. On the contrary, he should have “expected” to  
4 be haled into court here. The focus of long-arm statute's inquiry into whether the defendant  
5 purposefully availed itself of the privilege of conducting activities within the state is on the  
6 quality and nature of the defendant's activities in the state, rather than the number of acts within  
7 the state or some other mechanical standard, but the activity level need not reach the level  
8 required to establish general jurisdiction. *Raymond v. Robinson*, 104 Wn.App. 627, 15 P.3d  
9 697 (2001)

10 The quality and nature of Defendant Stevens contact with this state involved needlessly  
11 endangering Washington citizens for the sake of increased profits derived from Washington  
12 citizens. The courts have exercised jurisdiction where the defendant has purposefully availed  
13 itself of the state's markets and derived a financial benefit from this market. (*See Grange Ins.*  
14 *Ass'n v. State*, 110 Wn.2d 752, 757 P.2d 933 (1988); *Raymond v. Robinson*, 104 Wn. App. 627,  
15 638, 15 P.3d 697, 702 (2001)

16 As long as there is a substantial connection with the forum, even a single act can support  
17 jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. at 475 n. 18, 105 S.Ct. at 2184 n. 18;  
18 *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223, 78 S.Ct. 199, 201, 2 L.Ed.2d 223  
19 (1957).

20 There is a difference in purposeful minimum contact analysis for a retailer, manufacturer  
21 and government. *Grange* at 761. Defendant Stevens is more akin to a retailer putting his product  
22 in the stream of interstate commerce and he can be charged with the knowledge that his  
23 directives and policies might have consequences here.

24 The reason for having “door host” instead of security was to avoid the appearance of  
25  
26

1 being a club that needed of "security" for the purpose of attracting more patrons and  
2 consequently, increasing profits. <sup>2</sup> The managers were trained that a "door host" was someone to  
3 greet guests and to ensure that people have identification to drink alcohol when entering the  
4 building. [Knudson deposition page 12 line 8-10] Where defendants "purposefully derive  
5 benefit" from their interstate activities, it would be unfair to allow them to escape the  
6 consequences that proximately arise from these activities in other jurisdictions.  
7

8 Just as the State of Washington has a legitimate concern for protection of its children  
9 from sexual molestation, RCW 26.44.030, (See *Does 1--9 v. Compcare, Inc.*, 52 Wn.App. 688,  
10 699 (1988)) it also has a legitimate concern to avoid needless endangering citizens who patronize  
11 public clubs. (See SMC 10.11, Night Club Safety)  
12

### 13 Location of Negligence

14 Defendant Stevens may claim that his directions and policy making was done not in  
15 Washington, therefore, he is not subject to personal jurisdiction. In *Golden Gate Hop Ranch, Inc.*  
16 *v. Velsicol Chemical Corp.*, 66 Wash.2d 469 (1965) the act upon which liability was predicated  
17 was the writing and mailing of a letter from Chicago. The appellant contended that, since this act  
18 did not occur in this state, the requirements of the statute were not met.  
19

20 The Supreme Court pointed out in *Nixon v. Cohn*, 62 Wash.2d 987, 385 P.2d 305, that,  
21 where damages result from negligence of a defendant, the injury occurring in this state is an  
22

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23 <sup>2</sup> Contrary to corporate policy established by defendant Stevens to increase profitability, Knudson arranged with the  
24 promoter and Brock Robinson to have extra security due to the size of the anticipated crowd of approximately 500  
25 guests. But, no one apparently thought to check the firearms being carried into the building even though a cover A  
26 Charge of \$20 was being collected at the door prior to entry. Knudson deposition page 11, Line 9. Jillian's of  
Seattle's typically charges a cover fee for entry. [Balcom deposition page 21, line 13- 20.

1 inseparable part of the 'tortious act,' as that term is used in the statute. Here, the negligent act of  
2 directing that there be no security at JBC Entertainment nightclubs may have occurred outside  
3 Washington State, but the injury indisputably happened in Washington  
4

5 **Plaintiff's Burden**

6 The plaintiff, Jackson Mika, bears the burden of establishing personal jurisdiction over  
7 the defendant Stevens. *Sinatra v. National Enquirer, Inc.*, 854 F.2d 1191, 1194 (9th Cir.1988).  
8 Where the court relies solely on affidavits and discovery materials, a plaintiff's burden is to  
9 present a prima facie case of jurisdiction. *Pedersen Fisheries, Inc. v. Patti Industries, Inc.*, 563  
10 F.Supp. 72, 74 (W.D.Wn.1983).  
11

12 Here, the plaintiff had submitted expert testimony that Mika's injuries were the result of  
13 negligence with respect to providing reasonably safe premises for Jillian's patrons, negligent  
14 supervision and negligent hiring. This coupled with the admission that Jillian's has for years  
15 continuously violated Seattle's Nightclub Safety law, is sufficient to meet the plaintiff's burden.  
16

17 **Due Process Test**

18 There are three basic factors which must coincide if jurisdiction is to be entertained. Such  
19 would appear to be: (1) The nonresident defendant or foreign corporation must purposefully do  
20 some act or consummate some transaction in the forum state; (2) the cause of action must arise  
21 from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the  
22 forum state must not offend traditional notions of fair play and substantial justice, consideration  
23 being given to the quality, nature, and extent of the activity in the forum state, the relative  
24 convenience of the parties, the benefits and protection of the laws of the forum state afforded the  
25  
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1 respective parties, and the basic equities of the situation. *Tyee Constr. Co. v. Dulien Steel Prods.,*  
2 *Inc.*, 62 Wn.2d 106, 115–16, 381 P.2d 245 (1963).

3  
4 **Tortious Act**

5 In *Grange, Infra*, at 757, the court stated that the only question was if Idaho committed a  
6 “tortious act” within Washington within the meaning of the long arm statute, when all of its  
7 actions occurred outside this state. The Washington Supreme court has held many times that  
8 when an injury occurs in Washington, it is an inseparable part of the “tortious act” and that act is  
9 deemed to have occurred in this state for purposes of the long-arm statute. *Grange Ins. Ass’n v.*  
10 *State*, 110 Wn. 2d 752, 757, 757 P.2d 933, 936 (1988) Stevens tortious act is therefore rightfully  
11 deemed to have occurred in Washington.  
12

13 The long-standing rule announced in *Tyee, supra*, is that there are three basic factors  
14 which must coincide its jurisdiction to be entertained. Such would appear to be:

15 First, the nonresident defendant must purposefully do some act or consummate some  
16 transaction in the forum state. This first factor outlines the statutory requirements of RCW 4.20  
17 8.185 (1) (a) and (b). *Puget Sound Bulb Exchange V. Metal Buildings Insulation Inc.*, 9 Wn.  
18 App. 284, (1973) The cause of action must arise from, or be connected with, such act or  
19 transaction. The second factor expresses the limitations set forth in the long arm statute (1) and  
20 (3) that the cause of action must arise from, or be connected with, the act or transaction  
21 purposefully performed or consummated in the State. *Id.*  
22

23 Thirdly, the assumption of jurisdiction by the forum state must not offend traditional  
24 notions of fair play and substantial justice, consideration being given to the quality, nature, and  
25  
26

1 extent of the activity in the forum state, the relative convenience of the parties, the benefits and  
2 protection of the laws of the forum state afforded the respective parties, and the basic equities of  
3 the situation. This third factor does not arise from the statute, it expresses the due process  
4 limitation and that the imposition of this jurisdiction over the person of a nonresident defendant  
5 must not offend traditional notions of fair play and natural justice. *Id*  
6

7 In a tortious act case, the first two factors are satisfied whenever the person attempting to  
8 assert jurisdiction shows that the injury which is the subject of this suit occurred in this State and  
9 that it was caused by an act of the nonresident defendant outside the state. *Nixon v. Cohn*, 62 Wn..  
10 2d 987, 385 P.2d 305 (1963).  
11

12 In this case, there is not doubt that the injury occurred in this state and that the injury was  
13 the result of negligence, that is Steven's failure of a duty owed to Mika as an invitee, to provide a  
14 reasonable safe premise, by directing a policy of "no security" at JBC Entertainment's clubs.  
15 Therefore, the *Tyee, Nixon* factors are met.  
16

### 17 **Inherently Dangerous**

18 The defendant Steven's policy of stealth security created an inherently dangerous  
19 environment for the Washington state residents patronizing his Seattle club. In *Callahan v.*  
20 *Keystone Fireworks Mfg. Co.*, 72 Wash.2d 823 (1967), the court noted that there are a number of  
21 significant factors which merits consideration in determining whether the defendant's  
22 constitutional right to due process of law has been ignored in taking jurisdiction *in personam*  
23 over it under RCW 4.28.185. The court held that in its opinion, due process was justified by the  
24 (1) potentially dangerous nature of the product which Keystone has shipped into the state of  
25  
26

1 Washington, and the legitimate right of the courts of this state to provide a forum for the  
2 protection of any rights invaded as a result of defective manufacture of dangerous products  
3 shipped into the state  
4

5 Here, defendant Stevens policy of “ faux security” created an inherently dangerous  
6 situation for patrons of Jillian’s; his reason for having “ door host” and not security is to  
7 maximize profit, the amount of money Jillian’s has made over the years is not insignificant;  
8 Jillian’s advertises its services on its website and social media such as Face Book, which led to a  
9 “ packed” nightclub when Mika was shot; and Defendant Stevens took the initiative to direct, as  
10 CEO/CFO of JBC Entertainment, that there would be no obvious security at Jillian’s of Seattle  
11 which resulted in the injury to Mika.  
12

13 In *Puget Sound Bulb Exchange* 9Wn App. 284, 513 P.2d 102 (1973) the plaintiff, Metal  
14 Buildings, attempted to assert jurisdiction over the person of Hamilton pursuant to the long arm  
15 statute arguing “that Hamilton has committed a tortious act in this state.” The court stated that  
16 “thus, so far as the first two factors are concerned, it does not matter whether or not Hamilton had  
17 transacted business in this state.” *Puget Sound Bulb Exchange* at 291.  
18

19 In the case at bar the plaintiff was shot and injured with in this jurisdiction. The remaining  
20 question then is whether it was caused by an act of defendant Stevens outside this state. The  
21 plaintiff asserts that question is answered in the affirmative. This entire case is based on a failure to  
22 provide adequate security. Mr. Stevens, as CEO/CFO of Jillian's Entertainment, testified during  
23 deposition that security was not an issue for the nightclubs/billiard hall owned by JBC  
24 Entertainment. Moreover, he said that the policy in place at his facilities would have “door host”  
25  
26

1 instead of security. In his declaration Mr. Stevens expressed that his function was to increase  
2 profitability. It is clear that to have persons on the door with the words security<sup>3</sup> logo on their shirts  
3 would in his mind, reduce the profitability because it would no longer be attractive to the clientele  
4 he is attempting to patronize his facilities.  
5

6 Defendant CEO/CFO Stevens decision and directed policy that security was not a necessity  
7 at his facilities was a decision that affected the broad stream of interstate commerce because JBC  
8 Entertainment owned several facilities in the United States, coast-to-coast , including JBC of  
9 Seattle. We know that this notion that security is not a necessity came from defendant Stevens  
10 because Defendant Humphreys testified during deposition that he did not agree with this notion.  
11

12 [Stevens 51, line 19-24, 52 line 9-14]

13 The minimum contacts of *International Shoe* are inferred from the fact that the nonresident  
14 defendant knowingly places its product in the broad stream of interstate commerce. That is exactly  
15 what happened here, Stevens knowingly placed his product, without adequate security, in the broad  
16 stream of interstate commerce when he set policies for the facilities nationwide. (See *Puget Sound*  
17 *Bulb Exchange* at 292.)

18 Just as a manufacturer or retailer is charged with knowledge that its conduct may have  
19 consequences in another state, defendant Stevens is so charged with knowledge that his policy of  
20 quote "security is not a necessity" may have consequences in another state.

21 Stevens was charged with knowledge that his product would appear in another State  
22 therefore, necessary minimum contact is inferred. This court's assertion of jurisdiction over  
23

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24 <sup>3</sup> It is common knowledge that police uniforms serve a deterrent purpose. When police are seen, a person is less  
25 likely to commit any offense, from running a red light to bringing a gun into a nightclub and firing it. Effective  
26 security at the entry of Jillians of Seattle would have the same or similar effect.



1 Defendant Stevens will not offend the notion of fair play and substantial justice. Rather, this  
2 court's assertion of jurisdiction over Stevens promotes fair play and substantial justice for Mika, a  
3 Washington citizen.

4 A solitary business deal if transacted within this state, will under the long-arm statute  
5 sufficed to vest jurisdiction in the courts of Washington. *Quigley v. Spano Crane Sales and Service*  
6 *Inc.* 70 Wn.. 2d 198 (1967) Defendant Stevens single tortious act of directing that there be no “  
7 security” at his clubs is sufficient for the court to find personal jurisdiction over Stevens.

### 8 **General Jurisdiction**

9 Under RCW 4.28.080(15), a trial court may assert general jurisdiction over an individual .  
10 General jurisdiction enables a court to hear cases unrelated to the defendant's activities within  
11 the forum. *Hein*, 60 Wn.App. at 328, 803 P.2d 329. This statute has been held to confer general  
12 jurisdiction over a nonresident defendant who transacts business in Washington that is  
13 substantial and continuous, and of such a character as to give rise to a legal obligation. *Croze v.*  
14 *Volkswagenwerk Aktiengesellschaft*, 88 Wn.2d 50, 54, 558 P.2d 764 (1977).

15 General Jurisdiction over a nonresident defendant is proper if the defendant's actions in the  
16 state are so substantial and continuous that justice allows the exercise of jurisdiction even for claims  
17 arising from defendant's contacts with the state *Raymond v. Robinson* 104 Wn. App. 627, 633  
18 2001)

19 In this case the policy of defendant Stevens that security is not a necessity is substantial, and  
20 has been continuous for the years Jillian's of Seattle , or at least for as long as defendant Stevens has  
21 been Chief Executive Officer of JBC Entertainment, the owner of JBC Seattle. In addition, Stevens  
22 policy of lax or nonexistent security was available to him because his profits making venture in  
23 Seattle benefited from fire and police protection (see *Hein* 60 Wn App.325, 330-31, 803 P.2d 329.)

24 Moreover, Defendant Stevens direction to JBC Entertainment night clubs to have no  
25 security created a corporate culture that ignored security concerns. This lack of concern for security  
26

1 and patron safety led to JBC ignoring and violating Seattle Night Club Safety Code for years. The  
2 lack of a safety plan as required by the Seattle ordinance also contributed significantly to the fact  
3 that there was no effective security in place to prevent a firearm being brought into Jillian's when  
4 Mika was shot. Therefore, Defendant is subject to this court's general jurisdiction due to the  
5 continuous nature of his directive and policy of "no security" in this state..

### 6 **Specific Jurisdiction**

7 A defendant is subject to specific jurisdiction under Washington's long arm statute RCW  
8 4.20 8.185 when the defendant transacted business within the state and committed a tortious act  
9 within the state.

10 In order to establish limited or specific personal jurisdiction, the plaintiff must  
11 demonstrate that the defendant (1) has purposefully availed himself of the privilege of  
12 conducting activities in the state; (2) that their injuries "arise out of or relate to" those activities;  
13 and (3) that the maintenance of the suit does not offend traditional notions of "fair play and  
14 substantial justice." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-78, 105 S.Ct. 2174,  
15 2181-85, 85 L.Ed.2d 528 (1985); *Shute v. Carnival Cruise Lines, supra*.

16 Clearly, Stevens purposefully availed himself of the privilege of making profits in this  
17 state by directing a no-security policy designed to enhance to enhance the profits of JBC Seattle  
18 by projecting a false sense of safety.

19 In *McGowen supra*, the defendant purposefully directed her statements to residents of the  
20 state in hopes of selling them franchises. Here, Stevens purposefully directed that his "door  
21 host" employees would not look or act like "security" with the hope of increasing the profits of  
22 JBC Entertainment. The policy of projecting a non-security security posture contributed to the  
23 Plaintiff and other patron's belief that they were safe in the club. Jillian's of Seattle typically does  
24 not frisk or wand any person as a common practice. [Balcom 26, 18-19] Mr. Balcom also  
25 testified that Jillian's of Seattle has no policy the has general manager is aware of about when to  
26

1 use a wand / metal detector, or not. [Balcom 27, 7] The purposeful nature of Stevens' directive  
2 and policy that security for his patrons was a non-issue coupled with the fact that the plaintiff  
3 was shot because of this policy is not inconsistent with the "traditional notions of fair play and  
4 substantial justice"

5  
6 **Transaction of business**

7 To determine whether specific jurisdiction exists under the "transaction of business"  
8 section of the long arm statute, RCW 4.20 8.185 (1) (a), Mika must establish three factors: (1) that  
9 Stevens must have purposefully done some act or consummate some transaction in the State: (2) the  
10 cause of action must arise from, or be connected with, such act or transaction; and (3) exercise  
11 jurisdiction must not offend traditional notions of fair play and substantial justice. *Raymond v.*  
12 *Robinson*, 104 Wn App 627, 702. (2001)

14 The Plaintiff has demonstrated above that each and every one of these factors exists in this  
15 case. Therefore, this court can constitutionally and statutorily assert jurisdiction over defendant  
16 Stevens under the "transaction of business prong of Washington's Long Arm Statute.

17  
18 **Attorney Fees**

19 Attorney fees are inappropriate in this case because the Plaintiff should prevail when the  
20 court construe the facts and inference in light favorable to the Plaintiff. *Assuming arguendo* that  
21 Defendant Stevens somehow prevails, the plaintiff submits the following.  
22

23 Any award of fees is discretionary, as is the amount of such award. The touchstone for  
24 awarding attorneys' fees under Washington's long-arm statute is reasonableness: a court 'may'  
25 award prevailing defendants 'a reasonable amount' as attorneys' fees.  
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**CONCLUSION**

For all the reasons stated above this court should deny the Defendant Stevens' Motion for Summary Judgment and attorney fees and cost.

DATED this 9th Day of July, 2012.

**PHILLIPS LAW LLC**

s/Howard L. Phillips  
Howard L. Phillips, WSBA # 17937  
Attorney for Plaintiff

# **EXHIBIT D**

No. 69413-8-1

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IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
King County Superior Court No. 11-2-02108-4SEA

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JACKSON J. MIKA,

Plaintiff-Appellee,

vs.

JBC ENTERTAINMENT HOLDINGS INC., a Corporation doing business in the State of Washington; JBC OF SEATTLE, WA, INC., a Washington business, a subsidiary of JBC ENTERTAINMENT HOLDINGS INC.; MARQUIS HOLMES, an individual, dba. BOSS LIFE ENTERTAINMENT, JANE DOE, Husband and wife, and their community, GREG STEVENS, an individual, Husband and wife, and their community; TONY HUMPHREYS, an individual, Husband and wife, and their community.

Defendants.

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The Honorable Michael Hayden, Superior Court Judge

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PLAINTIFF'S/APPELLEE'S RESPONSE BRIEF

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## I. INTRODUCTION

The Superior Court found that Stevens was subject to Washington jurisdiction and denied his Motion for Summary Judgment. This Court granted the Appellant's Motion for Discretionary Review on February 22, 2013. This Appellant's claim of lack of jurisdiction below and before this court is founded on deliberate and blatant material false testimony of the appellant Gregory Stevens that he was merely a Chief Executive Officer of JBC Entertainment Holding, Inc. and had no contacts with Washington State. He was in fact majority owner of JBC Entertainment Holding, Inc. and as owner, participated in the negotiation and in "post-tort" sale of Jillian's of Seattle to Gameworks Entertainment LLC.<sup>1</sup>

This matter should be remanded to the trial court because the appellant below deliberately omitted his role in the "post-tort" sale of a Washington state asset, and the additional proof of facts is necessary to fairly resolve the issue of jurisdiction. It is equitable to excuse the plaintiff's failure to present evidence of Mr. Steven's ownership and involvement in the negotiation and sale of a Washington State corporation, and, it would be inequitable to decide that the trial court committed obvious error based on material omission of the appellant.

---

<sup>1</sup> Shortly after Stevens' December 20, 2011 deposition, on January 20, 2012, counsel for Stevens and the other JBC defendants without explanation filed a Notice of Intent to Withdraw as Defense Counsel for the JBC defendants. (CP 641)

## II. ASSIGNMENTS OF ERROR

### WHETHER JURISDICTION OF THE WASHINGTON COURT PROPERLY EXTENDS TO DEFENDANT GREG STEVENS

## III. STATEMENT OF THE CASE

The appellant Stevens' deposition was taken by the Plaintiff on two separate occasions and locations, September 30, 2011, in San Francisco, California [CP 813], and telephonic deposition from Reno, Las Vegas on December 20, 2011. (CP 823) At no time during either of these depositions did Stevens disclose that he was the majority owner of JBC Entertainment Holdings, Inc. (Hereinafter JBC Entertainment), and that he, along with Gemini Investors III, LP (Hereinafter Gemini), sold Jillian's of Seattle, an asset located in Washington State, to Gameworks Entertainment LLC (Hereinafter Gameworks), a California and Nevada based corporation.

During his second deposition on December 20, 2011, Stevens testified under oath that JBC Entertainment was Gemini's investment and that he was the CEO whom Gemini looked to for advice and guidance. [CP 677] Specifically he testified;

“It's -- you know, it's Gemini's investment. I'm -- you know, was the CEO. But they looked to me for guidance and advice and I am part of the process, if you will. So I would say it's somewhat collaborative more than kind of one side versus the other...”

It is plain that Stevens falsely testified that JBC Entertainment Holding Inc. was owned by Gemini and that Gemini merely sought his

advice as CEO for guidance regarding the sale of Jillian's of Seattle and five other properties. This is the testimony that was before the trial court.

On September 10, 2012, Stevens' Motion for Summary Judgment for lack of jurisdiction was denied by the trial court.

On October 23, 2012, defendant Stevens filed a Motion for Discretionary Review in this court. Oral argument set for January 4, 2013 was stricken on January 2, 2013, and Stevens' motion was referred to a panel of judges for consideration without oral argument.<sup>2</sup>

On January 17, 2013, the Plaintiff took the deposition of Matthew Keis, the designated 30(b) (6) witness for Gemini. [CP 696] Matthew Keis testified that Gemini was a minority shareholder of JBC Entertainment and the appellant, Gregory Steven, (who claimed merely to be CEO/CFO of JBC Entertainment) in fact, was the majority shareholder of JBC Entertainment.

Material evidence was revealed by Matthew Kies,<sup>2</sup> subsequent to Stevens' filing a Motion for Discretionary Review, that clearly shows that Stevens was not merely a corporate officer of JBC Entertainment, the corporate owner of JBC of Seattle; he was the Chief Executive Officer (CEO) and Chief Financial Officer (CFO) and "majority owner" of JBC Entertainment who negotiated the sale of and eventually sold Jillian's of Seattle to Gameworks. [CP 688 - CP 689] In addition, the Bill of Sale of

---

<sup>2</sup> This Court may take judicial notice of correspondence from the court to the parties. ER 201; a copy of the letter striking the oral argument set for January 4, 2013 is attached as Appendix A for the Court's convenience

Jillian's of Seattle, dated September 16, 2011, is signed by Stevens. [CP 821)

Keis testified that Gemini and Stevens were both owners of JBC Entertainment. Gemini owned about 40%, Stevens owned 49 %, <sup>4</sup> and Alpha Capital owned the remaining 11% [CP 688 – CP 689] He testified that he and Stevens worked closely on the sale of the “JBC properties to Gameworks” (SIC) [CP 690] He took a lead role regarding the economic negotiations and legal terms. [CP 690] With respect to sale of Jillian's of Seattle and the other properties, Stevens negotiated the aspects closer related to the operations of the business. [CP 690]

Jillian's of Seattle, a Washington Corporation was sold, along with other JBC assets to Gameworks, and JBC Entertainment has ceased to operate and is no longer a viable entity according to Defendant Stevens [CP 677]

#### **IV. ARGUMENT**

#### **THE TRIAL COURT DID NOT ERROR IN DENYING STEVENS MOTION FOR SUMMARY JUDGMENT BECAUSE THE JURISDICTION OF THE WASHINGTON COURT PROPERLY EXTENDS TO DEFENDANT STEVENS**

In response to defendant Stevens' claim that the trial court erred in denying his summary judgment motion, the Plaintiff, Jackson Mika argues

---

<sup>4</sup> Stevens testified in deposition when asked whether he was one of the decision makers to sell these properties, that "its--you know, it's Gemini's investment. I'm--you know was the CEO. But they looked at me for guidance and advice and I am part of the process if you will. Keis testified that Stevens was the majority shareholder .[CP 689]

that the court did not error in denying the defendant's motion for summary judgment.<sup>5</sup> The Plaintiff argues that Washington Court's may appropriately exercise personal jurisdiction over Greg Stevens because he was not merely a CEO/CFO of JBC Entertainment as he claimed during his depositions and pleadings before this court, Stevens was actually the majority owner of JBC Entertainment Holdings and he, along with Gemini, negotiated and eventually sold Jillian's of Seattle a Washington State Corporation to Gameworks.

Contrary to what has been presented to this court in the Appellant's Motion for Discretionary Review and Opening Brief, Stevens was not merely an employee/corporate officer of JBC Entertainment Holdings, the corporate owner of JBC of Seattle, he was the Chief Executive Officer (CEO) and Chief Financial Officer (CFO) and the majority owner who participated in the negotiation and sale of Jillian's of Seattle, an asset located in Washington State.

Stevens testified during both his depositions that he was merely an employee of JBC Entertainment. It is now known that Stevens was the majority owner of JBC Entertainment and that it was in this capacity that he was involved in negotiations and eventual "post-tort" sale of Jillian's of Seattle.

---

<sup>5</sup> The trial judge stated that that the Plaintiff, by expert opinion in the form of an affidavit by Dr Daniel Kennedy, (CP 568, 569) had committed a tortious act outside of Washington that had impact within the State of Washington, therefore, the court could properly exercise jurisdiction over Mr. Stevens. That record is not before this court, the defendant elected to not to include a Report of Proceedings in his pleadings to this court.

Matthew Keis of Gemini testified that Stevens was the majority owner of JBC Entertainment and that he was a principal in negotiating and finalizing the Asset Purchase Agreement by which Jillian's of Seattle a Washington state corporation was sold, along with other JBC Entertainment properties to Gameworks.

### **Specific Jurisdiction**

The specific jurisdiction requirements are satisfied if; 1. the nonresident defendant or foreign corporation purposefully does some act or consummate some transaction in the forum state (or commits an act outside the State that contemplates a phase occurring within this State); 2. the cause of action must arise from, or be connected with, such act or transaction; and, 3. the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice. *CTVC of Hawaii, Co., Ltd. v. Shinawatra*, 82 Wn. App. 699, 709-10, 919 P.2d 1243, 1249 (1996) *modified*, 932 P.2d 664 (Wn. App. 1997)

#### **1. Purposeful Availment**

To satisfy the first factor, a plaintiff must establish a mere prima facie showing of purposeful availment. Purposeful availment may be established by a nonresident defendant's act of doing business in Washington. *CTVC of Hawaii, Co., Ltd. v. Shinawatra*, 82 Wn. App. 699, 711, 919 P.2d 1243, 1250 (1996) *modified*, 932 P.2d 664 (Wn. Ct. App. 1997) In addition, the plaintiff may meet the burden of establishing

purposeful availment by showing the initiation of a transaction outside the state “in contemplation that some phase of it will take place in the forum state.” *CTVC*, 82 Wn. App. at 711, 919 P.2d 1243. *SeaHAVN, Ltd. v. Glitnir Bank*, 154 Wn. App. 550, 565, 226 P.3d 141, 150 (2010) In this case, Stevens initiated the sale of an in state asset out of state with the intent that Jillian’s of Seattle, located in Washington State, would be conveyed to Gameworks.

*In Freestone Capital Partners L.P. v. MKA Real Estate Opportunity Fund I, LLC*, 155 Wn. App. 643 (2010) the court noted that

“The link connecting the Guarantors to Washington may consist of affirmative acts outside of Washington in contemplation that some phase of the contract will take place in Washington. Although the Guarantors executed the guarantees in California, they acted in anticipation that they might become liable for MKA's debts to Freestone. Both the loans and the guarantees are payable to Freestone's Washington offices.

*Freestone Capital Partners L.P. v. MKA Real Estate Opportunity Fund I, LLC*, 155 Wn. App. 643, 654-55, 230 P.3d 625, 630-31 (2010)

In the case at bar, Stevens acted affirmatively outside this state, to enter into an Asset Purchase Agreement in anticipation that Jillian’s of Seattle, a Washington Corporation, would be conveyed to Gameworks.

The Plaintiff concurs that for the State of Washington to acquire jurisdiction, Stevens, not merely JBC Entertainment, must have personal contacts with the state. However, in this case, Stevens intentionally neglected to mention during either of his depositions, and in his pleadings before this court his material personal contacts, that he was the majority



owner of JBC Entertainment, and it was in that capacity, as “owner”, that he and Gemini negotiated and sold Jillian's of Seattle, a nightclub located in Washington State, to Gameworks.

The Plaintiff acknowledges that mere execution of a contract with a state resident alone is not sufficient to fulfill the “purposeful act” requirement. *Precision Laboratory*, 96 Wn .App. at 727, 96 Wn. App. 1007, 981 P.2d 454; *MBM Fisheries*, 60 Wn .App. at 423, 804 P.2d 627 *Raymond v. Robinson*, 104 Wash. App. 627, 638, 15 P.3d 697, 702 (2001) But in this case, there was more than the execution of a contract; a corporation and local business located in Washington State was negotiated for and conveyed by Stevens and Gemini to an out of state corporation.

With respect to purposeful availment, the fact that Stevens sold Jillian's of Seattle as majority owner and not as a mere CEO/CFO changes significantly the jurisdictional analysis. As a consequence, Plaintiff, due to Steven’s specious omissions, did not have the opportunity to argue, nor did the trial court have the opportunity to consider "purposeful availment" with respect to Stevens as the majority owner who "post-tort" sold an asset located in Washington State.

To make a proper analysis of a jurisdictional issue such as this, the trial court should have the opportunity to evaluate prior negotiations, contemplated future consequences, the terms of the contract, and the parties' actual course of dealing. (See *CTVC of Hawaii, Co., Ltd. v. Shinawatra*, 82 Wn. App. 699, 711, 919 P.2d 1243, 1250 (1996)) modified,

932 P.2d 664 (Wn. Ct. App. 1997) Material evidence related to these factors are not before this appellate court.

The *Mika v JBC et. al.* case has been transferred to another Superior Court Judge. The acquiring judge heard and granted Gemini's and Gameworks' motions for Summary Judgment. However, the newly assigned court below found that jurisdiction could be extended to these defendants because of their role in the sale of an asset which was located in Washington State.<sup>5</sup>

There was only one transaction conveying Jillian's of Seattle. Under the specific jurisdiction analysis, jurisdiction can be founded solely on one purposeful contact with Washington State, as long as the cause of action arose from that contact and the assertion of jurisdiction would be reasonable. *Langlois v. Deja Vu, Inc.*, 984 F. Supp. 1327, 1333 (W.D. Wash. 1997), *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984); *Doe v. Am. Ntl Red Cross*, 112 F.3d 1048, 1052 n. 7 (9th Cir.1997) *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 415 (9th Cir.1977).

## **2. Cause of Action**

The second prong requires that the cause of action must arise from, or be connected with, such act or transaction. In this case, it is axiomatic that the asset Stevens conveyed "post-tort" to Gameworks is the situs of the negligence and consequent injury to the Plaintiff. This prong is met.

---

<sup>5</sup> Report of Proceedings is attached as Appendix B ; ER 201, ; *In re Adoption of B.T.*, 150 Wn.2d 409, 415, 98 P.3d 634 (2003)

### 3. Fair Play

Stevens as majority owner of JBC Entertainment, not merely CEO/CFO, sold Jillian's of Seattle to another corporation, "purposefully availed [him]self of the privilege of conducting activities within this State, invoking the benefits and protections of our laws." <sup>7</sup>

An objective test is used to determine jurisdiction: Should the defendant, based upon his contact with the forum state, reasonably anticipate, expect, being haled into court there. *Huebner v. Sales Promotion, Inc.*, 38 Wn.App. 66, 684 P.2d 752 (1984). The focus of long-arm statute's inquiry into whether the defendant purposefully availed itself of the privilege of conducting activities within the state is of the quality and nature of the defendant's activities in the state, rather than the number of acts within the state or some other mechanical standard, but the activity level need not reach the level required to establish general jurisdiction. *Raymond v. Robinson*, 104 Wn. App. 627, 15 P.3d 697 (2001) Surely, the nature of selling off an asset in this state that was the situs of the injuries to the plaintiff is sufficient to justify being haled into Washington courts.

Subsequent to Stevens' depositions, Motion for Summary Judgment, and his filing a Motion for Discretionary Review before this court, codefendant Gemini's 30 (b)(6) witness testified during his deposition in January 2013, that Gemini owned only 40% of JBC Entertainment, Alpha Investors owned 11%. He added that Greg Stevens, the majority owner of JBC Entertainment, owned 49% of shares and that

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<sup>7</sup> *Raymond v. Robinson*, 104 Wn App 627, 637, 15 Pac. 3rd 697 (2001)

Stevens played a role in the negotiations and eventual sale of a corporate asset located in Washington State.

Ironically, had this court not stricken the oral argument set for January 4, 2013, Stevens may have succeeded in his deception and misdirection, and this court could have rendered an opinion on whether the trial court's committed error based on Stevens' deceptive testimony, as did the trial court.

The Plaintiff's arguments and briefing at summary judgment, in opposition to Steven's Motion for Discretionary Review, and the trial court's decision with respect to jurisdiction was based on Stevens' material and intentional false testimony that he was merely a CEO/CFO employee of JBC Entertainment. Consequently, the trial court's order denying Stevens' motion to dismiss for lack of jurisdiction was issued without the significant and material fact that Stevens was the majority owner of JBC Entertainment, not merely the CEO/CFO, who after being sued by the Plaintiff, negotiated for and sold Jillian's of Seattle.

The Plaintiff should have the opportunity to litigate the issue of jurisdiction before the trial court with this newly discovered material evidence.

Gemini's Motion for Summary Judgment was granted, however, Gemini's Motion for Attorney's Fees based on a lack of jurisdiction was denied by the Superior court because of Gemini's role as seller in the asset purchase of Jillian's of Seattle. [CP 919]

Likewise, Gameworks moved the court to find a lack of jurisdiction. Gameworks motion for the court to find a lack of jurisdiction was granted but to award attorney fees was denied because of GameWorks role in the sale of the Jillian's of Seattle, an asset located in Washington state. [CP 923]

“Purposeful availment analysis examines whether the defendant's contacts with the forum are attributable to his own actions or are solely the actions of the plaintiff.” *Sinatra v. National Enquirer*, 854 F.2d 1191, 1195 (9th Cir.1988). To show purposeful availment, a plaintiff must show that the defendant “engage[d] in some form of affirmative conduct allowing or promoting the transaction of business within the forum state.” *Gray & Co. v. Firstenberg Machinery Co.*, 913 F.2d 758, 760 (9th Cir.1990) The Plaintiff has made such a showing.

### **The Long Arm Statute**

Washington Revised Code § 4.28.185 provides;

- (1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:
- (a) The transaction of any business within this state;
  - (b) The commission of a tortious act within this state;
  - (c) The **ownership, use, or possession of any property whether real or personal situated in this state;** (EMPHASIS ADDED)

Analysis of jurisdiction under the Washington long-arm statute involves two issues: (1) does the statutory language purport to extend

jurisdiction, and (2) would imposing jurisdiction violate constitutional principles. *Grange Ins. Assoc. v. Idaho*, 110 Wn..2d 752, 756, 757 P.2d 933 (1988). Under the long-arm statute, Washington courts may assert jurisdiction over nonresident individuals and foreign corporations to the extent permitted by due process requirements, except where limited by the terms of the statute. *Werner v. Werner*, 84 Wn..2d 360, 364, 526 P.2d 370 (1974). In the context of this case, the statutory and constitutional standards merge into a single due process test. *Shute v. Carnival Cruise Lines*, 863 F.2d 1437 (9th Cir.1988).

To evaluate whether long-arm jurisdiction exists, courts examine three factors: (1) whether the party purposefully committed some act or consummated some transaction in the state; (2) whether the cause of action arose from, or was connected with, the act or transaction; and (3) whether the exercise of jurisdiction would offend traditional notions of fair play and substantial justice, with the focus being on the quality and nature of the act occurring within the forum state. *Bartusch v. Oregon State Bd. of Higher Educ.* 131 W. App. 298, 126 P.3d 840 (2006)

In this case, Stevens purposively negotiated and sold a Washington State corporate asset to an out-of-state corporation. The exercise of jurisdiction based on the negotiation and sale of Jillian's of Seattle, a Washington Corporation, would not offend traditional notions of fair play and substantial justice. Rather, jurisdiction in this case extended to Mr.

Stevens celebrates the traditional notions of fair play and substantial justice.

Exercise of jurisdiction, under the long-arm statute, must not offend traditional notions of fair play and substantial justice in light of the quality, nature, and extent of the defendant's activity in the state, the relative convenience of the parties, the benefits and protection of the laws afforded the respective parties, and the basic equities of the situation. *Raymond v. Robinson* (2001) 104 Wn. App. 627, 15 P.3d 697

It was intent of the legislature, in enacting this statute, to assert jurisdiction of courts of this state over nonresident defendant to extent permitted by due process clause of Federal Constitution, except as limited by terms of the statute. *Tyee Const. Co. v. Dulien Steel Products, Inc., of Wn.* (1963) 62 Wn.2d 106, 381 P.2d 245.

Importantly, and most germane to defendant Stevens, this statute is to be liberally applied to obviate mischief intended to be remedied by it. *Harrison v. Puga* 4 Wn.App. 52, 480 P.2d 247. (1971) Moreover, the Long-arm jurisdiction standards are less stringent than those necessary to establish general jurisdiction. *Bartusch v. Oregon State Bd. of Higher Educ.* (2006) 131 Wn. App. 298, 126 P.3d 840.

The touchstone of constitutional validity of RCW 4.28.185 is whether defendant's contacts in Washington in the transaction of the business involved are sufficiently substantial to show that he has undertaken 'some act by which the defendant purposefully avails itself of

the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’ *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958)

It is recognized that the transaction of particular business, such as defendant Stevens selling JBC Entertainment’s corporate asset located in this state, may involve contacts in more than one state. However, the rule requirements are met in the state in which suit is brought if there be sufficient substantial contacts in that state to meet the purposeful activity test even though there are also contacts elsewhere. Even though, Stevens sold five assets to Gameworks, the sale of Jillian’s of Seattle by Stevens as owner is sufficient to constitute conducting business activities within this State.

As stated above, an objective test is used to determine jurisdiction: Should the defendant, based upon his contact with the forum state, reasonably anticipate being haled into court there. *Huebner v. Sales Promotion, Inc.*, 38 Wn.App. 66, 684 P.2d 752 (1984), *review denied*, 103 Wash.2d 1018, *cert. denied*, 474 U.S. 818, 106 S.Ct. 64, 88 L.Ed.2d 52 (1985). A nonresident defendant must purposefully avail itself of the privilege of conducting activities within the forum state, thereby invoking the benefits and protections of its laws. *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239, 2 L.Ed.2d 1283 (1958). *Does 1--9 v. Compcare, Inc.*, 52 Wn.App. 688, 697 (1988). The *Does* court stated another way, there must exist a substantial connection between the defendant and the



forum state which comes about by an action of the defendant purposefully directed toward the forum state. *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 107 S.Ct. 1026, 1033, 94 L.Ed.2d 92 (1987) The selling of a corporate asset where the injury to the Plaintiff occurred, that is located in this state, creates a substantial connection between Stevens and Washington State.

The focus of long-arm statute's inquiry into whether the defendant purposefully availed itself of the privilege of conducting activities within the state is on the quality and nature of the defendant's activities in the state, rather than the number of acts within the state or some other mechanical standard, but the activity level need not reach the level required to establish general jurisdiction. *Raymond v. Robinson*, 104 Wn..App. 627, 15 P.3d 697 (2001)

The 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, ... or of the 'unilateral activity of another party or a third person ...' "). he 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, ... or of the 'unilateral activity of another party or a third person ...' "). A defendant's contacts must be such that he should "reasonably anticipate being haled into court there." *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

### **Specific Jurisdiction**

A defendant is subject to specific jurisdiction under Washington's long arm statute RCW 4.20 8.185 when the defendant transacted business within the state and committed a tortious act within the state.

In order to establish limited or specific personal jurisdiction, the plaintiff must demonstrate that the defendant (1) has purposefully availed himself of the privilege of conducting activities in the state; (2) that their injuries “arise out of or relate to” those activities; and (3) that the maintenance of the suit does not offend traditional notions of “fair play and substantial justice.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-78, 105 S.Ct. 2174, 2181-85, 85 L.Ed.2d 528 (1985); *Shute v. Carnival Cruise Lines*, *supra*.

Clearly, Stevens purposefully availed himself of the privilege of conducting business in this state where he as owner participated in the negotiation and sale of the asset, Jillian’s of Seattle.

### **Attorney Fees**

The Plaintiff/Appellee respectfully requests this court to award costs and fees pursuant to RAP 18.1, and RAP 14.2.

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## V. CONCLUSION

For all the foregoing reasons, this matter should be remanded to the trial court to consider the issue of whether Gregory Stevens is, by "purposeful availment" or any other factors, subject to the jurisdiction of Washington Superior court, based on newly discovered irrefutable evidence that he was not merely a CEO/CFO of JBC Entertainment, but was in fact the majority owner who negotiated and closed the sale of Jillian's of Seattle, a Washington State Corporation, to another out-of-state corporation, Gameworks.

DATED this 6<sup>th</sup> day of June, 2013.

Respectfully Submitted,

PHILLIPS LAW LLC

By: 

HOWARD L. PHILLIPS

Attorney for Plaintiff /Appellee

Jackson J. Mika

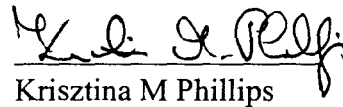
**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury and the laws of the State of Washington that on this date, I caused service via E-Mail, as agreed by the parties, and U.S. Mail true and correct copies of the:

**PLAINTIFF'S/APPELLEE'S RESPONSE BRIEF AND APPENDIX**

Lee-Smart  
Jeffrey Downer  
Peter Sutherland  
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Seattle, WA 98101-3929

6/6/2013

  
Krisztina M Phillips