69349-2

69349-2

NO. 69349-2-I

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

ALASKA STRUCTURES, INC.

Appellant,

v.

CHARLES J. HEDLUND,

Respondent.

CORRECTED BRIEF OF RESPONDENT

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ORIGINAL

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I. INTRODUCTION

This is a lawsuit by an employer Alaska Structures ("AKS") against a former employee Charles J. Hedlund ("Hedlund") alleging a "breach of a confidentiality agreement" based on a portion of single post on an internet web forum more than a year and a half after Hedlund left the company based on events that occurred after Hedlund left the company. AKS initiated litigation in three states—Washington, Georgia and Arizona—to silence Hedlund and sued him here in Washington after learning his name and the fact he had left the company before the events described and that the information published was a matter of public record, commonly known, and the subject of numerous police reports and new reports. AKS was warned numerous times that its suit against Hedlund was frivolous and subject to dismissal pursuant RCW 4.24.525, the Anti-SLAPP statute. As AKS has persisted in litigating this meritless action, Hedlund respectfully asks that this Court uphold the dismissal below and order granting the Anti-SLAPP Motion, but to additionally award CR 11 sanctions against AKS for its pursuit of the case and appeal.

II. COUNTER STATEMENT OF THE CASE

Plaintiff Alaska Structures ("AKS") manufactures and sells tents. One of its customers is the United States military, and AKS promotes itself as a primary supplier of tents to the U.S. military in Iraq,

Afghanistan, and elsewhere. Charles J. Hedlund worked at AKS for just under three years as a sales coordinator. CP 513-514, 792. He started in February 2007 and left in January 2010. **Id.** He has no memory of signing a "confidentiality agreement" with the company. CP 514. He knows he never signed away his right to report or publicize something he learned after he had left the company. **Id.**

On March 1, 2010, and March 7, 2010—several weeks **after** Hedlund had stopped working for AKS—AKS was burglarized. The burglaries were widely publicized on television news and in news papers. See, e.g., 274-438. Public records about the burglaries reveal that then AKS employee Dylan Schneider, who had no security experience (CP 436-438), oversaw the installation of a security system in the week following the first burglary and before the second burglary, but it was not activated on the night of the second burglary as it was "faulty". CP 334-347. Public records revealed that Schneider secretly installed hidden cameras in the server room that captured pictures of the thieves during the second burglary on March 7, 2010. CP 343. The image quality of these secret cameras was described by police in their report as of "good quality" CP 345.

Footage from the security cameras showing where the cameras were located and the quality of the footage as well as details of AKS's

security systems were made part of the police investigation and public records. CP 274-438.

On August 12, 2011—nineteen months after Hedlund had left his employment with AKS and seventeen months after the burglaries—Hedlund posted a comments on the internet website forum Indeed.com under the screen name "Can you Smell the B.S.?" about the March 2010 burglaries in response to comments by two posters Hedlund believed to be AKS employees masquerading as job seekers to mislead the public. CP 513-567, 792-832. AKS has focused its lawsuit on one portion of this August 12, 2011, post that was in response Hooper's comment that "property security is a must". See CP 792, 800. The portion AKS now focuses on read:

> "Proper security is a must"
>
> I doubt if the military gives a rat's behind if any of our enemies get their hands on any top secret tent designs. "Oh No! Terrorists might have as good billeting accommodations as out troops!"
>
> Furthermore, the security measures at AKS are all consumer-grade off the shelf fare installed by the former CIO, who had no prior security experience. AKS was broken into in 2010 and much of the server and several work stations were stolen, containing vast amounts of company information. They didn't have email for a few weeks. The cheap cameras provided no clues as to the identity of the thieves. That is why they now have the high-tech security precaution of human guards.

CP 812. The post was part of a chain of exchanges between Hedlund and several current employees of AKS masquerading as job seekers seeking to mislead other forum members about their lack of association with the company. CP 808,-832, 655. The posts related in part to the working conditions at AKS and the mistreatment of employees. **Id.**

On August 18, 2011, six days later, AKS filed a lawsuit against Hedlund as a John Doe over this posting. CP 1-3. AKS has belatedly focused on the security portion of the posts and not the mistreatment or other claims. On August 24, 2011, AKS sought and obtained an Order Directing Issuance of Letters Rogatory from this Court for permission to subpoena Indeed.com to learn the identity of the poster. CP 6-7, 39-44. The request to the Court identified the single post from August 12, 2011. CP 41-42. From the production by Indeed.com, AKS determined the poster used an ISP registered to Cox Communications, and on August 30, 2011, AKS sought and obtained an Order Directing Issuance of Letters Rogatory to Cox. CP 52-74.

On September 16, 2011, Hedlund's attorney sent AKS's counsel and Cox Communications an objection to the Subpoena referencing the Anti-SLAPP provision in RCW 4.24.525. CP 100-124. On October 20, 2011, AKS asked the Washington trial court to enforce the subpoena issued to a Georgia entity. CP 8-14. Hedlund, through his counsel,

opposed, again citing the bar posed to this suit of RCW 4.24.525. CP 77-162. The trial court did not grant the Order sought, and AKS then filed a motion to compel in Georgia, requiring Hedlund to obtain Georgia counsel. CP 230-251. Hedlund's Georgia counsel pointed out that the posted information related to the burglaries contained no confidential information as it was a matter of public record and news reports, filing and serving AKS with numerous such records. CP 307-327. The Georgia Court was only provided with three short news articles, and not the police records provided here regarding the burglaries, and the Georgia Court was not told that the poster had left the company by the time of the robberies. CP 307-327.

AKS persisted in the Georgia action claiming the merit of the lawsuit should not be considered as the issue was simply the enforcement of the subpoena, and the Georgia court enforced the subpoena to Cox holding that Cox's customer lacked standing to make the speech arguments of Hedlund as the customer was not the speaker. CP 695. Cox disclosed that Charles W. Hedlund in Arizona was the customer to whom the ISP had been registered on the relevant day. AKS then initiated litigation in Arizona against Charles W. Hedlund, a 69-year-old retiree (CP 265-266), and deposed him to determine who had posted the comment. CP 705-708.

Charles W. Hedlund revealed at his deposition that Charles J. Hedlund, his son, had used his computer on August 12, 2011, but that he had no direct knowledge of his son having posted the Indeed.com comment. CP 707-708.

On April 16, 2012, AKS filed an amended complaint naming Charles J. Hedlund as the Defendant in this lawsuit. CP 267-273. It falsely alleged that the posting about the burglaries and security system violated a confidentiality agreement. **Id.** AKS knew, or should have known, that Hedlund had left his employment with AKS after less than two three years in January 2010, several weeks before the burglaries, which occurred in March 2010, and that any information about the burglaries or succeeding security measures were facts learned after Hedlund had ceased to be an employee of AKS and thus could not be covered by any confidentiality agreement signed as an employee.

On April 5, 2012, Hedlund's attorney advised AKS's attorney that this suit against Hedlund was meritless and subject to dismissal pursuant to RCW 4.24.525 and that if the company did not dismiss the action that Hedlund would be forced to file an Anti-SLAPP Motion and seek an award of fees, costs, penalties and sanctions. CP 331-332.

The facts reported by Hedlund in the Indeed.com post are not confidential as they are facts which were reported in news reports and

disclosed in public records. AKS's attorneys were told this in the Georgia proceeding and provided with copies of a number of the news reports and public records. CP 275-276, 280-309.

AKS has made a practice of filing lawsuits against its former employees who report on Indeed.com facts the company or its head finds unflattering. See, e.g., CP 513-567. AKS has sued Dylan Schneider, the now-former employee who installed the security camera, and his wife, for alleged breach of a confidentiality agreement for comments he made about the company head Richard Hotes, and AKS sued its former filmmaker for posting a clip of a video the filmmaker made of one of the company's charity field trips that Hotes found unflattering. **Id.** While the Indeed.com site has numerous posts by current and former employees, AKS has not to Hedlund's knowledge ever sued any of those posters over favorable and flattering comments made about AKS, only those seen by AKS as negative or embarrassing.

Charles J. Hedlund worked for AKS from February, 2007 to January 2010, as a sales coordinator making about $4,000 a month salaried no matter how many hours he was forced to work. CP 513, 792. He left in January 2010 and hoped to find a better, less abusive work place environment. CP 797-806, 830. He has no recollection of signing the confidentiality agreement AKS claims he signed but knows he signed

nothing giving away his rights to discuss things he learned after he quit working for AKS. CP 514, 515. AKS claims it has sued Hedlund for a few sentences in a website post related to a March 2010 burglary of AKS. The burglaries occurred **after** Hedlund left AKS, and he has sworn under penalty of perjury that "everything I learned about the burglaries and the subsequent security efforts was learned after I had left my employment with AKS." CP 514. "Everything I said about the security system and measures also referred to measures taken after the burglaries and were details I had learned after I had left my employment at AKS." CP 515; **see also** CP 797-799, 801, 803-804, 806.

In August 2011 while visiting his father in Arizona Hedlund happened upon a jobs forum posting related to AKS on Indeed.com. CP 515. Indeed.com is a website designed to be an online resource for job-seekers, including job postings, salary averages, and a forum where employees and applicants can discuss a company's work environment. CP 516. This site is meant to be a resource for job seekers to ask others about a company to aid them in deciding whether or not to work there. CP 516.

On August 12, 2011, Hedlund saw two posts – one from "Jeff Hooper" left at 3:11 a.m. in the morning (CP 808) and one from "Jason Richards" left at 3:57 p.m. (CP 809) both with glowing reports of their interview experiences at AKS and expressing "love" and admiration for

AKS CEO/President Richard Hotes. The "Hooper" and "Richards" posters were responding to other posts by job applicants expressing concerns about the unprofessional and hostile antics of Hotes, corporate officer Matt Triplett and others, and the presence of surveillance cameras in every nook and cranny of the office and a creepy feeling of being watched and treated like a subject in a psychological experiment. CP 129-156, 289-305, 808-832. Hooper in his post said that he "freaking loved" Hotes and that he "would give my left nut to sit down and just have coffee with him..." CP 808. Hooper sought to justify the surveillance cameras mentioned in many of the previous posts by claiming: "If you work in military contracting proper security is a must, and usually a contractual requirement. So I fully understand the need for the security." CP 808. These posts stood out in direct contrast to numerous posts by candidates more than seven pages in length reporting abusive interview tactics and an extremely strange almost cult like environment including reports of alcohol being poured over an employee while he was working, forcing employees to stand on streets and sing Mary Had a Little Lamb to humiliate themselves, and other abusive and disturbing practices. CP 129-156, 289-305, 808-832. Hedlund, believing the Hooper and Richards posts to be by employees masquerading as job seekers to mislead the public, created a screen name "Can you Smell the B.S.?" and posted a

response at 4:30 p.m. that began "Wow. Is anyone else struck by the transparency of the previous 2 shill comments? They each reek of employees of Alaska Structures trying to save face for the company and keep people filling into the group interviews ..." CP 810, 516, 793-795. Hedlund accused the two posters of being AKS employees seeking to mislead job applicants. CP 810-811. He addressed line by line some of the comments the two posters had made. His post was broken in to two with the first posting at 4:30 p.m. due to its length and appears as if it was two posts, not simply one continuing response. CP 810-813. Hooper responded at 4:45 p.m. claiming not to be an employee. CP 811. The second part of Hedlund's post posted at 4:51 p.m. on the heels of Hooper's response. CP 812-813. The part two contains the response regarding the proper security comment initiated by Hooper. CP 812. Hedlund accused Hooper of sounding like an AKS employee who uses the screen name "Top Sales Dog" and Hooper responded. CP 813. At 5:01 p.m. Hedlund wrote back asking why Hooper would be so invested in the company after just one interview. CP 814. Richards also responded also claiming not to be an AKS employee. CP 816. Another poster under the screen name "Hah" responded to Richards saying in part to tell the forum if he actually has a reasonable and professional experience at the company. "So far the only folks with anything positive to say about the work experience are so

transparently parroting their sociopathic boss that even my dead granny can see it a mile away...." CP 817. Another poster "cultbuster" posted a link with a checklist for cult behavior suggesting AKS was a cult. CP 818. Hedlund posted a follow up comment stating that Hooper was also the poster "Best Interview Ever" and "Top Sales Dog" and an AKS employee. CP 820.

In a lengthy post Hedlund also responded to Richards challenging his representation of the interview process he experienced and describing work place abuses and mistreatment of employees and applicants, and questioning why Richards is so invested in the company that he is defending it so vigorously after just the one interview. Hedlund ended with the comment "Unless of course you are one of them." CP 821-824. Another poster "Jupiter" who had applied for a reception position stated "I sure have enjoyed reading about the wacky interviews, and am sorry for those people who actually worked at that loony bin. **Many, many thanks to those who posted and warned everyone away!**" CP 824 (emphasis added).

On August 16, 2011, a poster "AKS is ridiculous" commented on Hedlund's posts that questioned the legitimacy of Hooper and Richards posts and complained that AKS had had Hedlund's comments removed while allowing some other negative comments to remain. CP 825. The

poster stated: "any posts that reveal them to be the tricky conniving dishonest people they really are get removed as quick as can to help perpetuate the idea that this is just disgruntled employees complaining instead of the truth..." CP 825-826. Hooper continued to post disputing that he worked for AKS. CP 826. Hedlund posted again noting the censorship that occurs on the site where AKS can have comments almost immediately taken down as it did his posts and challenging Hooper's claim he was not an AKS employee. CP 828-829. Another poster calling himself "Jackson Five" accused "Can you Smell the B.S.?" of being the same person as "Hah" and "AKS is ridiculous" and criticizing that poster. CP 829. Jackson Five said emphatically "No, I don't work there, I did awhile ago . . ." CP 829. Hedlund responded accusing Jackson Five of still working at AKS. CP 830-831. Another poster posted saying "I want to thank everyone on this forum who posted their experiences and concerns . . the last thing we need are companies ran by egomaniacs like this taking advantage of people for their own sick pleasure!" and suggesting AKS and Hotes be investigated by the State Attorney General. CP 831. Hooper posted again continuing to dispute he was an AKS employee. CP 832.

Jackson Five subsequently admitted that he was in fact an AKS employee. See CP 19 (Hedlund response thanking him for being honest.)

Hedlund incurred legal costs and fees defending the Georgia action to protect his identity. See CP 517, 520. He did not incur legal costs and fees in the Arizona action as his father chose to proceed pro se and sit for his deposition without counsel present.

AKS makes a practice of suing its former employees to silence and intimidate them. A few months before it sued Hedlund, AKS sued its former filmmaker Chris Machowski for posting a portion of a video on Vimeo.com. CP 518-519, 523-551. Just days before it filed its John Doe lawsuit against Hedlund it sued its former CIO Dylan Schneider and his wife over comments Schneider posted on Indeed.com criticizing AKS's President and owner Richard Hotes. CP 519-520, 553-567. Schneider and his wife have been sued, under the guise of a confidentiality agreement with an ant disparagement provision for stating that Hotes (a) does not know how to drive from Kirkland to Seattle, (b) enjoys inflicting abuse on his employees, and (c) pushes employees to go to unsafe locations to perform charitable work while the president will go to such places himself due to claimed illnesses." CP 564-565 (Amended Complaint). The original version of the Complaint alleged only a breach of the confidentiality agreement by alleged disclosure of unidentified confidential information. CP 554 (confidential information "concerning the health of AKS' President and internal office and personnel matters")

AKS sued Schneider for disclosing information to his wife and sued his wife for disclosing details she knew of her husband's work place environment. CP 564-566.

Richard Hotes, President of AKS, has been written about in Vanity Fair, the Wall Street Journal, an article by actor Sean Penn on a popular blog, to name but a few. CP 718--791. Hotes is a board member of a charity run by Sean Penn and his bio promoting himself and his company are displayed on the site's website. CP 778-780. He promotes his products and services as the best in the world and AKS as the biggest business of its kind in the world CP 779. Hotes regularly socializes with movie stars, business moguls, politicians and Hollywood elite, and courts positions that place him in the limelight.

=CP 718-791

III. LEGAL AUTHORITY AND ARGUMENT

A. Plaintiffs' Claims Arise From Conduct Protected Under Washington's Anti-SLAPP Statute.

In 2010, the Washington legislature expanded an existing statute governing 'Strategic Lawsuits Against Public Participation,' known as 'SLAPPs' which are "lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition." **Nguyen v. County of Clark**, 732 F.Supp.2d 1190 (W.D. Wash 2010) (Settle, J.). In doing so, the legislature found that "SLAPPs" are "typically dismissed as groundless or

unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their productive activities." Laws of 2010, ch. 118 at § 1(b). The legislature also found that "[t]he costs associated with defending such suits can deter individuals and entities from fully exercising their constitutional rights to petition the government and to speak out on public issues." **Id.** at § 1(c).

As RCW 4.24.525(2) states:

> (2) This section applies to any claim, however characterized, that is based on an action involving public participation and petition. As used in this section, an "action involving public participation and petition" includes:
>
> (a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;
>
> (b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;
>
> (c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;
>
> (d) Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or
>
> (e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in

> furtherance of the exercise of the constitutional right of petition.

The statute remedies SLAPP by enabling a party to file a "special motion to strike" any claim based on protected conduct. **Id.** at (4)(a). It directs courts to decide special motions to strike as follows:

> A moving party bringing a special motion to strike a claim . . . has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving the public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. If the responding party meets this burden, the court shall deny the motion.

Id. at (4)(b).

The legislature specified that the statute "shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts." 2010 Session Laws, ch. 118 at § 3.

This statute allows for "a special motion to strike any claim that is based on an action involving public participation and petition" and "all discovery and any pending hearings or motions in the action shall be stayed upon the filing of a special motion to strike." RCW 4.24.525(4), (5)(c). Further,

> The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law:
> (i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed;
> (ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and
> (iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

RCW 4.24.525(6)(a).

There are few published decisions analyzing the Washington Anti-SLAPP Statute. In **Aronson v. Dog Eat Dog Films, Inc.**, 738 F.Supp.2d 1104 (W.D. Wash. 2010), the federal court analyzed whether the cause of action at issue was based on the defendant's exercise of First Amendment rights. The plaintiff sued Michael Moore's film company for invasion of privacy and misappropriation of likeness for including a snippet of the plaintiff's voice and likeness in his documentary, "Sicko." The court concluded that the inclusion of plaintiff's persona was directly related to discussion of the health care system, which was the subject of "Sicko," which addressed an issue of widespread public concern. The court noted, "[i]t is beyond dispute that documentary movies involve free speech." **Id.** Therefore, the Act applied. The court then found that the plaintiff had not shown by "clear and convincing evidence the probability of prevailing on

the merits of the cause of action for invasion of privacy." **Id.** This claim was dismissed and attorney's fees and costs of $10,000 was awarded to the defendant.

In **Aronson,** the court noted that additional guidance could be derived from California law because the Act was patterned after California's Anti-SLAPP Act. **Aronson** cited from two California cases to help determine the application of the Anti-SLAPP Act.

> The anti-SLAPP law applies to claims "based on" speech or conduct "in furtherance of the exercise of the constitutional right of . . . free speech in connection with an issue of public concern." Washington Anti-SLAPP Act ¶ 2. The focus is on whether the plaintiff's cause of action itself is based on an act in furtherance of the defendant's right of free speech. **City of Cotati v. Cashman**, 29 Cal. 4th 69, 78, 124 Cal. Rptr. 2d 519, 52 P.3d 695 (2002). In other words, the act underlying the plaintiff's cause, or the act which forms the basis for the plaintiff's cause of action, must itself have been an act in furtherance of the right of free speech. **Equilon Enterprises v. Consumer Cause, Inc.**, 29 Cal. 4th 53, 66, 124 Cal. Rptr. 2d 507, 52 P.3d 685 (2002).

Id.. See also Davis v. Avvo, Inc., Slip Copy, 2012 WL 1067640 (W.D.Wash. 3/28/12), granting Anti-SLAPP Motion dismissing claims against AVVO.com related to complaint over material posted there, stating:

> The Court has no difficulty finding that the Avvo.com website is "an action involving public participation," in that it provides information to the general public which may be helpful to them in choosing a doctor, dentist, or lawyer.

> Further, members of the general public may participate in the forum by providing reviews of an individual doctor or lawyer on his or her profile page. The profile pages on the Avvo.com website constitute a "vehicle for discussion of public issues ... distributed to a large and interested community." *New York Studio, Inc. v. Better Business Bureau of* Alaska, Oregon, and Western Washington, 2011 WL 2414452 at *4 (W.D.Wash. June 13, 2011). Therefore the burden shifts to plaintiff to show, by clear and convincing evidence, a probability of prevailing on his Florida state law claims.

Many parts of Washington's Anti-SLAPP statute closely mirror California's Anti-SLAPP statute. Therefore, where similar, this Court should look to case law interpreting California's provision as instructive here.[1] Both statutes allow for a special motion to dismiss and for a cutoff of discovery early on in an action upon a preliminary showing that Defendant's conduct involved either "Action involving public participation and petition" as in Washington, or an "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" as in California.

Here, the website on which the comments were made constitutes a public forum as it is available to anyone with internet access. **See** RCW 4.24.525(2)(d) (protecting statements made in public forum on issue of

[1] California's Anti-SLAPP Statute protects any "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" which includes " (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." See Cal. Code of Civil Procedure §425.16.

public concern). The public nature of the forum is demonstrated by the fact that so many are posting comments related to Alaska Structures fostering public debate. Further, in the Anti-SLAPP context, the California Supreme Court has held "that public access, not the right to public comment, is the hallmark of a public forum: 'Web sites accessible to the public ... are 'public forums' for purposes of the anti-SLAPP statute.'" **Nygard, Inc. v. Uusi-Kerttula**, 159 Cal.App.4th 1027, 1039, 72 Cal.Rptr.3d 210 (2008), *citing* **Barrett v. Rosenthal,** 40 Cal.4th 33, 41, fn. 4, 51 Cal.Rptr.3d 55, 146 P.3d 510 (2006). Indeed.com is an open forum and can be accessed by anyone.

The Honorable Mary Yu held that the lawsuit claims fell within the Anti-SLAPP statute on two separate bases:

First, under RCW 4.25.525(2)(d) as "Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern." Second under RCW 4.24.525(2)(e) as "Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition." Judge Yu's determination is correct and should be upheld as will be explained below.

B. Standard of Review on Appeal

AKS contends this Court should review the grant of an Anti-SLAPP Motion under an abuse of discretion standard while admitting Washington courts have not yet articulated this issue and that the statute itself is silent on the issue. AKS argues for an abuse of discretion standard solely based on California case law, while at the same time arguing that Washington's burden of proof required of a plaintiff is more significant than that imposed on California plaintiffs to avoid dismissal. See Br. of App. at 15-17. Hedlund contends this Court can review a grant of an Anti-SLAPP motion under an abuse of discretion standard, but that even if a de novo review is utilized, Judge Yu's Order must be upheld on this record.

C. Matter of Public Concern

For purposes of this case, Hedlund need only establish by a "preponderance of the evidence" that his written statement was submitted in a place open to the public or a public forum in connection with an issue of public concern, or that the claims related to lawful conduct in furtherance of the exercise of the constitutional right of fee speech. All parties concede that Hedlund's submission on the Indeed.com website on 8/12/11 was a "written statement or other document." Hedlund's posting was "lawful conduct in furtherance of the constitutional right of free speech." The only challenge AKS apparently makes is whether or not the

posting related to an issue of "public concern" or merely a private concern.

California has described an issue of public concern as "**any issue in which the public is interested**." **Nygard, Inc.**, 159 Cal. App. 4th at 1042 (emphasis in original). "Courts have recognized the importance of the public's access to consumer information. ... Members of the public ... clearly have an interest in matters which affect their roles as consumers, and peaceful activities ... which inform them about such matters are protected by the First Amendment." **Wilbanks v. Wolk**, 121 Cal. App. 4th 883, 899 (2004) (holding that California Anti-SLAPP law applied to statements about viatical settlement brokers). In **Wilbanks**, a defendant posted a derogatory comment on defendant's website about plaintiffs who were viatical settlement brokers. Plaintiffs sued, and the defendant moved to strike under California's anti-SLAPP statute. The appellate court held that because the defendant's statements posted on her own website were provided "to aid consumers choosing among brokers, the statements, therefore, were directly connected to an issue of public concern." 121 Cal. App. 4th at 896.

Even when such information "is not precisely accurate," courts have held that the First Amendment requires "insulate[ing] [consumer reports] from the vicissitudes of ordinary civil litigation." **Steaks**

Unlimited, Inc. v. Deaner, 623 F.2d 264, 280 (3d Cir. 1980); **see also Carver v. Bonds**, 135 Cal. App. 4th 328, 344 (2005) (applying anti-SLAPP statute to bar claims by podiatrist where newspaper provided warning and "other information to assist patients in choosing doctors"); **New York Studio, Inc. v. Better Business Bureau of Alaska, Or. & Wash.**, 39 Media L. Rep. 2297, 2011 WL 2414452 (W.D.Wash. 6/13/11) (barring claims under Washington's anti-SLAPP statute arising from press release posted to website cautioning consumers about talent agent practices related to children).

The United States District Court for the Western District of Washington granted an Anti-SLAPP Motion under Washington law to a lawsuit over an online review posted by defendant to her website criticizing about a baby pillow manufactured by the plaintiff and urging consumers not to purchase it in **AR Pillow Inc. v. Maxwell Payton LLC**, Slip Copy, 2012 WL 6024765 (W.D. Wash. 12/4/12). The court found the post with this general consumer warning to meet the test for public participation (i.e. to be a statement on a matter of public concern). **Id.** at *5.

In **Paradise Hills Assoc. v. Procel**, 235 Cal. App. 3d 1528, 1544, 1 Cal. Rptr. 2d 514 (1991), the California court held that members of the public "clearly have an interest in matters which affect their roles as

consumers" thus making a home owner's signs and leaflets citing complaints with her home and urging others not to purchase a home from her developer to be speech on a matter of public concern. 235 Cal. App. 3d at 1544. The court noted the growth of "consumerism" and the right of members of the public to inform themselves and share information to inform their consumer choices, rights which were protected by the First Amendment. **Id.** at 1544-45.

In **Davis v. Avvo, Inc**., the federal court had

> no difficulty finding that the Avvo.com website is "an action involving public participation," in that it provides information to the general public which may be helpful to them in choosing a doctor, dentist, or lawyer. Further, members of the general public may participate in the forum by providing reviews of an individual doctor or lawyer on his or her profile page. The profile pages on the Avvo.com website constitute a "vehicle for discussion of public issues ... distributed to a large and interested community."

2012 WL 1067640 at * 3.

The above cases are not, as AKS tried to portray them below, solely an issue of consumer protection. They are a matter of consumer information and knowledge – the right to make an informed choice, and the right to share information with others to aid them in their choices. Courts have found value in allowing members of the public to share their thoughts about professionals they hire to perform services for them as well as consumer goods

they purchase, and value to the public in having access to such information.

The Indeed.com website is a vehicle for prospective employees to research and share information about employers to aid prospective employees in making a choice – not just a choice about which doctor or lawyer to hire or brand of toothpaste to buy, but a choice about where to invest a far greater asset than mere money, but rather an investment of their time and their career.

The Indeed.com postings, when viewed in context, are replete with posts by job candidates about the abusive interview tactics of AKS, and by former AKS employees and friends of AKS employees about the abusive work place environment. See, for example, CP 97, 108-124, 129-156 (postings captured 9/26/11 and 10/26/11 before negative comments could be removed.) AKS promotes itself and its products and services as the best in the world and AKS as the biggest business of its kind in the world. It has employed hundreds of employees and has interviewed thousands more. The string of posts show that Hedlund's comment, taken out of context, was a post responding to two posts by what appeared to be AKS employees masquerading as job seekers to mislead the public. CP 792-796, 808-832. Posters thanked Hedlund for his posts on the forum. CP 824-825., 831. One poster, Jackson Five, eventually admitted he was an

employee and had been dishonest when he claimed he was not. CP 19 (Hedlund response quoting and thanking him for being honest; Jackson's Five's actual admission has been removed by AKS).

The few sentences AKS now focuses on and argues are not on a matter of "public concern" cannot lawfully be separated out as AKS desires. The purpose of the statute is to protect lawful speech activity, and to prevent the parsing AKS would have this Court do, where one word is alleged to be a matter of public concern and another not, so a lawsuit could continue, no matter how meritless, with no relief from the Anti-SLAPP statute and no ramifications against Plaintiff.

Taken in context, the sentences related to cameras and security clearly relate to the same issue of public concern as the remainder of the posts. Fraud and misrepresentation by an employer to attract applicants and employees is clearly a matter of public concern. The abusive tactics and practices described in the postings reveals a likely illegal as well as socially reprehensible treatment of subordinate individuals. Hedlund's willingness to call out his former employer's agents for masquerading as applicants to draw unwitting applicants in should be rewarded, not punished.

In addition, AKS now alleges that it, as a government contractor and major commercial enterprise in this state, knowingly allowed

substandard security to exist for more than a year after the business was the victim of two robberies. The investment of public resources to investigate, solve and prosecute the criminals, as well as to police against future robberies, is significant, and in these tough economic times, a matter of concern for the public. Inadequate security is surely a matter of concern for AKS's customers and employees whose information was made vulnerable, again, by AKS's alleged refusal to alter its systems. For AKS to allege that its alleged refusal to upgrade its systems in the face of known inadequacies is merely a "private" concern is troubling, and not worthy of acceptance by this Court.

Indeed.com is an open forum and can be accessed by anyone. It is a jobs forum for use by applicants to inform their decisions about which jobs to take, where to interview, and what jobs and interviews to pass by. Just like in **Avvo**, the exchanges between posters is on a matter of public concern. AKS argues, using largely cases about acts and not speech or speech that involves claims of misappropriation of name or likeness, that the court should look to the subject of the quoted words on the constitutionally protected activity rather than the activity itself. AKS's arguments are flawed. The activity at issue here is speech. The focus must be on whether that speech—in its complete context not just a few isolated words parsed from the post—is on a matter of public concern.

AKS's attempts to distinguish **Nygard** fail and have no impact on the overall holding that public interest is on anything in which "the public takes an interest." That has clearly been shown here, meaning the Anti-SLAPP Statute applies.

Additionally, the statements are addressing a matter of public concern as they discuss alleged management improprieties of a large employer who is also a government contractor, not proprietary information pertaining to Alaska Structures. In **Nygard**, the Court stated that

> "an issue of public interest" within the meaning of section 425.16 [California's Anti-SLAPP statute], subdivision (e)(3) is **any issue in which the public is interested**. In other words, the issue need not be "significant" to be protected by the anti-SLAPP statute—it is enough that it is one in which the public takes an interest.

159 Cal.App.4th at 1042 (emphasis in original). The issues pertaining to Alaska Structures, its cameras/security system, and its management clearly are of public interest given the level of discussion on Indeed.com alone. When numerous potential employees are interviewing on a regular basis, conditions of the workplace and the management are of public import and their discussion is protected by Washington's Anti-SLAPP Statute.

In addition, the burglary in question was part of a major crime spree affecting numerous businesses on the East Side and involving significant public resources. It was not a private matter impacting only

AKS. The public paid the price of the investigation and prosecution of the thieves, created at least in part by the faulty and inadequate security measures taken by the company.

1. Hotes as Public Figure

Below AKS tried to distinguish **Nygard** arguing that that business owner was a public figure and Hotes was not. This would not be a relevant basis of distinguishing the two cases (Nygard dealt with whether or not discussions of workplace conditions generally were a matter of public interest), but even so Hotes is no private figure. Hotes has been written about in Vanity Fair, the Wall Street Journal, an article by actor Sean Penn on a popular blog to name but a few. CP 718-719, 751-791. Hotes is a board member of a charity run by Sean Penn and his bio promoting himself and AKS are displayed on the charity's website. CP 718-719, 751-791. He promotes AKS's products and services as the best in the world and AKS as the biggest business of its kind in the world. CP 719, 779. Hotes regularly socializes with movie stars, business moguls, politicians, and Hollywood elite, and courts positions that place him in the limelight. CP 718-719, 751-791. Hotes need not be a public figure for the comments at issue to be of public concern, but AKS is wrong in their claims he is not.

D. AKS Did Not and Cannot Show It Will Prevail on Contract Claim

Once Hedlund establishes by a mere preponderance of the evidence that that his speech was on a matter of public concern, AKS must then show by clear and convincing evidence a likelihood of prevailing on the merits. RCW 4.24.525. This is more than a "mere preponderance of the evidence" and is showing that a fact is "highly probable". **In re Sego**, 82 Wn.2d 736, 739, 513 P.2d 831 (1973); **Bland v. Mentor**, 63 Wn.2d 150, 154, 385 P.2d 727 (1963). AKS did not and cannot show a probability of prevailing on its contract claim for several reasons discussed below.

E. Postings Did Not Reveal "Confidential" Information

Hedlund has sworn under penalty of perjury that his 8/12/11 post referred to events he learned after he left his employment at AKS and were about events occurring after he left AKS. CP 797-806. AKS cannot get into his head and show he meant something other than what he has claimed. The contract does not prevent Hedlund from reporting information he learned after he left AKS and on events occurring after he left AKS. This was not, as AKS tried to argue below, a "secrecy for life" promise requiring the former employee never to reveal anything he learned about the company or to discuss events occurring related to the company after he left his employment. See RP. AKS enters into contracts

with broader terms, as it did with its chiropractor (CP 852-879) showing that it knew how to write such an agreement when it intended to do so. Hedlund never agreed to keep silent forever about anything he learned about his former employer or to cease to speak about his former employer about events occurring after his employment, and no consideration was given for such a restriction if one had been intended.

The words for which AKS sued Hedlund are largely statements of opinion and not a disclosure of facts. Whether AKS's cameras were "cheap" or their "security system" was "off-the-shelf" and "consumer grade" is not a fact that can be proven true or false as every reader and speaker has a different impression of what such words mean. Hedlund could not have breached a confidentiality agreement that forbade disclosure of confidential information through the statement of opinions that cannot be proven true or false.

Further, even if factual, the information Hedlund conveyed was not secret and was known or easily known. AKS has an extremely high turnover rate and conducts numerous interviews at the Kirkland facility. Comments posted on Indeed.com by those who have interviewed at AKS routinely comment on the numerous cameras in plain view throughout the business.. For example, one post read:

> This place is FILLED with cameras in every corner of the space. What are they so worried about? The work areas were poorly constructed, electrical wires hanging from partitions, filing cabinets, the ceiling panels, and other obstacles is extremely hazardous, not to mention ugly!

CP 97, 117. Another read: "[T]here were at least 5 cameras on us at all times. This has to be some kind of psychological experiment in to the lengths interviewees will go to for employment of something...." CP 116.

News reports from March 2010, the time of the robberies, and May 2011, the time of the trial, revealed that AKS had been among several local businesses robbed by two men who stole computer servers to gain access to trade secrets, business and personal information on employees and customers. See, e.g., CP 158-161. The police reports and prosecutor's files, disclosed as public records, reveal all that was stolen from AKS and intricate details about its security measures and locations of cameras. CP 334-347, 350-434. Video images from the AKS surveillance cameras are a matter of public record. See Video images from the AKS surveillance cameras at CP 412 (top of page).

AKS admits that on March 1, 2010, its CIO Dylan Schneider contracted for the installation of a monitored security system by Allied Fire and Security. CP 634. The 10/31/11 Kirkland Police Depart report at page 3 of 7 reveals that a monitored security burglary alarm system had been installed between March 1, 2010, after the first burglary, and March

7, 2010, the date of the second burglary, but that it had not been activated on March 7, 2010, as the install was "faulty", that Schneider of AKS had managed the alarm system installation but was unable to provide police any details of the system. CP 334-347, 350-434. The police reports also reveal that Schneider was the CIO. **Id.**

The Kirkland Police Report also reveals that Schneider secretly installed a hidden camera in the sever room sometime after March 1, 2010 and prior to the March 7, 2010 burglary that captured images of the second theft. Those images are reported as "good quality" by police and were used to identify the burglars. CP 343, 345. Thus, according to police, Schneider installed cameras himself as well as oversaw the installation of a monitored security system. CP 343-345.

The fact that Schneider had no previous security system experience is revealed from police reports but also his Linked In Profile, publicly disclosed and available on the Internet. A copy downloaded on 10/25/11 is available at CP 436-438.

Also, Hedlund has sworn that he was reporting what he had learned from others, including a via a chiropractor who visited the AKS offices on a regular basis, facts learned after he left AKS about events occurring after he left AKS. Hedlund understood that after AKS was robbed that Schneider was charged with increasing the company's security

measures but that what Schneider installed was what in Hedlund's opinion would be deemed "consumer grade off the shelf" and including "cheap cameras" that did not capture good enough images to aid in catching the thieves.

As discussed above, "Consumer-grade,""off-the-shelf" and "cheap" are matters of opinion and not fact. One person's "cheap" is another's "expensive." No one knows what "consumer-grade" or "off-the-shelf" means and the fact AKS concedes it installed a below-par security system and allegedly did not upgrade it for more than year after being robbed twice does not change this. One must look at the actual words used by Hedlund as well as **his** meaning to determine if his disclosure can constitute a breach of contract. Hedlund has said what he meant when he used the words he used, and has said the events that he was describing. He has sworn under penalty of perjury that all of the events being described were events occurring after he left AKS and all facts being disclosed were events he learned about after he left AKS.

AKS has sued a former employee alleging he violated a confidentiality agreement signed during his employment based on a publication happening long after his departure from the company discussing events that happened after he left the company. The burglaries occurred in March 2010, and Hedlund left AKS in January 2010. Police

reports reveal the security system installed by Schneider that was the subject of Hedlund's post happened between March 1, 2010 and March 7, 2010. The outage of emails occurred after March 1, 2010. The security guard additions occurred after March 1, 2010. There are simply no facts reported by Hedlund that could have been known to Hedlund while an employee of AKS because everything he was discussing happened after he left. AKS has to have known these facts. If it didn't, it should have with any investigation prior to filing a lawsuit.

Further, the information Hedlund is alleged to have disclosed, even if it had occurred prior to his departure and was known prior to his departure, would not constitute confidential information to support the claim alleged here. The fact that AKS was burglarized was not a secret. It was widely reported in the news and the details of the burglaries are revealed in public records, and in the context of a public prosecution of the thieves. The fact that a new system was installed between March 1, 2010 after the first burglary and March 7, 2010 before the second burglary is revealed in these public records, as is the fact the newly-installed security system did not work on the night of the second burglary because it was "faulty" and that Schneider had managed the installation. The fact that Schneider had no previous security system installation experience is revealed by his own LinkedIn profile. None of the facts reported in the

post could support a contract breach claim even if they were known by Hedlund prior to his departure or were facts in existence prior to his departure.

AKS has not established that the information posted by "Can you smell the BS" is information that could only be known to an employee; in fact, the information is quite public. Nor has it established that anything contained in the statement infringes on AKS's proprietary interests in keeping information from the general public. AKS has an extremely high turnover rate and conducts numerous interviews at its Kirkland facility and visitors can see cameras throughout that have apparently been installed in an amateurish fashion.

Here, it is clear that there are individuals posting on the Indeed.com website that are not former employees, yet have information regarding the internal goings-on at AKS. For example, one person who, based on their posting, is not an employee stated:

> I can tell you that I currently work with one of your ex-employee's. He lasted 3 or 4 months and has told me numerous stories about working in that environment. Everything that I have heard from him has appalled me. I don't believe that abusive sales tactics and slave driving are appropriate ways to run any organization. Why does your company brag about the high turn-over? You shouldn't be proud that no one wants to work there...it doesn't make you cool or exclusive. The employees who are still there don't have self respect and are gluttons for punishment. No one should be treated like an animal in their place of work. It

> just isn't right. Life is too short. Your company should seriously be investigated.

CP 132. In a subsequent posting, the same person states, as examples of things occurring within Alaska Structures:

> Here are a few examples...
>
> 1. The president poured Tequila down this ex-employee's back while he was making a sales call.
> 2. This person was also required to stand on a street corner and scream "Mary Had a Little Lamb" until he lost his voice. Some type of humiliation tactic.
> 3. He was called at all hours of the morning and evening and had to be available 24/7.
> 4. The president would walk up behind him and hang up the phone while he was in the middle of a sales call. The president would laugh and walk away leaving everyone frustrated and defeated.

Id. Whether or not these allegations are true, what is clear is that there are individuals posting information online about AKS that (1) are not employees, and (2) have access to information that might appear would normally only be known to employees. It is clear that AKS has publicly-known idiosyncrasies that people readily discuss, as evidenced by the hundreds of comments posted on Indeed.com alone.

In **Nygard, Inc. v. Uusi-Kerttula**, 159 Cal.App.4th 1027, 1039, 72 Cal.Rptr.3d 210 (2008), an appellate Court in California, interpreting California's anti-SLAPP statute ruled that statements made by an employee about his working conditions and employer were not made in violation of a contract containing similar provisions to the one alleged to

bar the statements at issue here. In **Nygard**, the employee was subject to a contract preventing the dissemination of any information acquired in the course of consulting with the company, including but not limited to

> methods of doing business; trade and design secrets; financial data as to costs, revenues, prices, profits; market information and sales or customer lists; suppliers and corporate contact names, addresses and telephone numbers; and records pertaining to employees, including their names, addresses and telephone numbers.

Nygard, 159 Cal.App.4th at 1045. The Court stated "As [defendant] Timo correctly notes, all of these examples are of proprietary information or trade secrets. None of the information Timo revealed to the magazine is proprietary to the company; instead it concerns Timo's alleged working conditions." **Id**. at 1046. Similarly here, the contract alleged to apply to Hedlund prohibits dissemination of various types of proprietary and trade secret-type information.

The information contained in the post that AKS argues are made in breach of contract are not the type of information that AKS has kept confidential, nor are they the type of information that would be covered by the confidentiality provision Hedlund is said to have signed..

Further, AKS cannot show damage as a result of the alleged breach. It claims in this lawsuit it improved its security as a result of Hedlund's post, but the record makes clear it actually improved its security

as a result of getting burglarized, twice, and that it implemented security guards **before** Hedlund's post when the March 2010 security system install failed and the company was burglarized the second time. By the time of Hedlund's post, the news media had been discussing the burglarizes for more than a year and public records had disclosed minutiae of the security measures in place at the time including the specific locations of cameras. AKS had obviously updated its system before the August 12, 2012, post and did not upgrade it in the intervening seven days, as it claims, before it sued Hedlund as a John Doe. AKS has not and cannot prove any recoverable damages as a result of Hedlund's post even if they had otherwise had a valid claim. AKS further removed the post within hours of its posting, making it's feared harms from the post extremely suspect.

Finally, AKS cannot show a probability of prevailing on the merits as it cannot show a valid contract to begin with. AKS alleges that it gave consideration to Hedlund in exchange for his entering into an agreement by way of offering him a job, but AKS cannot establish Hedlund was even aware he signed such an agreement, that it was signed as a condition of employment and that the employment was consideration for the agreement, or that he and AKS had a meeting of the minds as to the meaning of its terms. Hedlund knows he signed no agreement that gave

away his right to report that which he learned after he left his employment at AKS and he has no memory of signing anything restricting his rights to report that which he learned during his employment.

It is clear that AKS has made a practice of using alleged contract breach claims and lawsuits as a way of silencing its critics and preventing the unmasking of its plants in chat rooms and web forums who masquerade as job seekers but are actually high ranking employees and officials or others paid to promote the reputation of the company. Based on the numerous reports by job seekers and former employees available solely on Indeed.com, AKS would appear to be a very unpleasant place to work, with abusive and likely illegal treatment of employees occurring on a regular basis. As the California Court recognized, employees cannot be prevented from discussion and reporting on workplace conditions, whether or not those reports are made to the government or the media or public at large. **See, Nygard**, 159 Cal.App.4th at 1046.

AKS now argues the use of words "off the shelf" and "cheap" cameras and "consumer grade" "security systems" are confidential facts the disclosure of which is a contract breach. AKS cannot establish these words are factual, as opposed to opinion, claims, nor can it show that anything Hedlund said was something he learned while an employee that the general public could not also have learned. Hedlund learned what he

wrote after he left his employment. He wrote about events occurring after he left his employment. Nothing he said was a confidential fact learned during his employment, and AKS has not and cannot show otherwise. The Georgia Court did not have the benefit of the police reports and prosecutor records and camera footage this Court has been provided, and enforced the subpoena finding the internet customer, who was not the poster, lacked standing to assert the First Amendment arguments, not as Plaintiff contends, from a finding that everything was confidential. Hedlund has clearly explained that numerous visitors, including a chiropractor who was a regular source of information for past employees, was a source for much of what he learned and posted. AKS has not shown it will prevail.

F. Posting Removed Within Hours of its Posting on August 12, 2011.

AKS admits it had Hedlund's 8/12/11 post removed by Indeed.com within hours of its posting. CP 800; see also CP 792 (post removed within 4 hours at most). Thus, few likely saw the post, and AKS cannot realistically claim to have been damaged by it. It was not robbed again as a result. The fact that it increased its guards on the off chance a robber saw the posting – even though it claims to have failed to upgrade its security for nearly a year after being robbed twice—is not "clear and convincing" evidence of damage.

G. The Award of Fees and Costs was Proper and Additional Fees and Costs are Required on Appeal

1. Georgia Fees and Costs

Hedlund incurred just over $2,000 in fees and costs for Georgia counsel related to AKS's efforts to enforce a subpoena issued in connection with this case. While his father was the customer of Cox, the real party in interest was Hedlund, and the legal fees and costs were incurred by Hedlund to protect himself in this action.

A court is to award a defendant all "costs of litigation" including fees on motions on which the party prevails and whatever the court deems appropriate to deter future abuses. Here the Honorable Mary Yu after considering all of the evidence held the fees and costs to be reimbursed should include the just over $2,000 Hedlund was forced to pay Georgia counsel to litigate the motion to compel in Georgia related directly to this Washington lawsuit. AKS has not shown that ruling was in error and it should not be disturbed. (AKS has likely paid its lawyers now more to brief this minor issue than the amount it was asked to pay, which illustrates that this litigation is, and always has been, a tool to silence and punish critics and intimidate others from exercising their free speech rights.)

2. Fees and Costs on Appeal

RCW 4.24.525(6) provides that the court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law: (i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed; (ii) An amount of ten thousand dollars, not including the costs of limitation and attorney fees; and (iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated. Hedlund should be awarded all fees and costs on appeal pursuant to RCW 4.24.525(6) and RAP 18.1.

The Washington Anti-SLAPP Act states that a purpose of the statute is to "[p]rovide for attorneys' fees, costs and additional relief where appropriate," after recognizing that "[t]he costs associated with defending [lawsuits brought primarily to have a chilling effect on speech] can deter individuals and entities from fully exercising their constitutional rights to petition the government and to speak out on public issues." *See* Laws of 2010, ch. 118 at § 1(a). AKS's meritless claims are of precisely the type for which the legislature intended to provide these remedies. As such, this Court should award Hedlund his attorneys' fees and costs in defending

against this suit on appeal and uphold the grant of fees, costs and the statutorily prescribed amount of $10,000 by the trial court, and award any other relief this court believes necessary to deter AKS and others from further conduct aimed at suppressing free speech.

This Court should further impose sanctions under CR 11 against AKS and its attorneys. On April 4, 2012, AKS learned the name of the Defendant John Doe and the poster of the comment in question. AKS surely knew this employee had left the company in January 2010 and that the burglaries and security measures being discussed had occurred in March 2010. AKS surely knew any contract it had with its former employee did not cover, and could not cover, disclosures of facts occurring after he left his employment or for knowledge gained after he left his employment. AKS was warned repeatedly that the Anti-SLAPP Motion would follow if AKS did not drop this suit, and AKS was warned repeatedly that the facts which it was claiming were confidential were all publicly-known and the subject of news reports and public records. Despite all these warnings, AKS pursued litigation against Hedlund across three states forcing him to defend and incur legal fees. When the Anti-SLAPP Motion was granted by the Honorable Judge Mary Yu, AKS filed this meritless appeal. It is clear the overarching goal of the company was to frighten off its critics and keep its current and former employees in line

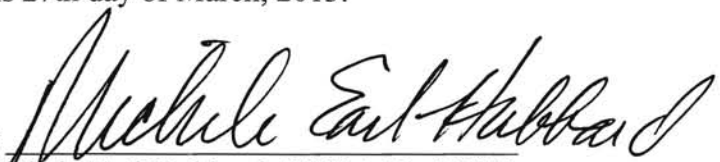
so that the company's poor treatment of employees could remain hidden. Hedlund is a individual of limited means fighting against this suit because he knew he was in the right, and the company in the wrong, and he was determined not be forced to settle and be silenced as others were. While counsel is well aware CR 11 sanctions are rare, and an extreme measure, in this instance, when they knew Hedlund was not an employee at the time of the events being reported, and were repeatedly warned the Anti-SLAPP motion would follow, this Court must in the interest of justice impose them upon AKS and its attorneys.

AKS has now winnowed down its lawsuit to claims it is suing a former employee for saying its security system was "off the shelf" "consumer grade" and "cheap" claiming, despite all the evidence, he must have learned those facts before he left, and that those facts only relate to circumstances before he left (despite conceding it did not change its alleged "cheap" "off the shelf" "consumer grade" "system" for more than a year after being burglarized twice). AKS has made a habit of silencing and sometimes suing its critics and this suit is part of the same effort. AKS knew Hedlund was gone before the events reported, and that the claims could not support the lawsuit here. The Anti-SLAPP Motion should be upheld and additional fees and costs and CR 11 penalties granted for the work on appeal.

IV. CONCLUSION

The Court should uphold the Order of the Honorable Mary Yu granting the Anti-SLAPP Motion and awarding Hedlund all fees and costs pursuant to the stipulation and the $10,000 award, and award additional fees, costs and penalties to Hedlund for the work on appeal.

Respectfully submitted this 27th day of March, 2013.

By: 

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on March 27, 2013, I delivered a copy of the foregoing Corrected Brief of Respondent by email pursuant to an electronic service agreement among the parties with back up by U.S. Mail to the following:

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Dated this 27th day of March, 2013.

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