No. 93777-0

(Court of Appeals No. 73336-2-I)

(King County Superior Court No. 14-2-12762-6 SEA)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

BYRON BARTON and JEAN BARTON,

Petitioners/Plaintiffs,

v.

JP MORGAN CHASE BANK, N.A., et al.,

Respondents/Defendants.

ANSWER OF JPMORGAN CHASE BANK, N.A., TO PETITION FOR REVIEW BY BYRON BARTON and JEAN BARTON

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I. INTRODUCTION

Petitioners Byron and Jean Barton ("Bartons") seek review of the same foreclosure claims based on the same facts they have alleged against JPMorgan Chase Bank, N.A. ("Chase") in three dismissed complaints.

The Bartons defaulted on loans totaling over $670,000 in July 2011 and a non-judicial foreclosure commenced. Their first two lawsuits challenged the nonjudicial foreclosure process, claiming Chase did not hold the Note and that the foreclosure documents were improper. The first lawsuit was dismissed without prejudice and the second with prejudice. The trial and appellate courts rightfully dismissed this third lawsuit—even after considering proposed amendments for new claims—on the grounds that res judicata barred it due to the previous two lawsuits.

Instead of seeking review of the issues raised and argued in the courts below, the Bartons now claim the appellate court did not follow *Albice v. Premier Mortgage Servs. of Washington, Inc.*, 174 Wn.2d 560, 560–63, 276 P.3d 1277, 1279 (2012). They assert the appellate court should have reversed dismissal of their Third Complaint and vacated the foreclosure sale because it supposedly occurred 120 days after the sale date set forth in a Notice of Trustee's Sale. Their theory does not warrant review of the appellate court decision. They never argued this 120 day theory before the trial or appellate courts, therefore waiving any review of it. Even if they had argued the 120 day issue, they wrongly base it upon the first Notice of Trustee's Sale; the sale was conducted within 120 days of the date set forth in the last and operative Notice of Trustee's Sale.

Thus, there is no need for review as the appellate court's decision was correct and does not even implicate *Albice*, much less conflict with it. They also do not provide any basis for reviewing the appellate court's decision that the third lawsuit was barred by res judicata due to the prior two complaints, or that their proposed amended complaint somehow raised claims not encompassed by the first two lawsuits. Finally, there is no public interest determination at issue here.

The Court should deny review for the following reasons:

First, the Bartons waived review of both their 120 day theory and the amendment denial because they did not raise it below;

Second, the appellate opinion is compatible with *Albice* as the foreclosure sale occurred within 120 days of the last renewed notice—which *Albice* allows—and no public interest issue is implicated;

Third, the appellate opinion is compatible with res judicata principles as their Third Complaint, proposed amendments, and 120 day theory could have been asserted in the two prior actions, and the failure to assert them does not implicate a public interest warranting acceptance of review.

II. IDENTITY OF RESPONDENT

Chase is the respondent and a defendant in this case.

III. STATEMENT OF CASE

A. Factual Background

1. The Bartons Obtained Loans from WaMu

In August 2007, Mrs. Barton obtained a $456,500 first loan and a

$207,500 Home Equity Line of Credit ("HELOC") second loan from Washington Mutual Bank ("WaMu") in a cash-out refinance of the Bartons' prior loans. CP 216-221, 276-284. The two new loans were evidenced by Notes and secured by Deeds of Trust recorded against the Bartons' property. CP 216, 221, 223-243, 276-284.

The Note and the Deed of Trust on the first loan expressly provide that the Note could be sold one or more times, without notice to the Bartons. CP 216 ¶ 1, 234 ¶ 20. On September 25, 2008, the FDIC placed WaMu in receivership and sold certain WaMu's assets to Chase. *See* CP 295-338 (Purchase and Assumption Agreement Among FDIC and JP Morgan Chase Bank, N.A. (Sept. 25, 1998), http://www.fdic.gov/about/freedom/ washington_mutual_p_and_a.pdf (the "Purchase and Assumption Agreement")). Chase thus became Note holder and Deed of Trust beneficiary in September 2008.

2. The Bartons Request Foreclosure Alternatives before Foreclosure Commenced

The Bartons and Chase discussed possible foreclosure alternatives like loan modification between December 2008 and July 2011, but they were denied. CP 250-251, 258. The Bartons defaulted in July 2011, and a Notice of Default issued in July 2012. CP 645-651.

3. Notices of Trustee's Sales were Recorded and Renewed before the Sale Occurred

The first recorded Notice of Trustee's Sale scheduled a sale for December 21, 2012. CP 340-343. A second Notice of Trustee's Sale set a

sale for August 9, 2013. CP 412-415. In December 2013, the foreclosure trustee recorded a third Notice of Trustee's Sale setting a sale date for April 11, 2014. CP 461-464. On April 11, 2014, the Property was sold to Triangle Property Development for $646,000.00. CP 466-468.

B. Procedural Background

1. The Bartons' First Lawsuit

The Bartons filed their first lawsuit on August 31, 2012, asserting claims for alleged: (a) breach of contract; (b) fraud; (c) RESPA violations; (d) state RICO violations; (e) quiet title; and (f) a list of various state and federal statutes and regulations with no allegations tied to those provisions. CP 349-362. After Chase removed and moved to dismiss the Bartons' First Complaint, the District Court dismissed their claims without prejudice. CP 408-410 (order dismissing complaint).

2. The Bartons' Second Lawsuit

Undeterred, the Bartons filed a virtually ***identical*** Second Complaint in King County Superior Court on April 23, 2013. CP 245-259. Upon removal, the federal court dismissed the Bartons claims ***with*** prejudice. CP 417-421 (order dismissing complaint).

3. The Bartons' Third (Current) Lawsuit

The Bartons filed a Third Complaint on May 5, 2014. CP 1-17. As with the previous lawsuits, the Bartons again allege Chase lacks the authority to foreclose. The Bartons asserted claims for (1) violations of the Deed of Trust Act ("DTA"); (2) violations of the Consumer Protection Act ("CPA"); (3) violations of the Uniform Commercial Code ("UCC"),

and (4) fraud and misrepresentation. CP 8-11, 16. Their Third Complaint wrongly alleged the foreclosure sale date occurred more than 120 days after the last scheduled sale date. CP 3.

Chase moved to dismiss on the basis that their claims were barred by res judicata, because Chase's ability to foreclose was litigated in the two previous complaints. CP 188-204. The Bartons did not argue the 120 day theory in their response brief. CP 482-495. On January 16, 2015, the trial court granted Chase's motion without prejudice and allowed the Bartons to move to amend their Third Complaint, which they did, proposing new claims and theories. CP 597-598, 623-626. They did not argue they should be allowed to amend to allege the sale date was continued more than 120 days after sale date in the last Notice of Trustee's Sale. CP 623-626, 677-679. The trial court denied amendment and dismissed claims against Chase with prejudice. CP 726-727.

4. The Bartons' Appeal on the Third (Instant) Lawsuit

After several procedural delays, the Bartons filed an opening brief on December 17, 2015, arguing Chase did not have authority to foreclose. Again, they did not argue that the sale date was 120 days after sale date in the last Notice of Trustee's Sale was issued. On September 26, 2016, the appellate court affirmed the trial court's determination that res judicata barred this current lawsuit.

5. The Third Party Buyer's Unlawful Detainer Action

The third party buyer at the foreclosure filed an unlawful detainer action, which was adjudicated in its favor. *See Triangle Prop. Dev., LLC v. Barton*, 190 Wn. App. 1017, 2015 WL 5682838, *1 (2015) (unpublished). The Bartons appealed; the appellate court affirmed the trial court's decision. It found that the Bartons did not establish that the foreclosure sale was defective, rejecting their claims that Chase lacked authority to foreclose and finding the 120 day argument had no merit. *Triangle Prop. Dev., LLC v. Barton*, 190 Wn. App. 1017, 2015 WL 5682838, *3 (2015).

IV. ARGUMENT

The Bartons petition this Court for review of the appellate court decision under Rule of Appellate Procedure 13.4(b)(1), (2) and (4). Under these provisions, a petition to review a decision is accepted only if the decision conflicts with decisions of the Supreme Court or another Court of Appeals, or if an issue of substantial public interest is present. RAP 13.4; *Hoflin v. City of Ocean Shores*, 121 Wn.2d 113, 125, 847 P.2d 428, 434–35 (1993). The Bartons claim the appellate court's decision is inconsistent with case law and public interest because, in their view, the foreclosure sale occurred 436 days from the first sale date set forth in the first Notice of Trustee's Sale. Since this theory is wrong, there is no basis to review

the opinion of the appellate court. There also is no other reason to review the appellate court's decision.

A. The Bartons Waived Review of the Issues Mentioned in their Petition

Under Rule Of Appellate Procedure 2.5, the appellate court can refuse to review any claim of error that was not raised in the trial court. Likewise, under Rule Of Appellate Procedure 12.1, the appellate court can only decide a case on the issues raised in the appellate briefs.

1. The Bartons Failed to Raise Below the Issue of the Timing of the Foreclosure Sale

The Bartons argue review is warranted because the appellate court wrongly upheld the foreclosure sale, despite occurring after the 120 day period set forth in RCW 61.24.040(6). Their theory is that the sale had to occur within 120 days of the sale date set forth in the first December 2012 Notice of Trustee's Sale (which was not operative as it was not the latest Notice of Trustee's Sale). Petition p.2-3. While this theory was pled in the Third Complaint, they failed to make any arguments referring to it or otherwise raise this issue in both their trial and appellate court pleadings. CP 482-495, 525-528, 623-626, 677-679; RP 10-15, 17-19. They therefore have waived any review of the theory by this Court. *See Mangat v. Snohomish Cty.*, 176 Wn. App. 324, 334, 308 P.3d 786, 791 (2013); *US W. Commc'ns, Inc. v. Wash. Utilities & Transp. Comm'n*, 134 Wn.2d 74, 112, 949 P.2d 1337, 1356 (1997), as corrected (Mar. 3, 1998). (And if this theory were correct, the Deed of Trust Act would bar postponement of

foreclosures to consider borrowers for loss mitigation options, because any failure to foreclose within 120 days would forever bar a new foreclosure.)

2. The Bartons Did not Raise Below the Issue Whether Their Amendment Request was Improperly Denied

Again, under Rule Of Appellate Procedure 12.1, the Court can only consider arguments raised in the appellate court. As the appellate court correctly noted, the Bartons did not argue that leave to file their proposed amended complaint containing new claims was wrongly denied. Appellate Opinion p.6. They waived any review of that determination. *See Mangat*, 176 Wn. App. at 334; *US W. Commc'ns,* 134 Wn.2d at 112.

B. The Appellate Court's Decision is Compatible with *Albice* and Does not Implicate any Public Interest

1. The Decision is Consistent with *Albice*

The Bartons assert that review is warranted because the appellate court's decision conflicts with *Albice v. Premier Mortgage Servs. of Washington, Inc.*, 174 Wn.2d 560, 560–63, 276 P.3d 1277, 1279 (2012). Even if the Bartons have not waived review of their 120 day theory, the appellate court's decision is compatible with *Albice*. In *Albice*, the borrower defaulted in 2006, with a trustee sale date initially set for September 6, 2006. The borrower entered into a forbearance agreement with the lender; while the forbearance was pending, the sale date was continued six times and finally occurred on February 16, 2007. *Albice*, 174 Wn.2d at 564. The trustee did not issue a new Notice of Trustee's Sale between September 6, 2006 and February 16, 2007. The *Albice* court

held that the sale was invalid because it was held 120 days after the September 6, 2006 sale date set forth in the last, operative Notice of Trustees' Sale. *Albice*, 174 Wn.2d at 568; RCW 61.24.040(6).

Here, the appellate court's holding is in accord with *Albice*. The appellate court found the Bartons' property was sold on April 16, 2014, which is the sale date set forth in the December 6, 2013 Notice of Trustee's Sale. Appellate Opinion p.3; CP 461-464. The sale took place within 120 days of the noticed sale date (in fact, took place **on** the noticed sale date). *Albice* only proscribes sales occurring 120 days after the last noticed date, so it is compatible with what happened here.

The Bartons' Petition is based upon a misreading of the facts and law. They cannot manufacture new claims through argument, *Woodley v. USAA Cas. Ins. Co.*, 175 Wn. App. 1038 (2013) (citing *Kirby v. City of Tacoma*, 124 Wn. App. 454, 472 (2004) ("A plaintiff may not amend his complaint through arguments in his brief in opposition to a motion for summary judgment.") (internal marks omitted). The Bartons seem to think that the 120 days in RCW 61.24.040(6) runs from the first Notice of Trustee's Sale scheduling a sale for December 21, 2012. CP 340-343. But this is incorrect. This Court acknowledged that the 120 day period is reset upon recording a new Notice of Trustee's Sale. *Albice*, 174 Wn.2d at 568; *see also Leahy v. Quality Loan Serv. Corp. of Washington*, 190 Wn. App. 1, 7, 359 P.3d 805, 808 (2015), as amended (Aug. 24, 2016), *review denied sub nom. Leahy v. Quality Loan Serv. Corp.*, 185 Wn.2d 1011, 368

P.3d 171 (2016) ("Once the 120–day period expires, a new trustee's sale must be scheduled and a new notice of sale must be issued and recorded to ensure that potential buyers are informed of the new sale date"). The 120 day period only applies to the operative Notice of Trustee's Sale, not prior, superseded Notices.

Here, as this Court suggested was allowed, the trustee re-issued a new statutory Notice of Trustee's Sale on December 6, 2013 that set the date for April 16, 2014 and consummated the sale on that day. Thus, the 120 day period in RCW 61.24.040(6) does not apply and the appellate court's decision follows *Albice*'s holding.[1]

2. There is No Public Interest Issue.

To determine whether there is a substantial public interest, the Court should consider "(1) the public or private nature of the issue; (2) the desirability of an authoritative determination that will provide future guidance to public officers; and (3) the likelihood that the issue will recur." *In re Det. of June Johnson*, 179 Wn. App. 579, 584, 322 P.3d 22, 25 (2014), *review denied sub nom. In re Det. of Johnson*, 181 Wn.2d 1005, 332 P.3d 984 (2014). The nature of this issue is individual and private as the issues are uniquely intertwined with the facts of the Bartons' loan. Reviewing the appellate decision will not provide new guidance to litigants. The issue the Bartons' raise has already been determined. *See Albice*, 174 Wn.2d at 568; *Leahy*, 190 Wn. App. at 7. It will also be

[1] A new Notice of Default does not need to be issued. *Leahy*, 190 Wn. App. at 5–7 (analyzing *Albice* and finding a notice of default does not need to be re-issued).

unlikely to re-occur, as it appears that beneficiaries and lenders all acknowledge that new notices must be issued 120 days after the sale date in the last Notice of Trustee's Sale.

There is nothing new for this Court to review.

C. The Appellate Court's Decision Correctly Held Res Judicata Barred The Bartons' Claims, and there is no Public Interest Issue Involved

The purpose of res judicata is to eliminate duplicitous litigation, conserve judicial resources and ensure finality of judgments. *Kuhlman v. Thomas*, 78 Wn. App. 115, 120, 897 P.2d 365, 368 (1995); *Matter of Pearsall-Stipek*, 136 Wn.2d 255, 262, 961 P.2d 343, 347 (1998), *as amended* (Oct. 17, 2000). It "stands for the general proposition that 'a controversy should be resolved once, not more than once.'" *Davidson v. Kitsap Cty.*, 86 Wn. App. 673, 681, 937 P.2d 1309, 1313 (1997). The trial and appellate courts followed the law on res judicata in dismissing the Barton's third lawsuit. The law does not allow the Bartons to keep trying theories in multiple lawsuits until something sticks.

Res judicata applies when there is a "concurrence of identity in (1) subject matter, (2) cause of action, (3) persons and parties, and (4) quality of the persons for or against whom the claim is made." *Emeson v. Dep't of Corr.*, 194 Wn. App. 617, 627, 376 P.3d 430, 436 (2016). The Bartons only disputed that the subject matter and cause of action were the same. [CP 493-494; Appellants Opening Brief p.20-21.] They are wrong; the subject matter and causes of action in the three complaints are the same.

1. The Bartons' Third Lawsuit was Correctly Dismissed as It Alleged the Same Claims as the Prior Two Complaints

All three lawsuits litigated the same subject matter—the loan, the right to title and possession and most importantly, stopping the foreclosure on the Bartons' property. *First Complaint*: CP 349 ("according to RCW 61.24.130 stop the sale of the home"), CP 350 ("they have received notification that their home may be foreclosed upon"), 352 ("costs and expenses incurred to attempt to prevent and fight pending foreclosure"), 359-360; *Second Complaint*: CP 246 ("according to RCW 61.24.130 stop the sale of the home"), 247 ("they have received notification that their home may be foreclosed upon"), 249 ("costs and expenses incurred to attempt to prevent and fight pending foreclosure"), 256-258; *Third Complaint*: CP 3 ("The Barton's [sic] filed suit to stop the sale of the illegal auction"), 5 ("Chase knowingly used "FAT to illegally foreclose"). All three sought to nullify the deed of trust (and therefore stop the foreclosure). *First Complaint*: CP 360-361; *Second Complaint*: CP 257-258; *Third Complaint*: CP 3-4.

The three complaints also alleged substantially similar causes of action. To find they are similar, the Court should consider:

> (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.

Emeson, 194 Wn. App. at 628. The appellate court correctly applied Washington law by finding:

> the Bartons' 2013 and 2014 lawsuits both arose out of the August 2007 loan transaction between the Bartons and Washington Mutual. Both lawsuits involve Chase and Quality's alleged infringement of the Bartons' rights regarding the foreclosure of their home. The same evidence is necessary for each suit—the Bartons' loan note and deed of trust, the purchase and assumption agreement between the FDIC and Chase, and the notices of default and sale.

Appellate Opinion p.5. All three lawsuits arose from the same facts--Chase succeeding to the loan, their default, and the subsequent foreclosure. As the appellate court noted, the same evidence would be used in all three complaints. They involve the same right against wrongful foreclosure, and quieting title in the Bartons' name. Lastly, litigating the Third Complaint would have destroyed the rights established in the first two complaints—namely, that Chase properly acquired an interest in the loan and the deed of trust, and that it could foreclose. Chase would be forced to litigate, yet again, the same issues on which it already prevailed and an inconsistent result could occur.

2. Since Res Judicata Encompasses Claims that Should Have Been Brought, the 120 Day Theory is Barred

Res judicata encompasses claims that "could have been raised, and in the exercise of reasonable diligence should have been raised". *Emeson*, 194 Wn. App. at 626. Even assuming they could bring it, the Bartons' 120 day argument is not a new claim/cause of action for the Third Complaint; instead, it is merely a new theory to support their previous lawsuits

alleging wrongful foreclosure. They could have brought it in the Second Complaint. *Emeson*, 194 Wn. App. at 626. This argument is attacking the December 2012 Notice of Trustee's Sale, which was already litigated in the two prior lawsuits. The Bartons may not plead their legal theories seriatim. *Kelly-Hansen v. Kelly-Hansen*, 87 Wn. App. 320, 331, 941 P.2d 1108, 1114 (1997) ("it has been held that a matter should have been raised and decided earlier if it is merely an alternate theory of recovery"). Finally, as discussed above, the theory simply is wrong and cannot negate the foreclosure sale.

3. Since Res Judicata Encompasses Claims that Should Have Been Brought, the Claims in the Proposed Amended Complaint are Barred

The Bartons' proposed amended complaint essentially was largely the same as the original Third Complaint, but contained additional facts asserting violations of the Deed of Trust Act (DTA). Even if the Bartons have not waived review of the denial of leave to file the proposed amended complaint, their claims are barred under res judicata.

As the appellate court correctly found, the claims alleged in their proposed amended complaint could have been brought in their two earlier complaints. Appellate Opinion p.6-8. Those proposed violations of the DTA—non-receipt of pre-foreclosure options followed by a notice of default and an opportunity to mediate—all arose before the Bartons filed their First and Second Complaints. Specifically, the Bartons defaulted in July 2011 and were sent a notice of default (they acknowledged receipt).

CP 645-651, 683. The first Notice of Trustee's Sale was recorded on December 21, 2012, and referenced the notice of default. CP 340-343. The second lawsuit was filed on April 23, 2013. CP 245-259. Thus, they knew the basis for any claims tied to failure to receive a pre-foreclosure options letter (followed by a notice of default and an offer to mediate) in December 2012—well before their Second Complaint was filed in April 2013. Those DTA claims could have, and should have been included in the Second Complaint. *Pederson v. Potter*, 103 Wn. App. 62, 67 (2000). Because the Bartons failed to allege these theories in their earlier Complaint, res judicata bars them from doing so now.

Although it is not clear, the Bartons appear to advance an alternative theory to this court to avoid res judicata: that because the foreclosure sale was not completed when the First and Second Complaints were filed, but was completed after the Third was filed, their claims are not barred. This difference is irrelevant for a few reasons.

First, the Bartons waived their post-foreclosure DTA claims when they did not obtain a pre-sale injunction. The DTA sets forth the procedure to obtain pre-sale injunctive relief to halt a nonjudicial foreclosure sale. RCW 61.24.130. "Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's Sale." RCW 61.24.040(1)(f)(IX). "This statutory procedure is the 'only means by which a grantor may preclude a sale once foreclosure has begun with receipt of the notice of sale and foreclosure.'" *Brown v. Household*

Realty Corp., 146 Wn. App. 157, 163 (2008) (quoting *Cox v. Helenius*, 103 Wn.2d 383, 388 (1985)). Since the Bartons failed to enjoin the sale, they have waived their DTA based claims. *Frizzell v. Murray*, 179 Wn.2d 301, 306–307 (2013). The Bartons received notice of their right to enjoin the sale. CP 3, 341, 413, 461-464. They knew of their defenses, as their two previous complaints alleged similar bases to enjoin the sale of their Property in 2012 and 2013 under the DTA. CP 246 (The First and Second Complaint alleged their action was "according to RCW 61.24.130 [to] stop the sale the home[.]"), 349 (same). They failed to bring an action to enjoin the sale (both prior actions were dismissed). CP 408-410, 417-421.

Second, their post-foreclosure claims in the third lawsuit are based upon the same alleged actions that the first two lawsuits alleged—whether Chase was the beneficiary and properly issued foreclosure notices. Moreover, the post-foreclosure claims set forth in their proposed amended complaint also arose out of actions that occurred before they filed their Second Complaint. Appellate Opinion p.6-8. Again, those claims could have, and should have been included in the Second Complaint. *Pederson v. Potter*, 103 Wn. App. 62, 67 (2000). Because the Bartons were required to bring these theories in earlier complaints, the Court of Appeals correctly determined that res judicata bars them from raising these theories now.

4. No Public Interest is Implicated in the Appellate Court's Decision

There is no public interest implicated in the appellate court's decision. *Johnson*, 179 Wn. App. at 584. The issues raised within the

three complaints are all personal to the Bartons. There is no novel issue of law, and reviewing the appellate court's decision will not lead to guidance on some issue of law. Res judicata law is settled and there is no reoccurring conflict. Likewise, the law on foreclosure notices, dates of sale, and ownership of the Note is settled. The Bartons simply want this Court to act as a second appellate court. The court of appeals was right in following the law of res judicata. There is nothing to review.

D. The Court should Award Chase its Fees and Costs.

The Court should award Chase its fees in connection with the Bartons' petition for review under RAP 18.1(j). That rule permits an award "to the party who prevailed in the Court of Appeals . . . for the prevailing party's preparation and filing of the timely answer to the petition for review." Chase is also entitled to fees under RCW 4.84.330 because it is the prevailing party and the Note and Deed of Trust contain fee provisions under which they agreed to pay Chase's fees incurred in collecting on the note. CP 219, 235-236. "A provision in a contract providing for the payment of attorneys' fees in an action to collect any payment due under the contract includes both fees necessary for trial and those incurred on appeal as well." *Boyd v. Davis*, 127 Wn.2d 256, 264 (1995) (affirming award of fees on appeal under RCW 4.84.330).

V. CONCLUSION

There is no reason to grant the Bartons' petition. The appellate court's decision, even considering their new theory, does not conflict with another court of appeals or Supreme Court decision. There is no public

interest present in the issue on which the Bartons seek review or otherwise in the appellate court decision. The Bartons cannot keep trying to litigate the same foreclosure over and over again. For the foregoing reasons, the Court should deny the Bartons' petition for review and award Chase its reasonable attorneys' fees and costs incurred in connection with the petition for review.

RESPECTFULLY SUBMITTED this 14th day of November, 2016.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies and declares under penalty of perjury under the laws of the state of Washington that on this 14th day of November 2016, she served a copy of the foregoing document upon the following via first class mail:

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Christine Kruger

Christine Kruger