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DIVISION II
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STATE OF WASHINGTON
BY
DEPUTY

No. 47794-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ALLYAH JASEM SALIM AYESH,

Respondent,

v.

JONATHAN MICHAEL BULLIS,

Appellant,

BRIEF OF RESPONDENT

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A. INTRODUCTION

Appellant (“Bullis”) seeks review of the trial court’s Renewal of a Protection Order. The underlying allegation is that the trial court did not have the authority to order participation in a domestic violence perpetrator treatment program and therefore abused its discretion by renewing the protection order when Bullis failed to participate in any treatment or counseling that complied with WAC 388-60. However, the Washington State Legislature has authorized the court to order participation in treatment and set out regulations for domestic violence treatment. The trial court did not abuse its discretion by renewing the order or finding Bullis failed to comply with the Order of Protection. Finally, Bullis makes vague claims that his constitutional due process rights were infringed and he was denied the right to a fair hearing. Bullis neither sets out a proper constitutional analysis, nor does he show actual or apparent bias of the trial court judge. Finally, his failure to obtain a transcript of the hearing was harmless error.

B. ASSIGNMENTS OF ERROR

Assignments of Error

Appellants Assignment of Error No. 1: The trial court erred in denying Respondent’s Motion for Reconsideration entered on April 16, 2015.

Appellant's Assignment of Error No. 2: The trial court erred in denying Respondent's Motion for Revision entered on May 8, 2015.

Issues Pertaining to Assignments of Error

Issue No. 1 Pertaining to Assignments of Error: Whether the court had the authority to grant the renewal of the domestic violence protection order.

Issue No. 2 Pertaining to Assignments of Error: Whether the trial court erred as a matter of law by Denying the Motion for Revision and finding that Bullis had failed to comply with the domestic violence Order for Protection entered on February 28, 2014.

Issue No. 3 Pertaining to Assignments of Error: Whether the trial court Judge's statements revealed actual or apparent bias and therefore denied Bullis a fair hearing on Revision.

Issue No. 4 Pertaining to Assignments of Error: Whether Bullis' failure to obtain the transcript of the hearing of the Motion for Revision was harmless error.

C. STATEMENT OF THE CASE

An Order of Protection ("the Order") was entered against Bullis on February 28, 2014. CP 55-59. The Order required Bullis to participate in treatment and counseling at a domestic violence perpetrator treatment program approved under RCW 26.50.150 or State-certified counseling that

complied with WAC 388-60. CP 57. The order also required that evaluations must be completed within 30 days and include releases of information to permit the Provider to contact the Petitioner. CP 57.

On March 20, 2014, Bullis submitted to a State certified domestic violence perpetrator treatment program at Social Treatment Opportunity Programs (“STOP”). CP 63. However, STOP failed to enroll Bullis in their treatment program in compliance with the Order for Protection. CP 65. Bullis did not submit to an evaluation at any other treatment program or participate in any domestic violence perpetrator program or counseling compliant with WAC 388-60. CP 12.

On February 3, 2015, Ayesh filed a Petition for Renewal of Order for Protection. CP 4. On February 27, 2015, a hearing was held for the Petition for Renewal of the Order of Protection. Commissioner Jonathon Lack found that Bullis had been court ordered to receive treatment, not just an assessment, and was therefore not in compliance with the Order. CP 91, RP 7 (February 27, 2015). Commissioner Jonathon Lack further found that the evaluation submitted to the court did not comply with WAC certification standards and the provider failed to make collateral contacts in compliance with the WAC. CP 91. He therefore entered the Order on Renewal of Order of Protection “based upon Mr. Bullis’ noncompliance with the order to complete the DV treatment program.” CP 91.

Bullis filed a Motion for Revision on March 9, 2015, alleging Commissioner Jonathon Lack erred as a matter of law when 1) he found Bullis in violation of the Order for failure to receive the ordered treatment or counseling 2) he found Bullis in violation of the Order for failure to sign the releases to contact the Petitioner; and 3) he entered the renewal of Order for Protection. CP 47. The Honorable Christin Schaller reviewed Bullis' Motion for Revision and the Declaration of Alana K. Bullis and additionally heard oral argument from Alana K. Bullis. Judge Schaller found no clear error of law and therefore denied Bullis' Motion for Revision on May 8, 2015. CP 96.

Bullis then filed a Motion for Reconsideration on May 18, 2015, alleging that the trial court erred when 1) it found Bullis failed to comply with the Order; 2) Bullis was denied a fair hearing due to judicial bias; and 3) Bullis was denied a fair hearing when he did not obtain the transcript prior to filing the Motion for Reconsideration. CP 100, 106, 107. Bullis also filed an Amended Motion for Reconsideration on May 19, 2015. CP 113. On June 16, 2015, Judge Schaller, "having reviewed all the documents filed in association with the motion," denied Bullis' Motion for Reconsideration. CP 181.

D. ARGUMENT

The trial court's decision to grant or deny 1) a Renewal of domestic violence protection order; 2) a Motion for Revision; and 3) a Motion for Reconsideration, are each reviewed for abuse of discretion. See RCW 26.50.060; *Hecker v. Cortinas*, 110 Wn. App. 865, 869, 43 P.3d 50 (2002); *City of Longview v. Wallin*, 174 Wn. App. 763, 776, 301 P.3d 45, review denied, 178 Wash.2d 1020, 312 P.3d 650 (2013). A trial court abuses its discretion when its decision is based on untenable grounds or reasons. *In re Marriage of Cota*, 177 Wn. App. 527, 312 P.3d 695, 699 (2013).

A trial court's findings of fact are reviewed for substantial evidence. *In re Marriage of Fahey*, 164 Wn. App. 42, 55, 262 P.3d 128 (2011). Review denied, 173 Wn.2d 1019 (2012). Substantial evidence exists if the record contains sufficient evidence to persuade a fair-minded, rational person of the finding's truth. *Fahey*, 164 Wn. App. at 55. The party challenging a finding bears the burden of showing that it is not supported by the record. *Standing Rock Homeowners Ass'n v. Misich*, 106 Wn. App. 231, 243, 23 P.3d 520 (2001). Unchallenged findings are verities on appeal, and challenged findings are also binding on appeal if they were supported by substantial evidence. *Standing Rock*, 106 Wn. App. at 238, 243.

Evidence may be substantial even if there are other reasonable interpretations of the evidence. *Sherrell v. Selfors*, 73 Wn. App. 596, 600-01, 871 P.2d 168 (1994). Deference is shown to the trial court's determinations on the persuasiveness of the evidence, witness credibility, and conflicting testimony. *Snyder v. Haynes*, 152 Wn. App. 744, 779, 217 P.3d 787 (2009). Therefore, a trial court's finding of fact will not be disturbed if substantial, though conflicting, evidence supports the finding. *Merriman v. Cokeley*, 168 Wn.2d 627, 631, 230, P.3d 162 (2010).

1. The Trial Court had the Authority to Grant the Renewal of the Protection Order when Ayesh's Petition for Renewal Alleged Past Acts of Domestic Violence and Present Fear.

RCW 26.50.060(3) sets out the law governing the renewal of protection orders. In a petition to renew a domestic violence protection order, the petitioner must state the reasons for seeking such renewal. The Petitioner only needs to show past abuse and present fear. RCW 26.50.060(3); *Barber v. Barber*, 136 Wn. App. 512, 516, 150 P.3d 124 (2007). The statute does not require a new act of violence for the trial court to renew a protection order. *Id.* When the petitioner meets the above-stated requirements, RCW 26.50.060(3) mandates that, "The court *shall* grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of

violence against the petitioner... when the order expires.” (emphasis added).

Ayesh’s Petition for Renewal of Order of Protection met the requirements outlined in *Barber*. CP 4. Like the petitioner in *Barber*, Ayesh incorporated the acts of violence that were stated in her original Petition for Order for Protection into her Petition for Renewal. CP 4. Those acts of violence were found sufficient by the trial court to enter an Order for Protection on February 28, 2014. CP 55. This Court of Appeals also concluded the trial court’s finding that Bullis placed Ayesh in fear of imminent harm and engaged in domestic violence were supported by the evidence and affirmed the Protection Order.

Ayesh expressed present fear by stating in her petition “I am still in fear of the Respondent due to his violent actions against me in this matter. I continue to live in fear for my safety.” CP 4. Therefore, the Court was required to Order the Renewal under RCW 26.50.060(3), unless Bullis proved by a preponderance of the evidence that he would not assume acts of violence against the petitioner.

To prove that he would not renew acts of violence against Ayesh, Bullis relied on his own assertions that there had been no recent acts or contact. However, the statute does not require new or recent acts of domestic violence or contact. *Barber* 136 Wn. App. at 516, 150 P.3d 124.

Bullis' claim that Ayesh did not allege any violence or abuse toward Ayesh since the original order did not satisfy his burden.

There was sufficient evidence for the trial court to renew the order of protection when Ayesh established prior acts of violence and present fear. Further, Bullis failed to prove he would not resume acts of domestic violence against Ayesh. Therefore, the trial court was required to renew the order under RCW 26.50.060(3).

2. The Trial Court did not Err as a Matter of Law by Denying the Motion for Revision when: The Renewal of the Protection Order was Required; Ordering Participation in Treatment is Authorized, and There was Substantial Evidence that Bullis failed to Comply with the Order.

The Trial Court had the Authority to Order Treatment or Counseling in Compliance with WAC 388-60 and properly found that Bullis had failed to comply. Bullis asserts that he had fully complied with the Order and the Commissioner erred by finding he had not when a "state-certified" counselor determined he didn't need treatment. The root of his argument is an assertion that the trial court did not have the authority to order Bullis to participate in treatment and counseling as follows:

- Domestic violence perpetrator treatment program approved under RCW 26.50.150 or counseling at: State certified provider that provides current WAC compliant treatment.

- Other: Evaluations must be completed [sic] within 30 days and include releases of information to permit the Provider to contact the Petitioner.

CP 57

In the hearing on the Motion for Revision, the trial judge perceived this underlying assertion and acknowledged it by stating, “So I appreciate the position, that Mr. Bullis’ real position is, ‘I didn’t do anything, and that order should have never been entered.’ But that’s not the issue in front of this court.” RP 9 (May 8, 2015) The underlying allegation in Bullis’ Motion for Revision, Motion for Reconsideration, and Appellant’s Brief, is that Bullis believes the court had only the authority to refer Bullis to an evaluation by a state-certified provider, but not to order him to *participate* in treatment or counseling that complies with WAC 388-60. However, the law is clear that the Court is authorized to order such treatment.

RCW 26.50.060(1)(e) states that upon notice and after hearing, the court may “order the respondent to *participate* in a domestic violence perpetrator treatment program approved under RCW 26.50.150.” (emphasis added). RCW 26.50.150(3) provides that “treatment must be for a minimum treatment period defined by the secretary of the department by rule.”

The Department of Social and Health Services has adopted rules and regulations for domestic violence perpetrator programs, which have

been codified in WAC 388-60. WAC 388-60-0015 defines a perpetrator as the client enrolled in the domestic violence perpetrator treatment program and further explains that “the client may be court-ordered to attend treatment.” Additionally, WAC 388-60-0255 clearly directs:

- (2) *the program must require participants to attend treatment and satisfy all treatment program requirements for at least twelve consecutive months*
- (3) The program must require the participant to attend:
 - (a) A minimum of twenty-six consecutive weekly same gender group sessions, followed by:
 - (b) Monthly sessions with the treatment provider until the twelve-month period is complete. (emphasis added)

The rules adopted in WAC 388-60 establish that the trial court had the authority to order Bullis to *participate* in a treatment program and that in order to comply with WAC 388-60, the program “must” require a court-ordered client to attend treatment and satisfy all program requirements for a minimum of 12 months. RCW 388-60-0255(2).

The provisions of the order were clear: he was ordered to participate in treatment or counseling that complies with WAC 388-60 AND to submit to evaluation within 30 days. The Declaration of Jonathan M. Bullis in Response to Petitioner’s Petition for Renewal of Order of Protection states that he was not enrolled in the domestic violence treatment program. CP 12. The “Domestic Violence Evaluation”

performed by STOP also clearly indicates that Bullis was “not enrolled” and therefore never participated in the program. CP 65.

The trial court properly denied the Motion for Revision when 1) the trial court was required to renew the order of protection under RCW 26.50.060(3); 2) the trial court had the authority to order participation in treatment; and 3) there was substantial evidence to support the trial court’s finding that Bullis failed to comply with the Order for Protection. Therefore, trial court did not err as a matter of law by denying Bullis’ Motion for Revision.

3. The Trial Judge’s Statements were not Evidence of Actual or Apparent Bias When He Properly Determined that STOP’s evaluation did not comply with WAC 388-60 and Bullis did not Meet His Burden.

Washington CR 59 sets out the grounds on which a Motion for Reconsideration may be requested. According to Bullis’ Motion for Reconsideration, the basis of his request for reconsideration was “(1) Irregularity in the proceedings of the court, jury or adverse party, or any other of the court, abuse of discretion, by which the party was prevented from having a fair trial.” CP 100. Bullis claims under CR 59(a)(1), that he was denied a fair trial due to the irregularity of a statement made by Judge Christine Schaller at the May 8, 2015, hearing on the Motion for Revision. CP 106. Judge Schaller stated “And Frankly, a treatment agency, when a

court has found domestic violence, they bring them in – and I recognize that STOP might be different, and perhaps that’s why he went to STOP, because he thought he could get an assessment that didn’t require treatment.” RP 8 (May 8, 2015). Bullis argues that this statement is evidence of bias or prejudice under the “Appearance of Fairness Doctrine.”

a. Bullis Fails to Identify the Basic Components of Due Process and Therefore the Issue Should Not Be Addressed by this Court.

Underlying the Appearance of Fairness Doctrine is ultimately the Constitutional guarantee of Due Process. However, Bullis fails to identify the basic components of a due process. Therefore, the issue should not be addressed by this court. *Meyer v. Univ. of Wash.*, 105 Wn.2d 847, 855, 719 P.2d 98 (1986) (“naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion”)(quoting *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970)); *Holland v. City of Tacoma*, 90 Wn. App. 533, 537-38, 954 P.2d 290 (1998).

b. Bullis’ Appearance of Fairness Claim does not Contain Evidence of Actual or Potential Bias.

The Appearance of Fairness doctrine provides that a judicial proceeding is valid only if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial and neutral hearing. See *State v. Ladenburg*, 67 Wn. App. 749, 754-55, 840 P.2d 228

(1992), *abrogated on other grounds by State v. Finch*, 137 Wn.2d 792, 975 P.2d 967 (1999). A party alleging judicial bias must present evidence of actual or potential bias. *State v. Post*, 118 Wn.2d 596, 618, 619 n. 8, 826 P.2d 172, 837 P.2d 599 (1992). Without evidence of actual or potential bias, an appearance of fairness claim cannot succeed and is without merit. *Id.* The Court has established an objective test to determine if a judge's impartiality might reasonably be questioned by a reasonable person who knows all the relevant facts. *In re Marriage of Davison*, 112 Wn. App. 251, 257, 48 P.3d 358 (2002).

Judge Schaller's statements were relevant facts related to whether Bullis would resume acts of domestic violence against Ayesh. The Court of Appeals, Division I, has held that blocking a renewal motion and modifying a permanent order are sufficiently similar to warrant the same standard. *Freeman v. Freeman*, 169 Wn.2d 664, 672, 239 P.3d 557 (2010). Bullis, the party attempting to block the renewal, bears the burden of proving by a preponderance of the evidence that he will not resume acts of domestic violence against Ayesh. *Id.* at 672-673. The Court in *Freeman* also adopted several factors to guide the courts in analyzing whether the preponderance of the evidence suggests a restrained party will commit a future act of domestic violence. *Id.* The Legislature has amended those

factors and codified them in RCW 26.50.130(3)(c). Relevant factors to the determination of whether Bullis met his burden included:

(ii) Whether the respondent has violated the terms of the protection order, and the time that was passed since the entry of the order;

...

(v) Whether the respondent has either acknowledged responsibility for the acts of domestic violence that resulted in entry of the protection order or successfully completed domestic violence perpetrator treatment or counseling since the protection order was entered.

Judge Schaller's statements regarding STOP were not biased but relevant to the determination of whether Bullis had failed to comply with the Order of Protection. Provided are relevant excerpts from the hearing:

"They didn't speak with the victim."

RP 6 (May 8, 2015)

"I just wanted to be clear that there should be contact with the victim in this case. But the order says that he is to do treatment as follows, domestic violence at a state-certified provider, and so I think that's the issue when I read this."

RP 7 (May 8, 2015)

"This is the court – this is an order for protection of domestic violence. The court found that Mr. Bullis engaged in an act or acts of domestic violence. Based upon the court's finding that there had been domestic violence, the court said, because there's domestic violence, you need to have treatment. And frankly, a treatment agency, when a court has found domestic violence, they bring them in – and I recognize STOP might be different, and perhaps that's why he went to STOP, because he thought he could get an assessment that didn't require treatment.

But this order is clear on its face, that he was to do treatment, and that's because the court found he had committed an act of domestic violence.

RP 7-8 (May 8, 2015)

...

In this case there's no question. There was a finding of domestic violence. And once there's a finding of domestic violence, this court regularly orders that the perpetrator of the domestic violence complete treatment, and that is because that is appropriate under WAC.

RP 9 (May 8, 2015)

Judge Schaller' statements supported his finding that Bullis had violated the terms of the protection order. STOP had failed to comply with WAC 388-60 and therefore did not constitute counseling at a "State-certified provider that provides current WAC compliant treatment." CP 57. Judge Schaller found that while STOP may be a State-certified provider, STOP did not provide current WAC compliant treatment.

In order for a domestic violence perpetrator treatment program to be approved under RCW 26.50.150 or to provide current WAC compliant treatment, the treatment must comply with WAC 388-60-0035 which requires:

All programs providing domestic violence perpetrator treatment services must:

- (1) Be certified by the department; **and**
- (2) Comply with the standards outlined in this chapter." (emphasis added)

STOP did not provide current WAC compliant treatment because it failed to comply with the standards outlined in WAC 388-60.

WAC 388-60-0165 sets out 19 different criteria the program is required to obtain during the intake interview, including access to the victim. WAC 388-60-00165(2)(o). Several of those criteria were not obtained and STOP failed to access the victim. CP 63. Ayesh testified at the renewal hearing on February 27, 2015, that she had not been contacted by or received any information from any domestic violence treatment provider since the original order.

STOP also failed to notify Ayesh within fourteen days of Bullis being accepted or denied. WAC 388-60-0065(2)(a). STOP failed to focus its "Recommended Treatment Plan" on ending Bullis' physical, sexual or psychological abuse. WAC 388-60-0045(1). STOP failed to hold Bullis accountable for the abuse that occurred. WAC 388-60-0045(2)(a). STOP also recommended, "[w]e feel that it would best benefit Mr. Bullis if he continued with his mental Health Counseling and continue taking his medication..." in direct contradiction to WAC 388-60-0095(4)(b). WAC 388-60-0095(4)(b) strictly regulates additional forms of counseling and specifically states, "...this therapy may not take the place of domestic violence perpetrator treatment session. CP 65.

While STOP may be a State-certified domestic violence perpetrator treatment program, the program failed to comply with the standards outlined in WAC 388-60. STOP's failure to comply with the WAC 388-60 was relevant to whether Bullis had failed to comply with the Order. The Court therefore was not showing prejudice or bias against Bullis' treatment program. Rather, he was properly determining whether Bullis had complied with the order because it was a relevant to the determination of whether Bullis had met his burden.

Bullis' appearance of fairness claim does not contain evidence of actual or potential bias of the judge toward him. Therefore, his appearance of fairness claim is without merit.

4. The Trial Court did not deny Procedural or Substantive Due Process when Bullis Failed to Obtain a transcript of the Hearing for the Motion for Revision.

Bullis filed a Motion for Reconsideration on May 18, 2015, alleging that he had contacted the clerk of the Court twice, on May 11 and May 15, 2015, to obtain a transcript of the Motion for Revision hearing conducted on May 8, 2015. CP 108. Bullis stated in his brief that he obtained the transcript on May 22, 2015. The trial court's Order Denying the Motion for Reconsideration was not entered until June 16, 2015. CP 181. Bullis had sufficient time to file an Amended Motion for Reconsideration once he received the transcript on May 22, 2015. He

failed to do so despite having filed an Amended Motion for Reconsideration on May 19, 2015. Bullis had sufficient time to Amend his Motion before the trial court's order.

a. Bullis Fails to Identify the Basic Components of Due Process and Therefore the Issue Should Not Be Addressed by this Court.

Underlying the Appearance of Fairness Doctrine is ultimately the Constitutional guarantee of Due Process. However, Bullis fails to identify the basic components of a due process. Therefore, the issue should not be addressed by this court. *Meyer v. Univ. of Wash.*, 105 Wn.2d 847, 855, 719 P.2d 98 (1986) (“naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion”)(quoting *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970)); *Holland v. City of Tacoma*, 90 Wn .App. 533, 537-38, 954 P.2d 290 (1998).

b. Bullis fails to Argue How Declaration of Sharon McMackin would Change the Trial Court's Determination.

Bullis failed to argue in his Motion for Reconsideration or his Appellant's Brief how the Declaration from Sharon McMackin would change the trial court's determination to renew the order for protection and, therefore this Court should not consider it. *Fishburn v. Pierce Planning & Land Servcs. Dep't*, 161 Wn. App. 452, 473, 250 P.3d 146 (2011); *Bohn v. Cody*, 119 Wn.2d 357, 368, 832 P.2d 71 (1992) (Appellate Court will not consider inadequately briefed argument); *Cowiche Canyon*

Conservancy v. Bosely, 118 Wn.2d 801, 809, 828 P.2d 249 (1992)

(argument unsupported by citation to the record or authority will not be considered; RAP 10.3(a)(6).

c. Any Error by the Trial Court for Failing to Timely Provide the Transcript was Harmless Error.

Finally, Bullis filed a Declaration from Sharon McMackin on March 8, 2016, in response to Ayesh's Petition for renewal of the protection order. Despite receiving the Declaration, the Court again renewed the Order for Protection on the grounds that Ayesh was still in fear and Bullis had still failed to comply with the Protection Order filed on February 28, 2014, by refusing to "participate" in court ordered treatment or counseling that complies with WAC 388-60. The Renewal for Order of Protection was entered on March 11, 2016. Therefore, any error in not timely providing the transcript was harmless error as the Declaration of Sharon McMackin did not change the determination of the trial court.

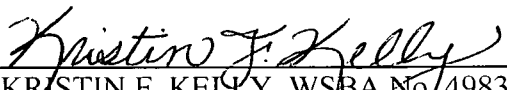
E. CONCLUSION

For the reasons stated above, this Court should affirm the trial Court's Renewal of the Order for Protection, affirm the trial court's Order

Denying Motion for Revision and Affirm the trial court's Order
Denying the Motion for Reconsideration.

Dated this 4th day of April, 2016.

Respectfully submitted,


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Attorneys for Respondent

FILED
COURT OF APPEALS
DIVISION II

2016 APR -4 PM 1:38

STATE OF WASHINGTON

BY _____
DEPUTY

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

In re:

ALLYAH JASEM SALIM AYESH,

Petitioner,

and

JONATHAN MICHAEL BULLIS,

Respondent.

CASE NO. 47794-7-II

CERTIFICATE OF SERVICE

I, Angela Hyde, hereby declare as follows:


1. I am over the age of 18 years and not a party to this action.
2. I am a paralegal at the Law Offices of Natalie de Maar and my business address is 9 Lake Bellevue Drive, Bellevue, WA 98005.
3. On the date below, I caused to be delivered **Brief of Respondent** and this **Certificate of Service** to the parties below via legal messenger delivery.

DELIVERED TO:

Alana Bullis, JD, MBA
Attorney for Respondent
1911 Nelson Street
DuPont, WA 98327

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Bellevue, Washington on this 4th day of April, 2016.


Angela Hyde