Supreme Court No. 95798-3

COA No. 350479-III

SUPREME COURT OF THE STATE OF WASHINGTON

ESTATE OF DAVID WHEAT BY TENA M. WHEAT, in her capacity as Personal Representative of the Estate, et al.,

Plaintiffs/Petitioners,

v.

FAIRWOOD PARK HOMEOWNERS ASSOCIATION, a Washington Corporation; FAIRWOOD PARK I HOMEOWNERS ASSOCIATION, a Washington Corporation; SPOKANE COUNTY; SPOKANE COUNTY UTILITIES DEPARTMENT; and SPOKANE COUNTY PUBLIC WORKS DEPARTMENT,

Defendants/Respondents.

RESPONDENTS FAIRWOOD PARK HOMEOWNERS ASSOCIATION and FAIRWOOD PARK I HOMEOWNERS ASSOCIATION'S ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENTS

Respondents Fairwood Park Homeowners Association and Fairwood Park I Homeowners Association (collectively, "Fairwood HOA" or "the HOA") are collectively the homeowner's association for the residents of Fairwood Park, a housing development in north Spokane, Washington.

II. INTRODUCTION

David Wheat was killed when he drove into a well-marked metal gate while driving his golf cart on a private road owned by Fairwood HOA. The trial court dismissed the claims of Petitioners (hereinafter, "the Estate") against the HOA and Spokane County upon finding that Wheat was a trespasser, or, at most, a licensee, and neither the HOA nor the County breached a duty of care to Wheat. After hearing oral argument, the Court of Appeals affirmed in an unpublished decision. This Court should deny the Estate's Petition for Review because the Court of Appeals' *Wheat* decision is not contrary to cases of either this Court or the Court of Appeals.

III. COUNTERSTATEMENT OF THE CASE

Fairwood HOA is the homeowner's association for the residents of Fairwood Park, a housing development in north Spokane. One of the

amenities operated by the HOA, for the exclusive benefit of its residents and their guests, is a swimming pool and park. *See* CP at 46, 53, & 71. A private road accesses a parking lot that residents can use when visiting the swimming pool and park. CP at 48.

The private access road connects to other private roads at points east and west. CP at 60. To the west is a private road within another private housing development. *Id.*; CP at 512. To the east is Fairwood Drive, a road within the Fairwood Park subdivision. CP at 60. Gates limit access at both entrances of the access road. CP at 69-70. Mr. Wheat suffered fatal injuries when he came into contact with the east gate while driving on the HOA's private access road. Prior to this accident, HOA President Robert Allen knew of no other incidents or injuries associated with the east gate. CP at 513.

On the day of the accident, Mr. Wheat was returning from golfing at the Spokane Country Club. Mr. Wheat was operating a street-legal golf cart, CP at 77-78, and he used the HOA's private access road as a shortcut from the Country Club to his residence located outside Fairwood Park, CP at 81, 86. Wheat was an avid golfer and his widow estimated that Wheat had used the HOA's private access road some 400 times prior to the accident. CP at 89. Wheat was never a member of Fairwood HOA and no

one from the HOA gave Wheat permission to use the road. CP at 52-53, 81, 87.

The access road is the private property of Fairwood HOA. CP at 55-57. To make this clear, the HOA affixed a double-sided sign on the east gate, visible when approaching the gate from either direction, that reads, inter alia: "Private Property," "Homeowners Only," and "No Trespassing." Also attached to the east gate, on the gate's posts on both sides of the access road, are two reflective "slow, children playing" signs. CP 54 & 380.

Beyond the fact that the private access road is gated at both ends and is marked with a conspicuous sign that reads, inter alia, "Private Property," "Homeowners Only," and "No Trespassing," other indicia suggests that the road is not for public use. First, to access the road, a traveler would have to go up a driveway curb and across a sidewalk from Fairwood Drive. CP at 511. Second, the access road itself is narrower than public streets, contains two speed bumps, and is not bordered by sidewalks, driveways, or mailboxes. CP at 511-12. Third, there are no stop signs at either end of the access road. CP at 512. Finally, more than any other kind of road, the access road resembles a private driveway. *E.g.*, CP at 60. To further block unauthorized users, the HOA placed rocks around

the poles of the east gates to the sides of the access road. CP at 48. This was done to prevent vehicles, such as golf carts, from driving around the gate when the gate was locked. *Id.*

Based on the undisputed facts, which were viewed in the light most favorable to the Estate, the trial court concluded that Wheat was a trespasser or, at most, a licensee, and the HOA did not breach a duty of care owed to trespassers or licensees. The Court of Appeals affirmed. *See Estate of Wheat v. Fairwood Park Homeowners Ass'n*, 2018 WL 1641017 (Wn. App., Div. III, Apr. 5, 2018).

IV. COURT OF APPEALS' DECISION

The Court of Appeals' *Wheat* decision begins by discussing the duties landowners owe to people who enter their land, depending on their status—invitee, licensee, or trespasser. *Wheat*, 2018 WL 1641017 at *1-3. The Court of Appeals analyzed the possible duties owed by the HOA to Wheat, and then the possible duties owed by Spokane County. *Id.* at *3-5.

Regarding the HOA, the Court of Appeals first concluded that Wheat "was not a business invitee" because he "was not invited on the HOA's property by an HOA member for any HOA purpose." *Id.* at *3. The Court of Appeals next found that Wheat "was probably a trespasser." *Id.* And, viewing the facts in the light most favorable to the Estate, the

HOA did not breach a duty owed to a trespasser because it "had no reason to know that unlocked or unsecured gates presented a high probability of injury to another." *Id.*

The Court of Appeals then analyzed the Estate's two arguments in support of its contention that the HOA owed a duty higher than the duty owed a trespasser. *Id.* at *3-4. In that regard, the Estate argued (1) the HOA owed Wheat a duty of reasonable care by virtue of its ownership of an "apparent public road"; and, (2) Wheat was a licensee by acquiescence. *Id.*

Rejecting the first argument, the Court of Appeals found that reasonable minds could not disagree that the HOA did not negligently mislead Wheat into believing the HOA's access road was a public road given the presence of gates at both ends, a no trespassing sign, and "plain visual cues" distinguishing the access road from other (public) roads in the neighborhood. *Id.* at *3. Rejecting the second argument, the Court of Appeals stated that even if unobjected use ripened into a license to use the road, the Estate did not present sufficient evidence for a reasonable trier of fact to find the HOA liable to licensees. *Id.* This is because Wheat's accident was "highly unusual," and the condition of the land (the gate arm

in the roadway) presented only a "remote risk of harm to licensees . . . not an *unreasonable* risk of harm." *Id.* (emphasis in original).

V. COUNTERSTATEMENT OF ISSUES

Whether the Court of Appeals' *Wheat* decision conflicts with an opinion of this Court or a published opinion of the Court of Appeals when the *Wheat* Court of Appeals:

A. Implicitly concluded that Wheat was not an invitee by virtue of the public's (alleged) historical use of the access road.

B. Did not distinguish between Wheat as a public invitee versus a business invitee, and the Estate did not argue this distinction, and this distinction does not affect the Court's ultimate disposition of this case.

C. Found that, based on the facts of this case, the HOA did not negligently mislead Wheat into thinking that its private access road was a public road.

D. Determined that the HOA did not breach a duty to Wheat as a licensee when the risk of harm posed by the east gate was "unusual" and "remote."

VI. STANDARD OF REVIEW

A petition for review will be accepted by the Supreme Court only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). The Estate seeks review only under RAP 13.4(b)(1) and (2), Petition at 4-5, and has therefore waived any argument that the issues presented in their Petition involve a significant question of constitutional law or an issue of substantial public interest. RAP 13.4(b)(3) and (4).

VII. ARGUMENT

A. The Court of Appeals' Finding that Wheat Was Not an Invitee is Not in Conflict with Opinions of This Court or the Court of Appeals.

1. The Court of Appeals' finding that Wheat was not an invitee does not conflict with Hanson v. Spokane Valley Land & Water Co., *58 Wash. 6, 107 P. 863 (1910).*

The Estate argues that *Wheat* conflicts with *Hanson v. Spokane Valley Land & Water Co.,* 58 Wash. 6, 107 P. 863 (1910). Petition at 6-8. According to the Estate, *Hanson* compels the conclusion that Wheat was

an invitee because he had an implied invitation to use the access road, which existed because of a history of public use. *Id.*

Hanson is distinguishable from this case, and *Wheat* is not in conflict with *Hanson*. *Hanson* involved "a well-defined and traveled private road," which the public travelled upon "generally, constantly, and daily." 58 Wash. at 7. In that case, the landowner did more than acquiesce to the public's use—the court found that public use was "the intention or design for which the way was adapted or allowed to be used." *Id.* at 8. Under these unique circumstances, this Court found the plaintiff to be an invitee.

Subsequent decisions of this Court, however, limit *Hanson*'s holding to the facts presented in that case. *E.g.*, *Garner v. Pac. Coast Coal Co.*, 3 Wn.2d 143, 149, 100 P.2d 32 (1940); *Dotson v. Haddock*, 46 Wn.2d 52, 56, 278 P.2d 338 (1955). In *Garner*, the Court noted, "It is apparent from the [*Hanson*] opinion . . . that the court felt that, under the **peculiar combination of circumstances**, the plaintiff should be permitted to recover." 3 Wn.2d at 149 (emphasis added). The Court further recognized that "[t]he facts [presented in *Hanson*] undoubtedly presented what is often termed 'a hard case,' and in order to sustain a cause of action, the court was seemingly driven to the **extremity of holding**, '**under the facts**

alleged,' that the plaintiff was an invitee." *Id.* (emphasis added). The *Garner* Court declined to apply *Hanson* beyond the facts of that case, stating that *Hanson* was "out of line" and not "wholly consonant" with the Court's later decisions. *Id.* at 148, 150.

Wheat does not present the "peculiar combination of circumstances" that were present in *Hanson.* Here, the access road is intended to be used by HOA owners, not the general public. This was made obvious by the gates at both the east and west ends of the road, the "No Trespassing" sign on the east gate, and the rocks placed on either side of the gate. Unlike *Hanson*, there is no evidence in this case that public use was "the intention or design for which [Fairwood HOA's access road] was adapted or allowed to be used." Further, in opposition to the HOA's Motion for Summary Judgment, the Estate presented only anecdotal evidence that pedestrians, bicyclists, and cross-country teams used the access road. Moreover, the Estate put forth no evidence that these individuals were not members of the HOA or guests of such members.[1] Thus, this is not evidence of "general, constant, and daily" *public* use as

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[1] Fairwood HOA disagrees with the Court of Appeals' characterization of the evidence as supporting that "Mr. Wheat was one of **many** non-HOA members who used the road." *Wheat*, 2018 WL 1641017 at *2 (emphasis added). However, this error is harmless because the Court of Appeals implied (by omission) that a history of public use does not change the status of a person using the property to that of an invitee.

was the case in *Hanson*. The HOA never intended, and in fact actively discouraged, public use. *Wheat* is not in conflict with *Hanson*.

The Estate argues there may be a conflict between *Hanson* and the Court of Appeals' decision in *Sikking v. Natl's R.R. Passenger Corp.*, 52 Wn. App. 246, 758 P.2d 1003 (1988), in which the Court of Appeals declined to adopt the constant trespasser doctrine. Petition at 7-8. The Court of Appeals' rejection of the constant trespasser doctrine in *Sikking* is in accord with the post-*Hanson* decisions of this Court that limit *Hanson* to its "peculiar" facts. *E.g.*, *Garner*. Moreover, any conflict between *Hanson* and *Sikking* is not grounds for review under RAP 13.4(b).

2. *The Court of Appeals' finding that Wheat was not an invitee does not conflict with* McKinnon v. Washington Fed. Sav. & Loan Ass'n, *68 Wn.2d 644, 414 P.2d 773 (1966).*

The Estate argues that *Wheat* conflicts with *McKinnon v. Washington Fed. Sav. & Loan Ass'n,* 68 Wn.2d 644, 414 P.2d 773 (1966), in which the Court noted a distinction between public and business invitees. Petition at 8-11. The Estate argues that the Court of Appeals erred by discussing Wheat as a possible "business invitee" without discussing his status as a potential "public invitee." Petition at 10-11.

Preliminarily, as candidly noted by the Estate, the Estate never argued a distinction between Wheat's potential status as a public or

business invitee. Petition at 10. The Estate has thus waived any challenge to the Court of Appeals' failure to address the public-business invitee distinction.

If the Court were to reach the merits of the Estate's argument, the Estate fails to show how the Court of Appeal's brief discussion of Wheat's status as a business invitee conflicts with *McKinnon* or any other opinion of this Court or the Court of Appeals. The Court of Appeals concluded that Wheat was "probably a trespasser," or, possibly, a licensee. *Wheat*, 2018 WL 1641017 at *3. Therefore, there was no need to analyze Wheat's possible status as an invitee, public or business. Moreover, as noted by the Court of Appeals, it was undisputed that no HOA member had ever invited Wheat onto the HOA's property for any HOA purpose. *Id. Cf. Botka v. Estate of Hoerr*, 105 Wn. App. 974, 983, 21 P.3d 723 (2001) ("An invitee is one who is expressly or impliedly **invited** on the premises of another.") (Emphasis added).

The fact that the Court of Appeals glossed over the business-public invitee distinction, when the Estate did not argue there was a distinction and when the distinction was irrelevant to the Court of Appeals' decision, is not an issue that presents a conflict between this case and an opinion of this Court or the Court of Appeals.

3. *The Court of Appeals' finding that Wheat was not an invitee does not conflict with* Rogers v. Bray, *16 Wn. App. 494, 557 P.2d 28 (1977).*

The Estate argues that the Court of Appeals' decision conflicts with *Rogers v. Bray*, 16 Wn. App. 494, 557 P.2d 28 (1977), which held that a question of fact existed regarding whether a property owner impliedly invited a motorcyclist to use the owner's private driveway. Petition at 11-16. This claim is premised on a theory found at *Restatement (Second) of Torts* § 367, which states that the owner of a private road may owe a duty of reasonable care to motorists when the owner misleads them into believing that they are traveling on a road commonly used by the public.

Rogers is distinguishable from the case at bar and does not present a conflict between the *Wheat* decision and an opinion of the Court of Appeals justifying discretionary review. In *Rogers*, a motorcyclist was injured when, while driving on a private driveway, he struck a chain hung across the road by the road's owner. 16 Wn. App. at 495. This chain was hung 150 feet from the spot where the driveway branched off from Red Marble Road[2]. *Id.* From the intersection of the two roads, the driveway

[2] Red Marble Road was a private road, but the owners did not dispute that it was used by the general public. *Rogers*, 16 Wn. App. at 494. For all intents and purposes, Red Marble Road was a public highway.

appeared well used and no signage or chains were visible. *Id.* The owner had posted no trespassing signs on the chain and on one of the trees supporting the chain, but no signs alerted a driver on Red Marble Road that the intersecting driveway was private property. *Id.* at 495. The Court of Appeals found summary judgment inappropriate in that case because the road's owner knew that motorcyclists used Red Marble Road, the private driveway appeared well used, and there was no sign warning travelers that the driveway was not for public use. *Id.* Under these facts, the Court of Appeals found that reasonable minds could infer that the motorcyclist was "negligently misled into believing that he was traveling on a road commonly used by the public." *Id.* at 495-96.

In this case, in contrast to *Rogers*, and viewing the evidence in the light most favorable to the Estate, reasonable minds could not disagree that Fairwood HOA's access road cannot be confused with a public highway. In *Rogers*, a motorist driving on Red Marble Road turning onto the private driveway was unable to distinguish the two roads: they both appeared as well travelled roads and no signs or structures existed to indicate that the driveway was, in fact, private. In this case, however, a motorist approaching the HOA's access road from either its east or west ends would observe a number of "visual cues" that would put the motorist

on alert that the access road was private. *See Wheat*, 2018 WL 1641017 at *3; *see also* Counterstatement of Facts, *supra*, pg. 3-4. Nothing about the HOA's access road would mislead a motorist into thinking that the road was a public highway.

The case at bar is analogous to *Zuniga v. Pay Less*, 82 Wn. App. 12, 13-14, 917 P.2d 584 (1996), in which the Court of Appeals affirmed summary judgment dismissal of a claim alleging an implied invitation based on *Restatement (Second) of Torts* § 367. In that case, as in this one, the physical characteristics of the road area made it so no reasonable person would think that the roadway was a public highway. *Id.* at 15.

The Estate argues that *Zuniga* should not control because in *Zuniga*, the plaintiff admitted that the road was not a public street, and there is "no comparable admission in this case." Petition at 15, n.9. But there is comparable evidence in this case. According to Wheat's widow, Wheat had passed the east gate and the sign many, perhaps upwards of 400, times. CP at 89. Wheat was intimately familiar with the signage and characteristics of the access road that distinguished it from a public highway. And prior to his death, Wheat maintained a gate identical to Fairwood HOA's east gate at his place of business. CP at 87, 142. Although it was not possible for Wheat to admit he knew that the HOA's

access road was not a public street (like the plaintiff in *Zuniga*) there is overwhelming evidence to suggest that he did.

In conclusion, *Wheat* does not conflict with an opinion of the Court of Appeals. To the contrary, *Wheat* is consistent with Court of Appeals precedent as it is analogous to *Zuniga* and distinguishable from *Rogers*.

B. The Court of Appeals' Conclusion that the HOA Did Not Breach a Duty to Wheat as a Licensee Does Not Conflict with Opinions of This Court or the Court of Appeals.

The Estate takes issue with the Court of Appeals' statement that Wheat's accident was "highly unusual," which the Court made in discussing whether the HOA breached a duty to Wheat as a licensee. Petition at 16 – 18. The Estate argues that the Court of Appeals' treatment of the "unusualness" of the accident went beyond the inquiry into whether the "risk of harm" was "unreasonable"[3] and involves the "improper application of the concept of foreseeability." *Id.* at 16 (*citing Winsor v. Smart's Auto Freight Co.*, 25 Wn.2d 383, 171 P.2d 251 (1946)).

The Court of Appeals' *Wheat* decision is not contrary to *Winsor*. In *Winsor*, plaintiff's decedent was involved in connecting a large truck to

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[3] The first element in determining whether a possessor of land owes a duty to a licensee is whether "the possessor knows or has reason to know of the condition and should realize that it involves an **unreasonable risk of harm** to such licensees, and should expect that they will not discover or realize the danger[.]" *Memel v. Reimer*, 85 Wn.2d 685, 538 P.2d 517 (1975) (*citing Restatement (Second) of Torts*, § 342(a) (1965)) (emphasis added).

a large trailer when he was pinned between the rear of the truck and the trailer and killed. 25 Wn.2d at 384. The testimony presented in defendant's "motion for nonsuit" established that the decedent, who was on the first day of a new job, had unexpectedly entered the "danger zone" between the truck and a trailer where the truck driver could not see him. *Id.* at 386. The trial court dismissed the case on defendant's "motion for nonsuit" (finding defendant had acted with reasonable care and the decedent had entered the area unexpectedly) and this Court affirmed. *Id.* at 386, 390.

As noted by the Estate, the Court cited *Restatement of Torts* § 291, which stated:

> Where an act is one which a reasonable man would recognize as involving a risk of harm to another, the risk is unreasonable and the act is negligent if the risk is of such magnitude as to outweigh what the law regards as the utility of the act or of the particular manner in which it is done.

Winsor, 25 Wn.2d at 388. In weighing the magnitude of the risk versus the utility of the act in *Winsor*, this Court stated that the act of backing up the truck and attaching the trailer was "not unreasonable," but rather, "[t]he act was useful and necessary," and defendants were "following the established custom for coupling similar vehicles." *Id.* But the Court also noted that the risk of a person stepping into the "danger zone" between the

trailer and the truck (as the decedent did), was "relatively slight" and the truck driver had a "right to expect" that no one would enter the "danger zone." *Id.* at 389.

In this case, the Court of Appeals did not focus on the east gate's utility, but instead focused on the "unusualness" and "remoteness" of the risk of harm. The Court of Appeals defined the risk of harm narrowly (east gate slightly ajar, pointing into road) and broadly (east gate closed), noting that, under either configuration the risk of harm posed by the gate was minimal, and, thus, unreasonable. *Wheat*, 2018 WL 1641017 at *4. The remoteness and unusualness of a risk of harm is a basis to find the risk of harm "unreasonable." As this Court noted in *Winsor*, when the risk of harm is "relatively slight," and when one does not "expect" an injury to occur, a court can find a risk of harm "unreasonable." 25 Wn.2d at 389. Further, as stated by a leading commentator defining "risk of harm":

> Nearly all human acts, of course, carry some recognizable but **remote** possibility of harm to another . . . . Those against which the actor is required to take precautions are those which society, in general, considers sufficiently great to demand them. No man can be expected to guard against harm from events which **are not reasonably to be anticipated** at all, or are so **unlikely to occur** that the risk, although recognizable, would commonly be disregarded.

W. PAGE KEETON ET AL., PROSSER AND KEETON ON TORTS 170, § 31 (5th ed. 1978) (emphasis added). Thus, contrary to the Estate's argument,

Washington courts are permitted to define an "unreasonable risk of harm" in terms of whether the risk of harm is "unusual," "remote," "slight," or "expected." *Wheat*, *Winsor*, *supra.*

Finally, even if the Court of Appeals made some error in discussing whether the HOA breached a duty to Wheat as a licensee, such alleged error does not make *Wheat* conflict with a decision of this Court or a published opinion of the Court of Appeals. This is because the Court of Appeals' analysis of whether the HOA breached a duty to Wheat as a licensee is (1) an alternative finding that has no bearing on the Court's disposition of the case and is arguably dicta, and (2) founded on an assumption that the Estate's licensee-by-acquiescence theory is a valid theory of liability in Washington.

First, the Court of Appeals' discussion of breach of duty to a licensee is an alternative finding that is not central to the Court's affirmance of summary judgment dismissal. The Court of Appeals did not need to reach the issue of whether Wheat was a licensee because the Court initially determined that "Wheat was probably a trespasser." *Wheat*, 2018 WL 1641017 at *3. Because the Court's discussion of this issue has "no bearing" on the Court's ultimate decision, it is arguably dicta. *In re Marriage of Rideout*, 150 Wn.2d 337, 354, 77 P.3d 1174 (2003).

Second, in addressing the Estate's licensee-by-acquiescence theory, the Court of Appeals assumed, without deciding, that the Estate's argument was accurate, i.e., unobjected use of a private road ripens into a license to use the road. *See Wheat*, 2018 WL 1641017 at *4 ("[e]ven if [the Estate's license-by-acquiescence theory] were true[.]"). The Court of Appeals was forced to make this assumption because the proposition argued by the Estate is not established in Washington law. In support of its argument, the Estate cited a footnote from *Singleton v. Jackson*, 85 Wn. App. 835, 935 P.2d 644 (1997) (which cited a lengthy passage from Prosser and Keeton on the Law of Torts), and a case from Ohio, *Seeholzer v. Kellstone, Inc.*, 610 N.E.2d 594 (Ohio 1992). App. Br. at 30-32. The Estate could not cite to binding Washington case law that establishes that a landowner's acquiescence to another's use of a private road provides a license to use the road. The Court of Appeals was well within its discretion to save this question for another day because it could resolve *Wheat* on other grounds. The Court of Appeals decision to not answer this question does not create a conflict between *Wheat* and the decisions of this Court or published decisions of the Court of Appeals.

In sum, the Court of Appeals did not err in citing to the "unusualness" and "remoteness" of the risk of harm posed by the HOA's

gates in concluding that the condition did not present an "unreasonable risk of harm." Whether the risk of harm is great or slight, expected or unexpected, is relevant to whether a risk of harm is "unreasonable." And even if the Court of Appeals made some error defining the "risk of harm" in this case, the fact that this discussion is premised on an unprecedented legal theory and is an alternative finding makes it so the *Wheat* decision can be read in harmony with the opinions of this Court and the Court of Appeals.

VIII. CONCLUSION

For all of the reasons discussed herein, Fairwood HOA respectfully requests that Plaintiffs' Petition for Review be denied. Should Fairwood HOA be the substantially prevailing party, the HOA requests costs incurred in responding to the Estate's Petition for Review. RAP 14.2.

RESPECTFULLY SUBMITTED this 6th day of June, 2018.

PAINE HAMBLEN LLP

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that a true and accurate copy of the document to which this declaration is affixed was sent via regular mail, postage prepaid, on this day, to:

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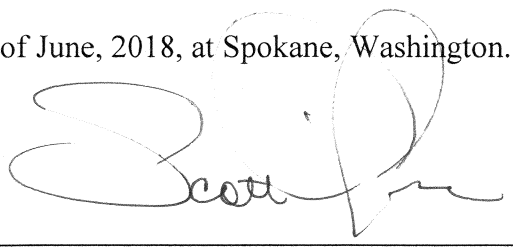

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