

Appeal No. 63728-2-I

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

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TRIMOBA, LLC, and BRIAN E. WHITESIDE, individually  
and the marital community comprised of BRIAN E.  
WHITESIDE and CYNTHIA A. WHITESIDE,

*Respondent*

v.

AWAKE CLINIC, LLC, and JON K. DECKER, individually  
and the marital community comprised of JON K. DECKER  
and TAN J. DECKER.

*Appellant*

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STATE OF WASHINGTON  
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**OPENING BRIEF OF APPELLANT**

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DIVISION ONE

JUL 16 2009

## TABLE OF CONTENTS

INTRODUCTION .....	5
ASSIGNMENTS OF ERROR .....	6
I. Order Denying Motion for Default for Invalid Service	
II. Order Denying Motion for Reconsider	
III. Order to Compel	
IV. Order for Continuance of Trial Date	
V. Final Judgment	
STATEMENT OF ISSUES .....	6
STATEMENT OF THE CASE .....	7
SUMMARY OF ARGUMENTS .....	9
ARGUMENTS .....	10
<b>I. Order for Default for Invalid Service</b> .....	10
A. Trimoba’s Falsified Declaration of Service on February 11, 2008 .....	10
B. No Record of Answer to Counterclaim with King County Superior Court Civil Docket on February 11, 2008 .....	10
C. Trimoba’s Letter Dated February 11, 2008 .....	11
D. Trimoba Never Provided Affidavits of Ms. Martin and the Server .....	11
E. Trimoba Willfully Deceived the Trial Court .....	12
F. Trimoba Never Refuted the Facts of February 11, 2008 Sewer Service and Fraud Allegation .....	12
<b>II. Order for Motion to Reconsider</b> .....	13
A. Trial Court Ruled on the Wrong Order Violating CR 59 .....	13
B. Decker Notified the Trial Court of Its Error .....	13

## TABLE OF CONTENTS

(continued)

<b>III. Order to Compel</b> .....	13
A. Trimoba Has Never Established How the Motion Was Properly Served .....	14
B. Notice of Deposition Was Not Timely Noticed .....	15
C. Motion to Compel Was Improperly Served .....	16
D. Trimoba Deliberately Delayed Serving Orders .....	17
E. Trimoba's Ex Parte Communication and Falsified Order .....	18
<b>IV. Order for Continuance of Trial Date</b> .....	20
A. Trimoba's Ex Parte Communication .....	21
B. Trimoba's Falsified Order .....	22
<b>V. Final Judgment</b> .....	24
A. Trimoba's Ex Parte Communications and Falsified Orders .....	24
B. Trimoba's Improper Motions .....	26
C. Trimoba's Repeated Refusal to Cooperate and Complete ADR .....	27
D. Counsels for Trimoba's Professional Misconduct .....	28
E. Trimoba's Noncompliance with Court Order Schedule .....	31
F. Trimoba's Violations of Federal and Civil Rules .....	32
<b>CONCLUSION</b> .....	34

## **TABLE OF CONTENTS**

(continued)

### **APPENDIX**

Appendix A	Declaration of Service Dated February 11, 2008 [Invalid Service]
Appendix B	King County Superior Court Civil Docket
Appendix C	Trimoba's Letter Dated February 11, 2008
Appendix D	Calendars
Appendix E	Orders to Compel
Appendix F	King County Superior Daily Calendar
Appendix G	Decker's Paid Subpoena Fees
Appendix H	Joint Statement of Evidence
Appendix I	Estimate Witness Examinations
Appendix J	Joint Confirmation of Trial Readiness
Appendix K	Orders for Continuance of Trial Date
Appendix L	Decker's ADR Letters
Appendix M	Department of Licensing Agreement
Appendix N	Affidavits of James Pitman
Appendix O	Trimoba's Claimed Damages, If Any, Are Incorrect

## INTRODUCTION

This opening brief by Appellant Decker is regarding Counsels for Trimoba and the trial court denying Decker's rights to proper due process and equal protection of the laws throughout the pendency of this case that have caused substantial prejudice to Decker. Counsels for Trimoba, Matthew R. Hansen and Daniel J. Oates from Graham & Dunn PC, filed meritless motions to dismiss and shorten time the day before the *rescheduled* June 15, 2009 trial date. Furthermore, Trimoba's motions violated KCLCR 7(b)(10), KCLCR 56, CR 5, CR 38, and CR 56 and gave Decker no time to respond.

Despite Trimoba's motions were improper and violated federal and civil rules, King County Superior Court Judge John P. Erlick granted Trimoba's motions violating KCLCR 7(b)(10)(D). Judge Erlick should not have considered and granted Trimoba's improper motions and defaulted Decker because pursuant to KCLCR 7(b)(10)(D) "*... the court will not rule on a motion to shorten time until the close of the next business day following filing of the motion (and service of the motion on the opposing party) to permit the opposing party to file a response*". Therefore, Judge Erlick did not provide the require time pursuant to KCLCR 7(b)(10)(D) before his ruling.

In addition, the trial court should not have considered Trimoba's improper motions because Trimoba's motions were filed *after* the Deadline for Hearing Dispositive Pretrial Motions of May 26, 2009 violating KCLCR 56 and CR 56. Furthermore, Counsels for Trimoba's repeated violations of not providing the required time to Decker have significantly prejudiced Decker.

Due to Trimoba's noncompliance with court order schedule and Judge Erlick granting Trimoba's improper motions, the trial court has (1) denied Decker's right to trial by jury despite Decker has requested and paid for jury; (2) prevented Decker's subpoenaed witnesses from testifying at trial; and (3) failed to provide proper due process and equal protection of the laws to Decker. Furthermore, the trial court facilitated Trimoba's ex parte communications and falsified orders; enabled Trimoba's noncompliance of court order schedule; denied all of Decker's motions without just cause; and granted all of Trimoba's improper motions show that the trial court never intended to provide Decker his right to a fair trial by jury.

#### **ASSIGNMENTS OF ERROR**

- I. Order Denying Motion for Default for Invalid Service
- II. Order Denying Motion for Reconsider
- III. Order to Compel
- IV. Order for Continuance of Trial Date
- V. Final Judgment

#### **STATEMENT OF ISSUES**

The trial court has the duty and responsibility to uphold Decker's *rights* to Fifth Amendment ("Amendment V") and Fourteenth Amendment ("Amendment XIV") of Section 1 to the United States Constitution:

- **Amendment V:** *"No person shall be ... deprived of life, liberty, or property, without due process of law ...."*
- **Amendment XIV of Section I:** *"... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".*

Decker has notified the trial court on May 5, 2009; June 12, 2009; and June 26, 2009 to provide proper due process and equal protection of the laws to Decker, but Decker's basic rights were denied throughout the pendency of this case. Furthermore, the trial court was informed of Counsels for Trimoba's repeated violations of federal and civil rules; *ex parte* communications and falsified orders; and defiance of court order schedule, but the trial court did not take any actions against Trimoba.

Due to Judge Erlick denying *pro se* Decker's rights to (1) trial by jury per Fed. R. Civ. P. 38; (2) allow Decker's subpoenaed witnesses to testify at trial per Fed. R. Civ. P. 45; (3) present Decker's admissible evidence at trial; and (4) have a fair trial as a citizen of United States of America, Decker's right to proper due process and equal protection of the laws pursuant to U.S. Constitution of Amendments V and XIV were deprived by the trial court.

#### **STATEMENT OF THE CASE**

Plaintiff Trimoba filed a frivolous lawsuit to retaliate against Defendant Decker *after* Trimoba, Landlord, was notified that Decker, Tenant, is exercising his remedy according to paragraph 21(g) of the Lease ("Default by Landlord") due to Trimoba's breach of lease and failure to cure its defaults. Decker has provided evidence (i.e. Decker's notices to Trimoba and subpoenaed witnesses) for this case regarding Trimoba's breach of lease and failure to cure its defaults to the trial court and Counsels for Trimoba (CP 78-81). Moreover, Trimoba's compliant only addresses events *after* Decker notified Trimoba of its Default by Landlord where Trimoba have deliberately avoided addressing Trimoba's breach of lease and failure to cure its defaults leading up to its complaint, which is an important aspect of this case. Furthermore, Decker was in

good standing with rent obligation when the keys to the Premises were returned to Trimoba with the Default by Landlord notice after Trimoba failed to cure its defaults.

After numerous written notices to Trimoba regarding Trimoba's repeated breach of lease and failure to cure its defaults, Trimoba continued to refuse to cure its defaults, in good faith, and showed no intention to comply with the Lease. As a result, Decker and his business were adversely affected by Trimoba's breach of lease and refusal to cure its defaults. Therefore, Decker exercised his last remedy according to paragraph 21(g) Default by Landlord of the Lease:

*If Landlord shall fail to perform any of its obligations when as due under this Lease (a "breach" or "default")...Tenant may at its option upon written notice if the default has a material and adverse effect upon Tenant's ability to operate its usual and regular business in the Premises, and Tenant has no other adequate remedy under this Lease or at law, declare the Term ended and vacate the Premises and be relieved from all further obligations under this Lease.*

This case involves Trimoba's breach of lease, fraud, discrimination, and defamation where a detailed counterclaim and crossclaim with specific dates and parties involved in claims against Trimoba, LLC, Brian E. Whiteside, and Cynthia A. Whiteside ("Trimoba") was filed on January 11, 2008 with King County Superior Court of State of Washington. Trimoba has never refuted the facts and merits of Decker's counterclaim and crossclaim. Furthermore, Decker's evidence that was provided to the trial court and Counsels for Trimoba would prove that Trimoba's complaint is frivolous and meritless (CP 78-81).

Due to Judge Erlick's prejudice against *pro se* Decker by not providing proper due process and equal protection of the laws, Decker was not able to present his admissible evidence for fraud against Brian E. Whiteside and Cynthia A. Whiteside, managing members of Trimoba, LLC. The evidence that will prove Brian E. Whiteside

and Cynthia A. Whiteside defrauded Decker for operating expense cost during Decker's tenancy are (1) Decker's letters dated February 2, 2007; February 12, 2007; March 13, 2007; and May 31, 2007 regarding Trimoba not providing services according to the Lease; (2) Brian E. Whiteside's letters dated January 9, 2007; February 5, 2007; and June 8, 2007 confirming no services were provided to Decker; (3) Brian E. Whiteside's letter dated June 8, 2007 stating Trimoba and his staff does not have access to the Premises during the tenancy; (4) testimony of Wade A. Rowley from Advanced Cleaning Services confirming Decker did not received services according to the Lease; (5) testimony from Acosta Sales and Marketing Co. ("Acosta") regarding shared operating expense; and (6) copies of cleaning contracts from Trimoba for Acosta and Decker. In fact, Trimoba has never refuted the facts and evidence of fraud in this case.

#### **SUMMARY OF ARGUMENTS**

Pursuant to U.S. Constitution of Amendments V and XIV, the trial court has failed to provide proper due process and equal protection of the laws to Decker and erred in (1) denying Decker's Motion for Default for Invalid Service when overwhelming evidence proved that Counsels for Trimoba committed sewer service and fraud on February 11, 2008; (2) denying Decker's Motion for Reconsideration where the trial court ruled on an order that was not requested for reconsideration and violated CR 59(b); (3) granting Trimoba's improper Motion to Compel without considering Decker's response dated May 21, 2009; and (4) granting Trimoba's improper motions to dismiss and shorten time that violated KCLCR 7, KCLCR 56, CR 5, and CR 38. Furthermore, Counsels for Trimoba's ex parte communications with the trial court and falsified orders to compel and continuance of trial date have caused substantial prejudice to Decker (Appendix E and K).

Superior Court Judge John P. Erlick granted all of Trimoba's improper motions and enabled Counsels for Trimoba's prejudice against Decker throughout the pendency of this case despite of Counsels for Trimoba's willful repeated (1) violations of federal and civil rules; (2) noncompliance with court order schedule; (3) professional misconduct; (4) ex parte communications with trial court and falsified orders (5); defiance of court orders; and (6) illegal delay of trial dates to eliminate Decker's jury trial and subpoenaed witnesses to testify at trial. Therefore, the trial court has failed to provide proper due process and equal protection of the laws to Decker.

## **ARGUMENTS**

### **I. ORDER FOR DEFAULT FOR INVALID SERVICE**

Decker has provided significant evidence to the trial court regarding invalid service or sewer service and fraud committed by Counsels for Trimoba, Matthew R. Hansen and Daniel J. Oates, on February 11, 2008 (CP 5-9, CP 34, CP 56).

#### **A. Trimoba's Falsified Declaration of Service on February 11, 2008.**

Counsels for Trimoba filed a falsified Declaration of Service on February 11, 2008 that was signed by Ms. Elizabeth G. Martin stating an Answer to Counterclaim and Third Party Complaint ("Answer to Counterclaim") was served "VIA HAND DELIVERY" to Decker on "February 11, 2008" (Appendix A). However, Decker never received this Declaration of Service or an Answer to Counterclaim on February 11, 2008.

#### **B. No Record of Answer to Counterclaim with Superior Court Civil**

**Docket on February 11, 2008.** King County Superior Court Civil Docket *only* has record of Declaration of Service on February 11, 2008, but there is no record of Answer to Counterclaim on February 11, 2008 (Appendix B).

Moreover, Decker never received an Answer to Counterclaim from Trimoba on February 11, 2008. Therefore, Counsels for Trimoba committed sewer service for filing a falsified Declaration of Service claiming an Answer to Counterclaim and this Declaration of Service was hand delivered to Decker on February 11, 2008.

**C. Trimoba's Letter Dated February 11, 2008.** Counsels for Trimoba falsified pleadings regarding sewer service and fraud allegation committed on February 11, 2008 when in fact Counsels for Trimoba attached a letter with their response dated April 17, 2009 stating an Answer to Counterclaim was served "VIA HAND DELIVERY" on "February 11, 2008" confirming the sewer service and fraud allegation (Appendix C). Moreover, Decker never received the February 11, 2008 letter until it was attached with Trimoba's response dated April 17, 2009. Trimoba's letter further proved that Counsels for Trimoba have committed sewer service and fraud on February 11, 2008 (CP 56-57).

**D. Trimoba Never Provided Affidavits of Ms. Martin and the Server.** Counsels for Trimoba never provided any sworn statements or affidavits from Ms. Elizabeth G. Martin and the server who supposedly served the Answer to Counterclaim by hand on February 11, 2008 to defend the sewer service and fraud allegation. Due to Counsels for Trimoba did not provide affidavits from Ms. Martin and the server, Trimoba has committed sewer service and fraud on February 11, 2008.

**E. Trimoba Willfully Deceived the Trial Court.** Counsels for Trimoba willfully substituted a Declaration of Service dated February 20, 2008 that was for service by mail and signed by Ms. Marlene E. Moseler to the deceived the trial court, instead of addressing the sewer service and fraud allegation for the Declaration of Service dated February 11, 2008 that was for service by hand delivery and signed by Ms. Elizabeth G. Martin. Due to Counsels for Trimoba deceived the trial court with the wrong Declaration of Service, the trial has court erred in ruling the motion for default for invalid service.

**F. Trimoba Never Refuted the Facts of February 11, 2008 Sewer Service and Fraud Allegation.** Trimoba has never refuted the facts and evidence regarding February 11, 2008 sewer service and fraud allegation. In fact, Counsels for Trimoba refused to address the Declaration of Service dated February 11, 2008 because Trimoba knows that no Answer to Counterclaim was hand delivered to Decker on February 11, 2008.

Counsels for Trimoba committed sewer service by filing a falsified Declaration of Service with King County Superior Court Clerk on February 11, 2008, which is considered fraud and violated CR 5 (CP 56-57). Decker has provided significant evidence to the trial court regarding Trimoba committed sewer service and fraud on February 11, 2008, but Judge Erlick denied Decker's Motion for Default for Invalid Service. Due to overwhelming evidence proved that Counsels for Trimoba committed sewer service and fraud, Decker's Motion for Default for Invalid Service should have been granted to dismiss Trimoba's complaint with prejudice on March 13, 2009.

## II. ORDER FOR MOTION TO RECONSIDER

Due to significant evidence confirming Counsels for Trimoba committed invalid service or sewer service and fraud on February 11, 2008 (see ¶ I of this brief), Decker filed a motion for reconsideration with the trial court for further review of the facts, evidence, and possible error on the trial court's ruling. However, instead of ruling on the order that was requested for reconsideration regarding sewer service and fraud on February 11, 2008, Judge Erlick ruled on an order that was more than a year ago and was not the order that Decker requested to be reconsidered (CP 33-41). Judge Erlick's order denying motion to reconsider violated CR 59 because an order that is more than 30 days after the judgment cannot be reconsidered.

Judge Erlick did not take any action to correct the order and left the ruling with the order that was not requested for reconsideration even *after* Decker notified the trial court that the ruling was on a wrong order and violated CR 59. Due to Judge Erlick erred on the ruling and overwhelming evidence proved that Counsels for Trimoba committed sewer service and fraud, Decker's motion for reconsideration should have been granted to dismiss Trimoba's complaint with prejudice.

## III. ORDER TO COMPEL

Pursuant to CR 37(d)(1), a deposition cannot be taken due to Counsels for Trimoba's improper notice of deposition. However, Counsels for Trimoba continued to frivolously file pleadings without justifying with federal and civil rules of *how* the notice of deposition and motion to compel were properly served. Decker has addressed Trimoba's improper depositions at least five (5) times on April 14, 2009; April 20,

2009; April 21, 2009; May 5, 2009; and May 21, 2009, but Counsels for Trimoba continued to violate federal and civil rules and defied court order schedule (CP 50-74).

Furthermore, Counsels for Trimoba have never addressed how Trimoba's notices and motions were properly served with federal and civil rules. Despite Counsels for Trimoba repeatedly filed improper notices and motions; violated federal and civil rules; and defied court order schedule, Judge Erlick still granted Trimoba's improper motion to compel. As a result of Judge Erlick granting Trimoba's improper motion to compel for deposition in less than six (6) court days before trial, Decker has been substantially prejudiced and had been denied the opportunity to prepare for trial.

**A. Trimoba Has Never Established How the Motion Was Properly Served.**

Counsels for Trimoba have never established or addressed in all their arguments *how* their depositions were timely noticed with federal and civil rules. Moreover, Decker has repeatedly cited federal and civil rules and provided visual calendars regarding Trimoba's improperly served and noticed depositions (Appendix D). Instead, Trimoba continued to file frivolous pleadings and motion accusing Decker of not complying with Trimoba's improper depositions without addressing *how* Trimoba's depositions were properly served with federal and civil rules.

In respond to this issue, Counsels for Trimoba needs to first establish *how* the original notice of deposition for April 20, 2009 was properly noticed and motion to compel was properly served with federal and civil rules instead of using vague statements of "deposition was timely noticed".

Due to Counsels for Trimoba were not able to prove *how* their notice of deposition for April 20, 2009 and motion to compel were timely served with federal and civil rules, Trimoba's frivolous motion and pleadings for depositions have eliminated the jury trial that Decker requested and paid per CR 38 and severely prejudiced Decker. Despite Decker repeatedly informed the trial court regarding Trimoba's improper notice and motion for deposition; violations of laws; and defiance of court order schedule, the trial court took no actions against Counsels for Trimoba.

**B. Notice of Deposition Was Not Timely Noticed.** Decker has cited federal and civil rules to elucidate how Trimoba's original deposition for April 20, 2009 was not timely noticed numerous times. In fact, Decker has provided a visual monthly calendar per CR 30(b)(1), CR 6(a), and CR 5(b)(2)(A) to Counsels for Trimoba and the trial court to illustrate this matter (Appendix D).

1. Trimoba's notice of deposition dated April 10, 2009 was not timely noticed by not providing at least five (5) days notice CR 30(b)(1)<sup>1</sup> excluding the day of the deposition CR 6(a)<sup>2</sup>, plus three (3) additional days for service by mail CR 5(b)(2)(A)<sup>3</sup>. Therefore, Trimoba's Notice of Deposition is invalid.

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1 CR 30(b)(1) "*A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing of not less than 5 days (exclusive of the day of service, Saturdays, Sundays and court holidays)...*"

2 CR 6(a) "*...the day of the act, event, or default from which the designated period of time begins to run shall not be included.*"

3 CR 5(b)(2)(A) "*If service is made by mail, ... The service shall be deemed complete upon the THIRD day following the day upon which they are placed in the mail...*"

2. Due to Trimoba's deposition was not properly noticed, Trimoba does not have any legal basis or arguments to compel Decker for depositions pursuant to CR 37(d)(1) and KCLCR 37(g).
3. Counsels for Trimoba have had ample opportunity, over a year and half, to obtain discovery per CR 26(b)(1)(a)(B), but failed to do so.

**C. Motion to Compel Was Improperly Served.** Trimoba's Motion to Compel dated May 12, 2009 was improperly served by not providing proper notice according to federal and civil rules. Pursuant to KCLCR 7(b)(4)(A), Trimoba "*shall serve and file all motion documents no later than six (6) court days before the date the party wishes the motion to be considered*". In addition, Trimoba needs to provide three (3) additional days for service by mail pursuant to CR 5(b)(2)(A) due to the motion was served by mail. In fact, a calendar illustrating the required time pursuant to KCLCR 7(b)(4)(A) and CR 5(b)(2)(A) was provided to Counsels for Trimoba and the trial court regarding this matter on April, 21, 2009; May 5, 2009; and May 21, 2009 (Appendix D). Therefore, Trimoba has failed to provide proper notice for its motion to compel as required by federal and civil rules.

Furthermore, pursuant to CR 37(d)(1), Trimoba, the moving party, can only compel "*a party to appear before the officer who is to take his or her deposition, after being served with a proper notice*". Additionally, Trimoba's deposition on May 29, 2009, only allowing less than six (6) court days before trial, violated KCLCR 37(g) where "*all discovery allowed under CR 26-37, ...must be completed no later than 49 calendar days before the assigned trial date*". Due to Trimoba's notice of deposition and motion to compel violated KCLCR 7(b)(4)(A), KCLCR 37(g), CR 5(b)(2)(A), CR

6(a), CR 30(b)(1), and CR 37(d)(1), Counsels for Trimoba does not have any legal basis to compel Decker for a deposition.

**D. Trimoba Deliberately Delayed Serving Orders.** Despite Trimoba's depositions were improper, Counsels for Trimoba deliberately served court orders *after* the deposition dates to create excuses for Trimoba to falsely accuse Decker of "failing to show" and "defying court orders". In fact, Decker received the order for April 20, 2009 deposition two (2) days after the deposition (CP 50-74, CP 108). Moreover, Trimoba failed to provide the order to compel that was entered on May 20, 2009 to Decker until nine (9) days later on May 29, 2009 (CP 89-90, CP 108).

Furthermore, Decker received a letter from Trimoba on May 28, 2009, but Trimoba did not provide any information or copy of the order with their letter (CP 97). This letter further proves that Counsels for Trimoba willfully delayed serving the orders to Decker to frivolous claim Decker did not show for his depositions. Counsels for Trimoba knew that Decker received the orders several days *after* deposition dates, but complained in their motion dated June 12, 2009 that Decker "willfully" missed his depositions is absurd. Moreover, Counsels for Trimoba's habitual use of vague statements claiming Decker received "notice of deposition in advance" without providing any evidence and/or specific dates of such claims show that Trimoba's claims are meritless.

Furthermore, Counsels for Trimoba never tried to reschedule with Decker knowing Decker received the order to compel after the requested deposition date. Instead, Trimoba falsely claimed that Decker has "failed to show and reschedule". Counsel for Trimoba's repeated acts of serving orders, by mail or hand delivery, several days after the requested depositions are to intentionally create frivolous excuses for

Trimoba to dismiss Decker. Counsels for Trimoba's violations and professional misconducts were repeatedly brought to the attention of the trial court, but no disciplinary actions were taken against Counsels for Trimoba (CP 84-97; CP 103-150).

**E. Trimoba's Ex Parte Communication and Falsified Order.** The order to compel has been tampered and/or altered, which copies of the order from the trial court and Counsels for Trimoba are significantly different as follow:

1. The order from the trial court has an instruction stamp of "Counsels for 'Pltfs' shall promptly mail a copy of this order to all other counsels/parties" on the upper portion of the first page, whereas, Counsels for Trimoba's copy that was mailed to Decker *first* does not have this stamp (Appendix E). Therefore, the order was altered due to the order from Counsels for Trimoba and trial court are different where it should be the exact same order.
2. The order that Decker received from the trial court has the "ORIGINAL" stamp on it. However, Counsels for Trimoba's faxed copy of the order that Decker received from Trimoba does not have this stamp. Moreover, the order should have the "ORIGINAL" stamp because it was drafted and submitted by Counsels for Trimoba with their motion (Appendix E).
3. For unknown reason, "Judge's Copy" is stamped on Counsels for Trimoba's copy of the order. However, the order that Decker received from the trial court does not have this stamp.
4. Decker filed a response to the motion before May 26, 2009 hearing date pursuant to KCLCR 7(b)(4)(D), but the trial court prematurely entered an order on May 20, 2009 without considering Decker's response dated May 21, 2009 before entering the order.

5. Trimoba did not served the order to Decker until May 29, 2009, nine (9) days after the order was entered on May 20, 2009, proved that Counsels for Trimoba deliberately delayed serving the order to Decker (CP 97).
6. Judge Erlick entered the order to compel on May 20, 2009 could not be possible because Judge Erlick was “ON LEAVE” during that week according to King County Superior Court Daily Calendar (Appendix F).

Decker has stated Trimoba’s improper motion to compel, falsified order, and ex parte communications to the trial court, but no actions were taken by the trial court to rectify this matter. Instead, Judge Erlick granted Trimoba’s improper motion despite Decker repeatedly stated that Trimoba’s May 29, 2009 invalid deposition, less than six (6) court days before trial, will adversely affect the scheduled June 8, 2009 trial date (CP 50-74; CP 84-97).

Trimoba’s failure to obtain discovery is Counsels for Trimoba’s own fault for (1) not properly noticing depositions; (2) requesting discoveries after cutoff deadline despite Trimoba had over a year and a half per CR 26(b)(1)(a)(B) to attain discovery; (3) willfully serving orders after the deposition dates; (4) initiating ex parte communications with the trial court; (5) falsifying order to compel; and (6) filing improper motion to compel. Furthermore, both parties received the court order schedule at the same time to comply and adhere accordingly. Therefore, Counsels for Trimoba’s challenged in time management and tardiness are the sole cause of Trimoba’s inability to prepare for trial.

#### IV. ORDER FOR CONTINUANCE OF TRIAL DATE

Decker has informed the trial court on May 21, 2009; May 19, 2009; June 1, 2009; and June 4, 2009 that Decker is ready for June 8, 2009 jury trial, had subpoenaed his witnesses, and paid jury fees. Moreover, Decker has provided evidence and subpoenaed witnesses that support his counterclaim and crossclaim to Trimoba and the trial court (CP 42-48, CP 49, CP 50-51, CP 78-81, CP 85-87).

1. Decker's witnesses were subpoenaed to testify for Decker's counterclaim and crossclaim at June 8, 2009 jury trial on May 20, 2009 (Appendix G).
2. Decker has provided the required Joint Statement of Evidence to Counsels for Trimoba and the trial court for June 8, 2009 jury trial (Appendix H).
3. Decker has completed and provided Judge Erlick's pretrial requirement of Estimate Witness Examinations to the trial court and Trimoba. In fact, Counsels for Trimoba have also completed Trimoba's estimated time to cross-examine Decker's subpoenaed witnesses in the Estimate Witness Examinations (Appendix I).
4. Decker has drafted the Mandatory Joint Confirmation of Trial Readiness where Decker reminded Trimoba to file the report jointly to meet the deadline (Appendix J). However, Counsels for Trimoba refused to cooperate and failed to file the required report violating KCLCR 16(a)(1). Therefore, Decker filed the report individually stating Decker is ready, had subpoenaed witnesses, and paid jury fees for the *scheduled* June 8, 2009 jury trial.

Furthermore, the trial court ordered both parties to proceed with pretrial requirements [i.e. Subpoena Witnesses, Exchange Witness & Exhibit Lists, Mandatory Joint Confirmation of Readiness, Joint Statement of Evidence, and Judge Erlick's pretrial requirement Estimate Witness Examinations] for June 8, 2009 jury trial.

Despite the trial court was fully informed of Decker's trial readiness; had knowledge of Trimoba's noncompliance with court order schedule; and ordered the parties to complete pretrial requirement for June 8, 2009 jury trial, Decker unexpectedly received an order for continuance of trial date to June 15, 2009 two (2) days before the trial. Moreover, the order for continuance of trial date was invalid because it was issued due to Counsels for Trimoba initiated ex parte communications and falsified the order.

**A. Trimoba's Ex Parte Communication with the Trial Court.** Counsels for Trimoba initiated ex parte communications to issue the order for continuance of trial date to delay June 8, 2009 jury trial (Appendix K).

1. The order for continuance has an "ORIGINAL" stamp on it shows that ex parte communication has occurred because since the order was issue by the trial court's own motion it should not have the stamp. The "ORIGINAL" stamp only needs to be on orders that are drafted by the parties to show the trial court that it is an original proposed order.
2. Due to the order was by trial court's own motion, Counsels for Trimoba would not know to contact the trial court in advance to request a fax copy of the order unless Counsels for Trimoba has prior knowledge about the order. Therefore, it is not possible for Counsels for Trimoba to receive the order via fax unless ex parte communication had occurred.

3. The order has “Clerk’s Action Required” on it. The order should not have “Clerk’s Action Required” because it was supposedly issued by Judge Erlick’s own motion and it is not required. The “Clerk’s Action Required” shows that the order was falsified by Counsels for Trimoba.
4. The font type in the order for continuance of trial date by Judge Erlick’s own motion is different from other orders that were drafted by Judge Erlick (i.e. Order Denying Motion for Reconsider). Therefore, the order was issued by ex parte communications between Counsels for Trimoba and the trial court.
5. Trimoba’s trial brief was signed on June 1, 2009, but filed four (4) days later proves that Counsels for Trimoba had prior knowledge about the order before the order was issued (CP 84-85). In fact, Counsels for Trimoba filing their trial brief four (4) days later shows inconsistent behavior where Trimoba has always signed and filed papers on the same day. Therefore, Counsels for Trimoba had prior knowledge of the order before it was issued for Trimoba’s trial brief to be admissible for the last minute changed trial date.

Counsels for Trimoba’s repeated professional misconducts and ex parte communications with the trial court have severely prejudiced Decker to a fair trial.

**B. Trimoba’s Falsified Order.** The order for continuance of trial date has also been tampered and/or altered as follow:

1. Trimoba’s faxed copy of the order that Decker received from Counsels for Trimoba by mail *first* has the “ORIGINAL” stamp on it. However, the order that Decker received from the trial court several days later does not have the “ORIGINAL” stamp. Moreover, the order should not have the “ORIGINAL”

stamp because it was issued by Judge Erlick's own motion (Appendix K).

2. "Clerk's Action Required" was on the order of continuance of trial date, which is not required. Therefore, Counsels for Trimoba falsified the order because the order was by trial court's own motion and "Clerk's Action Required" is not necessary (Appendix K).
3. The trial court has always used the required proper names of all parties involved in the caption for all court orders. Conversely, Counsels for Trimoba have consistently omitted the names of "Brian E. Whiteside and Cynthia A. Whiteside" and "et al." to deliberately conceal the crossclaim parties. Due to the order for continuance of trial date only states "Trimoba, LLC", it verifies that Counsels for Trimoba falsified the order and violated CR 10(a)(1).

Decker informed the trial court regarding the order for continuance of trial date was falsified and issued by Counsels for Trimoba's ex parte communications, but the trial court did not respond regarding this matter. Due to the unexpected last minute changes that eliminated Decker's jury trial and subpoenaed witnesses, Decker was left not knowing what was going on with the case and unable to prepare for the trial accordingly. The trial court's actions and bias against *pro se* Decker show that the trial court never intended to provide Decker's paid jury trial and prevented Decker's subpoena witnesses from testifying at trial.

## V. FINAL JUDGMENT

Counsels for Trimoba deliberately and unlawfully delayed trial dates with improper motions, falsified orders, and ex parte communications with the trial court (Appendix E and K). Moreover throughout the pendency of this case, Counsels for Trimoba's violations of federal and civil rules, repeated willful defiance of court orders, refusal to cooperate and complete the required ADR per KCLCR 16(b), and ex parte communications with trial court have caused substantial prejudice to Decker.

Decker has brought the concerns of Counsels for Trimoba's (A) ex parte communications and falsified orders; (B) improper motions; (C) failure to complete ADR; (D) professional misconduct; (E) noncompliance to court order schedule; and (F) federal and civil rules violations to the trial court, but the trial court did not take any actions against Trimoba. As a result, proper due process and equal protection of laws were not provided to Decker.

**A. Trimoba's Ex Parte Communications and Falsified Orders.** Two (2) days before June 8, 2009 trial date, unexpectedly, Decker received an order to delay trial date to June 15, 209 due to ADR has not been met and *oddly* requesting Decker's phone number (Appendix K).

The trial court and Counsels for Trimoba have never had any issues with Decker's contact information for over a year and a half, which Matthew R. Hansen have stated to Decker on April 15, 2009 that a phone number is not required. In fact, Counsels for Trimoba and the trial court never had any problems communicating with Decker throughout the pendency of this case with Decker's contact information that was provided since the beginning of this case.

Moreover, the trial court knew weeks before June 8, 2009 trial that Decker has initiated and tried to schedule with Trimoba to meet for ADR, but Trimoba repeatedly refused to cooperate and complete the required ADR. In fact, Andrew D. Kidde, J.D. from Bellevue Neighborhood Mediation Program confirmed that Counsels for Trimoba refused to meet for ADR for unknown reasons and did not provide other dates to reschedule (CP 42-48).

Furthermore, Counsels for Trimoba have always signed and filed Trimoba's pleadings on the same day, but Trimoba's trial brief filed three (3) days after it was signed on June 1, 2009 shows inconsistent behavior of Counsels for Trimoba. In fact, Trimoba's trial brief filed on June 4, 2009 was not admissible for original scheduled June 8, 2009 trial date because it would not meet KCLCR 4(m) requirement of filing at least five (5) court days before trial. Coincidentally, the order for continuance of trial date issued on June 2, 2009 by trial court's own motion allowed Trimoba's trial brief to be admissible for the last minute rescheduled trial date (CP 84-97). Therefore, Trimoba filing their trial brief on June 4, 2009 confirms that Counsels for Trimoba had prior knowledge of the order for Trimoba's trial brief to meet the required time per KCLCR 4(m) to be admissible for the last minute rescheduled June 15, 2009 trial date.

In addition, the order for continuance of trial date only states "Trimoba, LLC" shows that ex parte communications between the trial court and Counsels for Trimoba have occurred because the trial court has always used the required proper names of parties involved in the caption for all court orders. Conversely, Counsels for Trimoba have repeatedly omitted the names of "Brian E. Whiteside and Cynthia A. Whiteside" and "et al." to deliberately conceal the crossclaim parties.

Counsels for Trimoba have initiated ex parte communications to issue the order for continuance of trial date because (1) the trial court never had any issue with Decker's contact information throughout the pendency of this case; (2) the trial court did not take any actions against Trimoba's repeated refusal to complete ADR; (3) improper caption on court order for continuance; and (4) Trimoba had prior knowledge of the order for Trimoba's trial brief to be admissible for last minute changed June 15, 2009 trial date.

**B. Trimoba's Improper Motions.** Counsel for Trimoba filed motion to dismiss and motion shorten time the day before the rescheduled June 15, 2009 trial date violating KCLCR 56, KCLCR 7, CR 5, CR 38 and CR 56 and giving Decker no time to respond to the motions. Despite Trimoba's motions were improper and violated federal and civil rules, Judge Erlick granted Trimoba's invalid motions and entered default judgment against Decker. Pursuant to KCLCR 7(b)(10)(D), Judge Erlick should not have granted Trimoba's improper motion because *"Except for emergency situations, the court will not rule on a motion to shorten time until the close of the next business day following filing of the motion (and service of the motion on the opposing party) to permit the opposing party to file a response."*

Due to last minute delay of trial dates and Judge Erlick granting Trimoba's improper motions, the trial court has (1) prevented Decker's subpoenaed witnesses from testifying at trial; (2) denied Decker's right to trial by jury; and (3) failed to provide proper due process and equal protection of the laws to Decker, which has caused severe prejudice against Decker. The trial court granting Trimoba's improper motions and entering default judgment against Decker minutes before trial show that Judge Erlick never intended to provide Decker his right to a fair trial by jury. Furthermore, Judge

Erlick hearing Trimoba's improper motions on June 15, 2009 violated Seventh Amendment to the U.S. Constitution for denying Decker's right to a trial by jury despite Decker requested and paid jury fees.

**C. Trimoba's Repeated Refusal to Cooperate and Complete ADR.** Judge Erlick falsely accused Decker of not completing Alternative Dispute Resolution (ADR) when in fact the trial court was aware of Trimoba's repeated refusal to cooperate and complete the required ADR a month before the original trial date (CP 42-48, CP 53-54, CP 88-89). However, the trial court failed to require Trimoba to complete the required ADR when it was repeatedly brought to the trial court's attention on May 19, 2009; May 21, 2009; and June 11, 2009.

Moreover, Decker initiated, reminded and scheduled ADR with Counsels for Trimoba on numerous occasions, but Counsels for Trimoba failed to cooperate and refused to meet for the required ADR (Appendix L). In addition, Mr. Andrew D. Kidde from Bellevue Neighborhood Mediation Program confirmed that Trimoba refused to attend the scheduled ADR without providing justification and did not propose other dates to reschedule.

However, Trimoba falsely claims that Mr. Kidde received a letter from Decker stating that "he would not participate in the mediation" without providing the claimed letter. Decker did not write any letter stating that he would not participate in mediation. In fact, Decker was the party that contacted Mr. Kidde to arrange and schedule ADR conferences with Trimoba. But for unknown reasons, Counsels for Trimoba refused to attend the agreed upon conferences at last minutes without providing any reasons or other dates to reschedule (CP 42-48, CP 53-54, CP 88-89). Therefore, Judge Erlick defaulted Decker for not completing ADR knowing Trimoba was the party that

repeatedly refused to cooperate and complete ADR shows that Judge Erlick is bias against *pro se* Decker.

In addition, Counsels for Trimoba initiated ex parte communications and falsified the order for continuance to create excuses to dismiss Decker and eliminate Decker's jury trial and subpoenaed witnesses to testify at trial. However, Counsels for Trimoba frivolously claimed that Decker did not comply with order for continuance when in fact Counsels for Trimoba falsified the order and committed ex parte communication with the trial court to issue the order. Moreover, Judge Erlick engaging in ex parte communications with Counsels for Trimoba and facilitating Trimoba's falsified order for continuance have violated Canon 3(A)(4) and severely prejudiced Decker.

**D. Counsels for Trimoba's Professional Misconduct.** Counsels for Trimoba illegally requested and accessed Decker's personal information from State of Washington Department of Licensing ("DOL") on October 10, 2008 and May 28, 2009. Decker was not aware of this until he was notified by DOL that his personal information were released to Katie J. Drake from Graham & Dunn, PC (CP 84-97).

In the Public Disclosure/Contract Agreement Application with DOL, Counsels for Trimoba acknowledged and agreed that the information will not be (1) used for any purpose other than what is stated on the application or approved by DOL; (2) sold or used for commercial purpose; and (3) divulged to any third party (Appendix M).

Despite agreeing to the above conditions, Counsels for Trimoba illegally disclosed Decker's personal information from DOL to a third party, Mr. James Pittman from Mercer Island Process, LLC. In addition, Counsels for Trimoba filed pleadings

with Decker's personal information from DOL without approval from Decker and DOL. Furthermore, Counsels for Trimoba used Decker's personal information for purpose that was not stated in the agreement application. Therefore, Counsels for Trimoba have violated WAC 308-10-050 and USC Sec 2721 by divulging Decker's information to third parties; publishing Decker's information without consent from Decker and DOL; and falsifying the purpose of requesting Decker's information.

In addition to violating the agreement with DOL, Counsels for Trimoba committed professional misconduct and provided falsified affidavits and pleadings to the trial court as follow:

1. Counsels for Trimoba violated CR 5 and committed fraud for invalid service or sewer service for filing falsified Declaration of Service on February 11, 2008 (Appendix A).
2. Counsels for Trimoba provided falsified affidavits about Decker receiving "actual notice of the order on May 28, 2009" that never existed. In fact, Trimoba never provided evidence of such notice (CP 115). Moreover, the Declaration of Matthew R. Hansen dated June 11, 2009 admitted that the order to compel was served on May 29, 2009.
3. Counsels for Trimoba violated CR 5(b)(1) for improper hand delivery when Mr. James Pitman posted the order on the community area door instead of leaving it at Decker's "... *dwelling house with some person of suitable age and discretion then residing therein*" on May 29, 2009 (Appendix N).

4. Counsels for Trimoba submitted falsified affidavits regarding court reporters present and attorneys' fees for cost incurred that never existed, which the trial court repeatedly denied Trimoba's requests (CP 56).
5. Counsels for Trimoba abused and misused state agency, DOL, to attain private and sensitive personal information regarding Decker and violated the DOL agreement application (Appendix M).
6. Counsels for Trimoba frivolously claimed in their pleading dated June 12, 2009 that Decker was sanctioned for "repeated failure to provide adequate notice" when in fact Decker was never sanctioned for "inadequate notice" as claimed.
7. The orders that Decker received from Counsel for Trimoba and the trial court were significantly different (see ¶ III and IV of this brief).
8. Counsels for Trimoba's claimed Attorneys' Fees of \$24,173.50 for this case is excessively high compared to the proportion of total judgment of \$27,008.00, which could not be possible and is unreasonable compared to Trimoba's claimed damages (Appendix O).
9. Counsels for Trimoba falsified orders and initiated ex parte communications for order to compel and order for continuance (Appendix E and K).

Counsels for Trimoba's breach of DOL agreement; committing sewer service and fraud; falsifying orders; ex parte communications; and violations of federal and civil rules have substantially prejudiced Decker. Furthermore, the trial court was notified of Counsels for Trimoba's repeated professional misconducts that should have been sanctioned, but the trial court did not take any actions against Counsels for

Trimoba. As a result, proper due process and equal protection of laws were not provided to Decker.

**E. Trimoba's Noncompliance with Court Order Schedule.** Counsels for Trimoba repeatedly failed to comply with court order schedule and violated federal and civil rules throughout the pendency of this case despite both parties received the court order schedule over a year and half ago as follow:

1. Trimoba violated KCLCR 56 and CR 56 for filing dispositive motion on June 12, 2009 after the deadline for Hearing Dispositive Pretrial Motion: May 26, 2009.
2. Trimoba violated KCLCR 40(d) for changing trial dates after the deadline for Setting Motion for a Change in Trial Date: March 2, 2009.
3. Trimoba violated KCLCR 16(a)(1) for failure to file Mandatory Joint Confirmation of Trial Readiness even after Decker reminded Counsels for Trimoba regarding the report.
4. Trimoba violated KCLCR 16(b) and defied court orders for repeated refusal to cooperate and complete the required ADR.
5. Trimoba violated KCLCR 4(j)(C) for failure to provide documentary exhibits to Decker.
6. Trimoba violated KCLCR 4(m) for failure to provide Trimoba's trial brief to Decker.
7. Trimoba violated KCLCR 37(g) for demanding discovery after the deadline for Discovery Cutoff.

Ironically, Counsels for Trimoba falsely claims that Decker did not comply with the court order schedule when in fact Trimoba was the party that continuously refused to comply with the court order schedule. Conversely, Decker has complied with the court order schedule for Disclosure of Primary Witnesses; Jury Demand; Engaging in ADR (see ¶ IV section C of this brief); Subpoena Witnesses; Exchange of Witness & Exhibit Lists; Joint Confirmation of Trial Readiness; Joint Statement of Evidence; and Estimate Witness Examinations.

**F. Trimoba's Violations of Federal and Civil Rules.** Trimoba repeatedly and deliberately defied court orders and violated federal and civil rules throughout the pendency of this case as follow:

1. Violated KCLCR 56 and CR 56 for filing frivolous motion on June 12, 2009 after the deadline for Hearing Dispositive Pretrial Motion: May 26, 2009.
2. Violated KCLCR 40(d) for changing trial date of June 8, 2009 after the deadline for Setting Motion for a Change in Trial Date: March 2, 2009 with falsified orders and ex parte communications with the trial court.
3. Violated KCLCR 7(b)(10) for filing motion to shorten time on June 12, 2009, the day before trial, without providing the required service time and notice.
4. Violated CR 5 and committed fraud for sewer service by filing falsified Declaration of Service for Answer to Counterclaim on February 11, 2008.
5. Violated WAC 130.10.050 and 18 USC Sec. 2721 for unlawfully attaining Decker's personal information from State of Washington Department of Licensing ("DOL") (Appendix M).

6. Violated KCLCR 37(g) for demanding discovery after deadline on April 20, 2009, which Trimoba had over a year and a half per CR 26(b)(1)(a)(B) to attain the discovery before the deadline.
7. Violated KCLCR 16(a)(1) for failure to file Mandatory Joint Confirmation of Trial Readiness even after Decker initiated the report.
8. Violated KCLCR 16(b) and defied court orders for refusing to cooperate and complete the required ADR without justification and failed to propose dates for rescheduling.
9. Violated CR 5(b)(2)(A), CR 6(a), and CR 30(b)(1) by not providing at least five (5) days notice excluding the day of service, court holidays, Saturdays, Sundays, and the day of the act plus three (3) additional days for service by mail for April 20, 2009 deposition (Appendix D).
10. Violated CR 5(b)(1) for improper service by hand delivery by Mr. James Pitman of Mercer Island Process, LLC on May 29, 2009 (Appendix N).
11. Violated CR 5(b)(2)(A) and KCLCR 7(b)(4)(A) for improper motion to compel by not providing at least six (6) court days before the hearing date plus three (3) additional days for service by mail.
12. Violated CR 5(b)(2)(A) for repeatedly failing to provide required service time for court orders and motions.
13. Violated WAC 130.10.050 and 18 USC Sec. 2721 for publishing Decker's personal information from DOL and divulging Decker's information to third parties without DOL's approval (Appendix M).

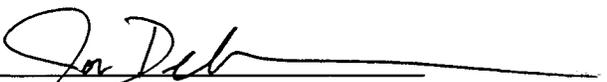
Counsels for Trimoba's willful repeated (1) violations of federal and civil rules; (2) professional misconduct; (3) noncompliance with court order schedule; (4) illegal delay of trial dates to avoid jury trial; (5) defiance of court orders; and (6) ex parte communications with the trial court and falsified orders have severely prejudiced Decker.

### CONCLUSION

For the foregoing reasons, the Appellate Court should (1) reverse default judgment against Decker entered on June 15, 2009; (2) reverse final judgment entered on July 1, 2009; (3) dismiss Trimoba's complaint with prejudice; and (4) enter judgment in favor of Decker's counterclaim and crossclaim and appropriate relief sought.

DATED THIS 16<sup>th</sup> day of July, 2009.

Respectfully Submitted By

  
\_\_\_\_\_  
Jon Decker, Pro Se  
*Appellant*

Jon Decker  
PO Box 14192  
Mill Creek, WA 98082

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COURT OF APPEALS  
DIVISION ONE

.||| 16 2009

## APPENDIX A

Declaration of Service Dated February 11, 2008  
[Invalid Service]

FILED

2008 FEB 11 AM 11:37

The Honorable Paris K. Kallas

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

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SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

TRIMOBA L.L.C., and BRIAN WHITESIDE,  
individually and the marital community  
comprised of BRIAN and CYNTHIA  
WHITESIDE,

No. 07-2-39915-1

DECLARATION OF SERVICE

Plaintiffs/Counterclaim/Crossclaim  
Defendants,

vs.

AWAKE CLINIC, L.L.C. a Washington limited  
liability company, and JON K. DECKER,  
individually and the marital community  
comprised of JON K. DECKER and TAN JOO  
DECKER,

Defendants/Counterclaim/Crossclaim  
Plaintiffs.

I, Elizabeth G. Martin, hereby certify that a true and correct copy of Answer to  
Defendant's Counterclaims and Third Party Complaint and this Declaration of Service, filed in the  
above matter, was served by Hand Delivery on this date on the following individual:

Jon K. Decker, Pro Se Defendant  
1375 Bellevue Way, #H  
Bellevue, WA 98004

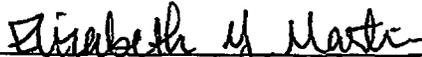
DECLARATION OF SERVICE -- 1

ORIGINAL

GRAHAM & DUNN PC  
Pier 70 ~ 2801 Alaskan Way ~ Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax: (206) 340-9599

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

3 EXECUTED this 11<sup>th</sup> day of February, 2008, in Seattle, Washington.

4  
5   
6 Elizabeth G. Martin

## APPENDIX B

King County Superior Court Civil Docket


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[Home](#) | [Summary Data & Reports](#) | [Request a Custom Report](#) | [Resources & Links](#) | [Get Help](#)

## Superior Court Case Summary

**Court:** King Co Superior Ct

**Case Number:** 07-2-39915-1

Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	12-19-2007	SMCMP	Summons & Complaint	
2	12-19-2007	*ORSCS JDG0035	Set Case Schedule Judge Paris K. Kallas, Dept 35	06-08-2009ST
3	12-19-2007	CICS LOCS	Case Information Cover Sheet Original Location - Seattle	
4	12-19-2007	AFSR	Affidavit/dclr/cert Of Service	
5	12-19-2007	ANAFDF	Answer & Affirmative Defense	
6	12-19-2007	AT	Attachment /summary Of Conversation	
7	12-21-2007	AFML	Affidavit Of Mailing	
8	12-21-2007	CS	Confirmation Of Service	
9	01-11-2008	AN3PC	Answer 3rd Pty Cmplt & Counterclaim /decker	
	01-11-2008	\$FFR	Filing Fee Received	200.00
10	01-15-2008	NTAPR	Notice Of Appearance	
11	01-15-2008	AFSR	Affidavit/dclr/cert Of Service	
12	01-17-2008	MTDFL	Motion For Default /plaintiff	
13	01-17-2008	NTHG	Notice Of Hearing /default	01-30-2008
14	01-22-2008	RSP	Response To Default/jon Decker	
15	01-29-2008	MT	Motion/decker/publication Service	
16	02-01-2008	ORDFL	Order Of Default Vs Awake	
17	02-01-2008	RPY	Reply To Motion For Default/pla	
18	02-01-2008	AFSR	Affidavit/dclr/cert Of Service	
19	02-07-2008	NTHG	Notice Of Hearing /default	02-13-2008
20	02-07-2008	NTHG	Notice Of Hearing /default	02-13-2008
21	02-07-2008	MTDFL	Motion For Default / Pla	
22	02-07-2008	MTDFL	Motion For Default / Pla	
23	02-07-2008	AFSR	Affidavit/dclr/cert Of Service	

### About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

### Contact Information

King Co Superior Ct  
516 3rd Ave, Rm C-203  
Seattle, WA 98104-2361  
**Map & Directions**  
206-296-9100[Phone]  
206-296-0986[Fax]  
**Visit Website**  
206-205-5048[TDD]

### Disclaimer

This information is provided for use as reference material and is not the official court record. The official court record is maintained by the **court of record**. Copies of case file documents are not available at this website and will need to be ordered from the **court of record**.

The Administrative Office of the Courts, the Washington State Courts, and the Washington State County Clerks :

1) Do not warrant that the information is accurate or complete;

24	02-07-2008	AFSR	Affidavit/dclr/cert Of Service	2) Do not guarantee that information is in its most current form;
25	02-11-2008	AFSR	Affidavit/dclr/cert Of Service	
26	02-19-2008	AFNF	Affidavit Of Not Found	3) Make no representations regarding the identity of any person whose name appears on these pages; and
27	02-19-2008	AFSR	Affidavit/dclr/cert Of Service	
28	02-19-2008	AFSR	Affidavit/dclr/cert Of Service	4) Do not assume any liability resulting from the release or use of the information.
29	02-19-2008	AFSR	Affidavit/dclr/cert Of Service	
30	02-20-2008	AN	Answer To 3rd Prty Cmplnt/jk Decker	Please consult official case records from the <b>court of record</b> to verify all provided information.
31	02-20-2008	AFSR	Affidavit/dclr/cert Of Service	
32	02-26-2008	AT	Attachment /correspondence	
33	03-03-2008	ORDYMT	Order Denying Motion For Default	
34	03-03-2008	ORDYMT	Order Denying Motion For Default	
35	03-31-2008	NT	Notice /def Change Of Address	
36	03-31-2008	AFSR	Affidavit/dclr/cert Of Service	
37	05-28-2008	CJPTY	Confirm. Join.: Party To Be Joined	
38	05-28-2008	CJNSC	Confirm. Join.: No Status Confer.	
39	06-11-2008	CJNSC	Confirm. Join.: No Status Confer.	
40	11-21-2008	DIS	Disclosure /prim Witn/ Pltf	
41	11-21-2008	AFSR	Affidavit/dclr/cert Of Service	
42	12-05-2008	ORCJ JDG0051	Order For Change Of Judge Judge John Erlick, Dept 51	
43	02-27-2009	NTHG	Notice Of Hearing /default	03-11-2009
44	02-27-2009	MTDFL	Motion For Default /plt	
45	02-27-2009	\$JDR6	Jury Demand Received - Six	125.00
46	02-27-2009	AFSR	Affidavit/dclr/cert Of Service	
47	02-27-2009	AFSR	Affidavit/dclr/cert Of Service	
48	03-09-2009	RSP	Response	
49	03-13-2009	ORDYMT	Order Denying Motion For Default	
50	03-18-2009	AFSR	Affidavit/dclr/cert Of Service	
51	03-18-2009	MTRC	Motion For Reconsideration/cross Pl	
52	03-20-2009	ORDYMT	Order Denying Mtn To Reconsider	
53	03-25-2009	RSP	Resp To Denied Ord To Reconsider	
55	04-13-2009	AFSR	Affidavit/dclr/cert Of Service	
56	04-15-2009	NTMTDK ACTION	Note For Motion Docket Mt Fr Protective Ord	04-20-2009
57	04-15-2009	AFSR	Affidavit/dclr/cert Of Service	

## APPENDIX C

Trimoba's Letter Dated February 11, 2008

DANIEL J. OATES  
(206) 340-9631  
doates@grahamdunn.com

February 11, 2008

**VIA HAND DELIVERY**

Jon K. Decker  
1375 Bellevue Way NE, #H  
Bellevue, WA 98004

**Re: Answer to Counterclaims and Third Party Complaint**

Dear Mr. Decker:

Please find enclosed the Plaintiffs' answer to the counterclaims contained in your answer, and the claims made in your third party complaint. Please strike your motions for default against Trimoba, L.L.C. and Cynthia Whiteside which are scheduled for February 13, 2008, and confirm in writing that they have been stricken. CR 55(a)(2); KCLR 55(a)(2).

The Plaintiffs did not receive your motions until Friday, February 8, 2008, only three days prior to the hearing. In the future, please note that you must provide the plaintiffs with sufficient advance notice of any motion filed with the Court. Motions for default require at least five days advance notice, not including weekends or holidays. See CR 55(a)(3), CR 6(a). If you choose to continue serving pleadings by mail, you must also provide an additional three days notice in advance of any hearing. See CR 6(e). Failure to comply with notice requirements may result in Court imposed monetary sanctions. CR 11(a).

Sincerely,

GRAHAM & DUNN PC



Daniel J. Oates

enclosures  
m36045-997781.doc

Pier 70  
2801 Alaskan Way ~ Suite 300  
Seattle WA 98121-1128  
Tel 206.624.8300  
Fax 206.340.9599  
www.grahamdunn.com

SEATTLE ~ PORTLAND

## APPENDIX D

### Calendars

**TRIMOBA'S NOTICE OF DEPOSITION WAS NOT TIMELY NOTICED**

**April 2009**

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1	2	3	4
5	6	7	8	9	10 <sup>A</sup> Trimoba's Notice of Deposition MAILED	MAIL DAY 1
MAIL DAY 2	MAIL DAY 3	NOTICE DAY 1	NOTICE DAY 2	NOTICE DAY 3	NOTICE DAY 4	B Exclude Weekend
B Exclude Weekend	NOTICE DAY 5 <sup>C</sup> CUTOFF Day for Discovery	*Earliest Possible Deposition Date	22	23	24	25
26	27	28	29	30		

<sup>A</sup> The day of mailing/service, April 10, 2009, is NOT included as part of the three (3) days CR 5(b)(2)(A).

<sup>B</sup> Per CR 30(b)(1), five (5) days of notice CANNOT include **day of service, Saturdays, Sundays, & court holidays.**

<sup>C</sup> April 20, 2009 is the CUTOFF day for discovery per Order Setting Civil Case Schedule (ORSCS).

\* CR 6(a) "...the day of the act, event, or default from which the designated period of time begins to run shall not be included" with the five (5) days notice.

**TRIMOBA'S MOTION TO COMPEL WAS NOT PROPERLY SERVED**

<h1>May 2009</h1>						
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1	2
3	4	5	6	7	8	9
10	11	12 <sup>A</sup> Trimoba's Motion to Compel MAILED	MAIL DAY 1	MAIL DAY 2	MAIL DAY 3	* Exclude Weekend
* Exclude Weekend	COURT DAY 1	COURT DAY 2	COURT DAY 3	COURT DAY 4	COURT DAY 5	* Exclude Weekend
* Exclude Weekend	* Exclude Holiday	COURT DAY 6  Invalid Request Date	*Earliest Possible Hearing Date			
31						

<sup>A</sup> The day of mailing/service, May 12, 2009, is NOT included as part of the three (3) days per CR 5(b)(2)(A).

\* Per KCLCR 7(b)(4)(A), "a moving party shall serve and file all motion documents no later than **six (6) court days** before the date the party wishes the motion to be considered"

## APPENDIX E

### Orders to Compel

**RECEIVED**

MAY 29 2009 *el*

JUDGE JOHN P. ERLICK  
DEPARTMENT 51

Honorable John P. Erlick / Dept. #51

Counsel for Pltfs  
shall promptly mail a copy of this  
order to all other counsel/parties

SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

TRIMOBA L.L.C., and BRIAN WHITESIDE,  
individually and the marital community  
comprised of BRIAN and CYNTHIA  
WHITESIDE,

No. 07-2-39915-1 SEA

ORDER GRANTING MOTION TO  
COMPEL

Plaintiffs/Counterclaim/Crossclaim  
Defendants,

**PROPOSED**

vs.

AWAKE CLINIC, L.L.C. a Washington limited  
liability company, and JON K. DECKER,  
individually and the marital community  
comprised of JON K. DECKER and TAN JOO  
DECKER,

Defendants/Counterclaim/Crossclaim  
Plaintiffs.

THIS MATTER having come before the Court for hearing on Plaintiff Trimoba, LLC's  
Motion to Compel, and the Court having considered the arguments of the parties, and the  
following papers submitted in support of those arguments:

1. Plaintiff's Motion to Compel;
2. Declaration of Matthew R. Hansen in Support of Plaintiff's Motion to Compel,  
with Exhibits A - H appended thereto;
3. Defendant's Response (if any) and

ORDER GRANTING MOTION TO  
COMPEL -- 1

GRAHAM & DUNN PC  
Pier 70 ~ 2801 Alaskan Way ~ Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax: (206) 340-9599

M36045-1202165

**ORIGINAL**

1 4. Plaintiff's Reply in Support of Motion to Compel (if any);

2 Having considered the above, and being otherwise fully informed, the Court finds and orders as  
3 follows:

4 *JK* The Plaintiff's motion to compel is hereby GRANTED. Defendant Jon K. Decker shall  
5 appear on May ~~28~~ <sup>29</sup> 2009 at 1:00 PM at the offices of Graham & Dunn, PC, Pier 70, 2801 Alaskan  
6 Way, Ste. 300, Seattle, Washington, 98121, and then and there give testimony under oath, as  
7 provided in the Plaintiff's second amended notice of deposition. (Hansen Decl., Ex. H). In the  
8 event the Defendant fails to appear and give testimony under oath at the appointed place and  
9 time, *Sanctions shall be imposed, which may include the following:* Defendant's counterclaims may be dismissed with prejudice, and the Court may enter  
10 judgment against the Defendant on all of Plaintiff's claims.

11 In addition, the Court finds that time spent by the Plaintiff's attorney at Graham & Dunn  
12 in preparing for the depositions of Mr. Decker, and preparing the motion to compel was  
13 reasonable and necessary in light of the issues involved, the amount at stake, and Mr. Decker's  
14 repeated failure to appear at the scheduled deposition dates. The Court also finds that the billing  
15 rates of the Plaintiff's attorneys are reasonable in light of the customary charges of other  
16 attorneys for similar legal services, and the skill and experience required of the attorneys to  
17 prosecute Plaintiff's claims against Mr. Decker.

18 NOW THEREFORE, it is ~~HEREBY~~ further GRANTED that Plaintiff is awarded its  
19 reasonable attorneys' fees and costs incurred preparing for the depositions and the motion to  
20 compel, in the amount of \$2,235.50. Such fees and costs should be paid with fourteen (14) days  
21 of this Order.

22 DATED this 29<sup>th</sup> day of May, 2009.

23  
24   
25 \_\_\_\_\_  
26 THE HONORABLE JUDGE JOHN P. ERLICK

ORDER GRANTING MOTION TO  
COMPEL -- 2

M36045-1202165

GRAHAM & DUNN PC  
Pier 70 ~ 2801 Alaskan Way ~ Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax: (206) 340-9599

1 Presented by:

2 GRAHAM & DUNN PC

3  
4 

5 By: \_\_\_\_\_  
6 Daniel J. Oates, WSBA# 39334  
7 Email: doates@grahamdunn.com  
8 Matthew R. Hansen, WSBA# 16281  
9 Email: mhansen@grahamdunn.com  
10 Attorneys for Plaintiff Trimoba, LLC

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ORDER GRANTING MOTION TO  
COMPEL -- 3

M36045-1202165

**GRAHAM & DUNN PC**  
Pier 70 ~ 2801 Alaskan Way ~ Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax: (206) 340-9599

JUDGE'S COPY

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Honorable John P. Erlick / Dept. #51

SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

TRIMOBA L.L.C., and BRIAN WHITESIDE,  
individually and the marital community  
comprised of BRIAN and CYNTHIA  
WHITESIDE,

No. 07-2-39915-1 SEA

ORDER GRANTING MOTION TO  
COMPEL

Plaintiffs/Counterclaim/Crossclaim  
Defendants,

~~PROPOSED~~

vs.

AWAKE CLINIC, L.L.C. a Washington limited  
liability company, and JON K. DECKER,  
individually and the marital community  
comprised of JON K. DECKER and TAN JOO  
DECKER,

Defendants/Counterclaim/Crossclaim  
Plaintiffs.

THIS MATTER having come before the Court for hearing on Plaintiff Trimoba, LLC's  
Motion to Compel, and the Court having considered the arguments of the parties, and the  
following papers submitted in support of those arguments:

1. Plaintiff's Motion to Compel;
2. Declaration of Matthew R. Hansen in Support of Plaintiff's Motion to Compel,  
with Exhibits A - H appended thereto;
3. Defendant's Response (if any), and

ORDER GRANTING MOTION TO  
COMPEL - 1

GRAHAM & DUNN PC  
Pier 70 - 2801 Alaskan Way - Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8500/Fax: (206) 340-9599

MJ6045-1202165

1 4. Plaintiff's Reply in Support of Motion to Compel (if any):

2 Having considered the above, and being otherwise fully informed, the Court finds and orders as  
3 follows:

4 *OK* The Plaintiff's motion to compel is hereby GRANTED. Defendant Jon K. Decker shall  
5 appear on May ~~28~~ <sup>29</sup>, 2009 at 1:00 PM at the offices of Graham & Dunn, PC, Pier 70, 2801 Alaskan  
6 Way, Ste. 300, Seattle, Washington, 98121, and then and there give testimony under oath, as  
7 provided in the Plaintiff's second amended notice of deposition. (Hansen Decl., Ex. H). In the  
8 event the Defendant fails to appear and give testimony under oath at the appointed place and  
9 time, *Sarokov shall be imposed, which may include fee to lawyer*, Defendant's counterclaims may be dismissed with prejudice, and the Court may enter  
10 judgment against the Defendant on all of Plaintiff's claims.

11 In addition, the Court finds that time spent by the Plaintiff's attorney at Graham & Dunn  
12 in preparing for the depositions of Mr. Decker, and preparing the motion to compel was  
13 reasonable and necessary in light of the issues involved, the amount at stake, and Mr. Decker's  
14 repeated failure to appear at the scheduled deposition dates. The Court also finds that the billing  
15 rates of the Plaintiff's attorneys are reasonable in light of the customary charges of other  
16 attorneys for similar legal services, and the skill and experience required of the attorneys to  
17 prosecute Plaintiff's claims against Mr. Decker.

18 NOW THEREFORE, it is HEREBY further GRANTED that Plaintiff is awarded its  
19 reasonable attorneys' fees and costs incurred preparing for the depositions and the motion to  
20 compel, in the amount of \$2,235.50. Such fees and costs should be paid with fourteen (14) days  
21 of this Order.

22 DATED this 29<sup>th</sup> day of May, 2009.

23   
24 \_\_\_\_\_  
25 THE HONORABLE JUDGE JOHN P. ERICK  
26

ORDER GRANTING MOTION TO  
COMPEL -- 2

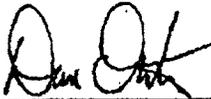
M36045-1202165

GRAHAM & DUNN PC  
Pier 70 - 2801 Alaskan Way - Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax: (206) 340-9599

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Presented by:

GRAHAM & DUNN PC



By:

Daniel J. Oates, WSBA# 39334  
Email: doates@grahamdunn.com  
Matthew R. Hansen, WSBA# 16281  
Email: mhansen@grahamdunn.com  
Attorneys for Plaintiff Trimoba, LLC

ORDER GRANTING MOTION TO  
COMPEL -- 3

M36045-1202165

**GRAHAM & DUNN PC**  
Pier 70 - 2801 Alaskan Way - Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax (206) 340-9599

## APPENDIX F

King County Superior Daily Calendar

# King County Superior Court Daily Calendar

**Wednesday, May 20, 2009 (pm)**

296= 6 205= 5	JUDGE	DEPT.	ROOM	JURY	ASSIGNMENT
	ARMSTRONG, SHARON S.	29	E-1201		Chief Criminal Judge – Case Setting Calendar
	BARNETT, SUZANNE	46	W-739		Civil Motions
	BENTON, MONICA	49	A3024/3B		Hogan v. Hogan (Dissolution)
	BRADSHAW, TIMOTHY	1	W-719	J	Crissinger v. Labor & Industries (Admin Law Review)
	CAHAN, REGINA	10	W-355	J	State v. Norman (Homicide / Assault / UPFA)
	CANOVA, GREG	21	W-817	J	State v. James Smith (Assault)
	CAREY, CHERYL	2	4035/4C		Quinones v. Barba (Dissolution)
	CAYCE, JAMES D.	50	A3063/3F		State v. Ballard (Identity Theft/Forgery)
	CLARK, PATRICIA HALL	39	W-965		ON LEAVE
	CRAIGHEAD, SUSAN	18	E-753	J	Steward v. Martin (Motor Vehicle Tort)
	DARVAS, ANDREA	23	4099/4H		Civil Motions
	DOERTY, JAMES D.	25	E-733		Chief UFC Judge / In re: Dependency of A.L. (Termination of Parental Rights)
	DOWNING, WILLIAM L.	43	E-762		Estate of Arena
	DOYLE, THERESA B.	13	E955		RALJ
	DUBUQUE, JOAN E.	27	Juv. Cr. 6		Juvenile Court
	EADIE, RICHARD D.	33	W-728		State v. Hoai Vu (VUCSA)
	ERLICK, JOHN	51	W-1060		ON LEAVE
	FLECK, DEBORAH	47	A4065/4F	J	State v. Nelson (Assault)
	FOX, MICHAEL J.	24	E-815	J	State v. Allen (Stalking)
	GAIN, BRIAN	14	A4083/4G		Judicial Meeting
	GONZÁLEZ, STEVEN	5	W-941		ON LEAVE
	HALPERT, HELEN	31	E-847	J	State v. Kenfield (Assault)
	HAYDEN, MICHAEL C.	16	E-854		Plea Court E-854
	HEAVEY, MICHAEL	20	A3109/3H	J	State v. Bird (Robbery/UPFA)
	HELLER, BRUCE	52	A3093/3G		Pleas/Sentencing Calendars (Room GA)
	HILL, HOLLIS	22	A3127/3J		ON LEAVE
	HILYER, BRUCE W.	40	E-942		Presiding Judge
	HUBBARD, PHILIP	6	Juv. Cr. 1		Chief Juvenile Judge / Administration
	INVEEN, LAURA	48	W-854	J	State v. Groth (Homicide)
	KALLAS, PARIS K.	35	E-209		Chief Civil Judge / Motions
	KESSLER, RONALD	44	Juv. Cr. 2		Juvenile Court
	LUM, DEAN S.	12	E-713		Evans v. Grise (Domestic)
	MACK, BARBARA A.	37	W-921	J	Ali v. Pham (Motor Vehicle Tort)
	MATTSON, GEORGE	36	A3006/3A		Wang v. Chou (Dissolution)
	McCARTHY, HARRY J.	19	E-746		Drug Court Training
	McCULLOUGH, LeROY	32	Juv. Cr. 4		Juvenile Court
	McDERMOTT, RICHARD	38	A4023/4B		Lindsey v. Lindsey (Dissolution)
	MIDDAUGH, LAURA G.	26	A4006/4A	J	State v. Borishkevich (Possession of Stolen Vehicle)
	NORTH, DOUGLASS	30	W-764	J	State v. Brown (Rape of Child / Promoting Prostitution)
	PROCHNAU, KIMBERLEY	7	A3035/3C		Garrett v. Oliy (Relocation)
	RAMSDELL, JEFFREY	9	W-813	J	State v. Koch (Assault)
	ROBERTS, MARY E.	4	A4052/4D	J	State v. Ahola (Malicious Harassment)
	ROBINSON, PALMER	41	E-835	J	State v. Thompson (Homicide)
	ROGERS, JIM	45	E-201	J	State v. Marston (Assault)
	SAINT CLAIR, J. WESLEY	17	E-912		Seattle Drug Diversion Court
	SCHAPIRA, CAROL	28	Juv. Cr. 3		Juvenile Court
	SHAFFER, CATHERINE	11	W-842	J	State v. Jones (VUCSA)
	SPEARMAN, MARIANE	53	W-331		In re: Marriage of Laureano (Dissolution)
	SPECTOR, JULIE	3	W-842	J	Balaton Condominium Association v. Balaton Condominium LLC
	TRICKEY, MICHAEL	34	W-711		ON LEAVE
	WASHINGTON, CHRIS A.	42	E-854		Juvenile Offender Trial
	WHITE, JAY	8	A4117/4J		State v. King (Child Molestation)
	YU, MARY	15	W-928		Birmisa v. Pilates Center of Redmond (Commercial)
COMMISSIONER	LOCATION / CALENDARS				PHONE(S)
BRADBURN JOHNSON, NANCY	Seattle- Ex Parte / Probate Department				296-9330
CANADA-THURSTON, BONNIE	Juvenile Court # 7 – ARY / CHINS / TRUANCY				205-2688
CASTILLEJA, ELIZABETH	ON LEAVE				205-9324
GALLAHER, RICHARD	Kent (1L)- Dependency Calendar				205-9324
GARRATT, JULIA	Juvenile Court				205-9450
HILLMAN, MARK	Kent (1F)- Family Law				205-2555
HOLMAN, HOLLIS	Seattle- Mental Health				296-9335
IESKE, JACQUELINE	Kent (1G)- Family Law				205-2555

## APPENDIX G

Decker's Paid Subpoena Fees

FILED

KING CO SUPERIOR CT  
BARBARA MINER  
DIRECTOR & SUPERIOR COURT CLERK  
SEATTLE WA

07-2-39915-1

Rept. Date 05/20/2009  
Acct. Date 05/20/2009  
Time 09:30 AM  
Receipt/Item # 2009-19-04378/04  
Tran-Code 1110  
Docket-Code \$FFRAF  
Cashier: RCF  
Paid By: DECKER, JON  
Transaction Amount: \$20.00

FILED  
KING COUNTY, WASHINGTON

MAY 20 2009

KING CO SUPERIOR CT  
BARBARA MINER  
DIRECTOR & SUPERIOR COURT CLERK  
SEATTLE WA

07-2-39915-1

SUPERIOR COURT CLERK

Rept. Date 05/20/2009  
Acct. Date 05/20/2009  
Time 09:30 AM  
Receipt/Item # 2009-19-04378/03  
Tran-Code 1110  
Docket-Code \$FFRAF  
Cashier: RCF

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

Paid By: DECKER, JON  
Transaction Amount: \$20.00

*Trimoba, UC et al*

Petitioner/Plaintiff,

vs

*Amaker Clinic LLC*  
Respondent/Defendant,

NO: 07.2.39915.1 SEA

Notice of Filing Fee Received

- Appeal to Appellate Court (JRS-1116) (\$AFF)
- Arbitration (JRS-1112) (\$FFR)
- Misc. Filing Fee Received (JRS-varies) (\$FFR)
- Non-Compliance Sanction (JRS-1552) (\$NCSR)
- Supplemental Proceedings (JRS-1114) (\$FFR)
- Unlawful Detainer- Answer/Show Cause (JRS-1136) (\$FFR)
- Warrant Fee Received & Issued (put in warrant status) (\$FFR)
- Writ, Subpoena, Citation, ect. (JRS-1139) (\$FFR)

Paid By: DECKER, JON  
Transaction Amount: \$20.00

Receipt/Item # 2009-19-04378/05  
Tran-Code 1110  
Docket-Code \$FFRAF  
Cashier: RCF  
Rept. Date 05/20/2009  
Acct. Date 05/20/2009  
Time 09:30 AM

Paid By: DECKER, JON  
Transaction Amount: \$20.00  
Rept. Date 05/20/2009  
Acct. Date 05/20/2009  
Time 09:30 AM  
Receipt/Item # 2009-19-04378/06  
Tran-Code 1110  
Docket-Code \$FFRAF  
Cashier: RCF

07-2-39915-1  
SEATTLE WA  
DIRECTOR & SUPERIOR COURT CLERK  
BARBARA MINER  
KING CO SUPERIOR CT

L:forms/cashiers/filing fee recvd 3/09

FILED

07-2-39915-1  
SEATTLE WA  
DIRECTOR & SUPERIOR COURT CLERK  
BARBARA MINER  
KING CO SUPERIOR CT

FILED

## APPENDIX H

Joint Statement of Evidence



## WITNESS LIST

### Counterclaim/Cross-claim Plaintiff's Witnesses:

1. **Acosta Sales & Marketing Co.** – Tenant of Trimoba, LLC at the rental property identified in the counterclaim and cross-claim complaint. Acosta Sales & Marketing Co. can be contacted at 13037 Bel-Red Road, Suite 150, Bellevue, WA 98005. Phone: (425) 454-5353. Acosta Sales & Marketing Co. will testify regarding the factual allegations set forth in the counterclaim and crossclaim complaint.
2. **Gregory S. Nelson** – Property manager of Trimoba, LLC, managing the rental property identified in the counterclaim and cross-claim complaint. Mr. Nelson can be contacted at Underwood Nelson Development, LLC, 14922 21<sup>st</sup> Ave SW, Seattle, WA 98166. Phone: (206) 818-5363. Mr. Nelson will testify regarding the factual allegations set forth in the counterclaim and crossclaim complaint.
3. **Brian E. Whiteside** – Crossclaim Defendant and managing member of Trimoba, LLC. Mr. Whiteside can be contacted through counsel Matthew R. Hansen at Graham & Dunn PC at 2801 Alaskan Way, Suite 300, Seattle, WA 98121. Phone: (206) 340-9595. Mr. Whiteside will testify regarding the factual allegations set forth in the counterclaim and crossclaim complaint.
4. **Wade A. Rowley** – President of Advance Cleaning Services. Mr. Rowley can be contacted at Advance Cleaning Services, 14214 21<sup>st</sup> St, Bellevue, WA 98007. Phone: (425) 890-2029. Mr. Rowley will testify regarding the factual allegations set forth in the counterclaim and crossclaim complaint.
5. **Mary E. MacDougall** – Managing member of Metro Escrow, LLC. Ms. MacDougall can be contacted through Mr. Weldon MacDougall, a register agent, at 240 118<sup>th</sup> Ave SE # 31, Bellevue, WA 98005. Ms. MacDougall will testify regarding the factual allegations set forth in the counterclaim and crossclaim complaint.

6. **Cynthia A. Whiteside** – Cross-claim Defendant. Ms. Whiteside can be contacted through counsel Matthew R. Hansen at Graham & Dunn PC at 2801 Alaskan Way, Suite 300, Seattle, WA 98121. Phone: (206) 340-9595. Ms. Whiteside will testify regarding the factual allegations set forth in the counterclaim and cross-claim complaint.
7. **Sonitrol Pacific** – Verified electronic security company for the rental property identified in the counterclaim and cross-claim complaint. Sonitrol Pacific can be contacted at 1406 140<sup>th</sup> Place NE, Suite 200, Bellevue, WA 98007. Phone: (425) 641-8948. Sonitrol Pacific will testify regarding the factual allegations set forth in the counterclaim and crossclaim complaint.
8. **Lee Sundquist** – Real estate broker for Trimoba, LLC for the rental property identified in the counterclaim and cross-claim complaint. Mr. Sundquist can be contacted at Market Associates, LLC, 532 1<sup>st</sup> Ave. South, Seattle, WA 98104. Phone: (206) 623-1500. Mr. Sundquist will testify regarding the factual allegations set forth in the counterclaim and crossclaim complaint.

**Counterclaim/Cross-claim Defendant's Witnesses:**

1. **Brian E. Whiteside** – Managing member of Trimoba, LLC. Mr. Whiteside can be contacted through counsel Matthew R. Hansen at Graham & Dunn PC at 2801 Alaskan Way, Suite 300, Seattle, WA 98121. Phone: (206) 340-9595. Mr. Whiteside will testify regarding the factual allegations set forth in the complaint and counterclaim/cross-claim.
2. **Gregory S. Nelson** – Property manager of Trimoba, LLC, managing the rental property identified in the complaint. Mr. Nelson can be contacted at Makota Management, P. O. Box 1301, Seahurst, WA 98062. Phone: (206) 248-3838. Mr. Nelson will testify regarding the factual allegations set forth in the complaint and counterclaim/cross-claim.
3. **Jeffrey D. Seanlan** – First Vice President of CB Richard Ellis, Inc. Mr. Jeffrey can be contacted at 10885 NE 4<sup>th</sup> Street, Suite 500, Bellevue, WA 98004. Phone: (425) 462-6923. Mr. Seanlan will testify regarding the factual allegations set forth in the complaint.

## EXHIBITS

Ex. No	Offered by	Description
1	Counterclaim Plaintiff	Counterclaim & Crossclaim Complaint from Decker
2	Counterclaim Plaintiff	Answer to Counterclaim & Third Party Complaint by Trimoba, LLC
3	Counterclaim Plaintiff	Letter from Decker to Brian Whiteside Regarding Breach of Lease by Trimoba, LLC
4	Counterclaim Plaintiff	Letter from Decker to Brian Whiteside Regarding Failure to Cure the Default
5	Counterclaim Plaintiff	Letter from Brian Whiteside Regarding Breach of Lease by Trimoba, LLC
6	Counterclaim Plaintiff	SBA Document Regarding Landlord Consent With Premises
7	Counterclaim Plaintiff	Cleaning Specifications for the Premises from Trimoba, LLC
8	Counterclaim Plaintiff	Service List & Marketing Materials of Awake Clinic, LLC
9	Counterclaim Plaintiff	Photos of the Premises
10	Counterclaim Plaintiff	Electronic Document on Noncompliance with Operating Expense by Trimoba, LLC
11	Counterclaim Plaintiff	Electronic Document on Breach of Lease with Operating Expense by Trimoba, LLC
12	Counterclaim Plaintiff	Electronic Document Regarding Noncompliance with the Lease by Trimoba, LLC
13	Counterclaim Plaintiff	Electronic Document on Unauthorized Possession & Rerouted of Properties
14	Counterclaim Plaintiff	Electronic Document Regarding Breach of Lease with Signage by Trimoba, LLC
15	Counterclaim Plaintiff	Electronic Document on Noncompliance with Operating Expense From Trimoba, LLC
16	Counterclaim Plaintiff	Electronic Document from a Major Bellevue Headquarter Clothing Company Client of Awake Clinic, LLC
17	Counterclaim Defendant	Lease Agreement signed between Trimoba, LLC and Awake Clinic, LLC and Jon Decker, dated December 15, 2007
18	Counterclaim Defendant	Lease Agreement signed between Trimoba, LLC and Metro Escrow, LLC, dated October 8, 2007
19	Counterclaim Defendant	Letter from Brian E. Whiteside to Jon Decker notifying that premises are ready for possession, dated January 31, 2007
20	Counterclaim Defendant	Letter from Brian E. Whiteside to Trimoba, LLC and Jon Decker regarding notice to gain entrance to the premises, dated June 8, 2007
21	Counterclaim Defendant	Three-Day Notice to Pay Rent or Vacate, dated June 21, 2007
22	Counterclaim Defendant	Affidavit of Posting of Three-Day Notice to Pay Rent or Vacate, dated June 21, 2007
23	Counterclaim Defendant	Affidavit of Service by Mail of Three-Day Notice to Pay Rent or Vacate, dated June 21, 2007
24	Counterclaim Defendant	Letter from Jon Decker to Brian Whiteside regarding receipt of Three-Day Notice to Pay Rent or Vacate, dated June 26, 2007
25	Counterclaim Defendant	Letter from Matthew R. Hansen to Awake Clinic, LLC and Jon Decker regarding breach of lease for the premises, dated October 26, 2007

DATED this 29<sup>th</sup> day of May, 2009

By 

Jon Decker, Pro SE  
Counterclaim/Crossclaim Plaintiff

DATED this 1<sup>st</sup> June day of May, 2009

By 

Matthew R. Hansen, WSBA#36631  
Email: mhansen@grahamdunn.com  
Daniel J. Oates, WSBA#39334  
Email: doates@grahamdunn.com  
Counsels for Counterclaim/Crossclaim Defendants

## APPENDIX I

Estimate Witness Examinations

**Trimoba, LLC et al. v. Awake Clinic, LLC et al.**

Estimate of Witness Examinations

Submission of the following information is **required** by Judge Erlick together with working copies of the Joint Statement of Evidence, Trial Briefs, etc. **not later than five court days prior to trial.** **DO NOT FILE THIS DOCUMENT WITH THE CLERK'S OFFICE.**

Use tenths of hours for estimates, i.e. .1, .2, .5, 1.0 etc.

PLAINTIFF(S)

Witness Name	Direct Exam	Cross-Exam	Re-Direct Exam	Total
Brian E. Whiteside	0.5	1.0	.7	2.2
Gregory S. Nelson	1.5	1.0	.7	3.2
Jeffrey D. Scanlan	0.5	0.5	.3	1.3

6.7

DEFENDANT(S)

Witness Name	Direct Exam	Cross-Exam	Re-Direct Exam	Total
Acosta Sales & Marketing	0.5	.5	0.5	1.5
Gregory S. Nelson	1.0	.4	1.0	2.4
Brian E. Whiteside	1.0	.4	1.0	2.4
Wade A. Rowley	1.0	.4	1.0	2.4
Mary E. MacDougall	0.5	.3	0.5	1.3
Lee Sundquist	0.5	.3	0.5	1.3
Cynthia A. Whiteside	0.5	.2	0.5	1.2
Sonitrol Pacific	0.5	.4	0.5	1.4

12.9

Counsel are to confer not later than ten calendar days prior to the trial date to determine estimations for cross-examination time for each party's witnesses and prepare this document. You may use this form, or create one of your own, as long as it includes the requested information.

If there are additional parties, each party should create and complete the required information for that party's witnesses.

**NOTE: Failure to complete this form and disclose witnesses may result in exclusion of witnesses or other sanctions.**

Jon Decker  
PO Box 14192  
Mill Creek, WA 98082

May 29, 2009

Matthew R. Hansen & Daniel J. Oates  
Graham & Dunn, PC  
2801 Alaskan Way, Suite 300  
Seattle, WA 98121-1128

**RE: Trimoba, LLC et al. v. Awake Clinic, LLC et al.  
King County Superior Court Cause No. 07-2-39915-1 SEA  
Joint Statement of Evidence & Estimate of Witness Examinations**

Mr. Hansen and Oates:

I have received your letter regarding the Joint Statement of Evidence and Estimate of Witness Examinations on May 28, 2009 (EXHIBIT A), which you have failed to mention any information or provide a copy of the order for motion to compel (Dkt. No. 70) with your letter.

However, I was shocked to see a copy of the order during the evening of May 29, 2009 taped on a common area door without envelope so everyone can see and read the lawsuit. I am not sure why you are using an address that was never provided to you or the Court, which is great concern of how you attained this address. Your threats, unprofessional conduct, and making public nuisance regarding this case are considered harassment, stalking, and defamation. Due to your actions, I will look into filing a police report and get a protective order against your repeated warned ill behaviors and violations of federal and civil rules. Moreover, pursuant to CR 5(b)(1), hand delivery is by "... leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein". Therefore, taping it on the door is in violation of CR 5(b)(1).

In your draft Joint Statement of Evidence and Estimate of Witness Examinations, you have included "Jon Decker" as one of Trimoba's witnesses. Pursuant to CR 43(f)(1), Trimoba is required to serve a notice on Jon Decker if Trimoba wishes to call him as a witness. Due to Mr. Decker did not receive any notice from Trimoba to appear as a witness as set forth in CR 43(f)(1), Trimoba cannot include him as a witness for their complaint. However, Brian E. Whiteside and Cynthia A. Whiteside did receive the appropriate notices that were mailed on May 18, 2009, therefore, they are required to appear for trial as scheduled on June 8, 2009 and they have been included in the witness list (EXHIBIT B).

Please review the attached Joint Statement of Evidence and Estimate of Witness Examinations that I have signed to comply with the deadline regarding this matter in a short timeframe. Once you have reviewed and signed the appropriate documents, please submit the documents to the Court and Judge Erlick's mailroom C203. Also, please forward a copy of the submitted documents with both parties' signatures to me as soon as possible. Thank you for your time and please feel free to contact me if you have any questions.

Sincerely,



Jon Decker  
*Counterclaim/Cross-claim Plaintiff*

## APPENDIX J

Joint Confirmation of Trial Readiness

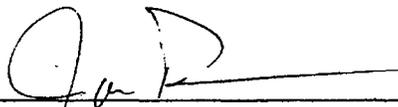


parties were unable to confirm jointly (EXHIBIT A). Decker represent that Decker is aware of all deadlines and requirements in the Pretrial Order, and certifies the following to the Court regarding trial readiness.

- B. On February 27, 2009, Jury was demanded and paid by Counterclaim/Cross-claim Plaintiff Decker for this case above for trial date on June 8, 2009.
- C. It is estimated, based upon a maximum of 5 trial hours per day that this trial will last approximately one (1) to two (2) days.
- D. Settlement Conference/Mediation/ADR (“settlement conference”) with a neutral third party was NOT accomplished due to the following reasons:
- On May 1, 2009, Decker provided a timeframe available for a non-judicial settlement conference before the ADR deadline, but Decker received a letter from Trimoba on May 7, 2009 stating that Trimoba was unable to arrange a non-judicial settlement conference for that timeframe.
  - Decker has tried numerous times to arrange a settlement conference with Trimoba before the ADR deadline where Decker found Mr. Andrew D. Kidde from Mediation Program at City of Bellevue on May 8, 2009 (EXHIBIT B).
  - Mr. Kidde was able to schedule a settlement conference for Trimoba and Decker on May 15, 2009 at 1 p.m. with his neutral third party mediators, attorney Michelle C. Mentzer and Mr. Stephen A Dennis, where the date and time were agreed upon by both parties. However, Trimoba refused to attend the agreed upon settlement conference at the last minute.

- Decker has tried in good faith to meet with Trimoba in regards with settlement conference. In conclusion, Counterclaim/Cross-claim Plaintiff Decker is ready for trial date on June 8, 2009 as scheduled. In fact, Decker has already subpoenaed his witnesses to appear and testify for June 8, 2009 for above case.

DATED THIS 19<sup>th</sup> day of May, 2009.



Jon Decker, Pro Se  
*Counterclaim/Cross-claim Plaintiff*

:: EXHIBIT A ::

VIA FAX (206) 340-9599

Jon Decker  
PO Box 14192  
Mill Creek, WA 98082

May 13, 2009

Matthew R. Hansen  
Graham & Dunn, PC  
2801 Alaskan Way, Suite 300  
Seattle, WA 98121-1128

**RE: Trimoba, LLC et al. v. Awake Clinic, LLC et al.  
King County Superior Court Cause No. 07-2-39915-1 SEA  
Joint Confirmation Regarding Trial Readiness**

Mr. Hansen:

According to the Order Setting Case Schedule ("Schedule"), both parties are required to complete a Joint Confirmation regarding Trial Readiness Report by May 18, 2009 per KCLCR 16(a)(1). Therefore, I have attached a completed Joint Confirmation regarding Trial Readiness for your convenience.

Please review and return the signed documents to me at my above address before May 15, 2009 in order to meet the deadline for filing Joint Confirmation of Trial Readiness. Once I have received your mailed documents, I will file the appropriate documents with the Court regarding this matter.

As you know, the trial date is scheduled for June 8, 2009 where it is required for both parties to comply with the Schedule pursuant KCLCR 4. Your prompt cooperation is vital in meeting the Schedule deadlines where non-compliance could result in terms and sanctions including possible dismissal pursuant to KCLCR 4(g), KCLCR 16(a)(1), and CR 37.

I look forward to receiving the appropriate documents regarding this matter. Thank you for your time and please feel free to contact me if you have any further questions.

Sincerely,



Jon Decker  
*Counterclaim/Cross-claim Plaintiff*

---

**IMPORTANT NOTICE**

Please do NOT use this public fax number to send any documents regarding this case above. Decker will not be able to receive any documents via this fax number. This fax may contain confidential or privileged information intended only for the addressee. Do not read, copy or disseminate it unless you are the addressee. If you are not the addressee, please permanently destroy it. Thank you.

**:: EXHIBIT B ::**

Jon Decker  
PO Box 14192  
Mill Creek, WA 98082

May 8, 2009

Daniel J. Oates  
Graham & Dunn, PC  
2801 Alaskan Way, Suite 300  
Seattle, WA 98121-1128

**RE: Trimoba, LLC et al. v. Awake Clinic, LLC et al.  
King County Superior Court Cause No. 07-2-39915-1 SEA  
Settlement Conference/Alternative Dispute Resolution**

Mr. Oates:

I received your letter dated May 6, 2009 regarding the Settlement Conference. You stated that you were unable to find a mediator on or before May 11, 2009, which was odd because I have called many local mediators that were available on a short notice for the same timeframe.

As you are aware, Mr. Andrew Kidde, mediator for Mediation Program from City of Bellevue, contacted you on May 8, 2009 to confirm with you regarding the Settlement Conference as required by our Schedule. However, Mr. Kidde stated that you would call him back after you have discussed with Mr. Matthew R. Hansen.

Per your conversation with Mr. Kidde, the Mediation Program from City of Bellevue is FREE and can accommodate the short notice to help comply with the Schedule as soon as Mr. Kidde hears from you. In addition, the conference will be held at Bellevue City Hall, which would also be at no cost to both parties. Moreover, having the conference at downtown Bellevue would be more convenient for your client(s) as well, if they need to be present because of the close proximity to their work and home.

Please contact Mr. Kidde at (425) 452-5288 immediately to confirm with him as he is expecting your call in order to proceed forward with the settlement conference. Your prompt cooperation is vital in meeting the deadlines in the Schedule that are required for both parties to comply per KCLCR 4.

Sincerely,



Jon Decker  
*Counterclaim/Cross-claim Plaintiff*

PS – Per your request, I have provided a date for the settlement conference to meet the deadline and clearly stated “non-judicial Settlement Conference” in my letter dated May 1, 2009. However, you scheduled a *judicial* conference date that is after the ADR deadline without my consent. This will only delay the trial date of June 8, 2009.

## APPENDIX K

Order for Continuance of Trial Date

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

TRIMOBA LLC,

Plaintiff,

vs.

AWAKE CLINIC LLC et al,

Defendants.

No. 07-2-39915-1 SEA

ORDER TO COMPLETE ADR AS  
REQUIRED IN KCLR 16(b), REQUIRING  
DEFENDANT TO PROVIDE CONTACT  
INFORMATION TO THE COURT, and  
CONTINUING TRIAL DATE TO  
MONDAY, JUNE 15, 2009 at 9:00 AM

Clerk's Action Required

THIS MATTER comes before the Court upon the Court's own motion to compel the parties to comply with KCLR 16(b), requiring participation in Alternate Dispute Resolution. This Court having been fully advised in the premises and being familiar with the particulars herein, specifically that trial in this matter was set to begin on Monday, June 8, 2009 and the ADR deadline was May 11, 2009, and the parties have failed to complete the ADR requirement, and that the defendant has failed to provide acceptable contact information to counsel and the Court. NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the parties must engage in Alternate Dispute Resolution no later than, Friday, June 12, 2009, in

ORDER TO COMPLETE ADR, REQUIRING DEFENDANT TO  
PROVIDE CONTACT INFORMATION TO THE COURT, and  
CONTINUING TRIAL DATE - 1

**ORIGINAL**

John P. Erlick, Judge  
King County Superior Court  
516 Third Avenue  
Seattle WA 98104  
(206) 296-9345

1 compliance with KCLR 16(b); that the defendant must provide a contact telephone  
2 number to the bailiff of the Court no later than Friday, June 5, 2009, and that the trial in  
3 this matter is set for Monday, June 15, 2009 at 9:00 AM. Sanctions may be imposed  
4 upon any party failing to cooperate and comply with this order and may include  
5 dismissal of the claims of the party found to be out of compliance.

6 DATED this 2<sup>nd</sup> day of June, 2009.

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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
7 IN AND FOR KING COUNTY

8 TRIMOBA LLC,

9 Plaintiff,

10 vs.

11 AWAKE CLINIC LLC et al,

12 Defendants.

No. 07-2-39915-1 SEA

ORDER TO COMPLETE ADR AS  
REQUIRED IN KCLR 16(b), REQUIRING  
DEFENDANT TO PROVIDE CONTACT  
INFORMATION TO THE COURT, and  
CONTINUING TRIAL DATE TO  
MONDAY, JUNE 15, 2009 at 9:00 AM

Clerk's Action Required

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15 THIS MATTER comes before the Court upon the Court's own motion to compel  
16 the parties to comply with KCLR 16(b), requiring participation in Alternate Dispute  
17 Resolution. This Court having been fully advised in the premises and being familiar with  
18 the particulars herein, specifically that trial in this matter was set to begin on Monday,  
19 June 8, 2009 and the ADR deadline was May 11, 2009, and the parties have failed to  
20 complete the ADR requirement, and that the defendant has failed to provide acceptable  
21 contact information to counsel and the Court. NOW, THEREFORE,

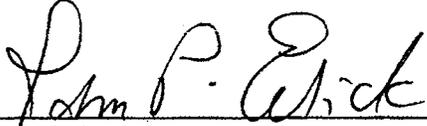
22 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the parties must  
23 engage in Alternate Dispute Resolution no later than, Friday, June 12, 2009, in

ORDER TO COMPLETE ADR, REQUIRING DEFENDANT TO  
PROVIDE CONTACT INFORMATION TO THE COURT, and  
CONTINUING TRIAL DATE - 1

John P. Erlick, Judge  
King County Superior Court  
516 Third Avenue  
Seattle WA 98104  
(206) 296-9345

1 compliance with KCLR 16(b); that the defendant must provide a contact telephone  
2 number to the bailiff of the Court no later than Friday, June 5, 2009, and that the trial in  
3 this matter is set for Monday, June 15, 2009 at 9:00 AM. Sanctions may be imposed  
4 upon any party failing to cooperate and comply with this order and may include  
5 dismissal of the claims of the party found to be out of compliance.

6 DATED this 2<sup>nd</sup> day of June, 2009.

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10 John P. Erlick, Judge  
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## APPENDIX L

Decker's ADR Letters

Jon Decker  
PO Box 14192  
Mill Creek, WA 98082

May 1, 2009

Daniel J. Oates  
Graham & Dunn, PC  
2801 Alaskan Way, Suite 300  
Seattle, WA 98121-1128

**RE: Trimoba, LLC et al. v. Awake Clinic, LLC et al  
King County Superior Court Cause No. 07-2-39915-1 SEA  
Settlement Conference/Alternative Dispute Resolution**

Mr. Oates:

I am aware of the Settlement Conference that is required for both parties to attend by May 11, 2009 according to Order Setting Civil Case Schedule.

I will be available for a nonjudicial Settlement Conference at a neutral place on May 11, 2009, Monday, after 3 p.m. Pursuant to KCLCR 16 (b)(1) the Settlement Conference must be conducted by a neutral third party.

Please let me know before May 11, 2009 if the date will work for you and who will be the neutral third party at our nonjudicial Settlement Conference. I will confirm with you once I hear from you regarding this matter. Thank you for your time and I look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jon Decker', with a long horizontal flourish extending to the right.

Jon Decker  
*Counterclaim/Cross-claim Plaintiff*

Jon Decker  
PO Box 14192  
Mill Creek, WA 98082

May 8, 2009

Daniel J. Oates  
Graham & Dunn, PC  
2801 Alaskan Way, Suite 300  
Seattle, WA 98121-1128

**RE: Trimoba, LLC et al. v. Awake Clinic, LLC et al.  
King County Superior Court Cause No. 07-2-39915-1 SEA  
Settlement Conference/Alternative Dispute Resolution**

Mr. Oates:

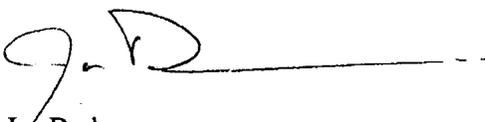
I received your letter dated May 6, 2009 regarding the Settlement Conference. You stated that you were unable to find a mediator on or before May 11, 2009, which was odd because I have called many local mediators that were available on a short notice for the same timeframe.

As you are aware, Mr. Andrew Kidde, mediator for Mediation Program from City of Bellevue, contacted you on May 8, 2009 to confirm with you regarding the Settlement Conference as required by our Schedule. However, Mr. Kidde stated that you would call him back after you have discussed with Mr. Matthew R. Hansen.

Per your conversation with Mr. Kidde, the Mediation Program from City of Bellevue is FREE and can accommodate the short notice to help comply with the Schedule as soon as Mr. Kidde hears from you. In addition, the conference will be held at Bellevue City Hall, which would also be at no cost to both parties. Moreover, having the conference at downtown Bellevue would be more convenient for your client(s) as well, if they need to be present because of the close proximity to their work and home.

Please contact Mr. Kidde at (425) 452-5288 immediately to confirm with him as he is expecting your call in order to proceed forward with the settlement conference. Your prompt cooperation is vital in meeting the deadlines in the Schedule that are required for both parties to comply per KCLCR 4.

Sincerely,



Jon Decker  
*Counterclaim/Cross-claim Plaintiff*

PS – Per your request, I have provided a date for the settlement conference to meet the deadline and clearly stated “non-judicial Settlement Conference” in my letter dated May 1, 2009. However, you scheduled a *judicial* conference date that is after the ADR deadline without my consent. This will only delay the trial date of June 8, 2009.

## APPENDIX M

Department of Licensing Agreement



**RECEIVED**  
**OCT 15 2008**  
**PUBLIC DISCLOSURE/CONTRACTS**

VEHICLE/VESSEL  
 DISCLOSURE SECTION  
 PO BOX 2957  
 OLYMPIA, WA 98507-2957  
 PHONE: (360) 902-3760 IVIPS  
 FAX: (360) 902-3827

**VEHICLE/VESSEL DISCLOSURE  
 AGREEMENT APPLICATION**

All applications are reviewed according to Federal and Washington State disclosure laws.  
 We will respond to you within five business days following the receipt of your application.  
 Please allow a minimum of 14 business days for processing your application.

<b>SECTION 1</b> Check the method(s) of access you are requesting:	<b>NEW APPLICANT &amp; RENEWAL OF EXISTING ACCOUNTS</b>	<b>AGENCY USE ONLY</b>
<input type="checkbox"/> Electronic Titling (ELT) (306) 902-3424 <input type="checkbox"/> Secure File Transfer (SFT) (Bulk Batches of Data) (360) 902-3726 <input checked="" type="checkbox"/> Internet Vehicle/Vessel Information Processing System (IVIPS) (Individual record inquiries) (360) 902-3760 <input type="checkbox"/> Vehicle/Vessel Owner Information Data Share (VOIDS) (Bulk batches of Data) (360) 902-3726	<ol style="list-style-type: none"> <li>1. Please read carefully and complete all sections of this form, (Attach additional sheets if necessary)</li> <li>2. Submit all required documents</li> <li>3. Complete and sign form, Incomplete forms can not be processed</li> <li>4. Return with required documents to:</li> </ol> <p style="text-align: center;">VEHICLE/VESSEL DISCLOSURE SECTION          PO BOX 2957          OLYMPIA, WA 98507-2957          PHONE: (360) 902-3760          FAX: (360) 902-3827</p>	<b>ACCOUNT</b> <del>XXXXXXXXXX</del> <input type="checkbox"/> New Account <input checked="" type="checkbox"/> Renewal <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> Canceled <input type="checkbox"/> Reapply

**PLEASE PRINT CLEARLY**

COMPANY/AGENCY NAME <i>Graham &amp; Dunn Law Firm</i>	PHONE NUMBER <i>(206) 624-8300</i>	DATE OF REQUEST <i>10/10/2008</i>
CONTACT NAME <i>Katie Drake</i>		FAX NUMBER <i>(206) 340-9599</i>
PHYSICAL BUSINESS ADDRESS (Number and Street REQUIRED) <i>2801 Alaskan Way, Suite 300, Pier 70</i>		
CITY <i>Seattle</i>	STATE <i>WA</i>	ZIP CODE <i>98121-1128</i>
MAILING ADDRESS (if different from above)		
CITY	STATE	ZIP CODE
E-MAIL ADDRESS <i>Kdrake@grahamdunn.com</i>		
WEBSITE ADDRESS <i>www.grahamdunn.com</i>		
TAX ID NUMBER REQUIRED ♦ Tax Identification Number (TIN). ♦ For other entities, it is your Employer Identification Number (EIN). ♦ Washington State Uniform Business Identifier (UBI).		Enter your: TIN <u>91-1120750</u> EIN _____ UBI <u>600 384 308</u>

<b>SECTION 2</b>	<b>CHECK THE BOX THAT BEST DESCRIBES YOUR ANTICIPATED MONTHLY USAGE</b>		
Usage is measured by each inquiry made.	<input checked="" type="checkbox"/> 0-to 25 <input type="checkbox"/> 26- to 100	<input type="checkbox"/> 101 to 499 <input type="checkbox"/> 500 to 999	<input type="checkbox"/> 1000 or more <input type="checkbox"/> OTHER explain

**SECTION 3: DURING WHAT HOURS WILL YOU NEED ACCESS TO INFORMATION?**

Monday - Friday 8AM - 5PM  Saturday - Sunday 8AM - 5PM  After business hours.  
 Explain why:

**SECTION 4: CHECK ALL BOXES THAT APPLY TO YOU AND/OR YOUR BUSINESS**  
 (Failure to properly disclose may result in criminal)

<input checked="" type="checkbox"/> Attorney <input type="checkbox"/> Auction <input type="checkbox"/> Auto Manufacturer or Agent <input type="checkbox"/> Bail Bonds <input type="checkbox"/> Bank or Financing Firm <input type="checkbox"/> Business <input type="checkbox"/> Commercial Data Broker/Reseller <input type="checkbox"/> Commercial Parking Company <input type="checkbox"/> Credit Union <input type="checkbox"/> Debt/ Recovery/Collection <input type="checkbox"/> Employer or Prospective Employer <input type="checkbox"/> Government <input type="checkbox"/> Home Owner Association <input type="checkbox"/> Hospital	<input type="checkbox"/> Hulk Hauler <input type="checkbox"/> Insurance Company or Agent <input type="checkbox"/> Marina <input type="checkbox"/> Neighborhood Block Watch <input type="checkbox"/> Newspaper or Media <input type="checkbox"/> Non-Profit Organization <input type="checkbox"/> Parking Enforcement <input type="checkbox"/> Private Investigator <input type="checkbox"/> Private Toll Facility <input type="checkbox"/> Process Server <input type="checkbox"/> Property Management - Government <input type="checkbox"/> Property Management - Private <input type="checkbox"/> Repossession Service	<input type="checkbox"/> Retail/Store <input type="checkbox"/> School - Private <input checked="" type="checkbox"/> School - Public <input type="checkbox"/> Scrap Processor or Wrecker <input type="checkbox"/> Security Services - Government <input type="checkbox"/> Security Services - Private <input type="checkbox"/> Towing Company <input type="checkbox"/> Transporter <input type="checkbox"/> Union (Non-Profit) <input type="checkbox"/> Vehicle/Vessel Dealer <input type="checkbox"/> Service Bureau for another business, provide business name: <input type="checkbox"/> Other (Explain)	<p><b>AGENCY USE ONLY</b></p> <p>Permitted</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes</p>
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**SECTION 5: WHY DO YOU NEED VEHICLE/VESSEL INFORMATION?**  
 Explain, in detail, who will use the information and how it will be used. Attach additional pages if necessary.

Probate Searches - identifying property in an estate.  
 Asset Searches - identifying property for collection on judgments

**SECTION 6: EXPLAIN EXACTLY WHAT YOUR BUSINESS DOES. BE SPECIFIC AND PROVIDE DETAILED INFORMATION.**

Provide legal advice in the areas of estate planning, banking, condemnation and litigation

**SECTION 7: WILL YOU PROVIDE OR SELL THE INFORMATION TO ANYONE ELSE?**  
 No  Yes  Sell  Give to another. Explain in detail.

Who will you give the information to? (Be specific)

How will you supply the information? (Written, phone etc.)?

Why will you share the information?

**SECTION 8** WILL YOU CONTACT THE VEHICLE/VESSEL OWNER(S)?  No  Yes Explain below.

How will you contact them? (Written, phone etc.)? *In writing and verbally.*

Why will you contact them? *Property belonging to an estate will be identified during probate. Assets will be identified for filing liens.*

**SECTION 9** READ CAREFULLY / CHECK ALL BOXES THAT APPLY / FOLLOW THE INSTRUCTIONS

- I represent a Washington business - attach legible copies of:
  - ◆ Current business license.
  - ◆ Any/all professional licenses that you possess.
- I represent a business entity outside Washington State. If your business is not required to be licensed in the State of Washington - attach legible copies of:
  - ◆ The unexpired business license issued by the out-of-state jurisdiction where the business entity is authorized to do business OR
  - ◆ Your Federal Employer Identification number/Federal tax number or Uniform Business Identifier (UBI) on official letterhead with a *notarized signature* of the owner or authorized representative, to indicate you are their agent.
- I am an Attorney - attach legible copies of:
  - ◆ Your current business license.
  - ◆ Your current bar card
  - ◆ If you are not working as an Attorney in your own business, but are employed as an Attorney with a firm or other business, submit on official letterhead a *notarized signature* of the business owner or authorized representative, indicating you are their agent.
- I am a Private Investigator, working as a private investigator - attach legible copies of:
  - ◆ Your current Private Investigator license
  - ◆ Your current business license
  - ◆ If you are not working in your own business but are employed as a Private Investigator, submit on official letterhead a *notarized signature* of the business owner or authorized representative, indicating you are their agent.
- I represent a Government Agency - attach on official letterhead a statement that the information you receive will be used solely for carrying out official agency functions.

(PRINT AGENCY NAME)

**AGENCY USE ONLY**

Submitted required information

No  Yes

Business License

Expiration Date

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Meets Permissible Uses for disclosure

No  Yes

- I represent a Non-Profit Organization, or Corporation - attach legible copies of:
  - ◆ Your Articles of Incorporation, filed with the Secretary of State, OR
  - ◆ Your Tax Exempt Status from the Internal Revenue Services (501) (c) (3), OR
  - ◆ Other documents reviewed and approved by the Department of Licensing Public Records Officer,
  - ◆ Submit on official letterhead with a *notarized signature* of the business owner or authorized representative, indicating you are their agent.

## SECTION 10

## ACKNOWLEDGEMENT

- I understand by signing this Agreement Application, there is no guarantee I will be provided the information I am requesting or that I will be given an Agreement with DOL (if applicable).
- I have attached all the required documents that apply to my Agreement Application.
- I agree the information provided to me by the Department of Licensing (DOL) will not be divulged to any third party. The information will not be used for any purpose other than what is stated on this application, or approved by DOL, and will not be sold or used for commercial purpose by me or by any other individual or organization.
- I will not use, or facilitate the use of, the information for the purpose of making unsolicited business contact with a person named in the disclosed information. "Unsolicited business contact" means a contact that is intended to result in, or promote the sale of any goods or services to a person named in the disclosed information.
- I declare under penalty of perjury under the laws of the State of Washington that the information and statements on this Agreement Application are true and correct and comply with the Federal Driver's Privacy Protection Act, 18 USC Sec. 2721 (DPPA).

The Department of Licensing (DOL) will only release personal, identifying information to you, as allowed by Washington State and Federal laws, under RCW 46.12.370-390, RCW 47.46, RCW 42.56.070 <http://apps.leg.wa.gov/rcw/>, WAC 308-93-087-088 and WAC 308-10, <http://apps.leg.wa.gov/wac/> Executive Order 97-01 <http://www.governor.wa.gov/execorders/eoarchive/eo97-01.htm> and DPPA (18 USC Sec.2721 and Sec 2725). <http://www.accessreports.com/statutes/DPPA1.htm>

SIGNATURE Kate J. Drake DATE 10/10/2008 ADDRESS 28 01 Alaskan Way  
 PRINT NAME Kate J. Drake CITY Seattle STATE WA 98121-1128  
 TITLE Librarian LOCATION/COUNTY King County

REVIEW STATUS

AGENCY USE ONLY

 Reviewed by Contract Application Review Committee

DATE RECEIVED

DATE

The Department of Licensing has a policy of providing equal access to its services.  
 If you need special accommodations, please call (360) 902-3760 or TTY (360) 664-8885



STATE OF WASHINGTON  
 DEPARTMENT OF LICENSING  
 PO Box 9020 • Olympia, Washington 98507-9020

May 29, 2009

DECKER, JON K  
 14714 MAIN STREET BB202  
 MILL CREEK WA 98012

**VEHICLE/VESSEL RECORD DISCLOSURE NOTIFICATION**

Notification of this disclosure is being sent to you, per the Revised Code of Washington (RCW) 46.12.380. This RCW provides that notification of disclosure requests must be sent to the affected vehicle/vessel owner. The following Requester made an inquiry on a vehicle or vessel record in which you are the registered owner on the records of the Department of Licensing:

Requester's Name <b>GRAHAM &amp; DUNN LAW FIRM</b>	
Address <b>2801 ALASKAN WAY STE 300 SEATTLE WA 98121</b>	
ATTN: <b>KATIE DRAKE</b>	
Date Information was Provided <b>May 28, 2009</b>	Phone Number (including area code) <b>(206) 903-4801</b>
Information was Provided By <b>Department of Licensing</b>	
Vehicle plate or vessel WN registration number: <b>[REDACTED]</b>	Vehicle (VIN) or vessel (HIN) identification number: <b>[REDACTED]</b>

If you have any questions regarding this inquiry, please contact the above named Requester.



## APPENDIX N

Affidavits of James Pitman

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF KING

TRIMOBA, LLC, and BRIAN WHITESIDE,  
individually and the marital community comprised of  
BRIAN and CYNTHIA WHITESIDE.

Plaintiff(s)/Counterclaim/Crossclaim Defendants,

Vs.

AWAKE CLINIC, LLC, a Washington limited liability  
company; et al.,

Defendant(s)/Counterclaim/Crossclaim Plaintiffs.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

NO. 07-2-39915-1 SEA

AFFIDAVIT OF SERVICE OF: ORDER GRANTING  
MOTION TO COMPEL: DECLARATION OF  
SERVICE.

The undersigned, being first duly sworn, on oath states:

That I am now, and at all times herein mentioned, was a citizen of the United States and a resident of the State of Washington, over the age of 18 years, not a party to or interested in the above entitled action, and am competent to be a witness therein.

That at 10:56 A.M. on May 29<sup>th</sup>, 2009, at 14714 Main Street, Apartment BB202, Mill Creek, Washington, I duly served the above-described documents in the above-described matter upon Jon K. Decker, by then and there personally delivering a true and correct copy thereof by posting the same to the front door of the residence after receiving no response to my knocking and took a picture of the posting, which is attached.

JAMES PITMAN KING CO. # 0411169

JUN 01 2009

Service Fees: 10.00  
Ferry tolls:  
Travel: 24.00  
SSA: 50.00  
Trace:  
Bad Address:  
Aff./Notary Fee: 12.00  
Special Fee: 50.00  
Photo: 5.00

TOTAL \$148.00

SUBSCRIBED AND SWORN to before me on:



WILLIAM P. LUTKUS  
NOTARY PUBLIC in and for the State  
of Washington residing at: Seattle.  
My commission expires: 10-01-10.

## APPENDIX O

Trimoba's Claimed Damages, If Any, Are Incorrect

**SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY**

TRIMOBA, L.L.C. et al.	)	<b>No. 07-2-39915-1 SEA</b>
	)	
Plaintiff/Counterclaim/Cross-claim Defendants,	)	
	)	
v.	)	<b>DECKER'S RESPONSE TO</b>
	)	<b>TRIMOBA'S MONETARY</b>
AWAKE CLINIC, L.L.C. et al.	)	<b>DAMAGES IN FINAL</b>
	)	<b>JUDGMENT</b>
Defendants/Counterclaim/Cross-claim Plaintiffs.	)	
	)	
	)	

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**TRIMOBA'S MONETARY DAMAGES, IF ANY, ARE INCORRECT**

Since June 12, 2009, Decker has not received any pleadings or orders from the trial court or Counsels for Trimoba until Decker received the order judgment with Trimoba's claimed mitigation

of damages from Counsels for Trimoba on July 11, 2009. For unknown reason, Decker received the order from Counsels for Trimoba about a month later after the judgment was entered on June 15, 2009.

Assuming *arguendo* that Trimoba claims are colorable, Trimoba have deliberately miss calculated their monetary damages to incur unnecessary cost and burden on Decker. Trimoba's claim of total amount of \$69,082.71 [Calculation: Principal Judgment of \$37,270.96 + Pre-Judgment Interest of \$7,068.25 + Attorneys' Fees of \$24,173.50 + Cost of \$570] is incorrect as follow:

1. **Principal Judgment.** Without citing Decker's liability from the Lease, Counsels for Trimoba included Operating Expense that is not part of Principal Judgment. According to the Lease, Decker is not liable for Operating Expense that Trimoba claimed in an additional amount of \$9,816.73. Therefore, the Principal Judgment is not \$37,270.96 but **\$27,008.12** as calculated below:

Rent:	\$3,706.50 x 5.5 months = \$20,385.75
Late Fees (5%):	(\$3,706.50 x .05) x 5 months = \$926.63
Real Estate Commission:	\$9,054.45
Reletting Cost:	\$744.82
Prepaid Deposit:	\$4,103.63

$$\$20,385.75 + \$926.63 + \$744.82 + \$9,054.45 - \$4,103.63 = \underline{\$27,008.12}$$

2. **Pre-Judgment Interest.** Due to the correct Principal Judgment is \$27,008.12 according to above calculation, Pre-Judgment Interest should be **\$5,123.40** instead of \$7,068.25 as claimed by Trimoba.

3. **Attorneys' Fees.** Counsels for Trimoba have not provided any evidence and break down cost of Attorneys' Fees to Decker.
- a. The Attorneys' Fees of \$24,173.50 is excessively high compared to the proportion of total judgment of \$27,008.00, which could not be possible and is unreasonable compared to Trimoba's claimed damages.
  - b. There are two (2) tenants under the Lease (Introduction paragraph of the Lease) where Trimoba filed a complaint against two (2) separate parties: Awake Clinic, LLC as a Washington State Limited Liability Company and Jon Decker as individually. Moreover, Counsels for Trimoba are aware that Awake Clinic was dissolved a year ago when Trimoba filed their complaint on December 17, 2007. Due to Awake Clinic is a separate party, Decker is not liable for cost incurred from Trimoba's claims against Awake Clinic, including Attorneys' Fees.
  - c. The trial court denied Counsels for Trimoba's falsified claims for court reporter costs and attorneys' fees that never occurred on April 20, 2009 and May 28, 2009 (Dkt. No. 68, 80, and 96). Due to the court reporter costs and attorneys' fees were denied and proven to be false claims, Attorneys' Fees for final judgment should not have the falsified court reporter costs and attorneys' fees.
  - d. For unknown reasons, Trimoba is represented by two (2) attorneys, Matthew R. Hansen and Daniel J. Oates, against *pro se* Decker where Trimoba has incurred unnecessary costs. According to Trimoba's pleading dated May 12, 2009, Matthew R. Hansen's rate is \$250.00 per hour with his justification of litigated "over hundred cases over the last several years" while Daniel J. Oates' hourly rate is \$205.00 and \$250.00 without any justification (Dkt. No. 73). Therefore, Counsels for Trimoba's hourly rates seem excessively high with their claimed experience.

4. **Costs.** There is no explanation of what is "Costs" in the final judgment (Dkt. No. 100) and it was not stated in the Lease. Due to "Costs" is unknown and not stated in the Lease, Decker is not liable for the unknown cost of \$570.00.

Trimoba's monetary damages, if any, as corrected above is \$27,008.12 plus the exaggerated Attorneys' Fees that is almost as much as Trimoba's claimed damages. Due to excessive, incorrect, and unknown costs, Trimoba's claim is frivolous especially when the attorneys' fees are more than Trimoba's supposed monetary damages.

DATED THIS 16<sup>th</sup> day of July, 2009.



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Jon Decker, Pro Se  
*Counterclaim/Cross-claim Plaintiff*