

COURT OF APPEALS NO. 72595-5

KING COUNTY CASE NO. 14-2-19075-1

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

LEENDERS DRYWALL, INC.; and DAVID J. LEENDERS,
individually and on behalf of his marital community

Plaintiffs/Respondents

v.

ADRIAN AYALA, ET. AL

Defendants/Appellants.

APPELLANTS' BRIEF

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INTRODUCTION

The Defendants/Appellants in this case (hereafter “Workers”) are mostly Hispanic, non-native English speakers who worked as drywall installers for Plaintiffs/Respondents Leenders Drywall, owned by David J. Leenders (collectively “Leenders”). On at least four projects, Leenders did not pay the Workers all the wages they were owed.¹ On public works projects, two safeguards exist to ensure workers and other claimants against the project are paid. First, public works contractors must take out a private bond. Second, the government agency hiring the work must retain a percentage of the project’s value until any outstanding claims, including those for wages, are resolved. The Workers timely filed Notices of Claim related to each of the four projects.

Filing a Notice of Claim on a public works project is the mandatory first step in initiating the judicial process to recover against the bonds, the project retainage, and to pursue a private lien. If the Workers had not filed the Notices of Claim, they would have lost their right to file suit pursuant to the applicable statutes. *Id.* Lawsuits are pending related to the Notices of Claim filed for two projects. The Workers have yet to file lawsuits on the other two projects.

In addition to preserving the Workers’ right to sue, filing the Notices of Claim did two other things. First, the Notices of Claim put the

¹ Leenders disputes that Aurora and Jefferson are subject to the Prevailing Wage Act. CP. 133-34. As discussed in section 1(B)(iii) below, that assertion is incorrect. Regardless, as seen below, the filing of a public or private Notice of Claim is identically protected, even if incorrect.

bond issuers on notice that there were claims against the bonds. Second, it put the contracting government agencies on notice that there were claims against the retainages. One purpose of filing the Notices of Claim, therefore, was to petition these government agencies for redress of the Workers' grievances by continuing to withhold the retainages on the four projects in question.

On July 10, 2014, Leenders filed this lawsuit in King County Superior Court. The Complaint alleged the Notices of Claim constituted tortious interference with contracts as well as several other torts and statutory violations. This lawsuit is a textbook example of a strategic lawsuit against public participation ("SLAPP"). Leenders' motivation for filing the lawsuit was clearly to thwart the Workers' efforts to recover the wages unlawfully withheld from them. Accordingly, the Complaint must be stricken according to RCW 4.24.525. Furthermore, each Worker should be awarded ten thousand dollars in statutory damages as well as reasonable attorney's fees, expenses, and costs according to RCW 4.24.525(6)(a), Wash. R. App. P. 14 and 18.1.

ASSIGNMENTS OF ERROR

1. The King County Superior Court erred in denying the Workers' Special Motion To Strike all of the claims in Leenders' Complaint pursuant to RCW 4.24.525, Washington's "anti-SLAPP" statute.
2. The King County Superior Court erred by not awarding the Workers ten thousand dollars each in statutory damages as well as reasonable attorneys' fees under RCW 4.24.525(6)(a).

STATEMENT OF THE CASE

The Workers are mostly Hispanic, non-native English speakers who worked as drywall installers for Leenders. CP. 29, ¶ 2. Leenders, by its counsel's own admission, paid the Workers less than the amount mandated by state and/or federal law on at least four projects for the work that they performed. CP. 32, ¶¶ 20-21; CP. 109, ¶¶ 13-15; CP. 115-17.

There are two safeguards in place to ensure claims against public works projects are satisfied. *See* RCW 39.08.010; RCW 60.28.011. First, RCW 39.08.010 requires all public works contractors to take out a bond to ensure any claims, including those for wages owed, are satisfied. In order to file an action on the bond, a laborer must file a notice of claim with the agency that contracted for the work. RCW 39.08.030.

Second, government agencies contracting for construction work must retain a percentage of the total contract value in a trust fund.² RCW 60.28.011. The purpose of the fund is to settle claims, including those for unpaid wages, related to the project. *Id.* If no claims to the retainage are asserted, the government agency must pay the retainage to the contractor sixty days after completion of the project. RCW 60.28.011(3)(b). If a worker has a claim for unpaid wages, however, he or she must file a notice of claim within forty-five days of completion of the project to prevent the government agency from paying the retainage to the contractor. RCW 60.28.011(2). This creates a lien against the retainage in favor of the worker for the amount of wages he or she is owed. *Id.*

² Commonly referred to as the "retainage."

Accordingly, to preserve their right to sue, and to make a claim on the contractors' bonds and the retainages withheld by the contracting government agencies, the Workers filed Notices of Claim on four projects on which they had performed work. CP. 29-31, ¶¶ 8-15. The Workers did not have access to Leenders' employment records, so they submitted reasonable approximations of the amounts owed. *Id.* at ¶¶ 7-8, 10, 12, 14.

Thus, on or about December 5, 2012, the Workers³ filed Notices of Claim with the King County Library System on the Newcastle Library Project ("Newcastle Project").⁴ CP. 30, 33-61. A lawsuit related to this project involving Leenders and the Workers is currently pending in King County Superior Court. CP. 31, ¶ 17; CP. 109, ¶ 8.

On or about January 10, 2013, the Workers filed Notices of Claim with the United States Department Housing and Urban Development for work performed on the H2O Apartments Project ("H2O Project").⁵ CP.

³ The fifteen named Workers each has claims related to some, but not all of the four projects at issue. The claims are as follows:

- Newcastle Project: Jimenez Arce (AKA Abraham Jimenez Arce), Ayala, Cadena, Castaneda, Castro, Gonzalo Maciel Garcia, Salvador Maciel Garcia, Orozco, and Oytuz.
- Aurora Project: Jimenez Arce, Ayala, Barrueta, Cadena, Castaneda, Castro, Gonzalo Maciel Garcia, Salvador Maciel Garcia, Orozco, Oytuz, and Soliz.
- Jefferson Project: Ayala, Cadena, Castaneda, Castro, Jimenez Arce, Larios, Laureano, Gonzalo Maciel, Salvador Maciel, Oytuz, and Solis.
- H2O Project: Ayala, Barrueta, Cadena, Castaneda, Castro, Jimenez Arce, Laureano, Gonzalo Maciel, Salvador Maciel, Martinez, Orozco, Oytuz, and Solis.

Accordingly, to the extent the term "Workers" is used herein to describe the Workers who have claims on certain projects, that term is only meant to include the Workers listed above in relation to that specific project.

⁴ Those Notices of Claim were subsequently amended in January 2013, May 2013, December 2013, and May 2014. CP. 30, 33-61.

⁵ Those Notices of Claim were subsequently amended in May 2013 and September 2013. CP. 31, ¶ 14; CP. 101-06.

31, ¶ 14; CP. 101-06. The Workers thereafter filed a lawsuit seeking recovery of wages for work performed on the H2O Project that remains pending in federal court. CP. 31, ¶ 16; CP. 108, ¶ 7.

On or about December 6, 2012, the Workers filed Notices of Claim with the City of Seattle's Office of Housing for work performed on the Aurora Supportive Housing Project ("Aurora").⁶ CP. 30, ¶ 10; CP. 62-81. Finally, on or about December 19, 2012, the Workers filed Notices of Claim with the City of Seattle's Office of Housing for work performed on the 12th and East Jefferson Workforce Housing Project ("Jefferson").⁷ CP. 30, ¶ 12; CP. 82-100.

On July 10, 2014, Leenders filed the Complaint in King County Superior Court against the Workers that initiated this lawsuit. CP. 1. The Complaint alleges that, by filing Notices of Claim on the Newcastle, Aurora, Jefferson, and H2O Projects, the Workers committed the torts of interference with contracts, interference with economic expectancy, civil conspiracy, abuse of process, and various Consumer Protection Act Violations, and seeks both damages and injunctive relief. CP. 8-11. The sole basis for recovery identified throughout the Complaint and underlying each cause of action is the Workers' filing of the Notices of Claim. *See* CP. 1-11, ¶¶ 11-15, 20, 25, 31, 33, 37, 41-43.

⁶ Those Notices of Claim were subsequently amended in January 2013, May 2013, September 2013, April 2014, and July 2014. CP. 30 ¶ 10; CP. 62-81.

⁷ Those Notices of Claim were subsequently amended in April 2013, August 2013, November 2013, February 2014, and July 2014. CP. 30, ¶ 12; CP. 82-100.

On August 20, 2014, the Workers filed a Special Motion To Strike Leenders' Complaint, including a request for statutory damages, attorneys' fees, and costs associated with filing the Motion. CP. 14-27. In its Response, Leenders inexplicably abandoned two of the seven claims asserted in its complaint; those for civil conspiracy violation of the Consumer Protection Act. CP. 121, Fn. 1. On September 24, 2014, King County Superior Court Judge Roger S. Rogoff issued an order denying the Workers' Special Motion To Strike. CP. 298-304. The Workers timely appealed that order. In support of the appeal, the Workers file this Appellants' Brief.

ARGUMENT

1. LEENDERS' COMPLAINT SHOULD BE STRICKEN BECAUSE IT VIOLATES WASHINGTON'S ANTI-SLAPP STATUTE.

The Superior Court erred by denying the Workers's Special Motion To Strike Leenders' Complaint for being in violation of Washington's anti-SLAPP statute. This Court reviews the grant or denial of an anti-SLAPP special motion *de novo*. Dillon v. Seattle Deposition Reporters, LLC, 179 Wn. App. 41, 70 Fn. 22, 316 P.3d 1119 (2014) (citing Green v. Normandy Park Riviera Section Cmty. Club, Inc., 137 Wn. App. 665, 681, 151 P.3d 1038 (2007)). When the Court engages in *de novo* review, it conducts the same inquiry as the trial court. Wilson Court Ltd. P'ship v. Tony Maroni's, Inc., 134 Wn.2d 692, 698, 952 P.2d 590 (1998).

“The procedure for deciding a special motion to strike a claim as a strategic lawsuit against public participation and petition is similar to the procedure for deciding a motion for summary judgment.” Davis v. Cox, 180 Wn. App. 514, 528, 325 P.3d 255 (Div. I, 2014) (internal quotation omitted). The procedure involves a two-part burden-shifting test:

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

RCW 4.24.525(3)(b). In following that procedure, “a court must generally presume the validity of the claimed constitutional right in the first step of the anti-SLAPP analysis,” and then permit the parties to address the propriety of the defendant’s acts in the second step, if necessary. Davis, 180 Wn. App. at 531-32. “If the responding party fails to meet its burden, the court must grant the motion, dismiss the offending claim, and award the moving party statutory damages of \$10,000 in addition to attorney fees and costs.” Dillon, 179 Wn. App. at 70. Because “Washington’s anti-SLAPP statute mirrors California’s anti-SLAPP statute,” California cases are considered “persuasive authority when interpreting RCW 4.24.525.” *Id.* at 69 Fn. 21.

As shown below, Leenders’ claims are based entirely on the Workers’ lawful filing of Notices of Claim with various local and federal agencies. The Workers’ filing of the Notices of Claim constitutes the

requisite public participation and petitioning under the anti-SLAPP statute. In addition, Leenders cannot demonstrate by clear and convincing evidence that they will prevail on their claims because each cause of action is based upon the Workers' lawful, privileged activity. Accordingly, Leenders' claims are properly stricken and each individual Worker is entitled to recover statutory damages and fees.

A. The Workers' Claims Are Based On Protected Public Participation And Petitioning.

Applying the first step of the two-part test, it is clear that the Workers' filing of Notices of Claims in relation to the four projects were acts that qualified as protected public participation and petitioning. RCW 4.24.525 authorizes "[a] party to bring a special motion to strike any claim that is based on an action involving public participation and petition. . . ." This lawsuit was clearly filed to thwart the Workers' efforts to engage in public participation and petition the government to redress Leenders' failure to pay them at the prevailing rate.

The statute defines public participation and petition as any action that meets any one of the following five definitions:

- (a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial or other governmental proceeding authorized by law;
- (b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;
- (c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration

- or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;
- (d) Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or
 - (e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

RCW 4.24.525 (2).

As next seen, the Workers' actions at issue in this appeal constitute public participation and petitioning under all five of the definitions above.

- i) The Workers engaged in public participation and petitioning according to RCW 4.24.525(a) and (b) because filing the Notices of Claim was an integral part of a "judicial proceeding or other governmental proceeding authorized by law."

The Workers' filing a Notice of Claim qualifies for the protection of the State's anti-SLAPP law under RCW 4.24.525(2)(a) and (b), as it was a "written statement or document submitted, in a...judicial...or other governmental proceeding authorized by law" as well as a "written statement or document submitted, in connection with an issue under consideration or review by a...judicial...or other governmental proceeding authorized by law."⁸

"The constitutional right to petition...includes the basic act of filing litigation or otherwise seeking administrative action." Ludwig v.

⁸ The California anti-SLAPP statute is California Code Civ. Proc. § 425.16, and is functionally equivalent to the Washington anti-SLAPP statute. Subdivision (e) defines an "act in furtherance of a person's right of petition..." to include: "(1) any written or oral statement or writing made before a...judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a...judicial body, or any other official proceeding authorized by law...." Cal. Code Civ. Proc. § 425.16 (e).

Superior Court, 37 Cal. App. 4th 8, 19, 43 Cal. Rptr. 2d 350 (1995). Additionally, “[i]n certain types of actions, it is necessary to serve or record a document prior to the commencement of litigation. In such a case, the satisfaction of the statutory prerequisite is considered to constitute protected prelitigation conduct.” People ex rel. Fire Ins. Exchange v. Anapol, 211 Cal. App. 4th 809, 823, 150 Cal. Rptr. 3d 224 (2012) (internal citations omitted). Thus, “communications preparatory to or in anticipation of the bringing of an action or other official proceeding...are...entitled to the protection of the” anti-SLAPP statute. Dove Audio, Inc. v. Rosenfeld, Meyer & Susman, 47 Cal. App. 4th 777, 784, 54 Cal. Rptr. 2d 830 (1996).⁹

California courts have repeatedly and explicitly recognized that the filing of a notice that is a legal prerequisite to the filing of a lawsuit is protected activity under the anti-SLAPP statute. In Salma v. Capon, 161 Cal. App. 4th 1275, 1280, 74 Cal. Rptr. 3d 873 (2008), a house-seller claimed that he and his wife were defrauded by a company that bought their house for far less than it was worth and shortly thereafter sold it to another buyer. Among other actions, the seller recorded a “notice of rescission,” a notice required under California law to file a cause of action for rescission.¹⁰ *Id.* at 1281. The seller thereafter filed the rescission action, and the buyer filed a cross-complaint based in part on the seller’s

⁹ Logically, it makes sense to include mandatory pre-litigation actions as part of a judicial proceeding because the failure to perform such acts prevents a party from even pursuing certain causes of action.

¹⁰ Cal. Civ. Code, § 1695.14, subd. (b).

filing of the notice of rescission. *Id.* The seller moved to strike the cross-complaint pursuant to the anti-SLAPP statute, which the trial court denied.¹¹ *Id.* The California Court of Appeals held that the seller's filing of a notice of rescission was a statement made as part of a judicial proceeding, protected by the anti-SLAPP statute, "because the notice was a legal prerequisite to [the seller's] filing of a rescission action." *Id.* at 1286. The buyer's cross-claim based on the notice was therefore subject to the anti-SLAPP statute. *Id.*

Similarly, in Birkner v. Lam, 156 Cal. App. 4th 275, 279, 67 Cal. Rptr. 3d 190 (2007), a landlord served his tenants with a termination notice seeking to terminate the tenancy. Such notice was required before filing a lawsuit to evict. *See* Cal. Code Civ. Proc. § 1946. The tenants sued based on the landlord's filing of the notice and refusal to release it, despite the fact that the landlord did not follow through with a lawsuit to evict. Birkner, 156 Cal. App. 4th at 279-80. The landlord moved to strike the complaint based on the anti-SLAPP statute, which the trial court denied and the landlord appealed. *Id.* at 280. The Court of Appeals recognized that, "[i]n general, terminating a tenancy or removing a property from the rental market are not activities taken in furtherance of the constitutional rights of petition or free speech." *Id.* at 281-82. Despite that general prohibition, the Court of Appeals held that "if the termination notice is a legal prerequisite for bringing an unlawful detainer action, as it

¹¹ With one exception. The court held that the seller's filing of a notice of *lis pendens* was protected activity, a holding affirmed on appeal.

is in this case, service of such a notice does constitute activity in furtherance of the constitutionally protected right to petition.” *Id.* at 282. Thus, the landlord’s service of the termination notice was protected activity under the state’s anti-SLAPP statute, and the Court of Appeals reversed.¹² A similar result is warranted here.

Each Notice of Claim filed by the Workers was undoubtedly a “written communication.” As such, each Notice of Claim meets the first requirement of the statute. In addition, filing each Notice of Claim is an absolute legal prerequisite to pursuing judicial action, rendering each Notice of Claim a document submitted in a judicial proceeding, or in connection with a judicial proceeding. *See* RCW 4.24.525(2)(a) and (b).

Filing a Notice of Claim with the appropriate governmental agency is an absolute legal prerequisite to filing a cause of action on the bond. State law provides:

persons shall not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work...the

¹² *See also* Feldman v. 1100 Park Lane Associates, 160 Cal. App. 4th 1467, 74 Cal. Rptr. 3d (2008) (“Service of a three-day notice to quit was a legally required prerequisite to the filing of the unlawful detainer action...[c]onsequently, service of the notice to quit was protected communicative activity under [the California anti-SLAPP statute]”); Dickens v. Provident Life & Accident Ins. Co., 117 Cal. App. 4th 705, 714, 11 Cal. Rptr. 3d 877 (2004) (contact with executive branch of government and its investigators about a potential violation of law was preparatory to commencing an official proceeding authorized by law, and thus was covered by anti-SLAPP law); and ComputerXpress, Inc. v. Jackson, 93 Cal. App. 4th 993, 1019, 113 Cal. Rptr. 2d 625 (2001) (“Communication to an official administrative agency...designed to prompt action by that agency is as much a part of the official proceeding as a communication made after the proceedings had commenced”) (internal citations omitted).

laborer...shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing....

RCW 39.08.030. Because the Workers had to file a Notice of Claim to pursue a bond action, their filing thereof was a part of a judicial proceeding protected by RCW 4.24.525.

Such filing of a Notice of Claim is also a legal prerequisite to pursuing a lien action upon moneys reserved by the public body (retainage) as required by RCW 60

.28.011. Washington law provides that:

[e]very person performing labor or furnishing supplies toward the completion of a public improvement contract has a lien upon moneys reserved by a public body under the provisions of a public improvement contract...the notice of the lien of the claimant must be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

RCW 60.28.011 (emphasis added). Again, because the Workers were legally required to file a Notice of Claim to pursue an action on the retainage for the various projects, their filing of the Notices of Claim is a part of a judicial proceeding protected by RCW 4.24.525.

Similarly, the filing of a Notice of Claim is a legal prerequisite to the pursuit of a civil action on a federal project bond, including the H2O Project at issue here:

A person having a direct contractual relationship with a subcontractor but no contractual relationship...with the contractor furnishing the payment bond may bring a civil action on the payment bond on giving written notice to the contractor within 90

days from the date on which the person did or performed the last of the labor...for which the claim is made.

40 U.S.C. § 3133 (b)(2). As such, the Workers' filing of the federal Notices of Claim is a part of the judicial proceeding to pursue a claim against a federal project bond, and constitutes an action protected by the anti-SLAPP statute.

Lastly, the filing of a Notice of Claim is a legal prerequisite to pursuing judicial enforcement of a private lien:

Every person claiming a lien under RCW 60.04.021 shall file for recording, in the county where the subject property is located, a notice of claim of lien not later than ninety days after the person has ceased to furnish labor...no action to foreclose a lien shall be maintained unless the claim of lien is filed....

RCW 60.04.091.¹³ This again means that Workers' filing of the Notices of Claim for private liens was a part of a judicial proceeding, protected by the anti-SLAPP statute.

Accordingly, the filing of Notices of Claim, like those filed by the Workers, is an absolute prerequisite to: filing a lawsuit on the bond; filing a lawsuit to collect against the retainage; filing a lawsuit on a federal project bond; and filing a lawsuit to enforce private lien rights. Simple review of each of the Notices of Claim demonstrates that they were filed pursuant to the various statutes at issue and cited above; as such, the act of filing is a protected action under the Washington anti-SLAPP statute because it is a part of a judicial proceeding.

¹³ See also Du Charme v. Am. Wood Pipe Co., 161 Wn. 114, 118-19, 296 P. 168 (1931) ("the filing [of a Notice of Claim with the relevant County Auditor's office] is necessary to perfect the lien...").

- ii) The Workers also engaged in public participation and petitioning according to the remaining three definitions, RCW 4.24.525(c), (d), and (e).

The Workers' filing of Notices of Claims with the four government agencies also met the definitions contained in RCW 4.24.525(c), (d), and (e). RCW 4.24.525(c) defines public participation or petitioning as statements or documents submitted that are "reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a . . . judicial proceeding or other governmental proceeding authorized by law."

The claims the Workers asserted in the Notices of Claim were likely to encourage or to enlist public participation. The projects at issue were all contracted for by government agencies and subject to prevailing wage. It is "reasonably likely" that these Notices of Claim and subsequent lawsuits would attract the attention of the public and encourage or enlist its participation. The public is reasonably likely to be concerned as to how the government is spending the public's tax dollars. The public is also reasonably likely to be concerned as to whether workers on public works projects are being paid properly according to prevailing wage law.

Next, the Workers engaged in public participation and petitioning according to RCW 4.24.525(d). That section states that public participation or petitioning includes "document[s] submitted in a place open to the public or a public forum in connection with an issue of public concern." The Notices of Claim were submitted to the federal Department

of Housing and Urban Development, the Seattle Office of Housing, and the King County Library System. All three of these are government agencies. The agencies would be required to disclose the Notices of Claim should any individual file a public records request under the appropriate public records act. RCW 42.56 (Washington's Public Records Act); 5 U.S.C. § 552 (Freedom of Information Act). Accordingly, the Notices of Claim were "submitted in a place open to the public."

Furthermore, the Notices of Claim addressed an "issue of public concern." The Notices of Claim themselves make clear that they are for Leenders' failure to pay wages owed to the Workers. CP. 30-31, ¶¶ 8, 10, 12, 14; CP. 33-106. The Supreme Court of Washington has already decided that the proper payment of wages is a matter of public concern. Parrish v. W. Coast Hotel Co., 185 Wn. 581, 583-84, 55 P.2d 1083 (1936), *citing* Larsen v. Rice, 100 Wn. 642, 171 P. 1037 (1918); *See also* Gould v. Maryland Sound Industries, Inc., 31 Cal. App. 4th 1137, 1148, 37 Cal. Raptr. 2d 718 (1995) ("[W]age and hours laws concern not only the health and welfare of the workers themselves, but also the public health and general welfare").

In Parrish, an employer contracted with an employee to pay her less than the state minimum wage. The employee sued, claiming she was entitled to the state minimum wage despite the agreement that she would accept less. The Court ruled on behalf of the employee. The Court noted that normally parties are free to contract away their personal rights, but

wages were not an “ordinary controversy between individuals.” Parrish, 185 Wn. at 583-84. Wages are “not wholly of private concern,” but rather, are “affected with a public interest.” *Id.* When the state has declared that a certain amount of wages must be paid to workers, “the state . . . has an interest in seeing that the fixed compensation is actually paid.” *Id.* The Court explained that “the welfare of the public requires that wage earners receive a wage sufficient for their decent maintenance.” *Id.*

The underlying dispute in this case is on all fours with the Parrish case. Just like the worker there, the Workers seek wages that are owed to them based on a rate set by the government. CP. 5, ¶ 18; RCW 39.04. The reasoning of the Parrish court was based on the minimum wage law, but is equally applicable to claims for wages owed according to prevailing wage law. Both laws express the legislature’s prerogative that workers be paid a certain amount for their labor. Just as ensuring that the minimum wage is paid, proper payment of prevailing wages is “affected with a public interest.” Accordingly, payment of prevailing wages is an “issue of public concern” satisfying section 4.24.525(d) of the anti-SLAPP statute.

Finally, the Workers engaged in public participation and petitioning because the filing of their Notices of Claim satisfies RCW 4.24.525(2)(e). That section states that “any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition” is protected activity.

Importantly, by filing the Notices of Claim on the four projects in question, the Workers were not only making a claim to the bond on each project, but also the retainage. The retainage is the five percent of the contract value that the contracting government agency must retain to settle claims arising under RCW 60.28.011.

The constitutional right to petition the government for redress of grievances is not limited to petitioning the courts, but rather, extends to all departments of the government. In re Marriage of Meredith, 148 Wn. App. 887, 899, 201 P.3d 1056 (Div. II, 2009), *citing* Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510, 92 S. Ct. 609 (1972).¹⁴ By sending the Notices of Claim, the Workers were petitioning the Department of Housing and Urban Development, the Seattle Office of Housing, and the King County Library System to redress the theft of their wages by continuing to withhold the retainages related to each of the four projects in question.¹⁵

In sum, the Workers' filing of Notices of Claim with the four government agencies met the statutory definitions of public participation and petitioning under RCW 4.25.525(c), (d), and (e). Filing the Notices of Claim met RCW 4.25.525(c) because it was "reasonably likely to

¹⁴ Although Marriage of Meredith discusses the right to petition the government under the federal constitution, the Washington Constitution, article I, section 4 provides that "[t]he right of petition ... shall never be abridged," and Washington courts "interpret Const. art. I, § 4 consistent with the First Amendment." Richmond v. Thompson, 130 Wn.2d 368, 383, 922 P.2d 1343 (1996).

¹⁵ In addition, the Workers' counsel exchanged emails and met with a representative from the City of Seattle Office of Housing. CP. 110, ¶ 16; CP. 118-19. The purpose of this meeting was to discuss the Workers' wage claims. *Id.* This is yet another clear example of how the present lawsuit is based on the Workers' constitutionally protected right to petition the government for redress of their grievances.

encourage . . . public participation . . . in a judicial proceeding.” That is because the public is likely to be keenly interested in where the public’s tax dollars are going, and that workers are being paid according to prevailing wage law.

Filing the Notices of Claim also meets RCW 4.25.525(d) because the Notices of Claim were “documents submitted in a place open to the public or a public forum in connection with an issue of public concern.” The Notices of Claim were filed in a place open to the public because they were filed with four government agencies that would have to disclose the notices pursuant to a public records request. The Notices of Claim are an issue of public concern because, as the state Supreme Court stated in Parrish, the payment of wages fixed by statute is “affected with a public interest.” 185 Wn. at 583-84.

Finally, filing the Notices of Claim met the definition in RCW 4.25.525(e) because it was an exercise of the Workers’ constitutional rights to free speech and petition. This is because the by filing the notices, the Workers were petitioning the contracting government agencies to redress their grievances by, among other things, withholding the retainages on the projects in question. Accordingly, the Workers have satisfied the first prong of the anti-SLAPP analysis - that Leenders’ claim is based on the Workers’ public participation and petitioning. As next seen, in the second prong of the anti-SLAPP analysis Leenders cannot

satisfy its burden to prove, by clear and convincing evidence, the probability that it will prevail on any of its claims.

B. Leenders Cannot Demonstrate, By Clear And Convincing Evidence, That It Can Prevail On Any Cause Of Action.

Once it is determined that the claim is based on protected communications, the burden shifts to Leenders to prove, by clear and convincing evidence, the probability that it will prevail.¹⁶ Clear and convincing evidence “is evidence which is weightier and more convincing than a preponderance of the evidence, but which need not reach the level of beyond reasonable doubt.” Matter of Deming, 108 Wn.2d 82, 109, 736 P.2d 639 (1987).

To be clear and convincing, there must be a “quantum of evidence sufficient to convince the fact finder that the fact in issue is highly probable.” Tiger Oil Corp. v. Yakima County, 158 Wn. App. 553, 562, 242 P.3d 936 (2010). The standard places a “higher procedural burden on the plaintiff [/respondent] than is required to survive a motion for summary judgment.” Dillon, 179 Wn. App. at 86-87. Furthermore, “[t]he clear-and-convincing standard mandated by the anti-SLAPP statute looks not only to whether the plaintiff has demonstrated a prima facie claim, but

¹⁶ Although the court below did not reach the second prong of the analysis, this Court is conducting a *de novo* review, and therefore should apply both parts of anti-SLAPP analysis. This situation was presented in Schwarzburd v. Kensington Police Protection & Community Services Dist. Bd., 225 Cal. App. 4th 1345, 1355, 170 Cal Rptr. 3d 899 (2014). There, the court decided it was in the interest of judicial efficiency to apply both prongs of the anti-SLAPP analysis despite the lower court’s not reaching the second prong. The Court has all the evidence before it that is necessary to make a final ruling on the Workers’ Special Motion to Strike. Leenders could have made a motion to allow further discovery on the issues related to the Special Motion to Strike under RCW 4.25.525(5)(c) but did not. This is a tacit admission by Leenders that all the relevant evidence is already in the record.

also requires consideration of the defenses raised by the moving party.” *Id.* at 88. Leenders cannot meet this high burden.

i.) The Workers are immune from liability on all claims.

Leenders cannot show, by clear and convincing evidence, that it can prevail in its lawsuit based on the Workers’ filing of the Notices of Claim because communications to any governmental entity are privileged and cannot serve as a basis for a lawsuit. RCW 4.25.510. “A person who communicates a complaint or information to any branch or agency of federal, state, or local government...is immune from civil liability for claims based upon the communications to the agency or organization regarding any matter reasonably of concern to that agency or organization.”¹⁷ RCW 4.24.510. “The legislature enacted RCW 4.24.510 to encourage the reporting of potential wrongdoing to governmental entities.” Gonthmakher v. City of Bellevue, 120 Wn. App. 365, 366, 85 P.3d 926 (2004).

Leenders’ Complaint is based entirely upon the Workers’ communication of information and complaints to a branch or agency of government. The Complaint repeatedly references the filing of the Notices of Claim as the bases for Leenders’ causes of action. *See* CP. 1-11, ¶¶ 11-15, 20, 25, 31, 33, 37, 41-43. The Notices of Claim were sent to the respective agencies in conformance with state and federal law. By sending the Notices of Claim, the Workers were alerting four government

¹⁷ The statute does not provide any exception to this immunity, rendering it absolute. Thus, even if the Notices of Claim were in fact frivolous – which they are not – the Workers would still remain immune from any suit based on their act of filing.

agencies that they had not been paid according to prevailing wage law. The Workers filed the Notices of Claim in part to petition the agencies to redress their grievances in any way they could, including by continuing to withhold the retainages on each project. As such, the Notices of Claim are communications to a branch of government covered by RCW 4.24.510.

In addition, the Workers' communications undoubtedly regarded a matter reasonably of concern to the agencies; namely, that the Workers on the agencies' respective projects had not been paid in conformance with state or federal law. Thus, the Workers are immune from civil liability based upon those communications.

ii.) Leenders cannot demonstrate a probability of success because it has not shown that the Workers filed a frivolous or willfully excessive lien.

Leenders will likely argue, as it did in its Response brief below, that it has a probability of success in this lawsuit because the Workers' Notices of Claim were "frivolous" or "excessive." CP. 132. Leenders relied on RCW 60.04.221(8) for this proposition. There are a number of reasons why Leenders' assertion is incorrect. To start, the argument ignores the Workers' argument that filing of their Notices of Claim is subject to immunity under RCW 4.25.510.

Next, RCW 60.04.221 does not authorize Leenders to file this lawsuit. Instead, it allows a party who believes a "frivolous" lien has been filed to institute a "show cause" hearing. RCW 60.04.221(9)(a). Leenders

ignored that provision as well, both in filing this lawsuit and in their Response in the court below.

Assuming *arguendo* that Leenders was entitled to file this lawsuit for frivolous or excessive liens, Leenders cannot meet its burden of proving, by clear and convincing evidence, that the Workers' liens are frivolous or excessive.¹⁸ Remarkably, Leenders has never claimed that it properly paid a single Worker on any of the projects at issue, and has provided absolutely no evidence that shows it did so. Such evidence, if it existed, would amply demonstrate that the liens were frivolous or excessive; apparently, it does not exist. In fact, Leenders did not even present any argument or any evidence that each and every lien filed by each and every worker was frivolous or excessive.

Leenders only made three arguments below that the liens were frivolous or excessive. First, it argued that Adrian Ayala, Cruz Laureano, and Angel Oytuz falsely claimed that they were never paid on certain projects. CP. 124, 135. Second, Leenders argued that Fidel Castro, Gonzalo Maciel, and Arturo Solis claim to have never worked on certain projects, when they did in fact work on such projects. CP. 126, 135. Third, Leenders claimed that Gonzalo Maciel, Salvador Maciel, and Fidel

¹⁸ Even without getting into the details of the argument, under the circumstances presented here it is intellectually dishonest of Leenders to argue the Workers' claims are "frivolous or excessive." The Workers made their best estimate as to the wages they were owed based on their recollections and the documentation available to them. Leenders has admitted that it did not pay the Workers everything they were owed, but it has never placed a number on the amount of money it stole from them. It also presented woefully insufficient records in the court below to precisely determine the amount. "Excessive" is a relative term. Without an admission from Leenders of a precise dollar amount owed, it is impossible to determine if the amount claimed by the Workers is excessive.

Castro claim to have started working on certain projects before Leenders began on those projects. CP. 124-25, 135.

Even if all three of these arguments were true and supported by clear and convincing evidence – which they are not – they only address the claims asserted by seven of the fifteen Workers who asserted claims.

In other words, Leenders presented no evidence or argument whatsoever that they are reasonably likely to prevail on their claims in this lawsuit in relation to eight of the fifteen Workers.¹⁹

A closer examination of the evidence Leenders provided demonstrates that it in no way substantiates that those seven workers filed frivolous or excessive liens. Leenders' first argument, that Adrian Ayala, Cruz Laureano, and Angel Oytuz falsely claimed that they were never paid on certain projects, does not prove any liens were frivolous or excessive. CP. 124, 135. Leenders provided no evidence whatsoever to substantiate the allegation that those Workers claimed to have “never” been paid on certain projects, citing only to its own complaint. CP. 124. The Notices of Claim before this Court – again, the basis for this lawsuit – do not contain any claims by any Workers that they were never paid on the four projects. The Notices of Claim make clear that the Workers allege they were not properly paid on such projects – a substantial difference from a claim that

¹⁹ As their employer, it would seem probable that Leenders would have in its possession all documentation necessary to show the hours worked and amount paid by all its employees. Regardless, Leenders did not request additional discovery before responding to the anti-SLAPP motion in Superior Court.

they were never paid, and a claim that Leenders never refuted. Even if the Workers made such assertions, Leenders did not rebut them.

For example, Leenders argued that “Adrian Ayala claims he was not paid for any work he performed on the four projects. In fact, Leenders Drywall issued Ayala more than 25 checks in 2012, totaling more than \$40,000.” CP. 124. Even if that statement were accurate, which it is not, the mere fact that Leenders issued Ayala more than 25 checks in 2012 would not prove that it paid him the correct wage for all hours worked on the four projects, nor does it mean that he was paid anything for work on those projects. Given that the Workers worked for Leenders on projects other than the four at issue here (*see* CP. 125 ¶ 12), the fact Leenders issued Ayala some checks merely means that it paid him something for having worked for Leenders somewhere.²⁰ At most, the exhibits submitted below show only that the Workers received some money from Leenders at some point in 2012, without tying any of that income to any of the four projects. That in no way demonstrates that the Workers filed frivolous and excessive liens on the four projects at issue, let alone by clear and convincing evidence.

Leenders’ second argument, that Fidel Castro, Gonzalo Maciel, and Arturo Solis claim to have never worked on certain projects, when they did in fact work on such projects, likewise fails to prove any lien is frivolous or excessive. CP. 126, 135. The evidence Leenders relies on for this assertion is a series of handwritten calendars. CP. 159-64. Yet again,

²⁰ The same holds true for the other Workers as well.

this evidence does not actually substantiate Leenders' allegation. Regarding Solis, the calendars are insufficient to prove that he has made any "false" claim. Leenders provided no indication when the calendars were created or by whom, nor do they give any other indication of their accuracy. At most, they demonstrate a dispute as to which projects Solis worked on at any given time; they do not show, by clear and convincing evidence, that any claim is false or excessive.

The records Leenders submitted in relation to Castro and Maciel are even more problematic. The "evidence" cited by Leenders in regards to the Shoreline Project nowhere contains a claim by either Worker that they did not work on that project. *See* CP. 159-64, CP. 172-76. Those calendars include a number of days in which the Workers did not identify the project on which they worked.²¹ CP. 159-64; CP. 182-86; CP. 173; CP. 178. Thus, the documents do not show that either Castro or Maciel claims to have "never" worked at the Shoreline project, and they certainly do not show, by clear and convincing evidence, that the Workers filed frivolous or willfully excessive liens.

Leenders' third and final argument, that Gonzalo Maciel, Salvador Maciel, and Fidel Castro claim to have started working on certain projects before Leenders began on those projects, likewise does not prove that any lien was frivolous or excessive. CP. 124-25, 135. Leenders provided no evidence whatsoever to identify when Leenders began working. Nothing

²¹ Many of which correspond to the days on which Leenders claims Castro and Maciel were working at Shoreline.

in any exhibit or either declaration submitted below mentioned any date on which Leenders started on the projects.²² Thus, Leenders has not provided any evidence, let alone clear and convincing evidence, to demonstrate that any Worker falsely claimed he began working on a project earlier than he actually did.

Each of Leenders' tort claims, as well as the claim for "misuse of Washington lien statutes," requires that they prove, by clear and convincing evidence, that each Worker's lien claims were frivolous or excessive.²³ Because Leenders has not provided any evidence showing that any Workers were properly paid, what a proper lien amount might be, or that any particular lien is even incorrect, they have failed to show – by any evidentiary standard – that any lien filed by the Workers was frivolous or excessive. They certainly have not shown a probability of prevailing on that issue by clear and convincing evidence. By failing to sustain their burden of proof, Leenders is liable under RCW 4.25.525.

²² Leenders claimed that "[t]hrough counsel, Claimants were provided with documents showing Leenders Drywall's first day of work on the Four Projects." CP. 125. Leenders cites to their counsel's declaration for this proposition. *Id.* Nothing in the declaration mentions providing such documents to the Workers' counsel, nor were such documents ever submitted to the court below. Again, Leenders makes an assertion with no basis in evidence.

²³ The tortious interference claims both require proof that the Workers engaged in "improper means." The only "improper means" argued by Leenders is the alleged frivolity or excessiveness of the liens. Similarly, abuse of process requires proof that the Workers used the legal process in an improper fashion. Again, Leenders points only the alleged frivolity or excessiveness of the liens. Finally, the claim that the Workers "misused the Washington lien statutes" requires Leenders to prove that the liens were clearly excessive. As explained above, Leenders has utterly failed to prove that any lien filed by any (let alone every) Worker was excessive or frivolous.

2. A NATURAL CONSEQUENCE OF THE ANTI-SLAPP STATUTE IS THAT CERTAIN LAWSUITS, SUCH AS LEENDERS', CANNOT STAND.

Leenders may argue, as it did to the court below, that it is unfair that it may be limited by the anti-SLAPP statute in bringing a lawsuit to have the Notices of Claim released. That is an argument Leenders should take up with the Legislature, not this Court. The Legislature has made clear that the purpose of Washington's anti-SLAPP statute is to disallow "meritless suits filed primarily to chill a defendant's exercise of First Amendment rights, including the right to petition the government for the redress of grievances." Bevan, 183 Wn. App. 177, 334 P.3rd 39 (Div. I, 2014) (quoting RCW 4.24.525 (Laws of 2010, ch. 118, § 1)). Furthermore, "the act shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts." Spratt v. Toft, 180 Wn. App. 620, 629, 324 P.3d 707 (Div. I, 2014) (internal quotation omitted).

As discussed in detail above, Leenders' suit is exactly the type of lawsuit the Legislature meant to disallow by passing the anti-SLAPP statute. There are certain claims that, prior to the passage of the anti-SLAPP statute, plaintiffs were free to pursue. After the passage of the anti-SLAPP statute, however, certain claims simply cannot lie.

A recent decision issued by this Court, Spratt v. Toft, 180 Wn. App. 620, is an excellent example of how certain claims can no longer be pursued in light of the anti-SLAPP law. There, a candidate for public office was sued for defamation after publicly making false statements about a political

detractor while on the campaign trail. This Court held that the candidate's statements fell "clearly . . . within protected activity and thus fall within the ambit of the statute."²⁴ *Id.* at 632. The Court noted that "[t]he right to speak on political matters is the quintessential subject of our constitutional protections of the right of free speech." *Id.* This constitutional protection applies equally to statements made by candidates or others who "inject[]" themselves "into the public process of a candidate running for office by attacking his credentials to hold office, a matter of public concern." *Id.*

A defamation claim based on statements made during a political campaign is a good example of a claim that simply cannot lie since the passage of the anti-SLAPP statute. Prior to the passage of the anti-SLAPP statute, nothing would prevent a plaintiff from pursuing such a claim. For example, in the pre-anti-SLAPP case O'Brien v. Tribune Pub. Co., 7 Wn. App. 107, 499 P.2d 24 (1972), a newspaper published allegedly defamatory statements about a Congressional administrative assistant in the midst of a contentious political campaign. Despite the statements being directly related to the propriety of a political campaign, this Court ruled that summary judgment for the defendants was inappropriate. *Id.* at 125. Similarly, in McKillip v. Grays Harbor Pub. Co., 100 Wash. 657, 171 P. 1026 (1918), a candidate for superintendent of schools for Grays Harbor county alleged that a newspaper published defamatory statements about him. The Supreme Court of Washington reversed the dismissal of

²⁴ The Court remanded the case back to the trial court after finding it had not properly applied the second step of the anti-SLAPP analysis. Spratt, 180 Wn. App. at 714.

the candidate's complaint, holding that he had stated a cause of action despite the fact that the statements were made during a political campaign. *Id.* at 667.

O'Brien and McKillip clearly demonstrate that in the past, defamation claims could be pursued based on statements made during and relating to a political campaign. Spratt, however, demonstrates that those claims can no longer lie since the passage of the anti-SLAPP statute. The same is true for the claims brought by Leenders in this case. While Leenders once may have been free to pursue the claims it asserts in this lawsuit, since the passage of the anti-SLAPP law, these claims may not lie and must be stricken.

3. LEENDERS SHOULD BE ORDERED TO PAY EACH OF THE WORKERS TEN THOUSAND DOLLARS IN STATUTORY DAMAGES PLUS REASONABLE ATTORNEYS' FEES, EXPENSES, AND COSTS FOR THE WORKERS' DEFENSE OF THE LAWSUIT IN THE COURT BELOW, AND FOR BRINGING THIS APPEAL.

Given that the Leenders' Complaint was barred by RCW 4.24.525, the Workers are each entitled to statutory damages of ten thousand dollars, as well as reasonable attorneys' fees incurred in defending the lawsuit below.²⁵ Washington law states that:

[t]he court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law: (i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed; (ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and (iii) Such additional relief,

²⁵ The Workers will submit an affidavit of fees and costs within ten days from the date of the Court's order on this Motion.

including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

RCW 4.24.525(6)(a) (emphasis added). Each and every Worker who prevails on an anti-SLAPP motion is separately entitled to recover the statutory damages of ten thousand dollars. Akrie, 178 Wn. App. 506, 315 P.3rd 567 (Div. I, 2013) (“Given that the motion was filed on behalf of all five defendants and that all five defendants prevailed...all five defendants were entitled to an award of \$10,000 in statutory damages”).²⁶ Thus, each Worker in this case is separately entitled to a mandatory award of \$10,000 in damages, as well as the recovery of the reasonable fees and costs incurred in defending the lawsuit below. The Court also has discretion to sanction opposing counsel for the filing of this suit. RCW 4.24.525(6)(a)(3).

In addition, given that Leenders’ lawsuit is based on the Workers’ absolutely privileged conduct, the Workers are entitled to recover attorneys’ fees under RCW 4.84.185, which allows for recovery of such fees when forced to defend a frivolous lawsuit. Moreover, the Workers are entitled to attorneys’ fees based on Leenders’ bad faith in bringing this suit. Forbes v. Am. Bldg. Maint. Co. W., 170 Wn.2d 157, 169, 240 P.3d 790 (2010). Counsel for Leenders admitted that Leenders failed to

²⁶ Furthermore, the Workers are entitled to recover expenses and reasonable attorneys’ fees incurred in establishing the affirmative defense of immunity based on their communications to governmental agencies, and are each entitled to statutory damages of ten thousand dollars. RCW 4.24.510 (“A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys’ fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars”).

properly pay the Workers on the projects.²⁷ CP. 32, ¶¶ 20-21; CP. 109, ¶¶ 13-15; CP. 115-17. Thus, Leenders' lawsuit is nothing more than a bad faith attempt to retaliate against the Workers for filing their Notices of Claim.

Finally, the Workers are entitled to attorneys' fees and expenses, plus costs for bringing this appeal. According to Wash. R. App. P. 14.2, "the party that substantially prevails on review" is entitled to recover costs. Those costs include statutory attorney fees and eight other categories of "reasonable expenses." Wash. R. App. P. 14.3. Furthermore, Wash. R. App. P. 18.1(a) allows parties to recover attorney fees on appeal if applicable law so allows. As this Court stated in Bevan, citing Landberg v. Carlson, 108 Wn. App. 749, 758, 33 P.3d 406 (2001), "when attorney fees are allowable at trial, the prevailing party may recover fees on appeal as well." Bevan, 183 Wn. App. at 190.

Here, as explained in detail above, attorney fees and costs were allowable in the court below on multiple grounds. Accordingly, this Court should not only award the Workers the attorney fees and costs for defending the lawsuit in the court below, but for bringing this appeal as well.

²⁷ ER 408 "prohibits admission of settlement negotiations into evidence for the purpose of proving liability or amount of damages." LaCouriere v. CamWest Dev., Inc., 172 Wn. App. 142, 154 Fn.3, 289 P.3d 683 (2012). However, it "does not prohibit any mention of settlement negotiations or render them privileged." *Id.* Because the Workers do not offer this evidence to prove liability or the amount of damages, but instead submit it to demonstrate Leenders' bad faith in bringing this action, ER 408 is inapplicable. *See also* Matteson v. Ziebarth, 40 Wn.2d 286, 242 P.2d 1025 (1952) (offer of settlement admissible to prove lack of good faith).

CONCLUSION

For the foregoing reasons, Leenders' Complaint should be stricken and each of the Workers should be awarded ten thousand dollars in statutory damages plus reasonable attorneys' fees, expenses and costs for defending the lawsuit below and for bringing this appeal.

DATED this 26th day of January, 2015.



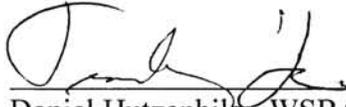
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CERTIFICATE OF SERVICE

I hereby certify that on January 26th, 2015, I filed the foregoing **APPELLANT'S BRIEF** with the Court of Appeals for the State of Washington Division I via legal messenger. On this same day, I caused a true and correct copy to be delivered via electronic mail and legal messenger to the following:

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