NO. 35234-6-II

COURT OF APPEALS, DIVISION II
FOR THE STATE OF WASHINGTON

COURT OF APPEALS
DIVISION II
07 JUL 17 PM 2:17
STATE OF WASHINGTON
BY
DEPUTY

CANDY SINGLETON, on behalf of herself and others similarly situated,

Petitioner,

vs.

NAEGELI REPORTING CORPORATION,

Respondent.

APPELLANT'S REPLY BRIEF

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ORIGINAL

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I. INTRODUCTION

Defendant below, Naegeli Reporting Corporation ("Naegeli"), having refused to strike a motion for summary judgment it filed and noted for hearing in the trial court after discretionary review was granted, compelling Plaintiff below, Candy Singleton ("Singleton") to request this court for an order requiring that motion to be stricken, begins its appeal brief with a Statement of the Case not supported by the record on appeal. In particular, Naegeli discusses and seeks to include in the appeal record a declaration from an assistant administrator within the Washington State Department of Licensing that was obtained **after** the decision which is the subject of this appeal and after Ms. Singleton filed her Motion for Discretionary Review. Naegeli also incorporated this declaration in its improperly filed motion for summary judgment. That declaration is rank hearsay and is inadmissible. Ms. Singleton has had no opportunity to address the issues in it and did not discuss it in her opening brief because it is not part of the record on appeal. Naegeli's request on page 11 of its brief that the declaration "be presented to this Court by way of an

appendix" should be denied for all of these reasons.[1]

II. LEGAL ARGUMENT

Naegeli argues, wrongly, that the formatting of court reporter transcripts is fully regulated by the Director of the Department of Licensing ("DOL"), thus exempting it from claims under the Washington Consumer Protection Act ("CPA") under 19.86.170. It also claims that because there is no difference between general industry standards and the Washington Administrative Code ("WAC"), Singleton's CPA claim based on Naegeli's failure to comply with general industry standards was properly dismissed by the trial court. Finally, Naegeli incorrectly argues again (having already had this argument rejected when this Court granted Ms. Singleton's Motion for Discretionary Review), that this Court is "technically" without jurisdiction, a half-hearted argument which seems to suggest that while "technically" there is no jurisdiction, it is probably just

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[1] Naegeli contends that the facts it has discussed "were the facts considered by the trial court (among others not relevant to this appeal) in its ruling granting [its] motion to dismiss Singleton's CPA claims." *See* Brief of Respondent at 6. Ms. Singleton does not agree that those facts were "the facts considered by the trial court" in making the ruling that is the subject of this appeal. Ultimately however, what facts were or were not considered by the trial court is irrelevant, because the reason the trial court dismissed Ms. Singleton's CPA claim was its erroneous legal conclusion that the Department of Licensing's general regulation of court reporting exempts Naegeli from liability under the CPA. None of the facts presented by either of the parties below had any bearing on this conclusion, as it depends entirely on the trial court's review of the Washington Administrative Code provisions applicable to court reporters and its construction of RCW 19.86.170.

as well to decide this case on the merits. This argument is completely without merit, and in fact is frivolous.

(1) Ms. Singleton's Claim is Not Exempted by RCW 19.86.170.

Naegeli confuses the issue of general regulation of a business with agency regulation permitting specific conduct. Thus, it mistakenly relies on *Vogt v. Seattle-First Nat'l Bank*, 117 Wn.2d 541, 817 P.2d 1364 (1991), and its equally mistaken conclusion that the conduct which is the subject of this litigation is specifically regulated by the DOL. The critical issue, which Naegleli ignores, is whether the conduct which is the subject of this action is specifically permitted. That conduct, the improper formatting of transcripts in order to increase the number of pages so that Naegeli may wrongly profit from its deceitful behavior, is not specifically permitted by the WACs.

That Naegeli is incorrect on both the law and facts is amply demonstrated by the recent case from Division One, *Stephens v. Omni Insurance Company*, __ Wn. App. __, 159 P. 3d 10 (April 23, 2007, reconsideration denied May 25, 2007). In that case, the Court of Appeals reviewed a credit collection agency's practice of sending aggressive notices to tortfeasors on behalf of insurance companies to recover

subrogation interests. Those notices were styled as "formal collection notices," demanding immediate payment of an "amount due." The Court of Appeals concluded the notices were deceptive and violated the Consumer Protection Act.

As does Naegeli in this case, the defendants in Stephens argued that they were not subject to the CPA, accusing the plaintiffs of "trying ... to make an end-run around regulatory statutes." (*Ibid.* at 21). The Court of Appeals rejected this argument:

> The fact that a business operates in a highly regulated arena does not mean that its activities are exempt from liability under the Consumer Protection Act. That argument was made on behalf of mobile home park landlords in *Ethridge v. Hwang,* 105 Wn. App. 447, 457, 20 P.3d 958 (2001). The landlord argued that mobile home tenancies should be exempt from the Consumer Protection Act because of the specific regulations already found in the Mobile Home Landlord Tenant Act, RCW Ch. 59.20. We rejected this contention, noting that "other heavily regulated areas of trade and commerce, such as the legal profession and the banking industry, are subject to the CPA". *Ethridge,* 105 Wn. App. at 457, 20 P.3d 958, citing *Short v. Demopolis,* 103 Wn.2d 52, 60-61, 691 P.2d 163 (1984). The area of debt collection is heavily regulated because of the "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. § 1692(a). The absence of regulation specifically directed at collection of subrogation claims does not mean that debt collection practices used in the recovery of subrogation claims are exempt from suit under the Act, and it does not undermine our conclusion that the practice here

is deceptive.

159 P. 3d at 21. Thus, *Stephens* makes clear that the fact that a profession may be generally regulated does not, in and of itself, mean that is exempt from the CPA.

More importantly for purposes of this case is the Court of Appeal's discussion in *Stephens* of the defendant's argument there that its conduct was not prohibited by the regulatory authority so it was therefore exempt from the CPA:

> But Farmers has not identified any regulatory entity that "permits" the collection practice at issue in this case. The most that can be said is that no regulatory entity has prohibited it. Farmers contends the collection scheme cannot be deemed deceptive because the insurance commissioner has not labeled it as such. This does not mean the commissioner has permitted it. In *Leingang,* the case on which Farmers relies, the claimant argued that a policy exclusion was necessarily an unfair trade practice because the insurance commissioner had not affirmatively approved it. The Supreme Court rejected this argument, finding no significance in the commissioner's silence. *Leingang,* 131 Wash.2d at 154, 930 P.2d 288. The commissioner's silence is equally insignificant in the context of these cases.

159 P.3d at 22. Accordingly, the fact that the Department of Licensing, which regulates court reporters, has not specifically prohibited the conduct in which Naegeli engages and which is the subject of Ms. Singleton's case,

is meaningless in evaluating whether Naegeli is exempt from liability under the CPA.

Naegeli shamelessly and deceptively manipulated transcripts to increase their length so that it could charge greater fees and increase its profits at the expense of consumers who were deceived and misled by its conduct. It cannot escape liability under the CPA relying on a rejected argument that because some of its activities are regulated (even if heavily), none of its behavior is subject to CPA scrutiny, because none of the regulations permit the conduct.

Naegeli fails to acknowledge that the 1974 amendment to RCW 19.86.170 expands the rights of consumers and therefore *narrows* the types of actions exempt from the CPA. *See, e.g., Lidstrand v. Silvercrest Indus.*, 28 Wn. App. 359, 369, 623 P.2d 710 (1981) ("The Act now exempts only 'actions or transactions permitted by any other regulatory body or officer ...'. RCW 19.86.170. This change expands the rights given to consumers and hence must be applied prospectively only."). The CPA must be "liberally construed so that its beneficial purposes may be served" and its exceptions must "be narrowly confined." *Vogt,* 117 Wn.2d at 552. Simply put, the fact that the Department of Licensing regulations

applicable to court reporters do not discuss the formatting issues raised in this case by Ms. Singleton means that the CPA applies to Naegeli's challenged actions.

(2) The Alleged Lack of Differences between General Industry Standards and the WAC is Irrelevant to Resolution of this Appeal.

While Naegeli appears to place primary emphasis on its claim that its conduct is exempt from CPA scrutiny (19 pages), it devotes 3 pages to its argument that because there is no difference between general industry standards and the WACs, Ms. Singleton's CPA claim based on its failure to comply with general industry standards was properly dismissed by the trial court.

This argument appears to combine an evidentiary objection (so-called "speculation" of plaintiff's counsel) with its exemption argument discussed above. The trial court found that there was no demonstrated difference between general industry standards and the WACs, and since the WACs regulate the industry, general industry standards apply. This argument is, therefore, ultimately the same exemption argument dressed in a new outfit. General industry standards do not allow court reporters to invent new, unregulated methods for formatting transcripts so as to

increase, artificially and deceptively, in order to increase profits, the number of pages from the original transcripts formatted by its contract reporters in compliance with Naegeli's own requirements.

Vogt does not aid Naegeli because the Supreme Court in that case analyzed exemption under the first proviso of RCW 19.86.170,[2] not the second proviso that exempts actions "specifically permitted" by a Title 18 agency. *Vogt*, 117 Wn.2d at 551–52. The bank claiming exemption under RCW 19.86.170 in *Vogt* argued that the "permission" found in the first proviso required a lesser showing than the "specific permission" found in the second proviso. *Id.* at 552. The *Vogt* Court noted that:

> This court in *In re Real Estate Brokerage Antitrust Litig.* addressed the meaning of "specifically permitted" under the 1974 amendment to the Consumer Protection Act, RCW 19.86.170. The court determined that under that portion of the statute, an agency must take "overt affirmative actions specifically to permit the actions or transactions engaged

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[2] RCW 19.86.170, in pertinent part, states:

> Nothing in this chapter shall apply to actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state, the Washington utilities and transportation commission, the federal power commission or actions or transactions permitted by any other regulatory body or officer acting under statutory authority of this state or the United States . . . PROVIDED, FURTHER, That actions or transactions specifically permitted within the statutory authority granted to any regulatory board or commission established within Title 18 RCW shall not be construed to be a violation of chapter 19.86 RCW. . . .

> in" by the person or entity involved in a Consumer Protection Act complaint.

Id.

In fact, the *Vogt* Court found that even under the first exemption proviso, RCW 19.86.170 does not exempt actions merely because they are regulated generally. *Id.* Thus, the fact that court reporting is a profession generally regulated by the Department of Licensing does not mean that Naegeli is exempt from the CPA; because the Department does not specifically permit the conduct at issue, the CPA applies to it, and the trial court should not have dismissed Ms. Singleton's CPA claims.

(3) Naegeli's "Assurance of Discontinuance" is Irrelevant.

Naegeli makes much of the fact that it entered into an "Assurance of Discontinuance" with the Attorney General and worked with the Department of Licensing prior to the Department's amendments to the WACs. *See* Brief of Respondent at 7-10. But this agreement is irrelevant to the issues between, on the one hand Ms. Singleton and the class she seeks to represent, and on the other hand Naegeli. The Assurance of Discontinuance does not mean that the specific issues raised by Ms. Singleton have been permitted by the State.

Paragraph 1.1 of the Assurance of Discontinuance (regarding the

Attorney General's opinion of transcript reporting actions it deems to be a violation of the CPA) does not constitute evidence or an admission of guilt by Naegeli. CP 139 (Assurance of Discontinuance ¶ 2.3); RCW 19.86.100.

Furthermore, the Attorney General's opinion does not have the force of law. *See Branson v. Port of Seattle*, 152 Wn.2d 862, 884–85, 101 P.3d 67 (2004) (noting that attorney general opinions are not binding). The Assurance of Discontinuance is not even a formal Attorney General Opinion. It is merely an agreement between the Attorney General and Naegeli in which Naegeli agreed not to violate the Consumer Protection Act and the Attorney General agreed to terminate its investigation of Naegeli in exchange for payment of $ 30,000. CP 139-40 (Assurance of Discontinuance ¶ 3.1, 3.3). Therefore, in evaluating Ms. Singleton's claims and whether Naegeli is exempt from the CPA, the Assurance of Discontinuance is irrelevant.[3]

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[3] Although it is also irrelevant in evaluating whether the Department of Licensing specifically permitted the conduct Ms. Singleton challenges in this case, Naegeli's representation that Ms. Singleton attempted to rebut the "fact" that "all of the transcripts" she identified in her Complaint "comply fully with the WAC provisions" with no "competent evidence" (*see* Brief of Respondent at 10) is false. In response to Naegeli's motion to dismiss, Ms. Singleton's counsel submitted his declaration, to which he attached copies of two transcripts Naegeli sold to Ms. Singleton. The declaration identified numerous instances in the transcripts that did not comply with the WAC requirements and that illustrated the practices that Ms. Singleton contends violate the

(4) This Court Has Jurisdiction, Because Ms. Singleton's Notice of Discretionary Review was Timely Filed.

Civil Rule 59 (b) governs the timing of motions for reconsideration:

> A motion for a new trial or for reconsideration shall be filed not later than (10) days after the entry of the judgment, order, or other decision. The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after the entry of the judgment, order, or other decision, unless the court directs otherwise.

Naegeli argues that this Court doesn't have jurisdiction of this appeal because Ms. Singleton did not timely note her Motion for Reconsideration of the trial court's order dismissing her CPA claim; therefore, Naegeli argues, her Notice of Appeal was not timely filed. *See* Brief of Respondent at 35-42. Commissioner Skerlec, granting Ms. Singleton's Motion for Discretionary Review, has already rejected this argument. *See* Ruling Granting Review at 1-2. Naegeli's argument is baseless. It is without dispute that Ms. Singleton filed and served her Motion for Reconsideration of the order dismissing her CPA claim within ten days of its entry. CP 302-305 (Order Granting in Part and Denying in Part Defendant's Motion to Dismiss Pursuant to CR 12(b)(6)); CP 312-

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CPA. CP 166-231.

321 (Motion for Reconsideration of Order Dismissing Plaintiff's CPA Claim).[4] Division One of the Court of Appeals ruled in *Buckner, Inc. v. Berkey Irrigation Supply,* 89 Wn. App. 906, 951 P.2d 338 (1998), that a Motion for Reconsideration only need be filed and served within the ten-day period provided by CR 59(b) to extend the time period required to file a Notice of Appeal; the motion need not be noted within a thirty-day period, and indeed, need not be noted for consideration at all.

In *Buckner,* following a judgment on a jury verdict, a party filed and served within ten days a motion for reconsideration. However, no note for hearing was filed or served with the motion. Within thirty days of the trial court's denial of the motion for reconsideration, the same party filed and served a notice of appeal. The opposing party moved to dismiss the appeal, arguing that CR 59(b) required the party moving for reconsideration to note it for hearing within thirty days of its filing; that the moving party's failure to do so meant that the motion was not timely; that the notice of appeal was therefore also not timely; and accordingly,

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[4] See also the June 26, 2006 Declaration of Delivery, one of the two additional documents designated for the record on appeal in Appellant's July 16, 2007 Supplemental Designation of Record, which confirms that copies of the Motion for Reconsideration were delivered to Respondents' counsel by facsimile and electronic mail, which was an agreed method of service of these papers. A copy of the Declaration of Delivery is attached hereto as Appendix A.

that the Court of Appeals had no jurisdiction to consider the appeal. *Buckner,* 89 Wn. App. at 912.

The Court of Appeals rejected these arguments in their entirety, ruling that as long as a motion for reconsideration is timely filed and served, the failure to note it for consideration within thirty days – indeed, the failure to note it for consideration at all – does not make the motion untimely:

> Buckner timely served and filed its motion for reconsideration. Berkey submitted briefing in opposition to the motion. The court considered and decided the motion within 30 days of its filing. And Buckner filed its notice of appeal within 30 days of the court's order denying the motion. It would be a true triumph of form over substance to hold that the purposes of CR 59(b) were not fulfilled under these facts. This is particularly so because Berkey has not suggested that it was prejudiced by the failure to note the motion. The motion for reconsideration was timely served, filed, and resolved.
>
> We hold that a timely served and filed motion for reconsideration satisfies the requirements of RAP 5.2(e) and extends the time limit for filing the notice of appeal. The failure to note the motion at the time it is served and filed does not affect the extension of time for appeal under RAP 5.2(e). This appeal was timely, and we have jurisdiction to decide it.

Id. at 915-16 (footnotes omitted).[5]

As in *Buckner,* in this case Ms. Singleton's Motion for

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[5] Division One's decision in *Buckner* was quoted with approval by the Supreme Court in *In re Detention of Turay,* 139 Wn.2d 379, 391, 986 P.2d 790 (1999).

Reconsideration was timely filed and served; Naegeli filed a brief opposing the motion; the trial court decided the motion before thirty days passed from the date it was filed; and Ms. Singleton filed her Notice of Appeal within thirty days of the date the motion was denied. As the Court of Appeals ruled in *Buckner,* the Court here should rule that the Notice of Appeal was timely filed and that it has jurisdiction to decide it.

In any event, Ms. Singleton's Motion for Reconsideration was timely noted for hearing because CR 59(b) by its terms authorizes trial courts to establish noting dates for reconsideration motions different than those set in the rule: "The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after the entry of the judgment, order, or other decision, *unless the court directs otherwise.*" CR 59(b) (emphasis supplied). A superior court may enact its own local rules that are not inconsistent with the statewide civil rules. GR 7, CR 83. Thus, pursuant to this authority and CR 59(b), the Kitsap County Superior Court has adopted its own rules governing the filing of a motion for reconsideration and how they should be noted for consideration:

> **(b) Motion for Reconsideration; Time for Motion; Contents of Motion.** A motion for reconsideration shall be filed, noted, and served on all parties and the trial judge not later than ten (10) days after entry of the judgment, decree, or

> order. The motion shall be noted on the trial judge's departmental motion docket to be heard not sooner than thirty (30) but not later than forty (40) days after entry of the judgment, decree, or order, unless the court directs otherwise. The bench copy shall be delivered to the trial judge's law clerk at the Superior Court office and shall contain the date the judgment, decree, or order was entered, and the names and addresses of opposing counsel.
>
> **(e) Hearing on Motion for Reconsideration.** A motion for reconsideration shall be submitted on briefs and affidavits of the moving party only. No response shall be submitted by the opposing party, nor shall oral argument be heard, unless the court so directs. The court shall notify the parties, not later than ten (10) days before the hearing, whether: (1) the motion has been denied and the hearing stricken; or (2) oral argument and/or responsive pleadings will be allowed.

Kitsap County LCR 59(b), (e).

Kitsap County LCR 59 is not inconsistent with CR 59(b). The local rule allows a motion to be considered within thirty days of entry of an order, and CR 59(b) allows courts to "direct otherwise" and schedule motions for reconsideration to be heard or considered outside of thirty days.

A notice of appeal must be filed within thirty days of the decision which the party filing the notice wants reviewed, or within thirty days of the entry of an order deciding a timely motion for reconsideration. RAP 5.2(a), (e); *King County v. Williamson*, 66 Wn. App. 10, 11, 830 P.2d 392 (1992); *Buckner,* 89 Wn. App. at 912.

In this case, the trial court entered an order Granting in Part and Denying in Part Defendant's Motion to Dismiss Pursuant to CR 12(b)(6) ("Order") on June 16, 2006. CP 302-305. Ms. Singleton filed her Motion for Reconsideration on June 26, 2006. CP 312-321. This complied with the ten-day notice requirement of Kitsap County LCR 59(b). Ms. Singleton noted her Motion for Reconsideration for July 21, 2006.[6] July 21, 2006 is thirty-five (35) days after June 16, 2006.[7] Thus, Ms. Singleton's Motion for Reconsideration was timely because it was "noted on the trial judge's departmental motion docket to be heard not sooner than thirty (30) but not later than forty (40) days after entry of the judgment, decree, or order." Kitsap County LCR 59(b).

On July 18, 2006, the trial court entered its Order Denying Plaintiff's Motion for Reconsideration. CP 322. Ms. Singleton's Notice of Discretionary Review was filed on August 15, 2006. CP 323-29. August 15, 2006 is twenty-eight (28) days after July 18, 2006. Accordingly, Ms. Singleton's Notice of Discretionary Review was filed within thirty (30) days

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[6] *See* Note for Motion Docket for Motion for Reconsideration, filed in the trial court on June 26, 2006, and requested to be made part of the appeal record in Plaintiff's July 16, 2007 Supplemental Designation of Record, and attached hereto as Appendix B.

[7] Kitsap County Superior Court hears civil motions on its Friday calendar. Kitsap County LCR 77(k)(2). Thus, the only date for which Ms. Singleton could note her Motion for Reconsideration that would comply with both Kitsap County LCR 59(b) and LCR 77(k)(2) was Friday, July 21, 2006, the date for which it was in fact noted.

of the entry of an order denying a timely motion for reconsideration and was timely. RAP 5.2(a), (e).

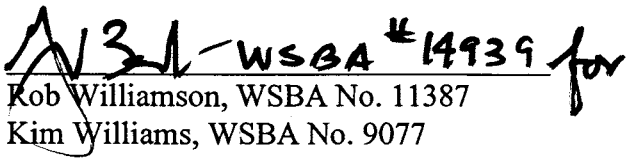
Naegeli's citation to *Schaefco, Inc. v. Columbia River Gorge Commission*, 121 Wn.2d 366, 849 P.2d 1225 (1993), is inapposite. In *Schaefco*, the party filing a motion for reconsideration did not serve the opposing party a copy of the motion within ten days of the order. *Id.* at 368. In this case, however, Ms. Singleton had to comply with the timing requirements of Kitsap County LCR 59(b), not the statewide CR 59(b). She did so, and all filing and service requirements were clearly, timely, and properly met. Naegeli's argument to the contrary is frivolous.

III. CONCLUSION

Respectfully, the trial court was mistaken in this case. Its order dismissing Ms. Singleton's CPA claim should be reversed, and Ms. Singleton should be permitted to proceed with her claim, individually and on behalf of a class of consumers, to obtain the redress to which she and they are entitled.

July 16, 2007

WILLIAMSON & WILLIAMS



Rob Williamson, WSBA No. 11387
Kim Williams, WSBA No. 9077

BECKETT LAW OFFICES, PLLC
Guy W. Beckett, WSBA No. 14939
Attorneys for Appellant

DECLARATION OF SERVICE

Lisa Hanlon declares:

1. I am a legal assistant employed by Williamson & Williams. I make this declaration from my personal knowledge.

2. On July 16, 2007 I mailed a copy of the foregoing document by United States first-class mail, with proper postage affixed, to:

Stephen L. Pettler
Harrison & Johnston, PLC
21 S. Loudoun St.
Winchester, VA 22601,

Bradford J. Fulton
CARTER & FULTON, P.S.
3731 Colby Avenue
Everett, Washington 98201

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

EXECUTED THIS 16TH day of July, 2007, at Seattle, Washington.

Lisa Hanlon

Lisa Hanlon

APPENDIX A

RECEIVED FOR FILING 2006 JUN 26 PM 4 20
KITSAP COUNTY CLERK
JUN 26 2006
DAVID W. PETERSON

Hearing date: July 21, 2006, 1:30 p.m.
Departmental Motion Calendar:
The Hon. Leila Mills

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

CANDY SINGLETON, on behalf of herself and others similarly situated, Plaintiff, v. NAEGELI REPORTING CORPORATION, Defendant.	NO. 05-2-02921-0 NOTE FOR MOTION DOCKET **(CLERK'S ACTION REQUIRED)**

TO: THE CLERK OF THE COURT;

AND TO: BRADFORD J. FULTON of CARTER & FULTON, P.S., and HARRISON & JOHNSTON, PLC and STEPHEN L. PETTLER, JR., attorneys for Defendant.

PLEASE TAKE NOTICE that the undersigned will bring on for hearing Plaintiff's Motion for Reconsideration. A copy of the motion is submitted with this Note for Motion Docket.

The hearing is to be held:

Time & Date: July 21, 2006, 1:30 p.m.

Place: The Honorable Leila Mills
Kitsap County Superior Court
614 Division Street
Port Orchard, WA 98366

Reporter requested: YES X NO ____

Electronic recorder acceptable: YES ____ NO X

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Tel 206-264-8135
Fax 206-264-8144

COPY

Court Commissioner may hear this motion: YES ___ NO X

DATED this 26th day of June, 2006.

BECKETT LAW OFFICES, PLLC

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Co-Counsel for Plaintiff

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APPENDIX B

FILED
COURT OF APPEALS
DIVISION II

07 JUL 17 PM 2:17

STATE OF WASHINGTON
BY _____
DEPUTY

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

CANDY SINGLETON, on behalf of herself and others similarly situated, Plaintiff, v. NAEGELI REPORTING CORPORATION, Defendant.	NO. 05-2-02921-0 DECLARATION OF DELIVERY

Melissa R. Macdonald declares:

On June 26th, 2006, I personally sent via facsimile and electronic mail (with permission from counsel) copies of the following documents:

- Note for Motion Docket
- Plaintiff's Motion for Reconsideration

to defense counsel listed below:

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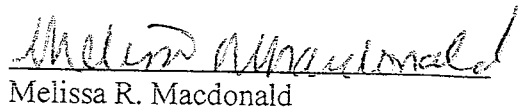
E-mail: pettler@harrison-johnston.com

Melissa R. Macdonald, under penalty of perjury under the laws of the State of Washington, declares that the foregoing is true and correct.

EXECUTED THIS 26th day of June, 2006, at Seattle, Washington.



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