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DIVISION II

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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
DEPUTY

**THE BRACK FAMILY TRUST, CALVIN BRACK and
JOYCE M. BRACK, Trustees,**

Appellant,

v.

EVELYNE GRUNDY,

Respondent.

**APPELLANT'S REPLY AND CROSS-RESPONDENT'S
RESPONSE BRIEF**

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I. INTRODUCTION

In their opening brief, the Bracks challenged three aspects of the superior court's decision. First, they argued that increased sea spray onto Grundy's property, even if caused by the Bracks' newly raised bulkhead, is not a trespass under *Grundy v. Thurston County*, 155 Wn.2d 1, 177 P.3d 1089 (2005). Second, they argued that the award of \$16,000 to Grundy was erroneous because the superior court found that Grundy suffered no "significant compensable harm." Third, the Bracks argued that the attorneys' fee award was erroneous because the superior court found that the trespass was not intentional.

Grundy's responses to these arguments are unconvincing. Rather than engaging the Bracks' legal argument that wave spray from Puget Sound is not a trespass, Grundy mischaracterizes the issue. The Bracks do not now challenge any of the superior court's findings of fact regarding the water trespass claim. Rather, they argue that wave spray overtopping a sea wall is not, as a matter of law, a trespass. Grundy provides no response to that argument.

Regarding whether the \$16,000 award was proper, Grundy provides no response to the line of cases holding that in order to be entitled to damages, trespass plaintiffs must prove more than *de minimis* injury, nor does she argue that she suffered more than *de minimis* injury.

Additionally, she does not challenge the well-established proposition that prospective damages are unavailable in trespass actions. Rather, she argues that the \$16,000 award is an equitable remedy, not a legal remedy. But money damages are inherently remedies at law, not equitable remedies. Even if the superior court did intend for the award to be an equitable remedy, Grundy did not satisfy two of the prerequisites necessary for obtaining equitable relief. First, she did not prove (and the superior court did not hold) that Grundy's legal remedies were inadequate. Second, she did not prove that she suffered "actual and substantial injury"; to the contrary, the court found that Grundy's injury was *de minimis*. Accordingly, Grundy's argument that the \$16,000 award was an equitable remedy in disguise should be rejected.

Finally, regarding whether the attorneys' fee award was proper, Grundy acknowledges that the Washington intentional trespass statute authorizes an award of attorneys' fees only if the plaintiff proves *intentional* trespass, but not negligent trespass. Further, Grundy concedes that the superior court, in its findings of fact and conclusions of law, found that the trespass here was not intentional. Rather than dispute these points, Grundy argues that it was an error for the superior court to hold that the trespass was not intentional. Further, she argues that the Bracks invited that error. The invited error doctrine, which prohibits a party from setting

up an error at trial and then complaining of it on appeal, does not apply here. First, the Bracks do not challenge the superior court's holding that the trespass was not intentional. Second, even if the Bracks did challenge that holding, there is no evidence in the record that they induced the court to reach that holding. Finally, the superior court did not err in concluding that the trespass was neither "wrongful" nor "intentional." Indeed, that conclusion was fully supported by the record. Accordingly, Grundy's argument that the invited error doctrine precludes review of the fee award should be rejected. Because Grundy has offered no other argument in fact or law, the attorneys' fee award should be reversed.

Perhaps sensing that her invited error doctrine argument will not succeed, Grundy asks this Court, in her cross-appeal, to "reform" the superior court's written findings of fact and conclusions of law. She does not argue that the findings of fact were not supported by substantial evidence. Nor does she argue that the conclusions of law were legally erroneous. Rather, without citing anything in the record or any legal authority, she argues that the superior court did not "intend" to rule as it did. The superior court unambiguously rejected Grundy's assertion that the Bracks' actions were "intentional" and "wrongful," and Grundy provides nothing more than speculation to the contrary. Therefore, this

Court should deny Grundy's request to "reform" the superior court's findings of fact and conclusions of law.

II. ADDITIONAL STATEMENT OF THE CASE

Because Grundy's cross-appeal raises issues regarding the timing of the attorneys' fee award and the entry of the findings of fact and conclusions of law, additional factual and procedural background is necessary.

The superior court held a three-day bench trial from June 11–13, 2007. CP 819-824. At the conclusion of the trial, the superior court announced that it would issue its ruling on June 22, 2007. CP 824. On June 22, the superior court found that sea spray, caused by the Bracks' raised bulkhead, was a trespass. But the court did not state whether the trespass was intentional or merely negligent. CP 825. The superior court also announced at that time that it would "hear argument as to attorneys' fees based on a lodestar basis and set the argument for July 27, 2007." *Id.*

One week before the hearing on attorneys' fees, Grundy filed a motion, memorandum and declaration in support of her fee request. CP 826-40. The Bracks responded on July 25, CP 841-51, arguing that, among other things, Grundy was not entitled to attorneys' fees under Washington's intentional trespass statute. Because the superior court had found that there was only a "slight trespass," Grundy had not proven the

elements of intentional trespass required to support an award of attorneys' fees under RCW 4.24.630. CP 845-46. Grundy argued in reply that because her expert "published" a report in 2000 (after the Bracks had raised their bulkhead) concluding that the raised sea wall was likely affecting Grundy's property, the Bracks should have known that raising their sea wall was "unauthorized" and thus "wrongful" under RCW 4.24.630. CP 855. Grundy did not argue that the superior court had already found that the trespass was "wrongful" under RCW 4.24.630; her brief treated the issue as unresolved. CP 855. Without explaining its reasoning, the superior court held that Grundy was entitled to attorneys' fees. CP 860.

On December 14, 2007, Grundy filed proposed findings of fact and conclusions of law. CP 861. Grundy proposed a finding that the Bracks "intentionally raised . . . [and] maintained their bulkhead after water intrusion on Plaintiff's property became manifest through debris lines and yellowed grass." CP 887. Grundy also proposed a conclusion of law that "Plaintiff has established that defendants' [sic] intentionally raised their bulkhead without considering the consequences to Grundy, water thereby intruded onto Plaintiff's property, and defendants continued the trespass well after they knew that the actual intrusion had occurred." CP 891. Further, she proposed a conclusion of law that "Plaintiff has proven

wrongful trespass by water, entitling her to award [*sic*] of reasonable attorneys' fees and costs pursuant to [RCW 4.24.630]." CP 892.

Before adopting them on December 18, 2007, the superior court significantly revised Grundy's proposed findings of fact and conclusions of law by, among other things, striking all language suggesting that the Bracks had acted "intentionally" or "wrongfully." See CP 887 ("The trial court finds that Defendants ~~intentionally~~ raised their bulkhead to repel water from their property without considering consequences to Plaintiff and that they maintained their bulkhead ~~after water intrusion on Plaintiff's property became manifest through debris lines and yellowed grass.~~") (alteration by superior court); CP 891 ("Plaintiff has established that defendants' ~~intentionally~~ raised their bulkhead without considering the consequences to Grundy, water thereby intruded onto Plaintiff's property, ~~and defendants continued the trespass well after they knew that the actual intrusion had occurred.~~") (alterations by superior court); CP 892 ("Plaintiff has proven ~~wrongful~~ trespass by water, entitling her to award of reasonable attorneys' fees and costs pursuant to [RCW 4.24.630].") (first alteration by superior court).

The findings of fact and conclusions of law, as signed and entered by the superior court, contain no references to the Bracks acting "wrongfully" or "intentionally." CP 878-94.

III. ARGUMENT AND AUTHORITY

A. Wave spray from Puget Sound splashing onto Grundy's property is not a trespass.

In her response brief, Grundy does not address the Bracks' legal argument that the increased sea spray coming onto Grundy's property is not a trespass in light of *Grundy v. Thurston County*, 155 Wn.2d 1, 117 P.3d 1089 (2005). In *Grundy*, the Supreme Court held that wind- and storm-driven waves, and spray from those waves that may splash onto waterfront property, remain part of Puget Sound. *Id.* at 10. Because spray from those waves remains, as a matter of law, within Puget Sound, it is not a trespass for that water to splash onto Grundy's waterfront property. Rather than addressing the Bracks' argument on the merits, Grundy mischaracterizes the Bracks' argument as a challenge to one of the superior court's findings of fact.

The Bracks do not challenge the superior court's findings of fact. The issue is not, as Grundy suggests, whether some water intruded onto Grundy's property. The superior court found "a water trespass of a limited nature that the Court finds is attributable to water intrusion and sea spray resulting from the increase in Defendant's bulkhead," CP 887, and the

Bracks have not challenged that finding. The issue is whether sea spray and water intrusion¹ can be a "trespass" in light of *Grundy*.

The Supreme Court in *Grundy* recognized that, for purposes of the law of water trespass and the common enemy doctrine, there are two, and only two, types of water: surface water and water that is part of a natural watercourse. *Grundy*, 155 Wn.2d at 10. Property owners have the right, under the common enemy doctrine, to protect themselves from the trespasses of surface water. *See id.* at 9 ("Surface water, caused by the falling of rain or the melting of snow, and that escaping from running streams and rivers, is regarded as an outlaw and a common enemy against which anyone may defend himself, even though by so doing injury may result to others.") (quoting *Cass v. Dicks*, 14 Wash. 75, 78, 44 P. 113 (1896)). But landowners are not entitled to protect themselves from water in natural drainage courses, like Puget Sound, *see, e.g., id.*, because water in a natural drainage course is, by definition, in the drainage course and not trespassing on the land over which it flows.

Specifically, in *Grundy* the Supreme Court held that wind- and storm-driven waves, and spray from those waves, remain part of Puget Sound. *Id.* Like the wind- and storm-driven waves in *Grundy*, the waves that struck Grundy's bulkhead were in Puget Sound, not on Grundy's

¹ "The Court's definition of water intrusion includes jetsam, flotsam and debris left by water; but the Court specifically finds that this term does not include flooding." CP 887.

property. Therefore, those waves did not trespass on Grundy's property. Accordingly, the Bracks respectfully request that this Court reverse the superior court's judgment in favor of Grundy, and direct the superior court to enter a verdict in favor of the Bracks on Grundy's trespass claim.

B. Whether construed as a damage award or as equitable relief, the \$16,000 award was inappropriate.

In their opening brief, the Bracks cited well-established authority for the proposition that damages, other than nominal damages, are unavailable to trespass plaintiffs unless the plaintiff suffers more than *de minimis* injury. *See, e.g., Keesling v. City of Seattle*, 52 Wn.2d 247, 254, 324 P.2d 806 (1958) ("Having established a technical trespass, the plaintiff was entitled to nominal damages. The damages awarded were substantial and have no basis in the evidence."). Additionally, the Bracks argued that the damages award here was erroneous because, under *Woldson v. Woodhead*, 159 Wn.2d 214 (2006), prospective damages are not allowed in trespass cases. *Id.* at 223. Grundy does not dispute either of these points.

Instead, Grundy argues that the \$16,000 award was an equitable remedy, and that the superior court has broad discretion to fashion such remedies. Grundy's argument is fatally flawed for two reasons.

First, Grundy's argument fails to distinguish *Woldson*, which is squarely on point. As discussed at length in the Bracks' opening brief, the trial court in *Woldson* awarded Woldson over \$30,000 to repair a retaining wall that was damaged by lateral pressure exerted by dirt that Woodhead's predecessor had placed against the wall. 159 Wn.2d at 217-18. At the time of the trial, Woldson had not repaired, replaced or removed the wall. *Id.* at 218. The Supreme Court held that requiring Woodhead to pay Woldson over \$30,000 to repair Woldson's retaining wall was a prospective damage award, and that such awards are not available in trespass actions. *Id.* at 218 n.3, 223.

Here, the superior court awarded Grundy \$16,000, ostensibly for the purpose of compensating Grundy for the cost of placing a cap on her sea wall at some point in the future. But Grundy had not yet installed a cap on her sea wall. In fact, the superior court found that Grundy suffered no "significant comprehensible injury" at all. CP 888. Under *Woldson*, the \$16,000 damage award is a purely prospective damage award. Because *Woldson* holds that prospective damage awards are not allowed in trespass actions, the \$16,000 award to Grundy cannot stand. Grundy's response brief does not even discuss *Woldson*, let alone offer any argument to distinguish it.

Second, money judgments are not equitable remedies. "A money judgment is a legal remedy whereas some other type of court order is equitable." 30A C.J.S. *Equity* § 1 (2008). Here, although the superior court concluded that the \$16,000 award would be "sufficient to install a lip or cap" on Grundy's bulkhead, CP 891, the court did not require Grundy or anybody else to install a lip or cap on Grundy's bulkhead, nor did it restrict how Grundy could use the \$16,000. That is, the \$16,000 award to Grundy is a pure money judgment with no conditions or strings attached. Accordingly, it is a legal remedy (a damage award), not an equitable remedy.

But even if, as Grundy argued, the superior court intended the \$16,000 award to be some form of unspecified equitable remedy, such relief was improper. "[I]t is a well-established rule that an equitable remedy is an extraordinary, not ordinary form of relief." *Sorenson v. Pyeatt*, 158 Wn.2d 523, 531, 146 P.3d 1172 (2006). Further, "[a] court will grant equitable relief only when there is a showing that a party is entitled to a remedy and the remedy at law is inadequate." *Id.* Further, equitable remedies, such as injunctions, are only available if a party proves "actual and substantial injury." *Brown v. Voss*, 105 Wn.2d 366, 372-73, 715 P.2d 514 (1986) ("One of the essential criteria for injunctive

relief is actual and substantial injury sustained by the person seeking the injunction.").

Grundy's brief does not argue that she lacked an adequate remedy at law, nor did she do so at trial. Nor did the superior court consider whether the legal remedies available to Grundy were so inadequate as to justify the imposition of an equitable remedy. Similarly, Grundy has not shown "actual and substantial" injury. The superior court found that Grundy suffered no "significant comprehensible injury" whatsoever. CP 888. The award of \$16,000 is, if construed by this Court to be an equitable remedy, erroneous.

Whether viewed as a damage award or as an equitable remedy, the \$16,000 award to Grundy cannot stand.

C. The award of attorneys' fees to Grundy was improper because the superior court found that the trespass was not intentional.

The Washington intentional trespass statute authorizes the award of attorneys' fees only when the plaintiff proves that the defendant "wrongfully" trespassed. RCW 4.24.630. "A person acts 'wrongfully' if the person intentionally and unreasonably commits the act or acts while knowing, or having reason to know, that he or she lacks authorization to so act." *Id.* Grundy concedes that in order for RCW 4.24.630 to apply and for attorneys' fees to be available, the trespass must have been

intentional, not merely negligent. Resp. Br. at 9 ("What distinguishes RCW 4.24.630 from the common law of trespass is its requirement that the acts be intentional and not merely negligent."). Grundy does not argue that the superior court found that the trespass was intentional here.² Rather, she argues that the Bracks somehow duped the superior court into entering findings and conclusions that the superior court actually disagreed with, thus inviting the very error that the Bracks complain of now. *Id.* at 10.

As a preliminary matter, by arguing that the invited error doctrine applies, Grundy necessarily concedes that the superior court committed error. Her argument is based on the premise that the attorneys' fee award cannot be reconciled with the superior court's striking of the words "intentionally" and "wrongfully" from the findings of fact and conclusions of law. Grundy does not attempt to reconcile that apparent conflict in any way, other than to argue that the Bracks caused the conflict. Accordingly, unless the invited error doctrine applies here, which it does not, under Grundy's logic the attorneys' fee award cannot stand.

The invited error doctrine does not apply here. The invited error doctrine "prohibits a party from setting up an error at trial and then

² If Grundy does so argue, the Bracks would reply that substantial evidence does not support a finding that the Bracks trespassed "wrongfully" within the meaning of the statute.

complaining of it on appeal." *Nania v. Pac. Nw. Bell Tel. Co.*, 60 Wn. App. 706, 709, 806 P.2d 787 (1991). "This doctrine applies when a party takes an affirmative and voluntary action that induces the trial court to take an action that a party later challenges on appeal." *Casper v. Esteb Enters., Inc.*, 119 Wn. App. 759, 771, 82 P.3d 1223 (2004). The invited error doctrine does not apply unless a party "sets up" the error. *Lavigne v. Chase, Haskell, Hayes & Kalamon, P.S.*, 112 Wn. App. 677, 682, 50 P.3d 306 (2002). For at least three reasons, the invited error doctrine does not apply here.

First, the doctrine does not apply because the Bracks do not now challenge the superior court's decision to strike the words "wrongfully" and "intentionally" from the proposed findings of fact and conclusions of law. Grundy argues that the Bracks induced the trial court to enter findings of fact and conclusions of law "that do not conform to the judgment the court indicated would be entered." Resp. Br. at 10. Even assuming, for the sake of argument, that the Bracks induced the superior court to alter the proposed findings of fact and conclusions of law, the invited error doctrine does not apply because the Bracks do not now challenge the actions that they allegedly induced. Rather, the Bracks challenge the award of attorneys' fees to Grundy. The Bracks did not

induce the superior court to award attorneys' fees to Grundy, and there is no evidence in the record to the contrary.

Second, even assuming that the Bracks were complaining that it was error for the trial court to strike the words "wrongfully" and "intentionally" from the findings of fact and conclusions of law, which they are not, Grundy points to no evidence in the record to suggest that the Bracks induced the error.

Moreover, the superior court's findings of fact and conclusions of law are supported by substantial evidence, and Grundy does not argue otherwise. Even if the Bracks did induce the superior court to strike the words "wrongfully" and "intentionally" wherever they appeared in the proposed findings of fact and conclusions of law, it was not error for the court to do so because the court's findings are supported by substantial evidence. In absence of a showing to the contrary, those findings of fact must stand.³ Similarly, Grundy does not argue that it was legal error for the superior court to conclude that the trespass was not "wrongful" or "intentional." Grundy has offered no authority or evidence in the record to suggest that the superior court's striking of the words "wrongfully" and

³ "Findings of fact are reviewed under a substantial evidence standard, defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true." *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

"intentionally" from the proposed findings of fact and conclusions of law was error at all, let alone error that the Bracks invited.

Grundy's argument concedes that the superior court's findings of fact and conclusions of law are not reconcilable with the attorneys' fee award. However, Grundy would have this Court hold that the Bracks induced that error. Because the invited error doctrine does not apply, the Bracks respectfully request that this Court reverse the attorneys' fee award.

IV. RESPONSE TO GRUNDY'S CROSS-APPEAL

A. There is no legal or factual basis to support modifying the superior court's findings of fact and conclusions of law as Grundy requests.

Grundy asks this Court to modify the superior court's clear and express written findings of fact and conclusions of law, but she cites neither legal authority nor evidence in the record to support her request. Instead, she asks this Court to infer from the superior court's award of attorneys' fees that it intended to find that the Bracks' alleged trespass was intentional. This Court should reject her request.

This Court reviews legal questions and questions of law *de novo*. *Sunnyside Valley Irrigation Dist.*, 149 Wn.2d at 880. "Findings of fact are reviewed under a substantial evidence standard, defined as a quantum of evidence sufficient to persuade a rational, fair-minded person the premise is true." *Id.* at 879. Additionally, "[a] trial court may alter, amend, or

reverse its rulings at any point before it enters a final judgment." *Hubbard v. Scroggin*, 68 Wn. App. 883, 887, 846 P.2d 580 (1993); *see also* CR 52(b) ("Upon motion of a party filed not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly."); CR 59(g) ("On motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct entry of a new judgment.").

Here, Grundy did not ask the superior court to alter, amend or revise its rulings. Furthermore, she does not argue that the superior court's findings of fact were not supported by substantial evidence. Nor does she argue that the superior court's conclusions of law were legally erroneous. Rather, she argues, without authority or evidence, that the superior court did not "intend" to rule as it did.

Grundy's argument is not supported by the record. At no point did the superior court state anywhere in the record that the Bracks committed "wrongful" trespass within the meaning of RCW 4.24.630. Apparently Grundy could find no express intent either, because she asks this Court to infer from the superior court's award of attorneys' fees that it intended to hold the Bracks liable for intentional trespass. Grundy has it exactly

backwards. The question is not whether the findings of fact and conclusions of law should be modified to conform the superior court's unstated and unascertainable "intent."⁴ Rather, the question is whether the findings are supported by substantial evidence. Grundy offers neither argument nor evidence to suggest that the findings and conclusions were not supported by substantial evidence. Therefore, her challenge to those findings and conclusions should be rejected.

But even if the superior court, when it awarded Grundy attorneys' fees, did believe that the alleged trespass was intentional under RCW 4.24.630, the superior court has the authority to change its mind at any time before it enters final judgment.⁵ Because the superior court had the power to modify its ruling at any time, the written, express findings of fact and conclusions of law necessarily trump any contrary inference from previous rulings.

⁴ Because the superior court provided no reasoning for its ruling on attorneys' fees, it is impossible to tell whether the court at that time believed that the alleged trespass was intentional, or whether the court thought some other rationale supported the fee award.

⁵ In addition to having the power, under *Hubbard*, to amend its judgment before issuing a written judgment, the superior court may also modify or reconsider its rulings after judgment is issued. CR 52(b) states that "Upon motion of a party filed not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly." Additionally, CR 59(g) states that, "On motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct entry of a new judgment." If Grundy truly believed that the superior court intended to hold that the Bracks intentionally trespassed but that the Bracks tricked the judge into holding otherwise, she could have filed a motion under either of these rules and settled the matter definitively.

Finally, Grundy argues that the superior court's written findings of fact and conclusions of law should be reformed "[i]n the interests of efficiency and judicial economy." Resp. Br. at 12. It is unclear how it would advance efficiency or judicial economy for this Court to modify the superior court's written decision on nothing more than Grundy's unsupported assertion that the court really did not intend to rule as it did. The superior court, after many years of litigation culminating in a three-day bench trial, rejected Grundy's assertion that the Bracks intentionally trespassed on Grundy's property. For this Court to disturb that ruling now, without the benefit of reviewing any of the evidence that the superior court considered, would promote neither efficiency nor judicial economy.

The superior court unambiguously held that the trespass was neither "intentional" nor "wrongful," and Grundy provides nothing more than innuendo to the contrary. Therefore, this Court should deny Grundy's request to modify the findings of fact and conclusions of law.

B. Grundy is not entitled to attorneys' fees on appeal.

Grundy argues that she is entitled to attorneys' fees on appeal because the Washington intentional trespass statute, RCW 4.24.630, authorizes attorneys' fee awards to successful litigants. However, as the Bracks argued in their opening brief and above, Grundy is not entitled to attorneys' fees under RCW 4.24.630 because the superior court concluded

that the Bracks did not "wrongfully" or "intentionally" trespass. Because the superior court erroneously awarded Grundy attorneys' fees under RCW 4.24.630, Grundy is not entitled to attorneys' fees on appeal.

V. CONCLUSION

Grundy's cross-appeal is based on neither evidence nor authority, and this Court should deny it. Additionally, Grundy has failed to offer any convincing arguments in response to the Bracks' appeal. The superior court held that the Bracks altered Puget Sound to such a degree as to cause it to trespass on Grundy's property. The court's ruling is unprecedented and is contrary to the Supreme Court's prior decision in this case.

Additionally, the superior court's \$16,000 award to Grundy was erroneous in light of the court's unchallenged finding that Grundy suffered no more than *de minimis* harm. Finally, the award of attorneys' fees to Grundy was erroneous in light of the superior court's written decision holding that the Bracks did not "wrongfully" or "intentionally" trespass. Therefore, the Bracks respectfully request that this Court reverse the superior court's

judgment that the Bracks trespassed on Grundy's property, and vacate the \$16,000 damages award and award of attorneys' fees to Grundy.

DATED: October 21st, 2008 **PERKINS COIE LLP**

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EVELYNE GRUNDY,

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The BRACK FAMILY TRUST,
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BRACK, Trustees,

Appellants.

CERTIFICATE OF SERVICE

Teresa McLain certifies and states:

I am a citizen of the United States of America and a resident of the State of Washington; I am over the age of eighteen years; I am not a party to this action; and I am competent to be a witness herein. On October 23, 2008, I caused to be served, a true and correct copy of the following:

1. Appellant's Reply and Cross-Respondent's Response
Brief;
2. Certificate of Service

upon the following at the address as stated below by the method of service indicated:

VIA U.S. MAIL

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DATED at Seattle, Washington this 23rd day of October, 2008.



Teresa McLain