

FILED

JUL 03 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 321991

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

BURGESS VINEYARDS, LLC,
a Washington Limited Liability Company,

Respondent/Plaintiff,

v.

PAUL BEVERIDGE and JANE DOE BEVERIDGE, husband and
wife, dba WILRIDGE WINERY & VINEYARD,

Appellants/Defendants,

BRIEF OF APPELLANTS

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I. Introduction.

Paul Beveridge (“Beveridge”), on behalf of Tapenade, Inc., dba Wilridge Winery and Vineyard (Appellants), and Paul Burgess (“Burgess”), on behalf of Burgess Vineyards, LLC (Respondent), agreed to a sale of grapes from Burgess to Tapenade. Burgess agreed to sell 7 tons of Pinot Gris grapes to Tapenade for \$6,300.00. Tapenade made a down payment of \$2,000.00 and paid the \$4,300.00 balance 57 days after the alleged due date. Applying the statutory interest rate of 12%, Burgess’ damages for not receiving payment on time totaled \$80.37. Nevertheless, more than two weeks after receiving the \$4,300.00 final payment, Burgess demanded further payment of \$815.86, claiming Beveridge owed 18% interest and a \$200.00 monthly late fee charge. When Beveridge did not pay the additional late fees and interest, Burgess filed suit in Franklin County Superior Court. The trial court held Beveridge, who is from Seattle, owed more in interest and late fees (\$7,506.92) than he paid for the grapes.

What sets this case somewhat apart is the fact that the parties signed two different contracts after they had a valid agreement in

place. One of the agreements (the “Burgess Contract”), states the person signing on behalf of the buyer personally guarantees payment and that a \$200.00 monthly late fee and 18% interest shall be applied to unpaid accounts. It also provides that Burgess is entitled to attorney’s fees and court costs “with or without litigation.”

The other agreement (the “Beveridge Contract”), did not provide for payment of late fees or interest on unpaid accounts. It also did not contain a personal guarantee or attorney’s fees clause.

II. Assignments of Error.

Assignment of Error No. 1

The trial court erred in awarding Burgess monthly late fees, 18% interest and attorney’s fees.

Assignment of Error No. 2

The trial court erred in finding Beveridge personally liable.

Issues Pertaining to Assignments of Error

Is the \$200.00 monthly late fee an unenforceable penalty under Washington law? (*Assignment of Error No. 1*)

Are modifications to an existing agreement enforceable in the absence of valid consideration? (*Assignment of Error No. 1*)

When parties execute two different contracts covering the same transaction, is there a meeting of the minds on terms and conditions which are not common to both contracts? (*Assignment of Error No. 1*)

Is the Burgess Contract procedurally unconscionable? (*Assignment of Error No. 1*)

Did Beveridge objectively manifest assent to the personal guaranty? (*Assignment of Error No. 2*)

III. Statement of the Case.

In September of 2010, Paul Beveridge, who is the winemaker for Tapenade, Inc., d/b/a Wilridge Winery, noticed an advertisement posted on a grape grower's website by Paul Burgess, on behalf of Burgess Vineyards, LLC. [RP pg. 38, lines 3-5] Beveridge could only recall "a couple" of instances in his 25 years as a winemaker that a written agreement was involved when he purchased grapes. [RP pg. 39, lines 1-24] Typically, the agreement to purchase is achieved via e-mail or a phone call. *Id.* Hence, on September 28, 2010, Beveridge sent an e-mail to Burgess inquiring as to the price of seven tons of Pinot Gris grapes. [RP pg. 38, lines 12-15;

Plaintiff's Ex. 2, pg. 1] Although it was late in the season and the company's cash flow was minimal, Beveridge was advised by his accountant that Tapenade was going to receive a substantial tax refund from the IRS. [RP pg. 45, lines 4-12] Tapenade had a wine tank available and Beveridge believed he could use the refund to make more wine. *Id.*

Burgess responded via e-mail at 5:21 a.m. on Wednesday, September 29, 2010, and stated the price was \$900.00 per ton. [Plaintiff's Ex. 2, pg. 2] A little over three hours later, Beveridge replied: "Okay. Let's plan to pick it on Friday or Saturday morning. I am working on setting up transportation. I would prefer Friday but it may have to be Saturday." [Plaintiff's Ex. 2, pg. 3] Later that evening, Burgess replied: "*Thank you for purchasing my Pinot Gris winegrapes [sic]...*" *Id.*, pg. 4 (emphasis added). Attached to that e-mail was a contract¹ which Burgess asked Beveridge to: "Please review, sign, and fax the signed contract to me tonite [sic] or tomorrow. I will look forward to hearing from you tomorrow so I can arrange my picking crew either Fri or Sat. for a full day of

¹ Plaintiff's Exhibit 2, pgs. 6-7.

harvesting. *Thank you again for your purchase!*" *Id.* (Emphasis added.)

Beveridge, who has been a licensed attorney since 1985 and a winemaker for 25 years, reviewed the proposed Burgess Contract and concluded it was "the most outrageous and one-sided contract I had ever seen in my experience." [RP pg. 41, lines 2-4] When asked what he found objectionable about the proposed Burgess Contract, Beveridge stated: "It had an outrageous interest rate. It had penalties. It was one-sided. It had [an] attorney's fees provision that was biased in his favor. I just thought I can't believe he'd propose it." [RP pg. 57, lines 7-21] Thus, he responded to Burgess at 8:53 a.m. the next morning as follows: "Thanks Paul. I think the contract you attached is more appropriate for an annual contract rather than a spot deal. I have attached a draft² that is more to the point. Please let me know if this acceptable and I will sign and fax it to you today." [Plaintiff's Ex. 2, pg. 5] Burgess did not respond to this e-mail. [RP pg. 26, lines 12-15] When Burgess failed to respond to Beveridge's objection to the proposed Burgess Contract

² Plaintiff's Exhibit 2, pg. 8.

or state any objection to the proposed Beveridge Contract, Beveridge believed they had “a deal”. [RP pg. 41, lines 17-24; pg. 42, lines 17-20] As indicated in the customary exchange of e-mails, the “deal” was for 7 tons of Pinot Gris grapes at \$900.00 per ton. [RP pg. 40, lines 11-23] Hence, Beveridge rented a truck on October 1, 2010, and drove from Seattle to Pasco. [RP pg. 41, lines 19-24] Had Burgess advised prior to October 1st that Beveridge needed to sign the Burgess Contract in order to get the grapes, Beveridge would not have driven to Pasco. [RP pg., 57, lines 19-21]

When Beveridge, who was alone, arrived at the Burgess vineyard, he was greeted by Paul Burgess. [RP pg. 42, line 21 thru pg. 43, line 25] They proceeded out to where workers were picking the grapes whereupon Burgess handed over the Beveridge Contract, which Burgess had signed³, and then insisted that Beveridge sign the Burgess Contract. *Id.* Beveridge could not believe he had driven

³ On direct examination, Burgess was shown the Beveridge Contract with his signature on it to which he responded: “That’s the first I’m aware of that.” **He insisted that he did not sign it and that his signature was forged.** [RP pg. 18, line 15 thru pg. 19, line 10] This was stunning given that Burgess’ attorney introduced the contract into evidence and acknowledged he obtained it from Burgess’ file! [RP pg. 28, line 21 thru pg. 29 line 3] Following his attorney’s revelation, Burgess stated on cross-examination that he didn’t recall signing it but agreed the signature appeared to be his. [RP pg. 29, lines 4-14]

“all the way out there” and now Burgess wanted him to sign the unfair contract. *Id.* In addition to feeling he had been tricked, Beveridge felt concern for his personal well-being so he signed the Burgess Contract and “just wanted to get out of Dodge”. *Id.*

When he signed the Burgess Contract, Beveridge crossed his name off at the top of page 1 “because this was a business transaction with Tapenade, Inc., not me personally.” [RP pg. 44, line 23 thru pg. 45, line 1] This is also why he indicated on page 2 that he was signing as “Secretary” on behalf of Tapenade. [RP pg. 45, lines 2-3]

Beveridge testified that the first time he talked with Burgess on the telephone, and again while at the Vineyard, he was clear that Tapenade’s ability to pay the balance was dependent upon receipt of the IRS refund. [RP pg. 45, line 13 thru pg. 46, line 3; pg. 49, lines 11-13] According to Beveridge, Burgess agreed to wait for payment until Tapenade received the refund. *Id.* Burgess claims the first time he heard about the IRS refund was when he received an e-mail on December 22, 2010, from Beveridge which stated: “Hi Paul. We are still waiting for our refund check from the IRS. As soon as we

receive the refund, we will pay all our grape bills.” [Plaintiff’s Ex. 2, pg. 10; RP pg. 19, line 16 thru pg. 17, line 3]

Burgess did not respond to this e-mail until February 10, 2011, when he sent an e-mail asking for payment. [Plaintiff’s Ex. 2, pg. 11] Beveridge replied a couple of hours later and said: “The check went out earlier this week. Please let me know if you do not have it by Monday. Thanks for your patience.” *Id.*, at pg. 12. Burgess waited nearly 3 weeks to respond, at which time he mailed an invoice dated March 1, 2011, which alleged that Beveridge owed \$815.86 in interest and late fees. [Plaintiff’s Ex. 3, pg. 2] Enclosed with the invoice was a letter from Burgess which stated in part:

“Per our telephone conversation, I understand that you were waiting for your IRS check in order to pay the Invoice under this contract in full.⁴ However, that was not our agreement. Even though waiting for payment was not to my liking, I am now following our agreement of late payments and interest.”

⁴ This contradicts Burgess’ testimony that he was unaware of the IRS refund prior to receiving the 12/22/2010 e-mail from Beveridge. Also, the fact that both of the proposed contracts call for a \$2,000 down payment with the balance due on December 15th suggests the parties discussed Tapenade’s inability to pay in full up front. It seems implausible that Beveridge did not let Burgess know Tapenade’s ability to pay the balance was tied to the IRS refund. Accordingly, Appellants assign error to Finding of Fact VII.

Id., at pg. 1 (emphasis added.)

According to Burgess' records, he received the \$4,300.00 balance from Tapenade on February 10, 2011. *Id.*, at pg. 2. When asked at trial what his financial loss was as a result of receiving payment 57 days late, Burgess replied: "Financially nothing". [RP pg. 30, lines 23-25] When asked to explain his justification for setting the monthly late fee charge at \$200, as opposed to some other figure, Burgess stated: "*I feel that's a fair amount to stop people from being deadbeats and not paying.*" [RP pg. 32, lines 1-19] (Emphasis added).

The parties did not communicate further until January 23, 2012, when Burgess e-mailed an invoice to his attorney⁵, which presumably was forwarded to Beveridge, as Beveridge e-mailed Burgess later that day. Beveridge responded that Burgess' position was not commercially reasonable, particularly for a spot market purchase at the end of harvest, and that "I was clear to you from the beginning that we could not pay for the grapes until we received our

⁵ Plaintiff's Ex. 2, pg. 13. The actual invoice was not included as an exhibit. According to Burgess' records, the amount alleged owing at this time appears to be \$3,087.40. [Plaintiff's Ex. 4, pg. 2]

IRS refund.” [Plaintiff’s Ex. 2, pg. 14] Furthermore, Beveridge had not previously raised an issue with the large amount of rot in the grapes (15-20%) which he would be compelled to do if Burgess continued to pursue the matter. *Id.*

Burgess filed suit in Franklin County Superior Court on April 17, 2012. [CP 50-54] The named defendants were Paul Beveridge and his marital community dba Wilridge Winery & Vineyard. *Id.* In the answer to the complaint, Beveridge admitted that Tapenade, Inc., dba Wildridge Winery entered into an agreement with Burgess but denied that the Burgess Contract was valid. [CP 47-49] Beveridge further denied that he personally guaranteed performance of the Burgess Contract. *Id.*

The case was set for trial on April 17, 2013, but had to be continued for lack of an available judge. A bench trial was eventually held on October 24, 2013, before the Honorable Salvador Mendoza, Jr.

At trial, Burgess’ sole contention was that all the terms in his contract were valid and enforceable because Beveridge signed it. Burgess did not offer a single citation of authority to support the

validity of his contract. [CP 30-33]. Beveridge countered with several legal arguments as to why the Burgess Contract was unenforceable. [CP 34-46] Namely, the monthly late fee charges are punitive and unenforceable as a matter of law. *Id.* Beveridge further asserted the Burgess Contract required additional consideration to be valid and it was otherwise signed under duress and unconscionable. *Id.* Also, since there were two written agreements, only those terms and conditions which are common to both agreements are binding and enforceable. *Id.*

Judge Mendoza ruled the Burgess Contract “is the enforceable contract” and that the Beveridge Contract “becomes frankly part of this [Burgess] contract.” [RP pg. 81, lines 6-24] He stated that, having been a business owner himself, he believed the monthly late fee was appropriate to account for “the stress and hassle of collecting” and therefore was not a punitive sanction. [RP pg. 80, line 21 thru pg. 81, line 3] Thus, Burgess was awarded \$200.00 per month in late fee charges, with 18% interest thereon, through October 2013, plus attorney’s fees. The initial Judgment totaled \$11,453.19 and was against Beveridge and his marital community.

[CP 24-25] Both sides presented proposed Findings of Fact and Conclusions of Law. Judge Mendoza signed Burgess' findings without requesting argument from counsel.

Beveridge moved for reconsideration which was mostly denied. [CP 18-23] Judge Mendoza did agree the monthly late fee charge should not be extended beyond the original trial date. *Id.* Thus, an Amended Judgment totaling \$10,253.52 was entered on January 2, 2014. [CP 12-13] The Amended Judgment consists of \$7,506.92 in interest and late fees, and \$2,746.60 in attorney's fees. *Id.*

Beveridge timely filed this appeal as Judge Mendoza erred as a matter of law in awarding Burgess anything more than statutory interest. He further erred in finding Beveridge assented to personal liability.

IV. Summary of Argument.

As discussed below, the Burgess Contract is unenforceable as a matter of law. Furthermore, the monthly late fee cannot be enforced since it is an obvious penalty. The trial court erroneously awarded Burgess \$7,506.92 in late fees and interest to account for "the stress and hassle of collecting." Given the conceded absence of any

financial loss, Burgess should not recover more in late fees and interest than he sold the grapes for. Burgess should not recover nearly twice as much in interest and late fees as the amount he waited 57 days to receive. For the reasons set forth below, Burgess is entitled to nothing more than statutory interest. Hence, the windfall bestowed upon him by the trial court should be reversed as a matter of law.

V. Argument

Standard of Review.

The validity of a contract is a question of law. *Anfinson v. FedEx Ground Package System, Inc.*, 174 Wn.2d 851, 865, 281 P.3d 289 (2012) (other citation omitted). The burden of proving a contract is on the party asserting it and he must prove each essential fact, including the existence of mutual intention. *Flower v. T.R.A. Industries, Inc.*, 127 Wn. App. 13, 28, 111 P.3d 1192 (2005), *review denied*, 156 Wn.2d 1030 (2006) (other citations omitted).

1. *The \$200.00 monthly late fee is an unenforceable penalty.*

“A provision in a contract which bears no reasonable relation to actual damages will be construed as a penalty.” *Northwest*

Collectors, Inc. v. Enders, 74 Wn.2d 585, 594, 446 P.2d 200 (1968) (other citations omitted). Furthermore, where the damage provision is designed as punishment upon default, rather than as compensation for actual damages, it is a penalty:

The distinction between liquidated damages and a penalty is well stated in 15 Am.Jur. 672, *Damages*, §241: ‘As distinguished from liquidated damages, a penalty is a sum inserted in a contract, not as the measure of compensation for its breach, but rather as a punishment for default, or by way of security for actual damages which may be sustained by reason of non-performance and it involves the idea of punishment. It is the payment of a stipulated sum on breach of contract, irrespective of the damage sustained. Its essence is a payment of money stipulated as in *terrorem* of the offending party, while the essence of liquidated damages is a genuine covenanted pre-estimate of damages.’

Management, Inc., v. Chassberger, 39 Wn.2d 321, 326, 235 P.2d 293 (1951) (emphasis added). *In terrorem* is defined in part as follows:

In fright or alarm or terror. In terror or warning; by way of threat.

BLACK’S LAW DICTIONARY 567 (6th ed. Abridged 1991).

Burgess concedes he suffered no financial loss as a result of getting paid late. [RP pg. 30, lines 23-25] Moreover, he was unable

to provide a rational basis for setting the monthly late fee charge at \$200.00, other than to say: “I feel that’s a fair amount to stop people from being deadbeats and not paying.” [RP pg. 32, lines 1-19] Hence, Burgess himself confirms that the \$200.00 monthly late fee charge is a threat designed “to stop deadbeats from not paying.” Any “deadbeat” who does not heed the threat is severely punished. Burgess cannot even allege the late fee is meant as security for actual damages since he admittedly suffers no loss when a payment is made a few weeks after the scheduled due date.

Here, Burgess lost \$80.37 in statutory interest on the \$4,300.00 he was owed for 57 days. Nevertheless, he wants to be compensated, *on a monthly basis*, by way of a late fee charge which is 2.5 times greater than his actual loss. This is unreasonable, if not unconscionable. Burgess is not entitled to monthly late fees because he acknowledged the fee bears no reasonable relation to any actual damages and is intended solely as a threat to induce timely payment. It is clearly a penalty and therefore unenforceable as a matter of law. *Management, Inc., v. Chassberger*, 39 Wn.2d at 330-31.

The trial court's determination that the monthly late fee was not a sanction, but merely a way to account for "the stress and hassle of collecting", constitutes obvious error as emotional distress damages are not recoverable in a breach of contract action. *Gaglidari v. Denny's*, 117 Wn.2d 426, 446, 815 P.2d 1362 (1991).

2. *The Burgess Contract cannot be used to modify the agreement which already existed.*

As set forth in Finding of Fact III, the parties reached an agreement concerning the price, tonnage and quantity of grapes to be sold, and this agreement was confirmed by e-mail. [CP 15] Thus, it is undisputed that a bilateral contract was formed. *Flower v. T.R.A. Industries, Inc.*, 127 Wn. App. at 27 (other citations omitted). In order to modify an existing bilateral agreement through a subsequent agreement, there must be a mutual change in obligations or rights, or the subsequent agreement fails for lack of consideration. *Id.*, at 27-28 (other citations omitted).

Here, the Burgess Contract modifies the parties' existing agreement by adding: (1) a personal guarantee; (2) a late fee penalty; (3) an 18% interest charge on unpaid accounts; and (4) a one-sided

attorney's fees clause. These new terms only affected Beveridge's obligations in relation to the existing agreement without imposing any new obligations upon Burgess. Hence, when the Burgess Contract was signed, there was not a *mutual* change in obligations or rights to the existing agreement. Thus, as a matter of law, the Burgess Contract lacks consideration and cannot serve to modify the agreement which already existed. *Id.*

3. *Only terms common to both agreements may be enforced.*

Assuming only for the sake of argument that the Burgess Contract is a valid agreement, which it is not, then there are 2 signed agreements (in addition to the agreement confirmed by e-mail). The issue is whether one signed agreement is enforceable to the exclusion of the other. The trial court decided the Burgess Contract "is the enforceable contract" and that the Beveridge Contract "becomes frankly part of this [Burgess] contract." [RP pg. 81, lines 6-24]⁶ The trial court offered no legal authority to support such a conclusion. Perhaps the court was confused because Burgess' counsel stapled the Beveridge Contract to the back of the

⁶ Beveridge assigns error to this conclusion of law as set forth in Finding of Fact V. [CP 15]

Burgess Contract and submitted both as one exhibit. [RP pg. 28, line 25 thru pg. 29, line 3]

In any event, common sense dictates there is a meeting of the minds only on those terms common to both agreements. *Cf. Tacoma Fixture Co., Inc., v. Rudd Co., Inc.*, 142 Wn. App. 547, 174 P.2d 721 (2008) (When there is an exchange of forms, the terms of the contract are those on which the parties' forms agree), *review denied*, 164 Wn.2d 1006. Thus, the onerous terms found only in the Burgess Contract (late fees, enhanced interest, personal guaranty and attorney's fees clause) are unenforceable. *Id.*

4. The Burgess Contract is procedurally unconscionable.

Procedural unconscionability has been described as the lack of a meaningful choice, considering all the circumstances surrounding the transaction, *including the manner in which the contract was entered.* *Nelson v. McGoldrick*, 127 Wn.2d 124, 131, 896 P.2d 1258 (1995) (emphasis added) (other citation omitted). The existence of an unconscionable bargain is question of law for the courts. *Id.*

Here, Burgess sent his contract to Beveridge and asked him to sign and fax back so he could arrange a picking crew. Instead of signing it as requested, Beveridge responded that the contract was not appropriate. At that point, Burgess knew Beveridge wasn't going to sign his contract but he went ahead and arranged a picking crew anyway. [RP 42-43] Had Burgess advised he would not provide the grapes unless Beveridge signed his contract, Beveridge would not have rented a truck and drove from Seattle to Pasco. [RP pg. 57, lines 10-21] Burgess likely suspected as much so he simply ignored Beveridge's rejection of his contract.

By remaining silent and thus not endangering the late-season sale, Burgess knew he would have an opportunity to get his contract signed when Beveridge arrived on his property. He could assume, given the investment in time and money Beveridge had to make to get to the vineyard, Beveridge would not want to turn around and drive home. Simply stated, this was going to be his only opportunity to get Beveridge to sign his contract.

Whether it was a calculated tactic or not, it worked as Beveridge lacked a meaningful choice when Burgess insisted he sign the

contract. Beveridge had made a significant investment in reliance on obtaining the grapes Burgess was obligated to deliver. He had just driven 200 miles in anticipation of capitalizing on his investment. Moreover, he was outnumbered and felt concern for his personal well-being. Lastly, he assumed Burgess would live up to his oral agreement to wait for final payment until Tapenade received the IRS refund.

When viewing all of the circumstances leading up to execution of the Burgess Contract, including the manner in which the Burgess was able to obtain Beveridge's signature, the Court should find the Burgess Contract procedurally unconscionable as a matter of law. *Nelson v. McGoldrick*, 127 Wn.2d at 132-33.

5. *Beveridge did not objectively manifest assent to personal liability.*

Washington follows the objective manifestation test, under which, to form a contract, the parties must manifest their mutual assent. *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wn.2d 171, 177-78, 94 P.3d 945 (2004). To reach mutual assent, there must be a "meeting of the minds" on the essential terms of the agreement. *Geonerco, Inc., v. Grand Ridge Props. IV LLC*, 146 Wn. App. 459,

465, 191 P.3d 76 (2008). Here, it is undisputed a meeting of the minds existed with respect to the essential terms: price, quantity and delivery method. When Burgess sought to modify the existing agreement, Beveridge promptly objected. When Beveridge was confronted at the vineyard and left with no other meaningful choice but to sign the Burgess Contract, he crossed out his name at the top of page 1 to signify this was a transaction with Tapenade, Inc., not him personally. [RP pg. 44, line 23 thru pg. 45, line 3] He further objectively manifested his intention to keep this transaction between Burgess and Tapenade, Inc., by signing as “Secretary.” By promptly stating his objection to the Burgess Contract and by crossing his name off that contract, Beveridge objectively manifested his intention to not be personally liable or otherwise bound by terms in the Burgess Contract which modified the parties’ existing agreement. Accordingly, Beveridge assigns error to Conclusion of Law II⁷, pursuant to which he is personally liable in this matter.

⁷ [CP 16]

VI. Conclusion.

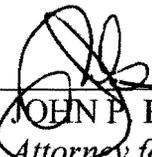
For the reasons set forth above, the trial court erred as a matter of law in concluding the Burgess Contract is an enforceable agreement. Burgess is not entitled to a windfall to account for the “stress and hassle” of waiting 57 days for payment. Accordingly, this Court should reverse and remand to the trial court with instructions to amend the Judgment. Tapenade, Inc., not Paul Beveridge, owes Burgess nothing more than 12% statutory interest for the 57 days he was owed \$4,300.00, which is \$80.37.

DATED this 2d day of July, 2014.

Respectfully Submitted,

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FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

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6
7 **IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**
8 **DIVISION III**

9 BURGESS VINEYARDS, LLC, a
10 Washington Limited Liability Company,

11 Plaintiff/Respondent,

No. 321991

12 v.

13 PAUL BEVERIDGE and JANE DOE
14 BEVERIDGE, husband and wife, dba
15 WILRIDGE WINERY & VINEYARD,

16 Defendants/Appellants.

DECLARATION OF MAILING

17 **THE UNDERSIGNED** hereby declares as follows: That she is over the age of twenty-
18 one (21) years and is not a party interested in the above-entitled action, and that she has on the
19 1 day of **July, 2014**, personally sent via U. S. mail, postage prepaid, a true and correct copy
20 of the following:

- 21
- 22 • **BRIEF OF APPELLANTS**
 - 23 • **MOTION FOR EXTENSION OF TIME TO FILE BRIEF UNTIL DATE RECEIVED**

24 in the above-entitled action to the following person:

25 ////

26 ///

27 //

28 /

DECLARATION OF MAILING/Page 1 of 2

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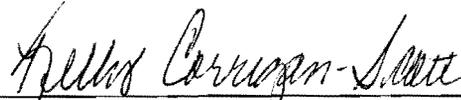
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8 **DATED** this 7 day of July, 2014.

9 

10

KELLY CORRIGAN-SCOTT, Legal Assistant