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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
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NO. 33428-7-III

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION III

MICHAEL JOHN McGOWAN, JR., and BETH ANN McGOWAN, husband and wife,

Plaintiffs/Appellants,

v.

CITY OF ASOTIN and DOES I through X,

Defendants/Respondents.

RESPONDENT'S BRIEF

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I. IDENTITY OF THE RESPONDENTS

Respondents City of Asotin and Does I through X (hereinafter "the City"), were the Defendants in the Asotin County Superior Court Cause No.: 13-2-00151-4. Appellant Michael McGowan is a former employee (police officer) of the City.

II. STATEMENT OF THE ISSUES

1. Did the trial court err when it found that there was no violation of Washington Civil Service Statutes? Answer: *No. The City disbanded its civil service commission prior to Mr. McGowan's termination, and the Washington Civil Service Statues did not require the City to maintain a civil service commission if the police force numbers less than three full-time employees..*

2. Did the trial court err when it found that Mr. McGowan's termination did not violate public policy? Answer: *No. The trial court properly determined that Mr. McGowan could not meet the "jeopardy" element of his wrongful discharge cause of action.*

3. Did the trial court err when it found that Mr. McGowan's termination did not breach any contract? Answer: *No. Mr. McGowan's employment was "at-will" pursuant to Washington state law, and no written contract existed between the parties.*

III. STATEMENT OF THE CASE

A. Background

The lawsuit arises of out of the termination of Michael McGowan's employment with the City of Asotin. CP 117-18. Mr. McGowan was hired in August 2008 as an at-will employee of the City and as a full-time police officer. CP 25. On October 27, 2008, the City established a Civil Service Commission in accordance with RCW 41.12 because as a result of Mr. McGowan's hiring, the City employed three full-time officers. CP 117.

On September 14, 2009, the City repealed the civil service provisions because Chief of Police Lee Reed resigned from his position, leaving the City with only two full-time officers. CP 117; 25. Mr. McGowan received a written warning on July 28, 2010 for insubordination, and a final warning on August 27, 2010, again for insubordination. CP 57-58. Mr. McGowan was eventually terminated on or about October 19, 2010, as he lacked the necessary skills to meet the expectations of the City's leaders. CP 59.

B. Procedural History

Mr. McGowan and his wife (Beth Ann McGowan) filed this lawsuit on June 24, 2013, in Asotin County Superior Court. CP 1.

The City filed a Motion for Summary Judgment, which was argued to the trial court on January 6, 2015. CP 119. On January 29, 2015, the trial court issued a decision letter granting the City's Motion and dismissing the matter with prejudice. CP 117-18. The trial court concluded that Mr. McGowan's employment was "at-will." Further, finding that no genuine issues of material fact existed with regard to counts one, two or three of Plaintiff's Complaint, the trial court granted judgment as a matter of law to the City on all counts. CP 118. Thereafter, on May 7, 2015, the trial court entered a formal order granting the City's Motion. CP 119-20. This appeal followed.

IV. ARGUMENT

A. THE CITY DID NOT VIOLATE WASHINGTON'S CIVIL SERVICE STATUTES.

1. The City was not required to have a civil service commission at the time of McGowan's termination.

The Washington Legislature codified the civil service rules for city police in RCW 41.12, *et seq.* The chapter does not apply to "cities having a police force of not more than two persons including the chief of police." *RCW 41.12.010.* In his Complaint, Mr. McGowan alleges that the City violated RCW 41.12.010 by not establishing a civil service commission after he was hired. CP 5. However, the City's civil service commission was

in fact established and passed by the City Council on October 27, 2008, and became effective five days thereafter. CP 47-50. Accordingly, the City established the civil service commission within the ninety day deadline imposed by RCW 41.12.183.

RCW 41.12 et seq. is applicable only if a department employs three of more full-time officers, as reservists and part-personnel are excluded from the statutory scheme. *Teamsters Food Processing Employees v. City of Moses Lake,* 70 Wn. App. 404, 853 P.2d 951 (1993) ("By our interpretation of RCW 41.12, we hold all full-time employees of a police department are covered by civil service. Those excluded would be reservists and part-time personnel"). Thus, when Police Chief Lee Reed resigned his position on May 14, 2009, the City was legally entitled to disband its civil service commission, as only two full-time police officers remained. CP 25.

In his response to the City's Motion for Summary Judgment, Mr. McGowan did not dispute that RCW 41.12 does not apply to cities having a police force of "not more than two persons including the chief of police.

CP 65. He also did not dispute that at the time of McGowan's termination, the City only employed two full-time police officers. CP 65.

Pursuant to RCW 41.12.010, cities and towns may adopt "local charter or other regulations" that accomplish the purposes of RCW 41.12. Those cities and towns that adopt such local charter or other regulations are exempt from the provisions of RCW 41.12. However, pursuant to RCW 41.12.020, if a city or town repeals the charter provisions or other local acts, those cities or towns are thereafter governed by RCW 41.12. Therefore, here, when the City repealed its civil service commission pursuant to Ordinance 2009-743, RCW 41.12 became applicable.

RCW 41.12.010 excludes from its coverage cities that employ less than 3 full time officers, meaning that RCW 41.12 did not apply to the City because it only employed two full-time police officers, including Mr. McGowan, at the time of his termination. Reading the two statutes together makes it clear that if a city or town that employs 3 or more full time officers adopts a civil service commission, but later repeals the civil service commission because the police force is reduced to two or fewer officers, the

provisions of RCW 41.12 become applicable, which exempts such cities from its provisions.

It therefore makes no difference to Mr. McGowan's claims that at one point in time the City maintained a civil service commission. What matters is that at the time of his termination, the City employed only two full-time officers and had disbanded its civil service commission. Those undisputed facts makes RCW 41.12 inapplicable to the City.

The undisputed facts as it relates to the City's Civil Service Commission are as follows:

- On August 8, 2008, Mr. McGowan was hired by the City;
- On October 27, 2008, the City created its Civil Service Commission;
- On May 9, 2009, the City's police force was reduced to two full-time officers;
- On September 14, 2009, the City repealed its Civil Service Commission;
- On October 20, 2010, the City terminated McGowan's employment; and
- At the time of Mr. McGowan's termination, the City employed only two full-time officers.

Pursuant to RCW 41.12.010, the City was not required to have a civil service commission, as it only employed two full-time officers. As

such, Mr. McGowan's causes of action premised upon RCW 4.12 fail as a matter of law.

2. There is no private cause of action arising out of RCW 41.12., *et seq.*

Further, RCW 41.12 does not create a private right of action. There is no express right of action contained in RCW 41.12, *et seq.* Therefore, the right of action must be implied in order for Mr. McGowans to maintain this action.

In determining whether a statute contains an implied private right of action, courts must consider whether: (1) the plaintiff is within the class for whose benefit the statute was enacted, (2) legislative intent, explicitly or implicitly, supports creating or denying a remedy, and (3) implying a remedy is consistent with the underlying purpose of the statute. *Ives v. Ramsden*, 142 Wn. App. 369, 389, 174 P.3d 1231 (2008). Mr. McGowan can meet the first element because the civil service rules specifically cover all full-time employees of the police department. *RCW 41.12.050.* The second element is not met, however.

The purpose of RCW 41.12 is to establish a civil service system to (1) provide for promotion on the basis of merit, (2) give police officers tenure, and (3) provide for a civil service commission to administer the system and to investigate, by public hearing, removals, suspensions, demotions, and discharges by the appointing power to determine whether such action was or was not made for political or religious reasons and whether it was or was not made in good faith for cause. *Seattle Police Officers' Guild v. City of Seattle*, 121 Wn. App. 453, 89 P.3d 287 (2004).

Mr. McGowan alleges in his Complaint that the City's "refusal" to create a civil service commission caused him "injury and damages." CP 5-6. To the extent Mr. McGowan alleges a damages claim based upon the City's purported "refusal" to create a private service commission, his claim fails as a matter of law because RCW 41.12, *et seq.* does not create a private cause of action for damages based upon a city's failure to comply with the statute. The cases cited by Mr. McGowan do not recognize a private cause of action for damages, but are cases wherein the plaintiffs sought judicial enforcement of the statutory scheme. *See* App. Brief at p.7.

Similarly, the third element is not met because a private right of action in the courts is inconsistent with the specific administrative remedy established by the chapter. If a civil action was the preferred remedy for addressing wronged police officers, the Legislature would not have codified the civil service rules.

Regardless of whether RCW 41.12, *et seq.* provides a private cause of action for damages, Mr. McGowan has failed to show that the City violated RCW 41.12, *et seq.* The City created a civil service commission when it hired a third full-time officer and then repealed the civil service commission after its police force was reduced to two full-time officers. "The provisions of this chapter shall have no application...to cities having a police force of not more than two persons including the chief of police." RCW 41.12.010; *see also, Samuels v. City of Lake Stevens*, 50 Wn. App. 475, 478, 749 P.2d 187 (1988) ("Washington law requires every city and town that employs more than two policemen to govern its police department through a civil service system"). The City was not required to maintain a

civil service commission once its force dropped to two full-time officers, and therefore, Mr. McGowan has no viable claim pursuant to RCW 41.12.

The City respectfully requests this Court affirm the trial court's determination that even if it was required to maintain a civil service commission pursuant to RCW 41.12, *et seq.*, that those statutes do not create a private cause of action for an aggrieved party.

3. McGowan did not exhaust his administrative remedies.

Mr. McGowan was offered a pre-termination hearing by the mayor, an offer that was witnessed by Mervin Schneider and Scott Broyles. CP 25. However, Mr. McGowan refused to attend such a hearing. *Id.* Mr. McGowan's failure to exhaust his administrative remedies is fatal to his claim:

> Plaintiff was required to exhaust his administrative remedies before the Asotin Civil Service Commission prior to filing this lawsuit. *Allstot v. Edwards,* 116 Wash.App. 424, 430–31, 65 P.3d 696 (2003). Given that he did not do so, Defendants are entitled to summary judgment.

Reed v. City of Asotin, 917 F. Supp. 2d 1156, 1165 (E.D. Wash. 2013).

Therefore, even if Mr. McGowan is correct that RCW 41.12, *et seq.*, applies, he was required to exhaust his administrative remedies prior to bringing suit for alleged violations of that statutory scheme. He failed to do so, and this failure is fatal to his RCW 41.12, *et seq.* claims.

The City respectfully requests the Court affirm the trial court's ruling that Mr. McGowan's claims under RCW 41.12, *et seq.* fail as a matter of law.

B. MR. MCGOWAN'S CANNOT ESTABLISH A BREACH OF CONTRACT CLAIM.

A breach of contract is actionable only if the contract imposes a duty, the duty is breached, and the breach proximately causes damage to the claimant. *Northwest Independent Forest Mfrs. v. Dept. of Labor and Indus.*, 78 Wn. App. 707, 712, 899 P.2d 6 (1995). Washington follows the "objective manifestation" theory of contracts. *Oliver v. Flow Intern. Corp.*, 137 Wn. App. 655, 659, 155 P.3d 140 (2006). This means that courts "impute an intention corresponding to the reasonable meaning of the words used", and "give words in a contract their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent." *Id.* (quoting *Hearst Comm'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 503-504, 115 P.3d 262 (2005)). When interpreting a contract,

courts do not interpret what was intended to be written, but what was actually written. *Id.*

MR. McGowan's employment was not governed by an express contract, and was thus considered terminable at-will. *Roberts v. ARCO,* 88 Wn.2d 887, 891, 568 P.2d 764 (1977). The only conceivable contract that could have existed between the parties in this case is the City of Asotin's Personnel Manual.

In some circumstances, employee handbooks may give rise to contractual obligations on the part of the employer. *Gaglidari v. Denny's Restaurants, Inc.,* 117 Wn.2d 426, 815 P.2d 1362 (1991). "In addition, an employer may expect, if not demand, that employees abide by policies expressed in employee handbooks or manuals, and create an atmosphere where employees justifiably rely on those expressed policies and justifiably expect that the employer will abide by those same policies." *Swanson v. Liquid Air Corp.,* 118 Wn.2d 512, 520, 826 P.2d 664 (1992). In order to disclaim what might be considered enforceable promises made in such handbooks, "the disclaimer must state in a conspicuous manner that nothing contained in the handbook, manual, or similar document is intended to be part of the employment relationship and that such statements are instead simply general statements of company policy." *Id.* at 527.

The City adopted a personnel manual ("Manual") via Ordinance 06-679 on April 24, 2006. The very first sentence of the first paragraph of the first section of that Manual states that it was meant as an "informational guide" and that is "***shall not be construed to create contractual rights or any type of promise or guarantee of specific treatment upon which any employee may rely***." CP 30 (emphasis added). Further, the Manual explicitly provides that MR. McGowan's employment was considered "at-will" at the time of his discharge because the Civil Service Commission and Union were disbanded. CP 31. As an "at-will" employee, Mr. McGowan could be discharged at any time with or without cause. *Id.*

On appeal, Mr. McGowan's sole argument regarding breach of contract is that the "'contract' of employment Mr. McGowan had when hired by the city was set out in RCW 41.12, *et seq*." App. Brief at p.12. Mr. McGowan fails to explain how the legislature could create a binding contract between a municipality and an individual. Mr. McGowan's claim fails for the following three reasons.

First, RCW 41.12, *et seq.* does not provide employees with a "contract of employment." Rather, the statute provides procedural protections for persons subject to the statute. Secondly, while the City had a civil service commission shortly after Mr. McGowan's *hiring*, it is undisputed that the City had repealed the its civil service commission for nearly a year prior to McGowan's *termination*. Third, even assuming *arguendo*, that RCW 41.12, *et seq.* limited the City's ability to terminate Mr. McGowan's employment to the grounds stated therein, Mr. McGowan has not submitted any evidence that his termination somehow violated RCW 41.12, *et seq.*

RCW 41.12.080(1) allows cities and towns to discharge officers based upon "[i]ncompetency, inefficiency or inattention to or dereliction of duty." The City submitted evidence that Mr. McGowan was terminated for these very reasons. CP 24-26. McGowan has not submitted any evidence, nor argument, suggesting that the stated basis for his termination was unlawful.

Mr. McGowan's breach of contract claim (and all his other claims), are premised upon the position that the City could not legally disband its civil service commission. App. Brief at pp. 12-13. As shown above, the provisions of RCW 41.12, *et seq.* are inapplicable to cities and towns with less than three full-time police officers. *RCW 41.12.010.*

The City respectfully requests this Court affirm the trial court's holding that there was no contract of employment in this case, that Mr. McGowan's employment was "at-will," and that Mr. McGowan's breach of contract claim fails as a matter of law.

C. THE TRIAL COURT PROPERLY DETERMINED THAT MCGOWAN'S TERMINATION DID NOT VIOLATE PUBLIC POLICY.

To prevail on a wrongful discharge in violation of public policy claim, a plaintiff must show:

> (1) the existence of a clear public policy (the clarity element); (2) that discouraging the conduct in which the employee engaged would jeopardize the public policy (the jeopardy element); (3) that the public-policy linked conduct caused the dismissal (the causation element); and (4) that the defendant has not offered an overriding justification for the dismissal (the absence of justification element).

Gardner v. Loomis Armored, Inc., 128 Wn.2d 931, 941, 913 P.2d 377 (1996); *Cudney v. ALSCO, Inc.,* 172 Wn.2d 524, 529, 259 P.3d 244 (2011). "[T]he tort of wrongful discharge in violation of public policy is a narrow exception to this employment at-will doctrine." *Briggs v. Nova Servs.,* 166 Wn.2d 794, 801-02, 213 P.3d 910 (2009) (citing *Sedlacek v. Hillis,* 145 Wn.2d 379, 385, 36 P.3d 1014 (2001)). "The exception should be applied cautiously so as not to swallow the rule." *Id.* at 802.

"[C]ourts ***should proceed cautiously if called upon to declare public policy absent some prior legislative or judicial expression on the subject.***" *Thompson v. St. Regis Paper Co.,* 102 Wn.2d 219, 232, 685 P.2d 1081 (1984) (emphasis in original). Additionally, "[t]he claim of wrongful discharge in violation of public policy is a claim of an intentional tort – the plaintiff must establish wrongful intent to discharge in violation of public policy." *Korslund v. DynaCorp Tri-Cities Servs., Inc.,* 156 Wn.2d 168, 125 P.3d 119 (2005) (citations omitted). "When determining whether a clear mandate of public policy is violated, [courts] consider whether the employer's conduct contravenes the letter or purpose of a constitutional, statutory, or regulatory provision or scheme." *Smith v. Bates Technical Coll.*, 139 Wn.2d 793, 807, 991 P.2d 1135 (2000).

"To establish the jeopardy element, a plaintiff must show that he or she 'engaged in particular conduct, and the conduct directly relates to the

public policy, or was necessary for the effective enforcement of the public policy.'" *Hubbard v. Spokane County,* 146 Wn.2d, 699, 713, 50 P.3d 602 (2002) (citing *Gardner,* 128 Wn.2d at 945). "This requires the plaintiff to 'argue that other means for promoting the policy . . . are inadequate.'" *Id.* "The other means of promoting the public policy need not be available to a particular individual so long as the other means are adequate to safeguard the public policy." *Id.* at 717. However, "the question of whether adequate alternative means for promoting the public policy exist may present a question of law, i.e., where the inquiry is limited to examining existing laws to determine whether they provide adequate alternative means of promoting the public policy." *Korslund,* 156 Wash.2d at 182. "The plaintiff must also 'show how the threat of dismissal will discourage others from engaging in the desirable conduct.'" *Hubbard,* 146 Wash.2d at 713. Further, "in determining whether the public policy has been contravened or jeopardized, a court must look to the 'letter or purpose of a statute.'" *Id.* (quoting *Dicomes v. State,* 113 Wash.2d 612, 620, 782 P.2d 1002 (1989)).

Here, the trial court could "find no public policy interest which would require the City to further justify the termination." CP 118. Further, Mr. McGowan did not, and could not, establish the "jeopardy" element of his wrongful discharge in violation of public policy as other means

adequately promote the public policy expressed in RCW 41.12, *et seq.*, because those statutes already provide an administrative remedy.

As stated *supra,* the purpose of RCW 41.12 is to establish a civil service system to (1) provide for promotion on the basis of merit, (2) give police officers tenure, and (3) provide for a civil service commission to administer the system and to investigate, by public hearing, removals, suspensions, demotions, and discharges by the appointing power to determine whether such action was or was not made for political or religious reasons and whether it was or was not made in good faith for cause. *Seattle Police Officers' Guild*, 121 Wn.App. at 453; *Reynolds v. Kirkland Police Commission,* 62 Wn.2d 720, 725, 384 P.2d 819 (1963). Clearly the administrative hearing process followed by an appeal in the courts for the redress of wrongs done to police officers adequately protects such public interest.

At the time of Mr. McGowan's termination, the City employed two full-time officers. Pursuant to RCW 41.12.010 and applicable case law, the City was therefore not required to maintain a civil service commission. Mr. McGowan did not provide to the trial court *any* evidence that he was engaged in "public-policy conduct" and that the same resulted in his termination. *See Gardner,* 128 Wn.2d at 941. Further, Mr. McGowan has not provided any evidence that his termination was based upon anything

other than the deficiencies cited in the two written warnings, and the termination notice provided to him. Finally, Mr. McGowan does not even allege (in his Complaint or pleadings) that he was engaged in any protected conduct, or that he was terminated for engaging in that particular conduct.

Mr. McGowan alleges in his opening brief that the City terminated his employment "without any indication as to specifically what that cause is or what policy or procedures were violated resulting in termination," and that this violates public policy. App. Brief at p.13. It is unclear how the written warning, final warning, and written termination statement, do not adequately advise Mr. McGowan of the reason for his termination. Further, conclusory statements cannot defeat summary judgment. "[T]o defeat a motion for summary judgment, a party must present more than '[u]ltimate facts' or conclusory statements. *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 139, 331 P.3d 40 (2014), citing *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 359–60, 753 P.2d 517 (1988) (mere "supposition or opinion" insufficient to defeat summary judgment). "Once there has been an initial showing of the absence of any genuine issue of material fact, the party opposing summary judgment *must* respond with more than conclusory allegations, speculative statements, or argumentative assertions of the existence of unresolved factual issues." *Hash by Hash v. Children's Orthopedic Hosp.*, 49 Wn. App. 130, 139, 741 P.2d 584 (1987) *aff'd and*

remanded sub nom. Hash by Hash v. Children's Orthopedic Hosp. & Med. Ctr., 110 Wn.2d 912, 757 P.2d 507 (1988), citing *LaPlante v. State,* 85 Wn.2d 154, 531 P.2d 299 (1975); *Estate of Kepl v. State,* 34 Wn. App. 5, 11–12, 659 P.2d 1108 (1983).

As Mr. McGowan was an at-will employee, he could be terminated with or without cause. *See e.g. Roberts,* 88 Wn.2d at 891. However, assuming *arguendo* that Mr. McGowan established a clear public policy (he has not), and that he was engaged in protected conduct (he was not), he must still show that his engaging in the protected conduct caused his termination. *Gardner,* 128 Wn.2d at 941. A cursory review of the written warnings and termination notice are illustrative:

1. July 28, 2010: written warning. CP 57.

    - Officer McGowan's interview statements and investigative narrative were inconsistent with the discovered facts.

    - Officer McGowan's record together with facts discovered in this case reflect a reluctance or unwillingness to perform DUI arrests.

    - Further, these facts are an act of insubordination by failing to accurately repot the facts.

    - Signed by Mayor Miller and McGowan.

2. August 27, 2010: final warning. CP 58.

    - [McGowan's] performance during Emphasis Patrols did not meet expectations.

- [Mayor Miller] is also dissatisfied that, in spite of being reminded of scheduled AED training, you did not attend. Nor did you communicate your unavailability to attend to Chief Derbonne.

- These acts reflect insubordination and do not meet our expectations.

- Signed by Mayor Miller and McGowan.

3. October 19, 2010: written termination. CP 59.

    - McGowan failed to complete "Accident Investigation" training.

    - Together with historic performance actions in recent months have caused [Mayor Miller] to conclude that you lack the necessary skills to meet our expectations.

    - Signed by Mayor Miller and copy received by McGowan.

This demonstrates the speciousness of Mr. McGowan's argument that he did not receive "any indication" as to why his performance fell short of expectations. Mr. McGowan's public policy argument fails as a matter of law at each element required for this claim. The City respectfully requests the Court affirm the trial court's holding that Mr. McGowan's termination did not violate public policy.

V. ATTORNEY FEES ON APPEAL

Pursuant to Rule of Appellate Procedure 18.9, the City respectfully requests the Court impose sanctions for this frivolous appeal. An appeal is frivolous if it raises no debatable issues on which reasonable minds might

differ and it is so totally devoid of merit that no reasonable possibility of reversal exists. *Protect the Peninsula's Future v. City of Port Angeles*, 175 Wn. App. 201, 220, 304 P.3d 914, *review denied*, 178 Wn.2d 1022, 312 P.3d 651 (2013); *Streater v. White*, 26 Wn. App. 430, 434, 613 P.2d 187 (1980).

Here, the plain language of RCW 41.12.010 precludes McGowan's lawsuit. On appeal, McGowan merely provides this Court with copied section of various statutes in RCW 41.12, *et seq.* Further, in regard to McGowan's breach of contract claim, he provides this Court with no statutory argument, nor a single case where a Court has construed a statute as creating a binding written contract between a municipality and a private citizen. McGowans' appeal is totally unsupported by evidence, is unsupported by argument or authority, and therefore, an award of attorney fees on appeal is appropriate. *Bill of Rights Legal Found. v. Evergreen State College*, 44 Wn. App. 690, 696-97, 723 P.2d 483 (1986); *Clarke v. Equinox Holdings, Ltd.*, 56 Wn. App. 125, 132, 783 P.2d 82 (1989).

Because the McGowans' appeal is frivolous, the City respectfully requests the Court grant attorney fees and expenses to it on appeal, subject to compliance with RCW 18.1(d).

VI. CONCLUSION

The trial court properly determined that no genuine issues of material fact existed with regard to any of Mr. McGowan's three causes of action. The City of Asotin respectfully requests this Court affirm the Order Granting Defendant's Motion for Summary Judgment dismissing Appellants' lawsuit.

RESPECTFULLY SUBMITTED this 14 day of September, 2015.

EVANS, CRAVEN & LACKIE, P.S.

By: _____

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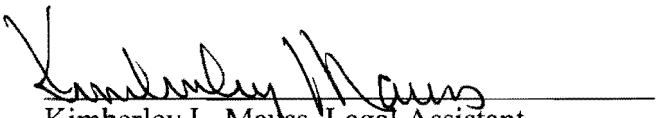
CERTIFICATE OF SERVICE

I hereby certify that on September 14th, 2015, copies of Respondent's Brief were served on counsel at the following address via U.S. Mail:

Scott M. Chapman
Chapman Law Offices, PLLC
P.O. Box 446
Lewiston, ID 83501

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

DATED this 14 day of September, 2015, at Spokane, Washington.



Kimberley L. Mauss, Legal Assistant