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COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON

OCT 26 2017

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DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

DANNY STEVEN KRAUSE  
and LORI A. KRAUSE, husband  
and wife

Superior Court No. 16-2-00218-3

Plaintiffs/Appellants,

COA No. 351793

and

CITY OF CLARKSTON, and  
DOES I-V,

Defendants/Respondents.

**REPLY BRIEF**

Appeal from the Superior Court of the State of Washington  
in and for the County of Asotin

Honorable Scott D. Gallina, Presiding

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I.

**TABLE OF CASES AND AUTHORITIES**

**CASES:**

Weden v. San Juan County, 135 Wn.2<sup>nd</sup> 678, 958 P.2d 273, 279  
(1998)..... 4

Lee v. Metro Parks Tacoma, 183 Wn. App. 961, 335 P.3d 1014  
1017 (2014)..... 6

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Civil Rule 3(a) ..... 5

RCW 4.96.020 ..... 5  
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A.  
STANDARD OF REVIEW

There appears to be no real dispute as to the standard to be applied except for the respondent, City of Clarkston, fails to indicate all reasonable inferences drawn from affidavits, etc are to be made in favor of the non-moving party. Weden v. San Juan County, 135 Wn.2<sup>nd</sup> 678, 958 P.2d 273, 279 (1998) as well as civil rule 56(c).

B.  
FACTS

The following facts are undisputed:

- 1) “The Claim for Damages was served on the City of Clarkston on August 30, 2016, (CP#41).
- 2) A Complaint against the City of Clarkston was filed in Asotin County Superior Court on September 8, 2016, (CP#1-6).
- 3) The Complaint was not served on the City of Clarkston until November 2, 2016, (CP#41). Some sixty four (64) days following the service of the Claim for Damages.

4) During that sixty four (64) day time frame the City of Clarkston at no time contacted plaintiff or plaintiff's representatives regarding settlement, damages, or liability.

C.  
ARGUMENT

The City of Clarkston had more than sixty (60) days to engage in the investigation contemplated by RCW4.96.020, it was and remains the position of the plaintiff that 1) there was compliance with the statute because the sixty (60) days from the service of Claim for Damages before institution of an action occurred and 2) the action herein was instituted by service the Summons and Complaint upon the City of Clarkston, sixty four (64) days following the service of the Claim for Damages.

Civil Rule 3 provides a lawsuit may be initiated in two ways 1) by service by filing a Complaint. Civil Rule 3(a) provides as follows:

Except as provided in rule 4.1, a civil action is commenced by service of a copy of a summons together with a copy of a complaint, as provided in rule 4 or by filing a complaint. Upon written demand by any other party, the plaintiff instituting the action shall pay the filing fee and file the summons and complaint within 14 days

after service of the demand or the service shall be void. An action shall not be deemed commenced for the purpose of tolling any statute of limitations except as provided in RCW 4.16.170. (Emphasis added)

Therefore the position remains that there was absolute compliance with RCW4.96.020 and summary judgment inappropriate.

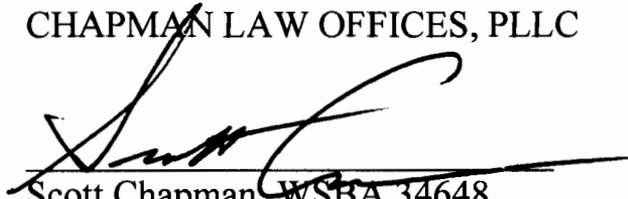
Further, assuming arguendo the court were to deem there was not complete compliance then certainly there existed substantial compliance contemplated by Lee v. Metro Parks Tacoma 183 Wn.app 961, 335 P.3d 1014, 1017, (2014) by virtue of more than sixty (60) days had lapsed prior to service without the City of Clarkston taken any of the action regarding investigation contemplated by said sixty (60) day period.

D.  
CONCLUSION

For the foregoing reasons summary judgment granted herein by the Superior Court should be reversed and the matter remanded to Superior Court for further proceedings.

DATED this 24<sup>th</sup> day of October, 2017.

CHAPMAN LAW OFFICES, PLLC

A handwritten signature in black ink, appearing to read 'Scott Chapman', is written over a horizontal line. The signature is stylized and cursive.

Scott Chapman, WSBA 34648  
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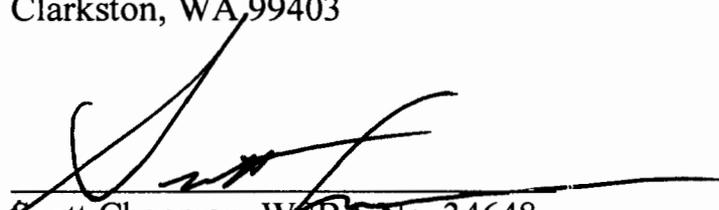
I HEREBY CERTIFY that  
a true and correct copy  
of the foregoing was on  
this 24<sup>th</sup> day of October, 2017,

Mailed  
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