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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 364429 - III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

TROY BROWER, Plaintiff/Appellant
vs.
DANIEL HOERNER and AUGUSTA HOERNER
Defendants/Respondents

**APPEALED FROM SPOKANE COUNTY SUPERIOR COURT
CAUSE NO. 15-2-04696-3**

THE HONORABLE RAYMOND CLARY

RESPONDENTS' OPENING BRIEF

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I. INTRODUCTION

On November 13, 2015, Appellant Troy Brower filed a lawsuit in the Spokane County Superior Court against Respondents Daniel Hoerner and “Augusta” Hoerner, alleging claims of Breach of Contract, Unjust Enrichment, Replevin, Conversion, Tortious Interference with Business Expectancies, Fraud, and a Request for a Declaratory Judgement. The case culminated in a two-day bench trial on July 2nd and 3rd, 2018.

In its decision filed October 18, 2018, The Superior Court properly dismissed all of Appellant Troy Brower’s claims with prejudice and awarded Respondents Daniel Hoerner and “Augusta” Hoerner statutory costs. Respondents Daniel Hoerner and “Augusta” Hoerner humbly beg this Court to uphold that decision.

Appellant Brower’s appeal arises out of his claim that the Trial Court made the following errors:

A. The Trial Court’s determination that Mr. Brower disassociated himself from the Big Dipper is not supported by substantial evidence and is not consistent with the law.

B. The Trial Court’s decision that Mr. Brower failed to prove his breach of contract claim is not supported by substantial evidence.

C. The Trial Court’s decision that Mr. Brower did not prove his fraud claim is not supported by substantial evidence.

D. The Trial Court committed error by concluding that Mr. Brower was not entitled to damages.

E. The Trial Court committed error in finding the following Findings of Fact that were not supported by substantial evidence: 21, 22, 25, 26, 27, 28, 31, 32, 33, 35, 37, 38, 39, 40, 4, 45, 46, 48, 50, 51, 56, 57, 58, and 60.

1 Respondents will show that the evidence and testimony submitted over the course of
2 three years of litigation and the two-day bench trial disprove the Appellant's claims in every
3 case. The Superior Court made the correct decision.

4 To support their theory of appeal, Mr. Brower and his attorneys have created the
5 following false premises:

6 **Appellant's Premise 1.** *"This appeal is the result of the trial court finding Troy Brower*
7 *("Brower") was a 50% member/owner of the Big Dipper, LLC ("Big Dipper"), but that Brower*
8 *voluntarily disassociated himself from the Big Dipper preventing reinstatement of his equal*
9 *percentage of membership/ownership in the Big Dipper and/or award of damages."* Appellant's
10 Opening Brief Pg. 1. The intent of this premise is that if the court had not found Mr. Brower to
11 have disassociated himself from The Big Dipper, Brower would have been eligible to receive
12 damages as a result of his claims. This is false.

13 The Trial Court found that Mr. Brower failed to provide substantial evidence that he
14 suffered damages as a result of his disassociation with The Big Dipper. Despite having three
15 years to do so, Brower failed to produce any substantive corroboration for his claims. The court
16 correctly found, *"There is insufficient evidence of Mr. Brower's capital contribution."* CP 521.
17 The court also found, *"The evidence is insufficient to show that Mr. Hoerner or The Big Dipper,*
18 *LLC withheld Mr. Brower's property."* CP 520.

19 In dismissing Brower's Breach of Contract claim, the court found, *"Mr. Brower had an*
20 *opportunity to perform and, in turn, benefit from a contract for a partnership and limited*
21 *liability company, but he failed to perform. He also lacked sufficient evidence of damages."* CP
22 524.

23 Brower was associated with The Big Dipper for the first nine months of 2014. The 2014
24 tax return for The Big Dipper, LLC shows a more than \$69,000 loss. The court found, *"At the*
25 *time that Mr. Brower disassociated, Mr. Hoerner and The Big Dipper, LLC had to absorb over*

1 \$69,000 in operating losses. Over \$34,000 of the losses would have been chargeable to Mr.
2 Brower.” CP 523. Mr. Brower did not bear any of those costs.

3 Additionally, the court found, “*Mr. Brower’s post-disassociation efforts to undermine*
4 *The Big Dipper and Mr. Hoerner resulted in unspecified expenses and losses that were absorbed*
5 *entirely by The Big Dipper and Mr. Hoerner.*” CP 523. This finding is supported by substantial
6 evidence and testimony. Mr. Brower did not bear any of those costs.

7 Furthermore, the court found that, “*Mr. Brower’s service contributions were for the*
8 *benefit of The Big Dipper partnership or The Big Dipper, LLC, not Mr. Horner (sic) individually*
9 *or his marital community.*” CP 524. “*Mr. Hoerner and his marital community is not personally*
10 *liable for the debts or obligations of The Big Dipper, LLC.*” CP 524. “*Mr. Brower did not name*
11 *or file claims against The Big Dipper partnership or The Big Dipper, LLC. He only sued Mr.*
12 *Hoerner and his marital community in his or its personal capacity.*” CP 525. “*Under*
13 *partnership law, Mr. Brower is not entitled to compensation for the services he provided to The*
14 *Big Dipper partnership and under limited liability company law Mr. Brower may not recover*
15 *compensation from Mr. Hoerner or his marital community in their personal capacities.*” CP 525.
16 “*Under the circumstances of this case, it would be inequitable to impose a personal financial*
17 *obligation on Mr. Hoerner or his marital community.*” CP 525. These findings are consistent
18 with Washington law. RCW 25.050.150(8); RCW 25.15.196. Brower does not have a right to
19 claim damages for his service contributions to The Big Dipper, LLC. Brower also brought his
20 suit against the wrong entities.

21 Finally, the court also found that, “*Mr. Brower did not produce sufficient evidence to*
22 *satisfy each of the elements for conversion.*” CP 525. “*There is insufficient evidence as to the*
23 *damages Mr. Brower allegedly suffered due to the alleged fraud.*” CP 527. “*There is insufficient*
24 *evidence as to the damages Mr. Brower suffered due to the alleged tortious interference with a*
25 *business expectancy.*” CP 527.

1 Regardless of the status of his partnership with The Big Dipper, Appellant Brower has
2 failed to show he suffered any damages as a result of his disassociation, he intentionally
3 damaged the business expectancies of The Big Dipper, he sued the wrong entities making him
4 ineligible for damages, and, in fact, he escaped a \$34,000 obligation for the year 2014.
5 Therefore, the Appellant's Premise 1. is false.

6 **Appellant's Premise 2.** *"Despite being equal partners, Mr. Hoerner would not*
7 *cooperate with Brower to run the Big Dipper, and specifically would not provide financial*
8 *information to Brower related to the Big Dipper and would not include Brower on bank*
9 *accounts. Mr. Hoerner's actions deprived Brower of the benefit of their partnership agreement,*
10 *and ultimately made their partnership untenable."* Appellant's Opening Brief Pg. 1. The intent
11 of this premise is to blame Respondent Hoerner for the tensions that led to the dissolution of
12 Brower-Hoerner partnership. Substantial evidence and testimony reviewed by the court show this
13 premise to be false.

14 Three fundamental issues plagued the Brower-Dipper partnership from its inception:

15 Firstly, Appellant Brower had agreed as a mandatory commonsense pre-condition to the
16 partnership that Brower, who had a history of growing, processing and distributing marijuana
17 without a license, would refrain from using or distributing marijuana in or near The Big Dipper.
18 It is against the rules of the Washington State Liquor and Cannabis Control Board to use, display
19 or distribute marijuana in a business that sells alcohol. The court heard the testimony that Brower
20 was distributing marijuana in The Big Dipper. The court also heard testimony about the
21 corrosive and deleterious effect Brower's actions had on the Brower-Hoerner partnership. Mr.
22 Brower's refusal to live up to this important term of the Brower-Hoerner partnership agreement
23 was a constant irritant. Brower never desisted from this behavior until his disassociation from
24 The Big Dipper.

1 As the court noted, *“Prior to the formation of the partnership and limited liability*
2 *company, Mr. Hoerner was concerned with Mr. Brower’s potential to use or distribute*
3 *marijuana in or near The Big Dipper.”* CP 518. *“As Mr. Hoerner explained, he was concerned*
4 *that use or delivery of marijuana, albeit legal if in compliance with marijuana laws, could*
5 *jeopardize The Big Dipper’s liquor license.”* CP 518. *“Therefore, a term of the business*
6 *relationship was that Mr. Brower would refrain from using or distribution of marijuana in or*
7 *near The Big Dipper.”* CP 518. *“As time went on, Mr. Hoerner learned that Mr. Brower was*
8 *distributing marijuana in or near The Big Dipper.”* CP 518. These statements of fact are
9 supported by substantial evidence.

10 Secondly, Appellant Brower had agreed to provide a matching 50% contribution to the
11 business. Evidence and testimony heard by the court prove Mr. Brower failed to live up to his
12 end of the agreement. Mr. Brower’s promised labor was inadequate or done by others, and his
13 ineffectual tinkering with critical systems ultimately cost the business far more than any potential
14 benefits he might have conferred. Even without factoring in Brower’s dodging of a \$34,000 bill
15 in 2014, and his relentless and successful post-disassociation campaign to damage the business
16 and the Respondents personally, Brower’s evidence of his contribution is insufficient.

17 Thirdly, Mr. Brower himself provided testimony about a meeting in April 2014, more
18 than five months prior to his disassociation, in which Respondent Hoerner raised serious
19 concerns about Brower’s girlfriend/wife Annie Grinolds and her involvement with the Big
20 Dipper. Specifically, Hoerner asked that Ms. Grinolds no longer be allowed to serve alcohol at
21 The Big Dipper. Hoerner believed Grinolds was misappropriating alcohol, and the business was
22 suffering because of it. Mr. Brower refused to listen to Respondent Hoerner’s concerns. Mr.
23 Brower insisted that Ms. Grinolds continue to be allowed to serve alcohol at The Big Dipper.
24 The court heard testimony that Ms. Grinolds was “dipping into the till”, and that despite being
25 frequently busy, the business was underwater. The court also heard testimony about the negative

1 effects the unresolved conflict over Ms. Grinolds' involvement with The Big Dipper had on both
2 the business and Mr. Hoerner personally. Mr. Brower provided testimony about the stress that
3 Mr. Hoerner was under at the time: "...if I remember correctly, you said you were bleeding. You
4 had stress and you were bleeding out your butt and that the stress from the business was causing
5 you to be stressed." RP 328.

6 It is therefore clear that the Appellant's Premise 2. is false and is, in fact, a ruse to try and
7 distract the court from Mr. Brower's own very real culpability in his disassociation from The Big
8 Dipper.

9 **Appellant's Premise 3.** *"Without Brower's knowledge or consent, Mr. Hoerner signed*
10 *documents and submitted these document (sic) to Washington State agencies removing Brower*
11 *as a member of the Big Dipper, from the business license and from the liquor license."*

12 Appellant's Opening Brief Pgs. 1 & 2. The intent of this premise is that the actions of
13 Respondent Hoerner with respect to updating Washington State agencies about the status of The
14 Big Dipper, LLC were surreptitious and done without the knowledge or consent of Mr. Brower.
15 This is false.

16 The court found Mr. Hoerner believed that Mr. Brower had provided his consent by
17 breaching the partnership agreement, seizing control of The Big Dipper's official Facebook page,
18 posting his self-serving and defamatory notice of disassociation, and thereafter working tirelessly
19 to harm and diminish the business expectancies of The Big Dipper. Every action taken by
20 Hoerner subsequent to Brower's disassociation was guided by the advice of an attorney and
21 intended to convey the truth of the situation to the appropriate authorities. Every action taken by
22 Hoerner was a direct response to the actions of Brower.

23 It is therefore reasonable and right that the Trial Court found, *"When Mr. Hoerner*
24 *notified the Secretary of State and Washington Liquor and Cannabis Board of the change in*
25 *ownership he had no intent to deceive. He genuinely believed that Mr. Brower had disassociated*

1 *and was neither a partner or member of the limited liability company.” CP 526-527. Mr.*
2 *Hoerner believed that Brower had knowledge of and consented to his disassociation with The*
3 *Big Dipper.*

4 *As the court noted, “On or near September 20, 2014, and following the conflict at The*
5 *Big Dipper, Mr. Brower posted a Facebook announcement on The Big Dipper’s Facebook Page*
6 *that he was no longer part of The Big Dipper. In part, he wrote, “I am no longer the co-owner of*
7 *The Big Dipper”; “I am burned and out” (syntax original); “I am glad to be gone”; “Time for*
8 *some rest and solitude.” CP 519. The court also noted that, “In addition to his post on The Big*
9 *Dipper’s Facebook page, Mr. Brower also changed the login information to prevent Mr.*
10 *Hoerner from accessing The Big Dipper’s Facebook page.” CP 520. Additionally, “Mr.*
11 *Brower’s post on The Big Dipper’s Facebook page, and his unilateral alteration of the login*
12 *information for The Big Dipper’s Facebook page, was designed to hurt and undermine The Big*
13 *Dipper, LLC.” CP 520. And finally, ““Mr. Brower’s post on The Big Dipper’s Facebook page,*
14 *and his unilateral alteration of the login information for The Big Dipper’s Facebook page, did,*
15 *in fact, hurt and undermine The Big Dipper, LLC.” CP 520.*

16 *Brower’s seizure of The Big Dipper’s Facebook page and his public disassociation from*
17 *The Big Dipper was the culmination of three nights of harassment of staff, performers and*
18 *customers by Brower and his girlfriend/wife Annie Grinolds as they attempted to shut down the*
19 *business. Brower and Ms. Grinolds were furious that Respondent Hoerner, five months after his*
20 *initial complaints to Brower about Grinolds, had finally decided that Grinolds was no longer*
21 *allowed to serve alcohol at The Big Dipper.*

22 *Brower’s statement of disassociation was subsequently picked up the next day and*
23 *reprinted verbatim by the Spokane Inlander. The damage caused by the Appellant’s actions to*
24 *both The Big Dipper’s business prospects and the reputations of the Respondents was severe and*
25 *lasting. Brower never returned the stolen Facebook page to the business. His statement of*

1 disassociation remained the public face of the Big Dipper from September 22, 2014 to
2 approximately December 6, 2014, when Facebook finally disabled the page. During the almost
3 three months that the stolen page was active, Brower used it as a platform to organize a boycott
4 of the Big Dipper and to curate a comments section below his post that was filled with hate-
5 speech and death threats against the Respondents. Never once since making his public statement
6 of disassociation has Brower recanted, clarified, or disputed it.

7 A reasonable person would look at Brower's statement, coupled with his actions prior
8 and subsequent, and come to the same conclusion as the Trial Court: Brower disassociated
9 himself from the Big Dipper.

10 Every action taken by Respondent Hoerner subsequent to Brower's disassociation was
11 taken under the direction of attorney Lisa Dickinson with the clear intent of properly following
12 the rule of law.

13 Therefore, Appellant's Premise 3. is false.

14 **Appellant's Premise 4.** *"Mr. Hoerner... solicited the assistance of an attorney to draft a*
15 *false document that Mr. Hoerner presented to Spokane Police indicating Brower was not a*
16 *member of the Big Dipper for the purpose of having Brower removed from the Big Dipper*
17 *premises once and for all."* Appellant's Opening Brief Pg. 2. The intent of this premise is that
18 Respondent Hoerner hired attorney Lisa Dickinson to intentionally commit fraud. This is false.

19 This premise also contains the assumption that the reason the Spokane Police were called
20 was simply to remove Brower from The Big Dipper, and not, in fact, in response to multiple days
21 of harassment, abuse and hate-speech from Brower and his girlfriend/wife Annie Grinolds as
22 they tried to bully staff, performers and customers into shutting down the business.

23 The court reviewed substantial evidence and testimony that Brower and his
24 girlfriend/wife Annie Grinolds began a campaign to damage The Big Dipper's business
25 prospects on September 19, 2014.

1 The day prior, September 18, 2014, Respondent Hoerner had finally, after five months of
2 building tensions, told Brower that Ms. Grinolds would no longer be allowed to serve alcohol at
3 The Big Dipper. Ex. P-51.

4 On the evening of September 19, 2014, Brower and Grinolds appeared at the venue
5 during business hours and proceeded to shout down the performers on stage, harass staff and
6 customers, and hurl abuse and hate-speech at Hoerner. Ms. Grinolds bared her breasts in front of
7 customers and staff. The performance that evening was ruined and the business and Respondents
8 were humiliated and damaged.

9 Early the next morning on September 20, 2014, Hoerner sent Brower a letter warning him
10 against repeating his actions of the previous evening. However, that night Brower and Grinolds
11 again returned to The Big Dipper and again began shouting down performers, harassing,
12 threatening and filming staff and customers, and hurling abuse and hate-speech at Hoerner.

13 As the court noted, "*On or near September 20, 2014 Mr. Brower and Ms. Grinolds*
14 *confronted Mr. Hoerner in The Big Dipper at a time when patrons were present for a music*
15 *event.*" CP 519. "*Mr. Brower and Ms. Grinolds yelled or shouted at Mr. Hoerner. Mr. Brower*
16 *characterized Mr. Hoerner as a "fagot (sic) Jew" and "piece of shit" in front of patrons and*
17 *staff.*" CP 519.

18 Their actions were so outrageous, Matt Paulson, Big Dipper security employee, called the
19 Spokane Police. When the police arrived, Mr. Brower and Ms. Grinolds desisted from their
20 campaign of harassment. However, again, the performance that evening was ruined and both the
21 business and Respondents were humiliated and damaged.

22 On September 21, 2014, Respondent Hoerner hired attorney Lisa Dickinson to represent
23 the best interests of The Big Dipper, LLC. Ms. Dickinson reviewed the facts of the case and
24 drafted a document to help Mr. Hoerner communicate with the authorities if and when Brower
25 and Grinolds decided to continue their campaign to disband the business. Every statement

1 contained within the document created by Ms. Dickinson was true and correct to the best
2 understanding of Hoerner at the time.

3 On September 22, 2014, Mr. Brower and Ms. Grinolds again returned to The Big Dipper
4 during business hours and again began harassing performers, customers and staff. Respondent
5 Hoerner called the Spokane Police. When the police arrived, they interviewed Mr. Brower
6 extensively, called the owner of the venue, Steve Spickard, and consulted with the Washington
7 Secretary of State. After completing their investigation, the Spokane Police escorted Brower and
8 Grinolds from The Big Dipper.

9 It was Brower and Grinolds own actions that caused the Spokane Police to escort them
10 from The Big Dipper. The Spokane Police made their decision based on multiple factors.
11 Therefore, Appellant's Premise 4. is false.

12 **Appellant's Premise 5.** "*Mr. Hoerner's only defense to Brower's claim for declaratory*
13 *relief, breach of contract and fraud was that Brower was never a member of the Big Dipper.*"
14 Appellant's Opening Brief Pg. 2. The intent of this premise is that Respondent Hoerner offered
15 no other defenses against Appellant Brower's claims for declaratory relief, breach of contract,
16 and fraud. This is false and in direct conflict with all the filings, evidence and testimony offered
17 to the court by Mr. Hoerner, from the initial responses, through discovery, litigation and during
18 the trial itself.

19 In addition to six affirmative defenses, Respondent Hoerner offered multiple defenses to
20 Brower's claims, including but not limited to:

21 A. Brower's many failures to perform with respect to the Hoerner-Brower partnership
22 agreement. Brower's deficient contribution and repeated violation of the agreement led Hoerner
23 to believe Brower had breached and therefore nullified the Brower-Hoerner partnership.

24 B. Brower's failure to show he suffered any damages as a result of his disassociation with
25 The Big Dipper.

1 C. Brower's failure to sue the right entity, preventing his eligibility for damages.

2 D. Hoerner's belief at all times that he was acting on true and correct information,
3 without the intent to deceive.

4 With respect to fraud, the court found, "*Mr. Hoerner lacked the requisite knowledge*
5 *required by the fourth element.*" CP 527. Also, "*There is insufficient evidence as to the damages*
6 *Mr. Brower allegedly suffered due to the alleged fraud.*" CP 527.

7 There is substantial evidence that Respondent Hoerner offered multiple defenses against
8 Appellant Brower's claims. Therefore, Appellant's Premise 5. is false.

9 **Appellant's Premise 6.** "*Brower also presented uncontroverted expert testimony*
10 *showing the damages he suffered as a result of Mr. Hoerner unilaterally and fraudulently*
11 *removing Brower from the Big Dipper.*" Appellant's Opening Brief Pgs. 2 & 3. The intent of this
12 premise is that the testimony offered by expert Joseph Mayo with respect to damages allegedly
13 suffered by Brower was credible to the Trial Court and therefore must carry weight. This is false.

14 Mr. Mayo offered the paid testimony of someone who had never owned a venue like The
15 Big Dipper before. Despite being only four years old at the time, Mr. Mayo did not bother to take
16 into account the business's \$69,000 loss in 2014 when making his valuation, instead focusing
17 only on the three years subsequent to Brower's disassociation.

18 As the court noted, "*A trier of fact is not bound to accept the testimony of any witness,*
19 *including uncontroverted testimony and the testimony of experts. See, Segal v. Ben's Truck*
20 *Parts, Inc., 5 Wn. App. 482, 483-5 (Div. 2 1971); Rea v. Rea, 19 Wn. App. 496, 501 (Div. 3*
21 *1978); WPI 1.02. (3)*" CP 522. Also, "*The trier of fact is the sole judge "of credibility of*
22 *witnesses". WPI 1.02. (4)*" CP 522.

23 Mr. Mayo failed to provide credible testimony. Therefore, Appellant's Premise 6. is false.

24 **Appellant's Premise 7.** "*The trial court's decision... that Mr. Hoerner did not breach*
25 *the parties' oral partnership agreement... was not based on substantial evidence.*" Appellant's

1 Opening Brief Pg. 3. The intent of this premise is that the court required substantial evidence
2 showing that Respondent Hoerner did **not** breach the parties' oral partnership agreement in order
3 to make its decision. This is false.

4 It was incumbent on Mr. Brower to prove that Hoerner **did** breach the parties' oral
5 partnership agreement. Mr. Brower failed to do that. In fact, it was Brower himself who was
6 shown by clear and overwhelming evidence to be in breach of the parties' oral partnership
7 agreement since its inception.

8 Therefore, Appellant's Premise 7. is false.

9 **Appellant's Premise 8.** *"The trial court's decision... that Mr. Hoerner did not commit*
10 *fraud by filing false documents with Washington State agencies and submitting a false document*
11 *to Spokane Police was not based on substantial evidence."* Appellant's Opening Brief Pg. 3.
12 Exactly like Appellant's Premise 7., the intent of this premise is that the court required
13 substantial evidence showing that Mr. Hoerner did **not** commit fraud. This is false.

14 It was incumbent on Mr. Brower to prove that Mr. Hoerner **did** commit fraud. Mr.
15 Brower failed to do that.

16 Every action by Hoerner was taken with the intent to do the right and proper thing, in
17 accordance with what he believed to be true, and under the advice and counsel of his attorney
18 Lisa Dickinson. As the court noted, *"The elements of Fraud are: 1) Representation of an existing*
19 *fact; 2) materiality; 3) falsity; 4)the speaker's knowledge of its falsity; 5) intent of the speaker*
20 *that it should be acted upon by the plaintiff; 6) plaintiff's ignorance of its falsity; 7) plaintiff's*
21 *reliance upon the truth of the representation; 8) plaintiff's right to rely upon it; and 9) damages*
22 *suffered by the plaintiff. Baddely v. Seek, 138 Wn. App. 333, 339 (2007)." CP 526. "The Plaintiff*
23 *must prove every element by clear, cogent, and convincing evidence. Baddely v. Seek, 138 Wn.*
24 *App. 333, 339 (2007)." CP 526. "When Mr. Hoerner notified the Secretary of State and*
25 *Washington Liquor and Cannabis Board of the change in ownership he had no intent to deceive.*

1 *He genuinely believed that Mr. Brower had disassociated and was neither a partner or member*
2 *of the limited liability company.” CP 526 – 527. “Mr. Horner (sic) lacked the requisite*
3 *knowledge required by the fourth element.” CP 527.*

4 In this case, there is only one clear cut example of fraud that satisfies all nine required
5 elements, and that is the appropriation of 100% ownership of The Big Dipper, LLC by Appellant
6 Brower when he filed documents with the Washington Secretary of State on March 20, 2015.

7 The Trial Court found that, *“On March 20, 2015, nearly six months after disassociating*
8 *from the partnership and The Big Dipper, LLC, Mr. Brower replaced Mr. Hoerner’s name with*
9 *his own as the sole member of The Big Dipper, LLC with the Washington Secretary of State’s*
10 *office.” CP 520.*

11 Mr. Brower 1) represented to the Secretary of State that he was 100% owner of The Big
12 Dipper, LLC; 2) that representation had materiality; 3) the representation was unequivocally
13 false; 4) Mr. Brower did not believe he was the 100% owner of The Big Dipper, LLC; 5) Mr.
14 Brower intended that the Secretary of State would act on his representation; 6) the Secretary of
15 State was ignorant of the falsity of Brower’s representation; 7) the Secretary of State relied on
16 the truth of Brower’s representation; 8) the Secretary of State had the right to rely on the truth of
17 Brower’s representation; and 9) both the Secretary of State and Respondent Hoerner were
18 damaged by Brower’s false representation; the Secretary of State by updating their records with
19 false information, and Hoerner by the costs incurred in attorney’s fees and filing fees to correct
20 the issue.

21 Mr. Brower failed to provide clear, cogent and substantial evidence of fraud on the part
22 of Mr. Hoerner, and the court was correct in denying his claim. Therefore, Appellant’s Premise
23 8. is false.

24 Because Mr. Brower’s case is built upon false and deceptive premises, his claims fail.
25 The Respondents pray that this Court will uphold the decision of the Trial Court.

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II. STATEMENT OF THE CASE

Exactly as they attempted to do in the Introduction to their Opening Brief, Appellant Brower and his attorneys have crafted a series of falsehoods in order to make their Statement of the Case.

In arguing that the trial court made an error by rejecting Mr. Brower's Motion for Summary Judgment and allowing the case to go to bench trial, Brower has made the following claim: "*Respondents also misrepresented to the trial court that Brower was never listed on any official business records as a member of the Big Dipper. RP 20*" Appellant's Opening Brief Pg. 6. This is a false statement.

The transcript cited (RP 20) clearly shows that the attorney for Respondent Hoerner was demonstrating to the court that Brower was not listed as a Member of The Big Dipper, LLC on the Initial Annual Report, which is true. Nor was Brower ever listed as a Member on any subsequent Annual Report. It is therefore correct for the attorney for the Respondent to have stated, "*Clearly, as I indicated, Mr. Brower is not listed as a member of that document. Mr. Brower has never been listed on these official business records except for the first time when he went in and surreptitiously altered the document, indicated he was a full one hundred percent owner.*" RP 20.

By extrapolating "*misrepresented to the trial court that Brower was **never** listed on **any** official business records... (emphasis added)*" from the transcript, Mr. Brower is attempting to create a false impression about the nature of Hoerner's statement to the trial court.

In denying the Appellant's Motion for Summary Judgment, the Trial Court noted, "*there are cases that say that the court can decline summary judgment even where the facts appear to be undisputed and entirely in favor of one party, but that party has an interest in the statements*

1 *that that party has made.*” RP 42. From this statement, Mr. Brower then makes the unwarranted
2 leap to conclude, *“The trial court was referring to the facts being undisputed and favoring*
3 *Brower. RP 7 – 42”* Appellant’s Opening Brief Pg. 6. Also, *“despite there being no genuine*
4 *issue of material fact to allow Respondents to proceed to trial, the parties went to a bench trial.”*
5 Appellant’s Opening Brief Pg. 6. These statements are false and inconsistent with the trial
6 record. There was clearly enough of a genuine issue of material fact for the Respondents to
7 proceed to and prevail at trial.

8 In noting that the Trial Court determined Brower failed to prove his claims and
9 Respondents prevailed at the bench trial, Appellant Brower has once again posited, *“The trial*
10 *court’s decision was largely based upon the finding that Brower had voluntarily disassociated*
11 *himself as a member/owner of the Big Dipper. CP 515 – 528”* Appellant’s Opening Brief Pgs. 6-
12 7. This is a false statement.

13 There were numerous deficiencies in the Appellant’s case that made it fatally flawed
14 from the beginning, including but not limited to: 1) Appellant’s failure to provide substantial
15 evidence he made a contribution to the Big Dipper, 2) Appellant’s failure to provide substantial
16 evidence of fraud, 3) Substantial evidence that Appellant breached the partnership agreement, 4)
17 Appellant’s failure to prove he suffered any damages, 5) Substantial evidence that Appellant
18 damaged both The Big Dipper, LLC and Respondents, 6) Appellant sued the wrong entity and is
19 therefore not eligible to receive damages, and 7) Appellant’s failure to provide substantial
20 evidence that Respondent breached the partnership agreement. For these reasons and others,
21 Appellant Brower’s claims against Respondents failed, regardless of the court’s ruling on the
22 nature and timing of Brower’s disassociation from The Big Dipper.

23 With respect to Mr. Brower’s disassociation from The Big Dipper, Brower goes on to
24 claim, *“The trial court made this finding of fact despite evidence showing that Mr. Hoerner had*
25

1 *already filed paperwork to remove Brower as an owner/member without Brower's knowledge or*
2 *consent...*" Appellant's Opening Brief Pg. 7. This claim is false.

3 It was proven to be false at trial when the attorney for Mr. Brower attempted to show that
4 Respondent Hoerner had filed a Change in Ownership/Governing People with the Washington
5 Secretary of State **before** Mr. Brower seized The Big Dipper's Facebook page and posted his
6 notice of disassociation. The evidence clearly shows that Brower publicly disassociated from
7 The Big Dipper on or about September 22, 2014. The Change in Ownership/Governing People
8 was submitted by Hoerner under the direction of his attorney on September 26, 2014. The date
9 the document was received by the Secretary of State is clearly displayed in the upper right-hand
10 corner. It is obvious that Appellant Brower wants to try and create a false scenario in which
11 Respondent Hoerner acted prior to Brower.

12 Similarly, Mr. Brower claims, "*Mr. Hoerner... created a false document that he provided*
13 *to police showing Brower was not a member of the Big Dipper so that Brower could be removed*
14 *from the Big Dipper's premises and could not return.*" Appellant's Opening Brief Pg. 7. This
15 statement is false.

16 All information provided to the police was true and correct, to the best understanding of
17 Mr. Hoerner, who was acting under the guidance of his attorney in the best interests of The Big
18 Dipper.

19 Mr. Brower and his girlfriend Ms. Grinolds were removed from The Big Dipper by the
20 Spokane Police in response to their own disruptive, infantile and damaging actions.

21 Mr. Brower then goes on to claim, "*Because the trial court's decision is not based on the*
22 *facts and evidence presented at trial, Brower appealed the trial court's decision.*" Appellant's
23 Opening Brief Pg. 7. This is false.

24 All the evidence and testimony presented at trial clearly support the Trial Court's
25 decision. It is, in fact, the Appellant's case that is entirely unsupported by facts and evidence,

1 relying instead on blatant falsehoods, deception, intentionally misconstruing statements and
2 evidence, and unjustified claims fabricated out of thin air.

3
4 **III. STATEMENT OF FACTS**

5
6 It is undisputed that Mr. Brower and Mr. Hoerner had an approximately 25-year long
7 friendship prior to forming a partnership to operate a business at The Big Dipper. RP 64.

8
9 In October of 2013, Mr. Hoerner and Mr. Brower decided to form a general partnership
10 to pursue the concept of creating a music venue in the building known at The Big Dipper. RP 65;
11 220.

12
13 Mr. Brower and Mr. Hoerner did not have a written general partnership agreement. RP
14 324.

15
16 Mr. Brower and Mr. Hoerner agreed to each be one-half or 50% responsible for expenses
17 and losses, and to evenly split profits. RP 104-105; 187; 220; 309; 323-326.

18
19 Mr. Brower had a history of growing, processing and distributing marijuana. RP 320;
20 372.

21
22 Because of Mr. Brower's history of growing, processing and distributing marijuana, it
23 was agreed as a commonsense term of the business relationship by Brower and Hoerner that
24 Brower would refrain from using or distributing marijuana in or near The Big Dipper, as that
25 could jeopardize The Big Dipper's liquor license. RP 320; 326; 372; 395.

1
2 Shortly after the partnership's inception, Mr. Brower and Mr. Hoerner developed
3 numerous fundamental differences. CP 76-77; 133; RP 69-70; 105; 118; 138-139; 318-320; 326-
4 330; 378-381; 394-396.

5
6 Mr. Hoerner did not believe Mr. Brower was making a matching contribution to the
7 partnership. RP 105; 118; 138-139; 171; 179-180; 312; 372.

8
9 Mr. Hoerner was concerned with the quality of repair, rehabilitation, and remodel work
10 that Mr. Brower did or was to do on The Big Dipper. Mr. Hoerner believed much of what Mr.
11 Brower was to do was not done, and much of what was done had to be redone by others. CP 76;
12 133; Ex. P-49; RP 68-69; 287-288; 294-309.

13
14 As time went on, Mr. Hoerner learned that Mr. Brower was using and distributing
15 marijuana in or near The Big Dipper. RP 379-380; 394-395.

16
17 Another issue causing tension in the Brower-Hoerner partnership involved Mr. Brower's
18 wife or significant other, Ms. Annie Grinolds, serving alcohol. Mr. Hoerner believed Ms.
19 Grinolds should not serve alcohol, as she had been misappropriating it. CP 76-77; 133; 453-454;
20 Ex. P-9 & Ex. D-119; RP 69-70; 327-329; 381-382.

21
22 A meeting was held in April 2014, during which Mr. Hoerner requested that Ms.
23 Grinolds no longer be allowed to serve alcohol at The Big Dipper. RP 327-329.

1 Mr. Brower refused Mr. Hoerner's request and Ms. Grinolds continued serving alcohol at
2 The Big Dipper until September 18, 2014. Ex. P-51.

3
4 Mr. Hoerner believed that Mr. Brower forfeited or dissolved his partnership/membership
5 interest by failing to contribute services, failing to contribute capital, distributing marijuana in or
6 near The Big Dipper, failing to address the issues surrounding Ms. Grinolds, and other conduct
7 or failures. Ex. P-9 & Ex. D-119; Ex. D-106; RP 105; 118; 138-139; 327-329; 379-380; 394-395.

8
9 On September 18, 2014 Mr. Hoerner told Mr. Brower that Ms. Grinolds was no longer
10 allowed to serve alcohol at The Big Dipper. Ex. P-51; CP 454.

11
12 On the evening of September 19, 2014 Mr. Brower and his wife/girlfriend Ms. Grinolds
13 appeared at The Big Dipper during business hours and shouted down the performers while
14 harassing customers and staff, damaging the business. Ex. P-9 & Ex. D-119; CP 454-455; RP 70;
15 174-177; 383.

16
17 On the evening of September 19, 2014 Mr. Brower encouraged Ms. Grinolds to
18 misappropriate alcohol from The Big Dipper. Ex. P-9 & Ex. D-119; RP 174-177; 383.

19
20 On September 20, 2014 Mr. Hoerner wrote Mr. Brower that he needed to remove himself
21 from the partnership and limited liability company. Ex. P-9 & D-119.

22
23 On the evening of September 20, 2014 Mr. Brower and Ms. Grinolds again appeared at
24 The Big Dipper and confronted Mr. Hoerner during business hours when patrons were present
25 for a music event. Ex. D-106; CP 455; RP 70; 177-178; 342-345; 375-378.

1
2 Mr. Brower and Ms. Grinolds yelled or shouted at Mr. Hoerner. Mr. Brower
3 characterized Mr. Hoerner as a “faggot Jew” and “piece of shit” in front of patrons and staff. RP
4 377.

5
6 Mr. Hoerner had cautioned Mr. Brower not to say or do things that would undermine or
7 interfere with The Big Dipper’s music patrons or success. Ex. P-9 & Ex. D-119; RP 174-178.

8
9 On the evening of September 20, 2014, Big Dipper employee Matt Paulson, fearing for
10 the safety of the performers, patrons and staff, and in direct response to the actions of Mr.
11 Brower and Ms. Grinolds, called the Spokane Police. Ex. D-106; CP 455; RP 70; 375-378.

12
13 On the evening of September 20, 2014 when the police arrived Mr. Brower and Ms.
14 Grinolds desisted from their harassment, however, once again the performance was ruined and
15 the business damaged. Ex. D-106; CP 455; RP 70; 342-345; 375-378.

16
17 On September 21, 2014 Mr. Hoerner hired attorney Lisa Dickinson to represent the best
18 interests of The Big Dipper. CP 455; RP 70-71; 176.

19
20 On the evening of September 22, 2014 Mr. Brower and Ms. Grinolds again appeared at
21 The Big Dipper during business hours and again began shouting down the performers and
22 harassing and intimidating customers and staff, damaging the business. Mr. Hoerner called the
23 Spokane Police in response to Mr. Brower and Ms. Grinolds damaging, threatening and
24 disruptive behavior. Ex. D-106; CP 133; RP 71; 128; 178.

1 On the evening of September 22, 2014, the Spokane Police escorted Mr. Brower and Ms.
2 Grinolds out of The Big Dipper. Ex. D-106; Ex. D-107 & Ex. P-43; RP 178; 194.

3
4 Late in the evening of September 22, 2014, following the conflict at The Big Dipper, Mr.
5 Brower posted a Facebook announcement on The Big Dipper's official Facebook page that he
6 was no longer part of The Big Dipper. In part, he wrote, "I am no longer the co-owner of The
7 Big Dipper"; "I am burned and out (syntax original); "I am glad to be gone"; "Time for some rest
8 and solitude." Ex. P-43 & Ex. D-107; CP 456; RP 71-72; 385-386.

9
10 In addition to his post on The Big Dipper's official Facebook page, Mr. Brower also
11 changed the login information to prevent Mr. Hoerner from accessing The Big Dipper's official
12 Facebook page. CP 456; RP 335-336; 387.

13
14 Mr. Brower's post on The Big Dipper's official Facebook page, and his unilateral
15 alteration of the login information for The Big Dipper's official Facebook page, was designed to
16 hurt and undermine The Big Dipper, LLC and the Defendants personally, and Mr. Brower's post
17 on The Big Dipper's official Facebook page, and his unilateral alteration of the login information
18 for The Big Dipper's official Facebook page, did, in fact, hurt and undermine The Big Dipper,
19 LLC and the Defendants personally. RP 71-72; 334-342; 385-394.

20
21 On September 23, 2014 the Spokane Inlander published Mr. Brower's statement of
22 disassociation in its entirety. Ex. P-43 & Ex. D-107; CP 457; RP 390-391.

1 Mr. Hoerner believed that Mr. Brower's public statement of disassociation from The Big
2 Dipper represented Mr. Brower's written notice that he was no longer a member of The Big
3 Dipper. CP 483; RP 184.

4
5 Mr. Brower's notice of disassociation was the public face of The Big Dipper from
6 September 23, 2014 until approximately December 6, 2014, when Facebook disabled the page.
7 RP 336-337.

8
9 Subsequent to Mr. Brower's statement of disassociation, attorney Lisa Dickinson
10 provided Mr. Hoerner with a Change in Governing People, Percentage Owned, and/or
11 Stock/Unit Ownership form. Ex. P-5 & Ex. D-110; RP 72-73; 111-112; 156-157.

12
13 On September 26, 2014 Mr. Hoerner memorialized his acceptance of Mr. Brower's
14 September 23, 2014 written disassociation by filing a Change in Governing People, Percentage
15 Owned, and/or Stock/Unit Ownership with the Washington Secretary of State. Ex. P-5 & Ex. D-
16 110; RP 153-154.

17
18 Following Mr. Brower's written disassociation, Mr. Hoerner attempted to coordinate the
19 return of Mr. Brower's personal property. Mr. Brower did not pick it up. On February 25, 2015,
20 Mr. Hoerner arranged for The Big Dipper, LLC to hire Spokane Movers to deliver Mr. Brower's
21 personal property to him at his home. Ex. D-109; RP 243-245; 246-259.

22
23 Mr. Brower testified that he declined to accept delivery of his personal property. RP 245.
24
25

1 The evidence is insufficient to show that Mr. Hoerner or The Big Dipper, LLC withheld
2 Mr. Brower's personal property.

3
4 On March 20, 2015, nearly six months after disassociating from the partnership and The
5 Big Dipper, LLC, Mr. Brower replaced Mr. Hoerner's name with his own as the sole member of
6 The Big Dipper, LLC, with the Washington Secretary of State, appropriating 100% ownership of
7 the business for himself. Ex. D-112 & Ex. P-31; CP 61; RP 280-282.

8
9 At no point prior or subsequent to this action did Mr. Brower ever believe he was the
10 100% owner of The Big Dipper, LLC. RP 280-285.

11
12 On March 31, 2015 Mr. Hoerner corrected Mr. Brower's false filing with the Washington
13 Secretary of State. Ex. D-113, CP 62.

14
15 On or about June 16, 2015, Mr. Brower again attempted to alter the records with the
16 Washington Secretary of State. When Mr. Hoerner learned of this, he again corrected them. Ex.
17 D-114, Ex. D-115, CP 63; CP 64.

18
19 Mr. Brower never provided the court with partnership or limited liability company
20 records that account for either the partnership or the LLC's debts to third parties, or Brower's
21 overall capital contribution to the partnership or limited liability company.

22
23 Mr. Brower testified that he felt his contribution of manual labor to the partnership was
24 worth \$50,000. RP 313-315.

1 Mr. Brower did not provide substantial corroboration for his statement.

2
3 Mr. Hoerner disputed Mr. Brower's claim regarding the value of his manual labor. Ex. P-
4 49; RP 118; 187; 287-288; 294-309.

5
6 There is insufficient evidence of Mr. Brower's capital contribution.

7
8 The parties both submitted a Schedule C profit and loss statement from The Big Dipper,
9 LLC's tax return for the year 2014 showing a net loss for The Big Dipper, LLC of over \$69,000
10 in 2014. Ex. D-120.

11
12 In respect to value of The Big Dipper, LLC, Mr. Brower offered the testimony of Joe
13 Mayo, Esq. CP 521.

14
15 Mr. Mayo is a lawyer. He has an LLM in taxation and he is a CPA. Mr. Mayo described
16 himself as a businessman who buys, sells and operates various businesses. CP 521.

17
18 Mr. Mayo was paid by Mr. Brower for his testimony. RP 209.

19
20 Mr. Mayo acknowledged that he had never valued a business like The Big Dipper before.
21 RP 209.

22
23 Mr. Mayo did not include the business's over \$69,000 loss in 2014 in his valuation of the
24 business. Ex. D-120; RP 199-200; 202-203.

1 The Trial Court's decision was supported by substantial evidence and should be upheld.

2
3 **IV. ARGUMENT**

4 **A. The Trial Court's Declaratory Judgment was Correct. The Trial Court's**
5 **Dismissal of Brower's Claims with Prejudice was Correct.**

6
7 The Trial Court heard Mr. Brower's cause of action for declaratory relief, seeking to be
8 made a 50% owner of The Big Dipper, LLC and to be awarded damages. A Trial Court has the
9 power to "*declare rights, status or other legal relations whether or not further relief is or could*
10 *be claimed.*" RCW 7.24.010. A Trial Court has the authority to determine partnership rights and
11 interest. Guenther v. Fariss, 66 Wash. App. 691, 833 P.2d 417 (1992). For a Trial Court to
12 entertain a claim for declaratory judgment, there must be justiciable controversy, which is shown
13 by meeting the following elements:

- 14 (1) an actual, present, and existing dispute, or mature seeds of one, as distinguished from
15 possible, dormant, hypothetical, speculative or moot disagreement.
16 (2) Between parties having genuine and opposing interests,
17 (3) Which involves interests that must be direct and substantial rather than potential,
18 theoretical, abstract, or academic, and
19 (4) A judicial determination of which will be final and conclusive.

20 Rhoads v. City of Battle Ground, 115 Wash. App. 752, 760, 63 P.3d 142 (2002).

21 Mr. Brower's claim was moot, because he already relinquished in writing his
22 membership in The Big Dipper on or about September 22, 2014. Ex. D-107; CP 456-457; RP
23 152; 153-154; 184. Mr. Brower's interest was not genuine because Brower had already breached
24 his partnership agreement and intentionally damaged the business prospects of The Big Dipper.
25 RP 385-394. Mr. Brower's interest in The Big Dipper was potential, theoretical, abstract and
academic.

1 The Trial Court's declaratory judgment that Brower was a 50% Member of The Big
2 Dipper, LLC, but that Brower had disassociated in writing sometime around September 22, 2014
3 was correct and supported by substantial evidence. Ex. P-43 & Ex. D-107; RP 152; 153-154;
4 184. The Trial Court's finding that Brower had failed to prove he suffered any damages as a
5 result of his disassociation was correct and is supported by the lack of any substantial evidence
6 provided by Brower.

7 Ordinary rules of appellate procedure apply to review of a trial court's decision regarding
8 a declaratory judgment. Nollette v. Christianson, 115 Wash.2d 594, 599-600, 800 P.2d 359
9 (1990). The Appellate Court will determine if the Trial Court's findings of fact were supported
10 by substantial evidence in the record, and if so whether the findings of fact support the Trial
11 Court's conclusions. Schneider v. Snyder's Foods, Inc., 116 Wash. App. 706, 713, 66 P.3d 640
12 (2003). A trial court's findings of fact will not be disturbed if they are supported by substantial
13 evidence. "*Substantial evidence is evidence sufficient to persuade a reasonable person of the*
14 *truth of the finding.*" Mansour v. King County, 131 Wash. App. 255, 262, 128 P.3d 1241 (2006).

15 Conclusions of law involving interpretation of statutes are reviewed de novo. Nollette,
16 115 Wash.2d 594 at 600.

17 The Trial Court's decision that Mr. Brower disassociated from The Big Dipper in writing
18 on or about September 22, 2014 is correct and supported by substantial evidence. Ex. P-43 & Ex.
19 D-107; RP 105; 152; 153-154; 184.

20 The Trial Court's decision that Mr. Brower's post-disassociation efforts to undermine
21 The Big Dipper and Mr. Hoerner resulted in unspecified expenses and losses that were absorbed
22 entirely by The Big Dipper and Mr. Hoerner is correct and supported by substantial evidence. RP
23 71-72; 334-342; 385-394.

1 The Trial Court's decision that Mr. Brower failed to show he suffered any damages as a
2 result of his disassociation from The Big Dipper is correct and supported by the lack of
3 substantial evidence provided by Brower.

4 The Trial Court's decision that Mr. Brower failed to perform and, in turn, benefit from a
5 contract for a partnership and limited liability company is correct and supported by substantial
6 evidence. CP 76-77; 133; RP 68-70; 105; 118; 138-139; 171; 179-180; 287-288; 312; 318-320;
7 326-330; 378-381; 394-396.

8 The Trial Court's decision that Brower is not entitled to remuneration for services he
9 performed for the partnership is correct and supported by Washington law. RCW 25.05.150(8).

10 The Trial Court's determination that Mr. Brower's service contributions were for the
11 benefit of The Big Dipper partnership or The Big Dipper, LLC, not Mr. Hoerner individually or
12 his marital community is correct and supported by Washington law. RCW 25.15.196.

13 The Trial Court's decision that Mr. Hoerner and his marital community is not personally
14 liable for the debts or obligations of The Big Dipper, LLC is correct and supported by
15 Washington law. RCW 25.15.126.

16 The Trial Court's finding that Mr. Brower did not name or file claims against The Big
17 Dipper partnership or The Big Dipper, LLC, but instead Mr. Brower sued Mr. Hoerner and his
18 marital community in his or its personal capacity is correct.

19 The Trial Court's decision that under limited liability company law Mr. Brower may not
20 recover compensation from Mr. Hoerner or his marital community in their personal capacities is
21 correct and supported by Washington law. RCW 25.15.126.

22 The Trial Court's decision that there was no conversion or unlawful retention of Mr.
23 Brower's personal property is correct and supported by substantial evidence. Ex. D-109; RP 243-
24 245; 246-259.

1 The Trial Court's decision that there is insufficient evidence as to the damages Mr.
2 Brower allegedly suffered due to alleged fraud is correct and supported by the lack of substantial
3 evidence provided by Brower.

4 The Trial Court's decision that there is insufficient evidence as to the damages Mr.
5 Brower suffered due to alleged tortious interference with a business expectancy is correct and
6 supported by the lack of substantial evidence provided by Brower.

7
8 **B. The Trial Court's Decision that Brower Voluntarily Disassociated Himself**
9 **from The Big Dipper is Supported by Substantial Evidence.**

10
11 Tensions developed in the Brower-Hoerner partnership almost immediately after its
12 inception. CP 76-77; 133; RP 69-70; 105; 118; 138-139; 318-320; 326-330; 378-381; 394-396.

13 Pursuant to RCW 25.05.165, Mr. Brower had a Duty of Care to The Big Dipper
14 partnership that required him to refrain from engaging in grossly negligent or reckless conduct,
15 intentional misconduct, or a knowing violation of law. Mr. Brower had agreed as a necessary
16 commonsense condition of the Brower-Hoerner partnership agreement to refrain from using or
17 distributing marijuana in or near The Big Dipper. RP 320; 326; 372; 395. It is against the rules of
18 the Washington State Liquor and Cannabis Control Board to use, display or distribute marijuana
19 in a bar. Title 314 WAC. Mr. Brower was aware of the fact that using, displaying or distributing
20 marijuana in The Big Dipper could result in the loss of the business's liquor license. RP 326.
21 From the inception of the business until his disassociation, Mr. Brower persisted in using and
22 distributing marijuana in or near The Big Dipper in violation of the Brower-Hoerner partnership
23 agreement. RP 379-380; 394-395. Mr. Brower's breach of his fiduciary duty of care was a
24 constant source of tension between the parties and ultimately nullified his membership in The
25 Big Dipper. RP 394-396.

1 Another important term of the Brower-Hoerner partnership was that each member would
2 make a matching contribution to the business. RP 104-105; 187; 220; 309; 323-326. Failure to
3 make a matching contribution to the business would result in a breach of the partnership
4 agreement. RP 324-326. Mr. Brower failed to provide a matching contribution to the business,
5 therefore Mr. Brower breached the Brower-Hoerner partnership agreement. RP 105; 118; 138-
6 139; 171; 179-180; 312; 372. Mr. Brower's breach was a constant source of tension between the
7 parties. RP 105.

8 Mr. Hoerner believed that Mr. Brower's wife/girlfriend Annie Grinolds was
9 systematically misappropriating alcohol from The Big Dipper. CP 76-77; 133; 453-454; Ex. P-9
10 & Ex. D-119; RP 69-70; 327-329; 381-382. Brower testified to a meeting held in March in which
11 Mr. Hoerner requested that Ms. Grinolds no longer be allowed to serve alcohol at The Big
12 Dipper. RP 327-329. Mr. Brower refused that request. Ex. P-51. Despite being busy, The Big
13 Dipper lost money in 2014. Ex. D-120. Mr. Hoerner did not know why The Big Dipper was
14 losing money, but he believed it was in part due to the misappropriation of alcohol. CP 76-77.
15 The conflict over Ms. Grinolds was a constant source of tension between the parties until
16 September 18, 2014, when Mr. Hoerner told Mr. Brower that Ms. Grinolds was no longer
17 allowed to serve alcohol at The Big Dipper. Ex. P-51; CP 454.

18 Mr. Brower has inferred that the sole source of tension in the Brower-Hoerner partnership
19 was Mr. Hoerner's refusal to provide Mr. Brower with financial information related to the
20 business, specifically access to a credit card and the business's bank account. Appellant's
21 Opening Brief Pg. 1. Mr. Brower states, "*The refusal to provide financial information to Brower*
22 *caused a dispute between the parties. RP 330-331.*" Appellant's Opening Brief Pg. 10. This is
23 false.

24 Mr. Hoerner had reasonable and serious reservations about Mr. Brower and his
25 wife/girlfriend Ms. Grinolds having access to a credit card or The Big Dipper, LLC's bank

1 account. CP 76-77; 133; RP 69-70; 105; 118; 138-139; 318-320; 326-330; 378-381; 394-396.
2 Specifically, Mr. Hoerner believed that Mr. Brower and Ms. Grinolds could or would
3 misappropriate money based on Mr. Brower's support of Ms. Grinolds' "dipping into the till" at
4 The Big Dipper. RP 159; 381. Mr. Hoerner had a fiduciary duty to The Big Dipper to safeguard
5 the business's assets.

6 Mr. Brower began making requests to have access to The Big Dipper's bank account on
7 approximately June 23, 2014, subsequent to all three sources of tension listed above. Ex. P-61.
8 Mr. Brower's claims with respect to financial information are hollow and lack credibility. The
9 real source of tension in the Brower-Hoerner partnership was Mr. Brower's own failures of
10 conduct.

11 In a brazen attempt to use a thoroughly disproven falsehood to support his case, Mr.
12 Brower has claimed, "*On August 28, 2014, unbeknownst to Brower, Mr. Hoerner signed a*
13 *"Change in Governing People, Percentage Owned and/or Stock/Unit Ownership" with the intent*
14 *to file it with the State of Washington Business Licensing Service. RP 111-113; Ex. P-5."*
15 Appellant's Opening Brief Pg. 17. This claim is false and is debunked by the court record cited
16 to support it. RP 111-113. Mr. Hoerner was provided with the Change in Governing People,
17 Percentage Owned and/or Stock/Unit Ownership form by The Big Dipper's attorney Lisa
18 Dickinson subsequent to Mr. Brower's written notice of disassociation published on or about
19 September 22, 2014. Ex. P-5 & Ex. D-110; CP 455-457; RP 72-73; 111-112; 156-157.

20 Brower goes on to claim, "*The purpose of filing this document was to retroactively*
21 *remove Brower's 50% ownership in the Big Dipper back to February 10, 2014. RP 111-113; Ex.*
22 *P-5."* Appellant's Opening Brief Pg. 17. This is false and debunked by the court record cited to
23 prove it. RP 111-113.

24 Mr. Brower has also failed to describe exactly how a person can have their ownership of
25 a business entity removed "retroactively" and by what mechanism or process the State of

1 Washington Business Licensing Service would accomplish a “retroactive removal”, or even what
2 sort of practical effect a “retroactive removal” would have on Mr. Brower. The only reason for
3 Mr. Brower to attempt to substantiate this false scenario is to support the fiction that Mr. Hoerner
4 acted prior to Brower in the dissolution of the Brower-Hoerner partnership. The Trial Court
5 found that substantial evidence proved Brower acted first and disassociated himself from The
6 Big Dipper. Ex. P-43 & Ex. D-107; CP 456; RP 71-72; 385-386.

7 Mr. Brower states, “*On September 20, 2014 a little less than a month after signing the*
8 *document to remove Brower’s 50% ownership from the business license...*” Appellant’s Opening
9 Brief Pg. 17. Once again, Brower is just blatantly, falsely trying to create a scenario that simply
10 didn’t happen. Because of the obvious nature of Brower’s attempted deception in this matter, and
11 how easily and clearly Mr. Brower’s assertion is debunked by the court record, all of Mr.
12 Brower’s claims should be suspect. Mr. Brower is not attempting to argue his case in good faith
13 because he knows the truth is not on his side.

14 On September 18, 2014 Mr. Hoerner told Mr. Brower that his wife/girlfriend Ms. Annie
15 Grinolds was not allowed to serve alcohol at The Big Dipper. Ex. P-51. This is the action that
16 precipitated Mr. Brower and Ms. Grinolds’ conflict with Mr. Hoerner. The remedy chosen by
17 Brower and Grinolds was to shut down and damage the business via threats, harassment,
18 disruption and hate-speech. Ex. P-9 & Ex. D-119; CP 454-455; RP 70; 174-177; 383.

19 Mr. Brower and Ms. Grinolds did not decide to shut down the business because of lack of
20 access to financial records or the business’s bank account. According to Mr. Brower’s own
21 testimony, the alleged ‘financials’ issue had been problematic to him since June 23, 2014. Ex. P-
22 61. And yet Brower and Grinolds were content to allow the business to continue on, as long as
23 Ms. Grinolds was serving alcohol. Ex. P-51. All of the fury and the misguided and hateful
24 actions directed by Brower and Grinolds toward The Big Dipper and Mr. Hoerner was a direct
25 response to Ms. Grinolds no longer being allowed to serve alcohol at the bar, and by extension

1 misappropriate it for the gain of the Brower-Grinolds marital community. CP 76-77; 133; 453-
2 454; Ex. P-9 & Ex. D-119; RP 69-70; 327-329; 381-382.

3 On the morning of September 20, 2014, following the disruption and disbanding of The
4 Big Dipper the previous evening by Brower and Grinolds, Mr. Hoerner sent Mr. Brower an
5 email. Ex. P-9. Mr. Brower has quoted Ex. P-9 in support of his claims, however, Mr. Brower
6 has never made reference to the following section of Ex. P-9:

7 ***Mr. Brower... The following events were reviewed:***

8 ***1. Your reckless and intentional misconduct exemplified in the following***
9 ***transactions:***

- 10 ***a. On September 19th, 2014, you allowed and encouraged a non-employee***
to enter the employees-only section of The Big Dipper, despite repeated
demands from the Managing Member that she leave the area.
- 11 ***b. On September 19th, 2014, you allowed and encouraged a non-employee***
to steal alcohol from The Big Dipper.
- 12 ***c. On September 19th, 2014, you allowed and encouraged a non-employee***
to serve alcohol to customers at The Big Dipper in direct violation of the
law, and despite repeated demands from the Managing Member that she
desist and leave the bar area.
- 13 ***d. On September 19th, 2014, you allowed and encouraged a non-employee***
to verbally abuse and harass the Managing Member in front of
customers, volunteers and performers, doing irreparable harm to both
the LLC and the Managing Member.
- 14 ***e. On September 19th, 2014, you verbally abused and harassed the***
Managing Member in front of customers, volunteers and performers,
doing irreparable harm to both the LLC and the Managing Member.

15 ...

16 ***Your actions have caused The Big Dipper, LLC significant financial loss***
and damage including but not limited to the loss of public good will,
disruption of business activity, and emotional distress of LLC Members.

17 ***You have, notwithstanding multiple demands that you cease and desist***
your destructive and illegal behavior, repeatedly declared you have no
intention of complying with the directives of the Managing Member, in
violation of The Big Dipper, LLC partnership agreement.

1 After being interviewed by the Spokane Police on the night of September 20, 2014, Mr.
2 Brower and Ms. Grinolds calmed down, but the event was ruined. Ex. D-106; CP 455; RP 70;
3 342-345; 375-378.

4 On September 21, 2014 Mr. Hoerner hired attorney Lisa Dickinson to represent the best
5 interests of The Big Dipper, LLC. CP 455; RP 70-71; 176.

6 On the evening of September 22, 2014, Brower and Grinolds returned to The Big Dipper
7 for a third time to disrupt and disband the business. Brower and Grinolds once again harassed
8 and filmed performers, staff and customers, called for a boycott of the business, and hurled
9 insults and hate speech at Mr. Hoerner. Ex. D-106; CP 133; RP 71; 128; 178.

10 Mr. Hoerner called the Spokane Police on the evening of September 22, 2014 in direct
11 response to the danger posed by Mr. Brower and Ms. Grinolds. Ex. D-106; Ex. D-107 & Ex. P-
12 43; RP 178; 194. After interviewing Mr. Brower, calling the owner of the building and
13 consulting with the Washington Secretary of State, the Spokane Police made the decision to
14 escort Mr. Brower out of The Big Dipper. Ex. D-107.

15 Some time late in the evening of September 22, 2014 Mr. Brower seized control of The
16 Big Dipper's Facebook page, changed the login information, and posted a statement of
17 disassociation from The Big Dipper and Mr. Hoerner. Ex. P-43 & Ex. D-107; CP 456; RP 71-72;
18 385-386. The statement was unambiguous and represented Mr. Brower's written withdrawal
19 from The Big Dipper partnership. Ex. D-107.

20 On Page 19 of the Appellant's Opening Brief, Mr. Brower has presented a sanitized and
21 edited version of his notice of public disassociation, which he calls the "pertinent part". Mr.
22 Brower's spin is crystal clear by looking at the parts of the post that he cut out. These are the
23 sections Mr. Brower edited out of his statement (syntax original):

24 ***"Many of you are great friends who came to this page when i opened The Big Dipper.***

25 ***We've made so many new friends as Annie and I worked away doing our daily duties to***

1 *bring the fun. Many others put into this shared spirit. We are huge music fans and it*
2 *was a pleasure and loves labor.”*

3 *“We were a member managed family affair. The tension increased as Dans controlling*
4 *insistence grew throughout the last year. His self claimed “managing member’ seemed*
5 *uncomfortable, yet i trusted him. Whatever, “i can take titles also”, i thought. Some of*
6 *us were bringing different skills and desires to the effort. His anger and stealthy lash*
7 *outs increased, increasingly directed towards Annie, became near unbearable. She*
8 *maintained for me and The Big Dipper. He carried on a manipulative and two faced*
9 *fluffing of my close friends. People gave to The Big Dipper.”*

10 *“We want to book this band? Burlesque is cool! Communication waned to silence and*
11 *avoidance. Team Troy and Annie uniting with Dan and Dawson.”*

12 *“So good as to win the whole sky.”*

13 *“It was strange, the waves of emotion moving through my body as i realized the depths*
14 *of betrayal that had taken place. For the first time in few years, tears overwhelmed this*
15 *usual hardened soldier.”*

16 *“Something Dan just couldn’t bare to confess laid bare.”*

17 *“I’m burned and out. I did make it by a threatened stabbing from a knife Dan had*
18 *positioned upon the Taps in case i went “crazy”.”*

19 *“Sure i was naïve and a little gullible but... others can remain culpable but I say divest*
20 *in Dan and fuck off. From a web of lies and plain usury my now free heart is softened.*
21 *My experience grows.”*

22
23 Mr. Brower’s statement that, “...others can remain culpable but I say divest in Dan and
24 fuck off,” is unambiguous. A reasonable interpretation of that text is that Mr. Brower considers
25 anyone working with Mr. Hoerner or supporting The Big Dipper “culpable” of wrongdoing and

1 that anyone who wants to avoid wrongdoing should be rid of or free from Mr. Hoerner and The
2 Big Dipper. With this statement Mr. Brower is both calling for a boycott of The Big Dipper and
3 stating that Mr. Brower personally has divested his interest in The Big Dipper. Ex. P-43 & Ex.
4 D-107.

5 In Mr. Brower's edited statement on Page 19 of the Appellant's Opening Brief, Mr.
6 Brower transcribes a line from his Facebook post as reading, "I'm burned out." Everywhere else
7 in the edited statement Mr. Brower used ellipses to indicate places where text was cut out. Mr.
8 Brower's actual words were, "I'm burned and out." Mr. Brower did not use ellipses to indicate
9 that he cut the 'and' out of his statement when he transcribed it into his Appellant's Opening
10 Brief on Page 19. This is important because the difference between "I'm burned out" and "I'm
11 burned and out" is the difference between two totally different thoughts and intentions. "I'm
12 burned out" has a standard meaning that a person is tired of something or just plain tired. "I'm
13 burned and out" in the context of Brower's statement means he was burned, an expression used
14 when someone has had a negative past experience, and he is now out of the partnership. The
15 intentional misrepresentation of his statement in the Appellant's Opening Brief Page 19 is
16 indicative of Mr. Brower's general lack of credibility.

17 Mr. Brower then goes on to claim, "*The trial court relied solely upon the above*
18 *statement made by Brower that he was "no longer co-owner of The Big Dipper" to find Brower*
19 *voluntarily disassociated his equal interest in the Big Dipper. CP 519, 523.*" Appellant's
20 Opening Brief Pg. 19. This is false.

21 The statement that Mr. Brower is referring to is his own sanitized and edited version of
22 Mr. Brower's original Facebook post.

23 In making its decision, the Trial Court relied on Mr. Brower's original Facebook post, as
24 well as other evidence and testimony that provided substantial proof that Mr. Brower

1 disassociated himself from The Big Dipper. Ex. P-43 & Ex. D-107; Ex. D-106; CP 456; 483; RP
2 71-72; 105; 152; 153-154; 184; 385-386.

3 The Trial Court found that Mr. Hoerner was justified in filing a Change in Governing
4 People, Percentage Owned and/or Stock/Unit Ownership form with the Washington State
5 Business Licensing Service on September 26, 2014 because Hoerner believed, as any reasonable
6 person would, that Mr. Brower had commemorated his disassociation from The Big Dipper in
7 writing. The court determined, "*Mr. Brower disassociated from The Big Dipper, LLC. Mr.*
8 *Hoerner filed documents with State agencies removing Mr. Brower from The Big Dipper, LLC*
9 *after Mr. Brower voluntarily disassociated by his Facebook post on or about September 20,*
10 *2014.*" CP 525. Followed by, "*Mr. Hoerner reasonably accepted and memorialized Mr.*
11 *Brower's disassociation.*" CP 525.

12 The Trial Court heard testimony that Mr. Brower's statement of disassociation was the
13 public face of The Big Dipper for three months, and during that time Brower never once
14 recanted, altered or made any further statement regarding his disassociation. RP 336-337. During
15 those three months, Mr. Brower curated a comments section below his statement that called for a
16 boycott of The Big Dipper as well as slurs and hate-speech directed at the Respondents. RP 387-
17 390. Mr. Brower never again returned to, invested in, worked for or made any positive
18 contribution to The Big Dipper. In fact, all of Mr. Brower's post-disassociation efforts have been
19 to harm, disband and destroy the business and the Respondents personally. RP 71-72; 334-342;
20 385-394.

21 On Page 20 of the Appellant's Opening Brief, Mr. Brower claims, "*Based solely on*
22 *Brower's Facebook post, and disregarding all evidence of Mr. Hoerner's prior actions leading*
23 *to Brower's post, the trial court's "Conclusion of Law" regarding the claim for declaratory*
24 *judgement found Brower voluntarily disassociated himself from the Big Dipper by the statement.*
25 *CP 523.*" This is false and a willful misinterpretation of the facts. The Trial Court found

1 substantial evidence of Mr. Brower's own actions prior to and subsequent to his public notice of
2 disassociation that unequivocally show Mr. Brower's intention to divest his interest in The Big
3 Dipper. CP 456; RP 71-72; 334-342; 385-394.

4 The Trial Court found that "*Mr. Hoerner consented to Mr. Brower's written*
5 *disassociation by filing the Change in Governing People, Percentage Owned and/or Stock/Unit*
6 *Ownership on or about September 26, 2014.*" CP 523. Mr. Brower disputes this by claiming,
7 (syntax and emphasis original), "*The above filing referenced by the trial court was signed by Mr.*
8 *Hoerner on August 28, 2014, a month prior to Brower's Facebook post. RP 111-113; Ex. P-5.*"
9 Appellant's Opening Brief Pg. 20. This is a false statement and disputed by the very court record
10 cited to support it. RP 111-113. Mr. Brower is clearly attempting to 'repeat a lie often enough
11 that it becomes truth.' Ex. P-5 & Ex. D-110; RP 72-73; 111-112; 156-157.

12 The court heard testimony that Mr. Hoerner first learned about the Change in Governing
13 People, Percentage Owned and/or Stock/Unit Ownership form when his attorney Lisa Dickinson
14 provided it to him subsequent to Mr. Brower's public notice of disassociation on or about
15 September 23, 2014. RP 156-157.

16 Mr. Brower claims on Page 20 of the Appellant's Opening Brief, "*In making its finding*
17 *based on Brower's Facebook post, the trial court completely ignored the September 20, 2014,*
18 *email sent by Mr. Hoerner two days prior to this post attempting to unilaterally vote Brower out*
19 *of his equal interest in the Big Dipper, and threatening to have him removed by police should he*
20 *return to the Big Dipper. Ex. P-9.*" However, it is Mr. Brower himself who is completely
21 ignoring his own reprehensible, infantile and damaging efforts to shut down the business because
22 his wife/girlfriend Annie Grinolds was no longer allowed to serve alcohol at The Big Dipper. P-
23 51, RP 383. Mr. Brower's own actions precipitated the email of September 20, 2014. Ex. P-9, RP
24 383.

1 In the Appellant's Opening Brief, Mr. Brower does not address the circumstances that led
2 to Mr. Hoerner sending Brower the email on the morning of September 20, 2014 warning him
3 not to continue his dangerous, unlawful and damaging behavior. Ex. P-9, RP 383. Mr. Brower
4 does not address the fact that he completely ignored the email and returned to The Big Dipper
5 again that evening to continue his crusade to disband the business. Ex. D-106; CP 455; RP 70;
6 177-178; 342-345; 375-378. The Trial Court, however, did not ignore the substantial evidence of
7 Mr. Brower's damaging actions, and therefore, made the correct decision based on the evidence.

8 *"Substantial evidence is evidence sufficient to persuade a reasonable person of the truth*
9 *of the finding."* Mansour v. King County, 131 Wash. App. 255, 262, 128 P.3d 1241 (2006). The
10 Trial Court's finding that, *"...following the conflict at The Big Dipper, Mr. Brower posted a*
11 *Facebook announcement on The Big Dipper's Facebook Page that he was no longer part of The*
12 *Big Dipper. In part, he wrote, "I am no longer the co-owner of The Big Dipper"; "I am burned*
13 *and out" (syntax original); "I am glad to be gone"; "Time for some rest and solitude."*
14 *Plaintiff's Exhibit 43; Defendants' Exhibit D-107,*" is correct and based on substantial evidence.
15 Ex. P-43 & Ex. D-107.

16 After having experienced in person Mr. Brower's efforts to disrupt and disband the
17 business for three nights, after seeing firsthand Brower's seizure and lockout of the business's
18 official Facebook page, after reading Brower's public notice of disassociation, after Brower's
19 public notice of disassociation was reprinted verbatim by the Spokane Inlander, after no further
20 communication, comment or clarification was made by Brower regarding his statement, after
21 Brower led a boycott of The Big Dipper, a reasonable person would come to the conclusion that
22 Mr. Brower had withdrawn in writing from the Brower-Hoerner partnership and The Big Dipper,
23 LLC.

24 This court should uphold the Trial Court's finding that Brower disassociated himself
25 from The Big Dipper.

1
2 **C. The Trial Court’s Decision that Brower Disassociated Himself from the Big**
3 **Dipper is Supported by Washington Law.**
4

5 The Trial Court’s conclusion of law that Mr. Brower disassociated himself from The Big
6 Dipper is supported by Washington law. RCW 25.15.131 sets forth the circumstances in which a
7 member may be disassociated from an LLC in the absence of a limited liability company
8 agreement: “(2) *A member may withdraw from a limited liability company at the time or upon*
9 *the happening of events specified in and in accordance with the limited liability company*
10 *agreement. If the limited liability company agreement does not specify the time or the events*
11 *upon the happening of which a member may withdraw, a member may not withdraw from the*
12 *limited liability company without the written consent of all other members.*” Mr. Brower
13 provided his written consent on or about September 22, 2014, and Mr. Hoerner provided his
14 written consent on or about September 26, 2014. Ex. P-43 & Ex. D-107; Ex. P-5 & Ex. D-110.

15 The Trial Court found by accepting Mr. Brower’s written consent to disassociation from
16 The Big Dipper, and by providing his own written consent, Mr. Hoerner followed Washington
17 limited liability company law. Mr. Hoerner made a “*bona fide attempt to comply with the law*”,
18 *by actually accomplishing its purpose.* Humphrey Indus., Ltd. v. Clay St. Assoc., LLC, 170
19 Wn.2d 495, 504 (2010).

20 Mr. Hoerner and Mr. Brower complied with RCW 25.15 which requires the consent of a
21 majority of members to amend the certificate of formation of a limited liability company.
22 According to the Trial Court’s ruling of October 18, 2018, The Big Dipper, LLC consisted of
23 two members, Brower and Hoerner, who each owned 50% of the LLC. CP 523. Mr. Brower and
24 Mr. Hoerner both consented in writing to Mr. Brower’s disassociation from The Big Dipper,
25 which means that 100% (a majority) of the members of The Big Dipper, LLC consented to

1 Brower's disassociation and the subsequent amendment of the certificate of formation. Ex. P-43
2 & Ex. D-107; Ex. P-5 & Ex. D-110.

3 After accusing Mr. Hoerner of allegedly committing fraud by allegedly filing false
4 documents with various Washington State authorities, Mr. Brower has the breathtaking audacity
5 to claim, "*Unlike Mr. Hoerner, Brower complied with the statutory scheme and acted promptly*
6 *when he discovered the false documents. RP 281-284, Ex. P-31 & P-32.*" Appellant's Opening
7 Brief Pg. 24.

8 Mr. Brower is referring to his own surreptitious and underhanded appropriation of 100%
9 of The Big Dipper, LLC on March 20, 2015, when he filed false documents with the Washington
10 Secretary of State removing Mr. Hoerner as a member of the LLC. Ex. D-112; CP 61.

11 The Trial Court saw right through Mr. Brower and found, "*On March 20, 2015, nearly*
12 *six months after disassociating from the partnership and The Big Dipper, LLC, Mr. Brower*
13 *replaced Mr. Hoerner's name with his own as the sole member of The Big Dipper, LLC with*
14 *Washington's Secretary of State's office.*" CP 520. Followed by, "*On March 31, 2015, when Mr.*
15 *Hoerner became aware of Mr. Brower's effort to alter the records with the Secretary of State, he*
16 *corrected them.*" CP 520.

17 Mr. Brower 1) represented to the Secretary of State that he was 100% owner of The Big
18 Dipper, LLC; 2) that representation had materiality; 3) the representation was unequivocally
19 false; 4) Mr. Brower did not believe he was the 100% owner of The Big Dipper, LLC; 5) Mr.
20 Brower intended that the Secretary of State would act on his representation; 6) the Secretary of
21 State was ignorant of the falsity of Brower's representation; 7) the Secretary of State relied on
22 the truth of Brower's representation; 8) the Secretary of State had the right to rely on the truth of
23 Brower's representation; and 9) both the Secretary of State and Respondent Hoerner were
24 damaged by Brower's false representation; the Secretary of State by updating their records with
25

1 false information, and Hoerner by the costs incurred in attorney's fees and filing fees to correct
2 the issue. CP 61, 62; RP 280-285.

3 The Trial Court found that Mr. Brower withdrew in writing as a member of The Big
4 Dipper, LLC. CP 519-520. Washington law supports the Trial Court's decision that Mr. Brower
5 and Mr. Hoerner consented in writing to Mr. Brower's withdrawal. RCW 25.15.131. All
6 subsequent actions by Hoerner were taken under the advice of an attorney with the intent of
7 following the law. CP 455; RP 70-71; 105; 152; 153-154; 176. Therefore, the Trial Court's
8 decision should be upheld.

9
10 **D. The Trial Court was Correct in Determining Brower Failed to Prove His**
11 **Claim for Breach of Contract.**

12 Generally, the "*plaintiff in a contract action must prove a valid contract between the*
13 *parties, a breach, and resulting damage.*" Lehrer v. State Dept. of Soc. and Health Serv., 101
14 Wn. App. 509, 516 (2000). The standard burden of proof when a breach of contract is alleged is
15 a preponderance of evidence. See generally, Allstate Ins. Co. v. Huston, 123 Wn. App. 530
16 (2004). The essential elements of a contract are, "the subject matter of the contract, the parties,
17 the terms and conditions, and (in some but not all jurisdictions) the price or consideration."
18 DePhillips v. Zolt Constr. Co., 136 Wn.2d 26, 31 (1998) (quoting Family Med. Bldg., Inc. v.
19 Dept. of Soc. & Health Serv., 104 Wn.2d 105, 108, 702 P.2d 459 (1985)).

20
21 In order for a contract to be formed, there must be mutual assent to the material terms of
22 the contract. Yakima Cty. (West Valley) Fire Prot. Dist. No. 12 v. City of Yakima, 122 Wn.2d
23 371, 388 (1993). Mutual assent is only required as to the material terms of the contract.
24 Trendwest Resorts, Inc. v. Ford, 103 Wn. App. 380, 388 (2000). Once there is mutual assent to
25

1 the material terms of the contract, the contract must be supported by consideration. DePhillips,
2 136 Wn.2d at 31. Washington courts define consideration as, “any act, forbearance, creation,
3 modification, or destruction of a legal relationship, or return promise given in exchange.” King v.
4 Riveland, 125 Wn.2d 500, 505 (1994). Consideration must be bargained for and exchanged for a
5 promise. Williams Fruit Co. v. Hanover Ins. Co., 3 Wn. App. 276, 281 (1970).

6 The implied duty of good faith and fair dealing in every contract, “*obligates the parties*
7 *to cooperate with each other so that each may obtain the full benefit of performance.*” Badget v.
8 Sec. State Bank, 116 Wn.2d 563, 569 (1991). The duty of good faith and fair dealing prohibits
9 one party from interfering with the other party’s performance. State v. Trask, 91 Wn. App. 253,
10 272-3 (1998). The duty of good faith does not obligate a party to accept a material change in
11 terms of the contract and obligates the parties to perform their respective obligations imposed by
12 their agreement. Betchard-Clayton, Inc. v. King, 41 Wn. App. 887, 890 (1985); Barret v.
13 Weyerhauser Co. Severance Pay Plan, 40 Wn. App. 630, 635 n. 6 (1985).

14 The Trial Court found that Mr. Brower failed to perform with respect to the Brower-
15 Hoerner partnership agreement: 1) Brower did not make an equal contribution to The Big
16 Dipper; 2) Brower’s labor was insufficient, done by others, or had to be redone; 3) Brower used
17 and distributed marijuana in and near The Big Dipper, jeopardizing the business’s liquor license,
18 in direct violation of the partnership agreement; 4) Brower breached his fiduciary duty of care by
19 putting the business’s liquor license at risk; 5) Brower breached his fiduciary duty of care by
20 allowing and encouraging his wife/girlfriend misappropriate alcohol; 6) Brower refused to
21 cooperate with Mr. Hoerner about his wife/girlfriend Ms. Grinolds serving alcohol at The Big
22 Dipper; 7) Brower breached his fiduciary duty of care by organizing a boycott of The Big
23 Dipper, intentionally damaging the business prospects for The Big Dipper; 8) Brower used slurs
24
25

1 and hate-speech against his partner in front of performers, customers and staff, greatly damaging
2 the business prospects of The Big Dipper; 9) Brower seized The Big Dipper's official Facebook
3 page, changed the login information, and posted a self-serving and defamatory public notice of
4 disassociation, greatly damaging the business prospects of The Big Dipper and the reputations of
5 the Respondents; and 10) Brower intentionally interfered with Mr. Hoerner's ability to operate a
6 business at The Big Dipper. Ex. P-43 & D-107; Ex. D-106; CP 76-77; 133; RP 69-70; 105; 118;
7 138-139; 171; 179-180; 287-288; 294-309; 312; 318-320; 326-330; 372; 378-381; 394-396.

8 Mr. Brower breached the covenant of good faith and fair dealing implied in every
9 contract requiring the parties to cooperate to gain the full benefit of the bargain. Badget, 116
10 Wn.2d at 569 (1991).

11 Mr. Brower's conduct constitutes a material breach of the parties' oral partnership
12 contract. Mitchell v. Straith, 40 Wash. App. 410 (1985).

13 Mr. Brower failed to prove Mr. Hoerner breached his contract with Brower.

14 Mr. Brower failed to provide sufficient evidence of damages.

15
16
17 **E. Mr. Brower's Credibility is Suspect.**

18
19 1. Brower testified under oath he never distributed marijuana in The Big Dipper. RP
20 319. Matt Paulson testified under oath that he witnessed Brower distributing
21 marijuana in The Big Dipper. RP 379-380.

22 2. Brower testified under oath that there was never a disagreement between Brower and
23 Hoerner about Brower distributing marijuana in The Big Dipper. RP 326. Matt
24

1 Paulson testified under oath that he witnessed Hoerner confronting Brower about
2 distributing marijuana in The Big Dipper. RP 394.

3 3. Brower testified under oath that the only reason his name did not appear on the lease
4 for The Big Dipper was that Hoerner "...rushed up there and signed it without me
5 that day." RP 291-294. Steve Spickard, the owner of The Big Dipper, testified under
6 oath that Mr. Brower was never meant to be a signatory to the lease. RP 365.

7 4. Mr. Brower testified under oath about Ex. P-49. When asked by his attorney, "Were
8 you the one who was mainly responsible for performing all of these tasks?" Mr.
9 Brower replied, "Yes, I was." RP 225-226. Mr. Brower's own subsequent testimony
10 proved that statement to be false. RP 294-309.

11 5. Occasionally, Mr. Brower's testimony conflicts with itself in the space of a few
12 sentences, such as when he claimed, "I had possessions in the Big Dipper when I was
13 locked out. Dan refused to give them to me. And so I've never received them back."
14 RP 243. In the next breath Brower changes his story, first to a trade for the hijacked
15 Facebook page, then to a delivery that was too inconvenient for him to receive. RP
16 244-245.
17

18 Because of the many conflicts and outright falsehoods contained within Mr. Brower's
19 testimony, all of his claims are suspect. The trier of fact is the sole judge "of credibility of
20 witnesses". WPI 1.02.

21 As a result of Mr. Brower's breach of the partnership agreement, Mr. Brower's failure to
22 prove a breach on the part of Mr. Hoerner, Mr. Brower's failure to prove he suffered any
23 damages as a result of the alleged breach, and Mr. Brower's general lack of credibility, Mr.
24
25

1 Brower's claims fail and the Respondents pray that this Court will uphold the decision of the
2 Trial Court.

3
4 **F. The Trial Court Correctly Determined Mr. Brower Failed to Prove Fraud.**

5
6 The elements of Fraud are: 1) Representation of an existing fact; 2) materiality; 3) falsity;
7 4) the speaker's knowledge of its falsity; 5) intent of the speaker that it should be acted upon by
8 the plaintiff; 6) plaintiff's ignorance of its falsity; 7) plaintiff's reliance on the truth of the
9 representation; 8) plaintiff's right to rely upon it; and, 9) damages suffered by the plaintiff.
10 Baddely v. Seek, 138 Wn. App. 333, 339 (2007). The plaintiff must prove every element by
11 clear, cogent, and convincing evidence. Baddely v. Seek, 138, 339 (2007).

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13 Prior to the formation of the Brower-Hoerner partnership, neither Mr. Brower nor Mr.
14 Hoerner were attorneys, nor did either partner have any training with respect to Washington law.
15 RP 64; 74; 108.

16 At all times, Mr. Hoerner believed he was doing the right and proper thing.

17 At all times, Mr. Hoerner's intent was to do the right and proper thing, and to follow
18 Washington law.

19 On September 21, 2014, Mr. Hoerner hired attorney Lisa Dickinson to represent the best
20 interests of The Big Dipper, LLC. CP 455; RP 70-71; 176. Every action taken by Mr. Hoerner
21 subsequent to September 21, 2014 was guided by his attorney, with the intent to do the right and
22 proper thing. CP 455-460; RP 71. Every representation made by Mr. Hoerner was true and
23 correct to the best of his knowledge.
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1 On September 22, 2014, after the third night of Mr. Brower's campaign to disbar and
2 disband The Big Dipper, Mr. Brower posted a public statement of disassociation from The Big
3 Dipper. P-43 & D-107.

4 Mr. Brower failed to show with clear, cogent and convincing evidence that Mr. Hoerner
5 made any representations that he knew were false.

6 The Trial Court recognized the fact that it is not fraud if the speaker does not know the
7 representations are false. CP 526.

8 Simply saying that a speaker committed fraud because a representation they made was
9 false is not enough; the plaintiff must provide clear, cogent, convincing evidence that the speaker
10 knew the representation was false. CP 526.

11 Mr. Brower offered the Trial Court no clear, cogent, convincing evidence beyond his
12 claim that Mr. Hoerner committed fraud. CP 526-527.

13 Mr. Brower also failed to prove to the court that he suffered any damages as a result of
14 the alleged fraud. CP 527.

15 Mr. Brower's claims of damages are hollow, phony and not made in good faith.

16 The Trial Court found that Mr. Brower failed to prove the fourth element necessary to
17 show fraud, 'the speaker's knowledge of a representation's falsity,' and Mr. Brower's fraud
18 claim failed. CP 526-527.

19 The Trial Court found that Mr. Brower failed to prove the ninth element necessary to
20 show fraud, 'damages suffered by the plaintiff,' and Mr. Brower's fraud claim failed. CP 527.

21 The Trial Court's finding that Mr. Brower failed to prove fraud is supported by the lack
22 of substantial evidence provided by Brower, and Washington law. The Respondents pray that
23 this Court will uphold the decision of the Superior Court.
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V. CONCLUSION

The Trial Court's decision that Brower disassociated himself from The Big Dipper is correct and based on substantial evidence. The evidence shows that Mr. Brower failed to perform as Mr. Hoerner's business partner and equal member in The Big Dipper. Prior to and subsequent to Mr. Brower's disassociation from The Big Dipper, Mr. Brower damaged and interfered with the business expectancies of Mr. Hoerner and The Big Dipper, LLC. Mr. Brower allowed a host of his personal problems to create a dangerous and hostile environment at The Big Dipper. Mr. Brower allowed and encouraged the unlawful behavior of his wife/girlfriend Annie Grinolds. Mr. Brower and Ms. Grinolds harassed, intimidated and threatened performers, customers and staff at The Big Dipper. Mr. Brower called Mr. Hoerner a "faggot Jew" and a "piece of shit" in front of performers, customers and staff at The Big Dipper. Mr. Brower seized The Big Dipper's most critical public face and marketing tool, its Facebook page, unilaterally changed the login, and posted his self-serving, defamatory and damaging notice of disassociation. Thereafter, Mr. Brower used the hijacked Facebook page to organize a boycott to damage and disband The Big Dipper.

Mr. Brower's every thoughtless, infantile and dangerous action to intentionally damage The Big Dipper and the Respondents prove beyond a shadow of a doubt that his claims are not about justice, fair play or doing what's right. Mr. Brower's claims are about revenge, pure and simple. Mr. Brower knows he has no case, which is why he argues in misleading terms using falsehoods and made up facts. The truth is not on Mr. Brower's side, but then Mr. Brower does not care about getting at the truth. Mr. Brower cares only about one thing: vengeance. He

1 used the Trial Court as a bludgeon to harass, intimidate and damage the Respondents, exactly as
2 he is using the Court of Appeals as a weapon to inflict further harm. Respondents humbly
3 request the Court find in favor of Respondents at the Appeal of this matter, uphold the decision
4 of the Superior Court, and award Respondents their costs and fees.

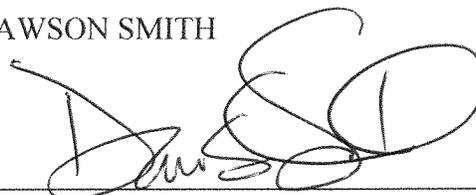
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7 Respectfully Submitted this 27 day of JUNE, 2019.

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9 DANIEL HOERNER

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12 DANIEL HOERNER
13 Pro Se Defendant

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15 DAWSON SMITH

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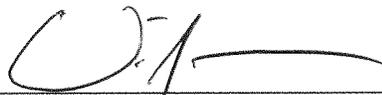
18 DAWSON SMITH
19 Pro Se Defendant

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the 27 day of JUNE, 2019, at Spokane, Washington, the foregoing documents were caused to be served on the following person(s) in the manner indicated: **Respondents' Opening Brief.**

Chad Freebourn Roberts Freebourn, PLLC 1325 W. First Ave., Ste. 303 Spokane, WA 99201	<input type="checkbox"/> VIA REGULAR MAIL <input type="checkbox"/> VIA CERTIFIED MAIL <input checked="" type="checkbox"/> HAND DELIVERED <input type="checkbox"/> VIA FACSIMILE <input type="checkbox"/> VIA EXPRESS DELIVERY
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DANIEL HOERNER