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NO. 57112-5-I

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

ARMEN YOUSOUFIAN,

Appellant,

v.

THE OFFICE OF RON SIMS, KING COUNTY EXECUTIVE, a
subdivision of KING COUNTY, a municipal corporation, et al.,

Respondents.

BRIEF OF *AMICUS CURIAE* ALLIED DAILY NEWSPAPERS OF
WASHINGTON, THE EVERGREEN FREEDOM FOUNDATION, THE
WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION, THE
WASHINGTON COALITION FOR OPEN GOVERNMENT, THE
CENTER FOR JUSTICE, AND THE SEATTLE COMMUNITY
COUNCIL FEDERATION

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COURT OF APPEALS
STATE OF WASHINGTON
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I. IDENTITY OF *AMICI*

A. Allied Daily Newspapers of Washington

Allied Daily Newspapers of Washington, Inc. (“Allied”) is a Washington not-for-profit association representing 27 daily newspapers serving Washington and the Washington bureaus of the Associated Press.

B. Evergreen Freedom Foundation

The Evergreen Freedom Foundation (“EFF”) is a non-partisan, public policy research organization with 501(c)(3) status, based in Olympia, Washington. EFF’s mission is to advance individual liberty, free enterprise, and responsible, transparent government.

C. Washington Newspaper Publishers Association.

Washington Newspaper Publishers Association (“WNPA”) is a for-profit association representing 124 community newspapers in Washington. With the exception of four daily newspapers and three biweekly newspapers, WNPA’s member newspapers are weekly or semi-weekly newspapers, most serving rural or suburban communities.

D. Washington Coalition for Open Government

The Washington Coalition for Open Government (“the Coalition”), a Washington nonprofit organization, is an independent, nonpartisan organization dedicated to promoting and defending the public’s right to

know in matters of public interest and in the conduct of the public's business.

E. The Center for Justice

The Center for Justice ("the Center") is a non-profit, public interest law firm located in Spokane, Washington, and recognized by the IRS as 501(c)(3). It regularly represents individuals and community organizations in their efforts to enforce Washington's Public Records Act.

F. The Seattle Community Council Federation

The Seattle Community Council Federation is a coalition of neighborhood associations from throughout Seattle. It was incorporated in and has been in existence since 1943.

II. INTEREST OF *AMICI*

The interest of *Amici* in this case stems from the public's strong interest in timely and complete information concerning the conduct of government. Each day, the *Amici* and their memberships request records from government under the Public Records Act ("PRA"). Each day they rely upon the good will of those agencies to abide by the law and release records as required. The only threat to ensure compliance is the right to sue, at one's own expense, and, if one wins against an agency, to obtain reimbursement of some of or all of one's fees and costs and a penalty of \$5 to \$100 per day for each day the record was withheld.

This Court's decision will greatly impact the scope of that threat in the future. With this case, this Court is being asked to determine whether any guidelines exist to inform judicial discretion regarding the choice of a penalty between \$5 and \$100 per day. The *Amici* and their members are regularly forced to challenge improper denials of public record requests and thus invoke and rely upon the provisions in the PRA related to statutory penalties. This decision will impact the deterrence, or lack thereof, created by such penalties. It will impact the ability of citizens and members of the *Amici* to bring lawsuits to challenge violations of the PRA. Thus, the *Amici* have a legitimate interest in assuring the Court is adequately informed about the impact its decision will have on all record requesters, not just the one whose record requests are at issue in this appeal.

III. STATEMENT OF THE CASE

Amici adopts the Statement of the case of the Appellant.

IV. ARGUMENT AND AUTHORITY

A. The Purpose of the Act is to Provide Full Access.

In 1972, the people of Washington passed the Public Records Act (then called the Public Disclosure Act) through Initiative 276. The voter pamphlet's statement of support explained:

[O]ur whole concept of democracy is based on an informed and involved citizenry. Trust and confidence in governmental institutions is at an all time low. High on the list of causes of this citizen distrust are secrecy in government and the influence of private money on governmental decision making. Initiative 276 brings all of this out into the open for citizens and voters to judge for themselves.

As enacted, the PRA repeatedly proclaimed the public policy of openness underlying the Act:

[M]indful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

The provisions of this chapter shall be liberally construed to promote ... full access to public records so as to assure continuing public confidence of ... governmental processes, and so as to assure that the public interest will be fully protected.

RCW 42.17.010(11). The rules of construction to be applied by agencies and courts could not be more clear:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy.

RCW 42.56.030. These policy statements indicate “the Legislature’s intent to ensure full access to public records.” *ACLU v. Blaine Sch. Dist.*, 86 Wn. App. 688, 697, 937 P.2d 1176 (1997).

The clear intent of the Act is “a strongly worded mandate for broad disclosure of public records.” *Progressive Animal Welfare Soc’y v. University of Washington*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994) (*PAWS*); *see also Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978). In order to promote “complete disclosure,” courts must construe the Act’s disclosure provisions liberally. *Dawson v. Daly*, 120 Wn.2d 782, 788, 845 P.2d 995 (1993); *see also PAWS*, 125 Wn.2d at 251.

The intent behind the PRA is clear: It is to be “liberally construed to promote ... full access to public records.” RCW 42.17.010(11). The intent behind the penalty provision is equally clear: It is to “discourage improper denial of access to public records.” *Hearst*, 90 Wn.2d at 140; *see also Amren v. City of Kalama*, 131 Wn.2d 25, 36, 929 P.2d 389 (1997); *PAWS*, 125 Wn.2d at 271; *King County v. Sheehan*, 114 Wn. App. 325, 351, 57 P.2d 307 (2002); *Doe I v. State Patrol*, 80 Wn. App. 296, 302, 908 P.2d 914 (1996); *Yacobellis v. City of Bellingham*, 64 Wn. App. 295, 300, 825 P.2d 324 (1992).

The legislative intent of both the PRA and its penalty provision promotes disclosure of public records, discourages attempts to err on the

side of nondisclosure and evinces a clear preference for requesters who prevail in obtaining access to records.

B. The Statutory Penalty is a Key Mechanism to Enforcement.

The Legislature did not provide for damages in the PRA. The law provides only three things if one wins – an order providing access to the record, an award of the fees and costs incurred which the court determines was reasonable, and a per day penalty between \$5 and \$100 per day for each day the record was denied. RCW 42.56.550 The statutory penalty provision is a vital tool “to enforce the strong public policies underlying the public disclosure act.” *Amren* 131 Wn.2d at 35-36. It is the only real deterrent to withholding of public records, and, as will be discussed further below, it is so minimal in most cases today that it has little deterrent effect.

There has been a penalty provision in the PRA since it became law in 1973. Laws, 1973 c 1 § 34 (Initiative Measure No. 276, approved Nov. 7, 1972); 1992 c 139 § 8. The only change other than a recent renumbering of the statute was a 1992 amendment that increased the maximum amount of the penalty from \$25 to \$100 a day, removed the discretion of a court not to award any penalty, and required at least a minimum penalty of \$5 per day. The amendment also expanded the

penalty to apply when agencies unreasonably delay in responding to requests for public records.

Yet despite the existence of a range of penalties – and a \$75 per day increase of the maximum penalty more than a decade ago – few courts ever issue penalties above the minimum penalty, let alone at the level of the original maximum penalty in place in 1972. *See, e.g., ACLU*, 95 Wn. App. at 115 (\$10 daily penalty even where “it is clear the District did not act in good faith”). *See also* Order on Plaintiff’s Motion for Partial Summary Judgment, *Pimentel v. Bruce W. Young, et al.*, Cause # 04-2-50598-7, Franklin County Superior Court, July 5, 2005 (awarding no more than \$25 per day despite finding that the agency “violated the Public Disclosure Act in bad faith” and withheld records for a period of 505 days); Order Granting the Olympian’s Motion for Fees, Costs and Statutory Penalty, *Audrey Broyles v. Edward J. Holm, et al.*, Cause # 02-2-00051-4, Thurston County Superior Court, June 24, 2002 (imposing \$5 per day penalty for records deemed to be a single report against an agency held to have violated the PRA by failing to identify exemptions or release redacted records or to give the requester its fullest assistance and most timely possible response); Ruling on Columbian’s Motion for Disclosure of Public Record, *Columbian v. Clark County Regional Services Agency*, Cause # 050-2-01366-8, Clark County Superior Court, March 25, 2005

(awarding \$5 per day for 911 tape withheld without citation of any exemption and later ruled to be non-exempt); Judgment Awarding The Seattle Times Company Fees, Costs and Civil Penalties, *Hudson v. Seattle School District*, Cause # 00-2-07733-5SEA, King County Superior Court, Aug. 4, 2000 (awarding \$10 per day against agency that withheld records it had been ordered to release for four days after a stay order expired when the district did not file an appeal); Judgment, *Thomas Drummond v. City of Bellevue*, Cause # 93-2-22537-7SEA, King County Superior Court, May 1, 1996 (awarding attorney's fees in PRA case against an agency but refusing to award statutory penalties); Order Denying Mercer Island School District's Motion for Injunctive and Declaratory Relief, Ordering Production of Public Records, and Granting the Seattle Times Company and Horvitz Newspapers Their Attorneys' Fees and Costs, *Mercer Island School District No. 400 v. Seattle Times Company et al.*, Cause # 00-2-06264-8SEA, King County Superior Court, April 18, 2000 (awarding fees but refusing to award penalties).¹ These decisions illustrate the need for guidance from this Court as to the appropriate use of the penalty range.

¹ *Amici* respectfully request that the Court take judicial notice of the above judgments pursuant to ER 201. As the decisions can be accessed independently from court records, they are capable of accurate and ready determination

C. Significant Penalties Provide the Appropriate Incentive for Requesters to Enforce the PRA and for Agencies to Comply with Their Statutory Obligations.

Requesters who challenge violations of the PRA are acting as private attorneys general protecting the rights of all citizens to access to information and to accountability of government. It falls to requesters of public records to ensure that agencies comply with the obligation imposed by the PRA to make public records “promptly available to any person” unless the record falls within a specific statutory exemption. RCW 42.56.070, .080, .520. The requester is the one who takes the agency to court to show cause why it withheld requested public records. RCW 42.56.550(1). The requester is the one who takes the agency to court for the agency to show that its estimate of time to respond to a public records request was reasonable. RCW 42.56.550(2).²

It can be very intimidating for a member of the public to request information from the government. If such a request is denied by an agency, most requesters simply go away, with a further diminished confidence in government as open or accessible. *See, e.g., Your Right to*

² Division III recently held that a requester also runs the risk, simply by submitting a public records request, of having to defend a lawsuit by the agency seeking to enjoin itself from releasing a record. *Soter v. Cowles Publ'g. Co.*, 131 Wn. App. 882, 907, 130 P.3d 840 (2006). The statutory penalties required by the Act serve to deter agencies from suing requesters by imposing a penalty should the requester prevail.

Know, available at <http://www.openwashington.com>. Other states have chosen to create a state agency as official ombudsman or give review and enforcement authority to the state attorney general. Washington has done neither of these things, choosing instead to rely on its citizens to bring judicial actions to force local agencies to obey the PRA.

The agencies have a ready supply of taxpayer-paid attorneys to litigate public record actions. Few citizens have the resources to engage an attorney and fight back. The promise of penalties might convince some lawyer to take a case for a citizen on a contingent fee basis. Few if any lawyers will take a contingent fee case when the best they will ever receive is to be paid just their regular fee. Without judicial implementation of the full range of civil penalties, requesters will not have the means or ability to secure counsel and prosecute violations so that agencies will be held accountable.

As with other civil rights laws, challengers must be compensated to encourage others to assume this burden and to ensure that government abuses do not go unquestioned and unchallenged. Decisions regarding civil penalties or attorneys' fees in addition to general damages consistently affirm the need to compensate such plaintiffs. *See Seattle Sch. Dist. No. 1 v. Washington*, 633 F.2d 1338, 1348 (9th Cir. 1980), *aff'd*, *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457 (1982) (providing

attorneys' fees in civil rights cases was designed to "eliminate financial barriers to the vindication of constitutional rights and to stimulate voluntary compliance with the law"); *Minger v. Reinhard Distrib. Co.*, 87 Wn. App. 941, 948, 943 P.2d 400 (1997) (not compensating counsel for civil rights plaintiffs will discourage lawsuits "whose primary effects are vindication of citizens' right[s]").

Just as with mandatory attorneys' fees, and in the absence of any other damage remedy, an adequate mandatory penalty is essential to the underlying policy of the PRA to promote full disclosure. *Amren*, 131 Wn.2d at 36-37; *Yacobellis*, 64 Wn. App. at 103. "Strict enforcement" is necessary to prevent agencies from improperly denying access to records. *Amren*, 131 Wn.2d at 36-37; *PAWS*, 125 Wn.2d at 272; *Hearst*, 90 Wn.2d at 140. If courts do not strictly enforce the statutory penalty provision, its deterrent effect will be lost and agencies will be emboldened to arbitrarily block access.

The need for a strong enforcement mechanism is clear. Agencies repeatedly withhold records from the public in violation of the Act. A 2001 statewide audit revealed that employees at agencies across the state violated the law by withholding records that the PRA required them to release. *See Your Right to Know*, available at <http://www>.

openwashington.com.³ The report of the audit tracked the results of public records requests to agencies in all 39 Washington counties. Journalists made requests for such public records as lists of registered sex offenders, crime reports, records of home values, school superintendent contracts and restaurant inspections. More than half of the time, police and sheriff's departments refused to release public records of property crimes. *See id.* School districts denied requests for superintendent contracts more than a tenth of the time. *See id.* Only county assessor's offices consistently provided the requested records. *See id.*

Other studies provide equally discouraging results. In a 50-state study on public records laws, Washington managed only an overall grade of C+. *See* Better Government Association, *Survey of Freedom of Information Laws*, available at <http://www.ire.org/foi/bga>.⁴

Washington courts have recognized that not only have agencies impermissibly withheld records from the public, they have done so based on improper motives. In *ACLU*, for example, the school district grossly

³ *Amici* respectfully request that the Court take judicial notice of the audit results pursuant to ER 201. As the report can be accessed independently at <http://www.openwashington.com>, it is capable of accurate and ready determination.

⁴ *Amici* respectfully request that the Court take judicial notice of the Better Government Survey pursuant to ER 201. As the report can be accessed independently at <http://www.ire.org/foi/bga>, it is capable of accurate and ready determination.

misstated the size of the records request and improperly decided not to assist the requester based on the identity of the requester. *ACLU*, 95 Wn. App. at 113-14. And while the Supreme Court remanded for a determination of the proper penalty in *Amren*, it recognized the requester's "compelling" arguments regarding the agency's potential bad faith. *Amren*, 131 Wn.2d at 38 & n. 11. These examples demonstrate that agencies are resistant to public scrutiny and will go to great lengths to deny legitimate requests for public records.⁵

Without strict enforcement of the penalty provision, the financial downside to withholding and delaying release of large amounts of public records would be negligible. Agencies could withhold records based on internal pressure to balance a slight penalty for delay against perceived costs of adverse publicity should agency records be released promptly.

The price of secrecy is not be very high: At a rate of \$5 a day, an agency could have to pay only \$1825 if it withheld for one year all records relevant to a request. Even if a court were to find that the agency acted in bad faith and should face the highest penalty of \$100 a day, the agency

⁵ In *Yacobellis*, the court recognized that if the PRA involved a damages award instead of a punitive provision, agencies "might be tempted to destroy public records in order to avoid paying damage awards for nondisclosure" since destruction of the records would make it more difficult for a requester to prove damages. *Yacobellis*, 64 Wn. App. at 300-301.

would only face a \$36,500 annual penalty. Since the PRA was amended in 2005 to reduce the statute of limitations for bringing a PRA action from five years to one year, the overall penalty risk to agencies today is now 80 percent lower than it was at the time the Supreme Court issued its decision in this case on the “per record” issue.

A higher range penalty as a matter of course would increase the risk to an agency of withholding records and improve the chances agencies would narrowly construe exemptions and broadly construe disclosure provisions as the law requires. Applying a higher range per-record penalty thus fulfills the purpose of the PRA by encouraging disclosure of public records and balances out any tendency toward excessive withholding of records and agency preference to delay public scrutiny of controversial actions.

D. Penalties Must be Sufficient to Deter Future Violations.

The purpose of a penalty is to punish current misconduct sufficiently to deter future misconduct. *See Sinatra, Inc. v. City of Seattle*, 131 Wn.2d 640, 662, 935 P.2d 555 (1997); *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 445, 98 P.3d 463 (2005) (Sanders, J., dissenting). Only ““strict enforcement” of ...fines will discourage improper denial of access to public records.”” *PAWS II*, 125 Wn.2d at 272, 884 P.2d 592.

The statutory penalties in the PRA are designed to punish the offending agency but also to effect compliance and deter violations. The penalties imposed must be sufficient to deter future violations – not just by the one offending agency, by other agencies as well. Minimum penalties -- \$1825 a year -- pose little risk for agencies of any size. Even maximum penalties --\$36,500 a year -- pale in comparison to the impact disclosure of information could have on an agency. For example, in the instant case, the records withheld related to a \$300 million dollar stadium by an agency with an annual operating budget of more than \$3 billion and the penalties at even the highest possible award amounted to less than one percent of the agency's operating budget. 152 Wn.2d at 445 & n.2 (Sanders, J., dissenting). And that was in a case where the withholding went on for numerous years and the requester still had five years to initiate suit – a scenario that will likely never occur again. That is why it is crucial – in this egregious case – that the Court not let the award stand at a mere \$15 per day. If agencies know that this egregious case resulted in just \$15 per day penalties, the harm to future requesters and the limited deterrence under the PRA will be substantial.

The Legislature created a range of \$5 to \$100 per day, increasing the maximum penalty in 1992 from \$25 to \$100 per day. The Legislature clearly intended for courts to use the entire penalty scale. As Justice

Sanders stated in the earlier appeal of this case, “the plain language of the PDA as well as its purposes demands a penalty closer to \$100 [per day].” 152 Wn.2d at 445 (Sanders, J., dissenting).

If we accept the conclusion that a diligent agency that barely violates the PDA with minimal consequences is still subject to a fine of at least \$5, one cannot justifiably impose the same minimal penalty against a negligent agency, much less an agency that is grossly negligent, or worse yet, intentionally violative of the PDA’s requirements to substantial harm.

As such, the default penalty from which the trial court should use its discretion is the half-way point of the legislatively established range: \$52.50 per day, per document. The trial court could then apply various criteria to shift the per diem penalty up or down.

Id. at 446. The midpoint between \$5 and \$100 is \$52.50 and should be the starting point for a penalty calculation in every case as Justice Sanders suggested. *Id.* at 446 & n.4.

E. The Trial Court can Assess a Per Day Penalty and Impose an Appropriate Penalty while Keeping within the Range Set by the Statute.

Amici do not wish to suggest that courts have no input into the amount of an appropriate penalty. Courts have the ability to make a case-by-case determination of the amount of penalty appropriate per day at various points in time. A court could, for example, assess a higher per day penalty for a period during which an agency ignores a requester, improperly delays a response or access or otherwise exhibits bad faith in

exercising less than the agency's fullest assistance as is required by the PRA. These amounts could equal as high as \$100 per day based on the court's assessment, in its discretion, of the level of bad faith. The court could assess a lower range penalty for agencies whose withholding conformed with earlier court precedent but subsequently was declared erroneous due to a change in judicial interpretation of the law. The court could also assess one penalty per day for periods the court deems to be due solely to judicial delay and not any action by a party and a different penalty for periods after a denial during which a requester sought counsel and considered whether to file suit.

In assessing whether an agency acted in good faith or bad faith, the court can, and should, consider whether the agency's delay or refusal to disclose in response to a request was self-created. RCW 42.56.070(3)(e) requires King County to maintain and make available for public inspection and copying a current index providing identifying information regarding "Factual staff reports and studies, factual consultant's reports and studies . . . and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others." RCW 42.56.070(3)(e). Had King County maintained such an index, it would have been much simpler for the requester to ask for a specific document and for the County to find the record. The County's failure to maintain

such an index led to a longer response time and, as a result, a higher penalty award.

In the final analysis, however, courts must abide by the clear language and intent of the PRA and award civil penalties using the entire range of penalties declared by the Legislature – starting with the middle level range and then working up or down. This is the only means to ensure that future requesters can prosecute abuses and that agencies are encouraged to abide by the law.

F. The Public Is Harmed by Lack of Disclosure.

King County argues against higher penalties objecting that higher penalties result in a significant expenditure of public funds. But government, left unattended and without public monitoring, will similarly lead to significant expenditures of public funds – including multimillion-dollar judgments for harming Washington residents – as past judgments against the state illustrate.⁶ If government action and decision-making

⁶ A Pierce County jury awarded damages of \$17.8 million, before interest, plus attorneys' fees and costs in a lawsuit that three developmentally disabled men filed against the Department of Social and Health Services. See *Beckman et al. v. Dep't of Social and Health Servs. et al.*, Judgment on Jury's Verdict for Plaintiff Damon R. Beckman, No. 98-2-05579-6 (Pierce Co. Super. Ct. April 14, 2000) (\$4.94 million judgment); *Beckman et al. v. Dep't of Social and Health Servs. et al.*, Judgment on Jury's Verdict for Plaintiff Eric C. Busch, No. 98-2-05579-6 (Pierce Co. Super. Ct. April 14, 2000) (\$4.61 million judgment); *Beckman et al. v. Dep't of Social and Health Servs. et al.*, Judgment on Jury's Verdict for Plaintiff

were subject to greater public scrutiny and accountability, such harms, and resulting judgments, might be avoided.

If the Court were to consider the alleged budgetary impact of an individual award of statutory penalties against an agency in a public records case, the Court should also consider the benefit (as found by the people of the State of Washington when they passed the original Public Disclosure Act by initiative in 1972) of increased public scrutiny of government on the whole, including preventing inappropriate agency action and damage awards resulting from such action. While personal injury awards relate to damage to individual plaintiffs, withholding the public's records – records that detail work done by public servants paid by public dollars – harms society as a whole. Indeed, the risks involved when government is allowed to act in secret create a direct threat to democracy. The costs involve more than money. Public confidence and understanding of the operation of government are eroded. *See, e.g., NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (access to information is essential “to ensure an informed citizenry, vital to the functioning of a

William G. Coalter, No. 98-2-05579-6 (Pierce Co. Super. Ct. April 14, 2000) (\$8.25 million judgment). Pursuant to ER 201, *Amici* request this Court to take judicial notice of these multimillion-dollar awards.

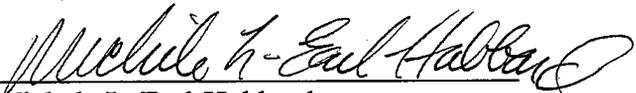
democratic society, needed to check against corruption and to hold the governors accountable to the governed”).

V. CONCLUSION

For the foregoing reasons, *Amici* urge the Court to definitively rule that the PRA’s penalty provisions should be applied as the people and the Legislature intended using the entire penalty scale and a mid point amount as the starting amount for an average case. In this case, that means the Appellant deserves more than \$15 per day.

RESPECTFULLY SUBMITTED this 21st day of August, 2006.

Davis Wright Tremaine LLP
Attorneys for *Amicus Curiae* Allied Daily
Newspapers of Washington, The Evergreen
Freedom Foundation, The Washington
Newspaper Publishers Association, The
Washington Coalition for Open Government,
The Center for Justice, and the Seattle
Community Council Federation

By 
Michele L. Earl-Hubbard
WSBA No. 26454

CERTIFICATE OF SERVICE

I, Colleen Johnson, declare and state as follows:

1. I am over the age of eighteen and competent to testify to the matters herein.
2. I am an employee of the law firm of Davis Wright Tremaine LLP. My business and mailing address are: 1501 Fourth Ave., Suite 2600, Seattle, WA 98101.
3. On August 21, 2006, I caused to be served a copy of the document to which this certificate is attached on the following, per the method indicated:

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Attorneys for Appellant

Delivery Method: *Via email & U.S. Mail pursuant to agreement.*

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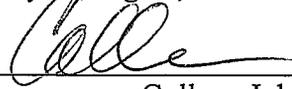
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Seattle, Washington, this 21st day of August, 2006.



Colleen Johnson

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STATE OF WASHINGTON