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COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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KAM SITTHIDETH,  
*Appellant, Plaintiff*

V.

CEDAR RIVER WATER & SEWER DISTRICT  
*Appellee, Defendant, Respondent.*

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RESPONSE TO BRIEF OF APPELLEE

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## **I. IDENTITY OF RESPONDENT**

Cedar River Water and Sewer District uses two names in recent past. On its service truck, business letter, and newsletter the symbol “Cedar River Water and Sewer” (CRWS) is displayed every where (CP-300). To be consistent, Mr. Sitthidet uses the name in reference to his lawsuit originally filed. Cedar River Water & Sewer did not file for Identity change in court. Further more, Cedar’s counsel referred its client as “Cedar” also in their communication emails..

## **II. UNFAIR TACTICAL APPROACH OF CEDAR RIVER DISTRICT**

Plaintiff requests this Court to REVERSE or GRANT in part the trial court's Order Granting Defendant's Motion for Summary Judgment Dismissal, entered July 22, 2011. (CP 297-298). The trial court's DENIAL of Plaintiff s Motion for Leave to Amend Complaint on May 31, 2011 (CP 83) was a clear violation of Plaintiff’s right to Amend Complaint effectively. Plaintiff’s Demanding Right for a Jury Trial (CP-253) was also shot down. Propelled by Respondent/Appellee to get rid of Mr. Sitthidet’ lawsuit in many ways they can to avoid liability, without proper due process.

## **A. Factual Background**

### **1. District Generally:**

Appellee, Cedar claimed that it has never been found through audit in fraud activities, and yet it failed to show evidence of such claim. It should have known that the audit office cannot audit 455 Utility districts thoroughly as Washington State is facing deficits and cut-back, from 2007 to present time.

### **2. Mr. Sithidet Water and Sewer Service:**

No matter how low Respondent tried to show its imposed charge of \$162.21 along with other scamming fees. They are inappropriate and too much when one does not receive product. Cedar failed to show the bottom line. Mr. Sithidet had to spend \$100 extra to get produce else where, this brings the bottom line to \$262.20 bi-monthly while waiting for litigation to finish. Comparing it to his Gas plus Electric bill of \$35 for October, 2011. The difference is a big difference. Cedar actions are brutal and inhuman, it knows how to make its no-service charges look reasonable at best.

Cedar went on misleading the courts to believe that Mr. Sithidet receives some benefits, it claims that its imposed charges are for Fire hydrant service when most customers already paid for to Fire Dept, thru their annual property tax. Respondent Cedar never run out of reasons to mislead the public, especially from unfortunate customer in bad economy.

### III. STATEMENT OF ISSUES

#### A. Liability issue is unresolved

Appellee Cedar knows the legal loop hole so well, it knew CPA 19.86 may not apply to it. It hides behind its commissioners and RCW 57.08.081(1) to do wrong, to manipulate, to retaliate against those complaining against it. Let's not forget RCW 57.08.100 recommends the districts to buy liability insurance for their protection. That is to imply that "the District should be liable for misconduct, for misconception of RCW 57 itself" and other laws not limiting to FDCPA or CPA 19.86". Although 19.86 does not apply to a utility companies in general, it may apply to Water & Sewer District if they are not regulated or if they are corrupted. When there are good body of commissioners, the district maybe exempted.

Cedar River District inhibited Mr. Sitthidet from Amending his complaint, to state his claim for liability and to complain effectively in order to mask off its liability it wronged Mr. Sitthidet. In his original complaint and in Amend Complaint, Mr. Sitthidet mentioned about selling/renting his property (CP-44)(CP 51). Cedar also saw his "For sale" sign in winter 2009. Cedar knew his oppressive economy condition and only made thing worse for the parties. (CP 51, line 15) By stopping him from producing rental income to pay Cedar bills.

That a clear intention to harm Mr. Sitthidet finance, therefore Cedar

is liable. Mr. Sitthidet requests this court to penalize Cedar, to order it to pay restitution for Mr. Sitthidet. Mr. Sitthidet lost about \$50,000 as of November 2011. This rental income loss was mentioned in the Summary Judgment Oral Argument as well (RPT page 10, line 29), (RPT page 11, line 13-20)

**B. Appellant's Right to Amend Complaint denied**

As with amendments as a matter of right under the first sentence of CR 15(a), any of the pleadings enumerated in CR 7(a) maybe amended with leave of court. In theory, amendments under the second sentence of the rule may be made at any stage of the litigation. See *Caruso v. Local Union No. 690 of Int'l Bhd. Of Teamsters*, 100 Wn.2d 343, 349,, 670 P.2d 240 (1983), *cert, denied*, 484 U.S. 815 (1987) (amendment permitted five years and four months after filing of original complaint).

Mr. Sitthidet has stated the grounds for the motion properly. See *Doyle v. Planned Parenthood*, 31 Wn.App 126, 139, 639, P.2d 240 (1982). The rule, however, makes no attempt to list or to limit the purpose for which an amendment may be made or the character of the amendment sought. Courts have granted leave to amend for a variety of reasons, including the following: to cure a defective pleading, to amplify or clarify a previously alleged claim or defense, to change the nature or theory of claim, to state additional claims or defenses, the increase the amount of damages sought, to elect new or additional

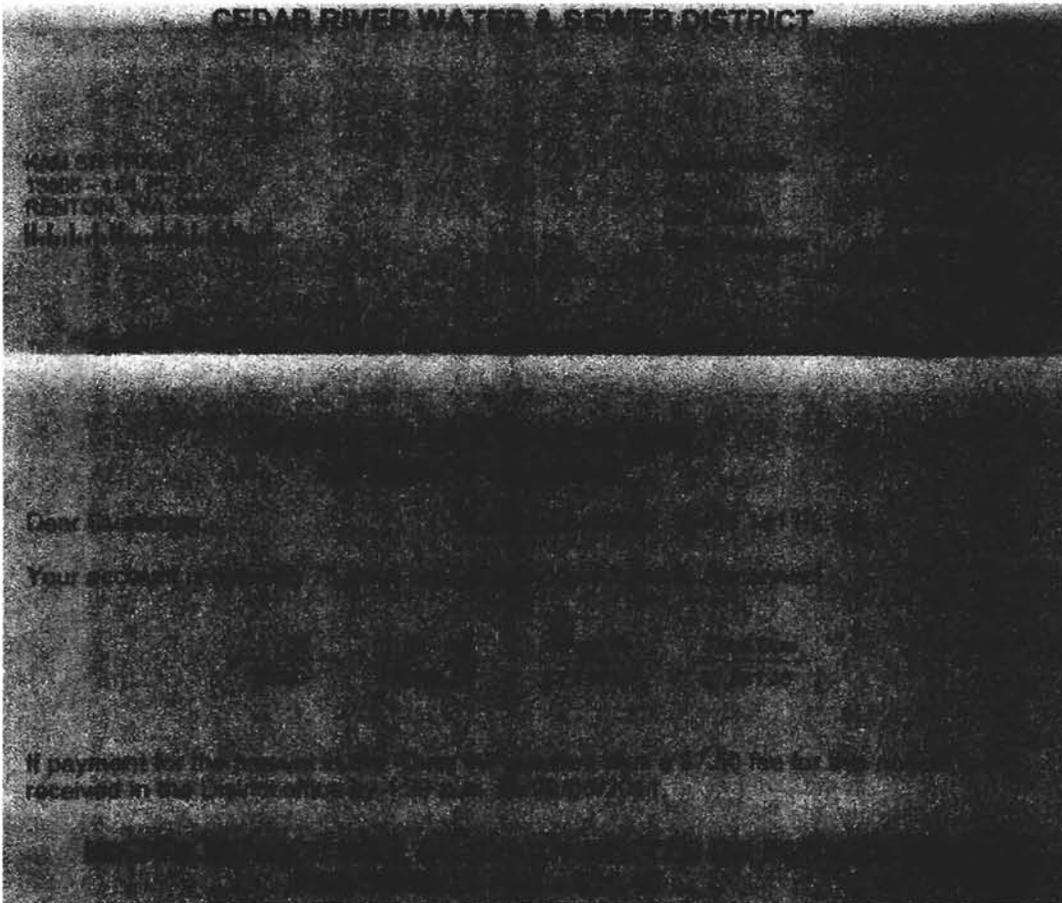
remedies, etc..

Plaintiff injury or financial damages occurred within the time frame of his lawsuit filed on April 6, 2010. Respondent did not want to go to trial any way, it uses its Summary Judgment to block Plaintiff's evidences, its liability, and its opponent's right for a Jury trial. (CP-253) All evidences and document in court are filed before Discovery cut-off date. Although not all evidences are transferred to this court, due to cost, Mr. Sitthidet requests this court to consider all evidences in this matter.

#### **IV. ARGUMENT**

##### **C. Cedar Scamming fees violate RCW 57.08.081(1)**

Appellee' bill for a single property owner not only contains unreasonable charges, it includes periodic scamming fee of \$7.50 not listed in section (1) of RCW 57. This is one of 15 scamming fees Mr. Sitthidet received:



The water & sewer service was already disconnected on 11/04/2009, there was no reason for Cedar to generate so many fees. It is unethical and unlawful. It blames its action on its computer software and every body else. There was no usable service of any kinds whatsoever provided, except the imaginary benefits Cedar tried to mislead.

**D. Mr. Sitthidet always wanted the service, if charges were appropriate**

Appellee Cedar falsely claimed Mr. Sitthidet did not want the service, and yet failed to show evidence to back it up. What

happened was, after Cedar damaged Mr. Sitthidet rental income for seventeen months; in February 2011 Cedar was reminded that this case will go to court of Appeals. Cedar tried to force Mr. Sitthidet to sign a paper acknowledging its imposed charges and scamming fees to be valid first before it would agree to turn water back on. Mr. Sitthidet indicated in his fax that he will not do business with a scamming company until it fix its root-cause problems and liability it caused him. Apparently Cedar did not tell this court the truth.

**E. District's Violation of RCW 57.08.081(1)**

Mr. Sitthidet cited an appeal case # 76062-4, The *HOLMES HARBOR SEWER DISTRICT v. HOLMES HARBOR HOME BUILDING LLC* in his brief. Apparently District Cedar did not see the point of the Court of Appeals. The court analyzed RCW 57.08.081(1) that the District cannot charge customer without providing service because RCW 57.08.081(1) does not supersede these section: 57.08.081(3), 57.08.081(5) and 57.08.081(10). The legislature expected the Districts to provide customers more than “Service Availability” or more than “Connection Opportunity”.

District Cedar assumed wrong that it can straightforwardly charge without providing service. It misunderstood RCW 57's principal, not only it assumed wrong it used this option to disconnect service, to retaliate against customer who complained about its unreasonable

charges and fees to AGO and these courts. (CP-199)

There is no doubt that some elements of corruption/retaliation existed in this case, more likely than not. Cedar District and its commissioners work for each other for more than forty years. Whenever Cedar wanted to increase its rate, it submitted new proposal for commissioners approval. It consistently gets what it wanted (CP 257-259). A 10% rate increase a year even in this bad economy on innocent consumers.

Further more, Cedar made many customers like Mr. Sitthidet pay fixed rate equal to six persons. (CP-256, see penalties in 2006, over \$69,000 in revenue) This is inappropriate, it is like making a kid paying adult meal for 13 years, etc. The term fixing rate in RCW 57.08.081(1) does not necessarily mean for customer to pay high rate designed for a big family. Fixing rate may imply “setting up the rate”. Cedar commissioners could have fixing rate proportionally for low income customers, they did not do so. This again shows some kinds of favoritism to Cedar District.

When Mr. Sitthidet tried to depose Cedar commissioners, Cedar was very upset. (CP-233) It threatened to bring a motion to sanction Mr. Sitthidet. In March 2011, Cedar counsel also threatened Mr. Sitthidet that he will end up with \$15,000+ in legal fee if he doesn't settle to accept Cedar imposed charges.

Cedar believes it has so much power, it only focuses on RCW 57.08.081(1) to assume it supersedes the rest RCW 57.08.081 sections. The court of Appeals analyzed RCW 57 in *HOLMES HARBOR SEWER DISTRICT* case and concluded that the legislature expected the District to provide more than just “Service Availability” or “Connection Availability” RCW 57.08.081(5), (3) and (10) emphasized on “Service provided” or “Receiving Service”. Cedar to take advantage of general public in time when customer need help the most. Mr. Sitthidet did not want Cedar money, he wanted their cooperation so that he can Rent or Sell his property in early 2010.

Cedar did not want to work with Mr. Sitthidet, he knows Cedar behavior for over a decade that it is rigid, inflexible. Most the time, it induced late fee on Mr. Sitthidet deliberately for financial gain. To impose and cut off service, is an act of abuse, a retaliation against Mr. Sitthidet for his complaints to AGO and to these Courts about Cedar financial aggressiveness. (CP-199)

**F. Mr. Sitthidet Communicated with the District for a decade**

After service cut-off, around December 12<sup>th</sup>, 2009 Mr. Sitthidet learned something shocking when Cedar sent him a bill with “imposed charges” mixing with a legitimate bill (CP 176- 195). A

10% late fee added consistently thereafter. Mr. Sitthidet called Cedar up and spoke with Mr. Sean Vance, Ms. Patty, and their commissioner “Mr. Wes” pleading for understanding to see if they will reduce the rate or work thing out. Cedar River has been rigid, inflexible. This is what Mr. Sean replied “*Why should we treat you better than everybody else?*”. On April 8<sup>th</sup>, 2010, Mr. Sean also sent an email to Mr. Sitthidet saying “*After the board meeting, we concluded that we can still charge you even without providing service.*” On December 1, 2010 Mr. Sitthidet also spoke with Mr. Ron Seidels, general manager to no solution. All of these communications maybe found in the evidences associating with Liability (CP 299 - 315).

Now the liability issues still remain, Cedar created a new story to allege that Mr. Sitthidet refused to meet with them. Mr. Sitthidet has met with their commissioner “Mr. Walter M. Canter”, Mr. Sean Vance, Mr. Ron Seidels. There was no indication whatsoever that Cedar will yield. Cedar blocked Mr. Sitthidet from selling and renting his home when good opportunity was at hand, by refusing to provide him with the service he needed for “service imposed” so his home can be inspected for rent or for sale. Mr. Sitthidet moved out all his furniture’s early 2010 to his brother’s home. He waited ever since that time to resolve issues with Cedar.

**G. Charged by the District**

**(CP 176 - 195) All regenerated bills by the District have incorrect Invoicing dates. The due-dates are correct.**

**The imposed charge for service availability on Mr. Sitthidet started from November 2009 onward. Defendant refers to it as “base charge”** currently it is imposed at \$162.21 bi-monthly with 10% late fee included, without product or service provided, intentionally to harm Mr. Sitthidet.

In addition, customers are charged additional amounts for their consumption of water based upon meter readings showing actual water used. Mr. Sitthidet bare minimum expense for Water & Sewer is \$262.20 bi-monthly because he had to spend on gas and cost to get water and service else where. The Defendant claim that its sewer is connected is false. Photos of blocked toilets were provided to trial court in Exhibit 16 & 17. In Any case without water supply, the sewer and drainage are useless.

Appellee Cedar claimed falsely that Mr. Sitthidet failed to pay his current bill (it means “imposed bill”). The one legitimate bill has been paid off in October 2010 with late fee and interest. Cedar claimed it applied to “imposed bill”. That is a clear violation of USC 1692a. It should separate bill per customer request. We went round and round endlessly. Cedar flip-flopped and uses many terms with similar meanings to confuse the court, ie. “Service

Availability, Base fee, minimum charge, imposed charge, current charges”, etc. They all have the same meaning.

Mr. Sitthidet did reject all Declaration of Mr. Sean Vance and the account balance claimed owed by Cedar River. (CP 3; 131 -136 ). Cedar should have known, no one would reject each bill separately. Mr. Sitthidet rejected the root problem of all bills generated from “Imposed Charges” or “Base Charge” without providing him with Service. He did raise an issue regarding all scamming charges for "Notice to Disconnect Service” that Cedar referred to as Final Notice Fee. Cedar blames its action on Software on the legislature, on every body else but itself. Here the court can see how irresponsible this District is.

The reason Cedar gets what it wanted from the trial court is because, the trial court judge has less experience in civil matter. The trial court judge asked Cedar counsel many questions about RCW 57. The trial court depends on Cedar counsel to make the decision in its behalf.

In case for *Lake Stevens Sewer Dist. v. Vill Homes, Inc.*, 18 Wash-App. 165, 566 P.2d 1256 (1977), the outcome could be in favor of property owner if the owner argues in higher courts. Most trial court judges in Washington State have more experience in criminal laws than in civil matter. RCW 57 is complex, and it should be analyzed with care. Five out of six times, it mentioned about “Service provided” or “Service Received”.

## **H. How Cedar caused Mr. Sitthidet sustained losses**

Mr. Sitthidet asked Mr. Sean Vance in February, March, May, July, August of 2010. *“If you are planning to impose charges on me forever, why not giving me the water?, Why not making money the clean way?”* Cedar continued to ignore Mr. Sitthidet pleading. It was clear that Cedar truly wanted to cause Mr. Sitthidet the most damages it can, by ignoring his request to turn water one for him.

Cedar stopped Mr. Sitthidet from selling his property when the market was not so bad; it also stopped Mr. Sitthidet from renting his property to general public. This is a direct cause to Mr. Sitthidet financial losses.

Appellee Cedar is directly liable for Mr. Sitthidet sustained loss because: Mr. Sitthidet’ property depends on Cedar water in order for his home to be inspected for rent or for sale. Cedar was wrong in using RCW 57 to retaliate in bad faith. It caused Mr. Sitthidet loss 96 times higher than its bill combined.

Appellee Cedar should never have demanded a customer in severe economy to pay “Imposed charges” upfront, because RCW 57.08.081 is not in Black and White color that it can rely upon. The court of Appeals has ruled against *HOLMES HARBOR SEWER DISTRICT* before twice on imposed charges. The Supreme court also ruled against it in 2008.

Instead of adopting FDCPA for its safety, Cedar flipped the litigation logic of *HOLMES HARBOR SEWER DISTRICT* case to assume that it can impose charge on Mr. Sitthidet in bad faith. Cedar was

the one charging Mr. Sitthidet inappropriately. Cedar is a highly money-oriented municipal company.

Regardless if FDCPA and 19.86 applied to Water District or not, Plaintiff Mr. Sitthidet requests this court to deter Cedar from abusing other customers in the same situation. Because there is no mechanic to stop any district from abusing the public. The court is the only place to get wrong thing corrected.

### **I. Cedar Liability**

Cedar cannot simply say FDCPA or CPA 19.86 not applied to them and get away from liability it caused. It should not point finger to Mr. Sitthidet or to the legislature for its action. A good example to see its liability is to look this instance, if someone drives a car on the road with a legal permit, it does not mean that that driver is free from liability it caused harms to someone on the road.

The RCW 57.08.105 recommends that Water & Sewer Districts buy liability insurance for the protection of any of its officials for misconduct or omission. So the legislature does expect the Districts to be liable for their vindictive behavior. If Cedar did not buy such insurance, the liability should come out of its pocket.

The fact that Cedar's commissioners help it increase its base charge 10% every year in bad economy shows corruption among them.

### **J. Evidences associating with liability timely filed**

Evidences were presented to honorable Judge Beth on July 22, 2011 in

the Defendant summary judgment's hearing, the trial court did not have time to review. (RPT 17, line 12) Mr. Sitthidet filed and served Cedar a copy of evidences associating with liability before the Discovery cut-off date (8-1-2010).

The oral argument for Summary Judgment was done in 10 minutes, with 11 minutes in presentation and ruling. Mr. Sitthidet requests this court to look at all evidences. The evidences show Mr. Sitthidet spent enormous efforts in contacting Cedar attempting to resolve issues so he can rent his property, Cedar ignorance or omission is a clear indication of causing Mr. Sitthidet lost.

**K. Cedar challenges Sitthidet to prove did it break the law**

Any unfair practice to deceive or harm other thru using some kind of shielding law (ie. RCW 57) to abuse someone is unlawful. Cedar knew it can get away from the law by claiming it acts under RCW 57. The court should recognize that there is no mechanic to deter a bad District under RCW 57, so the court should step in to exercise its discretion. Cedar claims that the court has no authority to change the statute, maybe true for a trial court but the court of appeals or supreme court can punish a bad District.

Cedar failed to show facts to back up its claim that Mr. Sitthidet failed to meet with them. Mr. Sitthidet spoke and had met with Cedar officials including commissioners (Wes, Mr. Walt M. Canter), Mr. Ron Siedels, and Mr. Sean Vance. There was nothing good coming out from talking. To Cedar, talking means to educate Mr. Sitthidet to conform to their unfair scheme, instead of fixing the root cause of the problem.

If Cedar District was fair with customers, it would not have made a one-person customer pay a six-person bill. Cedar is a highly money-oriented municipal company. They are unreasonable with customers in many levels, from imposing base charge to excessive late fee, to scamming fees. Further more, its unwillingness to provide service caused Mr. Sitthidet enormous loss, \$50,000 as of November 2011.

**L. Imposing Charges Reversed in higher court:**

Appellee Cedar assumes RCW 57.08.081(1) superseding everything in RCW 57. The appellate court reviews case 76062-4. in *HOLMES HARBOR SEWER DISTRICT v. HOLMES HARBOR HOME BUILDING LLC* and proves that Cedar is wrong in assuming RCW 57.08.081(1) superseding 57.08.081(5) and 57.08.081(10)

The Court of Appeals disallowed the districts from imposing charge in general. On a citation of *Lake Stevens Sewer Dist. v. Vill Homes, Inc.*, 18 Wash-App. 165, 566 P.2d 1256 (1977) that Cedar cited.

The lower court allowed the district to impose rate charge on property owner perhaps in the same manner as Mr. Sitthidet, due to lower court inexperienced in civil matter. If *Lake Stevens* property owner argued his case to court of Appeals, thing would have turned out differently.

This issues of “imposed charge” came to courts from time to time, because RCW 57 expects the Districts to provide service more than “opportunity” or “availability”. Previously addressed by the Washington State Supreme Court. In *Holmes Harbor Sewer Dist. v.*

*Holmes Harbor Home Bldg. LLC*, the sewer district was charging monthly sewer charges against unimproved lots. 155 Wash.2d 858, 123 P.3d 823 (2005). The Court found, In 1959, the legislature amended this statute's predecessor by changing the phrase "to those receiving such service" to read "to those to whom such service is available." Laws of 1959. ch. 103. Sec. 11. Only partly, it does not mean section (1) supersede section (5) or section (10). The Court of Appeals disallowed the districts from "imposing charge" without providing service.

----- Court of Appeals' Interpretation of RCW 57 -----

¶ RCW 57.08.005, which governs the general powers of a water-sewer district, provides a context for construing the meaning of availability in RCW 57.08.081(1). RCW 57.08.005(10) authorizes districts "to fix rates and charges for water, sewer, and drain service supplied." This subsection gives districts the authority in RCW 57.08.081(1) to generate revenues by fixing rates and charges for service provided. **Although this subsection authorizes rates and charges for supplying service, the converse is not necessarily implied that districts can charge when service is not supplied.** Unlike the language of RCW 57.08.081(3) (formerly RCW 56.16.100) discussed in Brill, the legislature has not amended this provision to authorize districts to charge for sewer service that is simply available, nor indicated any intent to replace this subsection with any subsection of RCW 57.08.081. **We read RCW 57.08.005(10) to require more service than a tentative opportunity to connect.** This construction is consistent with the requirement in RCW 57.08.081(1) that some level of service

be furnished.

**M. Mr. Sitthidet is entitled to damages.**

There is no doubt that Cedar caused harms to Mr. Sitthidet using RCW 57 to revenge, to retaliate against his complaint to AGO, and to these courts. The timing of its actions is obvious. Evidences show Cedar omission caused Mr. Sitthidet substantial financial losses and sufferings. Mr. Sitthidet requests this court to make Cedar accept the consequence of its action.

Cedar abuse of power is shown. Why Cedar never thought of easy solution Mr. Sitthidet offered back in early 2010 is a mystery.

**FACTS:**

- 1) If Cedar was not greedy to induce late fee and excessive base charge on Mr. Sitthidet, the service cut-off would have not happened. (CP-41, paragraph 12, 13, 14, 15).
- 2) If Cedar worked with Mr. Sitthidet, all its bills would have been paid off in early 2010, because Mr. Sitthidet was about to receive rental income from renter. He filed a lawsuit because he could not resolve or work with Cedar's demand for upfront payment for "imposed charges". Cedar forced the issues more than it should when it should have worked with its customer,

so customer can have their home inspected for rent or for sale.

In early 2010, Mr. Sitthidet had renters waiting to rent his property. The renters were wondering why his house took so long to be ready, they called him to find out. Cedar had stopped Mr. Sitthidet from renting his home for over twenty four month thru abuse of power. Mr. Sitthidet sustained losses include assistant benefits, good physical health, rental property income, etc. He tried to amend his complaint to include these losses, Cedar opposed consistently by making up reason to deny his Amend Complaint. Mr. Sitthidet requests this court to deter Cedar from abusing next customers.

**N. Cedar accused Mr. Sitthidet for not wanting his service restored**

After it caused so much damages for him; Cedar wanted Mr. Sitthidet to sign a paper acknowledging the legality of its imposed charges, in order to restore his water. Mr. Sitthidet simply could not jeopardize his lawsuit while in litigation. Then, Cedar accused Mr. Sitthidet for not wanting service restored.

## V. CONCLUSION

This district knows the thing to do but failed to carry out, refusing to provide service to revenge/retaliate against customer who complained against it to AGO and to these courts. It hides behind RCW 57 to omit its duty by mixing bills to make impossible for customer and assistant program to pay “imposed charges”. After so much damages, it pretended to offer to turn the water back on under its term “pay imposed fees first”.

Cedar counsel email on August 2, 2011 was a threatening email. It literally said “Cedar will not cooperate if Mr. Sitthidet appeals”. Mr. Sitthidet has been hurt for over two years by Cedar omission, with many losses, physical pains and sufferings. Mr. Sitthidet asks this court to right wrong decision of a trial court, to order Cedar River Water & Sewer District to pay restitution.

Respectfully submitted this 23rd day of November, 2011

  
KAM SITTHIDETH, Pro se.