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NO. 67824-8-1

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**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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GLOBAL EDUCATION SERVICES, INC.,

Respondent,

v.

MOBAL COMMUNICATIONS, INC.,

Appellant.

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**BRIEF OF RESPONDENT**

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## TABLE OF CONTENTS

INTRODUCTION.....	1
SUPPLEMENTAL STATEMENT OF THE ISSUES .....	1
STATEMENT OF THE CASE.....	2
I.    The three relevant statutes .....	2
II.   Facts.....	4
III.  Procedural history.....	7
ARGUMENT .....	9
I.    Applicable standards of review .....	9
II.   The Superior Court had personal jurisdiction under the Consumer Protection Act’s long-arm statute .....	11
A.   The requirements of the CPA’s long- arm statute, not those of the general long-arm statute, govern here .....	11
B.   Global Education’s personal service was sufficient under the CPA’s long- arm statute .....	20
C.   The Superior Court’s personal jurisdiction under the CPA’s long- arm statute is properly before this Court.....	22
III.  The Superior Court had personal jurisdiction under the doing-business statute .....	23
A.   The statutory language and structure demonstrate that Global Education’s substantial compliance with the	

	doing-business statute was enough to give the Superior Court personal jurisdiction over Mobal .....	25
B.	Precedent strongly suggests that the doing-business statute is an independent source of personal jurisdiction .....	29
C.	Global Education properly alleged doing-business jurisdiction.....	30
D.	Global Education substantially complied with the requirements of the doing-business statute, thus giving the Superior Court personal jurisdiction over Mobal .....	31
E.	Actual receipt of the summons and complaint is unnecessary for substantial compliance with the doing-business statute, and in any event there is substantial evidence that Mobal actually received the summons and complaint .....	38
F.	The Superior Court deprived Mobal of no opportunity to respond, and even if it had, that would make no practical difference to this appeal .....	41
IV.	Mobal is not eligible for an award of attorneys' fees—but even if it were, it is the Superior Court that should make any decision on fees .....	42
	CONCLUSION .....	43
	CERTIFICATE OF SERVICE .....	44
	APPENDIX.....	45

## TABLE OF AUTHORITIES

### Cases

<i>Ashcraft v. Powers</i> , 22 Wash. 440, 61 P. 161 (1900) .....	36, 37
<i>Automat Co. v. Yakima County</i> , 6 Wn. App. 991, 497 P.2d 617 (1972) .....	10, 40
<i>Bailey v. Allstate Ins. Co.</i> , 73 Wn. App. 442, 869 P.2d 1110 (1994) .....	16
<i>Barrett Mfg. Co. v. Kennedy</i> , 73 Wash. 503, 131 P. 1161 (1913).....	25, 32, 37
<i>Black v. Dep’t of Labor &amp; Indus.</i> , 131 Wn.2d 547, 933 P.2d 1025 (1997) .....	38
<i>Cingular Wireless L.L.C. v. Thurston County</i> , 131 Wn. App. 756, 129 P.3d 300 (2006).....	10
<i>City of Seattle v. Winebrenner</i> , 167 Wn.2d 451, 219 P.3d 686 (2009).....	16
<i>Croze v. Volkswagenwerk Aktiengesellschaft</i> , 88 Wn.2d 50, 558 P.2d 764 (1977) .....	25, 32
<i>Ford Motor Co. v. City of Seattle</i> , 160 Wn.2d 32, 156 P.3d 185 (2007).....	29
<i>Friends of the Law v. King County</i> , 123 Wn.2d 518, 869 P.2d 1056 (1994).....	22
<i>Getty Images (Seattle), Inc. v. City of Seattle</i> , 163 Wn. App. 590, 260 P.3d 926 (2011).....	9, 41
<i>Golberg v. Sanglier</i> , 96 Wn.2d 874, 639 P.2d 1347, 647 P.2d 489 (1982) .....	40
<i>Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.</i> , 105 Wn.2d 778, 719 P.2d 531 (1986).....	12

<i>Hartley v. Am. Contract Bridge League</i> , 61 Wn. App. 600, 812 P.2d 109 (1991) .....	24
<i>Hein v. Taco Bell, Inc.</i> , 60 Wn. App. 325, 803 P.2d 329 (1991).....	31
<i>Hoglund v. Meeks</i> , 139 Wn. App. 854, 170 P.3d 37 (2007).....	10, 33
<i>In re Marriage of McLean</i> , 132 Wn.2d 301, 937 P.2d 602 (1997) .....	38
<i>Jones v. Standard Sales</i> , 34 Wn.2d 546, 209 P.2d 446 (1949) .....	22
<i>Kennedy v. Sundown Speed Marine, Inc.</i> , 97 Wn.2d 544, 647 P.2d 30 (1982) .....	10, 29
<i>Kubey v. Travelers' Protective Ass'n of Am.</i> , 109 Wash. 453, 187 P. 335 (1920) .....	40
<i>LaMon v. Butler</i> , 112 Wn.2d 193, 770 P.2d 1027 (1989) .....	23
<i>Leen v. Demopolis</i> , 62 Wn. App. 473, 815 P.2d 269 (1991).....	11
<i>Martin v. Triol</i> , 121 Wn.2d 135, 847 P.2d 471 (1993).....	15
<i>Mistereck v. Wash. Mineral Prods., Inc.</i> , 85 Wn.2d 166, 531 P.2d 805 (1975) .....	28, 29
<i>Panag v. Farmers Ins. Co. of Wash.</i> , 166 Wn.2d 27, 204 P.3d 885 (2009).....	16
<i>Payne v. Saberhagen Holdings, Inc.</i> , 147 Wn. App. 17, 190 P.3d 102 (2008).....	42
<i>Piper v. Dep't of Lab &amp; Indus.</i> , 120 Wn. App. 886, 86 P.3d 1231 (2004).....	23
<i>Powell v. Sphere Drake Ins. P.L.C.</i> , 97 Wn. App. 890, 988 P.2d 12 (1999) .....	31, 32, 38
<i>Quigley v. Spano Crane Sales &amp; Serv., Inc.</i> , 70 Wn.2d 198, 422 P.2d 512 (1967).....	25

<i>R.D. Merrill Co. v. State Pollution Control Hearings Bd.</i> , 137 Wn.2d 118, 969 P.2d 458 (1999) .....	42
<i>Raymond v. Robinson</i> , 104 Wn. App. 627, 15 P.3d 697 (2001) .....	30
<i>Rosenthal v. City of Tacoma</i> , 31 Wn.2d 32, 195 P.2d 102 (1948) .....	22
<i>Ryland v. Universal Oil Co.</i> , 8 Wn. App. 43, 504 P.2d 1171 (1972) .....	21
<i>Scott Fetzer Co. v. Weeks</i> , 114 Wn.2d 109, 786 P.2d 265 (1990) .....	43
<i>Scott v. Goldman</i> , 82 Wn. App. 1, 917 P.2d 131 (1996) .....	36, 37
<i>Sievers v. Dalles, P. &amp; A. Navigation Co.</i> , 24 Wash. 302, 64 P. 539 (1901) .....	25
<i>State v. Gutierrez</i> , 92 Wn. App. 343, 961 P.2d 974 (1998) .....	23
<i>State v. Hirschfelder</i> , 170 Wn.2d 536, 242 P.3d 876 (2010) .....	15
<i>State v. Reader's Digest Ass'n</i> , 81 Wn.2d 259, 501 P.2d 290 (1972) .....	12, 13, 14
<i>Teague v. Damascus</i> , 183 F. Supp. 446 (E.D. Wash. 1960) .....	25
<i>Thiry v. Atl. Monthly Co.</i> , 74 Wn.2d 679, 445 P.2d 1012 (1968) .....	14
<i>White v. Kent Med. Ctr., Inc., P.S.</i> , 61 Wn. App. 163, 810 P.2d 4 (1991) .....	42
<i>Wilbur v. Dep't of Labor &amp; Indus.</i> , 38 Wn. App. 553, 686 P.2d 509 (1984) .....	27
<i>Xieng v. Peoples Nat'l Bank of Wash.</i> , 120 Wn.2d 512, 844 P.2d 389 (1993) .....	40
<i>Yakima v. Yakima Herald-Republic</i> , 170 Wn.2d 775, 246 P.3d 768 (2011) .....	27

**Statutes**

47 U.S.C. § 227 .....	5
Laws of 1959, ch. 131 .....	25
RCW 19.86.020.....	5
RCW 19.86.160 .....	passim
RCW 19.86.920 .....	16, 21
RCW 4.28.080 .....	21, 28
RCW 4.28.080(10).....	passim
RCW 4.28.180.....	passim
RCW 4.28.185 .....	passim
RCW 4.28.185(1) .....	4, 28, 30
RCW 4.28.185(2) .....	19, 28
RCW 4.28.185(4) .....	passim
RCW 4.28.185(5) .....	42
RCW 4.28.185(6) .....	15, 19, 26, 29
RCW 70.110 .....	17
RCW 70.110.020 .....	17
RCW 70.110.080 .....	17
RCW 80.36.540.....	5
RCW 80.36.540(5).....	12

**Rules**

RAP 10.3(a)(5) ..... 2  
RAP 10.3(b).....1, 2

## **INTRODUCTION**

Global Education Services (“Global Education”) personally served Mobal Communications (“Mobal”). Because Mobal failed to appear, the Superior Court entered a default judgment. Mobal later challenged that default judgment, arguing that Global Education’s service of process had been defective and the Superior Court lacked personal jurisdiction. After extensive discovery on the service issue, the parties submitted numerous briefs to the Superior Court, which upheld the default judgment.

The Superior Court’s judgment was correct. The Superior Court had personal jurisdiction to enter the default judgment under both the Washington Consumer Protection Act, RCW 19.86.160, and the statute that provides for jurisdiction over out-of-state corporations doing business in Washington, RCW 4.28.080(10). Mobal stakes much of its case on Washington’s general long-arm statute, RCW 4.28.185, but that is a distraction; the general long-arm statute does not apply here. Global Education respectfully urges this Court to affirm.

## **SUPPLEMENTAL STATEMENT OF THE ISSUES**

In accordance with RAP 10.3(b), Global Education supplements Mobal’s assignments of error. To the extent it is not already subsumed

within Mobal's first and second assignments of error (*see* Appellant's Opening Br. ("Mobal Br.") 6), the following issue is properly before the Court in this appeal:

**The Superior Court had personal jurisdiction over Mobal under the long-arm statute of the Washington Consumer Protection Act ("CPA").** Global Education asserted a CPA claim alleging that Mobal's CPA violation had a prohibited impact in this state. Global Education personally served a law firm that Mobal had designated for service of process by the New York Secretary of State. Under these facts, did RCW 19.86.160—the CPA's long-arm statute—give the Superior Court personal jurisdiction over Mobal?

#### **STATEMENT OF THE CASE**

Mobal has failed to present a "fair statement" of the relevant facts and procedure, "without argument." RAP 10.3(a)(5). Rather than burdening the Court with a motion to strike, however, Global Education will simply set forth its own statement of the case. RAP 10.3(b). The critical facts are simple and largely undisputed. (*See* Clerk's Papers ("CP") 528–529 (listing undisputed facts).)

#### **I. The three relevant statutes**

Because this case involves three different statutes that govern service of process, a brief summary of the three statutes may be useful.

The first statute is RCW 19.86.160, which is part of the Washington Consumer Protection Act, or CPA. Global Education will refer to this statute as “*the CPA’s long-arm statute,*” because the statute specifies how out-of-state service may be made on a defendant against whom the plaintiff has asserted a CPA claim. The CPA’s long-arm statute reads:

Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185.

RCW 19.86.160.

The next statute is RCW 4.28.080(10), which states how “personal service” is effected against “a foreign corporation . . . doing business within” Washington. Accordingly, Global Education will refer to this statute as the “*doing-business statute.*” The doing-business statute reads:

Service made in the modes provided in this section is personal service. The summons shall be served by delivering a copy thereof, as follows:

....

(10) If [the action is] against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof.

RCW 4.28.080(10).

The third and last statute is RCW 4.28.185, which courts generally call Washington's "long-arm statute." To distinguish it from the CPA's long-arm statute, however, Global Education will call it Washington's "*general long-arm statute*." It is "general" because it enumerates six general ways in which defendants can submit themselves to the long-arm jurisdiction of the state. RCW 4.28.185(1). Along with RCW 4.28.180, the general long-arm statute provides how service shall be made and what the force and effect of that service is. It also provides that under this general long-arm statute, out-of-state personal service is "valid only when an affidavit is made and filed to the effect that service cannot be made within the state." RCW 4.28.185(4).

## **II. Facts**

Global Education, a Seattle-based nonprofit, had been receiving a great many unsolicited faxes—commonly called "junk faxes." (CP 6, ¶ 10.) These junk faxes were a drain on its business. (CP 6, ¶ 10.) In October 2005, Global Education sued Mobal for sending junk faxes. Global Education alleged that Mobal had also sent unsolicited faxes to a proposed

class of many other unwilling recipients. (CP 7, ¶ 17(a).) On behalf of this proposed class, Global Education alleged violations of the federal Telephone Consumer Protection Act, 47 U.S.C. § 227; violations of the Washington Unsolicited Fax Law, RCW 80.36.540; and violations of Washington's Consumer Protection Act, RCW 19.86.020. (CP 10–11, ¶¶ 18–24.)

Global Education had a summons and complaint personally served on Segal, Tesser & Ryan, LLP, a New York law firm (the “Segal Firm”). (CP 495, 529.) Mobal had elected to name the Segal Firm on the New York Secretary of State's website as its agent for service of process when the Secretary was served. (CP 82-83, 103.) While Mobal says that in August 2005 the Segal Firm stopped performing legal work for Mobal, in October 2005 the firm remained the listed address for service of process on the New York Secretary of State. (CP 103.) In fact, to this day, the Segal Firm remains the listed address for service of process on the Secretary of State. (CP 86, 157–158.) In other words, both in October 2005 and today, if a plaintiff serves a summons and complaint on the New York Secretary of State as an agent for Mobal, the Secretary of State will then mail that summons and complaint to the Segal Firm. (CP 417.)

Service on the Segal Firm was made by a process server named Harry Torres. According to the deposition testimony of Greg Ryan, the managing partner of the Segal Firm, Ryan told Torres that the firm was not authorized to accept service from Torres. (CP 505:1-14, 557.) It is undisputed, however, that the firm was authorized to accept service from the New York Secretary of State. (CP 417:11-16 (Request for Admission 6).)

Mobal does dispute whether it received the summons and complaint from the Segal Firm. The Superior Court found that after personal service was made, the complaint and summons were mailed to Mobal by the law firm. (CP 529.) Greg Ryan, the Segal Firm partner, told Omer Evans, a secretary at the firm, to mail the complaint and summons to Mobal. (CP 505:15-18.) Evans testified that he did, in fact, mail the documents to Mobal. (CP 523:7-8.)<sup>1</sup>

Although Mobal claims it never received the summons and complaint, it never fired the Segal Firm as its agent for service from the

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<sup>1</sup> Mobal quotes a statement from Global Education's counsel about this mailing. (Mobal Br. 10.) That statement does not express disbelief that the Segal Firm actually mailed the summons and complaint to Mobal, or that Mobal actually received it; it expresses disbelief that the Segal Firm would have mailed the summons and complaint "without a cover letter or making sure it was received." (CP 331.)

New York Secretary of State. (CP 86, 157–158 (listing Segal Firm as Mobal’s agent for receiving process from the New York Secretary of State).) The record also shows that the Segal Firm forwarded other correspondence about this case, and that Mobal received those documents and responded to Global Education. (CP 111, 113 (Mobal responding to correspondence sent to Segal Firm).)

### **III. Procedural history**

After Mobal had failed to appear, Global Education filed a motion for default. (CP 26–28.) Global Education mailed its motion for default to Mobal (CP 20–21), but Mobal did not show up to contest it. The Superior Court granted the motion (CP 29), and thereafter Global Education moved for entry of judgment after default and certification of the proposed class (CP 40–51). The motion was granted. (CP 58–60.)

Shortly thereafter, Global Education sent Mobal a copy of the default judgment. (CP 111.) On January 17 and 18, 2007 and on February 22, 2007, Chrissie Phillips, Mobal’s Group Sales and Marketing Manager, responded to Global Education’s communications but took no other action. (CP 113–119).

In November 2009, Mobal moved to vacate the default judgment on the ground that service was defective and the Superior Court lacked

personal jurisdiction. (CP 63–67.) Global Education opposed the motion, arguing that service was proper under the doing-business statute. The Superior Court deferred ruling on the motion pending an evidentiary hearing (CP 202), and in the meantime the parties took discovery related to the service of process (*e.g.*, CP 205–219, 295–303).

In August 2011, the Superior Court ordered Mobal to show cause why its motion to vacate the default judgment should not be denied. (CP 252.) Global Education filed a memorandum supporting the show-cause order, arguing that service was proper under the doing-business statute. (CP 253–255.) Mobal responded to the show-cause order. In its response, it argued—for the first time—that the default judgment should be voided because Global Education had not complied with the general long-arm statute’s affidavit provision, RCW 4.28.185(4). (CP 257–269 (making affidavit argument); *cf.* CP 63–67, 171–177, 188–195, 237–242 (no such argument).) The affidavit provision of the general long-arm statute requires a plaintiff who makes personal service outside Washington to submit an affidavit “that service cannot be made within the state.” RCW 4.28.185(4).

In its order on the order to show cause, the Superior Court ruled that Global Education had substantially complied with the doing-business

statute. (CP 529–530.) It also directed Global Education to respond to Mobal’s argument about the general long-arm statute’s affidavit requirement. (CP 530.)

Global Education timely responded to the Superior Court’s order. (CP 531–543). After briefing, the Superior Court ruled that Global Education had not complied with the general long-arm statute’s affidavit requirement, but that compliance with the doing-business statute was sufficient to confer personal jurisdiction. It therefore upheld the default judgment. (CP 547–548.) This appeal soon followed. (CP 549–550.)

## **ARGUMENT**

### **I. Applicable standards of review**

Mobal is correct that the bulk of this appeal involves questions of statutory interpretation, and also correct that such questions are reviewed *de novo*. *Getty Images (Seattle), Inc. v. City of Seattle*, 163 Wn. App. 590, 600, 260 P.3d 926 (2011).

This appeal is not entirely without questions of fact, however. The Superior Court found that the law firm on which Global Education served the summons and complaint was Mobal’s agent, so that the service was valid under the doing-business statute, RCW 4.28.080(10). (CP 529–530.)

The existence of an agency relationship is a factual question for the trial court, so on appeal the trial court's finding is reviewed for substantial evidence. *Hoglund v. Meeks*, 139 Wn. App. 854, 866, 170 P.3d 37 (2007). Whether Mobal actually received the summons and complaint is also a factual question for the trial court. *Automat Co. v. Yakima County*, 6 Wn. App. 991, 996, 497 P.2d 617 (1972). "Substantial evidence is evidence that would persuade a fair-minded person of the truth of the statement asserted." *Cingular Wireless L.L.C. v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006).

Finally, this state's appellate courts have articulated two different standards for reviewing a trial court's denial of motion to vacate a judgment for lack of jurisdiction. In *Kennedy v. Sundown Speed Marine, Inc.*, the court wrote that "the question for an appellate court is whether the trial court acted properly in denying the motion to vacate the judgment" and the trial court's "exercise of its judgment . . . will be overturned on appeal only when it plainly appears the court has abused its discretion." 97 Wn.2d 544, 548, 647 P.2d 30 (1982) (plurality opinion); *see also id.* at 549 (Dimmick, J., concurring in the result) (reviewing the trial court's determination deferentially). That standard, however, stands in tension with the rule that a court has "a nondiscretionary duty to vacate

void judgments.” *Leen v. Demopolis*, 62 Wn. App. 473, 478, 815 P.2d 269 (1991). Under either of those standards, however, the Superior Court’s judgment should be affirmed.

**II. The Superior Court had personal jurisdiction under the Consumer Protection Act’s long-arm statute**

The Superior Court had personal jurisdiction over Mobal under the CPA’s long-arm statute, RCW 19.86.160.

**A. The requirements of the CPA’s long-arm statute, not those of the general long-arm statute, govern here**

The plain language of the CPA’s long-arm provision specifies the necessary service for personal jurisdiction in CPA cases:

Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185.

RCW 19.86.160.

Global Education alleged violations of the CPA (CP 6, ¶ 12; CP 11, ¶¶ 22–24), and thus the requirements of the CPA’s long-arm statute apply here. Mobal “engaged in conduct in violation” of the CPA, RCW 19.86.160; as Global Education noted in its complaint, a “violation of the Washington Unsolicited Fax Law constitutes a *per se* violation of the

Washington Consumer Protection Act.” (CP 4, ¶ 2; *see also* CP 6, ¶ 12.)  
*See* RCW 80.36.540(5) (“A violation of [the Washington Unsolicited Fax Law] is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW.”). And Mobal’s act “had an impact in this state” because Global Education received a fax from Mobal in Washington. (CP 6, ¶ 12.) At the time, Global Education was receiving “a large quantity of unsolicited advertisements by facsimile that [were] a drain on its business.” (CP 6, ¶ 10.) Because Mobal engaged in “conduct in violation” of the CPA that “had [an] impact” in Washington, and because Global Education “personal[ly] serv[ed]” Mobal, Mobal is “deemed to have thereby submitted [itself] to the jurisdiction of the courts of this state.” RCW 19.86.160.

*State v. Reader’s Digest Ass’n* is directly on point and demonstrates that the Superior Court had personal jurisdiction over Mobal. 81 Wn.2d 259, 501 P.2d 290 (1972), *modified on other grounds by Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531 (1986). There, the defendant, Reader’s Digest, was sending unsolicited sweepstakes solicitations through the mail to Washington residents at a time when sweepstakes were prohibited by Washington law. Reader’s Digest challenged the superior court’s personal jurisdiction. On appeal,

our Supreme Court reversed the superior court’s dismissal, holding that “performance of an unfair trade practice in this state by a foreign corporation which has no agents, employees, offices or other property in the state is a sufficient contact to establish jurisdiction” under the CPA’s long-arm statute. *Id.* at 276. The court also held that recognizing personal jurisdiction under the CPA “does not offend traditional notions of fair play and substantial justice,” because the offender “solicit[s] Washington business . . . by clearly illegal methods.” *Id.* at 278. Under such circumstances, it “is the duty of the state to protect its residents from such unfair practices. If our courts are not open, the state will be without a remedy in any court and the Consumer Protection Act will be rendered useless.” *Id.*

The CPA’s long-arm statute does not require the filing of an affidavit stating that in-state service could not be made—as opposed to the general long-arm statute, which does contain such a requirement. RCW 4.28.185(4). Should Mobal argue that Global Education had to satisfy both the CPA’s long-arm provision and the general long-arm statute’s affidavit requirement, that argument must be rejected. *Reader’s Digest* and the plain language of the CPA’s long-arm provision both foreclose the argument.

While the *Reader's Digest* court noted that the general long-arm statute controlled in another case, *see Reader's Digest*, 81 Wn.2d at 277 (citing *Thiry v. Atl. Monthly Co.*, 74 Wn.2d 679, 445 P.2d 1012 (1968)), tellingly, the court did not analyze—at all—whether jurisdiction over Reader's Digest was proper under the general long-arm statute. *See id.* at 278. In *Reader's Digest*, personal jurisdiction under the CPA's long-arm provision was all that was necessary. As noted above, Global Education met the requirements of the CPA's long-arm provision. Because the *Reader's Digest* court held that long-arm jurisdiction is proper when the requirements of only the CPA's long-arm statute are met, the Superior Court had personal jurisdiction over Mobal.

But the Superior Court would have had personal jurisdiction over Mobal under the CPA's long-arm statute even if our Supreme Court had never decided *Reader's Digest*. A straightforward reading of the relevant statutes shows that under the CPA's long-arm statute, compliance with the general long-arm statute's affidavit requirement is not necessary—and that Mobal is thus subject to Washington jurisdiction.

*First*, the plain meaning of the CPA's long-arm statute provides that it, and not the general long-arm statute, governs CPA cases. In interpreting statutes, courts look first to the plain meaning. *State v.*

*Hirschfelder*, 170 Wn.2d 536, 543, 242 P.3d 876 (2010). By its express terms, the CPA’s long-arm statute applies where a defendant “has engaged in conduct in violation of this chapter [the CPA].” RCW 19.86.160. Mobal violated the CPA; the CPA’s long-arm statute therefore governs.

*Second*, recognizing the personal service provisions of both the CPA and the general long-arm statute harmonizes those statutes and gives effect to all the language in each statute. Where two statutes “relate to the same subject and are not actually in conflict,” they “should be interpreted to give meaning and effect to both.” *Martin v. Triol*, 121 Wn.2d 135, 148, 847 P.2d 471 (1993). The general long-arm statute expressly provides that more specific statutes will govern for certain causes of action, stating that “[n]othing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law.” RCW 4.28.185(6). Because the CPA’s long-arm statute is a law that provides the “the right to serve any process in [an]other manner,” *id.*, its provisions are not affected by the general-long arm statute. Thus, the natural reading of the statutes is that the CPA’s long-arm statute—rather than the general long-arm statute—governs service of process for a CPA cause of action.

*Third*, even if there were a conflict between the CPA's long-arm statute and the general long-arm statute, giving effect here to the CPA's long-arm statute finds support in the "general rule of statutory construction" that "gives preference to the . . . more specific statute if two statutes appear to conflict." *Bailey v. Allstate Ins. Co.*, 73 Wn. App. 442, 446, 869 P.2d 1110 (1994). Here, the CPA's long-arm statute is the more specific statute—it covers only CPA claims. Requiring service under the CPA to *also* conform to the requirements of the long-arm statute would render the more specific CPA statute superfluous. *See City of Seattle v. Winebrenner*, 167 Wn.2d 451, 464, 219 P.3d 686 (2009) (holding that courts must avoid rendering statutory language superfluous).

*Fourth and last*, giving effect to the CPA's long-arm statute fulfills the Legislature's intent. The main difference here between the CPA's long-arm statute and the general long-arm statute is that the general statute requires filing an affidavit "that service cannot be made in the state." RCW 4.28.185(4). The Legislature commands that the CPA "shall be liberally construed [so] that its beneficial purposes may be served." RCW 19.86.920; *see also Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 40, 204 P.3d 885 (2009) (following the Legislature's command to liberally construe the CPA). Given the Legislature's intent to protect consumers

from out-of-state actors, it would frustrate that intent for a consumer's claim to fail solely because her counsel failed to file an affidavit that "service cannot be made within the state." RCW 4.28.185(4).

The harmful consequences of a contrary holding are well illustrated by the Flammable Fabrics Act, the statute covering torts arising from flammable children's clothing. Chapter 70.110 RCW. The Flammable Fabrics Act's long-arm statute is identical to the CPA's long-arm statute, and thus the Flammable Fabrics Act's long-arm statute rather than the general long-arm statute should govern any action under the Flammable Fabrics Act. *Compare* RCW 70.110.080, *with* RCW 19.86.160. This makes sense: the Legislature found flammable children's clothing to be "an immediate and serious danger to the infants and children of this state." RCW 70.110.020. Just as with the CPA, the Legislature wanted to ensure that failure to file an affidavit under the general long-arm statute would not prevent relief when a child was hurt or killed by unsafe sleepwear. In short, when the Legislature has wanted to protect Washingtonians from specific types of acts by out-of-state parties, it has eliminated some of the formalities of the general long-arm statute.

Mobal, however, may argue that when the CPA's long-arm statute provides that persons who violate the CPA "submit[] themselves to the

jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185,”<sup>2</sup> RCW 19.86.160, the CPA’s long-arm statute somehow incorporates the procedural requirements of the general long-arm statute, including its affidavit requirement. But that argument ignores the plain language of the CPA, which does not even hint at such incorporation. For that reason alone, the argument would have to be rejected.

In addition, a natural reading of the plain statutory language makes clear that “within the meaning of RCW 4.28.180 and 4.28.185” defines the *effect* of service under CPA long-arm statute. RCW 4.28.180 explains that personal service outside the state has the effect of personal service if service is made “upon a person who has submitted to the jurisdiction of courts of this state,” and that a summons to an out-of-state party shall give that party 60 days to respond, rather than the 20 days that an in-state party is entitled to. RCW 4.28.180 explains only what the summons must contain and the effect of service. Thus, the phrase “within the meaning of RCW 4.28.180” in the CPA’s long-arm statute means that personal service under the CPA shall have the effect described in RCW 4.28.180. RCW 4.28.185, the general long-arm statute, similarly contains

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<sup>2</sup> RCW 4.28.185 is the general long-arm statute and RCW 4.28.180 specifies how the summons and complaint are served outside the state in accordance with the general long-arm statute.

information about the effect of personal service: just like RCW 4.28.180, RCW 4.28.185(2) provides that personal service on an out-of-state party has “the same force and effect as though personally served within this state” if the party “is subject to the jurisdiction of the courts of this state.” Thus, by stating that a party “shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185,” the CPA’s long-arm statute has provided that out-of-state personal service has “the same force and effect as . . . personal[] serv[ice] within this state.” RCW 4.28.180, 4.28.185(2).

Any other reading of the CPA’s long-arm statute would be inconsistent with the general long-arm statute itself. Subsection six of the general long-arm statute itself, after all, provides that where other statutes, like the CPA’s long-arm statute, provide for particular forms of service, it is those statutes, and not the general long-arm statute, that govern. *See* RCW 4.28.185(6) (“Nothing herein contained limits or affects the right to serve any process in any other manner . . . provided by law.”).

In fact, subsection six of the general long-arm statute shows that even *if* the CPA’s long-arm statute explicitly provided that it incorporated the requirements of the general long-arm statute, there would still be no affidavit required by the CPA’s long-arm statute. After all, one of the

requirements of the general long-arm statute *is* subsection six: the requirement that more specific statutes like the CPA’s long-arm statute trump the general long-arm statute. Thus, even if the CPA’s long-arm statute incorporated the requirements of the general long-arm statute, the reader would be directed back to the CPA’s long-arm statute, which lacks any requirement that counsel file an affidavit testifying that in-state service was impossible.<sup>3</sup>

In sum, it is the CPA’s long-arm statute and not the general long-arm statute that governs here—and under the CPA’s long-arm statute, Global Education was not required to file any special affidavit.

**B. Global Education’s personal service was sufficient under the CPA’s long-arm statute**

The CPA’s long-arm statute does not itself define “personal service,” but under either Global Education’s or Mobal’s reading of Washington’s service statutes, Global Education substantially complied with the requirement of “personal service.”

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<sup>3</sup> To put it differently, interpreting the CPA’s long-arm statute to be subject to the general long-arm statute creates a vicious and unending cycle, with the reader being directed back from the CPA’s long-arm statute to the general long-arm statute, which then redirects the reader to the CPA’s long-arm statute—a process that logically would continue forever. It is unlikely the Legislature intended such a result, and thus unlikely that the CPA’s long-arm statute is subject to the additional requirements of the general long-arm statute.

As Global Education has already noted, the CPA is liberally construed. RCW 19.86.920; *see also supra* pp. 16–17. Given this liberal construction, the CPA’s requirement of “personal service” cannot impose any *more* requirements than the doing-business statute, which is part of Washington’s larger traditional personal-service statute, RCW 4.28.080. And for the reasons that Global Education discusses below, *see infra* pp. 31–37, the service here substantially complied with RCW 4.28.080(10), the doing-business portion of the traditional personal-service statute. *See Ryland v. Universal Oil Co.*, 8 Wn. App. 43, 45–46, 504 P.2d 1171 (1972) (substantial compliance is all that is required “where [p]ersonal service is made”).

As far as Global Education can determine, Mobal’s position appears to be that RCW 4.28.080, Washington’s traditional personal-service statute, defines what out-of-state “personal service” means for *all* service statutes. (*See* Mobal Br. 32.) If that position is correct, then Global Education made valid “personal service” under the CPA’s long-arm statute. That is because Global Education substantially complied with the relevant requirements of RCW 4.28.080(10), the doing-business portion of the traditional personal-service statute. *See infra* pp. 31–37. Thus, even on

Mobal's reading of Washington's service statutes, service here was sufficient under the CPA's long-arm statute.

**C. The Superior Court's personal jurisdiction under the CPA's long-arm statute is properly before this Court**

Whether the Superior Court had personal jurisdiction over Mobal under the CPA's long-arm statute was not raised below. That question, however, is a purely legal one. It is not disputed (nor can it be) that Global Education alleged a CPA violation against Mobal. (CP 6, ¶ 12; CP 11, ¶¶ 22-24.) Whether that allegation gave the Superior Court personal jurisdiction over Mobal depends solely on the interpretation of RCW 19.86.160 and 4.28.185—i.e., on statutory interpretation, which is “a pure question of law” reviewed de novo. *Friends of the Law v. King County*, 123 Wn.2d 518, 523, 869 P.2d 1056 (1994).

It has been well settled for over half a century that where a trial court's decision is subject to de novo review and its judgment “can soundly rest on any ground, it *must* be sustained.” *Rosenthal v. City of Tacoma*, 31 Wn.2d 32, 36, 195 P.2d 102 (1948) (emphasis added); *see also, e.g., Jones v. Standard Sales*, 34 Wn.2d 546, 552, 209 P.2d 446 (1949) (“On a trial de novo on the record, if judgment can be sustained on *any* ground, the cause will not be reversed.” (emphasis in original)). Washington courts continue to adhere to this doctrine—a doctrine that gives proper respect to

the decisions of trial courts. *See State v. Gutierrez*, 92 Wn. App. 343, 347, 961 P.2d 974 (1998) (“We can examine [an issue] even though it was not challenged in the trial court. A reviewing court will generally affirm the decision of the trial court upon any ground supported by the record, even if it is not the ground utilized by the trial court. There is no factual dispute in this case, and the issue presents a purely legal question that has been adequately briefed on appeal.” (footnote omitted)); *see also, e.g., LaMon v. Butler*, 112 Wn.2d 193, 200–01, 770 P.2d 1027 (1989); *Piper v. Dep’t of Lab & Indus.*, 120 Wn. App. 886, 890, 86 P.3d 1231 (2004). Thus, the Superior Court’s judgment should be affirmed on the simple ground that the CPA gave it personal jurisdiction over Mobal.

### **III. The Superior Court had personal jurisdiction under the doing-business statute**

Global Education’s complaint alleged that Mobal “transacted business within the State of Washington at all times relevant hereto,” “had continuous and systematic contacts with the State of Washington,” and “committed tortious acts within the State of Washington.” (CP 4, ¶ 6; *see also* CP 4–5, ¶ 7 (listing further allegations supporting doing business jurisdiction).)

A court has jurisdiction over an out-of-state corporation that is “doing business” within Washington when that corporation is served pursuant to the doing-business statute, RCW 4.28.080(10):

Service made in the modes provided in this section is personal service. The summons shall be served by delivering a copy thereof, as follows:

....

(10) If [the action is] against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof.

The “doing business” requirement of RCW 4.28.080(10) “subsume[s] the due process requirement” that applies under Washington’s general long-arm statute. *Hartley v. Am. Contract Bridge League*, 61 Wn. App. 600, 605, 812 P.2d 109 (1991). “[T]o support personal jurisdiction under RCW 4.28.080(10), the activities of a non-resident defendant must be continuous and substantial.” *Id.*

The Superior Court found that it had personal jurisdiction under the doing-business statute, “as alleged in the complaint. This has not been disputed in the Motion to Vacate.” (CP 547.) The Superior Court concluded that doing-business jurisdiction was “a sufficient basis to uphold the Default Judgment.” (CP 547.)

**A. The statutory language and structure demonstrate that Global Education’s substantial compliance with the doing-business statute was enough to give the Superior Court personal jurisdiction over Mobal**

The doing-business statute independently grants jurisdiction over out-of-state companies. Enacted in 1893, the doing-business statute “preceded and is not to be confused with Washington’s long-arm statute, RCW 4.28.185.” *Crose v. Volkswagenwerk Aktiengesellschaft*, 88 Wn.2d 50, 54, 558 P.2d 764 (1977). Thus the doing-business statute predates the general long-arm statute by nearly 70 years. *See* Laws of 1959, ch. 131 § 2; *Teague v. Damascus*, 183 F. Supp. 446, 447 (E.D. Wash. 1960) (noting the general long-arm statute was passed by the Legislature with an effective date of June 11, 1959). During that 70-year period, of course, out-of-state companies were sued in Washington courts and compliance with the doing-business statute was enough to confer personal jurisdiction. *See, e.g., Barrett Mfg. Co. v. Kennedy*, 73 Wash. 503, 504–05, 131 P. 1161 (1913); *Sievers v. Dalles, P. & A. Navigation Co.*, 24 Wash. 302, 64 P. 539 (1901); *see also Quigley v. Spano Crane Sales & Serv., Inc.*, 70 Wn.2d 198, 201–02, 422 P.2d 512 (1967) (holding that “where jurisdiction prior to enactment of the long-arm statute (RCW 4.28.185) . . . depended on doing business . . . now a solitary business deal if transacted within this state, will, under the long-arm statute, suffice to vest jurisdiction in the courts of

Washington”). Because the general long-arm statute neither abrogated nor amended the doing-business statute, Global Education’s compliance with the doing-business statute was sufficient to grant the trial court jurisdiction.

Mobal, however, argues that Washington’s general long-arm statute adds requirements for personal jurisdiction *on top of* the doing-business statute. (Mobal Br. 29–31.) Thus, according to Mobal, Global Education had to do two things: first, comply with the mode of service laid out in the doing-business statute, and second, file an affidavit in compliance with the general long-arm statute. *See* RCW 4.28.185(4). This argument is unpersuasive.

Subsection six of the general long-arm statute explicitly preserves the power of other statutes, stating that “[n]othing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law.” RCW 4.28.185(6). The doing-business statute, in turn, constitutes “any other manner . . . provided by law” because it explains how to make personal service on an out-of-state corporation doing business in Washington. *See* RCW 4.28.080(10). Where a statute explicitly preserves the power of other, related laws, courts construe both statutes to be independently effective. *See, e.g., Yakima v. Yakima Herald-Republic,*

170 Wn.2d 775, 797, 246 P.3d 768 (2011) (holding that courts give effect to Legislature’s purpose by “considering the statute as a whole, giving effect to all that the legislature has said, and by using related statutes to help identify the legislative intent embodied in the provision in question”). In other words, nothing in the general long-arm statute “limits or affects the right” to serve process in accordance with the doing-business statute. So serving process in accordance with the doing-business statute is sufficient to confer personal jurisdiction on a Washington court.

But even if subsection six of the general long-arm statute—the provision preserving other modes of service—did not exist, Mobal’s position would be implausible. If the general long-arm statute had added requirements to the doing-business statute, then the general long-arm statute would have amended the doing-business statute. But the general long-arm statute does not refer to the doing-business statute, much less state that it is amending it. *See* RCW 4.28.185. If there was an amendment, then it was an amendment by implication only.

“Implied amendments,” of course, “are disfavored in the law.” *Wilbur v. Dep’t of Labor & Indus.*, 38 Wn. App. 553, 559, 686 P.2d 509 (1984) (citing *Mistereck v. Wash. Mineral Prods., Inc.*, 85 Wn.2d 166,

531 P.2d 805 (1975)). Where a statute can be read not to impliedly amend an earlier law, it will be. *Mistereck*, 85 Wn.2d at 168.

The plain language of the general long-arm statute is best read as an independent source of personal jurisdiction. The general long-arm statute, at RCW 4.28.185(2), states that “[s]ervice of process upon any person *who is subject to the jurisdiction of the courts of this state, as provided in this section*, may be made by personally serving the defendant outside this state, as provided in RCW 4.28.180. . . .” RCW 4.28.185(2) (emphasis added). Thus, the mode of personal service required by RCW 4.28.185, and set forth in RCW 4.28.180, applies only to those who are subject to Washington jurisdiction “as provided in this section”—i.e., those who are subject to Washington jurisdiction because they have committed one of the acts enumerated in RCW 4.28.185(1).

Likewise, the plain language of the doing-business statute is best read as creating personal jurisdiction independently from the general long-arm statute. For if the mode of personal service required by the general long-arm statute applied to persons subject to Washington jurisdiction under the doing-business statute, it would make superfluous the statement in the doing-business statute that “[s]ervice made in the modes provided in this section *is* personal service.” RCW 4.28.080 (emphasis added).

“Constructions that would render a portion of a statute meaningless or superfluous should be avoided.” *Ford Motor Co. v. City of Seattle*, 160 Wn.2d 32, 41, 156 P.3d 185 (2007) (quotation marks and citation omitted).

Thus, even if subsection six of the general long-arm statute did not explicitly preserve the doing-business statute as a separate and sufficient source of personal jurisdiction, *see* RCW 4.28.185(6), the affidavit requirement of the general long-arm statute would still not apply to service under the doing-business statute. *Mistereck*, 85 Wn.2d at 168.

**B. Precedent strongly suggests that the doing-business statute is an independent source of personal jurisdiction**

In *Kennedy v. Sundown Speed Marine, Inc.*, 97 Wn.2d 544, 647 P.2d 30 (1982), our Supreme Court considered whether service was properly made under the doing-business statute without reference to the general long-arm statute. The plaintiff Kennedy served the defendant, Volvo Penta, by delivering the summons and complaint to a production worker at a plant in Chesapeake, Virginia. Later, a default judgment was entered and Volvo Penta moved to vacate it. The superior court denied the motion, and the Supreme Court affirmed, holding that service was proper. 97 Wn.2d at 548; *see also id.* at 548–49 (concurring opinion affirming trial court’s determination that service was proper). Neither the plurality nor the concurring opinion asked whether the service provision of the general

long-arm statute, RCW 4.28.180, was complied with, whether a long-arm affidavit was filed, *see* RCW 4.28.185(4), or, most strikingly, whether any of the jurisdictional prerequisites of the general long-arm statute were satisfied, *see* RCW 4.28.185(1). *Kennedy* shows that doing-business statute applies to out-of-state service; if the long-arm statute had to be followed in addition to the doing-business statute, the court would have said so.

**C. Global Education properly alleged doing-business jurisdiction**

Global Education has made, as it must, a prima facie showing of jurisdiction. *Raymond v. Robinson*, 104 Wn. App. 627, 633, 15 P.3d 697 (2001). On appeal, the allegations in Global Education’s complaint are taken as true. *Id.* The complaint here made sufficient allegations that Mobal was doing business in Washington, most importantly:

- Mobal “sent unsolicited faxes to hundreds of individuals or contracted with a third party to send said faxes into King County, Washington.”
- Mobal “transacted business within the State of Washington [and] had continuous and systematic contacts with the State of Washington.”

(CP 4, ¶¶ 5-6; *see also* CP 4-5, ¶ 7.) While the record here is less developed than in some reported cases upholding doing-business jurisdiction, Global Education is handicapped in making its showing. Mobal’s continuous contacts are more difficult to track than, for instance,

the restaurants that were quite obviously located in Washington and that the court relied on in finding doing-business jurisdiction in *Hein v. Taco Bell, Inc.*, 60 Wn. App. 325, 330, 803 P.2d 329 (1991). But Mobal should not escape jurisdiction solely because its activities are more difficult to trace. Taken as true, sending “unsolicited faxes to hundreds of individuals” in Washington (CP 4, ¶ 5), constitutes a continuing business enterprise sufficient to give the court “doing business” jurisdiction. (CP 560–561.)

**D. Global Education substantially complied with the requirements of the doing-business statute, thus giving the Superior Court personal jurisdiction over Mobal**

Washington law requires substantial compliance, rather than strict compliance, with personal service requirements. *See, e.g., Powell v. Sphere Drake Ins. P.L.C.*, 97 Wn. App. 890, 900, 988 P.2d 12 (1999) (“Service on a foreign corporation under RCW 4.28.080(10) is reviewed for substantial compliance.”). “In determining substantial compliance, the inquiry focuses on whether the method of attempted service was reasonably calculated to provide notice to the defendant.” *Id.* Here, Global Education substantially complied with the doing-business statute, RCW 4.28.080(10), which states that if an out-of-state corporation is doing

business within Washington, service may be made to “any agent, cashier or secretary” of that corporation.

An agent need not be a “registered agent” for service to be valid. As *Crose* held: “It is not necessary that express authority to receive or accept service of process shall have been conferred by the corporation on the person served. It is sufficient if authority to receive service may be reasonably and justly implied.” *Crose*, 88 Wn.2d at 58. This holding was consistent with long-standing Washington law, under which RCW 4.28.080(10)’s “any agent” language is broadly construed. Nearly a hundred years ago, *Barrett Manufacturing Co. v. Kennedy*, 73 Wash. 503, 506–07, 131 P. 1161 (1913) instructed that the term “any agent” in what is now RCW 4.28.080(10) was “intended to have a broad meaning, and must be liberally construed to effectuate the legislative intent.”

The dispositive questions, then, are whether the Segal law firm’s “authority to receive service may be reasonably and justly implied,” *Crose*, 88 Wn.2d at 58, and whether Global Education’s method of service “was reasonably calculated to provide notice” to Mobal, *Powell*, 97 Wn. App. at 900. The answer to both of these questions is yes.

As Mobal admits, Global Education “dispatched a process server” to an address “obtained . . . from the website of the New York Secretary of

State's Department of Corporations.” (Mobal Br. 8.) According to Mobal, the “New York Secretary of State’s webpage indicated that the . . . address was the address for ‘DOS Process,’ that is, the ‘[a]ddress to which [the New York Department of State] will mail process if accepted on behalf of the entity.’” (Mobal Br. 8 (bold italics omitted).) While Mobal terminated the law firm as its legal advisor a couple of months before service was made, it is undisputed that the firm was listed at the time of service, and remains listed to this day, as the address for service on the Secretary of State’s website. (Mobal Br. 8–9.) The parties agree, then, that Mobal had given the Segal Firm express authority to accept service from the New York Secretary of State.

There is “no qualitative difference” between the power to mail a summons and complaint to Mobal when it has come from the New York Secretary of State and the power to mail a summons and complaint to Mobal when it has been personally served. *Hoglund v. Meeks*, 139 Wn. App. 854, 869, 170 P.3d 37 (2007) (while a lawyer had not actually been given a particular power, it was reasonable for a third party to infer that the lawyer had been given that power, which was not qualitatively different from another power that the lawyer *had* actually been given). It is undisputed that the Segal Firm had the power to mail papers to Mobal when they had

come from the Secretary of State. When Global Education inferred that the Segal Firm had the power to mail personally served papers to Mobal, Global Education conferred on the Segal Firm no qualitatively greater authority than the Firm would have otherwise had. The inference was thus a reasonable one. As the Superior Court expressed this point:

[H]ad Global served Mobal at the [New York] Department of State, we would be in the same place—the Department of State would have taken the papers, mailed them to Segal, Tessler, and presumably Segal, Tessler would have taken the same action as they did here and mailed them to Mobal.

(CP 529.)

Serving the summons and complaint on the Segal Firm, moreover, was reasonably calculated to provide notice to Mobal. As the Superior Court noted, if the Segal Firm had received the summons and complaint from the New York Secretary of State, it would have mailed the papers on to Mobal. Making personal service on the Segal Firm, therefore, was reasonably calculated to provide notice to Mobal—it was not asking the Segal Firm to do anything it was not already doing. Mobal itself chose, and continues to choose, the Segal Firm as its agent for process through the New York Secretary of State, and it was reasonable for Global Education to rely on that selection. Thus, there was substantial evidence in the record to support the Superior Court’s finding that the Segal Firm qualified as an

“agent” under the doing-business statute. *See Hoglund*, 139 Wn. App. at 866 (existence of agency is a factual question reviewed for substantial evidence).

Against Global Education’s reasonable inferences and actions, Mobal makes two arguments. The first argument conflicts with settled law and common sense, not to mention what Mobal argues elsewhere in its brief. The second argument misconstrues the case law.

First, Mobal repeatedly states that the process server was “specifically told . . . that the Segal Law Firm had no authority to accept service for Mobal.” (Mobal Br. 38.) But Mobal itself notes that “[a]pparent authority of an agent may be inferred only from the acts of the principal, not from the acts of the purported agent.” (Mobal Br. 36–37 (bold italics and citations omitted).) Mobal thus acknowledges that the case law requires this court to focus on Mobal’s actions—authorizing the Secretary of State to publish the Segal Firm as an agent for service of process—and not on the purported words of the Segal Firm.

Besides being supported by the case law, focusing on Mobal’s actions rather than the Segal Firm’s words comports with common sense. People do not like being served with legal papers. They regularly try to avoid service through words and actions. If all that was required to defeat

personal service was a denial from the person being served that they could be served, few lawsuits could be commenced.

But Mobal claims that, here, settled law and common sense should be rejected merely because Global Education served a law firm rather than any other kind of agent. (Mobal Br. 35–36.) For this argument it relies on *Ashcraft v. Powers*, 22 Wash. 440, 61 P. 161 (1900) and *Scott v. Goldman*, 82 Wn. App. 1, 917 P.2d 131 (1996). Its reliance is misplaced.

According to Mobal, *Ashcraft v. Powers* requires attorneys to have written authority from their clients to accept service—and if not, service is void. But of course, here the Segal Firm did have authority to accept service. As Mobal admits, the Segal Firm “was listed as the address to which the Secretary of State would mail process for Mobal.” (Mobal Br. 8.) In contrast, the attorney in *Ashcraft* had no written authority to accept any kind of service at all. 22 Wash. at 442. *Ashcraft* thus stands for the proposition that simply because a lawyer represents a company in some matters it cannot accept service if it has not been given any authority at all to do so. Here, however, the Segal Firm was and is publically listed, at the request of Mobal, as an agent for service of process from the New York Secretary of State. Because it was reasonable and just to infer that the Segal Firm could also accept personal service, and because such service

was reasonably calculated to provide notice to Mobal, personal service to the Segal Firm substantially complied with the doing-business statute.

Nor is Mobal's other case, *Scott v. Goldman*, on point. If anything, *Scott* and this appeal present a study in contrasts. In *Scott*, just as in *Ashcraft*, there was no written authorization to an attorney to take service of any kind at all. Here, by contrast, the Segal Firm was specifically named as an agent for service of process. In *Scott*, the court was determining whether a general power of attorney granted the attorney power to accept process—and general powers of attorney are “strictly construed.” *Scott*, 81 Wn. App. at 6. Under the doing-business service statute, by contrast, the term “agent” is “liberally construed.” *Barrett*, 73 Wash. at 507. In *Scott*, the court distinguished a line of cases validating service on an agent who was not explicitly authorized to accept that service—and *Scott* did so precisely because “the governing court rules provide[d] for service on an individual defendant's agent.” *Scott*, 82 Wn. App. at 7. Here, by contrast, the governing statute, RCW 4.28.080(10), explicitly provides for service on “any agent.” *Scott* is simply irrelevant here.

**E. Actual receipt of the summons and complaint is unnecessary for substantial compliance with the doing-business statute, and in any event there is substantial evidence that Mobal actually received the summons and complaint**

Mobal strenuously argues that it did not actually receive the summons and complaint that the Segal Firm mailed, but this argument is no more than a distraction. Mobal does not appear to argue that actual receipt is necessary to substantially comply with the doing-business statute. Nor could it make that argument. The plain language of the statute focuses on whether the serving party actually “deliver[ed] a copy” of the summons and complaint to “any agent” of the foreign corporation. RCW 4.28.080, 4.28.080(10). The statute says nothing about the foreign corporation’s receipt. And in determining whether a party has substantially complied with the doing-business statute, courts ask whether the method of service “was reasonably calculated to provide notice.” *Powell*, 97 Wn. App. at 900. This phrasing tracks the same test employed under the due process clause—which requires not actual notice but rather “notice reasonably calculated under all the circumstances to apprise a party of the pendency of the action.” *In re Marriage of McLean*, 132 Wn.2d 301, 309, 937 P.2d 602 (1997); *see also Black v. Dep’t of Labor & Indus.*, 131 Wn.2d 547, 553, 933 P.2d 1025 (1997). If—as here—the method of

service was reasonably calculated to provide notice, then substantial compliance with the doing-business statute does not require actual receipt of the summons and complaint.

Moreover, there is substantial evidence that Mobal actually received the summons and complaint. The record evidence shows that the Segal Firm mailed the summons and complaint to Mobal and that the papers were never returned to the Segal Firm as undeliverable. (*E.g.*, CP 523:14–524:2, 525:19–526:2.) Relying on this evidence, the Superior Court found that the Segal Firm had mailed the papers to Mobal. (*See* CP 529 (noting that if Global Education had served the New York Secretary of State, the Segal Firm “would have taken the *same action as they did here and mailed [the summons and complaint] to Mobal*” (emphasis added))). As Mobal recognizes, this creates a presumption that Mobal did in fact receive the summons and complaint. (Mobal Br. 40.) That presumption necessarily shifted the burden to Mobal to show that it did not receive the summons and complaint.

According to Mobal, though, its employees’ denial that they did not receive the summons and complaint is enough to establish non-receipt as a matter of law. (Mobal Br. 40.) That is a strange position. While a party’s self-serving evidence can certainly create a question of fact, Global

Education can think of no area of the law where such evidence, by itself, can *remove* a question of fact from the factfinder. And indeed, this area of the law is no exception to that rule. As the case law has clarified, where there is evidence of both receipt and non-receipt, the ultimate question is for the factfinder to determine. *Automat Co. v. Yakima County*, 6 Wn. App. 991, 995–96, 497 P.2d 617 (1972); *accord Kubey v. Travelers’ Protective Ass’n of Am.*, 109 Wash. 453, 456–57, 187 P. 335 (1920). The Superior Court did not explicitly find that Mobal had actually received the summons and complaint, but Mobal vigorously argued that it had not actually received them. (CP 260–261.) Because Mobal bore the burden of proof on this issue, it can prevail only if substantial evidence could not support a finding that it actually received the summons and complaint. *See, e.g., Xieng v. Peoples Nat’l Bank of Wash.*, 120 Wn.2d 512, 526, 844 P.2d 389 (1993) (“Because the trial court did not make a finding [on the relevant issue], we must treat the case as though a finding of fact against the party with the burden of proof was made.” (citing *Golberg v. Sanglier*, 96 Wn.2d 874, 880, 639 P.2d 1347, 647 P.2d 489 (1982))). And as Global Education has just noted, there was substantial evidence to support a finding of actual receipt. *See supra* p. 39.

**F. The Superior Court deprived Mobal of no opportunity to respond, and even if it had, that would make no practical difference to this appeal**

Finally, Mobal claims that “the trial court erred by entering its dispositive order without permitting Mobal to respond to Global’s arguments” on doing-business jurisdiction. Mobal Br. at 41. Whether the Superior Court had doing-business jurisdiction, however, had been the sole focus of briefing before Mobal brought up the long-arm statute’s affidavit requirement—for the first time—in response to the Superior Court’s show-cause order. (*Compare* CP 257–269, *with* CP 63–67, 171–176, 188–194, 237–242.) Thus, it is just not credible for Mobal to contend that the Superior Court did not let it respond to the doing-business argument. And in any event, Mobal was on notice of this argument since the filing of the complaint in 2005. (CP 4, ¶ 6.)

Furthermore, whether or not the doing-business statute is an independent source of personal jurisdiction is a purely legal question—a question of statutory interpretation that this Court reviews de novo. *Getty Images (Seattle), Inc. v. City of Seattle*, 163 Wn. App. 590, 600, 260 P.3d 926 (2011). In this appeal, this Court will give no deference to the Superior Court’s decision on that question, and Mobal has had a full and fair opportunity to brief the question before this Court. Thus, even if the

Superior Court had deprived Mobal of an opportunity to respond to the doing-business question, that error makes no practical difference to this appeal.<sup>4</sup>

**IV. Mobal is not eligible for an award of attorneys' fees—but even if it were, it is the Superior Court that should make any decision on fees**

The Superior Court had personal jurisdiction over Mobal under the CPA's long-arm statute as well as under the doing-business statute. Global Education does not rely on Washington's general long-arm statute as a source of personal jurisdiction. Therefore, the attorneys' fees provision of the general long-arm statute, RCW 4.28.185(5), simply does not apply here.

Even if Mobal were eligible for an award of attorneys' fees, however, “[s]uch an award is discretionary.” *Payne v. Saberhagen Holdings, Inc.*, 147 Wn. App. 17, 36, 190 P.3d 102 (2008). Precisely because there is discretion involved, the proper course would be to remand this case to the Superior Court, because it is best positioned to determine the

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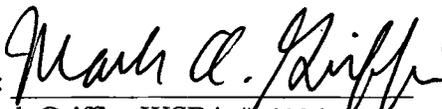
<sup>4</sup> Things might be different if the question were factual and its resolution turned on record evidence, as in the cases Mobal cites. See *R.D. Merrill Co. v. State Pollution Control Hearings Bd.*, 137 Wn.2d 118, 139, 969 P.2d 458 (1999); *White v. Kent Med. Ctr., Inc., P.S.*, 61 Wn. App. 163, 168, 810 P.2d 4 (1991).

proper size of an award, if any. *See Scott Fetzer Co. v. Weeks*, 114 Wn.2d 109, 123, 786 P.2d 265 (1990) (remanding for fee determination).

### CONCLUSION

The Superior Court had personal jurisdiction to enter the default judgment against Mobal. Its judgment should therefore be affirmed.

Respectfully submitted this 2nd day of February, 2012.

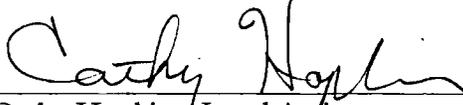
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**CERTIFICATE OF SERVICE**

I certify under penalty under the laws of the State of Washington that on February 2, 2012, I caused a true and correct copy of the foregoing BRIEF OF RESPONDENT to be delivered as follows:

Robert Michael Crowley, WSBA #37953	<input checked="" type="checkbox"/> Hand Delivered
Curt Roy Hinline, WSBA #16317	<input type="checkbox"/> Facsimile
Bracewell & Giuliani, LLP	<input checked="" type="checkbox"/> Email
701 5th Ave., Ste 6200	<input type="checkbox"/> 1 <sup>st</sup> Class Mail
Seattle, WA 98104-7018	<input type="checkbox"/> Priority Mail
Phone: (206) 204-6200	<input type="checkbox"/> Federal Express,
Fax: (206) 204-6262	Next Day
email: robert.crowley@bgllp.com	
curt.hinline@bgllp.com	

  
Cathy Hopkins, Legal Assistant

## APPENDIX

### **RCW 19.86.160**

#### **Personal service of process outside state.**

Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185.

### **RCW 4.28.080**

#### **Summons, how served.**

Service made in the modes provided in this section is personal service. The summons shall be served by delivering a copy thereof, as follows:

(1) If the action is against any county in this state, to the county auditor or, during normal office hours, to the deputy auditor, or in the case of a charter county, summons may be served upon the agent, if any, designated by the legislative authority.

(2) If against any town or incorporated city in the state, to the mayor, city manager, or, during normal office hours, to the mayor's or city manager's designated agent or the city clerk thereof.

(3) If against a school or fire district, to the superintendent or commissioner thereof or by leaving the same in his or her office with an assistant superintendent, deputy commissioner, or business manager during normal business hours.

(4) If against a railroad corporation, to any station, freight, ticket or other agent thereof within this state.

(5) If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found within the state.

(6) If against a domestic insurance company, to any agent authorized by such company to solicit insurance within this state.

(7)(a) If against an unauthorized foreign or alien insurance company, as provided in RCW 48.05.200.

(b) If against an unauthorized insurer, as provided in RCW 48.05.215 and 48.15.150.

(c) If against a reciprocal insurer, as provided in RCW 48.10.170.

(d) If against a nonresident surplus line broker, as provided in RCW 48.15.073.

(e) If against a nonresident insurance producer or title insurance agent, as provided in RCW 48.17.173.

(f) If against a nonresident adjuster, as provided in RCW 48.17.380.

(g) If against a fraternal benefit society, as provided in RCW 48.36A.350.

(h) If against a nonresident reinsurance intermediary, as provided in RCW 48.94.010.

(i) If against a nonresident life settlement provider, as provided in RCW 48.102.011.

(j) If against a nonresident life settlement broker, as provided in RCW 48.102.021.

(k) If against a service contract provider, as provided in RCW 48.110.030.

(l) If against a protection product guarantee provider, as provided in RCW 48.110.055.

(m) If against a discount plan organization, as provided in RCW 48.155.020.

(8) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this state.

(9) If against a company or corporation other than those designated in subsections (1) through (8) of this section, to the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent.

(10) If against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof.

(11) If against a minor under the age of fourteen years, to such minor personally, and also to his or her father, mother, guardian, or if there be none within this state, then to any person having the care or control of such minor, or with whom he or she resides, or in whose service he or she is employed, if such there be.

(12) If against any person for whom a guardian has been appointed for any cause, then to such guardian.

(13) If against a foreign or alien steamship company or steamship charterer, to any agent authorized by such company or charterer to solicit cargo or passengers for transportation to or from ports in the state of Washington.

(14) If against a self-insurance program regulated by chapter 48.62 RCW, as provided in chapter 48.62 RCW.

(15) In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.

(16) In lieu of service under subsection (15) of this section, where the person cannot with reasonable diligence be served as described, the summons may be served as provided in this subsection, and shall be deemed complete on the tenth day after the required mailing: By leaving a copy at his or her usual mailing address with a person of suitable age and

discretion who is a resident, proprietor, or agent thereof, and by thereafter mailing a copy by first-class mail, postage prepaid, to the person to be served at his or her usual mailing address. For the purposes of this subsection, "usual mailing address" does not include a United States postal service post office box or the person's place of employment.

**RCW 4.28.185**

**Personal service out-of-state — Acts submitting person to jurisdiction of courts — Saving.**

(1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:

(a) The transaction of any business within this state;

(b) The commission of a tortious act within this state;

(c) The ownership, use, or possession of any property whether real or personal situated in this state;

(d) Contracting to insure any person, property, or risk located within this state at the time of contracting;

(e) The act of sexual intercourse within this state with respect to which a child may have been conceived;

(f) Living in a marital relationship within this state notwithstanding subsequent departure from this state, as to all proceedings authorized by chapter 26.09 RCW, so long as the petitioning party has continued to reside in this state or has continued to be a member of the armed forces stationed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the defendant outside this state, as provided in

RCW 4.28.180, with the same force and effect as though personally served within this state.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon this section.

(4) Personal service outside the state shall be valid only when an affidavit is made and filed to the effect that service cannot be made within the state.

(5) In the event the defendant is personally served outside the state on causes of action enumerated in this section, and prevails in the action, there may be taxed and allowed to the defendant as part of the costs of defending the action a reasonable amount to be fixed by the court as attorneys' fees.

(6) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law.

**RCW 4.28.180**

**Personal service out-of-state.**

Personal service of summons or other process may be made upon any party outside the state. If upon a citizen or resident of this state or upon a person who has submitted to the jurisdiction of the courts of this state, it shall have the force and effect of personal service within this state; otherwise it shall have the force and effect of service by publication. The summons upon the party out of the state shall contain the same and be served in like manner as personal summons within the state, except it shall require the party to appear and answer within sixty days after such personal service out of the state.