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COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON

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HU YAN, individually and as Personal Representative  
of the Estate of GUIZHEN YAO, deceased,

Appellant,

v.

PLEASANT DAY ADULT FAMILY HOME, INC., P.S., a  
Domestic Corporation, YU CHEN YIN and unknown JOHN DOES,

Respondents/Cross-Appellants,

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RESPONDENTS/CROSS-APPELLANTS' REPLY BRIEF

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King County Superior Court Cause No. 10-2-35293-7 SEA

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PAMELA M. ANDREWS, WSBA #14248  
ANDREWS • SKINNER, P.S.  
645 Elliott Avenue West, Suite 350  
Seattle, WA 98119  
206-223-9248/ Fax: 206-623-9050  
Attorneys for Respondents/Cross-Appellants

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**A. The Trial Court Abused Its Discretion in Awarding Costs Pursuant to Civil Rule 68 and RCW 4.84.010, Which When Read Together Provide for Recovery of Post-Offer Costs.**

Respondents Pleasant Day and Maria Yin (“Pleasant Day”) have presented an issue of law that requires clarification: the application and interplay of Civil Rule 68 and RCW 4.84.010. Appellant Yan asserts that this issue is controlled by *Jordan v. Berkely*, 26 Wn.App. 242, 611 P.2d 1382 (1980).<sup>1</sup> Pleasant Day disagrees and submits that the holding in *Jordan* is not the same issue raised herein and therefore the holding in *Jordan* is not applicable to the present matter before the Court in this cross-appeal.

In *Jordan*, the trial court awarded the prevailing party expert witness fees which are not allowed under RCW 4.84. *Id.* at 245. The Court of Appeals found such an award to be in error. *Id.* Further, the case relied upon by the *Jordan* court limited its discussion to what constituted a “cost” and held that “costs” should not be expanded to include attorney fees and expert witness fees. *See Sims v. Kiro, Inc.*, 20 Wn. App. 229, 238, 580 P.2d 642 (1978).

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<sup>1</sup> Yan also cites *Estep v. Hamilton*, 148 Wn. App. 246, 201 P.3d 331 (2008), a distinguishable Division Three case. The court in *Estep* addressed recovery of costs to the defendant as a prevailing party on summary judgment. In addition to addressing some of the statutory costs, the court addressed expert witness fees, airfare, and library copying costs—none of which are permitted under RCW 4.84.010 or are at issue in this cross-appeal.

*Sims* and *Jordan* are not applicable to the issue here presented. Pleasant Day is not seeking the recovery of attorney fees, expert witness fees, or any other category of costs not identified in RCW 4.84.010. Instead, Pleasant Day is seeking recovery for costs that *are* identified as recoverable under RCW 4.84.010: deposition transcripts and medical records. The specific costs requested were incurred *after* the appellant rejected Pleasant Day's Offer of Judgment. Pleasant Day submits that those costs are recoverable and were contemplated and intended to be recoverable under CR 68.

The sole issue before the Court in this cross-appeal is whether RCW 4.84.010 and Civil Rule 68 should be harmonized and read in conjunction to permit the recovery of additional statutorily-categorized costs incurred after the rejection of the Offer of Judgment. Pleasant Day submits that CR 68 and RCW 4.84.010 must be read together which results in extending the time period during which costs are incurred and recoverable but does not change the character of the recoverable costs. Rule 68 permits the recovery of "costs incurred after the making of the offer." RCW 4.84.010 permits recovery of costs enumerated therein "in addition to costs otherwise authorized by law." CR 68, RCW 4.84.010. The purpose of Rule 68 is to shift the burden of the post-offer costs required by continuing litigation onto the plaintiff. *See Lietz v. Hansen*

*Law Offices, P.S.C.*, 166 Wn. App. 571, 581, 271 P.3d 899 (2012) (citing *Seaborn Pile Driving Co. v. Glew*, 132 Wn. App. 261, 267, 131 P.3d 910 (2006), *review denied*, 158 Wn.2d 1027 (2007)). “Court rules, like statutes, should be construed to foster the purposes for which they were enacted.” *State v. Greenwood*, 120 Wn.2d 585, 593, 845 P.2d 971 (1993).

In order to give it full effect and purpose, Rule 68 must be harmonized with RCW 4.84.010 to allow recovery of post-offer costs by a prevailing defendant. To do anything less nullifies the purpose of Rule 68 as a cost-shifting provision and renders the language of the rule that provides for recovery of “costs incurred after the making of the offer” meaningless.

**B. Appellant is not entitled to recovery of any fees under RAP 18.1 even if they prevail on this cross-appeal.**

Pleasant Day’s interpretation and application of Rule 68 and RCW 4.84.010 are reasonable given the clear language of the statute and the well-founded purpose of Rule 68. Because Pleasant Day’s cross-appeal addresses an apparent new or novel legal issue, relies on legal authority including the language of the Rule and statute, and presents reasonable grounds to conclude the trial court abused its discretion in awarding restricted costs to Pleasant Day as the prevailing party under these

circumstances, Yan would not be entitled to appellate attorney fees under RAP 18.1 if this court were to deny Respondent's cross-appeal.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of May, 2013.

ANDREWS ▪ SKINNER, P.S.

By 

PAMELA M. ANDREWS, WSBA #14248  
Attorneys for Respondent/Cross-Appellant

**CERTIFICATE OF SERVICE**

The undersigned certifies that under penalty of perjury under the laws of the State of Washington that on the below date she caused to be served the foregoing document on:

Attorney for Plaintiff

Erica B. Buckley  
James C. Buckley  
Buckley & Associates  
675 South Lane Street, Suite 300  
Seattle, WA 98104  
*Via Email and Legal Messenger*

DATED this 8<sup>th</sup> day of May, 2013, at Seattle, Washington.

  
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JANE JOHNSON  
Legal Assistant