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COURT OF APPEALS NO. 72595-5
KING COUNTY CASE NO. 14-2-19075-1

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

LEENDERS DRYWALL, INC.; and DAVID J. LEENDERS,
individually and on behalf of his marital community

Plaintiffs/Respondents

v.

ADRIAN AYALA, ET. AL

Defendants/Appellants.

APPELLANTS' REPLY BRIEF

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STATEMENT OF THE CASE

The Defendants/Appellants in this case (hereafter “Workers”) are mostly Hispanic, non-native English speakers who worked as drywall installers for Plaintiffs/Respondents Leenders Drywall, owned by David J. Leenders (collectively “Leenders”). On at least four projects, Leenders did not pay the Workers all the wages they were owed. The Workers timely filed Notices of Claim for unpaid wages owed on each of the four projects. On July 10, 2014, Leenders filed this lawsuit in King County Superior Court, alleging that the Notices of Claim constituted several torts and statutory violations. On August 20, 2014, the Workers filed a Special Motion To Strike Leenders’ Complaint, including a request for statutory damages, attorneys’ fees, and costs associated with filing the Motion. CP. 14-27. On September 24, 2014, King County Superior Court Judge Roger S. Rogoff issued an order denying the Workers’ Special Motion To Strike. CP. 298-304. The Workers timely appealed that order, and filed an appeal brief on January 26, 2015. Leenders filed its Response Brief on March 16, 2015. This is the Workers’ Reply on Appeal.

ARGUMENT

- I. LEENDERS’ LAWSUIT IS BARRED BY THE STATE’S ANTI-SLAPP STATUTE.**
- A. The Workers’ Filing Of The Notices Of Claim Is Subject To The Anti-SLAPP Statute.**
 - i. Filing of a notice of claim is protected under RCW 4.24.525 (a) and (b) because such filing is mandatory to pursue a judicial action.

The Workers’ filing of the Notices of Claim constitutes the requisite public participation under RCW 4.24.525 (a) and (b), because it

is a “written statement or document submitted, in a...judicial...or other governmental proceeding authorized by law” as well as a “written statement or document submitted, in connection with an issue under consideration or review by a...judicial...or other governmental proceeding authorized by law.” The language under the state bond statute, the state retainage statute, the federal bond statute, and the state private lien statute, respectively, makes such a filing mandatory to commence legal action, rendering the Workers’ Notices “submitted in” or “related to” a judicial proceeding. *See* RCW 39.08.030 (“persons shall not have any right of action on such bond...unless within thirty days from and after the completion of the contract...the laborer...shall present to and file...a notice in writing”); RCW 60.28.011 (“[e]very person performing labor...toward the completion of a public improvement contract has a lien upon moneys...the notice of the lien of the claimant must be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030”); 40 U.S.C. § 3133 (b)(2) (“[a] person having a direct contractual relationship with a subcontractor...may bring a civil action on the payment bond on giving written notice to the contractor....”); RCW 60.04.091 (“[e]very person claiming a lien under RCW 60.04.021 shall file...a notice of claim of lien not later than ninety days after the person has ceased to furnish labor...no action to foreclose a lien shall be maintained unless the claim of lien is filed....”).

Leenders has given this Court no basis for rejecting the persuasive California caselaw cited in the Workers’ Opening Brief. Where, as here, the Washington legislature adopts another state’s statute, it is presumed to

have adopted that state's interpretations of the statute as well. "[A] borrowed statute should be given the construction placed upon it by the courts of the state from whence it comes." In re Westlake Ave., 40 Wn. 144, 152, 82 P. 279 (1905); *see also* In re N. River Logging Co., 15 Wn.2d 204, 208, 130 P.2d 64 (1942) ("[f]or it is a general rule of statutory construction that a statute adopted from another state or country is presumed to have been taken with the construction there placed upon it"). As described in the Opening Brief, California courts have repeatedly held that the filing of a notice that is a legal prerequisite to the filing of a lawsuit is protected activity under the anti-SLAPP statute. *See, e.g.,* Salma v. Capon, 161 Cal.App.4th 1275, 1281, 74 Cal. Rptr. 3d 873 (2008); Feldman v. 1100 Park Lane Associates, 160 Cal.App.4th 1467, 74 Cal. Rptr. 3d (2008); Birkner v. Lam, 156 Cal.App.4th 275, 279, 67 Cal. Rptr. 3d 190 (2007). These cases demonstrate the California courts' interpretation of their statute, and they were issued before the Washington legislature adopted RCW 4.25.525. As such, the California courts' interpretation of their statute is presumed to have been implicitly adopted by the Washington legislature.

The similarity of the language of the relevant portions of the respective statutes bolsters that presumption. The California anti-SLAPP statute defines public participation and petition in relation to judicial proceedings as follows:

- (1) any written or oral statement or writing made before a...judicial proceeding, or any other official proceeding authorized by law;

- (2) any written or oral statement or writing made in connection with an issue under consideration or review by a...judicial body, or any other official proceeding authorized by law....

Cal. Code Civ. Proc. § 425.16 (e).

Meanwhile, the Washington statute defines public participation and petition in relation to judicial proceedings as follows:

- (a) [a]ny oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial or other governmental proceeding authorized by law;
- (b) [a]ny oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;¹

RCW 4.24.525. While the order of the words is minimally different, there is no substantive difference between these parts of the Washington statute and the corresponding California sections of its anti-SLAPP statute. The substantive similarity provides more justification for relying upon California decisions interpreting similar language.

Leenders does not directly address these cases on appeal. Instead, they rely extensively upon the trial court’s faulty reasoning, despite the fact that this Court is engaged in a *de novo* review.² Dillon v. Seattle Deposition Reporters, LLC, 179 Wn. App. 41, 70 Fn. 22, 316 P.3d 1119 (2014) (*citing* Green v. Normandy Park Riviera Section Cmty. Club, Inc., 137 Wn. App. 665, 681, 151 P.3d 1038 (2007)). Leenders quotes the trial court’s decision to argue that the cases “are inapposite because...‘they all involve a situation where the defendant engaged in an action where he or

¹ Inexplicably, Leenders never even cites this provision in their brief.

² Leenders devotes almost three full pages to simply cutting and pasting the lower court’s decision. *See Response* at 20, 22, 23-24.

she asked a governmental agency to do something on his or her behalf’....” Response at 23, n. 13. That statement is flatly wrong.

In Salma, 161 Cal.App.4th at 1281, the suit held barred by the anti-SLAPP statute was based on the housebuyers’ filing of a notice of rescission, a notice required under California law to file a cause of action for rescission. In Birkner, 156 Cal.App.4th at 279, the barred lawsuit was based on the landlord’s filing of a termination notice seeking to terminate the tenancy, a notice required to file an eviction lawsuit. Lastly, in Feldman, 160 Cal.App.4th 1467, the barred lawsuit was based on service of a three-day notice to quit, which was legally required to pursue an unlawful detainer action. In none of those cases did the party moving for dismissal under the anti-SLAPP statute “engage[] in an action where he or she asked a governmental agency to do something on his or her behalf.” They merely filed a notice as required by law, and that act of filing was held protected as part of the judicial process under California’s anti-SLAPP statute.³

The closest Leenders gets to addressing this issue is, again, in a quote of the trial court’s decision:

Defendants’ liens were not “statements in connection with an issue under consideration or review by a governmental proceeding.” RCW 4.24.525(2)(b). Because a private lawsuit does not constitute a right of public participation and petition, Saldivar v. Momah, 145 Wn.App. 365, 387 (2008), actions furthering such private lawsuits cannot form the basis for an Anti-SLAPP motion under subsection (2)(b) so long as they are not direct requests to a separate governmental agency to act....

³ Moreover, Birkner and Feldman were not cited to the trial court, so they could not possibly have been distinguished by the trial judge.

Response at 24. (emphasis in Leenders' Response). This quotation evidences the lower court's and Leenders' fundamental misunderstanding of the law. While Momah did hold that a private lawsuit was not subject to the anti-SLAPP statute, that case involved Washington's prior anti-SLAPP statute, RCW 4.24.510. In 2010, the current anti-SLAPP statute, RCW 4.24.525, was enacted, and that statute – the one at issue here – explicitly applies to communications made in the course of judicial proceedings. RCW 4.24.525(2)(a) & (b). While Washington's first anti-SLAPP statute was intended primarily to encourage reporting of potential wrongdoing to governmental entities, the new statute is much broader than the original. The current anti-SLAPP statute explicitly applies to judicial proceedings, which by their very nature include private lawsuits. Momah is simply not good law on that point, and Leenders' reliance upon it is misplaced.⁴

Leenders provides no other basis for distinguishing the California cases cited above and in the Opening Brief. California caselaw is persuasive on this point, and this Court should adopt its reasoning. Unlike the trial court's decision and Leenders' arguments, a holding that the mandatory filing of a notice is a protected part of the judicial process is

⁴ Leenders also argues that there cannot be public participation in relation to the Notices of Claim filed on the alleged private projects. Response at 18. Again, this argument demonstrates a total misunderstanding of the Workers' argument. The filing of the Notices of Claim on even private projects is mandatory in order to pursue judicial action, making them part of the judicial proceeding and subject to the anti-SLAPP statute under RCW 4.24.525 (a) and (b).

also consistent with the legislative directive that the “act shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts.” Spratt v. Toft, 180 Wn.App. 620, 629, 324 P.3d 707 (2014) (internal quotation omitted). The Court should hold that the Workers’ filing of the Notices of Claim was protected under RCW 4.24.525 as part of the judicial process.

- ii. The Workers’ filing of the Notices of Claim is also protected under the remaining anti-SLAPP provisions.

The Workers’ filing of Notices of Claims also met the definitions contained in RCW 4.24.525(c), (d), and (e).⁵ RCW 4.24.525(c) defines public participation or petitioning as statements or documents submitted that are “reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a . . . judicial proceeding or other governmental proceeding authorized by law.” Relying again upon the trial court, Leenders argues that the Notices of Claim are not covered by RCW 4.24.525 (c) because “[t]he liens were not publicly filed in an attempt to garner sympathy or support. They did not enlist anyone to do anything on Defendants’ behalf.” Response at 24.

⁵ Our Supreme Court has consistently read clauses separated by the word “or” and a semicolon disjunctively. *See, e.g., Concerned Ratepayers Ass'n v. Pub. Util. Dist. No. 1*, 138 Wn.2d 950, 959–60, 983 P.2d 635 (1999); *State v. Bolar*, 129 Wn.2d 361, 366, 917 P.2d 125 (1996) (in interpreting statutory language, “or” serves a disjunctive purpose and does not mean “and”). Thus, the Workers only need to demonstrate that their actions are protected by one of the five anti-SLAPP provisions. Nevertheless, their filing of the Notices of Claim qualifies for protection under all five provisions.

Factually, this is incorrect. The filing of the Notices of Claim with regard to the retainage functions as a request to the various public agencies to withhold monies due the general contractor to ensure the Workers receive their proper payment. As already outlined in the Opening Brief, it is “reasonably likely” that these Notices of Claim and subsequent lawsuits would attract the attention of the public and encourage or enlist its participation. The public is reasonably likely to be concerned as to how the government is spending the public’s tax dollars. The public is also reasonably likely to be concerned as to whether workers on public works projects are being paid properly in accordance with prevailing wage law. Leenders nowhere rebuts these arguments.

Next, the Workers engaged in public participation and petitioning according to RCW 4.24.525(d). That section states that public participation or petitioning includes “document[s] submitted in a place open to the public or a public forum in connection with an issue of public concern.” In arguing that this provision does not apply, Leenders does not dispute that the Notices of Claim were “submitted in a place open to the public or a public forum....” Instead, Leenders relies again upon the trial court’s inexplicable holding that the Workers’ pursuit of their wages was not a matter of public concern. See Response at 24 (“When an employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, then first amendment speech is not at issue...”). This flatly ignores the Supreme Court’s

holding that wages are “not wholly of private concern,” but rather, are “affected with a public interest.” Parrish v. W. Coast Hotel Co., 185 Wn. 581, 583-84, 55 P.2d 1083 (1936), *citing* Larsen v. Rice, 100 Wn. 642, 171 P. 1037 (1918). *See also* Gould v. Maryland Sound Industries, Inc., 31 Cal. App. 4th 1137, 1148, 37 Cal. Raptr. 2d 718 (1995) (“wage and hours laws concern not only the health and welfare of the workers themselves, but also the public health and general welfare”). Thus, the argument is incorrect as a matter of law. Because there is no dispute that the Notices of Claim were submitted in a place open to the public, and as a matter of law they involved a matter of public concern, the filing of the Notices of Claim was protected under RCW 4.24.525(d).

Finally, the Workers engaged in public participation and petitioning because the filing of their Notices of Claim satisfies RCW 4.24.525(2)(e). This section protects “any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.”

Leenders, relying again upon the trial court decision, argues that that the Workers were not engaging in protected activity under this provision because they “did not seek a public forum to change wage laws. They did not seek to petition the government for any change in the law.” Response at 24. The trial court and Leenders would apparently render those the only actions covered by RCW 4.24.525 (2)(e). Again, the anti-

SLAPP statute is supposed to be liberally construed; contrary to that legislative directive, Leenders' argument narrowly construes the statute to require parties to engage in very specific behavior to receive protection.

The wording of the statute is much broader, protecting "any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern...." RCW 4.24.525(2)(e). That is precisely what the Workers here did. The payment of proper wages is a public concern, and the filing of the Notices of Claim is expressly made lawful by statute. As such, the Workers' filing of the Notices of Claim is protected under subsection (e). In sum, the Workers' filing of Notices of Claim with the four government agencies met the statutory definitions of public participation and petitioning under RCW 4.25.525(c), (d), and (e).⁶

B. The Core Of Leenders' Lawsuit Is Based On The Workers' Protected Activity – The Filing Of The Notices Of Claim.

Leenders' claims are undoubtedly based upon the Workers' lawful public participation and petitioning. Leenders argues that its lawsuit is not based on any protected activity. Response at 20-22. Leenders narrowly identifies such activities as "filing a complaint with a government agency

⁶ In addition, as already described in the Opening Brief, by sending the Notices of Claim, the Workers were petitioning the various government agencies to redress the theft of their wages by continuing to withhold the retainages related to each of the four projects in question. Leenders argues incoherently that the lien against the retainage is not a means of getting public money, despite acknowledging that the funds belong to the public agency, and are paid out when the project is complete. Response at 19. The funds do belong to the public agency, so the Workers' lien is undoubtedly a request for the public agency to withhold its funds as a means to help redress the theft of their wages.

or testifying at a public hearing.” Response at 21. The anti-SLAPP statute is clearly not limited to those actions.

The sole basis for recovery identified throughout the Complaint and underlying each cause of action is the Workers’ filing of the Notices of Claim. *See* CP. 1-11, ¶¶ 11-15, 20, 25, 31, 33, 37, 41-43. Leenders acknowledges that the thrust of its suit is the Workers’ refusal to release expired claims “and that [Workers] filed false and/or clearly excessive claim....” Response at 21-22. Thus, it is undeniable that the filing of the Notices of Claim is the basis for this lawsuit. As described above, those filings were protected under the anti-SLAPP statute.⁷

C. Leenders Has Not Presented Clear And Convincing Evidence That It Will Prevail.

Leenders cannot show that it will prevail because the Workers are immune from suit based on their filing of the Notices of Claim. “A person who communicates a complaint or information to any branch or agency of federal, state, or local government...is immune from civil liability for claims based upon the communications to the agency or organization

⁷ Leenders claims that the anti-SLAPP statute is directed only at frivolous actions. Response at 20-21 (*citing Henne v. City of Yakima*, 182 Wn.2d 447, 341 P.3d 284, 288 (2015)). This is incorrect. This Court has held that “the anti-SLAPP statute does not sanction and frustrate only claims that are frivolous. Rather, the statute mandates dismissal of all claims based on protected activity where the plaintiff cannot prove by clear and convincing evidence a probability of prevailing on the merits.” *Akrie v. Grant*, 178 Wn.App. 506, 513 n. 8, 315 P.3d 567 (2013). Thus, “the anti-SLAPP statute sweeps into its reach constitutionally protected First Amendment activity.” *Id.* Leenders also relies heavily on *Bevan v. Meyers*, 183 Wn.App. 177, 334 P.3d 39 (2014). Response at 22-23. However, *Bevan* did not address the judicial proceeding provisions cited above, did not involve the proper payment of wages, an issue found by the Washington Supreme Court to be a matter of public concern.

regarding any matter reasonably of concern to that agency or organization.” RCW 4.24.510.

Leenders’ Complaint is based entirely upon the Workers’ communication of information and complaints to a branch or agency of federal, state, or local government. The Complaint repeatedly references the filing of the Notices of Claim as the bases for the Plaintiffs’ causes of action. *See* CP. 1-11, ¶¶ 11-15, 20, 25, 31, 33, 37, 41-43. It is important to note that RCW 4.24.510 protects both the communication of “a complaint” as well as the communication of “information” to a government agency. Contrary to Leenders’ repeated claims, it is not strictly the communication of complaints that is protected. There is no doubt that the Workers communicated “information” to the respective government agencies by sending the Notices of Claim.

Moreover, as the Notices of Claim put the various government agencies on notice of wage violations on their own projects, the Notices were on a “matter reasonably of concern to that agency or organization.” As such, they are communications covered by RCW 4.24.510, and the Workers are immune from suit for such communications. This same reasoning applies to the private Notices of Claim. Those Notices were sent to the relevant County Auditors, undoubtedly government agencies. And the Notices most certainly communicated “information” to those agencies that was reasonably of concern to them – rendering the Workers immune from suit for those communications as well.

Even if the Workers were not absolutely immune for suit from filing the Notices of Claim, Leenders has not met its burden of proving, by clear and convincing evidence, that the Workers in fact filed frivolous or excessive liens.⁸ RCW 4.24.525 (3)(b). A clear and convincing standard is a “heavier burden” than the preponderance of evidence standard. Herron v. King Broad Co., 112 Wn.2d 762 (1989).

Each of Leenders’ claims requires that they prove, by clear and convincing evidence, that each Workers’ lien claims were frivolous or excessive. Because Leenders has not provided any evidence showing that a single Worker was properly paid, what a proper lien amount might be, or that any particular lien is even incorrect, they have failed to show – by any evidentiary standard – that any lien filed by the Workers was frivolous or excessive. They certainly have not shown a probability of prevailing on that issue by clear and convincing evidence. By failing to sustain their burden of proof, Leenders is liable under RCW 4.25.525.

Leenders has provided no evidence whatsoever to substantiate any claim against the following Workers: Christian Barrueta, Joaquin Cadena, Leonel Castaneda, Abraham Jimenez Arce, Gabriel Lario, Rafael Larios, Juan Martinez, and Fredy Orozco. The evidence Leenders did provide –

⁸ While the Court in Spratt elected to remand the case for further consideration by the trial court, as described in the Opening Brief, this Court should rule on that issue in the interests of judicial efficiency. It has the same information before it that the trial court would have, meaning it has all the information needed for a determination. Leenders did not object to having this Court decide the issue, and appears to argue that its claims have merit. Response at 25-31. As noted, a similar situation arose in California, and the court there elected to decide the issue given that it was engaging in a *de novo* review. Schwarzburd v. Kensington Police Protection & Community Services Dist. Bd., 225 Cal. App. 4th 1345, 1355, 170 Cal Rptr. 3d 899 (2014).

regarding the remaining Workers – in no way substantiates their claim that the liens were frivolous or excessive.

As expected, Leenders asserts that certain Workers⁹ – Adrian Ayala, Cruz Laureano, and Angel Oytuz – filed false and excessive Notices of Claim because the Notices do not reflect the amounts Leenders purportedly paid to those Workers via check during the calendar year. Response at 11. The mere fact that Leenders issued Ayala, Laureano, and Oytuz multiple checks in 2012 does not prove that it paid them the correct wages for all hours worked on the four projects, nor does it mean that they were paid anything for work on those projects. Given that Leenders employed the Workers on projects other than the four at issue here, the fact Leenders issued the Workers some checks merely means that it paid them something for having worked for Leenders somewhere.¹⁰ At most, the exhibits submitted show only that those Workers received some money from Leenders at some point in 2012, without tying any of that income to any of the four projects. That in no way demonstrates that the Workers filed frivolous and excessive liens on the four projects at issue, let alone by clear and convincing evidence.

Next, Leenders asserts that other Workers – Gonzalo Maciel, Salvador Maciel, and Fidel Castro – allegedly claim to have started working on certain projects before Leenders began work on those projects.

⁹ Again, Leenders have never attempted to show that its claims against every Worker are viable, instead apparently picking at random which Workers to actually provide evidence in relation to.

¹⁰ The same holds true for the other Workers as well.

Response at 12-13. Leenders provided no evidence whatsoever to identify when Leenders began working. Leenders cites to the record for this claim, but nothing in any exhibit or declaration submitted to the trial court or to this Court has mentioned any date on which Leenders allegedly started on the projects.¹¹ Thus, Leenders has not provided any evidence to demonstrate the falsity of any Worker's supposed claim as to when he began working.

Lastly, Leenders claims that certain Workers – Fidel Castro, Gonzalo Maciel, and Arturo Solis – falsely assert that they rarely, if ever, worked on certain projects, when they did in fact work on such projects. Response at 14. Yet again, the evidence provided and cited by the Leenders does not actually substantiate the allegation. Regarding Solis, the records themselves are insufficient to prove that he has made any “false” claim. Leenders provided no indication when the cited calendars were created or by whom, nor do they give any other indication of their accuracy. At most, they demonstrate a dispute as to which projects Solis worked on at any given time; they do not show, by clear and convincing evidence, that his claim is false or excessive.

The records submitted in relation to Castro and Maciel are even more problematic. The calendar “evidence” cited by Leenders in regards

¹¹ As noted in our Opening Brief, Leenders cites to its claim that “[t]hrough counsel, Claimants were provided with documents showing Leenders Drywall’s first day of work on the Four Projects.” CP 125. Nothing in the cited declaration mentions providing such documents to the Workers’ counsel, nor were such documents submitted to either court.

to the Shoreline project includes a number of days in which the Workers did not identify the project on which they worked.¹² CP. 159-64; CP. 182-86; CP. 173; CP. 178. Thus, the documents do not show that either Castro or Maciel claims to have “rarely – if ever” worked at the Shoreline project, and they certainly do not show, by clear and convincing evidence, that the Workers filed frivolous or willfully excessive liens.

Despite the years that have passed since the Notices of Claim were filed, Leenders has never come remotely close to meeting its burden. Leenders asks, if the Notices of Claim are subject to the anti-SLAPP law, when will the liens be released – essentially arguing that they will have no recourse if the Court finds their suit subject to the anti-SLAPP statute. Response at 31. That is completely untrue. Simply because an activity is protected by the anti-SLAPP statute does not mean that a party has no recourse. It means that the party must have real proof to back up its claims. This is where Leenders has utterly failed.

To answer the question of when the liens would be released, the answer is quite simple: when Leenders produces evidence that they actually paid the Workers properly or that the lien amounts are excessive, and by what amount. This is a burden that could be met easily. Leenders could produce evidence showing: 1) the amount of hours worked by each Worker on each project; 2) the amount of money owed to each Worker as

¹² Many of which correspond to the days on which the Plaintiffs claim Castro and Maciel were working at the Shoreline project.

a result of those hours worked; and 3) that Leenders actually paid them the amount owed. This could be done by providing records to the Court that they are required by law to keep. They have never done so.

II. THE WORKERS ARE ENTITLED TO ALL FEES AND COSTS INCURRED IN BRINGING THE MOTION AND PURSUING THIS APPEAL. EVEN IF THE COURT CHOOSES NOT TO REVERSE THE LOWER COURT DECISION, LEENDERS IS NOT ENTITLED TO FEES AND COSTS.

Given that Leenders' Complaint is barred by RCW 4.24.525, the Workers are each entitled to statutory damages of ten thousand dollars, as well as reasonable attorneys' fees incurred in bringing the Special Motion to Strike and on appeal.

Even if the Court elects not to grant the Motion to Strike, Leenders is not entitled to damages, fees, or costs. The provision only allows a plaintiff to recover damages and expenses if the motion is frivolous. An issue is not frivolous if it is arguable. Nat'l Bank of Wash. v. Myers, 75 Wn.2d 287, 298, 450 P.2d 477 (1969). Whether Leenders' claims are barred by the anti-SLAPP statute was most certainly arguable.

CONCLUSION

For the foregoing reasons, Leenders' Complaint should be stricken and each of the Workers should be awarded ten thousand dollars in statutory damages plus reasonable attorneys' fees, expenses and costs for defending the lawsuit below and for bringing this appeal.

DATED this 16th day of April, 2015.



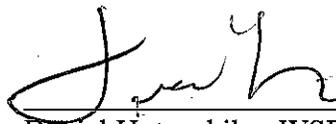
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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2015, I electronically filed the foregoing **APPELLANTS' REPLY BRIEF** with the Court of Appeals for the State of Washington Division I. On this same day, I caused a true and correct copy to be delivered via electronic mail and U.S. mail, postage prepaid, to the following:

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