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No. 101663-8

SUPREME COURT OF THE STATE
OF WASHINGTON

JERIMIAH RASMUSSEN, an
individual

Petitioner,

v.

BRIAN JENNINGS, an individual;
and GREEN COLLAR CANNABIS,
LLC, a Washington limited liability
company, et al

Respondents.

BRIEF OF RESPONDENTS

[Treated as Answer to Petition for Review](#)

MICHAEL J. HINES, WSBA#19929
REID G. JOHNSON, WSBA#44338

Attorneys for Respondents

LUKINS & ANNIS, P.S.

717 W. Sprague Ave.

Suite 1600

Spokane, WA 99201-0466

Telephone: (509) 455-9555

Facsimile: (509) 747-2323

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I. INTRODUCTION

Petitioner Jerimiah Rasmussen (“Petitioner” or “Rasmussen”) seeks review of the Court of Appeals’ Unpublished Opinion affirming the trial court’s denial of Rasmussen’s Motion to Remove Receiver John Munding. The Petition for Discretionary Review should be denied for several reasons. First, Petitioner has failed to address or explain how he meets the standards for acceptance of discretionary review by the Supreme Court. While the failure to address these considerations provides an independent basis to deny the petition, Petitioner would not be able to establish any basis for review had he addressed RAP 13.4(b). This is an action between private parties that does not implicate the Washington State or United States Constitutions, no conflicting decisions by the Supreme Court or any other Courts of Appeal have been identified, and there are no issues of substantial public interest involved. The appeal presents a standard challenge to the trial court’s decision that solely implicates the parties involved. There is simply no valid basis for discretionary review.

Second, Petitioner fails to establish any error committed by the Court of Appeals. Rasmussen first argues that the Court of Appeals improperly “agreed” with the trial court’s finding that the receiver was “impartial and unbiased while carrying out his duties.” However, this contention and the basic premise for the Petition for Review misinterprets the Court of Appeals’ decision. The Court of Appeals held that “good cause” must be established to remove a receiver under RCW 7.60.280 and that Petitioner failed to meet that standard. It did not “agree” with the trial court’s findings of fact; instead, it noted that Rasmussen failed to assign error to the findings of fact, rendering them verities on appeal. Because Petitioner failed to challenge these findings, the Court of Appeals had to treat them as verities, and those findings supported the trial court’s decision. Thus, it was Petitioner’s failure to challenge the findings of fact that led the Court of Appeals to affirm the trial court’s denial of Rasmussen’s motion to remove Munding as a receiver.

Rasmussen also contends that the Court of Appeals erred when it stated it could not provide any effective relief because the receivership has ended. Initially, while the Court of Appeals

did make this reference, it did not form the basis for its decision. Nonetheless, the Court of Appeals was correct. After the challenged ruling, the receiver completed his duties, the receivership estate was wound up, and Receiver Munding was discharged of his duties. The trial court issued an Order Granting Receiver's Petition and Motion for Order Approving Final Report, Final Accounting, Windup of Receivership Estate, and Discharging Receiver. Rasmussen did not challenge this Order, or any other subsequent action taken by the Receiver. Such challenges are now barred by RAP 2.5(a), rendering this Court unable to provide effective relief. Accordingly, Respondents respectfully request that this Court deny Rasmussen's Petition for Discretionary Review.

II. RESTATEMENT OF THE ISSUES

Whether this Court should grant discretionary review of the Court of Appeals' decision affirming the trial court's order denying Petitioner's Motion to Remove Receiver Munding after finding no evidence of bias or improper action or inaction.

III. STATEMENT OF THE CASE

A. Jennings and Rasmussen Form Green Collar Cannabis, LLC

In 2016, Jennings and Rasmussen formed Green Collar Cannabis, LLC (“GCC”) and executed the Operating Agreement. *Id.*, ¶ 4; CP 13-44. Jennings owned a 49% Membership Interest and Rasmussen owned a 51% Membership Interest, and the company was managed by both members. CP 20, ¶ 4.1; CP 33. Because Rasmussen owned a 51% interest, he continually led Jennings to believe that only he could control the direction of the business. *Id.*, ¶ 8.

The Operating Agreement created contractual and fiduciary obligations to each other and GCC. Importantly, the parties expressly and unambiguously agreed that if either member commits any act of dishonesty such as fraud or embezzlement, his membership interest shall be forfeited to GCC. CP 24, ¶ 5.6. This provision proved to be paramount as Rasmussen was later found to commit repeated acts of embezzlement and conversion of GCC assets, which required the forfeiture of his membership interest in GCC.

B. Rasmussen Exerts Complete Control Over GCC

From the beginning, Rasmussen utilized his majority ownership to unilaterally make major strategic decisions, despite contrary terms in the Operating Agreement. CP 74, ¶¶ 8-9. Rasmussen solely determined the compensation paid to Members, when Member draws would be made, and in what amount they would be issued, among other decisions. *Id.*, ¶¶ 9, 10.

Rasmussen also made several business decisions that had a detrimental impact on GCC's profits. Rasmussen unilaterally decided to form a separate business entity, GCC Enterprises, LLC ("GCC Enterprises"), to manage real estate endeavors. CP 75, ¶ 11. Rasmussen funded GCC Enterprises using GCC assets, but subsequently used and directed others to use those assets to pay expenses unrelated to GCC. *Id.* Rasmussen ultimately drained a total of \$1,003,462.52 in 2017 and 2018 from GCC for GCC Enterprises. CP 94-97.

In addition, Rasmussen started a media company called Green Collar Media, LLC ("Green Collar Media") and again utilized GCC funds to capitalize it. CP 75, ¶ 15. Green Collar

Media allegedly performs entertainment and marketing services. *Id.* Green Collar Media used rental space paid by GCC and also paid employees of Green Collar Media using GCC assets. CP 75-76, ¶¶ 15-16. Jennings strongly and continually objected to the expenditure of GCC funds to support Green Collar Media, but Rasmussen disregarded Jennings' opposing vote and dissipated the funds anyway. *Id.* Rasmussen ultimately drained a total of \$973,733.46 in 2017 and 2018 from GCC for Green Collar Media. CP 94-97.

C. Rasmussen Banishes Jennings From the Business and Refuses To Provide Access to Accounting Records

In June, 2018, the relationship between Rasmussen and Jennings deteriorated to a point of no return. After Jennings pursued an additional business venture, as fully allowed under the Operating Agreement,¹ Rasmussen completely shut Jennings out of the business altogether. CP 77, ¶ 20. Rasmussen barred Jennings from the retail store, denied him access to the

¹ Section 5.4 permits the Members to conduct any other business or activity without accountability to the Company or any other Member, and may even compete with the Company if they do not do so within a two-mile radius of the Company. CP 24.

Company's accounting records, modified Jennings' compensation structure, and continued to dissipate substantial GCC monies in separate entities. *Id.*, ¶¶ 21-23.

On November 1, 2018, Jennings issued Rasmussen a Notice of Default. CP 107-110. Jennings provided notice of several violations of the Operating Agreement and demanded that Rasmussen cure these violations and return all funds expended for other business entities, resume regular monthly distributions, and provide access to accounting and inventory records, among other requests. *Id.* Rasmussen refused to cure the violations or allow Jennings to participate in management. CP 112-115.

D. Complaint/Preliminary Injunction

Jennings then filed a Complaint and subsequently a Motion for Preliminary Injunction and Appointment of General Receiver. CP 45-72. On June 28, 2019, the Court granted Jennings' Motion and issued a Preliminary Injunction Order, immediately appointing John D. Munding as general receiver of GCC, requiring Rasmussen to **immediately** cease selling, transferring, or dissipating GCC assets to any third party, and

requiring Mr. Rasmussen's compliance with any and all requests from Receiver Munding including providing all information reasonably necessary for the Receiver to perform his duties.² CP 158-161.

E. Receiver Munding Immediately Uncovers Acts of Embezzlement and Theft and Rasmussen is Held in Contempt Three Times

After the entry of the Preliminary Injunction Order, Receiver Munding discovered that Rasmussen intentionally and repeatedly embezzled and converted substantial sums of money from GCC. During the week of the preliminary injunction hearing, Rasmussen withdrew \$600,000 from the GCC bank account. CP 205-206, 234, 237, 253-254, ¶ 10. Then, after entry of the Preliminary Injunction Order, Rasmussen violated the Order by making several charges from the GCC bank account before receiver John Munding was able to freeze Rasmussen's access. CP 201-206. On July 12, 2019, the Court held Rasmussen in contempt of the Preliminary Injunction Order for the first time

² Rasmussen filed an Emergency Motion to Dissolve the Preliminary Injunction, but the trial court denied the motion in full. CP 162-174, 308-309.

and required him to reimburse GCC for all expenditures made in violation of the Order. CP 312-315.

On August 9, 2019, Receiver Munding filed the second Motion for Contempt against Rasmussen. Receiver Munding's motion was premised on his independent determination that Rasmussen embezzled \$102,623 in cash from GCC's safe and refused to return or provide information and documentation regarding the wrongful transfer of \$600,000 from GCC. CP 2145-2155, 2161-2185. Specifically, Receiver Munding investigated these transfers and confirmed that Rasmussen himself directed the improper \$600,000 transfers, and that he **“went to the GCC's store shortly after the hearing of June 28, . . . [and] wrongfully converted the sum of at least \$102,623 in cash from GCC's cash deposit safes.”** CP 2162, ¶ 3, 2164, ¶ 7. His actions were caught on security cameras and witnessed by store employees. CP 2164, ¶ 7. Even after being caught red handed, Rasmussen refused to turn over the embezzled \$102,623 and continued to impede the Receiver's administration of the Receivership estate. CP 2165-2167.

On September 20, 2019, the trial court entered an Order Granting Receiver's Motion for Order of Contempt Against Defendant Jerimiah Rasmussen ("*Second Contempt Order*"), finding that Rasmussen embezzled substantial funds from GCC. CP 336-342. The court specifically found that Rasmussen "convert[ed], embezzle[ed], and wrongfully misappropriate[ed]" \$77,837.70 in GCC funds. CP 337, ¶ 3. The court also found that Rasmussen made two transactions that totaled \$600,000 that were "not authorized by GCC, its members, and [were] not made in accordance with GCC governing documents." CP 338, ¶¶ 6-7. The court then ordered Rasmussen to return the \$77,837.70 and produce all documentation and information related to the transfer of the \$600,000 within five court days. CP 339-341. Rasmussen has not challenged these findings or the order on appeal.

On October 31, 2019, Rasmussen failed to comply with the *Second Contempt Order*, and Receiver Munding filed a Motion for Order Directing Turnover of Property of Estate and/or Entry of Judgment ("*Motion to Turnover Property*"). CP 343-354. Receiver Munding submitted un rebutted evidence that: (a) Rasmussen admitted to taking the \$600,000, (b) Rasmussen

had possession of the same, (c) there was no authorized loan by GCC to Rasmussen, (d) Rasmussen refused to respond to Receiver Munding's request to supply all documentation to support Rasmussen's unilateral loan and return the \$600,000 to a segregated bank account, (e) Rasmussen instead converted the \$600,000 and attempted to close on a real estate transaction for a separate business entity (A.J. Lending, LLC), and (f) Rasmussen refused to return GCC's \$600,000. *Id.*; CP 355-383; CP 387-389; CP 467-484. Receiver Munding requested an order requiring Rasmussen to turn over the wrongfully converted sum of \$600,000 pursuant to RCW 7.60.070 and RCW 7.21.010. CP 343-354.

On November 15, 2019, the trial court entered its **third** order of contempt against Rasmussen. CP 485-489 ("Third Contempt Order"). The court found, among other things, that: (a) "the **total amount of \$600,000 taken and converted by Defendant Rasmussen** was and is property of GCC and GCC's Receivership Estate;" (b) Rasmussen failed and refused to relinquish possession and control of GCC's \$600,000; (c) Rasmussen's actions were not excused or justified; and (d) that

GCC was the rightful owner of the \$600,000. CP 486-87. The Court then ordered that Rasmussen was again in contempt of Court, directed him to relinquish possession and control of the converted \$600,000 within five (5) court days, imposed remedial sanctions, and authorized entry of judgment if Rasmussen failed to turnover the \$600,000. CP 487-488.

Consistent with Rasmussen's continuous refusal to comply with prior court orders, Rasmussen violated the Third Contempt Order by refusing to turn over the converted \$600,000. CP 496-498. As a result, the trial court again found that Rasmussen committed "**willful and wrongful conversion of GCC's property**" and then entered judgment in the amount of \$705,689.64 for Rasmussen's repeated violations of the court's contempt orders, embezzlement, and willful and wrongful conversion of GCC's property. CP 539.

Rasmussen filed a Motion for Reconsideration of the Judgment. CP 542-549. However, prior to the hearing, Rasmussen twice filed last minute bankruptcy petitions, the second of which was dismissed as a "bad faith" filing. CP 987-991. The trial court found that after the repeated bankruptcy

filings and publicly disparaging judicial officers,³ among other actions, Rasmussen would “not be rewarded for his continuing bad faith,” and concluded that he failed to show any cause, let alone good cause, to grant the motion for reconsideration. CP 987-991.

F. The Trial Court Denies Rasmussen’s Second Attempt to Remove the Receiver.

On December 30, 2019, while Rasmussen still maintained possession of the converted funds, and still refused to comply with multiple court orders directing the return of \$705,689.64, Rasmussen filed a second Motion to Remove Receiver Munding pursuant to RCW 7.60.035, claiming that good cause existed because Receiver Munding filed a Notice of Appearance on behalf of GCC and because he “joined” the motion for summary judgment. CP 753-758. Receiver Munding objected, noting that he was duly appointed as the general receiver of GCC with full

³ On December 29, 2019, just before the hearing on Jennings’ Motion for Partial Summary Judgment, Rasmussen posted on social media disparaging remarks about Receiver Munding and Judge Speir, claiming they were “working against the law”, “making up rules as the go not regards to the law”, and “corruption” with respect to prior proceedings and the upcoming hearing. CP 792-794.

authority to manage the operation of GCC, control its assets, and prosecute actions to recover assets or collect sums owed to GCC. CP 800-821. Mr. Munding clarified that he simply filed a notice of appearance on behalf of the Receiver and the Receivership estate, not on behalf of Jennings or as co-counsel with Jennings' counsel, and that his joinder of the motion for partial summary judgment was consistent with his obligation to manage and collect GCC's assets. CP 800-808. The trial court's hearing was delayed as a result of Rasmussen's "bad faith" bankruptcy filing.

On May 8, 2020, the trial court entered an Order Denying Defendant Rasmussen's Motion to Remove Receiver Munding. The trial court found that there was not "good cause" to remove Receiver Munding, the Receiver "properly acted as an officer of the Court, fulfilling his obligations as directed by the Court," and the "Receiver remains impartial and unbiased while carrying out his duties." CP 984-986. Thus, the trial court rejected Rasmussen's second attempt to remove Receiver Munding. The court subsequently issued an Order Granting Receiver's Petition and Motion for Order Approving Final Report, Final Accounting, Windup of Receivership Estate, and Discharging

Receiver. CP 2864-2870. Rasmussen has not appealed this decision.

G. The Trial Court Issues a Fourth Order of Contempt, Incarcerating Rasmussen for Repeated Violations of Court Orders.

Shortly thereafter, the trial court issued a show cause order pursuant to RCW 7.21.030 to determine whether Rasmussen was still in contempt of the court's *Third Contempt Order*. CP 2467-2468. The trial court warned Rasmussen that it would "**consider immediate incarceration**" if he was again found in contempt of the *Third Contempt Order*. *Id.* Receiver Munding presented clear evidence tracing the funds directly from Rasmussen to A.J. Lending, LLC ("AJ Lending"), which Rasmussen created with his stepson. CP 2477-2509. Despite the court's warning, Rasmussen again asserted his theory that the \$600,000 was a loan, but also that he did not have possession of the funds because they were in the possession of A.J. Lending, which he had no control over. CP 2510-2521; VRP 83-85.

The trial court rejected Rasmussen's claim outright, calling the assertion a "legal smokescreen, and in fact, it's a very bad smokescreen, trying to shield Mr. Rasmussen from these

assets.” VRP 85. The trial court determined that AJ Lending was an unlawful and illegitimate lending business, and Rasmussen used it to hide and launder the 600,000 wrongfully taken from GCC. CP 2608-2611, ¶¶ 5, 7. Rasmussen continued to control the \$600,000, attempted to hide and launder the funds, and was willfully refusing to comply with the *Third Contempt Order*. CP 2608-2611, ¶¶ 8-12. The trial court held Rasmussen in contempt again and ordered that he be “immediately confined in the Pierce County Detention and Corrections Center and held there so long as necessary to coerce his compliance with the Court’s Order.” *Id.*, *Order*, ¶¶ 1-2. Judge Costello then placed a Warrant of Commitment Contempt of Court, and Rasmussen was escorted to jail. CP 2612. Not surprisingly, the funds were then delivered two days later, and the Court released Rasmussen from Pierce County jail. CP 2616.

H. Rasmussen’s Counterclaims are Dismissed and Jennings’ Remaining Claims Remain Stayed

Consistent with his refusal to comply with prior court orders, Rasmussen then failed to satisfy his discovery obligations and the trial court ultimately dismissed all of his counterclaims

as a sanction. On October 16, 2020, the trial court granted Jennings' Third Motion to Compel Discovery and ordered Rasmussen to fully respond to Jennings' discovery requests. CP 1476-1479. Rasmussen failed to comply with the trial court's order. The trial court then granted Jennings' Motion for Order Imposing Sanctions for Discovery Violations and ordered Rasmussen to produce the discovery, pay a \$1,500.00 penalty, and warned Rasmussen that the court would consider additional sanctions, including dismissal with prejudice of all claims asserted by Rasmussen. CP 1551-1554. After Rasmussen again failed to comply with the trial court's order, Jennings filed a Second Motion for Order Imposing Sanctions for Discovery Violations. CP 1575-1590. On February 5, 2021, the trial court granted the motion and ordered that all of Rasmussen's counterclaims be dismissed with prejudice. CP 1657-1665. This order was reduced to a Judgment, and Jennings' remaining claims have been stayed. CP 1755-1759, 1760-1762. Rasmussen has not challenged the trial court's February 5, 2021 order or the Final Judgment.

IV. ARGUMENT

A. **Petitioner Fails to Address the Standards for Review in RAP 13.4(b).**

The Washington State Supreme Court will only accept review if the petitioner meets one of the enumerated considerations outlined in RAP 13.4(b). Specifically, the petitioner must establish that either: (1) the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; (2) the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; (3) the case involves a significant question of law under the Constitution of the State of Washington or the United States; or (4) the petition involves an issue of substantial public interest. RAP 13.4(b). Discretionary review should be denied because Petitioner has not addressed, and cannot establish any of these considerations.

For example, Petitioner has not identified any decision of the Supreme Court or any published decision from the Court of Appeals in which the underlying decision is in conflict. Accordingly, the first two bases for review are not applicable.

In addition, Petitioner has not identified any Constitutional provision from the State of Washington or the United States that has been implicated in this case, nor can he because this is a private action between private parties.

Finally, Petitioner has not identified any issue of substantial public interest that requires determination by the Supreme Court. Petitioner challenges the trial court's determination that good cause did not exist to remove Receiver Munding based on facts specific to the case at hand. Petitioner has not identified how the trial court's good cause determination will have any impact on the public interest. This is a private action between private parties. The trial court entered an order appointing Mr. Munding as receiver for GCC and provided directives for carrying out his duties. After Petitioner filed a Motion to Remove Receiver Munding, the trial court analyzed the evidence presented and ultimately determined that Receiver Munding "acted as an officer of the Court, fulfilling his obligations as directed by the Court." Petitioner has not identified how the application of RCW 7.60.035 or RCW 7.60.280 to the specific facts of this case impacts the public interest in any way.

Accordingly, Petitioner fails to satisfy the public interest consideration, or any of the remaining bases for obtaining discretionary review under RAP 13.4(b).

B. The Court of Appeals Rejected Rasmussen's Claim of Bias Because Rasmussen Failed to Assign Error to the Finding of Fact on Appeal

Petitioner contends that the Court of Appeals erred because it “agreed with the trial court’s finding that the receiver was ‘impartial and unbiased while carrying out his duties.’” *Petition for Review*, p. 2. However, this premise and assumption is incorrect. In reference to the trial court’s finding that Receiver Munding was “impartial and unbiased while carrying out his duties,” the Court of Appeals held that “**Rasmussen does not assign error to any of these findings, so they are verities on appeal.**” *Decision*, p. 21 (emphasis added). Any failure to address the alleged bias, whether through action or inaction, was not the result of an error by the Court of Appeals. Rasmussen himself failed to challenge the factual determination that Receiver Munding was impartial and unbiased, so the finding constituted a verity on appeal.

Despite his failure to challenge the trial court's findings of fact, Rasmussen argues the trial court failed to consider the allegation that Receiver Munding failed to investigate Rasmussen's concerns over Jennings' business activities. However, the trial court expressly stated in its Order Denying Defendant Rasmussen's Motion to Remove Receiver Munding that it "reviewed all pleadings submitted, evidence presented . . . and being fully advised, and finds that it is just to enter this ORDER DENYING Defendant Rasmussen's Motion to Remove" *Petition for Review, A-28-29*. Moreover, the Receiver submitted evidence that he received the concerns raised by Rasmussen, that Rasmussen's allegations were being "investigated, reviewed, and analyzed," and when the investigation was complete, "a formal report will be presented to Judge Spier for consideration, including a request for instruction as to how to proceed." CP 820. Thus, assuming this issue was properly before the Court of Appeals, which it was not, there is substantial evidence to support the trial court's finding of fact that Receiver Munding did investigate Rasmussen's allegations and that he remained unbiased.

Moreover, it is shocking that Rasmussen claims Receiver Munding could be biased in any way given that the Receiver had spent months trying to recover over \$600,000.00 in funds embezzled by Rasmussen from GCC. The Receiver is an officer of the court and is responsible for managing and protecting estate assets. Receiver Munding caught Rasmussen red-handed and despite giving Rasmussen every opportunity to return the embezzled funds, Rasmussen continued to evade the Receiver's demands and was found in contempt on three separate occasions before judgment was finally entered in favor of GCC. At the time he filed the Motion to Remove Receiver Munding, Rasmussen was still in contempt of court, still refusing to return the \$600,000 in embezzled and converted funds, just made publicly disparaging comments about judicial officers, and submitted a last-minute bankruptcy filing that was dismissed for being filed in "bad faith." It is not surprising that Receiver Munding was primarily focused on the recovery of over \$600,000 in embezzled funds while also investigating Rasmussen's allegations. The trial court's finding that Receiver was impartial and unbiased, even if properly challenged, is supported by substantial evidence.

Because the trial court's finding of fact that Receiver Munding remained impartial and unbiased is a verity on appeal, Rasmussen has no basis to establish "good cause" to remove Receiver Munding pursuant to RCW 7.60.280(1). The Court of Appeals properly rejected Rasmussen's contention, and review should be similarly denied.

C. This Court Cannot Provide Effective Relief Because the Receivership Estate Has Been Wound Up Without Challenge.

Petitioner contends that this Court can provide effective relief because it can conduct a full review of every single action taken by the Receiver and determine if it was executed with bias. This contention fails for multiple reasons. First, the receivership estate has been wound up and Receiver Munding has been discharged of his duties. The trial court issued an Order Granting Receiver's Petition and Motion for Order Approving Final Report, Final Accounting, Windup of Receivership Estate, and Discharging Receiver. CP 2864-2870. The trial court approved the Receiver's Final Report and Final Accounting, released the Receiver from any and all liability arising from the proceeding, barred any and all claims against the Receivership Estate, and

released all assets of the Receivership Estate back to GCC. Petitioner has not challenged this order, or any other subsequent action taken by the Receiver. Accordingly, such challenges are now barred by RAP 2.5(a), rendering this Court unable to provide effective relief.

Second, Petitioner provides absolutely no legal support for his contention that this Court, or any other court, can conduct a full review of all prior actions for potential bias. There is no legal basis or procedure in place to accomplish this task. If the Court were to grant such an option, the entire case would need to be re-litigated despite the fact that the vast majority of decisions have not been challenged on appeal. Such efforts would be a colossal waste of judicial resources. There is simply no legal basis to revisit and reanalyze every single decision or action as requested by Petitioner, particularly when no subsequent actions have been challenged on appeal. The Court of Appeals was correct in that no effective relief can be granted at this juncture.

V. CONCLUSION

Based on the forgoing, Respondents respectfully request that this Court deny discretionary review of the Opinion from the Court of Appeals.

VI. CERTIFICATE OF COMPLIANCE

I certify that this brief is in 14-point Times New Roman font and contains 4,265 words, in compliance with the RAP 18.17.

DATED this 9th day of March, 2023.

LUKINS & ANNIS, P.S.

By: 

MICHAEL J. HINES, WSBA #19929
REID JOHNSON, WSBA #44338

Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of March, 2023, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

James K. Kim
Themis Law
3520 96th St. S., Suite 109
Lakewood, WA 98499-9251

*Attorney for Appellant
Rasmussen*

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX)
- Via email:
law.kim@hotmail.com



TESSA MCCOY, Paralegal

LUKINS & ANNIS PS

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