No. 93183-6

SUPREME COURT OF THE
STATE OF WASHINGTON

STANLEY SMITH,

Appellant,

v.

TERRY MARTIN and M&M TECHNOLOGIES, INC.,

Appellees.

APPELLANT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The fundamental question before the Court of Appeals was whether Mr. Smith was entitled to the certainty and protection of the warranty language that he bargained for even if the trial court found—when applying the lowest evidentiary standard at law, *i.e.*, on a more likely than not basis—that the information set forth in Finding of Fact 3.18 and 4.06 was disclosed to him. The Court of Appeals ruled correctly. Mr. Smith should not have had to fight a "he said, she said" battle at trial to receive the benefit of the warranties at issue. Mr. Smith bargained for certainty, even certainty from the trial court "getting it wrong."

The petition for review should be denied. The Court of Appeals decision in *Martin* is not based on "its own, unsupported, "findings of fact" or unassigned errors or in conflict with this Court's precedent. Petitioners simply refuse to accept that the Court of Appeals decision was supported by the long-standing common law, the applicable trial court's findings of fact, and the weight of substantial and undisputed evidence admitted at trial, ***including*** the SEC's First Amended Complaint. In sum, none of the considerations set forth in RAP 13.4 exist.

II. STATEMENT OF THE CASE

The parties presented fundamentally different characterizations at trial as to what happened between the parties and why. Mr. Smith contested every material factual argument and representation by M&M and Mr. Martin at trial.[1] Ultimately, the trial court declined to characterize either party as "intentionally setting out to lie or steal from the other, " RP 3, Trial Court's Oral Decision, and ruled against Mr. Smith on all claims, including his breach of warranty claims. This appeal is Mr. Smith's last and only opportunity for justice that was denied at the trial level.

Mr. Smith[2] is a former construction worker and rehabilitation counselor turned residential real estate landlord, who entered into a series of inadvisable transactions with M&M Technologies, Inc. ("M&M") in March and April, 2007 that were beyond his real estate experience and expertise. RP 364-365, 370-372. He is a simple man and naïve. Mr. Smith invested because he believed—to his detriment—Mr. Martin's salesman hype about the potential for M&M's "perpetual motion" hydraulic pump that

[1] *See* RP 98-100, RP 154-158, RP 177-178, RP 188-200, RP 203-207 RP 218-219, RP 222-223, RP 251-271, RP 268-274, RP 282-290, RP 336, RP 364-365, RP 370-372, RP 379-382, RP 392-394, and RP 409-422.

[2] Mr. Smith's testimony at trial was made difficult because he suffers from Miniere's Disease and is unable to concentrate for extended periods. RP 366-370.

had been in R & D for ten years without any sales (just as the trial court believed his testimony over Mr. Smith's testimony on certain key issues).

Between December 4, 2006 and April 11, 2007 (the date the License and Option Agreements was executed), Mr. Martin and M&M learned that they were the subjects of investigation by the SEC into a Ponzi Scheme operated by an entity, IFC, and several individuals, one of whom, Mac Stevenson, was a business colleague of Mr. Martin at GEM Technology.[3] Exhs. 18-21, 23, 26, 27, 33-37, 41, RP 187-199, 154-158, 268-271, 309-310. The exchanges between Mr. Martin and the SEC and the financial records of M&M and CD2E, an investment entity wholly-owned by Mr. Martin, show that Mr. Martin, M&M and CD2E collectively received over $2 million from IFC's illicit criminal activities, not including approximately $300,000 paid directly to

[3] Mr. Smith will resist the temptation to respond to substantial parts of Petitioners' Statement of the Case, much of which is irrelevant to the issues raised before this Court and/or purportedly occurred post-formation of the license and option agreement on April 11, 2007. For example, Petitioners' post-formation characterization of "facts" are irrelevant because the narrow focus of this Court is properly limited to the facts relating to the single issue of breach of warranty, *i.e.*, if the warranty provisions of the two agreements was breached as of April 11, the agreements are void, such that all facts occurring post-formation are straw arguments only.

Mr. Martin as "consulting fees."[4] RP 188-200. None of these facts were disputed.

Further, as of March 13, 2007, Mr. Martin was notified by the SEC that M&M was likely to be named as a "relief defendant" (along with CD2E and Mr. Martin, individually) and that the SEC intended to disgorge the ill-gotten funds (including $550,000 paid directly by IFC to M&M). The SEC thereafter drafted, signed, and then filed its First Amended Complaint naming Mr. Martin, M & M and CD2E as "relief defendants," which ultimately led to an agreed settlement on July 16, 2008 for the repayment of in excess of $630,000. *Id.*; RP 177-178. None of these facts were disputed.

The initial threshold question addressed by the Court of Appeals was the interpretation of the word "claim" in paragraph 12.1(g) of the License Agreement and paragraph 5 of the Option Agreement, each entered into on April 11, 2007. Exhs. 1, 2. For the SEC's claim to be a "claim" under paragraphs 12.1(g) and 5, respectively, Mr. Smith argued that M&M did not need to formally be named and served as a relief defendant in the on-going Ponzi scheme litigation by the SEC. *Cf. Olympic S.S. Co. v. Centennial Ins. Co.,* 117 Wn.2d 37, 52, 811 P.2d 673 (1991)("A 'claim' is a

[4] Mr. Martin testified that he didn't know the nature of IFC's business, but acknowledged that he provided $300,000 in consulting fees without knowing. RP 188-190.

demand for compensation"); *Safeco Title Ins. Co. Gannon*, 54 Wn. App. 330, 335, 774 P.2d. 30 (1989)("'Claim' ordinarily means a demand . . . for damages . . ."); RCW 4.92.100 (pre-suit claim against State of Washington must be presented to the Office of Risk Management as precondition for filing a lawsuit). The Court of Appeals agreed. *Martin v. Smith,* 192 Wn.App. 527, 534-536, 368 P.3d 227 (2016).

The Court of Appeals next turned to the issue of whether the SEC claim would have a "material adverse effect on [Mr. Smith]." The Court of Appeals answered in the affirmative, noting that the trial court expressly found "materiality" in the context of holding that no "claim" existed, RP 11, Trial Court's Oral Decision, and further noting that neither party challenged the trial judge's observation. *Martin* at 534; *see infra* at pp. 11-12. Importantly, besides the trial court's factual finding, the Court of Appeals was fully aware that materiality was admitted by Petitioners and supported by substantial undisputed testimony and evidence that caused the trial court to find "materiality" in its oral ruling. RP 187-207, 268-290, 309-311, 318.

Lastly, the Court of Appeals turned to its *Miller* analysis of the warranty provisions. Notably, Petitioners admitted that these warranty provisions were material inducements for Mr. Smith to

enter into the respective agreements, and further that Mr. Smith was not expected or required to conduct any due diligence for the provisions to be enforced. RP 271-273, 318. Nonetheless, despite their failure to provide written notice of the SEC's claim to Mr. Smith or to request an express waiver of the warranties, Petitioners asserted at trial that the SEC demands for the return of $550,000 was *verbally* disclosed to Mr. Smith, RP 208-215, which the trial court accepted as being true "on a more probable than not" basis in its Findings of Fact at 3.18 and 4.06 ("FF").

Mr. Smith disagreed vehemently. Mr. Smith was unaware of the SEC allegations against M&M, or the likely impacts on M&M's operations, and he was unaware the M&M was "broke." RP 203-207. When Mr. Smith agreed on March 15, 2007 to loan $200,000 to M&M on a short term basis (4-6 months), the purpose of the loan, according to Mr. Martin's representations to Mr. Smith, was that M&M was buying a business and needed to show "cash on hand" for the transaction to close. The agreement was that Mr. Smith's funds were not to be disbursed; they were to remain in M&M's account. RP 392-393. For this reason, M&M simply secured the loan by pledging one share of M&M with handwritten notations and no formal promissory note was ever executed. Exh. 29; RP 215-218. Unbeknownst to Mr. Smith, however, instead of holding his $200,000 in M&M's account,

M&M used the funds immediately to pay M&M's payroll, to repay shareholder loans to M&M (*e.g.*, Mr. Martin's shareholder loan) and to extend loans to key shareholders. The loan proceeds were all but fully disbursed by April 1, 2007 and the balance of the $600,000 paid by Mr. Smith was fully distributed by June, 15, 2007.[5] RP 218-219, 222-223, 280-290, 353.

Shortly after the loan was made by Mr. Smith—even as his funds were being disbursed in breach of their understanding—Mr. Martin approached Mr. Smith with a business proposition to help M&M conduct certain research and development ("R&D") and ultimately to license any products that proved to be marketable from R&D. Until that point in time, M&M had never sold a single commercial product to the public in over 10 years of existence. RP 246-247. Lack of sales notwithstanding, Mr. Martin's pitch to Mr. Smith was that M&M is prepared to repay the loan, but he wanted Mr. Smith to consider a "once in a lifetime" opportunity. M&M and Martin pitched M&M's 2006 business plan, Ex. 32, RP 247-249, which showed M&M generating gross profit of over $200,000,000 in Year 1. In essence, Mr. Martin and M&M did not have the funds to repay Mr. Smith, so Mr. Martin dangled a

[5]Mr. Smith is deeply religious, and his judgment was clouded by Mr. Martin, who represented himself as a man of faith and then played on Mr. Smith's faith by appealing to Mr. Smith as fellow Christian. RP 336, 393-394. Instead of "trust and verify," Mr. Smith simply trusted.

financial carrot in front of Mr. Smith to avoid having to disclose that Mr. Smith's funds were gone.

Mr. Smith thereafter agreed to help M&M develop a marketable product for personal and religious reasons. The initial letter of intent between the parties was executed on March 28, 2007 and the subsequent R&D, License and Option agreements (collectively, "Agreements") were drafted by Mr. Martin, RP 215-219, 227-228, and executed on April 11, 2007. Mr. Martin and Mr. Smith met, reviewed and discussed the Agreements, their scope and intended purpose. During these meetings, Mr. Martin confirmed repeatedly that the successful completion of R&D to develop an actual product was a precursor, *i.e.*, a condition precedent, to any license rights that was being granted under the Agreements. RP 409-422. The payments to be made at the time of signed were characterized as "deposits" for when R&D efforts proved to be successful. RP 98-100.

Mr. Smith, whose experience was in residential real estate, not technology or licensing agreements, indicated that he was uncomfortable signing without consulting with an attorney. However, instead of encouraging Mr. Smith to have the Agreements independently reviewed, Mr. Martin recommended a local counsel, Mr. Edwin Hubbard, who thereafter represented all

parties in the transaction. RP 70-71, 299-302. Mr. Smith did not learn until after the fact that Mr. Hubbard had performed legal services for M&M and that Mr. Martin had studied under Mr. Hubbard's tutelage to become a lawyer.[6] RP 299-303.

III. ANSWER AND ARGUMENT

A. The Court of Appeals' limited reliance upon Ex. 38 as clear and substantial evidence of the existence of a "claim" was appropriate and is not in conflict with Washington Supreme Court precedent.

1. The Court of Appeals' limited reliance upon Ex. 38 was unnecessary because substantial undisputed testimony and evidence in the record before the Court of Appeals established the existence of a "claim" earlier in time.

The Court of Appeals properly relied upon the SEC's First Amended Complaint as clear evidence that a "claim" existed at least as of April 9, 2007, and in doing so, the Court of Appeals elected "not to address whether a claim by the SEC existed [earlier in time] during its investigation." *Martin v. Smith,* 192 Wn.App. 527, 536, 368 P.3d 227 (2016). However, the Court of Appeals was fully aware of the SEC's earlier demands on Petitioners (*e.g.*, in correspondence between the Petitioners and the SEC and from

[6] Mr. Smith settled his malpractice suit against Mr. Hubbard in Whatcom County Superior Court, Cause No. 10-2-02997-1, for *inter alia* failing to disclose conflicts of interest, etc., and for not explaining aspects of the Agreements that may appear to be different from the oral understandings between the parties. Exh. 9.

Mr. Martin's testimony at trial) and Petitioners' admissions that the ill-gotten funds from the Ponzi scheme were in Petitioners' possession. Appellant's Opening Brief at pp. 7-8; Appellant's Reply Brief at pp. 6-7; Exhs. 18-21, 23, 27, 33-37, 41, RP 187-199, 268-271, 309-310.

The Court of Appeals chose, in its discretion, to use the First Amended Complaint as the basis of its decision because Ex. 38 is clearly and unequivocally a "claim" such that an independent analysis of the SEC/Martin/M&M correspondence and associated testimony was unnecessary. In so ruling, the Court of Appeals correctly held that issue of prior "notice" of Ex. 38 was irrelevant. *Id.* at 538. The mere existence of the SEC's claim, whether known or unknown to Petitioners, was the relevant inquiry and the First Amended Complaint was the clearest (and most recent in time) evidence "that a claim by the SEC existed when the warranties in the agreements were executed," regardless of whether the First Amended Complaint had been filed or served. *Id.* at 536, 539.

Use of Ex. 38 for this limited purpose by the Court of Appeals was appropriate and not contrary to either the trial court's ruling on the admission of Ex. 38, RP 259-262, or any contrary legal authority of this Court. Impliedly, notice of the First Amended Complaint presupposes that the First Amended

Complaint exists and its existence, as evidenced by the date that Ex. 38 was signed by the Attorney General (April 9, 2007). This was not only the sum total of the Court of Appeals' limited reliance in support of its ruling, but the use is entirely consistent with the trial court's admission of Ex. 38. Petitioners overstate their case.

2. The allegations and claims set forth in Ex. 38 were not considered by the Court of Appeals for the truth of the matter asserted or to show "materiality".

The Court of Appeals relied upon the First Amended Complaint as evidence that the SEC's claim had a material adverse effect on M&M's ability to perform its obligations under the License Agreement and Option Agreement. Materiality was admitted by Petitioners and supported by such substantial testimony and evidence, RP 187-207, 268-290, 309-311, 318, that the trial court expressly found "materiality" in the context of holding that no "claim" existed:

> Now, I would further find that a requirement to pay $550,000 to the SEC by M&M would have been within the purview of paragraph 12.1(g) of the licensing agreement and paragraph 5 of the R & D Agreement (sic). If such a claim existed, it would be a material claim that might have a material adverse effect on the other party, but it didn't exist at the time.

RP 11, Trial Court's Oral Decision. As such, the Court of Appeals did not create new "findings of fact," and even noted that Petitioners did not dispute this assertion by Smith (in their

response brief, at oral argument or on motion for reconsideration). *Martin* at 538; *see* Appellant's Opening Brief at p. 3; Appellant's Reply Brief, n. 1.

B. *Devenny* is inapplicable—the Court of Appeals properly relied upon *Miller* to reaffirm that warranties are strictly enforced in the non-insurance commercial context.

Miller Commercial Union Assurance Co., 69 Wash. 529, 125 P. 782 (1912) is a century old decision that set forth the critical legal distinctions between representations and warranties generally. More importantly, *Miller* remains the common law of Washington as applied to the facts and circumstances before the Court of Appeals—specifically, in matters not involving warranties in insurance policies.

The Court of Appeals understood *Miller's* limited post-*Devenny* reach, and re-affirmed this Court's longstanding common law precedent that warranties are strictly enforced in the non-insurance commercial context and void the contract even if the breaching party is unaware of the breach, the breach was immaterial, and/or the underlying facts of the breach was fully disclosed or known. *Martin v. Smith,* 192 Wn.App. 527, 537-540, 368 P.3d 227 (2016); *Jeffery v. Hanson,* 39 Wn.2d 855, 239 P.2d 346 (1952); *see Edmonson v. Popchoi*, 172 Wn.2d 272, 283, 256 P.3d 1223 (2011)(grantee's prior knowledge of breach of warranty

is irrelevant to enforceability of statutory warranty deed). In so ruling, the Court of Appeals underscored that *Miller* provides certainty in business transactions, especially for business law practitioners who advise commercial clients. Decades of lawyers have relied upon the "bright line" articulated by *Miller* (and earlier cases) when drafting and enforcing contracts. *See generally Pac. Power & Light Co. v. White*, 94 Wash. 18, 26-28, 164 P. 602 (1917); *Springfield Shingle Co. v. Edgecomb Mill Co.*, 52 Wash. 620, 623-30, 101 P. 233 (1909).

Conversely, Petitioners' arguments would inject unpredictability and ambiguity into all non-insurance business transactions. If fraud or deceit was required to be proved (presumably by clear, cogent, and convincing evidence), every warranty in the non-insurance commercial context would potentially result in litigation regardless of the contracting parties' clear intent to the contrary. There would be no "bright line." Petitioners' newly-asserted reliance upon *Devenny v. Automobile Owners' Interinsurance Ass'n of Washington*, 124 Wash. 453, 214 P. 833 (1923) is simply misplaced. *Devenny*, which was decided after *Miller* and after Rem. Comp. Stat. §34, ch. 49, Laws of 1911 was enacted (recodified today as RCW 48.18.090), reflects a

legislative statutory "carve out" for insurance contracts from *Miller's* broader general holding.[7]

Simply put, the insurance industry is heavily regulated by statute for public policy reasons that do not exist in the non-insurance commercial context, as here. *See Touchette v. Northwestern Mut. Ins. Co.*, 80 Wn.2d 327, 333-34, 494 P.2d 479 (1972); RCW 48.18.090(1)(. . . [N]o oral or written misrepresentation or warranty made in the negotiation of an insurance contract, by the insured or in his or her behalf, shall be deemed material or defeat or avoid the contract . . . , unless the misrepresentation or warranty is made with intent to deceive."); RCW 48.18.010 ("This chapter applies to insurances other than ocean marine and foreign trade insurances."); *Riordan v. Commercial Travelers Mut. Ins. Co.*, 11 Wn.App. 707, 712, 525 P.2d 804 (1974)(breach of warranty in insurance policies must have a causal connection to preclude recovery of damages). Petitioners' attempt to conflate misrepresentations and warranties outside of the limited *Devenny* insurance context, such that the distinction between the two oft-used contract provisions is

[7] *Devenny* was not raised by Petitioners at trial or prior to the Court of Appeals decision (either in briefing and oral argument). *Devenny* was first raised in Petitioners' Motion for Reconsideration, along with legal theories of failure to rescind, ratification, repudiation, revocation and the very same arguments regarding Ex. 38 and failure to properly assign error. All arguments were summarily rejected.

meaningless, should be rejected. A careful reading of the two principal authorities relied upon by Petitioners, *Devenny* and *Brigham v. Mutual Life Ins. Co of New York, 95 Wash. 196, 163 P. 380 (1917)*, limit their application to insurance policies, which are highly regulated by statutes designed and intended to protect insureds from predatory underwriters who may arbitrarily and unfairly reject claims for property loss due to inadvertent mistakes in the insurance application process. Neither *Devenny* nor *Brigham* provide Petitioners with legal traction here.

Petitioners further urge—before this Court, during oral argument and in their Motion for Reconsideration—that Mr. Smith failed to argue that Petitioners' breach of warranty at trial or that breach of the warranties voided the License and Options agreements. In effect, Petitioner argue "surprise" and invited error by cherry-picking (yet again) from Mr. Smith's closing argument.[8]

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[8] During oral argument, Petitioners Counsel, Mr. Shepherd, represented to the Court of Appeals that Mr. Smith never raised and argued a breach of warranty theory at trial. The Court of Appeals expressly asked Mr. Smith's counsel, Mr. Karlberg, if Mr. Shepherd was correct. The transcript from oral argument will clearly and unequivocally reflect Mr. Karlberg's affirmation that the issue was raised at the trial level.

In their Motion for Reconsideration, Petitioners changed tactics. By cherry-picking excerpts from Mr. Smith's closing argument, Petitioners acknowledge Mr. Smith raised and argued his breach of warranty claim at trial, but Petitioners urge that Mr. Smith did so only in the context of Mr. Smith's fraud and misrepresentation claims, *i.e.*, the failure of M&M to disclose material facts breached the warranty provisions at issue as opposed to the meaning of the word "claim." Again, Petitioners overreached, *see* Smith Response to Motion for Reconsideration at pp. 6-

Petitioners are incorrect. The record is clear that Mr. Smith's breach of warranty claims were independent of his fraud and misrepresentation claims. The *complete* record of what was or was not argued at trial in opening and closing is set forth at RP 13-17 (prior to opening arguments), 512, 515-538 (closing argument). Mr. Smith's breach of warranty claim was clearly argued as a separate and independent claim from the fraud-based claims.

Likewise, Petitioners' characterization of what was or was not argued is directly at odds with the trial court's oral ruling on the findings of fact:

> Now, I would further find that a requirement to pay $550,000 to the SEC by M & M would have been within the purview of paragraph 12.1(g) of the licensing agreement, and paragraph 5 of the R & D agreement (sic). If such a claim existed, it would be a material claim that might have a material adverse effect upon the other party, but it didn't exist at the time.[9]
>
> I would find that as of the time that these documents were signed in April, and as of the time that the parties had the meeting on the 15th of March that it was an inchoate claim only. Mister – or that Mr. Martin and M & M did not know on the day that the documents were signed that the actual amended complaint named

9, which is why Petitioners' arguments were summarily dismissed by the Court of Appeals denial of the Motion for Reconsideration.

[9] The trial court's finding of materiality reflects Mr. Martin's unequivocal testimony that if the SEC demand had risen to the level of a "claim," the SEC claim would have had a material adverse effect on M & M, and by extension, Mr. Smith. RP 268-274. Petitioners never disputed these assertions at trial, during earlier briefing, or in oral argument.

them as relief defendants, or had been filed or prepared or any of that. There was an inchoate claim, a potential claim only. It may have never come to fruition. So it hadn't ripened in my opinion . . . .

RP 11-12, Trial Court's Oral Decision.

The trial court further confirmed his ruling in its conclusions of law as follows:

First of all, breach of warranty, the only thing in the, when the warranty that has been presented to this Court is a potential breach is a failure to comply with paragraph 12.1(g) which is the warranty that there were no existing claims against or on behalf of either party, particularly the Plaintiff, that would have a detrimental effect on the other party.

I find there was no existing claim. There was a potential claim. The potential claim was disclosed. There was no existing actual claim, and therefore, no breach of the warranty.

RP 20, Trial Court's Oral Decision.

Mr. Smith respectfully asserts that the trial court would not have made these findings and ruling if Petitioners' claim of "surprise" and invited error were true.

C. Mr. Smith properly assigned error.

One essential purpose of RAP 10.3 is to protect appellees from unfair surprise at the appellate level. Here, Petitioners make no such argument. Instead, Petitioners engage in legal semantics and hair-splitting, Petition at p. 1-2, 14-16, that were twice raised and rejected by the Court of Appeals. Petitioners

are correct—Mr. Smith did not assign error to FF 3.01, 3.02, 3.06, 3.04, 4.06 and related findings of fact that were occurred post-formation and/or irrelevant to the limited warranty-related issues before the Court of Appeals. Petitioners appear to argue, for example, that if Mr. Smith did not challenge the trial court's finding that the License and Options agreements are valid and enforceable, Mr. Smith is precluded from appealing the trial court's decision regarding the legal impact of the SEC's claim in the context of Mr. Smith's breach of warranty claims. Petitioners are incorrect. Petitioners may be correct if Mr. Smith were appealing the findings of fact and conclusions of law relating to his fraud and misrepresentation claims—either of which would have voided the two agreements *prior* to their formation. But Mr. Smith is not. *See* Appendix A to Appellant's Reply Brief; FF at 3.47, Remedy at 5.03, and CL 6, 8 and 11.

The issues and inquiry before the Court of Appeals were post-formation contractual questions limited to April 11, 2007 and earlier in time, *i.e.*, assuming the License and Option agreements were enforceable, may Mr. Smith void the agreements because Petitioners breached the warranty provisions? Simply put, Mr. Smith cannot allege breach of warranty unless the warranty provisions are enforceable. Likewise, Petitioners' reliance on downstream post-formation facts (April 12, 2007 and thereafter)

are misplaced because if the warranty provisions were breached, the respective agreements are voided, rendering the latter discussion irrelevant.

In sum, RAP 10.3 was never intended to be a "gotcha" requirement in complicated litigation, where the subtle distinctions between pre- and post-formation claims and facts may preclude an appeal on the merits merely because one party or the other characterizes the disputed claims in one manner or another. RAP 10.3 was never intended for this purpose. Notably, Petitioners do not contend they were prejudiced—they simply raise a hyper-technical legal argument that is form over substance.

IV. CONCLUSION

For the foregoing reasons, Mr. Smith respectfully requests this Court to deny the Petition for Review. None of the considerations set forth in RAP 13.4 exist.

Respectfully submitted this 20th day of June, 2016.

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CERTIFICATE OF SERVICE

I certify under penalty under the laws of the State of Washington that on June 20, 2016, I caused a true and correct copy of the foregoing ANSWER TO PETITION FOR REVIEW hand delivery to the following:

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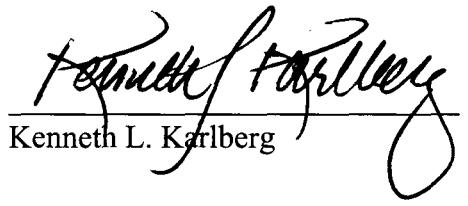

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