NO. 97530-2

COURT OF APPEALS NO. 49836-7-II

SUPREME COURT OF THE STATE OF WASHINGTON

DAN & BILL'S RV PARK,

Defendant-Petitioner,

v.

ESTATE OF EDNA ALLEN and MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM, WASHINGTON STATE ATTORNEY GENERAL'S OFFICE,

Plaintiffs-Respondents.

MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM'S ANSWER TO DAN & BILL'S PETITION FOR REVIEW

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I. INTRODUCTION

The Manufactured/Mobile Home Landlord Tenant Act (MHLTA or the Act), RCW 59.20, was enacted to address situations where a landowner rents space to tenants who, because their homes are impractical and expensive to move, are in vulnerable positions in housing disputes. Parks such as Dan & Bill's—that rent to low-income tenants like Edna Allen, who are not recreational or temporary residents but there to live with no plans to leave—are classified as "mobile home parks" to protect those tenants.

The specific question before the Court of Appeals was whether Dan & Bill's rented space to two or more "park model" homes, as defined under the MHLTA. Carefully examining both the language and legislative amendments of the MHLTA provisions, and applying established principles of statutory construction, the court correctly concluded that Dan & Bill's rented space to two or more tenants with park models on the property and therefore is subject to the MHLTA.

Dan & Bill's petition sets forth a laundry list of issues but fails to demonstrate that the Court of Appeals' decision conflicts with case law, raises any significant question of constitutional law, or raises any issue of significant public importance warranting review by this Court. This Court should deny the petition for review.

II. COUNTERSTATEMENT OF ISSUES

1. Did the Court of Appeals apply the correct deference to the order of the administrative law judge (ALJ) as it relates to mixed questions of law and fact, specifically concerning the legal definition of "park model"?
2. Did the Court of Appeals apply the correct deference to the ALJ's order with respect to interpreting the MHLTA?
3. Did the Court of Appeals properly consider and give effect to the legislative purpose of RCW 59.12.080(3)?
4. Did the legislature intend for the MHLTA to apply to an RV park that rents space to two or more RVs used as primary residences year-round?
5. Did the Attorney General violate Dan & Bill's due process rights by choosing not to defend an erroneous ALJ order?
6. Did Dan & Bill's, by failing to brief the issue on appeal, thereby waive their claim that the Attorney General violated their privacy rights by not obtaining a search warrant to meet with tenants on the premises?
7. Where the Estate of Edna Allen has properly substituted as a party to this matter, are any of the issues that the Court of Appeals remanded to the Office of Administrative Hearing abandoned or mooted by Ms. Allen's death?

III. COUNTER STATEMENT OF THE CASE

A. Overview of the Manufactured/Mobile Home Landlord Tenant Act

The MHLTA, RCW 59.20, applies to rental tenancies where a tenant owns a manufactured or mobile home, as defined under the Act, and rents the land upon which the home is situated. In 2007, the legislature determined that a tenant's difficulty and expense of moving and relocating a manufactured home gave manufactured housing park owners unfair leverage in disputes with tenants. RCW 59.30.010(1). To remedy this

inequality, the legislature created the Manufactured Housing Dispute Resolution Program (Program) as an equitable, less costly, and more efficient way for manufactured housing tenants and landlords to resolve disputes alleging violations of the MHLTA. RCW 59.30.030(2). Under the Program, the Attorney General is authorized to facilitate negotiations between manufactured housing landlords and tenants, investigate alleged violations of the MHLTA, make determinations, and issue fines and penalties against landlords and tenants if the Attorney General finds violations under the MHLTA. *See* RCW 59.30.010(3)(c).

In response to complaints filed with the Office of the Attorney General, the Program attempts to facilitate negotiated resolutions between the parties. RCW 59.30.040(3). If parties are unable to informally resolve the dispute, the Program will investigate potential violations of RCW 59.20. *Id.* After investigation, the Program may issue a notice of violation, if warranted. RCW 59.30.040(5)(a). Once a notice of violation is issued, the Attorney General is authorized to order a landlord or tenant to cease and desist from the unlawful practices. RCW 59.30.040(7). The Program may take affirmative steps to carry out the purposes of RCW 59.30, including issuing refunds of improper rent increases or other charges collected in violation of the law. *Id*.

Either party may request an administrative hearing under the Administrative Procedure Act (APA), RCW 34.05, to contest a notice of violation or, alternatively, a notice of non-violation. RCW 59.30.040(8)(a). The order of the ALJ constitutes the final agency order of the Attorney General and is subject to judicial review pursuant to the APA. RCW 59.30.040(10).

B. Factual and Procedural Background

Dan & Bill's is located in Puyallup, Washington. Dan & Bill's is located in Puyallup, Washington.[1] Edna Allen lived in a park model at Dan & Bill's, and she paid rent for space on the lot.[2] CP 12 (ALJ Order, Findings of Fact (FOF) 4.19, 4.20); AR 969:15-17. The park model had been at Dan & Bill's for at least four years prior to Ms. Allen moving in. AR 963:8-11. Ms. Allen described herself as a disabled senior on a fixed income; she was formerly homeless prior to moving into Dan & Bill's. AR 960:25; 966:12-13; 967:7-8; 968:2-3; AR 348. Though her home has attached wheels, Ms. Allen never moved her home from its location at Dan & Bill's from the time

[1] According to the Clerk's Paper Index for the Court of Appeals, Division II, a copy of the complete administrative record was forwarded the Court of Appeals upon payment of the Clerk's Papers. The Certificate of Agency Record and Supplemental Agency Records were filed on Jan. 6, 2016 and Jan. 20, 2016, respectively, and listed the administrative documents by AR page number. See Clerk's Papers (CP) 27-29, 32-33.

[2] Ms. Allen passed away in July 2017 during the appeal and subsequently, the Estate of Edna Allen has substituted itself as appellant.

she moved in on January 3, 2014. CP 12 (ALJ Order, FOF 4.19, 4.23); AR 988:9-10.

Ms. Allen regarded her park model home at Dan & Bill's as her permanent and primary residence. AR 993:5-10. Many other tenants at Dan & Bill's did as well. *See* AR 1016:2-4; AR 1027:25-1028:3, 1030:3-4; AR 1059:16-24; AR 1082:9-10, 1083:16-19. Many tenants resided at Dan & Bill's for many years, some for over a decade. AR 1013:6-11 (over fourteen years); AR 1028:8-9 (around five years); AR 1055:25 (around five years); AR 1081:14-16 (over nine years).

Because Dan & Bill's tenants had no plans to leave and intended to live there on a permanent basis, they landscaped their rented lots by installing grass, hedges, trees, shrubs, potted plants, outdoor seating areas, fences, outdoor art, and walls to prevent erosion. *See* AR 364, 368, 376, 382, 402, 416-418.

Dan Haugsness, the owner of Dan & Bill's, did not provide Ms. Allen or any of the other tenants with written rental agreements. CP 16 (ALJ Order, FOF 4.60, 4.61); AR 974:25-975:19. He did provide Ms. Allen with a document listing rules and regulations for the Park. AR 975:5-13; AR 358. This document did not detail the amount of rent or period of tenancy. AR 358. Shortly after Ms. Allen moved in, Mr. Haugsness verbally informed her that he was increasing her monthly rent by $20.00. CP 16 (ALJ

Order, FOF 4.65); AR 977:17 – 978:13. Mr. Haugsness provided only one month's notice of the rent increase. AR 355. In May 2014, four months after her tenancy began, Ms. Allen began paying $20.00 more each month for rent. AR 982:9-11; AR 408-410. However, Ms. Allen also filed a request for dispute resolution with the Program, alleging that Dan & Bill's refused to provide her with a written rental agreement and improperly increased her rent. AR 347-349; CP 10 (ALJ Order, FOF 4.1).

In response to Ms. Allen's Program complaint, Mr. Haugsness maintained that Dan & Bill's was an RV Park for recreational vehicles and not subject to either MHLTA or the Program. The Program completed an investigation and issued a Notice of Violation against Dan & Bill's in November 2014. AR 7-13. The Program concluded that Dan & Bill's had violated RCW 59.20.060(2)(c) and RCW 59.20.090(2) when it improperly increased Ms. Allen's rent, as well as RCW 59.20.050(1) and RCW 59.20.060(1) for failing to provide Ms. Allen with a written lease. AR 9-10. Dan & Bill's appealed the Notice of Violation to the Office of Administrative Hearings (OAH). AR 3.

In February 2015, Mr. Haugsness notified Ms. Allen that he was increasing her monthly rent again, effective April 1, 2015 by $10.00 a month to pay his attorney fees. AR 983:12 - 987:15. This time, Mr. Haugsness provided written notice to Ms. Allen, along with the invoice

for his attorney's services. *Id*. The Program issued Dan & Bill's an Order to Cease and Desist from increasing Ms. Allen's monthly rent as a retaliatory practice and without providing proper notice. AR 141. Dan & Bill's appealed the cease and desist order to OAH. CP 10 (ALJ Order, FOF 4.5).

Dan & Bill's two appeals of the Program's actions were consolidated by OAH, which conducted a live hearing and heard testimony from numerous tenants and Mr. Haugsness. Dan & Bill's argued that it was not a manufactured/mobile home park subject to MHLTA. The evidence at hearing included testimony from Ms. Allen and at least four other tenants who have resided at Dan & Bill's year round for periods of time ranging between 18 months and 12 years.

Following the hearing, an ALJ Order was issued on November 9, 2015, reversing the Program's actions and setting aside the Program's Notice of Violation and Order to Cease and Desist. AR 855, 870. The ALJ order was the agency action at issue in the appeal to the Court of Appeals, Division II.

Edna Allen and the Program appealed to the Thurston County Superior Court. After briefing and argument, the superior court reversed, corrected the ALJ's legal analysis, and applying its own analysis to the facts, concluded that more than two tenants had units at Dan & Bill's that qualified as "park models." CP 224-25 (Thurston Co. Super. Ct. Oct. 7,

2016 Letter Ruling at 4-5). Having reached this conclusion, the superior court found that Dan & Bill's was a manufactured/mobile home park under MHLTA and remanded the matter back to OAH for proceedings consistent with the order. CP 216-17 (Thurston Co. Super. Ct. Dec. 16, 2016 Order at 2-3). Dan & Bill's appealed to the Court of Appeals.

The Court of Appeals affirmed the superior court on the merits, (but reversed its award of attorney fees to Ms. Allen). Dan & Bill's and the Estate of Edna Allen timely filed separate petitions for review to this Court. This Answer responds to the petition filed by Dan & Bill's.[3]

IV. ARGUMENT

A. The Court of Appeals Does Not Defer to Tenants' Lay Opinions When Making Legal Determinations

The threshold issue on appeal is whether Dan & Bill's is a "mobile home park" subject to the MHLTA. Under the Act, a "mobile home park" or "manufactured/mobile home community" means "any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy." RCW 59.20.030(10). The ALJ made

[3] Although the Estate of Edna Allen lists the Program as petitioner in the caption to its Petition for Review, the Program has not filed a petition for review to this Court.

findings of fact, most of which were not challenged by Ms. Allen and the Program on appeal. By contrast, the ALJ made separate findings of law, which *were* challenged by Ms. Allen and the Program.[4]

Despite Dan & Bill's urging, however, the tenants' opinions concerning the definition of "park model" have no bearing on the court's legal analysis, and the Court of Appeals did not err when declining to defer to the witnesses' lay opinions. The meaning of "park model" under RCW 59.20.030(14) is a question of law that the Court of Appeals determines *de novo*. *Clark County Pub. Util. Dist. No. 1 v. State of Washington Dep't of Revenue*, 153 Wn. App. 737, 747, 222 P.3d 1232 (2009).

B. A Reviewing Court May Reverse an Administrative Order if It Finds That the Order Involves an Error in Interpreting or Applying the Law, as the Court of Appeals Properly Did Here

Similarly, a reviewing court's deference to the ALJ's statutory interpretation is not unlimited; the Court of Appeals may reverse an administrative order that involves an error in interpreting or applying the law, as the Court of Appeals did here. RCW 34.05.570(3)(d). *See Senate*

[4] While the Program did not challenge the findings of fact, it argues that the ALJ's statutory construction and conclusions of law are not supported by law or legislative history. While a reviewing court must be deferential to factual determinations of the fact finding authority, *Citizens to Preserve Pioneer Park LLC v. City of Mercer Island*, 106 Wn. App.461, 474, 24 P.3d 1079 (2001), it is for the reviewing court to determine the meaning and purpose of a statute. Contrary to Dan & Bill's assertions, conclusions of law are not reviewed as findings of fact unless they are erroneously described as conclusions of law. *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986).

Republican Campaign Comm. v. Pub. Disclosure Comm'n of State of Wash., 133 Wn.2d 229, 241, 943 P.2d 1358 (1997) ("[A]n administrative determination will not be accorded deference if the agency's interpretation conflicts with the relevant statute." (quoting *Cowiche Canyon Conservancy v. Bosley,* 118 Wn.2d 801, 815, 828 P.2d 549 (1992)).[5] For mixed questions of law and fact, the reviewing court determines the law independently and applies the law to the facts as found by the agency. *Galvis v. Dep't of Transportation*, 140 Wn. App. 693, 708, 167 P.3d 584 (2007). The Court of Appeals did not "overturn sixty-four unchallenged findings of fact," as Dan & Bill's assert. Pet. for Review at 12. At all times, the Court of Appeals applied facts stated in the ALJ's order, but it properly corrected the ALJ's legally erroneous readings of the statutory definitions at issue.

Dan & Bill's reliance on the Court of Appeals' supposed failure to afford strict deference to the administrative order when interpreting statutes is wrong on the law and without merit, and it presents no ground for this Court's review.

[5] Dan & Bill's reliance on *DaVita, Inc. v. Washington State Dep't of Health*, 137 Wn. App. 174, 151 P.3d 1095 (2007), is unavailing, because the *DaVita* court did not give strict deference to the agency decision maker. "Although we give weight to the agency's interpretation of the statutes it administers, we review the agency's legal conclusions de novo." *Id.* at 181.

C. The Court of Appeals Did Not Err in Interpreting "Park Model" to Include Recreational Vehicles Used as Primary Residences

Dan & Bill's asserts that under RCW 59.20.080(3), recreation vehicles occupied as a primary residence are not park models. Pet. for Review at 14. The Court of Appeals considered and rejected that argument, explaining that the plain language of RCW 59.20.080(3) "shows the legislature recognized the potential different uses of a 'recreational vehicle' in the MHLTA." Slip Op. at 12. Where an RV is used as a primary residence, it is governed by Chapter 59.20. Where it is used as a temporary living quarters, different statutes apply. *Id.*

Dan & Bill's disagrees with the Court of Appeals but at the same time makes no argument that this disagreement meets any criterion in RAP 13.4(b) to warrant this Court's review.

D. Applying the MHLTA to Dan & Bill's Under the Facts of This Case Implements the Legislature's Intent

Dan & Bill's accurately quotes the legislative finding in RCW 59.30.010(1):

> The legislature finds that there are factors unique to the relationship between a manufactured/mobile home tenant and a manufactured/mobile home community landlord. Once occupancy has commenced, the difficulty and expense in moving and relocating a manufactured/mobile home can affect the operation of market forces and lead to the inequality of the bargaining position of the parties.

Pet. for Review at 15. But it denies there is any such bargaining inequality at Dan & Bill's RV Park. *Id.* The record tells a different story.

The Court of Appeals summarized the testimony received by the ALJ and concluded that at least two trailers (Ms. Allen's and Mr. Shinkle's) were intended for permanent or semi-permanent installation, and that neither tenant had any plan to leave the Park. Slip Op. 4-6. Many other tenants testified to having lived there for years. *Id. See*, *supra*, III.B. Moreover, despite Dan & Bill's insistence that it does not exert leverage over its tenants, in that they could pack up their trailers and leave "in minutes," having a home on wheels does not alone make the tenants mobile in a practical or financial sense. Dan & Bill's tenants do not relocate not by choice but because they cannot find another park for their aging residences and cannot afford to leave. *See* AR 1003:7-24 (Ms. Allen testifying that the age and poor condition of her park model prevented her from moving to another park and noting she could not get a new trailer); AR 1016: 9-12; 15-16 (tenant Barbara Hamrick testifying: "A lot of it's financial. I can afford to be [at Dan & Bill's]. And to rent a place, I'd never be able to afford it, I'll probably just keep buying RVs and living in an RV court. . . . I've told [Dan Haugsness] I'd probably die there.").

Ms. Allen and others in her situation are among those the legislature intended to protect when it enacted the MHLTA in 1977 and amended it in

1999 to include "park models," defined as "a recreational vehicle intended for permanent or semi-permanent installation and habitation." Laws of 1999, ch. 359, §2. The Court of Appeals referred to this intent as it reviewed the language and history of the statute. Slip Op. at 9-10. Without the protections of the MHLTA and the Program, Ms. Allen and others in her situation would be afforded no protection under the law. They could be treated as if they were casual RV campers spending a couple of days at a campground. But the residents at Dan & Bill's are not casual campers. Dan & Bill's encourages year-round residence on its lot and enjoys year-round rent payments as a result.

The Court of Appeals did not err in holding that Dan & Bill's, in accepting two or more long-term tenants in their recreational vehicles, intended for permanent or semi-permanent installation, is a "mobile home park" under the MHLTA and therefore must comply with the Act. Dan & Bill's has not demonstrated any basis under RAP 13.4(b) for review of this holding.

E. Dan & Bill's Alleged Due Process Claim Is Not Supported by Relevant Argument and Need Not Be Considered Further

Dan & Bill's petition includes a heading asserting a due process violation, but the argument contained under that heading includes no discussion of due process. This Court need not consider an allegation of a

constitutional violation that is unsupported by "considered argument." *Health Ins. Pool v. Health Care Auth.*, 129 Wn.2d 504, 511, 919 P.2d 62 (1996). *See also Meyer v. Univ. of Washington*, 105 Wn.2d 847, 855, 719 P.2d 98 (1986) (court declined to consider constitutional claim simply mentioned without further discussion or analysis); *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 14, 721 P.2d 1 (1986) (same).

Likewise, the Court of Appeals had no reason to address due process. As here, Dan & Bill's brief to the Court of Appeals mentioned due process but contained no assignments of error, citation of authority, or argument addressing due process claim. *See McKee v. Am. Home Prod., Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045 (1989) (appellate court will not consider issues on appeal that are not raised by an assignment of error or are not supported by argument and citation of authority).

Dan & Bill's argument instead appears to allege that the Attorney General lacks authority under RCW 59.30.040(10)(c) to challenge the ALJ's adjudicative order and therefore lacks standing to have appealed the order. Pet. for Review at 16-17. The Court of Appeals expressly declined to address Dan & Bill's standing argument "because the claims that the Program raises are also raised by Allen." Slip Op. at 2 n.2. The complete overlap in both appellants' arguments, which Dan & Bill's does not dispute, meant that the Court of Appeals could address the issues raised by the Estate

of Edna Allen on appeal without also needing to address the Attorney General's role as appellant in order to resolve the case. The Court of Appeals did not commit error in reaching this conclusion.

F. The Program Was Not Obligated to Obtain a Search Warrant, and Dan & Bill's Failed to Brief This Issue in the Court of Appeals

Dan & Bill's alleges the Program was obligated to obtain a search warrant before it could talk with residents at the Park. This issue was not presented to the Court of Appeals—Dan & Bill's made no assignments of error, cited no authority, and offered no argument to address this issue in that Court, and thus the Court of Appeals did not address it. *See McKee*, 113 Wn.2d at 705. Dan & Bill's offers no reason why it should be permitted to raise the issue for the first time in this Court.[6]

Regardless, the Program conducted its investigation in a lawful manner, no reasonable expectation of privacy was violated, and the Program was not obligated to obtain a warrant. A law enforcement officer with legitimate purpose may enter areas of the curtilage which are impliedly

[6] Under RAP 2.5(a)(3), Dan & Bill's must show that the asserted constitutional error is both manifest and "truly of constitutional magnitude." *State v. WWJ Corp.*, 138 Wn.2d 595, 602, 980 P.2d 1257 (1999) (quoting *State v. McFarland,* 127 Wn.2d 322, 333, 899 P.2d 1251 (1995)). The policy behind this requirement is to ensure that appellate courts "will not waste their judicial resources to render definitive rulings on newly raised constitutional claims when those claims have no chance of succeeding on the merits." *Id.* at 603. RAP 2.5(a)(3) was not designed to allow parties "a means for obtaining new trials whenever they can 'identify a constitutional issue not litigated below.'" *Id.* at 602 (quoting *State v. Scott,* 110 Wash.2d 682, 687, 757 P.2d 492 (1988)).

open, such as access routes to the house. *State v. Ross*, 141 Wn.2d 304, 312–13, 4 P.3d 130 (2000). A tenant may consent to search of the rented area over any landlord objections, and consent vitiates the need for a warrant." *City of Seattle v. McCready*, 124 Wn.2d 300, 303-04, 306, 877 P.2d 686 (1994). Dan & Bill's tenants consented to speak with the Program investigator, and all statements and photographs were obtained in a lawful manner in accordance with that consent and with authority granted by MHLTA. Dan & Bill's claim is without merit.

G. Having Found That Dan & Bill's Was Subject to the MHLTA, the Court of Appeals Appropriately Remanded the Case to the Office of Administrative Hearings to Determine Whether Dan & Bill's Violated the MHLTA.

Dan & Bill's offer a list of complaints about the scope of the remand. Pet. for Review at 19-21. None has merit.

The Court of Appeals held that OAH "erred in (1) construing the definition of 'park model,' (2) concluding that the Park contained only one 'park model,' (3) concluding that the Park is not a mobile home park, and (4) concluding that the Park is not subject to the MHLTA." Slip Op. at 23. It "remand[ed] to the OAH for further proceedings *consistent with this opinion*." *Id.* (emphasis added). In short, the reviewing court held that Dan & Bill's was subject to the MHLTA, and because the ALJ had reached a contrary determination, the Court of Appeals remanded the matter back to

OAH for the ALJ to make determinations regarding *whether* Dan & Bill's violated MHLTA on the issues that were not consistent with the Court of Appeals' ruling.

Contrary to Dan & Bill's assertion, the Court of Appeals did not make any factual findings itself. It did not make a factual finding that there was a written agreement. It merely noted that Ms. Allen and Dan & Bill's had a "rental agreement"—an understanding that "Allen lived in the Park and provided rent to the Park. This agreement and Allen's use of the Park was based on the rules the Park gave to Allen. Thus, there is a rental agreement." Slip Op. at 19.

The Court of Appeals never made a legal determination that Dan & Bill's did not violate chapter 59.20 RCW in failing to provide a written rental agreement.[7] This issue was properly remanded to the OAH for determination. The Court of Appeals also made no rulings related to Pierce County codes and variances or registration with the Department of Revenue, so the scope of its order to OAH was not in error.

Finally, Dan & Bill's argues that most or all of the issues in this appeal are mooted by Ms. Allen's death. Pet. for Review at 19. Since this argument is made with no citation to legal authority, this Court may

[7] Significantly, the ALJ order contained findings of fact that Ms. Allen testified that she was never provided a written rental agreement and that the owner of Dan & Bill's told her that the Park never provided written rental agreements." AR 864 (FOF ¶ 4.60-4.61).

disregard this argument. *McKee*, 113 Wn.2d at 705 ("We will not consider issues on appeal that are not raised by an assignment of error or are not supported by argument and citation of authority."). In any event, the case is not moot. A case is moot if the court can no longer provide meaningful relief. *Yakima Police Patrolmen's Ass'n v. City of Yakima*, 153 Wn. App. 541, 552, 222 P.3d 1217 (2009). If Dan & Bill's is subject to and violated MHLTA, Ms. Allen paid excess rent that her estate should recover. *See id.* (case is not moot where deceased officer's disputed compensation could pass to his estate). This case is not moot because meaningful relief is possible.

V. CONCLUSION

Dan & Bill's has not demonstrated any basis under RAP 13.4(b) that merits this Court's review. The Court should deny Dan & Bill's Petition for Review.

RESPECTFULLY SUBMITTED this 9th day of September, 2019.

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CERTIFICATE OF SERVICE

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the date below, I caused a true and correct copy of the foregoing to be served on the following:

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