

73807-1

FILED
November 2, 2015
Court of Appeals
Division I
State of Washington
No. 73807-1

73807-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

JESSE FULLER,

Plaintiff-Appellant,

v.

FISHERMEN'S FINEST AND
NORTH PACIFIC FISHING, INC.

Defendants-Respondents-Cross Appellants,

**DEFENDANTS/RESPONDENTS/CROSS-APPELLANTS
FISHERMEN'S FINEST AND NORTH PACIFIC FISHING, INC.'S
ANSWERING BRIEF**

William H. Walsh, WSBA No. 21911
Karl Neumann, WSBA No. 48078
COZEN O'CONNOR
999 Third Avenue, Suite 1900
Seattle, WA 98104
Telephone: (206) 340-1000
E-mail: wwalsh@cozen.com
E-mail: kneumann@cozen.com

*Attorneys for Defendants/
Respondents/Cross-Appellants
Fishermen's Finest and North Pacific
Fishing, Inc.*

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I. INTRODUCTION

This Appeal stems from the filing of two frivolous pleadings, and an attorney who has repeatedly attempted to use the court system to vindicate a personal vendetta. Respondent Fishermen's Finest paid Appellant Mr. Fuller all disputed amounts over three weeks prior to the commencement of the underlying lawsuit. Despite full payment, Mr. Fuller's counsel, John Merriam, filed the Original Complaint for the same wages that were already paid.

After Fishermen's Finest provided Mr. Merriam unequivocal proof that his client was paid in full, Mr. Merriam stubbornly refused to withdraw the lawsuit. Instead, he filed an Amended Complaint, containing the exact same false wage allegations that his client had not been paid and attempted to blame the situation on the Respondent's president. Mr. Merriam blamed the president for the apparent miscommunication between himself and his client and chose to personalize the conflict accordingly. It became clear that the driving force behind this lawsuit was not Mr. Fuller, but rather Mr. Merriam himself.

The trial court did not abuse its discretion in finding that both the Original Complaint and Amended Complaint were frivolous filings. The facts underlining the Court's findings were clear and undisputed and the legal conclusions flowed unerringly from those findings. Critically,

Mr. Fuller himself stated in deposition testimony that he was “fully compensated” for his work well before the lawsuit was filed.

Appellant’s opening brief ignores the issues and the record: whether Plaintiff’s counsel filed two pleadings not grounded in fact. In what appears to be a back-handed way to appeal the underlying ruling in binding (i.e., non-appealable) arbitration, Plaintiff delves at length into maritime contract law, which is irrelevant for purposes of this appeal. Interpretation of Mr. Fuller’s employment contract does not change the fact that the aforementioned pleadings were frivolous and Mr. Merriam failed to conduct a reasonable inquiry into his client’s claim. Mr. Merriam filed a Complaint he should have known was false and then, when fully informed of the falsity of the allegations, knowingly repeated them in the Amended Complaint. The trial court must be affirmed.

II. APPELLANT’S STATEMENT OF ISSUES

A. Appellants Assignments of Error.

1. The trial court properly awarded attorneys’ fees based on evidence in the record.
2. The trial court properly found a *bona fide* dispute between Fishermen’s Finest and Mr. Fuller regarding end-of-contract bonus wages.

3. The trial court properly found that Mr. Fuller was paid in full prior to commencement of the underlying lawsuit.
4. The trial court properly found that Mr. Fuller's Original Complaint and Amended Complaint were both frivolous and baseless filings in violation of CR 11 and RCW 4.84.185.

B. Issues pertaining to Appellant's Assignments of Error.

1. Did the trial court abuse its discretion when it awarded attorneys' fees based on evidence *presented to the trial court*, including undisputed testimony from Mr. Fuller himself that he was fully compensated prior to commencement of the lawsuit? Answer: No.
2. Did the trial court err in finding a *bona fide* dispute where substantial evidence demonstrated that Mr. Fuller quit, contrary to the terms of his employment contract?
Answer: No.
3. Did the trial court err in finding that Mr. Fuller was paid in full where the record demonstrated payment to Mr. Fuller and Mr. Fuller conceded he was fully compensated?
Answer: No.

4. Did the trial court abuse its discretion when it ruled that the Original Complaint and Amended Complaint were frivolous and baseless filings where they contained false allegations and all disputed amounts were paid three weeks before the filing of the underlying lawsuit? Answer: No.

**III. RESPONDENT/CROSS-APPELLANT'S
COUNTER-STATEMENT OF ISSUES**

A. Respondent/Cross-Appellant's Assignment of Error and Request for Fees.

1. The trial court erred in arbitrarily reducing the amount of fees under CR 11 and RCW 4.84.185.
2. Fishermen's Finest should be awarded attorneys' fees and costs under RAP 18.1 and 18.9.

B. Issues Pertaining to Respondent/Cross-Appellant's Assignments of Error

1. Did the trial court abuse its discretion in reducing the amount of fees and costs awarded to Fishermen's Finest, where the amount was reduced *twice* without articulate explanation?
2. Should this Court award fees for a frivolous appeal against Appellant where the appeal presents no debatable issues and is devoid of merit?

IV. COUNTER-STATEMENT OF THE CASE

A. Mr. Fuller's Employment under the Maritime Contract.

On June 24, 2013, Mr. Fuller signed an employment contract (“Contract”) with Respondent North Pacific Fishing, Inc., which is owned by Fishermen’s Finest. CP 99–101. The Contract contained an initial sixty-day employment term, which ended on August 23, 2013. CP 99. The Contract provided that “[i]f the Vessel is at sea when the Term ends, the Term shall automatically extend until (1) the Vessel next returns to port for an off-load and (2) the Crewmember is released by the Captain after the off-load is completed.” CP 99–101 (emphasis added).

Because the fishing vessel and Mr. Fuller were at sea during expiration of the initial sixty-day period, Mr. Fuller’s employment term automatically extended. CP 354, 552-53. At Mr. Fuller’s request to Captain Vanderpol, he continued working *under the Contract* on the fishing vessel after August 23, 2013.¹ CP 552–53, 360 (agreeing with captain’s declaration regarding continuation of the Contract term).

However, on October 20, 2013, before the last trip of the season and prior to being released, Mr. Fuller quit. CP 516, 553. Because

¹ After quitting, Mr. Fuller filled out a “Last Day of Work Form,” demonstrating he was under the Contract when he quit. CP 324. The signed form indicates a handwritten check mark next to the “Contract Complete” box and additionally states, “I confirm that the last full day I worked on the F/V A1 was the 20 day of October, 2013. I understand my earnings will be calculated up to this date and this date only.” *Id.* By execution of the document, Plaintiff conceded his Contract’s extension through October 20, 2013.

Mr. Fuller abruptly quit, Fishermen's Finest was forced to fly a last-minute replacement to Alaska to take his place. CP 359. After the off-load, Captain Vanderpol eventually released Mr. Fuller from the crew. *Id.*

B. Bona Fide Dispute Regarding Mr. Fuller's Completion Bonus.

This maritime action originally arose out of an alleged underpayment regarding Mr. Fuller's end-of-contract completion bonus. CP 360. After Mr. Fuller quit, Fishermen's Finest promptly paid all his wages under the Contract. CP 73, 515–517, 533–546. However, Fishermen's Finest initially withheld Mr. Fuller's completion bonus for failing to finish working the "full term" of his contract—specifically, because Mr. Fuller quit before he was released. CP 85–86, 516, 553.

Under the Contract, Mr. Fuller was required to work his full term to obtain his end-of-contract completion bonus: "Term Bonus: If and only if the Crewmember completes working a full Term, Owner shall pay as a Term Bonus within thirty (30) days of completion of the Term." CP 99 (emphasis added). But contrary to the terms of the Contract, Mr. Fuller did not finish the full continued term. He quit before Captain Vanderpol released him, abandoning the fishing vessel before the last voyage of the 2013 season. CP 515–517; 552–53. As a result, Fishermen's finest did not disburse a completion bonus. CP 516.

C. Mr. Fuller Retains Counsel John Merriam.

As a result of the alleged underpayment, Mr. Fuller retained counsel John Merriam. CP 360. Before the lawsuit commenced, Fishermen's Finest attempted to communicate with Mr. Merriam to ascertain the basis of Mr. Fuller's claim. CP 81-86. To no avail, Fishermen's Finest requested information regarding the threatened lawsuit. CP 82-83. Mr. Merriam was uncooperative and refused to provide information regarding the same. CP 81-86. Instead of entertaining any meaningful discussion, Mr. Merriam dismissingly stated that he was "not in the mood for games" and planned to "put this case in line to file suit." CP 81-86.

D. Fishermen's Finest Paid All Disputed Amounts and Mr. Fuller was Fully Compensated.

Even though Mr. Fuller was not entitled to his completion bonus, Fishermen's Finest proceeded to gratuitously pay Mr. Fuller the disputed amounts. CP 516-17, 548-551. Because Mr. Merriam refused to discuss the purported claim—and to avoid needless litigation—Fishermen's Finest proceeded to pay Mr. Fuller. The disputed amounts were disbursed directly to Mr. Fuller. These included (1) the contract completion bonus; (2) two months interests on these wages at 1% per month; (3) airfare reimbursement; and (4) a courtesy payment of \$250 for legal expenses. CP 516-517, 548-551.

It was uncontested that Mr. Fuller received these payments. CP 3. In fact, Mr. Fuller explicitly agreed in deposition testimony that after receiving these amounts, he was “fully compensated.” CP 73–74.

E. Mr. Merriam and Mr. Fuller File *Two* Baseless Pleadings.

Over three weeks after Mr. Fuller was fully paid, Mr. Merriam nonetheless filed the Original Complaint on February 19, 2014. CP 1–3. Taken aback by the lawsuit, Fishermen’s Finest sent Mr. Merriam documentation confirming that his client was paid all requested amounts. CP 516–17, 548–551. On February 21, 2014, Fishermen’s Finest sent Mr. Merriam an e-mail warning of CR 11 sanctions if the lawsuit was not dismissed. CP 35.

Even after Mr. Merriam was provided documentation of the aforementioned payments, Mr. Merriam filed an Amended Complaint on March 7, 2014, which made the exact same wage allegations regarding Plaintiff’s alleged underpayment, plus two baseless allegations against non-party Dennis Moran, Respondent’s president, related to the circumstances of the payment. CP 7–9. The additional allegations were dismissed by the Washington Disciplinary Board. CP 77–79.

F. Mr. Merriam Was and Remains the Driving Force Behind this Lawsuit.

Mr. Fuller revealed during deposition testimony that the real driving force behind this lawsuit was Mr. Merriam himself. CP 74. After

Mr. Fuller conceded he was fully compensated, it became clear that this case was perpetuated *solely* because Mr. Merriam wanted some personal benefit out of this litigation. When asked about the purpose of this lawsuit, Mr. Fuller revealed the same:

Q. So, really, what this is about is paying Mr. Merriam?

A. Yes and no. Yes, to pay him because of the fact that I assumed that they had went through my lawyer with the pay and then I received mine.

CR 74.

Q. But they eventually paid you what they owed you under the contract?

A. Correct.

...

Q. And then your lawyer needs to be compensated? That's your – that's your contention in this litigation?

A. Correct.

CP 363-64 (testimony of Mr. Fuller) (emphasis added).

Mr. Merriam's desire for last-ditch profit and his animosity towards Mr. Moran have been apparent throughout this litigation.

Mr. Merriam put himself in the driver seat of this litigation with no regard to his client. He remains there on appeal.²

² Indeed, Mr. Merriam admits that he has not been in contact with his client, and has been unable to locate him. *See* A-1 to A-2.

G. Arbitration Background.

After this lawsuit commenced, Mr. Merriam refused to comply with the arbitration provision in the Contract. *See* CP 25–33. By Order of the court, the matter was compelled to arbitration where Fishermen’s Finest prevailed on the ostensible substantive issues. CP 52–53, 135–156 (Arbitration Opinion).

Contrary to Mr. Merriam’s blatantly false statement, the Arbitrator did not “refuse[] to award attorney fees to either side.” *Appellant Br.* at 9. Rather, the Arbitrator refused to award attorneys’ fees to just *Mr. Merriam and Mr. Fuller*. CP 155–56. To clarify Mr. Merriam’s misrepresentation, the Arbitrator acknowledged that “[Fishermen’s Finest] reserved the right to request attorneys’ fees as part of [Fishermen’s Finest’s] counterclaim” in the trial court.” CP 156; *see also* CP 14 (counterclaim reservation).

By letter, Fishermen’s Finest advised both the Arbitrator and Mr. Merriam that it would be pursuing its attorneys’ fees in trial court because the fees requested did not arise out of the operative Contract but, rather, from the civil rules of procedure. CP 158. Neither the Arbitrator nor Mr. Merriam objected.

H. The Trial Award and Reduction of Attorneys Fees.

Fishermen’s Finest filed its Petition for Fees and, on February 2, 2014, the trial Court entered an Order in favor of Fishermen’s Finest.

CP165–66. As requested by the trial Court, Fishermen’s Finest submitted its Application for Fees and Costs to determine the amount to be awarded.

Based on the amounts expended in defending this frivolous suit, Fishermen’s Finest requested fees in the total amount of \$70,318.43.

CP 28–234. Fishermen’s Finest provided the trial court a detailed Narrative Statement of Costs and Fees to confirm the amounts expended were lodestar compliant. CP 167–227.

On May 14, 2015, the trial court granted the Application, finding that the hourly rates were reasonable as a matter of law. CP 235–36. However, the trial court arbitrarily reduced the billings by approximately 60% to \$29,635.43, due to its interpretation that certain efforts were unnecessary. CP 236.

On June 3, 2015, the trial court issued its Findings of Fact and Conclusions of Law to support its decision to grant fees and costs. CP 302–305.³ However, the court proceeded to cut the already-reduced amount of sanctions to approximately 50%, for a total recovery of

³ To clear another untruth by Mr. Merriam, the trial court did not “simply sign[]” and “adopt[] verbatim” Fishermen’s Finest’s Proposed findings and conclusions. Appellant’s Brief at 10; *Compare* CP 274–76 (Proposed) with CP 302–05 (Court’s Order). Before the court issued its Findings, it gave Mr. Merriam adequate time to respond to the Proposed Findings submitted by Fishermen’s Finest. CP 279.

\$16,074.43. CP 300, 304. Of note, the fees were assessed against Mr. Merriam and Mr. Fuller, jointly and severally. 302–04⁴,

V. ARGUMENT

A. Standards of Review.

Two of Appellant’s assignments of error concern Findings of Fact, which are reviewed under a “substantial evidence” standard. *Mitchell v. Washington State Inst. of Pub. Policy*, 153 Wn. App. 803, 814, 225 P.3d 280 (2009) (citation omitted). “Substantial evidence” is evidence that “would persuade a fair-minded person of the truth of the statement asserted.” *Id.* (citation omitted). This is a deferential standard, and if there is conflicting evidence, “the record is reviewed *in the light most favorable to the party in whose favor the findings were entered [i.e., Fishermen’s Finest].*” *In re Marriage of Gillespie*, 89 Wn. App. 390, 404, 948 P.2d 1338 (1997) (emphasis added).

Appellant’s remaining two assignments of error take issue with the trial court’s award of fees and costs under CR 11 and RCW 4.84.185. The appropriate standard of review is “abuse of discretion.” *Stiles v. Kearney*,

⁴ Subsequently, a dispute arose as to the amount of Appellant’s supersedeas bond. Mr. Merriam represented to the trial court that he could not post a sufficient supersedeas amount because he was purportedly in bankruptcy. The claimed bankruptcy, however, was over four years old and irrelevant to the judgment debt arising from this litigation. See A-3 to A-10. Mr. Merriam omitted material facts related to his bankruptcy in the apparent hope of persuading the Court that he was currently insolvent and, therefore, unable to pay an increased bond. The court did so, demonstrating the trial court has been reasonably deferential to Mr. Merriam’s concerns regardless of his representations to it.

168 Wn. App. 250, 260, 277 P.3d 9 (2012) (citing *Biggs v. Vail*, 124 Wn. 2d 193, 197, 876 P.2d 448 (1994)). In determining whether the trial court abused its discretion, the appellate court “must keep in mind that the purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system.” *Id.* (citation omitted). For an assessment of fees, great deference is given to the trial court because it has “tasted the flavor of the litigation and is in the best position to make these kinds of determinations.” *Watson v. Maier*, 64 Wn. App. 889, 896, 827 P.2d 311 (1992) (citing *Miller v. Badgley*, 51 Wn. App. 285, 300, 753 P.2d 530 (1988)).

B. Mr. Merriam and Mr. Fuller’s Frivolous Pleadings [Appellant Assignment of Error #4].

The trial court did not abuse its discretion in concluding Mr. Fuller’s Original Complaint and Amended Complaint were both frivolous and baseless filings. *See* CP 304. The trial court made a well-founded decision based on straightforward facts: Prior to the commencement of litigation, Fishermen’s Finest paid Mr. Fuller all disputed amounts.⁵ *See* CP 516–17, 548-551. Nonetheless, Mr. Merriam proceeded to file two pleadings without any objective basis.

⁵ This Finding of Fact, No. 5, along with Nos. 1, 4, and 6, are all undisputed. *See* CP 303. Because these have not been assigned error, they are deemed verities on appeal. *Hilltop Terrace Homeowner's Ass'n v. Island Cnty.*, 126 Wn. 2d 22, 30, 891 P.2d 29 (1995).

1. The Original Complaint was Baseless and Filed without Reasonable Inquiry.

Mr. Merriam's Original Complaint constitutes a baseless filing because the amounts requested were fully paid. CR 11 concerns two types of filings: "those lacking factual or legal basis (baseless filings), and those made for improper purposes." *MacDonald v. Korum Ford*, 80 Wn. App. 877, 883, 912 P.2d 1052 (1996) (emphasis added). Relevant for this appeal, a baseless filing is one "(1) not well grounded in fact, or (2) not warranted by (i) existing law or (ii) a good faith argument for the alteration of existing law." *West v. Wash. Ass'n of County Officials*, 162 Wn. App. 120, 135, 252 P.3d 406 (2011) (citation and quotation omitted) (emphasis added).

The Original Complaint was devoid of factual basis. General manager of Fishermen's Finest, Kristian Uri, paid Mr. Fuller his contract completion bonus, airfare reimbursement, and courtesy two months' interests and attorneys' fees. CP 516-17 (Uri Declaration); 548-551 (proof of payment). Yet, these were the *exact same* alleged losses sought after in the Original Complaint. *See* CP 1-3 (alleging entitlement to relief because "Plaintiff was denied his southbound air fare" and was shortened on his "contract completion bonus").

To assess fees, the trial court must additionally find that the attorney who signed the filing failed to conduct a reasonable, factual inquiry. *West*, 162 Wn. App. at 135. The trial court must use an objective standard in evaluating “the appropriate level of pre-filing investigation” required for pleadings. *Biggs*, 124 Wn.2d at 197 (quoting *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 218-19, 829 P.2d 1099 (1992)).

It is undisputed that Mr. Merriam failed to conduct a reasonable inquiry—or for that matter—*any* inquiry whatsoever. Mr. Merriam concedes in his opening brief that no pre-filing investigation was performed. *Appellant Br.* at 7 (stating he was “[u]naware of this payment”). Underscoring Mr. Merriam’s failure is the fact that he had over three weeks to conduct a simple consult with his client. *See* CP 516–17, 548-551. Mr. Merriam himself admits that “roughly a month” had passed between the time of payment and his baseless filing. *Appellant Br.* at 7.

Mr. Merriam gives no justification other than that his client never informed him. As an officer of the court, it was Mr. Merriam’s professional and affirmative duty to conduct a reasonable inquiry into his client’s claims:

[W]here important facts are easily ascertainable and where telephone calls and correspondence would lead a prudent person to further inquiry before resorting to legal process,

the lawyer who simply files suits and waits for the facts to sort themselves out surely will be exposed to CR 11 sanctions.

Brigade v. Econ. Dev. Bd., 61 Wn. App. 615, 625, 811 P.2d 697 (1991) (emphasis added). A litany of Court of Appeals' decisions confirm that the failure to conduct a reasonable inquiry is telling in CR 11 and RCW 4.84.185 claims.⁶

Mr. Merriam refused to acknowledge any factual basis for this litigation from the outset. Before the suit was filed, Fishermen's Finest informed Mr. Merriam it had difficulty understanding Mr. Fuller's claim, requesting information for "[t]he work days for which your client believes he was not paid or underpaid." *See* CP 81–86. Instead of ascertaining any reasonable basis for his client's claim, Mr. Merriam ignored the inquiry and merely "put [the] case in line to file suit." *Id.* This shoot-first-and-ask-questions-later approach is precisely the type of cavalier practice that must be deterred. *See Peterson v. Cuff*, 72 Wn. App. 596, 602-03, 865 P.2d 555 (1994) (affirming CR 11 attorneys' fees where the plaintiff

⁶ *See, e.g., Watson v. Maier*, 64 Wn. App. 889, 897, 827 P.2d 311, 315 (1992) (affirming sanctions where attorney relied on consulting firm and failed to conduct his own inquiry into the facts); *Lee v. Columbian, Inc.*, 64 Wn. App. 534, 540, 826 P.2d 217 (1991) (affirming sanctions where "[t]he most cursory investigation would have disclosed" the claim was without merit); *McClure v. Davis Wright Tremaine*, 77 Wn. App. 312, 318, 890 P.2d 466 (1995) (affirming sanctions where "counsel had an obligation to ascertain if there was a factual basis for the claim made in his motion for reconsideration").

“repeatedly ignored or rebuffed” the defendant’s attempt to discern a proper foundation for the complaint).

2. The Amended Complaint Underscores Mr. Merriam’s Frivolity.

Whatever may be said of Mr. Merriam’s failure to investigate prior to the filing of the Original Complaint, the filing of the Amended Complaint, with full knowledge that full payment had been made, was particularly egregious. After the Original Complaint was filed, Fishermen’s Finest provided Mr. Merriam (1) documentation of Mr. Fuller’s payment and (2) requested that Mr. Merriam withdraw this suit. CP 517. Mr. Merriam refused.⁷ *Id.* Even after explicitly acknowledging the payment to Mr. Fuller, *see* CP 35, Mr. Merriam filed his Amended Complaint on March 7, 2014. Critically, the Amended Complaint contained the same exact wage allegations as in the Original Complaint.⁸ CP 7–9. Mr. Merriam knew those allegations were false but included them anyway.

⁷ Mr. Merriam’s refusal to withdraw—prolonging this unnecessary litigation—was yet another basis for the trial court’s decision to impose fees. *See West v. Wash. Ass’n of County Officials*, 162 Wn. App. 120, 127, 137, 252 P.3d 406 (2011) (awarding CR 11 sanctions in part because plaintiff was given notice to withdraw baseless declaration but failed to do so).

⁸ In a futile attempt to rationalize the Amended Complaint, Mr. Merriam also added allegations of an RPC 4.2 violation and tortious interference. CP 7-9. Both of these grievances were dismissed by the Washington Disciplinary Board and Arbitrator. CP 77–79, 135–156.

These are textbook examples of frivolous and baseless filings. *See, e.g., In re Cooke*, 93 Wn. App. 526, 528–29, 969 P.2d 127 (1999) (affirming CR 11 fees where trial court found plaintiff’s issues were not capable of proof at the time of filing).

An imposition of fees under CR 11 or RCW 4.84.185 cannot be overturned unless it is manifestly unreasonable or based on untenable grounds. *Stiles v. Kearney*, 168 Wn. App. 250, 260, 277 P.3d 9 (2012). Neither is the case here, and the trial court’s rulings should be upheld.

C. The Trial Court’s Rulings were Based on Evidence in the Record [Appellant Assignment of Error #1].

Mr. Merriam provides no evidence for his assertion that the trial court based its decision on evidence presented to the Arbitrator, and not the record. Critically, in submitting its Petition for Fees, Fishermen’s Finest did not rely on any arbitration materials.⁹ Neither did the trial court—especially considering Fishermen’s Finest submitted sufficient evidence with its Petition. Fishermen’s Finest also directed the trial court’s attention to evidence already in the court’s record. CP 54–86.

Indeed, the trial court had the benefit of a thorough record to correctly find

⁹ Interestingly, it was Mr. Merriam who submitted the Arbitrator’s opinion to the trial court. Fishermen’s Finest did not rely or submit the Opinion in its Petition for Fees because the Opinion was explicitly deemed “CONFIDENTIAL” by the Arbitrator. CP 54–86, 135- 155. However, in his opposition brief, Mr. Merriam cherry-picked excerpts from the Arbitration Opinion (contrary to the Arbitrator’s wishes) and grossly mischaracterized it. *See* CP 93–98. To avoid being prejudiced, Fishermen’s Finest eventually submitted the Opinion in full with its Reply. CP 125.

that Mr. Merriam filed frivolous pleadings. *See, e.g.*, CP 25–33, 46–51, 54–86, 124–164, 515–551.

A plethora of evidence was submitted to the trial court on the reconsideration briefing. CP 306–483. Thus, Mr. Merriam’s complaint that the trial court based its decision on evidence to the Arbitrator is completely unsupported. These types of arguments have consistently failed on appeal. *See, e.g., Stiles v. Kearney*, 168 Wn. App. 250, 263, 277 P.3d 9 (2012) (noting that CR 11 and RCW 4.84.185 sanctions were based on evidence in the record and not solely on the fact that defendant prevailed on summary judgment motion as proclaimed by the attorney).

Mr. Merriam attempted to leave out the evidence that was actually before the Court in filing this appeal. Mr. Merriam had the initial burden of designating all clerk’s papers including “exhibits needed to review the issues.” RAP 9.6. In his designation, Mr. Merriam included all docket entries but selectively omitted those that contained critical exhibits for Fishermen’s Finest. Mr. Merriam then argued that the trial court did not have evidence to support its findings, knowing that he had omitted citations to that evidence in his designation of clerk’s papers.

Mr. Merriam understood that these entries contained evidence that the trial

court relied upon in its findings.¹⁰ It should not be well taken that Mr. Merriam argued that the trial court did not have “substantial evidence” before it when he omitted such evidence from his designation. This is further evidence of the necessity of deterrence, both specific and general.¹¹

**D. Mr. Fuller was Fully Compensated Under his Contract
[Appellant Assignment of Error #3].**

1. Substantial Evidence Supports the Trial Court’s Finding that he was Paid in Full.

Substantial evidence supports the trial court’s finding that Mr. Fuller was paid in full under his Contract. *See* CP 303. This finding was undisputed: Mr. Fuller’s *own testimony* confirmed that he was fully compensated well before commencement of this lawsuit:

Q. And this informed you that a deposit had been made in your bank account related to the completion of your 2013 contract, correct?

A. Correct.

* * *

Q. The amount is \$5,816.43. And you did receive that into your bank account, correct?

¹⁰ Significantly, excluded entries contained exhibits confirming that Fishermen’s Finest paid Mr. Fuller under the Contract. CP 515–551. Fishermen’s Finest supplemented Mr. Merriam’s designation of clerk’s papers as appropriate. *Compare* A-11 to A-13 with A-14 to A-17.

¹¹ Likewise, Mr. Merriam deliberately omitted his Notice of Intent to Withdraw from this litigation. While Fishermen’s Finest’s Application for Fees was pending (*see* CP 228–234), Mr. Merriam attempted to withdraw and have Mr. Fuller shoulder the costs of his sanctions. CP 555–56 (withdrawal), 557 (objection to withdrawal), 279 (court Order on withdrawal). Mr. Merriam has repeatedly attempted to escape responsibility for his conduct, and this appeal is just another futile attempt.

A. Yes, I did.

Q. Once you received that, did you feel like you had been fully compensated?

A. I did.

CP 73. Corroborating Mr. Fuller, general manager Kristian Uri provided evidence of these payments. CP 515–551 (final settlement sheet, payment, and explanation of benefits to Mr. Fuller).

There is no conflicting evidence to state otherwise. *Cf. City of Puyallup v. Hogan*, 168 Wn. App. 406, 420, 277 P.3d 49, 57 (2012) (noting that expert testimony could not overturn the trial court’s finding of fact based on “substantial evidence” standard). The trial court’s finding was unequivocally supported by substantial evidence and must be affirmed.

2. Maritime Contract Law Has no Bearing on Whether the Filings Were Factually Baseless.

Mr. Merriam’s kitchen-sink citations to maritime contract law are irrelevant to this appeal. The purpose of the underlying arbitration was to address the purported contractual issues between Fishermen’s Finest and Mr. Fuller. CP 135–156 (arbitration opinion). The evidence for that proceeding concerned the facts and law surrounding Mr. Fuller’s maritime contract. *Id.* It is of no relevance here. *Cf. Eller v. E. Sprague Motors & R.V.’s, Inc.*, 159 Wn. App. 180, 193, 244 P.3d 447 (2010) (noting that an

award of fees is appropriate even where plaintiff asserts colorable claims because case must be viewed in its entirety).

Regardless, Mr. Merriam fails to provide any authority demonstrating how these maritime contract issues refute the fact that he filed two factually baseless pleadings. Those facts led to the outcome of the arbitration as much as it did the outcome on the sanctions motion. Mr. Merriam's vacant arguments do not concern the assignments of error specified by Mr. Merriam and, therefore, must be ignored. *See* RAP 10.3(g).¹²

E. A Bona Fide Dispute Existed Regarding Mr. Fuller's Completion Bonus [Appellant Assignment of Error #2].

As a threshold matter, this purported issue has no bearing on the fact that Mr. Fuller and Mr. Merriam filed two baseless pleadings. Whether Respondent had a right to delay payment until completing an investigation of the termination of Mr. Fuller's employment is irrelevant to Mr. Merriam later filing a frivolous pleading with full knowledge that it was false. Frankly, this appears to be Mr. Merriam's attempt to appeal the ruling from binding arbitration—which is clearly improper. Regardless, the assertion is also substantively without merit.

¹² *See also State v. Copeland*, 130 Wn.2d 244, 280, 922 P.2d 1304 (1996) (indicating the court need not consider issues irrelevant to the assigned errors); *Watson*, 64 Wn. App. at 899 (dismissed assignment of error regarding sanctions that lacked proper argument or citation to authority).

1. Substantial Evidence Supported the Trial Court's Finding of a Bona Fide Dispute.

Substantial evidence supported the trial court's finding that Fishermen's Finest lawfully withheld wages based on a *bona fide* dispute. CP 303. A determination of whether there was a *bona fide* dispute is a question of fact reviewed under the "substantial evidence" standard. *Champagne v. Thurston Cnty.*, 163 Wn. 2d 69, 81, 178 P.3d 936 (2008). Mr. Merriam erroneously claims that his pleadings were not baseless because he was entitled to recovery under RCW 49.52.050 and RCW 49.52.070. These statutes permit fees and costs where an employer "[w]ilfully and with intent to deprive the employee of any part of his or her wages." RCW 49.52.050. However, the statutes do not apply where there is an absence of willful intent, or put differently, where there is a *bona fide* dispute.¹³ *Washington State Nurses Ass'n v. Sacred Heart Med. Ctr.*, 175 Wn.2d 822, 834, 287 P.3d 516 (2012) (finding *bona fide* dispute regarding whether straight pay or overtime pay was appropriate method of compensation); *Snoqualmie Police Ass'n v. City of Snoqualmie*, 165 Wn. App. 895, 908, 273 P.3d 983 (2012) (denying remedies under 49.52.070 where *bona fide* dispute existed regarding rate to be used for back pay)

¹³ A *bona fide* dispute is a "fairly debatable" dispute concerning whether all or a portion of wages must be paid. *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 161, 961 P.2d 371 (1998).

Mr. Fuller's completion bonus wages were initially withheld because he failed to complete working a "full term." CP 515-53, 515-17.¹⁴ Under the Contract, Mr. Fuller was entitled to a completion bonus "[i]f and only if [Mr. Fuller] complete[d] working a full Term." CP 99 (emphasis added). He failed to do so by voluntarily quitting. The Captain of the fishing vessel, Darin Vanderpol, provided a declaration confirming that Mr. Fuller voluntarily quit, prior to being released. CP 553; *see also* CP 516 (noting Mr. Fuller quit while fishing vessel was preparing for its final week of fishing).

Critically, in deposition testimony, Mr. Fuller himself agreed with Captain Vanderpol that he quit. CP 360 ("Q. Are there any statements in that declaration that you disagree with? A. No."). Indeed, Mr. Fuller conceded that he voluntarily left before the last fishing trip because he "didn't want to be there anymore" and he "was done." CP 354-55, 358. Mr. Fuller understood that his actions forced Fishermen's Finest to fly a replacement up to Alaska for him. CP 359. Axiomatically, quitting prior

¹⁴ Indeed, a good faith doubt as to the justification of a demand for wages is a sufficient cause for withholding those wages. *See Mateo v. M/S KISO*, 41 F.3d 1283, 1290 (9th Cir. 1994) (finding that defendants acted with sufficient cause in withholding pay due to established custom).

to being released under the contract, while the fishing vessel was on its voyage, did not constitute working a “full term” under the Contract.¹⁵

There is no evidence of willful intent to deprive Mr. Fuller of his wages. But certainly, there was substantial evidence of a *bona fide* dispute. *See, e.g., Morrison v. Basin Asphalt Co.*, 131 Wn. App. 158, 127 P.3d 1 (2005) (finding *bona fide* dispute where employer was unclear whether truck drivers were entitled to prevailing wage rate).

Lastly, Mr. Merriam’s assertion that there was a delay in Mr. Fuller’s payment is immaterial. Delay does not support a cause of action under the cited wage statutes. Similar to the instant case, no action under the cited statutes can be sustained where wages were ultimately paid. *See, e.g., Champagne v. Thurston Cnty.*, 134 Wn. App. 515, 519, 141 P.3d 72 (2006), *aff’d on other grounds*, 163 Wn.2d 69, 178 P.3d 936 (2008) (refusing to apply RCW 49.52.070 where correction officers acknowledged “the County did pay them their due wages”).

¹⁵ Mr. Merriam takes the position that Mr. Fuller was not under the contract. *Appellant Br.* at 15. Mr. Merriam’s legal basis is incorrect. Mr. Merriam’s interpretation of the “writing” requirement under § 10601 is contrary to established precedent; fishing agreements under § 10601 may include both written and oral provisions when there is no duress or coercion tied to the oral terms. *Flores v. Am. Seafoods Co.*, 335 F.3d 904, 913 (9th Cir. 2003). Accordingly, even if Mr. Fuller’s extension was created in part by oral agreement, the oral extension nonetheless fulfills the “writing” requirement under §10601. *See* CP 553.

Moreover, the record confirms that Mr. Fuller was under the Contract when he quit on October 20, 2013. CP 358 (“Q. But before you requested release, you were still under the contract, right? A. Correct”); CP 354 (admitting that he customarily remained under continual contracts and was accordingly paid under them).

VI. CROSS-APPEAL ARGUMENT

A. The Trial Court Erred in Reducing the Assessed Fees against Mr. Merriam and Mr. Fuller.

The trial court abused its discretion in *twice* substantially reducing the award of fees and costs for defending this frivolous lawsuit. CP 235-36, 304. Despite the trial court’s discretion to assess fees, “an award substantially less than the amount requested should indicate at least approximately how the court arrived at the final numbers, and explain why discounts were applied.” *Taliesen Corp. v. Razore Land Co.*, 135 Wn. App. 106, 146, 144 P.3d 1185 (2006) (citation omitted). Where the trial court fails to make such findings, the fee award must be remanded. *See id.* (remanding reduction of fee award where trial court failed to provide articulable grounds for its deductions); *Harmony at Madrona Park Owners Ass'n v. Madison Harmony Dev., Inc.*, 143 Wn. App. 345, 364, 177 P.3d 755, 765 (2008).

Despite the unchallenged reasonableness of Fishermen’s Finest’s request for fees,¹⁶ the trial court drastically reduced the initial award by 60 percent. CP 166, 236. The trial court cut fees because “certain billed efforts” were “unnecessary[] or overstated.” CP 236. The trial court failed to articulate any reasonable explanation as required under precedent. *See* CP 236. Due to Mr. Merriam’s intransigence throughout the

¹⁶ CP 235 (noting Mr. Merriam’s non-response)

underlying litigation, Fishermen’s Finest found itself as a reoccurring moving party, expending considerable fees to remove itself from this litigation. *See, e.g.*, CP 25–33 (motion to enforce arbitration). Contrary to the trial court’s cursory conclusions, these activities and their associated fees were, in fact, necessary evils.

The second time the Court reduced fees, it simply “halve[d] the determined amount of reasonable attorney fees.” CP 304. Again, the trial court failed to give any definitive reason and merely concluded that it was exercising its “broad discretion.” CP 304. Such arbitrary action, without sufficient explanation, is clear grounds for remand on the issue of the calculation of fees. The trial court has a duty to take an “active role in assessing” an award of fees rather than “treating cost decisions as a litigation afterthought.” *Mahler v. Szucs*, 135 Wn.2d 398, 432, 957 P.2d 632 (1998).

Both times, the trial court made significant reductions without providing explanation or authority of why it substantially deviated from the amount requested. Accordingly, Fishermen’s Finest requests that this court remand the reduction and enter the full amount requested, or another amount as reasonably determined and explained by the trial court.¹⁷

¹⁷ Fishermen’s Finest should not be burdened with the costs of frivolous litigation, and the trial court erred by reducing the fees, giving Mr. Merriam a mere slap on the wrist. Such conduct must be adequately deterred with an appropriate amount of fees and costs.

B. Fishermen’s Finest is Entitled to its Fees and Costs Under RAP 18.1 and RAP 18.9.

Fishermen’s Finest respectfully requests attorneys’ fees on appeal in accordance with RAP 18.1 and 18.9(a). The Rules of Appellate Procedure authorize appellate courts to order sanctions against parties who file frivolous appeals. *See Watson*, 64 Wn. App. at 901 (allowing fees under RAP 18.1 and 18.9(a) where Mr. Merriam appealed CR 11 sanctions regarding failure to conduct reasonable inquiry); *Stiles*, 168 Wn. App. at 268 (awarding fees for frivolous appeal based on underlying CR 11 & RCW 4.84.185 case); *Harrington v. Pailthorp*, 67 Wn. App. 901, 913, 841 P.2d 1258 (1992) (same).

The primary inquiry for sanctions is whether the appeal “presents no debatable issues and is so devoid of merit there is no reasonable possibility of reversal.” *Watson*, 64 Wn. App. at 901 (citation omitted). Given the egregious facts here, there is nothing debatable on appeal. Mr. Fuller himself admitted he was “fully compensated” before the commencement of this lawsuit. CP 73. He thereafter admitted that the litigation was driven solely by Mr. Merriam’s desire for his own payment. CP 74, 364.

See Mahler v. Szucs, 135 Wn.2d 398, 433, 957 P.2d 632, 651 (1998) (“Courts should be guided in calculating fee awards by the lodestar method.”).

Despite being repeatedly warned of the frivolous nature of the underlying action, and losing at arbitration, in the trial court, and on reconsideration, Mr. Merriam did not hesitate to—one last time on appeal—drag Fishermen’s Finest through further litigation. Mr. Merriam should not be permitted to hide behind his ignorance, and this misuse of judicial resources must be deterred. Accordingly, Fishermen’s Finest requests its reasonable fees and costs for defending this frivolous appeal.

VII. CONCLUSION

It cannot be contested that Mr. Merriam failed to consult with Mr. Fuller and filed pleadings without reasonable inquiry. Mr. Merriam’s purported blind spot for his client’s payment is belied by Mr. Merriam’s admission that he had full knowledge of said payment before filing the Amended Complaint. Mr. Merriam has dragged this litigation out and forced Fishermen’s Finest to incur costs for defending a dispute that was fully resolved.

RESPECTFULLY SUBMITTED this 2nd day of November, 2015.

COZEN O’CONNOR

By: s/ Karl Neumann
William H. Walsh, WSBA No. 21911
E-mail: wwalsh@cozen.com
Karl Neumann, WSBA No. 48078
E-mail: kneumann@cozen.com

Attorneys for
Defendants/Respondents/Cross-Appellants

DECLARATION OF SERVICE

The undersigned states:

I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of 18 years, I am not a party to this action, and I am competent to be a witness herein.

On this 2nd day of November, 2015, I caused to be electronically filed the foregoing Defendants/Respondents/Cross-Appellants Fishermen’s Finest and North Pacific Fishing, Inc.’s Answering Brief with the Court of Appeals, Division I. I also served a copy of said document on the following party as indicated below:

| | |
|---|---|
| <p><i>Counsel for Plaintiff-Appellant:</i></p> <p>John W. Merriam, WSBA No. 12749 4005 20th Avenue West, Suite 110 Seattle, WA 98199-1290 Telephone: 206.729.5252 Facsimile: 206.729.1012 Email: john@merriam-maritimelaw.com</p> | <p><i>Via Email and US First Class Mail</i></p> |
|---|---|

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 2nd day of November, 2015.

s/ Jan Young
Jan Young, Legal Assistant

APPENDIX

Fuller v. Fishermen's Finest and North Pacific Fishing, Inc., Case No. 73807-1

Defendants/Respondents/Cross-Appellants Fishermen's Finest and North Pacific Fishing, Inc.'s Answering Brief

| Pages | Date | Sub No. | Description |
|--------------|-------------|----------------|--|
| A-1 to A-2 | 9/29/15 | n/a | Opposition to Defendants' Motion to Increase Supersedeas Bond and Vacate Stay |
| A-3 to A-10 | n/a | n/a | U.S. Bankruptcy Court Docket |
| A-11 to A-13 | 8/27/15 | n/a | Defendants / Respondents / Cross-Appellants Fishermen's Finest and North Pacific Fishing, Inc.'s Designation of Clerk's Papers |
| A-14 to A-17 | 8/24/15 | n/a | Designation of Clerk's Papers |

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HONORABLE TIMOTHY A. BRADSHAW

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JESSE FULLER,

Plaintiff,

vs.

FISHERMEN'S FINEST and NORTH PACIFIC
FISHING, INC.,

Defendant

Case No.: 14-2-05490-4 SEA

**OPPOSITION TO DEFENDANTS' MOTION
TO INCREASE SUPERSEDEAS BOND AND
VACATE STAY**

RELIEF REQUESTED

Plaintiff requests that Defendants' Motion to Increase the cash Supersedeas Bond from the \$17,000 presently posted by another \$13,000, to the total amount of \$30,000, be denied.

STATEMENT OF FACTS

Plaintiff, Jesse Fuller, cannot be located by counsel and is, at any rate, believed to be judgment-proof. Declaration of John Merriam, attached hereto at Ex. 1. The undersigned is in bankruptcy and does not currently have \$13,000 to add to the supersedeas bond. Id.

STATEMENT OF ISSUES

Should counsel for the plaintiff be required to increase the cash supersedeas bond amount from \$17,000 to \$30,000?

EVIDENCE RELIED UPON

Ex1: Declaration of John Merriam.

**OPP. TO DEFS' MOTION TO INCREASE SUPERSEDEAS BOND AND
VACATE STAY
CASE NO. 14-2-05490-4 SEA**

John W. Merriam
4005 20th Avenue West, Suite 110
Seattle, WA 98199
T (206) 729-5252 ♦ F (206) 729-1012

1 AUTHORITY

2 RAP 8.1.

3
4 Respectfully submitted this 29th day of September, 2015.

5
6 LAW OFFICE OF JOHN MERRIAM

7
8 By: s./J. Merriam
9 John Merriam, WSBA#12749
10 Attorney for Plaintiff
11 4005 20th Avenue West, Suite 110
12 Seattle, WA 98199
13 Telephone: (206) 729-5252
14 Fax: (206) 729-1012
15 E-mail: john@merriam-maritimelaw.com

16 CERTIFICATE OF SERVICE

17 I hereby certify that on the 29th day of September, 2015, a true and correct copy of the foregoing
18 was sent via E-mail and U.S. Mail to:

19 William H. Walsh, Esq.
20 Cozen O'Connor
21 999 Third Avenue, Suite 1900
22 Seattle, WA 98104
23 wwalsh@cozen.com

24 *Meghan Brown*
25 Law Office of John Merriam

OPP. TO DEFS' MOTION TO INCREASE SUPERSEDEAS BOND AND
VACATE STAY
CASE NO. 14-2-05490-4 SEA

John W. Merriam
4005 20th Avenue West, Suite 110
Seattle, WA 98199
T (206) 729-5252 ♦ F (206) 729-1012

DebtEd, DebtEdJt, Dom

**U.S. Bankruptcy Court
Western District of Washington (Seattle)
Bankruptcy Petition #: 11-12939-CMA**

Assigned to: Christopher M Alston
Chapter 13
Voluntary
Asset

Date filed: 03/17/2011
341 meeting: 05/09/2011
Deadline for filing claims: 08/08/2011
Deadline for filing claims (govt.): 09/13/2011

Debtor

John W Merriam
19533 Stone Ave N
Seattle, WA 98133
KING-WA
SSN / ITIN: xxx-xx-2121

represented by **David A Kubat**

Law Office of David A Kubat
2634 Thorndyke Ave W Ste 201
Seattle, WA 98199
206-545-8394
Email: quithran@comcast.net

Joint Debtor

Brenda Kaye Walker
19533 Stone Ave N
Seattle, WA 98133
KING-WA
SSN / ITIN: xxx-xx-8545
aka Brenda Kaye Merriam

represented by **David A Kubat**

(See above for address)

Trustee

K Michael Fitzgerald
600 University St #2200
Seattle, WA 98101
206-624-5124

represented by **K Michael Fitzgerald**

600 University St #2200
Seattle, WA 98101
206-624-5124
Email: courtmail@seattlech13.com

US Trustee

United States Trustee
700 Stewart St Ste 5103
Seattle, WA 98101
(206) 553-2000

| Filing Date | # | Docket Text |
|-------------|-------------------------------|---|
| 03/17/2011 | 1 (43 pgs) | Chapter 13 Voluntary Petition . Government Proof of Claim due by 09/13/2011. Filed by David A. Kubat on behalf of John W Merriam, Brenda Kaye Walker (Kubat, David) (Entered: 03/17/2011 at 08:00:31) |
| 03/17/2011 | 2 (4 pgs) | Chapter 13 Plan. Filed by David A. Kubat on behalf of John W Merriam, Brenda Kaye Walker. (Kubat, David) (Entered: 03/17/2011 at 08:00:46) |
| 03/17/2011 | 3 (2 pgs) | Application to Pay Filing Fees in Installments .. Filed by David A. Kubat on behalf of John W Merriam, Brenda Kaye Walker (Kubat, David) (Entered: 03/17/2011 at 08:00:56) |
| | 4 | Certificate of Credit Counseling for Debtor . Filed by David A. |

| | | |
|------------|--|---|
| 03/17/2011 | (1 pg) | Kubat on behalf of John W Merriam. (Kubat, David) (Entered: 03/17/2011 at 08:01:05) |
| 03/17/2011 |  <u>5</u> (1 pg) | Certificate of Credit Counseling for Joint Debtor . Filed by David A. Kubat on behalf of Brenda Kaye Walker. (Kubat, David) (Entered: 03/17/2011 at 08:01:14) |
| 03/17/2011 |  <u>6</u> (7 pgs) | Chapter 13 Statement of Current Monthly and Disposable Income . Filed by David A. Kubat on behalf of John W Merriam, Brenda Kaye Walker. (Kubat, David) (Entered: 03/17/2011 at 08:01:24) |
| 03/17/2011 |  <u>7</u> | Social Security Number(s) of Debtor(s) Submitted. PDF only viewable by court. Filed by David A. Kubat on behalf of John W Merriam, Brenda Kaye Walker. (Kubat, David) (Entered: 03/17/2011 at 08:01:34) |
| 03/17/2011 |  | Creditor matrix uploaded/added 16 creditor(s). (admin) (Entered: 03/17/2011 at 08:02:01) |
| 03/17/2011 |  <u>8</u> | Meeting of Creditors & Notice of Appointment of Interim Trustee K Michael Fitzgerald with 341(a) meeting to be held on 05/09/2011 at 09:45 AM at US Courthouse, Room 4107 (341 Meetings). Confirmation hearing to be held on 06/02/2011 at 09:30 AM at Judge Barreca's Courtroom, U.S. Courthouse, Room 7106. Proof of Claim due by 08/08/2011. Objections for Discharge and Reaffirmation Agreements due by 07/08/2011. (Kubat, David) (Entered: 03/17/2011 at 08:09:49) |
| 03/17/2011 |  | ORDER Granting Payment of Filing Fee in Installments: Entry of an order of discharge will be held in abeyance until filing fees are paid in full. Mark L. Hatcher, Clerk . Final Installment Payment due by 7/15/2011. (MEH) (Entered: 03/17/2011 at 09:44:59) |
| 03/17/2011 |  <u>9</u> (2 pgs) | 341 Meeting of Creditors Notice Sent to BNC for Mailing . (MEH) (Entered: 03/17/2011 at 09:45:34) |
| 03/17/2011 |  <u>10</u> (3 pgs) | Amendment to Schedules A&C . Filed by David A. Kubat on behalf of John W Merriam, Brenda Kaye Walker. (Kubat, David) (Entered: 03/17/2011 at 11:53:36) |
| 03/17/2011 |  | Receipt of Chapter 13 Installment Filing Fee - \$0.00 by CC. Receipt Number 00175052. (admin) (Entered: 03/17/2011 at 22:05:20) |
| 03/18/2011 |  <u>11</u> (8 pgs) | Amendment to Schedules Form 7-SFA . Filed by David A. Kubat on behalf of John W Merriam, Brenda Kaye Walker. (Kubat, David) (Entered: 03/18/2011 at 20:35:59) |
| 03/19/2011 |  <u>12</u> (5 pgs) | BNC Certificate of Mailing - Meeting of Creditors (Related document(s) <u>9</u> 341 Meeting of Creditors Sent to BNC for Mailing). Service Date 03/19/2011. (Admin.) (Entered: 03/19/2011 at 21:32:12) |
| | | |

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|------------|---------------------------------------|---|
| 03/19/2011 | 13 (5 pgs) | BNC Certificate of Notice (Related document(s) 2 Chapter 13 Plan). Service Date 03/19/2011. (Admin.) (Entered: 03/19/2011 at 21:32:12) |
| 03/24/2011 | 14 (4 pgs; 4 docs) | Debtor's Motion to Sell <i>Vacant Land located on 49th Avenue S. in Seattle, WA.</i> with Notice of Hearing. Proof of Service. Filed by David A. Kubat on behalf of John W Merriam, Brenda Kaye Walker The Hearing date is set for 4/21/2011 at 09:30 AM at Judge Barreca's Courtroom, U.S. Courthouse, Room 7106. Response due by 4/14/2011. (Attachments: 1 Notice of Hearing 2 Proposed Order 3 Proof of Service) (Kubat, David) (Entered: 03/24/2011 at 11:05:06) |
| 04/11/2011 | 15 (2 pgs; 2 docs) | Request for Special Notice <i>with Certificate of Mailing</i> . Filed by Lance Olsen on behalf of JP Morgan Chase Bank, N.A.. (Attachments: 1 Proof of Service) (Olsen, Lance) (Entered: 04/11/2011 at 10:12:27) |
| 04/15/2011 | 16 (1 pg) | Declaration of No Objection <i>To Motion to Sell Real Estate</i> (Related document(s) 14 Motion to Sell)... Filed by David A. Kubat on behalf of John W Merriam, Brenda Kaye Walker. (Kubat, David) (Entered: 04/15/2011 at 12:52:20) |
| 04/15/2011 | 17 (1 pg) | Debtor's Received UNSIGNED Order. Forwarded to Chambers for Judge's Signature . Filed by David A. Kubat on behalf of John W Merriam, Brenda Kaye Walker. (Related document(s) 14 Motion to Sell). (Kubat, David) (Entered: 04/15/2011 at 12:53:55) |
| 04/19/2011 | 18 | Minutes. Hearing Not Held. Order to be entered pursuant to Local Bankruptcy Rule 9013-1(f)(2). (related document(s): 14 Debtors Motion to Sell Vacant Land located on 49th Avenue S. in Seattle, WA.. with Notice of Hearing. Proof of Service filed by David A. Kubat (KEK) (Entered: 04/19/2011 at 11:51:25) |
| 04/23/2011 | 19 | Creditor matrix uploaded/added 1 creditor(s). (admin) (Entered: 04/23/2011 at 12:02:01) |
| 04/25/2011 | 18 (1 pg) | ORDER Allowing Real Property Sale (Related Doc # 14) Signed on 4/25/2011. . (SJI) (Entered: 04/25/2011 at 12:49:43) |
| 05/03/2011 | 20 | Receipt of Chapter 13 Installment Filing Fee - \$274.00 by JG. Receipt Number 00176875. (admin) (Entered: 05/03/2011 at 22:05:24) |
| 05/04/2011 | 21 | Receipt of Filing Fee for Final Installment; Fee Paid in Full . (BEF) (Entered: 05/04/2011 at 08:07:01) |
| 05/10/2011 | 19 (1 pg) | ORDER To Provide Financial Information. (SJI) (Entered: 05/10/2011 at 11:39:30) |
| 05/12/2011 | 22 | Chapter 13 341 Meeting of Creditors Held. Debtor(s) appeared. . (Tr Staff - Burgos, Fe) (Entered: 05/12/2011 at 11:52:46) |
| | 20 | BNC Certificate of Notice (Related document(s) 19 Order |

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| 05/12/2011 | (2 pgs) | GENERIC). Service Date 05/12/2011. (Admin.) (Entered: 05/12/2011 at 21:33:19) |
| 06/02/2011 |  | Chapter 13 Confirmation Hearing Continued.. Continued Confirmation hearing scheduled for 7/14/2011 at 09:30 AM at Judge Barreca's Courtroom, U.S. Courthouse, Room 7106. (Fitzgerald, K) (Entered: 06/02/2011 at 15:57:05) |
| 06/23/2011 |  <u>21</u> (1 pg) | Notice of Requirement to File Financial Management Course Certificate (admin) (Entered: 06/23/2011 at 02:44:08) |
| 06/25/2011 |  <u>22</u> (3 pgs) | BNC Certificate of Notice (Related document(s) <u>21</u> Notice to File Cert Fin Mgmt Course). Notice Date 06/25/2011. (Admin.) (Entered: 06/25/2011 at 21:27:31) |
| 07/08/2011 |  <u>23</u> (1 pg) | Change of Address for Attorney <i>David A Kubat</i> . (JAT (Entered: 07/08/2011 at 10:58:35) |
| 07/14/2011 |  | Chapter 13 Confirmation Hearing, Plan Confirmed. (Fitzgerald, K) (Entered: 07/14/2011 at 15:42:21) |
| 07/14/2011 |  <u>24</u> (1 pg) | ORDER Confirming Chapter 13 Plan . (VAB) (Entered: 07/15/2011 at 08:53:21) |
| 07/27/2011 |  <u>25</u> (3 pgs; 2 docs) | Transfer of Claim 3 Transfer Agreement 3001 (e) 2 Transferor: FIA Card Services, NA as successor in interest to (Claim No. 3) To Oak Harbor Capital II, L.L.C. Filed by Richard S. Ralston on behalf of Oak Harbor Capital II, L.L.C..(Ralston, Richard) (Entered: 07/27/2011 at 10:45:46) |
| 07/27/2011 |  | Creditor matrix uploaded/added 1 creditor(s). (admin) (Entered: 07/27/2011 at 11:02:02) |
| 07/30/2011 |  <u>26</u> (3 pgs) | BNC Certificate of Notice (Related document(s) <u>25</u> Transfer of Claim). Notice Date 07/30/2011. (Admin.) (Entered: 07/30/2011 at 21:28:29) |
| 08/29/2011 |  <u>27</u> (2 pgs; 2 docs) | Transfer of Claim 6 Transfer Agreement 3001 (e) 2 Transferor: Chase Bank USA, N.A. (Claim No. 6) To CR Evergreen II, LLC Filed by CR Evergreen II, LLC.(B-Line LLC) (Entered: 08/29/2011 at 03:40:16) |
| 09/01/2011 |  <u>28</u> (3 pgs) | BNC Certificate of Notice (Related document(s) <u>27</u> Transfer of Claim). Notice Date 09/01/2011. (Admin.) (Entered: 09/01/2011 at 21:28:38) |
| 10/05/2011 |  <u>29</u> (2 pgs; 2 docs) | Transfer of Claim 9 Transfer Agreement 3001 (e) 2 Transferor: U.S. Bank N.A. (Claim No. 9) To Portfolio Recovery Associates, LLC Filed by PRA Receivables Management, LLC.(Pra Receivables Mgmt, LLC) (Entered: 10/05/2011 at 05:54:55) |
| 10/14/2011 |  <u>30</u> (5 pgs) | Chapter 13 Trustee's Report of Filed Claims (Batch) (Chapter 13 Trustee Office- auto) (Entered: 10/14/2011 at 10:09:36) |

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| 10/14/2011 | 31 (3 pgs) | BNC Certificate of Notice (Related document(s) 29 Transfer of Claim). Notice Date 10/14/2011. (Admin.) (Entered: 10/14/2011 at 21:32:54) |
| 10/24/2011 | 32 (10 pgs; 4 docs) | Motion for Relief from Stay, <i>Real Property located at 19533 Stone Avenue N, Shoreline, Washington 98133</i> with Notice of Hearing. Proof of Service. Filed by Jennifer L Aspaas on behalf of Wells Fargo Bank, N.A. The Hearing date is set for 12/1/2011 at 09:30 AM at Judge Barreca's Courtroom, U.S. Courthouse, Room 7106. Response due by 11/23/2011. (Attachments: # 1 Notice of Hearing # 2 Proposed Order # 3 Proof of Service) (Aspaas, Jennifer) (Entered: 10/24/2011 at 11:35:24) |
| 10/24/2011 | | Receipt of filing fee for Motion for Relief from Stay(11-12939-MLB) [motion,185] (150.00). Receipt number 14210941. Fee amount \$ 150.00. (U.S. Treasury) (Entered: 10/24/2011 at 11:35:44) |
| 10/24/2011 | 33 (25 pgs; 3 docs) | Declaration <i>In Support of Motion for Relief from Stay, Real Property located at 19533 Stone Avenue N, Shoreline, Washington 98133</i> (Related document(s) 32 Motion for Relief from Stay)... Filed by Jennifer L Aspaas on behalf of Wells Fargo Bank, N.A.. (Attachments: # 1 Note# 2 Deed of Trust) (Aspaas, Jennifer) (Entered: 10/24/2011 at 11:37:24) |
| 10/26/2011 | 34 (2 pgs; 2 docs) | Transfer of Claim 1 Transfer Agreement 3001 (e) 2 Transferor: FIA Card Services, NA as successor in interest to (Claim No. 1) To Portfolio Recovery Associates, LLC Filed by PRA Receivables Management, LLC.(Pra Receivables Mgmt, LLC) (Entered: 10/26/2011 at 14:23:44) |
| 10/26/2011 | 35 (2 pgs; 2 docs) | Transfer of Claim 4 Transfer Agreement 3001 (e) 2 Transferor: FIA Card Services, NA as successor in interest to (Claim No. 4) To Portfolio Recovery Associates, LLC Filed by PRA Receivables Management, LLC.(Pra Receivables Mgmt, LLC) (Entered: 10/26/2011 at 14:24:33) |
| 10/28/2011 | 36 (3 pgs) | BNC Certificate of Notice (Related document(s) 34 Transfer of Claim). Notice Date 10/28/2011. (Admin.) (Entered: 10/28/2011 at 21:40:17) |
| 10/28/2011 | 37 (3 pgs) | BNC Certificate of Notice (Related document(s) 35 Transfer of Claim). Notice Date 10/28/2011. (Admin.) (Entered: 10/28/2011 at 21:40:17) |
| 11/28/2011 | 38 | Notice to Court Unopposed Motion, Order to be Submitted. Hearing Originally Scheduled for: 12/1/2011. Filed by Jennifer L Aspaas on behalf of Wells Fargo Bank, N.A.. (Related document (s) 32 Motion for Relief from Stay). (Aspaas, Jennifer) (Entered: 11/28/2011 at 09:58:42) |
| | 39 | Notice to Court Agreement Reached, Agreed Order to be Submitted on Date of Hearing: 12/1/2011. Filed by Jennifer L Aspaas on behalf of Wells Fargo Bank, N.A.. (Related document (s) 32 Motion for Relief from Stay). (Aspaas, Jennifer) (Entered: 11/28/2011 at 09:58:42) |

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| 11/30/2011 | | 11/30/2011 at 12:08:04) |
| 11/30/2011 | 38 (3 pgs) | Received UNSIGNED Order Forwarded to Chambers for Judge's Signature. Filed by Miersma, James. Related document 32 (Entered: 11/30/2011 at 18:02:02) |
| 12/01/2011 | 38 | Minutes. Hearing Not Held. No Appearances. (related document (s): 32 Motion for Relief from Stay) Appearance : Jennifer L Aspaas. : Agreed order to be entered. (KEK) (Entered: 12/05/2011 at 14:41:34) |
| 12/02/2011 | 39 (3 pgs) | Stipulated ORDER Conditioning Stay as to Wells Fargo Bank NA re 19533 Stone Ave N Shoreline WA 98133 (Related document(s) 32 Motion for Relief from Stay). (VAB) (Entered: 12/02/2011 at 13:32:52) |
| 12/15/2011 | 40 (5 pgs) | Transfer of Claim 6 Transfer Agreement 3001 (e) 2 Transferor: CR Evergreen II, LLC (Claim No. 6) To East Bay Funding, LLC Filed by East Bay Funding, LLC.(Resurgent Capital Services) (Entered: 12/15/2011 at 08:33:49) |
| 03/10/2012 | doc (3 pgs) | Notice of Mortgage Payment Change (Claim # 5) with Certificate of Service Filed by Creditor JPMorgan Chase Bank, NA Filed by JPMorgan Chase Bank, NA.(4 S Technologies LLC) (Entered: 03/10/2012 at 13:09:10) |
| 06/20/2012 | 41 (3 pgs; 2 docs) | Transfer of Claim 6 Transfer Agreement 3001 (e) 2 Transferor: East Bay Funding, LLC (Claim No. 6) To Portfolio Recovery Associates, LLC Filed by Portfolio Recovery Associates, LLC. (Portfolio Recovery Associates LLC) (Entered: 06/20/2012 at 17:40:23) |
| 06/23/2012 | 42 (3 pgs) | BNC Certificate of Notice (Related document(s) 41 Transfer of Claim). Notice Date 06/23/2012. (Admin.) (Entered: 06/23/2012 at 21:35:56) |
| 07/05/2012 | doc (7 pgs) | Notice of Mortgage Payment Change (Claim # 12) with Certificate of Service Filed by Creditor Wells Fargo Bank, N.A. Filed by Wells Fargo Bank, N.A..(Wells Fargo Home Mortgage) (Entered: 07/05/2012 at 13:31:13) |
| 12/22/2012 | doc (3 pgs) | Notice of Postpetition Mortgage Fees, Expenses, and Charges (Claim # 12) with Certificate of Service Filed by Creditor Wells Fargo Bank, N.A. Filed by Wells Fargo Bank, N.A..(Wells Fargo Home Mortgage) (Entered: 12/22/2012 at 10:38:54) |
| 07/25/2013 | 43 (7 pgs) | Notice of Mortgage Payment Changes of Claim No. 12 filed by Wells Fargo Bank N.A. (Entered: 07/25/2013 at 08:30:06) |
| 06/24/2014 | 44 (3 pgs) | Chapter 13 Trustee's Motion to Dismiss Plan and Notice of Hearing, Certificate of Mailing (Batch) Hearing to Dismiss Chapter 13 Case Scheduled for 7/24/2014 at 9:30 AM at Judge Barreca's Courtroom, U.S. Courthouse, Room 7106. Response due by 7/17/2014. (Fitzgerald, K) (Entered: 06/24/2014 at 17:14:36) |

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| 06/26/2014 | 45 (2 pgs) | Proof of Service <i>Declaration of Mailing</i> . Filed by K Michael Fitzgerald on behalf of K Michael Fitzgerald. (Related document (s) 44 Chapter 13 Trustees Motion to Dismiss Plan and Notice of Hearing). (Fitzgerald, K) (Entered: 06/26/2014 at 16:50:56) |
| 07/24/2014 | 45 | Notice to Court Agreement Reached, Agreed Order to be Submitted on Date of Hearing: 7/24/2014. Filed by K Michael Fitzgerald on behalf of K Michael Fitzgerald. (Related document (s) 44 Chapter 13 Trustees Motion to Dismiss Plan and Notice of Hearing). (Fitzgerald, K) (Entered: 07/24/2014 at 12:54:15) |
| 07/24/2014 | 46 (2 pgs) | Received UNSIGNED Order Forwarded to Chambers for Judge's Signature. Filed by Fitzgerald, K. Related document 44 (Entered: 07/24/2014 at 13:02:01) |
| 07/24/2014 | 46 | Minutes. Hearing Not Held. No Appearances. (related document (s): 44 Chapter 13 Trustees Motion to Dismiss Plan and Notice of Hearing) (TR) (Entered: 07/29/2014 at 08:20:51) |
| 07/29/2014 | 47 (2 pgs) | Stipulated ORDER Resolving Trustee's Motion to Dismiss Case (Related document(s) 44 Chapter 13 Trustees Motion to Dismiss Plan and Notice of Hearing). (VAB) (Entered: 07/29/2014 at 08:18:12) |
| 07/30/2014 | 48 (7 pgs) | Notice of Mortgage Payment Changes of Claim No. 12 filed by Wells Fargo Bank N.A. (Entered: 07/30/2014 at 21:08:53) |
| 07/30/2014 | 49 (7 pgs) | Notice of Mortgage Payment Changes of Claim No. 12 filed by Wells Fargo Bank N.A. (Entered: 07/30/2014 at 21:14:44) |
| 07/30/2014 | 50 (7 pgs) | Notice of Mortgage Payment Changes of Claim No. 12 filed by Wells Fargo Bank N.A. (Entered: 07/30/2014 at 21:20:39) |
| 12/16/2014 | 51 (2 pgs) | Notice of Satisfaction of Proof of Claim #5 Filed by JPMorgan Chase Bank, NA . (VAB) (Entered: 12/17/2014 at 09:22:39) |
| 12/17/2014 | 51 | Correction regarding Claim Number 5. (Related document(s) 51 Generic Notice). (VAB) (Entered: 12/17/2014 at 09:23:26) |
| 02/12/2015 | doc (4 pgs) | Notice of Mortgage Payment Change (Claim # 5) with Certificate of Service Filed by Creditor JPMorgan Chase Bank, NA Filed by JPMorgan Chase Bank, NA.(JPMorgan Chase Bank NA) (Entered: 02/12/2015 at 06:59:23) |
| 03/06/2015 | 52 (1 pg) | Notice of Withdrawal of Attorney Lance E. Olsen and Substituting Attorney Jennifer Aspaas of RCO Legal, PS. (DR) (Entered: 03/06/2015 at 12:46:56) |
| 07/01/2015 | 52 | NOTICE: Effective July 1, 2015, this case is reassigned to Judge Christopher M. Alston. Matters previously scheduled for hearings before Judge Barreca will now be heard by Judge Alston. There is no need to re-notice matters due to this change in judge or hearing location. (admin ADI) (Entered: 07/02/2015 at 11:58:56) |

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| 07/03/2015 |  <u>53</u> (6 pgs) | Notice of Mortgage Payment Changes of Claim No. 12 filed by Wells Fargo Bank N.A. (Entered: 07/03/2015 at 10:08:47) |
| 10/20/2015 |  <u>54</u> (1 pg) | Withdrawal and Substitution of Attorney James K Miersma for JP Morgan Chase Bank, N.A. and Wells Fargo Bank, N.A.. Involvement of Jennifer L Aspaas Terminated .. Filed by Jennifer L Aspaas , James K Miersma on behalf of JP Morgan Chase Bank, N.A. , Wells Fargo Bank, N.A. . (VAB) (Entered: 10/20/2015 at 15:05:15) |

| PACER Service Center | | | |
|------------------------|---------------------|-------------------------|--|
| Transaction Receipt | | | |
| 10/30/2015 16:37:43 | | | |
| PACER Login: | cozen1079:2844544:0 | Client Code: | 348677.000 |
| Description: | Docket Report | Search Criteria: | 11-12939-CMA Fil or Ent: filed Doc From: 0 Doc To: 99999999 Term: included Links : included Headers: included Format: html Page counts for documents: included |
| Billable Pages: | 5 | Cost: | 0.50 |

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JESSE FULLER,

Plaintiff,

v.

FISHERMEN'S FINEST and NORTH PACIFIC
FISHING, INC.,

Defendants.

Cause No.: 14-2-05490-4 SEA

DEFENDANTS / RESPONDENTS /
CROSS-APPELLANTS FISHERMEN'S
FINEST AND NORTH PACIFIC
FISHING, INC.'S DESIGNATION OF
CLERK'S PAPERS

CLERK'S ACTION REQUIRED

Defendants/Respondents/Cross-Appellants Fishermen's Finest and North Pacific Fishing, Inc., pursuant to RAP 9.6 and RAP 9.7 hereby designate the documents listed below for transmission to Division I of the State of Washington Court of Appeals. The appellate court case number is 73807-1.

Fishermen's Finest and North Pacific Fishing, Inc. request the Clerk to (1) assemble copies of the designated documents, and number each page in chronological order of filing, (2) prepare an alphabetical index to the designated papers, (3) send a copy of the index to each party, and (4) transmit the designated papers to Division I of the State of Washington Court of Appeals under case number 73807-1.

| Sub. No. | Docket Date | Document Description |
|----------|-------------|--------------------------------------|
| 16 | 4/14/2014 | Declaration of Nicholas J. Neidzwski |

DEFENDANTS / RESPONDENTS / CROSS-APPELLANTS
FISHERMEN'S FINEST AND NORTH PACIFIC FISHING,
INC.'S DESIGNATION OF CLERKS PAPERS - 1
CAUSE NO.: 14-2-05490-4 SEA
LEGAL\24182939\1 17665.0001.000\348677.000

LAW OFFICES OF
COZEN O'CONNOR
A PROFESSIONAL CORPORATION
1900 WELLS FARGO CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104
(206) 340-1000

| Sub. No. | Docket Date | Document Description |
|----------|-------------|--|
| 17 | 4/14/2014 | Declaration of Kristian Uri |
| 20 | 4/21/2014 | Declaration of Darin Vanderpol |
| 40 | 5/6/2015 | Notice of Intent to Withdraw |
| 41 | 5/6/2015 | Objection/Opposition to Notice of Intent to Withdraw |
| 42 | 5/11/2015 | Plaintiff's Response to Defendants' Objection |
| 62 | 6/5/2015 | Order for Withdrawal of Attorney |
| 64 | 6/15/2015 | Notice of Appearance |
| 75 | 8/12/2015 | Defendants' Notice of Cross Appeal |

Fishermen's Finest and North Pacific Fishing, Inc. reserve the right to supplement this Designation of Clerk's Papers as provided in RAP 9.6(a).

RESPECTFULLY SUBMITTED: August 27, 2015.

COZEN O'CONNOR

s/ William H. Walsh
 William H. Walsh, WSBA No. 21911
 Attorney for Defendants/Respondents/Cross-Appellants Fishermen's Finest and North Pacific Fishing, Inc.

DEFENDANTS / RESPONDENTS / CROSS-APPELLANTS
 FISHERMEN'S FINEST AND NORTH PACIFIC FISHING,
 INC.'S DESIGNATION OF CLERKS PAPERS - 2
 CAUSE NO.: 14-2-05490-4 SEA
 LEGAL\24182939\1 17665.0001.000\348677.000

LAW OFFICES OF
COZEN O'CONNOR
 A PROFESSIONAL CORPORATION
 1900 WELLS FARGO CENTER
 999 THIRD AVENUE
 SEATTLE, WASHINGTON 98104
 (206) 340-1000

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 27, 2015, I electronically filed the foregoing *Defendants*
3 *Fishermen's Finest and North Pacific Fishing, Inc.'s Designation of Clerk's Papers* with the
4 Clerk of the Court using the CM/ECF system and served counsel of record in the manner
5 indicated below:

6 John W. Merriam. WSBA #12749
7 4005 20th Avenue W., Suite 110
8 Seattle, WA 98199-1290
9 Telephone: 206.729.5252
10 Facsimile: 206.729.1012
11 Email: john@merriam-maritimelaw.com

*Via Legal Messenger and
Notice of Electronic Filing*

12 *Counsel for Appellant/Plaintiff Jesse Fuller*

13 SIGNED AND DATED this 27th day of August, 2015 at Seattle, Washington.

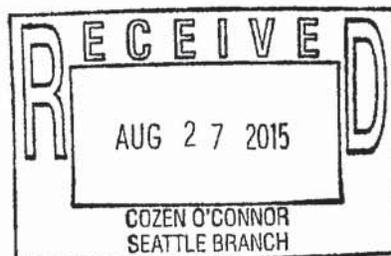
14 COZEN O'CONNOR

15 By: *s/ Patty Cameron*
16 Patty Cameron, Senior Legal Assistant

17 COZEN O'CONNOR
18 1900 Wells Fargo Center
19 999 Third Avenue
20 Seattle, Washington 98104
21 Telephone: 206.340.1000
22 Facsimile: 206.621.8783
23 E-mail: pcameron@cozen.com

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26 DEFENDANTS / RESPONDENTS / CROSS-APPELLANTS
FISHERMEN'S FINEST AND NORTH PACIFIC FISHING,
INC.'S DESIGNATION OF CLERKS PAPERS - 3
CAUSE NO.: 14-2-05490-4 SEA
LEGAL\24182939\1 17665.0001.000\348677.000

LAW OFFICES OF
COZEN O'CONNOR
A PROFESSIONAL CORPORATION
1900 WELLS FARGO CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104
(206) 340-1000



HONORABLE TIMOTHY A. BRADSHAW

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

JESSE FULLER,

Plaintiff,

vs.

FISHERMEN'S FINEST and
NORTH PACIFIC FISHING, INC.,

Defendants

Trial Court Case No.: 14-2-05490-4 SEA
Court of Appeals Case No.: 73807-1

DESIGNATION OF CLERK'S PAPERS

TO THE CLERK OF THE COURT:

Please prepare and transmit to the Court of Appeals, Division I, the following clerk's papers:

| FILE # | DOCUMENT | DATE |
|--------|-------------------------------------|-----------|
| 1 | Complaint | 2/19/2014 |
| 6 | Demand for Non Resident Bond | 3/5/2014 |
| 7 | Amended Complaint | 3/7/2014 |
| 8 | Answer and Counterclaim/Def's | 3/13/2014 |
| 9A | Bonds Received | 3/28/2014 |
| 13 | Answer and Counter Claim/Def's | 4/11/2014 |
| 15 | Motion to Enforce Arbitration/Def's | 4/14/2014 |
| 18 | Objection/Opposition/Pla | 4/18/2014 |

DESIGNATION OF CLERK'S PAPERS
TRIAL COURT CASE NO. 14-2-05490-4 SEA
COURT OF APPEALS CASE NO. 73807-1

John W. Merriam
4005 20th Avenue West, Suite 110
Seattle, Washington 98199
T (206) 729-5252 ♦ F (206) 729-1012

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| SUB # | DOCUMENT | DATE |
|-------|--|------------|
| 19 | Reply/Def | 4/21/2014 |
| 22 | Order Enforce Arb/Stay Litigation/Trial Remains Until Nte Stlmnt | 5/8/2014 |
| 24 | Petition for Attys' Fees/Defs | 11/13/2014 |
| 25 | Declaration of William Walsh | 11/13/2014 |
| 26 | Objection/Opposition/Pla | 11/18/2014 |
| 28 | Reply/Defs | 11/20/2014 |
| 31 | Declaration of William Walsh | 11/20/2014 |
| 32 | Attachment/Exhibit A to Dclr of W. Walsh | 11/20/2014 |
| 33 | Order Granting Motion re Attorney Fees & Bond Amount | 2/2/2015 |
| 34 | Declaration of William Walsh | 3/5/2015 |
| 35 | Motion for Fees and Costs/Def | 3/5/2015 |
| 36 | Declaration of William Walsh | 3/13/2015 |
| 38 | Application for Fees & Costs/Def | 3/13/2015 |
| 43 | Order On Application for Fees/Def | 5/14/2015 |
| 44 | Notice of Presentation/Def | 5/20/2015 |
| 45 | Objection/Opposition/Pla | 5/20/2015 |
| 47 | Motion/Def | 5/20/2015 |
| 48 | Declaration of William Walsh | 5/20/2015 |
| 49 | Motion and Affidavit/Declaration | 5/26/2015 |
| 50 | Objection/Opposition/Pla | 5/26/2015 |
| 52 | Reply/Defs | 5/28/2015 |
| 54 | Objection/Opposition/Def | 6/1/2015 |
| 56 | Order re Entry of Judgment | 6/1/2015 |
| 57 | Objection/Opposition | 6/2/2015 |
| 58 | Reply/Fishermen Finest and North Pacific Fishing Inc. | 6/3/2015 |
| 60 | Judgment | 6/4/2015 |

DESIGNATION OF CLERK'S PAPERS
TRIAL COURT CASE NO. 14-2-05490-4 SEA
COURT OF APPEALS CASE NO. 73807-1

John W. Merriam
 4005 20th Avenue West, Suite 110
 Seattle, Washington 98199
 T (206) 729-5252 ♦ F (206) 729-1012

| | DOCUMENT | DATE |
|----|--|-----------|
| 1 | | |
| 2 | 61 Findings of Fact & Conclusions of Law | 6/4/2015 |
| 3 | 63 Motion for Reconsideration/Pla | 6/15/2015 |
| 4 | 66 Order re Def Mt for Jdgmnt | 6/19/2015 |
| 5 | 67 Order re Briefing Schedule | 6/30/2015 |
| 6 | 68 Objection/Opposition/Def | 7/10/2015 |
| 7 | 70 Declaration of William Walsh | 7/10/2015 |
| 8 | 72 Reply/Pla | 7/17/2015 |
| 9 | 73 Order on Mtn for Reconsideration/Denied | 7/17/2015 |
| 10 | 74 Notice of Appeal | 7/29/2015 |

11 DATED this 24th day of August, 2015.

12 LAW OFFICE OF JOHN MERRIAM

13
 14 By: s./J. Merriam
 15 John Merriam, WSBA#12749
 16 Attorney for Plaintiff
 17 4005 20th Avenue West, Suite 110
 18 Seattle, WA 98199
 19 Telephone: (206) 729-5252
 20 Fax: (206) 729-1012
 21 E-mail: john@merriam-maritimelaw.com

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 DESIGNATION OF CLERK'S PAPERS
 TRIAL COURT CASE NO. 14-2-05490-4 SEA
 COURT OF APPEALS CASE NO. 73807-1

John W. Merriam
 4005 20th Avenue West, Suite 110
 Seattle, Washington 98199
 T (206) 729-5252 ♦ F (206) 729-1012

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HONORABLE TIMOTHY A. BRADSHAW

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

JESSE FULLER,

Plaintiff,

vs.

FISHERMEN'S FINEST and
NORTH PACIFIC FISHING, INC.,

Defendants

Trial Court Case No.: 14-2-05490-4 SEA
Court of Appeals Case No.: 73807-1

PROOF OF SERVICE

TO THE CLERK OF THE COURT:

The undersigned certifies that on August 13, 2015, she filed the Designation of Clerk's Papers in King County Superior Court and additionally served a copy of the Designation of Clerk's Papers, via U.S. Postal Service, to the following parties entitled to notice pursuant to RAP 18.5:

The Court of Appeals
State of Washington
Division I
One University Square
600 University Street
Seattle, WA 98101-4170

William H. Walsh, Esq.
Nicholas J. Neidzowski, Esq.
Cozen O'Connor
999 Third Avenue, Suite 1900
Seattle, WA 98104

Jesse Fuller
8354 Rogue River Highway
Grants Pass, OR 97517

I certify under penalty of Perjury under the laws of the State of Washington that the foregoing is true and correct this 24th day of August, 2015.



Meghan Brown
Signed at Seattle, Washington

PROOF OF SERVICE
TRIAL COURT CASE NO. 14-2-05490-4 SEA
COURT OF APPEALS CASE NO.

John W. Merriam
4005 20th Avenue West, Suite 110
Seattle, Washington 98199
T (206) 729-5252 • F (206) 729-1012