

*Apps Fritz*

No. 35740-2

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

EDDIE BLOOR and EVA BLOOR, husband )	
and wife, )	Lewis County Circuit
Respondents, )	Court Case No.
v. )	05 2 00628 3
ROBERT A. FRITZ and CHARMAINE A. )	
FRITZ, and the marital community comprised )	
thereof; LANCE MILLER, a single person; )	
LAM MANAGEMENT, INC., a Washington )	
corporation, dba ALLEN & ASSOCIATES )	
PROPERTY MANAGEMENT; LC )	
REALTY, INC., a Washington corporation )	
dba WINDERMERE REAL )	
ESTATE/ALLEN & ASSOCIATES; )	
Appellants, )	
and )	
COWLITZ COUNTY, a political subdivision )	
of the State of Washington, )	
Defendant. )	

COURT OF APPEALS  
 DIVISION II  
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 STATE OF WASHINGTON  
 BY KS  
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**OPENING BRIEF OF APPELLANTS FRITZ**

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## **INTRODUCTION**

This is an appeal from a court trial in which the trial judge granted rescission to the buyers of a residence after finding the sellers and Realtors failed to disclose the suspected presence of a methamphetamine lab on the property. Judgment was also entered against the sellers for money damages on a negligent misrepresentation theory. This brief is presented on behalf of defendants Robert and Charmaine Fritz, the sellers of the home. A separate appeal has been filed by co-defendants, who acted as joint real estate agents for buyers and sellers. The same agents also acted as property manager for the sellers while the home was previously maintained as a rental. Plaintiffs also obtained judgment against Cowlitz County for its negligence in failing to report to the Health Department that Sheriff's office investigators discovered implements of meth manufacturing during service of an arrest warrant. The County has not appealed.

The court incorrectly awarded damages under a negligent misrepresentation theory which is not recognized in these circumstances in the State of Washington. The court also incorrectly concluded there was a failure of consideration and based rescission on that conclusion. The

first two issues on review relate to these two points. Subsequent issues raise alternative arguments to address the court's assessment of damages and attorney fees and those issues need not be addressed if defendants prevail on the first two issues.

**A. ASSIGNMENTS OF ERROR**

1. The trial court erred in denying defendant Fritz' motion to dismiss plaintiffs' claim for negligent misrepresentation at the close of plaintiffs' case and renewed at the conclusion of all evidence. RP 1014-15; RP 1153.
2. The trial court erred in entering Conclusion of Law No. 7 as follows:

“The Fritzes knew and failed to disclose the fact that the property had been used as an illegal drug manufacturing site. The Fritzes' failure to disclose that fact was a negligent misrepresentation of that fact.” CP 39.
3. The trial court erred in rendering Conclusion of Law No. 19 as follows:

“The credit problems and the resulting negative reporting on the Bloor's credit history was proximately caused by the failure of the Fritzes . . . to fulfill their duties regarding their knowledge of the use of the property as a meth lab and the potential of

contamination of the property and the resulting loss by the Bloors of their home and personal property. Had the defendants not failed in their duties to the Bloors, the Bloors would not have purchased the property in the condition it was at the time of sale, nor moved onto the property.” CP 41-42.

4. The trial court erred in rendering Conclusion of Law No. 22

as follows:

“Judgment should be entered in favor of the Bloors and against all of the defendants, jointly and severally, for the following damages:

- a. Damages for emotional distress suffered by Ed Bloor – \$10,000
- b. Damages for emotional distress suffered by Eva Bloor – \$25,000
- c. Damages for displacement of the Bloors and loss of work income – \$7,500
- d. Damages for loss of use of the property – \$9,000
- e. Damages for injury to the Bloor’s credit rating and the reasonably certain additional costs of credit that they will suffer in the future – \$10,000

- f. Damages for loss of personal property owned by the Bloors – \$30,000"

- 5. The trial court erred in entering Conclusion of Law No. 24

as follows:

“The contract between the Fritzes and the Bloors should be rescinded by requiring the Fritzes to make payment to the Bloors of the purchase price of \$149,000, any interest thereon at the statutory rate of 12% as provided in RCW 19.52.010 from the date the Bloors were forced to vacate the property on October 22, 2004, due to the contamination, until entry of judgment herein, plus the late charges, the lender attorney fees and foreclosure costs imposed by the Bloor’s lenders due to the defaults and the loans owed by the Bloors in the amount of \$9,231.89. Judgment should be entered against the Fritzes in the amount of \$38,555.13 for accrued interest on the purchase price at the rate of 12% per annum from the date the Bloors vacated the property, October 22, 2004, through December 18, 2006, and thereafter at the statutory rate applicable to judgments until paid.” CP 43.

- 6. The trial court erred in entering Conclusion of Law No. 25

as follows:

“The Bloors should receive judgment against the Fritzes in the total sum of \$196,787.02 for the purchase price plus

accrued interest from October 22, 2004, through the date hereof, late charges, lender attorney fees and costs, which judgment shall be satisfied by payment into the registry of this court. Upon completion of such payment into the registry of the court, the Fritzes may apply to this court for entry of an order disbursing said payment to the lenders of the Bloors to satisfy the indebtedness secured by the property, with any excess to be received by the Bloors. At such time that payment of the judgment and interest thereon has been completed, the court shall enter a decree quieting title on the property in the Fritzes free from any claim of the Bloors. CP 43-44.

7. The trial court erred in entering Conclusion of Law No. 39

as follows:

“The attorney fee provision in the REPSA provides for the recovery of expenses incurred in this action. The Bloors should receive judgment against the Fritzes, for their expenses in the sum of \$18,975.55, subject to credit for costs paid by other defendants.”

8. The trial court erred in entering Conclusion of Law No. 36

as follows:

“The Bloors should receive judgment in the amount of \$122,163.75 through October 10, 2006, for their reasonable attorney fees against the Fritzes, Miller and L.C. Realty, Inc., jointly and severally.”

9. The trial court erred in making Finding of Fact No. XLVIII

(48) as follows:

“Due to the financial burden of setting of a new household and reestablishing their lives, the Bloors were unable to make payments on the underlying indebtedness secured by the Property. As a result of the Bloors’ inability to pay their loan obligations, the beneficiaries under the Deed of Trust that secured the purchase money loan to the Bloors initiated foreclosure proceedings, which proceedings were suspended on several occasions while this litigation was pending. Additional penalties and interest have accumulated on the debts owed by the Bloors.”

10. The trial court erred in making Finding of Fact No. LIII

(53) as follows:

“When they purchased the Property in July 2004, the median credit score was 666 and the median credit score for Eva Bloor was 647. Due to the loss by the Bloors of their home and belongings, and their resulting inability to make the required monthly payments on their loans, as of April, 2006, Ed Bloor’s credit score had fallen to 569 and Eva Bloor’s credit score had fallen to 552. The cause of the difference between the credit scores in July, 2004 and the credit scores in April, 2006 was the reporting of the Property foreclosure proceedings and other associated debts that were proximately caused by the Bloors’ loss of their home and

belongings due to the discovery of the meth contamination.”

11. The trial court erred in making Finding of Fact No. LIV

(54) as follows:

“Due to the reduction of the Bloors’ credit scores it is reasonably certain that for at least the next ten (10) years the Bloors will suffer economic loss when they apply for credit. A reasonable estimate of the loss they will suffer from the damage to their credit scores can be made based on the increased cost they will likely than not incur to acquire and pay a home purchase loan. The reduced credit scores the Bloors now have will result in them having to pay approximately one percentage point more in interest on a home loan, which translates to a current loss of \$10,000, when the added cost of the loan over the normal amortization period of the loan is reduced to present cash value. This loss is reasonably certain and based on reliable statistical data provided by Robert Moss, the Bloor’s economic expert witness.”

12. The trial court erred in making Finding of Fact No. LV (55)

as follows:

“Ed Bloor was unable to work for at least three months due to the contamination of the Property and the loss of his tools and equipment. His average income prior to the discovery of the contamination was \$2,500.00. He lost approximately three

months income and thus, his income loss due to his inability to work was \$7,500.00.”

**B. ISSUES FOR REVIEW**

**Issue No. 1:** May the court award damages for economic loss caused by negligent misrepresentation by the seller of real property concerning alleged defects in the property? (Assignments of Error Nos. 1, 2, 3 and 4)

**Issue No. 2:** May the court order rescission of a real estate contract for partial failure of consideration where the alleged defects in the property may be economically cured? (Assignments of Error Nos. 5 and 6)

**Issue No. 3:** Did the court err in awarding economic damages for loss of income, and damage to credit, because there was insufficient evidence and those damages are not recoverable as a matter of law? (Assignment of Error No. 3)

**Issue No. 4:** Did the court err in awarding interest and lender fees as restitution in connection with rescission of

the real estate contract? (Assignment of Error No. 5)

**Issue No. 5:** Did the court err in awarding plaintiffs' damages for mental anguish or emotional distress? (Assignment of Error No. 4)

**Issue No. 6:** Did the trial court correctly interpret the real estate sale's contract to allow an award of litigation expenses to the prevailing party? (Assignment of Error No. 7)

**Issue No. 7:** May attorney fees be awarded without segregating time incurred on claims for which fees are not recoverable? (Assignment of Error No. 8)

**C. STATEMENT OF THE CASE**

**NATURE OF THE JUDGMENT**

The court entered judgment following trial to the court and entry of detailed findings and conclusions. There was extensive argument and three separate hearings concerning the propriety of the findings and conclusions and the final document contains 85 findings of fact and 40 conclusions of law. With respect to the Fritz defendants, the final

judgment ordered that they pay damages to plaintiffs for negligent misrepresentation; that the real estate sale's contract between the Fritzes and Bloors be rescinded; and that the Fritz defendants pay additional damages to restore the Bloors to their original condition. Finally, the court awarded attorney fees to the Bloors pursuant to an attorney fee provision in the real estate purchase agreement.

In this appeal the Fritz appellants challenge the pertinent legal conclusions and seek reversal of both the negligent misrepresentation and rescission orders or, alternatively, a reduction of the award of money damages, and modification of the restitution order.

#### **SUMMARY OF FACTS**

In 1993 a house near Silver Lake, Washington was purchased by Mr. Fritz. At that time he was not married to Charmaine Fritz. Findings, I, II, CP 13. Mr. & Mrs. Fritz were married in 2000, but title to the property remained in Mr. Fritz' name. Finding II, CP 13. In 2001 Mr. & Mrs. Fritz moved away from the area and they retained LAM Management, dba Allen & Associates to manage the property as a rental. Finding III, CP 13.

In the summer of 2004 plaintiffs Ed and Eva Bloor moved out of their home in Missouri with the idea of settling around Newport, Oregon. Finding XX, CP 18. They found they could not afford to live in Newport and instead went to Mr. Bloor's sister's home near Silver Lake, Washington, where Mr. Bloor then planned to start a siding business. Findings XX, XXI, CP 18. While staying in Silver Lake they noticed an empty house and upon inquiry found it was owned by Mr. Fritz and was managed by Windermere, Allen & Associates and/or LAM Management. Finding XXI, CP 18.

The Bloors contacted the agents at Windermere, Allen & Associates and they were shown the house by Jayson Brudvick, one of the Windermere agents. Findings XXI, XXII, CP 13. Another Windermere agent, Lance Miller, prepared a real estate purchase and sale agreement and conveyed the Bloor's offer to purchase the property to Mr. & Mrs. Fritz. Finding XXIV, CP 14. Miller acted as a dual agent representing both seller and buyer in the transaction. Finding XXIV, CP 14.

As required by Washington Law, Mr. Fritz completed a seller's disclosure statement which was faxed to him by Mr. Miller Finding XXV, CP 14. The disclosure statement included the question whether the

property had ever been used for illegal drug manufacturing and Mr. Fritz answered “no” to that question. There was no other direct communication between Mr. or Mrs. Fritz and the Bloors. RP 446, 935.

In January of 2004, seven months before the sale, the Cowlitz Wahkiakum Joint Narcotics Task Force executed a warrant at the property and discovered a marijuana growing operation. They also found some implements commonly used in the manufacture of methamphetamine on the back deck of the home. Finding V, CP 14.

Mrs. Fritz heard about the police activity from her son, who had been told by a friend. Finding XI, CP 15-16. She also received a telephone call from Jayson Brudvick, the Windermere realtor, concerning the arrest of their tenant and the need to start eviction proceedings. Finding X, CP 15. In addition, she spoke with a Task Force detective who told her that implements of a meth lab had been found on the back deck and had been removed. Finding XIV, CP 16. Information about the equipment found at the property was also given to Lance Miller, the other Windermere agent. Finding XVI, CP 16.

State law requires that law enforcement agencies report to the Health Department when a meth lab is discovered. Finding LXXII, CP

37. In this case, there was no report to the Health Department and therefore no inspection for contamination occurred and an order to vacate the house was not issued at the time of the initial search in January of 2004. Findings XXXI, XXXIV, CP 20-21.

After eviction of the tenants residing at the time of the search, Mr. & Mrs. Fritz re-rented the property to a new tenant. Finding XVIII, CP 17. They later decided to sell the house and in preparation cleaned it up, including repainting and installing new floor coverings. Finding XIX, CP 17. As stated above, the house was then sold to the Bloors.

It was not until three months after the sale, in October of 2004, that Mrs. Bloor was told by her son that the house was reputed to be a “drug house”. Finding XXIX, CP 20. Mrs. Bloor investigated further by researching newspaper articles on the Internet and speaking with Task Force and Health Department employees. Findings XXX, XXXI, CP 20-21. The Bloors then hired a decontamination contractor to inspect the property and prepare a plan for decontamination. Finding XXXIII, CP 21. The decontamination estimate was \$13,403.16, plus an additional \$4,000 for the garage. Findings XXXIX, XLI, CP 23.

When the Health Department was advised of the contamination in October of 2004 an order was issued on October 22, prohibiting occupancy until the contamination could be cleaned. RP 849, Findings XXXIV, XXXVI, CP 21-23. The Bloors moved out of the property and took no further steps to remediate and made no further payments toward the purchase. The court found the value of personal property left by the Bloors in the house was \$30,000. Finding XLVII, CP 29. It also found they suffered from emotional distress (Findings XLIX, L, CP 26) and that their “credit scores” had declined as a result of their financial problems. Findings LIII, LIV, CP 27. In addition, the court found Mr. Bloor sustained a loss of income and they lost the use of the property for one year. Findings LV, LVI, CP 28.

#### **ARGUMENT ON ISSUE NO. 1**

The trial court erred in denying defendants’ motion to dismiss as a matter of law plaintiffs’ claim for negligent misrepresentation because no such claim exists in connection with the sale of a residence resulting in economic loss.

### **STANDARD FOR REVIEW**

The question whether Washington recognizes the tort of negligent misrepresentation in these circumstances raises an issue of law for the court to determine. *Alejandre v. Bull*, 159 Wn2d 674, 153 P3d 864 (2007).

**A. Washington Law Does Not Recognize the Tort of Negligent Misrepresentation to Recover Economic Loss**

The precise issue raised by defendants Fritz was recently decided by the Washington Supreme Court in *Alejandre v. Bull*, 159 Wn2d 674, 153 P3d 864 (2007), reversing the Court of Appeals decision cited by plaintiffs as authority for the contrary argument in the trial court. In *Alejandre*, the plaintiff claimed defendant Bull sold a house to plaintiff and negligently represented the septic system was in good condition. In fact, problems with the system had been identified one year prior to the sale and the seller had been advised to connect to the City sewer. Similar to this case, the seller completed a disclosure statement, answering “no” to the question whether there were defects in the septic system. The buyer subsequently noted offensive odors and soggy ground. When inspected,

they found the drain field was not working. The plaintiffs sought repair costs of \$30,000.

The Supreme Court held:

“The defective septic system at the heart of plaintiff’s claims is an economic loss within the scope of the parties’ contract, and the economic loss rule precludes any recovery under a negligent misrepresentation theory.”

The court explained this rule is meant to draw the line between contract rights and torts. Where the relationship between the parties is created by contract, contract law governs their rights and obligations. Negligent misrepresentation is a tort theory and is simply inapplicable. That rule applies even if the parties fail to explicitly anticipate this loss in their contract.

Because the *Alejandre* opinion is the latest statement from our Supreme Court, and its rule is directly applicable, no other citation is necessary. As a result, the judgment, to the extent based on negligent misrepresentation, must be reversed, including all damages described in Conclusion of Law No. 22 and set out at Paragraph 2, subparagraphs “a” through “f”, of the court’s judgment.

## **ARGUMENT ON ISSUE NO. 2**

The trial court erred in ordering rescission of the real estate purchase and sale agreement because the court erroneously concluded there was a failure of consideration.

### **STANDARD OF REVIEW**

The decision whether to order rescission of a contract is a matter of equitable discretion, subject to review by the appellate court for abuse. *Hornbeck v. Wentworth*, 132 Wn App 504, 132 P3d 778 (2006). The appellate court may review the facts relied upon by the trial court for its decision. An abuse of discretion may be found if the trial court's decision is based on untenable grounds or for untenable reasons, for example, if based on the wrong legal standard or on facts not in the record. *TS v. Boy Scouts of America*, 138 P3d 1053, 157 Wn2d 416 (2006).

**A. Failure of Consideration is an Improper Basis for Rescission Unless the Failure Totally Frustrates the Purpose of the Contract**

The Findings & Conclusions of the trial court do not clearly state the legal basis for the court's order of rescission. Finding of Fact LVII and Conclusion 24 simply state the contract should be rescinded. CP 28-

29, CP 43. However, in the court's oral findings in open court the court concluded there was a failure of consideration. RP 1389.

No doubt a contract may be rescinded where there is a complete failure of consideration. In *Krause v. Mariotto*, 66 Wn2d 919, 406 P2d 16 (1965), the court found a failure of consideration when the buyer of a business, including a franchise for distribution of equipment, could not obtain the rights to the franchise. Because the business was worthless without the franchise, the court held rescission was the proper remedy.

In contrast with that case is *Capital Savings and Loan v. Convey*, 175 Wn2d 224, 27 P2d 136 (1933), where the court held rescission was improper where the defects in the property could be cured. The court explained the rule thus:

“It must be conceded that rescission usually lies where the partial failure of consideration is substantial. But it will not be granted in all cases. Where the partial failure of consideration is slight in comparison with the whole consideration and the subject matter of the contract, where damages are easily ascertainable and the vendee can be thereby fully compensated, and where a rescission would be grossly inequitable to the vendor, the purchaser will not be permitted to rescind, but will be allowed a proportionate abatement from the purchase price.” 175 Wn at 227-228.

The court further explained:

“The fundamental theory of rescission is that neither party will be hurt by it; that the status quo of the parties can be established.” 175 Wn at 229.

Because in *Capital Savings* the alleged defects were correctable, and the buyer could be made whole with a claim for damages, it was held rescission was inappropriate.

One of the key factors to be weighed is the relative cost to cure compared to the total transaction cost. In this case, a residence and surrounding property was sold at a cost of \$149,000. The contamination later discovered could be corrected for a total of \$17,403.16. Findings XXXIX and XLI, CP 23-24. Plaintiffs will no doubt argue they were financially incapable of remediating the property and therefore unable to mitigate their loss. However, the measure of loss is objective and not based on the relative wealth of the parties. Nothing done by defendants caused plaintiffs to be financially incapable of handling their affairs. They moved from Missouri after selling their home in that state and they exhausted their resources before purchasing defendants' home. At the time of the purchase they had no employment and no money to make their

mortgage payment. RP 40, 42-43, RP 911. Only one mortgage payment was made by plaintiffs. RP 472.

In weighing the equities to determine if rescission was proper, the trial court should have considered the relative slight cost to correct the contamination. Rescission is an equitable remedy which requires an equitable solution and an attempt to restore parties to their relative prior positions. *Willener v. Sweeting*, 107 Wn2d 388, 397, 730 P2d 45 (1986).

A total failure of consideration did not occur in this case because the limited contamination was correctable for an economic sum. The remedy of rescission in this context is wasteful and unfair, and under these circumstances was an abuse of discretion.

### **ARGUMENT ON ISSUE NO. 3**

The trial court erred in awarding economic damages for loss of income, and damage to credit, because there was insufficient evidence and those damages are not recoverable as a matter of law.

### **STANDARD FOR REVIEW**

The court reviews findings of fact following a court trial to determine if they are supported by substantial evidence. *Thorndike v. Hesperian Orchards Inc.*, 54 Wn2d 570, 343 P2d 183 (1959).

Conclusions of law are subject to de novo review. *Dumas v. Gagner*, 137 Wn2d 268, 280, 971 P2d 17 (1999).

**A. There Was Insufficient Evidence to Find Plaintiff Suffered Wage Loss or Damage to Credit Caused by Any Act of Defendants**

As stated above in argument concerning Issue No. 1, plaintiffs should not be awarded damages for economic loss due to negligent misrepresentation. If the court agrees with defendants' argument on Issue No. 1, this argument under Issue No. 3 may be moot.

However, even if the court does not grant defendants' appeal under Issue No. 1, the award of damages for income loss and damage to credit should be reversed. The court made several findings of fact which were not supported by the evidence. Finding XLVIII (CP 26) states:

“Due to the financial burden of setting up a new household and reestablishing their lives, the Bloors were unable to make payments on the underlying indebtedness secured by the property.”

The court attributes foreclosure proceedings, including penalties and interest, as damage caused by the defendants.

At Finding LIII and LIV (CP 27) the court concludes credit scores for Mr. & Mrs. Bloor were negatively impacted by their financial condition and would result in the loss of \$10,000 due to increased payments for future credit transactions.

At Finding LV (CP 28) the court concluded Mr. Bloor lost income of \$7,500 based on an assumption he lost three months of work at an income of \$2,500 per month.

These findings resulted in the court's Conclusions of Law Nos. 19 and 22, which awarded plaintiffs damages for income loss and injury to credit.

The evidence does not support the court's findings. The testimony of Mr. & Mrs. Bloor clearly shows they were without sufficient financial resources and lacked any income before they were forced out of the home by the Health Department. They were not financially able to pay their mortgage, or even adequately support themselves, regardless of any action by the defendants. They did have a fund of money when they first moved from Missouri. They obtained \$19,000 as equity from the home they sold in Missouri. RP 285. They had savings of about \$2,000. RP 290. Eva

Bloor sold some property she had inherited in Spokane, gaining another \$12,000. RP 291.

Plaintiffs then spent about a month in the Newport, Oregon area looking for jobs and housing. RP 292. When they finally moved to the Silver Lake area they had \$11,000 left. RP 298. Eva Bloor did not work while at Silver Lake. RP 331. Ed Bloor didn't work either, except for some odd jobs. RP 346-347. When purchasing defendants' house they paid \$500, plus an additional \$1,200 at closing. RP 366. They made only one payment on the mortgage. RP 367-368, 450. Mr. Bloor believes he earned a couple thousand dollars on the odd jobs. RP 441. The Bloors spent nearly all of their funds before October of 2004, when the contamination was discovered. RP 442-443. Although Mr. Bloor intended to start a siding business, that had not yet occurred. RP 470. During this period of depleted finances, they also spent \$3,000 to \$4,000 for a new boat. RP 498.

The figures mentioned above are from Mr. Bloor's testimony. Mrs. Bloor provided slightly different numbers. She states that by the time they arrived in Silver Lake they had \$7,153. RP 818. As of October 8, according to their bank statement, they were over drawn by \$8.30. RP

833-834; Ex. 68. The property was not posted by the Health Department until October 22. RP 849. They received their first notice of default on the property on December 27, 2004. RP 838; Ex. 45. They had no money with which to make their mortgage payment and thus Mrs. Bloor had to borrow money to travel to Spokane to care for her ill mother. RP 911.

This undisputed evidence demonstrates plaintiffs were unable to satisfy their financial obligations by October of 2004 because their cash reserve had been exhausted and they had no source of added revenue. This predicament clearly pre-existed without regard to any act of the defendants.

Mr. Bloor was unemployed and the prospect for earning income from a siding business he had not yet started was speculative at best. The Bloors had filed for bankruptcy in 1999. RP 372-373; Ex. 13. Mr. Bloor had no idea what income he could make as a siding contractor in Silver Lake. RP 474.

When reviewing the evidence to determine whether it supports the court's findings, the appellate court looks for substantial evidence.

*Dickson v. Kates*, 132 Wn App 724, 133 P3d 498 (2006). Substantial

evidence must be sufficient to persuade a fair minded person of the truth of the proposition. *Washington State Attorney General's Office v. Washington Utilities and Transportation Commission*, 128 Wn App 818, 116 P3d 1064 (2005). On this record, a fair minded person would not be convinced Mr. Bloor lost three months in income as a result of defendants' negligence, since he had no income at the time, and no immediate prospects for earning income. Likewise, in light of plaintiffs' poor financial condition, poor history of fiscal responsibility, and clear inability to satisfy their obligations, damage to their credit cannot be reasonably connected to the defendants. There was not substantial evidence to support the court's award of damages for lost income and injury to credit.

#### **ARGUMENT ON ISSUE NO. 4**

The trial court erred in awarding interest and lender fees to plaintiffs as part of the rescission remedy.

#### **STANDARD FOR REVIEW**

The decision to order rescission and the terms of restitution in connection with rescission are matters of equity and are reviewed for abuse of discretion. *Hornbeck v. Wentworth*, 132 Wn App 504, 132 P3d 778 (2006). An abuse of discretion is found if the trial court's decision is

for untenable reasons or is based on untenable grounds. *T. S. v. Boy Scouts of America*, 157 Wn2d 416, 138 P3d 1053 (2006).

**A. Damages Awarded to Plaintiffs Were Inappropriate Because They Were Not Calculated to Restore the Parties to Their Original Position**

This argument is alternative to the argument set out above in support of reversal under Issue No. 2. If the court agrees with defendants' argument that rescission is inappropriate, the arguments concerning Issue No. 4 are moot.

The remedy of rescission has, as its primary purpose, the restoration of the parties, as near as possible, to the position they occupied before the contract was entered into. *Busch v. Nervik*, 38 Wn App 541, 687 P2d 872 (1984). As stated in *Hornbeck v. Wentworth*, 132 Wn App 504, 513, 132 P3d 778 (2006), "the parties should be restored to the positions they would have occupied if no contract had ever been made."

The trial court incorrectly concluded that as part of the rescission remedy, defendants should not only repay the purchase price, but should also pay 12% interest to the Bloors on the entire purchase price, beginning on the date the Bloors vacated the house. The Bloors' only out of pocket

expense in connection with the purchase was an initial payment of \$1,700 and the payment of one mortgage payment. They did not pay any interest, as it accrued on the mortgage and since defendants are required to pay the mortgage balance, including interest and lender fees, in order to reclaim the property, interest should not also be paid to the plaintiffs. This is not a case like *Hornbeck, supra*, where the plaintiff was awarded interest on money reimbursed to the plaintiff which the plaintiff had previously paid. Here, plaintiffs did not pay the \$149,000 purchase price and should not be entitled to interest.

When the trial court made its original comments granting rescission, the judge expressed some confusion about the mechanics of this remedy. RP 1394-1395. During the first post-trial hearing concerning findings and conclusions, plaintiffs' attorney advised the court plaintiffs did not want rescission, but preferred money damages for breach of contract. RP 1399. The election issue was raised again at the second hearing on proposed findings and conclusions and plaintiffs finally elected to seek rescission. That second hearing involved a discussion of pre-judgment interest on the purchase price. The court observed it would award interest only if rescission was not elected. RP 1481. At that point

the plaintiffs still had not decided whether to seek rescission or damages for alleged breach of contract, and that hearing was recessed to allow them to deliberate further. RP 1505.

At the final hearing, plaintiffs finally decided to elect rescission, and the court again considered argument on the allowance of damages and interest. The court clarified that its award of consequential damages was based on the tort of negligent misrepresentation, not rescission. RP 1528. Those damages should be deleted because of the arguments made in support of Issue No. 1 above. Contrary to the court's earlier comments (RP 1481) it ruled that as part of the rescission plaintiffs were entitled to interest on the entire purchase price.

In prior cases where interest was awarded, it was awarded to reimburse the buyer for money the buyer had previously paid. See *Wilkinson v. Smith*, 31 Wn App 1, 639 P2d 768 (1982).

In this case, plaintiffs paid only \$1,700, plus one mortgage payment. They did not pay \$149,000, and they allowed their mortgage to go into default and foreclosure. The proper terms of rescission, if it is to be allowed, would simply require defendants to satisfy plaintiffs' obligation on the mortgage, including whatever interest or fees are charged

by the lender, and reimburse plaintiffs for the approximately \$3,000 they actually paid. As stated above, the remedy should be fashioned to return the parties to their respective positions prior to entering into the contract. The allowance of damages by way of restitution should not reward one party or penalize the other party. It was also error for the court to rule at Conclusion No. 25 that defendants pay a surplus to the plaintiffs if the underlying mortgage could be satisfied for a lesser sum. At Conclusion No. 25 the court ordered defendants to pay into court a sum of money believed sufficient to satisfy the lender and redeem the property, but the court then ordered: “. . . the Fritzes may apply to this court for entry of an order disbursing said payment to the lender of the Bloors to satisfy the indebtedness secured by the Property, with any excess to be received by the Bloors.” Again, that order penalizes defendants and rewards plaintiffs rather than simply returning them to the status quo.

#### **ARGUMENT ON ISSUE NO. 5**

It was error for the court to award damages for emotional distress.

#### **STANDARD FOR REVIEW**

The court may review de novo the trial court’s legal conclusion that damages for mental anguish or emotional distress were recoverable.

**A. Damages for Emotional Distress May Not Be Recovered for Rescission**

Plaintiffs should not be entitled to argue that damages for emotional distress were awarded as part of the rescission remedy because the trial court expressly stated those damages were awarded for negligent misrepresentation. RP 1528.

In addition, the court in *Wilkinson v. Smith, supra*, held damages for mental distress could not be recovered for a rescinded contract.

Finally, for the reasons stated under Issue No. 1, damages for negligent misrepresentation should be stricken from the case because there can be no claim under that theory in these circumstances.

**B. Damages for Emotional Distress May Not Be Recovered on These Facts**

A mere breach of contract does not give rise to damages for emotional distress. In *Gaglidari v. Denny's Restaurant*, 117 Wn2d 426, 815 P2d 1362 (1991), the Supreme Court completed a thorough review of the law concerning emotional distress damages for breach of contract. The plaintiff had sought those damages in connection with her claim for wrongful termination of employment. The court reviewed with approval

the law as set out in *Restatement of Contracts* (Second) § 353, pointing out that damages for emotional distress may be allowed in only a few types of contracts where that type of damage is reasonably foreseeable. This is not one of the categories of contracts recognized in the Restatement. The court also acknowledged that in some cases the defendants' behavior may constitute a tort which permits damages for mental distress. Again, this is not such a case. The tort theory relied upon by the court in this case was negligent misrepresentation, and as pointed out above, that theory should not have been applied to these facts.

Cases allowing negligent infliction of emotional distress require much more egregious behavior, as demonstrated in *Colbert v. Moomba Sports, Inc.*, 132 Wn App 916, 135 P3d 485 (2006).

This case involves an arms-length transaction for the sale of a residence. As stated by the court in *Gaglidari* it would cause a "profound change in the law" if damages for emotional distress were allowed in these circumstances. 117 Wn2d at 448. To avoid such a profound change it is necessary to adhere to the historical distinction between tort and contract law. That same policy is behind the court's decision that claims for

negligent misrepresentation should not be permitted for economic loss.

*Alejandro v. Bull, supra.*

Plaintiffs' claims for damages for emotional distress should be dismissed.

#### **ARGUMENT ON ISSUE NO. 6**

The trial court erred in awarding plaintiffs litigation expenses of \$18,975.55, in addition to attorney fees, pursuant to the terms of the Real Estate Purchase and Sale Agreement.

#### **STANDARD FOR REVIEW**

The court reviews de novo the court's legal conclusion that the contract between plaintiffs and defendants provided for an award of litigation expenses. Interpretation of a contract is a matter of law for the court. *Columbia CU Committee v. Columbia Community Credit Union*, 134 Wn App 175, 139 P3d 386 (2006).

**A. The Contractual Provision for Attorney Fees to the Prevailing Party Did Not Encompass the Expenses Awarded by the Court**

The Real Estate Purchase Agreement contained an attorney fee provision as follows:

“If buyer or seller institutes suit against the other concerning this agreement, the

prevailing party is entitled to reasonable attorney fees and expenses.” Ex. 41

The court concluded the attorney fee provision obligated the defendants to pay legal expenses incurred by the Bloors in the amount of \$18,975.55. CP 46. The court itemized the expenses which make up this total at Finding of Fact LXIV. CP 31. It included expert witness fees of \$9,497.81, court reporter fees of \$5,456.95, travel expenses of \$1,526.92, mediation expenses of \$1,075, plus some miscellaneous expenses which fit more closely into the statutory definition of costs. The expenses itemized above, however, are not expenses traditionally thought of as costs to be included in a claim for costs and attorney fees.

The general rule is that parties to litigation bear their own attorney fees and costs. Exceptions are made to this rule only by statute, contract or equitable considerations established by case law. In this case there is a statutory provision that allows recovery of attorney fees and costs where there is an appropriate contractual provision. RCW 4.84.330 provides that if a contract “specifically provides that attorney fees and costs” shall be awarded to one of the parties, the prevailing party is entitled to “reasonable attorney fees in addition to costs and necessary disbursements”. But for this statutory authority, the court would not have authority to award

attorney fees. The limitations of the statute regarding reasonable fees and costs apply, despite any particular contractual provision. Absent statutory authorization, a court would not be empowered to award expenses as part of a judgment.

Costs are defined by RCW 4.84.080 to include only certain fees and expenses. Faced with a similar attorney fee provision, the court in *Paradiso v. Drake*, 135 Wn App 329, 143 P3d 859 (2006) awarded attorney fees and costs as defined in the statute. The attorney fee provision in that case, as in this case, referred to attorney fees and expenses. The court did not explicitly address the difference between “expenses” and “costs” but the court implicitly interpreted the word expenses to mean costs that are statutorily authorized.

In this case plaintiffs claimed expert fees as recoverable expenses. Expert fees are not recoverable costs under RCW 4.84.010. The Washington Supreme Court has allowed recovery of expert fees in one limited type of case. *Panorama Village Condominium Owners Association v. Allstate Insurance Company*, 144 Wn2d 910, 26 P3d 910 (2001). In that case the insured was forced to litigate insurance coverage issues and prior case law held the insured should be made whole for the

expense of bringing suit. The limited holding and rationale of that case is not applicable here.

Plaintiffs have also claimed court reporter fees. RCW 4.84.010 allows the court to exercise discretion in awarding the cost of deposition transcripts, but the award is limited to a pro rata amount based on the portions of the transcript actually used at trial. Plaintiffs have made no attempt to prorate the portion of the transcripts used at trial and accordingly, the court should award no expenses.

There is no authority for plaintiffs' claim for travel expenses in the amount of \$1,526.92. There is also no authority for the claim for mediation expenses.

In addition, as more thoroughly explained below, even if the attorney fee clause in the Real Estate Purchase and Sale Agreement authorizes expenses in addition to attorney fees, they should be apportioned to reflect only the fees and expenses incurred in litigating issues arising under the contract. To the extent plaintiffs' costs and expenses are incurred litigating claims for which no attorney fees are provided, such as the claims against other parties in the case, the court should not have awarded fees, costs or expenses.

### **ARGUMENT ON ISSUE NO. 7**

The trial court erred in concluding that the Fritz defendants and the Windermere defendants are jointly and severally liable for attorney fees, expenses and costs.

### **STANDARD FOR REVIEW**

The question whether a party is entitled to attorney fees pursuant to contract is a question of law to be decided by the court. The appellate court reviews de novo the trial court's determination of plaintiffs' entitlement to attorney fees. *C. C. Bottlers Limited v. JM Leasing Inc.*, 78 Wn App 384, 896 P2d 1309 (1995).

**A. In Suits Involving Multiple Claims, Attorney Fees Must be Segregated and the Court Should Award Only the Fees Reasonably Attributable to the Claim for Which Fees are Recoverable**

In Conclusion of Law 36, the court held plaintiffs should receive attorney fees "against the Fritzes, Miller and LC Realty, Inc., jointly and severally." CP 45. The court also made a finding at paragraph LXXXIII that the Fritzes, along with defendants Miller and LC Realty, Inc., should be jointly and severally liable for 90% of the Bloor's attorney fees.

There were two possible claims in the case which could result in attorney fees to the plaintiffs if they prevail. One was the action under their Real Estate Purchase and Sale Agreement with the Fritzes and the other was the Consumer Protection Act claim against the Realtor defendants. There were, however, many other claims in the litigation which did not provide for attorney fees to the prevailing party. A quick review of plaintiffs' trial brief shows the complexity and number of theories asserted for which they could not recover attorney fees. This included claims against the County for breach of statutory duty, which required consideration of the public duty doctrine and its exceptions and permutations, and exhaustion of administrative remedies. The claims against defendants Fritz also included claims not based on breach of the Real Estate Contract. This included breach of statutory duty, common law fraud and negligent misrepresentation. Against the Realtor defendants, Allen & Associates, LAM Management and Lance Miller, plaintiffs asserted violations of the Consumer Protection Act and breach of fiduciary duty as well as ordinary negligence.

Clearly, plaintiffs only claim for attorney fees against defendants Fritz arises from their claim of breach of contract or rescission of the Real

Estate Purchase and Sale Agreement. It is also clear that substantial time and effort was spent litigating claims and issues which have no bearing on the breach of contract or rescission questions. The trial court awarded attorney fees to plaintiffs which included their time on unrelated issues and claims.

The law permits a recovery of attorney fees only when authorized by statute or contract. In *Kastanis v. Education Employees Credit Union*, 122 Wn2d 483, 859 P2d 26 (1994), the court held attorney fees should not have been awarded where there was no effort to segregate the fees between claims upon which the plaintiff prevailed and claims upon which he did not prevail. The court stated:

“This court has held that a plaintiff can be required to segregate its attorney fees between successful and unsuccessful claims that allow for the award of fees. . . . If the claims are unrelated, the court should award only the fees reasonably attributable to the recovery.”

A similar issue was decided by the Court of Appeals in *C.C. Bottlers, Ltd. v. JM Leasing, Inc.*, 78 Wn App 384, 896 P2d 1309 (1995). In that case the plaintiff filed the action to collect a debt on two delinquent promissory notes. The notes contained attorney fee provisions. The

defendant counterclaimed for securities fraud and that claim did not have an attorney fee feature. Although plaintiff prevailed on his effort to collect on the promissory notes, and he defeated the counterclaim for securities fraud, the court held it was error to award the plaintiff attorney fees for defense of the securities fraud claim. The court noted the general rule that attorney fees may be awarded only when authorized by contract, statute or some recognized ground in equity. The court also noted that since the plaintiff's action on the notes was independent of the plaintiff's defense of the securities fraud counterclaim, time and expenses should have been segregated. Citing *Tradewell Group, Inc. v. Mavis*, 71 Wn App 120, 857 P2d 1053 (1993), the court held

“the prevailing party should be awarded attorney fees only for the legal work completed on the portion of the claim permitting such an award, because while collateral claims may well be related to the contract claim and therefore conveniently tried together, they need not be resolved in order to decide the primary claim. . . . Allowing recovery for actions which do not authorize attorney fees would also give the prevailing party and unfair and unbargained for benefit.” 78 Wn App at 389

During discussion of this issue, while raising objections to the court's Findings and Conclusions, counsel for Mr. & Mrs. Fritz proposed

to the court that the attorney fee award should be split equally between the Realtor defendants and the Fritz defendants. Even that proposal by defense counsel is overly generous to plaintiffs inasmuch as no attorney fees should be recoverable for the time and effort spent litigating the claims against Cowlitz County. The court in *Kastanis, supra*, reversed the trial court's award of attorney fees because no effort was made to properly segregate the fees. The burden is on plaintiffs to establish their entitlement to fees for claims for which fees are recoverable and since that did not occur, the claim for attorney fees should be denied.

**ATTORNEY FEES (RAP 18.1)**

As found by the trial court, the Real Estate Purchase and Sale Agreement between the Bloors and the Fritzes provided for an award of attorney fees and expenses to the prevailing party. Pursuant to RCW 4.84.330 fees and expenses should be awarded to the Fritz defendants if they prevail on appeal with regard to Issue No. 2 above. *Herzog Aluminum, Inc. v. General American Window Corp.*, 39 Wn App 188, 692 P2d 867 (1984).

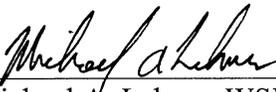
**CONCLUSION**

The judgment in favor of plaintiffs should be reversed for the reasons set out above concerning Issues Nos. 1 and 2. Attorney fees should then be awarded to defendants/appellants Robert and Charmaine Fritz.

In the alternative, the judgment should be corrected to delete inappropriate damage awards, amend the terms for rescission and reduce plaintiffs' claim for attorney fees.

DATED this 31<sup>st</sup> day of May, 2007.

LEHNER & RODRIGUES PC

By   
Michael A. Lehner, WSB #14189  
Of Attorneys for Appellants Fritz

CERTIFICATE OF SERVICE

I hereby certify that the original and 1 copy of **OPENING BRIEF OF APPELLANTS FRITZ** was filed with the State Court Administrator on May 31, 2007, by depositing the same in the United States mail in Portland, Oregon, enclosed in a sealed envelope with first-class postage thereon fully prepaid and addressed as follows:

Court Clerk  
 Washington Court of Appeals  
 Division II  
 950 Broadway, Ste. 300 MS TB-06  
 Tacoma, WA 98402-4454

I hereby certify that I served a true copy of the foregoing **OPENING BRIEF OF APPELLANTS FRITZ** on:

Todd S. Rayan  
 Attorney at Law  
 Olson Althaus Lawler & Samuelson  
 P. O. Box 210  
 Centralia, WA 98531  
*Attorneys for Respondents*

Brandi Lane Adams  
 Melanie A. Leary  
 Demco Law Firm  
 52224 Wilson Avenue S., Suite 200  
 Seattle, WA 98118  
*Attorneys for Appellants Miller, LAM  
 Management and LC Realty*

by causing a full, true and correct copy thereof to be **MAILED** in a sealed, postage-paid enveloped, addressed as shown above, which is the last-known address for the party's office, and deposited with the U.S. Postal Service at Portland, Oregon, on the date set forth below;

DATED this 31st day of May, 2007.

LEHNER & RODRIGUES PC

By   
 Michael A. Lehner, WSB #14189  
 Of Attorneys for Appellants Fritz

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 COURT ADMINISTRATOR  
 STATE OF WASHINGTON  
 BY DEPUTY

# APPENDIX

STATE FARM FIRE

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Kathy A. Brack  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF LEWIS

EDDIE BLOOR AND EVA BLOOR,  
husband and wife,

Plaintiffs,

vs.

ROBERT A. FRITZ and CHARMAINE A.  
FRITZ, and the marital community  
comprised thereof; LANCE MILLER, a  
single person; LAM MANAGEMENT, INC.,  
a Washington Corporation, dba ALLEN &  
ASSOCIATES PROPERTY  
MANAGEMENT; LC REALTY, INC., a  
Washington corporation, dba  
WINDERMERE REAL ESTATE/ALLEN &  
ASSOCIATES; COWLITZ COUNTY, a  
political subdivision of the State of  
Washington,

Defendants.

No. 05-2-00628-3

AMENDED COMPLAINT

COME NOW, Eddie Bloor and Eva Bloor, husband and wife, by and through their  
attorney, Todd S. Rayan, of OLSON ALTHAUSER LAWLER & SAMUELSON, and for cause  
of action against Defendants, state as follows:

I. JURISDICTION AND VENUE

(.) This court has jurisdiction over this case pursuant to RCW 2.08.010.

AMENDED COMPLAINT - 1

OLSON ALTHAUSER LAWLER & SAMUELSON  
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1.2 Venue is proper in Lewis County, Washington, as one of the Defendants is Cowlitz County, and Lewis County is one of the two nearest judicial districts pursuant to RCW 36.01.050.

II. PARTIES

2.1 Plaintiffs Eddie Bloor and Eva Bloor are married adult persons and reside in Spokane, Spokane County, Washington, and are referred to herein as "BLOORS."

2.2 Defendants Robert A. Fritz and Dolores A. Fritz are believed to be married adult persons, residing in Casper, Natrona County, Wyoming, and are referred to herein as "FRITZ."

2.3 Defendant Lance Miller is believed to be a single person who works as a real estate agent for Defendant LC Realty, Inc., and is referred to herein as "MILLER."

2.4 Defendant LC Realty, Inc., is a Washington corporation that does business as Windermere Real Estate Allen & Associates, with its principal place of business in Longview, Cowlitz County, Washington, and is referred to herein as "LC REALTY."

2.5 Defendant LAM Management, Inc., is a Washington corporation that does business as Allen & Associates Property Management, with its principal place of business in Longview, Cowlitz County, Washington, and is referred to herein as "LAM."

2.6 Defendant Cowlitz County is a political subdivision of the State of Washington, is the lead and responsible entity for the Cowlitz/Wahkiakum Joint Narcotics Task Force, and is referred to herein as "COWLITZ COUNTY."

AMENDED COMPLAINT - 2

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III. FACTUAL ALLEGATIONS

3.1 On July 10, 2004, BLOORS entered into a Real Estate Purchase and Sale Agreement (herein referred to as "REPSA") with FRITZ for the sale of real property on which there is a residence and outbuildings, herein referred to as the "Property," the legal description of which is attached hereto as Exhibit "A."

3.2 BLOORS learned of the property at or before the time it was listed for sale, and searched to find the listing agent for FRITZ. BLOORS contacted MILLER, the listing agent and employee of LC REALTY.

3.3 MILLER represented to the BLOORS that he was acting as a dual agent, and indicated the same on the agency disclosure section of the REPSA that was eventually prepared by MILLER for BLOORS and FRITZ.

3.4 From at least January of 2004 through the date of the sale to BLOORS of the property by FRITZ, MILLER and LAM acted as the property manager for FRITZ. On FRITZ'S behalf, MILLER and LAM rented the Property to persons who occupied the premises.

3.5 On January 30, 2004, Cowlitz/Wahkiakum Joint Narcotics Task Force detectives discovered that illegal drug manufacturing was being conducted on the Property. The detectives made arrests, executed search warrants, and seized evidence that showed that a clandestine methamphetamine lab existed on the Property.

3.6 Evidence of the methamphetamine lab was removed from the Property, and photographs of the implements of the methamphetamine manufacturing were secured and used as evidence in criminal proceedings that followed the arrests.

AMENDED COMPLAINT - 3

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3.7 Neither the Task Force members nor any other law enforcement officials reported the illegal drug manufacturing activity on the Property to the local health officer of the Cowlitz County Health Department. Prior to October 29, 2004, no record of the clandestine drug lab that was discovered on the Property was recorded with the county auditor as required by RCW 64.44.020.

3.8 On four separate occasions in early 2004, Cowlitz County law enforcement officers spoke directly with FRITZ and informed them of the methamphetamine manufacturing lab that had been discovered on the Property.

3.9 In the Spring of 2004, MILLER and LAM, acting as the agent for FRITZ, issued a notice to vacate the premises to the occupants of the Property, which notice was based in part upon the illegal drug manufacturing that had been taking place on the Property.

3.10 After the tenants vacated, FRITZ, through MILLER and LAM, then re-rented the Property to another tenant who was also eventually evicted from the Property.

3.11 In late Spring of 2004, FRITZ prepared the Property for sale by painting the residence interior and making repairs thereto with full knowledge of the prior existence of the methamphetamine manufacturing lab on the Property, all without first testing the premises for toxic materials

3.12 At or prior to the time of the closing of the sale to BLOORS, pursuant to RCW 64.06.020, FRITZ completed and provided to BLOORS a Real Property Transfer Disclosure Statement (the "Disclosure Statement").

3.13 On the Disclosure Statement, FRITZ stated that the Property had never been used as an illegal drug manufacturing site. The representation made by FRITZ was

AMENDED COMPLAINT - 4

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1 false and FRITZ and MILLER either knew, or reasonably should have known, that  
2 it was false.

3 3.14 FRITZ and MILLER failed to disclose to BLOORS that the Property had been  
4 used as an illegal drug manufacturing site. MILLER knew or should have known  
5 that information about prior illegal methamphetamine manufacturing on the  
6 Property constituted a material defect that affected the use and value of the  
7 property.  
8

9 3.15 BLOORS had no knowledge or reason to know of the falsity of the  
10 representations by FRITZ that the Property had never been used as an illegal drug  
11 manufacturing site, believed the representation by FRITZ to be true, and relied  
12 upon the representation in making the decision to purchase the Property and move  
13 all of their possessions onto the Property after the purchase.  
14

15 3.16 FRITZ made the false representation to the BLOORS for the purpose of inducing  
16 the BLOORS to purchase the Property.

17 3.17 Relying on the above-described false representation made by FRITZ, and on the  
18 public record as shown on the preliminary commitment for title insurance  
19 provided at the request of FRITZ and MILLER pursuant to the terms of the  
20 REPSA, BLOORS purchased the Property for \$149,000.00. The price paid was  
21 much greater than the fair market value of the Property considering the  
22 contamination that was later discovered to exist due to the effects of the  
23 methamphetamine manufacturing operations that had been conducted in the  
24 residence and structures on the Property.  
25  
26

AMENDED COMPLAINT - 5

OLSON ALTHAUSER LAWLER & SAMUELSON  
MASONIC BUILDING - P.O. BOX 210  
CENTRALIA, WASHINGTON 98531  
TELEPHONE (360)736-1101  
FAX (360)736-4802  
oald@centralialaw.com

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1 3.18 LC REALTY and LAM are vicariously liable to BLOORS for losses suffered by  
 2 BLOORS as a result of the breach of duties to BLOORS owed by MILLER, as  
 3 agent for FRITZ and a licensed sales associate and agent of LC REALTY. LC  
 4 REALTY received a portion of the commission received by MILLER from  
 5 FRITZ. LC REALTY owed a duty to BLOORS to assure that its sales associate  
 6 knew of and fulfilled his legal obligation to disclose to BLOORS the history of  
 7 illegal drug manufacturing on the Property.  
 8

9 3.19 COWLITZ COUNTY breached its duties as stated in RCW 64.44.020 to record  
 10 public notice of the discovery of the methamphetamine manufacturing operation  
 11 on the Property, which resulted in the absence of any public record of such illegal  
 12 use, and ultimately the purchase by BLOORS of the Property without notice or  
 13 knowledge that the Property was contaminated. BLOORS are the specific persons  
 14 to whom COWLITZ COUNTY owed the duty of publication of notice of such  
 15 illegal drug manufacturing use as the sale of the Property was foreseeable, and the  
 16 BLOORS ultimately purchased the Property. Notice of claim was properly served.  
 17  
 18

19 **IV. CAUSES OF ACTION AGAINST DEFENDANTS**

20 4.1 BREACH OF CONTRACT. The acts, omissions, and misrepresentations of  
 21 FRITZ constitute a breach of the implied warranties of fitness for use of the  
 22 Property as a residence inherent in the REPSA.

23 4.2 FRAUD. The acts, omissions and misrepresentations of FRITZ and MILLER  
 24 were fraudulent and caused the BLOORS to suffer damages. FRITZ and MILLER  
 25 made representations of existing facts related to the condition of the Property (that  
 26 no drug manufacturing had occurred on the Property), the representations were

AMENDED COMPLAINT - 6

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 tolu@centralialaw.com

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1 material to the decision by BLOORS to purchase the Property, the representations  
 2 made by FRITZ and MILLER were false (drug manufacturing had occurred on the  
 3 Property), FRITZ and MILLER knew they were false, FRITZ and MILLER  
 4 intended that the BLOORS would rely upon the representations, the BLOORS  
 5 were ignorant of the falsity of the representations made by FRITZ and MILLER.  
 6 The BLOORS did rely on the representations made by FRITZ and MILLER, the  
 7 BLOORS were entitled to rely upon the representations made by FRITZ and  
 8 MILLER, and the BLOORS were damaged by the representations because they  
 9 purchased a residence property that was and still is uninhabitable due to the  
 10 contamination of the Property from the methamphetamine manufacturing that was  
 11 conducted on the Property.

12  
 13  
 14 4.3 MISREPRESENTATION. In the alternative, the acts and representations of  
 15 FRITZ and MILLER were negligent misrepresentations for which they, LC  
 16 REALTY, and LAM are liable.

17  
 18 4.4 BREACH OF STATUTORY DUTY. The acts, omissions, and misrepresentations  
 19 of MILLER, and vicariously LAM and LC REALTY were in violation of the  
 20 duties owed to BLOORS to (1) exercise reasonable skill and care; (2) deal  
 21 honestly and in good faith; (3) and to disclose all existing material facts known by  
 22 the licensee and not apparent or readily ascertainable to a party, as provided in  
 23 RCW 18.86.030.

24  
 25 4.5 CONSUMER PROTECTION ACT. The acts, omissions, and misrepresentations  
 26 of MILLER, and vicariously, LAM and LC REALTY were in violation of RCW  
 18.86.030, which constitute a per se violation of RCW 19.86 *et seq*

AMENDED COMPLAINT - 7

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1 4.6 NEGLIGENCE. The acts and omissions of the Cowlitz/Wahkiakum Joint  
 2 Narcotics Task Force in failing to comply with RCW 64.44.020 was negligent and  
 3 caused the foreseeable injury to the subsequent purchaser of the Property, the  
 4 BLOORS. COWLITZ COUNTY had a statutory duty to report to the local health  
 5 officer of the Cowlitz County Health Department the discovery of illegal drug  
 6 manufacturing on the Property which duty was breached as a result of the failure  
 7 to report such manufacturing.  
 8

9 V. ARMED FORCES

10 5.1 None of the Defendants are believed to be members of the armed forces in the  
 11 United States or any other country.  
 12

13 VI. ATTORNEY FEES

14 6.1 The Plaintiffs are entitled to recover their costs and attorney fees from FRITZ,  
 15 MILLER, LC REALTY, and LAM pursuant to the attorney fee provision in the  
 16 REPSA, and pursuant to RCW 19.86 *et seq.*  
 17

18 VII. DAMAGES

19 7.1 As a direct and proximate result of the above described conduct by the  
 20 Defendants, Plaintiffs sustained the following damages:

21 7.1.1 Costs and expenses associated with statutorily required environmental  
 22 cleanup of the Property, including all costs incidental thereto.

23 7.1.2 Costs to restore or replace any of the BLOOR'S personal property lost or  
 24 destroyed as a result of the contamination thereof or the cleanup activities.

25 7.1.3 Lost wages, lost business opportunity, and out-of-pocket expenses  
 26 necessarily incurred for storage, rent, and other moving and living expenses

AMENDED COMPLAINT - 8

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1 incurred by the BLOORS due to the contamination of the Property and the  
2 Defendants' failure to disclose the contamination to the BLOORS.

3 7.1.4 General damages for pain and suffering and emotional distress suffered by  
4 the BLOORS that was caused by the ordeal of moving into a residence only to  
5 learn that it is dangerously contaminated and that all of their personal belongings  
6 are likewise now dangerously contaminated.  
7

8 7.1.5 Treble the amount of damages suffered by the BLOORS up to \$10,000.00  
9 pursuant to RCW 19.86.090, as to the claims against MILLER, LC REALTY and  
10 LAM.

11 7.1.6 The loss in value suffered, described as the difference between the value as  
12 represented and the actual value of the Property in the condition in which it  
13 existed at the time of the sale. The cost to repair and the difference in value will  
14 be shown at time of trial.  
15

16 **VIII. RESCISSION**

17 8.1 In the alternative, if FRITZ is able to pay the amounts necessary to rescind the  
18 transaction of sale with BLOORS, BLOORS are entitled to a rescission of their  
19 purchase of the Property and judgment against FRITZ for the amount of their  
20 purchase money, interest thereon, and all interest, taxes, insurance, and other costs  
21 of ownership paid.  
22

23 **IX. REQUEST FOR RELIEF**

24 **WHEREFORE**, having made complaint against Defendants, BLOORS pray for relief as  
25 follows:  
26

AMENDED COMPLAINT - 5

OLSON AT THALBERG LAWLER & SANIURLESON  
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1. For entry of judgment against FRITZ rescinding the purchase if FRITZ is able to repay the sums necessary for a rescission, or in the alternative, for entry of judgment against the FRITZ in an amount to be proven at trial to complete the remediation of the Property to the condition represented by FRITZ at the time of the sale to BLOORS, and entry of judgment in favor of BLOORS for the difference in value of the property as delivered after remediation from that which was represented, along with the BLOORS' damages, including, but not limited to, damages due to contaminated personal property, lost income, mental and emotional distress, costs and reasonable attorney fees, all in an amount to be shown at trial.
2. For entry of judgment against MILLER, LAM and LC REALTY in such amount as the court shall determine for damages suffered by BLOORS as stated herein.
3. For entry of judgment against FRITZ, MILLER, LAM, and LC REALTY in such amount as the court shall deem proper for Plaintiffs' reasonable attorney fees and costs herein pursuant to the provisions of the REPSA, the Consumer Protection Act (RCW 19.86.090), and to the extent otherwise allowed by law.
4. For entry of judgment against MILLER, LAM and LC REALTY for treble damages up to \$10,000.00 as allowed pursuant to RCW 19.86.090.
5. For entry of judgment against FRITZ, MILLER, LAM, LC REALTY and COWLITZ COUNTY in an amount to be proven at trial for lost wages, lost rental value, storage costs, lost business opportunity, moving expenses, destruction of personal property, loss of the enjoyment of life from the date of discovery of the

AMENDED COMPLAINT - 10

OLSON ALTHAUSER LAWLER & SAMUELSON  
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contamination of the Property until the date of entry of judgment, and for emotional distress.

6. For entry of such other and further relief as the court shall deem proper.

DATED this 20th day of May 2005.

OLSON, ALTHAUSER, LAWLER  
& SAMUELSON  
Attorneys for Plaintiffs

By:

  
Todd S. Rayan, WSEA 34090

AMENDED COMPLAINT - 11

OLSON ALTHAUSER LAWLER & SAMUELSON  
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**EXHIBIT A**

**Parcel Account Number: WG34-12-005**

LOT 1 OF SHORT PLAT NO. 81-027 AS RECORDED AUGUST 27, 1981, UNDER AUDITOR'S FILE NO. 810827059, IN VOLUME 5 OF SHORT PLATS, PAGE 51, BEING A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER AND GOVERNMENT LOT 1 IN SECTION 34, TOWNSHIP 10 NORTH, RANGE 1 WEST OF THE W.M.

EXCEPTING THAT PORTION CONVEYED TO THE STATE OF WASHINGTON, UNDER AUDITOR'S FILE NO. 850827006.

SITUATE IN THE COUNTY OF COWLITZ, STATE OF WASHINGTON



SUBJECT TO covenants, conditions, restrictions, reservations, easements and agreements of record, if any.

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF LEWIS**

EDDIE BLOOR, et ux.,  
  
Plaintiffs,  
  
v.  
  
ROBERT A. FRITZ, et ux., et al.,  
  
Defendants.

NO. 05-2-00628-3

ANSWER BY DEFENDANTS LANCE  
MILLER, LAM MANAGEMENT, INC.  
AND LC REALTY, INC.

COME NOW Defendants Lance Miller, LAM Management, Inc. and LC Realty, Inc. (collectively "the Windermere defendants"), by and through their attorneys, Melanie A. Leary and the Demco Law Firm, P.S., and answer the plaintiffs' amended complaint. Paragraph numbers correspond to those of the amended complaint. "Insufficient knowledge" is an abbreviation for "responding defendants have insufficient knowledge and information upon which to form an answer and therefore deny."

**I. ANSWER**

- 1.1 Deny.
- 1.2 Deny.
- 2.1 Insufficient knowledge.
- 2.2 Insufficient knowledge.

b/l

1 2.3 Admit that Defendant Lance Miller is a real estate salesperson licensed to and working as  
2 an independent contractor for Defendant LC Realty, Inc. Deny all other allegations  
3 contained in paragraph 2.3.

4 2.4 Admit.

5 2.5 Admit.

6 2.6 Admit that Defendant Cowlitz County is a political subdivision of the State of  
7 Washington. Insufficient knowledge with respect to all other allegations contained in  
8 paragraph 2.6.

9 3.1 Admit that the Bloors entered into a real estate purchase and sale agreement with the  
10 Fritzes for the sale of real property improved by a residence and outbuildings. Admit that  
11 the legal description of the subject property is attached to the amended complaint as  
12 Exhibit A. Deny all other allegations contained in paragraph 3.1.

13 3.2 Admit that the Bloors contacted Miller, who was the listing agent for the Fritzes. Deny  
14 that Miller is an employee of LC Realty. Insufficient knowledge with respect to all other  
15 allegations contained in paragraph 3.2.

16 3.3 Admit that the Bloors and the Fritzes consented to Miller acting as a dual agent in the  
17 subject transaction and that Miller properly disclosed the dual agency in the subject  
18 purchase and sale agreement that he prepared in accordance with the Bloors' request.

19 3.4 Admit.

20 3.5 Insufficient knowledge.

21 3.6 Insufficient knowledge.

22 3.7 Insufficient knowledge.

23 3.8 Insufficient knowledge.

24 3.9 Admit that sometime in the spring of 2004, LAM Management, Inc., acting as the  
25 Fritzes' property manager, issued a notice to vacate the premises to the occupants of the  
26 property. Deny all other allegations contained in paragraph 3.9.

1 3.10 Admit.

2 3.11 Insufficient knowledge.

3 3.12 Admit.

4 3.13 Admit the first sentence. Deny that Miller knew or reasonably should have known that  
5 any representations by Fritz were false. Insufficient knowledge with respect to all other  
6 allegations contained in paragraph 3.13.

7 3.14 Insufficient knowledge with respect to Fritz. Deny with respect to Miller.

8 3.15 Deny.

9 3.16 Insufficient knowledge.

10 3.17 Admit that the Bloors purchased the property for \$149,000.00. Deny all other allegations  
11 contained in paragraph 3.17.

12 3.18 Deny.

13 3.19 Insufficient knowledge.

14 4.1 Insufficient knowledge.

15 4.2 Deny with respect to Miller. Insufficient knowledge with respect to Fritz.

16 4.3 Deny with respect to Miller, LC Realty and LAM Management. Insufficient knowledge  
17 with respect to Fritz.

18 4.4 Deny.

19 4.5 Deny.

20 4.6 Insufficient knowledge.

21 5.1 Admit upon information and belief.

22 6.1 Deny with respect to Miller, LC Realty and LAM Management. Insufficient knowledge  
23 with respect to Fritz.

24 **II. AFFIRMATIVE DEFENSES**

25 BY WAY OF FUTHER ANSWER AND AFFIRMATIVE DEFENSES, the Windermere  
26 defendants state as follows:

- 1 1. The alleged damages, if any, were caused by persons and entities other than the
- 2 Windermere defendants, including, but not limited to, the plaintiffs themselves,
- 3 Defendants Fritz, Defendant Cowlitz County, and/or the Fritzes' tenants.
- 4 2. Plaintiffs' claims are barred by waiver and/or estoppel.
- 5 3. Plaintiffs have alleged fraud without setting forth the circumstances with sufficient
- 6 particularity as required by CR 9(b).
- 7 4. Plaintiffs have not set forth their alleged damages with sufficient particularity.
- 8 5. Plaintiffs have failed to state a claim upon which relief may be granted against the
- 9 Windermere Defendants.
- 10 6. Plaintiffs assumed the risk with respect to the existence of the alleged defects.
- 11 7. Plaintiffs' claims against the Windermere defendants are frivolous and brought without
- 12 reasonable cause.
- 13 8. Plaintiffs expressly conditioned their purchase offer on an independent inspection of the
- 14 condition of the property and therefore did not rely upon any representation, of either
- 15 opinion or fact, made by the Windermere defendants.
- 16 9. Plaintiffs failed to mitigate their alleged damages.
- 17 10. Plaintiffs were contributorily negligent and/or comparatively at fault.

### 18 III. RESERVATION OF RIGHTS

19 The Windermere defendants expressly reserve their right to plead further answer,  
20 affirmative defenses, counterclaims, cross-claims and/or third-party claims, as investigation and  
21 discovery may warrant.

22  
23 WHEREFORE, the Windermere defendants seek the following relief:

- 24 1. Dismissal with prejudice of all claims against them;
- 25
- 26

- 1 2. Costs, disbursements, and reasonable attorney's fees, as may be found applicable  
2 pursuant to contract and/or RCW 4.84.185, 4.84.250, 4.84.330, other statutes, court rules,  
3 case authority and/or equity; and  
4 3. Such other relief as the court may award.

5  
6 DATED this 16th day of June, 2005.

7 DEMCO LAW FIRM, P.S.

8 By Melanie A. Leary  
9 Melanie A. Leary, WSBA #21050  
10 Attorneys for Defendants Miller, LAM  
11 Management, Inc. and LC Realty, Inc.  
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SUPERIOR COURT OF WASHINGTON FOR LEWIS COUNTY

EDDIE BLOOR and EVA BLOOR,  
husband and wife,

Plaintiffs,

vs.

ROBERT A. FRITZ and CHARMAINE  
A. FRITZ, and the marital community  
comprised thereof; LANCE MILLER, a  
single person; ALLEN & ASSOCIATES;  
WINDERMERE REAL ESTATE  
SERVICE COMPANY, a Washington  
Corporation; COWLITZ COUNTY, a  
political subdivision of the State of  
Washington,

Defendants.

NO. 05-2-00628-3

DEFENDANT COWLITZ COUNTY'S  
ANSWER AND AFFIRMATIVE  
DEFENSES

1.1 Admit

1.2 Admit

2.1 Admit

2.2 Defendant Cowlitz County is without information or knowledge sufficient to form a belief as to the truth of paragraph 2.2, and, therefore, denies the same.

2.3 Defendant Cowlitz County is without information or knowledge sufficient to form a belief as to the truth of paragraph 2.3, and, therefore, denies the same.

2.4 Defendant Cowlitz County is without information or knowledge sufficient to form a belief as to the truth of paragraph 2.4, and, therefore, denies the same.

2.5 Defendant Cowlitz County is without information or knowledge sufficient to form a belief as to the truth of paragraph 2.5, and, therefore, denies the same.

DEFENDANT COWLITZ COUNTY'S  
ANSWER AND AFFIRMATIVE DEFENSES -

1 2.6 Defendant Cowlitz County admits it is a political subdivision of the State of Washington.  
2 The remainder of paragraph 2.6 is a mixture of factual allegations and conclusions of law  
and is denied on that basis.

3 3.1 Defendant Cowlitz County is without information or knowledge sufficient to form a  
4 belief as to the truth of paragraph 3.1, and, therefore, denies the same.

5 3.2 Defendant Cowlitz County is without information or knowledge sufficient to form a  
6 belief as to the truth of paragraph 3.2, and, therefore, denies the same.

7 3.3 Defendant Cowlitz County is without information or knowledge sufficient to form a  
8 belief as to the truth of paragraph 3.3, and, therefore, denies the same.

9 3.4 Defendant Cowlitz County is without information or knowledge sufficient to form a  
10 belief as to the truth of paragraph 3.4, and, therefore, denies the same.

11 3.5 Admit.

12 3.6 Admit.

13 3.7 Defendant Cowlitz County is without information or knowledge sufficient to form a  
14 belief as to the truth of paragraph 3.7, and, therefore, denies the same.

15 3.8 Defendant Cowlitz County is without information or knowledge sufficient to form a  
16 belief as to the truth of paragraph 3.8, and, therefore, denies the same.

17 3.9 Defendant Cowlitz County is without information or knowledge sufficient to form a  
18 belief as to the truth of paragraph 3.9, and, therefore, denies the same.

19 3.10 Defendant Cowlitz County is without information or knowledge sufficient to form a  
20 belief as to the truth of paragraph 3.10, and, therefore, denies the same.

21 3.11 Defendant Cowlitz County is without information or knowledge sufficient to form a  
22 belief as to the truth of paragraph 3.11, and, therefore, denies the same.

23 3.12 Defendant Cowlitz County is without information or knowledge sufficient to form a  
24 belief as to the truth of paragraph 3.12, and, therefore, denies the same.

25 3.13 Defendant Cowlitz County is without information or knowledge sufficient to form a  
26 belief as to the truth of paragraph 3.13, and, therefore, denies the same.

3.14 Defendant Cowlitz County is without information or knowledge sufficient to form a  
belief as to the truth of paragraph 3.14, and, therefore, denies the same.

3.15 Defendant Cowlitz County is without information or knowledge sufficient to form a  
belief as to the truth of paragraph 3.15, and, therefore, denies the same.

3.16 Defendant Cowlitz County is without information or knowledge sufficient to form a  
belief as to the truth of paragraph 3.16, and, therefore, denies the same.

3.17 Defendant Cowlitz County is without information or knowledge sufficient to form a  
belief as to the truth of paragraph 3.17, and, therefore, denies the same.

1 3.18 Paragraph 3.18 contains conclusions of law not allegations of fact which can be fairly admitted or denied. It is denied on that basis.

2 3.19 Paragraph 3.19 contains conclusions of law not allegations of fact which can be fairly  
3 admitted or denied. It is denied on that basis.

4 4.1 Paragraph 4.1 contains conclusions of law not allegations of fact which can be fairly admitted or denied. It is denied on that basis.

5 4.2 Paragraph 4.2 contains conclusions of law not allegations of fact which can be fairly  
6 admitted or denied. It is denied on that basis.

7 4.3 Paragraph 4.3 contains conclusions of law not allegations of fact which can be fairly admitted or denied. It is denied on that basis.

8 4.4 Paragraph 4.4 contains conclusions of law not allegations of fact which can be fairly  
9 admitted or denied. It is denied on that basis.

10 4.5 Paragraph 4.5 contains conclusions of law not allegations of fact which can be fairly admitted or denied. It is denied on that basis.

11 4.6 Paragraph 4.6 contains conclusions of law not allegations of fact which can be fairly  
12 admitted or denied. It is denied on that basis.

13 5.1 Admit.

14 6.1 Paragraph 6.1 contains conclusions of law not allegations of fact which can be fairly admitted or denied. It is denied on that basis.

15 7.1 Defendant Cowlitz County denies that the plaintiffs are entitled to recover any of the  
16 damages set forth in paragraph 7.1.1-7.1.6 from Cowlitz County.

17 Defendant Cowlitz County further denies that the plaintiffs are entitled to recover from it the relief they request in sections VIII and IX of the complaint.

18 " AFFIRMATIVE DEFENSES

19 By way of FURTHER ANSWER and AFFIRMATIVE DEFENSES, defendant Cowlitz  
20 County alleges:

21 1. That the injuries and/or damages sustained, if any, were proximately caused by  
22 the fault of third persons over whom this defendant had no control, including, but not limited to, Robert A. and Charmaine A. Fritz, Lance Miller, LAM Management, Inc., Allen & Associates Property Management, LC Realty, Inc., and Windermere Real Estate/Allen & Associates.

23 2. That the injuries and damages, if any, claimed by the plaintiffs were proximately  
24 caused or contributed to by the fault of plaintiffs.

25 This defendant expressly reserve the right to amend this Answer, including the addition  
26 of affirmative defenses warranted by investigation and discovery, and to make such amendments either before or during trial, including asserting other defense theories or conforming the pleadings to the proof offered at the time of trial.

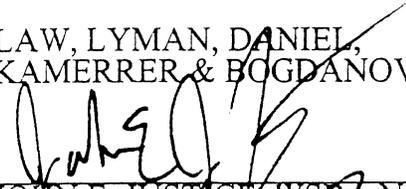
DEFENDANT COWLITZ COUNTY'S  
ANSWER AND AFFIRMATIVE DEFENSES -

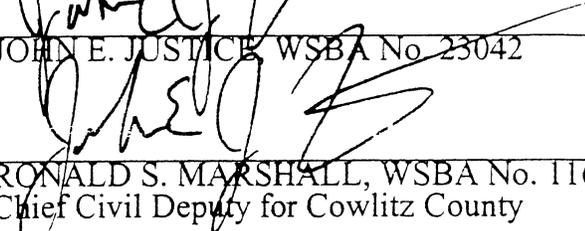
1 WHEREFORE, defendant Cowlitz County prays as follows:

2 That plaintiff's Complaint be dismissed with prejudice and that plaintiff take nothing by  
3 his Complaint and that this defendant be allowed its costs and reasonable attorneys' fees herein.

4 DATED this 16<sup>th</sup> day of June, 2005.

5 LAW, LYMAN, DANIEL,  
6 KAMERRER & BOGDANOVICH, P.S.

7   
8 JOHN E. JUSTICE, WSBA No. 23042

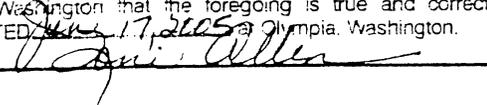
9   
10 RONALD S. MARSHALL, WSBA No. 11662  
11 Chief Civil Deputy for Cowlitz County

12 Attorneys for Defendant Cowlitz County

13 CERTIFICATE OF MAILING

14 Pursuant to RCW 9A.72.035, today I deposited in the U.S.  
15 Mail and/or overnight delivery service and/or caused to be  
16 delivered via ABC-Legal Messengers, Inc. originals and/or  
17 copies of this document directed to the offices of attorneys  
18 for Plaintiffs  
19 and the Clerk of the Court.

20 I certify under penalty of perjury under the laws of the State  
21 of Washington that the foregoing is true and correct.  
22 DATED June 17, 2005 at Olympia, Washington.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF LEWIS

EDDIE BLOOR and EVA BLOOR,  
husband and wife,  
Plaintiffs,

v.

ROBERT A. FRITZ and CHARMAINE  
A. FRITZ, and the marital community  
comprised thereof; LANCE MILLER, a  
single person; LAM MANAGEMENT,  
INC., a Washington corporation, dba  
ALLEN & ASSOCIATES PROPERTY  
MANAGEMENT; LC REALTY, INC.,  
a Washington corporation, dba  
WINDERMERE REAL ESTATE/ALLEN  
& ASSOCIATES; COWLITZ COUNTY,  
a political subdivision of the State of  
Washington,

Defendants.

Case No. 05-2-00628-3

ANSWER AND AFFIRMATIVE  
DEFENSES OF DEFENDANTS  
ROBERT AND CHARMAINE FRITZ

Defendants, Robert and Charmaine Fritz (hereinafter "Fritz"), by way of Answer to  
plaintiffs' Amended Complaint, admit, deny and allege as follows:

1.1 Admit.

1.2 Deny.

2.1 Defendants Fritz are without knowledge or information sufficient to form a belief as to the  
truth of the allegations in this paragraph and it is therefore denied.

2.2 Admit.

2.3 Defendants Fritz are without knowledge or information sufficient to form a belief as to the  
truth of the allegations in this paragraph and it is therefore denied.

2.4 Defendants Fritz are without knowledge or information sufficient to form a belief as to the  
truth of the allegations in this paragraph and it is therefore denied.

10/28

1 2.5 Defendants Fritz are without knowledge or information sufficient to form a belief as to the  
2 truth of the allegations in this paragraph and it is therefore denied.

3 2.6 Admit that defendant Cowlitz County is a political subdivision of the State of Washington.  
4 Fritz defendants are without knowledge or information sufficient to form a belief as to the  
5 truth of the remaining allegations in Paragraph 2.6 and they are therefore denied.

6 3.1 Admit that plaintiffs Bloor entered into a real estate purchase and sale agreement with  
7 defendants Fritz for the sale of real property improved by a residence and outbuildings.  
8 Admit that the legal description of the subject property is attached to the Amended  
9 Complaint as Exhibit A. Deny all remaining allegations contained in Paragraph 3.1.

10 3.2 Defendants Fritz are without knowledge or information sufficient to form a belief as to the  
11 truth of the allegations in this paragraph and it is therefore denied.

12 3.3 Defendants Fritz are without knowledge or information sufficient to form a belief as to the  
13 truth of the allegations in this paragraph and it is therefore denied.

14 3.4 Admit.

15 3.5 Defendants Fritz are without knowledge or information sufficient to form a belief as to the  
16 truth of the allegations in this paragraph and it is therefore denied.

17 3.6 Defendants Fritz are without knowledge or information sufficient to form a belief as to the  
18 truth of the allegations in this paragraph and it is therefore denied.

19 3.7 Admit.

20 3.8 Defendants Fritz admit that Charmaine Fritz spoke with a Cowlitz County law enforcement  
21 officer once in January of 2004 but deny that the officer informed her of any  
22 methamphetamine manufacturing lab.

23 3.9 Admit that in Spring of 2004 LAM Management, Inc., acting as the Fritzes' property  
24 manager, issued a notice to vacate the premises to the occupants of the property. Deny all  
25 other allegations contained in Paragraph 3.9.

26 3.10 Admit that after the tenants vacated the property was re-rented to another tenant.

1 3.11 Admit that in Spring of 2004 defendants Fritz painted portions of the residence interior and  
2 made repairs at the property. Deny the remaining allegations in Paragraph 3.11.

3 3.12 Admit that defendants Fritz completed a real property transfer disclosure statement and  
4 provided it to their real estate agent.

5 3.13 Defendants Fritz admit that they marked the disclosure statement to state that, to their  
6 knowledge, the property had never been used as an illegal drug manufacturing site. The  
7 remaining allegations in Paragraph 3.13, as they pertain to defendants Fritz, are denied.

8 3.14 Defendants Fritz deny that they failed to disclose to plaintiffs Bloor that the property had  
9 been used as an illegal drug manufacturing site, since that information was unknown to  
10 them. The remaining allegations in Paragraph 3.14, as they pertain to defendants Fritz, are  
11 denied.

12 3.15 Deny.

13 3.16 Deny.

14 3.17 Admit that the Bloors purchased the property for \$149,000. Deny the remaining allegations  
15 of Paragraph 3.17 as they pertain to defendants Fritz.

16 3.18 Paragraph 3.18 contains conclusions of law not allegations of fact which can be fairly  
17 admitted or denied. It is denied on that basis.

18 3.19 Paragraph 3.19 contains conclusions of law not allegations of fact which can be fairly  
19 admitted or denied. It is denied on that basis.

20 4.1 Deny.

21 4.2 Deny the allegations as they pertain to defendants Fritz. Defendants Fritz are without  
22 knowledge or information sufficient to form a belief as to the truth of the allegations as  
23 they pertain to defendant Miller and therefore deny said allegations.

24 4.3 Deny the allegations as they pertain to defendants Fritz. Defendants Fritz are without  
25 knowledge or information sufficient to form a belief as to the truth of the allegations as  
26 they pertain to defendant Miller, LC Realty and LAM and therefore deny said allegations.

1 4.4 Defendants Fritz are without knowledge or information sufficient to form a belief as to the  
2 truth of the allegations in this paragraph and it is therefore denied.

3 4.5 Defendants Fritz are without knowledge or information sufficient to form a belief as to the  
4 truth of the allegations in this paragraph and it is therefore denied.

5 4.6 Defendants Fritz are without knowledge or information sufficient to form a belief as to the  
6 truth of the allegations in this paragraph and it is therefore denied.

7 5.1 Admit upon information and belief.

8 6.1 Deny the allegations as they pertain to defendants Fritz. Defendants Fritz are without  
9 knowledge or information sufficient to form a belief as to the truth of the allegations as  
10 they pertain to defendant Miller, LC Realty and LAM and therefore deny said allegations.

11 7.1 Deny.

12 8.1 Deny.

13 9.1 Except as specifically admitted herein, defendants Fritz deny each and every other  
14 allegation in plaintiffs' Amended Complaint and the whole thereof.

15 FOR A FURTHER AND SEPARATE ANSWER AND BY WAY OF AFFIRMATIVE  
16 DEFENSES, defendants Fritz allege:

17 1. The alleged damages, if any, were caused by persons and entities other than defendants  
18 Fritz, including but not limited to, the plaintiffs themselves, the Windermere defendants,  
19 defendant Cowlitz County and/or the tenants.

20 2. Plaintiffs' claims are barred by waiver and/or estoppel.

21 3. < Plaintiffs' claim for Breach of Contract against the Fritz defendants fails to state a claim  
22 upon which relief can be granted and should be dismissed. >

23 4. Plaintiffs' claim for Fraud against the Fritz defendants fails to state a claim upon which  
24 relief can be granted and should be dismissed.

25 5. Plaintiffs' claim for Misrepresentation against the Fritz defendants fails to state a claim  
26 upon which relief can be granted and should be dismissed.

- 1 6. < Plaintiffs' claim for Attorney Fees against the Fritz defendants fails to state a claim upon  
2 which relief can be granted and should be dismissed. >
- 3 7. Plaintiffs have alleged Fraud without setting forth the circumstances with sufficient  
4 particularity as required by CR 9(b).
- 5 8. Plaintiffs have not set forth their alleged damages with sufficient particularity.
- 6 9. Plaintiffs assumed the risk with respect to the existence of the alleged defects.
- 7 10. Plaintiffs expressly conditioned their purchase offer on an independent inspection of the  
8 condition of the property and therefore did not rely upon any representation, of either  
9 opinion or fact, made by the Fritz defendants.
- 10 11. Plaintiffs have failed to mitigate their alleged damages.
- 11 12. The injuries and damages claimed by plaintiffs, if any, were proximately caused or  
12 contributed to by the fault of the plaintiffs.

13 The Fritz defendants expressly reserve their right to amend this Answer including the  
14 addition of affirmative defenses warranted by investigation and discovery, and to make such  
15 amendments either before or during trial, including asserting other defense theories or conforming  
16 the pleadings to the proof offered at the time of trial.

17 WHEREFORE, having fully answered plaintiffs' Amended Complaint, defendants Fritz  
18 pray that the same be dismissed and that plaintiffs take nothing thereby, and for their costs and  
19 disbursements incurred herein.

20 DATED this 28<sup>th</sup> day of October, 2005.

21 LEHNER & RODRIGUES, P.C.

22 /s/ Carl R. Rodrigues

23 Carl R. Rodrigues, WSB #33480  
24 Attorney for Defendants Robert and Charmaine Fritz  
25 Suite 1015 Crown Plaza  
26 1500 SW First Avenue  
Portland, OR 97201  
(503) 226-2225

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS ROBERT AND CHARMAINE FRITZ on the following attorney(s) by mailing a true copy thereof, certified as such, contained in a sealed envelope, with postage paid, addressed to:

Todd S. Rayan  
Attorney at Law  
Olson Althausser Lawler & Samuelson  
P. O. Box 210  
Centralia, WA 98531  
*Attorneys for Plaintiffs*

John E. Justice  
Attorney at Law  
Law Lyman Daniel Kamerrer & Bogdanovich  
910 Lakeridge Way SW  
P. O. Box 11880  
Olympia, WA 98508-1880  
*Attorneys for Cowlitz County*

Ronald S. Marshall  
Chief Civil Deputy  
Susan I. Bauer  
Cowlitz County Prosecuting Attorney  
312 SW 1<sup>st</sup> Street  
Kelso, WA 98626  
*Attorneys for Cowlitz County*

Brandi Lane Adams  
Melanie A. Leary  
Demco Law Firm  
52224 Wilson Avenue S., Suite 200  
Seattle, WA 98118  
*Attorneys for Miller, LAM  
Management and LC Realty*

and deposited in the post office at Portland, Oregon on this 28<sup>th</sup> day of October, 2005.

LEHNER & RODRIGUES, P.C.

/s/ Carl R. Rodrigues  
Carl R. Rodrigues, OSB No. 82456  
Of Attorneys for Defendants Fritz

DEC 18 2006

Kathy A. Brack  
Lewis County Clerk

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

EDDIE BLOOR AND EVA BLOOR, husband and  
wife,

Plaintiffs,

vs.

ROBERT A. FRITZ and CHARMAINE A.  
FRITZ, and the marital community comprised  
thereof; LANCE MILLER, a single person; LAM  
MANAGEMENT, INC., a Washington  
Corporation, dba ALLEN & ASSOCIATES  
PROPERTY MANAGEMENT; LC REALTY,  
INC., a Washington corporation, dba  
WINDERMERE REAL ESTATE/ALLEN &  
ASSOCIATES; COWLITZ COUNTY, a political  
subdivision of the State of Washington,

Defendants.

No. 05-2-00628-3

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

THIS MATTER came on for trial on July 17, 2006. The court received evidence on July 17, 18,  
19, 20, 21 and 24, 2006. and announced its oral decision on July 25, 2006, after considering the  
testimony of the witnesses called by the parties, the exhibits admitted in evidence, and the argument of  
counsel. NOW, THEREFORE, the court hereby makes the following:

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW-1

OLSON ALTHAUSER LAWLER SAMUELSON & RAYAN  
ATTORNEYS AT LAW  
MASONIC BUILDING - P.O. BOX 210  
CENTRALIA, WASHINGTON 98531  
TELEPHONE (360)736-1301  
FAX (360)736-4802

COPIES  
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26  
27

2 **FINDINGS OF FACT**

3 I.

4 Robert Fritz purchased a home and approximately five acres of property (the "Property") at  
5 3409 Spirit Lake Highway from Pete McVey in 1993, the legal description of which is as follows:  
6

7 LOT 1 OF SHORT PLAT NO. 81-027 AS RECORDED AUGUST 27, 1981, UNDER  
8 AUDITOR'S FILE NO. 810827059, IN VOLUME 5 OF SHORT PLATS, PAGE 51,  
9 BEING A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST  
10 QUARTER AND GOVERNMENT LOT 1 IN SECTION 34, TOWNSHIP 10  
11 NORTH, RANGE 1 WEST OF THE W.M.

12 EXCEPTING THAT PORTION CONVEYED TO THE STATE OF WASHINGTON,  
13 UNDER AUDITOR'S FILE NO. 850827006.

14 SITUATE IN THE COUNTY OF COWLITZ, STATE OF WASHINGTON.

15 SUBJECT TO covenants, conditions, restrictions, reservations, easements and  
16 agreements of record, if any.

17 Cowlitz County Parcel Number: WG34-12-005.

18 II.

19 Robert Fritz married Charmaine Fritz in 2000. They lived in the home at the Property. They  
20 both contributed to the payment of the debt Robert Fritz owed that was secured by the Property, and  
21 the upkeep of the Property. Although title to the Property remained in the name of Robert Fritz, the  
22 Fritzes treated the Property as if it was owned by both Robert and Charmaine Fritz.

23 III.

24 In approximately 2001, Robert and Charmaine Fritz moved from the Property and hired LAM  
25 Management, Inc. d/b/a Allen & Associates Property Management (hereafter referred to as LAM).  
26 Lance Miller and Jayson Brudvick are the co-owners and operators of LAM. LAM provided

CP 17

management of the Fritz' property, contracted with tenants, enforced terms of the rental agreements,  
and conducted evictions.

IV.

In January, 2004, Jason Waddington, Charles Waddington, Pam Jackson and Sarah Holton occupied the Property pursuant to a rental agreement some of them signed through LAM. The monthly rental amount was \$750.00.

V.

On January 30, 2004, a search pursuant to a search warrant was made at the Property by the Cowlitz-Wahkiakum Joint Narcotics Task Force (the "Task Force"). During the search, task force members discovered a marijuana growing operation in the basement of the house on the Property; and implements of methamphetamine ("meth") manufacturing on and under the rear deck of the home and inside of the hot tub that was on the deck. Jason Waddington was charged with Manufacturing Marijuana. Charles Waddington was charged with Manufacturing Methamphetamine.

VI.

The Task Force issued a press release on January 31, 2004, which identified the Property as the site of the drug search, identified the persons involved, stated that a marijuana growing operation had been removed from the Property, and stated that implements of a small meth lab had been confiscated from the rear deck and hot tub area of the Property.

VII.

A newspaper article was published in the Longview Daily News on Sunday, February 1, 2004, that reported the events described in the press release issued by the Task Force on January 31, 2004. The newspaper article reported the identity of the persons arrested, the address of the Property, that a

1 marijuana grow operation had been seized and that evidence of a small meth lab was discovered in the  
2 backyard.

3 VIII.

4 Task Force members Kevin Tate, Darren Ullmann, and Jeff Brown were on the scene when the  
5 search warrant was executed at the Property on January 30, 2004. The case agent on the scene when the  
6 search warrant was executed was Jeff Brown. During the search, Jeff Brown decided to process the site as  
7 a meth manufacturing site. Among the items that were located at the site were a mason jar with a bi-layer  
8 liquid, a mason jar with a brown sludge, an empty Heet fuel additive bottle, an empty plastic muriatic  
9 acid bottle, a 20 oz pop bottle that had been converted to a hydrochloric acid generator, and numerous  
10 empty pseudoephedrine based cold medicine blister packs. All of these items are commonly used in the  
11 manufacturing of meth. While the Task Force members were collecting the evidence, the liquid in the  
12 pop bottle began generating gas when the bottle was moved.  
13

14 IX.

15 No one from the Task Force or any other law enforcement agency notified the Cowlitz County  
16 Health Department (the "Health Department"), Washington State Department of Health, Washington  
17 State Department of Ecology, or any other state agency regarding the discovery of the meth lab.  
18

19 X.

20 Jayson Brudvick saw the article published in the Longview Daily News on Sunday, February 1,  
21 2004, and contacted the Fritzes by telephone to notify them and to get instructions on how to proceed  
22 with respect to evicting the tenants.  
23

24 XI.

25 Charmaine Fritz learned that there had been police activity on the Property through her son, who  
26

1 had heard it from a family friend. Charmaine Fritz contacted numerous law enforcement agencies  
2 attempting to determine what occurred at the Property.

3 XII.

4 Charmaine Fritz contacted the Task Force on Monday, February 2, 2004, and spoke with Judy  
5 Connor, the support staff specialist for the Task Force. Judy Connor had worked for the Task Force for  
6 16 years. Her duties included staff support, investigation, file management, and statistical reporting,  
7 among other things.  
8

9 XIII.

10 Judy Connor advised Charmaine Fritz that there had been arrests on the Property, that a  
11 marijuana grow operation had been confiscated, and that implements of a meth lab had been  
12 confiscated. As the officers were not available on Mondays, Ms. Connor advised Charmaine Fritz that  
13 she would pass the message along and have one of the detectives contact her.

14 XIV.

15 Charmaine Fritz made three additional telephone calls to the Task Force on February 2 and  
16 February 3, 2004. In a telephone call on February 3, 2004 at 11:25 AM, Charmaine Fritz spoke with  
17 Detective Darren Ullmann for 14 minutes and forty-three seconds. During that conversation, Detective  
18 Ullmann advised Charmaine Fritz that implements of a meth lab had been removed from the Property.  
19 The denial by Charmaine Fritz that she was told that implements of a meth lab had been removed is not  
20 credible.  
21

22 XV.

23 Charmaine Fritz shared the information she received from her contacts with the Task Force with  
24 her husband, Robert Fritz. The denial by Robert Fritz that he was informed by Charmaine Fritz of the  
25

items found by the Task Force in the service of the search warrant is not credible.

XVI.

During the first few days of February 2004, Lance Miller contacted law enforcement regarding the status of the Property and the arrests that were made at the Property. During his contact, Lance Miller was informed of the marijuana grow operation and the discovery of the meth lab. The denial by Lance Miller that he was informed of the discovery of the implements used in meth manufacturing on the Property is not credible.

XVII.

Lam Management, Inc., issued eviction notices to the tenants at the Property, and the tenants and criminal suspects were evicted from the Property in February or March of 2004.

XVIII.

The Property was subsequently re-rented for a short period of time through LAM. In approximately May 2004, after evicting the tenants from the Property, the Fritzes decided they would sell the Property.

XIX.

The Fritz's prepared the Property for sale by cleaning it up, painting the interior, changing the floor coverings, and removing debris. During this cleanup effort, Charmaine Fritz spoke with neighbors to the Property, John and Jenae Cyr, regarding the work that was being done on the Property. During the conversation with the Cyrs, Charmaine Fritz stated that the Fritzes felt they were lucky that the meth had not been cooked in the house and that it was only cooked on the back porch.

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CP 17

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2 Ed and Eva Bloor are a married couple. In 2004 the Bloors sold their home in Missouri  
3 intending to move to Newport, Oregon. They used the proceeds to move and for a long desired  
4 vacation on the Oregon coast. After visiting the Oregon coast and determining that they could not  
5 afford to live there, the Bloors decided to live near Mr. Bloor's sister, Sherrie Belding, near Silver  
6 Lake, Washington.

XXI.

21

8 When the Bloors arrived in Washington they stayed with Sherrie Belding, near Silver Lake.  
9 The Bloors made plans for Ed Bloor to start a siding business, and started looking for a home to  
10 purchase. They noticed the house at the Property was empty and inquired with a neighbor, Pete  
11 McVey. Mr. McVey advised the Bloors that Robert and Charmaine Fritz owned the home and that  
12 Windermere Allen & Associates was their agent. The Bloors contacted Windermere Allen &  
13 Associates on or about July 8, 2004.

XXII.

22

16 L.C. Realty, Inc. does business as Windermere Allen & Associates. Susan Lantz is the owner of  
17 and broker for LC Realty, Inc. Jayson Brudvick is a licensed real estate agent for Windermere Allen &  
18 Associates. Jayson Brudvick showed the Property to the Bloors. He did not disclose to the Bloors that  
19 illegal drug manufacturing had occurred on the Property.

XXIII.

23

23 Lance Miller was a real estate agent with Windermere Allen & Associates and listed the  
24 Property for the Fritzes. When he received the listing he made arrangements for a for sale sign to be  
25 installed on the Property and entered the listing on the multiple listing service. No mention of the drug  
26

28

manufacturing that had been discovered on the Property was made on the MLS listing or to other prospective buyers that had expressed interest in the Property.

27

XXIV.

The Bloors decided to make an offer on the Property. Lance Miller prepared a Real Estate Purchase and Sale Agreement (the "REPSA") for the Bloors. Lance Miller elected to represent both the Fritzes and the Bloors as a dual agent in the transaction, and both parties approved. On July 10, 2004, the REPSA was faxed to the Fritzes.

25

XXV.

Lance Miller faxed a blank Seller's Disclosure Statement form to Robert Fritz, which both Robert and Charmaine Fritz reviewed and Robert Fritz completed. On the Seller's Disclosure Statement, the Fritzes represented that the Property had never been used as an illegal drug manufacturing site.

26

XXVI.

Miller reviewed the Seller's Disclosure Statement with the Bloors before they signed the REPSA, but he did not disclose the history of the search of the Property by the Task Force or the discovery of the marijuana grow operation or the meth lab implements found on the Property.

27

XXVII.

The Bloors initially intended to offer less than the asking price, but when Miller told them that another party was interested in the Property, they agreed to offer the full asking price of \$149,000.00. The Fritzes accepted the Bloors' offer to purchase the Property and the transaction closed on or about August 13, 2004. The Bloors were never informed by the Fritzes, Miller, or anyone else that evidence of illegal drug manufacturing had been found on the Property during a search conducted by the Task

Force. The Bloors moved into the home on or about August 18, 2004.

2 XXVIII. 27

3 Before moving to Washington, Ed Bloor owned and operated a siding and window installation  
4 business in Missouri and planned to start a similar business when he moved to Washington. He owned  
5 all of the tools necessary to begin his business and brought his tools with him when he came to  
6 Washington. After moving onto the Property, he stored his tools in the garage on the Property.  
7

8 XXIX. 29

9 In September, 2004, Eva Bloor returned to Missouri to be with the Bloors' daughter for the  
10 birth of their grandchild. When Eva Bloor returned from Missouri, the Bloors' son, Michael, who was  
11 a senior at Toutle High School, advised her that the Property was known as a "drug house."  
12

13 XXX. 30

14 Upon receiving the report that their home was known as a "drug house", the Bloors  
15 investigated the history of the Property. Eva Bloor looked on the internet at the Longview Daily News  
16 internet archives, where she found an on-line version of the article that had been published on Sunday  
17 February 1, 2004. The article she found stated that a warrant had been executed at the Property, that a  
18 marijuana grow operation had been discovered, that a small meth lab had also been discovered, that  
19 two of the tenants were arrested for manufacturing marijuana and that Charles Randall Waddington  
20 was arrested on suspicion of manufacturing meth. Eva Bloor then contacted the Task Force, where she  
21 spoke with Sgt. Kevin Tate, who confirmed that there had been a meth lab processed and confiscated at  
22 the residence.  
23

24 XXXI. 31

25 Eva Bloor contacted Audrey Shaver at the Cowlitz County Health Department (the "Health  
26

Department") and asked about the report of meth manufacturing at the Property. Audrey Shaver informed Eva Bloor that no report had been made to the Health Department and that they would need to investigate further to determine what, if any, action would be taken by the Health Department.

32

XXXII.

On October 13, 2004, after finding additional suspicious items at the Property, the Bloors contacted Sgt. Kevin Tate. Detective Jeff Brown, along with Detective Darren Ullmann, visited the Property on October 14, 2004 and removed additional items that are commonly used in the production of meth.

33

XXXIII.

The Bloors engaged Lori Hall from CEcon Corp., a certified decontamination contractor, to assess the likelihood that the Property was contaminated, and provide an estimate to sample the Property for meth contamination. A work plan to sample the Property dated October 19, 2004 was provided by Lori Hall to the Health Department for approval.

34

XXXIV.

On October 22, 2004, Audrey Shaver, as a representative of the Health Department, advised the Bloors that the Health Department had determined that the Property was contaminated by the meth manufacturing and the house was unfit to occupy and would be posted as unfit for use. She also informed the Bloors that they could not remove their personal property from the Property because of the risk of cross contamination.

35

XXXV.

After learning that the Health Department had determined the Property to be contaminated, the Bloors left the residence and, as they were instructed, they left nearly all of their personal belongings in

1 the house and garage on the Property. Ed stayed at a nearby property owned by his sister, while Eva  
2 went to Spokane to take care of her ailing mother. 36

3 XXXVI.

4 The Health Department posted the Property with an Order Prohibiting Use on October 29,  
5 2004, which had an effective date of October 22, 2004. The Order Prohibiting Use stated that the  
6 Bloors were financially responsible for the cost of remediation, that the remediation would have to be  
7 performed by a certified decontamination contractor, and that use of the Property would subject the  
8 violator to criminal charges. Occupancy of buildings contaminated by manufacture of  
9 methamphetamine is dangerous to the health and safety of the occupants. 37

10 XXXVII.

11 The Order Prohibiting Use stated that the Bloors could appeal the determination that the  
12 Property was contaminated by filing a written appeal of the decision within ten days of service of the  
13 Order. The Order also stated that at any such appeal hearing, the burden would be on the Bloors to  
14 show that a decontamination contractor that was certified in accordance with RCW 64.44 and WAC  
15 246-205 had decontaminated the Property. The Bloors believed the Property was contaminated and did  
16 not have the resources to have the Property decontaminated. The Bloors did not appeal the  
17 determination of contamination. 38

18 XXXVIII.

19 The Bloors contacted attorney Todd S. Rayan. On October 26, 2004, Rayan sent written  
20 demand to the Fritzes and Miller that they decontaminate the Property. Neither party agreed to do  
21 anything to remediate the Property. On approximately August 15, 2005, the Fritzes indicated that they  
22 would pay for the decontamination if all claims against them were released. The Bloors refused to  
23

release the Fritzes on the terms offered.

XXXIX.

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After the Order Prohibiting Use was issued, the Bloors contacted Lori Hall to get an estimate to have the Property decontaminated. Lori Hall's estimate, dated December 9, 2004, stated the cost to decontaminate the house, barring any residual contamination after the initial cleaning, was approximately \$13,403.16. The December 9, 2004, estimate became outdated due to increases in the number of samples required by applicable regulations and the cost to test the samples. Hall's estimate also did not include septic, soil or water samples or decontamination, and did not include restoration of the premises after removal of contaminated materials. The Bloors were advised that all porous materials would need to be removed and disposed of, including, but not limited to, all carpet, clothing, paper items, eating utensils, appliances, countertops, light fixtures, switch plates, ventilation fans, bedding and furniture. The Bloors did not have the money to hire CEcon to decontaminate the house.

XL.

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The Bloors incurred expenses in obtaining assessments and testing the Property for contamination that should be paid by the Defendants. The total of expenses was \$2,768.37.

XLI.

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In December, 2004, the Bloors inquired with the Health Department whether the detached garage could be decontaminated separately from the house so Ed Bloor could remove from the garage his tools that he used in performing siding installations. A pre-assessment sample plan prepared by Lori Hall of CEcon Corp and dated January 7, 2005, was submitted for approval to the Health Department. The plan was approved and Lori Hall sampled the garage and selected items within the garage for contamination. The samples taken from the garage showed meth contamination levels above

the acceptable level in Washington State of .01ug/100cm<sup>2</sup>. Lori Hall estimated the cost to  
2 decontaminate the garage, including the tools, at nearly \$4,000.00. The Bloors did not have the money  
3 to have the garage or the tools decontaminated.

4 XLII.

5 By December 2004, the Bloors were living in Spokane so Eva Bloor could care for her ailing  
6 mother. The Bloors temporarily stayed with relatives until they could secure a place to live.

7 XLIII.

8 After they left the Property, the Bloors had to repurchase clothing, bedding, furniture, and other  
9 necessities of life, as everything they owned was still at the Silver Lake Property. Eva Bloor liquidated  
10 her 401k retirement account, netting approximately \$4,000.00 after the withdrawal penalty, to help  
11 fund the purchase of their necessities.

12 XLIV.

13 In April, 2005, Ed Bloor started work in Spokane with a company that provided the necessary  
14 tools for him to work. His average monthly income was \$2,500.00. The Bloors were financially unable  
15 to support themselves and make the monthly payments to the lenders from whom they had borrowed  
16 the money to purchase the Property.

17 XLV.

18 Before they left, the Bloors locked and secured the house and garage. The Property was still  
19 posted by the Health Department as unfit for occupancy and warning against entry. In October 2005,  
20 thieves broke into the Property and nearly every item of value remaining in the residence and garage  
21 was stolen. Because the Property had been posted as unfit for use, the Bloors were unable to live at the  
22 Property and were unable to do anything more to protect the personal property that was left there.

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XLVI.

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2 The Bloors compiled extensive lists of the personal property they brought with them from  
3 Missouri and that they purchased to furnish the Property. Because of the theft of their personal  
4 property, no appraisals were possible. The personal property included collections that they had made  
5 over the years, household furnishings, tools of Ed Bloor's siding business, a boat the Bloors had  
6 purchased for \$4,000, and their personal effects and clothing. The Bloors estimated the value of their  
7 personal property to be over \$60,000. Much of their household furnishings had been purchased just  
8 prior to moving onto the Property and had been used for only a couple of months. Many of the values  
9 presented by the Bloors relative to their collectable items were based, in part, on comparison of the  
10 items with similar items offered for sale on internet auction sites. Ed Bloor's collection of "Camel  
11 memorabilia" and Eva Bloor's collection of "porcelain dolls" are irreplaceable. The Bloors also lost  
12 nearly all of their family mementos, photographs and keepsakes.

XLVII.

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15 Since all of the personal property was used when it was lost, the value must be discounted.  
16 Although no opinion testimony was presented regarding the depreciation of personal property, it is  
17 reasonable to discount the values stated by the Bloors by fifty per cent (50%). The fair market value of  
18 the personal property items the Bloors lost is \$30,000.00. If items of personal property that were  
19 destroyed or lost as claimed by the Bloors (as shown on the exhibits in this matter) remain on the  
20 Property and are salvaged, the Bloors should be required to allow credit for the fair market value of  
21 such items as are retrieved by them, or they shall abandon the items to the Defendants so they can be  
22 sold or retained by the Defendants. The Bloors should be allowed, at their option after the  
23 decontamination has been completed, to retrieve all items of personal property that is still on the  
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25  
26

Property that were not claimed and on the exhibit lists, without allowing any credit or set off to the Defendants.

XLVIII.

Due to the financial burden of setting up a new household and reestablishing their lives, the Bloors were unable to make payments on the underlying indebtedness secured by the Property. As a result of the Bloors' inability to pay their loan obligations, the beneficiaries under the Deed of Trust that secured the purchase money loan to the Bloors initiated foreclosure proceedings, which proceedings were suspended on several occasions while this litigation was pending. Additional penalties and interest have accumulated on the debts owed by the Bloors.

XLIX.

The stress and strain on the Bloors caused them to suffer from anxiety and to experience significant emotional distress and discomfort. Ed Bloor suffered symptoms of depression. Ed Bloor's sister, Sherrie Belding, noticed changes in Ed's personality. Ed Bloor blamed himself for what had happened and felt like he had let his family down.

L.

Eva Bloor experienced anxiety from the ordeal of losing her home and contents, resulting in an emergency trip to a hospital in Spokane because she thought she was having a heart attack. Dr. Leonard Vanderbosch examined Eva and diagnosed her with anxiety and panic attacks that were temporally related to the loss of the Property due to the contamination. Eva Bloor was prescribed medication to reduce her anxiety. The stress and anxiety suffered by the Bloors was caused by the loss of use of their home, personal effects, furnishings, tools, and keepsakes.

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LI.

§1

The sum of \$10,000.00 is a reasonable sum to compensate Ed Bloor for his mental distress and anxiety, and the sum of \$25,000.00 is a reasonable sum to compensate Eva Bloor for her mental distress and anxiety.

LII.

§2

In January 2006, Lori Hall, then with American Environmental, L.L.C., performed sampling for meth contamination inside the residence on the Property. The results of this sampling confirmed that the residence is contaminated beyond acceptable limits and is unfit to occupy.

§3

LIII.

When they purchased the Property in July 2004, the median credit score for Ed Bloor was 666 and the median credit score for Eva Bloor was 647. Due to the loss by the Bloors of their home and belongings, and their resulting inability to make the required monthly payments on their loans, as of April, 2006, Ed Bloor's credit score had fallen to 569 and Eva Bloor's credit score had fallen to 552. The cause of the difference between the credit scores in July, 2004 and the credit scores in April, 2006 was the reporting of the Property foreclosure proceedings and other associated debts that were proximately caused by the Bloors' loss of their home and belongings due to the discovery of the meth contamination.

§4

LIV.

Due to the reduction of the Bloors' credit scores it is reasonably certain that for at least the next ten (10) years the Bloors will suffer economic loss when they apply for credit. A reasonable estimate of the loss they will suffer from the damage to their credit scores can be made based on the increased cost they will likely incur to acquire and pay a home purchase loan. The reduced credit scores

1 the Bloors now have will result in them having to pay approximately one percentage point more in  
2 interest on a home loan, which translates to a current loss of \$10,000.00, when the added cost of the  
3 loan over the normal amortization period of the loan is reduced to present cash value. This loss is  
4 reasonably certain and based on reliable statistical data provided by Robert Moss, the Bloor's  
5 economic expert witness.

6  
7 LV.

8 Ed Bloor was unable to work for at least three months due to the contamination of the Property  
9 and the loss of his tools and equipment. His average income prior to the discovery of the  
10 contamination was \$2,500.00. He lost approximately three months income and thus, his income loss  
11 due to his inability to work was \$7,500.00

12  
13 LVI.

14 The Bloors have been unable to use the Property since it was posted as unfit for occupancy by  
15 the Health Department. For at least twelve months, the Bloors attempted to get one of the defendants  
16 to decontaminate the Property. The Fritzes should have either caused the Property to be  
17 decontaminated or rescinded the sale. The reasonable rental value of the Property is \$750.00.  
18 Reasonable compensation to the Bloors for loss of use of their belongings and the Property for one  
19 year is \$9,000.00, although the Bloors have been unable to use the Property for over two years.

20  
21 LVII.

22 The Bloors should be awarded interest on the purchase price of \$149,000.00 paid to the Fritzes  
23 at the statutory rate allowed under RCW 19.52.010 from October 22, 2004, through the date of entry of  
24 judgment. The amount is liquidated and able to be determined by objective criteria and without  
25 resorting to an exercise of discretion. The Fritzes received the purchase price from the Bloors and, due

§5

§6

§7

1 to the contamination, the Bloors were unable to use the property since they moved out due to the  
2 contamination. Also, as a result of the contamination and the loss by the Bloors of their home, they  
3 incurred late charges, lender attorney fees and foreclosure costs. Charges, penalties and fees on the first  
4 position mortgage debt, as stated on the notices issued by said lender, include: Attorney fees \$590.00;  
5 BPO Fee \$100.00; Field services conduct sale fee \$100.00; Foreclosure costs \$804.54; Previous  
6 Service Expenses \$406.24; Property Preservation Costs \$100.00; Recording costs (appointment of  
7 substitute trustee) \$10.00; Recording fee \$82.00; Title \$710.82; Trustee Fees \$135.00; Inspections  
8 \$139.00; Escrow Deficit (charges for taxes and insurance advanced) \$4,864.65; Statement Fee \$20.00;  
9 and Attorney Costs \$253.75, totaling \$8,316.00. Charges, penalties and fees on the second position  
10 mortgage debt, as stated on the notice issued by said lender, include late charges of \$674.50 and other  
11 expenses of \$241.39 totaling \$915.89. The total of the lender charges is \$9,231.89.  
12  
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14 LVIII. 58

15 The Bloors acted in good faith and were not legally responsible for the contamination, the  
16 determination that the Property was contaminated and unfit for occupancy, or their inability to arrange  
17 for the property to be decontaminated. The removal of the Bloors from the home and the prohibition of  
18 removal of their personal belongings created an emergency for the Bloors that they did not have the  
19 resources to manage. 59

20 LIX.

21  
22 Lance Miller listed the Property and entered it on the multiple listing service. He also showed  
23 the Property to another prospective buyer, all without revealing the history of illegal drug  
24 manufacturing at the Property. Miller knew of the history of illegal drug manufacturing at the Property  
25 from one or all three of his contacts with Jayson Brudvik from his report of the article in the  
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1 newspaper, from Charmaine Fritz relative to her contacts with the Task Force, and from his personal  
2 contact with law enforcement. Miller also knew from his prior involvement with property that had  
3 been contaminated by meth manufacture of the danger of contamination with toxic chemicals from  
4 such operations. The denial by Miller of his knowledge of the history of illegal drug manufacturing at  
5 the Property is not credible.  
6

7 LX. 60

8 The public is at risk of personal injury and economic loss if an agent with knowledge of use of  
9 a property for manufacture of illegal drugs does not disclose his knowledge of such use to prospective  
10 buyers of the property. Miller was and is in the business of offering residential property for sale to the  
11 public.  
12

13 LXI. 61

14 Miller concealed his knowledge that the Property had been used for illegal drug manufacturing  
15 when he announced his listing of the Property, and during his marketing of the Property for the Fritzes.  
16 Miller knew of the history of illegal drug manufacturing and of the potential contamination, knew that  
17 the Fritzes had not disclosed it on their Disclosure Statement, and failed to disclose his personal  
18 knowledge of the history of use of the Property for illegal drug manufacturing, or of the potential  
19 contamination of the Property to the public, to a prospective buyer of the Property that was interested  
20 in the Property at the same time as the Bloors, or to the Bloors.  
21

22 LXII. 62

23 The Bloors were damaged by Miller's failure to disclose the history of drug manufacturing at  
24 the Property. As shown by the investigation made by Eva Bloor upon receiving information that drug  
25 activity had occurred at the Property, Miller's failure to disclose his knowledge of the drug activity on  
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1 the Property to the Bloors misled the Bloors and deprived them of essential information needed by  
2 them to learn of the true condition of the Property. Had Miller revealed his knowledge of the drug  
3 activity on the Property, the Bloors would have probably made inquiry to law enforcement and the  
4 health department, which they did upon receiving information of the history of such activity at the  
5 Property.  
6

7 LXIII.

8 The REPSA contains a provision for recovery of attorney fees and expenses by the prevailing  
9 party in any litigation arising from the REPSA. The claims against the Fritzes arise from the REPSA as  
10 the misrepresentation by the Fritzes induced the Bloors to enter the contract. The term "expenses" used  
11 in the REPSA, is a broader term than the term "costs," and indicates the intent to allow the prevailing  
12 party to recover all of the expenses they incur arising from the breach of the contract or in attempting  
13 to enforce the contract. The Bloors should recover the investigation and litigation expenses they  
14 incurred that were reasonably necessary in the prosecution of their claims against the Fritzes. These  
15 expenses include the fees of expert witnesses, court reporter fees, deposition transcripts, travel  
16 expenses (including those paid for the depositions of the Fritzes), costs for expert evaluation of the  
17 contamination of the Property, and the expenses charged by their attorneys. In addition the Bloors  
18 should recover their statutory taxable costs.  
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21 LXIV.

22 The Bloors should be awarded judgment against the Fritzes for their expenses incurred in this  
23 litigation in the total amount of \$18,975.55. This sum consists of \$9,497.81 for expert witnesses,  
24 \$5,456.95 for court reporter fees. \$1,526.92 for travel expenses, \$1,075.00 for mediation costs,  
25 \$110.00 for filing fees, \$334.00 for service costs, \$750.30 for photocopy charges, \$154.93 for mailing  
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1 costs and \$69.64 for medical records. The Bloors should be awarded statutory costs against Cowlitz  
2 County, Miller and LC Realty, Inc.

3 LXV.

4 The declarations submitted by the Bloors' attorneys show that they expended over 800 hours in  
5 the prosecution of the Bloor's claims. The Bloors did not have the money to hire their attorneys and  
6 pay for their representation. The Bloors' attorneys, expecting the defendants to capitulate, accepted the  
7 representation on a contingent fee basis and, when the defendants failed to accept responsibility, the  
8 attorneys assumed significant business risk that they would not be paid. Although the Bloors paid the  
9 filing fee and some of the service fees, they were unable to pay any of the remaining expenses, and had  
10 they not prevailed at trial, the Bloors' attorneys faced substantial risk that they would not be paid their  
11 fees or the significant expenses and costs they advanced.

12 LXVI.

13 The defendants were steadfast in their denial of responsibility both before and at trial. The  
14 Bloors' attorneys faced significant difficulty in proving the Bloors' claims against the Fritzes and  
15 Miller due to the lack of direct evidence. The time expended by the Bloors' attorneys was generally  
16 reasonable and appropriate. However, considering the documents involved, the time span involved, the  
17 number of factual issues to be addressed, and the complexity of the multiple legal theories and issues,  
18 some of the time expended was duplicative of other efforts and should be deducted.

19 LXVII.

20 Depositions of 16 witnesses were conducted, 11 of which were read into the record as a part of  
21 the Bloors case. Two of the Bloors' attorneys attended six of the depositions, but the attendance of  
22 both attorneys was warranted because those depositions were of the Bloors, some of the defendants.

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1 and of critical witnesses. Although the attendance of both attorneys was warranted, the attendance of  
2 Mr. Rayan at the six depositions was duplicative. The deposition testimony established many of the  
3 essential facts of the Bloors' claims. The discovery work by the Bloors' attorneys enabled the Bloors to  
4 prove the knowledge that the Fritzes and Miller possessed, despite their denial of such knowledge at  
5 trial. Considerable effort and skill was required by the Bloors' attorneys to present the case in a  
6 convincing manner in the face of the opposition by experienced and skillful counsel for the  
7 Defendants.  
8

9 LXVIII.

10 The average hourly rate for attorneys in Lewis County ranges from \$150.00 to \$225.00 per  
11 hour. The hourly rate of the Bloors' attorneys of \$160.00 per hour for Todd S. Rayan and \$225.00 per  
12 hour for T. Charles Althausen is reasonable and customary in the community.  
13

14 LXIX.

15 Todd S. Rayan expended 480.2 hours in prosecuting the case up to and including the court's  
16 oral ruling, exclusive of time segregated and expended in efforts solely against Cowlitz County, and  
17 exclusive of the following described 43 hours that are disallowed as duplicative or unnecessary:  
18 thirteen (13) hours spent on drafting the complaint, six (6) hours spent in assisting the Bloors in a  
19 media interview, and twenty-four (24) hours for attendance at depositions with T. Charles Althausen.  
20 Todd S. Rayan expended an additional 124.3 hours in efforts attributed solely to claims against  
21 Cowlitz County. Todd S. Rayan expended 55 hours after the court's oral ruling up to and through  
22 October 10, 2006. Todd S. Rayan expended 11.5 hours from November 15, 2006 through the date of  
23 entry hereof.  
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26 Based on representations made by the Fritzes regarding their ability to perform a rescission of

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1 the sale to the Bloors, on October 10, 2006, the Bloors changed their position regarding the relief that  
2 should be awarded, and sought damages instead of rescission. In response, this court ordered that the  
3 right to recover attorney fees after October 10, 2006, would be suspended. Then, on November 15,  
4 2006, the Fritzes objected to the change in remedies and asserted that, with the recently promised help  
5 of their insurer, they could and preferred to perform the rescission. This court then reinstated the right  
6 of the Bloors to recover their attorney fees in the completion of the processes.  
7

8 LXX.

9 T. Charles Althausen expended 115.5 hours in prosecuting the case up to and including the  
10 court's oral ruling, exclusive of time segregated and expended in efforts solely against Cowlitz  
11 County. T. Charles Althausen expended an additional 16.1 hours in efforts attributed solely to claims  
12 against Cowlitz County. T. Charles Althausen expended 25.8 hours after the court's oral ruling up to  
13 and through October 10, 2006. T. Charles Althausen expended 4.7 hours from November 15, 2006  
14 through the date of entry hereof.  
15

16 LXXI.

17 Other attorneys in the law firm contributed time and effort in prosecuting the Bloors' case.  
18 James W. Lawler expended a total of 7.5 hours prior to trial of the matter and Rule 9 Intern Paul A.  
19 Strophy expended a total of 7.6 hours prior to the court's oral ruling and an additional 27.3 hours after  
20 the court's oral ruling and up to and through October 10, 2006, and 2.9 hours after November 15,  
21 2006. Six (6) hours expended by attorney James W. Lawler in attending mediation with Todd S. Rayan  
22 is duplicative and should be discounted.  
23

24 LXXII.

25 The time and labor expended by the Bloors' attorneys was significant, totaling more than 800

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hours over a period of twenty-four months including many hours investigating the case, conducting extensive discovery, and preparing for and conducting a six day trial.

LXXIII.

The claim of damage to the Bloors' credit was a novel issue presented by the Bloors' attorneys and the claim against Cowlitz County based on its failure to comply with the requirements of reporting under RCW 64.44 *et seq.*, the contaminated properties statute, was unusual and was apparently the first such claim against a governmental entity made under that statute.

LXXIV.

Plaintiffs' case was legally complex with multiple legal theories presented against multiple Defendants. Plaintiffs' case was complicated by having to prove that the Fritzes and Miller had knowledge of the use of the Property for illegal drug manufacturing using circumstantial evidence.

LXXV.

In the extensive amount and use of discovery procedures and the preparation and presentation of the case at trial, the Bloors' attorneys demonstrated the various skills necessary to perform the legal services needed to enable the Bloors to prevail. The quality of representation by both the Bloors' counsel and counsel for all of the Defendants was high.

LXXVI.

The many hours expended on the prosecution of the Bloors' claims necessarily precluded the Bloors' attorneys from other employment opportunities that would have otherwise been available.

LXXVII.

The Bloor's attorneys undertook representation on a contingent fee basis, encountered a concerted defense effort, and faced a very real risk of no recovery at all had they not been successful at

1 trial. None of the defendants made cross claims against any other defendant or otherwise contributed to  
2 the effort needed to prove the claims by the Bloors.

3 LXXVIII. 78

4 Due to the contaminated status of the Property and the ongoing defaults on the underlying  
5 mortgage, the Bloors' attorneys faced frequent and significant urgency due to the time limitations  
6 imposed by the lenders in their foreclosure process and the repeated efforts of the Bloors' attorneys to  
7 convince the lenders to forbear the foreclosure pending the outcome of this case. 79

8 LXXIX.

9 Significant claims for damages arising from the contamination of the Property were made and  
10 proven, including the cost to remediate and restore the Property to a habitable condition, the value of  
11 the lost possessions of the Bloors, the emotional distress suffered by the Bloors, the damage to the  
12 Bloors' credit, the Bloors' loss of income, loss of use, and related damages. The Bloors' attorneys  
13 successfully proved the liability of four defendants on multiple legal theories and obtained a very  
14 favorable judgment for the Bloors. 80

15 LXXX.

16 The Bloors' trial attorneys were a respected and experienced senior attorney in the local Bar,  
17 and a junior attorney who, during the course of the case, became a partner in the law firm. Both  
18 attorneys demonstrated significant skills and abilities as effective counsel for the Bloors. 81

19 LXXXI.

20 The complexity of the case, difficulty of proof, absence of direct evidence, uncertainty as to  
21 recovery, rescission as a possible remedy, and significant expense and time involved in prosecuting the  
22 case to completion all support the fact that the case was not highly desirable. The uncontroverted  
23

1 declaration of Marc Scheibmeir submitted by the Bloors established that the case was undesirable,  
2 risky and burdensome, and the time expended by the Bloors attorneys was reasonable.

3  
4 LXXXII.

5 Some of the issues involved in the Bloors claims were novel. Cowlitz County is a member of  
6 the task force that conducted the search and arrests leading to the discovery of the meth lab, and task  
7 force members failed to report the discovery to the Cowlitz County Health Department, as required by  
8 law. Determining that Cowlitz County was the liable entity for such failure required careful  
9 investigation and development of the Bloors claims, and overcoming the defenses claimed by Cowlitz  
10 County, including the claim of public duty doctrine. The case was complex in that the Bloors had to  
11 prove multiple acts and omissions of the four defendants, and the Fritzes and Miller steadfastly denied  
12 their commission of such omissions and acts. The persistent resistance of the Fritzes and Miller to  
13 acknowledge liability, the time and labor required to prosecute the claims, the necessity of an  
14 expeditious resolution and time sensitivity of the claims required diligent and determined prosecution  
15 of the Bloors claims. The Bloors claims were also undesirable because of their inability to pay their  
16 attorneys, their residence in Spokane, the relative difficulty of communication with them, and the  
17 resources the defendants were willing to expend to defend against the claims. These factors, the  
18 uncertainty of recovery and the contingent nature of the representation all support an enhancement of  
19 the attorney fees to be awarded. An enhancement based on a multiplier of 1.2 should be made to the  
20 hourly rates applied to the allowed hours expended by the Bloors' attorneys prior to date the Court  
21 announced its oral ruling.

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24 LXXXIII.

25 Approximately ten percent (10%) of the time spent by Plaintiffs' attorneys in prosecution of the

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1 Plaintiffs' claims was expended on the claims of violation of the Consumer Protection Act against  
2 Miller and L.C. Realty, Inc. The Fritzes should be found jointly and severally liable, with Miller and  
3 L.C. Realty, Inc., for ninety per cent (90%) of the Bloors' attorney fees. Miller and L.C. Realty, Inc.,  
4 should be found jointly and severally liable for one hundred per cent (100%) of the Bloor's attorney  
5 fees.  
6

7 LXXXIV.

8 The claims against Cowlitz County by the Bloors have resulted in a recovery against Cowlitz  
9 County that will have the effect of reducing the amount that the Fritzes, Miller and LC Realty, Inc.,  
10 will have to pay to compensate the Bloors for their losses. Although the Bloors, Fritzes, Miller and LC  
11 Realty, Inc. will all benefit from the recovery from Cowlitz County, no "common fund" has been  
12 created from which the Bloors' attorney's fees incurred in prosecuting the claims against Cowlitz  
13 County may be recovered.  
14

15 LXXXV.

16 As discounted, the fees, costs and expenses stated on the billings submitted by the Bloors'  
17 attorneys are reasonable and were necessary for the services provided, and appropriate given the  
18 difficulty of proof in this case.  
19

20 WHEREFORE, having made the foregoing findings of fact, the court hereby makes the  
21 following:

22 CONCLUSIONS OF LAW

- 23 1. The court has jurisdiction of the parties and the subject matter of this action.  
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2. Cowlitz County was negligent in failing to report the discovery of the meth lab on the Property located at 3409 Spirit Lake Highway on January 30, 2004 to the Health Department as required by RCW 64.44.030.
3. Cowlitz County owed a duty to the Bloors as members of a circumscribed and particular class of persons which RCW 64.44 *et seq.* was intended to protect.
4. The Bloors did not fail to exhaust their administrative remedies, as the Order Prohibiting Use on its face provided no meaningful opportunity to appeal, any relief available in such appeal would have been meaningless and according to the plain language of the Order Prohibiting Use, an appeal would have been futile.
5. The breach of duty owed to the Bloors by Cowlitz County was a proximate cause of the losses suffered by the Bloors described in the Findings of Fact.
6. The manufacture of Methamphetamine is illegal drug manufacturing and the history of such use of the Property was a material fact the Fritzes and Miller were required to disclose to the Bloors.
7. The Fritzes knew and failed to disclose the fact that the Property had been used as an illegal drug manufacturing site. The Fritzes failure to disclose that fact was a negligent misrepresentation of that fact.
8. Lance Miller, as an agent for LC Realty, Inc., d/b/a Windermere Allen & Associates, had actual knowledge of the prior drug manufacturing that occurred on the Property and failed to disclose this fact to the Bloors. Illegal drug manufacturing on the Property is a material fact that Miller had a duty to disclose under RCW 18.86.030.

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9. Miller was and is in the business of managing rental properties and the business of marketing property for sale to the public.
  10. Miller's knowledge of the condition of properties that he manages as rental properties was, and is likely to be, greater than the owner of the property.
  11. When Miller offers properties that he has managed as a rental property for sale to the public, prospective purchasers of the property are at risk if Miller conceals or fails to disclose his actual knowledge of dangerous defective conditions that exist in such properties.
  12. Miller's actions were taken in his capacity as an agent for LC Realty, Inc., and consequently LC Realty, Inc., is equally liable for the actions of Miller.
  13. The failure of Miller and LC Realty Inc. to disclose the history of illegal drug manufacturing at the Property was a negligent misrepresentation to the Bloors, the other prospective purchaser of the Property, and to the public of the condition of the Property.
  14. The production of marijuana on the Property was also illegal drug manufacturing. Miller and LC Realty, Inc., and other members of the real estate industry, have historically denied that production of marijuana is illegal drug manufacturing. The denial by Miller and LC Realty, Inc. that production of marijuana is illegal drug manufacturing is indication of their willingness to interpret the law in favor of the seller without regard to the risks to the buyer of property on which illegal drug manufacturing has occurred. Such conduct is a threat to the health and safety of the public, and unless the conduct is corrected, is likely to result in future losses similar to that suffered by the Bloors.

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15. There is a real and substantial potential of repetition of the denial by Miller and LC Realty, Inc., of their duty to disclose the history of illegal drug manufacturing to prospective purchasers of property where such activities have occurred.
16. Although the sale by the Fritzes of their Property to the Bloors was a single transaction, the failure by Miller and LC Realty, Inc. to disclose the history of illegal drug manufacturing on the Property occurred at least three times, and such conduct is likely to be repeated and many other prospective purchasers of property damaged as a result of such concealment unless a penalty is imposed as allowed under the Consumer Protection Act.
17. The failure of Miller and LC Realty, Inc. to disclose to the Bloors, the other prospective purchaser of the Property, and the public the known fact that illegal drug manufacturing had occurred at the Property was a deceptive practice in violation of the Consumer Protection Act.
18. The Bloors actions after the discovery of the contamination were reasonable under the facts and circumstances present and they took reasonable measures to mitigate their damages.
19. The credit problems and the resulting negative reporting on the Bloors' credit history was proximately caused by the failure of the Fritzes, Miller, L.C. Realty, Inc. and Cowlitz County to fulfill their duties regarding their knowledge of the use of the Property as a meth lab and the potential of contamination of the Property, and the resulting loss by the Bloors of their home and personal Property. Had the Defendants

not failed in their duties to the Bloors, the Bloors would not have purchased the Property in the condition it was at the time of sale, nor moved onto the Property.

20. The Bloors were without fault in the events that led to their losses and damages.

21. Pursuant to RCW 4.22.070, the court concludes that the total fault proximately causing the damages of Bloors as detailed in Conclusion of Law No. 22 herein below should be apportioned among the defendants as follows:

- a. Cowlitz County 1/3
- b. Fritz 1/3
- c. Miller/L.C. Realty, Inc. 1/3

22. Judgment should be entered in favor of the Bloors and against all of the defendants, jointly and severally, for the following damages:

- a. Damages for emotional distress suffered by Ed Bloor - \$10,000.00;
- b. Damages for emotional distress suffered by Eva Bloor - \$25,000.00;
- c. Damages for displacement of the Bloors and loss of work income - \$7,500.00;
- d. Damages for loss of use of the Property - \$9,000.00;
- e. Damages for injury to the Bloors' credit rating and the reasonably certain additional costs of credit that they will suffer in the future - \$10,000.00
- f. Damages for loss of personal property owned by the Bloors - \$30,000.00.
  - i. If items of personal property claimed by the Bloors and listed on their exhibits remain on the Property and are salvageable, the Bloors, at their option after the items have been decontaminated, should be allowed to retrieve those items and should be required to allow credit for the fair market

value of such items, or deliver the items to the Defendants so they can be sold or retained by the Defendants. The Bloors also should be allowed to retrieve all other items of personal property that were not claimed by the Bloors and were not listed on their exhibits after the items are decontaminated, without any credit or set off being given to the Defendants.

23. Judgment should be entered in favor of the Bloors and against Miller and LC Realty, Inc. for treble damages, for violation of the Consumer Protection Act, in the amount of \$10,000.00.

24. The contract between the Fritzes and the Bloors should be rescinded by requiring the Fritzes to make payment to the Bloors of the purchase price of \$149,000.00, and interest thereon at the statutory rate of twelve percent as provided in RCW 19.52.010 from the date the Bloors were forced to vacate the property on October 22, 2004, due to the contamination, until entry of judgment herein, plus the late charges, lender attorney fees and foreclosure costs imposed by the Bloors lenders due to the defaults in the loans owed by the Bloors, in the amount of \$9,231.89 Judgment should be entered against the Fritzes in the sum of \$38,555.13, for accrued interest on the purchase price at the rate of twelve per cent (12%) per annum from the date the Bloors vacated the Property, October 22, 2004, through December 18, 2006, and thereafter at the statutory rate applicable to judgments until paid.

25. The Bloors should receive judgment against the Fritzes in the total sum of \$196,787.02 for the purchase price plus accrued interest from October 22, 2004, through the date hereof, late charges, lender attorney fees and costs, which judgment shall be satisfied by

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2 payment into the registry of this court. Upon completion of such payment into the  
3 registry of the Court, the Fritzes may apply to this court for entry of an order disbursing  
4 said payment to the lenders of the Bloors to satisfy the indebtedness secured by the  
5 property, with any excess to be received by the Bloors. At such time as payment of the  
6 judgment and interest thereon has been completed, this court shall enter a decree  
7 quieting title in the Property in the Fritzes free from any claim of the Bloors.

- 8 26. The hourly rates stated on the billing statements of the Bloors' attorneys are reasonable.
- 9 27. The 437.2 hours expended by attorney Todd Rayan up to the court's oral ruling was  
10 reasonable and necessary.
- 11 28. The 124.3 hours expended by attorney Todd Rayan pursuing and defending claims  
12 solely against Cowlitz County was reasonable and necessary, though there is no  
13 statutory, contractual or common law basis for recovery of those fees.
- 15 29. The 55 hours expended by attorney Todd Rayan after the court's oral ruling up to and  
16 through October 10, 2006, and the 11.5 hours expended from November 15, 2006  
17 through the date of judgment were reasonable and necessary.
- 18 30. The 115.5 hours expended by attorney T. Charles Althausen up to the court's oral ruling  
19 was reasonable and necessary.
- 21 31. The 16.1 hours expended by attorney T. Charles Althausen pursuing and defending  
22 claims solely against Cowlitz County was reasonable and necessary, though there is no  
23 statutory, contractual or common law basis for recovery of those fees.

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32. The 25.8 hours expended by attorney T. Charles Althausser after the court's oral ruling up to and through October 10, 2006, and the 4.7 hours expended from November 15, 2006 through the date of judgment were reasonable and necessary.
33. 9.1 hours expended by other attorneys in the firm representing the Bloors up to the court's oral ruling was reasonable and necessary.
34. The 27.3 hours expended by other attorneys in the firm representing the Bloors after the court's oral ruling up to and through October 10, 2006, and 2.9 hours from November 15, 2006 through the date of judgment was reasonable and necessary.
35. The attorneys fee award to the Bloors should be enhanced by employing a multiplier of 1.2 to the attorney fees earned through the date of announcement of the Court's oral ruling. The enhancement is warranted because of the contingent risk assumed by the attorneys in prosecuting the Bloors' claims, the difficulties, burdens and lost opportunities experienced by the Bloors' attorneys in prosecuting the claims, the uncertainty of recovery, and the skills and abilities demonstrated by the Bloors' attorneys.
36. The Bloors should receive judgment in the amount of \$122,163.75 through October 10, 2006, for their reasonable attorney fees against the Fritzes, Miller and L.C. Realty, Inc., jointly and severally.
37. The Bloors should receive judgment in the amount of \$3,171.50 from November 15, 2006 through entry of judgment. for their reasonable attorney fees against the Fritzes, Miller and L.C. Realty, Inc. jointly and severally.

1 38. The Bloors should receive judgment for additional attorney fees spent on Consumer  
2 Protection Act claims in the amount of \$13,907.30 against Miller and L.C. Realty, Inc.,  
3 jointly and severally.

4 39. The attorney fee provision in the REPSA provides for the recovery of expenses incurred  
5 in this action. The Bloors should receive judgment against the Fritzes, for their  
6 expenses in the sum of \$18,975.55, subject to credit for costs paid by other defendants.  
7

8 40. The Bloors should recover their statutory costs from all of the Defendants jointly and  
9 severally pursuant to the Consumer Protection Act, the contract and RCW 4.84.  
10

11 DATED this 18 day of December, 2006.

12  
13 **Original Signed By**  
**NELSON E. HUNT**

14 \_\_\_\_\_  
JUDGE

15  
16 Presented by:  
17 OLSON ALTHAUSER LAWLER  
18 SAMUELSON & RAYAN  
Attorneys for Plaintiffs

Approved for entry/Copy Received:  
LAW, LYMAN, DANIEL, KAMERRER &  
BOGDANOVICH, P.S.  
Attorneys for Defendant

19  
20 By: \_\_\_\_\_  
Todd S. Rayan, WSBA #34090

\_\_\_\_\_  
John Justice WSBA# 23042

21 COWLITZ CO. PROSECUTING ATTORNEY  
22 OFFICE  
Attorneys for Defendant

23 By: \_\_\_\_\_  
T. Charles Althausen, WSBA #06863

24 \_\_\_\_\_  
Ron Marshall WSBA # 11662

25  
26  
27 FINDINGS OF FACT AND  
CONCLUSIONS OF LAW-35

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1 Approved for entry/Copy Received:

2 DEMCO LAW FIRM, P.S.  
3 Attorneys for Defendant

4  
5 Brandi L. Adams WSBA# 31214

Approved for entry/Copy Received:

LEHNER & RODRIGUES, P.C.  
Attorneys for Defendant

\_\_\_\_\_  
Carl Rodrigues WSBA # 33480

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FINDINGS OF FACT AND  
CONCLUSIONS OF LAW-36

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The Honorable Nelson E. Hunt

13 Presented by:  
14 OLSON ALTHAUSER LAWLER  
15 SAMUELSON & RAYAN  
Attorneys for Plaintiffs

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Todd S. Rayan, WSBA #34090

John Justice WSBA# 23042

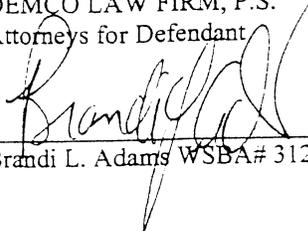
COWLITZ CO. PROSECUTING ATTORNEY OFFICE  
Attorneys for Defendant

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19 By: \_\_\_\_\_  
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20 \_\_\_\_\_  
Ron Marshall WSBA # 11662

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24   
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Brandi L. Adams WSBA# 31214

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27 FINDINGS OF FACT AND  
CONCLUSIONS OF LAW-28

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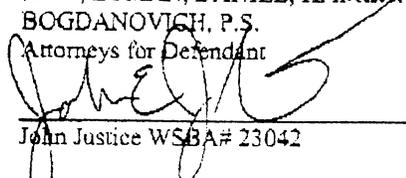
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The Honorable Nelson E. Hunt

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16 SAMUELSON & RAYAN  
17 Attorneys for Plaintiffs

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LAW, LYMAN, DANIEL, KAMERRER &  
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16 SAMUELSON & RAYAN  
17 Attorneys for Plaintiffs

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Attorneys for Defendant

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23 Ron Marshall WSBA # 11662

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