



## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ISSUES PRESENTED .....	1
III.	COUNTER STATEMENT OF THE FACTS.....	2
	A. Substantive Facts .....	2
	B. Procedural Facts.....	4
IV.	STANDARD OF REVIEW.....	4
V.	ARGUMENT .....	6
	A. As Mr. Chester’s Action Involves Claims That Were Or Could Have Been Litigated In His Previous Action, This Action Is Barred By Res Judicata .....	6
	B. Mr. Chester’s Entry Into A Release And Settlement Agreement Releasing All Current And Future Claims Bars This Action .....	10
VI.	CONCLUSION .....	14

## TABLE OF AUTHORITIES

### Cases

<i>Atchison v. Great Western Malting Co.</i> , 161 Wn.2d 372, 166 P.3d 662 (2007).....	5
<i>Barnum v. State</i> , 72 Wn.2d 928, 435 P.2d 678 (1967).....	5
<i>Batten v. Abrams</i> , 28 Wn. App. 737, 626 P.2d 984 (1981), review denied, 95 Wn.2d 1033 (1981).....	2, 9
<i>Brown v. MacPherson's, Inc.</i> , 86 Wn.2d 293, 545 P.2d 13 (1975).....	5
<i>Burrows v. Williams</i> , 52 Wash. 278, 100 P. 340 (1909) .....	11
<i>Camer v. Seattle Sch. Dist. No. 1</i> , 52 Wn. App. 531, 762 P.2d 356 (1988), cert. denied, 493 U.S. 873, 110 S. Ct. 204, 107 L.Ed.2d 157 (1989).....	6
<i>Contreras v. Crown Zellerbach Corp.</i> , 88 Wn.2d 735, 565 P.2d 1173 (1977).....	5
<i>Cowiche Canyon Conservancy v. Bosley</i> , 118 Wn.2d 801, 828 P.2d 549 (1992).....	10
<i>Federated Dep't Stores, Inc. v. Moitie</i> , 452 U.S. 394, 101 S. Ct. 2424, 69 L.Ed.2d 103 (1981).....	6
<i>Fosbre v. State</i> , 70 Wn.2d 578, 424 P.2d 901 (1967).....	10
<i>In re Diafos</i> , 110 Wn. App. 758, 37 P.3d 304 (2001).....	8
<i>Loveridge v. Fred Meyer, Inc.</i> , 125 Wn.2d 759, 887 P.2d 898 (1995) .....	6

<i>Mellor v. Chamberlin</i> , 100 Wn.2d 643, 673 P.2d 610 (1983).....	6
<i>Mut. of Enumclaw Ins. Co. v. State Farm Mut. Auto. Ins. Co.</i> , 37 Wn. App. 690, 682 P.2d 317 (1984).....	11
<i>N.W. Motors, Ltd. v. James</i> , 118 Wn.2d 294, 822 P.2d 280 (1992).....	10
<i>Oregon Mut. Ins. Co. v. Barton</i> , 109 Wn. App. 405, 36 P.3d 1065 (2001).....	11
<i>Paopao v. Dept. of Social and Health Svc.</i> , 145 Wn. App. 40, 185 P.3d 640 (2008).....	10, 11
<i>Pederson v. Potter</i> , 103 Wn. App 62, 11 P.3d 833 (2000).....	6
<i>Rains v. State</i> , 100 Wn.2d 660, 674 P.2d 165 (1983) .....	7
<i>Reid v. Pierce County</i> , 136 Wn.2d 195, 961 P.2d 333 (1998).....	5
<i>Rodriguez v. Loudeye Corp.</i> , 144 Wn. App. 709, 189 P.3d 168 (2008).....	5
<i>Schoeman v. New York Life Ins. Co.</i> , 106 Wn.2d 855, 726 P.2d 1 (1986) .....	7
<i>Seafirst Center Ltd. Partnership v. Erickson</i> , 127 Wn.2d 355, 898 P.2d 299 (1995).....	13
<i>U.S. Bank v. Whitney</i> , 119 Wn. App. 339, 81 P.3d 135 (2003).....	10

**Statutes**

RCW 42.56.290 .....	3
RCW 42.56.550(3).....	4

**Other Authorities**

Philip A. Trautman,  
*Claim and Issue Preclusion in Civil Litigation in Washington*,  
60 Wash. L. Rev. 805 (1985) ..... 6

**Rules**

CR 12(b)(6)..... 5  
CR 56 ..... 5  
ER 201(b)..... 5  
RAP 10.3(c) ..... 10

## I. INTRODUCTION

The undisputed record in this case demonstrates that inmate David Chester previously entered into a release and settlement agreement releasing all existing and future claims, causes of action, and damages relating to his April 10, 2007 public records request. The superior court record also demonstrates that Mr. Chester did or could have litigated the issue regarding the withheld records in his previous lawsuit. Finally, the issue of the application of exemptions was not the basis for the trial court's dismissal or the appeal before this Court. Mr. Chester's claims are barred by accord and satisfaction and res judicata and this Court should affirm the superior court's order of dismissal.

## II. ISSUES PRESENTED

1. Mr. Chester previously litigated his claim that the Department's response to his April 10, 2007 public records request violated the Public Records Act. Is Mr. Chester's action barred by res judicata?

2. Mr. Chester previously entered into a settlement agreement releasing all existing and future claims, damages, and causes of action arising from his April 10, 2007 public records request. Is Mr. Chester's action barred by accord and satisfaction?

### III. COUNTER STATEMENT OF THE FACTS

#### A. Substantive Facts

On April 10, 2007, Airway Heights Corrections Center (AHCC) inmate and frequent Public Records Act (PRA) litigator David Chester<sup>1</sup> submitted a public records request to the Department of Corrections (the Department) “to inspect documents relating to the disciplinary proceedings or actions against PA<sup>2</sup>-C John Loranger, and certain investigative documents generated by the department of corrections.” CP 37-38, ¶ 3.5. After several back and forth correspondences, on July 27, 2007, 179 pages of responsive documents were made available to Mr. Chester. CP 48. Mr. Chester was also informed that 691<sup>3</sup> pages of documents were exempt from disclosure as “litigation and work product

---

<sup>1</sup> In his brief, Mr. Chester asserts he is inexperienced and untrained in handling actions brought under the PRA. *See* Opening Brief of David Chester, at 13. However, a pro se litigant is generally held to the same standard as an attorney. *Batten v. Abrams*, 28 Wn. App. 737, 739 n.1, 626 P.2d 984 (1981), *review denied*, 95 Wn.2d 1033 (1981). Additionally, Mr. Chester has extensively litigated matters under in the PRA. *See, e.g. Chester v. Grant County*, Kittitas County Superior Court No. 09-2-00473-3; *Chester v. Grant County*, Kittitas County Superior Court No. 09-2-00042-8; *Chester v. Grant County*, Kittitas Superior Court No. 10-2-00471-1; *Chester v. Grant County*, Kittitas Superior Court No. 10-2-00429-0; *Chester v. DOC*, Spokane County No. 08-2-01403-1; *Chester v. DOC*, Spokane County No. 08-2-01443-1; *Chester v. DOC*, Spokane County No. 09-2-02850-2; *Chester v. DOC*, Spokane County No. 10-2-02894-8.

<sup>2</sup> Physician Assistant.

<sup>3</sup> In all documents submitted in Spokane and Thurston County and this Court, Mr. Chester has referenced 691 pages of documents at issue in his complaints. However, for unknown reasons, in his appellate brief, Mr. Chester refers to “more than 700 pages.” *See, e.g.,* Opening Brief of David Chester, at 3, 5, 13; *contra* Motion for in Camera Review, at 1, 2, 4, 8; Motion to Submit Additional Evidence for Review, at 2, 5. Complaint for Violations of the Public Records Act, at 5; CP 8, ¶ 4.13-4.14.

files<sup>4</sup> pursuant to RCW 42.56.290. CP 8, ¶ 4.12; CP 38, ¶ 3.8. On November 15, 2007, Mr. Chester filed a complaint against the Department in Spokane County Superior Court No. 07-2-05187-7 alleging violations of the PRA. CP 36-44. The basis of the complaint was Mr. Chester's April 10, 2007, request for the documents concerning John Loranger and the Department's response to that request. *Id.*

On February 22, 2010, after Mr. Chester's matter was dismissed and pending appeal, Mr. Chester signed a Release and Settlement Agreement with the Department. CP 51-52, 54, 60-62. Mr. Chester agreed to release and discharge any and all existing and future claims, damages, and causes of action arising out of the PRA as described in Mr. Chester's complaint. CP 60-61. The Release and Settlement agreement was the "final, conclusive and complete release" of all known, as well as all unknown and unanticipated damages arising out of the incidents set forth in Mr. Chester's complaint. CP 61. In return, Mr. Chester received a settlement of three thousand dollars (\$3000). *Id.* The Release and Settlement agreement was entered by the Court on March 12, 2010, dismissing Mr. Chester's case with prejudice. CP 56, 58, 62 at ¶ 9.

---

<sup>4</sup> On June 9, 2008, after reviewing its previous exemption of 691 pages of documents, the Department determined that 192 pages could be disclosed and offered those documents to Mr. Chester. CP 48.

On March 16, 2010, a mere four days after the Release and Settlement Agreement was adopted by the court, Mr. Chester served the Department with a complaint filed in Thurston County Superior Court<sup>5</sup> once again challenging the Department's response to his April 10, 2007 request for documents concerning PA-C Loranger. CP 64; CP 5-22.

**B. Procedural Facts**

Mr. Chester filed his complaint alleging violations of the PRA in Thurston County Superior Court on February 16, 2010. CP 4 (date stamp). Mr. Chester served his Complaint on the Department on March 16, 2010. CP 64. The Department responded to Mr. Chester's complaint by asserting that dismissal was required under the doctrines of Accord and Satisfaction, Res Judicata, and Collateral Estoppel. CP 26-64. On May 7, 2010, the Thurston County Superior Court granted the Department's motion to dismiss. CP 143. Mr. Chester filed a Motion for Reconsideration which was denied. CP 144-167, 191-192. This appeal follows.

**IV. STANDARD OF REVIEW**

Judicial review of all agency actions under the PRA is *de novo*. RCW 42.56.550(3). Appellate review of a trial court ruling under CR

---

<sup>5</sup> The matter was originally filed by Mr. Chester on February 16, 2010. CP 4 (date stamp).

12(b)(6)<sup>6</sup> is *de novo*. *Atchison v. Great Western Malting Co.*, 161 Wn.2d 372, 376, 166 P.3d 662 (2007). Dismissal under CR 12(b)(6) is appropriate where it appears beyond a reasonable doubt that no facts exist that would justify recovery, even while accepting as true the allegations contained in the plaintiff's complaint. *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998). A motion to dismiss questions only the legal sufficiency of the allegations in a pleading. *Contreras v. Crown Zellerbach Corp.*, 88 Wn.2d 735, 742, 565 P.2d 1173 (1977); *Brown v. MacPherson's, Inc.*, 86 Wn.2d 293, 298, 545 P.2d 13 (1975). "The only issue before the trial judge is whether it can be said there is no state of facts which plaintiff could have proven entitling him to relief under his claim." *Contreras*, 88 Wn.2d at 742; *Barnum v. State*, 72 Wn.2d 928, 929, 435 P.2d 678 (1967).

---

<sup>6</sup> The trial court's order of dismissal cites to both CR 12(b)(6) and CR 56. CP 143. However, the Department's motion was filed pursuant to CR 12(b)(6) and contained public court documents whose authenticity could not be reasonably disputed. *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 725-726, 189 P.3d 168 (2008); *see also* ER 201(b). Additionally, neither party moved for summary judgment. *See also* Opening Brief of David Chester, at 15.

## V. ARGUMENT

### A. As Mr. Chester's Action Involves Claims That Were Or Could Have Been Litigated In His Previous Action, This Action Is Barred By Res Judicata

Mr. Chester's action is barred by res judicata. Res judicata ensures the finality of decisions. *Pederson v. Potter*, 103 Wn. App 62, 67, 11 P.3d 833 (2000) (citing *Camer v. Seattle Sch. Dist. No. 1*, 52 Wn. App. 531, 534, 762 P.2d 356 (1988), *cert. denied*, 493 U.S. 873, 110 S. Ct. 204, 107 L.Ed.2d 157 (1989)). Res judicata, or claim preclusion, prevents the re-litigation of a claim or cause of actions that were litigated, or could have been litigated, in a prior action. *Mellor v. Chamberlin*, 100 Wn.2d 643, 646, 673 P.2d 610 (1983) (citing *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 101 S. Ct. 2424, 69 L.Ed.2d 103 (1981)); *Pederson*, 103 Wn. App. at 67 (citing *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 763, 887 P.2d 898 (1995)). The purpose of res judicata is to attempt to end disputes, which "limits the vexation and harassment of other parties; lessens the overcrowding of court calendars, thereby freeing the courts for use by others; and, by providing for finality in adjudications, encourages respect for judicial decisions." Philip A. Trautman, *Claim and Issue Preclusion in Civil Litigation in Washington*, 60 Wash. L. Rev. 805, 806 (1985).

Res judicata is applicable to preclude re-litigating a claim if there is "a concurrence of identity in four respects" with regard to a subsequent

litigation: (1) subject matter; (2) cause of action; (3) persons and parties; and (4) quality of the persons against whom the claim is made. *Rains v. State*, 100 Wn.2d 660, 665, 674 P.2d 165 (1983). Res judicata also requires a final judgment on the merits. *Schoeman v. New York Life Ins. Co.*, 106 Wn.2d 855, 860, 726 P.2d 1 (1986).

First, it is undisputed that the subject matter in Mr. Chester's Spokane County and Thurston County cases are the same. Both cases arise out of Mr. Chester's April 10, 2007 public records request and both cases challenge the Department's response to that request.<sup>7</sup> *See, e.g., Rains*, 100 Wn.2d at 663; *see also* CP 37-38 (¶¶ 3.3-3.5), CP 42 (¶¶ 4.1-4.3) and CP 5 (¶¶ 4.1-4.2), CP 21-22 (¶¶ 4.72, 5.1-5.3).

Second, the causes of action are also identical for purposes of res judicata. As both matters arise from the April 10, 2007 public records request and the response thereto, the evidence necessary in both cases is identical. The same violation of the PRA, i.e. the proper denial of records, is alleged in both cases. Both cases arise from the same transactional nucleus of facts - a singular public records request dated April 10, 2007.

Third, it is undisputed, and conceded by Mr. Chester, that the parties and their quality are the same. *See* Opening Brief of David Chester, at 16.

---

<sup>7</sup> Mr. Chester appears to concede this point in his brief. Opening Brief of David Chester, at 15-16 ("The DOC argues . . . the issues are the same . . . . This may be true. The same documents are at issue in both cases . . . .").

Finally, there was a final judgment on the merits in Mr. Chester's first action. The entry of the Release and Settlement Agreement, for purposes of res judicata, is considered to be a final judgment on the merits. *In re Diafos*, 110 Wn. App. 758, 764, 37 P.3d 304 (2001). The final judgment dismissed Mr. Chester's case regarding his public records request with prejudice.

Mr. Chester argues that res judicata does not apply because the Spokane County Court did not consider whether the Department's invocation of the attorney-client privilege and work product privilege violates the PRA. *See* Opening Brief of David Chester, at 16. But the basis of Mr. Chester's Spokane County complaint was his April 10, 2007 request for records regarding John Loranger and the Department's response to that request. *See* CP 37-38 (¶¶ 3.3-3.5), CP 42 (¶¶ 4.1-4.3). This is the exact same request for records and response challenged in the Thurston County action that is the subject of this appeal. The Thurston County complaint is the same matter resolved in the Spokane County case. In fact, Mr. Chester concedes the parties and events in the Thurston County action are the same as in the Spokane County action. *See* Opening Brief of David Chester, at 16. Mr. Chester's argument that res judicata does not apply because the Thurston

County matter only challenges the claimed exemptions of attorney-client privilege and work product privilege is without merit.<sup>8</sup> Regardless of whether the Thurston County matter raises the same claims or new claims, res judicata bars review of those claims. Even assuming, arguendo, that the Thurston County matter raises new claims, Mr. Chester could have and should have raised the claims in the Spokane County Matter.<sup>9</sup>

Mr. Chester had an opportunity to bring all his claims related to his record request and the Department's response in Spokane County. He entered into a final order. That order dismissed his claims with prejudice. He is now barred by res judicata from attempting to resurrect the case. Therefore, Mr. Chester cannot proceed with his underlying action, and has failed to state a claim entitling him to relief.

---

<sup>8</sup> In fact, Mr. Chester's Thurston County Complaint cites eight (8) alleged violations of the PRA, and 3 causes of action (none which specifically cite the Department's application of the attorney-client privilege or work product exemptions), many of which, are only duplicative of his claims made in the Spokane County complaint, but all arise of the same nucleus of facts. *Compare* CP 21-22, (¶¶ 4.72, 5.1-5.4) *and* CP 41-42 (¶¶ 3.18-3.21, 4.1-4.3).

<sup>9</sup> In his response to the Department's Motion to Dismiss, Mr. Chester claims he was not permitted to amend his complaint. CP 69. However, the record is devoid of any motion by Mr. Chester requesting to amend his complaint. Additionally, a pro se litigant is generally held to the same standard as an attorney. *Batten*, 28 Wn. App. at 739 n.1. If Mr. Chester did not timely bring a claim that he should or could have, it does not relieve him from the application of res judicata.

**B. Mr. Chester's Entry Into A Release And Settlement Agreement Releasing All Current And Future Claims Bars This Action**

Pursuant to the doctrine of Accord and Satisfaction, Mr. Chester's claims were properly dismissed by the lower court. To have an accord and satisfaction, the parties must have a bona fide dispute, an agreement to settle the dispute (the accord), and execution of that agreement (the satisfaction). *Paopao v. Dept. of Social and Health Svc.*, 145 Wn. App. 40, 46, 185 P.3d 640 (2008). Both parties must intend to create an accord and satisfaction. *U.S. Bank v. Whitney*, 119 Wn. App. 339, 351, 81 P.3d 135 (2003). When an accord is fully performed, the previously existing claim is discharged and all defenses and arguments based on the underlying contract are extinguished.<sup>10</sup> *Paopao*, 145 Wn. App. at 46 (citing *N.W. Motors, Ltd. v. James*, 118 Wn.2d 294, 305, 822 P.2d 280

---

<sup>10</sup> In his response to the Department's Motion to Dismiss and in his Motion for Reconsideration, Mr. Chester raised the issue that the Department did not abide by the terms of the Release and Settlement Agreement when statutory deductions were taken from Mr. Chester's award. This argument was meritless and denied by the Court. However, more importantly, Mr. Chester did not raise that issue in his Opening Brief, and therefore he is precluded from arguing it in his reply, and is deemed to have waived the issue. *See, e.g., Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) ("An issue raised and argued for the first time in a reply brief is too late to warrant consideration."); *Fosbre v. State*, 70 Wn.2d 578, 583, 424 P.2d 901 (1967) (holding that contentions raised for the first time in reply "will not receive consideration on appeal"; also holding that points not argued and discussed in the opening brief are considered "abandoned and not open to consideration on their merits."). *See also* RAP 10.3(c).

(1992)); *Mut. of Enumclaw Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 37 Wn. App. 690, 694, 682 P.2d 317 (1984). A court presumes that a settlement agreement embraces all existing claims from the underlying incident. *Oregon Mut. Ins. Co. v. Barton*, 109 Wn. App. 405, 414, 36 P.3d 1065 (2001). Additionally, a strong presumption attaches that the parties have considered and settled every existing difference. *Paopao*, 145 Wn. App. at 46 (citing *Burrows v. Williams*, 52 Wash. 278, 287, 100 P. 340 (1909)). To overcome this strong presumption requires “testimony so clear and convincing that the court can free the transaction from all doubts as to the intent of the parties.” *Barton*, 109 Wn. App. at 414 (quoting *Burrows*, 52 Wash. at 287).

Mr. Chester, after filing this case, entered into a Release and Settlement Agreement regarding his public records action filed in Spokane County. Release and Settlement Agreement. CP 60-62. Mr. Chester agreed to release and discharge “any and all existing and future claims, damages and causes of action of any nature arising out of public records act as described in Plaintiff’s Complaints and Appeal in . . . *Chester v. Department of Corrections*, Spokane County Superior Court No. 07-2-05187-7, and *Chester v. Department of Corrections*, Washington Court of Appeals No. 28126-4-III made pursuant to RCW 42.56 *et seq.*, . . . .” CP 60-61. Additionally, the agreement released all known, unknown and

unanticipated damages arising out of the incident set forth in Mr. Chester's complaint and appeal, namely his April 10, 2007, public records request. CP 61. In return, Plaintiff received three thousand dollars (\$3000) as a "full and complete settlement". *Id.*

This Release and Settlement Agreement bars Mr. Chester's claims in this case. As Mr. Chester admits, his actions in Spokane County and Thurston County arise out of the same public records request. CP 61; *see also* Opening Brief of David Chester, at 16 ("The DOC argues the parties are the same, and the issues are the same since Mr. Chester's complaint in Thurston County incorporated all the claims form (sic) CHESTER I, Spokane County Court No. 07-2-05187-7. This may be true. The same documents are at issue in both cases and the parties are the same.").

However, the Release and Settlement Agreement specifically released all claims, damages and causes of action of any nature arising out of his April 10, 2007, request for records as set forth in Mr. Chester's first complaint. Mr. Chester argues that his action in Thurston County is not barred because he only settled the claims he set forth in his Spokane County complaint and the court did not consider the claims he brought forth in his Thurston County matter. Opening Brief of David Chester, at 5, 14, 16. However, both arguments are unpersuasive in light of the plain

and clear language of the Release and Settlement Agreement Mr. Chester entered into.

Additionally, Mr. Chester's argument undercuts both the finality that the parties expect when entering into a release and settlement agreement, as well as Washington's strong public policy of encouraging settlements. *Seafirst Center Ltd. Partnership v. Erickson*, 127 Wn.2d 355, 366, 898 P.2d 299 (1995). As Mr. Chester filed his Thurston County matter<sup>11</sup> prior to entry of the Release and Settlement Agreement, Mr. Chester was aware of all his existing claims. He chose to enter into the Release and Settlement Agreement discharging all existing and future claims, damages, and causes of action arising from the public records request at issue for monetary compensation. Mr. Chester served his Thurston County complaint only days after the Release and Settlement Agreement was entered. Clearly the Thurston County matter, served after the Release and Settlement Agreement was entered was an attempt to circumvent that agreement and an attempt to conduct piecemeal litigation. This severed any finality the Department felt it reached when it settled Mr. Chester's claims.

Mr. Chester entered into a release settlement agreement, resolving all issues arising from his April 10, 2007 public records request. That

agreement has been executed by the payment of \$3,000.00 to Mr. Chester. Mr. Chester's claim that the Thurston County matter was brought under a different theory of claims is irrelevant. He has released and discharged any existing or future claims arising from his April 10, 2007 public records request. Therefore, Mr. Chester cannot proceed with his underlying action, and has failed to state a claim that relief may be granted.

## VI. CONCLUSION

For all of the foregoing reasons, the Department respectfully requests that this Court affirm the superior court's dismissal of Mr. Chester's PRA Complaint.

RESPECTFULLY SUBMITTED this 14 day of January, 2011.

ROBERT M. MCKENNA  
Attorney General



OHAD M. LOWY, WSBA #33128  
Assistant Attorney General  
Corrections Division  
PO Box 40116  
Olympia WA 98504-0116  
(360) 586-1445

---

<sup>11</sup> Mr. Chester filed his Thurston County matter on February 16, 2010. CP 4.

**CERTIFICATE OF SERVICE**

I certify that on the date below I served a copy of the **BRIEF OF THE DEPARTMENT OF CORRECTIONS** on all parties or their counsel of record as follows:

- US Mail Postage Prepaid
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by \_\_\_\_\_

DEPT. OF CORRECTIONS  
COURT OF APPEALS  
DIVISION II  
11 JAN 18 AM 10:10  
STATE OF WASHINGTON  
BY Katrina Toal  
DEPUTY

TO:

DAVID K CHESTER #823719  
AIRWAY HEIGHTS CORRECTIONS' CENTER  
PO BOX 2049  
AIRWAY HEIGHTS WA 99001-2049

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED this 14<sup>th</sup> day of January, 2011 at Olympia, Washington.

Katrina Toal  
KATRINA TOAL  
Legal Assistant