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COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
BY \_\_\_\_\_

No. 323781-III

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

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REBECCA MAUCH and KELLIE DAVIS,

Plaintiffs/Respondents,

v.

BOURKE OWENS, DIANA OWENS and SWISS VALLEY  
AGENCY d/b/a NORTH TOWN INSURANCE AGENCY,

Defendants/Appellants.

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APPEALED FROM SPOKANE COUNTY SUPERIOR COURT  
CAUSE NO. 10-2-01008-9

THE HONORABLE ANETTE PLESE

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**REBECCA MAUCH AND KELLIE DAVIS'S RESPONSE  
BRIEF**

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## **I. INTRODUCTION**

In September of 2008, the parties to this action all signed a “Letter of Offer of Purchase,” (hereinafter, “Agreement”). This purpose of this Agreement was to transfer the legal right to Swiss Valley Agency, Inc. d/b/a North Town Insurance, (hereinafter, “North Town”) from Appellants/Defendants Bourke Owens (“Appellants”) and Diane Owens to Respondents/Plaintiffs Rebecca Mauch and Kellie Davis (“Respondents”). On March 16, 2010, Respondents filed a complaint for damages alleging breach of contract against Appellants Bourke Owens and Diane Owens. **CP 3-7.** On May 28, 2010, Appellants filed a motion to “North Town” as a necessary party. **CP 8-14.** On June 15, 2010, using joint counsel, Appellants and North Town filed a joint answer and counterclaims in response to the complaint in this matter. **CP 15-26.**

A bench trial was held from November 18, 2013, through November 22, 2013, in front of the Honorable Judge Annette Plese. On the first day of trial, the trial court excluded Appellants’ expert witnesses Daniel Harper and John Richardson for failing to properly disclose expert opinions and materials in accordance with the rules

of discovery, which prejudiced the Respondents ability to prepare for trial. Additionally, the trial court excluded Mr. Harper due to a conflict of interest. The trial court also did not allow Dale Russell, the parties' joint attorney, to testify as an expert witness against the Respondents.

The trial court also heard Respondents' motion in limine regarding the parole evidence rule. Defendants sought to introduce evidence prepared by parties' joint counsel, outside of the signed agreement, to show that the parties never intended the agreement to be valid contract for the sale of North Town. After reviewing the trial briefs, declarations presented in the matter, and hearing argument from counsel, the trial court ruled in favor of the Respondents and prevented parole or extrinsic evidence from being introduced to show the parties' intent at the time they signed the contract for the sale of North Town.

The trial court also found the Agreement contained all of the materials terms necessary to be a contract; an offer, acceptance, consideration, and mutual assent, and ruled that the signed Agreement was a contract as a matter of law. After making its

rulings in limine, the trial court instructed the parties that the issues at left for resolution in Respondents' case were whether the contract was performed, whether the contract was breached, whether there were any resulting damages.

Throughout the trial Appellants' counsel refused to accept the trial court's ruling that the Agreement was a contract, and continuously challenged the trial court's ruling. Appellants' counsel did this by attempting to elicit testimony that the Agreement was not a contract, and used requested materials that were not provided during discovery to show the Agreement was not a contract. This failure to acknowledge the trial court's ruling resulted in Appellant Bourke Owens to admit during his testimony that he never performed any term within the Agreement because he did not believe the Agreement to be a contract.

Throughout the trial, the trial court instructed and admonished Appellants' counsel against challenging the ruling that the Agreement was a contract, as well as against using requested materials not provided to Respondents during the course of litigation. Appellants' counsel repeatedly ignored the trial court's

instructions. As a result, this was very disruptive trial, which required numerous objections and breaks in the proceedings where the trial court was forced to direct Appellants' counsel to follow its rulings.

Within their case-in-chief, Respondents presented evidence and testimony showing that they performed pursuant to the Agreement, and suffered damages from Appellants' admitted material breach. Prior to the start of the presentation of Appellants' defenses and counterclaims, Respondents moved to limit the Appellants' witnesses' testimony in accordance with the trial court's ruling that the Agreement was a valid contract. Appellants' affirmative defenses and counterclaims were plead in the alternative to the trial court finding the Agreement to be a valid contract. Therefore, Respondents argued there was no relevant evidence to be presented within Appellants' case.

During Respondents' motion in limine at the close of their case, it became apparent after hearing argument from parties' counsel that the Appellants could not present their case. With Appellant Mr. Owens' admission of material breach of the

Agreement, the Appellants could not offer any contrary evidence within their defense or in support of their counterclaims or defenses. Appellants' counsel failed provide an offer of proof that would result in substantial evidence in support of Appellants' counterclaims or defenses, and the trial court entered verdict against the Appellants.

The trial court directed the parties to proceed to closing arguments. Following closing arguments, the trial court awarded damages to Respondents as a direct result of the Appellants' material breach, and entered Findings of Fact and Conclusions of law.

Appellants now appeal the trial court's rulings during this bench trial. The resulting decision of the trial court was based upon the evidence and relevant law. All of Appellants' issues on appeal stem from either Appellants' willful discovery violations, or Appellants' refusal to follow the order of the court that the Agreement was a contract. Facts, evidence, and argument in support of upholding the trial court's decision appear below.

## **II. STATEMENT OF THE CASE**

### **A. Background**

In May of 1994, Respondent Kellie Davis began her employment at North Town. **RP 359.** At the start of her employment, Ms. Davis' duties included answering the telephones, filing, and general administrative tasks. **RP 359-60.** Over her 14-years as an employee, Ms. Davis' duties expanded to customer service, writing insurance policies, and ultimately management. **RP 359-60.** Respondent Rebecca Mauch started as an independent contractor with North Town in July of 2005, as an insurance agent. **RP 87.**

In late 2006, the Respondents discussed the purchase of North Town from owner Appellant Bourke Owens. **RP 89-90; RP 364.** Because of these sale discussions, the independent contractor agreement signed by Ms. Mauch and Mr. Owens in November of 2006, stated the agreement was null and void in event of the sale of North Town to Ms. Mauch. **RP 89.** In June of 2006, prior to signing the Agreement, the parties set up a Banner Bank account for Mr. Owens in order to facilitate payments made pursuant to the Agreement. **RP 191-92; RP 366.**

In early September of 2008, the all parties signed a "Letter of

Offer of Purchase,” (hereinafter, “Agreement”) which served as the agreement for the purchase of North Town. **RP 180; RP 363; Ex.**

**36.** Because Appellant Ms. Owens did not work at North Town, but had an ownership interest in North Town, Mr. Owens made sure to explain the terms of the Agreement prior to Ms. Owens signing the agreement. **RP 181; RP 185.**

The parties’ joint attorney, Dale Russell, was present when all the parties signed the Agreement at the building where North Town is located. **RP 109; RP 363.** The Agreement provided that Mr. Owens had offered to sell North Town to Respondents for the sum of \$651,000, which was to be paid in monthly installments of \$7,000.00 to Mr. Owens at a fixed interest rate of 7.8% over a period of 12-years. **CP 1246-47.** The parties, using the industry standard valuation of 1.5 times North Town’s commissions, jointly determined the sales price of \$651,000.00 set forth in the Agreement. **CP 1246-47; RP 92; RP 181-82; RP 365.** The Agreement further provided for transfers of all assets of North Town, including but not limited to insurance contracts, advertising rights, company name, office equipment, phone numbers, and

employee and insurance producer contracts. **CP 1247**. Finally, the agreement stated that the effective date of the sale would be September 30, 2008. **CP 1247; RP 374**.

Pursuant to the Agreement, Respondents took possession of North Town and began running the business as their own on October 1, 2008. **RP 91**. After signing the Agreement, Mr. Owens absconded to California, where he remained until January of 2010. **CP 1247; RP 97-99; RP 187; RP 377**. Upon taking over the business on October 1, 2008, Ms. Mauch and Ms. Davis were served with a lawsuit naming North Town and Mr. Owens as defendants. **CP 1248; RP 97; RP 185-86; RP 377**. The lawsuit alleged, amongst other claims, that both North Town and Mr. Owens had committed trade secret misappropriation by taking client information from an insurance competitor. **RP 186**. Ms. Mauch and Ms. Davis retained counsel, paid to defend the lawsuit, and ultimately paid to resolve the suit in December of 2009. **RP 97; RP 378; CP 1248**.

From when Respondents took possession of North Town on October 1, 2008, until Mr. Owens on January 14, 2010, forced them out as owners, Respondents did all things necessary to comply with

the terms of the agreement. **RP 97-106; RP 365-381.** Once the resolution of the lawsuit involving ABC Insurance, North Town Insurance and Bourke Owens, Mr. Owens relocated to Spokane, WA from California in January 2010. **RP 111, RP 206.**

After Ms. Mauch and Ms. Davis had done all things necessary to resolve the aforementioned lawsuit, Mr. Owens returned to North Town. **RP 98-99; RP 187.** Upon his return, Mr. Owens claimed the Agreement was null and void because the parties had never signed the subsequent documents that were created by Mr. Russell. **CP 1248; RP 111; RP 378.** As a result of Mr. Owens forcing Respondents out as owners of North Town, both Respondents lost their homes and business. **RP 113; RP 382.** Respondents suffered damages. **RP 504-47.**

### **III. ARGUMENT**

#### **A. Standard of Review.**

On appeal from a bench trial, the Appellate Court's "review is limited to determining whether substantial evidence supports the trial court's findings of fact and, if so, whether the findings support the trial court's conclusions of law." *In re Wash. Builders Benefit*

*Trust*, 173 Wash. App. 34, 41 (2013), citing, *City of Tacoma v. State*, 117 Wash.2d 348, 361 (1991). “Substantial evidence is ‘a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.’” *Id.* at 41, quoting, *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wash.2d 873, 879 (2003).

On appeal, the Appellants do not specifically challenge any of the findings of fact of the trial court. “Unchallenged findings of fact are verities on appeal.” *In re Wash. Builders Benefit Trust*, 173 Wash. App. at 41. Appellants main focus is on whether the trial court abused its discretion when making its rulings. “The abuse of discretion standard again recognizes that deference is owed to the judicial actor who is ‘better positioned than another to decide the issue in question.’” *Wash. State Physicians Ins. Exch. & Ass’n v. Fisons Corp.*, 122 Wash. 299, 339 (1993), citing, *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 403, 110 L. Ed. 2d 359, 110 S. Ct. 2447 (1990), quoting, *Miller v. Fenton*, 474 U.S. 104, 114, 88 L. Ed. 2d 405, 106 S. Ct. 455 (1985). “A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable

grounds.” *Id.* at 339. “A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law.” *Id.*

The trial court did not abuse its discretion in making any of its decision in this matter.

**1. The Trial Court Did Not Commit Error By Granting The Directed Verdict.**

“The standard for directed verdict is to view all material evidence and reasonable inferences in favor of the nonmoving party; if no substantial evidence is presented to create a prima facie case, the motion is granted as a matter of law.” *Boeing Co. v. Sierracin Corp.*, 108 Wash.2d 38, 67 (1987). There must be substantial evidence, which would be legally sufficient to support a jury verdict in favor of the party opposing the directed verdict. *Wold v. Jones*, 60 Wash.2d 327, 330 (1962). Washington has refused to follow other courts by holding that a scintilla of evidence is sufficient to carry a case to the jury. *Id.* at 330, citing, *Knight v. Trogdon Truck Co.*, 191 Wash. 646, 653 (1937).

Noticeably absent from the Appellants’ brief is any evidence in the record, or reference to any evidence that would have been

presented, that shows the existence of substantial evidence to support any of their counterclaims. The Appellants must show the existence of substantial evidence supporting their counterclaims and defenses, and they simply cannot meet their burden. *See, Wold v. Jones*, 60 Wash.2d 327, 330 (1962).

At the outset of trial, the trial court found the parties' Agreement to possess all of the essential elements of a contract, and ruled that the parties' Agreement was a contract as a matter of law.

**RP 62-64; CP 1250.** The only issues left for the trial court to resolve was whether there was a breach of the Agreement, and in the event there was a material breach, whether any damages resulted.

**RP 64.** All of the Appellants' counterclaims were based on the assumption that the parties' agreement was not a valid contract. **CP 15-25.** When the trial court ruled the parties' agreement to be a contract as a matter of law, there no longer was a basis for any of the counterclaims or defenses asserted by the Appellants. **CP 15-25.**

After making the finding that the Agreement was a valid contract, Mr. Owens admitted during his testimony that he signed the Agreement. **RP 181.** Mr. Owens also admitted during his

testimony that never did anything to perform under the Agreement. **RP 206-207.** Thus, Mr. Owens admitted that he materially breached the Agreement. **RP 507.** The Court reviewed the complaint, Appellants' defenses and counterclaims, along with the Court's notes, and found that all of the affirmative defenses and counterclaims depended upon the Court finding the parties' Agreement not to be a contract. **RP 506-508; RP 514; RP 516.** Because of Mr. Owens' testimony at trial, when the Court ruled the Agreement was a contract all of the Appellants affirmative defenses and counterclaims were out the door. **RP 516.**

As is shown in more detail below, each of the counterclaims asserted by the Appellants failed upon the trial court's ruling that the agreement was a valid contract. Because of Mr. Owens' testimony in the case-in-chief of Ms. Mauch and Ms. Davis, there could be no substantial evidence supporting the Appellants' affirmative defenses and counterclaims. Therefore, the directed verdict was proper.

**B. Counterclaims for Breach of Employment Contract.**

The Appellants brought two counterclaims for breach of employment contract, one against Ms. Mauch and one against Ms.

Davis. **CP 19-20.** By finding the agreement to be a valid contract for the purchase of North Town, it was impossible for the Appellants to prove a breach of an employment contract, because Respondents possessed the legal right to North Town for the relevant time period at issue. Therefore, any employment contract applying to Respondents were void, and they were incapable of breaching an employment contract.

In addition, the Appellants could not prove their counterclaim for breach of employment contract with regard to Ms. Mauch because her independent contractor agreement with North Town specifically states that the agreement became “null and void” in the event Ms. Mauch purchased the agency. **RP 87-89; CP 412.** Ms. Mauch’s independent contractor agreement was admitted into evidence as Defendant’s Exhibit 101.

Although irrelevant because the Agreement was found to be a contract, the Appellants failed to produce any employment contract signed by Ms. Davis as an exhibit at trial. Therefore, the Appellants could not have presented any evidence of what terms or conditions Ms. Davis breached within the alleged employment agreement.

Further, Appellants alleged Ms. Davis breached her alleged employment contract by misappropriating North Town trade secrets after terminating her employment at North Town. **CP 19-20.**

However, the evidence presented at trial showed that Ms. Davis remained unemployed during the relevant period of time following Ms. Davis leaving employment at North Town. **RP 382.**

Given the trial court's ruling that there was a valid contract for the sale of North Town, there was no substantial evidence supporting a finding that Ms. Mauch and Ms. Davis breached an employment agreement with North Town.

**C. Counterclaims for Violation of Uniform Trade Secret Act, Breach of Fiduciary Duty, Civil Conspiracy, and Conversion.**

The Appellants brought counterclaims against Ms. Mauch and Ms. Davis for: (1) violation of the Uniform Trade Secret Act ("UTSA"); (2) Breach of Fiduciary Duty; (3) civil conspiracy; and (4) conversion. Like the counterclaims for breach of employment agreements discussed above, these claims were totally dependent upon a ruling that there was not a valid contract for the sale of North Town. **CP 21-23.** The basis for these counterclaims is Respondents,

as employees of North Town, misappropriated trade secrets, breach a fiduciary duty owed as employees, converted company property for their own use, and conspired with another to do all of these things.

**CP 21-23.**

Because the trial court ruled the Agreement a valid contract for the sale of North Town, the counterclaims fail, as Respondents cannot misappropriate their own information, convert their own property, breach the fiduciary duty owed to themselves, or conspire to misappropriate or convert their own property. The Appellants' counterclaims for trade secret misappropriation, conversation, breach of fiduciary duty, and civil conspiracy make little legal sense. This can be seen in the discussion below.

**1. Trade Secret Violation**

In order to prove a claim for trade secret misappropriation, Appellants must show that Mauch and Davis acquired a trade secret by improper means, disclosed the trade secret without express or implied consent by a person who at the time of the disclosure or use, knew or had reason to know that the trade secret was derived from improper means, was acquired under circumstances requiring

secrecy be maintained, or derived through a person charged with a duty to maintain secrecy. *RCW 19.108.010*. A trade secret is information that derives independent economic value by not being generally known or readily ascertained by proper means by the public, and has been subject to efforts that are reasonable to maintain secrecy. *RCW 19.108.010(4)*.

A necessary requirement to prove a claim for trade secret misappropriation is that the trade secret was gained through improper means. *RCW 19.108.010*. When the trial court ruled the Agreement to be a contract as a matter of law, the Appellants could not prove their claim for trade secret misappropriation because Respondents properly obtained the legal right to the trade secret information pursuant to the Agreement. Therefore, Respondents did not obtain the information through improper means, and Appellants counterclaim for trade secret misappropriation fails.

Further, Appellants “may not rely upon acts that constitute trade secret misappropriation to support other causes of action.” *Ed Nowogroski Ins., Inc. v. Rucker*, 88 Wash. App. 350, 358, *aff’d*, 137 Wash.2d 427 (1999). Washington courts apply a three step analysis

to determine whether claims are precluded by the Uniform Trade Secrets Act (UTSA), to prevent duplicate recovery: “(1) assess the facts that support the plaintiff’s civil claim, (2) ask whether those facts are the same as those that support the plaintiff’s UTSA claim, and (3) hold that the UTSA preempts liability on the civil claim unless the common law claim is factually independent from the UTSA claim.” *Thola v. Henschell*, 140 Wash. App. 70, 82 (2007).

As plead, Appellants’ counterclaims for breach of contract, breach of fiduciary duty, conversion, tortious interference with a business expectancy, and civil conspiracy are all based upon the same facts and allegations as the UTSA claim. Law preempts these claims preempted by the UTSA. *Thola*, 140 Wash. App. at 82. Thus, when the Appellants UTSA counterclaim fails, so do these other related claims.

There are only two claims independent of the UTSA counterclaim, and those claims were for unjust enrichment and fraud.

**D. Counterclaim for Unjust Enrichment Against Ms. Davis.**

The Appellants' counterclaim for unjust enrichment against Ms. Davis is based upon Mr. Owens attempting to get Ms. Davis to sign an agreement to release of all claims against North Town and Mr. Owens. **CP 171-74**. This agreement was never signed by any of the parties. **CP 171-74**. "Three elements must be established in order to sustain a claim based on unjust enrichment: a benefit conferred upon the defendant by the plaintiff; an appreciation or knowledge by the defendant of the benefit; and the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without payment of its value." *Young v. Young*, 164 Wash.2d 477, 191 P.3d 1258 (2008).

At the outset of this agreement, it states that Ms. Davis is an employee, which is contrary to the trial court's ruling that Ms. Davis was the purchaser of North Town. **RP 62-64; CP 1250**. Once again, this claim assumes that there was no sale of North Town, and Ms. Davis was an employee of North Town. Also included in this release agreement, is an option for Ms. Davis to purchase her home that she was buying from Mr. Owens at this time. This was included

because Ms. Davis lost her home as a result of the Appellants' breach of the Agreement. **CP 1249; RP 382.**

Because of the trial court's ruling that there was a valid Agreement, combined with Mr. Owens admission during testimony that he never did anything to comply with the Agreement, Appellants could not have proved that Ms. Davis was unjustly enriched. **RP 206-207.** The Appellants could not have produced substantial evidence showing that Ms. Davis was an employee, that she signed the agreement, or that it was in equitable to receive payment.

**E. Counterclaim for Fraud.**

Finally, the Appellants asserted a counterclaim for fraud against Ms. Mauch and Ms. Davis. **CP 23-24.** The basis for this counterclaim stems from allegations that Ms. Mauch and Ms. Davis misrepresented that they were the owners of North Town. Given the trial court's ruling that the Agreement was a valid contract for the sale of North Town, this counterclaim is clearly dependent upon the Agreement being invalid.

To prove fraud a party must allege and show by clear, cogent, and convincing evidence the nine elements of fraud, which are as follows: “(1) the representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker’s knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted on by the person to whom it is made; (6) ignorance of its falsity on the part of the person to whom it is made; (7) the latter’s reliance on the truth of the representation; (8) his right to rely upon it, and (9) his consequent damage.” *Kirkham v. Smith*, 106 Wash. App. 177, 183, 23 P.3d 10 (2001). Because of the trial court’s ruling that the Agreement was a valid contract, the Appellants cannot meet the above requirements. There could not be any substantial evidence presented by the Appellants to prove this counterclaim.

The Appellants completely fail to show any substantial evidence within this record, and fail to make reference to evidence that would have been produced, to support a finding in favor of any of their counterclaims. All of the counterclaims asserted by the Appellants depended upon a finding that there was not a valid contract from the sale of North Town. Because the trial court ruled the Agreement

signed by all parties was a valid contract for the sale of North Town, all of the counterclaims asserted by the Appellants fail.

Viewing all the evidence in the light most favorable to the Appellants, they are unable to show any substantial evidence that supports a favorable finding as to any of their counterclaims. Therefore, the directed verdict granted by the trial court must have been granted. *Boeing Co. v. Sierracin Corp.*, 108 Wash.2d 38, 67 (1987).

**1. The Trial Court Did Not Violate the Appearance of Fairness.**

In their opening brief, Appellants argue that because the trial court granted a directed verdict the trial court violated the appearance of fairness doctrine. (Appellants Brief, pp. 11-12). In support of their position, the Appellants cite *State v. Gamble*, 168 Wash.2d 161, 187 (2010). However, the Appellants fail to cite the standard that must be met to show an appearance of fairness.

To establish this claim, the Appellants must present, “[e]vidence of a judge’s actual or potential bias must be shown before an appearance of fairness claim will succeed.” *State v. Gamble*, 168 Wash.2d 161, 187, 188 (2010). Further, “[a] party

asserting a violation of the [appearance of fairness] doctrine must produce sufficient evidence demonstrating bias, such as personal or pecuniary interest on the part of the decision maker: mere speculation is not enough.” *Tatham v. Rogers*, 170 Wash. App. 76, 96 (2012), citing, *In re Pers. Restraint of Haynes*, 100 Wn. App. 366, 377 n.23, 996 P.2d 637 (2000).

In their brief, the Appellants speculate that because the trial court granted a directed verdict and dismissed their counterclaims without letting the Appellants present evidence constitutes a violation of the appearance of fairness. (Appellants Brief, pp. 11-12). However, as discussed above, all of the counterclaims asserted by the Appellants depended upon the trial court finding that there was not a valid Agreement. There is no evidence presented whatsoever by the Appellants showing an actual bias or potential bias of the trial court by granting the directed verdict. Therefore, this issue on appeal must fail.

**2. The Trial Court Did Not Error By Finding Plaintiffs’ Exhibit 36 Was A Contract, Did Not Misapply The Parole Evidence Rule, And Did Not Improperly Exclude Documents.**

Appellants argue the trial court committed error by finding the Agreement to be a contract, and also erred by excluding evidence regarding the parties' intent at the time the Agreement was formed. (Appellants Brief, pp. 15). The crux of the Appellants' argument in this respect is the trial court failed to consider whether the Agreement contained all the necessary terms; thus, the trial court committed error in its application of the parole evidence rule. (Appellants Brief, pp. 16-17).

Generally, the "plaintiff in a contract action must prove a valid contract between the parties, a breach, and resulting damage." *Lehrer v. State, Dept. of Social and Health Services*, 101 Wash. App. 509, 516, 5 P.3d 722 (2000). The standard burden of proof when a breach of contract is alleged is a preponderance of evidence. *Allstate Ins. Co. v. Huston*, 123 Wash. App. 530, 94 P.3d 358 (2004). The essential elements of a contract are, "the subject matter of the contract, the parties, the terms and conditions, and (in some but not all jurisdictions) the price or consideration." *DePhillips v. Zolt Constr. Co.*, 136 Wash.2d 26, 31 (1998), quoting, *Family Med.*

*Bldg., Inc. v. Department of Soc. & Health Serv.*, 104 Wash.2d 105, 108, 702 P.2d 459 (1985).

A contract is a legally enforceable promise or set of promises. See, *WPI 301.01*. “A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.” *Hansen v. Virginia Mason Medical Center*, 113 Wash. App. 199, 207, 53 P.3d 60 (2002), citing, *Restatement (Second) of Contracts* § 2(1) (1981). A promise has been defined as “an undertaking, however expressed, either that something shall happen, or that something shall not happen, in the future.” *Plumbing Shop, Inc. v. Pitts*, 67 Wash.2d 514, 517, 408 P.2d 382 (1965). “A promise may be stated in words, either oral or written, or may be inferred wholly or partly from conduct.” *WPI 301.02*, citing, *Restatement (Second) of Contracts* § 4 (1981).

In order for a contract to be formed, there must be mutual assent to the materials terms of the contract. *Yakima County (West Valley) Fire Protection Dist. No. 12 v. City of Yakima*, 122 Wash.2d 371, 388, 858 P.2d 245 (1993). **Mutual assent is only required as**

**to the material terms of the contract.** *Trendwest Resorts, Inc. v. Ford*, 103 Wash. App. 380, 388, 12 P.3d 613 (2000). Once there is mutual assent to the material terms of the contract, the contract must be supported by consideration. *DePhillips*, 136 Wash.2d at 31. Washington courts define consideration as, “any act, forbearance, creation, modification, or destruction of a legal relationship, or return promise given in exchange.” *King v. Riveland*, 125 Wash.2d 500, 505, 886 P.2d 160 (1994). Consideration must be bargained for and exchanged for a promise. *Williams Fruit Co. v. Hanover Ins. Co.*, 3 Wash. App. 276, 281, 474 P.2d 577 (1970).

The trial court found that the Agreement contained all of the essential elements of a contract. **RP 63.** The trial court then ruled that the Agreement was a contract as a matter of law. **RP 64.** The trial court also stated that it would exclude all evidence of what the intent of the parties were prior to the writing of the contract pursuant to the parole evidence rule. **RP 63-64.**

“It is well established that in the absence of accident, fraud, or mistake, parole evidence is not admissible for the purpose of contradicting, subtracting from, adding to, or varying the terms of an

unambiguous written instrument.” *Spokane Helicopter Serv. v. Malone*, 28 Wash. App. 377, 381 (Div. III 1981), citing, *Fleetham v. Schneekloth*, 52 Wash.2d 176, 179 (1958). The “use of parole, or extrinsic, evidence as an aid to interpretation does not convert a written contract into a partly oral, partly written contract.” *Bort v. Parker*, 110 Wash. App. 561, 574 (Div. III 2002). “Admissible extrinsic evidence does *not* include: (1) evidence of a party’s unilateral or subjective intent as to the meaning of a contract word or term, (2) evidence that would show an intention independent of the contract, or (3) evidence that varies, contradicts, or modifies the written language of the contract.” *Id.* at 574, citing, *Hollins v. Garnwall, Inc.*, 137 Wash.2d 683, 695 (1999).

The Appellants argue that the trial court misapplied the parole evidence rule by excluding all evidence regarding the parties’ intent prior to signing the Agreement. (Appellants Brief, pp. 15-20). The Appellants argue the trial court erred by not allowing evidence of terms that should have been in the Agreement. (Appellants Brief, pp. 16-17). The arguments asserted by the Appellants are in direct conflict with the proper application of the parole evidence rule.

The Appellants have not presented any argument or evidence within the record as to what accident, fraud, or mistake occurred that would make the parole evidence rule applicable in this case to modify the terms of the Agreement. *See, Spokane Helicopter Serv.*, 28 Wash. App. at 381. Further, the Appellants fail to show what ambiguities within the Agreement made the admissible of extrinsic evidence necessary. The trial court found the Agreement contained all of the material terms necessary to be a valid contract, and the Appellants argue that they should have been able to admit evidence contrary to the terms of the Agreement to show it was not a contract. (Appellants Brief, pp. 18). “Admissible extrinsic evidence does *not* include: (1) evidence of a party’s unilateral or subjective intent as to the meaning of a contract word or term, (2) evidence that would show an intention independent of the contract, or (3) evidence that varies, contradicts, or modifies the written language of the contract.” *Id.* at 574, citing, *Hollins v. Garnwall, Inc.*, 137 Wash.2d 683, 695 (1999). This is exactly what the Appellants assert in their argument was improperly decided by the trial court.

Further, a contract cannot be unilaterally modified by one of the parties to the contract. *See, Swanson v. Liquid Air Corp.*, 118 Wash.2d 512, 826 P.2d 664 (1992). “Once a contract has been entered into, mutual assent of the contracting parties is essential for any modification of the contract.” *WPI 301.07; See, Swanson*, 118 Wash.2d at 522-23. Parties have the ability to modify a contract by a subsequent agreement. *Ebling’s v. Gove’s Cove, Inc.*, 34 Wash. App. 495, 499, 663 P.2d 132 (1983). However, ***an oral modification to a written contract must be shown by clear and convincing evidence.*** *Tonseth v. Serwold*, 22 Wash.2d 629, 644, 157 P.2d 333 (1945); *Dinsmore Sawmill Co. v. Falls City Lumber Co.*, 70 Wash. 42, 44, 126 P. 72 (1912).

To modify a contract the parties must agree to new consideration or mutual change in obligations and rights. *Rosellini v. Banchemo*, 83 Wash.2d 268, 273, 517 P.2d 955 (1974). A subsequent agreement is not supported by consideration if one party has to perform additional terms while the other party simply is to perform as stated in the original contract. *Id.* at 273. All of the evidence Appellants sought to introduce, and argue that they were

deprived of presenting, could not modify the written agreement of the parties.

The Appellants fail to show any evidence within the record that the trial court erred in finding the Agreement to be a contract, or that the trial court improperly refused to allow extrinsic evidence as to the parties' intent to enter into the Agreement.

**3. The Trial Court Did Not Error By Excluding Appellants Experts Witnesses**

The Appellants argue that the trial court committed err by excluding their experts witnesses on the first day of trial because the trial court did not consider lesser sanctions other than exclusion. (Appellants Brief, pp. 20-23). Also, the Appellants allege that Respondents did not file their motion to exclude expert testimony until shortly before trial as a trial tactic. (Appellants Brief, pp. 21). However, Ms. Mauch and Ms. Davis filed their motion in limine to exclude expert testimony in accordance with the case scheduling order provided by the trial court, and the proper time to argue the motion in limine was at the start of trial.

The Appellants further argue that it was the responsibility of Respondents to track down the expert information from the

Appellants that was never provided in response to discovery requests. (Appellants' Brief, pp. 22). Specifically, Appellants argue that Ms. Mauch and Ms. Davis had an obligation to request more detail about Mr. Harper's opinions, seek to depose Mr. Harper, or make an effort to put Appellants on notice of their lack of responses, or to make an effort to cure the Appellants' discovery deficiencies prior to moving to exclude experts. *Id.* The arguments asserted by the Appellants in this regard are without merit, and completely ignore their duty to supplement discovery regarding experts pursuant to *CR 26(e)*.

By not adhering to their duty to supplement discovery responses related to their disclosed experts, the trial court's exclusion of the experts from testifying at trial was an appropriate sanction. *Detwiler v. Gall*, 42 Wash. App. 567, 573 (1986). As the Appellate Court held:

**“CR 26(e)(1) places a duty upon the parties to seasonably supplement responses to interrogatories requesting information about expert witnesses. Exclusion of the expert’s testimony is an appropriate sanction for failure to supply such supplementary responses.”**

*Id.* at 573, citing *Lampard v. Roth*, 38 Wash. App. 198; *Rupert v. Gunter*, 31 Wash. App. 27 (1982). The Appellate court reviews a trial court's sanction for abuse of discretion, as sanction rules are designed to provide the trial court with a wide latitude and discretion to determine which sanctions are proper. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wash. 299, 339 (1993). "A trial court abuses its discretion when its order is manifestly unreasonable or based upon untenable grounds." *Id.*

During motions in limine, Appellants counsel admitted that their responses to discovery requests that had been produced in July of 2010, and did not include the opinions of expert witness Daniel Harper to be presented at trial. **RP 29-30; RP 221-222.** In fact, Appellants admitted the opinions of Mr. Harper was not provided to Respondents until November 13, 2013, five days prior to the start of trial. **RP 30.** This late disclosure of Mr. Harper's expert opinions was acknowledged by the trial court, and considered as a factor for its decision. **RP 38; RP 44.** The trial court also considered the fact that the Appellants had failed to meet their duty to supplement discovery requests regarding the expert opinions of Mr. Harper, and

the prejudice it caused Respondents preparing for trial. **RP 37-38;**

**RP 44.**

Additionally, when reaching its decision to exclude Mr. Harper as an expert the trial court considered the inherent conflict of interest possessed by Mr. Harper. **RP 39-44.** A prior ruling of the trial court prevented Mr. Harper from obtaining financial and other sensitive client information from Mr. Kassa, a party dismissed by Appellants prior to trial, because Mr. Harper had acted as an expert witness for Mr. Kassa in another matter concerning similar insurance information. **RP 44.** Mr. Kassa was the employer of Ms. Mauch at all times relevant to this action, and Mr. Harper would have had to review his former client Mr. Kassa's company information in order to render an opinion against Mr. Kassa and Ms. Mauch in the present action. **RP 39-44.** In addition to the failure to supplement discovery pursuant to CR 26(e)(1) and prejudice to Ms. Mauch and Ms. Davis' trial preparation, the trial prevented Mr. Harper from testifying due to a conflict of interest. **RP 44.**

The trial court also considered that the Appellants had completely failed to disclose anything regarding the testimony of

their expert witness John Richardson. **RP 33-36.** The trial court also noted Appellants' duty to supplement their discovery responses with regard to Mr. Richardson's testimony, and the failure to do so prejudiced Ms. Mauch and Ms. Davis' ability to prepare for trial. **RP 34-36.** For these reasons, Mr. Richardson was excluded from testifying as an expert witness.

The Appellants' expert witnesses were excluded because of their own failure to comply with the discovery rules and their obligations to provide the basis of their expert testimony prior to trial. **RP 44; RP 221-222; RP 224-226; RP 233-237.** The record clearly shows that the Appellants never made any effort to provide relevant opinions for the experts, basis for expert testimony, or anything that would allow Ms. Mauch and Ms. Davis the ability to prepare for expert testimony at trial. **RP 44; RP 221-222; RP 224-226; RP 233-237.**

Under these circumstances, the trial court's exclusion of these experts witnesses was an appropriate sanction, and the trial court did not abuse its discretion. *Detwiler*, 42 Wash. App. at 573. The Appellants appeal in this regard must be denied.

**4. The Trial Court Did Not Error By Excluding Mr. Owens' Testimony From His Notes.**

Appellants try to assign error to the trial court for not allowing Mr. Owens to testify from notes at trial. The notes referred to by Mr. Owens were prepared the night prior to his testimony from information that was requested by Respondents during the course of discovery, but was admittedly never provided by Appellants. **RP 251; RP 255-56; RP 258; RP 260-63.** The trial court ruled that Mr. Owens could not refer to his notes to refresh his recollection because he had failed to provide the requested information pursuant to discovery requests; therefore, without producing the information there was lack of foundation for Mr. Owens to use his notes. **RP 260-63.** Appellants' counsel refused to follow the trial court's ruling, and made multiple attempts to circumvent the trial court's ruling. **RP 260-280.**

In fact, the process of attempting to refresh Mr. Owens' recollection from materials not provided to Respondents pursuant to discovery requests became so disruptive that the trial court stopped trial and directed the Appellants' counsel to return to his office and search his records to determine whether the information he was

seeking to refresh the recollection of Mr. Owens had been provided pursuant to the discovery requests of Ms. Mauch and Ms. Davis. **RP 281-287.** Appellants returned from the break and admittedly could not show the information they sought to use for the refreshing of recollection was provided to Ms. Mauch and Ms. Davis. **RP 281.**

“The extent to which the witness may use such memorandum is for the trial judge in his discretion to determine, and his ruling will not be disturbed unless there has been an abuse of such discretion.” *State v. Huelett*, 92 Wash.2d 967, 969 (1979). The trial judge did not abuse her discretion by refusing Mr. Owens to testify from notes he created the night before his testimony from records never provided to Respondents, despite their request for such information during the course of discovery.

**5. The Trial Court Did Not Error By Entering Judgment Against Swiss Valley Agency.**

When this lawsuit was initiated, the Plaintiffs brought an action against Bourke Owens and Diana Owens individually. **CP 3-7.** When it came time for Appellants to answer the complaint, the Appellants, not Respondents, made a motion to join North Town as party Defendant. **CP 8-14.** Thereafter, the Defendants Owens

voluntarily added North Town as a party Defendant in their answer. **CP 15-26.** North Town was represented during the litigation and at trial by the same counsel as Mr. Owens individually. **CP 15-26.** Because Appellants added North Town as a party Defendant to this matter, North Town is subject to the judgment.

The Appellants argue that North Town should not be subject to the judgment because the Plaintiffs failed to assert claims specifically against North Town. (Appellants' Brief, pp. 27-28) However, because Appellants voluntarily added North Town as a party defendant, all of the claims asserted by the Respondents within their complaint apply to North Town. Appellants cite no authority that North Town can be added as a party defendant for the limited purpose of asserting counterclaims, but not being liable as a party.

In their motion, Appellants requested "the Court issue an order joining the following parties:..**Swiss Valley Agency, Inc. dba North Town Agency, as a party defendant in the original action and as counterclaimant.**" **CP 13.** Because North Town was added as a party defendant to the original allegations, there was no need for Respondents to amend their original complaint as stated. Further,

when Appellants filed their answer, they did not file separate answers to Respondents' complaint. **CP 15-25**. By adding North Town as a party defendant, either made them potentially liable for the claims stated within the complaint, or North Town failed to provide an answer to the complaint resulting in a default judgment.

The trial court's decision to enter judgment against North Town is consistent with the language of *CR 20(a)*. Appellants moved for joinder of North Town to be added as a party defendant pursuant to *CR 19* and *CR 20*. Pursuant to *CR 20(a)*:

**All persons may be joined as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction or occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.**

*CR 20(a)*; **CP 11 (citing the exact same portion of *CR 20(a)* as a reason to add North Town as a party defendant)** When North Town was added as a party Defendant by Appellants, it was clearly for the reasons stated above. Therefore, North Town is subject to the decision of the trial court, and the resulting judgment.

In addition, Appellants argue that Plaintiffs cannot obtain a judgment against North Town because Ms. Mauch and Ms. Daivs

failed to serve North Town after they were joined to the suit; however, this argument is without merit. Pursuant to *CR 20(d)(1)*, Ms. Mauch and Ms. Davis did not have to effectuate service on North Town separately. Plaintiffs have the ability to proceed without service and collect judgment against all defendants under *CR20(d)(1)* because the judgment is against the “**joint property of all and the separate property of the defendants served.**” *CR 20(a)(1)*. In this action, Bourke Owens is the sole owner of 100% of North Town’s stock. **CP 1100-1101**. Therefore, Ms. Mauch and Ms. Davis can collect against North Town because North Town is either the joint property of North Town and Mr. Owens, or the separate property of Mr. Owens for the purposes of *CR 20(a)(1)*.

Finally, Appellants cannot argue inconsistent positions with regard to the liability of North Town. Either North Town, by being added as a party defendant, appeared through Appellants counsel and actively defended this suit with the potential of being held liable, or alternatively, North Town was voluntarily added as a party defendant and failed to defend this suit, which results in a default judgment against North Town. *CR 55*. As a corporation, North Town

should have had separate counsel if it was not aligned with Mr. Owens. *Cottringer v. Emp't Sec. Dep't*, 162 Wash. App. 782, 787 (2011)(holding that a corporation must be represented by counsel). Respondents had the right to rely upon the Appellants pleadings, and language of CR 20 under which North Town was added to this action.

For all these reasons, the judgment against North Town should stand.

**6. The Trial Court Did Not Error By Awarding Damages.**

The trier of fact has the discretion to award damages within the relevant evidence, and an award will not be disturbed absent a showing the damages awarded were not supported by substantial evidence, shocks the conscience, or appears to have arisen from passion or prejudice. *Federal Signal Corp. v. Safety Factors, Inc.*, 125 Wash.2d 413, 439 (1994). The trial court's award of damages was within the relevant evidence, and supported by substantial evidence. Further the trial court's award clearly does not shock the conscience.

**a. The Trial Court Did Not Award Lost Profits, Therefore Did Not Commit Error.**

The Appellants argue that the trial court committed error by awarding lost profits to Ms. Mauch and Ms. Davis; however, the trial court made no such award. **RP 540-547.** The Appellants devote substantial briefing to this issue; however, the trial court only awarded expectation damages, restitution damages and prejudgment interest to Respondents. **RP 540-547.** Any reference to the term lost profits made by the trial court during its ruling, was a generic reference and not meant to invoke a damage award. **RP 540-547.**

There is no merit to Appellant's argument regarding the award of lost profits, and it must be dismissed.

**b. The Trial Court Did Not Speculate In Its Award of Damages.**

The trial court properly awarded expectation damages in this matter. The purpose of damages in a breach of contract action is “not a mere restoration to a former position, as in tort, but the awarding of a sum which is the equivalent of performance of the bargain—the attempt to place the plaintiff in the position he would be in if the contract had been fulfilled...” *Rathke v. Roberts*, 33

Wash.2d 858, 865 (1949). “The amount of damages should reflect what is required to place the [injured party] in the same financial position he would have enjoyed in the absence of the breach.”

*Family Medical Bldg., Inc. v. State Dept. of Social & Health Services*, 104 Wash.2d 105, 114 (1985).

Expectation damages are properly awarded where the trial court has found the existence of a contract, and that the contract was materially breached. *See, WPI 303.01*. In this matter, the trial court found the Agreement to be a valid contract. **CP 1250; RP 540-41**. The trial court also found that Mr. Owens materially breached the Agreement. **CP 1250; RP 544**. The trial court found that the Respondents performed pursuant to the Agreement. **CP 1250; RP 541-44**. Because the trial court found the Agreement to be a contract, and that Appellants materially breached the Agreement, the award of expectation damages was proper.

Evidence of the expectation damages awarded to Ms. Mauch and Ms. Davis came from the undisputed value of North Town established jointly by the parties by using the industry standard of 1.5 times the commissions of North Town. **CP 1246-47; RP 92; RP**

**181-82; RP 365.** The stated value of North Town in the Agreement was \$651,000.00. **Ex. 36; CP 1246-47.** Appellant Owens testified that the annual sales of North Town were \$7,000,000.00 per year. **RP 238; CP 1249.** Given the agreed upon value of North Town, combined with Mr. Owens testimony, the trial determined that the Respondents would have owned a very profitable business but for Appellants' material breach. **CP 1251.**

The expectation damages awarded to the Respondents in the amount of \$480,000.00, was foreseeable as a result of the material breach and is clearly supported by the evidence. *See, Federal Signal Corp. v. Safety Factors, Inc.*, 125 Wash.2d 413, 439 (1994); **CP 1251; RP 546-47.** Proof of damages where the evidence establishes a reasonable basis for estimating the loss without resorting to speculation or conjecture. *Id.* at 443. The expectation damage award should not be disturbed, as the \$480,000.00 award is the amount that would put the Respondents in as good of a position had Appellants not breached the Agreement. *WPI 303.01; See, Rathke v. Roberts*, 33 Wash.2d 858, 865 (1949); *See also, Family Medical*

*Bldg., Inc. v. State Dept. of Social & Health Services*, 104 Wash.2d 105, 114 (1985).

In addition to the expectation award, the trial court also awarded \$105,000.00 in restitution damages to the Respondents. **CP 1251; RP 545-46.** The trial court awarded this amount to the Respondents because the evidence showed that Respondents had paid Appellants \$105,000.00 during the 15-months they ran North Town while Mr. Owens was in California. **CP 1247; CP 1251; RP 544-46.** The trial court found this benefit conferred upon Appellants in pursuit of the contract, rightfully belonged back to Respondents. **CP 1251.**

Restitution damages are generally equitable damages that are awarded in the instance of a quasi-contract where “money or property has been placed in one person’s possession, under such circumstances that in equity and good conscience, he ought not to retain it.” *Bill v. Gattavara*, 34 Wash.2d 645, 650 (1949). The evidence in this matter clearly supported the amount of the restitution award. **CP 1251.** However, to the extent that a restitution award is an alternative award to the finding of a contract and breach

or is inconsistent with an award of expectation damages, this award may have been misplaced. In this event, the Respondents ask that this matter be remanded to the trial court for consideration of the damage award, as the clear intention of the trial court was to award the amount of damages that placed the Respondents in as good as a position but for the breach. **CP 125; RP 540-47.**

**c. The Trial Court's Award Does Not Shock the Conscience.**

In this portion of the appeal, the Appellants offer no evidence within the record to support their issue. For the sake of brevity, the Respondents rely upon the argument and evidence stated in "Section 7" above. The trial court's award as stated above must be upheld.

**7. The Trial Court Calculated Prejudgment Interest Based Upon The Evidence Supporting The Damages Awarded.**

"In Washington, '[p]rejudgment interest is granted to compensate a party for the loss of use of money to which he was entitled.'" *Seattle-First Nat'l Bank v. WIGA*, 94 Wash. App. 744, 759 (1999). Prejudgment interest is available "(1) when an amount claimed is "liquidated" or (2) when the amount of an "unliquidated" claim is for an amount due upon a specific contract for the payment

of money and the amount due is determinable by computation with reference to a fixed standard contained in the contract, without reliance on opinion or discretion.” *Id.* at 759-60, quoting, *Prier v. Refrigeration Eng’r Co.*, 74 Wash.2d 25, 32 (1968).

“Prejudgment interest is favored in the law because it promotes justice.” *Seattle-First Nat’l Bank*, 94 Wash. App. at 760, citing, *Prier*, 74 Wash.2d at 34. In this matter, the trial court awarded prejudgment interest on its award. **CP 1251, RP 547.** The \$105,000.00 in restitution damages was a sum certain amount, as it resulted by the stipulation of Appellants’ counsel. **RP 349-50.** This occurred when Appellants’ counsel stipulated to receiving payments in the amount of \$7,000.00 per month for the period of 15-months from Respondents in open court during a motion to compel where Respondents sought bank records to prove this issue. **RP 349-50.** Therefore, there was no discretion in coming to the amount of this award, and applying prejudgment interest thereto.

With regard to expectation damages, the trial court stated, “[t]he Court did some figuring to come up with a number less than the actual price of the business, **but as stated in the contract**, it

should put them back in the place that they should have been.” **RP**  
**546.** Because neither party knows what figuring was done, this court cannot make a determination as to whether prejudgment interest is proper. This statement by the trial court gives no indication as to whether the “figuring” used opinion or discretion, because the trial court specifically notes the amount is stated in the contract. **RP**  
**546.**

Because of the uncertainty of the trial court’s calculation, and the basis therefore, Respondents would ask for this issue to be remanded in lieu of overturning the award of prejudgment interest.

**8. Appellants Cannot Judge Shop Because They Do Not Like The Trial Court’s Decision.**

The Appellants have not set forth any valid reason for the trial court judge to be replaced in this matter in the event of remand. As set forth in “Section 2” above, there is no violation of appearance of fairness. This request should be denied.

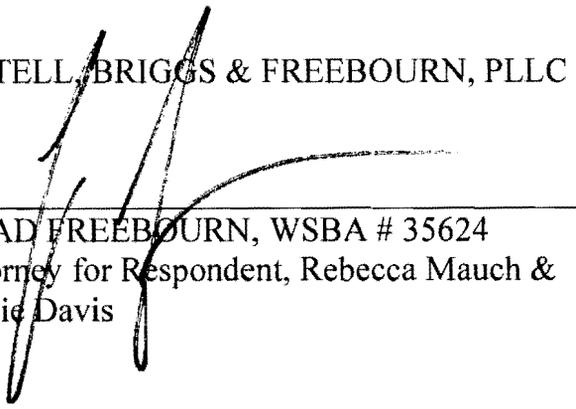
**VII. CONCLUSION**

Respondents have shown that the trial court’s decisions were not an abuse of discretion, and that the award was supported by

substantial evidence. To the extent necessary, the Respondents would ask for this matter to be remanded in order for the trial court to show how it arrived at prejudgment interest, rather than have the award overturned. Further, to the extent that the award of expectation damages and restitution damages are not consistent, Respondents ask for remand for further consideration of appropriate damages.

DATED this 30<sup>th</sup> day of October, 2014.

AXTELL BRIGGS & FREEBOURN, PLLC



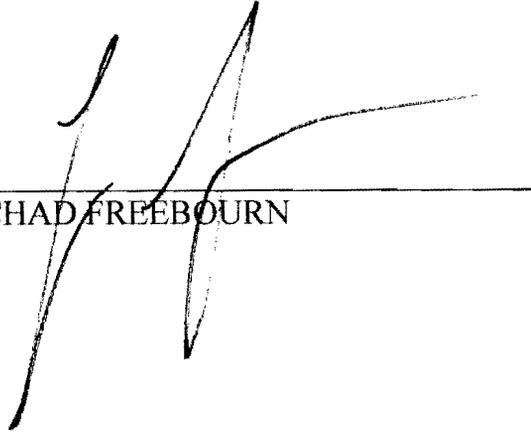
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CHAD FREEBOURN, WSBA # 35624  
Attorney for Respondent, Rebecca Mauch &  
Kellie Davis

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30<sup>th</sup> day of October, 2014, I caused to be served a true and correct copy of the foregoing document to the following:

- |                          |                  |                                                 |
|--------------------------|------------------|-------------------------------------------------|
| <input type="checkbox"/> | HAND DELIVERY    | Douglas R. Dick                                 |
| <input type="checkbox"/> | U.S. MAIL        | Phillibaum, Ledlin, Matthews<br>& Sheldon, PLLC |
| <input type="checkbox"/> | OVERNIGHT MAIL   | 1235 Post Street, Ste 100                       |
| <input type="checkbox"/> | FAX TRANSMISSION | Spokane, WA 99201                               |
| <input type="checkbox"/> | EMAIL            |                                                 |
|                          |                  |                                                 |
| <input type="checkbox"/> | HAND DELIVERY    | Michael V. Felice                               |
| <input type="checkbox"/> | U.S. MAIL        | The Law Office of Michael V.<br>Felice, PLLC    |
| <input type="checkbox"/> | OVERNIGHT MAIL   | 621 W. Mallon Ave., Ste. 509                    |
| <input type="checkbox"/> | FAX TRANSMISSION | Spokane, WA 99201                               |
| <input type="checkbox"/> | EMAIL            |                                                 |

  
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CHAD FREEBOURN