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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

BRANDON APELA AFOA,

Respondent,

v.

PORT OF SEATTLE,

Petitioner.

**RESPONDENT AFOA'S COMBINED ANSWER TO
BRIEFS OF AMICI CURIAE**

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ORIGINAL

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I. INTRODUCTION

WSAJ hits the nail on the head when it says:

Notwithstanding argument to the contrary, the question here is not whether the retained control principle applies generally to all licensors. . . . Instead, the question here is whether in these circumstances the landowner/licensor Port also retained a right to control how EAGLE performed its ground handling services . . .

WSAJ Amicus Brief at 12-13 (emphasis in original). The answer is clear. Under the Port-EAGLE license, EAGLE is bound to Port rules and regulations and directly bound to comply with Port directives regarding unsafe equipment. CP 207 ¶9 (“Licensee shall comply with all Port regulations including the Port’s Schedule of Rules and Regulations for Seattle-Tacoma International Airport . . .”); CP 207 ¶10 (Port may revoke license without advance notice for failure to comply with its rules); CP 207 ¶11A (“*As solely determined by the Port*, equipment appearing to be unsafe or unoperational is subject to towing, impoundment and storage charges” (emphasis added)); CP 207 ¶11(B) (“Any equipment that hinders circulation or is stored in an unsafe or disorderly fashion, *as determined solely by the Port*, is subject to towing, impoundment and storage charges” (emphasis added)). Port rules mandate that EAGLE “shall comply with written or oral instructions issued by the Director [of Aviation of the Port] or Port employees to

enforce these regulations.” CP 141 ¶1. The Port’s contracts with the airlines allow use of the airfield area “subject at all times to the exclusive control and management by the Port.” CP 402 ¶2.1.

A license is merely a revocable grant of permission to enter upon and use property of another. 4 Powell on Real Property § 34.25 (Wolf ed. 2010). All these other provisions are **above and beyond** the mere license. And they all had their intended effect. EAGLE managers instructed their employees that they were to follow the Port’s instructions, *even when in conflict with instructions from EAGLE’s own managers*. CP 345. Port Ramp Patrol employees directed the movements of EAGLE employees both in person and through constant radio contact, including telling them where to fuel, where to unload containers, and how to tow a train of dollies. CP 346, 349-51. On repeated occasions, Port Ramp Patrol or Port Police stopped EAGLE employees, including Mr. Afoa, and ordered action based on defective equipment or for other reasons. CP 352-54; CP 289. In a prior incident involving a PIT – the same type of equipment on which Mr. Afoa was injured – the Port ordered it off service until it was repaired to the Port’s satisfaction. CP 366-70.

Clearer evidence of control over the manner of work could not be presented. Yet *Amici Association of Washington Business et. al.* (“AWB

Amici”) and Airports Council International (“ACI”) would have this Court create a categorical, across-the-board exemption from WISHA and common-law liability for common jobsite injury, simply because the contractual relationship between Mr. Afoa’s employer and the Port is called a *license*, instead of an *independent contract*, without regard to all the other evidence of contractual control over the manner of work. In contrast, the Court of Appeals took a moderate approach by finding a disputed issue of material fact on the issue of control. *Afoa v. Port of Seattle*, 160 Wn. App. 234, 244, 247-48, 247 P.3d 482 (Div. 1 2011). The Court of Appeals properly refused to abandon a line of Washington authority imposing liability based on control that stretches back over 100 years. *AFOA Supp. Br.* at 1, 3-6. It also refused to chart a course that would pit the State against the Federal government on WISHA/OSHA worker safety enforcement. *Amicus Brief of Dept. Labor & Indus.*, at 1-2, 11-14. This Court should affirm the Court of Appeals.

II. ANSWER TO ASS’N OF WASHINGTON BUSINESS, *et. al.*

A. Amici Fail to Persuasively Distinguish a License from a Contractor Relationship

AWB Amici argue that “there is a critical distinction between a licensor restricting a licensee’s permitted use of property and a principal retaining control over the . . . manner in which a contractor performs the

contracted work,” based on three elements of the Port-EAGLE license that supposedly create this “critical distinction”: (1) “no express or implied description of a scope of work”; (2) “no provision for the payment of money for services”; and (3) “no retained control over the means and manner of performing work because there is no work being performed for the Port. . .” *AWB Amicus Brief* at 7. AWB is not correct that this creates a basis to distinguish the long line of authority basing liability on control, not type of contractual relationship.

“*[N]o description of the work*” – Paragraph 5 of the Port-EAGLE license agreement states in part that EAGLE shall use the premises for “ground handling services . . . including loading/ unloading aircraft cargo, baggage or mail, aircraft movement and/or aircraft maintenance, interior/exterior aircraft cleaning, and aircraft water, lavatory and fueling . . .” CP 205 ¶5. This has the same effect as a scope of work provision in a subcontract, because it details the services to be performed. AWB Amici say that the services are not formally provided for the Port. Again, the proper test under a long line of existing cases is *control, not economic benefit*, see, *AFOA Supp. Br.* at 3-6, so the reality is that AWB Amici’s arguments create a distinction without a difference. Nonetheless, even taken on their own terms, AWB Amici’s arguments fall short, because *the Port clearly does benefit from EAGLE’s*

services. The Port is in the business of running an airport, for which it must provide ground services in one manner or another. The fact that it chooses to do it through licensing EAGLE and other ground services contractors rather than subcontracting with them does not mean that the services are of no benefit to it. *See, AFOA Supp. Br.* at 12-13.

“[N]o provision for the payment of money for services” – The Port is paid by EAGLE for use of the premises. *AFOA Supp. Br.* at 12-13. It is true that EAGLE is paid by the airlines, but AWB Amici do not explain why this might be significant for purposes of determining WISHA or common-law liability for injury to employees in a common jobsite. The Port is an employer with respect to the site. RCW 49.17.020(4). The Port benefits directly from payment by EAGLE, instead of indirectly (as a general contractor would) from services provided by the sub-contractor, leading to ultimate payment by the owner. This suggests that it makes *more sense, not less sense*, to hold the Port responsible for injuries to EAGLE’s employees.

“[N]o retained control over the means and manner of performing work because there is no work being performed for the Port” – This is the verbal equivalent of slight-of-hand. AWB Amici cannot directly rebut the extensive record evidence of pervasive Port control, which shows both the Port’s right to control operation of vehicles and storage of

equipment in the ramp area, and the actual practice by the Port of minute and regular control of the same. *See, supra*, at 1-2; *AFOA Supp. Br.* at 2, 9-11; *Reply Brief of Appellants (COA)* at 6-10. Therefore, AWB Amici rely instead on the fiction that “there is no work being performed for the Port” to attempt to sidestep all this evidence. But the fact remains that without ground services, the airport would grind to a halt. As a practical matter, ground services constitute labor performed for the Port regardless of how the Port has structured the contracts for the essential services needed to run an airport. The governing statute does not require direct employment; only that “the essence” of the contract be “personal labor.” *See*, RCW 49.17.020(4) (WISHA definition of “employer” includes anyone who “contracts with one or more persons, *the essence of which is the personal labor* of such person or persons . . .”). That is satisfied by the Port-EAGLE license.

AWB Amici contend that form governs over substance. The Court of Appeals, Mr. Afoa, and the entire weight of modern jurisprudence, says that the Court should determine liability based on the substance of the transaction before it. *See cases cited, AFOA Supp. Br.* at 7-8; *see also, e.g., Cellular Engineering Ltd. v. O’Neill*, 118 Wn.2d 16, 24-25, 820 P.2d 941 (1991) (*quoting, Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967)) (in interpreting a statute, ““form should be disregarded

for substance and the emphasis should be on economic reality”); *Pybas v. Paolino*, 73 Wn. App. 393, 398, 869 P.2d 427 (Div. 2 1994) (“the law is to interpret rules and statutes to reach the substance of matters so that substance prevails over form”). The “economic reality” here is plain for all to see: the Port directly benefits from EAGLE’s work.

B. Response to City of Kent

The City of Kent argues that it routinely issues “licenses” for use of its property by the public for such activities as concerts, sporting events, or utilities, and that the alleged “extension” of the *Kelley/Stute* rule placing liability on the party with the right to control the means of performing the work to licensors could have unforeseen consequences on municipal liability. The City is mistaken for two key reasons: first, the distinction between sovereign and proprietary action; and second, a difference in the degree of control.

1. Sovereign Regulation vs. Proprietary Contract

As detailed by Amicus Department of Labor & Industry, the distinction between sovereign action in a governmental capacity, and employer action in a proprietary capacity, creates a clear line of demarcation between general governmental issuance of permits and the Port’s entry into specific licensing contracts for work done on a common jobsite. See, *Brief of Amicus L&I*, at 16-17. The City of Kent is a non-

charter code city with general powers of governance over local and municipal affairs. Wash. Const., Art. XI §10; RCW 35A.11.020; Kent Mun. Code §1.01.120. The City of Kent does not even call the kind of action it takes when it approves a concert, sporting event, or utility work, a “license.” Instead, these sovereign¹ approvals are designated in its Municipal Code as “Permits.” Kent Mun. Code §§ 4.05.010 (concerts); 4.01.170 (use of parks); 6.07.100 (street or sidewalk use and utility work); 7.10.050 (underground utility work). As we have argued, the substance of the transaction, not the label put on it, determines liability. However, this is evidence that what the City is actually doing is considered by the City to be different in kind from the contractual license for proprietary purposes issued by the Port.

Even if the City called it a “license,” the kind of permit or license to which the City refers is a sovereign governmental authorization, to be distinguished from the “license” issued by the Port as owner, which is a contract for granting access to the Port’s property. *Compare*, 9 McQuillan on Municipal Corporations §§26:2, 26:14, 26:15, 26:128 (2005 Thompson/West) (municipal permits or licenses are not

¹ Strictly speaking, municipal corporations have no sovereignty of their own; they are only sovereign insofar as they exercise governmental duties imposed upon them as representatives of the state. *Kelso v. City of Tacoma*, 63 Wn.2d 913, 916-17, 390 P.2d 2 (1964).

contractual, but are governmental grants of permission to do what the law restricts but permits under specified conditions), *with*, 4 Powell on Real Property, *supra* § 34.25 (license is a revocable permission to enter onto and use property of another). Violation of permit conditions is treated by the City very differently from breach of contract: it is defined by the City Code as a public nuisance subject to criminal and civil remedies, and as a misdemeanor. *E.g.*, Kent Mun. Code §§ 4.05.070-.080.

By way of contrast, the Port of Seattle is created for the proprietary purpose of running an airport and a seaport, not to govern a city. CP 363.² It is an employer within the meaning of WISHA with respect to this jobsite. CP 363; RCW 49.17.020(4); *AFOA Supp. Br.* at 13-14. Its own employees are all over the ramp area where Mr. Afoa was injured, constantly checking for violations of its many rules. CP 288-89, 342-43, 345-56. Its license with EAGLE is a specific contract to ensure performance of ground services that are necessary to completion of its proprietary airport purposes, and to ensure its control over the manner in which EAGLE performs its work. CP 207.

The gulf between these two scenarios is the gulf between **sovereign regulation in the public interest, and contractual allocation**

² See also, *Brief of Amicus ACI* at 9 (admits that airport authorities' powers are "proprietary"); <http://www.portseattle.org/About/Our-Story/Facilities/Pages/default.aspx> (accessed Jan. 30, 2012).

of rights and duties in service of a **proprietary** interest. The mere fact that the Port is a public authority does mean that it is acting in a sovereign capacity when it manages this jobsite. It is not the City of Kent's job to provide power or to give a concert or to sponsor a baseball league, but it *is* the Port's job to run an airport. Governmental bodies can act in both a sovereign and proprietary capacity.³ *Skagit County Public Hospital Dist. No. 1 v. State, Dept. of Revenue*, 158 Wn. App. 426, 445-46, 242 P.3d 909 (Div. 2 2010) (Public Municipal Hospital District acting for its own benefit and the benefit of the municipality, is not entitled to sovereign exemption from interest). The Port is acting in its proprietary capacity with respect to managing the Ramp Area.

2. Municipal Permitting is Different in Degree of Control from The Port-EAGLE License

The second major flaw with the City of Kent's argument is that it fails to take into account the nuances of municipal permitting versus the kind of license shown by this record. A municipal permit may involve imposition of a number of conditions to ensure safety of the general public, perhaps enforced by inspection and penalties. But the City is not directly involved as part of its business mission, it is not an employer

³ The Legislature spoke to this in the context of the present case by making WISHA applicable to "the state, counties, cities, and all municipal corporations, public corporations, [and] political subdivisions of the state . . ." RCW 49.17.020(4). That portion of WISHA must apply to proprietary, not governmental, actions.

with respect to the jobsite, and – as the City of Kent admitted in its briefing in support of Petition for Review – when it grants a permit it “does not retain the right to control the means and manner of how employees of contractor and subcontractors perform their construction work.” *Joint Amici Memo in Supp. of Pet. for Rev.*, at 9. There is simply greater distance and more neutrality in the grant of a permit under generally applicable ordinances, than the kind of specific contractual licensing to carry out a business purpose of the Port that is at issue here. As a consequence, there is likely to be less direct control, and the control that is exercised will be like the City of Kent’s – through inspections, and possible penalties under ordinances, rather than use of contractual remedies. Merely inspecting to ensure that the permitted work is done properly is already established by prior case law to be insufficient to constitute control over the manner of work. *Kamla v. Space Needle Corp.*, 147 Wn.2d 114, 120-21, 52 P.3d 472 (2002). Any duty the City might impose on permittees to comply with generally applicable ordinances creates no liability. *Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774, 784-85, 30 P.3d 1261 (2001); 9 McQuillan on Municipal Corporations § 26:128 (grant of governmental license or permit is a governmental function that does not give rise to liability unless done in a discriminatory fashion). It follows that affirming the

Court of Appeals will not subject Washington cities to additional liability for ordinary permitting.

Compare this to the pervasive scheme of contractual control devised by the Port. *See, supra*, at 1-2; *AFOA Supp. Br.* at 2, 9-11; *Reply Brief of Appellants (COA)* at 6-10. This scheme of control extends far beyond the actual “license,” which is merely the grant of permission to enter and use land. 4 Powell on Real Property, *supra* § 34.25. It is enforceable through contractual remedies. CP 207, 209. It follows that affirming the Court of Appeals *on the facts of this case* will not result in imposition of any new liability on municipalities around the state.

III. ANSWER TO AIRPORT COUNCIL INTERNATIONAL

Amicus ACI argues:

[T]he Court of Appeals decision . . . would dramatically expand the potential liability of airport operators by imposing on them a general duty of care . . . [that] would require airport operators to supervise and regulate the manner in which hundreds of different entities perform hundreds of technical jobs . . .

The Court of Appeals’ ruling represents a sharp departure from precedent and would impose a duty to provide a safe workplace in the absence of an independent contractor relationship *or control over the performance of the work*. . .

[T]he Court of Appeals’ ruling reflects a fundamental misunderstanding of Washington law and the relationship between airport operators such as the Port and licensees such as EAGLE.

Amicus Brief of ACI at 1-3 (emphasis added); *see also, id.* at 19 (arguing that the Court of Appeals’ decision requires airport operators to provide safety rules for hundreds of entities). This is empty rhetoric. **Nothing in the decision of the Court of Appeals requires airport operators to supervise or control the manner in which contractors or licensees perform their work.** The Court of Appeals takes the facts as it finds them – as *the Port itself chose to structure them* – and applies well-settled principles of Washington law to find a disputed material fact question on liability. *Afoa v. Port of Seattle, supra*, 160 Wn. App. at 239-48. It is certainly not true that the Court of Appeals would establish liability “in the absence of . . . control over the performance of the work,” *Amicus ACI Brief* at 2; as stated by the Court of Appeals:

[W]hether *Stute* is applied does not turn on an analysis of the definitions of “employer” and “employee” under WISHA. Instead, the question is whether the business entity retains such control or supervisory authority over the performance of a subcontractor's work as to be analogous to a general contractor. *Weinert*, 58 Wn. App. at 696. If that is the case here, the Port has a nondelegable duty to ensure WISHA compliance for everyone employed at the work site. *Id.*

Afoa v. Port of Seattle, supra, 160 Wn. App. at 247. Thus, the Court of Appeals’ entire rationale turns on the issue of “control,” as required by this Court’s precedents in *Kelley*, *Stute* and *Kamla*. It is ACI, not the Court of Appeals, that requests a “sharp departure from precedent” and

demonstrates a “fundamental misunderstanding of Washington law” when it argues for abandonment of the control test.

It is one thing to present fair and reasoned argument; it is another to simply “make it up” and then mount a polemical attack. The latter is the tactic of the ACI brief, and to detail each instance would require more pages than we have in this short Answer. We will therefore confine our response to a few key points.

A. Establishing the Kind of Relationship Does Not Determine Liability – Only Control Determines Liability

Drawing on this Court’s decision in *Kamla v. Space Needle Corp.*, 147 Wn.2d 114, 52 P.3d 472 (2002), ACI argues that: (1) it is necessary to establish the nature of the relationship prior to applying the control test, and (2) absent a contractor relationship, the property owner does not have a duty to provide a safe work place to all employees on his/her property. *Amicus Brief of ACI* at 5. While the first part of this syllogism is correct, the second is not.

First, *Kamla* rejected the Space Needle’s argument that the Court should abandon the more lenient liability test of right to control, in favor of actual control. *Kamla, supra*, 147 Wn.2d at 119-21. Mr. Afoa has presented evidence sufficient to create a fact question even under the more rigorous actual control test.

Next, the *Kamla* Court rejected owner liability based on the presumption of control that is enforced against general contractors. *Id.* at 122-25. But that only demonstrates the first part of the syllogism: it is important to determine whether the party to be held liable is a contractor, for whom there is a presumption of control, or an owner (like the Port) and/or a party to another type of contractual relationship (in this case a licensor, also like the Port). The only significance of this determination is whether or not to apply the presumption of control. *Kinney v. Space Needle Corp.*, 121 Wn. App. 242, 248-49, 85 P.3d 918 (Div. 1 2004). Contrary to ACI's argument, this does not mean that the owner/contracting party is automatically free from liability. As stated by this Court in *Kamla*:

If a jobsite owner does not retain control over the manner in which an independent contractor completes its work, the jobsite owner does not have a duty under WISHA . . .

Kamla, supra, 147 Wn.2d at 124-25. The flip side is also true: for those jobsite owners or parties with other contractual relationships *who do* retain control over the manner in which a contractor completes its work, the WISHA special duty applies. *Kinney v. Space Needle Corp., supra*, 121 Wn. App. at 248-49. And it must be remembered that the Port is not merely an owner, but also *an employer* with respect to this jobsite.

Like the Port, Amicus ACI argues based on the Second Restatement of Agency that an employment or independent contractor relationship is requisite to control. *Brief of Amicus ACI* at 5. This is contrary to the Third Restatement of Agency. *AFOA Supp. Br.* at 17-19.

If there is a general contractor-independent contractor relationship, there is a presumption of control over the means of work. In all other contractual relationships between owners or employers with respect to the common jobsite on the one hand, and parties performing work which is the essence of personal labor on the other hand, it cannot be presumed that control is exercised. *But Mr. Afoa does not rely on a presumption.* On the record of pervasive control by the Port in this case, the Court of Appeals was correct that the fact that the contractual relationship was a license does not preclude liability, but at most creates a disputed issue of material fact on the issue of control.

B. ACI's FAA Preemption Argument is Misleading and Immaterial Because Mr. Afoa's Work was Not Performed in the FAA-Controlled Air Movement Area, and His Claims Have Nothing to Do with Airline Price, Routes or Service

ACI admits that "Mr. Afoa's accident occurred in the ramp area of Sea-Tac, which accords with Mr. Afoa's testimony." *Brief of Amicus ACI* at 11; CP CP 286 ¶4. But ACI nonetheless attempts to muddy the

waters regarding FAA versus Port of Seattle control by mixing in misleading statements about the “Air Movement Area”:

Airport operators also do not control aircraft operations. FAA has exclusive operational control over the use of the airspace and FAA air traffic controllers control the movement of aircraft, on the airfields and in the air, *as well as the movement of many ground vehicles in the aircraft movement areas of the airfield.*

Brief of Amicus ACI at 14 (emphasis added). But the “aircraft movement areas of the airfield” do not include the Ramp area where Mr. Afoa was injured – and ACI knows this full well. This is made clear by the record:

The Air Operations Area or “AOA” is the land inside the entire fenced airport, including runways. The ramp area is that part of the Airport tarmac that *does not* contain landing strips, including the pavement that interconnects the landing strips. The term “Ramp” is used interchangeably with “AOA” even though they are different things. The ramp area is where aircraft are gated, passengers board and unboard, and baggage is loaded and unloaded from under the aircraft.

* * *

Apart from the “AOA”, there is the “AMA.” This stands for “Air Movement Area.” This is the area where the runways are located. Planes land and takeoff in the AMA.

A wide, red-and-white painted line, called the “Vehicle Control Line” separates the AMA from the ramp area.

* * *

There are two Port of Seattle control towers, one for the AMA, and one for the Ramp area. The tallest tower [is] known as “Seattle Ground Control” . . . [EAGLE employees were] . . . required by the Port, and the FAA, to tune to it when crossing into the AMA. The FAA is involved with the AMA because of the greater danger that exists due to aircraft taking off and landing in the AMA.

The shorter tower is known as “Seattle Ramp Control.” . . . [EAGLE employees were] . . . required by the Port of Seattle to

tune to it when hooked by a PIT to an airplane in the ramp area. The FAA does not involve itself with the "Seattle Ramp Control" tower functions; the POS [Port of Seattle] is in complete control.

CP 342 ¶¶5, 6; CP 344 ¶¶10, 11; CP 345 ¶¶ 17, 18; *see also*, CP 322 (map showing line of demarcation between movement area and ramp area).

ACI's entire argument about FAA control is invalid and immaterial in light of its admission, and the record evidence (CP 286 ¶4), that Mr. Afoa was injured in the Ramp Area, not in the Air Movement Area, of the AOA. *Brief of Amicus ACI* at 13-17.

ACI cites general studies suggesting that the ramp area is often controlled by both airports and airlines, *id.* at 12, from which it concludes that airlines are in control of work done in the ramp area, *id.* at 12-13; *see also, id.* at 16. This conclusion is a non-sequitur, and is also immaterial to this particular case in light of the significant evidence of the Port of Seattle's control over the ramp area. CP 346, 349-51. Likewise, the cited evidence that airports are not *mandated* to oversee ramp operations is immaterial to whether the Port in this case *actually does* oversee ramp operations. *Brief of Amicus ACI* at 17. Generalizations about typical relationships at the many other airports around the country are simply not material or helpful.

ACI repeatedly dances around the question of preemption in an apparent attempt to confuse this Court. It notes that “airport operators are preempted from regulating . . . airline price, routes or service.” *Id.* at 13, 19-20. But the issue here is not airline price, routes or service; it is ground service equipment and safety. Preemption is a red herring.

IV. CONCLUSION

The Port’s Amici’s categorical approach leads them to warn this Court against a “parade of horrors” that will supposedly result from affirming the Court of Appeals, but in fact no dire consequences will result from a fact-specific inquiry focused on the reality of whether control is retained. “Judges and lawyers live on the slippery slope of analogies; they are not supposed to ski it to the bottom.” *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182, 194 n.16 (1999). But one adverse consequence that the Port’s Amici do not concern themselves with is the adverse and contagious effect on worker safety that would surely result from a decision categorically shielding the Port – the party best able to control this complex common jobsite – from liability, simply because it called its contract with EAGLE a “license.”

This Court should affirm the moderate approach of the Court of Appeals, and refuse to abandon the long line of existing authority that assigns liability to the party in control of the manner of work in the

common jobsite, for the protection of all employees at the site. What this Court said in *Kamla* is as true today as it was in 1990 when *Stute* was decided, and in 1978 when *Kelley* was decided:

When we distill the principles evident in our case law, the proper inquiry becomes whether there is a retention of the right to direct the manner in which the work is performed
....

Kamla, supra, 147 Wn.2d at 121. On this record, as the Court of Appeals found, there is at least a disputed issue of fact regarding control; on another record involving a different license, there may not be. Not all licenses are created equal. Liability can only be dismissed outright by completely ignoring the record of the Port's pervasive control of EAGLE's manner of work in the Ramp Area common jobsite.

This Court should affirm and remand for trial.

Dated at Seattle, WA, this ____ day of February, 2012.

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

BRANDON APELA AFOA, an individual,

Plaintiff / Respondent,

vs.

PORT OF SEATTLE, a Local Government
Entity in the State of Washington,
Defendant / Petitioner.

No. 85784-9

CERTIFICATE OF SERVICE

I certify that on today's date I served via e-mail, and via United States Mail, postage pre-paid to:

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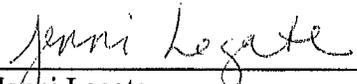
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