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

No. 69535-5-I

EGP INVESTMENTS, LLC, a Washington limited liability  
company,

*Plaintiff/Appellant,*

v.

ERIC A. ANDREWS, as Personal Representative of the  
ESTATE OF JENNIFER LUND,

*Defendant/Respondent.*

On Appeal from the Superior Court of Snohomish County  
Hon. Richard T. Okrent  
Superior Court Docket Number 12-2-03800-5

BRIEF OF APPELLANT

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## I. INTRODUCTION

This is a service of process case that arises from a revolving charge account issued by Chase Bank USA, N.A (the “**Account**”) that was used by the late Jennifer Lund (the “**Decedent**”). Plaintiff / Appellant EGP Investments, LLC (“**EGP**”) purchased the Account after it went into default and subsequently submitted a creditor’s claim concerning the Account to Defendant / Appellee Eric Andrews (the “**PR**”), the Personal Representative of the Decedent. CP 321. The PR rejected EGP’s creditor’s claim on the ground that it was untimely, and EGP filed suit against the PR in Snohomish County Superior Court for the wrongful rejection of this claim on March 22, 2012. CP 322, 324.

EGP’s declaration of service from registered process server Mario Robledo provides that Mr. Robledo personally served the PR at 40818 May Creek Road in Gold Bar, Snohomish County, Washington on May 30, 2012 by leaving a copy of EGP’s summons and complaint with a person of suitable age and discretion who was a co-resident with the PR at the aforesaid address. CP 273; CP 309. Thus, according to this declaration of service, EGP effectuated personal service of its summons and complaint on the PR within ninety (90) days of filing suit, which is the period mandated by RCW 11.40.100 and RCW 4.16.170.

Approximately four months after EGP filed suit, the PR filed his motion to dismiss EGP’s complaint on the grounds that EGP had not obtained good service on the PR and because the statute of limitations on

EGP's claim had therefore run. Specifically, the PR asserted that because EGP had not effectuated good service on him within ninety (90) days of filing suit and EGP had not commenced service by publication within that period, EGP's complaint should be dismissed. CP 315.

EGP filed several declarations in response to the PR's motion to dismiss that showed Mr. Robledo properly served the PR at his house of usual abode, and the PR responded by filing a motion to strike these declarations and also Mr. Robledo's original declaration of service CP 265.

On July 20, 2012, one (1) day after the PR filed his motion to strike, the trial court granted the PR's motion to dismiss and granted the PR's motion to strike in part. CP 258-59. Although EGP requested an evidentiary hearing during the July 20, 2012 hearing on the PR's motion to dismiss, the trial court denied this request, thereby dismissing EGP's complaint as a matter of law. *See id.*

This ruling came despite the fact that EGP's original declaration of service from process server Mario Robledo (CP 309) *was not stricken*, despite the PR's request for such. CP 259, 265. Again, Mr. Robledo's declaration of service provides that Mr. Robledo personally served the PR at 40818 May Creek Road in Gold Bar on May 30, 2012 by leaving a copy of EGP's summons and complaint with a person of suitable age and discretion who was a co-resident with the PR at the aforesaid address. CP 273; CP 309.

EGP filed its motion for reconsideration pursuant to CR 59(a)(1), (2), (4), and (9) on August 1, 2012. CP 174. EGP stated in this motion that the PR's pleadings caused EGP suspicion and caused it to engage in an additional investigation of the relevant facts of the case. CP 183. EGP then came to believe that certain of the PR's declarations contain false testimony due to their numerous internal inconsistencies. *See id.* This led EGP to run Westlaw background checks on two of the PR's declarants, which reflected that these declarants, Brad Domhoff and Jason Rask, have lengthy criminal histories, and that *each of these individuals has been convicted of theft.* CP 127 (showing third degree theft conviction for Brad Domhoff); CP 137-38 (showing theft conviction for Jason Rask). EGP submitted a declaration with these criminal histories to the trial court in connection with EGP's motion for reconsideration. CP 119-20.

Although the PR opposed EGP's motion for reconsideration and twice moved to strike EGP's declarations that it submitted in support of its motion for reconsideration, EGP pointed out to the trial court that the PR's response never addressed subsections (1), (2), and (9) of CR 59. CP 33; CP 40-50.

On October 9, 2012 the trial court denied EGP's motion for reconsideration without oral argument and granted the PR's motion to strike all of the portions of EGP's new declarations that the PR objected to. CP 7, 8. Thus, the trial court granted all three of the PR's motions to strike in this case. CP 19; CP 40; CP 265. In doing so, it dismissed

EGP's complaint without an evidentiary hearing or summary judgment hearing despite (a) the conflicting declarations; (b) the numerous inconsistencies in the PR's declarations; (c) the theft convictions of two of the PR's declarants; and (d) the fact that process server Mario Robledo's original declaration of service, which reflects his service of EGP's summons and complaint on a person of suitable age and discretion that was a "co-resident" of the PR's, was never stricken from the record.

EGP filed its notice of appeal concerning the order denying its motion for reconsideration on November 7, 2012. CP 5.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred when it granted the PR's motion to dismiss EGP's complaint.
2. The trial court erred when it struck the material portions of process server manager Laura Meas's declaration.
3. The trial court erred when it denied EGP's motion for reconsideration pursuant to CR 59(a)(1) due to irregularity in the proceedings.
4. The trial court erred when it denied EGP's motion for reconsideration pursuant to CR 59(a)(2) due to the misconduct of the PR.
5. The trial court erred when it denied EGP's motion for reconsideration pursuant to CR 59(a)(4) given EGP's newly discovered evidence.
6. The trial court erred when it struck EGP's newly discovered evidence from the record.
7. The trial court erred when it denied EGP's motion for

reconsideration pursuant to CR 59(a)(9) on the ground that substantial justice has not been done.

### III. ISSUE STATEMENTS

1. Whether the trial court erred by granting the PR's motion to dismiss EGP's complaint due to insufficient service of process when (a) EGP's original declaration of service reflects good service on the PR; (b) this declaration is presumptively valid; (c) the presumption of validity may only be overcome by clear and convincing evidence; and (d) the trial court dismissed EGP's complaint without holding an evidentiary hearing on the topic of whether service was good. Answer: **Yes. (Assignment of Error No. 1).**

2. Whether the trial court erred by striking material portions of process server manager Laura Meas's declaration given the hearsay exception for declarations of service. Answer: **Yes. (Assignment of Error No. 2).**

3. Whether the trial court erred by striking all of EGP's newly discovered evidence that EGP put forward in connection with EGP's motion for reconsideration. Answer: **Yes. (Assignments of Error No. 5, 6).**

4. Whether the trial court erred by denying EGP's motion for reconsideration under CR 59(a)(4) based on newly discovered evidence when (a) EGP put forth new evidence that reflected good service on the PR and called the veracity of the PR's evidence into question; (b) EGP's new evidence also showed that two of the PR's declarants have been convicted of theft; and (c) EGP realistically had no way to obtain this evidence before the hearing on the PR's motion to dismiss. Answer: **Yes. (Assignments of Error No. 5, 6).**

5. Whether the trial court erred by denying EGP's motion for reconsideration under CR 59(a)(1), (2), and (9) due to irregularity in the proceedings, misconduct of the PR, and because substantial justice has not been done when (a) the PR's declarations contain numerous inconsistencies that at the very least suggest the declarants have not been truthful; (b) two of the PR's declarants have been convicted of theft; and (c) the PR never provided argument or authority concerning CR 59(a)(1), (4), and (9) in his response to EGP's motion for reconsideration. Answer: **Yes.** (Assignments of Error No. 3, 4, 6, and 7).

#### IV. STATEMENT OF THE CASE

##### A. **The Decedent Had An Account With EGP.**

Plaintiff / Appellant EGP Investments, LLC ("EGP") is a limited liability company created and in good standing under the laws of the state of Washington. CP 321. EGP is a creditor of the Estate of Jennifer Lund. CP 321.

Defendant / Appellee Eric Andrews (the "PR") is the Personal Representative of the Estate of Jennifer Lund. CP 321. The PR is the husband of the late Jennifer Lund (the "Decedent"). The Decedent died on April 7, 2011. CP 303, 321.

Prior to her passing, the Decedent obtained and utilized a revolving charge account issued by Chase Bank USA, N.A. (the "Account"). CP 322. EGP now owns the Account and is the successor in interest to Chase Bank USA, N.A. insofar as the Account is concerned. CP 322.

**B. The PR Denied EGP's Probate Creditor's Claim And EGP Filed Suit Against The PR For The Wrongful Rejection Of This Claim.**

On or about February 6, 2012, EGP submitted to the PR a probate creditor's claim concerning the Account. CP 322. EGP asserted in its creditor's claim that the Decedent owed EGP approximately \$25,303.64 under the Account as of March 31, 2009. CP 321.

On February 24, 2012, EGP received the PR's notice of rejection of EGP's creditor's claim. CP 322. The PR's stated basis for rejecting this claim is that it is untimely pursuant to RCW 11.40.051. CP 307.

Under Washington's probate statutes, if the personal representative of an estate rejects a creditor's claim, the claimant must bring suit against the personal representative within thirty (30) days after notification of the rejection or the claim is barred. RCW 11.40.100; CP 314. For the purpose of tolling any statute of limitations, an action shall be deemed commenced when the complaint is filed or summons is served, whichever occurs first. RCW 4.16.170; CP 314. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety (90) days from the date of filing the complaint. RCW 4.16.170; CP 314.

EGP filed suit against the PR for the wrongful rejection of its creditor's claim on March 22, 2012 in Snohomish County Superior Court. CP 324. EGP's declaration of service from registered process server

Mario Robledo provides that Mr. Robledo personally served the PR at 40818 May Creek Road in Gold Bar, Snohomish County, Washington on May 30, 2012 by leaving a copy of EGP's summons and complaint with a person of suitable age and discretion who was a co-resident with the PR at the aforesaid address. CP 273; CP 309. This declaration of service goes on to describe the PR's co-resident as a white male with black hair in his twenties who is 5'11" tall and 150 pounds. CP 317.

**C. The PR Moved To Dismiss EGP's Complaint Due To Insufficient Service Of Process.**

The PR never filed or served an answer to EGP's complaint. *See* CP 312-316. However, the PR filed his motion to dismiss EGP's complaint on July 12, 2012, almost four (4) months after EGP filed its complaint and after the statute of limitations had run on EGP's claim against the PR for the wrongful rejection of its creditor's claim. CP 312-313. The PR noted this motion for hearing on July 20, 2012. CP 312, CP 294. The PR's motion was supported by declarations from the PR, Brad Domhoff, and the PR's attorney, W. Mitchell Cogdill.

The PR asserted in his motion to dismiss that EGP's complaint should be dismissed due to improper service upon the PR. CP 313. Because EGP had not effectuated good service on the PR within ninety (90) days of filing suit and EGP had not commenced service by publication within that period, the PR argued that EGP's complaint should be dismissed. CP 315.

Specifically, the PR argued that dismissal was warranted because the PR claimed he resides with his girlfriend at 40818 May Creek Road in Gold Bar, and that Brad Domhoff, whom the PR asserted is the “John Doe” that was served with EGP’s complaint, was not a resident at either 40818 or the neighboring 40816 May Creek Road in Gold Bar, Washington at the time of service, “but was instead working as a landscaper at the time he was served.” CP 313.

Mr. Domhoff provided a declaration in support of the PR’s motion to dismiss in which he stated he was working as a landscaper at 40816 May Creek Road in Gold Bar on May 30, 2012 and that he was not a resident of 40816 or 40818 May Creek Road on May 30, 2012. CP 310-11. Mr. Domhoff further declared his home address to be 21011 164<sup>th</sup> Drive SE in Monroe, Washington where he “has lived since October 2010.” CP 311.

Neither the PR nor Mr. Domhoff acknowledged in their declarations that they are friends. *See* CP 303-4, 310-11.

Jason Rask also provided a declaration in support of the PR’s motion to dismiss in which he declared he owns and currently resides at the residence located at 21011 164<sup>th</sup> Drive SE in Monroe. CP 263. Mr. Rask further declared he told an unknown person (which person was assumedly one of EGP’s process servers) that Brad Domhoff is his former roommate and had lived with him at his residence since late 2010. CP

264. Mr. Rask further declared that Mr. Domhoff moved out of his residence on June 8, 2012. CP 264.

Shortly after the PR filed his motion to dismiss, EGP learned that the gentleman who had originally served the PR, process server Mario Robledo, had left the legal services company he had been working for and moved out of state to join his wife. CP 200. In light of EGP's inability to locate Mr. Robledo on short notice in order to oppose the PR's motion to dismiss and EGP's looming response date concerning this motion, EGP utilized its best efforts to provide evidence sufficient to withstand the PR's motion by, among other things, enlisting the aid of experienced process server Howard Andreasen. CP 200-201.

EGP filed its response in opposition to the PR's motion to dismiss and the accompanying declarations of Brian Fair, process server manager Laura Meas, and process server Howard Andreasen on July 18, 2012. CP 274-291. Mr. Fair asserted in his declaration that the PR and Brad Domhoff are in fact friends as confirmed through Facebook. CP 278. Mr. Fair further declared that public records show the PR was dating Denise Domhoff, who he believed to be Brad Domhoff's sister, at the time of service. CP 278. Mr. Fair further asserted that Denise Domhoff's picture on Facebook showed she resided in Gold Bar at the time of service, that the PR admitted in his declaration that he lives with his girlfriend at 40818 May Creek Road in Gold Bar, and that EGP's address search revealed that

neither Brad Domhoff nor Denise Domhoff are listed as residents of the neighboring 40816 May Creek Road in Gold Bar. CP 278.

EGP also asserted in its response brief that although Mr. Domhoff claims to live at 21011 164<sup>th</sup> Drive SE in Monroe, the residents of that address state he lives with his sister near Wallace Falls State Park, which is near the PR's home at 40818 May Creek Road. CP 289.

Process server manager Laura Meas asserted in her declaration that on May 24, 2012 a white female in her twenties located at 40818 May Creek Road in Gold Bar stated she did not know the PR. CP 293. Ms. Meas further asserted that on May 30, 2012 her process server asked a male occupant at the aforesaid address if he was a resident of that address, and he replied "yes." CP 293. Ms. Meas then declared that when this male individual was asked if the PR lives at this address, he replied "yes." CP 293. Lastly, Ms. Meas declared the process server left documents with this "John Doe" at this address, who was described as being a white male with black hair in his twenties, 5'11" and 150 pounds. CP 293.

In his declaration, licensed process server Howard Andreasen declared that on July 16, 2012 he observed at 40818 May Creek Road a 22-24 year old white male who was 5'11" with black hair, dark eyes, and 170 pounds raking the newly graded driveway. CP 274. Mr. Andreasen also stated in his declaration that on July 17, 2012, he observed three vehicles at the address of 21011 164<sup>th</sup> Drive S.E. in Monroe, Washington (the address Mr. Domhoff claimed was his home address in his initial

declaration at CP 311), none of which are registered to Brad Domhoff. CP 275. In addition, Mr. Andreasen declared that on July 17, 2012, Jeremiah Robinson and Jason Rask came out of the residence at 21011 164<sup>th</sup> Drive S.E. in Monroe and said that Brad Domhoff moved out of the residence more than three months ago and now lives with his sister north of town, near Wallace Falls State Park, and that these directions correspond with the location of the property owned by the PR, namely 40818 May Creek Road in Gold Bar. *See* CP 275.

The following day, July 19, 2012, the PR filed his motion to strike “certain hearsay statements in the Declaration of Laura Meas filed on July 16, 2012 and the Declaration of Howard Andreasen filed July 18, 2012 and statements made without foundation in the Declaration of Mario Robledo.” CP 265. With his motion to strike, the PR filed a supplemental declaration from Brad Domhoff. CP 261-264. Mr. Domhoff declared in his supplemental declaration that he told the process server on May 30, 2012 that he was not the PR, and that he never stated or represented that he was a resident at either 40816 May Creek Road in Gold Bar or 40818 May Creek Road. CP 262. Mr. Domhoff further declared that he lived at 21011 164<sup>th</sup> Drive SE in Monroe until June 8, 2012 and that since that date he has resided at the Nature Trails RV Park located at 16411 May Creek Road in Gold Bar. CP 262.

**D. The Trial Court Granted The PR's Motion To Dismiss And Motion To Strike And EGP Moved For Reconsideration.**

On July 20, 2012, one (1) day after the PR filed his motion to strike, the trial court granted the PR's motion to dismiss and granted the PR's motion to strike in part. CP 258-59. Although EGP orally requested an evidentiary hearing during the July 20, 2012 hearing, the trial court denied this request. *See id.*<sup>1</sup>

This ruling came despite the fact that EGP's original declaration of service from process server Mario Robledo (CP 309) *was not stricken*, despite the PR's request for such. CP 259, 265. Again, Mr. Robledo's declaration of service provides that Mr. Robledo personally served the PR at 40818 May Creek Road in Gold Bar on May 30, 2012 by leaving a copy of EGP's summons and complaint with a person of suitable age and discretion who was a co-resident with the PR at the aforesaid address. CP 273; CP 309. This declaration of service goes on to describe the "John Doe" as a white male with black hair in his twenties who is 5'11" tall and 150 pounds. CP 317.

EGP filed its motion for reconsideration pursuant to CR 59(a)(1), (2), (4), and (9) on August 1, 2012. CP 174. Specifically, EGP maintained reconsideration should be granted under CR 59(a)(1) because EGP was not timely served with the PR's responsive pleadings and that the PR's declarations do not accurately state the facts relating to service on

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<sup>1</sup> The July 20, 2012 hearing on the PR's motion to dismiss and first motion to strike was not recorded or transcribed.

the PR. CP 185. EGP also argued reconsideration was warranted under CR 59(a)(2) because the PR's declarations do not contain accurate facts and lack veracity. CP 185. EGP further argued reconsideration should be granted under CR 59(a)(4) due to newly provided evidence from EGP that was not available prior to the hearing on the PR's motion to dismiss that could not have been discovered prior to the hearing on the motion to dismiss. CP 185. Finally, EGP argued that substantial justice required the trial court to reconsider its order dismissing EGP's complaint. CP 33.

EGP stated in its motion for reconsideration that the PR's pleadings caused EGP suspicion and caused it to engage in an additional investigation of the relevant facts of the case. CP 183. EGP then came to believe that Brad Domhoff's initial and subsequent declarations are false. CP 183. EGP also noted that Mr. Domhoff changed his declaration testimony as to where he presently lives, for in his initial declaration he stated he lives at 21011 164<sup>th</sup> Drive S.E. in Monroe, while in his subsequent supplemental declaration he claimed to live at an RV park located at 16411 May Creek Road in Gold Bar. CP 183.

EGP further stated in its motion for reconsideration that Jason Rask was not truthful in his declaration when he stated he owns the property at 21011 164<sup>th</sup> Drive S.E. in Monroe and that Mr. Rask was not truthful in his declaration when he described his encounter with process server Howard Andreasen. CP 184. EGP also pointed out that

unbeknownst to Mr. Andreasen at the time, he was actually speaking with Brad Domhoff and not Mr. Rask. CP 184.

As for the evidence that EGP submitted in support of its motion for reconsideration, it included (1) a new declaration from process server Mario Robledo dated July 26, 2012 (CP 176); (2) a declaration from attorney Robert W. Sealby; (3) a supplemental declaration from Brian Fair; and (4) two supplemental declarations from process server Howard Andreasen. CP 188-257.

In his declaration of July 26, 2012, process server Mario Robledo stated that on May 24, 2012, he attempted service on the PR at 40818 May Creek Road in Gold Bar, at which time he spoke with a white female in her twenties who stated she does not know the PR. CP 176. Mr. Robledo further declared that on July 23, 2012 he was shown a picture of Brad Domhoff, who is claiming to be the person that Mr. Robledo served on May 30, 2012, and that Mr. Robledo can “*unequivocally say that Brad Domhoff is not the [person he] served*” on May 30, 2012 at 40818 May Creek Road in Gold Bar. CP 176 (emphasis added).

Mr. Andreasen stated in his supplemental declaration (CP 115) that he observed two vehicles that are licensed to the PR at the 40818 May Creek Road address in Gold Bar on July 16, 2012. CP 115. Mr. Andreasen further declared that on that same date, he observed a white male who was 22-24 years of age, 5’11” with black hair and 170 pounds raking the newly graded driveway at 40818 May Creek Road and that Mr.

Andreasen “now know[s] that this person was not Brad Domhoff.” CP 115. Mr. Andreasen further declared that on July 16, 2012 he observed at the 40816 May Creek Road address “no evidence of any trees or bushes being cut or evidence of any recent landscaping,” (CP 116), that there “is no house number, mail box, or street numbers for this address to discern the two properties” and that Mr. Andreasen “located this property by use of parcel maps only.” CP 116.

Mr. Andreasen also declared in his supplemental declaration dated July 28, 2012 that on July 17, 2012 at the address of 21011 164<sup>th</sup> Drive SE in Monroe (the address claimed by Mr. Domhoff), he spoke to a resident “who refused to give me his name.” CP 116. This resident was a white male, 5’10”, with sandy receding hair, 22-29 years old, and 190 pounds. CP 116. Mr. Andreasen declared he reviewed the Facebook picture of Brad Domhoff, and the person that previously told him that Brad Domhoff had moved from that address “is not Jason Rask” and that the person Mr. Andreasen spoke with on July 17, 2012 “was Brad Domhoff.” CP 116. Mr. Andreasen also declared he “reviewed the declaration of Jason Rask dated July 18, 2012” and that it “is false both to whom I spoke with and the length of time I was told when Brad Domhoff moved out.” CP 116.

In his second supplemental declaration dated July 28, 2012, Mr. Andreasen declared that he had reviewed the supplemental declaration of Brad Domhoff (which was filed on July 19, 2012 and submitted in support of the PR’s motion to dismiss) and declared that Mr. Domhoff “cannot be

a guest of Gold Bar Nature Trails” as he had claimed because “[p]er the Gold Bar Nature Trails Rules and Regulations, a guest of the park is only allowed to stay for 14 consecutive days within a 30 day period.” CP 188. Mr. Andreasen further declared that he went to this trailer park located at 16411 May Creek Road on July 27, 2012, interviewed employees and members there, and determined that “Brad Domhoff has never lived or been a guest of the Gold Bar Nature Trails, especially during the recent time period going back to June 8, 2012.” CP 188.

In Mr. Fair’s supplemental declaration dated July 30, 2012, Mr. Fair declared that after he noticed the inconsistencies in the declarations of Brad Domhoff and Jason Rask, he decided to do a background check on them through EGP’s Westlaw data base. CP 120. Mr. Fair then attached a copy of the Westlaw background checks on Messrs. Domhoff and Rask to his supplemental declaration. CP 120; CP 123-157. Said background checks reflect that Messrs. Domhoff and Rask have lengthy criminal histories, and that each of these individuals has been convicted of theft. CP 127 (showing third degree theft conviction for Brad Domhoff); CP 137-38 (showing theft conviction for Jason Rask).

The PR filed his response to EGP’s motion for reconsideration and motion to strike on August 9, 2012. CP 40. Through this motion, the PR asked the trial court to strike all of the newly submitted evidence in EGP’s motion, to strike certain statements in EGP’s declarations, for the denial of EGP’s motion, and for attorney fees. CP 40. With his motion to strike,

the PR filed declarations from Sue Egbert, attorney W. Mitchell Cogdill, the PR, and supplemental declarations from Jason Rask and Brad Domhoff. CP 38-89.

In his supplemental declaration of August 6, 2012, Mr. Rask declared that regarding the declaration he previously executed, in which he stated he owned the property located at 21011 164<sup>th</sup> Drive SE, Monroe, Washington he “misread” paragraph 2 of that declaration at the time of his signing, and that he does “live at that address, but I am a tenant, not the owner.” CP 38.

In his supplemental declaration of August 6, 2012, Mr. Domhoff declared that he has never been a resident at 40816 May Creek Road, where he claims he was handed EGP’s summons and complaint on May 30, 2012. CP 65. Mr. Domhoff further declared he told the process server that he knew the PR and that he “would give him the papers.” CP 66.

The PR stated in his declaration of August 8, 2012 that on Wednesday, May 30, 2012 at 5:11 p.m. he was working at his regular job and was not at either 40816 May Creek Road or 40818 May Creek Road at that time. CP 67.

EGP filed its supplemental legal memorandum in support of its motion for reconsideration and in response to the PR’s motion to strike on August 16, 2012. CP 31. In this supplemental memorandum, EGP summarized its position based on evidence in the record as to why it

believed that several of the PR's declarations lacked veracity. CP 32-33.

This summary reads as follows:

Upon investigation conducted by [process server] Howard Andreasen, including interviewing the employees of the RV Park [where Mr.] Domhoff claims to live, Domhoff has never shown his face at this place, much less lived there.

Upon [EGP] obtaining the rules of the RV Park, those rules indicate that Domhoff could not have lived there for as long as he claims. There is a two week limit for guests.

Process Server Mario Robledo has reviewed the picture Mr. Domhoff posts on his Facebook and has stated that is not the party he served.

Howard Andreasen has reviewed the picture Mr. Domhoff posts on his Facebook page, and states that the person who has been working on the property of [the PR], that fits the description of the process server, is not Mr. Domhoff.

Domhoff has two different Declarations claiming to live at two different places at the same time. Par. #5 to Brad Domhoff's Declaration signed July 5, 2012: 'My home address is 21011 164<sup>th</sup> Drive SE, Monroe, Washington, where I have lived since October 2010.' Par #5 to Domhoff's declaration signed July 18, 2012: "I lived at 21011 164<sup>th</sup> Drive SE Monroe, Washington until June 8, 2012. Since that date I have resided at the Nature Trails RV Park, located at 16411 May Creed [*sic*] Road, Gold Bar, Washington."

CP 32.

In sum, EGP pointed out to the trial court that Mr. Domhoff changed his story regarding the location of his residence. CP 32. EGP also pointed out that Jason Rask changed his story. CP 33. EGP therefore maintained that the declarations submitted in support of its motion for reconsideration should not be stricken. CP 33.

In addition, EGP noted in its supplemental memorandum in support of its motion for reconsideration that it sought reconsideration not

just under CR 59(a)(4), “but also subsections (1), (2), and (9)” and that the PR’s response to EGP’s motion for reconsideration “does not address those subsections.” CP 33.

The PR then filed his “motion to strike certain hearsay statements” in EGP’s supplemental legal memorandum on August 21, 2012, along with a declaration from Sue Egbert. CP 11, 19. This was the third motion to strike that the PR filed in this case. CP 19; CP 40; CP 265. This motion to strike did not contain any argument in response to EGP’s assertion that reconsideration of the order granting the PR’s motion to dismiss was warranted under CR 59(a)(1), (2), and (9). CP 20. Thus, the PR never put forth any argument or authority in opposition to EGP’s assertion that reconsideration was warranted under each of these three (3) subsections of CR 59(a).

**E. The Trial Court Denied Reconsideration Of Its Decision To Dismiss EGP’s Complaint And Struck EGP’s Newly Discovered Evidence.**

On October 9, 2012 the trial court denied EGP’s motion for reconsideration without oral argument and granted the PR’s motion to strike all of the portions of the declarations of Robert Sealby, Brian Fair, Howard Andreasen, and Mario Robledo that the PR objected to. CP 7, 8. The stricken declaration testimony included Mr. Andreasen’s assertion that his investigation at the RV Park where Mr. Domhoff claims to live revealed that Mr. Domhoff has never been there and has never lived there (CP 23), process server Mario Robledo’s assertion that he has reviewed

Mr. Domhoff's Facebook picture and that Mr. Domhoff is not the person that Mr. Robledo previously served (CP 25), and Mr. Andreasen's assertion that he reviewed Mr. Domhoff's picture on Facebook and that this person does not fit the physical description of the person that Mr. Robledo previously served (CP 27).

Thus, the trial court granted all three (3) of the PR's motions to strike in this case. CP 19; CP 40; CP 265. In doing so, it dismissed EGP's complaint without an evidentiary hearing despite (a) the parties' conflicting declarations; (b) the numerous inconsistencies in the PR's declarations; (c) the fact that two of the PR's declarants have been convicted of theft, a crime of moral turpitude; and (d) the fact that process server Mario Robledo's original declaration of service, which reflects his service of EGP's summons and complaint on a person of suitable age and discretion that was a "co-resident" of the PR's, was never stricken from the record.

EGP timely filed its notice of appeal concerning the order denying its motion for reconsideration on November 7, 2012. CP 5.

## V. ARGUMENT

An appeal from an order on a motion for reconsideration allows review of the propriety of the final judgment itself. *Davies v. Holy Family Hosp.*, 144 Wn. App. 483, 183 P.3d 283 (2008).

- A. **The Trial Court Erred When It Dismissed EGP's Complaint Because The PR Failed To Prove By Clear And Convincing Evidence As A Matter Of Law That Service Upon Him Was Defective.**

A trial court's ruling on personal jurisdiction is a question of law reviewable de novo when the underlying facts are undisputed. *Lewis v. Bours*, 119 Wn.2d 667, 669, 835 P.2d 221 (1992). If the trial court's ruling is based on affidavits and discovery "only a prima facie showing of jurisdiction is required." *Precision Lab. Plastics, Inc. v. Micro Test, Inc.*, 96 Wn. App. 721, 725, 981 P.2d 454 (1999). The rationale is that "[a]ny greater burden such as proof by a preponderance of the evidence would permit a defendant to obtain a dismissal simply by controverting the facts established by a plaintiff through his own affidavits and supporting materials." *Data Disc, Inc. v. Sys. Tech. Assoc.*, 557 F.2d 1280, 1285 (9<sup>th</sup> Cir. 1977). Therefore, if the plaintiff's proof is limited to written materials, it is necessary only for these materials to demonstrate facts which support a finding of jurisdiction in order to avoid a motion to dismiss. *See id.* .

An affidavit of service that is regular in form and substance is presumptively correct. *Lee v. Western Processing Co.*, 35 Wn. App. 466, 469, 667 P.2d 638 (1983). The burden is then on the person attacking the service to show by clear and convincing proof that the service was improper. *McHugh v. Conner*, 68 Wn. 229, 231, 122 P. 1018 (1912); *see also Miebach v. Colasurdo*, 35 Wn. App. 803, 670 P.2d 276 (1983), *reversed in part on other grounds*, 102 Wn.2d 170, 685 P.2d 1074 (1984).

If the facts are sharply in dispute, so that factual determinations turn on the credibility of witnesses, the trial court should conduct a

hearing with live testimony before ruling on the issue of personal jurisdiction. KARL B. TEGLAND, 15A Wash. Pract. § 10.17 (citing *State ex rel. Coughlin v. Jenkins*, 102 Wn. App. 60, 7 P.3d 818 (2000) and *Woodruff v. Spence*, 88 Wn. App. 565, 945 P.2d 745 (1997) (“The affidavits in this case present an issue of fact which can only be resolved by determining the credibility of witnesses. The matter must be remanded for an evidentiary hearing to resolve this fact issue.”))

Under Washington’s probate statutes, if the personal representative of an estate rejects a creditor’s claim, the claimant must bring suit against the personal representative within thirty (30) days after notification of the rejection or the claim is barred. RCW 11.40.100;CP 314. For the purpose of tolling any statute of limitations, an action shall be deemed commenced when the complaint is filed or summons is served, whichever occurs first. RCW 4.16.170; CP 314. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety (90) days from the date of filing the complaint. RCW 4.16.170; CP 314.

The trial court committed reversible error when it granted the PR’s motion to dismiss EGP’s complaint. The trial court should have denied the PR’s motion to dismiss outright because process server Mario Robledo’s original declaration of service — which reflects good service on the PR — is presumptively valid, and the PR failed to overcome this

presumption by clear and convincing evidence as a matter of law.

If nothing else, under these circumstances, the trial court was required to hold an evidentiary hearing as to whether service on the PR was good. The trial court erred when it failed to do so despite EGP's oral request for such at the hearing on the PR's motion to dismiss.

In sum, the trial court erred when it granted the PR's motion to dismiss because the PR failed to prove by *clear and convincing* evidence *as a matter of law* that service upon him was defective. EGP maintains the trial court committed reversible error in this regard even if its ruling on the PR's first motion to strike was correct and was not an abuse of discretion.

**B. The Trial Court Erred When It Struck Material Portions Of Process Server Manager Laura Meas's Declaration In Light Of The Hearsay Exception For Declarations Of Service.**

A trial court's evidentiary rulings are reviewed for abuse of discretion. *Hume v. Am. Disposal Co.*, 124 Wn.2d 656, 666, 880 P.2d 988 (1994), *cert. denied*, 513 U.S. 1112 (1995). A trial court abuses its discretion when its decision is manifestly unreasonable or rests on untenable grounds. *State v. Lord*, 161 Wn.2d 276, 283-84, 165 P.3d 1251 (2007).

The trial court's decision to strike material portions of process server manager Laura Meas's declaration pursuant to the PR's first motion to strike, which declaration EGP submitted in response to the PR's motion to dismiss, rests on untenable grounds. Ms. Meas, a manager at process

service company Pacific Coast Attorney Services LLC, stated in her declaration that on May 30, 2012, her process server asked a male occupant of 40818 May Creek Road in Gold Bar if he was a resident of 40818 May Creek Road and he then replied “yes.” CP 269. Ms. Meas further declared her process server then asked the male occupant if the PR lives at 40818 May Creek Road and he then replied “yes.” CP 269. Ms. Meas then declared the process server left EGP’s summons and complaint with the male occupant, who was a white male with black hair in his twenties, 5’11” and 150 pounds. CP 269.

Ms. Meas’s declaration contains material evidence concerning the location of the PR’s house of usual abode and the question of whether a person of suitable age and discretion lived with the PR at 40818 May Creek Road in Gold Bar during the period in question. Nevertheless, in his motion to strike (which is in essence a reply in support of the PR’s motion to dismiss and was filed one (1) day before the hearing on this motion), the PR argued that Ms. Meas’s declaration should be stricken because it contains hearsay statements. CP 266.

The trial court should not have stricken any part of Ms. Meas’s declaration given that CR 4(g) provides a process server exception to the hearsay rule under ER 802, which provides that “[h]earsay is not admissible except as provided by these rules, by other court rules, or by statute.” *See* CR 4(g); *Marsh McLennan Bldg., Inc. v. Clapp*, 96 Wn. App. 636, 980 P.2d 311 (1999).

In *Marsh*, the trial court admitted affidavits of service that contained a hearsay statement (including what a neighbor told the process server about where the defendant lived) under the reliable business records hearsay exception. *Id.* at 638-39, 980 P.2d 311. Division One of the Washington Court of Appeals affirmed the trial court's evidentiary ruling on alternative grounds, holding that ER 802 preserves the admission of affidavits of service prepared under CR 4(g). *Id.* at 641, 980 P.2d 311. Accordingly, CR 4(g) is a court rule that provides for the admissibility of hearsay contained in an affidavit of service for the purposes of asserting proper service. *See id.*

In this case the trial court erred when it struck the material portions of Ms. Meas's declaration on hearsay grounds. As seen above, Ms. Meas's declaration is admissible for the purpose of asserting proper service even if it contains hearsay statements. By striking the material portions of Ms. Meas's declaration, the trial court abused its discretion, as this ruling rests on untenable grounds in light of the controlling legal authority set forth above.

C. **The Trial Court Erred By Denying EGP's Motion For Reconsideration.**

This Court reviews a trial court's decision to grant or deny a motion for reconsideration for abuse of discretion. *Drake v. Smersh*, 122 Wn. App. 147, 150, 89 P.3d 726 (2004). The trial court abuses its discretion only if its decision is manifestly unreasonable or rests upon untenable grounds or reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362

(1997). An abuse of discretion exists only if no reasonable person would have taken the view adopted by the trial court. *Holaday v. Merceri*, 49 Wn. App. 321, 324, 742 P.2d 127 (1987).

EGP moved for reconsideration of the trial court's order of dismissal based on CR 59(a)(1), (2), (4), and (9). As seen from the following, the trial court abused its discretion by refusing to vacate this order.

***1. Reconsideration Of The Order Dismissing EGP's Complaint Is Required Due To Irregularity In The Proceedings Of The Adverse Party And Abuse Of Discretion.***

CR 59(a)(1) provides that reconsideration may be granted when there is an irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial or hearing. *See* CR 59(a)(1).

There is no question that the trial court abused its discretion when it struck material portions of process service manager Laura Meas's declaration on hearsay grounds and dismissed EGP's complaint without first conducting an evidentiary hearing as to whether EGP effectuated good service on the PR. These rulings cannot stand under the controlling authority set forth above. As such, the trial court should have reconsidered its ruling on the PR's motion to dismiss pursuant to CR 59(a)(1), especially when the PR failed to provide any authority or argument in response to reconsideration under this subsection of the rule. CP 33.

2. ***Reconsideration Of The Order Dismissing EGP's Complaint Is Required Due To The Misconduct Of The PR.***

CR 59(a)(2) provides that reconsideration may be granted based on misconduct of the prevailing party. CR 59(a)(2). "Misconduct" has been defined as "improper or unprofessional behaviour." The Oxford Dictionary of Current English, New Revised Edition, Page 568 (Oxford University Press 1998 ed.).

Here, it is undisputed that there are inconsistencies in the PR's declarations that were filed in the trial court, and that certain of the PR's witnesses changed their stories insofar as their testimony is concerned. There is also evidence to the effect that two of the PR's witnesses, Messrs. Rask and Domhoff — each of whom have previously been convicted of theft — provided false testimony to the trial court. As such, EGP submits the PR engaged in "improper or unprofessional behavior" in this case. Accordingly, the trial court should have reconsidered its ruling on the PR's motion to dismiss pursuant to CR 59(a)(2), especially when the PR failed to provide any authority or argument in response to reconsideration under this portion of the rule. CP 33.

3. ***Reconsideration Of The Order Dismissing EGP's Complaint Is Required Based On EGP's Newly Discovered Evidence.***

CR 59(a)(4) provides that newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced beforehand, provides grounds for reconsideration. CR 59(a)(4).

Newly discovered evidence may warrant relief from judgment if it is discovered after the judgment, could not have been discovered before the judgment, is material, and is not cumulative or impeaching. *See Graves v. Dep't of Game*, 76 Wn. App. 705, 718-19, 887 P.2d 424 (1994).

The PR filed his first motion to strike with a declaration from Jason Rask and a supplemental declaration from Brad Domhoff one (1) day prior to the hearing on the PR's motion to dismiss. Soon after EGP's complaint was summarily dismissed, it submitted its motion for reconsideration. As seen from this motion, EGP had no way to obtain its new evidence beforehand, which was partly because process Mario Robledo had left the legal services company he had been working for when he served the PR in May of 2012 and moved out of state to join his wife. CP 200.

EGP's new evidence provided further proof that EGP effectuated good service on the PR while it also called the veracity of the PR's declarations into question.

To illustrate, in addition to the internal inconsistencies and contradictions themselves that are set forth in certain of the PR's declarations, the Westlaw background checks that EGP ran on Messrs. Domhoff and Rask reflect these individuals have lengthy criminal histories, and that *each of these individuals has been convicted of theft*. CP 127 (showing third degree theft conviction for Brad Domhoff); CP 137-38 (showing theft conviction for Jason Rask). These theft convictions

call the credibility of Messrs. Domhoff and Rask into question. EGP could have used these convictions to impeach the testimony of Messrs. Domhoff and Rask under ER 404(a)(3) and ER 609(a) and (b) had the trial court granted EGP's previous request for an evidentiary hearing.

Further, Mr. Robledo's declaration dated July 26, 2012 states he was shown a picture of Brad Domhoff on July 23, 2012 and that Mr. Domhoff, who claims to be the "John Doe" that Mr. Robledo served with EGP's summons and complaint on May 30, 2012 at 40818 May Creek Road in Gold Bar, is "unequivocally not the 'John Doe' I served." CP 176.

Nevertheless, the trial court refused to grant reconsideration or hold an evidentiary hearing to gauge the credibility of the PR's witnesses. Further, the trial court improperly struck EGP's newly discovered evidence. These rulings constitute an abuse of discretion in light of EGP's newly discovered evidence and the facts and circumstances herein.

**4. *Reconsideration Of The Order Dismissing EGP's Complaint Is Required Because Substantial Justice Has Not Been Done.***

CR 59(a)(9) provides that reconsideration may be had when substantial justice has not been done.

There is no question that this portion of the rule provides grounds for reconsideration of the trial court's order dismissing EGP's complaint. The fact is substantial justice has not been done, certainly not in this case where the PR utilized testimony from two criminals who were each convicted of a crime of dishonesty or moral turpitude, the original

declaration of service from Mario Robledo that reflects good service on the PR was never stricken from the record, and Mr. Robledo's subsequent declaration from July 26, 2012 states Mr. Domhoff is not the "John Doe" that he served on May 30, 2012.

For these reasons, the trial court should have reconsidered its ruling on the PR's motion to dismiss pursuant to CR 59(a)(9), especially considering the PR failed to provide any authority or argument in response to reconsideration under this portion of the rule. CP 33.

**D. EGP REQUESTS AN AWARD OF ATTORNEY'S FEES AND COSTS IF IT PREVAILS ON APPEAL.**

Attorney's fees and expenses incurred on appeal can be awarded if applicable law, contract, or equity permits an award of such fees and expenses. RAP 18.1(a). The party requesting an award of fees and expenses must devote a section of its opening brief to the request for the fees or expenses. RAP 18.1(b).

RCW 11.96A.150, which is part of the Trust and Estate Resolution Act ("TEDRA"), provides the superior court or any court on appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party in any proceeding governed by Title 11, including but not limited to proceedings involving decedent's estates. RCW 11.96A.150(1), (2). Fees and costs may be awarded to any party from any party to the proceedings and from the assets of the estate involved in the proceedings. RCW 11.96A.150; *see also In re Estate of Black*, 116 Wn. App. 476, 491, 66 P.3d 670 (2003) (demonstrating TEDRA's bearing on

claims against personal representatives under RCW 11.40).

In the event that EGP prevails in this forum, it respectfully requests an award of its costs and attorney's fees, jointly and severally, against both the PR and the Decedent's estate, in accordance with RCW 11.96A.150(1).

EGP submits the equities tilt markedly in its favor given the alarming inconsistencies in the PR's declarations, the likelihood that the PR and/or certain of his witnesses have provided false testimony to the trial court, and the fact that the PR relied upon the testimony of two convicted criminals that have each been convicted of a crime of moral turpitude to bolster his position.

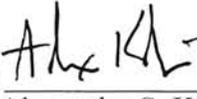
## **VI. CONCLUSION**

The trial court committed reversible error when it granted the PR's motion to dismiss EGP's complaint due to insufficient service of process. The trial court also erred when it struck material portions of process server manager Laura Meas's declaration of service, struck EGP's newly discovered evidence, and denied EGP's motion for reconsideration. Accordingly, EGP asks this Court to reverse the trial court's rulings and allow EGP's claim against the PR to go forward and be resolved on the merits. In the event that EGP prevails on appeal, it respectfully requests an award of attorney's fees and costs against the PR and the Decedent's

estate, jointly and severally, pursuant to RCW 11.96A.150(1).

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of March, 2013.

EISENHOWER CARLSON PLLC

By: 

Alexander S. Kleinberg, WSBA # 34449  
Attorneys for Appellant EGP  
Investments, LLC

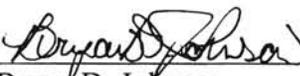
DECLARATION OF SERVICE

I, Bryan D. Johnson, am a paralegal with the firm of Eisenhower Carlson PLLC, and am competent to be a witness herein. On March 25, 2013, at Tacoma, Washington, I caused a true and correct copy of EGP Investments, LLC's Brief of Appellant to be served upon the following in the manner indicated below:

W. Mitchell Cogdill Cogdill Nichols Rein Wartelle Andrews Vail 3 Thirty Two Square 3232 Rockefeller Ave Everett, WA 98201-4317  Telephone: (425) 259-6611 Email: wmc@cnrlaw.com	<input checked="" type="checkbox"/> by Legal Messenger <input checked="" type="checkbox"/> by Electronic Mail
---	--

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

DATED this 25th day of March, 2013, at Tacoma, Washington.

  
Bryan D. Johnson

FILED  
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DIVISION II  
2013 MAR 25 PM 2:28  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

# APPENDIX A

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SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

  
**CL15763897**

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

EGP INVESTMENTS, LLC, a  
Washington Limited Liability Company,  
  
Plaintiff,

Cause No. 12-2-03800-5

ORDER

v.

ERIC A. ANDREWS, as Personal  
Representative of the ESTATE of  
JENNIFER LUND,  
  
Defendant.

THIS MATTER having come on regularly for hearing upon Plaintiff's Motion to Dismiss Plaintiff's Complaint, and Plaintiff  appearing by and through its attorney, Robert W. Sealby, and Defendant Eric Andrews as personal representative of the estate of Jennifer Lund appearing by and through his attorney, W. Mitchell Cogdill, and the court having reviewed the records and files herein, including the following:

1. Defendant's Motion to Dismiss dated July 2, 2012.
2. Declaration of W. Mitchell Cogdill with attachments dated July 9, 2012.
3. Declaration of Eric Andrews dated July 5, 2012 with attachments.

ORDER - 1

COGDILL NICHOLS REIN WARTELLE ANDREWS  
3232 Rockefeller Avenue  
Everett, WA 98201  
Phone: (425) 259-6111  
Fax: (425) 259-6435

**CLOSED ORIGINAL**

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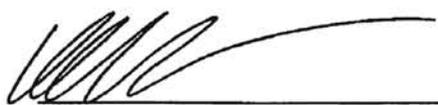
- 1 4. Declaration of Brad Domhoff dated July 5, 2012.
- 2 5. Declaration of Laura Meas dated July 16, 2012.
- 3 6. Plaintiff's Response in Opposition to Defendant's Motion to Dismiss dated July
- 4 18, 2012.
- 5 7. Declaration of Brian Fair dated July 18, 2012 with attachments
- 6 8. Declaration of Hoawrd Andreasen dated July 18, 2012
- 7 9. Defendant's Motion to Strike dated July 19, 2012
- 8 10. Supplemental Declaration of Brad Domhoff dated July 18, 2012
- 9 11. Declaration of Jason Rask dated July 18, 2012

~~Plaintiff~~ Defendant's motion to strike Ench. A + B is granted. 

and the court being fully advised in this matter, now therefore, makes the following Order:

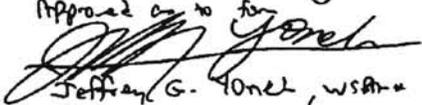
- 1. Plaintiff's Motion to Dismiss Defendant's Complaint is granted.

DONE IN OPEN COURT this 20 day of July, 2012.

  
 \_\_\_\_\_  
 JUDGE

Presented by:

COGDILL NICHOLS REIN  
 WARTELLE ANDREWS-VAIL

By:   
 W. Mitchell Cogdill, WSBA #1950  
 Attorney for Defendant  
 Approved as to form for   
 Jeffrey G. Donel, WSBA # 17762  
 Atty for plaintiff

ORDER - 2

COGDILL NICHOLS REIN WARTELLE ANDREWS  
 3232 Rockefeller Avenue  
 Everett, WA 98201  
 Phone: (425) 259-6111  
 Fax: (425) 259-6435

# APPENDIX B



FILED

2012 JUN -5 PM 12: 59

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

EGP Investments LLC, a Washington Limited Liability Company

Case No.: 12-2-03800-5

Plaintiff(s),

vs.

DECLARATION OF SERVICE

ERIC A ANDREWS, as Personal Representative of the ESTATE of JENNIFER LUND



Defendant(s).

STATE OF WASHINGTON  
COUNTY OF KING ss.

The undersigned, being first duly sworn on oath deposes and says: That he/she is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen years, not a party to or interested in the above entitled action and competent to be a witness therein.

That on 05/30/2012 at 5:11 PM, at the address of 40818 May Creek Rd, Gold Bar, within SNOHOMISH County, WA, the undersigned duly served the following document(s): SUMMONS; COMPLAINT; MILITARY DEPENDENT NOTICE in the above entitled action upon ERIC A ANDREWS, by then and there, at the residence and usual place of abode of said person(s), personally delivering 1 true and correct copy(ies) of the above documents into the hands of and leaving same with John Doe, co-resident, being a person of suitable age and discretion, who is a resident therein. Desc: Sex: Male - Skin/Race: White - Hair: Black - Age: 20s - Height: 5'11" - Weight: 150

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

Date: 6/1/12

X   
Mario Robledo  
Registered Process Server  
License#: 2012-15  
Pacific Coast Attorney Services LLC  
2926 6th Ave S  
Seattle, WA 98134  
206.652.2692

TOTAL: \$45.00



3

# APPENDIX C

FILED

12 JUL 16 PM 3:21

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH



CL15761839

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

EGP Investments LLC, a Washington Limited Liability Company

Plaintiff(s),

vs.

ERIC A ANDREWS, as Personal Representative of the ESTATE of JENNIFER LUND

Defendant(s).

Case No.: 12-2-03800-5

DECLARATION OF Laura Meas, Manager



STATE OF WASHINGTON  
COUNTY OF KING ss.

I affirm that according to the records maintained in this office, service/attempts were made in the following manner:

That on 05/23/2012 at 9:28 AM, the following document(s): SUMMONS; COMPLAINT; MILITARY DEPENDENT NOTICE were received for service on ERIC A ANDREWS. The following narrative is what transpired:

Attempted on 05/24@1833 - White female (in her 20's) states she does not know defendant. Attempted on 05/30@1711 - Server asked a male occupant if he was a resident of 40818 May Creek Rd Gold Bar, WA 98251, he then replied "yes". Server then asked if defendant lives at 40818 May Creek Rd Gold Bar, WA 98251 and then he replied "yes". Then server left documents with John Doe, co-resident at address 40818 May Creek Rd Gold Bar, WA 98251. Description: Male, White, Black Hair, 20s, 5'11" and 150lbs.

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

Date: 7-16-12

X Laura Meas  
Laura Meas, Manager  
Process Server  
Pacific Coast Attorney Services LLC  
2926 6th Ave S  
Seattle, WA 98134  
206.652.2692

TOTAL: \$45.00



\*147986\*

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# APPENDIX D

CL15675287

FILED

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SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

EGP Investments LLC, a Washington Limited Liability Company

Case No.: 12-2-03800-5

Plaintiff(s),  
vs.

DECLARATION OF Mario Robledo

ERIC A ANDREWS, as Personal Representative of the ESTATE of JENNIFER LUND



Defendant(s).

STATE OF WASHINGTON  
COUNTY OF KING ss.

The undersigned, being first duly sworn on oath deposes and says: That he/she is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen years, not a party to or interested in the above entitled action and competent to be a witness therein.

That on 05/23/2012 at 9:28 AM, the following document(s): SUMMONS; COMPLAINT; MILITARY DEPENDENT NOTICE were received for service on ERIC A ANDREWS. The following narrative is what transpired:

I attempted on 05/24/12 @ 6:33pm and I spoke with a white female (in her 20's) who stated she does not know defendant. I again attempted on 05/30/12 @ 5:11pm and I left documents with John Doe, co-resident, at address 40818 May Creek Rd Gold Bar, WA 98251. Description: Male, White, Black Hair, 20s, 5'11" and 150lbs. I was formerly employed by Pacific Coast Attorney Services, LLC. I have since voluntarily left their employment. On 07/23/12 @ 2:30pm I was shown a picture of Brad Domhoff, picture attached as EXHIBIT A, who is claiming to be the "John Doe" I served on 05/30/12 @ 5:11pm at the address of 40818 May Creek Rd. Gold Bar, WA 98251. After seeing the picture of Brad Domhoff, I can unequivocally say that Brad Domhoff is not the "John Doe" I served on 05/30/12 @ 5:11pm.

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

Date: 7.26.12

X   
Mario Robledo  
Registered Process Server  
License#: 2012-15  
Pacific Coast Attorney Services LLC  
2926 6th Ave S  
Seattle, WA 98134  
206.652.2692

TOTAL: \$45.00



\*147986\*

ORIGINAL

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

EGP INVESTMENTS, LLC, a Washington  
Limited Liability Company,

No. 12-2-03800-5

Plaintiffs,

vs.

ERIC A. ANDREWS, as Personal  
Representative of the ESTATE OF JENNIFER  
LUND,

Defendants.

I, KATHRYN L. ESCALERA, declare under penalty of perjury under the laws of the  
State of Washington that the following is true and correct:

1. I am the person who received the attached signature page to *Declaration of  
Mario Robledo* dated July 26, 2012 from Mario Robledo. I have examined these documents,  
which are complete and legible and consists of 3 pages, including this affidavit page.

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

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DATED this 30<sup>th</sup> day of July, 2012 at Wenatchee, Washington.

Kate Escalera  
KATHRYN L. ESCALERA

SIGNED AND SWORN to before me on this 30<sup>th</sup> day of July, 2012 by Kathryn L. Escalera.



[Signature]  
Signature of Notary Public  
Carma R. Baird-Figueroa  
Name of Notary Public  
12/15/12  
My Appointment Expires

# APPENDIX E

**FILED**

OCT 08 2012

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH.

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

EGP INVESTMENTS, LLC, a  
Washington Limited Liability Company,

Plaintiff,

v.

ERIC A. ANDREWS, as Personal  
Representative of the ESTATE of  
JENNIFER LUND,

Defendant.

Cause No. 12-2-03800-5

ORDER DENYING PLAINTIFF'S  
MOTION FOR  
RECONSIDERATION AND  
AWARDING ATTORNEY'S FEES  
TO DEFENDANT

~~PROPOSED~~

THIS MATTER having come before the Court on Plaintiff EGP's Motion for Reconsideration; the Court having considered that motion and the pleadings filed by Plaintiff; having considered the response and declarations opposing that motion filed by Defendant Eric Andrews; and otherwise being fully advised in this matter; now, therefore,

IT IS HEREBY ORDERED:

1. Plaintiff's motion is denied;
2. The portions of the declarations and exhibits attached thereto of Robert Sealby, Brian Fair, Howard Andreasen and Mario Robledo objected to by Defendant in

ORDER - 1

COGDILL NICHOLS REIN WARTELLE ANDREWS  
3232 Rockefeller Avenue  
Everett, WA 98201  
Phone: (425) 259-6111

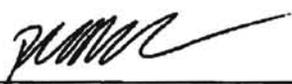
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his response are stricken; and

3. ~~The Court awards reasonable attorney's fees and costs to Defendant and finds that Plaintiff's motion included substantial arguments that were unsupported by rational argument on either the law or facts, advanced without reasonable cause, not well grounded in fact, nor warranted by existing law or a good faith basis for altering existing law.~~

4. \_\_\_\_\_  
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\_\_\_\_\_

DONE IN OPEN COURT this 8<sup>th</sup> <sup>October</sup> day of ~~August~~, 2012.

  
\_\_\_\_\_  
JUDGE

Presented by:  
COGDILL NICHOLS REIN WARTELLE ANDREWS

By \_\_\_\_\_  
W. Mitchell Cogdill, WSBA #1950  
Attorney for Defendant

By \_\_\_\_\_  
Robert W. Sealby, WSBA # 21330  
Attorney for Plaintiff

ORDER - 2

COGDILL NICHOLS REIN WARTELLE ANDREWS  
3232 Rockefeller Avenue  
Everett, WA 98201  
Phone: (425) 259-6111  
Fax: (425) 259-6125