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NO. 70726-4

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

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COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
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TSANG WONG LIM d/b/a TSANG
WONG LIM & ASSOCIATES

Respondent,

vs.

GRACE YIM YEE SIOU

Appellant.

BRIEF OF APPELLANT

Grace Yim Yee Siou
Appellant Pro Se
16404 36th Ave SE, Bothell, Washington 98012

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I. INTRODUCTION

Appellant Grace Siou respectfully requests the Court of Appeals to allow the civil case to proceed to trial on the merits and to reverse the trial court's default judgment decision. *Appellant* Grace Siou (*Grace*) was employed by *Respondent* Tsang Wong Lim (*Mrs. Lim*) and Lim's partner Rolf Christiansen (*Mr. Christiansen*) from October 1, 1998 to December 30, 2008 as their shared administrative assistant. Lim and Christiansen were life insurance agents hired directly by Northwestern Mutual Life Insurance Company (*NWML*) in the Seattle Office. Grace Siou, as an administrative assistant hired by Mrs. Lim and Mr. Christiansen together performed clerical work designated by the two insurance agents (not involving selling products and not receiving any commissions from *NWML*). CP 4. Lim herself engaged in the sale of insurance and investment products for approximately 20 years with a sophisticated knowledge of financial affairs. Lim and Christiansen both selling products require licenses to receive commissions regulated by Financial Industry Regulatory Authority (*FINRA*, the SEC's regulatory agency). Mrs. Lim and Mr. Christiansen both shared part of their individual sales commissions to employee Grace to encourage performance. Lim's partner Mr. Christiansen has not joined the civil lawsuit against Grace. Lim and Christiansen never suffered damages as result of their assistant Grace's not having *FINRA* Series 6 or 63 licenses. They benefited by paying a lower fixed base salary to Grace.

Tsang Wong Lim claims not knowing Grace Siou's licensing status for her more than 10 years employment even though Lim sponsored Grace's continuing education and licenses while Grace worked for her. Lim alleged misrepresentation by Grace and improperly paid Grace part of Lim's commissions. There is no misrepresentation and Lim shows no evidence to support her allegations. Rather than focus on material facts, Lim represented by Christopher Anderson tactics focus on Grace's vulnerabilities: language barriers and lacking legal knowledge. Lim was not prejudiced for trial because discovery disputes are not related to material facts of whether there was intentional misrepresentation by Grace, whether Lim improperly shared her commissions with her assistant as earned paid wages that can be taken back, and whether Lim should be allowed take back paid wages earned more than eight years from the time of filing the civil lawsuit or not?

There would be no prejudice on preparation for trial because Lim's causes of action are either not recognized by Washington law in the first place, and / or barred by the Statue of Limitations.

II. ASSIGNMENTS OF ERROR

- A. The trial court erred in entering its June 6th, 2013 Order of Default against Grace Yim Yee Siou. CP 149.
- B. The trial court erred in entering its July 1st, 2013 Order of Default Judgment for an Amount Certain against Grace Yim Yee Siou. CP 159.

- C. The trial court erred in entering its July 24th, 2013 Order Denying Grace Yim Yee Siou's Motion for Reconsideration. CP 165.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the alleged discovery violations irreparably prejudice Tsang Wong Lim's ability to prepare for trial? **No**
 - Pertaining to Assignments of Error A, B, and C.
2. Should a default on liability have been found when Washington does not recognize a cause of action to recover commissions from someone who was not licensed to receive it, after the commission has been paid, and where Tsang Wong Lim should not have improperly shared commissions with an employee who was not licensed to receive that commission? **No**
 - Pertaining to Assignments of Error A, B, and C.
3. Should the claim, filed eight (8) years late, be precluded by the Statute of Limitations, on the basis that the cause of action accrued when Tsang Wong Lim knew, or should have known for ten (10) years employment sponsorship, that Grace Siou's licenses that would have permitted commission sharing expired? **Yes**
 - Pertaining to Assignments of Error A, B, and C.
4. Was the amount of the default judgment inequitable and incorrect, when Tsang Wong Lim erred in her determination of the year of licensing

expiration, and incorrectly included sales that did not require a license?

Yes

- Pertaining to Assignments of Error B and C.

IV. STATEMENT OF THE CASE

A. Factual history and background of the case

1. Grace's employment not required Series 6 and Series 63 licenses. Lim and Christiansen paid base salary plus part of their commissions as income to Grace.

Grace Siou (Grace) was hired by Tsang Wong Lim (Lim) and Lim's partner Rolf Christiansen (Christiansen) on October 1, 1998 as a shared administrative assistant by the two agents. Grace performed clerical work designated by the two insurance agents. She never sold any products requiring Series 6 and Series 63 licenses. Lim and Christiansen were life insurance agents themselves. They were directly hired by Northwestern Mutual Life Insurance Company (NWML) in the Seattle Office. During Grace's employment, Tsang Wong Lim sponsored Grace's licenses and continuing education. Lim paid for Grace's renewing of Series 6 license while Grace's Series 63 license expired in 1995. This was before her employment with Lim but Lim included Series 63 in her civil lawsuit claim anyway. Series 6 is required for selling of Mutual Funds products.

2. Lim claim amount incorrect and unjust.

Lim and Christiansen paid Grace a base salary with portions of their own paid commissions into Grace's paid earned income. Mutual Funds are a small part of

this whole equation totally \$1647.29. CP 162, attachment to Exhibit 2. Other products that are not requiring Series 6 or Series 63 licenses also paid into Grace earned income. As part of benefit to Grace, Lim sponsored Grace's continuing education and licenses. Grace never paid for licenses renewing fees herself. In October 2003, Tsang Wong Lim paid for Grace Series 6 renewing fees. This would have been good for another 3 years until 2006. In August 2004 NWML Tsang Wong Lim employer erroneously filed U5 form disconnecting Grace from association with NWML unknown to Grace. CP 154 (page 23). Grace's employment ended with Tsang Wong Lim on December 30, 2008. In March 2009, three months after the ending of Grace's 10 years employment with Lim, Lim alleged Grace, during the last 5 years periods between August 2004 and December 2008 the following misconducts:

- (1) Withdrew more money from her employer's payroll bank account than she was entitled to;
- (2) Signed her employer Tsang Wong Lim's name on insurance and investment applications and more 150 of Grace's employment related bank checks without Lim's prior authorization. Lim admitted she signed 100% of all those applications and bank checks by herself before 2004 and suddenly stopped signing any of the same applications and bank checks 2004 - 2008.
- (3) Misrepresented herself as having Series 6 and Series 63 licenses and received commissions from 2004 - 2008 on the sale of insurance and investment products. Lim seeks damage from the misrepresentation and claims Grace's

was not entitled to her paid wages because she was alleged not properly registered with regulatory bodies: Financial Industry Regulatory Authority (FINRA, the SEC's private regulatory agency) and the Washington Insurance Commissioner. CP 4.

The first two of these allegations have been litigated in criminal court, resulting in a restitution payment on that basis, and the Lim expressly seeks *no damages for them* in this lawsuit. This fact is confirmed by Lim's Supplemental Responses to, former co-defendant Interrogatories. CP 143 Exh. A. Almost \$40,000 has been fully paid to Lim in restitution. CP 162, 12-14. All requirements for the criminal case were also fully satisfied and the case was closed. Thus, the *sole* question remaining in this civil case is whether Lim is entitled to a judgment for Grace's receipt of a share of Lim's own paid commissions paid to her by employer Lim at a time when Grace was allegedly not licensed with Financial Industry Regulatory Authority (FINRA) and the Washington Insurance Commissioner. Tsang Wong Lim claimed she first discovered Grace lacked licenses and is not entitled to commissions on March 24, 2009. In the civil lawsuit, *no* direct liability has been alleged against former co-defendant personally. Former co-defendant was dismissed with prejudice on July 1, 2013.

B. Procedural History:

1. Discovery violations

Grace served her former employer Tsang Wong Lim Back Pay Wages Complaint in January 2012 in Renton Small Claim Court, Washington case Number

114-04170. The Small Claim Court dismissed the case without prejudice due to its complexity. Lim hired former King County deputy prosecutor, Christopher Anderson, as her attorney to file the civil complaint in February of 2012 and an amended complaint in March of 2012. CP 1, 4. Return of Service for the complaint was filed on August 8, 2012 five months after the claimed Service on March 24, 2012. CP10. Following a motion to compel, Grace was ordered to provide answers to interrogatories on September 13, 2012, without sanctions. CP 18. A second Order to Compel Answers to Interrogatories, as well as to pay sanctions of \$2,033 granted on October 30, 2012. CP 23. A third Order compelling answers to interrogatories and sanctions of \$1,796.25 was entered on January 10, 2013. CP 41. A Fourth Court Order compelling complete answers to interrogatory questions was ordered on March 22, 2013, without sanctions. CP 90. Grace did not ignore the orders but responses were not satisfied by Lim. Despite the language barriers, “Two supplemental responses were filed herself, and one with the assistance of counsel. CP 162,

2. Order of Default and Order of Default Judgment

Lim moved for default against Grace on May 28th, 2013 on the basis of repeated violations of discovery orders, failure to pay court ordered sanctions, and the failure to appear at a deposition on May 22, 2013. CP 138. An Order of Default granting Lim’s motion for default on liability only against Grace was granted on June 6th, 2013. CP 149. Lim moved for entry of judgment against Grace in an amount certain on June 19, 2013. CP 150. The Court entered an Order granting

a default judgment of \$69,950.58 against Grace on July 1, 2013. CP 159. Lim seeks no damages for the Bank Theft and Fraud claims because they have been litigated in criminal court. Lim only seeks recovery for Grace's receipt of Lim's commissions shared paid to her by Lim at a time when she was not licensed. CP 150, and CP 143, Exhibit 1. On July 1st, 2013 Co-defendant was dismissed with prejudice as a party. On July 11, 2013, Grace moved for reconsideration of the Order of Default Judgment. CP 162 On July 24th, 2013, the motion for reconsideration was denied. CP165. Grace timely appealed the orders finding liability, entering judgment, and denying reconsideration. Grace did not appeal the sanctions orders.

V. AUTHORITY

A. The Standard of Review is De Novo

A trial court's resolution of questions of law is reviewed de novo. *Huff v. Budbill*, 141 Wn. 2d 1, 7, 1 P.3d 1138 (2000).

B. Summary of the Argument

Tsang Wong Lim seeks recovery on the payment of her own commission as wages to Grace after she alleged Grace was found to have not been licensed in FINRA Series 6, Series 63, and in the State of Washington Insurance Commissioner Office. CP 4. Grace allegedly engaged in the sale of securities and receipt of commissions without having Series 6 and 63 registrations for securities sales and a license for life and disability insurance. *Id.* Grace

vehemently denies engaging in the *sale of securities*, and contends it was not part of her job responsibilities as an administrative assistant performing only clerical work designated by Lim and Christiansen. This fact was admitted by Tsang Wong Lim in her complaint paragraph 3.1 CP4. Grace performed *clerical duties*. Tsang Wong Lim lacks standing to recovery her shared commissions back from Grace. Washington's statutes regarding licensure protect the purchaser of the policy or security; not the employer seeking to recover commission wages from an employee who was not licensed to receive that commissions. In addition, if Grace had engaged in the sale of securities, Tsang Wong Lim should not have improperly shared commissions with Grace where Grace lacked registrations, and Tsang Wong Lim should not be entitled to recover and collect commission wages that were paid to her for unlicensed work done by Grace.

The Statute of Limitations on Fraud should bar Tsang Wong Lim's claim, where the action was filed in 2012 eight (8) years after Grace allegedly did not have Series 6 or Series 63 registrations or a license to sell life insurance and disability since 2004. CP 4. During the entire time Grace's employment Tsang Wong Lim had to file Compliance Report yearly with NWML Compliance Department regarding her employee. Tsang Wong Lim claims to have discovered Grace lacks of licensing on March 24, 2009, almost exactly 3 years prior to the filing of the complaint in 2012. CP 143, Exhibit 1, p. 10. Lim could and should have known years earlier from the exercise of due diligence audits or records review, long before the civil action was filed in 2012.

The amount of damages is not based on a sum certain and is not equitable. Lim lacks documentation as to when Grace's FINRA registrations actually expired, and without that information, it could not be computed from what year the commissions would be taken from. *Id.* The complaint alleges Grace's FINRA registration expired in 2004, while Grace states she later learned it actually expired in 2006 according to FINRA's Rules and Regulations. CP 162, Ex. 2. Lastly, in light of the fact that Lim was only seeking recovery on the paid shared commissions due to Grace's lack of licensure, and the *information* for that claim was *freely available* from other sources, Grace's discovery violations did not irreparably harm Lim's preparations for trial.

C. ARGUMENT

1. Tsang Wong Lim lacks standing to recover her commissions shared paid to Grace as wages.

a) Washington does not recognize a cause of action for recovery of commissions by an employer to an unlicensed person.

Tsang Wong Lim claims that the payment of commissions was conditioned upon Ms. Siou being licensed for life and disability insurance in the State of Washington and having Series 6 and 63 registrations for securities sales. CP 4, and CP 150, exhibit 1. Washington does not recognize a cause of action to recover paid commissions from someone who was not licensed to receive that commission. In *Main v. Taggares*, 8 Wn. App.6 (1972), a vendor who sold his land by unlicensed broker was not entitled under statute or case law to sue for refund of

commission portion already paid. The Court of Appeals, Division 3 ruled
”Neither the statutes nor the case law give one who sells his land by an unlicensed
broker the right to sue for refund of a commission once paid.” *Main v. Taggares*,
8 Wash. App. 6, 11, at 312 (1972). Although *Main v. Taggares* involves licensure
real estate brokerage under Wash. Rev. Code Ann. § 18.85.010 and the present
case involves licensure for sales of insurance and securities, there is no relevant
legal distinction between the license requirements as a prerequisite to earning a
commission on real estate versus other investments. *Id.* Washington’s Business
and Professions statutes are designed to protect the purchaser.

In reference to Real Estate Brokerage, Wash. Rev. Code Ann. § 18.85.331 states:
“It is unlawful for any person to act as a real estate broker, managing broker, or
real estate firm without first obtaining a license therefor, and otherwise complying
with the provisions of this chapter. No suit or action shall be brought for the
collection of compensation as a real estate broker, real estate firm, managing
broker, or designated broker, without alleging and proving that the plaintiff was a
duly licensed real estate broker, managing broker, or real estate firm before the
time of offering to perform any real estate transaction or procuring any promise or
contract for the payment of compensation for any contemplated real estate
transaction. Wash. Rev. Code Ann. § 18.85.331 (West)”

Wash. Rev. Code Ann. §21.20.430, the statute regarding sale of securities, is very
similar in that it expressly protects the buyer of the securities.

“(1) Any person, who offers or sells a security in violation of any provisions of
RCW 21.20.010, 21.20.140 (1) or (2), or 21.20.180 through 21.20.230, is liable to
the person buying the security from him or her, who may sue either at law or in
equity to recover the consideration paid for the security, together with interest at

eight percent per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security. Damages are the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at eight percent per annum from the date of disposition.

(2) Any person who buys a security in violation of the provisions of RCW 21.20.010 is liable to the person selling the security to him or her, who may sue either at law or in equity to recover the security, together with any income received on the security, upon tender of the consideration received, costs, and reasonable attorneys' fees, or if the security cannot be recovered, for damages. Damages are the value of the security when the buyer disposed of it, and any income received on the security, less the consideration received for the security, plus interest at eight percent per annum from the date of disposition, costs, and reasonable attorneys' fees.“ Wash. Rev. Code Ann. § 21.20.430 (West).

b) Public policy and justice supports protection for the buyer of securities, not an employer who improperly shared commissions with an employee that performed.

i. Public policy supports protection for the buyer.

The party the statutes protect in this case is the buyer, as part of public policy.

The Court of Appeals explained this policy in *Erwin v. Cotter Health Centers, Inc.*, 133 Wash. App. 143, 154, 135 P.3d 547, 553 (2006)

“...[T]he policy underlying California's licensing law is the same as Washington's—“to protect the public from the perils incident to dealing with incompetent or untrustworthy real estate practitioners.” *Schantz v. Ellsworth*, 19 Cal.App.3d 289, 292–93, 96 Cal.Rptr. 783 (1971). *Erwin v. Cotter Health Centers, Inc.*, 133 Wash. App. 143, 154, 135 P.3d 547, 553 (2006) *aff'd in part*,

rev'd in part sub nom. *Erwin v. Cotter Health Centers*, 161 Wash. 2d 676, 167 P.3d 1112 (2007).”

ii. An unlicensed employee who performed as promised was not unjustly enriched.

“The rationale for not allowing recovery of money paid to an unlicensed defendant who has performed as promised is not that the plaintiff and the unlicensed defendant are in *pari delicto*, but rather, it is that the defendant has not been unjustly enriched.” *Van Zanen v. Qwest Wireless, L.L.C.*, 522 F.3d 1127 (10th Cir. 2008).

Similarly, the Supreme Court of Virginia in *Grengo Real Estate Investment Trust v. Nathaniel Greene Development Corporation* 218 Va. 228, 1977 held against the Plaintiff on an action against an unlicensed stockholder to recover real estate commissions for selling land without a license. There the question was whether a seller could recover commissions already paid if, at the time the contract was executed, he knew the agent was unlicensed.

“Although there is authority to the contrary, we believe the better rule is expressed in *Comet Theatre Enterprises, Inc. v. Cartwright*, 195 F.2d 80 (9th Cir. 1952), which involved an analogous statute requiring licensing of contractors. There, Comet, a theatre owner, sought to recover from unlicensed contractor money paid for full performance of a contract to construct a building. The California licensing statute under review provided both a criminal penalty against the unlicensed contractor and a forfeiture of his right to sue to recover compensation for services. The court said: “There is no provision in the (licensing) Act that when the unlicensed persons have completely performed a contract for agreed services and the person so benefited voluntarily has paid the agreed consideration he may recover back the money so paid. Here to add . . . a

right in Comet to retain the value of the services of the appellees and also to recover back the fair amount Comet had paid for (the) services is not necessary to effectuate the policy of the statute. . . .” 195 F.2d at 81. *Grengo Real Estate Investment Trust v. Nathaniel Greene Development Corporation*, 218 Va. 228, 1977.

The facts in *Grengo* differ in that it applied if the Plaintiff *knew* the contractor in that case was unlicensed, and Tsang Wong Lim alleges *not to have known* Grace was unlicensed since August 2004 when she claimed she first discovered in March 24, 2009. CP 4, at 3.1. However, Grace maintains that Tsang Wong Lim was aware of her licensing status because Lim has been Grace’s license sponsoring employer since Grace was first hired in 1998, in which case it may be comparable. CP 162. Exhibit 2.

2. Since Tsang Wong Lim has no valid cause of action for recovery of commissions, she lacks standing.

Since Tsang Wong Lim does not have a cause of action for recovery of the commissions, she lacks standing. Courts use a two-part test for determining whether a party has standing to bring a particular action, both parts of which must be met by party seeking standing: first, courts ask whether the interest asserted is arguably within the zone of interests to be protected by the statute or constitutional guaranty in question, and second, courts consider whether the party seeking standing has suffered from an injury in fact, economic or otherwise.” *Branson v. Port of Seattle*, 152 Wash. 2d 862, 101 P.3d 67 (2004). Tsang Wong

Lim's interest is not protected by the statute, and therefore Tsang Wong Lim lacks standing to assert a claim for the commissions she improperly shared.

3. Tsang Wong Lim's allegation of receipt of unlicensed commissions is barred by the Statute of Limitations.

The Statute of Limitations for Fraud is three years. RCW 4.16.080. The cause of action for fraud accrued when Lim knew, or should have known, that Grace's registration with FINRA that would have permitted commissions sharing expired.

"Under the discovery rule, the statute of limitation for [fraud or securities fraud] begins only when *the aggrieved party* discovers, or should have discovered by due diligence, the fact of fraud or securities fraud and sustains some actual damage as a result." RCW 21.20.430(4)(b); *First Md. Leasecorp. v. Rothstein*, 72 Wash.App. 278, 281–82, 864 P.2d 17 (1993) (citing RCW 4.16.080(4)). *Ives v. Ramsden*, 142 Wash. App. 369, 385, 174 P.3d 1231, 1239 (2008)

Because Tsang Wong Lim had a regulatory duty not to share commissions with an unregistered person, Tsang Wong Lim had a regulatory duty *to know* the registration status of Grace prior to allegedly sharing commissions. Tsang Wong Lim alleges that Grace's registration expired in 2004, well before three years prior to this suit being filed in 2012. Knowledge of Grace's licensing status should be imputed to Tsang Wong Lim.

4. Grace's alleged violations of Discovery Rules and Orders do not merit the sanction of default and default judgment.

a) Lim's ability to prepare for trial was not prejudiced.

In order to merit the ultimate sanction of judgment by default, a defendant's discovery violations must rise to the level that her opponent's ability to prepare for trial is prejudiced. *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 589 (2009). Furthermore, before granting such a Motion for Default, the Court is required to consider, on the record, whether any less severe sanctions would suffice to cure the prejudice. *Id.* The information relating to commissions and Grace's licensure was either in possession of Lim (Grace's license sponsoring employer) or was in the hands of the licensing agencies, not from Grace. The "prejudice" alleged by the Lim concerns Grace's failure to adequately answer interrogatory questions such as where she deposited her payroll checks, and answers to questions concerning credibility. CP 144, p. 5. Lim's discovery requests refer only to Grace's criminal action, and Lim's "inability" to obtain documents to support a summary judgment. However, Tsang Wong Lim is only seeking recovery on the commissions Grace allegedly received and was not entitled to. CP 143, exhibit 1, and CP 150. Much of the "prejudice" alleged by the Lim has nothing to do with commissions – the *only* issue remaining in this case. Here are the *only* issues remaining in the case:

- 1) On the commission claim, either Washington supports a cause of action for recovery of commissions paid to an unlicensed person, or it does not. No evidence from Grace can change this.
- 2) Either Grace was properly licensed through FINRA and the Washington Office Insurance Commissioner, or she was not. Evidence of these facts has been

available through FINRA and the Office Insurance Commissioner since the outset of the case, and Grace's testimony cannot change her actual status as a registered person.

3) The amount of the commissions allegedly paid. Lim *is not* seeking a default judgment *on damages*, so this factor does not apply, but it is worthwhile to note that Lim can determine the amount of commissions paid to Grace to the penny, without Grace's help.

Therefore, the facts needed to make that determination are whether Grace was properly licensed through FINRA and the Insurance Commissioner and the amount of commissions allegedly paid. Licensing evidence was available through FINRA and the Insurance Commissioner, and the amount of commissions was in the hands of Tsang Wong Lim, which relied on the figures to find a sum certain for Judgment. CP 150.

b) Grace made efforts to comply with Discovery, and her discovery violations do not merit a default judgment.

Grace was hampered in compliance with Lim's repeated demands for discovery update requests by a number of factors: family responsibilities in caring for her children, job responsibilities working at a grocery store, difficulties in seeking employment due to criminal history, language barrier (her native language is Cantonese), mounting financial responsibilities, her earned wages were withheld by employer Lim since 2008, wages earned working for new employer were also garnished by Lim, and her difficulty in securing effective

legal assistance. CP 162, and CP 62A. Much of Grace's representation was Pro-Se. CP 75, Exhibit 1. Her prior attorney, Sean Malcolm, stated that "[he] withdrew from this matter in large part because I was unable to communicate with Grace due to this language barrier sufficiently to provide her with effective assistance, including responding to Lim's repeated demands for updated discovery requests." CP 75, Exhibit 1. Despite the language barriers, "Two supplemental responses were filed herself, and one with the assistance of counsel. CP 162, Exhibit 6. Grace cannot afford counsel and attempting to respond to technical and sometimes subtly worded interrogatories is obviously difficult. The mounting financial pressures and inability to obtain counsel results in Grace attempting to handle many legal tasks herself when she does not have the training, education or experience.

c) Lim's description that Grace failed to appear at a deposition in bad faith does not bear up under the facts and is inaccurate.

Grace's failure to appear at a scheduled deposition on May 22, 2013 was due to an understanding that the deposition would be either canceled or re-noted. CP 162, Exhibit 7. Lim noted Grace's deposition without consultation and on short notice. The claim now that she simply failed to appear - and that is evidence of her bad faith - does not bear up under the facts. Grace engaged counsel on receiving notice of the deposition and entered into good faith negotiations while informing Lim's counsel she could not make that deposition time. Contrast this with the declaration of Lim's counsel which admits he discussed the matter with Grace's counsel, but avoids the details of that discussion and specifically avoids

denying he was informed Grace could not appear at that time. While Grace's difficulties in compliance with discovery do not excuse her, and she is not appealing the discovery sanctions, the discovery violations do not merit a default judgment at this time.

5. \$68,504.23, the amount of damages computed by Tsang Wong Lim and granted in the Default Judgment is not correct and is inequitable; the correct amount of "shared commission paid as wages" should be \$1,647.29.

Tsang Wong Lim listed \$68,504.23 as the principal judgment amount. CP 150. The payroll calculations are based on calculation sheets for September 2004-December 2008. Id. Exhibit 4. These calculations are in error. The judgment sum includes all of Grace's bonuses from all sales by Lim in the dates when Grace alleged was not licensed, not just sales involving securities which arguably required a license. CP 162, Exhibit 2. Grace calculates that the correct amount of "commission wages" would be \$1,647.29. CP 162, attachment to Exhibit 2. Tsang Wong Lim is only seeking compensation on the commissions. CP 150. Tsang Wong Lim cites 2004 as the year Grace became unlicensed in FINRA Series 6, Series 63, and the license to sell life insurance and disability products with Washington Insurance Commissioner. CP 4, p.2. Grace contends her FINRA Series 6 license was valid until 2006, not 2004 as stated by Tsang Wong Lim. CP 162, Exhibit 2. No substantive proof has been submitted by

either side, and the correct date needs to be determined to assess damages, and if Grace is correct, Tsang Wong Lim would need to revise her Judgment to reflect the commissions from the time Grace was actually not licensed in 2006. Finally, there is no set-off made for the nearly \$40,000 in restitution already satisfied. CP 162, Exhibit 4.

VI. CONCLUSION

For the foregoing reasons, Grace Siou respectfully requests that the Court of Appeals reverse the trial court's Order of Default, Order of Default Judgment, and Denial of Motion for Reconsideration, and to allow the matter to proceed to trial on the merits.

RESPECTFULLY SUBMITTED this on 10th day of March, 2015.



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