

## EBCC Board Meeting August 13, 2024

### Attendance:

Cory Anderson (president), Lyn Damschen, Matt Hoffman (vice president), Janean Moriarty (secretary), Steve Moutray, Kelly Roberts.

Community members: Marge Stuntz, John DeArman

Not in attendance: Brian Foley (treasurer), Reese Leabo, Robert Leaverton, Ingrid Obee, Steve Weir, Daria Hansen (financial secretary), John Cooper (caretaker).

Called to order at 6:03 p.m. by Cory Anderson.

### Caretaker Report

Cory reported on behalf of John Cooper, who is still recovering from his injuries earlier in the summer. John's mobility and stamina are limited, but he is working more and more. John is receiving help from Cory Anderson and Reese Leabo, as well as other friends and community members, in keeping up the community properties. The lawn and flowers look great. There have been a few minor complaints about cleanliness in the cabana and restrooms, which the board is aware of and making efforts to support the caretaker.

### Financial Updates

Daria Hansen emailed the financial report to the board. She reports that dues payments are trickling in. She submitted the overdue accounts to the paralegal to pursue liens, where filing charges will be added to the accounts. 990 taxes have been filed for 2024. Quarterly L&I taxes have been paid.

### Treasurer's Report

No treasurer's report. There is some discussion on the treasurer's participation in the board and that Reese Leabo, a signer, but not the treasurer, has been covering this.

### Mullholland Gate Lawsuit

The Mullholland Gate Lawsuit continues. Three board members and the caretaker have been named individually in the complaint from Joseph Ostheller and Renee McKeen Ostheller (copied at the end of these minutes).

MOTION: Steve Moutray motioned for indemnification of the three EBCC Board Members and the EBCC Caretaker named in the Joseph Ostheller, Renee McKeen v. Edgewater Beach Community Club Second Ammended Complaint per Article X. Indemnification of the EBCC Bylaws. Kelly Roberts seconded the motion. The motion passed with a unanimous vote.

After noting community members' concern, there was discussion about a community member videoing board members and community members during the Annual Meeting and afterwards without notification or permission. It appears that although this was a private community meeting, it was of a public nature. It does not appear that the videoing would be illegal.

Gratitude was expressed to the board members who continue to attend meetings and engage with the ongoing legal issues. It continues to be in the community's interest to maintain beach access from Edgewater Blvd. and Mulholland Blvd.

#### Covenant Update

The proposals to change the Covenants are compiled and under board review. Time did not permit discussion at August's board meeting. The proposals will be reviewed at a special work session preceding the September board meeting, at 5:00pm. The work session will add explanation or clarification of the impact of proposed changes on the community. The board will review the community ballot at the September meeting. The covenants were last filed in 1991. Board members expressed interest in a more regular review of the covenants.

#### Website / Communications / Newsletter

Newsletter: Kelly Roberts sent the summer newsletter to the community. The board thanked Kelly for her work on this important communication to the community. Kelly requested ideas or topics to include in future editions.

Website: Ingrid Obee was approved to update the website. The board is wondering about the progress on this and what the next step might be. Ingrid is not in attendance to update the board on the progress.

Facebook: Facebook is not an official means of communication for the EBCC board.  
Adjourned 7:30 p.m.

Upcoming:

EBCC board meeting      September 10, 2024, at 6:00 p.m.

Covenant work session      September 10, 2024, at 5:00 p.m.

jlm

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

COUNTY OF KITSAP

JOSEPH OSTHELLER, RENEE MCKEEN

OSTHELLER, and the marital community

thereof

Plaintiffs

vs

EDGEWATER BEACH COMMUNITY

CLUB, a Washington Not-for Profit

Homeowner's Association and Matthew

Hoffman and the marital community thereof

and Cory Bennett (aka Cory Anderson) and

the marital community thereof and John

Cooper and the marital community thereof

and Reese Leebo and the marital community

thereof

Defendants.

Case No. 23-2-00131-18

SECOND AMENDED COMPLAINT FOR

QUIET TITLE, INJUNCTIVE RELIEF,

DAMAGES

COMES NOW, Plaintiffs Joseph Ostheller and Renee McKeen Ostheller, married persons, by and through their attorney of record, Erin C. Sperger, and for claims against Defendants, allege as follows:

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## 1. PARTIES

1.1 Plaintiff(s) Joseph Ostheller is a married person to Renee McKeen Ostheller (collectively the “Osthellers”). Joseph Ostheller and Renee McKeen Ostheller are the record owner of real property located in Kitsap County, Washington state.

1.2 Defendant Edgewater Beach Community Club (the “EBCC”) is, and at all times mentioned in this complaint was, a Washington not for profit homeowner’s association with its members in Kitsap County, Washington.

1.3 Defendant Matthew Hoffman is a community member who serves on the EBCC Board and is a resident of Kitsap County, Washington.

1.4 Defendant Cory Bennett aka Cory Anderson is a community member who serves on the EBCC Board and is a resident of Kitsap County, Washington.

1.5 Defendant John Cooper is the caretaker, an employee of the EBCC, and has authority from the EBCC and is a resident of Kitsap County, Washington.

1.6 Defendant Reese Leebo is a community member who serves on the EBCC Board and

is a resident of Kitsap County, Washington.

## 2. JURISDICTION

2.1 This court has jurisdiction over this matter.

## 3. VENUE

3.1 Venue is proper in this court.

## 4. FACTS

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4.1 Joseph Ostheller and Renee McKeen Ostheller are the owners of real property located at 1727 NW Mulholland Blvd, Poulsbo, WA 98370, which property is legally described as follows:

LOT 57, EDGEWATER ESTATES FIFTH ADDITION, ACCORDING TO PLAT  
RECORDED IN VOLUME 14 OF PLATS, PAGES 44 THROUGH 47,  
INCLUSIVE, IN KITSAP COUNTY, WASHINGTON.

(Osthellers' Property) Exhibit 1 attached hereto.

4.2 The Osthellers' Property is subject to a recorded 12-foot easement for ingress, egress, and utilities, as recorded under Kitsap County recording Number SC #872006869, legally described as follows:

SUBJECT TO: ALL OF LOT 57 SUBJECT TO AN EASEMENT PER

SC#872006869 DESCRIBED AS FOLLOWS:

AN EASEMENT FOR AN EXISTING ROADWAY, WITH APPROXIMATELY 12 FEET OF PAVED WIDTH, LYING OVER AND ACROSS THAT PORTION OF LOT 57,, "EDGEWATER ESTATES – FIFTH ADDITION", ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 14 OF PLATS, PAGES 44 THROUGH 47, RECORDS OF KITSAP COUNTY, WASHINGTON, THE EXISTING CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:  
COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 57; ALSO BEING THE NORTHWEST CORNER OF LOT 58; THENCE SOUTH 80°40'00 EAST, ALONG THE SOUTHERLY LINE OF SAID LOT, A DISTANCE OF 59.83 FEET TO A POINT ON THE CENTER OF SAID ROADWAY AND THE TRUE POINT OF BEGINNING OF SAID DESCRIBED CENTERLINE; THENCE NORTH 13°45'41 WEST A DISTANCE OF 73.18 FEET TO THE BEGINNING OF A 35 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST; THENCE ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 114°14'52 AN ARC DISTANCE OF 75.77 FEET; THENCE SOUTH 79°30'49 EAST A DISTANCE OF 54.93 FEET; THENCE SOUTH 59°54'32 EAST A DISTANCE OF 65.22 FEET; THENCE SOUTH 49°31'36 EAST A DISTANCE OF 109.05 FEET TO THE INTERSECTION OF THE EASTERLY LINE OF SAID LOT WITH NORTHWESTERLY RIGHT OF WAY MARGIN OF THAT CERTAIN COUNTY ROAD KNOWN AS MULHOLLAND BOULEVARD AND THE TERMINUS OF

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SAID DESCRIBED CENTERLINE, SAID POINT BEARS SOUTH 33° 25'16"  
WEST A DISTANCE OF 10.09 FEET FROM THE MOST EASTERLY CORNER  
OF SAID LOT 57.

Parcel Number: 43030000570008

(the "Easement") Exh. 1; Exhibit 2, Recorded 1987 Judgment and Easement attached hereto.

4.3 The easement area runs along the north and west side of Plaintiff's property and is physically located on Plaintiff's property. The purpose of the Easement is to provide the Edgewater Beach Community Club members access to the Edgewater Community Beach, although there is a second access point.

4.4 In 1987, the Osthellers' predecessor, Lowell Ostheller, owned the Osthellers' Property. Sometime in or before 1987, the EBCC erected a manual gate over the easement on the northeastern side of Osthellers' Property. Litigation ensued.

4.5 In October 1987, the Kitsap Superior Court ordered Lowell Ostheller to "return the gate installed and maintained by Plaintiffs [EBCC] to its original position and condition." Exhibit 2.

4.6 Lowell Ostheller restored the manual gate to its original location.

4.7 Sometime in the late 1980s or early 1990s, the EBCC abandoned use of that manual gate and removed it.

4.8 The EBCC erected an electric vehicle gate ("Beach Road Gate") with a gate control box, a gate operator, a bollard, with electrical and corresponding components across



the easement area in a significantly different location (by approximately 203 feet)

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than the original manual gate at the entrance to the property. The EBCC also added a keypad, a post, another bollard, electrical and corresponding components in a separate location, all of which are also significantly west of the site of the original gate site (by approximately 173 feet) that did not originally contain these additional components. This new gate location, divides the traversable portion of the OstHELLERS'

land into two parts, as it is now located fairly close to the home with its attached lean-to and is between the home and the neighbor's fence. Plaintiff does not know when

this current electric vehicle gate/control box, keypad/post, bollards, and electrical and associated components were installed.

4.9 The EBCC also paved a portion of the Easement and a portion of the OstHELLER'S Property that is not part of the Easement, (hereinafter the "Beach Road"). When the OstHELLER'S filed this lawsuit, the Beach Road as was currently being used, the Beach Road Gate, the gate control box, electrical wiring, two bollards, the keypad and post and the area needed to access the control box all encroached on the OstHELLERS' private

property, which is not part of the easement, by approximately 10 feet.

4.10 The Osthellers' commissioned a marker finding survey and, according to that survey, it appears that a portion of the paved easement road is not on the easement as recorded or acknowledged by the Kitsap County Superior Court.

4.11 After the Osthellers filed this lawsuit, the EBCC removed the electronic keypad (used to operate the gate from the street side ingress direction) with its attached post

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and protective bollard, they removed the gate's end gatepost (the south side post) with its magnetic lock/plate and protective bollard, and they removed a portion of the actual gate itself with its magnetic lock/plate. The portion of the gate that was removed was an end section of the gate, where the gate connected and locked to the magnetic lock on the gatepost, when it was closed.

4.12 On June 23, 2023 Plaintiffs notified the EBCC that it did not have permission to place the keypad/post/related items on their property. The EBCC ignored this warning and a few days later, Defendant Matt Hoffman dug a hole in the Ostheller's property, poured concrete in the hole, and permanently erected a post with an electronic keypad back into the ground which has altered and caused damage to the Ostheller's property. (In order to place this keypad with related components into the

ground, the EBCC cut into and removed a section of the easement pavement on the Ostheller's property before a hole for the post could be dug.) Now, an exposed thick wire comes straight out of the ground (a few inches in a South-Easterly direction from the keypad's post) that makes an upside-down loop which is a liability and is a tripping hazard.

4.13 A portion of the gate (that includes, but is not limited to, the control box, gate operator, gate post, gate, electrical and other corresponding components) is still on the Osthellers' private property along with portions of the easement. Exhibit 3 .

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4.14 Based upon information and belief, either neither party knew the Beach Road, the Beach Road Gate, the gateposts, the gate operator, the bollards, the gate control box with components, the keypad and post and all electrical wiring and associated components encroached upon the Osthellers' Property or the previous owner gave the EBCC permission to place the gate, the gate operator, the gate posts, the gate control box and components, electrical wiring, two bollards, the keypad/post and associated components in that position. The EBCC has not used the Beach Road, the Beach Road Gate, the gate control box, the gate operator, electrical wiring, bollards, the keypad/post, the gate posts, and all associated components and the area needed to

access the control box, or areas pedestrians used to walk/ride/drive around these components, in a hostile manner.

4.15 When this lawsuit was filed, the electronic vehicle gate did not have a separate pedestrian entrance. The industry standard for electronic gates is to have a separate pedestrian entrance. Without a separate pedestrian entrance, the electronic Beach Road Gate creates an unreasonable risk of harm to pedestrians and especially to children and persons with disabilities. The EBCC modified the electronic gate's operational settings, leaving the dangerous electric magnets exposed; these hazardous gate settings, where the gate could freely move with the electric magnets exposed, were not only no longer in compliance with the manufacturer's instructions, but it also significantly increased the risk of danger and increased the risk of liability. After

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the EBCC's Annual Membership Meeting held June 10, 2023, the EBCC again proceeded to alter the gate. Nonetheless, even after these newest alterations to the Beach Road Gate, the gate continues to be out of compliance with the manufacturer's instructions. Today's industry standard requires that pedestrians have a separate access opening that is not part of a vehicular electronic gate, and today's industry standards also requires that pedestrians have access to traverse in an area where they

cannot come into contact with an electronic vehicular gate while the gate is in motion, could be in motion, and anywhere in its path or where they could enter its path.

4.16 The Osthellers do not agree to bear the burden of this unreasonable risk.

4.17 As of the time that this lawsuit was filed, when the Beach Road Gate was closed, pedestrians(including mobility-assistive devices and strollers), bicyclists, ATV's and motorcyclists who were members and/or guests of members of the EBCC as well as uninvited non-members, walked, drove, or rode around the gate onto the Osthellers' private property to get past the closed gate. Thus, even the closed gate was not effective in keeping out non-members.

4.18 After the EBCC altered the Beach Road Gate and/or its components following the June 10, 2023 Annual Member's Meeting, it still poses an unreasonable risk of serious bodily harm or death.

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4.19 During the June 8, 2024 Annual Member's Meeting, discussion was presented and discussed amongst community members that the current gates are not effective in keeping out drug users & a sex offender.

4.20 The Osthellers' predecessor, Lowell Ostheller, gave the EBCC permission for its pedestrian members to walk around the gate as well as for others that are unable to

trigger the presser sensor to open the gate, such as bicyclists, to ride around the gate.

On August 4, 2022, Renee McKeen Ostheller informed the EBCC (at the EBCC Board Meeting) that the Osthellers rescinded permission for easement users to go around the gate and wanted all easement users to stay within the scope of the easement, that the electronic vehicular gate was not for pedestrian use, and that the Osthellers did not want the liability of the gate on their property, especially as it was not within safety standards. On November 14, 2022, the Osthellers' counsel notified the EBCC the Osthellers' revoked permission for anyone to walk, (ride, drive, or enter) onto their private property.

4.21 In or about August 25, 2022, the EBCC cut and removed shrubs from the Osthellers' private property bordering the gate. In or about May 2023, the EBCC cut and removed shrubs from the Osthellers' private property that is not subject to the easement. This is an ongoing issue, and the EBCC has cut and removed shrubs on several other occasions including just recently, before the June 8, 2024 Annual Members' Meeting.

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4.22 Based upon information and belief, the EBCC has also cut and cleared brush from the Osthellers property.

4.23 The Easement separates the majority of the Osthellers' Property from the northwest point of the Osthellers' Property, which contains a flat lookout area of the Hood Canal (as well as additional parking) and a steep cliff leading to a portion of the beach also owned by the Osthellers. Exhibit 2, page 9.

4.24 Although the easement only allows the EBCC 12-feet to traverse to its portion of the beach and common area, the EBCC has expressly told Mr. Ostheller that it plans to use the northwest tip of the Osthellers' private property for its members to use as a pull-off for their vehicles. Defendant Reese Leebo told the Osthellers he planned to take away more of their property along the easement in order to widen the easement. On June 10, 2023, the EBCC held its annual meeting, during which EBCC Board President Cory Anderson (aka Cory Bennett) and EBCC caretaker John Cooper made untrue statements about Joseph Ostheller and Renee McKeen Ostheller and/or painted them in a false light. John Cooper knowingly and intentionally painted the Plaintiffs in a false light in order to create a hostile living environment for the Osthellers and to intentionally interfere with their use and enjoyment of their property and the EBCC common areas. John Cooper told the community members in attendance that he was angry with the Osthellers for putting the entire community's

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safety at risk and encouraged the community members to act with hostility toward the Plaintiffs.

4.25 Cory Bennett aka Corey Anderson told the community that the Osthellers did not come talk to the board before commencing litigation, a statement he knew was not true, but would make the other community members hostile toward the Osthellers.

4.26 Board member John Trimble interjected more than once and told the board members, non-board members of the EBCC, and anyone else present, that these statements were not true and/or that negative things said about the Osthellers (especially those negative thing from President Cory Anderson and Caretaker John Cooper) were painting the Plaintiffs in a false light and that he had been at Board meetings where he knew from being present or from the meetings' content that these accusations/false statements were not true.

4.27 The EBCC maintains a Facebook page for its members to include owners, family members, as well as renters and their family members, and even some former members. The EBCC monitors the posts and exercises discretion in retaining or deleting posts. The EBCC has allowed members to continue to publish false statements about the Plaintiffs or to paint them in a false light when the EBCC and its board members know those statements are false and/or paint the Plaintiffs in a false light. EBCC Board Members have even used the EBCC Facebook page to harass

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the Plaintiffs in the name of the Board. The posts can be accessed by hundreds of members.

4.28 At the annual meeting on June 10, 2023 the EBCC invited all members to help clean up the beach area by clearing brush and trash. On June 25, 2023, Renee McKeen Ostheller was at the beach doing just that when Reese Leebo accused her of trespassing and demanded that she leave.

4.29 On June 28, 2023, Plaintiffs notified the EBCC that Renee McKeen Ostheller is a veteran who suffers from PTSD and that the EBCC's actions have triggered her condition. Almost immediately after this disclosure, the EBCC invited all community members to attend a party on the easement on the Osthellers' property. On July 3, 2023, Matt Hoffman led the party where several community members attended and consumed alcohol provided by Matthew Hoffman either as an individual or on behalf of the EBCC. Defendant Hoffman did this to intentionally discriminate against and cause the Osthellers emotional distress. Defendant Hoffman taunted Renee McKeen Ostheller to call the police on him (and the others present, to include board member Steve Moutray) when she informed him that he (and the others) needed to leave.

4.30 Defendant Matt Hoffman repeatedly told Renee McKeen Ostheller that he and/or the EBCC had placed cameras on the Ostheller's property in order to surveil them, but would not tell her where they were. Matt Hoffman did this to discriminate against

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and intentionally cause Renee McKeen Ostheller emotional distress, knowing that given her disability she is more susceptible to emotional distress.

4.31 The EBCC continues to encourage community members to act with hostility toward the Osthellers. At the August 28, 2023 EBCC meeting that the board invited the entire community to (and allowed visitors) but excluded the Osthellers from attendance, the Board discussed the Osthellers, making such statements as, “the wife is crazy” and continued the discussion when a community member said “some people choose to use their time for evil” in reference to Renee McKeen Ostheller. The EBCC stated that the Plaintiffs’ lot was “one of the best situated houses” in the community then proceeded to discuss ways to force them out of the community including fining the Osthellers for “junk” in the back yard even though the majority of EBCC members have items in their yards. Two people present mentioned that the Osthellers’ yard looks much better than when they had acquired the property. On December 22, 2023, the EBCC’s modified gate prevented Renee McKeen Ostheller from gaining access to her property to park her car. It was a quiet evening, with no ingress/egress attempted on the easement at that time by anyone else. As Ms. McKeen Ostheller could not get passage through the EBCC’s gate, even after several attempts of entering the gate code, the only way to traverse would have been backing her vehicle up the couple of hundred feet in the dark down the easement back onto the road. As Ms. McKeen Ostheller was so distraught and distressed at being blocked from going

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across her own property by the EBCC's gate that she exited her car, left her vehicle and immediately walked straight down the easement to enter into her home so she could find her husband to get his help to move her vehicle. Joseph Ostheller took her keys, left the house (while he had his office staff and their families there), and walked straight down the easement to Ms. McKeen Ostheller's vehicle intending to move it straight away. He had barely approached Ms. McKeen Ostheller's vehicle when John Cooper and another man, that Dr. Ostheller couldn't identify in the dark of night were shining flashlights straight in Joseph Ostheller's face, suddenly appeared on the other side of the gate. They repeatedly and loudly demanded to know why the vehicle was there , spoke loudly and demanded that Mr. Ostheller remove the vehicle immediately. The vehicle was not blocking the easement in any way and it was nowhere near the caretaker's home. This incident caused Renee McKeen Ostheller severe emotional distress.

4.32 On February 13, 2024, at an EBCC board meeting, Matt Hoffman made a motion that community members who damage community property may have privileges to use community areas suspended for up to one year.

4.33 On March 12, 2024, the EBCC board realized there needed to be a protocol for limiting access to the community areas to members. It discussed the steps for limiting access, but did not implement any rules or regulations.

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4.34 On March 21, 2023 the EBCC served a paper to Joseph Ostheller at his dental practice purporting to prohibit the Plaintiffs, their family (some of whom are associate EBCC members), and their guests from using any EBCC common areas. The document was undated, did not cite to any HOA rule, did not provide evidence of any wrongdoing and did not provide notice of any appeal process.

4.35 On March 30, 2024 Joseph Ostheller attended an Easter egg hunt with his children at the EBCC park, where Matt Hoffman continued to record him throughout the entire event. Matt Hoffman did this to harass the Plaintiffs and to cause them emotional distress in order to keep them from using and enjoying their own property and the EBCC common areas. Renee McKeen Ostheller was too distraught to attend.

4.36 On June 6, 2024 Ms. McKeen Ostheller notified the EBCC that she and her husband were members of the Address Confidentially Program. Yet, at the annual meeting on June 8, 2024 the EBCC failed to keep their address confidential and instead published it to the entire community.

4.37 On June 8, 2024, the Plaintiffs attended the EBCC annual meeting. After the meeting, Matt Hoffman, acting on behalf of the EBCC, called the Kitsap County Sheriff's office to report that the Osthellers were trespassing on EBCC property.

4.38 Matt Hoffman did this to discriminate against and harass the Osthellers and to cause them emotional distress. Matt Hoffman reported false information to the police,

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which the police relied upon to issue a trespass warning, so if the Plaintiffs attempt to use and enjoy the EBCC common areas they will be arrested.

4.39 The Plaintiffs are also the owners of parcel number 272701-2-004-2005 which has a legal description as follows:

4.39.1 TH PTN OF GOVT LOT 1 DAF BAT NE COR OF LOT 1 BLK 1  
EDGEWATER EST TH S50\*07'49W ALG NWLY LN OF SD LOT  
129.89FT TH N55\* 59'50W 283.25FT TO MOST SLY COR OF A TR  
DEEDED TO EDGEWATER COMMUNITY CLUB PER AUD NO  
819226 & AMENDED BY AUD NO 911004 TH NELY ALG SD TR TO  
MOST ELY MGN OF EXIST PAVED RD TO PRIVATE BEACH TH  
NWLY ALG SD ELY MGN TO TOE OF A SLOPE TH NWLY TO GOVT  
MEA COR BTWN SECS 27 & 28 TH ALG MEA LN N17\*E 30FT TH  
S71\*43E ALG A FENCE LN AS DESC IN AFFIDAVIT RECD 714-65  
UND AUD NO 852913 300FT TH E ALG SD FENCE LN 1063.0FT TO  
E LN OF GOVT LOT 1 TH S AI G E LN OF SD GOVT LOT 1 760FT

M/L TO SE COR OF SD GOVT LOT 1 TH WLY ALG S LN OF SD GOVT  
LOT 1 TO THE PT WH IT X THE NELY LN OF EDGEWATER EST TH  
NWLY ALG NELY LN OF SD PLAT TO POB EXC EDGEWATER EST  
FIFTH ADD ALSO EXC ANY PTN IF ANY LY WITHIN FDT TH PTN  
OF GOVT LOT 1 SEC 27 & GOVT LOT 1 SEC 28 DAF BAT GOVT  
MEA COR BTWN SD SEC 27 & 28 (A 1-1/2IRON PIPE) WH BEARS  
N1\*46' 02E 2155.80FT FR 1/4 COR COMN TO SD SEC 27 & 28 (A  
CONC MONU) TH ALG GOVT MEA LN S51'29'50W 394.50FT TH  
LEAVG SD MEA LN S79\*54'38E 199.73FT TH S48\*10'19E 135.07FT  
TAP OF SEC LN BTWN SD SECS 27 & 28 WH PT BEARS S1\*46'02W  
370.81FT FR TPOB TH S1\*46'02W 140FT TH S55\*59'50E 179.26FT TO  
WLY (COR) LN OF PRTY DEEDED PER AUD NO 858008 TH ALG SD  
WLY LN NELY TO MOST MGN OF EXIST PAVED RD TO PRIVATE  
BEACH TH NWLY ALG SD MOST ELY MGN TO THE TOE OF A  
SLOPE TH NWLY ALG SD TOE OF A SLOPE TO A NAIL IN THE TOP  
OF NELY END OF A CONC BULKHEAD TH NELY 116.42FT TO POB  
TGW RIGHT TO USE A PRIVATE BEACH

4.40 This property is known as the Canyon Property; the two portions of this lot are separated by the EBCC's beach road, parking lot, picnic area and beach. The only

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way to access the smaller portion of the Canyon Property is by traversing over those areas. The only way to access the larger portion of the Canyon Property is by traversing over the EBCC's beach road. This beach road is an easement given to all members of the EBCC.

4.41 Historically, the Plaintiffs and their predecessors in interest have traversed over the EBCC parking lot, picnic area, and beach to access their own private beach.

4.42 In addition, the original statutory warranty deed for the Canyon Property gives the owner, and his heirs and assigns the right to use the EBCC's entire parcel, including its private beach. This is a right created by a covenant that runs with the land, separate and apart from the Plaintiffs' rights as EBCC members. See Exhibit 4 attached.

4.43 The statutory warranty deed also gives the owner, and his heirs and assigns the right to use the Beach Road as an easement. This is a right created by a covenant that runs with the land, separate and apart from the Plaintiffs' rights as EBCC members.

4.44 The trespass notice issued on June 8, 2024, prohibits the Osthellers from using the beach road easement to access their own property, from traversing over the EBCC's parking lot, picnic area, and beach to access their own private beach, and from exercising their right to use the EBCC's private beach. The only other way to access the Plaintiffs' private beach is by climbing down a cliff.

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4.45 It appears the EBCC has planted a tree near or along the disputed property line between the EBCC beach and the Ostheller's beach property. Based upon information and belief, the EBCC did this to prohibit the Osthellers from finding the true property line. Palm trees are known to spread out much further than the trunk of the palm tree and to cause significant damage. Based upon information and belief the EBCC or someone acting on its behalf planted this tree there in an attempt to destroy the buried bulkhead that is part of the property line, and/or to cause damage to the Osthellers' property.

#### 5. FIRST CAUSE OF ACTION: QUIET TITLE

5.1 The preceding paragraphs above are incorporated herein as if fully stated.

5.2 Plaintiffs are the owner in fee simple and are in possession of property located at 1727 NW Mulholland Blvd, Poulsbo, WA 98370 and legally described as follows:

LOT 57, EDGEWATER ESTATES FIFTH ADDITION, ACCORDING TO PLAT

RECORDED IN VOLUME 14 OF PLATS, PAGES 44 THROUGH 47,

INCLUSIVE, IN KITSAP COUNTY, WASHINGTON. Parcel Number

43030000570008

5.3 Plaintiffs and the marital community thereof acquired the above-described property by virtue of a recorded Quitclaim Deed in Kitsap County under the recording number 202206090229.

5.4 The portion of the property to which title is to be quieted is as follows: All of



Plaintiff's legally described property that is not expressly subject to the easement.

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5.5 Plaintiff's predecessor previously gave the EBCC, its members, and guests, and others permission to use the approximate 10-foot strip of land on the north side of the Osthellers' Property which contains land that is both north and south of where the electric Beach Road Gate is currently located. This land is the approximate 4-foot strip of land just north of where the Beach Road Gate is currently located, and the approximate 6-foot strip of land south of where the Beach Road Gate is currently located. Both of these areas are used by pedestrians/bicyclists/motorcyclists to walk/ride around the vehicle gate. Plaintiff's predecessor previously gave the EBCC, its members, and guests permission to use the approximate 2-foot strip of land on the north side of the Osthellers' Property (more easterly than where the Beach Road Gate is currently located, yet on the south side of the Beach Road) which contains land that has a bollard and the post/keypad for the gate. The Osthellers' predecessor also gave the EBCC a license to temporarily use other areas as well, with the intent that it could be revoked. As of November 14, 2022, the Osthellers revoked this permission in writing. However, they verbally revoked permission as early as August 4, 2022. Thus, the EBCC has not used any of these strips in a hostile manner for more than 10

years. Neither the EBCC nor any of its members have any right to any portion of the Osthellers' Property through adverse possession.

5.6 Therefore, the Osthellers are entitled to have title quieted in their name.

## 6. SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT

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6.1 The preceding paragraphs above are incorporated herein as if fully stated.

6.2 Plaintiffs are entitled to an order declaring the following pursuant to RCW 7.24:

6.2.1 That the easement recorded under instrument number SC#872006869 is the true and correct boundary line for said easement.

6.2.2 That neither the recorded easement nor the 1987 Judgment authorizes the EBCC to build a gate across the easement in its current location, nor does it authorize an electric gate to be placed anywhere on the easement.

6.2.3 That neither the EBCC nor any of its members (except for the Osthellers) have any right to use the Osthellers' Private Property that is not expressly subject to the easement, for any reason. Nor does the EBCC or any of its members (except for the Osthellers) have any right to use the easement for any reason other than the reasons specifically outlined in the Easement description.

6.2.4 That the current location of the paved Beach Road does not fall within the express boundaries of the Easement or 1987 Judgment.

6.2.5 That the current location of the Beach Road Gate on the Beach Road as it is currently being used encroaches upon the Osthellers' property by approximately 4 feet on the north side of the gate. That the EBCC shall remove the electric vehicle gate ("Beach Road Gate") with its gate control box, gate operator, along with all electrical and corresponding components,

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the keypad and post, along with electrical and corresponding components, anything else related to the gate or its components, anything else that encroaches onto the Ostheller's private property not specifically authorized and/or outside of the easement boundaries by the easement description and/or 1987 judgement to be there. That the EBCC shall not place anything else that encroaches onto the Osthellers' private property, including cameras, mirrors, security systems, fences, or any other items. That the EBCC shall not use any cameras placed outside the easement to surveil or otherwise monitor the Osthellers.

6.2.6 That the EBCC has no legal right to use the northwest portion of the

Osthellers' Property, which is separated by the Easement, as a pull-off, for turning around or for any other purpose.

6.2.7 That the EBCC has no legal right to trim, cut, or otherwise interfere with the Osthellers' shrubs, grass, trees, or other growth.

6.3 That a vehicle gate (and especially a vehicle gate in non-compliance with manufacture safety instructions, to include but not limited to being a vehicular gate that contains no separate pedestrian entrance where pedestrians are forced to traverse in an area where they can come into contact with an electronic vehicular gate while the gate is in motion, could be in motion, and anywhere in its path and/or where pedestrians could enter its path), creates an unreasonable foreseeable risk of harm,

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which the Osthellers should not have to bear. That the electrical vehicular gate interferes with the Osthellers' free use of their property.

6.3.1 That the EBCC has abandoned its original gate referenced in the 1987 Judgment, thus, it no longer has any right to build a gate in the original location.

## 7. THIRD CAUSE OF ACTION: INJUNCTIVE RELIEF

7.1 The preceding paragraphs above are incorporated herein as if fully stated.

7.2 Plaintiffs are entitled to an order for injunctive relief as follows:

7.2.1 Removal and/or an order prohibiting replacement (or new placement) of the Beach Road Gate, the gate controller, the gate control box, gateposts, all associated electrical wiring to and from the gate, any presser sensor(s), all bollards, the keypad and post, any gateposts and all associated components which, as currently being used, encroach on the Osthellers' private property on the south side of the gate and by approximately 4 feet on the north side of the gate.

7.2.2 To remove the paved portions of the Easement that encroach on the Osthellers' private property, which is not subject to the easement.

7.2.3 To restore the recorded express grant of the easement to 12 feet.

7.2.4 To narrow the recorded easement to 12 feet.

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7.2.5 Plaintiffs are entitled to a temporary restraining order, a preliminary injunction, and a permanent injunction restraining Defendant from trespassing on to the "disputed area," from trimming, cutting, removing, or

otherwise interfering with any shrubs, trees, or other plants or growth that are on the Osthellers' private property that is not subject to the easement.

7.2.6 To prohibit the EBCC or any of its members from using the northwestern tip of the Osthellers' property as a pull-off, to turn their vehicles around or for any other purpose.

7.2.7 To prohibit the EBCC or any of its members from tampering with, destroying, and/or removing the Osthellers' fencing, safety and security signage, property markers, and/or any of the Ostheller's personal property on any of their properties.

7.2.8 For a permanent injunction prohibiting the EBCC from excluding the Osthellers or any of their heirs or assigns from using the Private Beach as described in Exhibit 4 or any other easements that may be discovered.

7.2.9 For removal of the Palm Tree that is prohibiting the Osthellers' ability to discover the true boundary line for their Canyon Property.

## 8. FOURTH CAUSE OF ACTION: ENCROACHMENT

8.1 The preceding paragraphs above are incorporated herein as if fully stated.

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8.2 Portions of the paved Beach Road, the Beach Road Gate, the gate operator, the gate

control box, the gate post, electrical wiring, and associated components and the area needed to access the control box encroach on Plaintiff's private property, which is not subject to the recorded Easement or the 1987 Judgement.

8.3 Plaintiffs are entitled to a permanent injunction for the removal of the Beach Road Gate, the gate control box, gate operator, all electrical wiring to and from the gate, keypad and any presser sensor(s)/other sensors, all bollards, the keypad and post and all associated components to include any possible cameras, recorders, mirrors, or monitoring systems anywhere on any of the Ostheller's properties or facing towards or onto any of their properties. .

8.4 Plaintiffs are entitled to a permanent injunction for the removal of the paved portions of the Beach Road which encroach upon the Osthellers' private property that is not subject to the Easement, along with any mirror, or any other use or items that encroach on any portion of the Osthellers' private property or interfere with the Osthellers' use of express easements granted to them.

## 9. FIFTH CAUSE OF ACTION: TIMBER TRESPASS

9.1 The preceding paragraphs above are incorporated herein as if fully stated.

9.2 The EBCC, or someone acting within its control or on its behalf, cut down, girdled, or otherwise injured, or carried off trees and/or shrubs on the Osthellers' land without lawful authority.

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9.3. Plaintiffs are entitled to triple damages under RCW 64.12.030

#### 10. SIXTH CAUSE OF ACTION: DEFAMATION

10.1 The preceding paragraphs above are incorporated herein as if fully stated.

The EBCC, or board members acting on its behalf, made both written and oral knowingly false statements, which were published and would be highly offensive to an objectively reasonable person under the circumstances. These knowingly false statements harmed the Plaintiffs' reputation in the community and have created an untenable situation. As a direct and proximate result of these false statements, the Plaintiff have been injured. They have incurred damages in an amount to be proved at trial.

#### 11. SEVENTH CAUSE OF ACTION: FALSE LIGHT

11.1 The preceding paragraphs above are incorporated herein as if fully stated.

11.2 The EBCC verbally stated and published materially false statements concerning the Plaintiffs that would be offensive to a reasonable person. These statements were spoken and/or stated to a large group of the public. As a direct and proximate cause of these false statements, the Plaintiffs have been damaged in an amount to be proved at trial.

#### 12. EIGHTH CAUSE OF ACTION: HOSTILE ENVIRONMENT

HARASSMENT (Violation of 24 C. F.R. § 100 et. seq.)

12.1 The preceding paragraphs above are incorporated herein as if fully stated.

12.2 24 C.F.R. § 100 prohibits discriminatory and harassing conduct. Specifically, 24 C.F.R. § 100.600(a)(2) states:

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(2) Hostile environment harassment. Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with: The availability, sale, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision or enjoyment of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. Hostile environment harassment does not require a

change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities, or of the residential real-estate transaction.

12.2 The EBCC and Matthew Hoffman and Cory Anderson (aka Cory Bennett) and John Cooper and Reese Leebo have violated this provision by engaging in harassing conduct that is sufficiently severe or pervasive as to interfere with the Plaintiffs' ability to use or enjoy their dwelling and/or the terms, condition, or privileges as an EBCC member.

12.3 Some examples of the harassment include but are not limited to: The EBCC intentionally digging a hole on the Plaintiffs' property to place the callbox; the EBCC and Matt Hoffman organizing a party with alcohol on the easement solely to discriminate against and harass the Plaintiffs; Matt Hoffman, either as an individual or acting on behalf of the EBCC, telling the Plaintiffs that he placed cameras somewhere on their property or the neighbors' property so he can watch them but would not disclose the location; the

EBCC attempting to trespass the Plaintiffs from the common areas at the beach then serving Dr. Ostheller with the purported trespass at his place of business solely to harass and embarrass him, the EBCC asking for volunteers to clean up the beach area but board member and former outgoing EBCC President Reese Leebo telling Ms. McKeen Ostheller that she was trespassing, demanding that she leave the EBCC beach property

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during normal usage hours, and to stop participating in the volunteer common area clean up; Matt Hoffman displaying intimidating behavior by demanding Plaintiffs answer his questions despite the Plaintiffs repeatedly requesting that all communications go through their attorney; Matt Hoffman video recording Dr. Ostheller while he took his children to the Easter Egg Hunt at the HOA park (off of Edgewater); The EBCC and/or its board members surveilling the Plaintiffs; EBCC President Cory Anderson (aka Cory Bennett) and the EBCC's caretaker/employee John Cooper and other board members slandering the Plaintiffs and inciting other members against them to the point the members voted to remove Ms. McKeen Ostheller from the Board; Matt Hoffman saying rude things to Ms. McKeen Ostheller while she is on the easement, the EBCC putting a continuous beeping sound on the gate even though it is directly outside what was the Ostheller's bedroom; Caretaker John Cooper refusing to open the easement gate to allow the Ostheller's hired

backhoe driver through to reach the other side of their property and to reach their other property parcel; President Cory Anderson and the EBCC repeatedly not responding to Ms. McKeen Ostheller's emails about the time, date, and location of next HOA meetings so that she could not attend; President Cory Anderson telling Ms. McKeen Ostheller while still a board member, not to come to a regularly scheduled board meeting where voting would take place for various issues and to leave early from regularly scheduled board meetings as well; EBCC members followed Ms. McKeen Ostheller and Dr. Ostheller from the 2023 annual board meeting yelling at them; the EBCC targeting the

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Plaintiffs in its newsletter, Board member Reese Leebo telling the board (to include Ms. McKeen Ostheller) that Ms. McKeen Ostheller is not a good mother; Reese Leebo telling the Board (and any visitors present) that he was going to take over the Osthellers' property to enlarge the easement; caretaker John Cooper pointing a flashlight in Dr. Ostheller's face at nighttime while Dr. Ostheller was on his own property near his wife's vehicle demanding that he move the vehicle even though no traffic was present as Ms. McKeen Ostheller couldn't get the gate to open to drive her vehicle to its parking place; the EBCC invited the whole entire community but singled out the Ostheller's and said that the Ostheller's were not allowed to attend the 2023 Special Gate Board Meeting; the

EBCC informed a visitor that Ms. McKeen Ostheller was “crazy”; Board member Mindy Belgiva-Rovira previously insisted that the Ostheller’s sell their property to the board even though the Ostheller’s said no, then later commented that it was “brave” of Ms. McKeen Ostheller to attend the annual 2023 member’s meeting; During the EBCC’s April 2024 board meeting, board member Reese Leebo told the board and guests that he wished that the Osthellers would sell and move and that they didn’t even currently live there. At the 2024 June Annual Member’s meeting, the EBCC reminded the community of reasons they should vote against electing Renee McKeen Ostheller onto the board, referencing comments from the June 2023 Annual Members’ Meeting.

12.4. The EBCC and Matt Hoffman have further engaged in harrassing activity by reporting false information to the Kitsap County Sheriff’s office so they would issue a

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trespass notice, which prohibits the Osthellers from using the Easement to access their own property, prohibits the Osthellers from exercising their right to use the private beach which was granted through an express easement, and prohibits them from using and enjoying the EBCC common areas.

### 13. NINTH CAUSE OF ACTION: NUISANCE

13.1 The preceding paragraphs above are incorporated herein as if fully stated.

13.4 Defendants EBCC, Matt Hoffman, Cory Bennett, Reese Leebo and John Cooper have unlawfully committed an act or acts which annoy, injure, or endanger the comfort, repose, health, or safety of the Osthellers. Their unlawful acts have directly and proximately caused damages to the Osthellers in an amount to be proved at trial.

#### 14. TENTH CAUSE OF ACTION: OUTRAGE

14.1 The preceding paragraphs above are incorporated herein as if fully stated.

14.2 Defendants EBCC, Matt Hoffman, Cory Bennett, Reese Leebo and John Cooper have intentionally caused severe emotional distress to the Osthellers by extreme and outrageous conduct, which directly and proximately caused severe emotional distress to the Osthellers and would cause emotional distress to any objectively reasonable person under the same circumstances. The Osthellers are entitled to damages in an amount to be proved at trial.

#### 15. ELEVENTH CAUSE OF ACTION: VIOLATION OF WASHINGTON LAW AGAINST DISCRIMINATION RCW 49.60 ET. SEQ.

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15.1 The preceding paragraphs above are incorporated herein as if fully stated.

15.2 Defendant EBCC has discriminated against Renee McKeen Ostheller because of her disability by discriminating in the terms, conditions, and/or privileges of a real estate

transaction or in the furnishing of facilities or services in connection therewith.

15.3 The board, knowing Ms. McKeen Ostheller suffers from PTSD, has stated that she is “crazy,” adopted statements that she uses her time for “evil,” and has intentionally tried to exacerbate her condition in order to complete its goal of causing her so much emotional distress that she will sell her home and move out of the community.

15.4 The Osthellers are entitled to bring this action under RCW 49.60.030(2). If they prevail they are entitled to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.)

15.5 These violations also constitute a violation of the Consumer Protection Act, RCW 19.86 et. seq.,. Thus, the Osthellers are entitled to triple damages under RCW 19.86.090 as well as attorneys’ fees and costs.

## 16. TWELTH CAUSE OF ACTION: PRESCRIPTIVE EASEMENT/IMPLIED OR BY NECESSITY

16.1 The preceding paragraphs above are incorporated herein as if fully stated.

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16.2 The Osthellers and their predecessors have continuously and without interruption, traversed over the EBCC parking lot, lawn, picnic area, and beach to access their private beach, which is part of the Canyon property, parcel number 272701-2-004-2005. They have done so openly, notoriously, hostilely, over a uniform route with knowledge the EBCC's knowledge for over thirty (30) years.

16.3 The Canyon property had unity of ownership with the EBCC's adjacent property because both properties were part of the Edgewood Beach Estates. There has been an apparent and quasi easement existing for the benefit of the Osthellers' Canyon property to the detriment of the EBCC's property during unity of title and after the two properties were separated it created a necessity for such an easement. The southeastern portion of the Canyon Property is landlocked by the other owner's property and is only accessible by the already existing Easement that is the beach road. The northwestern portion of the Canyon property is also landlocked on two sides by the EBCC's property on one side by the Hood Canal and the on the other side by a cliff.

16.4 Thus, the Plaintiffs are entitled to an easement by necessity and/or an implied easement.

16.5 Further, there is a express easement that runs with the land, that grants unlimited use of the EBCC's private beach.

17. PRAYER FOR RELIEF

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17.1 WHEREFORE, Plaintiffs, having asserted claims for relief, now pray for judgment against Defendant as follows:

17.2 That Plaintiffs' title to the strip of land on the north and south side of the Beach Road Gate and the keypad/post be quieted in fee simple in Plaintiffs and against the right of Defendant or any other person.

17.3 That Defendant be forever barred from having or asserting any right, title, estate, lien, or interest in the land and premises making up any of the OstHELLERS' property that is not expressly subject to the Easement.

17.4 That the Court enter an injunction against Defendants during the pendency of this action enjoin it, its agents, and contractors, from entering onto, trespassing on, or otherwise affecting Plaintiffs' property and the property subject to this quiet title action.

17.5 For injunctive relief ordering the Beach Road Gate, the gate operator, the gate control box, the gatepost, all electrical wiring associated with the gate, its keypad and its components, the keypad and post, any presser sensor(s), any bollards, and all other associated components be removed and that the paved portions of the Easement which encroach on the OstHELLERS' property be removed. That any damage as a result of removal of the gate and associated components be properly repaired or compensated. And for any other injunctive relief justified by the facts in this complaint or facts discovered before or at trial.

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17.6 For declaratory relief ordering that the northwestern tip of the Osthellers' property is not subject to the Easement and Defendant is forever barred from having or asserting any right, title, estate, lien, or interest in that portion of the Osthellers' private property.

17.7 For an award or damages for Timber Trespass including triple damages and attorney's fees under RCW 64.12.030

17.8 For an award of damages for Defamation, False Light, Hostile Environment Harassment, Nuisance, Outrage, Violation of WLAD, and violation of the Consumer protection act including attorneys' fees and costs under RCW 49.60.030 and 19.86.090, and for triple damages under RCW 19.86.090.17.9 That the Court finds for an award of reasonable attorney's fees and costs for the Plaintiff, as authorized in RCW 49.60.030, RCW 4.84, or under any other legal or equitable theory.

17.9 That the Court awards such other and further relief as it deems just and equitable.

DATED this 26th day of June, 2024

Erin C. Sperger, WSBA No. 45931

Attorney for Defendant Joseph Ostheller and Renee McKeen Ostheller