Honorable Judge Redacted D. Eadie
Hearing Date: December 11, 2012
Hearing Time: 9:00 AM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF KING

LANE POWELL, PC, an Oregon professional corporation, Plaintiff, v. MARK DECOURSEY and CAROL DECOURSEY Defendants	No. 11-2-34596-3 SEA **DECLARATION OF MARK DECOURSEY IN SUPPORT OF RESPONSE TO SUPPLEMENTARY BRIEFING TO SUMMARY JUDGMENT MOTION**

Declaration of Mark DeCoursey

Mark DeCoursey hereby swears and affirms as follows:

I, Mark DeCoursey, being of legal age and competent to testify, do testify under penalty of perjury that:

1. Ryan McBride's characterization of our "outlandish and sometimes frivolous" instructions to Lane Powell is remarkably dishonest and self-serving. *Declaration of Ryan McBride in Support of Supplementary Briefing*. Notably, McBride does not offer any specifics. None at all. An examination of the specifics gives a completely different picture.

2. **Lane Powell's Failed Attempts to Wreck the Case:** Throughout, Lane Powell tried to

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set the objectives of the litigation in violation of RPC 1.2.

> Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

3. In 2008, Lane Powell attempted to get us to sell the house to Windermere for "fair market value." This was not just a suggestion. This was ongoing and relentless pressure that continued for weeks, even to calling us into the office and browbeating us. **Exhibit A.** Examples of correspondence during that period. Resisting this pressure was unnecessarily wearing and burdensome, and Lane Powell even charged us for the time it spent attempting to browbeat us into accepting their objectives. **Exhibit B**.
4. On information and belief, throughout the Windermere case, the Lane Powell attorneys were working under the supervision of Shareholder Grant Degginger, who was Mayor of Bellevue in the years 2006-2010 and City Council Member of Bellevue in the years 1999-2012, according to his Lane Powell bio.
5. Lane Powell's efforts to get us to settle were transparently in Windermere's interest. Apparently, the mutual interests at the "rich man's club" prevailed upon the management within Lane Powell (through Degginger) to shut down and neutralize the impact of the case, including settling out of court with the City of Redmond.
6. This outside influence got so bad that even after the trial in which we had wiped the floor with Windermere's attorneys, Lane Powell was still pressuring us to capitulate. The jury retired to deliberate on October 29. On October 30, Lane Powell sent us a letter urging us to offer to settle with Windermere for $250,000. **Exhibit C.** This was about $130,000 less than the Lane Powell invoice, and would have left us with nothing

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to repair the damage to the house or our finances. Why would Lane Powell be urging us to commit financial suicide? That is hardly "exceptional" legal work. ("Exceptional" is how Lane Powell has characterized its work throughout this case.)

7. On October 31, the jury returned a verdict awarding us $522,000, with a CPA violation that authorized us to seek attorney fees eventuating in a judgment that almost doubled that amount.

8. Is it possible that Lane Powell was so oblivious to what had occurred during trial that it could not predict the verdict? I doubt it. The low-ball settlement figure clearly indicates Lane Powell was driven by more sinister motives.

9. Throughout the case, Windermere worked to increase the cost of the litigation. No maneuver or argument was too puerile or specious. For example, while representing its agent in court, Windermere argued that its agent "wasn't an agent of Windermere" and had no vicarious liability for the agent. Quoting from Lane Powell's own description:

> Stickney and Windermere filed numerous motions for summary judgment, sought amendment to orders denying their summary judgments, failed to cooperate in discovery, continuously threatened to pursue discovery admit evidence regarding the DeCoursey' political and religious views. Before trial, Windermere argued that (1) it was a third party beneficiary of the Purchase and Sales Agreement; (2) that Stickney was not a Windermere agent; and (3) that Windermere was not vicariously liable for Stickney. All of these issues required the DeCourseys to expend time and money filing responsive briefing. [**Exhibit** D, p. 2 at 21-26; p. 3 at 1-2]

10. This gives the lie to the *Declaration of Andrew Gabel*, wherein he claims that there might have been something wrong with us for allegedly having opinions that might be different from other people's opinions. According to Lane Powell's earlier statements to the court, filed under the Bar oath of candidness to the tribunal, the fault for the expensive litigation was not ours, but Windermere's. Can Lane Powell now claim the opposite and retain credibility?

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11. The Superior Court Case Summary comprises 467 items, a testament to Windermere's abuse of process. (**Exhibit E**, first and last pages of Docket Case Summary).

12. We repeatedly urged Lane Powell to file CR 11 but Lane Powell refused. Lane Powell simply parried every worthless argument with laborious responses, racking up the billing hours. When we complained about Windermere's scorched earth strategy and asked why Lane Powell permitted it, Mr. Redacted told us that Lane Powell had a policy against asking for CR 11 sanctions.

13. On what grounds would a law firm refuse to follow court rules specifically designed for the protection its clients? We subsequently discovered the reason: The more work Windermere's puerile and specious maneuvers generated for Lane Powell, the more billable hours Lane Powell could charge to us -- with the benefit of Lane Powell's 9% interest surcharge.

14. Attorney Paul Fogarty opined:

> Though the legal fees soared through the trial and appeal, and though the DeCourseys pleaded with LP to complain, not once did LP move for CR 11 sanctions (or the RAP equivalent) to discourage Windermere's strategy. Instead, LP proceeded as if asserting frivolous arguments in a lawsuit was par for the course. It certainly enriched LP. (**Dkt 152**, *Subjoined Declaration of Mark DeCoursey*, Ex. A, Page 9, Para. 1.)

15. In 2008, before trial, the case went through a flurry of summary judgment hearings. As Atty. Paul Fogarty pointed out (**Dkt 152**, *Subjoined Declaration of Mark DeCoursey*, Ex. A, Pages 9, 10, 11), we had collated the various pleadings and answers, and discovered that Windermere had failed to deny our key allegations in its pleadings. **Exhibit F**. Civil Rule 8(d) states that any allegation not denied is admitted. We urged Lane Powell to use that court rule to our advantage with so little cost and risk, so much possible gain. But Lane Powell refused to follow our instructions and refused to

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advance the CR 8(d) arguments.

16. Attorney Paul Fogarty opined:

> The cost of ignoring those arguments on summary judgment cannot be overstated. Given the text of CR 8(d) and the *Jansen* precedent, the DeCourseys had excellent arguments to prevail on summary judgment in all the major elements of the eventual verdict without an expensive trial. The trial would have been avoided or narrowly tailored (e.g., amount of damages). In cases where the facts are established and only the damages are left at issue, the case usually terminates in a settlement. (**Dkt 152,** *Subjoined Declaration of Mark DeCoursey*, Ex. A, Page 10, Para. 7.)

17. Discovery in the Windermere lawsuit closed on September 2, 2008. Throughout the discovery period, Windermere failed to send experts into the house to assess damage. Windermere's discovery failures gave us a huge advantage in the upcoming trial-- Windermere did not have expert witnesses to counter ours. Soon after the close of discovery (about the time Windermere realized the matter was going to trial), we were told that Windermere wanted to buy our home. **Exhibit A.** Lane Powell began to pressure us into letting Windermere experts into the home to inspect the damages -- so they could offer us a "fair market" price. (**Exhibit A**, pg.1, para 4, *et seq.*)

18. Lane Powell's plan would have given Windermere the expert witness it so badly needed at trial. But we refused to allow entry to the expert.

19. First, we did not want to sell the home. We would have nowhere to go and no money to go there once we had paid off Lane Powell. Secondly, why would we accept "fair market" value of a damaged home? The more damage the expert found, the less Windermere would be paying us for the damage that Windermere had caused (causation in terms of the eventual verdict). Had Windermere offered fair market value for the home as it might exist with needed repairs done, paid our other losses and our legal fees

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and costs, and put the offer in writing, perhaps we would have considered it.[1] But none of those terms were part of the offer. Windermere faux offer was a transparent ploy to get an expert onto the property after the close of discovery.

20. To us, the ploy was obvious and we announced our litigation objectives to Lane Powell – no deal. But despite our repeated refusal to let Windermere into the house, Lane Powell kept the pressure up for weeks -- even having us called into the Lane Powell offices (on or about September 22, 2008) to discuss the matter with Redacted Gabel, and Jacobs. At the meeting, Gabel asked, "What would it take to get you to sell your house to Windermere?" And Carol answered, "A lobotomy."

21. At no time did Windermere produce a written offer, but Lane Powell wanted us to trust them, and their verbal promise that the expert would not be used at trial. After all, trusting Windermere was how we got into that situation, and we were not willing to trust them again.

22. In a letter dated December 5, 2008, Lane Powell admitted we were billed for services it knew we did not want -- the attempt to get us to sell our home to Windermere.

> I understand you have concerns that I have billed more time than necessary in my attempts to get you to settle. While I did not bill all my time in those endeavors, I did bill some as I believed that is was always in your best interests given the costs and continued perils of trial and post trial. (Exhibit 2008 at December 5, 2008, Letter from Lane Powell, pg. 1, Para 4.)

23. Despite Redacted Nourse's competent presentation of the case in trial, on October 30, 2008, the day after jury deliberations began, we received a letter over his signature -- a letter obviously not written by him[2] -- recommending we offer to settle with Windermere for

[1] In such a case, Windermere would not need an expert witness: the publicly available description of the property would be sufficient.

[2] Note that "Mr. Redacted referred to himself in the third person in that letter, and he addressed us as "Mr. and

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$250,000. **Exhibit C**.

24. Instead of settling for half our losses and an additional burden of attorney fees, we won in court, as Lane Powell admits over and over again in this litigation. But Lane Powell is careful to tell only half the truth. The other half of the truth is that if we had followed Lane Powell's advice, we would have been ruined.

25. Curiously, Degginger billed .3 hours to our case on October 30, Andrew Gabel billed 3 hours to "correspond with DeCourseys" and Redacted Redacted did not bill one minute. **Exhibit G**. Those invoices show the letter was written by Mr. Gable under Degginger's direction.

26. As Lane Powell's invoices reveal (*Declaration of Grant Degginger*), at the time Gable was writing the "surrender" letter to us, Lane Powell had billed our account in excess of $457,000. Thus with that letter, Lane Powell was recommending that we accept little more than half Lane Powell's legal fees in settlement of damages plus costs. If we had followed Lane Powell's advice on that settlement, we would have been condemned to a crippling debt and poverty for the rest of our lives. Is that how fiduciaries look after their clients' best interests – and provide "exceptional" legal services?

27. **Jury Finds for Us**. On October 31, 2008, the day after Lane Powell urged us the October 30 surrender letter on us, the jury awarded us $522,200 in damages and a finding that Windermere violated the Consumer Protection Act. The judge later awarded us approx. $.5 million in legal fees, too.

28. The trial victory of which Lane Powell now boasts was in large part the result of our

Mrs. DeCoursey," instead our using our first names as was common in other letters and emails.

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refusal to accept Lane Powell's suicidal advice -- to surrender for the sum of $250,000 and shut the door on an award of over $1 million.

29. This gives the lie to McBride's description of us as "difficult clients." Lane Powell wanted to set the objectives for the litigation and through its bad advice, and send us spinning into a pit of loss. We refused. Now Lane Powell complains that we were not tractable to Lane Powell's suicidal advice. Lane Powell, apparently, has redefined RPC 1.2 and stood it on its head. To Lane Powell, the client who sets his own objectives for the litigation is a "difficult client."

30. And now to complete the irony, having failed to drive the case into failure for us, Lane Powell claims that it won an "exceptional" or "excellent result." **Dkt. 18** for one of many examples:

> Lane Powell achieved an excellent result for the Defendants in the Windermere lawsuit. The court entered a judgment for damages in the amount of $522,200.00, and

31. By actual review of the case, the "excellent" legal work was done by Redacted Redacted but he was fired or forced to resign from Lane Powell very suddenly in November 2009.

32. **The Costs Awards:** Four different categories of costs and expenses from the Windermere case should be of interest to this court.

    a. **Lane Powell's attorney fees**. In the course of representation, this totaled $617,946.50. This figure did not include interest on those fees. **Exhibit H**. Only $327,562.50 of this sum was presented to the trial court. **Exhibit S**. The trial court began with a base figure of $356,142, and awarded it with a 1.3 multiplier (*Declaration of Hayley Montgomery in Support of Motion for*

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Partial Summary Judgment, Ex. HH, p. "5"). The full fee award was affirmed on appeal.

b. **Costs that Lane Powell (allegedly) spent** and invoiced to us. This includes photocopying, faxes, travel fees, etc. and totals $21,977.80. **Exhibit H.** Though it should have been, this amount was ***not*** presented to the trial court by Lane Powell, so of course was not awarded.

c. **DeCourseys' Expenses While *Pro Se* Litigants**, enumerated on CP 1319 and amounting to $28,577.76. **Exhibit I** copy of CP 1319, Case #06-2-24906-2, Dkt 370, January 9, 2009**.** This amount was presented to the trial court in the Declaration of Mark DeCoursey, but was not awarded.

d. **DeCourseys Direct Expenses While Represented by Lane Powell**, including experts, transcriptions, copying, and court fees, amounting to $45,442.03. We paid these costs directly to the service providers and vendors, and they never appeared on the Lane Powell invoices. **Exhibit I** copy of CP 1319**,** Case #06-2-24906-2, Dkt 370, January 9, 2009. This amount was awarded by the trial court but reversed in the Court of Appeals. Without foundation, Lane Powell now fraudulently claims that we owe this money to them. (*Supplemental Brief,* p. 4 at 13 *et seq.*)

33. The trial court granted some of the awards requested (as listed above) under both the CPA (RCW 19.86) and the Windermere REPSA. **Dkt. 254**, Ex. E. As shown by the Feb 6, 2009 order, even though Windermere was not a signing party to the REPSA, Windermere became subject terms of that agreement because it had argued it was a

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"third party beneficiary."

34. Robert Sulkin, Land Powell's lead counsel, misrepresented another basic fact of the instant case when he argued to this court on November 16, 2012 that the award of that money was inappropriate: From my notes, my memory, and my unofficial digital recording of the proceedings, Robert Sulkin spoke of that award as follows:

> First on the issue of the cost, the $45,000 that they now claim fraud on. Those costs were viewed by judge fox and approved. In fact if we look at Exhibit H, which is the court of appeals decision, and if you turn, your honor, to page 36 of that opinion, it explains exactly what happened. What happened was that Judge Fox... and I'm at the second full paragraph... what happened was Judge Fox ordered the defendants to pay costs, the $45,440 to... in other words, he looked at everything and he said, "you owe it." And he said, "you owe it under the real estate purchase and sale agreement." And the Court of Appeals said, "Wait a minute, you're not suing the seller." So the very cost that they're claiming were the subject of fraud... it just... all the reasons I gave you apply there.

35. In the first place, we have never previously claimed that sum is the subject of fraudulent activity by Lane Powell or anyone else. That is another of Sulkin's off-the-wall statements for which the only purpose could be to confuse the court and grab more for his client than is lawful.[3]

36. However, Lane Powell is ***just now*** making a fraudulent claim for that sum (*Supplemental Brief,* p. 4 at 13 *et seq.*), and we are calling fraud on that claim. An attorney has the obligation under the Civil Rules and the RPC to tell the truth in court. A lie with the intent to obtain money wrongfully is fraud.

37. Redacted Redacted **Left Lane Powell**: In about November 2009, Redacted Redacted left the firm of Lane Powell suddenly and without warning. We were informed of his departure only after he was gone.

38. Brent's immediate supervisor at Lane Powell was Stanton Beck. However, our case

[3] For other documented examples of Lane Powell's deliberate and calculated misrepresentations in this case, see in particular Dkt. 20, 54, 67, 140, 152, 156, 165, 173, 174, 225, and 296.

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was not given to anyone else in Beck's group or to Beck himself. From that point on, Beck's superior, Grant Degginger, handled the case personally. **Exhibit J**.

39. We were not told why Degginger was assigned (or assigned himself) to our case. Degginger's resume does not reveal experience with real estate law or appeals courts. *Declaration of Ryan McBride*, Ex. 2. Apparently, as later events showed, Degginger had his own "objectives" for the case, and taking the case himself was the best way to insure that those objectives were met. See p. 2 of **Exhibit J**.

40. **Court of Appeals Acted *Sua Sponte***: Windermere did not challenge that the REPSA foundation for the awards at the Court of Appeals. But while the Court of Appeals affirmed the greater part of the judgment, it *sua sponte* disallowed the REPSA argument and the fees and costs awards that depended on it, resulting in a loss to us of almost $100,000. (*Declaration of Hayley Montgomery in Support of Motion for Summary Judgment,* Ex. H. p. "39" fn 24.) If the Court of Appeals had recognized the REPSA foundation for these awards (a la *Bloor v. Fritz* that "expenses" are broader than "costs"), this loss would not have occurred.

41. I believe that disallowing the REPSA foundation for the award was an error on the part of the judges, particularly since it was not challenged by Windermere. It should have been questioned and corrected by Lane Powell through a motion to modify.

42. But Lane Powell took no measures to correct the court's error. We (Carol and Mark) were not aware of the option to file a "motion to modify" at that time, so we did not know to ask our "appeals specialist" attorney at Lane Powell specifically to do that work

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for us. But $440-per-hour Ryan McBride certainly knew about the option, and he kept woefully silent. He let the moment and the opportunity pass without a whisper.

43. Under their December 30, 2008 Agreement with us (*Motion for Partial Summary Judgment,* Ex. K), they were obligated to "assist [us] regarding possible appeals with regard to the same as necessary **to prevail in or retain the awards discussed**." (Emphasis added.) The "awards discussed" included "attorneys' fees and costs of the suit," named just previously in the same document.

44. Under the RPC ("These principles include the lawyer's obligation conscientiously and ardently to protect and pursue a client's legitimate interests, within the bounds of the law" – RPC Preamble: A Lawyer's Responsibility ¶9), Lane Powell was obligated to at least tell us of the possibility of filing a motion to modify the Court of Appeals decision, contract or no contract.

45. The Court of Appeals also used the *Nordstrom v. Tempourlos* decision to limit the costs award from the trial court to those allowed in RCW 4.84.010 (i.e., nothing), and fee award for the appeal to the arguments "related to CPA."

46. Carol and I believe the *Nordstrom* principle is contrary to the legislative intent for the CPA statute, which provided for an award of the "costs of the suit," not just the costs of the CPA argument.

47. **Publication:** Because we are connected with a number of Windermere victims and litigants, past and present, failed and successful, we wanted to use our case to do the best for the public interest. Our decision at the Court of Appeals was UNPUBLISHED. We wanted Lane Powell to move the court to have it published.

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48. Lane Powell resisted with spurious reasons, arguing that publication would increase the chances of reversal at the Supreme Court. I call this argument spurious because Lane Powell had just told the Court of Appeals that the decision at trial was correct in all particulars under the law and fundamentally just. That being so, why would anyone imagine the Supreme Court would decide contrary to law and justice?

49. Apparently, Lane Powell had its own "objectives" for the litigation, in violation of RPC 1.2, quoted above, and those objectives did not include embarrassing the large and wealthy Windermere corporation. We believe Windermere is part of the development community with which, as Mayor of Bellevue, Degginger was currying favor. Publication of a decision adverse to Windermere was just not acceptable.

50. Lane Powell strongly resisted our request to file a motion to publish. Finally, as the deadline for filing the motion to publish drew nigh and DeCourseys announced they would file the motion *pro se*, Lane Powell assented to file it. **Exhibit K.** But the motion to publish was not granted.

51. **Cross-Petition:** When Lane Powell filed a petition for review to the Supreme Court, we asked Lane Powell to file a cross-petition to recover the $100,000 we had lost at the Court of Appeals. We argued that the words "costs of the suit" in the CPA actually meant the costs of the suit, not just the part of the suit involved in proving the CPA, which would turn the CPA into a solipsistic law. If a plaintiff spends $100,000 arguing the CPA and recovers only $100,000 of his legal fees, the value CPA is nullified. Why bother bringing the CPA into the picture? The *Nordstrom* doctrine was obviously not the legislative intent for the CPA. The legislative intent is recognized in *Sign-O-Lite*

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Signs v. DeLaurenti Florists, Inc. See ¶64 below.

52. Lane Powell refused file the cross-petition to overturn *Nordstrom*. In the persons of Grant Degginger, Ryan McBride, and (silently) Andrew Gabel, they told us repeatedly that they could not cross-petition on the base we requested because it was "not supported by law." **Exhibit L.**

53. Grant Degginger wrote to us that the Supreme Court had "no discretion" to change the Court of Appeals ruling. Degginger wrote that the only way to change that "law" was to go to the legislature, and he was willing to help us after the case was over. **Exhibit M**.

54. Only later did we learn that the Court of Appeals decision was based on the *Nordstrom v. Tampourlos* precedent, a case in which Lane Powell had represented Nordstrom's effort to use the CPA to eviscerate its small single-owner opponent. The *Nordstrom* court limited the CPA at that time to prevent injustice in that case. Obviously, the Supreme Court can overrule a precedent it previously set when confronted with the consequences of an earlier decision, just as the US Supreme Court did in *Brown v. the Board of Education* when it overturned *Plessy v. Ferguson* and the *Slaughterhouse* cases. And a Supreme Court can always overrule or modify statutes – the Supreme Court had all the "discretion" necessary to fix this aspect of Washington law.

55. But in this case, the decision we wanted was a precedent in accordance with legislative intent, with the statute as it was originally written; we wanted a reversal of the prior precedent based on updated facts.

56. We know that Degginger was lying to us about both the basis of the Court of Appeals decision and about our prospects in the Supreme Court of modifying that decision. But

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why would Degginger lie to us about these things?

57. Lane Powell had what Paul Fogarty called a "positional conflict of interest." (**Dkt 152**, Ex. A.) Lane Powell's normal run of large corporate clients would not be pleased if Lane Powell assisted us to establish a plaintiff-favorable Consumer Protection Act precedent.

58. We asked whether Lane Powell intended to withdraw from representing us. Lane Powell responded that it did "not want to withdraw." **Exhibit N**, p. 6.

59. On February 25, 2011, Degginger and McBride told another whopper. They said they have to DRIVE the brief to Olympia and file it by hand. **Exhibit N**, p 1. Carol easily discovered this was not true by calling the Court in Olympia and questioning Camilla in the Clerk's Office. See Declaration of Carol DeCoursey, Ex. C.

60. In the same email (**Exhibit N**), McBride endorsed the other whoppers Grant Degginger had told us ("I agree 100% with everything Grant has told you"), including the preposterous claim that the part of the CPA with which we disagree was a part of the CPA statute itself, and that the Washington Supreme Court does not have the discretion to change Washington laws. By those statements, McBride impeached his own credibility as a witness.

61. On February 28, 2011, Lane Powell called our house and asked to speak to both of us. Allegedly, Andrew Gabel was on the call, but only Degginger and McBride spoke. With Degginger's reluctant implicit permission, we recorded the call. Later, we had the call transcribed. **Exhibit O**.

62. In that call, McBride stated that Lane Powell would prefer to withdraw from

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representation rather than file a cross-appeal to the Supreme Court. **Exhibit O**, p. 12 at 24.

63. Truly, Lane Powell had little hope of recovering the legal fees it had invoiced to us if we did not prevail in the Windermere case. But just as truly, Lane Powell had even less hope of recovering its fees if we were left to fight the Supreme Court battle *pro se*. What could dissuade Lane Powell from making that argument in the Supreme Court that was worth more to Lane Powell than $350,000 (approximate size of Lane Powell's outstanding invoice on February 28, 2011), and more than any adverse consequences of breaching its contract to defend our awards?

64. It is obvious to us that Lane Powell feared to establish a precedent of exactly the type we hoped to establish. In arguing for fees in the Windermere case, Redacted Redacted quoted the *Sign-O'-Lite* decision:

> In Sign-O-Lite, the Court of Appeals ruled on whether CPA attorney fees were available on appeal. Sign-O-Lite Signs, Inc. v. DeLaurenti Florists, Inc., 64 Wn. App. 553, 825 P.2d 714 (1992). Allowing the plaintiff to collect some fees on appeal, the court noted that the policy behind the award of attorney fees is "aimed at helping the victim file the suit and ultimately serves to protect the public from further violations." Id., 64 Wn.App at 568. [**Exhibit** p.l 10 at 17 *et seq.*]

65. Redacted Redacted who loyally represented us as individual plaintiffs, sat on the side of a plaintiff's lawyer. From our years of association with him, observing his rigorous argument and careful strategizing, we have absolutely no doubt that he was personally and emotionally behind our cause and our position in the case against Windermere. He believed that our case was just.

66. In contrast to Redacted Redacted Bellevue Mayor Degginger sat on the other side of the cultural battle between wealthy and working class, between corporate defendants and individual plaintiffs. Degginger was constitutionally and emotionally on the side of

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large corporations defending against individuals. In the language of present day, Redacted is a lawyer for the 99%. Degginger represents the 1%. In a fantasy courtroom with each representing the causes he believed in, Redacted and Degginger would be representing opposing sides.

67. In representing us, Degginger had a positional conflict of interest.

68. A few weeks after the trial, we discovered this difference in a remarkably frank conversation with Degginger. It was our first real discussion with him. We were discussing the recent verdict, and we told Degginger that our case would be a trophy in Lane Powell's resume. It would bring new business to Lane Powell. Degginger looked slightly sour and said words the effect, "No, no, it's not good for Lane Powell." By his demeanor, we could see it was not good for Grant Degginger, either.

69. If the legislative vision of the Consumer Protection Act became a reality in the courts, as recognized by the *Sign-O'-Lite* court, unconstrained by the *Nordstrom* decision, it would encourage more individual plaintiffs to bring suits against large corporations and encourage more lawyers to take those cases, knowing that their fees would likely be awarded.

70. Given these factors, the last two years of the Windermere case were a gigantic struggle for both sides, as Degginger attempted to bring about the best for the litigants he believed in, while we tried to retain the awards that were granted us in the trial court.

71. McBride has fully declared himself on the side of Degginger. **Exhibit N**. In the *Declaration of Ryan McBride,* he calls us "difficult clients." He calls our efforts to get Lane Powell to represent our objectives for the litigation (ref: RPC 1.2) "outlandish and

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sometimes frivolous."

72. Granted, we are not educated lawyers who have passed the Bar exam, but our suggestions were frequently helpful and often essential to the case, both factually and legally. For example, **Exhibit P** and **Exhibit Q** are emails in which McBride acknowledged the worth of out contributions. McBride wrote on October 2, 2009: "Regarding some of the additional argument you suggested, I incorporated some but not all. … Both aspects of the brief are stronger because of these additions. I hope you agree. … I am very happy with (and proud of) this brief." **Exhibit P**.

73. On May 16, 2011, McBride accepted our suggestions to incorporate arguments from an Amicus Brief that was filed in our support by other Windermere victims. McBride's tone indicates not only assent, but agreement that the suggestion was worthy. **Exhibit Q**. These are but two of many such exchanges in which we materially improved the papers McBride filed with the courts.

74. Thus, McBride's current statement about our "demands for Lane Powell to make outlandish and sometimes frivolous arguments" is shown to be a gross untruth. McBride radically contradicts himself. He is impeached as a witness and should be granted no credibility by the Court. His declaration is worth nothing.

75. An examination of the major battles we had with Lane Powell shows that our arguments were found to be neither outlandish nor frivolous by Redacted Redacted the judge, or the jury of the trial court. We reasonably expected the same of the courts of appeal.

76. In the Appellants' Brief to the Court of Appeals, Div. I, Atty. Matt Davis for Windermere wrote: "We know what [the judge] did was wrong; the problem is counting

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the ways it is wrong." **Exhibit R**, p. "29."

77. Just so is McBride's personal attack on us. His declaration shows he is so emotionally wrought by a confrontation with individual person plaintiffs, the 99%, he cannot give specifics and cannot "count the ways it is wrong."

78. Each of the **Exhibits A through S** attached hereto is a true and fair copy of what it purports to be.

79. **Exhibit A** is a letter sent by Redacted Redacted of Lane Powell to Mark and Carol DeCoursey on September 19, 2008.

80. **Exhibit B** is a letter sent by Redacted Redacted of Lane Powell to Mark and Carol DeCoursey on December 5, 2008.

81. **Exhibit C** is a letter sent by Redacted Redacted of Lane Powell to Mark and Carol DeCoursey on October 30, 2008.

82. **Exhibit D** is an excerpt of the *Plaintiff's Motion in Support of An Award of Attorney Fes and Costs* filed with in the King County Courthouse in the case V&E Medical Imaging Services, Inc. v. Mark DeCoursey, et al., No. 06-2-24906-2 on January 9, 2009, Dkt. 367.

83. **Exhibit E** is the first and last pages of the web version of the docket in the King County Courthouse case *V&E Medical Imaging Services, Inc. v. Mark DeCoursey, et al*., No. 06-2-24906-2 on January 9, 2009, Dkt. 367.

84. **Exhibit F** is an email exchange between Bruce M. Volbeda of Lane Powell and myself concerning the possibility of applying CR 8(d) to Windermere's pleadings, dated June 14, 2008.

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85. **Exhibit G** is a page from Lane Powell's invoices that it produced in discovery and filed with this court as an exhibit to the *Declaration of Grant Degginger in Support of Partial Summary Judgment*, dated December 5, 2008.

86. **Exhibit H** is a spreadsheet I created from Lane Powell's invoices showing the total amounts claiming for costs and fees.

87. **Exhibit I** is a spreadsheet I created and included as part of my declaration for support of *Plaintiff's Motion in Support of An Award of Attorney Fes and Costs* filed with in the King County Courthouse in the case *V&E Medical Imaging Services, Inc. v. Mark DeCoursey, et al*., No. 06-2-24906-2 on January 9, 2009, Dkt. 370 or Dkt. 371.

88. **Exhibit J** is the first of a number of cover letters signed by Grant Degginger sent to us by Lane Powell with invoices, dated December 10, 2009. The second page shows such an invoice dated January 10, 2011 with "G. Degginger" in the header indicating he held himself to be the point man for the case.

89. **Exhibit K** is an email exchange between Ryan McBride and myself concerning the management of the Windermere case while in the Court of Appeals, Div. I, *Mark DeCoursey and Carol DeCoursey, Res. v. Paul Stickney et al.* Case No 62912-3-I. Dated November 22, 2010.

90. **Exhibit L** is an email exchange between Grant Degginger and Carol DeCoursey concerning the management of the Windermere case that Windermere had petitioned to the Supreme Court of Washington, Case No. 855633, dated February 17,. 2011.

91. **Exhibit M** is an email exchange between Grant Degginger and Carol DeCoursey concerning the management of the Windermere case that Windermere had petitioned to

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the Supreme Court of Washington, Case No. 855633, dated February 14, 2011.

92. **Exhibit N** is a February 25, 2011 email from Ryan McBride concerning the management of the Windermere case that Windermere had petitioned to the Supreme Court of Washington, Case No. 855633. Dated February 25, 2011.0

93. **Exhibit O** is a transcript we hired a private firm to produce. I have verified that the transcript is a fair and true rendering of a February 28, 2008 conference telephone call between Ryan McBride, Grant Degginger, and Andrew Gabel (allegedly, though his voice is not heard on the call), and Carol and myself that I recorded on my own equipment.

94. **Exhibit P** is an email from Ryan McBride concerning the progress on *Respondents'' Brief* to the Court of Appeals, dated October 2, 2009.

95. **Exhibit Q** is an email exchange between Ryan McBride and DeCourseys dated May 16, 2011.

96. **Exhibit R** is an excerpt of the Appellants' Brief filed in Court of Appeals, Div. I, in the case *Mark DeCoursey and Carol DeCoursey, Res. v. Paul Stickney et al.* Case No 62912-3-I.

97. **Exhibit S** is a copy of the Lane Powell's Billed and Unbilled Recap of time Detail, DeCoursey v. V&E Medical Imaging, "page 40" include in Clerk's Papers as CP 1279.

DATED this ~~8th~~ 6th day of December, 2012

Mark DeCoursey

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