

Honorable Judge Jean Rietschel  
Hearing Date: July 25, 2014  
Time: 1:30 p.m.

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8 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
9 **IN AND FOR THE COUNTY OF KING**

10 ALYNE FORTGANG,

11 Plaintiff,

12 v.

13 WOODLAND PARK ZOO a/k/a  
14 WOODLAND PARK ZOOLOGICAL  
15 SOCIETY,

16 Defendant.

Case No.: 14-2-07283-0 SEA

**PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

17 **I. RELIEF REQUESTED**

18 COMES NOW Plaintiff Alyne Fortgang and, pursuant to CR 56, respectfully requests the  
19 Court conclude as a matter of law that Defendant Woodland Park Zoo a/k/a/ Woodland Park  
20 Zoological Society ("Zoo") is subject to the Washington State Public Records Act, RCW 42.56  
21 *et seq.* ("PRA").

22 **II. STATEMENT OF FACTS**

23 **A. Plaintiff's PRA Request and the Zoo's Response**

24 Plaintiff Alyne Fortgang is a single woman and a resident of the City of Seattle, in King  
25 County, in the state of Washington. Fortgang Decl. ¶ 1. Ms. Fortgang pays taxes and fees to the  
26 City of Seattle, which is used in part to fund the Zoo. *Id.* ¶ 2. On November 6, 2013, Plaintiff  
27

1 submitted a public records request to the Zoo that asked eight specific questions. Ex. A to  
2 Fortgang Decl. Among other things, the public records request sought information on use of  
3 taxpayer dollars by the Zoo for the elephants, as well as information and background documents  
4 used by the Zoo for its Report. *Id.*

5 On November 13, 2013, the Zoo contacted Plaintiff in writing acknowledging receipt of  
6 the public records request and promising a response by December 20, 2013. Ex. B to Fortgang  
7 Decl. On December 20, 2013, the Zoo responded to Plaintiff’s public records request by stating  
8 that the Zoo is “a private company” but was “responding to your questions despite any legal  
9 obligation to do so.” Ex. C to Fortgang Decl. The Zoo’s response addressed each of the  
10 specific requests; however, the Zoo only provided responses to two. *Id.* The Zoo indicated that,  
11 as to the other requested public records, “The zoo considers this information not subject to a  
12 public records request.” *Id.*

13 **B. The Zoo’s Operating Agreement with the City**

14 The City of Seattle, acting through its Department of Parks and Recreation, entered into  
15 the Woodland Park Zoo Operations and Management Agreement (the “Operating Agreement”)  
16 with the Zoo on December 17, 2001. Ex. A to Smith Decl. The term of the Operating  
17 Agreement is twenty years. *Id.* at p. 7.

18 Under the Operating Agreement, the Woodland Park Zoological Society manages and  
19 operates the Zoo, and assumed all of the City of Seattle’s (“City”) obligations with respect to the  
20 animals exhibited, housed, or otherwise kept at the Zoo. The Operating Agreement provides that  
21 the City must provide the Zoo with annual operations payments, routine maintenance payments,  
22 and other financing. The City retains ownership and control over the property and facilities of  
23 the Zoo. *Id.* at p. 3. Ownership of Zoo animals rests with the Zoo, but reverts to the City upon  
24 expiration or termination of the Operating Agreement. *Id.* at p. 17. The Operating Agreement  
25 may be terminated if the Zoo fails to care for the Zoo animals in accordance with federal, state,  
26 and local laws and regulations. *Id.* at p. 26-27.

1 The Operating Agreement requires the Zoo to provide a formal annual report and to  
 2 present an annual plan and monthly reports to the superintendent of the City's Department of  
 3 Parks and Recreation, to provide quarterly supplementary reports to the City's Board of Park  
 4 Commissioners, and to provide annual reports to the City's Parks and Green Spaces Levy  
 5 Oversight Committee. *Id.* at p. 22. The Zoo has to provide the public with an opportunity to  
 6 review and comment on the Annual Report and further agrees to respond to such comments in a  
 7 supplementary report to the City. *Id.* at p. 23. In addition, the superintendent of the City's  
 8 Department of Parks may, upon request, inspect the Zoo records regarding the veterinary  
 9 management and treatment of Zoo animals in order to ensure that Zoo animals are receiving  
 10 proper care and treatment. *Id.* at p. 22. Under the Operating Agreement, these Zoo veterinary  
 11 records are also to be made available to a member of the public upon request. *Id.*

12 **C. The City's and Taxpayer's Substantial Funding of the Zoo**

13 Since the Operating Agreement was put in place, the Zoo has relied substantially on the  
 14 City and King County's support for its operations. The following chart demonstrates the  
 15 substantial subsidies that taxpayers provide to the Zoo on an annual basis:

Year Ending (December 31)	Total Contributed Support	City Contribution	County Contribution (Pro Parks Levy)	Percentage of Government Subsidy
2002	\$21,186,782	\$5,700,000	\$3,204,816	42.0%
2003	\$21,630,140	\$6,554,050	\$2,622,000	42.4%
2004	\$22,537,105	\$6,656,930	\$2,685,000	41.5%
2005	\$24,955,943	\$6,732,061	\$2,751,000	38.0%
2006	\$25,252,936	\$6,816,698	\$2,819,000	38.2%
2007	\$27,927,541	\$6,988,644	\$2,888,000	35.4%
2008	\$28,028,670	\$7,315,896	\$4,304,409	41.5%
2009	\$30,581,123	\$6,359,045	\$3,616,928	32.6%
2010	\$29,668,062	\$6,359,045	\$3,663,478	33.8%
2011	\$33,949,517	\$6,327,561	\$3,794,413	29.8%
2012	\$33,938,403	\$6,478,611	\$3,983,460	30.8%
<b>TOTAL</b>	<b>\$299,656,222</b>	<b>\$72,288,541</b>	<b>\$36,332,504</b>	

26 Ex. B to Smith Decl. In total, since the Operating Agreement was executed, **over \$100 Million**  
 27 of City and County government money – from taxpayers – has been spent on the Zoo.

1 **III. STATEMENT OF THE ISSUES**

- 2 1. Whether the Court should grant Plaintiff’s motion for summary judgment and hold  
3 the Zoo accountable to taxpayers as the functional equivalent of a public entity under  
4 the PRA?  
5  
6 2. Whether Plaintiff is a prevailing party under the PRA for an award of all costs and  
7 reasonable attorneys’ fees incurred in connection with this action, and for the award  
8 of a statutory penalty for each day Defendant was in violation of the PRA pursuant to  
9 RCW 42.56.550(4).

10 **IV. EVIDENCE RELIED UPON**

11 This Motion relies on the Declaration of Alyne Fortgang (“Fortgang Decl.”) and the  
12 Declaration of Rob Roy Smith (“Smith Decl.”) and the Exhibits attached thereto, as well as the  
13 [Proposed] Order submitted with this Motion on behalf of Plaintiff.

14 **V. LEGAL AUTHORITY AND ARGUMENT**

15 **A. Summary Judgment Standard**

16 Summary judgment is appropriate where there are no genuine issues of material fact and  
17 the moving party is entitled to judgment as a matter of law. CR 56. Summary judgment is  
18 designed to do away with unnecessary trials when there is no genuine issue of material fact.  
19 *LaPlante v. State*, 85 Wash.2d 154, 158, 531 P.2d 299 (1975). “A material fact is one upon  
20 which the outcome of the litigation depends.” *Jacobsen v. State*, 89 Wash.2d 104, 108, 569 P.2d  
21 1152 (1977).

22 The burden is on the moving party to demonstrate there is no genuine issue of material  
23 fact and, as a matter of law, summary judgment is proper. *Jacobsen*, 89 Wash.2d at 108. If the  
24 moving party satisfies its burden, then the non-moving party must present evidence  
25 demonstrating material facts are in dispute. *Atherton Condo Ass’n v. Blume Dev. Co.*, 115  
26 Wash.2d 506, 516, 799 P.2d 250 (1990). The non-moving party must “set forth specific facts  
27

1 showing there is a genuine issue for trial.” *LaPlante*, 85 Wash.2d at 158. A non-moving party  
2 may not oppose a motion of summary judgment by nakedly asserting there are unresolved factual  
3 questions. *Bates v. Grace United Meth. Church*, 12 Wash. App. 111, 115, 529 P.2d 466 (1974).

4 As explained below, as a matter of law the Court should find that the Zoo is the  
5 functional equivalent of a state or local agency and is subject to the PRA.

#### 6 **B. Washington’s Public Records Act**

7 The “PRA is a strongly worded mandate for broad disclosure of public records.”  
8 *Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wash.2d 702, 714, 261 P.3d  
9 119 (2011). In light of this purpose, the PRA is liberally construed in favor of disclosure and its  
10 exemptions are narrowly construed. RCW 42.56.030. The PRA “requires all state and local  
11 agencies to disclose any public record upon request, unless the record falls within certain very  
12 specific exemptions.” *Progressive Animal Welfare Soc. v. Univ. of Wash.*, 125 Wash.2d 243,  
13 250, 884 P.2d 592 (1994).<sup>1</sup> RCW 42.17.020(1) defines agency to include all state agencies and  
14 all local agencies. Some non-government agencies (such as an association of counties) which  
15 nonetheless performs governmental or quasi-governmental functions can be considered an  
16 “agency” if they meet a four-part test. *See* 2002 Att’y Gen. Op. No. 2.

17 Under the PRA, agencies must respond within five business days of receipt of a public  
18 records request. RCW 42.56.520; *West v. Thurston County*, 168 Wash. App. 162, 182, 275 P.3d  
19 1200 (2012). An agency may withhold all or part of a record if it falls within an exemption  
20 under the PRA “or other statute which exempts or prohibits disclosure of specific information or  
21 records.” RCW 42.56.070(1). Review of the Zoo’s decision is *de novo*. RCW 42.156.550(3).

#### 22 **C. The Zoo Is Subject to the PRA**

23 “The Washington Public Records Act is one of the strongest open government laws in the  
24 nation and reflects the desire of Washington citizens to know what their government is doing. A  
25

26 \_\_\_\_\_  
27 <sup>1</sup> In *PAWS*, the Supreme Court interpreted and applied former chapter 42.17 RCW, the public disclosure act (PDA).  
Effective July 1, 2006, the PDA was renamed the PRA and was recodified as chapter 425 of the RCW. LAWS OF  
2005, ch. 274, §§ 102-03.

1 transparent and accessible government is essential to a successful free society, and fosters trust  
2 and confidence in government.” <http://www.atg.wa.gov/OpenGovernment.aspx>. It is time for  
3 the Zoo to come clean to the people of Seattle and become subject to the PRA.

4         The leading case that must guide this Court’s consideration of whether the Zoo is the type  
5 of public entity that is subject to the PRA is *Telford v. Thurston County Bd. of Comm’rs*, 95  
6 Wash.App. 149, 974 P.2d 886, *review denied*, 138 Wash.2d 1015, 989 P.2d 1143 (1999)  
7 (“*Telford*”). In *Telford*, the Court of Appeals was asked to determine if two organizations—the  
8 “Washington State Association of Counties” and the “Washington State Association of County  
9 Officials”—were public entities. *Id.* at 152-56, 974 P.2d 886. The court in *Telford* adopted a  
10 four-factor “functional equivalent” balancing test to determine if an entity is to be regarded as a  
11 public agency for purposes of the PRA: (1) whether the entity performs a governmental function;  
12 (2) the level of government funding; (3) the extent of government involvement or regulation; and  
13 (4) whether the entity was created by the government. *Id.* at 162, 974 P.2d 886. Under *Telford*,  
14 each of these criteria need not be equally satisfied, but rather the criteria on balance should  
15 suggest that the entity in question is the functional equivalent of a state or local agency. *Id.* On  
16 balance, there is no genuine issue of material fact and judgment as a matter of law should issue  
17 that the Zoo is the functional equivalent of a state or local agency and is, therefore, subject to the  
18 PRA.

### 19                   **1. The Zoo Performs a Government Function**

20         The first *Telford* factor, performance of a government function, is satisfied here. The  
21 Operating Agreement was expressly established in order to further the *City’s mission* in  
22 “education, conservation of wildlife, recreation, providing benefits to the citizens of Seattle, and  
23 developing the Zoo as an important civic asset, cultural resource and attraction.” Ex. A at p. 3 to  
24 Smith Decl. The City continues to own the underlying property managed by the Zoo. *Id.* at p. 9-  
25 10. Although the Operating Agreement does give temporary ownership rights of the animals to  
26 the Zoo, it also imposes on the Zoo “all obligations the City may have with respect to animals  
27

1 exhibited” and provides the City with a reversionary interest in the animals. *Id.* at p. 17. The Zoo  
2 is stepping into the City’s shoes and performing a government function.

3 The Zoo’s contractual relationship with the City under the Operating Agreement is  
4 analogous to the facts in *Clarke v. TCAC & Control Shelter*, 144 Wash.App. 185, 181 P.3d 881  
5 (2008). In that case, the Court of Appeals held that the Tri-Cities Animal Care & Control Shelter  
6 (“TCAC”), a privately-run corporation that contracted with the Animal Control Authority of  
7 Richland, Pasco and Kennewick to provide animal control services for the Tri-Cities area, was  
8 the functional equivalent of a public agency for purposes of the PRA. Like here, under the  
9 government function factor, the court noted although the functions were assigned to the private  
10 sector, the delegation occurred via a contractual relationship between the cities and the animal  
11 control agency. *Id.* at 194. The court concluded that “the nature of the delegation merely allows  
12 TCAC to step into the shoes of the local government. In short, while the local government can  
13 delegate the performance authority for this public function to a private entity, it cannot delegate  
14 away its statutory responsibility to perform within [PRA] legal requirements.” *Id.* The court  
15 went on, “were we to conclude that TCAC is not a functional equivalent of a public agency, we  
16 would be setting a precedent that would allow governmental agencies to contravene the intent of  
17 [ ] Public Records Act by contracting with private entities to perform core government  
18 functions.” *Id.* The same holds true here.

19 For these reasons, this factor balances in favor of finding that the Zoo is the functional  
20 equivalent of a public agency.

## 21 **2. The Zoo Receives Substantial Government Funding**

22 The second *Telford* factor tips strongly in favor of application of the PRA to the Zoo.  
23 The Operating Agreement requires continuous, substantial funding by the City and King County  
24 taxpayers. The numbers tell the story. Accordingly to the Zoo’s website, presumably for 2014,  
25 “Public funding sources provide 30% of the zoo’s support, including revenue from both the City  
26 of Seattle and King County.” <http://zoo.org/page.aspx?pid=2372#Establishment>. The Zoo’s  
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1 operating budgets for each year since the Operating Agreement was executed demonstrate that  
2 the City and the County contribute approximately one-third of the funding needed to operate the  
3 Zoo. Ex. B Smith Decl; *see* Table *supra*. In fact, since 2002, the City has contributed a  
4 staggering \$72,288,541 to the Zoo; another \$36,332,504 has been contributed to the Zoo from  
5 King County through the Pro Parks Levy. *Id.*

6 The substantial and ongoing tax payer contribution to the Zoo –\$108,621,045.00 since  
7 2002 – is critical to the Zoo’s operation. The Zoo could not operate absent City and County  
8 contributions and levies. In fact, the Agreement spells out Zoo’s option to terminate the  
9 Operating Agreement unless the City continually renews a Zoo levy or, absent voter approval,  
10 provides “replacement funding.” Ex. A to Smith Decl. at p. 27. Moreover, under the Operating  
11 Agreement, the Zoo operates on City-owned land within a public park which is open to the  
12 public, and the City to holds title to all buildings and the land. *Id.* at p. 16. In sum, both annual,  
13 dependable publicly-funded support, and the land itself, are indispensable to the Zoo’s very  
14 existence.

15 Again, these facts are similar to the facts in *Clarke*. There, a majority of TCAC’s  
16 operating budget came from public money and the “TCAC occupies space in a building rent-  
17 free, subsidized by the local government with which it contracts, and it is forbidden by the terms  
18 of that contract from engaging in any business on that premises other than its animal control  
19 services.” *Clarke*, 144 Wash.App. at 195. For the same reasons, this factor heavily weighs in  
20 favor of application of the PRA to the Zoo.

### 21 **3. The City is Extensively Involved in the Zoo**

22 The third *Telford* factor also tips strongly in favor of application of the PRA to the Zoo,  
23 as the Operating Agreement makes clear the robust oversight of the Zoo by the City.

24 As a general matter under the Operating Agreement, the Zoo’s financial records must be  
25 open and available for review by the City. Ex. A to Smith Decl. at p. 23. The Operating  
26 Agreement requires the Zoo to provide annual reports to the Superintendent of Seattle Parks,  
27



1 including a “complete financial accounting.” *Id.* at p. 21. It also requires the Zoo to submit an  
2 annual plan to the Superintendent, including a one-year capital improvement plan, a description  
3 of all major programmatic changes, and any change to fees. *Id.* The Operating Agreement also  
4 specifically requires a host of supplementary reports be issued to City entities. The Zoo must  
5 submit quarterly reports to the Parks Board, reports to Oversight Committee regarding  
6 expenditure of levy funds, monthly finance reports to the Parks Superintendent, a summary of  
7 revenue from various sources and accounting of costs, and an annual independent audit signed  
8 and delivered to the Superintendent. *Id.* at p. 22.

9         The Operating Agreement requires the public’s participation on Zoo’s Board of Directors  
10 via appointment of public members, one each by the Mayor, the Superintendent, and the Council  
11 committee that generally oversees parks functions. *Id.* at p. 24. Similarly, the Operating  
12 Agreement requires WPZ to involve the public in all major capital projects and specifically calls  
13 for a neighborhood liaison with Phinney Ridge, Wallingford, Fremont and Greenlake  
14 neighborhoods. *Id.* at p. 23. The Zoo’s board meetings are subject to notice and public  
15 participation. *Id.*

16         In addition, there are government restrictions on how the City facilities can be used by  
17 the Zoo. The premises are to be used solely for the operation of a public zoological gardens and  
18 related and incidental purposes and programs. *Id.* at p. 9. Additionally, improved transit, bicycle  
19 and pedestrian access was required to be built into all parking area improvements. *Id.* at p. 14  
20 The City continues to own the underlying property managed by the Zoo as well as improvements  
21 made to the property. *Id.* at p. 9. Under the Operating Agreement, the City is also able to  
22 perform an audit of “the use and application of all revenues, grants and fees, all City funds,  
23 except for private fundraising activities and private donor information, received by WPZS during  
24 the current and preceding year, including Zoo operations and management.” *Id.* at p. 23. This  
25 provision of the Operating Agreement provides the City with extensive oversight in compliance  
26 with RCW 35.64.010, which governs public contracts for management and operation and  
27

1 requires oversight “to ensure public accountability of the entity and its performance in a manner  
2 consistent with the contract.” *Id.* at p. 18.

3 In sum, there is a substantial degree of City control of the Zoo. This factor too heavily  
4 weighs in favor of finding that Zoo is the functional equivalent of a public agency.

#### 5 **4. The Zoo Was Originally a City Entity; Now, the Zoo Could Not Exist** 6 **Without the City**

7 What is now the Zoo as Seattleites know it was largely run by the Seattle Parks  
8 Department for much of its existence; it was only in 1965 that the Seattle Zoological Society  
9 (later Woodland Park Zoological Society) was formed. <http://zoo.org/page.aspx?pid=2170>; *see*  
10 *also* <http://zoo.org/page.aspx?pid=2372#Establishment>. In 2002, through the Operating  
11 Agreement, the City transferred certain responsibilities to Woodland Park Zoological Society.  
12 Most importantly, the Operating Agreement makes clear that Zoo could not perform its functions  
13 without its symbiotic relationship with the City. *See generally*, Ex. A to Smith Decl. At best,  
14 the fourth *Telford* factor is neutral.

#### 15 **5. On Balance, the Zoo is Subject to the PRA**

16 On Plaintiff’s summary judgment motion, the Court is required balance the above four-  
17 factors, construing the PRA liberally in favor of the fullest possible public records access. On  
18 balance, the Court should conclude as a matter of law that the Zoo is the functional equivalent of  
19 a public agency.

20 If public agencies are able to create and finance a new agency with public money, but  
21 then call it an exempt association, they would effectively be able to delegate significant  
22 government power to an entity that is insulated from public accountability. Here, the City has  
23 created and funded a separate organization in order to manage and operate property owned by  
24 the City without being subject to such accountability. While the Zoo undeniably performs some  
25 non-public functions and has some non-public characteristics, the fact that it performs a  
26 governmental function dependent upon its relationship with the City, receives substantial funding  
27 from taxpayers to perform that function (over \$100 Million since 2002), and is subject to regular

1 City government oversight, all tip the scale in favor of finding that Zoo is the functional  
2 equivalent of a public agency.

3 This conclusion is bolstered by the fact that the Zoo has partially complied with the PRA.  
4 The Zoo complied with the PRA requirement of acknowledging receipt of the Plaintiff's public  
5 records request within five days. RCW 42.56.520; Ex. B to Fortgang Decl. The Zoo cannot  
6 have it both ways, as it cannot claim it is not subject to the PRA at all based on its practice of  
7 partial compliance with PRA requests. Compliance with the five-day rule is a critical admission  
8 of the PRA's application to the Zoo.

9 **D. Because the Zoo is Subject to the PRA, Statutory Attorney's Fees and a**  
10 **Penalty Must Be Awarded**

11 The PRA requires the trial court to award attorney fees and costs to a party who "prevails  
12 against an agency in any action in the courts seeking the right to inspect or copy any public  
13 record or the right to receive a response to a public record request within a reasonable amount of  
14 time." RCW 42.56.550(4). The award of reasonable attorneys' fees and the award of the  
15 statutory penalty are mandatory, although the amount is within the court's discretion. *E.g.*,  
16 *Progressive Animal Welfare Soc'y*, 114 Wash.2d at 683-84, 790 P.2d 604. A PRA claimant  
17 "prevails" against an agency if the agency wrongfully withheld the documents or that some other  
18 violation of the PRA occurred. *Germeau v. Mason County*, 166 Wash. App. 789, 811, 271P.3d  
19 932, *review denied*, 174 Wash.2d 1010 (2012); *Citizens for Fair Share v. Department of*  
20 *Corrections*, 117 Wash. App. 411, 431, 72 P.3d 206 (2003).

21 Here, if the Court finds that the Zoo is subject to the PRA, there is no credible dispute  
22 that Plaintiff should be found to be a "prevailing party" under the PRA. As such, as a matter of  
23 law, Plaintiff should be awarded her attorneys' fees and costs, in an amount to be determined  
24 through post-judgment briefing.

25 "In addition, it shall be within the discretion of the court to award . . . an amount not less  
26 than five dollars and not to exceed one hundred dollars for each day that he or she was denied the  
27 right to inspect or copy [a wrongfully withheld] public record. " RCW 42.56.550(4). A "PRA

1 penalty determination involves a two-step inquiry: (1) determining the appropriate daily penalty  
2 amount; and (2) calculating the number of days the public agency denied the party access to the  
3 records.” *West*, 168 Wash. App. at 188. The principal factor to be considered in setting the  
4 amount of the statutory daily penalty is whether the agency acted in bad faith, but bad faith is not  
5 required. *Yacobellis v. City of Bellingham*, 64 Wash. App. 295, 303, 825 P.2d 324 (1992). The  
6 requester need not show actual loss. The penalty is for each day the record was withheld and  
7 need not be per record, although a court has discretion to group records into categories and  
8 impose penalties per category. *Yousoufian v. Office of Ron Sims*, 152 Wash.2d 421, 436, 98 P.3d  
9 463 (2004). The penalty runs for the time between the request and the disclosure.

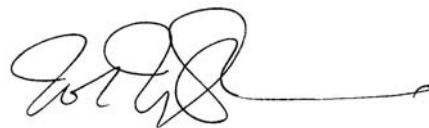
10 The Court should exercise its discretion under RCW 42.56.550(4) to assess the full  
11 statutory penalty (\$100/ day) against the Zoo for its failure to comply with the PRA. The  
12 number of days for which the penalty should apply is from November 13, 2013 (the date of the  
13 request) through, at least, the date of any Order compelling disclosure.

14 **VI. CONCLUSION**

15 For the foregoing reasons, Plaintiff respectfully requests that the Court grant this motion  
16 and declare that the Zoo is the functional equivalent of a state or local agency and is subject to  
17 the PRA; enjoin the Zoo to comply with Plaintiff’s PRA request; and award Plaintiff her  
18 attorneys fees costs and make an assessment of penalties under RCW 42.56.550(4).

19 DATED this 23rd day of June, 2014.

20 **Kilpatrick, Townsend & Stockton LLP**

21 

22 By: \_\_\_\_\_

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25 1420 Fifth Avenue, Suite 4400  
26 Seattle, WA 98101  
27 202-467-9600

*Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**


2 I hereby certify that I served via mail and electronic mail the foregoing **PLAINTIFF’S**  
3 **MOTION FOR SUMMARY JUDGMENT**, on June 23, 2014, to the following:

4  
5 Gregory J. Wong  
6 Paul J. Lawrence  
7 Pacifica Law Group LLP  
8 1191 Second Avenue, Suite 2100  
9 Seattle, WA 98101

10 *Attorneys for Defendant*

11 DATED this 23rd day of June, 2014.

12 KILPATRICK TOWNSEND & STOCKTON LLP

13 

14 By: \_\_\_\_\_  
15 Rob Roy Smith, WSBA # 33798  
16 [RRSmith@kilpatricktownsend.com](mailto:RRSmith@kilpatricktownsend.com)  
17 *Attorneys for Plaintiff*