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The Honorable Barbara J. Rothstein

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

THE TULALIP TRIBES, and THE
CONSOLIDATED BOROUGH OF
QUIL CEDA VILLAGE,

Plaintiffs,

v.

Washington State Department of Revenue
Director VIKKI SMITH, SNOHOMISH
COUNTY, Snohomish County Treasurer
KIRKE SIEVERS, and Snohomish
County Assessor CINDY PORTMANN,

Defendants.

NO. 2:15-cv-00940-BJR

DEFENDANT VIKKI SMITH'S
ANSWER AND AFFIRMATIVE
DEFENSES

Defendant Vikki Smith ("Smith") responds to the allegations in Plaintiffs' Complaint as follows.

I. ANSWER

1. Smith admits that the Tulalip Tribes have been involved in developing the Quil Ceda Village into a thriving economic center that generates millions of dollars of annual economic activity. Smith also admits that the Complaint seeks a declaration and injunction to enjoin various taxes. Smith denies that State or Snohomish County taxes preclude Plaintiffs from imposing Tribal taxes. Smith is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1, and therefore denies the same.

1 2. Smith is without knowledge or information sufficient to form a belief as to the truth
2 of the allegation that the Village's development was "accomplished through" the cited
3 statute, and therefore denies the same. Smith admits that development of the Village
4 advances certain congressional policies. Smith admits that the Tulalip Tribes have been
5 involved in developing, maintaining, and supporting infrastructure and business activities
6 within the Village, but denies that the State and Snohomish County have been excluded from
7 all these activities. Smith is without knowledge or information sufficient to form a belief as
8 to the truth of the remaining allegations in Paragraph 2, and therefore denies the same.

9 3. Smith admits that the State and County annually collect tens of millions of dollars in
10 total excise and personal property taxes from non-Indian businesses and non-Indian patrons
11 related to activities within Quil Ceda Village. Smith denies that the collection of these taxes
12 excludes Plaintiffs from imposing or enforcing taxes. Smith denies that imposition of these
13 taxes unduly burdens the Tulalip or commerce within the Village or interferes with any of the
14 cited objectives. Smith denies that these taxes prevent Tulalip or the Village from imposing
15 taxes. Smith admits that if Plaintiffs imposed or collected taxes, they could be used for the
16 cited activities, but is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations about how such revenues would be used, and therefore denies the
18 same. Smith denies that state or county taxes frustrate federal statutory or regulatory
19 provisions, denies that Tribal taxes have been excluded, and denies that federal statutory or
20 regulatory provisions seek to exclude "interference" by state or local governments.

21 4. Smith admits that the Complaint requests declaratory and injunctive relief and denies
22 the rest of the allegations in Paragraph 4.

23 5. Smith admits that this Court has jurisdiction over the subject matter of this action
24 under 28 U.S.C. § 1331 and §1362. Smith denies that the allegations of the Complaint give
25 rise to an actual controversy under 28 U.S.C. § 2201 because Plaintiffs' alleged harm or legal
26 injury is speculative.

1 6. Smith admits the allegations in Paragraph 6.

2 7. Smith admits the first and third sentences in Paragraph 7, including the legal citation
3 following the first sentence. The second sentence in Paragraph 7 constitutes legal argument
4 and requires no answer. To the extent an answer is required, Smith admits that the Tulalip
5 exercise powers of self-governance within the Tulalip Reservation, which is located within
6 the exterior boundaries of the State of Washington.

7 8. Smith is without knowledge or information sufficient to form a belief as to the truth
8 of the allegations in Paragraph 8, and therefore denies the same.

9 9. Smith admits the allegations of Paragraph 9, with the clarification that the
10 Washington State Department of Revenue administers and enforces some, but not all, of the
11 taxes at issue in the Complaint.

12 10. Smith denies the allegation in Paragraph 10 that Snohomish County is a municipal
13 government. Smith admits the remaining allegations of Paragraph 10, with the clarification
14 that Snohomish County enforces the personal property tax at issue in this Complaint.

15 11. Smith admits the allegations in Paragraph 11, with respect to the personal property
16 tax at issue in this Complaint. With respect to other taxes at issue in this Complaint, Smith
17 denies the allegations in Paragraph 11.

18 12. Smith admits that Defendant Cindy Portman is the Snohomish County Assessor, that
19 she assesses taxable value and calculates levy rates, and that she is sued in her official
20 capacity. Smith denies the remaining allegations in Paragraph 12.

21 13. Smith admits the allegations in the first two sentences of Paragraph 13. With regard
22 to the third sentence of Paragraph 13, Smith admits that Tulalip has certain rights and
23 authority on its reservation. The remainder of the third sentence constitutes legal argument,
24 to which no answer is required.

25 14. Smith is without knowledge or information sufficient to form a belief as to the truth
26 of the allegations in Paragraph 14, and therefore denies the same.

1 15. Smith is without knowledge or information sufficient to form a belief as to the truth
2 of the allegations in Paragraph 15, and therefore denies the same.

3 16. Smith is without knowledge or information sufficient to form a belief as to the truth
4 of the allegations in Paragraph 16, and therefore denies the same.

5 17. Smith is without knowledge or information sufficient to form a belief as to the truth
6 of the allegations in Paragraph 17, and therefore denies the same.

7 18. Smith is without knowledge or information sufficient to form a belief as to the truth
8 of the allegations in Paragraph 18, and therefore denies the same.

9 19. Smith is without knowledge or information sufficient to form a belief as to the truth
10 of the allegations in Paragraph 19, and therefore denies the same.

11 20. Smith is without knowledge or information sufficient to form a belief as to the truth
12 of the allegations in Paragraph 20, and therefore denies the same.

13 21. Smith is without knowledge or information sufficient to form a belief as to the truth
14 of the allegations in Paragraph 21, and therefore denies the same.

15 22. Smith is without knowledge or information sufficient to form a belief as to the truth
16 of the allegations in Paragraph 22, and therefore denies the same.

17 23. With regard to Paragraph 23, Smith admits that Plaintiff or Plaintiffs have engaged in
18 infrastructure development within the Village. Smith is without knowledge or information
19 sufficient to form a belief as to the truth of the allegations regarding specific projects
20 Plaintiffs have engaged in, or the specific amount of money expended by Plaintiffs, and
21 therefore denies the same.

22 24. Smith is without knowledge or information sufficient to form a belief as to the truth
23 of the allegations in Paragraph 24, and therefore denies the same.

24 25. Smith is without knowledge or information sufficient to form a belief as to the truth
25 of the allegations in Paragraph 25, and therefore denies the same.
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1 26. Smith is without knowledge or information sufficient to form a belief as to the truth
2 of the allegations in Paragraph 26, and therefore denies the same.

3 27. Smith is without knowledge or information sufficient to form a belief as to the truth
4 of the allegations in Paragraph 27, and therefore denies the same.

5 28. Smith is without knowledge or information sufficient to form a belief as to the truth
6 of the allegations in Paragraph 28, and therefore denies the same.

7 29. Smith is without knowledge or information sufficient to form a belief as to the truth
8 of the allegations in Paragraph 29, and therefore denies the same.

9 30. Smith is without knowledge or information sufficient to form a belief as to the truth
10 of the allegations in Paragraph 30, and therefore denies the same.

11 31. Smith is without knowledge or information sufficient to form a belief as to the truth
12 of the allegations in Paragraph 31, and therefore denies the same.

13 32. Smith admits the presence of Wal-Mart and Home Depot retail stores at the Village.
14 Smith is without knowledge or information sufficient to form a belief as to the truth of the
15 remaining allegations in Paragraph 32, and therefore denies the same.

16 33. Smith is without knowledge or information sufficient to form a belief as to the truth
17 of the allegations in Paragraph 33, and therefore denies the same.

18 34. Smith admits that in 2003, Tulalip opened a gaming facility in the Village in
19 accordance with a Tribal/State Compact for Class III Gaming Between Tulalip Tribes of
20 Washington and the State of Washington. Smith is without knowledge or information
21 sufficient to form a belief as to the truth of the other allegations in Paragraph 34, and
22 therefore denies the same.

23 35. Smith admits the presence of Seattle Premium Outlets at the Village north of the
24 gaming facility. Smith is without knowledge or information sufficient to form a belief as to
25 the truth of the other allegations in Paragraph 35, and therefore denies the same.
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1 36. Smith admits the presence of an amphitheater at the Village. Smith is without
2 knowledge or information sufficient to form a belief as to the truth of the other allegations in
3 Paragraph 36, and therefore denies the same.

4 37. Smith admits the presence of a hotel, resort, and spa at the Village adjacent to the
5 casino. Smith is without knowledge or information sufficient to form a belief as to the truth
6 of the remaining allegations in Paragraph 37, and therefore denies the same.

7 38. Smith admits the presence of a Cabela's retail store at the Village. Smith is without
8 knowledge or information sufficient to form a belief as to the truth of the remaining
9 allegations in Paragraph 38, and therefore denies the same.

10 39. Smith is without knowledge or information sufficient to form a belief as to the truth
11 of the allegations in Paragraph 39, and therefore denies the same.

12 40. Smith is without knowledge or information sufficient to form a belief as to the truth
13 of the allegations in Paragraph 40, and therefore denies the same.

14 41. Smith is without knowledge or information sufficient to form a belief as to the truth
15 of the allegations in Paragraph 41, and therefore denies the same.

16 42. Smith is without knowledge or information sufficient to form a belief as to the truth
17 of the allegations in Paragraph 42, and therefore denies the same.

18 43. Smith is without knowledge or information sufficient to form a belief as to the truth
19 of the allegations in Paragraph 43, and therefore denies the same.

20 44. Smith is without knowledge or information sufficient to form a belief as to the truth
21 of the allegations in Paragraph 44, and therefore denies the same.

22 45. Smith is without knowledge or information sufficient to form a belief as to the truth
23 of the allegations in Paragraph 45, and therefore denies the same.

24 46. Smith is without knowledge or information sufficient to form a belief as to the truth
25 of the allegations in Paragraph 46, and therefore denies the same.
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1 47. Smith admits that Tulalip Tribal police officers are recognized and authorized to act
2 as general authority Washington peace officers under state law within the exterior boundaries
3 of the Tulalip Reservation or as authorized under chapter 10.93 RCW, except to the extent
4 that Plaintiffs and Tulalip Tribal police officers have failed to comply with RCW 10.92.020.
5 Smith is without knowledge or information sufficient to form a belief as to the truth of the
6 remaining allegations in Paragraph 47, and therefore denies the same.

7 48. Smith is without knowledge or information sufficient to form a belief as to the truth
8 of the allegations in Paragraph 48, and therefore denies the same.

9 49. Smith is without knowledge or information sufficient to form a belief as to the truth
10 of the allegations in Paragraph 49, and therefore denies the same.

11 50. Smith is without knowledge or information sufficient to form a belief as to the truth
12 of the remaining allegations in Paragraph 50, and therefore denies the same.

13 51. Smith is without knowledge or information sufficient to form a belief as to the truth
14 of the allegations in Paragraph 51, and therefore denies the same.

15 52. Smith is without knowledge or information sufficient to form a belief as to the truth
16 of the allegations in Paragraph 52, in part because the allegations are vague, and therefore
17 denies the same.

18 53. Smith is without knowledge or information sufficient to form a belief as to the truth
19 of the allegations in Paragraph 53, in part because the allegations are vague, and therefore
20 denies the same.

21 54. Smith is without knowledge or information sufficient to form a belief as to the truth
22 of the allegations in Paragraph 54, and therefore denies the same.

23 55. With regard to Paragraph 55, Smith admits than numerous businesses and visitors
24 come to the Village, and admits that those businesses together generate hundreds of millions
25 of dollars in annual sales activity. Smith is without knowledge or information sufficient to
26 form a belief as to the truth of to what extent the attraction of businesses, commercial

1 investment, visitors, or sales activities were due to the activities of Plaintiffs, and therefore
2 denies the same. Smith is also without knowledge or information sufficient to form a belief
3 as to the truth of to what extent the sales or revenues were generated as a result of a tax
4 advantage, and therefore denies the same.

5 56. Smith is without knowledge or information sufficient to form a belief as to the truth
6 of the allegations in Paragraph 56, and therefore denies the same.

7 57. Smith is without knowledge or information sufficient to form a belief as to the truth
8 of the allegations in Paragraph 57, and therefore denies the same.

9 58. Smith is without knowledge or information sufficient to form a belief as to the truth
10 of the allegations in Paragraph 58, and therefore denies the same.

11 59. Smith is without knowledge or information sufficient to form a belief as to the truth
12 of the allegations in Paragraph 59 generally and therefore denies the same. Smith denies that
13 such tribal artwork or tribal signage is prominent in the Seattle Premium Outlets.

14 60. Smith is without knowledge or information sufficient to form a belief as to the truth
15 of the allegations in Paragraph 60, and therefore denies the same.

16 61. With regard to Paragraph 61, Smith denies that the lands within the Village have
17 never been subject to state or county jurisdiction. Smith is without knowledge or information
18 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 61, and
19 therefore denies the same.

20 62. Smith admits that some United States Indian policies over the past 40 years have
21 encouraged self-determination, self-sufficiency, and economic development, but denies the
22 implication that these are the only policies that have been promoted over this time period.
23 Smith is without knowledge or information sufficient to form a belief as to the truth of the
24 remaining allegations in Paragraph 62, and therefore denies the same.

25 63. The first, second, and fourth sentences of Paragraph 63 constitute legal argument and
26 require no answer. To the extent an answer is required, Smith is without knowledge or

1 information sufficient to form a belief as to the truth those allegations, and therefore denies
2 the same. Smith is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations in the third sentence of Paragraph 63, and therefore denies the same.

4 64. Smith admits the allegations in Paragraph 64 as to ad valorem taxation of land, but
5 denies any implication that such statute covers any of the taxes at issue in this action.

6 65. Smith denies the allegations of the first sentence of Paragraph 65. Smith admits that
7 the language in the second sentence of this paragraph is quoted from the cited regulation, but
8 denies that this quoted language is complete, denies that the quoted language accurately
9 reflects the intent of the regulation without the omitted language, and also denies that the
10 quoted language supports the allegation in the first sentence of this paragraph.

11 66. Smith denies the allegations in Paragraph 66.

12 67. Smith is without knowledge or information sufficient to form a belief as to the truth
13 of the allegations in Paragraph 67, and therefore denies the same.

14 68. The allegations of Paragraph 68 constitute legal argument and require no answer.

15 69. Smith is without knowledge or information sufficient to form a belief as to the truth
16 of the allegations in Paragraph 69, and therefore denies the same.

17 70. Smith denies that Snohomish County administers and enforces sales and use taxes
18 under the identified statutes, but otherwise admits the allegations in Paragraph 70.

19 71. With regard to the allegations in the first sentence of Paragraph 71, Smith admits that
20 \$37 million reflects one estimate of the retail sales and use tax collected by the Department
21 of Revenue regarding activities within Quil Ceda Village in 2013. Smith denies that all state
22 retail sales tax revenue was deposited in the State general fund for general statewide
23 expenditures, and therefore denies the second sentence of Paragraph 71.

24 72. With regard to Paragraph 72, Smith admits that the Washington State Department of
25 Revenue administers and enforces a state business and occupation tax on businesses
26

1 operating within Quil Ceda Village, with various exceptions. The tax rates for various
2 classifications of the business and occupation tax are stated in RCW 82.04.

3 73. With regard to the allegations in the first sentence of Paragraph 73, Smith admits that
4 \$2.1 million reflects one estimate of the business and occupation taxes the Department of
5 Revenue collected related to activities within Quil Ceda Village in 2013. Smith admits that
6 revenue collected under the retailing classification of the state business and occupation tax
7 and most wholesaling tax revenue is deposited into the State general fund. Smith is without
8 knowledge or information sufficient to form a belief as to the truth of the remaining
9 allegations in Paragraph 73, and therefore denies the same.

10 74. With regard to Paragraph 74, Smith admits that pursuant to RCW Title 84, the
11 Department exercises general supervision and control over the administration of the property
12 tax laws of the state and that for calendar year 2013 (taxes due in 2014), the state property
13 tax levy rate was approximately \$2.43 per \$1,000 of assessed value. Except as admitted,
14 Smith denies the remaining allegations in Paragraph 74.

15 75. Smith admits the allegations in the first sentence of Paragraph 75 as reflecting an
16 estimate of the total collected for taxes on real property and personal property, but denies that
17 the figure of \$1 million reflects the amount of personal property taxes collected. With regard
18 to the second sentence, Smith denies that the figures listed for the State's and County's share
19 of personal property tax revenues are correct. Smith also denies that the State's share was
20 deposited in the State general fund "for general statewide expenditures" because state
21 property taxes are collected for support of common schools.

22 76. With regard to Paragraph 76, Smith admits that the Department of Revenue issued
23 Property Tax Advisory 1.1.2014. Smith denies that Property Tax Advisory 1.1.2014
24 "admits" the stated proposition. Rather, it is the Department's interpretation of a 2013 Ninth
25 Circuit decision. Smith admits that Property Tax Advisory 1.1.2014 does not address state or
26 local taxation of personal property on Indian trust lands. Smith admits that some personal

1 property tax is assessed at the Village, but denies that she or the Department is involved in
2 this assessment.

3 77. With regard to the first sentence of Paragraph 77, Smith admits that \$40.1 reflects one
4 estimate of the total state and county taxes collected related to activities at Quil Ceda Village
5 in 2013. Smith is without knowledge or information sufficient to form a belief as to the truth
6 of the second sentence in Paragraph 77, and therefore denies the same.

7 78. Smith admits the allegations in Paragraph 78.

8 79. Smith is without knowledge or information sufficient to form a belief as to the truth
9 of the allegations in Paragraph 79, in part because the allegations are vague, and therefore
10 denies the same.

11 80. Smith is without knowledge or information sufficient to form a belief as to the truth
12 of the allegations in Paragraph 80, in part because the allegations are vague, and therefore
13 denies the same.

14 81. With regard to Paragraph 81, Smith admits that the State does not directly remit the
15 referenced state tax revenues to Tulalip or the Village. Smith is without knowledge or
16 information sufficient to form a belief as to the truth of whether Tulalip has requested that the
17 State do so, and she denies any implication that Tulalip and the Village do not benefit from
18 those tax revenues.

19 82. Smith admits the allegations in the first two sentences in Paragraph 82 with respect to
20 the Tulalip Tribes and states that cooperative agreements between Tulalip and the State with
21 respect to cigarette and motor vehicle taxation have been made in accordance with state law.
22 Smith is without knowledge or information sufficient to form a belief as to the truth of the
23 allegations of the first sentence as they relate to Quil Ceda Village or Snohomish County and
24 other local governments. Smith admits that the Department and other agencies and state
25 officers currently lack the statutory authority to enter into any agreement of the type alleged.
26 Smith denies the remaining allegations in Paragraph 82.

1 83. Smith is without knowledge or information sufficient to form a belief as to the truth
2 of the allegations in the first two sentences in Paragraph 83, and therefore denies the same.
3 Smith denies the allegations in the final sentence of Paragraph 83.

4 84. Smith is without knowledge or information sufficient to form a belief as to the truth
5 of the allegations in Paragraph 84, and therefore denies the same.

6 85. Smith is without knowledge or information sufficient to form a belief as to the truth
7 of the allegations in Paragraph 85, and therefore denies the same.

8 86. Smith denies the allegations in Paragraph 86.

9 87. Smith is without knowledge or information sufficient to form a belief as to the truth
10 of the allegations in Paragraph 87, and therefore denies the same.

11 88. Smith denies the allegations in Paragraph 88.

12 89. Smith denies allegations in Paragraph 89.

13 90. Smith denies the allegations in Paragraph 90.

14 91. With regard to Paragraph 91, Smith denies that Defendants' actions deny Plaintiffs a
15 tax revenue stream or meaningful access to the municipal bond market. Smith is without
16 knowledge or information sufficient to form a belief as to the truth of the allegations
17 regarding whether Plaintiffs could use municipal bonds to finance economic and
18 infrastructure development, and therefore denies the same, although Smith assumes that such
19 use may be possible.

20 92. Smith denies the allegations in Paragraph 92.

21 93. Smith denies the allegations in Paragraph 93.

22 94. The allegations in Paragraph 94 constitute legal argument and require no answer. To
23 the extent an answer is required, Smith denies the allegations in Paragraph 94.

24 95. Smith denies the allegations in Paragraph 95.

25 96. Smith denies the allegations in Paragraph 96.

26 97. Smith denies the allegations in Paragraph 97.

1 98. Smith admits that the state taxes referenced in Paragraph 98 are generally imposed
2 taxes on individuals and businesses throughout the State, and that much of this revenue is
3 deposited into Washington's general fund. Smith denies that the State does not provide
4 important government services that benefit the Village, as well as its businesses, employees,
5 suppliers, or patrons.

6 99. Smith denies the allegations in Paragraph 99.

7 100. The allegations in Paragraph 100 constitute legal argument and require no answer.
8 To the extent an answer is required, Smith denies the allegations.

9 101. Smith is without knowledge or information sufficient to form a belief as to the truth
10 of the allegations in the first two sentences of Paragraph 101, and therefore denies the same.
11 Smith denies the allegations in the final sentence of Paragraph 101.

12 102. Smith is without knowledge or information sufficient to form a belief as to the truth
13 of the allegations in the first sentence of Paragraph 102, and therefore denies the same.
14 Smith denies the allegations in the second and third sentences of Paragraph 102. Smith is
15 without knowledge or information sufficient to form a belief as to the truth of the allegations
16 in the last sentence of Paragraph 102, and therefore denies the same.

17 103. Smith is without knowledge or information sufficient to form a belief as to the truth
18 of the allegations in Paragraph 103, and therefore denies the same.

19 104. Smith is without knowledge or information sufficient to form a belief as to the truth
20 of the allegations in Paragraph 104, and therefore denies the same.

21 105. Smith admits that lands held in trust by the United States for the benefit of an Indian
22 tribe or its members are not subject to ad valorem state or local taxation, but denies that this
23 prohibition of taxation extends to the taxes at issue in the Complaint. Smith denies the
24 allegations of the second and third sentences of Paragraph 105.

25 106. Smith denies the allegations of Paragraph 106, except to the extent that Smith admits
26 that the State has an interest in raising revenue.

1 107. Smith denies the allegations in Paragraph 107.

2 108. Smith denies the allegations in the first sentence of Paragraph 108. Smith is without
3 knowledge or information sufficient to form a belief as to the truth of the remaining
4 allegations in Paragraph 108, and therefore denies the same.

5 109. Smith denies the allegations in Paragraph 109.

6 110. With regard to Paragraph 110, Smith admits that Tulalip possesses certain rights to
7 make laws and to be ruled by them. The remaining allegations in Paragraph 110 constitute
8 legal argument and do not require an answer. To the extent an answer is required, Smith
9 denies the allegations.

10 111. The allegations in Paragraph 111 constitute legal argument and do not require an
11 answer.

12 112. The allegations in Paragraph 112 constitute legal argument and do not require an
13 answer.

14 113. Smith denies the allegations in Paragraph 113.

15 114. Smith denies the allegations in Paragraph 114.

16 **II. AFFIRMATIVE DEFENSES**

17 In further answer to the Complaint and as affirmative defenses, Defendant Smith
18 alleges:

- 19 1. Plaintiffs fail to state a claim upon which relief can be granted.
20 2. Plaintiffs have not alleged a legally cognizable injury or harm.
21 3. Plaintiffs' claims are not ripe.

22 **III. PRAYER FOR RELIEF**

23 Having answered the allegations of the Complaint and pleaded affirmatively,
24 Defendant Smith requests that the Court:

- 25 A. Dismiss the Complaint with prejudice or enter judgment for Defendants;
26 B. Award Defendant Smith costs and attorneys' fees as allowed by law; and

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C. Enter such other relief as the Court may deem just and equitable.

DATED this 14th day of August, 2015.

ROBERT W. FERGUSON
Attorney General

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PROOF OF SERVICE

I hereby certify that on August 14, 2015, I electronically filed Defendant Vikki Smith's Answer and Affirmative Defenses using the CM/ECF system, which will send notification of the filing to all parties in this matter who are registered with the Court's CM/ECF filing system.

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

DATED this 14th day of August, 2015, at Tumwater, WA.

/s/ Julie Johnson
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