

HOW TO PRESENT A CHARITY CARE DEFENSE TO A LAWSUIT FOR HOSPITAL DEBT COLLECTION

Introduction

This packet is intended to help you when you are being sued for hospital-based medical services which you would not owe if the hospital had correctly determined your eligibility for Charity Care. If you are being sued for hospital debts and other non-hospital related debts, you may want to use the information in this publication and the information in our publication How to Answer a Lawsuit for Debt Collection.

THIS PACKET IS NOT A SUBSTITUTE FOR ACTUAL REPRESENTATION BY A LAWYER. YOU SHOULD ALWAYS TRY TO CONSULT OR HIRE AN ATTORNEY BEFORE ANSWERING PAPERS.

This packet should be used with our publication "Charity Care": Medical Coverage for Hospital-Based Services, available from Northwest Justice Project by calling 1-888-201-1014 [1-888-201-9737 (TTY)], or on our web site at www.nwjustice.org. If you are 60 years of age or over, please call 1-888-387-7111.

Should you answer the complaint?

YES, if you believe that you do not owe part or all of the amounts claimed.

What happens if you do not answer the complaint?

The plaintiff will win automatically. The plaintiff will get a judgment for the amount of money the plaintiff asks for in the complaint, even if it is not the correct amount. Even if the plaintiff wins, there are limits on what the plaintiff may do to collect. See our publications Debtors' Rights in a Lawsuit and Debtors' Rights with Collection Agencies.

May your account go to a collection agency or might you be sued for an unpaid hospital bill if you have offered to make payments, cannot afford to pay off the debt in full immediately, or cannot afford to pay the debt at all?

YES, your account may go to collection or you may be sued once your bill becomes delinquent: a hospital is not required to accept partial payments, wait for full payment, or hold off on suing because you can't afford to pay your debt. **In addition, public hospitals (not private hospitals) may add a "collection fee" of up to 50% of the hospital bill upon referral of your account to a collection agency. Our publication, Debtor's Rights – Collection Agencies explains how you can obtain more information about your bills and added charges from the collection agency.**

A hospital is not, however, as our publication "Charity Care": Medical Coverage for Hospital-Based Services explains, allowed to sue you if you qualified for Charity Care, have a pending application for Charity Care, or are appealing a Charity Care denial. Additionally, if the hospital has agreed to your making small payments, and you have fully complied with this agreement, then you have a good argument that the hospital has entered into a contract with you. If that is

the case, the hospital should not **refer your account to collection** or sue you as long as you do not violate the contract. It is always best to get such agreements in writing.

What are a Summons and Complaint?

When any lawsuit is started, the person starting it must prepare a statement telling the judge what the problem is and what he or she wants. That statement is called the COMPLAINT, and the person, company or agency starting the lawsuit is called the PLAINTIFF. If the lawsuit is against you, you are the DEFENDANT. A copy of the COMPLAINT must be delivered to you so that you will know about the lawsuit. You will also receive a SUMMONS, which tells you that you have a right to disagree with the COMPLAINT in writing. It also tells you the amount of time you have to answer the COMPLAINT and where to deliver your ANSWER.

If you do not tell the court in writing that you disagree with the statements in the COMPLAINT, **the judge will assume that you agree with the COMPLAINT** and will usually give the PLAINTIFF what he or she asks for. In other words, the PLAINTIFF wins by DEFAULT since you have not answered. If a DEFAULT JUDGMENT is entered in the court records against you, you will not necessarily be notified. Once a JUDGMENT is entered against you, the PLAINTIFF may be able to use the judgment to take money from your bank account or paycheck, or to take some of your property to pay the JUDGMENT. Therefore, it is very important that you file an ANSWER within the time limit given by your SUMMONS, which is usually twenty days (read your SUMMONS carefully for the deadline).

What is an Answer?

The ANSWER is your response to the statements in the COMPLAINT. You are called the DEFENDANT. It is critical to properly file an Answer if you disagree that you owe the debt or disagree with the amount that the Plaintiff states that you owe. However, you should know that filing an ANSWER may increase the court costs and attorney's fees that you owe if you lose the case.

In your ANSWER, you do not have to tell the entire story or make legal arguments. You do need to state whether you agree or disagree with each statement in the complaint. Your answer should be typed, but if you cannot have it typed, you may neatly hand write it, using print (not cursive writing).

Your ANSWER does need to be clear and readable, and it must say whether you agree or disagree with some or all of the statements in the COMPLAINT, or whether you do not know if the statements in the COMPLAINT are true or not. Your answer also must be on 8 ½ by 11-inch paper (this size) and you should leave 3 inches of blank space **at the top of the first page** and **1-inch** of blank space on **all other margins**.

By filing an ANSWER in time, you keep your right to argue about this matter in court and to be notified of further proceedings.

To file your ANSWER, you will need a total of one original and two copies of your ANSWER which should be used as follows:

1. The original should be filed with the court;
2. A copy should be delivered to the PLAINTIFF'S attorney. His or her address is usually printed in the lower right corner of your SUMMONS and COMPLAINT. If the PLAINTIFF is representing himself or herself, this copy is sent directly to the PLAINTIFF. Get the court clerk to stamp this copy, take the copy with you to deliver to the PLAINTIFF'S attorney.

Have the person who receives the answer write the date and time received on your copy;
and

3. A copy should be kept for your records.

Parts of the Answer

CAPTION

Look at your SUMMONS and COMPLAINT. You will notice that they have a heading that gives information about the case. This heading is called the “caption”. All court papers, including the SUMMONS, the COMPLAINT and your ANSWER, are called “pleadings”. All pleadings use this same kind of caption.

The caption looks something like this:

IN THE _____ COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____

(YOUR OPPONENT’S NAME),)
)
) No. _____
)
 Plaintiff,)
)
) ANSWER
 vs.)
)
 (YOUR NAME),)
)
)
 Defendant.)
)

The top line gives the name of the court, the state, and the county. For instance, “District Court of Washington for Pierce County” or “In the Superior Court of the State of Washington In and for the County of Pierce.”

The left side identifies the parties in the action. The right side lists the number that has been assigned to this case by the court clerk (so that they can keep it filed correctly) and the title of that particular pleading.

NOTE: If the papers you received do not have a file number, that may mean that your opponent decided to deliver (or SERVE) the papers to you before filing them with the court. The law allows this, and you are still bound by the time limit listed in your SUMMONS to answer the COMPLAINT. However, if this is the case, you will not need to file your ANSWER with the court yet. You will still have to deliver a copy to the PLAINTIFF’S attorney (or the plaintiff if s/he has no attorney). Read your SUMMONS carefully. It should tell you what to do.

When you write or type your ANSWER (this packet has a blank form for you to use), fill in the caption at the top of the page. You may copy the necessary information from your SUMMONS and COMPLAINT. Copy the names of the PLAINTIFF and DEFENDANT just as they are on the SUMMONS and COMPLAINT, even if they spelled your name wrong or called you or your spouse “John Doe”.

When you finish the heading for your ANSWER, it should look like the example above, but with the blanks properly filled in. See the attached “Sample Answer.”

ADMISSIONS/DENIALS

After you complete the HEADING, use the middle of the page to give your answers to the statements in the COMPLAINT. Usually, the paragraphs in the COMPLAINT will be numbered. You should list the numbers and say one of the following three things about each paragraph of the complaint:

1. You admit that it is a true statement (for instance, that you live in Pierce County or that you are not a member of the armed forces). Admit the statement only if you agree with every part of it. Otherwise, deny the statement.
2. You deny that it is a true statement (for instance that you owe a specific amount of money to the person named).
3. You write that you do not know whether the statement is true or not (for instance, whether the collection agency who is suing you is licensed and bonded. You might assume that they are, but you do not have any evidence because you have never seen their license.)

Read your COMPLAINT carefully and make sure you briefly answer all of the statements in it.

If you totally disagree with everything in the COMPLAINT, you may simply write a single sentence saying you deny each and every allegation in the COMPLAINT. However, you should not deny things that you know are true.

DEFENSES

If you believe that you qualify or qualified for Charity Care coverage for the hospital-based medical services for which you are now being sued, you may have legal defenses to the COMPLAINT based on such eligibility. If you have not yet applied for Charity Care, you should do so immediately by submitting a completed application to the hospital; you should then send or take a copy to the court clerk for inclusion in the court file. If you have already completed a Charity Care application which the hospital has not correctly considered, you should attach a copy to the Answer you file. For more information, see our publication **Charity Care: Medical Coverage for Hospital-Based Medical Services**.

Even if you don't believe Charity Care is a defense to the lawsuit, you may have other legal defenses such as an argument that the statute of limitations has run. Actions to collect debts, like all actions, have a time limit called the “statute of limitations”, which usually begins once the creditor has a right to sue you [for example, a creditor may have the right to sue you the first time you miss a payment]). Once that time limit has passed, the person may no longer collect the money from you and the action will be dismissed. To raise this or other legal arguments, you should contact a private lawyer or you may call us at 1-888-201-1014 (TTY: 1-888-201-9737).

Since you are going to be telling the court in your ANSWER that you have an “Affirmative Defense”, your ANSWER must state why you believe you qualify or qualified for Hospital Charity Care. You could lose your right to argue your “affirmative defense” if you file your ANSWER without clearly stating it. A SAMPLE ANSWER stating “Affirmative Defenses” is attached. Our form ANSWER states many of the typical affirmative defenses which are available to someone who is sued but has not been correctly considered for Charity Care. Just mark the appropriate boxes to use this form; if you believe you have a defense which isn't listed, just mark the “Other” box and briefly describe that defense.

COUNTERCLAIMS

In some situations, you may have claims that you want to make against the plaintiff. These claims must be stated in your ANSWER if they arise out of the same transaction or occurrence that the plaintiff is suing about. For example, if **the collection agency** violated the Fair Debt Collection rules (see our handout Debtors' Rights-Collection Agencies), you may have a damages claim against the plaintiff. For more information on counterclaims, consult a lawyer or the court rules. Another possible counterclaim is that the Hospital owes you a refund of any of the payments which you have already paid to them because you would not have had to make those payments if your eligibility for Charity Care had been correctly determined by the hospital.

THE SIGNATURE

At the lower right-hand side of the page, put the date you sign your name. Below that, sign your name with your legal signature (the one you use for checks). Just below your signature, print or type your name so it will be easily readable. Finally, put your address below that. You may need to be able to receive delivery of other pleadings or court documents by mail and by hand at this address, so do **add your full street address even if you use a P.O. Box**. Now your ANSWER is complete.

*REMEMBER to make two (2) copies of your original ANSWER:

1. **Deliver or send** or take one copy to the PLAINTIFF(S)' attorney. (If the Plaintiff is not represented by an attorney, the ANSWER will have to be delivered to the Plaintiff);
2. Always keep one copy for your own records;
3. Take the original to the court clerk to be filed.

Try to hand deliver all your copies. If you mail it, you must mail it at least three (3) days before the deadline. Also, if you mail the ANSWER, you should consider sending one ANSWER by regular mail and one by certified mail, return receipt requested. Hand delivery is best because you can have the lawyer and the court clerk stamp your copy showing that your ANSWER was delivered and filed.

*REMEMBER to make sure that you file our ANSWER within the time limit listed in your SUMMONS (usually twenty days). Do not take a chance with that time limit! **EVEN IF YOU THINK YOU MAY HAVE ALREADY MISSED YOUR TIME LIMIT, TRY TO FILE AN ANSWER ANYWAY.** A late ANSWER may be better than no ANSWER at all. If you are too late, and a judgment has been entered against you, you should contact an attorney immediately. Once you have timely filed your ANSWER and served the plaintiff's attorney, you should be given notice of any hearing. **DO NOT MISS THESE HEARINGS!**

Two Additional Things to File with The Answer: A Notice of Appearance and Certificate Of Service

NOTICE OF APPEARANCE

A notice of appearance is a formal paper filed with the court that tells who is representing you in the lawsuit. Since you are representing yourself, you need to tell this to the court and the other side and make sure they know where to send you legal papers.

A sample Notice of Appearance and a Notice of Appearance form you may use are attached.

CERTIFICATE OF SERVICE

You need to give to the other side a copy of any documents you file with the court. The court, in turn, needs to know that the attorney who represents the other party (or the other party himself or herself if they are not represented by an attorney) has in fact received copies of the papers you file with the court. You do this by filing a Certificate of Service with the court. A Certificate of Service tells the court that the other side has been served with copies of the papers you have filed with the court. The certificate also tells the court how you served the papers on the other side. You usually get the papers to the other side either by hand delivering them yourself, by having them hand delivered by someone else who is 18 or over and a U.S. citizen, or by sending them through the mail.

A sample Certificate of Service and Certificate of Service form you may use are attached. (You may want to make extra copies of the form before you use it). Make sure you identify what kind of legal paper the certificate of service refers to (i.e. the Answer, the Notice of Appearance, etc.).

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, November 2002.

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SAMPLE ANSWER - DO NOT FILE

**DISTRICT COURT OF WASHINGTON
COUNTY OF EVERGREEN**

<u>ABC123 COLLECTIONS</u>)	
Plaintiff,)	<u>No. 99-0000-0</u>
)	
vs.)	
)	ANSWER, AFFIRMATIVE DEFENSES,
)	COUNTERCLAIMS
<u>AMY PATIENT,</u>)	
Defendant.)	
)	

I. ANSWER

Defendant(s) answer the complaint as follows:

- 1) Admit the statements contained in paragraph numbers 1 and 2 except for the following statements: ____

- 2) Deny the statements contained in paragraph numbers 3 and 4 except for the following statements: ____

- 3) Lack knowledge about the truth and therefore deny the statements contained in paragraph numbers 5, 6 and 7.

II. AFFIRMATIVE DEFENSES

(Mark an "X" for all that apply to your case)

1
2 A. The Court has no subject matter jurisdiction over this matter for any or all of the following reasons:

3 1. The LAISSEZ CARE HOSPITAL (Name of Hospital) failed to comply with any or all of the
4 following Charity Care notice requirements set forth in WAC 246-453-010(16) and 246-453-
020(2), resulting in my not applying for Charity Care coverage at the time hospital-based
medical services were provided (I believe that I qualify for Charity Care coverage):

5 X a. The hospital failed to post or prominently display, within the public areas of the
6 hospital, information concerning the availability of Charity Care coverage;

7 X b. At the time the hospital requested information from me about the availability of
insurance, it failed to provide me with written information and/or explain how I might obtain
Charity Care coverage;

8 _____ c. I am not able to communicate effectively in the English language but the hospital
9 failed to provide me with written information and an explanation of the availability of Charity
Care in the language in which I can communicate effectively (if the non-English language is
10 spoken by more than 10% of the population in the hospital's service area), or a qualified
interpreter was not provided to explain to me the availability of Charity Care coverage.

11 2. The Laissez Care (Name of Hospital) failed to comply with any or all of the following
12 application requirements set forth in WAC 246-453-020 and 246-453-030, resulting in my
being improperly denied Charity Care coverage:

13 X a. The hospital failed to make an initial determination of my eligibility for Charity
Care coverage even though I cooperated or was prepared to cooperate fully with its efforts;

14 X b. The hospital failed to make a final determination of my eligibility for Charity
15 Care coverage even though I provided sufficient documentation for it to make such a
determination;

16 _____ c. The hospital required so much information and documentation from me that I
17 became discouraged and was not able to comply with its burdensome application process;

18 _____ d. I have language, physical, mental, intellectual or sensory limitations which made
it too hard for me to comply with the hospital's application requirements;

19 _____ e. I have a Charity Care application pending but the hospital is pursuing collection
in violation of the law.

20 3. _____ The Laissez Care (Name of Hospital) failed to notify me that I had been denied
21 Charity Care coverage and/or that I had a right to appeal the denial, resulting in my being
improperly denied Charity Care coverage.

22 B. _____ The Laissez Care (Name of Hospital) considered my application for Charity Care but the
23 hospital made an erroneous decision. I have attached or will obtain documentation which was
available to the hospital at the time of my application which demonstrates my eligibility for Charity
24 Care coverage at the time I was denied.

1 C. X Other Defenses (Specify):

2 _____ (1) The debts incurred for these services are the result of an oral contract and it has been more
3 than three (3) years since there has been any payment activity, therefore the statute of limitations
prohibits collection;

4 _____ (2) The debts incurred for these services are the result of a written contract and it has been
5 more than six (6) years since there has been any payment activity, therefore, the statute of limitations
prohibits collection on them;

6 _____ (3) I entered into an agreement with the hospital and/or the Plaintiff to make payments and
7 have complied fully with that agreement, therefore Plaintiff's action should be dismissed; or

8 _____ (4) I have already paid for these bills in full.

9
10 **III. COUNTERCLAIMS [If applicable]**

11 1. Plaintiff owes defendant \$1,000 plus the maximum interest permit by statute because: I already
12 paid these bills but was entitled to reimbursement under WAC 246-453-020(11) because these
bills should have been covered by Charity Care.

13 Defendant(s) request that this lawsuit be dismissed and that a judgment be entered against Plaintiff(s) for
14 any counterclaims, costs, and/or attorney fees.

15 DATED this 5th day of March , 2002.

16 Name: Amy Patient
17 Address: 111 Cherry Lane
18 Lang, WA 98600
19 Phone No.: (206)555-1212

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_____ **COURT OF WASHINGTON**

COUNTY OF _____

_____,)
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Plaintiff,)
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vs.)
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Defendant.)
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No. _____

**ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIMS**

I. ANSWER

Defendant(s) answer the complaint as follows:

1) Admit the statements contained in paragraph numbers _____, except for the following

statements: _____

_____.

2) Deny the statements contained in paragraph numbers _____, except for the following

statements: _____

1 _____
2 _____
3 3) Lack knowledge about the truth and therefore deny the statements contained in paragraph numbers: ____
4 _____

5 **II. AFFIRMATIVE DEFENSES**

6 (Check all that apply to your case)

7 A. The Court has no subject matter jurisdiction over this matter for any or all of the following reasons:

8 1. The _____ (Name of Hospital) failed to comply with any or
9 all of the following Charity Care notification requirements set forth in WAC 246-453-
10 010(16) and 246-453-020(2), resulting in my not applying for Charity Care coverage at the
11 time hospital-based medical services were provided (I believe that I qualify for Charity Care
12 coverage):

13 _____ a. The hospital failed to post or prominently display, within the public areas of the
14 hospital, information concerning the availability of Charity Care coverage;

15 _____ b. At the time the hospital requested information from me about the availability of
16 insurance, it failed to provide me with written information and/or explain how I might obtain
17 Charity Care coverage;

18 _____ c. I am not able to communicate effectively in the English language but the hospital
19 failed to provide me with written information and an explanation of the availability of Charity
20 Care in the language in which I can communicate effectively (if the non-English language is
21 spoken by more than 10% of the population in the hospital's service area), or a qualified
22 interpreter was not provided to explain to me the availability of Charity Care coverage.

23 2. The _____ (Name of Hospital) failed to comply with any or all of
24 the following application requirements set forth in WAC 246-453-020 and 246-453-030,
resulting in my being improperly denied Charity Care coverage:

_____ a. The hospital failed to make an initial determination of my eligibility for Charity
Care coverage even though I cooperated or was prepared to cooperate fully with its efforts;

_____ b. The hospital failed to make a final determination of my eligibility for Charity Care
coverage even though I provided sufficient documentation for it to make such a
determination;

_____ c. The hospital required so much information and documentation from me that I
became discouraged and was not able to comply with its burdensome application process;

_____ d. I have language, physical, mental, intellectual or sensory limitations which made
it too hard for me to comply with the hospital's application requirements.

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_____ e. I have a Charity Care application pending but the hospital is pursuing collection in violation of the law.

3. The _____ (Name of Hospital) failed to notify me that I had been denied Charity Care coverage and/or that I had a right to appeal the denial, resulting in my being improperly denied Charity Care coverage.

B. The _____ (Name of Hospital) considered my application for Charity Care but the hospital made an erroneous decision. I have attached or will obtain documentation which was available to the hospital at the time of my application which demonstrates that I was eligible for Charity Care coverage at the time I was denied. Other Defenses (Specify):

III. COUNTERCLAIMS

1) Plaintiff(s) owes defendant \$ _____ plus the maximum interest permitted by statute because:

_____ Not applicable;

_____ Defendant paid Plaintiff for hospital-based medical services which should have been paid by Charity Care coverage;

_____ Other (Specify):

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Defendant(s) request that this lawsuit be dismissed and that a judgement be entered against the plaintiff(s) for any counter-claims, costs, or attorney fees.

DATED this _____ day of _____, 200__.

Signature

Print Name

Address:

Telephone:

SAMPLE FORM - DO NOT FILE

**DISTRICT COURT OF WASHINGTON
COUNTY OF EVERGREEN**

ABC123 COLLECTIONS,)
Plaintiff,)
vs.)
AMY PATIENT,)
Defendant.)

No. 99-0000-0

NOTICE OF APPEARANCE

TO: JOE SCHMOE, Attorney for Plaintiff

AND TO: Clerk of the District Court

YOU AND EACH OF YOU PLEASE TAKE NOTICE that Defendant(s) hereby appears in the above-entitled cause and requests that all further papers and pleadings herein, except original process, be served upon the Defendant at the address stated below, pursuant to Civil Rule 5.

Dated this 5th day of March, 2002.

Amy Patient (Defendant's Signature)

Amy Patient (Print Name)

111 Cherry Lane (Address)

Lang, WA 98600

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_____ COURT OF WASHINGTON
COUNTY OF _____

_____,)
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Plaintiff,)
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vs.)
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_____,)
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Defendant.)
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)

No. _____

NOTICE OF APPEARANCE

TO: _____ Attorney for Plaintiff

AND TO: Clerk of the _____ Court

YOU AND EACH OF YOU PLEASE TAKE NOTICE that Defendant(s)/ Respondent(s) hereby appears in the above-entitled cause and requests that all further papers and pleadings herein, except original process, be served upon the Defendant at the address stated below, pursuant to Civil Rule 5.

Dated this _____ day of _____, 200__.

(Defendant's Signature)

(Print Name)

(Address)

SAMPLE FORM - DO NOT FILE

**DISTRICT COURT OF WASHINGTON
COUNTY OF _____**

ABC123 COLLECTIONS,)
Plaintiff,)

No. 99-0000-0

vs.)

CERTIFICATE OF SERVICE

AMY PATIENT)
Defendant.)

I certify under penalty of perjury under the laws of the State of Washington that, on the date(s) stated below, I did the following:

On the 6th day of March, 2002, I hand-delivered a copy of the foregoing

Answer, Affirmative Defenses and Counterclaim and a Notice of Appearance to Attorney Joe Schmoe at the following address:

4444 Smith Building, Metropolis, Washington 98000

AND/OR

On the _____ day of _____, 200__, I mailed a true copy of the foregoing

_____ to _____ at the following
(Name of Paper Served) (Name of Plaintiff or Plaintiff's Attorney)
address: _____

by regular U.S. Mail, postage prepaid.

Dated this _____ day of _____, 200__, in _____ (City),
_____ (State).

Linda Jones
(Signature)

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_____ **COURT OF WASHINGTON**

COUNTY OF _____

_____,)

Plaintiff,)

vs.)

_____,)

Defendant.)

No. _____

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that, on the date(s) stated below, I did the following:

On the _____ day of _____, 200__, I hand-delivered a copy of the foregoing

_____ (Name of Paper Served) to _____

(Name of Plaintiff or Plaintiff's Attorney) at the following address:

_____.

AND/OR

On the _____ day of _____, 200__, I mailed a true copy of the foregoing

_____ (Name of Paper Served) to _____

(Name of Plaintiff or Plaintiff's Attorney) at the following address:

_____.

1 by regular U.S. Mail, postage prepaid.

2 Dated this ___ day of _____, 200__, in _____ (City),
3 _____ (State).

4 _____
(Signature)