

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**SUPERIOR COURT OF WASHINGTON  
FOR GRANT COUNTY**

<b>ELVIS T. SWISHER,</b>	)	
<b>Plaintiff,</b>	)	
<b>vs.</b>	)	<b>No.:</b>
<b>CITY OF MOSES LAKE,</b>	)	
<b>a Municipal Corporation,</b>	)	<b>SUMMONS</b>
<b>Defendant.</b>	)	

**TO:** The Defendant Above Named.

A lawsuit has been started against you in the above-entitled Court by the Plaintiff above named. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and by serving a copy upon the person signing this Summons within twenty (20) days after the service of this Summons upon you, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where Plaintiff is entitled to what it asks for because you have not responded. If you serve a Notice of Appearance on the undersigned person, you are entitled to notice before a default judgment may be entered against you.

SUMMONS - 1

LAW OFFICES OF  
**J.E. FISCHALLER**  
601 S. Pioneer Way, Suite F-252  
Moses Lake, WA 98837  
206-930-1818

1 You may demand that the Plaintiffs file this lawsuit with the Court. If  
2 you do so, the demand must be in writing and must be served upon the  
3 person signing this Summons. Within fourteen (14) days after you serve the  
4 demand, the Plaintiffs must file this lawsuit with the court, or the service on  
5 you of this Summons and Complaint will be void.

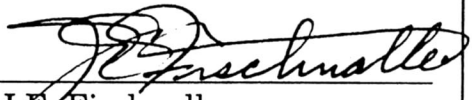
6 If you wish to seek the advice of an attorney in this matter, you should  
7 do so promptly so that your written response, if any, may be served on time.

8 This Summons is issued pursuant to Rule 4 of the Superior Court Civil  
9 Rules of the State of Washington.

10 DATED this 7<sup>TH</sup> day of July, 2008.

12 Law Offices of  
13 **J.E. FISCHNALLER**

14 By

  
15 J.E. Fischnaller (WSBA # 5132)  
16 Of Attorneys for Plaintiffs

## CASE TYPE 2

### GRANT COUNTY SUPERIOR COURT CASE INFORMATION COVER SHEET

Case Number \_\_\_\_\_ Case Title SWISHER V. MOSES LAKE

Attorney Name J.E. FISCHNALLER Bar Membership Number 5132

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time in docketing new cases, but helps in forecasting needed judicial resources. Cause of action definitions are listed on the back of this form. Thank you for your cooperation.

#### APPEAL/REVIEW

- ☐ Administrative Law Review (ALR 2)
- ☐ Appeal of a Department of Licensing Revocation (DOL 2)
- ☐ Civil, Non-Traffic (LCA 2)
- ☐ Civil, Traffic (LCI 2)

#### CONTRACT/COMMERCIAL

- ☐ Breach of Contract (COM 2)
- ☐ Commercial Contract (COM 2)
- ☐ Commercial Non-Contract (COL 2)
- ☐ Third Party Collection (COL 2)

#### MERETRICIOUS RELATIONSHIP

- ☐ Meretricious Relationship (MER 2)

#### DOMESTIC VIOLENCE/ANTI-HARASSMENT

- ☐ Civil Harassment (HAR 2)
- ☐ Domestic Violence (DVP 2)
- ☐ Foreign Protection Order (FPO 2)
- ☐ Vulnerable Adult Protection (VAP 2)

#### JUDGMENT

- ☐ Abstract Only (ABJ 2)
- ☐ Foreign Judgment (FJU 2)
- ☐ Judgment, Another County (ABJ 2)
- ☐ Judgment, Another State (FJU 2)
- ☐ Tax Warrant (TAX 2)
- ☐ Transcript of Judgment (TRJ 2)

#### OTHER COMPLAINT/PETITION

- ☐ Action to Compel/Confirm Private Binding Arbitration (MSC 2)
- ☐ Change of Name (CHN 2)
- ☐ Deposit of Surplus Funds (MSC 2)
- ☐ Emancipation of Minor (EOM 2)
- ☐ Injunction (INJ 2)
- ☐ Interpleader (MSC 2)
- ☐ Malicious Harassment (MHA 2)

- ☐ Minor Settlement (No guardianship) (MST 2)
- ☐ Petition for Civil Commitment (Sexual Predator) (PCC 2)
- ☐ Seizure of Property from Commission of Crime (SPC 2)
- ☐ Seizure of Property Resulting from a Crime (SPR 2)
- ☐ Subpoenas (MSC 2)

#### PROPERTY RIGHTS

- ☐ Condemnation (CON 2)
- ☐ Foreclosure (FOR 2)
- ☐ Land Use Petition (LUP 2)
- ☐ Property Fairness (PFA 2)
- ☐ Quiet Title (QTI 2)
- ☐ Unlawful Detainer (UND 2)

#### TORT, MEDICAL MALPRACTICE

- ☐ Hospital (MED 2)
- ☐ Medical Doctor (MED 2)
- ☐ Other Health Care Professional (MED 2)

#### TORT, MOTOR VEHICLE

- ☐ Death (TMV 2)
- ☐ Non-Death Injuries (TMV 2)
- ☐ Property Damage Only (TMV 2)

#### TORT, NON-MOTOR VEHICLE

- ☐ Asbestos (PIN 2)
- ☐ Other Malpractice (MAL 2)
- ☐ Personal Injury (PIN 2)
- ☐ Products Liability (TTO 2)
- ☐ Property Damage (PRP 2)
- ☐ Wrongful Death (WDE 2)

#### WRIT

- ☐ Habeas Corpus (WHC 2)
- ☐ Mandamus (WRM 2)
- ☐ Restitution (WRR 2)
- ☐ Review (WRV 2)

IF YOU CANNOT DETERMINE THE APPROPRIATE CATEGORY, PLEASE DESCRIBE THE CAUSE OF ACTION BELOW.

SUIT FOR MONEY DUE UNDER STATUTE & INJUNCTIVE RELIEF

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**SUPERIOR COURT OF WASHINGTON  
FOR GRANT COUNTY**

<b>ELVIS T. SWISHER,</b>	)	
<b>Plaintiff,</b>	)	
<b>vs.</b>	)	<b>No.:</b>
<b>CITY OF MOSES LAKE,</b>	)	<b>COMPLAINT FOR DAMAGES</b>
<b>a Municipal Corporation,</b>	)	<b>AND INJUNCTIVE RELIF</b>
<b>Defendant.</b>	)	

Comes now the plaintiff, above named, Elvis T. Swisher, and for cause of action against the defendant, City of Moses Lake, complains and alleges as follows:

**I.  
PARTIES**

1.1 At all times material hereto, Elvis T. Swisher, the plaintiff in the above entitled action, was and is a firefighter retired from the position of Fire Chief for the defendant, City of Moses Lake. As such, he was, and is now, a member of the Washington State Law Enforcement Officers' and Fire Fighters' Benefit System, Plan 1, codified as Chapter 41.26 RCW, and often referred to as LEOFF I.

1.2 At all times material hereto, the defendant, City of Moses Lake, was and is now a municipal corporation, organized and existing under the laws of the State of Washington; and the former employer of retired Fire Chief, Elvis T. Swisher.

## II. JURISDICTION AND VENUE

2.1 The defendant, City of Moses Lake, is a local governmental entity, located wholly within the County of Grant, State of Washington.

2.2 The plaintiff, Elvis T. Swisher is and has been, at all times material hereto, a resident of the County of Grant, State of Washington.

2.3 The Complaint in this action seeks both money damages and injunctive relief; and venue is properly laid in Grant County Superior Court.

### III. FACTUAL ALLEGATIONS

3.1 Under the provisions of Plan 1 of the Washington State Law Enforcement Officers' and Fire Fighters' Benefit System (hereinafter referred to as "LEOFF I"), members such as the plaintiff, Elvis Swisher, are granted certain medical benefits which are to be paid for by the member's employer, in the case of active members; and by the member's former employer, in the case of retired members, like the plaintiff.

3.2 RCW 41.26.030(22) sets forth certain minimum medical services which must be provided for all LEOFF I members with the cost of all such services being paid by the members employer or, in the case of a retired member, by the members former employer.

1           3.3     In addition to these "minimum" medical services which must be  
2 paid for all LEOFF I members, RCW 41.26.150(1)(b) vests local Disability  
3 Boards with the authority and discretion to designate other medical services  
4 which must also be made available to LEOFF I members and paid for by the  
5 member's employer or former employer.

6           3.4     The defendant employer and the plaintiff LEOFF I member both  
7 come under the jurisdiction of the Grant County Disability Board, which, by  
8 statute, is solely responsible for reviewing and approving or disapproving all  
9 claims for the payment of medical services which are made by LEOFF I  
10 members (see RCW 41.26.150(1)(b)).

11           3.5     Under the provisions of the act and the applicable case law, an  
12 employer may not refuse to pay a bill for medical services provided to a  
13 LEOFF I employee or retired employee, which has been approved by the local  
14 Disability Board, and not successfully appealed by the employer.

15           3.6     Although the Grant County Disability Board reviews each claim  
16 for medical services on its own merits, the Board has promulgated Rules and  
17 Regulations which describe the procedures by which claims for the payment  
18 of medical bills are to be brought before the Board for review and approval;  
19 and which outline, in a general way, which medical services are likely to be  
20 approved by the Board for payment by the employer or former employer.

21           3.7     The Grant County Disability Board, like many disability boards  
22 around the State, has adopted a Rule which provides a limited dental benefit  
23 for LEOFF I members such as the plaintiff in this action.

1           3.8    On approximately April 16, 2003, the plaintiff began a course of  
2 treatment with his dentist which included some fillings and the insertion of a  
3 partial plate due to the loss of some teeth.

4           3.9    When the dental work was completed, the plaintiff submitted  
5 the bill first to his private insurance as required, which paid \$512.50 of the  
6 entire \$1,100.00 bill. The remaining \$587.50 was then submitted to the  
7 Grant County Disability Board for approval, in accordance with its Rules and  
8 Regulations.

9           3.10   At its regular meeting of October 8, 2003, the Grant County  
10 Disability Board approved payment of the entire remaining balance of the  
11 bill, in the amount of \$587.50, and forwarded the bill, along with their  
12 approval order, to the City of Moses Lake for payment.

13           3.11   The City of Moses Lake did not request reconsideration by the  
14 Disability Board, and failed to file an appeal of the Board approval; and the  
15 time for such appeals has run.

16           3.12   On approximately November 12, 2007, the plaintiff began a  
17 course of treatment with his dentist which included the removal of a crown to  
18 repair a cavity and the application of a new crown.

19           3.13   When the dental work was completed, the plaintiff submitted  
20 the bill first to his private insurance as required, which paid \$389.30 of the  
21 entire \$706.00 bill. The remaining \$316.70 was then submitted to the Grant  
22 County Disability Board for approval, in accordance with its Rules and  
23 Regulations.  
24  
25

3.14 At its regular meeting of March 19, 2008, the Grant County Disability Board approved payment of the entire remaining balance of the bill, in the amount of \$316.70, and forwarded the bill, along with their approval order, to the City of Moses Lake for payment.

3.15 The City of Moses Lake did not request reconsideration by the Disability Board, and failed to file an appeal of the Board approval; and the time for such appeals has run.

## IV.

### CAUSE OF ACTION – MONEY OWED

4.1 Plaintiff does hereby re-allege each and every allegation heretofore set forth in paragraphs 1.1 through 3.15 of this Complaint.

4.2 The dental bill claims approved by the Grant County Disability Board, in the amounts of \$587.50 and \$316.70, total \$904.20, and are an obligation of the defendant City owed to the plaintiff.

4.3 The City of Moses Lake has, at all times, unlawfully failed and refused to pay said dental bill charges, and plaintiff has been required to pay the \$904.20 out of pocket and is entitled to be reimbursed by the City in said amount, together with pre-judgment interest at 12% per annum on each sum from the date of the Board's approval until finally paid in full by said employer.

V.

**CAUSE OF ACTION – DOUBLE DAMAGES AND ATTORNEY’S FEE**

5.1 Plaintiff does hereby re-allege each and every allegation heretofore set forth in paragraphs 1.1 through 4.3 of this Complaint.



5.2 The defendant employer's failure and refusal to reimburse the plaintiff for the sums approved by the Grant County Disability Board, and to which plaintiff is lawfully entitled, violates Chapter 41.26 RCW, and constitutes a willful withholding of benefits by the employer with the intent of depriving the plaintiff of said benefits; all in violation of RCW 49.52.050(2).

5.3 The defendant City's conduct subjects it to civil action by the plaintiff for double the amounts unlawfully withheld, by way of exemplary damages, and to the payment of plaintiff's costs of suit and a reasonable attorney's fee; all pursuant to RCW 49.52.070.

## VI. CAUSE OF ACTION – INJUNCTIVE RELIEF

6.1 Plaintiff does hereby re-allege each and every allegation heretofore set forth in paragraphs 1.1 through 5.3 of this Complaint.

6.2 The expenditure of time and money required of either an active or a retired LEOFF I member, to force the City of Moses Lake to fulfill its statutory obligations under Chapter 41.26 RCW and reimburse said LEOFF I member for dental and other necessary medical expenses which have been approved by the Board and not timely appealed, is considerable.

6.3 The City of Moses Lake should be permanently enjoined from failing or refusing to promptly pay, or to reimburse the member who has already paid, for all bills for medical or dental services which have been approved by the Grant County Disability Board, as soon as the Board's approval of said medical or dental bills has become final.

VII.  
PRAYER FOR RELIEF

WHEREFORE, having set forth fully his claims against the defendant, City of Moses Lake, the plaintiff prays for judgment against said defendant, as follows:

7.1 For judgment against the defendant, City of Moses Lake, in the amount of \$1,808.40, double the amount of the benefits intentionally and willfully withheld by the City, together with pre-judgment interest, costs of suit, and a reasonable attorney's fee, pursuant to RCW 49.52.070;


7.2 In the alternative, for judgment against the defendant, City of Moses Lake, in the amount of \$904.20, the amount of benefits unlawfully withheld from plaintiff by the defendant City, together with pre-judgment interest and statutory costs and attorney's fees;

7.3 That this Court issue a permanent injunction against the City of Moses Lake prohibiting the City from failing or refusing to promptly pay, or to reimburse the member who has already paid, for all bills for medical or dental services which have been approved by the Grant County Disability Board, as soon as the Board's approval of said medical or dental bills has become final; and

1           7.4   For such other and further relief as the Court deems just and  
2                   equitable.

3  
4           DATED this 7<sup>TH</sup> day of July, 2008.

5                                   Law Offices of  
6                                   **J.E. FISCHNALLER**

7                                   By   
8                                   J.E. Fischnaller (WSBA # 5132)  
9                                   Of Attorneys for Plaintiff