

DECLARATION OF KENNETH W. FORNABAI

My name is Kenneth W. Fornabai, and I am licensed to practice law in the State of Washington. My WSBA Number is 8215.

I have been practicing criminal defense for 44 years and a significant portion of that is representing individuals who have been arrested for driving under the influence. In addition to representing these individuals in court proceedings, there can also be administrative proceedings under RCW 46.20.308 with the Washington State Department of Licensing to determine if an individual's privilege to drive will be suspended or revoked. RCW 46.20.308(7) allows for the sworn report of the law enforcement officer, under declaration authorized by law, and other evidence, under declaration authorized by law, to be admitted without any further evidentiary foundation. Additionally, under WAC 308-101-210(10), the Hearings Examiner at the administrative proceeding can examine and admit records from the Washington State Patrol Breath Test Section website.

In the administrative proceedings, where the suspension or revocation is to be based upon a breath test result, The Department of Licensing must produce a declaration signed by the State Toxicologist approving the quantitative measurement of alcohol. The May 8, 2015 declaration of Dr. Fiona Couper entitled "Instruments, Equipment and External Standards approved for the Quantitative Measurement of Alcohol in Person's Breath in Washington State" is provided by the Washington State Department of Licensing and admitted into evidence by the Hearings Examiner at the administrative proceeding, as Exhibit 2 (attached). Without Exhibit 2 no breath test would be admissible, and no suspension or revocation of an individual's driving privilege would ensue.

SIGNED IN Enumclaw, Washington, on this 8<sup>th</sup> day of February, 2022.

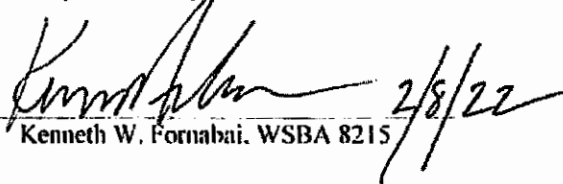
  
Kenneth W. Fornabai, WSBA 8215 2/8/22

EXHIBIT 2

INSTRUMENTS, EQUIPMENT AND EXTERNAL STANDARDS APPROVED FOR  
THE QUANTITATIVE MEASUREMENT OF ALCOHOL IN PERSON'S BREATH IN  
WASHINGTON STATE

I, Fiona J. Couper, affirm under penalty of perjury under the laws of the State of Washington that the following is true and correct:

I am the State Toxicologist authorized under RWC 46.61.506 to approve methods for breath alcohol testing with the State of Washington.

The instruments approved for the quantitative measurement of alcohol in a person's breath are:

- a) The DataMaster
- b) The DataMaster CDM
- c) The Drager Alcotest 9510

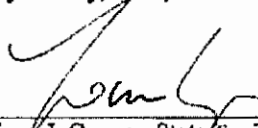
A Guth Model 34C or Guth Model 2100 wet bath simulator device is attached to every DataMaster and DataMaster CDM. Each Guth Model 34C simulator employs a mercury-in-glass thermometer with a scale graduated in tenths of a degree measuring a range between 33.5 to 34.5 degrees centigrade, and each Guth Model 2100 simulator employs a digital thermometer, as approved in WAC 448-16-020.

All Guth Model 34C and Guth Model 2100 wet bath simulator devices operate through the use of a certified, liquid simulator solution. These simulators will function in the analysis of a breath sample, as defined in WAC 448-16-050, only if a liquid simulator solution is used. A liquid simulator solution must be used with the Guth Model 34C or the Guth Model 2100 simulator devices in order to produce a breath test result.

A dry gas external standard is a component of the Drager Alcotest 9510. The Drager Alcotest 9510 only uses a dry gas external standard. Gas standards are not susceptible to temperature variations, so thermometers are inapplicable to this instrument.

All approved breath test instruments calculate whether the breath test results are within plus or minus 10% of their mean in accord with WAC 448-16-060. If a breath sample is outside this parameter, no breath test result is generated.

EXECUTED this 8<sup>th</sup> day of May, 2015, at Seattle, Washington

  
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Dr. Fiona J. Couper, State Toxicologist

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**IN THE WASHINGTON STATE DEPARTMENT OF LICENSING**

**In re: The State of Washington** )  
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**Department of Licensing** )  
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**DECLARATION OF COUNSEL**

I, HOWARD S. STEIN, do hereby state as follows:

I am over the age of 18 years, competent to testify in a court of law and make this Declaration based upon my personal knowledge of the facts:

1. I am an attorney licensed to practice in the State of Washington since 1984.
2. My Washington State Bar Assoc. Number is 14114.
3. I have been practicing criminal defense for over 30 years and a significant portion of that work has been representing individuals who have been arrested for driving under the influence.
4. In addition to representing these individuals in court proceedings I also appear in administrative license suspension proceedings under RCW 46.20.308 before the Washington State Department of Licensing .
5. RCW 46.20.308(7) allows for the sworn report of the law enforcement officer, under declaration authorized by law, and other evidence, under declaration

1 authorized by law, to be admitted without any further evidentiary foundation.

2 6. Additionally, under WAC 308-101-210(10), the Hearings Examiner at the  
3 administrative proceeding can examine and admit records from the  
4 Washington State Patrol Breath Test Section website.

5  
6 7. In the administrative proceedings, where the suspension or revocation is to  
7 be based upon a breath test result, it is common practice for the May 8,  
8 2015, declaration of Dr. Fiona Couper entitled "Instruments, Equipment and  
9 External Standards approved for the Quantitative Measurement of Alcohol in  
10 Person's Breath in Washington State" to be provided to the Washington  
11 State Department of Licensing  
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13 8. That Declaration is routinely admitted into evidence by the Hearings  
14 Examiner at the administrative proceeding.

15 9. This has been true since the document was created and despite proof that  
16 the document is no longer accurate. That proof has come in the form of a  
17 subsequent sworn declaration of Dr. Couper dated June 18, 2021.  
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19 I declare under penalty of perjury under the laws of the State of Washington that  
20 the foregoing is true and correct to the best of my knowledge.

21 Executed at Bellevue, Washington, this 11<sup>th</sup> day of February, 2022

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Howard S. Stein, #14114

My name is Jason Lantz and I am licensed to practice law in the State of Washington. My WSBA Number is #42873.

I have been practicing criminal defense for 11 years and a significant portion of that is representing individuals who have been arrested for driving under the influence. In addition to representing these individuals in court proceedings there can also be administrative proceedings under RCW 46.20.308 with the Washington State Department of Licensing to determine if an individual's privilege to drive will be suspended or revoked. RCW 46.20.308(7) allows for the sworn report of the law enforcement officer, under declaration authorized by law, and other evidence, under declaration authorized by law, to be admitted without any further evidentiary foundation. Additionally, under WAC 308-101-210(10), the Hearings Examiner at the administrative proceeding can examine and admit records from the Washington State Patrol Breath Test Section website.

In the administrative proceedings, where the suspension or revocation is to be based upon a breath test result, it is common practice for the May 8, 2015 declaration of Dr. Fiona Couper entitled "Instruments, Equipment and External Standards approved for the Quantitative Measurement of Alcohol in Person's Breath in Washington State" to be provided by the Washington State Department of Licensing and admitted into evidence by the Hearings Examiner at the administrative proceeding.

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

Dated this 10<sup>th</sup> day of February, 2022 in Seattle, Washington.

  
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Jason Lantz

Declaration of Matthew Knauss

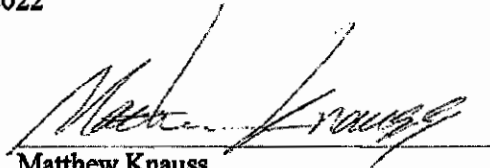
My name is Matthew Knauss and I am licensed to practice law in the State of Washington. My WSBA Number is 35732.

I have been practicing criminal defense for over 13 years and a significant portion of that is representing individuals who have been arrested for driving under the influence. In addition to representing these individuals in court proceedings there can also be administrative proceedings under RCW 46.20.308 with the Washington State Department of Licensing to determine if an individual's privilege to drive will be suspended or revoked. RCW 46.20.308(7) allows for the sworn report of the law enforcement officer, under declaration authorized by law, and other evidence, under declaration authorized by law, to be admitted without any further evidentiary foundation. Additionally, under WAC 308-101-210(10), the Hearings Examiner at the administrative proceeding can examine and admit records from the Washington State Patrol Breath Test Section website.

In the administrative proceedings, where the suspension or revocation is to be based upon a breath test result, it is common practice for the May 8, 2015 declaration of Dr. Fiona Couper entitled "Instruments, Equipment and External Standards approved for the Quantitative Measurement of Alcohol in Person's Breath in Washington State" to be provided by the Washington State Department of Licensing and admitted into evidence by the Hearings Examiner at the administrative proceeding.

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

Signed in Kirkland, WA, on February 10, 2022

A handwritten signature in black ink, appearing to read "Matthew Knauss", written over a horizontal line.

Matthew Knauss  
WSBA#35732

**EXHIBIT 2**

**INSTRUMENTS, EQUIPMENT AND EXTERNAL STANDARDS APPROVED FOR  
THE QUANTITATIVE MEASUREMENT OF ALCOHOL IN PERSON'S BREATH IN  
WASHINGTON STATE**

I, Fiona J. Couper, affirm under penalty of perjury under the laws of the State of Washington that the following is true and correct:

I am the State Toxicologist authorized under RWC 46.61.506 to approve methods for breath alcohol testing with the State of Washington.

The instruments approved for the quantitative measurement of alcohol in a person's breath are:

- a) The DataMaster
- b) The DataMaster CDM
- c) The Drager Alcotest 9510

A Guth Model 34C or Guth Model 2100 wet bath simulator device is attached to every DataMaster and DataMaster CDM. Each Guth Model 34C simulator employs a mercury-in-glass thermometer with a scale graduated in tenths of a degree measuring a range between 33.5 to 34.5 degrees centigrade, and each Guth Model 2100 simulator employs a digital thermometer, as approved in WAC 448-16-020.

All Guth Model 34C and Guth Model 2100 wet bath simulator devices operate through the use of a certified, liquid simulator solution. These simulators will function in the analysis of a breath sample, as defined in WAC 448-16-050, only if a liquid simulator solution is used. A liquid simulator solution must be used with the Guth Model 34C or the Guth Model 2100 simulator devices in order to produce a breath test result.

A dry gas external standard is a component of the Drager Alcotest 9510. The Drager Alcotest 9510 only uses a dry gas external standard. Gas standards are not susceptible to temperature variations, so thermometers are inapplicable to this instrument.

All approved breath test instruments calculate whether the breath test results are within plus or minus 10% of their mean in accord with WAC 448-16-060. If a breath sample is outside this parameter, no breath test result is generated.

EXECUTED this 8<sup>th</sup> day of May, 2015, at Seattle, Washington

  
\_\_\_\_\_  
Dr. Fiona J. Couper, State Toxicologist



# FOX LAW FIRM

February 10, 2022

Re: DOL proceedings/May 8, 2015 declaration of Dr. Fiona Couper

My name is Jon Scott Fox and I am licensed to practice law in the State of Washington. My WSBA Number is 14785.

I have been practicing criminal defense in Washington State since 1984 and a significant portion of that is representing individuals who have been arrested for driving under the influence. In addition to representing these individuals in court proceedings there can also be administrative proceedings under RCW 46.20.308 with the Washington State Department of Licensing to determine if an individual's privilege to drive will be suspended or revoked. RCW 46.20.308(7) allows for the sworn report of the law enforcement officer, under declaration authorized by law, and other evidence, under declaration authorized by law, to be admitted without any further evidentiary foundation. Additionally, under WAC 308-101-210(10), the Hearings Examiner at the administrative proceeding can examine and admit records from the Washington State Patrol Breath Test Section website.

In the administrative proceedings, where the suspension or revocation is to be based upon a breath test result, it is common practice for the May 8, 2015 declaration of Dr. Fiona Couper entitled "Instruments, Equipment and External Standards approved for the Quantitative Measurement of Alcohol in Person's Breath in Washington State" to be provided by the Washington State Department of Licensing and admitted into evidence by the Hearings Examiner at the administrative proceeding.

Respectfully,



Jon Scott Fox WSBA #14785  
Fox Law Firm

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**AFFIDAVIT**

I James F. Walker hereby declare as follows:

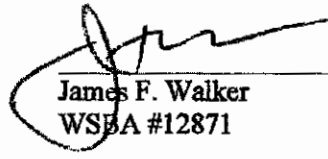
I am a member in good standing of the Washington State Bar Association and have been practicing law exclusively in Washington for 39 years. My primary focus is criminal defense, with most of my practice focusing on defending persons charged with driving under the influence and other traffic related criminal matters.

In defending Driving Under the Influence cases, almost always there is a concurrent administrative proceeding with the Department of Licensing in addition to the criminal charge in court. The purpose of the Department of Licensing hearing is to determine whether the driver's privilege to drive will be suspended or revoked pursuant to the Implied Consent Statute, RCW 46.20.308. RCW 46.20.308(7) allows for the sworn report of the arresting officer and other evidence, under declaration authorized by law, to be admitted without any further evidentiary foundation. Additionally, under WAC 308-101-210 (10), the Hearing Examiner is authorized to examine and admit records from the Washington State Patrol Breath Test Section website.

In the administrative hearing, where the suspension or the revocation is to be based upon a breath test result, it is common practice for the May 8, 2015 declaration of Dr. Fiona Couper entitled "Instruments, Equipment and External Standards approved for the Quantitative Measurement of Alcohol in Person's Breath in Washington State" (copy attached for ease of reference) to be provided by the Department of Licensing and admitted into evidence by the Hearing Examiner.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated at Everett, WA this 9<sup>th</sup> day of February, 2022.

  
James F. Walker  
WSBA #12871

**EXHIBIT 2**

**INSTRUMENTS, EQUIPMENT AND EXTERNAL STANDARDS APPROVED FOR  
THE QUANTITATIVE MEASUREMENT OF ALCOHOL IN PERSON'S BREATH IN  
WASHINGTON STATE**

I, Fiona J. Couper, affirm under penalty of perjury under the laws of the State of Washington that the following is true and correct:

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The instruments approved for the quantitative measurement of alcohol in a person's breath are:

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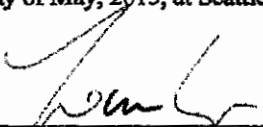
A Guth Model 34C or Guth Model 2100 wet bath simulator device is attached to every DataMaster and DataMaster CDM. Each Guth Model 34C simulator employs a mercury-in-glass thermometer with a scale graduated in tenths of a degree measuring a range between 33.5 to 34.5 degrees centigrade, and each Guth Model 2100 simulator employs a digital thermometer, as approved in WAC 448-16-020.

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All approved breath test instruments calculate whether the breath test results are within plus or minus 10% of their mean in accord with WAC 448-16-060. If a breath sample is outside this parameter, no breath test result is generated.

EXECUTED this 8<sup>th</sup> day of May, 2015, at Seattle, Washington

  
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Dr. Fiona J. Couper, State Toxicologist

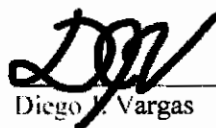
I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

My name is Diego J. Vargas and I am licensed to practice law in the State of Washington. My WSBA Number is 29925.

I have been practicing criminal defense for over 21 years and a significant portion of that is representing individuals who have been arrested for driving under the influence. In addition to representing these individuals in court proceedings there can also be administrative proceedings under RCW 46.20.308 with the Washington State Department of Licensing to determine if an individual's privilege to drive will be suspended or revoked. RCW 46.20.308(7) allows for the sworn report of the law enforcement officer, under declaration authorized by law, and other evidence, under declaration authorized by law, to be admitted without any further evidentiary foundation. Additionally, under WAC 308-101-210(10), the Hearings Examiner at the administrative proceeding can examine and admit records from the Washington State Patrol Breath Test Section website.

In the administrative proceedings, where the suspension or revocation is to be based upon a breath test result, it is common practice for the May 8, 2015 declaration of Dr. Fiona Couper entitled "Instruments, Equipment and External Standards approved for the Quantitative Measurement of Alcohol in Person's Breath in Washington State" to be provided by the Washington State Department of Licensing and admitted into evidence by the Hearings Examiner at the administrative proceeding.

Dated the 9<sup>th</sup> day of February 2022.

  
\_\_\_\_\_  
Diego J. Vargas

**BAUMGARTEN**  
LAW OFFICES PLLC

LUKE E. BAUMGARTEN\*  
MICHAEL J. PETTIT, Of Counsel  
KASSANDRA ZWICK, Associate\*  
COREY KLEER-LARSON, Associate  
JOSHUA J. HUBER, Associate  
DALE F. BRAUNGER, Associate\*

Phone 509.339.7102  
Fax 509.339.7087  
Web www.baumgartenlaw.com

1125 NW NYE ST., SUITE A  
PULLMAN, WA 99163

\*Licensed in Washington and Idaho

My name is Luke E. Baumgarten and I am licensed to practice law in the State of Washington. My WSBA Number is 40583.

I have been practicing criminal defense for twelve (12) years and a significant portion of my practice involves representing individuals who have been arrested for driving under the influence. In addition to representing these individuals in criminal court proceedings, there can also be administrative proceedings under RCW 46.20.308 with the Washington State Department of Licensing to determine if an individual's privilege to drive will be suspended or revoked. RCW 46.20.308(7) allows for the sworn report of the law enforcement officer, under declaration authorized by law, and other evidence, under declaration authorized by law, to be admitted without any further evidentiary foundation. Additionally, under WAC 308-101-210(10), the Hearings Examiner at the administrative proceeding can examine and admit records from the Washington State Patrol Breath Test Section website.

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I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at Pullman, Washington on 2/8/2022

  
Luke E. Baumgarten

**EXHIBIT 2**

**INSTRUMENTS, EQUIPMENT AND EXTERNAL STANDARDS APPROVED FOR  
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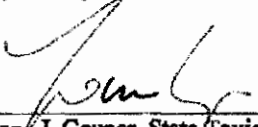
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EXECUTED this 8<sup>th</sup> day of May, 2015, at Seattle, Washington

  
\_\_\_\_\_  
Dr. Fiona J. Couper, State Toxicologist

**HUGHES | ROBBINS, P.S.**  
**ATTORNEYS AT LAW**



SCOTT A. HUGHES

425-455-0390

scotthughes@hughesrobbins.com

SCOTT R. ROBBINS

425-637-3022

scottrobbins@hughesrobbins.com

February 7, 2022

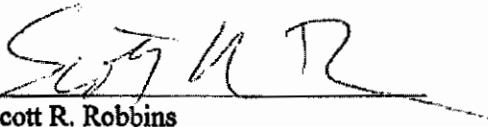
My name is Scott Robbins and I am licensed to practice law in the State of Washington. My WSBA Number is 19296.

I have been practicing criminal defense for 32 years and a significant portion of that is representing individuals who have been arrested for driving under the influence. In addition to representing these individuals in court proceedings there can also be administrative proceedings under RCW 46.20.308 with the Washington State Department of Licensing to determine if an individual's privilege to drive will be suspended or revoked. RCW 46.20.308(7) allows for the sworn report of the law enforcement officer, under declaration authorized by law, and other evidence, under declaration authorized by law, to be admitted without any further evidentiary foundation. Additionally, under WAC 308-101-210(10), the Hearings Examiner at the administrative proceeding can examine and admit records from the Washington State Patrol Breath Test Section website.

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I declare under penalty of perjury under the law of Washington that the foregoing is true and correct.

Signed on the 7th day of February, 2022 at Bellevue, Washington.

By   
Scott R. Robbins

My name is Geoffrey Burg and I am licensed to practice law in the State of Washington. My  
WSBA Number is 24406.

I have been practicing criminal defense for<sup>27</sup> \_\_\_\_\_ years and a significant portion of that is  
representing individuals who have been arrested for driving under the influence. In addition to  
representing these individuals in court proceedings there can also be administrative proceedings  
under RCW 46.20.308 with the Washington State Department of Licensing to determine if an  
individual's privilege to drive will be suspended or revoked. RCW 46.20.308(7) allows for the  
sworn report of the law enforcement officer, under declaration authorized by law, and other  
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Alcohol in Person's Breath in Washington State" to be provided by the Washington State  
Department of Licensing and admitted into evidence by the Hearings Examiner at the  
administrative proceeding.

02/07/2022





## **CERTIFIED STATEMENT OF STEVEN BENNETT**

My name is Steven Bennett and I am licensed to practice law in the State of Washington. My WSBA Number is 15960.

I have been practicing criminal defense for 35 years and a significant portion of that is representing individuals who have been arrested for driving under the influence. In addition to representing these individuals in court proceedings there can also be administrative proceedings under RCW 46.20.308 with the Washington State Department of Licensing to determine if an individual's privilege to drive will be suspended or revoked. RCW 46.20.308(7) allows for the sworn report of the law enforcement officer, under declaration authorized by law, and other evidence, under declaration authorized by law, to be admitted without any further evidentiary foundation. Additionally, under WAC 308-101-210(10), the Hearings Examiner at the administrative proceeding can examine and admit records from the Washington State Patrol Breath Test Section website.

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Electronically approved

STEVEN BENNETT