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STATE OF WASHINGTON  
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No. 100453-2

THE SUPREME COURT  
STATE OF WASHINGTON

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RJ GAUDET & ASSOCIATES, LLC, a Washington  
Limited Liability Company,

Respondent,

vs.

VASILICA CECILIA ANITEI and CRISTIAN ANITEI,  
Wife and Husband,

Petitioners.

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RESPONDENT'S ANSWER TO PETITION FOR REVIEW,  
INCLUDING CONTINGENT PETITION FOR CROSS-REVIEW

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## **I. Introduction**

The Petition of Mr. & Mrs. Anitei seeks needless delay of the final resolution of the trial court proceedings after remand from Division I. See, e.g., Crooks, *Discretionary Review of Trial Court Decisions Under the Washington Rules of Appellate Procedure*, 61 Wash. L. Rev. 1541 1551 (1986)(“[B]ecause the normal review process will impose additional delays, it usually makes little sense to grant an interlocutory review that will put a case on hold, before trial, for several years”).

Here, after a 9-day federal jury trial (which they lost), Mr. and Mrs. Anitei refused to pay the hourly fees and expenses they had agreed to pay their attorney, Respondent RJ Gaudet & Associates. In response to the Gaudet firm’s Complaint to recover its unpaid fees, Mr. & Mrs. Anitei alleged numerous defenses and counterclaims which the trial court resolved on summary judgment. The Aniteis appealed to Division I, which affirmed on 13 of 14 Issues raised by the Aniteis on appeal.



Their Petition to this Court perpetuates the Anitei's misunderstanding of fundamental legal concepts relating to the statutes of limitations and summary judgment.<sup>1</sup> Thus, while the trial court dismissed their *affirmative* counterclaims based on the statute of limitations,<sup>2</sup> they ignore the fact that the trial court also rejected those same *defensive* setoff claims on their merits. Appx. E, F. Division I affirmed on those same grounds. Appx. A, p. 3, 4, 8. Indeed, the Petition for Review makes no attempt to establish a trial court error on the merits of their setoff allegations. Thus, no conflict exists between this Court's decision in *Allis-Chalmers Corp. v. North Bonneville*, 113 Wn.2d 108, 775 P.2d 953 (1989) and the decisions of the lower courts; instead, the Aniteis simply failed to establish the existence of a genuine issue of material fact relative to their setoff defense.

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<sup>1</sup> Petition for Review, pp. 1-2.

<sup>2</sup> Indeed, the Anitei's Counterclaims conceded that the applicable statutes of limitations barred their affirmative counterclaims. Appx. A, pp. 6-7.

The Aniteis make the same mistake in their assertion<sup>3</sup> that the trial court and Division I purportedly held that RPC violations may not impair enforcement of an attorney's fee agreement; the lower courts instead concluded that "none of their [*i.e.*, the Anitei's] cited authority suggests that the specific violations they allege, if established, would invalidate the contract." Appx. A, pp. 12-13 and n.35. The Aniteis make no showing to the contrary in their Petition to this Court; nor do they make any showing that Division I was in error in that conclusion.

The Aniteis are also mistaken in their assertion that "the Court of Appeals incorrectly weighted [*sic*] evidence" on summary judgment.<sup>4</sup> The lower courts instead determined that no genuine issue of *material* fact remained in dispute relative to the Anitei's contention because "[e]ven when viewed in a light most favorable to them, the e-mails are not an objective manifestation of intent to retain the law firm subject to a limit

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<sup>3</sup> Petition for Review, p. 2.

<sup>4</sup> Petition for Review, p. 2.

on the maximum fees they could incur.” Appx. A, p. 12-13.

The Aniteis acknowledge their inability to cite any authority to support their final issue,<sup>5</sup> but nevertheless assert that the Gaudet law firm was “illegally formed” as a limited liability company rather than a professional services corporation.<sup>6</sup> Beyond the lack of supporting authority, the Aniteis’ Petition fails to disclose that they had waived their lack of capacity defense in their trial court Answer, or that their reasoning related to the significance of the issue relies upon an erroneous construction of the statutes they cite.

The Anitei’s Petition for Review thus fails to meet any of the standards governing acceptance of review under RAP 13.4(b). The Court should therefore deny review; indeed, the Court of Appeals correctly decided each of the issues for which the Aniteis seek review, consistent with established case law.

Nevertheless, contingent on whether the Court grants

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<sup>5</sup> Appx. A, p. 12.

<sup>6</sup> Petition for Review, p. 23.

review, Respondent requests that the Court then grant review of the one issue on which Division I reversed. More specifically, the trial court determined that a portion of the amounts demanded were undisputed and thus granted the Gaudet Firm partial summary judgment on those amounts. Division I reversed on that one issue based on the mistaken conclusion that the Aniteis had, in fact, disputed those portions of the account when they had not.

## **II. Citation to Court of Appeals Decision**

*RJ Gaudet & Assoc., LLC v. Anitei*, 2021 WL 5177686

(Div. I, 11/08/2021).

## **III. Rebuttal to Assignments of Error; Assignments of Error on Cross-Review**

1. The lower courts correctly rejected the Anitei's setoff defenses on their merits, including the lack of expert testimony to support their legal malpractice and breach of fiduciary duty allegations.
2. The lower courts correctly held that the Aniteis failed to establish any violation of the RPC's or that the violations alleged would warrant denial of the law firm's recovery of fees.

3. The lower courts did not “weigh” the evidence on summary judgment.
4. The lower courts correctly rejected the Anitei’s lack of capacity defense.

#### **Contingent Assignment of Error on Cross-Review**

5. If the Court grants review, it should also review Division I’s reversal of the trial court partial summary judgment relative to undisputed amounts due Respondent by Petitioners.

#### **IV. Rebuttal Statement of the Case**

On February 28, 2013, Defendant Vasilica Anitei retained Respondent RJ Gaudet & Associates, LLC, to represent her in a job discrimination lawsuit against her employer, Port of Seattle. CP 002 ¶3.0, 144 ¶3.0, 290, 295-298, 357. Ms. Anitei signed a hybrid fee agreement with the Gaudet Firm that provided for a combination of reduced hourly and contingent fees. CP 295-298. The fee agreement includes detailed provisions related to the firm’s hourly fee rates, expense reimbursements, contingent fee percentage, and payment and trust account deposit obligations. *Id.* Ms. Anitei certified that she “had an opportunity to read this engagement letter and ask Firm any questions about its terms.” CP 298.

The fee agreement does *not* include any reference to an alleged \$30,000 limit on fees and expenses. *Id.*

On March 26, 2013, the Gaudet Firm (and Mr. Gaudet) filed a lawsuit on behalf of Mrs. Anitei in the United States District Court for the Western District of Washington, case no. 13-cv-01545-TSZ entitled *Anitei v. Port of Seattle*. CP 0363. The Gaudet Firm continued to represent Mrs. Anitei in the federal court case through and including a 9-day trial to verdict in front of a jury. *Id.* The trial concluded with a defense verdict. The Gaudet Firm's representation continued until November 7, 2014 when the federal court authorized its withdrawal from further representation. *Id.* (Dkt. 199).<sup>7</sup>

During the course of its representation, the Gaudet Firm issued periodic invoices to Mrs. Anitei. CP 004-005 ¶¶3.1, 3.11, 3.14, CP 144-146 ¶¶3.1, 3.11, 3.14; CP 290 (RFA no. 3) and CP 357 (Ans. to RFA no. 3), CP 301-354. On November 11, 2014, the Gaudet Firm issued its final Invoice 131 to Mrs.

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<sup>7</sup> W.D. Wash. LCR 83.2(b) generally requires that attorneys obtain leave of court to withdraw from representation.

Anitei, in the amount of \$130,726.81. CP 009 ¶3.33, CP 149 ¶3.33, CP 291 (RFA no. 5), 332-354, and CP 357 (Resp. to RFA no. 5). Invoice 131 included amounts of prior invoices that remained unpaid at that time and thus represents the total amount the Gaudet Firm claimed due. CP 336 n. 5. The additional amounts included in Invoice 131 remain unpaid. CP 291 (RFA no. 7) and CP 358, CP 009 ¶3.33 and CP 149 ¶3.33.

Prior to initiating this lawsuit, the Gaudet Firm's counsel sent a demand letter to the Aniteis. CP 22 ¶2, 26. The Gaudet Firm filed the Complaint on February 20, 2020. CP 001. Mr. and Mrs. Anitei thereafter filed their Answer, including counterclaims alleging breach of fiduciary duty, legal malpractice and violation of the Washington Consumer Protection Act against RJ Gaudet & Associates, LLC. CP 143. The Anitei's Answer explicitly acknowledged that the statutes of limitations barred their counterclaims. CP 156.

The Gaudet Firm filed a motion for summary judgment to dismiss the Aniteis' counterclaims and affirmative defense of setoff on its merits, and for judgment on the amounts due it. CP 266; Appx. D. The Aniteis filed their own motion for summary judgment, which the Gaudet firm opposed. CP 454; Appx. E.

During briefing on the summary judgment motions, the Aniteis disputed the Gaudet Firm's final invoice in the amount of \$130,726.81, but did *not* dispute the prior invoices, which total \$93,265.79. RP 10:10-11:4. The Aniteis also claimed to have paid \$52,870 (of which the Gaudet Firm disputes \$5,000), which left the amount of \$40,395.79 ( $\$93,265.79 - \$52,870 = \$40,395.79$ ) indisputably due. *Id.* and CP 862 n. 11.

On January 15, 2021, the trial court granted the Gaudet Firm's motion to dismiss Anitei's claims against Mr. Gaudet personally, granted the Gaudet Firm's motion for summary judgment relative to the Anitei's counterclaims and setoff defense, and granted the Anitei's motion for summary judgment in part. CP 1404; Appx. F. The trial court resolved



all the Anitei's counterclaims and their affirmative defense of setoff and left only the balance claimed by the Gaudet Firm unresolved and remaining for trial. *Id.* The trial court thereafter certified the summary judgment as final. CP 1441, 1445.

On appeal, Division I affirmed the lower court on 5 of the Anitei's 6 Assignments of Error and 13 of 14 Issues Pertaining to the Assignments of Error they had raised. However, Division I reversed the trial court judgment that had awarded the Gaudet law firm partial summary judgment on the undisputed amounts owed by the Aniteis and remanded for trial to determine the amount owed. Appx. A.

## **V. ARGUMENT**

### **A. The Petition for Review Fails to Satisfy the Standards for Review Under RAP 13.4(b).**

The Petition for Review fails to meet any of the standards for review under RAP 13.4(b) due to the Anitei's fundamental misunderstanding of the trial court and Division I decisions. For example, the trial court did *not* reject the Anitei's

affirmative defense of setoff in contravention of this Court's jurisprudence; instead, the trial court and Division I rejected the Anitei's setoff defense on its merits, due to the lack of evidence to establish a genuine issue of material fact in dispute relative to legal malpractice, breach of fiduciary duty, and the purported violation of the Washington Consumer Protection Act. Appx. F. The Petition thus fails to demonstrate a conflict between the lower court decisions and this Court's prior decisions relative to the availability of setoff on a claim otherwise barred by the statute of limitations, and thus fails to satisfy RAP 13.4(b)(1).

The lower courts also acknowledged that violations of the RPC's *could* render an attorney's fee agreement unenforceable but held that none of the alleged (and unproven) RPC violations alleged by the Aniteis would potentially warrant complete invalidation of the fee agreement. The Petition thus fails to demonstrate any conflict between the Division I opinion

and other decisions by the Courts of Appeal as required by RAP 13.4(b)(2). The same deficiency exists relative to the Anitei's assertion that Division I had in some manner "weighed" the evidence on summary judgment when no such purported error had occurred.

And, finally, whether a law firm formed as a limited liability company under Washington law may recover its unpaid fees and reimbursable expenses unless formed as a "professional services corporation," can scarcely qualify as a matter of "substantial public interest" considering that the Aniteis have not cited a single case which adopted that position.

More significantly, however, CR 9(a) required that the Aniteis raise any challenge to the Gaudet firm's capacity to sue in their Answer. *Bus. Serv. of Am. II, Inc. v. WaferTech, LLC*, 188 Wn.2d 846, 851, 403 P.3d 836 (2017)(affirming waiver of objection to capacity). Here, the Aniteis expressly admitted the Gaudet Firm's capacity to bring this lawsuit in their Answer. CP 144 ¶1.0. They thus waived their lack of capacity defense

as a matter of law.

In addition, RCW 25.15.006 defines a “limited liability company” or “domestic limited liability company” as “a limited liability company having one or more members or transferees that is formed under this chapter.” The Aniteis do not dispute the fact that the Gaudet Firm constitutes an entity as a “limited liability company,” but insist that a limited liability company cannot contract to provide professional services unless it is also registered as a “professional limited liability company.”

The Aniteis reason that if Plaintiff had been organized as a “professional limited liability company, Mr. Anitei would have been required to maintain the amount of at least one million dollars (\$1,000,000) in professional liability insurance. Pet., pp. 24-25.<sup>8</sup>

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<sup>8</sup> The Aniteis assert that RJ Gaudet & Associates does not maintain business liability insurance. However, the Anitei’s Interrogatory no. 8 asked the irrelevant question of whether RJ Gaudet & Associates had malpractice insurance between January 1, 2013 and December 31, 2014. Because malpractice insurance policies are “claims made” policies, any such policy would not have provided coverage for Anitei’s claims asserted for the first time in 2019.

The Aniteis are mistaken for two reasons: (1) Washington does *not* require attorneys to maintain \$1,000,000 in malpractice insurance, and; (2) RCW 25.15.046(3) merely provides that, in the absence of such insurance, “then the limited liability company's members are personally liable to the extent that, had the insurance, bond, or other evidence of responsibility been maintained, it would have covered the liability in question.” Accordingly, RCW 25.046(3) does *not* require *any* LLC or professional services corporation to maintain professional liability insurance *and* attorneys always remain liable for the consequences of their own negligence regardless of whether practicing as an LLC, or PLLC, or a solo practitioner, or otherwise. RCW 18.100.070. Therefore, the Aniteis are clearly mistaken in their premise that Gaudet would in any way “escape professional liability and accountability in front of their clients.”<sup>9</sup> Indeed, the Aniteis proved the error in their logic when they counterclaimed against Mr. Gaudet,

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<sup>9</sup> Petition for Review, p. 25.

personally, in this case.<sup>10</sup> Therefore, the Aniteis could not have suffered harm regardless of whether the Gaudet Firm was organized as an “LLC” rather than a “PLLC.”

Moreover, the Anitei’s cited authority does *not* support their theory that a limited liability company cannot contract to provide legal services. For example, *Fallahzadeh v. Ghorbanian*, 119 Wn. App. 596, 82 P.3d 684 (2004) merely held that a non-dentist could not enforce his financial interest in a partnership for the practice of dentistry. Here, the Gaudet Firm is *not* attempting to enforce a partnership agreement with a non-lawyer; nor was RJ Gaudet in any manner prohibited from practicing law in Washington.

Thus, regardless of whether a Washington attorney can practice as an “LLC” rather than a P.S. or PLLC, “Washington courts have consistently held that failure to comply with a registration statute does not render a contract void.” *Energy Nw. v. SPX*

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<sup>10</sup> The trial court dismissed the Anitei’s claims against Mr. Gaudet, personally, a ruling to which the Aniteis did *not* assign error in either Division I or their Petition in this Court.

*Heat Transfer, Inc.*, 2015 WL 4604204 \*2 (E.D. Wash. 07/30/2015)[citations omitted]. Thus, “[a] contract that violates a statutory regulation of business is not void unless made so by the statute. Where a statute imposes a penalty for failure to comply with statutory requirements, the penalty so fixed is exclusive of any other.” *Id.*, quoting, *Yakima Lodge No. 53, K. P. v. Schneider*, 173 Wash. 639, 643, 24 P.2d 103 (1933).

For these reasons, the Aniteis have not established a substantial public interest warranting review of this case.

**B. If the Court Grants Review, the Court Should Also Review the One Issue on which Division I Reversed to Further Judicial Efficiency.**

Division I reversed the trial court determination that \$40,395.79 of the Gaudet Firm’s account was undisputed, holding that “there is evidence that the Aniteis disputed the reasonableness of fees and expenses in the prior invoices” such that “summary judgment was improper” (p. 9) and “the disputes were not merely vague and general protests.” (p. 11).

However, “[a] written account becomes an account stated if the other party to the transaction *acquiesces* in its correctness.” *Parrott Mechanical, Inc. v. Rude*, 118 Wn. App. 859, 865, 78 P.3d 1026 (2005). Accordingly, “[a]ssent may be implied from failure to object within a reasonable time.” *Id.*<sup>11</sup>

Acquiescence is evaluated based on objective facts. Thus, **“payment together with a failure to objectively manifest either protest or an intent to negotiate the sum at some future time, does establish an account stated.”** *Sunnyside Valley Irrigation Dist. v. Roza Irrigation Dist.*, 124 Wn.2d 312, 316 n. 1, 877 P.2d 1283 (1994)(reinstating trial court summary judgment on account stated)(emphasis added).

The trial court judgment of \$40,395.79 was based upon charges in Invoices 128 and 130 that the Aniteis never disputed and toward which they made payments.<sup>12</sup> There is nothing in

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<sup>11</sup> Six years is *not* a “reasonable time.”

<sup>12</sup> CP1406-1407; RP (Jan. 15, 2021), pp. 9-11 (“there are undisputed invoices ... the prior invoices [before Invoice 131] are not disputed”), 22 (“\$40,395.79 is undisputed and that is an agreed-upon amount that is due to the plaintiff”); CP 873-877



the record to show the Aniteis specifically disputed any charges in Invoices 128 or 130, despite having been given an opportunity to do so [CP 872-877] until six years later when they defended themselves against this lawsuit. Indeed, after issuing Invoice 128, Gaudet asked the Aniteis whether they contested any charges, and the Aniteis said “no.” CP 874. This was memorialized in an email in which Gaudet wrote,

Invoice 128 asks for payment of legitimate costs and fees. Cecilia has not challenged any of the items billed. During our phone conversation of May 17, 2014, with the both of you, I specifically asked whether there were any problems with the items or hours billed for and you said there were not.<sup>13</sup>

Division I also failed to identify any email, letter, or other document that reflects that the Aniteis specifically protested those charges.

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(explaining Aniteis had never disputed Invoice 128; said they did not dispute Invoice 128, and made payments on Invoice 128 including \$10,000 and \$5,750).

<sup>13</sup> CP 1010.

Not only did the Aniteis fail to contest Invoices 128 and 130,<sup>14</sup> but they admitted liability and made payments towards these Invoices.<sup>15</sup> On May 24, 2014, Mr. Anitei emailed that he had made a payment of \$10,000 two days earlier to pay “\$65,000” in charges (CP 626) for Invoice 128 which was issued on May 16 in the amount of \$65,741.69. CP 980. A Wells Fargo receipt and account statement confirm the \$10,000 deposit. CP 805-806, 1016. The Wells Fargo statement also shows \$5,750 transferred to the Gaudet Firm in May 2014 as “Invoice 128 Partial Payment.” CP 805-806. By email, Mr. Gaudet confirmed receipt of the Aniteis’ payments of \$5,750

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<sup>14</sup> CP 872-877 (“Engagement Letter expressly states they must contest any charges in writing within one week ...The Aniteis have never followed this rule to contest any charge”).

<sup>15</sup> CP 874-875 (“Aniteis made partial payments on Invoice 128. I memorialized these payments in an email to them on May 25, 2014. ... Instead [sic] of contesting these charges, the Aniteis authorized me to withdraw \$5,750 held in an IOLTA account as partial payment towards the \$65,741.69 due in Invoice 128. ... On May 22, 2014, the Aniteis deposited \$10,000 which was received into my firm’s IOLTA account on May 25, 2014”).

and \$10,000 toward Invoice 128 and noted a remaining balance of \$49,991.69. CP 875, 1007.

The record thus shows that the Aniteis did not dispute any charges with respect to Invoice 128. The Aniteis also do not dispute that they paid \$10,000 towards Invoice 128 or authorized the Gaudet Firm to withdraw \$5,750 from the IOLTA account to pay for Invoice 128. Division I thus appears to have overlooked the Aniteis' failure to dispute Invoice 128 and their payments on Invoice 128. If the Aniteis had wanted to contest Invoices 128 and 130, they could have disputed the charges before paying \$10,000 and \$5,750 and they could have responded to Gaudet's emails stating they had not contested charges.

Division I thus erred when it reversed the trial court summary judgment relative to the undisputed portion of the amount due the Gaudet Firm. In the interest of judicial efficiency, this Court should therefore grant review of this additional issue if the Court grants review of the Anitei's

Petition.

**VI. Conclusion**

For these reasons, Respondent RJ Gaudet & Associates, LLC requests that the Court deny the Anitei's Petition for Review. Respondent further requests that, if the Court grants review of the Petition for Review, that it also grant review of that portion of the underlying Division I opinion which reversed the trial court grant of partial summary judgment in its favor.

**VII. RAP 18.17 Certification**

This brief complies with the type-volume limitation of RAP 18.17 because this brief contains 3,703 words, which is less than the 5,000-word limitation.

DATED: January 4, 2022.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid  
BRIAN J. WAID  
WSBA No. 26038  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

This document was filed via CM/ECF and will be automatically served on all registered participants. Additional copies served by mail: None, unless requested.

DATED: January 4, 2022.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid

Brian J. Waid

WSBA No. 26038

Attorney for Appellants

No. 100453-2

THE SUPREME COURT  
STATE OF WASHINGTON

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RJ GAUDET & ASSOCIATES, LLC, a Washington  
Limited Liability Company,

Respondent,

vs.

VASILICA CECILIA ANITEI and CRISTIAN ANITEI,  
Wife and Husband,

Petitioners.

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RESPONDENT'S APPENDIX IN SUPPORT OF ANSWER TO  
PETITION FOR REVIEW

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Hon. Suzanne Parisien  
Date of Hearing: November 6, 2020  
Time of Hearing: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

RJ GAUDET & ASSOCIATES, LLC, a  
Washington Limited Liability Company,

NO. 20-2-04515-2 SEA

Plaintiff,

MOTION TO DISMISS BY  
DEFENDANT-IN-COUNTERCLAIM  
RJ GAUDET AND MOTION FOR  
SUMMARY JUDGMENT BY  
PLAINTIFF/ DEFENDANT-IN-  
COUNTERCLAIM RJ GAUDET &  
ASSOCIATES, LLC

vs.

VASILICA CECILIA ANITEI and  
CRISTIAN ANITEI, Husband and  
Wife, Individually and on Behalf of the  
Marital Community Comprised  
Thereof,

Defendants.

**I. Request for Relief**

Plaintiff RJ Gaudet & Associates, LLC filed this lawsuit to recover attorney fees and litigation expenses incurred by the defendants in 2013-2014. The Answer of Mr. and Mrs. Anitei alleged counterclaims, which they acknowledged are barred by the governing statutes of limitation), against both Plaintiff and its principal, Robert J. Gaudet. Mr. and Mrs. Anitei also allege entitlement to a setoff based on those same

Motion to Dismiss by Defendants-in-  
Counterclaim and Motion for Summary  
Judgment by Plaintiff

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1 counterclaims. Mr. and Mrs. Anitei did not add Mr. Gaudet as a party to this litigation  
2 or serve him with process.

3 Plaintiff/Defendant-in-Counterclaim RJ Gaudet & Associates, LLC moves for  
4 summary judgment as follows: (1) dismissing defendants' counterclaims against it  
5 based on the statute(s) of limitations and/or the merits; (2) dismissing defendants'  
6 affirmative defenses based on the merits, and; (3) entering judgment in its favor and  
7 against the against the defendants. Defendant-in-Counterclaim Robert J. Gaudet  
8 separately moves to dismiss the Counterclaims filed against him for lack of service and  
9 lack of jurisdiction.<sup>1</sup>

11 **II. Facts**

12 On February 28, 2013, Defendant Vasilica Anitei retained Plaintiff RJ Gaudet &  
13 Associates, LLC, to represent her in a job discrimination lawsuit against her employer,  
14 Port of Seattle. Compl. ¶3.0; Answer ¶3.0; Waid Decl. (10/07/20) **Ex. A** (RFA no. 1  
15 and Ex. 1); **Ex. B** (Resp. to RFA no. 1). Ms. Anitei signed a hybrid fee agreement with  
16 Plaintiff that provided for a combination of reduced hourly and contingent fees. *Id.*  
17 Robert J. Gaudet, Jr. was and remains the sole owner and principal of Plaintiff RJ  
18 Gaudet & Associates, LLC. Gaudet Decl. (10/07/20) ¶1

19 On March 26, 2013, Gaudet filed a lawsuit on behalf of Mrs. Anitei in the  
20  
21  
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23 <sup>1</sup> Although lack of jurisdiction and process result in dismissal without prejudice, summary judgment  
24 dismissing Mr. & Mrs. Anitei's counterclaims based on either the statute of limitations or the merits will  
25 also bar re-litigation of the counterclaims against Mr. Gaudet under principles of collateral estoppel  
and/or *res judicata*. Defendants' affirmative defenses (*e.g.*, setoff) only apply against the claims of  
Plaintiff RJ Gaudet & Associates and are thus irrelevant to the counterclaims against Mr. Gaudet.

Motion to Dismiss by Defendants-in-  
Counterclaim and Motion for Summary  
Judgment by Plaintiff

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SEATTLE, WA 98136  
206-388-1926

1 United States District Court for the Western District of Washington, case no. 13-cv-  
2 01545-TSZ entitled *Anitei v. Port of Seattle*. Waid Decl. (10/07/20) **Ex. C**. Gaudet  
3 continued to represent Mrs. Anitei in the federal court case through and including a 9-  
4 day trial to verdict in front of a jury. *Id.* (Dkt. 152-180). The trial concluded with a  
5 defense verdict on September 16, 2014. *Id.* (Dkt. 180). Gaudet's representation  
6 continued until November 7, 2014 when the federal court authorized his withdrawal  
7 from further representation. *Id.* (Dkt. 199).

9 During the course of its representation, Plaintiff RJ Gaudet & Associates, LLC  
10 issued periodic invoices to Mrs. Anitei. Compl. ¶¶3.1, 3.11, 3.14; Ans. ¶¶3.1, 3.11,  
11 3.14; Waid Decl. (10/07/20) **Ex. A** (RFA no. 3 and Exhibit 3); **Ex. B** (Resp. to RFA no.  
12 3). On November 11, 2014, Plaintiff issued its final Invoice 131 to Mrs. Anitei, in the  
13 amount of \$130,726.81. Compl. ¶3.33; Ans. ¶3.33; Waid Decl. **Ex. A** (RFA no. 5 and  
14 Exhibit 5); **Ex. B** (Resp. to RFA no. 5). Invoice 131 includes amounts of prior invoices  
15 that remained unpaid at that time and thus represents the total amount remaining due.  
16 Waid Decl. (10/07/20) **Ex. A** (footnote 3 to Ex. 5). Invoice 131 remains unpaid. *Id.*  
17 **Ex. A** (RFA no. 7); **Ex. B** (Resp. to RFA no. 7); Compl. ¶3.33; Ans. ¶3.33.

18 Plaintiff RJ Gaudet & Associates filed the Complaint on February 20, 2020. On  
19 September 7, 2020, Mr. and Mrs. Anitei filed their Answer, including Counterclaims  
20 alleging breach of fiduciary duty, legal malpractice and violation of the Washington  
21 Consumer Protection Act against both RJ Gaudet & Associates, LLC and Mr. Gaudet,  
22 personally. Mr. & Mrs. Anitei's Answer acknowledges that their counterclaims are  
23  
24  
25

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1 barred by the statute of limitations. Ans., p. 14.

2           Nevertheless, Mr. & Mrs. Anitei also did not seek or obtain leave to add Mr.  
3 Gaudet as a defendant-in-counterclaim; nor have they issued or effectuated service of  
4 process on him. (The Court would presumably not have granted leave due to the  
5 defendants' admission that their counterclaims against Mr. Gaudet are barred by the  
6 statute of limitations). RJ Gaudet & Associates and Mr. Gaudet filed their Reply to Mr.  
7 & Mrs. Anitei's counterclaim in which Mr. raised the lack of proper joinder and service  
8 as affirmative defenses [Reply ¶2.0-2.3] thus preserving those defenses.  
9

10           Mr. & Mrs. Anitei have also conceded that they "have no expert witnesses to  
11 disclose." Waid Decl. (10/07/20) Ex. D, p. 4.  
12

13           **III. Issues Presented**

- 14           1. Should the Court dismiss Defendants' counterclaims against R.J. Gaudet for  
15 failure to properly join him as a party and/or failure to serve him with  
16 process? **Answer: Yes.**  
17           2. Should the Court dismiss Defendants' counterclaims against Plaintiff RJ  
18 Gaudet & Associates, LLC based on the statute of limitations? **Answer:**  
19 **Yes.**  
20           3. Should the Court dismiss Defendants' affirmative defenses to Plaintiff's  
21 Complaint on the merits? **Answer: Yes.**  
22           4. Should the Court grant Plaintiff summary judgment against the Defendants?  
**Answer: Yes.**

23           **IV. Evidence Relied Upon**

- 24           1. Plaintiff's Complaint;  
25           2. Defendants' Answer and Counterclaims;

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1 3. Plaintiff's Reply to Defendants' Complaint.

2 4. Declaration of R.J. Gaudet dated October 7, 2020 with Exhibits I through 7  
3 attached thereto;

4 5. Declaration of Brian J. Waid dated October 7, 2020 with Exhibit A through  
5 D attached thereto.

6 **V. ARGUMENT**

7 **A. The Court Should Dismiss Mr. and Mrs. Anitei's Claims Against**  
8 **RJ Gaudet Pursuant to CR 12(b)(2) and CR 12(b)(5).**

9 CR 13(h) and CR 20 allow defendants such as Mr. & Mrs. Anitei to join a  
10 person such as Mr. Gaudet as an additional defendant-in-counterclaim. However, to  
11 add Mr. Gaudet (personally) as an additional defendant-in-counterclaim, CR 13(h) and  
12 CR 21 required that they file a motion to obtain leave to add him. Furthermore, even  
13 after Mr. & Mrs. Anitei obtained leave of Court to add Mr. Gaudet as a defendant-in-  
14 counterclaim (if they had done so), they would then still be required to serve him with  
15 process. *E.g.*, Miller, Kane & Spencer, 6 *Fed. Prac. & Proc. Civ.* § 1436 (3d  
16 ed. 04/2020); accord, 3A *Wash. Prac., Rules Practice CR 15* (6th ed.)("A defendant  
17 who is added after the action is commenced, by amendments to the pleadings or  
18 otherwise, must be served in the same manner as the original defendant")[citations  
19 omitted]. In the absence of proper service of process, the Court lacks jurisdiction over  
20 the defendant (in this case, the defendant-in-counterclaim Robert J. Gaudet). *E.g.*,  
21 *Crystal, China & Gold, Ltd. v. Factoria Ctr. Investments, Inc.*, 93 Wn. App. 606, 608,  
22 969 P.2d 1093 (1999); *Chengdu Gaishi Elecs., Ltd. v. G.A.E.M.S., Inc.*, 11 Wn. App. 2d  
23 617, 622-623, 454 P.3d 891 (2019); accord, *Campbell v. Fernandez*, \_\_ Wn. App.2d \_\_,  
24 25

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1 \_\_P.3d \_\_\_\_, 2020 WL 5903569 \*4 (Div. III, 10/06/20).

2 Here, Mr. & Mrs. Anitei neither sought nor obtained leave to add Mr. Gaudet as  
3 a defendant-in-counterclaim; nor have they issued or served him with a summons and  
4 their Counterclaims. Mr. Gaudet expressly raised the lack of personal jurisdiction and  
5 lack of service of process in his Reply to the Counterclaim, thus preserving those  
6 affirmative defenses. Reply ¶¶2.0-2.3.

8 The Court thus lacks jurisdiction over Mr. Gaudet and the Counterclaims against  
9 him should be dismissed, without prejudice.

10 **B. The Statutes of Limitations Bar Mr. and Mrs. Anitei's**  
11 **Counterclaims Against RJ Gaudet & Associates, LLC.**

12 The party moving for summary judgment carries the burden of establishing the  
13 absence of a genuine issue of material fact on the issues for which the moving party  
14 seeks summary judgment. *Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 225 and n.1,  
15 770 P.2d 182 (1989). The moving party satisfies that initial burden by merely  
16 “showing” or pointing out the absence of evidence necessary to establish a genuine  
17 issue of material fact relative to those issues on which the moving party does *not* have  
18 the burden of proof at trial,  
19

20 Defendants have the burden of proof at trial relative to their affirmative defenses  
21 and must therefore carry the summary judgment burden of introducing sufficient  
22 evidence to establish a genuine issue of material fact in dispute relative to each essential  
23 element of each affirmative defense. *E.g., Hansen v. Wightman*, 14 Wn. App. 78, 88,  
24 538 P.2d 1238 (1975)(“The burden is on the attorney to prove that the client was  
25

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1 contributorily negligent in failing to act or in failing to disclose information to the  
2 lawyer”); *Haslund v. City of Seattle*, 86 Wn.2d 620-621, 547 P.2d 1221 (1976).  
3 Nevertheless, plaintiff (or as here, plaintiffs-in-counterclaim) must carry the burden of  
4 proof if he or she alleges that the statute was tolled and does not bar the claim.” *Rivas*  
5 *v. Overlake Hosp. Med. Ctr.*, 164 Wn.2d 261, 267, 189 P.3d 753 (2008); accord,  
6 *Gimera v. First Baptist Church of Rose Hill*, 2020 WL 1917496 \*4 (Div. I).

8 Accordingly, once Plaintiff RJ Gaudet & Associates establishes that the  
9 statute of limitation has expired, the burden shifts to Mr. & Mrs. Anitei (plaintiffs-in-  
10 counterclaim) to establish through competent evidence the existence of a genuine issue  
11 of material fact for purposes of tolling.

12 Mr. & Mrs. Anitei alleged three causes of action against Plaintiff RJ Gaudet &  
13 Associates, LLC, including: (1) breach of fiduciary duty;<sup>2</sup> (2) negligence,<sup>3</sup> and; (3)  
14 violation of the Consumer Protection Act.<sup>4</sup> The three-year statute of limitations  
15 provided by RCW 4.16.080(3) governs the Aniteis’ breach of fiduciary duty and  
16 negligence causes of action. *E.g.*, *Cawdrey v. Janson Baker Ludlow Drumheller, P.S.*,  
17 129 Wn. App. 810, 816, 120 P.3d 605 (2005); *Hipple v. McFadden*, 161 Wn. App. 550,  
18 557, 255 P.3d 730 (2011); *Janicki Logging & Const. Co. v. Schwabe, Williamson &*  
19 *Wyatt, P.C.*, 109 Wn. App. 655, 659, 37 P.3d 309 (2001). Moreover, “entry of an  
20 adverse judgment at trial. . .put[s] the client on notice that the attorney may have  
21 committed malpractice in connection with the representation.” *Janicki Loggins, supra*,

22  
23  
24  
25 <sup>2</sup> Def. Answer, p. 26.

<sup>3</sup> Def. Answer, p. 28.

<sup>4</sup> Def. Answer, p. 30.

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1 109 Wn. App. At 660, *citing Richardson v. Denend*, 59 Wn. App. 92, 95-96, 795 P.2d  
2 1192 (1990); accord, *Quinn v. Connelly*, 63 Wn. App. 733, 739, 821 P.2d 1256 (1992).

3 The four-year statute of limitations provided by RCW 19.86.120 governs Mr. &  
4 Mrs. Anitei's Consumer Protection Act cause of action.

5 Here, Mr. and Mrs. Anitei acknowledge that Plaintiff's representation of them  
6 concluded no later than November 2014, after an adverse jury verdict in the underlying  
7 trial. They did not file their counterclaims until September 2020, nearly six years after  
8 conclusion of Gaudet's representation of them. Indeed, the Aniteis acknowledge that the  
9 "statute of limitations has run out on any affirmative actions that could have reasonably  
10 been pursued by the Defendants." Def. Answer, p. 14.

11 The Court should therefore dismiss all of Mr. and Mrs. Anitei's counterclaims  
12 against RJ Gaudet & Associates, PLLC, with prejudice, as barred by the governing  
13 statutes of limitations, *i.e.*, RCW 4.16.080(3) and RCW 19.86.120.

14 **B. The Court Should Also Grant Plaintiff Summary Judgment on the**  
15 **Merits of Mr. & Mrs. Anitei's Counterclaims.**

16 Relative to Mr. & Mrs. Anitei's counterclaims, RJ Gaudet & Associates only  
17 needs to make an initial "showing" that the Aniteis lack competent evidence to establish  
18 a genuine issue of material fact to support each essential element of their counterclaims.

19 *Young v. Key Pharmaceuticals, supra*, 112 Wn.2d at 225 and n. 1.<sup>5</sup>

20 Legal Malpractice

21  
22  
23  
24  
25 <sup>5</sup> Summary judgment on the merits of the Aniteis' counterclaims is also necessary in light of their  
affirmative defenses alleging a setoff and that the fee agreement violates the RPC's. Ans. ¶¶8.12, 8.15.  
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1 The essential elements of the Mr. & Mrs. Anitei's legal malpractice cause of  
2 action include: (1) the existence of an attorney-client relationship which gives rise to a  
3 duty of care, (2) an act or omission by Mr. Gaudet in breach of that duty, (3) damage to  
4 the Aniteis, and (4) proximate causation between the breach of duty and the damage  
5 incurred. *E.g.*, *Slack v. Luke*, 192 Wn. App. 909, 916, 370 P.3d 49 (2016), *citing Hizey*  
6 *v. Carpenter*, 119 Wn.2d 251, 260-261, 830 P.2d 646 (1992).

8 In most legal malpractice cases,<sup>6</sup> the client must introduce expert testimony to  
9 establish the attorney's breach of the standard of care. *E.g.*, *Geer v. Tonnon*, 137 Wn.  
10 App. 838, 851, 155 P.3d 163 (2007); *Slack, supra* 192 Wn. App. at 916-917, *Balint v.*  
11 *Wynne*, 2018 WL 5279393 \*5 (Div. II). However, Mr. and Mrs. Anitei have disclosed  
12 that they have no expert witnesses. Accordingly, in the absence of expert testimony to  
13 support their contention that Mr. Gaudet breached the standard of care, summary  
14 judgment should be granted.

16 The same absence of evidence also applies to the issue of proximate cause.  
17 More specifically, the legal malpractice plaintiff must also establish that he/she would  
18 have prevailed in the underlying trial-within-a-trial (or "case-within-a-case") but for the  
19 attorney's breach of the standard of care. *E.g.*, *Slack, supra*, 192 Wn. App. at 919. A  
20 motion for summary judgment can resolve the proximate cause issue in three situations,  
21 *i.e.*, causation can be decided as an issue of law where: (1) where the issue is one of  
22 law; (2) the facts are so clear that reasonable persons could not disagree; or (3) where  
23  
24

25 <sup>6</sup> Washington case law recognizes that expert testimony on the standard of care is not required when the malpractice is within the knowledge of laypersons. *E.g.*, *Balint, supra* at \*5.

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1 the issue of causation or damage is left to speculation.” 4 Mallen, *Legal Malpractice* §  
2 37:78, pp. 1730-1731 (2020 ed.).  
3

4 Therefore, in the absence of competent evidence that demonstrates that Mr. &  
5 Mrs. Anitei would have won the underlying trial but for Mr. Gaudet’s alleged breaches  
6 of the standard of care, the Court should grant summary judgment dismissing their legal  
7 malpractice claim against RJ Gaudet & Associates.  
8

9 Breach of Fiduciary Duty

10 Plaintiff agrees that Washington attorneys undertake the duties of a fiduciary in  
11 favor of their clients, including the duty to act with utmost fairness and good faith  
12 toward their clients in all matters. *E.g., Perez v. Pappas*, 98 Wn.2d 835, 840-841, 659  
13 P.2d 475 (1983); *VersusLaw v. Stoel Rives*, 127 Wn. App. 309, 333, 111 P.3d 866  
14 (2005); *In re Beakley*, 6 Wn.2d 410, 423, 107 P.2d 1097 (1940); *Bovy v. Graham*,  
15 *Cohen & Wampold*, 17 Wn. App. 567, 570, 564 P.2d 1175 (1977). The attorney’s  
16 fiduciary duties include “duties of confidentiality and undivided loyalty.” 2 Mallen,  
17 *Legal Malpractice* §15.1, p. 652-653 (2020 ed). In Washington, the Rules of  
18 Professional Conduct (RPC) generally outline the attorney’s minimum fiduciary duties.  
19 *Arden v. Forsberg & Umlauf*, P.S. 193 Wn. App. 731, 743, 373 P.3d 320 (2016), *citing*  
20 *Eriks v. Denver*, 118 Wn.2d 451, 457-458, 824 P.2d 1207 (1992) and *Cotton v.*  
21 *Kronenberg*, 111 Wn. App. 258, 265-266, 44 P.3d 878 (2002).  
22  
23  
24  
25

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1           However, as in legal malpractice claims, the client must generally<sup>7</sup> introduce  
2 expert testimony to establish the attorney's breach of fiduciary duty. *Balint, supra* at  
3 \*5-6. Here, Mr. & Mrs. Anitei allege that Mr. Gaudet breached fiduciary duties to  
4 them in numerous respects. Def. Ans., p. 26. Plaintiff's Reply denies the Aniteis'  
5 allegations.<sup>8</sup> Mr, and Mrs. Anitei must therefore come forward with competent evidence  
6 (including expert testimony) to establish a genuine issue of material fact relative to each  
7 essential element of the alleged breaches of fiduciary duty. In the absence of competent  
8 of supporting evidence that demonstrates that Mr. Gaudet breached his fiduciary duties  
9 to Mr. & Mrs. Anitei, the Court should grant summary judgment dismissing breach of  
10 fiduciary duty claims against RJ Gaudet & Associates.

11  
12  
13           Consumer Protection Act

14           *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778,  
15 787-793, 719 P.2d 531 (1986) sets forth the five elements of a Consumer Protection Act  
16 claim: (1) an unfair or deceptive act or practice; (2) in trade or commerce; (3) that  
17 affects or has the capacity to affect the public interest; (4) injury to business or property;  
18 and (5) causation. The five *Hangman Ridge* elements assure that the plaintiff is a  
19 proper party to bring suit." *Rhodes v. Rains*, 195 Wn. App. 235, 246, 381 P.3d 58  
20 (2016).

21  
22           A Consumer Protection Act cause of action "may be predicated upon a per se  
23 violation of statute, an act or practice that has the capacity to deceive substantial  
24

25           <sup>7</sup> See n. 5, above.

<sup>8</sup> Pl. Reply to Counterclaims ¶¶1.0 through 1.69.

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1 portions of the public, or an unfair or deceptive act or practice not regulated by statute  
2 but in violation of public interest.” *Klem v. Wash. Mutual Bank*, 176 Wn.2d 771, 787,  
3 295 P.3d 1179 (2013). The term “unfair or deceptive” is not otherwise defined in the  
4 Act. RCW 19.86.020. No intentional deception need be proved, only a capacity or  
5 tendency to deceive. *State v. A.N.W. Seed Corp.*, 116 Wn.2d 39, 50, 802 P.2d 1353  
6 (1991); *Hangman Ridge, supra*, 105 Wn.2d at 785; *Rhodes v. Rains, supra*, 195 Wn.  
7 App. at 242-243. When the underlying facts are undisputed, the question whether the  
8 acts are likely to deceive—an objective inquiry—is a question of law. *State v.*  
9 *Mandatory Poster Agency, Inc.*, 199 Wn. App. 506, 512, 398 P.3d 1271 (2017); *Panag*  
10 *v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 47, 204 P.3d 885 (2009)(“whether a  
11 particular act or practice is ‘unfair or deceptive’ is a question of law”). Several of Mr.  
12 & Mrs. Anitei’s allegations of unfair or deceptive conduct cannot possibly qualify as  
13 either unfair or deceptive and should thus be dismissed on that basis.<sup>9</sup> Others require  
14 Mrs. Anitei to establish specific facts to support her allegations, e.g., that her mental  
15 capacity was so seriously diminished that she could not adequately make decisions in  
16 connection with her representation,<sup>10</sup> and that “the lawyers not admitted to practice” in  
17  
18  
19

20 <sup>9</sup> E.g., Def. Ans. ¶57(g)(“failing to preserve the confidentiality of client’s information”),  
21 57(h)(disclosing client’s tax return information to adverse party); 57(j) failing to perform competently);  
22 57(l)(failing to expedite litigation); 57(m)(failing to inform client of case proceedings); 57(o)(“failing to  
23 meet the responsibilities associated with the firm’s legal assistant”); 57(s)(“relying on lawyers not  
24 admitted to practice in the jurisdiction”); 57(t)(“Engaging in multiple other cases during the  
25 representation of Mrs. Anitei”); 57(v)(“Requesting payment of invoice and another amendment to  
engagement letter in exchange for pursuing appeal”).

<sup>10</sup> Def. Ans. ¶57(a). Establishing this fact will appear to require expert testimony from a qualified mental  
health professional, as well as testimony to establish that she was incapable of managing her affairs  
without the assistance of her husband, Cristian Anitei.

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1 the Western District of Washington were not competent to appear on her behalf,<sup>11</sup> and  
2 that RJ Gaudet & Associates' fee lien, as authorized by RCW 60.40, was in some  
3 manner unlawful.<sup>12</sup> In the absence of such evidence, the Court should dismiss the  
4 those allegations of a CPA violation for which Mr. & Mrs. Anitei fail to introduce  
5 supporting evidence.  
6

7 Plaintiff agrees that certain entrepreneurial aspects of the practice of law may  
8 fall within the "trade or commerce" definition of the CPA. *Short v. Demopolis*, 103  
9 Wn.2d 52, 60, 691 P.2d 163, 168 (1984). The entrepreneurial aspects of the practice of  
10 law include "how the price of legal services is determined, billed, and collected and the  
11 way a law firm obtains, retains, and dismisses clients. *Id.* 103 Wn.2d at 61 (CPA applies  
12 to an attorney's collection efforts); accord, *Rhodes v. Rains*, *supra* 195 Wn. App. at 246  
13 (attorney fee padding). However, a former client's allegations of incompetency,  
14 negligence, or the failure to obtain particular results do *not* state a claim for violation of  
15 the Consumer Protection Act. *E.g.*, *Short v. Demopolis*, 103 Wn.2d 52, 61-62 (1984);  
16 *Michael v. Moscara-Lacey*, 165 Wn.2d 595, 603, 200 P.3d 695 (2009)("Claims directed  
17 at the competence of and strategies employed by a professional amount to allegations of  
18 negligence and are exempt from the Consumer Protection Act."), *quoted with*  
19  
20

21  
22 <sup>11</sup> Def. Ans. ¶57(s). Attorneys frequently appear in "foreign" courts *pro hac vice*, when they are not  
admitted to practice in that particular court. See, e.g., Wash. APR 8(b) and W.D. Wash. LCR 83.1(d).

23 <sup>12</sup> Def. Ans. 57(u). Furthermore, the underlying trial court authorized Mr. Gaudet's withdrawal from  
24 representation, which forecloses any assertion of impropriety by Mr. Gaudet in connection with his  
25 withdrawal. *Schibel v. Eymann*, 189 Wn.2d 93, 100, 399 P.3d 1129 (2017) collaterally estopped from  
relitigating whether the Attorneys' withdrawal was proper, as is alleged in Def. Ans. ¶57(c).

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1 approval, *Timmerman v. S. Sound Outreach Servs.*, 2019 WL 14888 77 \*5 (Div. II).

2  
3 However, the vast majority of Mr. & Mrs. Anitei's allegations of CPA  
4 violations<sup>13</sup> have nothing to do with the entrepreneurial aspects of the practice of law.  
5 The Court should therefore be dismissed those additional allegations of CPA violation.

6 The third essential element of Mr. & Mrs. Anitei's CPA cause of action  
7 requires them to establish that their remaining (if any) allegations of unfair and  
8 deceptive conduct by Mr. Gaudet affect the public interest. Under *Hangman Ridge*, the  
9 trier of fact in a consumer transaction should consider whether (1) the alleged acts were  
10 committed in the course of defendant's business; (2) the acts were a part of a pattern or  
11 generalized course of conduct; (3) repeated acts were committed before the act  
12 involving the plaintiff; (4) there is a real and substantial potential for repetition of  
13 defendant's conduct; and (5) the act complained of involved a single transaction, or  
14 many consumers. *Hangman, supra* 105 Wn.2d at 790.

15  
16  
17 However, an essentially "private" dispute affecting no one but the parties to the  
18 contract generally will not affect the public interest. *Id.* In that context, the trier of fact  
19 should consider whether (1) the alleged acts were committed in the course of  
20 defendant's business; (2) the defendant advertised to the public in general; (3) the  
21 defendant actively solicited the particular plaintiff; and (4) the plaintiff and defendant

22  
23 <sup>13</sup> Def. Ans. ¶57, including: RPC 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.6  
24 (confidentiality), 1.8 (conflict of interest), 1.14 (client with diminished capacity), 1.15(B)(maintaining  
25 trust account records), 1.16 (withdrawal), 3.2 (expediting litigation), 4.1 (truthfulness in statements to  
others), 5.3 (supervision of non-lawyer assistants), 5.5 (unauthorized practice of law), 5.7 (law-related  
services), 7.3 (solicitation of clients), 7.4 (communication of fields of practice and specialization), and 8.4  
(misconduct).

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1 occupy unequal bargaining positions. *Id.* at 791.

2 Here, the Aniteis and RJ Gaudet & Associates engaged in a private transaction.  
3 The law firm did not actively solicit Mrs. Anitei's business; instead, she sought out the  
4 law firm and, by her own account, considered other law firms but chose RJ Gaudet.<sup>14</sup>  
5 Thus, Mrs. Anitei and not RJ Gaudet & Associates, had superior bargaining power over  
6 the law firm. Under these circumstances, Mr. & Mrs. Anitei cannot establish the  
7 existence of a genuine issue of material fact that defeats summary judgment on the  
8 public interest element of their CPA cause of action.<sup>15</sup>

9  
10 Accordingly, Mr. & Mrs. Anitei cannot establish that a genuine issue of material  
11 fact remains in dispute relative to each essential element of their Consumer Protection  
12 Act cause of action.

13  
14 **C. The Court Should Grant Plaintiff Summary Judgment on Its**  
15 **Breach of Contract Cause of Action.**

16 Plaintiff's breach of contract cause of action only requires that it establish that:  
17 (1) Mrs. Anitei entered into an agreement to compensate RJ Gaudet & Associates, LLC  
18 for performing legal services; (2) she received the invoices for legal services, and; (c)  
19 she admitted that she did not pay those invoices. *Elliott Bay Asset Solutions, LLC v.*  
20 *James B. Nutter & Co.*, 2020 WL 5891894 \*3 (Div. I, 10/05/2020). The burden thus  
21

22  
23 <sup>14</sup> Gaudet Decl. (10/07/20) ¶3-7.

24 <sup>15</sup> Mr. & Mrs. Anitei also cannot establish proximate cause and damages considering that they have *not*  
25 paid the vast majority of the fees and expenses they owe RJ Gaudet & Associates and Mrs. Anitei did not  
recover any funds subject to a contingency fee.

Motion to Dismiss by Defendants-in-  
Counterclaim and Motion for Summary  
Judgment by Plaintiff

**WAID LAW OFFICE, PLLC**  
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SEATTLE, WA 98136  
206-388-1926

1 shifts to Mr. & Mrs. Anitei<sup>16</sup> to introduce competent evidence to establish a genuine  
2 issue of material fact relative to specific charges invoiced to them.

3 Mr. & Mrs. Anitei must also carry the burden of demonstrating that a genuine  
4 issue of material fact remains in dispute relative to each of their other affirmative  
5 defenses, *i.e.*, failure to state a claim upon which relief can be granted, breach of  
6 contract by RJ Gaudet & Associates, duress and/or undue influence, unclean hands,  
7 fraud or misrepresentations, contributory negligence and assumptions of risk, failure to  
8 mitigate, third party fault, estoppel, waiver and laches [sic], payment, fee agreements  
9 that violate the RPC's, statute of frauds, "non-performance of condition precedent," and  
10 set-off.<sup>17</sup>

11  
12  
13 However "unclean hands," contributory negligence, and third party fault have  
14 no application to a breach of contract cause of action. Furthermore, laches is an  
15 equitable defense that does *not* apply when a specific statute of limitations applies to the  
16 factual circumstances. *E.g.*, *Brawley v. Washington*, 712 F. Supp. 2d 1208, 1216 (W.D.  
17 Wash. 2010), *quoting Rutter v. Rutter's Estate*, 59 Wn.2d 781, 784, 370 P.2d 862  
18 (1962); *Integrated Facilities Mgmt., LLC v. City of Mercer Island*, 2016 WL 1566799  
19 \*2-3 (Div. I 04/18/2016)(unpublished); *In re Marriage of Capetillo*, 85 Wn. App. 311,  
20 317-318, 932 P.2d 691 (1997). Considering the six-year statute of limitations provided  
21

22  
23 <sup>16</sup> Mr. & Mrs. Anitei admit that they were, and remain, married to each other during the relevant time  
24 periods. Waid Decl. (10/07/20) Ex. B (Resp. to RFA no. 8).

25 <sup>17</sup> See discussion above at pp. 6-7. Mr. & Mrs. Anitei's affirmative defenses of setoff and alleged  
violation of the RPC's thus fail if the Court agrees that their counterclaim for legal malpractice and  
breach of fiduciary duty fail on the merits.

Motion to Dismiss by Defendants-in-  
Counterclaim and Motion for Summary  
Judgment by Plaintiff

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1 by RCW 4.16.040(1) for claims based on written contracts by RCW 4.16.040(1) laches  
2 has no application here. And, finally, the Anitei's must establish that a genuine issue of  
3 material fact remains in dispute relative to each essential element of their remaining  
4 affirmative defenses that would either invalidate their fee agreement or reduce the  
5 amounts due.  
6

7 The Court should therefore grant Plaintiff RJ Gaudet & Associates summary  
8 judgment on their breach of contract cause of action.

9 **D. The Court Should Award Plaintiff Pre-Judgment and Post-**  
10 **Judgment at 12% Per Annum on Amounts Due It.**

11 Washington provides for recovery of pre-judgment interest when an amount  
12 claimed is "liquidated" or the amount of an "unliquidated" claim is for an amount of  
13 money that is "determinable by computation with reference to a fixed standard  
14 contained in [a] contract, without reliance on opinion or discretion." *Prier v.*  
15 *Refrigeration Engineering Co.*, 74 Wn.2d 25, 32, 442 P.2d 621 (1968). Attorneys  
16 are entitled to recover pre-judgment interest on the unpaid fees due them. *E.g., Forbes*  
17 *v. Am. Bldg. Maint. Company West*, 170 Wn.2d 157, 166-167, 240 P.3d 790 (2010)(pre-  
18 judgment interest awarded on contingent fee); *Taylor v. Shigaki*, 84 Wn. App. 723, 731-  
19 732, 930 P.2d 340 (1997)(pre-judgment interest awarded on contingent fee); DeWolf,  
20 Allen Caruso, 25 *Wash. Prac., Contract Law & Prac.* §14.14 n. 15 (3rd ed. updated  
21 through Oct. 2014). Interest accrues at 12% per annum, *i.e.* 1% per month. RCW  
22 19.52.010(1).  
23  
24

25 The Court should therefore also award RJ Gaudet & Associates, LLC interest on

Motion to Dismiss by Defendants-in-  
Counterclaim and Motion for Summary  
Judgment by Plaintiff

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1 the sums due by Mr. & Mrs. Anitei at 12% per annum, including both pre-judgment and  
2 post-judgment interest, from November 14, 2014 until paid.  
3

4 **VI. Conclusion**

5 For these reasons, the Court should: (a) dismiss Mr. and Mrs. Anitei's  
6 counterclaims against Robert J. Gaudet, Jr. without prejudice; (b) dismiss their  
7 counterclaims against RJ Gaudet & Associates, LLC with prejudice, and; (c) grant  
8 Plaintiff summary judgment on its Complaint, together with interest and costs of this  
9 action. Plaintiff has submitted a proposed Order with this Motion.  
10

11 **LCR 7(b)(5)(B)(vi) Certification:** I certify that this memorandum contains  
12 4,546 words, in compliance with the Local Civil Rules.

13 DATED: October 7, 2020.

14 WAID LAW OFFICE, PLLC

15 BY: /s/ Brian J. Waid

16 BRIAN J. WAID

17 WSBA No. 26038

18 Attorney for Plaintiff/Defendants-in-  
19 Counterclaim

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Motion to Dismiss by Defendants-in-  
Counterclaim and Motion for Summary  
Judgment by Plaintiff

WAID LAW OFFICE, PLLC  
5400 CALIFORNIA AVENUE SW, SUITE D  
SEATTLE, WA 98136  
206-388-1926

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2020, I served all parties, through their attorneys, via the Court's ECF delivery system (or by email and/or United States Mail, first class postage prepaid if defendants are not ECF registered).

DATED: October 8, 2020.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid  
BRIAN J. WAID  
WSBA No. 26038  
Attorney for Plaintiff and  
Defendants-in-Counterclaim

Motion to Dismiss by Defendants-in-Counterclaim and Motion for Summary Judgment by Plaintiff

WAID LAW OFFICE, PLLC  
5400 CALIFORNIA AVENUE SW, SUITE D  
SEATTLE, WA 98136  
206-388-1926

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Hon. Suzanne Parisien  
Date of Hearing: January 15, 2021  
Time of Hearing: 10:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

RJ GAUDET & ASSOCIATES, LLC, a  
Washington Limited Liability Company,

NO. 20-2-04515-2 SEA

Plaintiff,

PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT

vs.

VASILICA CECILIA ANITEI and  
CRISTIAN ANITEI, Husband and  
Wife, Individually and on Behalf of the  
Marital Community Comprised  
Thereof,

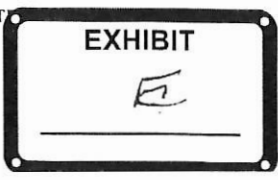
Defendants.

I. Response to Relief Requested

Plaintiff RJ Gaudet & Associates, LLC filed this lawsuit to recover hourly attorney fees and expenses incurred by Mr. and Mrs. Anitei in connection with Mrs. Anitei's complex discrimination lawsuit in 2013-2014, which ultimately led to a nine (9) day federal jury trial. Plaintiff filed its Motion for Partial Summary Judgment on October 8, 2020. On Defendants' CR 56(f) Motion, the Court postponed the hearing on Plaintiff's summary judgment motion from November 6, 2020 to January 15, 2021.

Plaintiff's Opposition to Defendants'  
Motion for Summary Judgment

WAID LAW OFFICE, PLLC  
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SEATTLE, WA 98136  
206-388-1926



1 10/26/2020 Order. Defendants then filed their own motion for summary judgment on  
2 December 17, 2020 and noted it for hearing on the same day as Plaintiff's motion.

3 Defendants' motion seeks the following relief: (1) dismissal of Plaintiff's  
4 fraud and promissory estoppel causes of action based on the statute of limitations; (2)  
5 objection to Plaintiff's standing because Plaintiff was "formed as a limited liability  
6 business entity that is not legally entitled to render professional attorney services in  
7 Washington State;"<sup>1</sup> (3) dismissal of Plaintiff's complaint based on the defendants'  
8 allegation that Plaintiff had agreed to limit its fees to \$30,000, and; (4) Plaintiff cannot  
9 assert a claim for an account stated because its fee agreement with the Defendants is  
10 "void or voidable. Def. Mot, pp. 1-2.  
11

12 Plaintiff acknowledges that the defendants are correct in their assertion that  
13 Plaintiff's causes of action for fraud and promissory estoppel are barred by the statute  
14 of limitations and thus concede those two issues. See Pl. Proposed Order. The Court  
15 should nevertheless deny Defendants' remaining motions because: (1) Defendants  
16 waived the standing/capacity to sue defense they allege, but Plaintiff has standing to  
17 sue for Defendants' breach of contract in any event; (2) Plaintiff never agreed to limit  
18 its fees to \$30,000; (3) Plaintiff did not violate the RPC's, and; (4) in any event,  
19 Defendants have not established the absence of genuine issues of material fact relative  
20 to whether Defendants' fee agreement with Plaintiff is "void or voidable" or limited to  
21 \$30,000.  
22  
23  
24

25 <sup>1</sup> Def. SJ Motion, p. 1.

1           **H. Facts**

2           Plaintiff's motion for partial summary judgment sets forth most of the facts  
3 relevant to this motion which are reiterated here, but single spaced [Pl. SJ Mot, p. 2 4]:

4           On February 28, 2013, Defendant Vasilica Anitei retained Plaintiff RJ  
5 Gaudet & Associates, LLC, to represent her in a job discrimination lawsuit  
6 against her employer, Port of Seattle. Compl. ¶3.0; Answer ¶3.0; Waid Decl.  
7 (10/07/20) **Ex. A** (RFA no. 1 and Ex. 1); **Ex. B** (Resp. to RFA no. 1). Ms.  
8 Anitei signed a hybrid fee agreement with Plaintiff that provided for a  
9 combination of reduced hourly and contingent fees. *Id.* Robert J. Gaudet, Jr.  
was and remains the sole owner and principal of Plaintiff RJ Gaudet &  
Associates, LLC. Gaudet Decl. (10/08/20) ¶1

10           On March 26, 2013, Gaudet filed a lawsuit on behalf of Mrs. Anitei in  
11 the United States District Court for the Western District of Washington, case no.  
12 13-cv-01545-TSZ entitled *Anitei v. Port of Seattle*. Waid Decl. (10/07/20) **Ex.**  
13 **C**. Gaudet continued to represent Mrs. Anitei in the federal court case through  
14 and including a 9-day trial to verdict in front of a jury. *Id.* (Dkt. 152-180). The  
trial concluded with a defense verdict on September 16, 2014. *Id.* (Dkt. 180).  
Gaudet's representation continued until November 7, 2014 when the federal  
court authorized his withdrawal from further representation. *Id.* (Dkt. 199).

15           During the course of its representation, Plaintiff RJ Gaudet & Associates,  
16 LLC issued periodic invoices to Mrs. Anitei. Compl. ¶¶3.1, 3.11, 3.14; Ans.  
17 ¶¶3.1, 3.11, 3.14; Waid Decl. (10/07/20) **Ex. A** (RFA no. 3 and Exhibit 3); **Ex.**  
18 **B** (Resp. to RFA no. 3). On November 11, 2014, Plaintiff issued its final  
19 Invoice 131 to Mrs. Anitei, in the amount of \$130,726.81. Compl. ¶3.33; Ans.  
20 ¶3.33; Waid Decl. **Ex. A** (RFA no. 5 and Exhibit 5); **Ex. B** (Resp. to RFA no.  
21 5). Invoice 131 includes amounts of prior invoices that remained unpaid at that  
22 time and thus represents the total amount remaining due. Waid Decl.  
23 (10/07/20) **Ex. A** (footnote 3 to Ex. 5). Invoice 131 remains unpaid. *Id.*  
24 **Ex. A** (RFA no. 7); **Ex. B** (Resp. to RFA no. 7); Compl. ¶3.33; Ans. ¶3.33.

25           Plaintiff RJ Gaudet & Associates filed the Complaint on February 20,  
2020. On September 7, 2020, Mr. and Mrs. Anitei filed their Answer, including  
Counterclaims alleging breach of fiduciary duty, legal malpractice and violation  
of the Washington Consumer Protection Act against both RJ Gaudet &  
Associates, LLC and Mr. Gaudet, personally. Mr. & Mrs. Anitei's Answer  
acknowledges that their counterclaims are barred by the statute of limitations.  
Ans., p. 14.

1                    **Additional Facts Relevant to this Motion:**

2                    Defendants complain that Plaintiff filed an identical complaint in Snohomish  
3 County Superior Court on October 14, 2020. Def. Mot., p. 2. However, as Mr. & Mrs.  
4 Anitei know (but fail to mention), “[w]e filed that lawsuit to protect against your [sic]  
5 any potential negative ruling on your motion for discretionary review.” Waid Decl.  
6 (01/04/21) Ex. E (11/30/20 email @ 4:32 p.m.; 12/04/20 email @ 11:32 a.m.). Plaintiff  
7 thus promptly proposed that the parties stipulate to a stay of the Snohomish County case  
8 pending resolution of their appeal [*id.*]; however, Mr. & Mrs. Anitei refused. *Id.*  
9 (12/04/20 email @ 11:27 a.m.). Washington expressly allows the filing of such a  
10 protective action. *Campbell v. Fernandez*, 14 Wn. App. 2d 769, 776, 473 P.3d 675  
11 (2020). In that situation, “[a]mong other possible remedies, the defendant can move to  
12 abate the second action.” *Id.* Plaintiff thus acted properly in filing its Snohomish  
13 County Superior Court protective lawsuit and the defense has no reason to complain.

14                    Mr. Gaudet also disputes virtually all of the negative assertions of fact by  
15 Mr. & Mrs. Anitei and Mr. Cooley,<sup>2</sup> and supports his testimony with extensive,  
16 contemporaneous documentation. Gaudet Decl. (01/03/21) ¶¶3-356 and Ex. A-CCC.  
17 For example, Mr. Gaudet explains and documents the following in detail: (1) there was  
18 never any agreement to limit fees to \$30,000;<sup>3</sup> (2) Gaudet did *not* pressure Mrs. Anitei  
19 to amend the fee agreement.<sup>4</sup> Thus, genuine issues of material fact remain in dispute  
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23 \_\_\_\_\_  
24 <sup>2</sup> Mr. Cooley served as defense counsel in the underlying litigation.

25 <sup>3</sup> Gaudet Decl. (01/03/21) ¶¶156-173 and Ex. C (p. 2-4), X (p. 1), B (p. 26).

<sup>4</sup> Gaudet Decl. (01/03/21) ¶¶223-250, 283-308 and Ex. JJ, KK, LL, MM, NN, OO, PP, W (p. 2-45),  
QQ, G, II, RR, SS, YY, ZZ, AAA and BBB. (Exhibits listed in the order referenced in cited paragraphs).

1  
2 relative to Mr. & Mrs. Anitei's affirmative defenses and allegations.

3 **III. Issues Presented**

- 4 1. Did Defendants waive their lack of capacity/standing defense? **Answer:**  
5 **Yes.** [pp. 7-8].
- 6 2. May Plaintiff recover its fees and expenses regardless of whether it was  
7 formed as an LLC rather than as a PLLC? **Answer: Yes.** [p. 8-10].
- 8 3. Do genuine issues of material fact remain in dispute relative to Defendants'  
9 allegation of an agreement contract to limit Plaintiff's fees to \$30,000?  
10 **Answer: Yes.** [pp. 10-11]
- 11 4. Are defendants' allegations of RPC violations baseless? **Answer: Yes** [11-  
12 12]

12 **IV. Evidence Relied Upon**

- 13 1. Plaintiff's Complaint;
- 14 2. Defendants' Answer and Counterclaims;
- 15 3. Plaintiff's Reply to Defendants' Counterclaims;
- 16 4. Declaration of Brian J. Waid dated October 7, 2020 with Exhibits A through  
17 D attached thereto;
- 18 5. Declaration of Robert J. Gaudet, Jr. dated October 7, 2020 with Exhibit 1  
19 attached;
- 20 6. Declaration of Brian J. Waid dated January 4, 2021 with Exhibit E attached  
21 thereto;
- 22 7. Declaration of Robert J. Gaudet, Jr. dated January 3, 2021 with Exhibits A  
23 through CCC attached thereto;
- 24 8. Plaintiff's Opposition to Defendants' Motion for Summary Judgment.
- 25

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Plaintiff's Opposition to Defendants'  
Motion for Summary Judgment

Page 5 of 13

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**V. ARGUMENT**

**A. Defendants Must Establish that No Genuine Issue of Material Fact Remains in Dispute Relative to Their Affirmative Defenses.**

As the moving party, Defendants have the initial burden to "show" that no genuine issue of material fact<sup>5</sup> remains. *Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 225 and n.1, 770 P.2d 182 (1989). They "must...identify 'those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *White v. Kent Medical Center, Inc., PS*, 61 Wn. App. 163, 170, 810 P.2d 4 (1991), quoting *Celotex*, 477 U.S. at 322-323. If the moving party fails to make a sufficient initial "showing," then the burden does *not* shift to the non-moving party and "summary judgment may not be entered, regardless of whether the opposing party submitted responding materials." *White, supra*, 61 Wn. App. at 170. Moreover, in the absence of a sufficient initial "showing," the moving party may *not* correct deficiencies for the first time in reply. *Id.* at 168.

Relative to affirmative defenses, Defendants have the burden of proof at trial. *E.g., Hansen v. Wightman*, 14 Wn. App. 78, 88, 538 P.2d 1238 (1975)("The burden is on the attorney to prove that the client was contributorily negligent in failing to act or in failing to disclose information to the lawyer"); *Haslund v. City of Seattle*, 86 Wn.2d 620-621, 547 P.2d 1221 (1976). Defendants must therefore establish the absence of a

<sup>5</sup> "A material fact is one upon which the outcome of the litigation depends in whole or in part." *E.g., Boguch v. The Landover Corp.*, 153 Wn. App. 595, 608, 224 P.3d 795 (2009), quoting *Atherton Condo Apartment-Owners Ass'n Bd. of Dirs v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 491 (1990).



1 genuine issue of material fact relative to their affirmative defenses in their initial  
2 "showing." *Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 225 and n.1, 770 P.2d 182  
3 (1989). Furthermore, the Court "must view all facts and reasonable inferences in the  
4 light most favorable to the non-moving party" (*i.e.*, *RJ Gaudet & Associates*) and  
5 "[w]here competing inferences may be drawn from the evidence, the issue must be  
6 resolved by the trier of fact." *Versustlaw, Inc. v. Stoel Rives, LLP*, 127 Wn. App. 309,  
7 328-329, 111 P.3d 866 (2005).  
8

9 Defendants have not met these standards.

10  
11 **B. Defendants Waived Their Capacity to Sue Objection.**

12 CR 9(a) requires that a defendant must raise any challenge to a plaintiff's  
13 "capacity to sue" by a "specific negative averment." "Any objection to the capacity of a  
14 business to bring suit based solely on the identity of the named plaintiff **must be raised**  
15 **in a preliminary pleading or by answer or the objection is deemed waived.** *Bus.*  
16 *Serv. of Am. II, Inc. v. WaferTech, LLC*, 188 Wn.2d 846, 851, 403 P.3d 836 (2017)  
17 (emphasis added; affirming waiver of objection to capacity), *citing, Dearborn*  
18 *Lumber Co. v. Upton Enterprises, Inc.*, 34 Wn. App. 490, 492-493, 662 P.2d 76 (1983)  
19 ("assumed business name filing requirements go only to capacity to sue"). A challenge  
20 to a party's capacity filed *after* the parties' answer is waived. *Id.*  
21

22 Here, Mr. and Mrs. Anitei did *not* raise lack of standing or capacity to sue  
23 in their Answer, despite having alleged fifteen (15) separate affirmative defenses. Def.  
24 Ans., pp. 12-13. To the contrary, the Aniteis' Answer admitted Plaintiff's capacity to  
25

1  
2 sue. Ans. ¶1.0. Defendants thus waived the argument that Plaintiff lacks capacity to  
3 recover for its services to them and the Court should deny their motion.<sup>6</sup>

4 **C. Plaintiff Has Standing to Recover on Its Contract Regardless of**  
5 **Whether Defendants Waived their Capacity to Sue Objection.**

6 RCW 25.15.006 defines a “limited liability company” or “domestic limited  
7 liability company” as “a limited liability company having one or more members or  
8 transferees that is formed under this chapter.” Mr. & Mrs. Anitei do not dispute the  
9 fact that Plaintiff constitutes an entity as a “limited liability company,” but insist that  
10 a limited liability company cannot contract to provide professional services unless it  
11 is also registered as a “professional limited liability company.” Def. Mot., pp. 13-16.  
12 They reason that if Plaintiff had been organized as a “professional limited liability  
13 company, Mr. Anitei would have been required to main “the amount of at least one  
14 million dollars” (\$1,000,000) in professional liability insurance.: *Id.* p. 15.<sup>7</sup>

15  
16 Defendants are mistaken for two reasons: (1) Washington does *not* require  
17 attorneys to maintain \$1,000,000 in malpractice insurance, and; (2) RCW 25.15.046(3)  
18 merely provides that, in the absence of such insurance, “then the limited liability  
19 company's members are personally liable to the extent that, had the insurance, bond, or  
20

21 <sup>6</sup> The Court also denied the Defendants’ previous motion to amend their Answer on October 26, 2020.

22 <sup>7</sup> Defendants assert that RJ Gaudet & Associates “does not maintain business liability insurance.” Def.  
23 Mot., p. 15. However, Defendants’ Interrogatory no. 8 asked the irrelevant question of whether RJ  
24 Gaudet & Associates had malpractice insurance between January 1, 2013 and December 31, 2014.  
25 Because malpractice insurance policies are “claims made” policies, any such policy would not have  
provided coverage for Defendants’ claims asserted for the first time in 2019. The purported lack of  
insurance is irrelevant in any event because the Aniteis’ claims against Plaintiff are all barred by the  
statute of limitations.

1 other evidence of responsibility been maintained, it would have covered the liability in  
2 question.” Defendants are thus mistaken because RCW 25.046(3) does *not* require *any*  
3 LLC or PLLC to maintain professional liability insurance *and* attorneys always remain  
4 liable for the consequences of their own negligence regardless of whether practicing as  
5 an LLC, or PLLC, or a solo practitioner, or otherwise. See further, RCW 18.100.070.<sup>8</sup>  
6

7 Furthermore, the Aniteis’ cited authorities do *not* support their lack of capacity  
8 defense. For example, *State Farm Mut. Auto. Ins. Co. v. Jacobs*, 2014 WL 5470623 \*4  
9 (W.D. Wash.) flatly *rejected* State Farm’s attempt to claw back insurance payments for  
10 physical therapy and massage services based on the “novel” theory that the “owners  
11 were never licensed to provide the medical services the entities were providing” and the  
12 defendant entity thus did not satisfy the technical requirements of the Professional  
13 Services Corporation Act (PSCA). *Columbia Physical Therapy, Inc., P.S. v. Benton*  
14 *Franklin Orthopedic Associates, P.L.L.C.*, 168 Wn.2d 421, 427, 228 P.3d 1260 (2010)  
15 similarly arose out of a lawsuit by a group of physical therapists who tried to prevent a  
16 group of physicians from providing hiring employees to provide physical therapy  
17 services. Indeed, the Supreme Court in *Columbia Physical Therapy* thus affirmed  
18 *dismissal* of the alleged violation of the PSCA. Defendants thus fail to cite any  
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22  
23 <sup>8</sup> RCW 18.100.070 provides, in pertinent part, that “Nothing contained in this chapter shall be  
24 interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the  
25 professional relationship and liabilities between the person furnishing the professional services and the  
person receiving such professional services and the standards for professional conduct.” [Emphasis  
added]. In other words, if Mr. Gaudet had committed malpractice, then he would have remained  
responsible to the Anitei’s regardless of how his firm was registered.

1 authority that would prevent a law firm from recovering fees pursuant to its fee  
2 agreement based on its registration as a “limited liability company” rather than a  
3 “professional limited liability company.” Furthermore and as a practical matter,  
4 literally hundreds of Washington law firms appear in the Secretary of State’s records  
5 registered as an “LLC” rather than a “PLLC.”  
6

7 Thus, even if the defendants had not waived their objection to the Gaudet  
8 Law Firm’s capacity to sue, defendants have not cited any relevant authority to support  
9 the contention that the law firm cannot recover its fees and expenses incurred by it on  
10 behalf of defendants.

11 **D. Genuine Issues of Material Fact Remain in Dispute Relative to**  
12 **Defendants’ Allegation that Plaintiff (Purportedly) Agreed to Limit**  
13 **Its Fees to \$30,000.**

14 Defendants assert that Plaintiff is “estopped”<sup>9</sup> to recover its fees because (they  
15 say) Mr. Gaudet in some manner agreed to limit his fees to \$30,000. Def. Mot., pp. 16-  
16 18. However, Mr. Gaudet categorically denies that his firm agreed to limit its fees to  
17 \$30,000 and the documentary evidence confirms his testimony. *E.g.*, Gaudet Decl.  
18 (01/03/21) ¶¶ 156-173 and Ex. C (p. 2-4), X (p. 1), B (p. 26). Indeed, in the context of a  
19 complex discrimination case tried to a federal court jury for nine (9) days,<sup>10</sup> the Aniteis’  
20 assertion is so absurd that the Court should disregard it.  
21

22 In any event, the defense cannot establish any of the essential elements of  
23

24 <sup>9</sup> Estoppel is an affirmative defense. CR 8(c). The Aniteis must therefore carry the burden of  
establishing that no genuine issue of material fact remains in dispute relative to that defense.

25 <sup>10</sup> See, Waid Decl. (10/07/20) Ex. C (Dkt. Nos. 152-180).

1 equitable estoppel, *i.e.*, agreement, reasonable reliance, or injury. Genuine issues of  
2 material fact thus remain in dispute relative to whether the Gaudet firm agreed to limit  
3 its hourly fees to \$30,000 and the Court should deny defendants' motion on that issue.<sup>11</sup>

4 **E. RJ Gaudet & Associates Did Not Violate the RPC's.**

5 Defendants assert that RJ Gaudet & Associates cannot recover its fees because:  
6 (1) it allegedly violated RPC 1.5 in connection with its purported informal agreement to  
7 limit its fees to \$30,000 [Mot. pp. 18-21]; (2) the termination provision contained in the  
8 Engagement Letter violates RPC 1.16 because it provides that "Client is liable for  
9 payment of any outstanding fees or costs that may be due and as are billed to Client by  
10 firm" [*id.*, pp. 21-22]; (3) violated RPC 1.2 and RPC 1.4 by allegedly failing to "inform  
11 and obtain Mrs. Anitei's consent to associate" Eric Lewis [*id.*, pp. 22-23], and; (4)  
12 violated RPC 1.8 in some unspecified manner [*id.*, p. 23]. RJ Gaudet & Associations  
13 disputes each of these allegations on the facts.

14 First, as discussed above (pp. 9-10), there was no agreement to limit the firm's  
15 fees to \$30,000. Moreover, Mr. Gaudet has provided a detailed rejoinder that refutes  
16 Mr. & Mrs. Anitei's complaints about purportedly "unreasonable" fees and charges.  
17 Gaudet Decl. (01/03/20) ¶¶37-136 and Ex. A-B, F, E, I-J, L, K, M-U. Accordingly,  
18 the defense has *not* established a violation of RPC 1.5 as a matter of law.

19 Second, termination of a law firm does not relieve a client from liability for  
20 accrued fees and expenses; indeed, RCW 2.44.040 provides that "no such change [in  
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25 <sup>11</sup> Defendants paid Plaintiff a total of \$47,827.68, rather than \$52,870 that Mr. and Mrs. Anitei assert. Gaudet Decl. (01/03/21) ¶¶261-263. See further, Def. SJ Mot., pp. 17-18.

1 attorneys] can be made until the charges of such attorney have been paid by the party  
2 asking such change to be made.”<sup>12</sup> Thus, the termination clause in the fee agreement  
3 could *not* conceivably have prevented Mrs. Anitei from retaining replacement counsel.

4 Furthermore, the federal court authorized the Gaudet law firm’s withdrawal.  
5 Waid Decl. (10/07/20) Ex. C (Dkt. 199). Collateral estoppel thus bars the Aniteis from  
6 asserting that the Gaudet law firm’s withdrawal was in any way improper. *Schibel v.*  
7 *Eymann*, 189 Wn.2d 93, 100, 399 P.3d 1129 (2017). Thus, Plaintiff did not violate RPC

9 1.16

10 Third, the parties’ Letter of Engagement provides that the Gaudet “[f]irm  
11 reserves the right to associate with other lawyers and legal assistants to perform the  
12 legal services described in this Engagement Letter.” Waid Decl. (10/07/20) Ex. A (Ex.  
13 I attached to Ex. A), p. 1. Fee agreements in Washington routinely include such an  
14 authorization, which do not offend the Rules of Professional Conduct in any way. The  
15 Gaudet firm thus had no obligation to obtain Mrs. Anitei’s consent to associate with  
16 Eric Lewis. See, Gaudet Decl. (01/03/21) ¶¶37, 56-58. However, the Gaudet firm also  
17 did *not* charge fees of Mr. Lewis or for time incurred by the Gaudet firm in connection  
18 with consulting Mr. Lewis. *Id.* Thus, no violation of RPC 1.2 or RPC 1.4 occurred.

19 Therefore, Plaintiff’s fee agreement is *not* “void” as a matter of law.

20  
21 **VI. Conclusion**

22 For these reasons, Plaintiff RJ Gaudet & Associates, LLC concedes dismissal of  
23 of Plaintiff’s causes of action for fraud and promissory estoppel; however, the Court  
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12 Waid Decl. (10/07/20) Ex. A (Ex. I attached to Ex. A) p. 3.

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should deny the remainder of Defendants' motion because they have failed to carry their summary judgment burden of establishing that no genuine issues of material fact remain in dispute.

**LCR 7(b)(5)(B)(vi) Certification:** I certify that this memorandum contains 3,309 words, in compliance with the Local Civil Rules.

DATED: January 4, 2021.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid  
BRIAN J. WAID  
WSBA No. 26038  
Attorney for Plaintiff/Defendants-in-Counterclaim

**CERTIFICATE OF SERVICE**

I hereby certify that on January 4, 2021, I served all parties, through their attorneys, via the Court's ECF delivery system (or by email and/or United States Mail, first class postage prepaid if defendants are not ECF registered).

DATED: January 4, 2021.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid  
BRIAN J. WAID  
WSBA No. 26038  
Attorney for Plaintiff

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Hon. Suzanne Parisien  
Date of Hearing: January 15, 2021  
Time of Hearing: 10:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

RJ GAUDET & ASSOCIATES, LLC, a  
Washington Limited Liability Company,

Plaintiff,

vs.

VASILICA CECILIA ANITEI and  
CRISTIAN ANITEI, Husband and  
Wife, Individually and on Behalf of the  
Marital Community Comprised  
Thereof,

Defendants.

NO. 20-2-04515-2 SEA

ORDER (1) GRANTING  
PLAINTIFF'S MOTION TO  
STRIKE; (2) GRANTING THE  
MOTION TO DISMISS WITHOUT  
PREJUDICE OF DEFENDANT-IN-  
COUNTERCLAIM ROBERT J.  
GAUDET, JR.; (3) GRANTING IN  
PART AND DENYING IN PART  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT, AND; (4)  
GRANTING IN PART AND  
DENYING IN PART DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

This matter came before the Court on January 15, 2021, on: (1) Plaintiff's  
Motion for Summary Judgment and Defendant-in-Counterclaim Robert J. Gaudet's  
Motion to Dismiss, and; (2) Defendants' Motion for Summary Judgment. The Court  
heard oral argument by of counsel for Plaintiffs, Brian J. Waid, and *pro se* Defendants  
by Cristian Anitei. The Court also considered the following documents and evidence  
which were brought to the Court's attention before the order on summary judgment and

Order on Summary Judgment Motions

Page 1 of 4

WAID LAW OFFICE, PLLC  
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dismissal was entered.

On behalf of Plaintiff RJ Gaudet & Associates, LLC:

1. Plaintiff's Motion for Summary Judgment;
2. Plaintiff's Complaint;
3. Defendants' Answer and Counterclaims to Plaintiff's Complaint;
4. Plaintiff's Reply to Defendants' Counterclaims;
5. Declaration of Robert J. Gaudet dated October 7, 2020;
6. Declaration of Brian J. Waid dated October 7, 2020.
7. Plaintiff's LCR 56(e) Motion to Strike and Reply in Support of Plaintiff's Motion;
8. Declaration of Brian J. Waid dated January 7, 2021;

On behalf of Defendants Vasilica Cecilia Anitei and Cristian Anitei:

9. Defendants' Opposition to Plaintiff's Motion;
10. Declaration of Dr. Steven H. Johansen, Ph.D;
11. Declaration of Joyce A. Jefferson;
12. Declaration of Vasilica Cecilia Anitei;
13. Declaration of Cristian Anitei;
14. Declaration of Andrew Cooley dated December 21, 2020;
15. Defendants' Motion for Summary Judgment;
16. Declaration of Vasilica Anitei dated December 16, 2020;
17. Declaration of Cristian Anitei dated December 16, 2020;
18. Declaration of Andrew Cooley (undated);

Order on Summary Judgment Motions

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19. Defendants' Reply in support of Defendants' Motion for Summary Judgment;

20. Declaration of Vasilica Anitei dated January 7, 2021.

Based on the arguments of counsel, and the pleadings and evidence, the Court **GRANTS** the Plaintiff's LCR 56(e) Motion to Strike the Declarations of Dr. Stephen H. Johansen and Joyce A. Jefferson, and;

IT IS FURTHER ORDERED that the Court **GRANTS** the Motion to Dismiss filed by Defendant-in-Counterclaim Robert J. Gaudet, Jr., and all claims against Mr. Gaudet are hereby dismissed without prejudice, and;

IT IS FURTHER ORDERED that the Court **GRANTS** the Motion for Summary Judgment filed by Plaintiff RJ Gaudet & Associates, LLC and hereby dismisses all counterclaims filed against Plaintiff by Defendants Vasilica Cecilia Anitei and Cristian Anitei with prejudice, and;

IT IS FURTHER ORDERED that the Court **GRANTS** Plaintiff's Motion for Summary Judgment rejecting the Defendants' Affirmative Defense of Set-Off relative to Defendants' allegations of Plaintiff's breach of the standard of care, breach of fiduciary duty, and violation of the Washington Consumer Protection Act and;

IT IS FURTHER ORDERED that the Court **GRANTS** the Motion for Summary Judgment filed by Plaintiff RJ Gaudet & Associates, LLC establishing that Defendants' are liable to Plaintiff for breach of contract, and;

IT IS FURTHER ORDERED that Plaintiff RJ Gaudet & Associates, LLC is

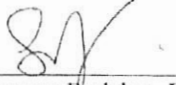
1 entitled to entry of judgment in its favor, and against the defendants Vasilica Cecilia  
2 Anitei and Cristian Anitei, and their marital community in the sum of \$40,395.79,  
3 together with pre-judgment and post-judgment interest at the rate of 12% per annum,  
4 from November 14, 2014 until paid, and all taxable costs of these proceedings, and;  
5

6 IT IS FURTHER ORDERED that the Court **GRANTS** the motion of  
7 Defendants' Vasilica Cecilia Anitei and Cristian Anitei to dismiss Plaintiff's causes of  
8 action alleging fraud and promissory estoppel, with prejudice as barred by the statute of  
9 limitations, and;  
10

11 IT IS FURTHER ORDERED that the Court **DENIES** Defendants' motion for  
12 summary judgment in all other respects.

13 The only issue remaining for trial thus consist of the additional amounts  
14 allegedly due to Plaintiff by Defendants.

15 DATED this 15<sup>th</sup> day of January 2021 at Seattle, Washington.

16  
17   
18 \_\_\_\_\_  
Hon. Suzanne Parisien, Judge

19 PRESENTED BY:

20 WAID LAW OFFICE

21 BY: /s/ Brian J. Waid  
22 BRIAN J. WAID  
23 WSBA No. 26038  
24 Attorney for Plaintiff  
25

**WAID LAW OFFICE**

**January 04, 2022 - 2:08 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 100,453-2  
**Appellate Court Case Title:** RJ Gaudet & Associates, LLC v. Vasilica Cecilia Anitei, et ano.

**The following documents have been uploaded:**

- 1004532\_Answer\_Reply\_20220104140349SC986792\_5483.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was Gaudet.Answer to Petition for Review.pdf*

**A copy of the uploaded files will be sent to:**

- canitei@outlook.com
- gopika@waidlawoffice.com

**Comments:**

Respondent's Answer to Petition for Review, Including Contingent Petition for Cross-Review, and Appendix in Support of Answer to Petition for Review

---

Sender Name: Brian J. Waid - Email: bjwaid@waidlawoffice.com

Address:

5400 CALIFORNIA AVE SW STE D

SEATTLE, WA, 98136-1501

Phone: 206-388-1926

**Note: The Filing Id is 20220104140349SC986792**