Supreme Court **No. 99271-1**

Court of Appeals **No. 80543-6-1**

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SYMON MANDAWALA,

Petitioner,

v.

ERA LIVING LLC,

Respondant

AMENDED **PETITION FOR REVIEW**

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A. IDENTITY OF PETITIONER

The Petitioner, **Symon Mandawala**, requests this Court to grant review of the Court of Appeals decision in Mandawala v. Era Living LLC, 80543-6-1 (Div I. October 2, 2020) (Appendix A).

B. DECISION BELOW AND ISSUES PRESENTED FOR REVIEW

Both Appeals court and Trial court have been upholding that Era Living act of filling an appearance does not mean they waived a defense of insufficient service of process quoting lybbert v. Grant County, 141 Wn 2d 29, 43 1124 (2000). see **Exhibit A,** An appearance made by the party to court is simply notifying the court of availability of the party to defend the case either with an attorney or self represents, it does not stay or Tolling the time of presenting that defense of insufficient of services. Especially where defendant make an appearance within the 20 days period of raised insufficient of service of process as stated on Sup.CR12(a)

Issue One: (Untimely filed motion to dismiss).

Does the Defendant Make an appearance to the court tolls the time for raising insufficient service of process defense in rule 12(a) from 20 days to 124 days without court's concert to extend the 20 day period?

Mandawala filed a complaint on February 4, 2019, the service was insufficient in documents and name of who lead Era Living on March 25, 2019 Era Living made an appearance to court on April 10,

2019 (see Exhibit C) and 110 days's from appearance date and 124 days from the date of return receipt Era Living filed Rule 12(b)5 a motion to dismiss. (see Exhibits D) The trial court did not look at all untimely request of the Era Living motion to dismiss and denied Mandawala even a one-time chance to cure the defects in the original process.(see Exhibit B) The court of Appeals affirmed that Era Living did not delay the time of responding and dismissed Mandawala's case for not complying to the service of process. (See Exhibit A)

Thus, the question to this court raised above and argued below.

ISSUE TWO: (abuse of court's discretion to deny plaintiff the right to amendment before responsive pleading is filed)

"As a matter of course," does the trial court have a discration to deny Plantiffs' a one-time right to amend the process and complaint when defendant does not file a responsive pleading?

The Court of appeals says rule 4(h) is an amendment of summon. (see Exhibit A) The rule itself has a word "any process" can the court clarifies because "any" means several some not mentioned. By applying "any process" to a single interpretation of "amendment of summon only"(see Exhibit A at 9 and 10) does such view deprive other process apart from amendment of summon. For example, a process of proving the services is a single process not amending the summon. A process of waiving the service is not only amending the summon. A process of adding a party to already commenced action

is not an Amendment of summon only, jury demand and process not summon amended under CR4h. In a conflict analysis the Appeals court says the Process of service cannot be amended contradicting itself to wording in Sup.CR4(h) (see Exhibit A). Or Does Sup.CR4(h) a privilege depending on defendant being a corporation or not for pro-se litigants in this state?

Issue Three (first impression to this court): (Intimidation to a plaintiff who brought Racial discrimination to State court is prohibited under federal 42 U.S.C 1985(2) last clause).

"As a matter of equal protection clause in 14th amendment" while the racial civil right case is pending, can a corporate defendant and their attoney's demand a plaintiff to reserve them with process without a court permiting such demand and threat with dismissal without violating 42 U.S.C 1985(2)? And even without anti deprivation statute and jurisdiction does the court allows that as normal preceding?

The complainant is grieving that his civil rights were violated based on race and gender. Both Washington and Federal have anti-discriminatory laws. Only the federal has an addition anti-deprivation of right that prohibits any conduct by two people or more that can cause the civil rights justice in state to be obstructed, impeded or deterred under 42 U.S.C 1985(2) last clause. It doesn't exempt any judicial offers involved in such conspirancy to denter or attoney client conspirancy as all conducts listed in the stututes are all classfied as criminal federally. See 18 U.S.C § 3521 The federal

statute prohibits any intimidation of any kind in state justice of civil rights from anyone to Plaintiff who complains in state court. The appeals court has considered these contact in a right of business contract and viewed the coursing the attorney as declaration of out of court contract. Pursuing to US Supreme Court in Howlett v. Rose, it was reasoned that if the state has similar laws as to the federal one, the state should apply as it could have been in Federal court. See Howlett v. Rose, 496 U.S. 356 (1990) ld. At 361-383. The Appeals court applying the attorney's declaration as a contract because it happened outside the court is undermining the purpose of section 1985(2) and it's a deprivation to Mandawala.

While the racial civil rights case is pending, can a corporate defendant and their attorney's demand a civil right plaintiff reserve and threat with dismissal without the trial court's consent simply because Washington State has no anti-deprivation of right law?

Does the appeals court view of outside court threats to the civil rights Plaintiff as a contract not undermining the purpose of the federal Section 1985(2) last clause?

Issue Four: (Two opposite parties can not share one attorney/counsel in the same litigation). Does Washington state, Washington state Bar Association or Washington state supreme court allow a defense attorney to provide free legal advice (Legal Samaritan) Exhibit F to the pro-se plaintiff who sued their client?

C. STATEMENT OF THE CASE

Mandawala is a former employee of the responding corporation Era Living LLC. This case arose from incidents that happened when Mandawala was working at one of the Era Living business facilities namely Aljoya Thonton a Place near Northgate Mall. Mandawala was hired by Era Living LLC on October 10, 2012 and his job was wrongfully terminated that he received unemployment benefit from the department of Unemployment in Washington State.

The events in Mandawala's complaint were on going and per statute of limitation. The first incident happened on February 8, 2016, where his coworkers subjected him a segregated work conduct. The second event happened around March 11, 2016 whereby Mandawala was looking for urgent medical attention and the Manager at the time refused to allow Mandawala to get the medical attention. Although the same manager allowed a fellow white female employee to take the day off for having a cold. Another event happened around April 22, 2016. This time the same manager who denied Mandawala medical attention decided to give a work task to Mandawala which Era Living has been hiring third party professionals to clean the Exhaust Air System. It was the first time for Mandawala to do such higher voltage electric system cleaning and he was severely injured that he is still struggling with the effect of the injury.

Prior to Mandawala's injury, two separate former employees of Era Living were already severely injured with the equipment. One was a former manager who was replaced by the Subject Manager who had a high voltage shock in his head while trying to clean the system.

Seconded by a dishwasher who voluntarily tried to clean the same system and he fell down and injured his back. As noted these injuries prior to Mandawala's injury, it is undisputed that Era Living LLC had knowledge of the equipment causing injuries and they ignored that knowledge to order Mandawala to clean the system that ended up causing him injured.

After 2 years of medical treatment from the hip injury sustained while working at Era living, Mandawala filed a lawsuit in Washington State Superior Court in Seattle on February 4, 2019. Since his injury, Mandawala lives in Texas where his relatives are working. Mandawala first attempted to serve Era Living through Friend as in person service process. His friend was frustrated after he was told to wait for someone to pick the court papers at the front desk of Era living home office. The process server left the paper to the front desk the other copies were sent through regular mail to support in person service as the rule 4(d)4,4(e.).

Due to unavailability of Mandawala's friend's declaration on his in person service, Mandawala reserved again the Era Living this time Certified Mail return receipt (Exhibit E) was requested and it was returned on March 25, 2019 in which the envelope was shown to Trial Court that it was arrived as the date on the return receipt by Era Living as an affidavit to support their motion to dismiss. On April 10, 2019, Era-Living made appearance to the court. (see Exhibit C) While the case was pending on April 22, 2019, the counsel for the defendant directed without the Trial Court's consent and told Mandawala that the service he made should be approved in Washington State and if he does

not re-service within 10 days (which is by May 2) Era Living will file a motion to dismiss. (see Exhibit D)

There was no attorney client-relationship between Mandawala and Era Living counsel. These are two separate parties that had opposite interests in this case. Much more, whatever Era Living counsel brings on litigation, is in the best of interest of their client not Mandawala. Still both Appeals Court and Trial Court does not see how inappropriate (see Exhibit H at 28) it is to provide legal advice to the opposite party Exhibit F in the name of being Legal Samaritan.

After April 10, 2019 court appearance, and April 22, 2019 without court consent to provide legal advice to the opponent of their client, on July 26, 2019, Era living filed(see Exhibit D) a motion to dismiss for insufficient of service of process, that 124 days from the date on return receipt (exhibit E), 110 days from the date Era Living made an appearance in court Exhibit C.

The court was notified about deficiency in service of process on August 23, 2019 at the hearing by Era Living for the first time, and denied requeat by Mandawala to exercise its discretion as stated in Sup.CR4h and the case was dismissed. (See Exhibit B)

Mandawala timely filed a notice of appeal to the Washington State Court of Appeals in division 1 and the court affirmed that the Trial Court dismissed the case. It further raised a conflict view that the service of process is strictly and cannot be amended but the Sup.CR4(h) provides that the court can order any process of service to be amended. (see Exhibit A) In which raising some of these issues.

D. ARGUMENT

This Court may grant a review where a decision of the Court of Appeals conflicts with a decision of the Supreme Court or a published decision of the Court of Appeals, or presents a significant question of law under the Constitution of the State of Washington or of the United States; or involves an issue of substantial public interest that should be determined by this Court. The issues raised herein meet more than one of these criteria:

ISSUE ONE: DOES THE ERA LIVING MAKING AN APPEARANCE TO THE TRIAL COURT TOLLS THE TIME FOR RAISING INSUFICIENT SERVICE OF PROCESS DEFENSE IN RULE 12(A), FROM 20 DAYS TO 124 DAYS, WITHOUT COURT'S CONSENT TO EXTEND THE 20 DAY PERIOD?

The issue here is a narrow one because a lawsuit does not commence if the plaintiff served improper defendant. This is a different situation to services of process that is insufficient in documents to the proper defendant. In a case where the improper defendant has been served the time of raising insufficient of service tolled until the day such service has been arrived to proper defendant that is when the CR12(a) time starts running out on that proper defendant.

Here in this case the proper defendant (Era Living LLC) was served a complaint that was filed in superior court immediately acknowledged that there was a defense of shortage of documents (insufficient of service of process) but allowing the timeline of raising defense of insufficient of service process of 20 days (see

Sup.CR12(a)) to run out up top 124 days, and then acting as improper defendant? (see Exhibit C & F)

A proper defendant makes an appearance to the court does not constitute a waiver of the defense of insufficient of service of process. But proper defendant untimely or unseasonably filling insufficient service of process defense (**without a cause**) after making such appearance coconstitute waived a defense of insufficient service of process. if raised such defense of insufficient services of process untimely or unseasonably or with conducts contrary to related claimed or defense by the defendant clearly satisfys the waiver of such defense.

If any proper defendant is served and wait whatever period they would like to raise the defense of insufficient of service as the same as improper defendant or no service at all party does, it will be proper for this court to remove the insufficient of service from Sup.CR12(b). Because Sup.CR12(b) defenses governed by timeline in Sup.CR12(a).

In Federal courts handling the defense of insufficient of service of process, they held that "defendants must not only comply with the letter of the rule only, but also "with spirit of the rule, which is 'to expedite and simplify proceedings in the ***court." id (quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1342 (2d ed. 1990)) see also US v. Ziegler Bolt & Parts Co., 111 F.3d 878, 882 (Fed.Cir.1997) (holding that a defendant's

literal compliance with the procedural rule does not end the waiver analysis)

The 8th Federal Circuit Court went further with a very clear about dangling around with time and conducts of the defendants who claims defense of insufficient of service or personal jurisdiction. "Failure to assert it **seasonably**, by formal submission in a cause, or by submission through **conduct."** See Yeldell v. Tutt, 913 F.2d 533, 539 (8th Cir. 1990) see also other federal Circuit (insufficient service of process defense 'may be waived by 'formal submission in a cause or by submission through **conduct")** Trustee of central laborers' Welfare fund v. lowery 924 F.2d 731, 732 (7th Cir 1991) Quoting Marcial Ucin, S.A. v. SS Galicia, 723 F.2d 994,996-97 (1st Cir 1983)

The 5th Circuit U.S Court of Appeals sorts the delay "without cause" as "sleeping on right" no court has discretion to entertain that delay as it costs the court and is unfair to the party whom such delay is issued. "However, equitable consideration or **tolling time** is only available in cases presenting **"rare and exceptional circumstances"** U.S. v. Riggs, 314 F.3d 796, 799 (5th Cir 2013) (emphasis added) and this is **"not intended for those who sleep on their rights"** Manning v. Epps, 688 F.3d 177, 183 (5th Cir 2012)

Era-Living should not play guardian angel here that their attorney was advising Mandawala in his interest of this case prior to file the motion to dismiss, and is a cause of such delay after make an apperarence. (see Exhibit F) That does not support the delay up 124 days "**without a cause**" to raising insufficiency of service of process

from the date of appearance or mail return receipt. Era Living cannot raise any cause at this level of appeal if it failed to raise it at the Trial Court.

Much more defense attorney demanding (Exhibit F) anything merit to the case from the plaintiff without a court order is prohibited federally and considered intimidation to the court witness. See US v. Tison H. Claude jr., Marcelino Echevarria and Scan realty Service, inc., 780 F.2d 1567 (11th cir. 1986) (applied Federal criminal code 18 U.S.C 1512-15 to defense attorney seek information to the opposition party without court order)

(Court Published Precedents that has been contradicted by Appendix A,B

(1) **Raymond v. Fleming.,**24 Wn. App.112, 600 P.2d 614.(1979))

ISSUE TWO: "AS A MATTER OF COURSE" DID THE TRIAL COURT HAD DISCREATION TO DENY MANDAWALA A ONE TIME RIGHT AMENDMENT WHILE ERA LIVING FAILED TO FILE A TIMELY RESPONSIVE PLEADING?

When this issue comes up to the US eleventh circuit court of appeals after the US district court judge dismisses the lawsuit for reasons that Insufficient services of process, the US 11th appeal court looked at the service of process and pleadings. See Williams v. Board of Regents of University System of Geogia, 477 F.3d 1282, 1292 (11th Cir. 2007) The US 11th circuit held that when a plaintiff file a complaint in district (trial) court with pleading in it, those pleadings need the defendant's responsive pleadings for the court to balance the case facts' merit.

The US 11th circuit court found when the defendant does not file a responsive pleading that challenges the complaint's pleadings, The district court lacks the discretion to deny any amendment of the complaint. Because whatever plaintiff amended is what the defendant will respond to and denying the plaintiff such amendment is an abuse of court discretion as it looks, the court has judged the plaintiff without the defendant's side of the story. "When the plaintiff has the right (before responsive pleading filed) to file an amended complaint as a matter of course, the court lacks the discretion to reject the amendment. See Thomas v. Home Depot USA Inc. No. C06-02705 (N.D. Cal. Jul. 25, 2007) (emphasis added) quoting See Williams v. Bo. Reg. Uni of Geogia, 477 F.3d 1282, 1292 at n.6

In Mandawala's case, the trial judge acknowledged that there were defects; the trial judge raised a question if the court has the discretion to allow Mandawala to amend the process. (see Exhibit H pg 28 line 1-2) The same amendment process Era Living attorney was demanding Mandawala without a court order. (See Exhibit F)

By applying the US 11th circuit court opinion, the trial court lacks the discretion to deny the plaintiff of any amendment when the defendant does not file responsive pleading (Answer). It makes that Judge Iveen did luck discretion to deny Mandawala anamendment because Era living did not file responsive pleading (answer). Instead, the court had the CR12(b)5 motion to dismiss filed by Era Living based on insufficient of service of process. (See

Exhibit D) Motion to dismiss is not a responsive pleading as defined in CR7, similar to Federal rules of civil procedures 7.

The Majority of the federal courts have held that ("Motion to dismiss is not a responsive pleading") Mc Gruder v. Phelp, 608 F.2d 1023, 1025 (5th Cir. 1979), (Motion to dismiss not responsive pleading for the purpose of Fed.R.Civ.P 15); Hanraty v. Ostertag, 470 F.2d 1096, 1097(10th Cir. 1972) Miller v. American Export Lines, inc., 313 F.2d 218 n.1(2d Cir. 1963) (Motio for Summary judgment not responsive pleading for purpose of Fed.R.Civ.P 8).

This is also the view of this circuit of federal court of this territory the 9th federal circuit court. A Motion to Dismiss the complaint is not a responsive pleading. Allen v. Veterans Admin 749 F.2d 1386, 1388 (9th Cir 1984) and (Rule 12(b)6 motion to dismiss not a responsive pleading) see Mayes v. Leipziger, 729 F.2d 605, 607 (9th Cir 1984)

The 9th circuit court in Allen's case concluded that even the district court dismiss the case still the plaintiff had the right to amend. This is exactly with Mandawala's case where Mandawala did not allowed neither single amendment.

As noted that the court did not have discretion to deny Mandawala's request to amend, one wonders why the trial judge decided to asked Mandawala to give the judge if she has discretion to amennd the process (Exhibit H at 24. line 15-22) when the wording in rule 4h is as clear as sky in sun day that the court "on its discretion" meaning the trial court possess discretion to order an

amendment. It did not even require to ask Mandawala such question.

Considering that if defendant doesn't file a responsive pleading a plaintiff as a matter of right has one chance to amend either the process or the complaint. The question could have been gone to Era Living to demonstrate if any legal injury could have occurred to them if Mandawala did amend the process, in which the answer is NOT at ALL since there is no answer.

Even though Mandawala's English is a second language it does not require a university professor of language to differentiate the language in rule 4h of "Process" and "the documents used to that process."More over the word "any process" cannot change to one process of amending summon only. The word "any" means "whatever, more than one, other processes ." that means "whatever process" the court has discretion to order an amendment. "unless it clearly appears that material prejudice would result to the substantial right of the party against whom the process issued." see Rule 4h last clause

One wonders that Appeals court saying in Exhibit A at 9 and 10 "summon" only when the "writ" in that meaning is all submission to the court's including Motions, Declaration, Subpenors summons and other submissions in courts. Much more Exhibite H demonstrate that mandawala was asking the court to amend under CR4h not what court of appeals refered in Exhibite A of CR15

The Appeals court should not encroach the words of the rule as such means judicial bias.

Court Published Precedents has been contradicted by Appendix A)

(1) **in re Marriage of Markowski.**,50 Wn. App.633, 635-36, 749 P.2d 754(1988) 37

(2) **in re Marriage of Marrison.**,26 Wn. App.571, 573-78 613 P.2d 557(1980)

(Issue of first impression to this court)

ISSUE THREE: "AS A MATTER OF EQUAL PROTECTION CLAUSE IN 14TH AMEND" WHILE THE RACIAL CIVIL RIGHT CASE IS PENDING, CAN A CORPORATE DEFENDANT AND THEIR ATTORNEY'S DEMAND PLAINTIFF TO RESERVE THEM WITH PROCESS WITHOUT A COURT PERMITTING SUCH DEMAND AND THREAT WITH DISMISSAL WITHOUT VIOLATING 42 U.S.C 1985 (2)?AND IF THE STATE HAS NO ANTI-DEPRIVATION LAWS, IS IT NORMAL COURSE OF JUSTICE IN WASHNGTON STATE?

Both Appeals Court and Trial court incorrectly viewed the opposite counsel demand of re-service of process exhibite F direct to Mandawala without seeking the court order as a courteous and help to Mandawala (Exhibit A, and H at 28) is undermining the purpose and spirit of the federal statute 42 U.S.C 1985 (2) last clause. Pursuing to the US Supreme Court precedent in Howllet v. Rose (2000) said that if the State has similar law as the federal one, the State Court should exercise the jurisdiction as it could be in Federal court. See Howlett v. Rose, 496 U.S. 356 (1990) ld. At 361-383 (the court applied the U.S Constitution Article VI, clause 2) Mandawala's complaint alleged that he was subject to racial and other indifference work conditions

compared to white coworkers and claimed Federal Act of civil rights Title VII and RCW 49.60.180 (3).

Mandawala pleaded that his former manager subjected to him indifferent racial working conditions when he allowed the a female white coworker named Wendy to seek medical attention but refused to allow Mandawala who was in severe pain to seek urgent dental attention the same day. See Mandawala v. Era Living complaint.

. . The Federal statute 42 U.S.C 1985(2) last clause requires "racial" or "class based animus" as the same as it like to sister statute 42 U.S.C 1985(3) pursuing to US supreme court in Griffin v. Breckenridge, 403 U.S. 88, 102 (1971)

Grinffin court *Id* at 88-100, said it does not also require a plaintiff to file a (section 1985(2))(original 1985(3) statute substituted) lawsuit specifically for section 1985 in order for the court to provide protection under the statute as its purpose is to **protect civil rights** litigants rather than **federal tort law**.

Era Living and their attorney directly contacted Mandawala without a court order, and who is racially grieved plaintiff, and demanded re-service of process with the threat of dismissal if Mandawala did not comply to the demand. Both attorney and their client (Era Living) conspired to harass or threat or deter (exhibit F) with the purpose of impeding the course of justice in the Superior Court. See 42 U.S.C 1985(2).

It is why the court was supposedly to be notified either by **timely** motion to dismiss if the intention of contacting Mandawala

was to dismiss his complaint rather than going to Mandawala directly with the demand to reserve Era Living. Or memorandum to the presiding judge, if Era Living's intentions was really for Mandawala to amend the process.

As noted in issue #1 that federally, it is prohibited for defendant's attorney to make such contact to the plaintiff and it considered intimidation and harassment that violates federal criminal code. Era Living cannot say their attorney's action is part of one party action to deny conspiracy to intimidate Mandawala because the conduct is classified as fraudulant or criminal federally, and intracorporation doctrine cannot be used on witness intimidation or harassment. See all federal court exempting conduct classified as criminal conspiracy exempting intra-corporation.

First, Fifth, Six, Eighth and Nineth Eleventh Circuits Federal Courts hold that any criminal or fraud conspiracy whether raised by a prosecutor or an individual in section 1985 claim intracorporation doctrine defense is exempted or does not apply McAndrews v. JA Blackwell Jr., T.A. Graham, et al.,177 F.3d 1310 (11th Cir. 1999) see 1st Circuit in US v. Peters 732 F.2d 1004, 1007-08 (1st Cir. 1984), 5th Circut in Dussouy v. Gulf Coast investment Corp.,660 F.2d 594, 603 (5th Cir. 1981) 6th circuit in US v. Ames Sintering Co., 927 F.2d 232, 236 (6th Cir. 1990) (quoting that " 'in the criminal context a corporation may be convicted of conspiracy with its offers'") regardless who brought the claim of that criminal conduct. See(US v. S Vee Cartage Co., 704 F.2d 914, 920 (6th Cir 1983) 8th circuit in US v. Hugh Chalmers Chevrolet-Toyota, inc 800 F.2d 737, 738 (8th Cir.

1986) and 9th Circuit in US v. Hughes Aircraft Co., 20 F.3d 974, 978-79 (9th Cir. 1994)

Therefore, both the Trial court and the Appeals Court harmonizing exhibite F the Harassment and intimidation that is federally a criminal conduct is an errorneus view that undermines the purpose 42 U.S.C 1985(2) as it protect any racial or class based animas litigant in state courts. (See especially Dussouy court where Attorney conspired with client corporation) Moreover since Mandawala made a formal notification of the defendant's attorney's out of court demands without court order to do so, the view by trial court on Exhibit H at 28 undermined the purpose and the spirit of the section 1982(2) which is to "protect civil rights litigants and witness" seeking civil right justice in state court like what Mandawala did.

Era Living demands were not really in good faith in considering the 124 days of filing Exhibit D insufficient service of process defense as the trial court reasoning on Exhibit H page 28 and the Appeals court holding it as appropriet is an erra of judicial view. It is why this court should reverse the lower court decisions because allowing this to be as it is, the corporate defendants will intimidate victims knowingly there is no protection for plaintiffs in Washington State courts. That will open a door to undermine the similar state law RCW 49.60.180 and make it worthless statute if its sister statue of federal 42 USC 2000e will not be considered wisely.

ISSUE FOUR: DOES WASHINGTON STATE, WASHINGTON STATE BAR ASSOCIATION OR THIS COURT(SUPREME COURT OF WA) ALLOWS DEFENSE ATTORNEYS TO PROVIDE FREE LEGAL ADVICE (LEGAL SAMARITAN) TO THE PRO-SE PLAINTIFF WHO SUED THEIR CLIENT?

This issue is a little similar to the above civil rights issue. This court should scruitnise from timeline in Exhibit E, C with the time of filing D does not support CR12(a.) and to buy back is an amendment without impact of CR15c by providing free legal advice to plaintiff to amend the process exhibit F. and it is very unforfunate to read exhibit H page 28 from the judge people deems know the law and uphold the integrite of Washington justice system. Apply the ethical neture of contacting Mandawala exhibite F after Era Living noticed that it has missed CR12(a)

The contact exhibit F to demand re-service court deemed help and courteous to Mandawala and was pleased that defense attorney warned Mandawala that raised a huge question that one lawyer can represent two opposite parties in the same litigation?. (See Exhibit H pg 28) The Appeals Court viewed as an affidavit for summary judgment. As noted that in civil rights such contact without court's consent is prohibited under 42 U.S.C 1985(2) last clause as the complaint had some civil rights claims.

With the view that defendant attorney was doing a legal Samaritan to Mandawala and Mandawala should appreciate that help, raise these questions: 1. Which interest is the defense attorney representing in this case between her client and Mandawala? 2. How does the court consider legal advice from defense attorney to Plaintiff who sued the attorney's client? Is this the new standard of

attorney representation in Washington State? Or is it a corporate defendant attorney allowed to freely share legal advice to pro-se litigants who sue their client?

It is clear that plaintiff is a legal attacker in any litigation and defendant is a legal defender from attack. Then how can they litigate if one attorney is taking both sides? Moreover, is the party who does not pay the attorney going to get better legal advice, the answer is obviously NO.

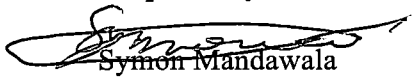
Therefore, the conduct is considered attorney harassing pro-se litigant no matter how soft justification can be because 124 days late can not be covered by legal samaritan. The motion to dismiss was untimely and this contributed to Mandawala fear to act as he was not sure why the court was not contacted at least.

E. CONCLUSION

For the reasons cited above, this Court should accept review of the four issues raised herein, as one is first impression to this court and two are public concerns issues needs to be resolved. While the other issue involves U.S constitution or Federal State conflict issue.

DATED this 8th day of November, 2020.

Respectfully submitted,



Symon Mandawala

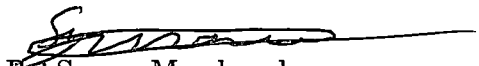
P.O. Box 5512
San Antonio
Texas 78201
Petitioner/Appellant/Plaintiff (*pro-se*)

Certificate of services

I, Symon Mandawala, certify that on this day November 30, 2020 the true copy of **Petition for Review** and **Appidex** was Mailed to Skylar A. Sherwood. Counsel of the respondant;

1001 4th Avenue, Suite 4500, Seattle, Washington 98154

Through Certified Mail return reciept



By: Symon Mandawala
P.O. Box 5512
San Antonio, Tx 78201

APPENDIX

Volume 1

Orders

A

FILED
11/2/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SYMON B. MANDAWALA,

Appellant,

v.

ERA LIVING AT ATP and DENNIS NEWMAN JR.,

Respondents.

DIVISION ONE

No. 80543-6-I

UNPUBLISHED OPINION

DWYER, J. — Symon Mandawala appeals the trial court's order granting Era Living, LLC's motion to dismiss for insufficient service of process. Mandawala asserts that the trial court erred in concluding that Mandawala did not properly serve Era Living. Mandawala also contends that the trial court erred by (1) failing to exercise its jurisdiction over the proceedings; (2) refusing to allow him to amend his pleading and service of process; (3) denying his motion for reconsideration after the judge overseeing the matter retired; and (4) not allowing him to file a surreply in response to Era Living's motion to dismiss. Additionally, Mandawala asserts that Era Living waived its defense of insufficient service of process and engaged in improper ex parte communication with the trial court. Mandawala does not establish an entitlement to appellate relief. Accordingly, we affirm.

I

On February 4, 2019, Mandawala, acting pro se, filed a complaint against Era Living in the King County Superior Court. This complaint incorrectly named

"Era Living, LLC" as "Era Living at ATP." On February 21, 2019, Mandawala mailed a copy of the complaint and an order setting civil case schedule to Era Living's Seattle office. On February 26, 2019, Mandawala mailed an amended order setting civil case schedule to Era Living. On March 25, 2019, Mandawala sent Era Living, via certified mail, a purported certificate of service,[1] another copy of the amended order setting civil case schedule, and another copy of the complaint.

Notably, all three of Mandawala's mailings to Era Living were addressed generally to "Era Living" and not to any particular individual. Moreover, none of the mailings included a summons.

On April 22, 2019, counsel for Era Living mailed a letter to Mandawala stating that he had not properly served Era Living and that Era Living intended to move to dismiss the case for insufficient service of process. The letter included an Internet link to the Washington State Superior Court Civil Rules and explained that those rules contained the requirements for service of process.

The following day, Mandawala sent an e-mail to Era Living's counsel expressing his belief that he had properly served Era Living on March 25, 2019. Era Living's counsel responded to Mandawala, reiterating that the March 25 mailing did not constitute sufficient service of process under the Superior Court Civil Rules.

[1] This document, which is signed by Mandawala and entitled "CERTIFICATE OF SERVICE," states that Era Living "has been served in accordance to the king county Rules and procedures."

On July 26, 2019, Era Living filed a motion to dismiss based on insufficient service of process. In support, Era Living submitted the declaration of Skylar A. Sherwood, who was the counsel for Era Living. Sherwood attached as exhibits to her declaration copies of the mailings sent by Mandawala to Era Living, a copy of the letter mailed to Mandawala by Era Living, and a copy of the e-mail response sent to Mandawala regarding service of process. In his response to the motion to dismiss, Mandawala asserted that a process server had hand delivered "court paper work" to the "person on the desk" at Era Living's Seattle office. However, Mandawala did not produce a declaration from the process server detailing the manner in which Era Living was served. On August 23, 2019, the trial court heard the motion to dismiss. The trial court granted the motion. Mandawala then filed a motion for reconsideration, which the trial court denied. Mandawala appeals.

II

Mandawala first asserts that a process server personally served Era Living and, consequently, the trial court erred by concluding that service of process was insufficient. Additionally, Mandawala contends that the trial court erred in concluding that RCW 23.95.450—a statute permitting service of process by certified mail on a corporation under certain circumstances—did not apply to Mandawala's situation. Because Mandawala failed to properly serve Era Living in either of these respects, we disagree.

Where, as here, the trial court considers matters outside the pleadings, the motion is treated as one for summary judgment. Hartley v. Am. Contract

Bridge League, 61 Wn. App. 600, 603, 812 P.2d 109 (1991). On review of a summary judgment order, we engage in the same inquiry as the trial court. Wash. State Major League Baseball Stadium Pub. Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Constr. Co., 165 Wn.2d 679, 685, 202 P.3d 924 (2009). All facts and reasonable inferences are considered in a light most favorable to the nonmoving party, and all questions of law are reviewed de novo. Berger v. Sonneland, 144 Wn.2d 91, 102-03, 26 P.3d 257 (2001). Summary judgment is appropriate when "there is no genuine issue as to any material fact and [] the moving party is entitled to a judgment as a matter of law." CR 56(c).

Whether service of process was proper is a question of law that we review de novo. Goettemoeller v. Twist, 161 Wn. App. 103, 107, 253 P.3d 405 (2011). "Proper service of the summons and complaint is a prerequisite to a court's obtaining jurisdiction over a party." Harvey v. Obermeit, 163 Wn. App. 311, 318, 261 P.3d 671 (2011). "When a defendant challenges service of process, the plaintiff has the initial burden of proof to establish a prima facie case of proper service." Northwick v. Long, 192 Wn. App. 256, 261, 364 P.3d 1067 (2015). The plaintiff may do this with the declaration of a process server that is "regular in form and substance." Northwick, 192 Wn. App. at 261. The defendant must then show by clear and convincing evidence that service was improper. Northwick, 192 Wn. App. at 261.

The pertinent statute provides that personal service on a corporation must be made as follows:

> Service made in the modes provided in this section is personal service. The summons shall be served by delivering a copy thereof . . . to the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent.

RCW 4.28.080(9).

"[P]ersonal service statutes require . . . substantial compliance." Martin v. Triol, 121 Wn.2d 135, 144, 847 P.2d 471 (1993). "'Substantial compliance has been defined as actual compliance in respect to the substance essential to every reasonable objective of [a] statute.'" City of Seattle v. Pub. Emp't Relations Comm'n, 116 Wn.2d 923, 928, 809 P.2d 1377 (1991) (alteration in original) (quoting In re Santore, 28 Wn. App. 319, 327, 623 P.2d 702 (1981)). "In the cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty." Pub. Emp't Relations Comm'n, 116 Wn.2d at 928.

Mandawala contends that a process server personally served Era Living. However, Mandawala did not introduce any evidence, such as a declaration of the process server, to establish a prima facie case of proper service. See Northwick, 192 Wn. App. at 261. Rather, Mandawala merely asserted in his response to Era Living's motion to dismiss that a process server delivered "court paper work" to the "person on the desk" at Era Living's Seattle office. To prove that a process server personally served Era Living, Mandawala was required to produce "the person's affidavit of service endorsed upon or attached to the summons." CR 4(g)(2). Mandawala's assertion, without more,

was merely hearsay without an exception, and was thus inadmissible evidence of personal service. See ER 802.

Nonetheless, even if true, Mandawala did not prove that his claim constituted proper personal service because it does not identify the "person on the desk" or establish that this person was one of the individual's listed in RCW 4.28.080(9). Therefore, Mandawala's purported personal service of process on Era Living did not substantially comply with the requirements of the personal service statute. See Pub. Emp't Relations Comm'n, 116 Wn.2d at 928 ("In the cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty."). Therefore, Mandawala did not establish that a process server personally served Era Living.

Next, Mandawala contends that he properly served Era Living via certified mail. The uniform business organizations code provides a means by which a corporation may be served process via certified mail:

> (1) A represented entity[2] may be served with any process, notice, or demand required or permitted by law by serving its registered agent.
>
> (2) If a represented entity ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the entity at the entity's principal office. The address of the principal office must be as shown in the entity's most recent annual report filed by the secretary of state. Service is effected under this subsection on the earliest of:
>
> (a) The date the entity receives the mail or delivery by the commercial delivery service;
>
> (b) The date shown on the return receipt, if executed by the

[2] "Represented entity" means "[a] domestic entity" or "[a] registered foreign entity." RCW 23.95.400(3)(a)-(b). "'Domestic,' with respect to an entity, means governed as to its internal affairs by the law of this state." RCW 23.95.105(4). Further, "[e]ntity" includes "[a] limited liability company." RCW 23.95.105(6)(e).

A

> entity; or
>
> (c) Five days after its deposit with the United States postal service or commercial delivery service, if correctly addressed and with sufficient postage or payment.

RCW 23.95.450.

Mandawala bore the burden to prove that he was authorized under this statute to serve Era Living via certified mail. See Northwick, 192 Wn. App. at 261 ("When a defendant challenges service of process, the plaintiff has the initial burden of proof to establish a prima facie case of proper service."). For a party to be authorized to serve process via certified mail pursuant to RCW 23.95.450, the party must present facts establishing that the represented entity either "ceases to have a registered agent, or [that] its registered agent cannot with reasonable diligence be served." RCW 23.95.450(2). Mandawala did not establish either of these things. In particular, Mandawala did not present any evidence demonstrating that Era Living did not have a registered agent. Further, Mandawala did not show that Era Living's registered agent could not be served with reasonable diligence. "Reasonable diligence requires the plaintiff to make honest and reasonable efforts to locate [another]." Wright v. B&L Props., Inc., 113 Wn. App. 450, 458, 53 P.3d 1041 (2002). Because Mandawala presented no evidence that he met either of the conditions under RCW 23.95.450, this statute did not authorize Mandawala to serve Era Living via certified mail.

In any event, Mandawala's mailings did not constitute sufficient service of process because they did not contain a summons, which is required by the Superior Court Civil Rules. See CR 4(d)(1) ("The summons and complaint shall

be served together."). Accordingly, the trial court did not err by concluding that Mandawala's mailings to Era Living did not constitute proper service of process.

Finally, Era Living's act of filing a notice of appearance does not excuse Mandawala's failure to provide sufficient service of process. Indeed, "the mere appearance by a defendant does not preclude the defendant from challenging the sufficiency of service of process." Lybbert v. Grant County, 141 Wn.2d 29, 43, 1 P.3d 1124 (2000).

For these reasons, the trial court did not err in concluding that Mandawala did not properly serve Era Living.

III

Mandawala next contends that the trial court erred by not exercising jurisdiction over Era Living pursuant to RCW 4.28.020. However, Mandawala's interpretation of RCW 4.28.020 is incorrect.

RCW 4.28.020 states:

> From the time of the commencement of the action by service of summons, or by the filing of a complaint, or as otherwise provided, the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings.

This statute does not grant a trial court personal jurisdiction over a party. Rather, it provides that a trial court has jurisdiction over all proceedings subsequent to the commencement of an action. The trial court properly exercised its jurisdiction over the proceedings when it held a hearing on—and subsequently granted—Era Living's motion to dismiss for insufficient service of

process. The trial court properly concluded that it had not acquired personal jurisdiction over Era Living and accordingly dismissed the action.[3]

IV

Mandawala also asserts that the trial court erred by not allowing him to amend his pleading and service of process under CR 15 and CR 4(h).

Mandawala's pleading incorrectly named "Era Living, LLC" as "Era Living at ATP." Although CR 15 allows a party to amend its pleading under certain circumstances,[4] the trial court's order granting Era Living's motion to dismiss was based on insufficient service of process, not a defective pleading.

To the extent that Mandawala contends that the trial court erred by not allowing him to amend his summons under CR 15, his argument is flawed. CR 15 applies to the amendment of a pleading, not a summons.[5] It is CR 4(h) that

---

[3] A trial court always has jurisdiction to determine its jurisdiction. Mead Sch. Dist. No. 354 v. Mead Ed. Ass'n, 85 Wn.2d 278, 280, 534 P.2d 561 (1975) (citing United States v. United Mine Workers of Am., 330 U.S. 258, 292 n.57, 67 S. Ct. 677, 91 L. Ed. 884 (1947); United States v. Shipp, 203 U.S. 563, 573, 27 S. Ct. 165, 51 L. Ed. 319 (1906)).

[4] CR 15 provides:

> **Amendments.** A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served, or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. If a party moves to amend a pleading, a copy of the proposed amended pleading, denominated "proposed" and unsigned, shall be attached to the motion. If a motion to amend is granted, the moving party shall thereafter file the amended pleading and, pursuant to rule 5, serve a copy thereof on all other parties. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

CR 15(a).

[5] "Pleading" is defined in CR 7:

> **Pleadings.** There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of rule 14; and a third party answer, if a third

applies to the amendment of a summons.[6] Regardless, Mandawala would have had to serve a summons in order to be entitled to amend any defect in it. See Sammamish Pointe Homeowners Ass'n v. Sammamish Pointe LLC, 116 Wn. App. 117, 64 P.3d 656 (2003) (holding that a party may amend a defective summons that was properly served).

Nor does CR 4(h) permit a party to amend insufficient service of process. Instead, CR 4(h) applies to the amendment of "process or proof of service." "Process" is defined as a "summons or writ, esp[ecially] to appear or respond in court." BLACK'S LAW DICTIONARY 1399 (10th ed. 2014). However, "'[s]ervice of process refers to a formal delivery of documents that is legally sufficient to charge the defendant with notice of a pending action.'" Larson v. Kyungsik Yoon, 187 Wn. App. 508, 515, 351 P.3d 167 (2015) (quoting Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 700, 108 S. Ct. 2104, 100 L. Ed. 2d 722 (1988)). Accordingly, CR 4(h) does not permit a party to amend defective service of process. Indeed, "[a] failure to accomplish personal service of process is not a defect that can be cured by amendment of paperwork." Sammamish Pointe LLC, 116 Wn. App. at 124. Therefore, Mandawala's assignment of error fails.

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party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

CR 7(a). Thus, a summons is not a pleading.

[6] CR 4(h) states: "At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued."

V

Mandawala also contends that the trial court erred by denying his motion for reconsideration after the trial judge overseeing the matter had retired. However, the retired judge was appointed as a judge pro tempore by the presiding judge prior to ruling on the motion for reconsideration. This complied with the requirements of the Washington State Constitution, which provides that "if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement." WASH. CONST. art. IV, § 7. Accordingly, the trial judge was fully authorized to rule on the motion for reconsideration.

VI

Mandawala next asserts that the trial court erred by not allowing him to respond to Era Living's reply in support of its motion to dismiss. However, the Kind County Superior Court Civil Rules do not authorize a party to file a surreply. See LCR 7(b)(4). Rather, these local rules merely provide for the filing of a motion, a response, and a reply. See LCR 7(b)(4)(A)-(E). Because Mandawala was not entitled to file a surreply in opposition of Era Living's motion to dismiss, the trial court did not err by not allowing him to do so.

VII

Mandawala additionally contends that Era Living engaged in dilatory conduct, thereby waiving its right to seek dismissal pursuant to CR 12(b)(5). Mandawala is wrong.

"A defendant may waive the defense of insufficient service of process if . . . 'the defendant has been dilatory in asserting the defense.'" Davis v. Blumenstein, 7 Wn. App. 2d 103, 117, 432 P.3d 1251 (2019) (internal quotation marks omitted) (quoting Harvey, 163 Wn. App. at 323).

According to Mandawala, Era Living engaged in dilatory conduct by making deceptive statements in its correspondence with him. Yet Mandawala does not demonstrate how, exactly, Era Living's correspondence could have caused any delay. Regardless, Era Living's correspondence was not deceitful. Era Living's letter to Mandawala dated April 22, 2019, correctly stated that "to date, Era Living has not been properly served with the Summons and Complaint and you have not taken any further action in this matter." The letter then provided an Internet link to the Washington State Superior Court Civil Rules by which Mandawala could find the rules governing service of process. Further, the e-mail sent by Era Living on April 24, 2019, reiterated the same information. Therefore, Era Living's correspondence with Mandawala was neither deceitful nor dilatory.

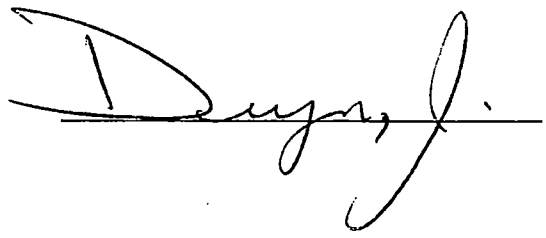
Mandawala additionally asserts that Era Living acted deceptively by (1) not including an "attached receipt" in the exhibits affixed to the declaration in support of its motion to dismiss and (2) indicating in its motion to dismiss that Mandawala had not produced an affidavit of service. Again, these acts did not cause any delay.

Because Era Living did not engage in dilatory conduct, it did not waive its right to seek dismissal for insufficient service of process.

VIII

Mandawala finally asserts that Era Living engaged in improper ex parte communication with trial court staff. Mandawala apparently refers to e-mail communications between Era Living and trial court staff seeking to schedule a date and time for a hearing on Era Living's motion to dismiss. Mandawala attached copies of these e-mail communications to his opening brief, but they are not contained in the record. As "a reviewing court, [we] only consider[] on appeal evidence which was admitted in the trial court." Dioxin/Organochlorine Ctr. v. Dep't of Ecology, 119 Wn.2d 761, 771, 837 P.2d 1007 (1992); see also Casco Co. v. Pub. Util. Dist. No. 1 of Thurston County, 37 Wn.2d 777, 784-85, 226 P.2d 235 (1951) (refusing to consider a purported copy of a contract that was attached as an appendix to a brief and not admitted in the trial court). Thus, we do not consider these e-mail communications.[7]

Affirmed.



[7] In any event, any communication between Era Living and trial court staff that was designed to facilitate the scheduling of a hearing on a motion to dismiss would not be improper under the King County Superior Court Local Civil Rules. See LCR 7(b)(4)(B) ("The time and date for hearing shall be scheduled in advance by contacting the staff of the hearing judge.").

WE CONCUR:

Verellen J. Leach, J.

B

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

SYMON MANDAWALA, Plaintiff, v. ERA LIVING AT ATP and DENNIS NEWMAN JR., Defendants.	NO. 19-2-03308-8 SEA **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS** (Clerk's Action Required)

This matter came before the Court on Defendant Era Living LLC's ("Era Living") Motion to Dismiss. The Court is fully informed having reviewed the pleadings and papers on file, and the following documents:

1. Era Living's Motion to Dismiss;
2. Declaration of Skylar A. Sherwood;
3. Plaintiff's Opposition; and
4. Era Living's Reply in Support.

The following facts are undisputed:

1. On February 21, 2019 Plaintiff mailed a copy of the Complaint and the Order Setting Civil Case Schedule to "Era Living LLC". He mailed (at least one certified) various combinations of the Complaint, Order Setting Civil Case Schedule on February 26,

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2019 and March 25, 2019, all addressed to Era Living, without being directed to an individual.

2. None of the mailings contained the summons.

3. On April 22, 2019 Counsel for Era Living sent a letter to Plaintiff informing Plaintiff he had not properly served Era Living, LLC, sending a link to the state court rules governing the proper procedures. Plaintiff did not remedy the deficient service.

CONCLUSIONS

Plaintiff's Mailings do not constitute proper service of process on ERA Living. CR 5 applies to subsequent pleadings, not original process. CR4 governs. RCW 23.95.450 is not applicable.

IT IS HEREBY ORDERED, that any and all claims asserted against Era Living are hereby dismissed without prejudice and without an award of costs or attorneys' fees to either party.

DATED this 29th of August, 2019.

efiled

Judge Laura Inveen

Presented by:

FOX ROTHSCHILD LLP

By *s/ Skylar A. Sherwood*
Skylar A. Sherwood, WSBA #31896
Attorney for Defendant

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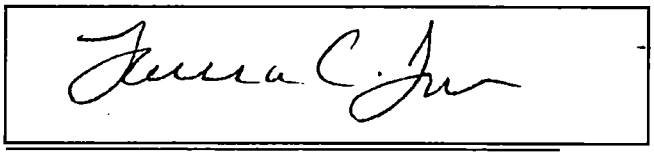
B

King County Superior Court
Judicial Electronic Signature Page

Case Number: 19-2-03308-8
Case Title: MANDAWALA VS ERA LIVING ET ANO

Document Title: ORDER GRANTING MOTION TO DISMISS

Signed by: Laura Inveen
Date: 8/30/2019 9:00:00 AM



Judge/Commissioner: Laura Inveen

This document is signed in accordance with the provisions in GR 30.
Certificate Hash: 29E4FACFE1514ED8BB7811050522A36D08540905
Certificate effective date: 7/16/2018 2:30:26 PM
Certificate expiry date: 7/16/2023 2:30:26 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA, O=KCDJA, CN="Laura Inveen: DODD3wrS5hGi7L72AFk6yQ=="

Volume 2

C

SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

SYMON B. MANDAWALA, Plaintiff, v. ERA LIVING AT ATP and DENNIS NEWMAN JR., Defendants.	NO. 19-2-03308-8 SEA **NOTICE OF APPEARANCE** **[CLERK'S ACTION REQUIRED]**

TO: THE CLERK OF COURT

AND TO: SYMON B. MANDAWALA, Plaintiff

PLEASE TAKE NOTICE that Skylar A. Sherwood of the law firm Fox Rothschild LLP hereby appears as counsel of record for Defendant Aljoya Thornton Place, LLC (incorrectly designated as "Era Living at ATP") and Era Living, LLC. All future pleadings and/or papers for Aljoya Thornton Place, LLC and/or Era Living, LLC in connection with this matter, exclusive of original process, shall be served upon the following attorneys of record:

Skylar A. Sherwood, WSBA #31896
Fox Rothschild LLP
1001 4th Avenue, Suite 4500
Seattle, WA 98154
Phone: (206) 624-3600
Email: ssherwood@foxrothschild.com

//

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DATED this 10th day of April, 2019.

FOX ROTHSCHILD LLP

s/ Skylar A. Sherwood

Skylar A. Sherwood, WSBA #31896
Attorneys for Defendant Aljoya Thornton Place LLC and Era Living LLC
Fox Rothschild LLP
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154
Telephone: 206.624.3600
Facsimile: 206.389.1708
E-mail: ssherwood@foxrothschild.com

C

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the date written below, I caused a true and correct copy of the foregoing to be delivered to the following parties in the manner indicated:

Name:	Symon B. Mandawala	☐ Via electronic mail
Law Firm:		☑ Via U.S. Mail
Address:	7530 Mockinbird Lane #308	☐ Via Messenger Delivery
Address:	San Antonio, TX 78229	☐ Via Overnight Courier
Phone:		☐ Via Facsimile
Fax:		☐ Via FedEx
Email:		

Plaintiff

DATED this 10th day of April, 2019.

Monica Dawson

FOX ROTHSCHILD LLP
1001 FOURTH AVENUE, SUITE 4500
SEATTLE, WA 98154
206.624.3600

D

SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

SYMON B. MANDAWALA, Plaintiff, v. ERA LIVING AT ATP and DENNIS NEWMAN JR., Defendants.	NO. 19-2-03308-8 SEA **ERA LIVING, LLC'S MOTION TO DISMISS**

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff Symon B. Mandawala filed this lawsuit against "Era Living at ATP" on February 4, 2019. To the extent Plaintiff intended to identify Era Living, LLC ("Era Living") as a defendant in that lawsuit, Plaintiff has not properly served Era Living and Era Living requests that the Court dismiss the action against it pursuant to CR 12(b)(5) for insufficient service of process.

II. STATEMENT OF FACTS

Plaintiff filed a Complaint ostensibly against Era Living in King County Superior Court on February 4, 2019. As of the date of filing this Motion, Plaintiff has not properly served Era Living and has taken no steps to prosecute the lawsuit. Declaration of Skylar Sherwood ("Sherwood Decl.") at ¶ 2.

On February 21, 2019, Plaintiff mailed a copy of the Complaint and the Order Setting Civil Case Schedule to "Era Living LLC". Sherwood Decl., Ex. A. He sent various other

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combinations of the Complaint, Order Setting Civil Case Schedule, a Notice Regarding An Order Setting Original Case Schedule, and a purported Certificate of Service on February 26, 2019 and March 25, 2019. Sherwood Decl., Exs. B, C. These were both addressed to "Era Living".

On April 22, 2019, counsel for Era Living, Skylar Sherwood, sent a letter to Plaintiff, who is pro se, informing him that he had not properly served Era Living and that Era Living intended to move to dismiss the case for failure to do so. Sherwood Decl., Ex. D. This letter included a link to the Washington State Court Civil Rules, and explained that the requirements for proper service of process are outlined in the rules. *Id.* Plaintiff emailed Ms. Sherwood the next day expressing his opinion that he had properly served Era Living on March 25, 2019. Sherwood Decl., Ex. E. On April 24, 2019, Ms. Sherwood responded to Plaintiff, reiterating that the mailing Plaintiff referenced did not constitute proper service and again referencing the link to the Civil Rules that Ms. Sherwood included in her April 22 letter. *Id.*

As of the date of this Motion, Plaintiff has not served Era Living in a manner complying with the Civil Rules and Washington law and Plaintiff has taken no steps to prosecute his Complaint; counsel for Era Living has received no further communications from Plaintiff, except in connection with scheduling the hearing for this motion. Era Living respectfully requests the Court dismiss Plaintiff's lawsuit for insufficient service of process.

III. STATEMENT OF ISSUES

Should the Court dismiss this action pursuant to CR 12(b)(5) for insufficient service of process when Plaintiff has not made service consistent with CR 4(d)(2) and RCW 4.28.080(9)?

IV. EVIDENCE RELIED UPON

This motion is based upon the attached declaration of Skylar Sherwood, the exhibits thereto, and the other documents and pleadings filed in this case.

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SEATTLE, WA 98154
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D

V. AUTHORITY AND ARGUMENT

CR 4(d)(2) provides that "[p]ersonal service of summons and other process shall be as provided in RCW 4.28.080(9)." RCW 4.28.080(9) requires that process against a company be made "to the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent."

"When a defendant moves to dismiss based upon insufficient service of process, 'the plaintiff has the initial burden of making a prima facie showing of proper service.'" *Witt v. Port of Olympia*, 126 Wn. App. 752, 757, 109 P.3d 489 (2005) (quoting Karl B. Tegland, Wash. Prac. Civil Procedure sec. 4.40, at 108 (2004)). "A plaintiff may make this showing by producing an affidavit of service that on its face shows that service was properly carried out." *Witt*, 126 Wn. App. at 757 (citing 14 Wash. Prac. Sec. 4.40, at 108 (2004)); *State ex. rel. Coughlin v. Jenkins*, 102 Wn. App. 60, 65, 7 P.3d 818 (2000); *Woodruff v. Spence*, 88 Wn. App. 565, 571, 945 P.2d 745 (1997). If the plaintiff makes this showing, the burden then shifts to the defendant "who must prove by clear and convincing evidence that service was improper." *Witt*, 126 Wn. App. at 757.

A. Plaintiff Has Failed To Serve The Individuals Identified In RCW 4.28.080(9)

To date, Plaintiff has mailed copies of the Complaint, various iterations of the Case Schedule, and other documents to no one in particular at "Era Living" – certainly none of the individuals identified in RCW 4.28.080(9). None of his mailings having included a Summons. Despite informing Plaintiff more than once that he had not completed proper service and directing him to the rules for proper service, neither Era Living's registered agent nor any of the individuals identified in RCW 4.28.080(9) have received service.

FOX ROTHSCHILD LLP
1001 FOURTH AVENUE, SUITE 4500
SEATTLE, WA 98154
206.624.3600

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B. Plaintiff Has Not Substantially Complied With Service of Process Requirements

Personal service statutes require at least substantial compliance. *Martin v. Triol*, 121 Wn.2d 135, 144, 847 P.2d 471 (1993). Substantial compliance requires "'actual compliance with respect to the substance essential to every reasonable objective'" of a rule. *Crosby v. County of Spokane*, 137 Wn.2d 296, 301, 971 P.2d 32 (1999) (quoting *Continental Sports Corp. v. Department of Labor & Indus.*, 128 Wn.2d 594, 602, 910 P.2d 1284 (1996)). Compliance in a manner that does not fulfill the objective of the rule cannot constitute substantial compliance. *Petta v. Department of Labor & Indus.*, 68 Wn. App. 406, 409-10, 842 P.2d 1006 (1992).

Substantial compliance has been recognized where a defendant has clearly authorized service upon another, or where service is indirect, such as when a defendant contracted with someone to accept service on their behalf who is not identified in the service statute. *See, e.g., Lee v. Barnes*, 58 Wn.2d 265, 267, 362 P.2d 237 (1961) (recognizing service as sufficient where defendant contracted with a person to accept service, even though statute did not authorize service on that individual); *Thayer v. Edmonds*, 8 Wn. App. 36, 41-42, 503 P.2d 1110 (1972), *rev. denied*, 82 Wn.2d 1001 (1973) (holding that service was sufficient where defendant indicated that notice could be left at the door).

In contrast, no evidence of substantial compliance exists here because Era Living has not authorized service in any manner or to any person not expressly enumerated by RCW 4.28.080(9). To date, none of the statutorily enumerated recipients have been served with the summons and Complaint, despite repeated notices to Plaintiff about proper service and Era Living requests that Plaintiff's action be dismissed.

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1001 FOURTH AVENUE, SUITE 4500
SEATTLE, WA 98154
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D

VI. CONCLUSION

For the reasons stated above, Era Living respectfully request that the Court grant its motion and dismiss Plaintiff's lawsuit.

DATED this 26th day of July, 2019.

FOX ROTHSCHILD LLP

s/ Skylar A. Sherwood

Skylar A. Sherwood, WSBA #31896
Attorney for Era Living
Fox Rothschild LLP
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154
Telephone: 206.624.3600
Facsimile: 206.389.1708
E-mail: ssherwood@foxrothschild.com

CERTIFICATION

I certify that this memorandum contains 1105 words in compliance with the Local Civil Rules.

D

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the date written below, I caused a true and correct copy of the foregoing to be delivered to the following parties in the manner indicated:

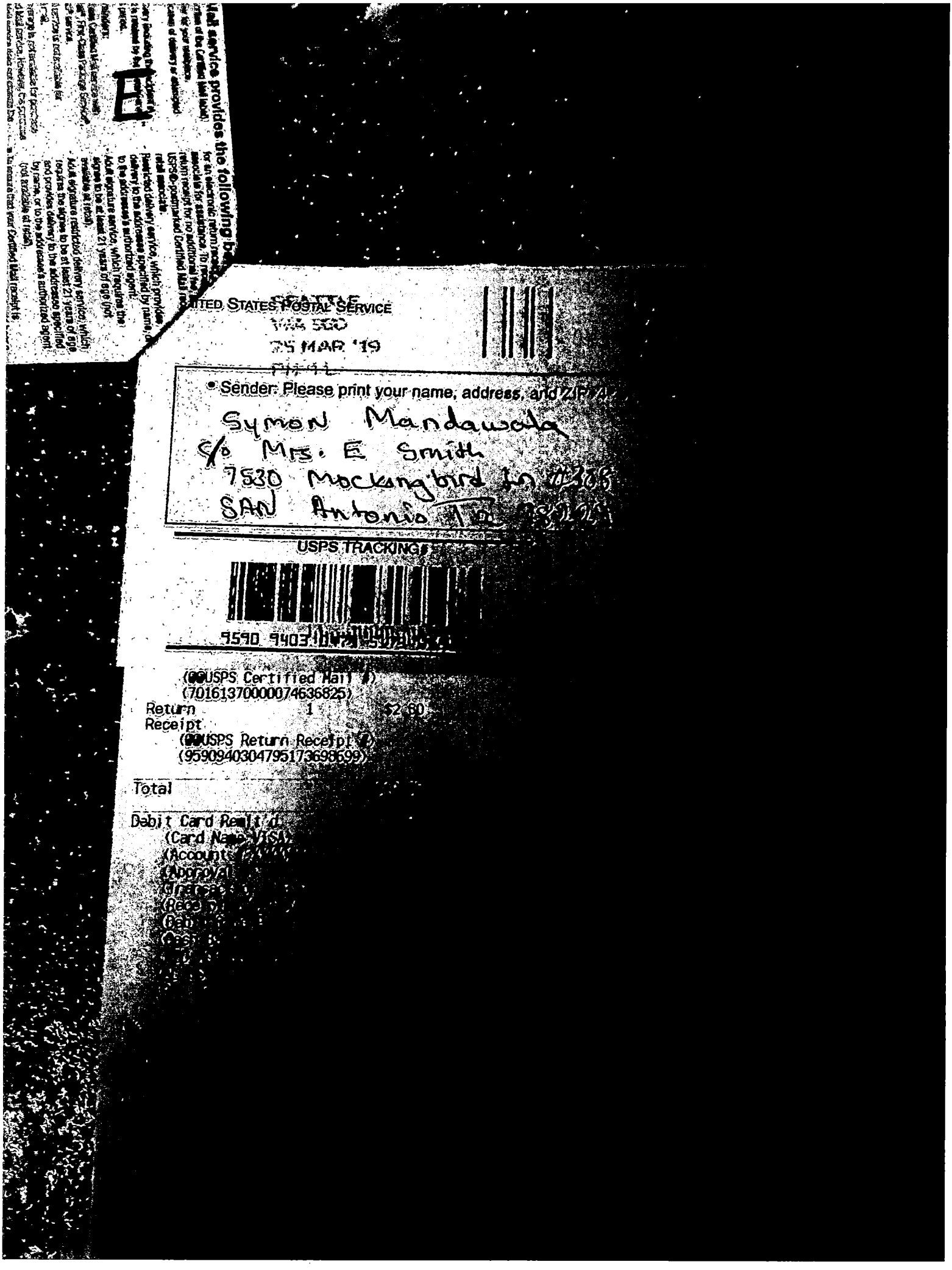
Name:	Symon Mandawala	☐ Via electronic mail
Law Firm:		☑ Via process service
Address:	7530 Mockingbird Lane #106	☐ Via Messenger Delivery
Address:	San Antonio, TX 78229	☐ Via Overnight Courier
Phone:		☐ Via Facsimile
Fax:		☐ Via FedEx
Email:		

Plaintiff pro se

DATED this 26th day of July, 2019.

Courtney Tracy

FOX ROTHSCHILD LLP
1001 FOURTH AVENUE, SUITE 4500
SEATTLE, WA 98154
206.624.3600



service provides the following b

UNITED STATES POSTAL SERVICE

25 MAR '19

• Sender: Please print your name, address, and ZIP

Symon Mandawala
C/o Mrs. E Smith
7530 Mockingbird Ln
SAN Antonio TX

USPS TRACKING

9590 9403

(USPS Certified Mail)
(70161370000074636825)

Return Receipt 1 $2.60

(USPS Return Receipt)
(9590940304795173698699)

Total

Debit Card Remit'd
(Card Name: VISA)
(Account
(Approval
(Transac
(Recd
(Debi
(Cash

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tools.usps.com/go/Trac

USPS Tracking®

FAQs >

Track Another Package +

Remove ×

Tracking Number:
9590940304795173698699

Your item was delivered in or at the mailbox at 9:52 am on April 1, 2019 in SAN ANTONIO, TX 78229.

Delivered

April 1, 2019 at 9:52 am
Delivered, In/At Mailbox
SAN ANTONIO, TX 78229

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Tracking History

April 1, 2019, 9:52 am
Delivered, In/At Mailbox
SAN ANTONIO, TX 78229
Your item was delivered in or at the mailbox at 9:52 am on April 1, 2019 in SAN ANTONIO, TX 78229.

March 31, 2019, 9:02 pm
Departed USPS Regional Facility
SAN ANTONIO TX DISTRIBUTION CENTER

March 27, 2019, 10:04 am
Arrived at USPS Regional Facility
SAN ANTONIO TX DISTRIBUTION CENTER

March 25, 2019, 8:30 pm
Departed USPS Regional Facility
SEATTLE WA DISTRIBUTION CENTER

March 25, 2019, 5:33 pm
Arrived at USPS Regional Facility
SEATTLE WA DISTRIBUTION CENTER

Departed USPS Regional Facility
SEATTLE WA DISTRIBUTION CENTER

March 25, 2019, 5:33 pm
Arrived at USPS Regional Facility
SEATTLE WA DISTRIBUTION CENTER

March 22, 2019, 4:27 pm
Return Receipt Associated

Product Information

Postal Product:
First-Class Package Service - Retail

Features:
Return Receipt
USPS Tracking®

See tracking for related item:
70161370000074636825

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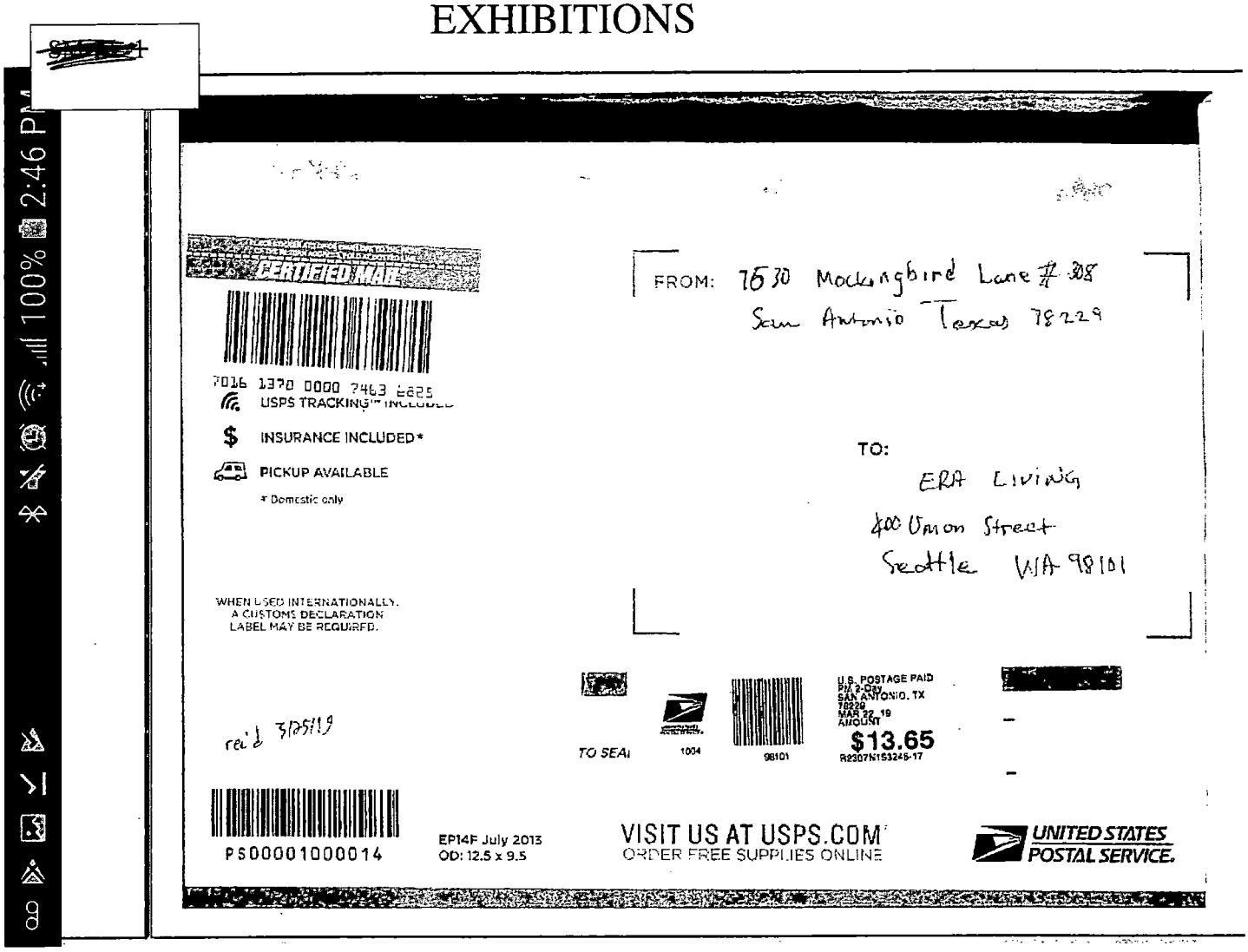
EXHIBITIONS



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7016 1370 0000 7463 6825

USPS TRACKING™ INCLUDED

$ INSURANCE INCLUDED*

PICKUP AVAILABLE

* Domestic only

WHEN USED INTERNATIONALLY, A CUSTOMS DECLARATION LABEL MAY BE REQUIRED.

FROM: 7830 Mockingbird Lane # 308
San Antonio Texas 78229

TO:
ERA Living
400 Union Street
Seattle WA 98101

rec'd 3/25/19

TO SEA

1004

98101

U.S. POSTAGE PAID
FM 2-DAY
SAN ANTONIO, TX
78229
MAR 22 '19
AMOUNT
$13.65
R2307N153245-17

PS00001000014

EP14F July 2013
OD: 12.5 x 9.5

VISIT US AT USPS.COM
ORDER FREE SUPPLIES ONLINE

UNITED STATES POSTAL SERVICE.

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Fox Rothschild LLP
ATTORNEYS AT LAW

1001 Fourth Avenue, Suite 4500
Seattle, WA 98154
Tel 206.624.3600 Fax 206.389.1708
www.foxrothschild.com

SKYLAR A. SHERWOOD
Direct No: 206.389.1584
Email: ssherwood@foxrothschild.com

April 22, 2019

VIA FEDERAL EXPRESS

Symon B. Mandawala
7530 Mockingbird Lane, #308
San Antonio, TX 78229

Re: Mandawala v. Era Living
King County Superior Court Case No. 19-2-03308-8 SEA

Dear Mr. Mandawala:

I am writing regarding the lawsuit you filed against "Era Living at ATP" in February 2019. As you may have noticed from the Notice of Appearance that I filed, I represent Era Living, LLC ("Era Living") with regard to this matter. I have not been notified that you are represented by a lawyer in this matter. If you do have a lawyer, please have him or her contact me so I can speak with him or her directly.

It has been more than two months since you filed this lawsuit, but to date, Era Living has not been properly served with the Summons and Complaint and you have not taken any further action in this matter. Proper service of process is outlined in the court rules, which can be found at https://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=sup&set=CR. We therefore assume you do not intend to pursue this case further. As such, Era Living intends to move to dismiss this lawsuit unless you properly serve Era Living by April 30, 2019.

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Fox Rothschild LLP
ATTORNEYS AT LAW

Sincerely,

Skylar A. Sherwood

SS:md

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2-03308-8 SEA

me
To ssherwood@foxrothschild.com
Apr 23 at 7:48 PM
7 attachments

Dear Mrs. Sherwood

In regard to your letter dated April 22, 2019. I'm writing to notify you that your client was served properly last month on March 5, 2019 through certified mail return receipt after two unsuccessful services.
Attached there is face copy of summon, petition, amended schedule from the clerks office. I have added more attachments including signature of the person who returned the receipt.

In regard to my counsel, I'm representing myself in this case for now until further notice.

Let me say thank you for your correspondence and inquiries.

Thank you
Symon

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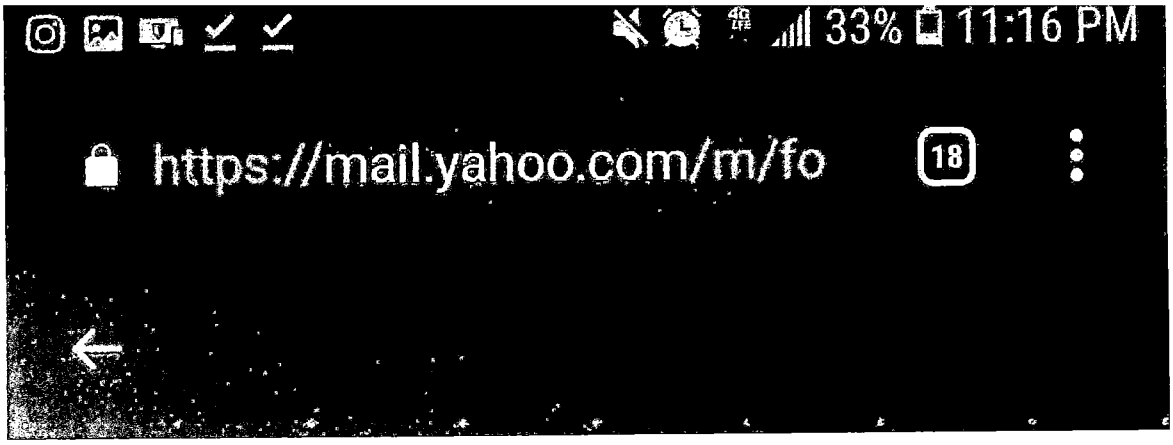
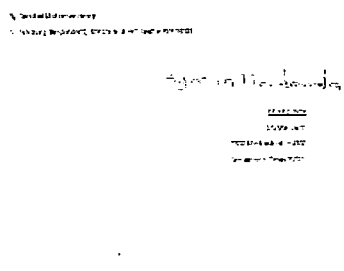


Symon

› Show original message



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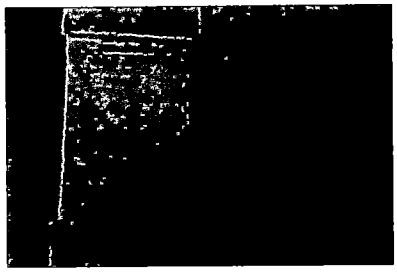

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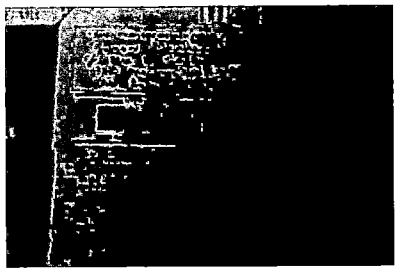

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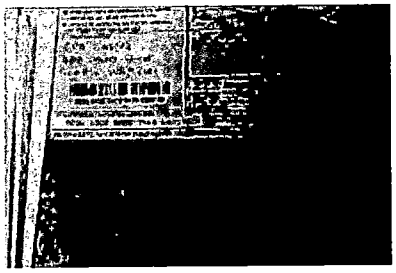

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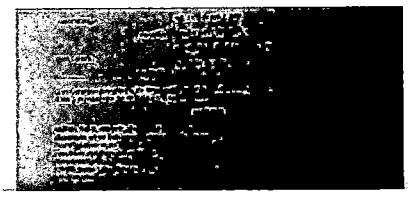

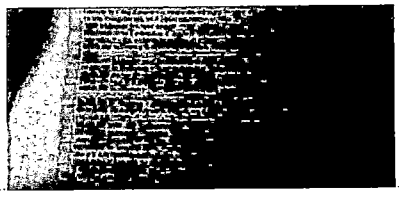

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Thank you for your emails. I understand you believe you have properly served Era Living. However, Era Living's position is that the mailing you reference in your emails below does not constitute service consistent with the Civil Rules (a link to which I included in my April 22 letter to you) that triggers an obligation for Era Living to answer your Complaint.

Sincerely,

Skylar Sherwood

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THE STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

MANDAWALA	*	
	*	
v.	*	Couse # : 19-2-03308-8
	*	
	*	Hon Judge Inveen
ERA LIVING LLC &	*	
DENNIS NEWMAN JR.	*	IN SEATTLE
	*	
	*	
	*******	

August 12, 2019

A NOTICE OF POTENTIAL ATTORNY'S MISCONDUCT

Att: Honorable Judge Inveen
C/o King County Superior Court
516 3rd Ave, Room
Seattle, WA 98104

Dear Hon. Judge Ivneen,

Plaintiff is hereby notifying your court that the defendant's attorney's communications to the plaintiff to enforce the re-service process as noted in the reply without the court's acknowledge, determination or order, has no legitimate purpose but constitute harassment.

Facts

1. Not at any time the plaintiff were requesting a return of the services from Mrs. Sherwood, neither plaintiff seek any legal advice from her.

2. Not at any time were this court communicate to the plaintiff that the defendant's attorney is a member of judicial staff of this court that she can claim exercise duties under Rule CR4 (h).

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3. Not at any time prior to the defendant filing the motion to dismiss this lawsuit, the court did communicated or order the plaintiff to amend the service process in which the plaintiff can consider the court is exercising rule CR4(h).

Such absence of court's order under rule CR4 (H) to the plaintiff, and non-judicial enforcement (speaking objection) to reservice the process requested by the defendant's attorney, constitutes misleading the plaintiff and it's a Harassment. As such, the defendant's attorney is asking this court to act on the plaintiff for not abide to her request by dismissing this case because of speaking objections that violate RCW 9A.72.110 (1)b.

Referring to the above facts, compare facts in the defendant's motion to dismiss the case with attorney's course of conduct in US v Claude H Tison (1986). The 11th circuit court of US appeal affirmed the US district court charge of misconduct by attorney Tison with harassing a witness and victims under US congress enacted the victim and witness protection Act 1982. see US v. Claude H. Tison, Jr., Marcelino Echevarria and Scan Realty Services, inc., 780 F.2d 1569 (11th Cir. 1986)

Therefore, Attorney madam Sherwood's repeating request the plaintiff to reserve her client has no legitimate purpose as it is lacking this court's order of rule CR 4 (h). Because of this, the plaintiff is being harassed and therefore with duely respect this should be considered a formal notice of possible appeal after the scheduled August 23, 2019 hearing.

Yours truthful,

Symon Mandawala
Plaintiff

7530 Mockingbird lane #308
San Antonio, Texas 78229

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

SYMON B. MANDAWALA, Plaintiff, v. DENNIS NEWMAN, JR. and ERA LIVING AT ATP, Defendants.	Cause No. 19-2-03308-8 SEA Appeals No. 80543-6-I PAGES 1-33

VERBATIM REPORT OF

DIGITALLY-RECORDED PROCEEDINGS

August 23, 2019, DR W864

HEARD BEFORE THE HONORABLE LAURA C. INVEEN

FOR THE PLAINTIFF: PRO SE

FOR THE DEFENDANT: SKYLAR A. SHERWOOD
Fox Rothschild
1001 Fourth Avenue, Suite 4500
Seattle, Washington 98154-1065

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INTERPRETER MONDA MWAYA PRESENT 3

DEFENSE MOTION TO DISMISS 8

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COURT TO ISSUE WRITTEN RULING 27

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August 23, 2019, 10:01 a.m.

THE BAILIFF: … session. The Honorable Laura C. Inveen presiding.

THE COURT: Please be seated. Good morning.

MS. SHERWOOD: Good morning.

THE COURT: We are here in the King County Courthouse in the matter of Mandawala—am I pronouncing it correctly?

MR. MANDAWALA: Yes, yes.

THE COURT: Versus ERA Living. This is Case No. 19-2-03308 [sic]. And we are joined via I believe Skype—a Skype process with—by an interpreter, and I'm going to ask her to introduce herself and the language which she is interpreting.

THE INTERPRETER: My name is Monda Mwaya, and I'll be interpreting Chichewa for—for the client. I have been interpreting for other court services, and I have been a lecturer in Chichewa for seven years at the University of Pennsylvania.

THE COURT: And, where are you located today?

THE INTERPRETER: I'm in Philadelphia, Pennsylvania.

THE COURT: All right. And, this is a process that I've never used before. Even though I've been a judge for 31 years, this is—

THE INTERPRETER: Oh.

THE COURT: —the first time we have—I have had the opportunity to do this by Skype. And so, I appreciate everyone

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bearing with me in this process.

I'm going to—in Washington state we put you under oath. I'm going to ask you some questions. And then I will also put you under a separate oath in which you're going to swear or affirm that you will accurately interpret these matters. So, could you—

THE INTERPRETER: Oh.

THE COURT: —please raise your right hand?

THE INTERPRETER: Uh-huh.

THE COURT: And do you swear or affirm to give the truth in these proceedings?

THE INTERPRETER: I will.

THE COURT: Okay. And now, please state your name again?

THE INTERPRETER: Could you please repeat that?

THE COURT: State your name one more time?

THE INTERPRETER: Monda Mwaya.

THE COURT: And Ms. Mwaya, you are interpreting in the Chichewa language. Is that your first language?

THE INTERPRETER: Yes, Your Honor.

THE COURT: And so you, I assume, are fluent in that language?

THE INTERPRETER: Yes, I am.

THE COURT: So, now I'm going to ask you some questions about your English-speaking background. How did you learn to speak English?

THE INTERPRETER: In school.

THE COURT: Was that here in the US or elsewhere?

THE INTERPRETER: No, I learned how to speak English in Malawi.

THE COURT: And how long have you been speaking English?

THE INTERPRETER: I've been speaking English for 40—40 years.

THE COURT: Is that now your first language on a day-to-day basis?

THE INTERPRETER: Yes, it is.

THE COURT: And are you a fulltime interpreter, or do you do something else?

THE INTERPRETER: I work as a lecturer at the University, and I also work as a community health worker for Aetna Better Health.

THE COURT: And so, as a lecturer you are—you are speaking English; you are lecturing in English?

THE INTERPRETER: I'm lecturing in English and teaching them Chichewa, yes.

THE COURT: Ah, okay. All right. And so have you—are you—and you can put your hand down.

THE INTERPRETER: Okay.

THE COURT: Have—are you familiar with the Code of Ethics of a court interpreter?

THE INTERPRETER: Yes, I am.

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THE COURT: How often do you interpret or—let me start again. Have you interpreted in court proceedings before?

THE INTERPRETER: Yes, I did. I did last year for a Texas court.

THE COURT: Is this the first time you have in a Washington state court?

THE INTERPRETER: Yes, it is.

THE COURT: Okay. And, have you had a chance to talk with Mr. Mandawala in your—in Chichewa?

THE INTERPRETER: No.

THE COURT: Okay. And I am going to ask you now to take our code of ethics. If could—

THE INTERPRETER: Okay.

THE COURT: —raise your right hand? Or just—do you swear or affirm to accurately interpret these matters from English to Chichewa and Chichewa to English and to follow the interpreter Code of Ethics?

THE INTERPRETER: I will.

THE COURT: All right. I do find that Ms. Mwaya is qualified to serve as an interpreter today. And I'm now going to ask Mr. Mandawala, who I believe is represented by himself, Mr. Mandawala, it's my understanding that my bailiff, the court staff, had some preliminary conversations with you, maybe over email, about—or maybe in person about how you'd like to proceed with the interpreter. There is the option of

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having the interpreter interpret everything that is said—

MR. MANDAWALA: Uh-huh.

THE COURT: —in your first language. Or she can serve as a standby interpreter, so if you need clarification or questions, she can interpret. And I'm going to ask her to interpret what I just said, and then we'll decide.

THE INTERPRETER: Because of the time, he would like for me to be present. He will speak for himself. And if he find that he's having difficulty understanding what you're saying, he will have—he will ask me for assistance in interpreting. So, he would like me to remain as a standby and hear the proceedings.

THE COURT: All right. And Mr. Mandawala, if at any time you want to change back—

MR. MANDAWALA: Yeah.

THE COURT: —and have her interpret everything—

MR. MANDAWALA: Okay.

THE COURT: —that's fine.

MR. MANDAWALA: All right.

THE COURT: Okay? All right. And also present today is a lawyer, and I'll ask her to introduce herself.

MS. SHERWOOD: Good morning, Your Honor. Skylar Sherwood from the firm Fox Rothschild on behalf of Era Living.

THE COURT: And this is the Defendant's motion to dismiss this matter. And I have read all of the materials. And I'll

hear from you. And even though we're—Mr. Mandawala is comfortable speaking in English, let's just make sure that we go a little slower than we might normally when we speak.

MS. SHERWOOD: Of course. Yes, Your Honor, as—as you've indicated, you've read everything. You know that this is a motion to dismiss for failure to properly serve Defendant Era Living. This—the relevant statute here, RCW 4.28.080, we're looking at Subpart (9) of that statute because we're talking about service on a company or corporation. And that statute is very clear about the designated individuals who are authorized to accept service on behalf of such a defendant. You know, it—it's a list, but there—it includes the president, it includes the registered agent. And in this case there has not been service on any of those designated individuals. We have various mailings, but they are insufficient on their face. Various of them were sent by US Mail. I think one was sent via certified mail only to Era Living, no addressee, no designee, just the entity itself. No summons has been included in the materials, no certificate of service specifying an individual who received the document for service.

And so from our perspective, Mr. Mandawala here has failed to meet his burden to show he's complied with the service statute and rules. And, this is not any—this is despite receiving prior notifications from me in an effort to alert

him to this deficiency. I had communications with him on at least two occasions about it, pointing generally to the relevant rules, and still the failure was not remedied. And so, at this time we're moving to dismiss.

From our perspective, there also has not been any kind of substantial compliance here sufficient to find service because nothing so far really meets the substantial—or the substantive, excuse me, provisions of the statute from the cases we've cited. The *Clymer* case, for example, gives—gives an example of substantial compliance such as a party serves—or mails a document via FedEx even though the underlying appeals statute specifies that things be sent by mail. So, that was deemed to be substantial compliance. That's not what we're seeing here.

And then finally, Your Honor, just from a practical standpoint, I'm a bit concerned going forward in the case if we can't have proper service here—

[Off-the-record discussion.]

MS. SHERWOOD: —concerns for the—going forward in the case. If servant—service hasn't been correct here, you know, service may continue to be a problem in this case and—and assuring that Era Living is getting the notices that it requires and that are required in a timely and effective manner. So, from Era Living's standpoint, this Court lacks jurisdiction over it due to the—Mr. Mandawala's failure to

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properly serve Era Living, and we'd ask for the matter to be dismissed.

THE COURT: Do you know of any legal authority that gives this Court discretion in this matter?

MS. SHERWOOD: I'm not aware. It's a matter of statutes and what a statute says. So, no, Your Honor, it's not really a discretionary standard. It's a standard that's laid out very clearly in the statute that I cited earlier as well as the civil rules.

THE COURT: And I'm going to step off the bench just for 20 seconds because I think I left my notes on my desk. I'll be right back.

Thank you. All right. I will hear Mr. Mandawala.

MR. MANDAWALA: Uh, thank you very much, Judge, for giving me opportunity to, uh, try respond to this motion. Uh, and first of all, I appreciate your service. I know that you say you are retiring. We're going to have a gap.

But, anyway, let me come through, first of all, uh, to, uh, the motion itself. Before I responded in, uh, details, uh, getting the motion, I need, uh, a little bit asking you a question to help us to understand what, uh, the Rule No., uh, CR 4(h).

THE COURT: And I have that on my computer, and I've just pulled it up. Yes.

MR. MANDAWALA: All right. Thank you very much,

Madam Judge. Uh, if we look at, uh, the CR 4(h), uh, my—my question is that, uh, I need help with you to understand who is having authority to give the order of amendment of any service or process, uh, to a plaintiff between a defendant and the court.

THE COURT: Let me read this. And, I don't know if Counsel has that in front of her. It says CR 4(h) is entitled "Amendment of Process."

MR. MANDAWALA: Uh-huh.

THE COURT: It says, "At any time in its discretion and upon such terms as it deems just"—

MR. MANDAWALA: Uh-huh.

THE COURT: —"the court may allow any process"—

MR. MANDAWALA: Uh-huh.

THE COURT: —"or proof of service thereof to be amended, unless" it is—"it clearly appears that material prejudice would result in the substantial rights of the party against whom the process is issued."

MR. MANDAWALA: Thank you very much, Madam Judge. Uhm, if you can tell, you're going to find out that it is the court that suppose [sic] to tell the plaintiff, see, your serving is insufficient and you need to amend. The Court may ask, or another way I will use the word "asking" for that. So, forgive me, I'll just do that. The Court may ask the Plaintiff to amend the service if the service is insufficient one; is—if

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also there is anything that the court feels that it's not properly served. It's the court.

Now, I'm coming to the, uh, second part whereby, uh—uh, the Rule No., uh, CR 11. CR 11 is talking about if there is some insufficient during the time of serving, uh, pleadings when you are filing—when a plaintiff is, uh, filing the pleadings, in some way it is not okay, then the Court itself, they have to contact the plaintiff in order to fulfill those gaps. That's what, uh, Rule No. 11 says. But, I'm not citing the Rule No. 11 yet. I'm citing the Rule No. 4(h) which is can amend anything, anything.

So, it says it's the court, not the defendant. In my case I was contacted by the—by the Defendant, who told me that you have insufficiently served us. Then I said, I did not receive anything from the Court. That's where I stop. To avoid confusion, to avoid what, I stopped from there. I did not respond. I did not act anything because I'm—I was waiting for the Court. I came here to the Court because I need remedy. Uh—uh, in other words, can I asking how to say the—the word?

THE COURT: Yes.

THE INTERPRETER: He would like the Court to help him with the right procedure.

MR. MANDAWALA: Thank you. That's all what I came here. I did not come here for to have a case from a law firm. If it was like that, my petition would go to the law firm.

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THE COURT: And I didn't understand. You said to have a case from?

MR. MANDAWALA: Yeah. I did—when I send my print—my—my pleadings to this Court, that means I was looking for a proper procedure from this Court, not from the law firm because otherwise I could send everything to them to complain so that they can take over everything. Now, I'm receiving the order to amend my pleading from the Defendant. Where is the Court? Where is the power of the Court in the—in the rule? That means my due process has been what? Has been estopped [sic]. The Defendant did bypass the Court. Therefore, the Court has nothing to do with the motion because Defendant bypass the Court.

What are you going to do with it? You don't know anything. They did not inform you. I—I did not receive anything from you. I received it from her. I'm not sure if I can ask, did you give her an order that the Plaintiff needed to be served again—I mean, the Defendant needed to be served again? This Court.

THE COURT: This Court doesn't give advisory opinions.

MR. MANDAWALA: Thank you.

THE COURT: This Court doesn't give legal advice to you—

MR. MANDAWALA: Exactly.

THE COURT: —or to the Defendant. This Court waits to have legal matters drawn to its attention, and then acts. And

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that's why we're here today.

MR. MANDAWALA: Exactly. Thank you very much, Madam Judge.

Uhm, as you said that the Court cannot do that, but when it comes to discretion or judgment, you see, we feel that something is missing and, uh, we're going to do this. And we cannot concede, uh, the motion as [inaudible] to notice to the Court that it is in some way insufficient. We cannot concede it. Why? Because Defendant did not contact the Court to let the Court know before the filing the motion that it is insufficient somewhere. And we were really—I should say before come to me, it was supposed to come to the Court first. Then the Court should know that if it is somewhere something that the Plaintiff need to amend, it did not happen like that until today when you—you are receiving this motion.

So, my due process is going to be different than any other court because now I'm being charged—or—or my case is being taken over by a law firm, not the Court. In that way, Madam Judge, you're going to agree with me that I do deserve Fifth Amendment. I do deserve 14th Amendment. And on top of that it's not only that by missing the—by missing—by—by bypassing the Court—by bypassing the Court, not informing the Court what is insufficient in the pleadings, then the Court comes over and take over the—the what do you—what I should say what the Defendant is saying that, oh, we communicated to him, we did, uh, [inaudible], there is this document,

which has been filed on Monday, last Monday.

THE COURT: I'm not sure what it is. I can't see it. If you could hand it to the Clerk, and I'll take a look at what you're referring to.

MR. MANDAWALA: It is that. That—

THE COURT: And for the record, it's Era Living motion to dismiss. Is this something different, or is this what was before me?

MR. MANDAWALA: Oh, I think I—I [inaudible] wrong. Uh, sorry, Madam Judge. Let me do this. Thank you. Ah, here we go.

THE COURT: Oh, this is the reply and the motion in—

MR. MANDAWALA: Yeah. Uh—

THE COURT: —support of the motion to dismiss.

MR. MANDAWALA: Reply and the motion.

THE COURT: Right.

MR. MANDAWALA: Yeah. So, as you notice, the, uh—this one, this document came on Monday; uh, they filed on Monday. Uh, and I did not have much, uh, time to receive because it went also to the stamp I guess to find out two days ago. So, I did manage to try to look around some of the things that I have in order to—to responded to this. But, uh, that would—depends with the, uh—the Court is understanding about this because if I remember, now I'm—I'm on that, supporting that document, if you look at that one, uh, for this supporting document,

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I'm not sure if this supporting document is supporting or it's an amendment of the order—the motion. Why I'm saying so? It's because if you look at the—uh, the whole document itself, and you look at the, uh—uh, the content where they say according, uh, the—I failed to serve them according to CR 4, now it has changed. The—the way it has been changed, the change of word is that the—they revised the Code that has been used the way, uh, the Section 9 has been removed.

THE COURT: Section 9?

MR. MANDAWALA: Yeah, Section 9 of they advise the Court they sent out the—I should say they advise Court—the one in which, uh, they say—okay. If you can go to the original motion—

THE COURT: Yes.

MR. MANDAWALA: —then on the original motion you find the statement of the issue.

THE COURT: Yes.

MR. MANDAWALA: Then if you go down there, you find where they say the Rule CR 4(d)(2)—

THE COURT: What—

MR. MANDAWALA: —then—

THE COURT: What page are you on?

MR. MANDAWALA: Uh, I'm on Page—

THE COURT: Oh, yes.

MR. MANDAWALA: Yes.

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THE COURT: Page 2? Yes?

MR. MANDAWALA: Yes. CR 4—

THE COURT: Right.

MR. MANDAWALA: —(d)(2).

THE COURT: Yes.

MR. MANDAWALA: And they, uh—they put that CR 4(d)(2) is coming from the Revised Code 4.28.080. Then the paragraph is 9.

THE COURT: Yes.

MR. MANDAWALA: If you take a look at the supporting document, you find that that one has been removed; there is no anything about that. So, because of that, this is an amendment, not in support.

THE COURT: That's your argument?

MR. MANDAWALA: Yes.

THE COURT: Okay.

MR. MANDAWALA: This is an amendment, not in support. And moreover, there is no any new, uh, facts that could we say we are supporting that. So, if you look at this supporting document, it's not a support, but an amendment. So, the amendment came three days ago, after I replied.

THE COURT: So, your—as I understand your argument, you are arguing that the reply—

MR. MANDAWALA: Yes.

THE COURT: —to your response—

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MR. MANDAWALA: Yes.

THE COURT: —is an amendment—

MR. MANDAWALA: Yes.

THE COURT: —because it doesn't address the—

MR. MANDAWALA: The—

THE COURT: —statute.

MR. MANDAWALA: The normal—yes, the normal complaint they had. The normal complaint they had is—was CR—uh, Revised Code 29, which talks about the title of the person who's supposed to be served. But, that one is being barred. Why? Because recently the Washington, uh, legislators, because of Boeing—most of the time, Boeing, when people are serving Boeing, they always having problems, you know? So, because of that, our legislators, they allow the serving by mail, served by mail. If you look at the all previous, before 2015, all previous Revised Code, they had no explanation.

THE COURT: And I saw in your materials a reference to a 2015 change.

MR. MANDAWALA: Yeah.

THE COURT: And I was—I—

MR. MANDAWALA: Addition.

THE COURT: —I could not find the change that you were—

MR. MANDAWALA: Okay, yes.

THE COURT: —referring to.

MR. MANDAWALA: The Revised Code that has been—uh, by the

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time I guess you'll find the Constitution itself, I did not went to see how they put it on the Revised Code. Now you can find that I dig down, I found it. It's Revised Code 23—23.95—23.95.450.

THE COURT: I will look at that and see what that refers to. That's under the chapter on corporations.

MR. MANDAWALA: Yes.

THE COURT: University—Uniform Business Code.

MR. MANDAWALA: Uh-huh. Then this process—serving process?

THE COURT: There—you say 23.95?

MR. MANDAWALA: .450.

THE COURT: 050? There isn't—

MR. MANDAWALA: Yes.

THE COURT: —an 050.

MS. SHERWOOD: 4.

MR. MANDAWALA: Uh, the one that says—

MS. SHERWOOD: Your Honor, .450.

THE COURT: Oh.

MR. MANDAWALA: Yeah.

THE COURT: .450. I'm sorry.

MR. MANDAWALA: Yes, .450.

THE COURT: Service of process, okay.

MR. MANDAWALA: Then, uh, if you go to Paragraph No. 2, you find how it is explained about serving the corporate, at the head office of the corporate, an entity.

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THE COURT: Let me read this. Okay.

MR. MANDAWALA: Yes. So, as you can see that one, it says that in Paragraph 2, it's—if you remove the—anything that when you are serving the headquarters of the company, like a corporate company, you don't need necessarily to put the name of the individual. You can—of course, you can put it, it's okay. But, according to this statute, you don't need to put because it says that the address should show the address of the corporate—what corporate principal office; office, not officer, but, the principal's office of the entity.

THE COURT: This references a represented entity.

MR. MANDAWALA: Yes. And—

THE COURT: And I'm not sure what a represented entity—

MR. MANDAWALA: Yeah. So, when the entity does not have that representation when people are serving papers, they serve to the agent. That company doesn't have one agent. Now that's what it says. You can serve direct to the principal's office. Then what happen if the principal's office cannot be served? For instance, if the principal's office is not here in Washington state, how we going to serve it? Or we don't know where the principal's office is. However, back in [inaudible], for example, like the Dunk—Dunkin' Donuts where the corporate office is in Germany, how you going to serve it? That's when they said you go to the, uh, Paragraph No. 3. See, you serve the person in charge of the entity's normal

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business area, like, normal place where they do business, the person who is in charging there. Because he's the person who send report to the head office, he's the one who can inform the entity that we are being sued. That's my argument there. You see that what they are refer is person [inaudible]. That is referred in, uh, Paragraph 3. But, my service was Paragraph 2, where I did by registered mail.

So, if you look at that, there is a little bit missing there, and even if we—I even refer to the whole entire, uh—uh, their argument on—on, uh, Revised Code, uh—Revised Code 48, uh, 0.39, the one they say it was center of the issue, you'll find that that one is a personal service; it's not mail. It's not mail service. If you look at it, you find that it—they are talking about if you serving in person. If you're serving in person, meaning that you have to go to the office or somebody should go to the office, then you find and you leave the—the summons to that or court papers to—to the office, not by mail.

Now, the—the lawmakers has changed the—the—they have added this one. It was—it was just added. It wasn't there. This—uh, the one I'm citing now, the one you see a part of 223-something-something, they just added in 2015. Yes. So, because of that addition, it gives that anybody who is at the corporate office [inaudible] or instead in—in generally say headquarters has got a power to make decision to handle the

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case, find there is a director of marketing, there is a director of what, there is a director of what, there is a director of what. Those are the entities. Even if it is a government entity, you find there—there is a director of health, there is a director of, uh, community service, director of what. So, all those directors, what are their job? They are directing things. That means they can handle that and say give to this lawyer and say the court can do that. It doesn't need necessarily to be president, what. No.

So, upon arriving to the corporate's entity, principal's office, that's good. They did that because of Boeing. I hear, uh—I was going through the previous conversation of people—you know, the people who gives opinion about what the lawmakers are doing. And I saw those—uh, those opinions found that most of them, they are complaining, you see. When you serve Boeing, they'll tell you, they say, oh, the president of this area doesn't really have—doesn't—he found in this area. Go—it goes there. So, you go to Everett; you go to Auburn; you go to where, and you—and at the end they come to court with no service. Why? Insufficient serving. And people are going home, what happened? There is no law governing what? Mail service.

Now, here it is, the law is here helping those kind of things. You can just serve no president [inaudible]. So, my serving was sufficient, and it was right under the law.

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THE COURT: Why don't I hear a response from the Defense?

MS. SHERWOOD: Your Honor, I apologize that I did turn my phone on so I could pull up the statute. Ordinarily I would keep it off. But, as I read—my understanding is Mr. Mandawala was pointing just most recently to RCW 23.95.450. And, I, like, Your Honor, am not upon immediate review of this entirely certain what the term "represented entity" means in this statute. However, by looking at even Subpart (2)—well, by looking at Subpart (1), it's—it's indicating that an entity may be served with any process permitted by law by serving its registered agent. Again, here that hasn't occurred.

Subpart (2)—thank you so much—and then Subpart (2) talks about cases where the represented entity ceases to have a registered agent. That is not the circumstance here either.

So, our—our position is that this statute is inapplicable, that really the—the governing statute is RCW 4.28.080, and we're looking at Subpart (9) in addition to Civil Rule 4.

THE COURT: All right. So, you are a very sympathetic person. You're very persuasive, and your English is excellent. And although I assume you don't have legal training, you certainly have a lot of legal knowledge. I don't think I can rule in your favor, but I want to give you the benefit of the doubt and give some opportunity to hear some additional responses.

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A couple of things. You made some arguments that you didn't address in your oral argument, but I wanted to at least comment on. Regarding the notice of appearance, that doesn't—the fact that a lawyer files a notice of appearance doesn't waive the sufficiency of the service argument. The mail—the—none of the mailings had the summons with them as required. And they weren't to an authorized person, at least under RCW 4.28. So, the question is, does RCW 23.95.040—450 take it out of that requirement? And I'm going to take some time to look at that, and I will invite, if—if either party wishes to provide any further authority, that it be done so by the end of Tuesday, August 20th—oh, I'm sorry, 27th, because I have to make this decision before next Friday because that's my last day on the bench.

And I also—if you—if I find that RCW 23 does not apply, I am also—if I had discretion, I would rule in your favor because I do know that the Defendant knows about this lawsuit. I don't think I have discretion. I think that this is a bright line issue. But, if you can find any cases, Washington state cases, that interpret RCW 4.28 that says I have discretion, I invite you, and you need to send—and it can be—you can send it by email to both the Defendant and me, also by the end of Tuesday.

MR. MANDAWALA: Can you allow me to add something there?

THE COURT: Yes.

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MR. MANDAWALA: All right. So, I do have, uh, your ruling on, uh, 2014. Uh, the case was *Rule versus Swart*.

THE COURT: I'm sorry, say it again?

MR. MANDAWALA: *Rule versus Swart*, R-U-L-E, *versus* S-W-A-R-T, 2014 in April. I think that was April or something like that.

THE COURT: Do you have any more information about that case? Was it in the—

MR. MANDAWALA: Uh, this case—this case, uh, it was, uh, regarding, uh, you dismissed the motion of, uh, reconsideration.

THE COURT: I did?

MR. MANDAWALA: Yes.

THE COURT: So, this is a case that—one of my cases?

MR. MANDAWALA: Yes, one of your cases.

THE COURT: Okay. And—

MR. MANDAWALA: Yes. Then what I trying to refer, it's about this, uh—

THE COURT: Do you know the cause number of the case?

MR. MANDAWALA: Unfortunately, I—I do not know about the case number, but—

THE COURT: How'd you find it?

MR. MANDAWALA: Okay. I—I was going through something, and, uh, I ended up coming to—coming to this.

THE COURT: What do you have there? You're showing me your

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phone.

MR. MANDAWALA: Yes, ma'am. It's—it was happening because I received this document a little bit late. So, I have to do quick research.

THE COURT: *Rule*—oh, *Ann Rule versus Swart*, okay.

MR. MANDAWALA: Yes. Yes. In that—in that ruling, you—I pulled—I—I took a screenshot of your, uh—one of the orders you gave. It's—

THE COURT: I think I was overturned in one—

MR. MANDAWALA: No, uh—

THE COURT: —by the Court—

MR. MANDAWALA: —they—they appealed.

THE COURT: Right.

MR. MANDAWALA: Yeah, they appealed. They—I think they moved some of the information, like, uh, whereby, uh, this additional what—additional copy was affirmed by the appeal court, say you were right. There were not supposed to send something, uh, like, the way it is, like, uh, how can I put—ma'am, can you help me?

THE INTERPRETER: Okay. So, Your Honor, you had ruled on a—on a case in 2014. The people went to appeal the case, and some of your decision were—decisions remained. Some of them were overturned. So, he's—he—the argument is you should refer to that case.

THE COURT: Okay. Well, I—the only thing I can—I'll—I'll

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tell Counsel what the case is. I don't have the cause number, but it's—Ann Rule was a crime writer, and she sued an individual who she claimed had libeled her—oh, my bailiff happens to have that case. It's—well, we don't—it's Cause—it's in the Court of Appeals, Cause No. 71706-5-I. But, that doesn't tell me—I don't know if parties could find the actual appellate case. And I was over—I—I made a couple of rulings on summary judgment. I recall I was overturned. I will try to dig that out, but I don't think it was on point. I don't think it was the same issue, but I will look. But, if you have any other cases that you can think of—

MR. MANDAWALA: Uh-huh.

THE COURT: —or can do some research on. Internet is a dangerous place to do—

MR. MANDAWALA: I know.

THE COURT: —research. It would really be better to go right to the cases.

MR. MANDAWALA: Yes.

THE COURT: But other than that, I think that's all I have at this point. So, if you—either party wishes to provide me any additional authority in writing by the end of the day on August 27th, I will then issue my ruling in writing.

MS. SHERWOOD: Understood, Your Honor.

THE COURT: Okay?

MR. MANDAWALA: Yes.

THE COURT: And like I say, if I had discretion, I would rule in your favor. I—I—and I have to actually commend Counsel for Defendant. You're criticizing her for warning you about the deficiencies. A lot of lawyers would have just done nothing.

MR. MANDAWALA: Okay.

THE COURT: They would have just sat and waited and then—

MR. MANDAWALA: Uh-huh.

THE COURT: —after the statute of limitations expired, they would have come in and moved to dismiss this case. I was actually rather pleased to see that Defense Counsel had reached out to AN unrepresented party to say, hey, you haven't done it right. But, she can't ethically give you any more advice. Her—

MR. MANDAWALA: Yes, absolutely.

THE COURT: She has an ethical obligation to her client.

MR. MANDAWALA: Exactly. Now, uh, with that information, and only [sic] that you say I have to write again, but I did submit something like a notice of misconduct, uh, regarding what you are saying.

THE COURT: I saw that. And I did not find that was misconduct.

MR. MANDAWALA: All right.

THE COURT: She reached out to us. I know she also—we require people to schedule matters. And so, she reached to

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our—our bailiff to get a hearing date. And in a perfect world, she should have checked with you if that was—if that worked for you. But that's sort of the first step is to ask for a hearing date. And so, I didn't think that that was misconduct.

MR. MANDAWALA: It's not necessarily about, uh, the scheduling for—uh, on that notice, it's not about, uh, scheduling the what—the—the motion. If you look at it, it is about when you are saying that she was doing a favor to me. Uh, if you consider the—the case of *Tison* in United States Court, *Tison versus*—I mean, *US versus Tison, Claude* in United States Court, it was the same way. It was, like, the person was doing favor, say—just doing as in favor, doing this. But, the question was, did the court put on his [inaudible] of say that is a time for discovery because the time was not—like, the—the case was pending. Then the lawyer was asking for information from the plaintiff—I should say because it's criminal, I'm going to call it, uh, victim, the lawyer—the defense lawyer was asking what the—the victim provide more information regarding the case, which the judge later on say that you were supposed to do that at this point because this is not a discovery time. Right now the court is pending; you cannot do that. And he said, no, he continued it. Now, what he did, he went on and opened another case in state court in order to get information from the wife—from the plaintiff—

THE COURT: Uh-huh.

MR. MANDAWALA: —which was, like, bypassing the court.

The issue here is bypassing the court. Bypassing the court in order to get the information. Whether they do as a sympathize, whether they do as a [inaudible], whether they do as what, but it was unacceptable.

THE COURT: Hmm.

MR. MANDAWALA: The Court did not accept it. Now, the District Court find [inaudible] because after the court say that you are not supposed to do discovery this time and you did not tell the court, then you need to stop. And, unfortunately, they would like—I should say—I should recommend that there—there is nothing beyond more than that date, should not go to any [inaudible] something in order to get information.

But, here is what happened. In that—in that case, a lawyer went to—to get—uh, to open another, uh, lawsuit in the state court. Then find that the, uh—the victim shouldn't provide more information by, uh, the time they do discovery. What happened? They—uh, the court charged the attorney for that. It's a misconduct because it's intimidation. If there is no court intervention or if there is no court knowledge, you cannot put a deadline for somebody to say do this by this time. No.

THE COURT: To me I think we're talking about apples and oranges, mean—

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MR. MANDAWALA: Yeah.

THE COURT: —meaning I don't think this is—that's the same. But, I'll—in my—well, bailiff did find the cause number, the Superior Court cause number for the *Rule* case, which could lead you to the Court of Appeals cause number, our—our case. And the Superior Court cause number is 13-2-26410-2. So, if anyone is so inclined, they could likely find the appellate decision in that. And I will at least review it.

Okay. We have an 11 o'clock matter, so we are going to have to transfer now and conclude these proceedings. And I want to thank Ms. Mwaya—

THE INTERPRETER: Uh-huh.

THE COURT: —for her time.

THE INTERPRETER: Thank you.

THE COURT: And appreciate it. I'll go ahead and disconnect. Anything further at this point? Okay. All right. We are in recess.

[Session ends at 10:46 a.m.]

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LEGEND OF SYMBOLS USED

—	Indicates an incomplete sentence or broken thought.
...	Indicates there appears to be something missing from original sound track or a break in the testimony when switching either from Side A to Side B or switching between tapes.
[inaudible]	1. Something was said but could not be heard. 2. Speaker may have dropped their voice or walked away from microphone. 3. Coughing in background, shuffling of papers, et cetera, which may have drowned out speaker's voice.
[sic]	1. The correct spelling of that word could not be found, but is spelled phonetically, or — 2. This is what it sounded like was said.
[No response.]	There is a pause in proceedings, but no response was heard.
[No audible response.]	Possible that something was said, but word or words could not be heard.
[Off-the-record discussion.]	1. Discussion not pertaining to case. 2. Discussion between counsel and/or the Court, not meant to be on the record.

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I, Barbara A. Lane, certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That I am a certified transcriptionist;

2. This transcript is a true and correct record of the proceedings to the best of my ability, including any changes made by the trial judge reviewing the transcript;

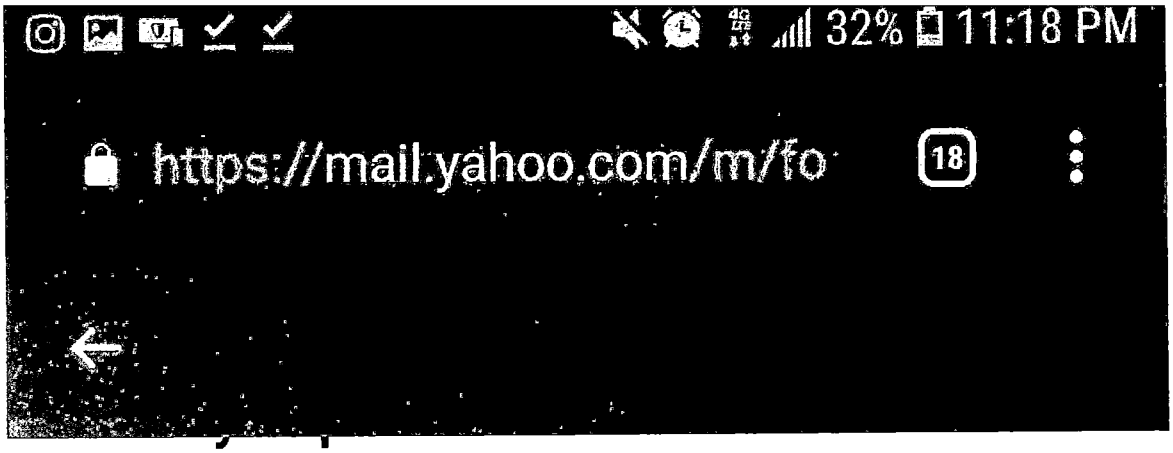
3. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and

4. I have no financial interest in the litigation.

Dated this 1st day of January, 2020 at Snohomish, Washington.

Barbara A. Lane

Barbara A. Lane, CET**D-687
Northwest Transcribers



2-03308-8 SEA

me
To Sherwood, Skylar A.
Jul 11 at 11:28 PM
1 attachment

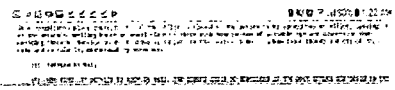
Good morning,

I will communicate with you soon.

Thank you for your correspondence,

Symon

> Show original message



Delete Move to Forward Reply More

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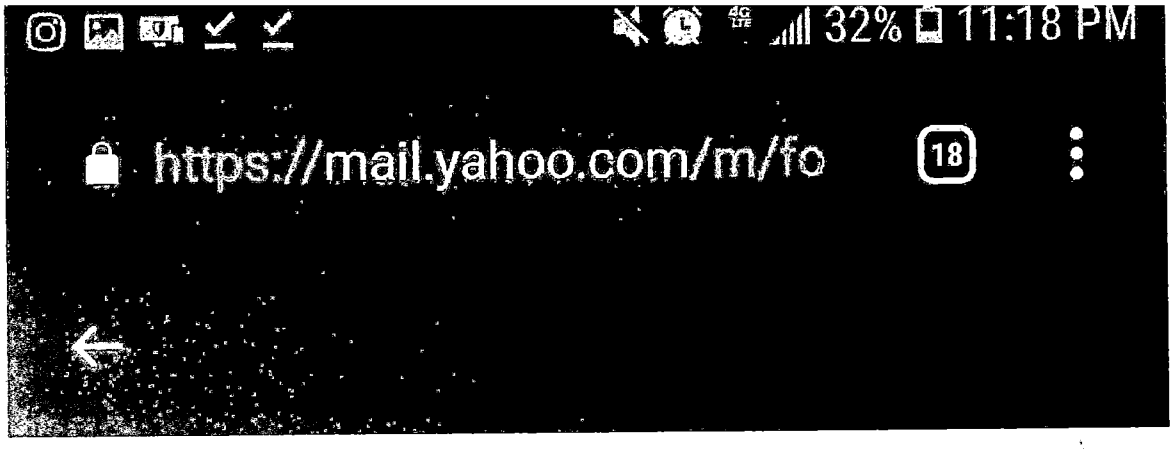

Mandawala v. Era Living King County superior court Case No. 19-2-03308-8 SEA

me

To Skylar A. Sherwood

Jul 12 at 4:58 PM

----- Forwarded Message -----

Hello Mrs. Sherwood,

Plaintiff did not receive the schedule you recieved from the court. Because of that plaintiff availability on the date you mentioned can not be determined. We will seek the time and date you mentioned from the court and who's official had privileges to do so. You can try to move the intended motion, it will be responded accordingly and possible appeal if we will not convinced. Thank you for taking time to let the plaintiff know your client intentions.

Delete Move to Forward Reply More

I

Hi Greg,

Per our conversation a few minutes ago, I am emailing with a request for dates available in August.

Case No. 19-2-03308-8

Case Name: Mandawala v. Era Living

We will be filing a Motion to Dismiss.

Thank you.

Delete Move to Forward Reply More

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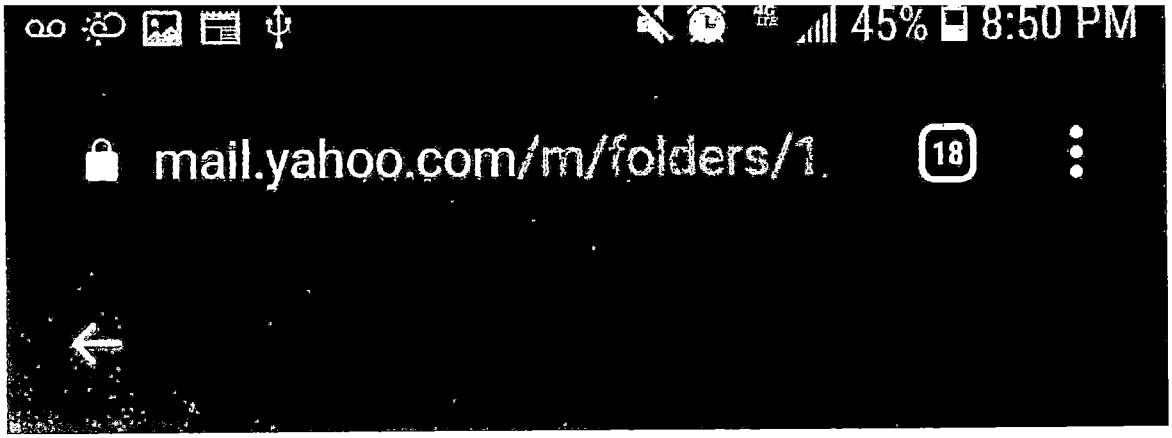

Case Name: Mandawala v. Era Living

We will be filing a Motion to Dismiss.

Thank you.

Veronica Magda
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From: Magda, Veronica <vmagda@foxrothschild.com>
Sent: Monday, July 01, 2019 3:13 PM
To: Howard, Greg <Greg.Howard@kingcounty.gov>
Cc: Sherwood, Skylar A. <ssherwood@foxrothschild.com>
Subject: Mandawala v. Era Living - hearing dates

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Hi Greg,

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MEMO

Symon Mandawala - Petitioner,

v.

Era Living LLC - Respondant

Att: The Office of the Court's clerk

Ref: Case # 99271-1 Petition for Review

Subject: **Removing of irrelevant copies on Appendix**

Dear Sir/Madam,

This memorandum is supporting a request to replace the original copies of the Petition for review which was accompanied by wrongful the Federal writ on the Appedix.
This submission to replace the original copy was already served to Era living (Respondant) without those Federal writ. Nothing changed other than those federal copies.

Let me appreciate in advance your understanding and it was mistakenly included.

Sincerery,

Symon Mandawala

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P O Box 5512
San Antonio,
Texas 78201

Supreme Court Clerk's Office

~~company~~: 415 12th Avenue SW,
name: Olympia, WA 98504-0929
phone: _____ box _____ of _____

SYMON MANDAWALA
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SAN ANTONIO TX 78229-3408

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