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I. INTRODUCTION

The Central Co-Op (“Co-Op”) Response urges deferential review, but fails to explain how this Court could defer to an arbitrary corporate decision that had no basis in the corporation’s Articles of Incorporation, Bylaws, and Policies. The Co-Op Board (“Board”) decision relied solely upon Policies that only govern the General Manager’s conduct, so it failed to establish cause under its Bylaws for terminating Ms. Taft’s membership. [CP 49: 21-25; CP 50: 12-20; CP: 62: 2.9; CP 80; CP 81] At oral argument on summary judgment, the Co-Op’s attorney admitted that Policies B5 and B6 do not govern members. [VRP pg. 8: 17-25; VRP pg. 9: 1-25; VRP pg. 10: 1-4]

The Co-Op Response claims that Ms. Taft got reasonable notice of the proposed termination decision, but does not explain how notice that she was being terminated for violating Policies B5 and B6 – policies that she was not aware of and that everyone now admits do not apply to her – could constitute reasonable notice.

In its defense of the trial court’s summary judgment decision, the Co-Op ignores the problem that the trial court failed in its duty to view all evidence and evidentiary inferences in the light most favorable to Ms. Taft. And, the trial court erred in its denial of Ms.

Taft's motion for reconsideration, stating "*Plaintiff's argument that material factual issues preclude summary judgment is made for the first time in their motion for reconsideration. ... CR 59 does not permit a party to raise new arguments for the first time in a motion for reconsideration.*" On the contrary, Ms. Taft clearly stated in her Response to Defendant's Motion for Summary Judgment that there were significant disputed issues of material fact that prevented summary judgment. [VRP 22: 4-21; CP 159: 23-25; CP 160: 1-25; CP 289: Para 2; CP 290: Para 1]

II. REPLY ARGUMENT

- A. This Court cannot treat the Co-Op's decision to terminate Ms. Taft with deference because that decision was arbitrary and made in bad faith.**
1. A corporation's decision made without reference to the corporation's own Bylaws and Policies does not earn deference.

It is an arbitrary and unreasonable interpretation of the Co-Op's Bylaws and Policies to hold that where their words impose a duty on the General Manager, they really provide cause to terminate a member. In holding that Policies B5 and B6 were a proper basis to terminate Ms. Taft's membership, the Board engaged in an arbitrary and unreasonable interpretation of its bylaws and policies, and the Court should not defer to that construction.

The Co-Op urges that Couie v. Local Union No. 1849 United Broth. of Carpenters and Joiners of America, 51 Wn.2d 108, 316 P.2d 473 (1957), demands deferential review; this is wrong. The standard applied in Couie was that courts “[will not] interfere with the interpretation placed upon such a constitution by its officers and agents unless such interpretation is arbitrary and unreasonable.” 51 Wn.2d at 116. When the Board terminated Ms. Taft’s membership based on Policies B5 and B6, it was claiming that her demeanor violated the *General Manager’s* duty to maintain a safe shopping environment and violated *his* duty to refrain from treating staff in “any way that is unfair, unsafe, unclear or undignified.” [VRP 9: 1-21; CP 50: 3-20] The decision was unreasonable and arbitrary. No deference is owed to the Co-Op Board’s decision under Couie.

Counter to the Co-Op’s claim, there was no evidence from which the trial court could properly find on summary judgment that Ms. Taft had “repeatedly” violated policies that govern members’ conduct. The parties agree that in June 2013, Ms. Taft had a disagreement with staff about allowable ADA questions that can be asked of shoppers to distinguish service animals from pets. The Co-Op has characterized the disagreement as a confrontation; Ms. Taft saw it as exercising her right as a Co-Op member/owner to participate in Co-Op governance and comment on Co-Op affairs. [CP 124: 4; CP 141: 1-6; CP 189; CP 272: 13-25; CP 273: 1-20] In

fact, the Co-Op, is a “democratically-operated, member-owned” grocery store; the Bylaws provide that active member/owner participation in the Co-Op business is to be encouraged by the General Manager. See Bylaw 2.8; Policy B5(1). [CP 62: 2.8; CP 80: 1] Although the Co-Op also claims there was a confrontation with another customer in the store in November, Ms. Taft denied that she was involved in any incident in November and declared that she never confronted other customers about their dogs; only staff members. [CP 141: 7-19; CP 273: 21-25; CP 274: 1-17] As argued in section D(3) below, the trial court had a duty to take the evidence about the character of the interactions in the light most favorable to Ms. Taft in ruling on summary judgment.

2. The Co-Op is not a voluntary social club, and even if it were, its proceedings still did not meet the test of being regular, in good faith, and in compliance with State law.

The Co-Op urges the Court to defer to the Board’s decision because it is a voluntary, nonprofit corporation rather than a trade association, appearing to argue that this distinction is relevant. But, when corporations of any kind construe their bylaws in an unreasonable or arbitrary manner, courts do not exercise deferential review, especially when the membership affects or confers a property interest. See Couie v. Local Union No. 1849, 51 Wn.2d at 115. The Co-Op’s Articles of Incorporation and Bylaws

confer a property interest in membership dividends. [VRP 19: 19-25; VRP 20: 1-12; CP 56: 4; CP 57: 1, 3 and 4; CP 58: 5, 6 and 7]

The Co-Op appears to argue that a court must defer to board decisions of a voluntary nonprofit corporation. A number of cases held otherwise. In Galbraith v. Tapco Credit Union, 88 Wn.App 939, 946 P.2d 1242 (1997), Mr. Galbraith, like Ms. Taft, became a member of a voluntary, nonprofit credit union “so that he could legitimately participate in affairs as a member of the credit union.” Galbraith, 88 Wn.App. at 942. Also like Ms. Taft, Mr. Galbraith took his obligation to participate in the credit union’s affairs seriously. He submitted a declaration in support of a judicial proceeding against the credit union. As a result, the Board of Directors expelled him from membership because he “engaged in conduct adverse to the interests of Tapco Credit Union.” *Id.* at 943. Galbraith appealed the termination decision to the Board. After conducting a hearing at which Galbraith presented evidence, the Board denied his request for reinstatement. Galbraith then appealed to the Superior Court, which dismissed his claims on summary judgment. The Court of Appeals did not defer to the Board decision; on the contrary, it held that the Board had wrongfully retaliated against Mr. Galbraith for participating in a lawsuit, and remanded for a proper determination whether the credit union had “just cause” to terminate his membership.

Likewise, in Hendryx v. People's United Church of Spokane, 42 Wash. 336, 84 P. 1123 (1906), even as the Washington Supreme Court explained that it was loath to interfere in the affairs of voluntary associations such as churches, it nevertheless did not defer to the church board's decision expelling members from the church, explaining that deferential review was inappropriate because the decisions had not been made in good faith and implicated property interests.

Likewise, in Riss v. Angel, 131 Wn.2d 612, 934 P.2d 669 (1997), the trial court and Court of Appeals declined to defer to a homeowners' association board decision refusing to approve a home design, holding that the board had deviated from its covenants and unreasonably rejected the homeowner's plans. The Riss courts found that the homeowners' association was "not entitled to reject a proposal unless their decision is reasonable and in good faith." Riss, 131 Wn.2d 631-33, and that the board had engaged in "arbitrary, unreasonable decision-making." *Id.* at 630.

Green v. Normandy Park, Riviera Section, Community Park, 137 Wn.App. 665, 151 P.3d 1038 (2007), rejected the notion that the court must defer to a community association's decisions; the court held that it must review the decision to ensure that it is reasonable and in good faith.

The Co-Op improperly claims that it is a "voluntary association" akin to a social organization, and argues that the Court

is required to review its decision terminating Ms. Taft's membership in a highly deferential manner. But, that is simply incorrect; it is a corporation formed under the Miscellaneous and Mutual Corporation Act, Chapter RCW 24.06, and elects to avail itself of additional rights and powers under RCW 23.86.105(1), 23.86.160¹, 23.86.170², and 23.86.030(1) and (2). [CP 55: 4] Washington courts have held that courts review decisions of organizations "...involving property rights of members..." to determine if "the organization's proceedings were regular, in good faith, and not in violation of the laws of the order or the laws of the state."

¹ RCW 23.86.160 - Apportionment of earnings.

The directors may apportion the net earnings by paying dividends upon the paid-up capital stock at a rate not exceeding eight percent per annum. They may set aside reasonable reserves out of such net earnings for any association purpose. The directors may, however, distribute all or any portion of the net earnings to members in proportion to the business of each with the association and they may include nonmembers at a rate not exceeding that paid to members. The directors may distribute, on a patronage basis, such net earnings at different rates on different classes, kinds, or varieties of products handled. All dividends declared or other distributions made under this section may, in the discretion of the directors, be in the form of capital stock, capital or equity certificates, book credits, or capital funds of the association. All unclaimed dividends or distributions authorized under this chapter or funds payable on redeemed stock, equity certificates, book credits, or capital funds shall revert to the association at the discretion of the directors at any time after one year from the end of the fiscal year during which such distributions or redemptions have been declared.

² RCW 23.86.170 - Distribution of dividends.

The profits or net earnings of such association shall be distributed to those entitled thereto at such time and in such manner not inconsistent with this chapter as its bylaws shall prescribe, which shall be as often as once a year.

Anderson v. Enterprise Lodge No. 2, 80 Wn.App. 41, 906 P.2d 962 (1995). See RCW 24.06.153(1)³.

This Court should decline the Co-Op's invitation to give deference to the termination decision. The above cases teach that when nonprofit organizations fail to act in good faith and breach their own bylaws and policies, their decisions are not entitled to deferential review.

3. The Co-Op cannot claim the protection of the Business Judgment Rule because it failed to exercise reasonable care and acted in bad faith.

The Business Judgment Rule does not insulate the Co-Op Board decision from review. The Business Judgment Rule does not absolve nonprofit board members of the "fiduciary duty to exercise ordinary care in performing their duties and to act reasonably and in good faith." Riss v. Angel, 131 Wn.2d, at 631-633. In Riss, the homeowners' association board attempted to use the Business Judgment Rule to shield its decision; the Court held that rule does not protect the board's decision from careful, non-deferential review.

³ RCW 24.06.153 - Duties of director or officer—Standards—Liability.

- (1) A director shall discharge the duties of a director, including duties as a member of a committee, and an officer with discretionary authority shall discharge the officer's duties under that authority:
 - (a) In good faith;
 - (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (c) In a manner the director or officer reasonably believes to be in the best interests of the corporation.

The Business Judgment Rule requires both good faith *and* reasonable care. Corporate board members must exercise reasonable care. In re Spokane Concrete Products Inc. 126 Wn.2d 269, 279, 892 P.2d 98 (1995). In corporate decision-making, mere good faith of board members is insufficient; a director must *also* act with the reasonable care as a reasonably prudent person in a like position would use under similar circumstances. Shinn v. Thrust IV Inc., 56 Wn.App. 827, 833-35, 786 P.2d 285 (1990).

Further, the Nonprofit Miscellaneous and Mutual Corporations Act, under which the Co-Op was formed, imposes a duty on directors to act in good faith. See RCW 24.06.153(a).

In light of the authorities above, the Business Judgment Rule does not exonerate the Co-Op's directors for their arbitrary and unreasonable decision to expel Ms. Taft from membership without having established any cause for termination under Bylaw 2.9.

B. Ms. Taft's property interest in her Co-Op membership is real, not illusory.

1. The Co-Op analyzes the property interest of a terminated member, not Ms. Taft's property interest as it existed when the Board engaged in the arbitrary and unreasonable decision-making under review.

Displaying considerable sleight of hand, the Co-Op argues that Ms. Taft had no property interest because "the Co-Op provides no future benefits for terminated members," and because the "Bylaws and Articles of Incorporation... excluded claims of property

interests once membership was terminated.” Response Br. at 28 and 31. This analysis answers the wrong question. The question is not whether Ms. Taft has an ongoing property interest *after* a valid termination. [CP 62: 2.9] Rather, the question is whether Ms. Taft had a property interest *prior* to being terminated – an interest that now entitles her to non-deferential review of the Board’s unreasonable and arbitrary decision to terminate her.

The Co-Op’s proposed analysis would produce an absurd rule in which no expelled member of an organization could ever have a court scrutinize the decision of a corporate action terminating a member’s property rights. That clearly contravenes Washington case law. If the Co-Op’s analysis were the rule, the Corgiat court would have reviewed deferentially the benefit society’s decision to expel him. State v. Corgiat, 50 Wash. 95, 98, 96 P. 689 (1908). Like Ms. Taft, after the voluntary association terminated his membership, he lost his property right to a death benefit. Contrary to the Co-Op’s claim, Mr. Corgiat had no property right to future benefits after termination under the association’s rules. That is why he asked the court to determine if his interests were arbitrarily terminated.

Similarly, if the Co-Op’s analysis were the rule, our Supreme Court would have reviewed deferentially the church’s expulsion of members in Hendryx v. People’s United Church of Spokane, 42 Wash. 336, 84 P. 1123 (1906). The church’s decision in that case

terminated a property interest; if members had to retain a post-termination property interest to merit non-deferential court review, the Court would have reached the opposite result.

This Court should decline the Co-Op's invitation to address whether after termination Ms. Taft had a property interest. See Galbraith v. Tapco Credit Union, *supra* (courts reviewed the credit union's expulsion of Mr. Galbraith in a non-deferential manner after expulsion had terminated his membership and property interests in the credit union).

2. The Co-Op's own Articles of Incorporation and Bylaws gave Ms. Taft a property interest in exchange for her contribution of capital.

In response to Ms. Taft's argument that she had a property interest in the Co-Op before termination, the Co-Op quotes its Articles of Incorporation: "no member shall have any property rights whatsoever by reason of his membership except for those property rights set forth in Article VI." This provision does not negate Ms. Taft's property interest in the Co-Op before termination. While it is true that her property interest did not take the form of a share of capital assets,⁴ the Bylaws, enacted pursuant to the Articles of Incorporation, nevertheless give Ms. Taft a distinct property interest. Over twenty years ago, when she paid her

⁴ This is not unique to the Co-Op; in all corporations, "the corporation and not its members or shareholders own the corporate property." See *Fletcher, Cyclopedia of Corporations*, 12A §5096.

membership equity contribution and became entitled to dividends, she obtained a property interest. See Bylaw 2.3 (membership equity interest). [CP 61: 2.3] *Black's Law Dictionary* defines an "equity interest" as a "partial or full ownership interest in a company."

The Co-Op's argument that the dividends were simply "membership benefits" or "rebates" goes directly against the Bylaws' use of the words "patronage dividends." See Bylaws §5.1. [CP 67: 5.1] The definition of a dividend is "the income return received by a shareholder in respect of his investment... Dividends may denote a fund set aside by a corporation out of its profits to be apportioned among the shareholders or the proportional amount falling to each." *Black's Law Dictionary*. According to *businessdictionary.com*, a shareholder is "one who owns shares or equity in a corporation." Clearly, the Co-Op's founding documents intended to confer a property interest on members by characterizing the membership fee as an "equity contribution" and the entitlement to the proportionate share of net profits as a "dividend." For example, the Bylaws provide that "[p]ursuant to RCW 23.86.160 which the Co-Op has elected to apply... all unclaimed patronage dividends... shall revert to the Co-Op, at the discretion of the Board at any time after one year from the end of the fiscal year during which such distributions or redemptions have been declared." Bylaw 5.6, Unclaimed Property. [CP 68: 5.6]

Payment of a dividend is not an incidental membership benefit, as the Co-Op claims. The Co-Op's nonprofit, tax-exempt status – that is, its very existence – depends on being a “member owned” organization that pays “membership” dividends. Absent payment of membership dividends, the Co-Op could not shelter its income and avoid taxation. Indeed, the Co-Op's Response at page 3 describes the Co-Op as being a “member-owned corporation.”

Ellen Taft paid a membership equity contribution in return for ownership interest in the Co-Op; being a member/owner was significant to her. Her property interest is real, is conferred by the Co-Op's founding documents, and entitles her to a reasonable and non-arbitrary termination procedure. [CP 62: 2.9]

C. The Co-Op's response still fails to establish cause for termination.

1. The Co-Op did not respond to Ms. Taft's central claim that its termination proceeding failed to establish cause for termination.

The Co-Op provides no response to a crucial appeal claim: that it arbitrarily terminated Ms. Taft's membership and failed to identify a cause for involuntary termination supported by Bylaw 2.9. Bylaw 2.9 allows for involuntary termination for “intentional or repeated violation of any provision of Co-Op Bylaws or Policies...” The sole cause the Co-Op identified before the trial court for terminating Ms. Taft's membership was her allegedly repeated

violation of “Executive Limitation Policies B5 and B6,” policies that the Co-Op attorney conceded at argument do not apply to her.⁵

THE COURT: My question was does it [Policies B5 and B6] apply to Ms. Taft? Because those were referenced in the termination letter saying these are the reasons why we are terminating her.

Response page 8, lines 17-21

MR. WALSH: Yes... did that [Policies B5 and B6] require conduct of her? The answer is no.

Response page 8, line 25; Response page 9, line 1.

THE COURT: ... my reading of the Board Exhibit C, the governance policies, really pertain only to the manager, not to a member... it doesn't really apply to her”

Response page 9, lines 19-21; Response page 10, line 1.

⁵ Policy B5 states:

Policy Type: **Executive Limitations**

Policy Title: **B5 – Treatment of Customers**

The **General Manager** (GM) shall not be unresponsive to customer needs.

The **GM** shall not:

1. Operate without a system for soliciting and considering customer opinion regarding preferences, product requests, complaints and suggestions fairly, consistently, respectfully, and in a timely manner.
2. Allow an unsafe shopping experience for our customers.
3. Fail to operate facilities with appropriate accessibility.

Policy B6 states, in pertinent part:

Policy Type: **Executive Limitations**

Policy Title: **B6 - Staff Treatment and Compensation**

The **General Manager** (GM) shall not cause or allow treatment of staff in any way that is unfair, unsafe, unclear, or undignified.

[Emphasis added.]

MR. WALSH: ... I think we're conceding that it doesn't.

[VRP 8:17-20, 24, 25; VRP 9:1; VRP 9:19-21; VRP 10:1]

The Board did not identify any other policy or rule that Ms. Taft allegedly violated, and it did not provide any specific details about her actions allegedly forming the basis of their decision, so that she *“had an opportunity to respond in person or in writing”* as required by Bylaw 2.9, until after they voted to terminate her membership. [VRP 9: 6-21; VRP 24: 19-24] Its notification letter failed to identify any Bylaw or Policy demanding specific conduct from members when exercising their right to comment on membership affairs – a right that should be allowed and encouraged in a “democratically-operated,” “member-owned” grocery store. See Response page 3. See Policy B5(1). [CP 80: 1]

The Co-Op's failure to provide a cause for termination supported by Bylaw 2.9 should cause this Court to reverse the trial court's summary judgment. The Co-Op's response brief failed to address this deficiency.

2. The Co-Op still fails to address the deficiency of its notification letter to Ms. Taft, at the heart of this case.

The Co-Op Response ignores the point that the Board's notification letter to Ms. Taft was legally deficient. The sole cause put forth was Ms. Taft's alleged repeated violations of Policies B5 and B6, but the Co-Op attorney conceded at oral argument that

those policies do not impose a code of conduct on members. [VRP 8: 17-25; VRP 9: 1; VRP 10:1-3] Thus, the notice given to Ms. Taft of the cause for proposed termination was intrinsically flawed. The Board failed to give Ms. Taft notice of any cause for termination supported by Bylaw 2.9. It claimed in a conclusory manner that she had violated policies that did not apply to her and did not proscribe the conduct the Board complained of.

In its response brief, the Co-Op utterly fails to argue why the Board's conclusory, non-specific notice of cause for termination was adequate. The Co-Op hopes that if it ignores this problem, it will go away. The Co-Op fails to explain how Ms. Taft got reasonable notice, as required by Bylaw 2.9, for involuntary termination of her membership, when the Board notified Ms. Taft only of alleged "repeated violations" of rules which did not apply to her. [CP 121]

The Board's letter advised her in a conclusory manner that she had engaged in "verbal abuse," but failed to provide specific examples of the alleged conduct supporting the accusation. Although the Co-Op claims that it extended the time for Ms. Taft to respond to the letter, this was an empty gesture. More time, without more information about her alleged violations, did not enable a more effective response. The Board failed to inform Ms. Taft of any specific alleged conduct constituting violations of Policies B5 and B6, as requested by Ms. Taft's attorney, until *after*

her membership was terminated. [CP 123-25; CP 128: 5, 6,7; CP 129: 1] And, the Co-Op's own statement of alleged violations reports only one incident that the Co-Op and Ms. Taft agree occurred. This was in June of 2013, and was followed by a phone call from Mr. Peterson during which he advised her not to discuss the issue of dogs again; Ms. Taft heeded his words and did not. [CP 140: 1-6; 272: 13-25; CP 273: 1-20] The alleged incident in November 2013 involving a man with his dog, is denied by Ms. Taft. Ms. Taft testifies that she did have a conversation about the Co-Op's finances with a cashier, which was immediately followed by a phone call revoking her shopping privileges. [CP 273: 21-25; CP 274: 1-17] These are the "repeated violations" the Co-Op used as a basis for revoking Ms. Taft's membership. [CP 128: 6,7; CP 129: 1; CP 189: 3,4; CP 272: 3-25; CP 273: 1-25; 1-17]

The trial court judge did not believe that Policies B5 and B6 applied to Ms. Taft, and the Co-Op's attorney agreed; any notice to Ms. Taft about her membership termination based on violation of Policies B5 and B6 is deficient. Because the Board's letter advised Ms. Taft that she was being terminated for violating policies that, by their own terms, exclusively governed the General Manager, it was impossible for her to respond in a meaningful manner.

This Court should reject the Co-Op's argument that because Ms. Taft had allegedly engaged in misconduct, she did not deserve notice of the particular incidents supposedly constituting cause for

termination under Bylaw 2.9. “If you don’t know what you did wrong, we’re not going to tell you” is not an accepted mode of notice.

3. The Co-Op’s extremely late attempt to establish cause for termination – on the allegation Ms. Taft impeded the purposes of the Co-Op and made “threats” – is presented for the first time on appeal and cannot be considered.

The Co-Op, perhaps belatedly attempting to advance a cause for termination supported by Article 2.9 of the Bylaws, argues for the first time on appeal that Ms. Taft’s conduct “impeded the Co-Op from accomplishing its purposes.” Alternatively, it argues that Ms. Taft’s conduct constituted “threats that adversely affected the interests of Central Co-Op and its members.”

Response Br. page 20.

The question before this Court is whether the actual termination procedure before the Board was sufficient. New, alleged causes for termination are hypothetical; they were not the reasons advanced by the Board before it terminated Ms. Taft. She was never given notice that her alleged conduct impeded the Co-Op from accomplishing its purposes, or constituted threats that adversely affected the interests of the Central Co-Op and its members. The Co-Op cannot now, retroactively, claim this justification for its termination decision. Because this argument is made for the first time on appeal, this Court should disregard it.

D. The Co-Op's Brief overlooks arguments that the trial court's summary judgment ruling ignored disputed questions of material fact and failed to view all evidence and inferences in the light most favorable to the nonmoving party.

1. Disputed questions of material fact existed on issues other than notice, which the Co-Op ignores.

The Co-Op Response Brief correctly explains that Ms. Taft cannot claim that a disputed issue of material fact exists on the issue of notice because she sought summary judgment on that issue. However, that does not prevent consideration of other issues of material fact which should have prevented summary judgment. The facts were in dispute about:

- i. Whether the Co-Op established cause for involuntary termination of Ms. Taft's membership. Ms. Taft testifies that she neither addressed Co-Op staff in a rude nor abusive manner, and never addressed customers directly. Ms. Taft also denies that any incident involving service or pet animals occurred in November.
- ii. Whether Ms. Taft engaged in conduct prohibited by the Bylaws, Articles of Incorporation, or Policies. These documents do not prohibit members from raising topics such as asking ADA permitted questions to customers with animals, nor do they demand a specific sort of shopping demeanor, tone of voice, or voice level by Co-Op members.
- iii. Whether the Board arbitrarily applied Policies B5 and B6 to support its involuntary membership termination decision, when those policies only govern the duties of the General Manager.
- iv. Whether the Board acted in bad faith when it failed to give Ms. Taft further notice, upon request by Ms. Taft's attorney on May 12, 2014, of the particular charges of alleged misconduct which violated Co-Op policies. The

Board only provided information of alleged incidents after voting to terminate her membership.

The above disputed issues of material fact should have prevented summary judgment.

2. The Co-Op fails to address the trial court's breach of its duty to view the facts in the light most favorable to Ms. Taft.

The Co-Op's Response Brief ignores the argument that the trial court erred on summary judgment when it failed to view all evidence and inferences in the light most favorable to Ms. Taft, and that the trial court's error resulted in wrongful dismissal of all of her claims. Failing to view the following facts in Ms. Taft's favor, the nonmoving party, resulted in the erroneous grant of summary judgment. The following facts should have been viewed in Ms.

Taft's favor:

- i. Ms. Taft neither engaged in rude nor abusive conduct in addressing staff, and she never directly addressed customers.
- ii. After Floor Manager Peterson, on June 23, 2013, warned Ms. Taft not to address issues regarding service dogs with staff again, she never addressed that topic again.
- iii. The Co-Op failed to identify cause for involuntarily terminating Ms. Taft's membership that is supported by the Bylaws.
- iv. The Co-Op failed to establish cause for involuntary termination; Policies B5 and B6 pertain solely to the General Manager.
- v. The Co-Op acted in bad faith when it expelled Ms. Taft from membership; it did not advance a cause for involuntary termination coming within the purview of the Bylaws.

E. Ms. Taft has not demanded due process protections; she demands reasonable notice and non-arbitrary decision-making, as required by the Co-Op's Bylaws and Washington case law.

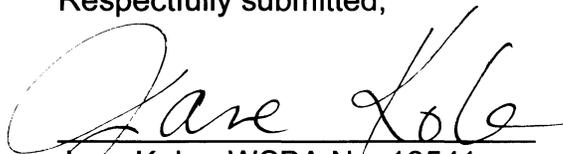
In its Response, the Co-Op incorrectly claims that Ms. Taft demanded due process protections. At the trial court, Ms. Taft simply argued that Bylaw 2.9 required reasonable notice of the alleged cause for termination, and that the Board was required to act reasonably and in good faith. [VRP 24:19-24; VRP 25:1-13]

III. CONCLUSION

The trial court erred by failing to view the evidence and inferences in the light most favorable to the non-moving party on summary judgment. The Co-Op Board's decision-making was unreasonable and arbitrary, and the Co-Op cannot shore up its reasons and conclusions on appeal. Ms. Taft was earnestly exercising her membership duty to participate in the "democratically-governed, member-owned" Co-Op, and ensure a safe shopping environment for all member/owners.

DATED this 3rd day of June, 2016.

Respectfully submitted,



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Court of Appeals Cause No. 73917-4-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

ELLEN TAFT and ARTHUR CHAMPERNOWNE,

Appellants,

v.

CENTRAL CO-OP, a Washington nonprofit corporation, GEORGE ARNETT, and JANE
DOE ARNETT,

Respondents.

2016 JUN -6 AM 11:39
COURT OF APPEALS DIV I
STATE OF WASHINGTON

DECLARATION OF SERVICE OF REPLY BRIEF OF APPELLANTS

Jane Ryan Koler
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DECLARATION OF SERVICE

The undersigned hereby declares, under the penalties of perjury of the laws of the State of Washington, as follows:

That I am over the age of 18, not a party in the above-entitled action, and have personal knowledge of the following:

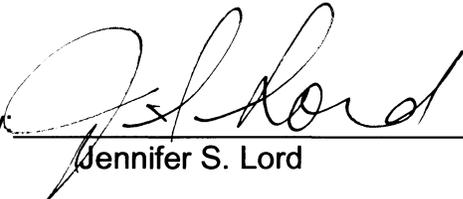
On the 3rd day of June, 2016, I placed in the USPS Priority Mail at the address listed below, a true and correct copy of "*Reply Brief of Appellants*" to:

Washington State Court of Appeals
Division 1
600 University Street
One Union Square
Seattle, WA 98101-1176

and to:

William H. Walsh, WSBA No. 21911
Robert L. Bowman, WSBA No. 40079
COZEN O'CONNOR
999 Third Avenue, Suite 1900
Seattle, WA 98104

DATED this 3rd day of June, 2016, at Gig Harbor, Washington.

By: 
Jennifer S. Lord