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Court of Appeals
Division III
State of Washington
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COA No. 359204; 362272

IN THE COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

SARA RHODES, an individual,

Appellant/Cross Respondent,

v.

STADTMUELLER AND ASSOCIATES, P.S., *d/b/a* BARNETT,
STADTMUELLER & ASSOCIATES, P.S., a Washington Professional
Services Corporation; RYAN BARNETT *aka* RYAN MOOSBRUGGER
and SHARON S. BARNETT *aka* SHARON S. KIM, as individuals and a
marital community,

Respondents/Cross Appellants.

RESPONDENTS/CROSS APPELLANTS' RESPONSE BRIEF

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I. THE RESPONDING/CROSS-APPEALING PARTIES.

Ryan Barnett and his wife, Sharon Kim-Barnett, are the responding parties in this appeal, and cross appeal on their own behalf. They are the Defendants in the trial court below.

II. RESPONSE SUMMARY.

The issue of whether certain information is “discoverable” is not reached where a party refuses to answer interrogatories or requests for production, violates court orders requiring those answers and production, fails to respond or cooperate, and abandons her case, resulting in dismissal. A party should be allowed review of an order compelling discovery when she never answered anything of substance asked of her, never produced a single document or privilege log, never asked for “attorney’s eyes only” relief, and simply disappeared. Dismissal of the case in the foregoing circumstances is authorized by CR 37(b)(2)(C), and that authority was properly exercised here.

Second, the imposition of CR 11 sanctions upon such a litigant’s attorney is equally proper where the attorney fails to disclose that his client has abandoned her case, but instead, continues to pursue the case and cause

substantial expense to the opposing party.¹ That CR 11 authority was also properly exercised here.

The error that occurred below occurred months after the judgment of dismissal was entered, and after four judgments were entered holding the attorney jointly liable with his client for the Barnetts' discovery expense as a CR 11 sanction. The trial court's belated entertaining of the attorney's CR 60 motion to vacate asking that he be relieved of the liability *he* caused the Defendants by pursuing an abandoned case, to impose that liability solely upon his client, was error. The attorney is the one who caused the continued expense. More importantly, an attorney may not move on his own behalf to promote his own financial interests against that of his own client. The action required disqualification of the attorney from his client's case.

The original four joint liability judgments entered throughout February 2018 should be restored. The trial court's June 12 and September 7, 2018 orders amending the identity of the debtor on two of those February 2018 judgments to shift the liability to the attorney's client alone should be reversed, and vacated. The Barnetts should be awarded attorney fees and costs for the necessity of their defense to this frivolous appeal, and their need to reinstate the February 2018 Judgment Summaries III and IV as entered.

¹ *CP 1014.*

III. STATEMENT OF THE CASE.

A. 2014: The damage begins.

On October 28, 2014, attorney Kevin Roberts demanded \$950,000 from Defendant Sharon Kim Barnett—Defendant Ryan Barnett’s wife, and a dentist then practicing in California—in exchange for his then-client Sara Rhodes not filing a certain complaint Roberts had crafted. *CP 191-197 (Letter enclosing draft complaint)*. That letter and its proposed complaint pleading, as crafted by Roberts, included pages of gratuitous detail designed to ruin any fledgling professional’s reputation and business. The presentation asserted that Ryan Barnett repeatedly raped and sexually degraded Plaintiff Rhodes—his employee—in the workplace. *CP 191-197*. The letter alleged, e.g., “shocking and horrifying conduct,” “alarming and disgraceful employment practices,” conduct “completely beyond the bounds of human decency...” and offering, “Frankly, we have not seen this type of campaign of abhorrent conduct ... in the workplace for some years now, since most professionals understand that there are laws in place that forbid such idiocy and unlawful actions.” *CP 195-196*. The complaint is equally histrionic, and the production is plainly intended to leverage the demanded million-dollar settlement under the threat of substantial professional and personal damage to *both* Barnett and Dr. Kim. *CP 3-18*.

On November 5, 2014, Barnett's then-counsel tried to settle the matter, which only escalated Roberts' approach. *CP 308, 311*. Attorney Roberts demanded a litany of financial information, and told Barnett that he could "obtain a loan" to pay Rhodes, or he could use community assets from the Barnetts, i.e., Dr. Kim's assets. *CP 312-313*. On November 6, 2014, Roberts threatened Dr. Kim and her professional practice directly:

"As to Dr. Kim, you can relay to your client that we will be sending her a demand as well. If she is arrogant enough to believe that she has no liability, *that is unfortunate for her and her practice.*"

CP 313 (emphasis added).

On November 19, 2014, Roberts then wrote directly to Dr. Kim in Ventura, California and threatened her with the complaint, "in which you will be named a party." *CP 190*.

Barnett and Kim retained new counsel, rescinded their offer, and Roberts thereupon filed Rhode's complaint on December 2, 2014, making this damaging series of allegations public. *CP 3-19*.

B. 2014: The complaint and answer form the basis for the relevant discovery.

The complaint and answer frame the dispute. *Compare Complaint at 3-19, and Answer at 729-742*. Ryan Barnett was an out of state resident who began the accounting firm of Barnett and Associates, Inc., in Spokane,

Washington. Plaintiff/Appellant Sara Rhodes became an employee of his corporation via a firm transition. *CP 733, ¶ 4; 734, ¶ 9*. Rhodes worked in Barnett's office for about two months, not including her absences from work. She started work around August 11, 2014, and near immediately established a pattern of being late to work. *CP 5, ¶ 10; CP 734, ¶ 10*. Barnett intended to fire her, but, perhaps coincidentally, the two then began a consensual sexual relationship. *CP 734, ¶¶ 10 and 16*. Barnett says Rhodes invited sexual relations with him; he got the sense that Rhodes had done this with her prior employer, Roger Stadtmueller. *CP 735: ¶¶ 15-16*. Barnett began telling Rhodes that he was reluctant to continue the relationship. *CP 7, ¶ 14 (Complaint); CP 734, ¶ 14 (Answer)*. But Barnett continued to participate in this inappropriate work relationship--the relationship continued from August to October (*CP 9-12*). Rhodes asserted that Barnett forced those sexual relationships upon her; Barnett asserted that the relations were consensual—Rhodes would come into his office and invite them. *CP 9-12 (Complaint); CP 735-76 (Answer)*.

Surrounding these trysts, and as an actual employee, Rhodes was unreliable, requested cash advances which Barnett gave her, gradually began disappearing from work for up to two days a week, and then texted Barnett a “picture of a physician’s note” that said she would be out for five

days, but offering no detail. Rhodes disappeared altogether on or about October 15, 2014. *CP 735-736*. Two weeks later, on October 28th, Attorney Roberts' letter and draft complaint materialized. *CP 191*.

As noted, Dr. Sharon Kim, Barnett's wife, lived and practiced dentistry in Ventura, California. *CP 733, ¶ 3; CP 738-740*. Dr. Kim had never met Sara Rhodes, nor had any interaction with Rhodes. *CP 739, ¶¶ 3.3.-4*. Yet Rhodes' complaint now pled seven of eight causes of action against Dr. Kim as a joint defendant, including Rhodes claiming that Dr. Kim sexually harassed Rhodes, assaulted and battered Rhodes, inflicted emotional distress on Rhodes, was negligent as to Rhodes, and "breached (her) duty of care" as to Rhodes. *CP 13-17*. The complaint alleges that Dr. Kim violated Washington's Consumer Protection Act, RCW 19.86 et seq., willfully failed to pay Rhodes wages in violation of RCW 49.52.052, and engaged in "outrage" against Rhodes. *Id.* The complaint describes no actual conduct taken by Dr. Kim against Rhodes—except that buried in her third cause of action of outrage, Rhodes alleges that Dr. Kim "provided narcotics" to Barnett "who she knew or should have known posed a risk to others." *CP 14, ¶ 39*.

Barnett and Kim (hereafter "Barnett") answered the complaint by alleging that Rhodes was engaged in attempted extortion. "Dr. Kim refused

to pay Plaintiff \$950,000 for claims against her that had no proper basis in the law, on which (Dr. Kim) had no liability, and this complaint was thus interposed for an improper purpose, including an effort to extort funds...” *CP 740*. They asserted that Sara Rhodes’ claims were “fraudulent.” *CP 740*. Barnett requested that Rhodes’ complaint be dismissed, and that attorney fees, costs, and sanctions be awarded against attorney Kevin Roberts under CR 11 for the frivolous nature of the claims. *CP 740*.

C. February 2015 – September 2017: Rhodes does not pursue her claim.

Rhodes had misnamed her own employer business in her complaint, which led to an attempted removal action by Barnett, which the federal court rejected. *CP 160*. On February 11, 2015, it remanded the matter to the superior court. *CP 448*. That federal district court would thereafter sanction attorney Roberts for personal attacks on Barnett’s counsel “in a sexist and derogatory manner.” *CP 755, 759-762*.

Following this remand, it would be seven months before Rhodes and attorney Roberts reappeared. On September 16, 2015, Rhodes reemerged via a motion to amend her complaint to properly name her employer. *CP 469-470*. On October 6, 2015, Barnett thereupon served their First Set of Written Interrogatories and Requests for Production to

Rhodes. *CP 522-543*. The document includes a request for, and a form for, Rhodes' release of medical records, given her claims of physical ramifications. *CP 12-13*.

The interrogatories request a variety of basic background information about Rhodes, including such things as her educational background, history of arrests or criminal charges, marriages, children, income, etc. *CP 522-543*. There were indeed questions regarding Rhodes' "sexual history," including Interrogatory 13, where she was asked to identify any prior or current employers with whom she had engaged in sexual contact (*Interrogatory 13*). But she was also asked about any history of making claims against others, particularly claims that she may have made against any others of rape, assault, or sexual misconduct (*Interrogatory 15*). She was asked about her history of claiming to be a victim of crimes. (*Interrogatory 16*). She was asked whether she had participated or been alleged to be involved in, or contacted by police, regarding any sting operation in Spokane County (*Interrogatories 31, 32*). She was questioned about her connection to the former owner of the accounting business, Roger Stadtmueller, who had come under investigation for tax evasion, accounting, and financial misconduct matters (*Interrogatories 33-35*). None of the questions were unusual for a litigation. Rhodes was asked

whether she had forwarded her \$950,000 demand letter and her draft complaint to Mr. Stadtmueller. (*Interrogatory 36*). She was asked about her overall history of claims in any respect, including for unemployment benefits, L&I compensation, etc. (*Interrogatories 18, 19*). She was also asked what evidence she had to implicate Dr. Sharon Kim in writing prescriptions for narcotics for Barnett. *Interrogatory 23*. She was asked upon what basis Dr. Sharon Kim would be liable to her in any fashion. *Interrogatory 29*.

On October 15, 2015, Rhode's law firm, Dunn and Black, withdrew from her representation. Rhode's address was listed on that notice as "c/o Kevin Roberts" at a new office location. *CP 494-495*. The Dunn and Black firm filed a lien for fees. *CP 516*. Barnett's counsel asked the firm and its now separated attorney Roberts who would now be representing Rhodes since Roberts had not filed a substitution of counsel on his own behalf at his new location, and the October 2015 discovery requests were still outstanding from Rhodes. *CP 517*. There was no answer.

Over a year later, and by early 2017, Rhodes had still not responded to the Barnetts' October 2015 discovery, nor posed any objections. Attorney Roberts did not communicate in any fashion. *CP 516*. Barnett assumed that Rhodes had decided not to pursue her action "and we did not want to incur

defense costs unnecessarily if she ultimately did not intend to do so.” *CP 516*.

In early 2017, however, the superior court issued a new case scheduling order. *CP 518*. Barnett’s counsel thereupon contacted and conferred with attorney Roberts on June 8th, and Roberts agreed to return his client’s answers by June 30, 2017. *CP 518*. No answers were received, nor did Roberts communicate as to what happened. *Id.* Barnett requested deposition dates for Rhodes. No response was received. *CP 518*.

D. September 2017: Rhodes provides a signature.

By September 5, 2017, having no answers nor responses, Barnett moved to compel Rhodes’ answers to their October 2015 first set of discovery. *CP 513-543*. Barnett voluntarily agreed to strike the hearing on their motion to compel when Roberts again agreed to provide his client’s answers by September 20, 2017. *CP 560-585, at 561 (Supplemental declaration)*.

On September 20, 2017, Rhodes returned “answers” with only seven of the 42 interrogatories responded to. She produced not a single piece of paper in response to the 18 requests for production. *CP 561, and see CP 568-584 non-responses*. Rhodes’ signature was on that document, but it would be the last time she would be heard from until months after the

order was entered dismissing her case.

E. October – December 2018: The order compelling answers.

Barnett re-noted their motion to compel, and now sought an order of default given the case history. *CP 582*. On October 25, 2017, the Hon. James Triplet referred this matter to Special Discovery Master Mary Owen. *CP 794-796*. On November 30, 2017, the Discovery Master presided over an in-person hearing. *See CP 1069-1134; transcript filed March 16, 2018*.

On December 10, 2017, the Special Discovery Master issued her first report and recommendations on the Defendants’ motion to compel. *CP 814-817, included in App. A*. The Discovery Master denied Barnett’s request for default, but also denied Rhodes’ requested protective order. Rhodes was given protection for the information she produced were it to be improperly invasive or privacy protected—once she responded in some meaningful fashion, then further hearing could be held as necessary to discuss whether certain produced information should be retained as confidential, and for “attorney’s eyes only.” *CP 816*. The Discovery Master ordered Rhodes to provide responses and a medical release form to Barnett by December 21, 2017. *CP 816*. The discovery cutoff was extended, and, contingent upon the progression of discovery, the trial date would be continued if necessary. *CP*

816. The Discovery Master recommended awarding Barnett fees for the preparation and filing of their motion to compel. *Id.*

On December 18, 2017, the superior court ordered the Discovery Master's report and recommendation into effect, ordering that Rhodes provide complete and full responses and executed medical release forms by December 21, 2017. *CP 817, App. A.*

F. December – January 2018: Rhodes repeatedly refuses to comply with the December 18, 2017 order compelling discovery.

Rhodes produced nothing on or by December 21, 2017. Instead, on December 20, 2017, attorney Roberts requested another extension of the date for her compliance. There was no evidence of, or from, Rhodes herself. This extension request is not in the appellate record, but Barnett's response to it is. *CP 914-915 (email); 923-925 (response and request).* Barnett asserted the suspicion that, consistent with Rhode's pattern at work, Rhodes hadn't been able to leverage a settlement and had simply disappeared. Roberts' request for an extension on Rhode's behalf was not supported by Rhodes' declaration, and the medical release form, ordered to be completed by December 21st, would only have required a simple signature:

“There is no evidence of her presence, her progress—no indication of whether she has made some superficial start to answers, or not.

The ordered medical release form, as an example, requires only a signature. Ms. Rhodes' counsel has attached a news article describing an incident that happened three weeks earlier on November 30th, but Ms. Rhodes provides no declaration that this article is about her. Had she shown up in her counsel's office to hand him that article, she could have signed her medical release at the same time. Instead, there is no declaration, no medical release, no draft answers, no compliant progress, no showing of diligence, and no valid reason offered to allow this action to continue.”

CP 923.

Barnet provided materials showing that Rhodes was active in a number of other litigations against other men claiming that they were also abusive toward her. Rhodes was appearing pro se in her own cases. *CP 924; 926-1010.*

Notwithstanding her lack of presence, the discovery master gave Rhodes an extension on her time to comply with the December 18, 2017 court order compelling her answers. As reflected in the later January 12, 2018 discovery master recommendation, “After a sustained period of discovery non-compliance on Plaintiff’s part,” the discovery master mitigated Rhodes’ failure to comply with the court order. *CP 878, App. B (Recommendation of January 12, 2018 detailing the history of the Discovery Master’s mitigation attempts).* Rhodes was ordered to comply with the Court’s order by January 4, 2018. *CP 889.* On January 4th, Rhodes provided nothing. *CP 889.*

The Discovery Master gave Rhodes more time to comply. It set a hearing for January 10, 2018 at 7:00 a.m., giving Rhodes another week to comply, or to simply just materialize and file something about what her intentions were given the concerns raised. *CP 888*. By January 10th, there was no sign of Rhodes. She provided nothing. *App. B, CP 879*.

On January 12, 2018, the Special Discovery Master issued her report. *CP 877-882, at App. B*. The Discovery Master made specific findings:

“(Rhodes) has not complied in any fashion with the order directing answers, production or a medical release form. . . . The Discovery Master gave her additional time over the holidays to reply and Plaintiff remains unresponsive. She has provided no signatures on anything, no (medical) release form, and no evidence of her status, nor evidence of willingness to comply. She has not been in contact with her own counsel. There is no evidence that she is even set up to *talk* with her counsel about answers. Plaintiff thus offers no reasonable excuse nor justification for an order granting her an extension on her noncompliance. There is no evidence that would support such an extension to the present order under the circumstances, because there is no evidence demonstrating any effort being made by Plaintiff to comply.”

CP 880, (emphasis in original).

The Discovery Master concludes, “Evidence does not show fair and reasoned resistance to discovery; it shows willful failure to comply with discovery, now including an order.” *CP 880*. Her counsel’s claims of an emergency “follows a party who previously ignored and failed to respond to

requests, then submitted answers that evaded discovery requests...” and was now violating an order. *CP 880*.

The Discovery Master notes that Rhodes had never even *said* that she would respond, or that anything “will convince her to respond.” *CP 881*. The Discovery Master notes, “She has not provided any testimony. If Plaintiff had some intent to respond, there would and should have been some effort on her part to so advise the Court, and to keep in communication with her counsel.” *CP 881*.

But the Discovery Master then allowed Rhodes yet *another* extension to comply with the December 18, 2017 order compelling production by December 21, 2017, allowing her until January 16, 2018 at 5:00 p.m. *CP 882*. Rhodes was told that as a sanction for missing this January 16, 2018 deadline, the Discovery Master would recommend the dismissal of her claims. *CP 882*. January 16, 2018 came and went with no sign of Rhodes. *CP 826*. This time, attorney Roberts did not communicate. *Id.* Barnett notes, “By January 16, 2018, even (Rhodes’) counsel has ceased communicating with either the Discovery Master or Defendants’ counsel as to why no response was being provided, or for any purpose.” *CP 826*.

G. Barnett requests fees as a CR 11 sanction.

On January 18, 2018, Barnett moved to adopt the Discovery Master's recommendation of dismissal based on Rhodes' continuing refusal to comply with the December 18, 2017 order compelling discovery. *CP 825-834 (Declaration) and 835-857 (Orders and Fee Request)*. Barnett requested that the trial court dismiss Rhodes' action. *CP 830-831*. They requested reimbursement of their costs and fees, "with some means of securing those fees and costs so that the defendants do not become liable **for those fees and costs as well by Plaintiff's abandonment.**" *CP 826-827* (emphasis added). On January 23, 2018, Attorney Roberts filed a two page pleading "challenging" the January 16, 2018 discovery master recommendation only to request more time "to produce supplemental discovery." *CP 864*. In response to Roberts' request for "more time to produce supplemental discovery" to an October 2015 discovery pleading, Barnett asked that the court impose CR 11 sanctions on attorney Roberts. *CP 870-873*. Barnett asserted that Rhodes had plainly abandoned her claims. *CP 871-72*. There was "no sign of any active plaintiff in this action," while Rhodes had been litigating other claims. *CP 871*. They asserted that attorney Roberts' lack of candor about his client's abandonment of this case was escalating the costs of the litigation. Attorney

Roberts was “the one driving up the costs of litigation ... trying to leverage some ‘settlement’ to stop further litigation harassment, without any client ...” *CP 872*. Attorney Roberts was questioned at each of the two discovery master hearings “as to where his client actually was, her status in the case, and whereabouts,” and Roberts demurred, “citing ‘attorney-client privilege.’” *CP 872*. The Discovery Master specifically found that:

Plaintiff’s counsel was unable to provide a date by which his client will provide compliance. Counsel asserts attorney-client confidentiality in response to more pointed inquiries by this Discovery Master about Plaintiff’s status, whereabouts, and situation in not responding. The best that can be gleaned is that Plaintiff has had no contact with her counsel since, at least, his filing of the motion for an extension on her behalf.

CP 879, App. B, Discovery Master Report of Jan. 12, 2018.

Barnett asserted that whether or not a client actually exists is not an attorney-client privileged communication. *CP 872*. Barnett asserted that *because* of Roberts’ lack of candor, it was unclear exactly *when* Rhodes had disappeared, but she plainly *had*. Full disclosure should determine “who should be held responsible for this now 7-month long compel process for a first set of discovery, and that leads to CR 11.” *CP 871*. Attorney Roberts did not provide that disclosure.

Barnett asked that Rhode’s claims be dismissed, and that, via CR 11, “**costs and fees should be imposed against Plaintiff’s counsel** to ensure

that the Defendants, and now the Discovery Master, as well, are not all financially harmed by an abandoned litigation.” *CP 873: 19-24, filed Jan. 29, 2018* (emphasis added).

H. February 2018: The order of dismissal and joint Judgments I – IV.

On February 09, 2018, by stipulation of both parties, the trial court entered an order confirming that it could adopt *or revise* any recommendation of the Discovery Master as it deemed just, and that it would issue its ruling *on the pleadings*. *CP 1017* (emphasis added). *App. C*. Rhodes had still not appeared.

The trial court then entered its order dismissing the Plaintiff’s claim, and imposing CR 11 sanctions against attorney Roberts, including \$4,062.50 of defense fees against both attorney Roberts and Rhodes jointly. *CP 1014, at App. D*. The trial court found that Rhodes had necessitated numerous proceedings by her refusal to respond. But “Per CR 11, this process could and should have been terminated far earlier had there been disclosure to the Court by Plaintiff’s counsel of his client’s abandonment of her claims at some earlier point, either before or during this discovery process.” The court found that Roberts’ “continued pursuit of this litigation when his client had clearly abandoned her claims is contrary to CR 11, and he should bear the

costs of the Discovery Master equally with his client.” *CP 1014; CP 1012-1015*. That order imposed Judgment Summaries I and II against judgment debtors attorney Roberts and Plaintiff Rhodes, with Judgment Summary I awarding Barnett \$4,062.50 of fees against both. *See Judgment Summary I at CP 1012*. The Discovery Master’s fees were then intended to be entered at Judgment Summary II, with the line left blank, with the responsible party for those fees also identified as both attorney Roberts and Rhodes. *CP 1013*.

On February 15, 2018, the court reentered that *same* order that it had signed on February 9th yet again, with the same Judgment Summaries I and II, including CR 11 sanctions. *App., CP 1022-1025; and February 9th order at CP 1012-1015*. No exception was taken by Roberts to either order.

On February 20, 2018, Barnett noted a supplemental fee request. *CP 1226, 1227*. Barnett now proposed Judgment Summaries III and IV, requesting that additional attorney fees be assessed against both attorney Roberts and Plaintiff Rhodes jointly in the amount of \$7,477.50. *CP 1029; and see App. F*. The proposed order states, “Per the court’s February 15, 2018 order, Plaintiff and Plaintiff’s counsel are jointly and severally liable for these judgments for the reasons stated in the February 15, 2018 order.” *CP 1031*. This proposed order was presented to the court on seven days’ notice. Plaintiff Rhodes was still nowhere to be found. *CP 1026*. Attorney

Roberts took no exception to the joint debtor identification.

On February 28th, the court entered the proposed order with Judgment Summaries III and IV, assigning another \$7,477.50 of attorney fees against attorney Roberts and Plaintiff Rhodes jointly “for the reasons stated in the February 15, 2018 order.” *App. F, CP 1044-1045; and see CP 1046, ¶ 4*. The court further imposed the Discovery Master fees of \$3,812.50 against attorney Roberts and Plaintiff Rhodes jointly, as intended by the earlier February 9th and 15th order. *CP 1045*.

Attorney Roberts did not move for reconsideration of any of these orders under CR 59’s ten day rule, nor did he raise any of the CR 59 criteria for amendments of judgments based on any asserted error.

I. March 2018: The appeal.

On March 9, 2018, attorney Roberts filed a Notice of Appeal. The notice appeals the December 18, 2017 order (adopting the December 10, 2017 recommendation of the Discovery Master). *CP 1047; 1051-1054*; the February 9th order applying CR 11 sanctions against Roberts and entering joint Judgment Summaries I and II, *CP 1048; Order at 1056-1059*; the February 15th duplicate order, *CP 1048; CP 1060-1064 (Duplicate Order)*; and the February 28, 2018 order, also entering joint judgments III and IV, *CP 1048; 1065-1068*. Roberts has not appealed the February 9, 2018 order

allowing the trial court to rule as it deemed appropriate based upon the pleadings. *CP 1047-48*.

J. May 2018: Attorney Roberts’ motion to amend judgment to assign his own liability to his client.

On May 4, 2018, nearly two months after filing his appeal, attorney Roberts moved on his own behalf, but under his client’s name, for an order amending the single duplicate order entered February 15, 2018 to identify only his client Sara Rhodes as the judgment debtor. *CP 1140-41*. Roberts noted his motion for May 18, 2018. *CP 1174*. Plaintiff Rhodes remains absent. There is no declaration from Rhodes evidencing her participation or awareness that her attorney had filed such a motion under her name to impose the fee judgment of \$4,062.50 against *her* as the sole judgment debtor, nor anything denoting her permission for attorney Roberts to do so. *CP 1140-1155*.

Barnett responded, arguing that attorney Roberts should be disqualified from bringing such a motion under RPC 1.7 and *In re Marriage of Wixom & Wixom*, 182 Wn. App. 881, 897-98, 332 P.3d 1063 (2014); *CP 1177*. Roberts was not objecting to his client being sanctioned—“He objects to being sanctioned along with her.” *CP 1177: 20-21*. Barnett again asked for fees and sanctions against Roberts, *CP 1175*, and a combined

award of fees and sanctions of \$10,000. *CP 1181*. Roberts was required to withdraw, Barnett argued, because such a conflict was non-consentable. *CP 1178*.

Second, Roberts' motion requested amending only the February 15, 2018 order of \$4,062.50, i.e., Judgment Summaries I and II. The February 15th order was a duplicate of the original February 9, 2018 order imposing that \$4,062.50 of fees against Roberts and Rhodes jointly. *CP 1140-1141 (Motion); CP 1012-1015 (Feb.9, 2018 Order at App. D, imposing Judgment Summaries I and II); and CP 1022-1025 (February 15, 2018 duplicate Order at App E, again imposing Judgment Summaries I and II)*. Attorney Roberts asserted that he had misread the proposed February 15th order, and had not seen his own name on the order. In fact, his inclusion on the judgments was brought to his attention by another lawyer who *had* apparently read the order, and who was using it to “personally attack” (Roberts) in some other action. *CP 1172-1173*. Roberts seemed unaware that two other orders had also been entered—one on February 9th, *CP 1012-1015* (the same order), and another on February 28th, *CP 1044-1045*, the latter including Judgment Summaries III and IV, with another \$7,477.50 of fees. *Id.*

Attorney Roberts' reply of May 16th offers no evidence from his client Rhodes that she was aware of what he was doing. Roberts instead

states: “There is no conflict. Plaintiff was improperly sanctioned, and that decision has been appealed.” *CP 1248*. He also states, contrary to the order itself, that “There was never any sanction against Plaintiff’s counsel.” *CP 1248*.

On May 25, 2018, Roberts finally filed a declaration of Plaintiff Rhodes. *CP 1253-1255, filed May 25, 2018*. It fails to show that she has knowledge of the four separate judgments entered against her by three separate orders—one a duplicate—or that those judgments were entered jointly against her and her attorney. It acknowledges only that she had become aware, at least by *May 25, 2018*, that Roberts was appealing “the rulings and the dismissal of my case that occurred.” *CP 1254: ¶ 8*. She states: “*I have been kept informed* by my lawyers and made decisions presented to me about my case and how to proceed.” *CP 1254* (emphasis added). The declaration does not confirm that Rhodes has seen any of the orders, or that Roberts’ motion to assess only Rhodes for the fees was pending.

On June 13, 2018, the trial court granted Roberts’ motion to amend the joint judgments to impose his own liability solely upon his client. The order’s title states that it is amending the judgment of February 28, 2018, i.e., Judgment Summaries III and IV, which impose the \$7,477.50 of fees (*CP*

1257). But attorney Roberts had requested amendment of the *February 15th* judgment, i.e., Judgments I and II, which assigned \$4,062.50 of fees, per his motion. *CP 1140-1141 (Motion); App. E (February 15, 2018 order, CP 1022-1025)*. The court altered later judgments III and IV in spite of finding that attorney Roberts had never objected to Barnett's request to include him personally on those judgments, nor did he object to the proposed judgment summaries. *CP 1258, first para.* The trial court found that, at the second presentation of Judgment Summaries III and IV, notice was again sent to Roberts, and the proposed order again openly included his name as a judgment debtor along with his client, but Roberts made no objection to that requested second judgment either. *CP 1258.* The trial court noted that Roberts' motion was based solely upon his "misread(ing) *the* judgment, and assumed he was listed only as *the* judgment debtor's attorney." *CP 1258* (emphasis added).

The trial court directed Roberts to prepare the orders. On September 7, 2018, the court signed his two orders amending only Judgments III and IV entered of the February 28, 2018 order. *CP 1138-1139; 1135-1137.* The earlier February 9 and 15, 2018 orders imposing and re-imposing the CR 11 sanctions against attorney Roberts, and holding him jointly liable for the Barnetts' fees of \$4,062.50, are not disturbed.

Barnett cross-appeals the trial court's removing Roberts as a joint debtor in Judgment Summaries III and IV by its orders of June 13 and September 7, 2018. They further request that all fees and costs of this appeal be assessed against attorney Roberts remain under CR 11.

IV. COUNTER STATEMENT OF ISSUES.

a. The "discoverability" of information is not reached where a party abandons her case; dismissal of the case is proper.

b. A lawyer's continuing pursuit of a case that his plaintiff client abandoned should result in the CR 11 sanctions ordered.

c. An attorney is disqualified from pursuing his own financial interests at the expense of his own client.

d. An attorney's repeated failure to read orders does not merit CR 60 relief.

V. ARGUMENT.

A. The "discoverability" of evidence is not reached where a plaintiff party abandons her case.

1) Rhodes abandoned her trial court case.

Unchallenged findings of fact are verities on appeal. *Fuller v. Employment Sec. Dep't of State of Wash.*, 52 Wn. App. 603, 605, 762 P.2d 367 (1988). Rhodes assigns error to the trial court's "entering CR 11

sanctions against Plaintiff's Counsel based on Defendants claiming *abandonment.*" *Brief, at p. 4, Assignment of error 7* (emphasis in original). But Barnett did not simply "claim" abandonment—the trial court made a *finding* of abandonment. *CP 1014, Finding 5.* Rhodes fails to assign error to that finding, and the verity on appeal is that Rhodes "clearly abandoned" her claim.

Assuming arguendo that some global assignment of error can be liberally construed to assign that specific error, there is no argument or analysis in Rhode's brief as to why the finding of clear abandonment is not supported. *See Opening Brief, at pp 9-20.* Failure to support an assignment of error with legal argument precludes review. *Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 624, 818 P.2d 1056 (1991); *RAP 10.3(a)*. An appellant must provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." *Knedlik v. Cent. Puget Sound Reg'l Transit Auth.*, 179 Wn. App. 1013 (2014), citing *RAP 10.3(a)(6)*. Arguments that are not supported by references to the record, meaningful analysis, or citation to pertinent authority need not be considered.

Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990).

Rhodes points to nothing in the record that would controvert the trial court's finding of clear abandonment, nor does she provide any analysis as to why that finding is wrong. Her appeal thus proceeds under the unchallenged finding that Rhodes "clearly abandoned" her trial court action. *CP 1014, Finding 5*.

2) Rhode's claim of non-discoverability may not be reached.

Attorney Roberts argues that it was improper for Barnett to seek "sexual information" about Rhodes in her sexual harassment claims against Barnett, and improper for the trial court to grant an order compelling such answers. The point is not reached. Rhodes' case was dismissed because she refused to answer *anything*, including any substantive question about, e.g., claim history or theories, and even including failing to return a signed a medical release form, or produce anything, or to even show some sign of some intent to answer or produce anything, in defiance of the December 18, 2017 court order compelling those answers and production, and in equal defiance of the repeated efforts by the Discovery Master to mitigate Rhodes' non-compliance by granting her extensions of time to comply. *CP 881; and see, e.g. Appendices A (Order) and B (DM Recommendation, showing the*

history of efforts by the Discovery Master to mitigate Rhodes' noncompliance with the Order). Dismissal of the case in the foregoing circumstances is authorized by CR 37(b)(2)(C), and that authority was properly exercised here. The evidence showed, and the trial court found, that Rhodes had simply abandoned her action. *App. D, Order, CP 1014: 18-20*. Rhode's claimed assignment of error should not be addressed.

- 3) Even if Rhodes' claim of non-discoverability were to be reviewed, her appeal is without merit.

Pretrial discovery orders are reviewed for manifest abuse of discretion. *Gillett v. Conner*, 132 Wn. App. 818, 822, 133 P.3d 960 (2006). The abuse of discretion standard also governs review of sanctions for noncompliance with discovery orders. *Rivers v. Washington State Conference of Mason Contractors*, 145 Wn.2d 674, 684–85, 41 P.3d 1175 (2002). Dismissal of claims is authorized where a party fails to respond to orders compelling discovery. *CR 37(b)(2)(C)*. That authority was properly exercised here. There was no abuse of discretion in the Discovery Master and the trial court ordering Rhodes to respond properly to discovery.

Barnett had the right to obtain discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action...” *CR 26*. Admissibility at trial is different than discoverability. “[I]t

is not grounds for objection that the information sought will be inadmissible at the trial, but the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” *CR 26(b)(1)*. Rhodes was required to answer interrogatories under CR 33, unless the question was objected to, in which event the reasons for her objection must be stated in lieu of the answer. In *Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 344, 858 P.2d 1054 (1993). The same applies to requests for production under CR 34. *Id.*

Here, Rhodes simply failed to respond in any way to the October 2015 discovery until September 2017, when, under the leverage of a motion to compel, she delivered a set of boilerplate objections, answered virtually nothing, and produced literally nothing. *CP 568-584*. She then went on to entirely ignore a discovery master directive, a trial court order compelling that discovery by December 18, 2017, and multiple discovery master efforts to mitigate her violation of the December 18th order by allowing her until January 4, 2018 to comply, then January 16, 2018, and this refusal behavior continued even through the entry of the dismissal and judgment order themselves on February 9th, 15th, and 28, 2019. Rhodes failed to materialize on any of these occasions to explain her behavior.

Moreover, Rhodes' complaints that certain interrogatories invaded her privacy interests were accommodated. A trial court has substantial latitude to decide when a protective order is appropriate and what degree of protection is required, given the unique character of the discovery process. *See King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 16 P.3d 45 (2000), *as amended on reconsideration* (Feb. 14, 2001). The court did so here. The door was left open for Rhodes as to whether certain information could be designated as confidential, or for "attorney's eyes only." *CP 816, App. A, Dec. 18, 2017 Order*. Rhodes did not avail herself of this protection. She provided nothing. ER 412 itself allows for the admissibility of the evidence Rhodes' complains these questions were designed to elicit where the probative value of such evidence substantially outweighs the danger of harm to any "victim" and of unfair prejudice to any party. ER 412 includes a specific procedure to determine admissibility in such circumstances, which involves the party intending to offer such evidence filing a motion fourteen days before trial describing the evidence and stating the purpose for which it is offered, and the court's then conducting an in-camera hearing relative to the offer. *ER 412*. Rhodes did not avail herself of the rule protections either. She just disappeared.

Discovery abuses necessitate aggressive judicial control and

supervision. *Fisons Corp.*, 122 Wn.2d at 341-342, citing to “*Amendments to the Federal Rules of Civil Procedure, Advisory Committee Note*, 97 F.D.R. 166, 216-19 (1983). Where interrogatories and requests for production contain only boilerplate objections, CR 37 enforcement is proper. *Johnson v. Jones*, 91 Wn. App. 127, 132-33, 955 P.2d 826 (1998). Sanctions are permitted for unjustified or unexplained resistance to discovery, and such sanctions serve the purpose of deterring, punishing, compensating, and educating a party or its attorney for engaging in discovery abuses. *Id.* A court may dismiss an action under CR 37(b)(2) for a party’s failure to comply with a court order compelling discovery. *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 585, 220 P.3d 191 (2009). Dismissal was ordered here, and it was well within the trial court’s authority.

CR 41(b) also provides dismissal authority, as “under CR 41(b), a trial court also has the authority to dismiss an action for noncompliance with a court order or court rules.” *Rivers*, 145 Wn.2d at 686, citing *Woodhead v. Disc. Waterbeds, Inc.*, 78 Wn. App. 125, 129, 896 P.2d 66 (1995), *review denied*, 128 Wn.2d 1008 (1996) (citing *Snohomish County v. Thorp Meats*, 110 Wn.2d 163, 166, 169, 750 P.2d 1251 (1988)). When a trial court imposes dismissal or default in a proceeding as a sanction for violation of a discovery order, it must be apparent from the record that (1)

the party's refusal to obey the discovery order was willful or deliberate, (2) the party's actions substantially prejudiced the opponent's ability to prepare for trial, and (3) the trial court explicitly considered whether a lesser sanction would probably have sufficed. All of these criteria were extensively considered by the Discovery Master in a section called "Sanctions Issue." *App. B, CP 879-881*. The trial court found that Rhodes clearly abandoned her action, and there is no evidence showing otherwise. *App. D, Feb. 9, 2018 Order, CP 1014*. Dismissal was proper.

Rhodes cites *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997), *as amended on denial of reconsideration* (June 5, 1997) for the proposition that dismissal was improper. No party in *Burnett* simply disappeared from the litigation, and refused to respond to anything. *CP 568-584*. In none of the cases cited by Rhodes did the party refuse to respond to court orders and abandon her claim.²

² See *Hughes v. Twenty-First Century Fox, Inc.*, 327 F.R.D. 55 (S.D.N.Y. 2018)(subpoenas directed to non-parties pursuant to Federal Rule 45, and the party responded); *Macklin v. Mendenhall*, 257 F.R.D. 596, 600 (E.D. Cal. 2009)(noting that in order to gain protection from discovery, a moving party must demonstrate a "particular and specific need for the protective order, as opposed to making stereotyped or conclusory statements."); *Rossvach v. Rundle*, 128 F.Supp.2d 1348 (2000)(restricting the plaintiff's discovery requests by setting forth permissible areas of discovery into which the plaintiff could inquire); *Williams v. Board of County Commissioners, et al.*, 192 F.R.D. 698, 702-03 (2000)(conducting a balancing test relative to the discovery sought and the objection made, but noting that the party resisting the discovery had the burden to establish a lack of relevance, even under the Federal Rule); *Howard v. Historic Tours of Am.*, 177 F.R.D. 48, 51 (D.D.C.

There was no abuse of discretion in the court's orders compelling her responses.

B. Dismissal of a claim is a proper and necessary sanction where an attorney is pursuing a claim without the client's consent.

The standard of review for sanctions is abuse of discretion. *State ex rel. Quick–Ruben v. Verharen*, 136 Wn.2d 888, 903, 969 P.2d 64 (1998). Here, Rhodes had abandoned her claims.

An attorney has a duty not to harm a client or a former client in the matter related to the attorney's representation of the client. *In re Marriage of Wixom*, 182 Wn. App. at 908, referencing RPC 1.8(b), RPC 1.9(c)(1). Here, another unchallenged CR 11 finding is that “Plaintiff’s counsel’s continued pursuit of this litigation when his client had clearly abandoned her claims is contrary to CR 11, and he should bear the cost of the Discovery Master equally with his client.” *CP 1014, Order, Feb 9, 2018*, p. 3, ¶ 5. The court’s dismissal order arises not simply out of CR 37’s dismissal authority for Rhodes’ violation of the December 2017 order to compel; dismissal is alternatively mandated by the court’s required policing of professional responsibility. Because the client abandoned her claim, then her attorney’s continuing to pursue that litigation was causing harm to his client. *Wixom*,

1997)(the court again stating that in an action for sexual harassment, some evidence of the alleged victim’s sexual behavior and/or predisposition may perhaps be relevant, although non-workplace conduct will usually be irrelevant).

supra. This is illustrated here by Rhodes being assessed attorney fees and discovery master costs which originated from her own attorney's pursuit of the action after she had disappeared. That damage to Rhodes was exacerbated when, post-judgment, her attorney then shifted the entire financial responsibility for *his* continuing pursuit of her abandoned claims onto Rhodes herself. It is unclear exactly what went on between Rhodes and her counsel because of attorney Roberts' lack of candor to the Discovery Master and the trial court, *CP 879:6-10*,³ but in *Johnsen v. Petersen*, 43 Wn. App. 801, 807, 719 P.2d 607 (1986), a client made an active demand upon their attorney that their action be discontinued, yet their attorney "prolonged the case for a period of months in a running battle over his authority, marked by (the attorney's) repeated requests for continuances and frequent hearings." This situation appears similar. Rhodes plainly abandoned the claims, and her attorney with them; but attorney Roberts did not withdraw from the action based on this lack of communication and disappearance of his client; he simply continued to pursue the action against

³ The Discovery Master states, "At hearing, Plaintiff's counsel was unable to provide a date by which his client will provide compliance. Counsel asserts attorney-client confidentiality in response to more pointed inquiries by this Discovery Master about Plaintiff's status, whereabouts, and situation in not responding. The best that can be gleaned is that Plaintiff has had no contact with her counsel since, at least, his filing of the motion for an extension on her behalf." *CP 879, App. B*.

Barnett. The sanction against him for escalating the costs of the litigation was properly entered because of this.

RCWA § 2.44.020 in fact provides for a client to be *relieved of their own attorney* by the court itself if their attorney is acting without their authority. The statute provides that the court “may also summarily, upon motion, compel the attorney to repair the injury to either party consequent upon his or her assumption of authority.” Barnett can raise the opposing attorney’s authority to pursue the action. *Johnsen*, 43 Wn. App. at 806–07. The dismissal of Rhodes’ claim for abandonment is proper, and authorized, not simply under CR 37, but equally under *Wixom*, *Johnson*, and RCW § 2.44.020. This appeal is frivolous.

C. CR 11 sanctions against attorney Roberts were proper.

CR 11 provides that the trial court may impose sanctions for legal filings 1) that are not well grounded in fact and warranted by law, and 2) that are interposed for any improper purpose. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992). “The purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system.” *Id.* at 219. The court must specify the sanctionable conduct in its order. *N. Coast Elec. Co. v. Selig*, 136 Wn. App. 636, 649, 151 P.3d 211 (2007). The trial court did so here, finding that “Plaintiff’s counsel’s continued pursuit of this

litigation when his client had clearly abandoned her claims is contrary to CR 11.” *CP 1014, App. D, Feb. 9, 2018*. The Discovery Master was more descriptive. *CP 879-881, App. B, Recommendation*. Again, where a client has abandoned a claim, and is no longer pursuing that claim, then the attorney’s continuing to pursue that litigation is causing harm to the client, as well as to Barnett. *Wixom*, 182 Wn. App. at 908, referencing RPC 1.8(b), RPC 1.9(c)(1); *Johnsen*, 43 Wn. App. at 807. Per RCW § 2.44.020, “[T]he court may impose whatever sanction is appropriate to repair the injury, whether that be an award of damages, a stay of proceedings or otherwise.” *Johnsen*, 43 Wn. App. at 806-07.

The trial court was authorized to impose CR 11 sanctions against Roberts.

D. Any duty to confer was accomplished.

Attorney Roberts argues that Barnett and Kim did not meet and confer as required by the Rules of Civil Procedure prior to the motion to compel. This proposition is equally frivolous. The orders compelling Rhodes’ production arose during a discovery master proceeding, where the court’s order appointing the discovery master allows for informality to expedite disputes. *CP 795*. CR 53.3(d) allows trial court to specify the duties of a discovery master, and authorizes the master to resolve discovery

disputes. *CR 53.3*. An order was entered allowing the Discovery Master the power to preside over discovery disputes in a manner that allowed for the expeditious resolution of discovery. *CP 795*. This challenge is frivolous.

The February 2018 orders should be affirmed.

VI. COUNTER APPEAL.

Barnett appeals the trial court's later June 13, 2018 memorandum opinion and its subsequent two September 7, 2018 orders removing attorney Roberts as a joint debtor from the February 28, 2018 Judgments III and IV. *See App. G, June 13, 2018 Memorandum Order, CP 1257-1260; and see App. H, September 7, 2018 Order, CP 1138-1139, (Order Re: Opinion on reconsideration on Motion to Amend Judgment Entered 2/28/2018), and September 7, 2018 Amended Judgments, CP 1135-37 (Amended Judgment and Order on supplemental fees and fee bill and discovery master fees.)* Removing attorney Roberts as a joint debtor on Judgments III and IV was entirely improper. The amendment should be reversed, and the orders entered June 13, 2018 and September 7, 2018 vacated.

A. Judgments III and IV resulted from attorney Roberts' conduct, not his client's.

As noted above, the trial court's September 7, 2018 orders do not vacate the earlier February 9th and 15, 2018 orders—to the contrary, the

September 7th order specifically adopts the February 15, 2018 order and its amounts. *App. H., CP 1136, Order at ¶ 4.* Judgments III and IV alone, entered on February 28th, were amended to shift the liability under that order for the \$7,477.50 imposed as defense fees solely to Rhodes; but “for the reasons stated in the February 15, 2018 Order.” *CP 1136.* The February 9th and February 15th orders, however, impose CR 11 sanctions on attorney Roberts and find that after Rhodes *abandoned* her claim, attorney Roberts continued pursuit of that claim. *CP 1012-1015 (February 9th); 1022-1025 (February 15th).* There was thus no rational basis for the trial court to remove attorney Roberts as a joint debtor from Judgments III and IV. It was Roberts’ own behavior that caused those additional fees, and the CR 11 sanction findings remained as they were in earlier orders, as does Judgment I for \$4062.50 in defense fees already imposed as joint liability against Roberts.

The June 13th and September 7th orders amending the February 28th order should be vacated. They are entirely inconsistent with the trial court’s earlier orders of February 9th and 15th.

B. Attorney Roberts was disqualified from bringing a CR 60 motion on his own behalf to the detriment of his client. His motion was required to be stricken.

An attorney is disqualified from pursuing his own financial interests at the expense of his client in the same case in which he represents the client. *Wixom*, 182 Wn. App. 897-98. Joint sanctions create a financial interest in the attorney through that attorney's exposure to culpability. *Id.* at 898. RPC 1.7 prohibits an attorney from representing that client where the representation will now be materially limited by the personal and financial interest of the attorney. *Wixom*, at 897-98. Such a scenario is *not* consentable by the client. *Id.* at 902.

Attorney Roberts' CR 60 motion was brought on his *own* behalf under his client's name, but to serve purely his own financial interest at the *expense* of his client. This is particularly egregious when it was the attorneys' behavior that caused the escalated litigation fees. *CP 1012 ¶ 5*. The escalated expense was caused by Roberts' lack of candor in *failing to disclose* his client's clear abandonment of the claim. *Id.* Attorney Roberts was thus asking to shift the financial damage *he* caused to his client. His motion should have been immediately stricken.

As noted above, conduct by an attorney against a former client also implicates the attorney's duty not to harm their former client. *Wixom*, at 908 (2014), referencing RPC 1.8(b), RPC 1.9(c)(1). It implicates the duty of loyalty to a client. *Id.* at 908. That duty of loyalty and confidentiality to a

former client continues in force even after the representation has ended; here, even after Rhodes abandoned her claim. *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821, 250 P.3d 1115, 124 Cal. Rptr. 3d 256 (2011).

Moreover, an attorney who signs a motion but who is not authorized to appear for purposes of that motion is appropriately sanctioned. *See Marina Condo. Homeowner's Ass'n v. Stratford at Marina, LLC*, 161 Wn. App. 249, 262, 254 P.3d 827 (2011). There is no evidence in this record that Roberts' client knew that her attorney was requesting that the fee judgment he caused be shifted solely to her.⁴

The Superior Court has “of course, the authority and duty to see to the ethical conduct of attorneys in proceedings before it. Upon proper grounds, it can disqualify an attorney.” *Hahn v. Boeing Co.*, 95 Wn.2d 28, 34, 621 P.2d 1263 (1980). The court should have immediately disqualified Roberts, and stricken his motion. *Id.* at 902.

It was abuse of direction by the trial court to entertain Roberts' motion on his own behalf to shift fees generated by his behavior to his own

⁴ RPC 1.2(a) imposes a duty upon an attorney to “abide by a client's decisions concerning the objectives of representation,” and RPC 1.4(b) requires a lawyer to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” *In re Disciplinary Proceeding Against Marshall*, 160 Wn.2d 317, 338, 157 P.3d 859 (2007)(detailing the application of these rules).

client, and the court's June 13 and September 7th orders granting that relief should be vacated.

C. The attorney's CR 60 motion was substantively frivolous; an attorney's repeated failure to read orders proposed, and then entered, is not a proper basis for CR 60 relief.

The standard of review for a decision granting a motion to vacate under CR 60(b) is abuse of discretion. *Barr v. MacGugan*, 119 Wn. App. 43, 45-46, 78 P.3d 660 (2003), citing *Luckett v. Boeing Co.*, 98 Wn. App. 307, 309, 989 P.2d 1144 (1999). A court abuses its discretion when its decision is based on untenable grounds or reasoning. *Id.* (citing *Luckett*, 98 Wn. App. at 309). The trial court abused its discretion in amending Judgment Summaries III and IV under CR 60.

CR 60(b) permits a court to vacate a final judgment for reasons such as excusable neglect, unavoidable casualty, or misfortune preventing the party from prosecuting or defending, or any other reason justifying relief from the operation of the judgment. *Barr*, 119 Wn. App. at 43, 45-46, citing CR 60(b)(1), (9), (11). The use of CR 60(b) (11) "should be confined to situations involving extraordinary circumstances not covered by any other section of the rule." *Id.* (citing *Gustafson v. Gustafson*, 54 Wn. App. 66, 75, 772 P.2d 1031 (1989), (quoting *Flannagan v. Flannagan*, 42 Wn. App.

214, 221, 709 P.2d 1247 (1985)). None of the criteria for CR 60 relief existed here.

Attorney Kevin Roberts' motion for CR 60 relief was frivolous, because CR 60 does not allow a lawyer to vacate an order of sanctions against him because he *repeatedly* failed to read the multiple orders the court was asked to enter, and did enter. An attorney's negligence or neglect does not constitute grounds for vacating a judgment under CR 60(b). *Barr v. MacGugan*, 119 Wn. App. 43, 46 (2003) (citing *Haller v. Wallis*, 89 Wn.2d 539, 547, 573 P.2d 1302 (1978)). The trial court itself points out that Roberts never objected to the judgments being entered against him, or the CR 11 language, on either presentment. *App. G, CP 1257-1260. (Memo ruling of June 13, 2018)*.

An attorney's decision not to read proposed or entered orders is not a clerical mistake. "Clerical mistakes" under CR 60(a) require errors in transcription, alteration, or omission of any papers and documents which are traditionally or customarily handled or controlled by clerks. That is not what occurred. This decision "involves a legal decision or judgment," and it is not a clerical mistake. *Foster v. Knutson*, 10 Wn. App. 175, 177, 516 P.2d 786 (1973). The correction of a judicial error is not allowed under the rule. *Presidential Estates Apartment Associates v. Barrett*, 129 Wn.2d 320, 917

P.2d 100 (1996). CR 60(a) provides no authority for the trial court's June 13th and September 7th orders.

The trial court's memorandum ruling does not identify the CR 60 rule on which it granted relief. *CP 1259-1260*. It amends the judgments upon an unstated "good cause." *CP 1259*. Good cause is not a generic basis for relief under CR 60. CR 60(11) allows for relief for "any other reason justifying relief from the operation of the judgment." But good cause is insufficient cause to amend or vacate orders under CR 60(11). "The operation of CR 60(b)(11) is 'confined to situations involving extraordinary circumstances not covered by any other section of the rule.'" *Hammack v. Hammack*, 114 Wn. App. 805, 809-10, 60 P.3d 663 (2003) (quoting *State v. Keller*, 32 Wn.App. 135, 140, 647 P.2d 35 (1982)). Extraordinary circumstances resulting in a manifest injustice can implicate the rule's proper use. *Id.* (citing *In re Marriage of Jennings*, 138 Wn.2d 612, 625-26, 980 P.2d 1248 (1999), *as amended on denial of reconsideration* (Oct. 5, 1999)). But the latter extraordinary circumstances "must relate to irregularities extraneous to the action of the court." *Id.* (cites omitted). Errors of law may not be used to vacate a judgment. *Id.* (cite omitted). No extraordinary circumstances are present in this motion to vacate, and no manifest injustice arose from naming the attorney jointly

responsible for the litigation expense he caused. This amendment relieved the attorney causing the harm from financial responsibility for his own actions, and thereby resulted in additional harm to the substantial rights of Barnett, as well as Rhodes, and was improper. *See, e.g., Pappas v. Taylor*, 138 Wn. 31, 33, 244 P. 393 (1926).

Moreover, the trial court's "good cause" basis for amending the February 28, 2018 order appears to be that the "Discovery Master" did not order CR 11 sanctions against attorney Roberts. *CP 1259*. This finding is abuse of discretion. It was the *trial court itself* that made that CR 11 finding. *CP 1014, ¶ 5*. The trial court had already made clear that it could rule as it saw fit *based on the pleadings* before it. *App. C, CP 1047-48*. Barnett specifically asked the court to sanction attorney Roberts under CR 11 for the fees of the proceeding as an additional part of its order. *CP 873*. They presented an order implementing their fee award request. The court adopted that request and their order. *App. F, CP 1044-1046*. All three orders of February 9th, the 15th, and the 28th consistently impose CR 11 sanctions upon attorney Roberts' continued pursuit of Rhodes' claim after she had abandoned it. *App. D, CP 1012-1015* (February 9th); *App. E, CP 1022-1025* (February 15th), and *App. F, CP 1044-1046* (February 28th).

While it is true that the CR 11 sanction paragraph 5 in the February

9th and 15th orders states that Roberts should “bear the costs of the discovery master equally with his client,” this is not the exclusive application of the CR 11 finding made, nor was it the sum of the request—Barnett requested defense fees as a CR 11 sanction, and named attorney Roberts in the Judgment Summary as a joint debtor because of it. *CP 873*.

To this date, Judgment Summaries I and II remain in place imposing CR 11 sanctions against Roberts jointly and awarding \$4,062 of fees for discovery abuse. The Amended Judgment entered September 7, 2018 does not alter the February 9th or 15th orders, or the substance of the February 28th order. It amends only the debtor on Judgment Summaries III and IV, as entered February 28, 2018. *CP 1135-1139, at App. H*. Amending Judgment Summaries III and IV to remove Roberts as a joint debtor is inconsistent with the February 9th and 15th orders.

The February 28, 2018 Judgment Summaries III and IV imposed against both Roberts and Rhodes should be reinstated by reversing and vacating the later June 13th and September 7th orders.

VII. ATTORNEY FEES.

A. Rhodes' request for attorney fees.

There is no legitimate basis for Appellant Sara Rhodes to receive attorney fees for her appeal under either CR 37 or CR 11 after abandoning her trial court claims. The fee request is frivolous.

B. Barnett should receive RAP 18.1 fees.

Barnett should be awarded their fees on appeal as a continuing CR 11 sanction against attorney Kevin Roberts. Per the above cited law and discussion, the imposition of CR 11 prevents baseless filings, and filings made for an improper purpose. *MacDonald v. Korum Ford*, 80 Wn. App. 877, 833, 912 P.2d 1052 (1996). Sanctions are proper to curb such a continuing abuse of this judicial system in the way demonstrated here. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d at 219. Rhodes' appeal is a baseless filing, initiated after Rhodes abandoned her trial court action, and not even challenging that abandonment. Her appeal is equally not well grounded in fact, and not warranted by existing law or a good faith argument for the alteration of existing law. *McDonald* at 883–84. It is entirely frivolous for a party who abandoned their claim to challenge a discovery order made before they disappeared.

RCW 4.84.185 also warrants attorney fees incurred in Barnett's need to oppose this frivolous appeal; the action "as a whole" is frivolous and advanced without reasonable cause. *Quick–Ruben v. Verharen*, 136 Wn.2d at 903. A lawsuit is frivolous if, when considering the action in its entirety, it cannot be supported by any rational argument based in fact or law. *Curhan v. Chelan County*, 156 Wn. App. 30, 37, 230 P.3d 1083 (2010); *Goldmark v. McKenna*, 172 Wn.2d 568, 582, 259 P.3d 1095 (2011) (same). This statute is also "designed to discourage abuses of the legal system by providing for an award of expenses and legal fees to any party forced to defend against meritless claims advanced for harassment, delay, nuisance, or spite." *Skimming v. Boxer*, 119 Wn. App. 748, 756, 82 P.3d 707 (2004).

Rhodes' lawsuit was frivolous as a whole, as evidenced by her complaint charging Dr. Sharon Kim with violations against Sara Rhodes, whom she had never met, as evidenced by Rhodes' continued refusal to comply with discovery rules or court orders or discovery master recommendations, and as evidenced by her ultimate abandonment of her action altogether. In the face of this record, this appeal is frivolous in the extreme.

Barnett should recover fees on appeal.

VIII. CONCLUSION.

This Court should affirm the February 2018 orders of dismissal, fees and sanctions entered, with Judgments I–IV. It should reverse and vacate the trial court’s memorandum order entered on June 13, 2018, and the two amended orders entered on September 7, 2018, removing attorney Roberts as a joint debtor in Judgment Summaries III and IV. Respondents should be entitled to all attorney fees and costs on appeal.

DATED this 21st day of April, 2019.

MARY SCHULTZ

/s/Mary Schultz

Mary Schultz, WSBA # 14198

Attorney for Respondents/Cross Appellants

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Telephone: (509) 245-3522

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APPENDIX INDEX

App. A *Dec. 18, 2017 Order on Discovery
Master’s Report and Recommendations
Re: Defendant’s Motion to Compel,
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Defendant’s Supplemental Motion for an
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App. B *Jan. 12, 2018 Discovery Master’s Report
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Discovery* CP 877-882

App. C *Feb. 12, 2018 Order and Stipulation
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App. E *Feb. 15, 2018 Order Adopting Discovery
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App. G *June 13, 2018 Opinion on Reconsideration on
Motion to Amend Judgment entered 02/28/18* CP 1257-1260

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Discovery Master Fees and Order Re: Opinion
on Reconsideration on Motion to Amend
Judgment Entered 02/28/18*..... CP 1135-1139

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers, and that on the 21st day of April, 2019, she electronically filed the foregoing document with the Court of Appeals, Division III, and thereby served a copy to the following individuals:

Service List	
Kevin W. Roberts Roberts Freebourn, PLLC 1325 W. 1 st Avenue, Suite 303 Spokane, WA 99201-4600 <i>Attorney for Appellant/Cross Respondent Sara Rhodes</i>	<input checked="" type="checkbox"/> E-Mail: kevin@robertsfreebourn.com ;

DATED this 21st day of April, 2019.

MARY SCHULTZ LAW, P.S.

/s/Mary Schultz

MARY SCHULTZ, WSBA # 14198

Attorney for Respondents/Cross Appellants

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APPENDIX A

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HONORABLE JAMES M. TRIPLET

CN: 201402046841
SN: 50
PC: 4

FILED
DEC 18 2017

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF SPOKANE**

SARA RHODES, an individual,

Plaintiff,

v.

STADTMUELLER & ASSOCIATES, P.S. d/b/a
BARNETT, STADTMUELLER &
ASSOCIATES, P.S., a Washington professional
services corporation, and RYAN BARNETT AKA
RYAN MOOSBRUGGER and SHARON S.
BARNETT AKA SHARON S. KIM, as
individuals and a marital community,

Defendants.

NO.: 14-2-04684-1

Order on
DISCOVERY MASTER'S REPORT AND
RECOMMENDATIONS RE:
DEFENDANT'S MOTION TO COMPEL,
PLAINTIFF'S REQUEST FOR A
PROTECTIVE ORDER, AND
DEFENDANT'S SUPPLEMENTAL
MOTION FOR AN ORDER OF DEFAULT
AND FEES

Case Background

This action was commenced in December of 2014. Plaintiff filed a Complaint for Damages alleging Sexual Harassment (RCW 49.60.180); Assault and Battery; Infliction of Emotional Distress; Negligence; Violation of the Consumer Protection Act (RCW 19.86 et. seq.); Vicarious Liability; Willful Failure to Pay Wages (RCW 49.52.050 (2)); and the tort of Outrage against the Defendants.

November 30, 2017, Hearing

On November 30, 2017, an in-person hearing was conducted at the law offices of Kevin Roberts, located at 13255 W. 1st Ave., Ste. 303, in Spokane, Washington. Attorney Kevin Roberts

DISCOVERY MASTER'S REPORT AND RECOMMENDATIONS RE:
DEFENDANT'S MOTION TO COMPEL, PLAINTIFF'S REQUEST FOR
A PROTECTIVE ORDER, AND DEFENDANT'S SUPPLEMENTAL
MOTION FOR AN ORDER OF DEFAULT AND FEES - Page 1

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1 appeared on behalf of Plaintiff and attorney Mary Schultz appeared on behalf of Defendant Ryan
2 Barnett and, in a limited capacity, on behalf of defendant Sharon Barnett. Special Discovery
3 Master Mary E. Owen presided over the hearing.

4 The hearing addressed Defendant's Motion to Compel Answers to the First Set of
5 Interrogatories and Requests for Production, which included a request for an extension of time for
6 Discovery; Plaintiff's Request for a Protective Order; and Defendant's Supplemental Motion for
7 an Order of Default and Fees.

8 Defendant argues that the First Set of Written Interrogatories and Requests for Production
9 of Documents propounded to the Plaintiff were served on October 6, 2015, and that Plaintiff did
10 not respond nor object to the written discovery. The defense was not sure if Plaintiff was going to
11 pursue her claims. The law firm of Dunn and Black filed a notice of intent to withdraw on behalf
12 of the Plaintiff on October 15, 2015, with an attorney's lien. No substitution of counsel was
13 served, and the last known address of the Plaintiff was stated as being Mr. Roberts' office. No
14 response to Ms. Schultz's inquiries regarding discovery took place.

15 A unique aspect to this case was a procedural move to Federal Court which accounts for
16 additional time in which discovery did not proceed in Superior Court. Issues related to the Federal
17 Court tenure were not the subject of the hearing.

18 The defense argued that subsequent to a new case schedule order from Superior Court,
19 which was issued on September 16, 2016, little to no cooperation has taken place between the
20 parties. On June 8, 2017, counsel for the parties conferred and an agreement was entered that
21 Plaintiff's answers to outstanding discovery would be served no later than June 30, 2017. In July
22 of 2017, Ms. Schultz requested possible dates to depose Plaintiff, but had still not received written
23 discovery responses. Defendant Sharon Barnett filed a motion to compel on September 5, 2017,
24 which was stricken based on an agreement between the parties that Plaintiff would provide written
answers by September 20, 2017. The defense argues that when answers to the First Set of

DISCOVERY MASTER'S REPORT AND RECOMMENDATIONS RE:
DEFENDANT'S MOTION TO COMPEL, PLAINTIFF'S REQUEST FOR
A PROTECTIVE ORDER, AND DEFENDANT'S SUPPLEMENTAL
MOTION FOR AN ORDER OF DEFAULT AND FEES - Page 2

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1 Interrogatories and Requests for Production were received, the information and objections were
2 inadequate, inappropriate, evasive and non-responsive.

3 Defendant filed a Supplemental Motion and Declaration in Support of the Motion to
4 Compel, requesting that based on Plaintiff's conduct and lack of cooperation that an order of
5 default be entered pursuant to CR 37 (b)(2)(C). Plaintiff Rhodes responded to the defense's
6 arguments by stating that Defendant's written discovery is not intended to lead to the discovery of
7 admissible evidence, and that the purpose of the inquiries is to annoy, embarrass and harass the
8 Plaintiff. Mr. Roberts believes that inquiry into Plaintiff's personal life, sexual history, possible
9 criminal acts and financial status seeks to embarrass Plaintiff, and would not be admissible at the
10 time of trial. Plaintiff objected to the majority of inquiries in the written discovery, and did not
11 produce any documents. Plaintiff requested that her objections be found proper and a protective
12 order entered.

13 The parties briefed their positions extensively. Despite Plaintiff's compelling arguments, it
14 is the recommendation of the undersigned that Plaintiff provide complete and full responses to
15 Defendant's First Set of Interrogatories and Requests for Production, and execute a medical
16 release form by December 21, 2017. Given the egregious behavior alleged to have occurred,
17 Defendant is afforded the right to investigate and obtain information relevant to the defense of
18 such actions, even if such information is ultimately found to be inadmissible at trial.

19 I recommend that the request for a protective order be denied. However, I also recommend
20 that the parties and the Discovery Master hold a telephonic conference, once the responses are
21 completed and served, to discuss if certain information should be held as confidential and for
22 "attorneys' eyes only."

23 It is my recommendation that the discovery cutoff be extended, and contingent upon the
24 progression of discovery, the trial date should be continued if necessary. If the parties are unable
25 to agree upon dates, I recommend that the Discovery Master designate such dates as she deems

DISCOVERY MASTER'S REPORT AND RECOMMENDATIONS RE:
DEFENDANT'S MOTION TO COMPEL, PLAINTIFF'S REQUEST FOR
A PROTECTIVE ORDER, AND DEFENDANT'S SUPPLEMENTAL
MOTION FOR AN ORDER OF DEFAULT AND FEES - Page 3

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1 appropriate. In addition, I recommend that Defendant's fees for the preparation and filing of this
2 motion be granted. (See Attachment A)

3 The undersigned also recommends that Defendant's Supplemental Motion for an order of
4 default be denied.

5
6 Dated this 10th day of December, 2017.

7 
8 _____
Special Discovery Master

9 *The above is hereby an order of the court*
10 *12/18/17* *James M. Triplett*
11

JAMES M. TRIPLET

12 *HT approved*
13 *Mary Schulte*
14 *Kevin Roberts*

APPENDIX B

HONORABLE JAMES M. TRIPLET

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF SPOKANE

SARA RHODES, an individual,

Plaintiff,

v.

STADTMUELLER & ASSOCIATES, P.S. d/b/a
BARNETT, STADTMUELLER &
ASSOCIATES, P.S., a Washington professional
services corporation, and RYAN BARNETT AKA
RYAN MOOSBRUGGER and SHARON S.
BARNETT AKA SHARON S. KIM, as
individuals and a marital community,

Defendants.

NO.: 14-2-04684-1

**DISCOVERY MASTER'S REPORT
AND RECOMMENDATIONS
REGARDING OUTSTANDING
DISCOVERY**

Motion/Response.

By order of December 18, 2017, Plaintiff Sara Rhodes was ordered to provide full and complete answers, and a medical release form, to Defendants no later than December 21, 2017. On December 20, 2017, Plaintiff's counsel requested that Plaintiff be allowed an extension to the ordered Dec. 21st compliance deadline. Defendants responded, objected to any further extension, and requested dismissal of Plaintiff's claims on grounds of willful non-compliance. Both requests are properly before this Discovery Master for hearing.

Plaintiff requested that this matter be decided on the pleadings without oral argument, but this Discovery Master set oral argument given the severity of the sanction requested, and the

DISCOVERY MASTER'S REPORT AND RECOMMENDATIONS
REGARDING OUTSTANDING DISCOVERY - Page 1

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1 circumstances of the Plaintiff's request.

2 **Background.**

3 After a sustained period of discovery noncompliance on Plaintiff's part, this Discovery
4 Master recommended on Dec. 10, 2017, and the Superior Court ordered, on Dec. 18, 2017, that
5 Plaintiff provide all answers and all requests for production to Defendants' First Set of
6 Interrogatories and Requests for Production, which were issued to Plaintiff over two years ago in
7 October 2015. Plaintiff was ordered as follows: "Plaintiff (is) to provide complete and full answers
8 to Interrogatories and Requests for Production, and execute a medical release form by December
9 21, 2017." The behavior being alleged by Plaintiff against the Defendants is egregious, and the
10 Discovery Master notes the length of time that has gone by with such claims remaining public and
11 unresolved, and without the Defendants receiving answers from Plaintiff per their rule right to
12 investigate and obtain information relevant to their defenses against such claims. On Defendants'
13 earlier motion to compel answers, the Discovery Master found that the inquiries made of the Plaintiff
14 by the Defendants were relevant inquiries, and, in many cases, near standard issue in a personal
15 injury action. The Discovery Master recommended that the Defendants be awarded their fees for
16 the necessity of preparation and presentation of the motion to compel. As noted, the Superior Court
17 signed that recommendation into effect on December 18, 2017.

18 There is no dispute that the ordered compliance date of Dec. 21st was not met by Plaintiff.
19 Instead, on December 20, 2017, Plaintiff's counsel filed a motion on her behalf. But the Plaintiff
20 herself provided no attested information supporting any extension. She provided no declaration,
21 testimony or evidence. Defendants objected to an extension on such grounds and moved for the
22 severe sanction of dismissal under Rule 37, pointing to not just the failure of compliance with the
23 order, but pointing also to the record as a whole since October 2015, while various indicia exist of

24 DISCOVERY MASTER'S REPORT AND RECOMMENDATIONS
REGARDING OUTSTANDING DISCOVERY - Page 2

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1 the Plaintiff's availability and pursuit of other litigation matters during this time. The Discovery
2 Master granted the Plaintiff additional time over the holiday to present her reply to this response
3 and request for dismissal, frankly anticipating some response from Plaintiff herself. On January 4,
4 after reply, the Discovery Master set this hearing for January 10, 2018. As of the reply, and as of
5 this hearing date, Plaintiff has provided no attested information.

6 At hearing, Plaintiff's counsel was unable to provide a date by which his client will provide
7 compliance. Counsel asserts attorney-client confidentiality in response to more pointed inquiries
8 by this Discovery Master about Plaintiff's status, whereabouts, and situation in not responding. The
9 best that can be gleaned is that Plaintiff has had no contact with her counsel since, at least, his filing
10 of the motion for an extension on her behalf.

11 **Sanction Issue.**

12 The record and argument shows Plaintiff's willful disregard of a court order without
13 reasonable excuse or justification, and it shows that no lesser sanctions will reasonably suffice to
14 motivate compliance. Defendants are, and continue to be, prejudiced in preparing for trial on very
15 serious allegations.

16 Specifically, the above case was filed in 2014. The Defendants' First Set of Interrogatories
17 and Requests for Production were served on the Plaintiff on October 6, 2015. They remain
18 outstanding. No answers have been provided, and no production has been provided.

19 The Court previously granted the Plaintiff additional time to complete discovery. The trial
20 date of December 7, 2017 was moved, and this Discovery Master appointed because of the motion
21 to compel process initiated in June 2017. The trial court thus already gave Plaintiff additional time
22 to respond. This Discovery Master also gave Plaintiff additional time to respond on its' compel
23 recommendation, as did the trial court on the ensuing compel order. Plaintiff has simply not

1 responded to these accommodations. She has not complied in any fashion with the order directing
2 answers, production or a medical release form. Even the timing of her counsel's request for more
3 time was the day before these materials were required. But even that extension request is not attested
4 to by her. The Discovery Master gave her additional time over the holidays to reply and Plaintiff
5 remains unresponsive. She has provided no signature, no release form, and no evidence of her
6 status, nor evidence of willingness to comply. She has not been in contact with her own counsel.
7 There is no evidence even that she is set up to *talk* with her counsel about answers. Plaintiff thus
8 offers no reasonable excuse nor justification for an order granting her an extension on her non-
9 compliance. There is no evidence that would support such an extension to the present order under
10 the circumstances, because there is no evidence demonstrating any effort being made by Plaintiff to
11 comply. Evidence does not show fair and reasoned resistance to discovery; it shows willful failure
12 to comply with discovery, now including an order.

13 Plaintiff's counsel argues an emergency situation, but this record does not comport with a
14 rational, expected, required, and open disclosure process of *Teter v. Deck*, 174 Wn.2d 207, 218, 274
15 P.3d 336, 341-42 (2012), when difficulties arose with expert witnesses. It does not comport with
16 open discussions for noncompliance as seen in *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 584
17 (2009), or those in *Burnet v. Spokane Ambulance*, 131 Wash. 2d 484, 933 P.2d 1036 (1997), as
18 amended on denial of reconsideration (June 5, 1997). This emergency follows a party who
19 previously ignored and failed to respond to requests, then submitted answers that evaded discovery
20 requests, via assertions that the requests were overbroad and not reasonably calculated to lead to the
21 discovery of admissible evidence, *Magana*, at 584, and who now violates an order. This cannot be
22 construed as other than willful behavior.

23
24

DISCOVERY MASTER'S REPORT AND RECOMMENDATIONS
REGARDING OUTSTANDING DISCOVERY - Page 4

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1 The Defendants are necessarily suffering severe prejudice from a continued inability to
2 prepare for trial. The actions Plaintiff claims occurred are egregious and are alleged to have taken
3 place in August 2014—three and a half years ago. The interrogatories still outstanding were issued
4 in the fall of 2015. Defendants are entitled to a full rules discovery period and orders throughout in
5 order to investigate and defend against egregious claims. Depriving them of this right because the
6 discovery cutoff is “not until August” is not well taken. Defendants cannot process discovery still
7 outstanding, much less follow up on that discovery with depositions or further inquiries, and thus
8 still cannot prepare for their trial without answers even to a now two-year old first set of discovery.
9 This has gone on since October 2015, without real explanation. Defendants have already lost over
10 two years of discovery and trial preparation. The prejudice being suffered is that of *preparing* for
11 trial, not necessarily *obtaining* a fair trial. *Hyundai, at 589.*

12 The Discovery Master cannot find that lesser sanctions will suffice in this situation. Plaintiff
13 has been accommodated by Defendants with additional time to respond last summer and again in
14 early fall, and this accommodation did not result in answers. The trial continuance from Dec. 7th,
15 the Court’s referral of the compel motion to this Discovery Master, the order of directing compliance
16 itself—all allowed Plaintiff additional time. The Court’s order awarding fees for non-compliance
17 affirmed the seriousness of this matter. Plaintiff has not responded to any of these accommodations.
18 Moreover, the Plaintiff herself has not said that any sanction will convince her to respond. She has
19 not provided any testimony. If Plaintiff had some intent to respond, there would and should have
20 been some effort on her part to so advise the Court, and to keep in communication with her counsel.
21 The evidence shows a lack of concern on her part to comply with this Court’s order. Under these
22 circumstances, the Discovery Master cannot reasonably find that lesser sanctions will suffice.

23
24 DISCOVERY MASTER’S REPORT AND RECOMMENDATIONS
 REGARDING OUTSTANDING DISCOVERY - Page 5

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Recommendations.

The Discovery Master recommendation is as follows:

Notwithstanding the foregoing, Plaintiff should be allowed to provide full, complete, unequivocal answers to all interrogatories and all production requested by Tuesday, January 16, at 5:00 p.m.¹. If she fails to meet that deadline and that quality criteria—complete, unequivocal answers and production by Tuesday at 5:00 p.m.—then I recommend that her claims be dismissed.

The Discovery Master recommends that further fees be imposed against Plaintiff and awarded to the Defendants for the continued necessity of their pursuit of answers to their 2015 first set of interrogatories. Ms. Schultz should provide a supplement on fees to the date of the entry of this recommendation, and those fees and costs should be awarded.

Dated this 12th day of January, 2018.



Special Discovery Master

¹ Monday was ordered, but it is a holiday.

APPENDIX C

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CN: 201402046841
SN: 60
PC: 6

FILED
FEB 12 2018
Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

<p>SARA RHODES, an individual, Plaintiff,</p>	<p>NO. 14-2-04684-1 PROPOSED ORDER AND STIPULATION</p>
<p>v.</p>	
<p>STADTMUELLER AND ASSOCIATES, P.S., d/b/a BARNETT, STADTMUELLER & ASSOCIATES, P.S., a Washington professional services corporation; RYAN BARNETT AKA RYAN MOOSBRUGGER and SHARON S. BARNETT AKA SHARON S. KIM, as individuals and a marital community,</p>	<p>SUBMITTING ADOPTION OF DISCOVERY MASTER RECOMMENDATION AND MOTIONS CHALLENGING <i>without oral argument</i></p>
<p>Defendants.</p>	

I. STIPULATION.

Defendants have moved this Court to adopt Discovery Master recommendations, dismiss the Plaintiff's claims, and award fees to Defendants; Plaintiff has filed a motion challenging the Special Master's recommendation, and requesting an extension of time regarding supplemental responses. The parties have agreed to submit the motions on the pleadings, as follows:

Per the Stipulation and Order Appointing a Discovery Master filed October 25, 2017, the report with the rulings and recommendations of the Special Master shall be

[PROPOSED] ORDER AND STIPULATION TO SUBMIT ON THE PLEADINGS
Page 1 of 4

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1 reviewed by the Court and may be adopted or revised as the court deems just, citing CR
2 53.3. *Id at p.2, para 3.* CR 53.3 refers to RCW 4.48.090.¹ Neither the order's CR
3 provision, nor statute, mandate oral argument for the court to enter judgment on the
4 discovery master's report, or the motions to adopt such.

5
6 The Stipulation and Order Appointing a Discovery Master does provide that for
7 any challenge and entry of the discovery master's recommendations, such as filed by the
8 Plaintiff here, then this motion *is* to be done without oral argument.²

9 Plaintiff has proposed, and Defendants herein agree, that Defendants' motion to
10 adopt the Discovery Master recommendations, dismiss Plaintiff's claims, and award
11 Defendants' fees and allocate costs, and Plaintiff's motion challenging Special Master's
12 recommendation and requesting an extension of time regarding supplemental responses,
13 should be heard without oral argument, and the Court should issue its ruling on the
14 pleadings.
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18 ¹ RCW 4.48.090 states as follows: "The court may affirm or set aside the report of a
19 referee appointed under RCW 4.48.020 either in whole or in part. If it affirms the report it
20 shall give judgment accordingly. If the report be set aside, either in whole or in part, the
21 court may make another order of reference as to all or so much of the report as is set aside,
22 to the original referees or others, or it may find the facts and determine the law itself and
give judgment accordingly. Upon a motion to set aside a report, the conclusions thereof
shall be deemed and considered as the verdict of the jury."

23 ² The order states, at pag 2:23-3:3: "In the event that a party wishes to challenge the
24 Special Master's recommendation for the resolution of a discovery dispute, the party will
25 bring a motion within five (5) court days following receipt of the submission of the
26 Special Master's report to the Court. Any opposition shall be filed within five (5) court
27 days thereafter, and no replies or oral argument will be permitted without leave of this
28 Court."

[PROPOSED] ORDER AND STIPULATION TO SUBMIT ON THE PLEADINGS

Page 2 of 4

MARY
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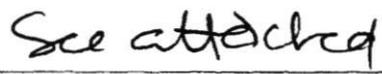
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DATED this 9th day of February, 2018.

MARY SCHULTZ LAW, P.S.

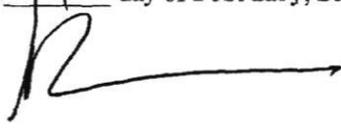

MARY SCHULTZ, WSBA #14198
Attorney for Defendants

ROBERTS FREEBOURN PLLC


KEVIN ROBERTS, WSBA #29473
Attorney for Plaintiff

II. ORDER.

1. Based on the foregoing, it is ORDERED that Defendants' Motion to adopt Discovery Master recommendations, dismiss the Plaintiff's claims, and award fees to Defendants, and Plaintiff's motion challenging Special Master's recommendation filed January 16, 2018, and requesting an extension of time regarding supplemental responses, will be heard on the pleadings without oral argument.

DONE IN OPEN COURT this  day of February, 2018.


HON. ANNETTE S. PLESE
Spokane County Superior Court Judge


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Spokane, WA 99031
Phone: 509.245.3522 • Fax: 509.245.3308

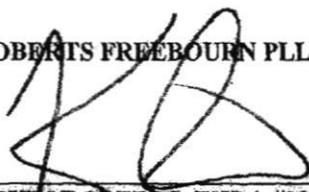
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DATED this 9th day of February, 2018.

MARY SCHULTZ LAW, P.S.

MARY SCHULTZ, WSBA #14198
Attorney for Defendants

ROBERTS FREEBOURN PLLC



KEVIN ROBERTS, WSBA #29473
Attorney for Plaintiff

II. ORDER

1. Based on the foregoing, it is ORDERED that Defendants' Motion to adopt Discovery Master recommendations, dismiss the Plaintiff's claims, and award fees to Defendants, and Plaintiff's motion challenging Special Master's recommendation filed January 16, 2018, and requesting an extension of time regarding supplemental responses, will be heard on the pleadings without oral argument.

DONE IN OPEN COURT this _____ day of February, 2018.

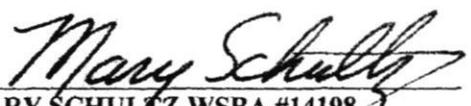
HON. ANNETTE S. PLESE
Spokane County Superior Court Judge



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Presented By:

MARY SCHULTZ LAW, P.S.


MARY SCHULTZ WSBA #14198
Attorney for Defendants

Approved as to form
Copy received:

ROBERTS FREEBOURN PLLC

KEVIN ROBERTS WSBA #29473
Attorney for Plaintiff


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Presented By:

MARY SCHULTZ LAW, P.S.

MARY SCHULTZ WSBA #14198
Attorney for Defendants

Approved as to form
Copy received:

ROBERTS FREEBOURN PLLC

KEVIN ROBERTS WSBA #29473
Attorney for Plaintiff

[PROPOSED] ORDER AND STIPULATION TO SUBMIT ON THE PLEADINGS
Page 4 of 4

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APPENDIX D

1 CN: 201402046841

2 SN: 59.1

3 PC: 4

4 FILED
5 FEB 09 2018
6 Timothy W. Fitzgerald
7 SPOKANE COUNTY CLERK

8 SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

9 SARA RHODES, an individual,

NO. 14-2-04684-1

10 Plaintiff,

~~PROPOSED~~ ORDER ADOPTING
DISCOVERY MASTER'S
RECOMMENDATIONS,
DISMISSING PLAINTIFF'S
CLAIMS and AWARDING FEES

11 v.

12 STADTMUELLER AND
13 ASSOCIATES, P.S., d/b/a BARNETT,
14 STADTMUELLER & ASSOCIATES,
15 P.S., a Washington professional services
16 corporation; RYAN BARNETT AKA
17 RYAN MOOSBRUGGER and SHARON
18 S. BARNETT AKA SHARON S. KIM,
19 as individuals and a marital community,

Judgment Summaries I and II

20 Defendants.

21 I. JUDGMENT SUMMARY I

- | | |
|---|--------------------------------------|
| 22 1. Judgment Creditor(s): | <u>Ryan and Sharon Barnett</u> |
| 23 2. Judgment Debtor(s): | <u>Kevin R. Roberts; Sara Rhodes</u> |
| 24 3. Judgment Principal -first order: | \$ 4062.50 |
| 25 4. Judgment Principal- second order: | \$ TBD |
| 26 5. Other Amounts (Interest Accrued): | \$ _____ |
| 27 6. TOTAL JUDGMENT AMOUNT: | \$ _____ |
| 28 7. Judgment to Bear Interest at: 12% | |
| 8. Attorney for Judgment Creditor | <u>Mary Schultz</u> |

18901100-1 

~~PROPOSED~~ ORDER ADOPTING DISCOVERY MASTER'S RECOMMENDATIONS
Page 1 of 4

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II. JUDGMENT SUMMARY II

1. Judgment Creditor(s):	<u>Mary Owen Consulting</u>
2. Judgment Debtor(s):	<u>Kevin R. Roberts; Sara Rhodes</u>
3. Judgment Principal -first order:	\$ TBD
4. Judgment Principal- second order:	\$ TBD
5. Other Amounts (Interest Accrued):	\$ _____
6. TOTAL JUDGMENT AMOUNT:	\$ _____
7. Judgment to Bear Interest at: 12%	
8. Attorney for Judgment Creditor	<u>Mary Owen</u>

III. BASIS.

The Court heard, on the pleadings, Defendants' motion to adopt the January 12, 2018 discovery master's recommendations, Plaintiff's motion challenging those recommendations, and Defendants response to that challenge requesting CR 11 sanctions, on February 9, 2018. Plaintiff Sara Rhodes is represented in her pleadings by counsel Kevin Roberts, and Defendants are represented by attorney Mary Schultz.

Having reviewed all pleadings and the file, and finding good cause as stated within the discovery master's review of these matters, including prior recommendations and court orders, the Court now ORDERS as follows:

IV. ORDER.

1. The Defendants' Motion to adopt the Discovery Master recommendations signed January 12, 2018, dismissing the Plaintiff's claims, and awarding fees to Defendants is GRANTED.

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2. Plaintiff's claims are dismissed with prejudice.

3. Defendants are awarded fees and costs, per the discovery master's first recommendation of December 10, 2017, in the amount of \$ 4,062.50 for fees incurred to the date of that recommendation, as approved by the discovery master. **Judgment hereby is entered on this sum.**

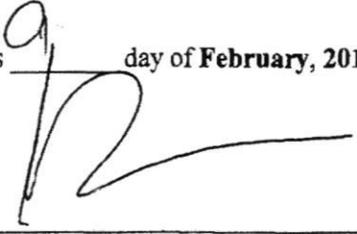
4. Within ten days of the date of this order, Defendants shall submit a supplemental fee request for all fees incurred from the December 10, 2017 recommendation to the date of the discovery master's second recommendation of January 12, 2018, as also recommended by the Discovery Master on January 12, 2018 (p.6: 9-11), and judgment will be entered on those fees as well.

5. The discovery master fees shall be paid by the Plaintiff, for the same reasons upon which the fee award in favor of Defendants is based, as the Plaintiff necessitated all of these proceedings by her refusal to respond to discovery or court orders. Moreover, those discovery master fees shall be assigned to Plaintiff's counsel jointly and severally. Per CR 11, this process could and should have been terminated far earlier had there been disclosure to the court by Plaintiff's counsel of his client's abandonment of her claims at some earlier point either before or during this discovery process. Plaintiff's counsel's continued pursuit of this litigation when his client had clearly abandoned her claims is contrary to CR 11, and he should bear the costs of the discovery master equally with his client.

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6. The Discovery Master's bill shall be submitted to this court and the parties within ten days, and judgment will issue.

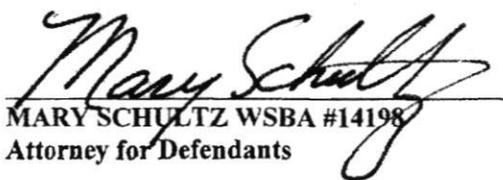
DONE IN OPEN COURT this 9 day of February, 2018.



HON. ANNETTE S. PLESE
Spokane County Superior Court Judge

Presented By:

MARY SCHULTZ LAW, P.S.


MARY SCHULTZ WSBA #14198
Attorney for Defendants

Approved as to form
Copy received:

ROBERTS FREEBOURN PLLC

See letter dated 2/9/18

KEVIN ROBERTS WSBA #29473
Attorney for Plaintiff



APPENDIX E

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CN: 201402046841
SN: 63
PC: 4

FILED
FEB 15 2018

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

SARA RHODES, an individual,

Plaintiff,

v.

STADTMUELLER AND ASSOCIATES, P.S., d/b/a BARNETT, STADTMUELLER & ASSOCIATES, P.S., a Washington professional services corporation; **RYAN BARNETT AKA RYAN MOOSBRUGGER** and **SHARON S. BARNETT AKA SHARON S. KIM**, as individuals and a marital community,

Defendants.

NO. 14-2-04684-1

~~FILED~~ **ORDER ADOPTING DISCOVERY MASTER'S RECOMMENDATIONS, DISMISSING PLAINTIFF'S CLAIMS and AWARDED FEES**

Judgment Summaries I and II

I. JUDGMENT SUMMARY I

- 1. Judgment Creditor(s): Ryan and Sharon Barnett
- 2. Judgment Debtor(s): Kevin R. Roberts; Sara Rhodes
- 3. Judgment Principal -first order: \$ 4062.50
- 4. Judgment Principal- second order: \$ TBD
- 5. Other Amounts (Interest Accrued): \$ _____
- 6. TOTAL JUDGMENT AMOUNT: \$ _____
- 7. Judgment to Bear Interest at: 12%
- 8. Attorney for Judgment Creditor Mary Schultz

18901245-7 *MS* *JS*

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II. JUDGMENT SUMMARY II

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|--------------------------------------|--------------------------------------|
| 1. Judgment Creditor(s): | <u>Mary Owen Consulting</u> |
| 2. Judgment Debtor(s): | <u>Kevin R. Roberts; Sara Rhodes</u> |
| 3. Judgment Principal -first order: | \$ TBD |
| 4. Judgment Principal- second order: | \$ TBD |
| 5. Other Amounts (Interest Accrued): | \$ _____ |
| 6. TOTAL JUDGMENT AMOUNT: | \$ _____ |
| 7. Judgment to Bear Interest at: 12% | |
| 8. Attorney for Judgment Creditor | <u>Mary Owen</u> |

III. BASIS.

The Court heard, on the pleadings, Defendants' motion to adopt the January 12, 2018 discovery master's recommendations, Plaintiff's motion challenging those recommendations, and Defendants response to that challenge requesting CR 11 sanctions, on February 9, 2018. Plaintiff Sara Rhodes is represented in her pleadings by counsel Kevin Roberts, and Defendants are represented by attorney Mary Schultz.

Having reviewed all pleadings and the file, and finding good cause as stated within the discovery master's review of these matters, including prior recommendations and court orders, the Court now ORDERS as follows:

IV. ORDER.

1. The Defendants' Motion to adopt the Discovery Master recommendations signed January 12, 2018, dismissing the Plaintiff's claims, and awarding fees to Defendants is GRANTED.

~~PROPOSED~~ ORDER ADOPTING DISCOVERY MASTER'S RECOMMENDATIONS
Page 2 of 4

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2. Plaintiff's claims are dismissed with prejudice.

3. Defendants are awarded fees and costs, per the discovery master's first recommendation of December 10, 2017, in the amount of \$ 4,062.50 for fees incurred to the date of that recommendation, as approved by the discovery master. **Judgment hereby is entered on this sum.**

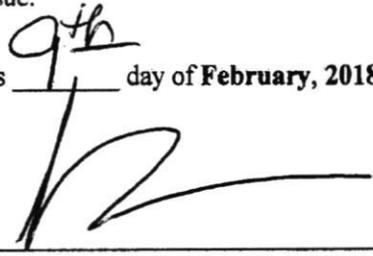
4. Within ten days of the date of this order, Defendants shall submit a supplemental fee request for all fees incurred from the December 10, 2017 recommendation to the date of the discovery master's second recommendation of January 12, 2018, as also recommended by the Discovery Master on January 12, 2018 (p.6: 9-11), and judgment will be entered on those fees as well.

5. The discovery master fees shall be paid by the Plaintiff, for the same reasons upon which the fee award in favor of Defendants is based, as the Plaintiff necessitated all of these proceedings by her refusal to respond to discovery or court orders. Moreover, those discovery master fees shall be assigned to Plaintiff's counsel jointly and severally. Per CR 11, this process could and should have been terminated far earlier had there been disclosure to the court by Plaintiff's counsel of his client's abandonment of her claims at some earlier point either before or during this discovery process. Plaintiff's counsel's continued pursuit of this litigation when his client had clearly abandoned her claims is contrary to CR 11, and he should bear the costs of the discovery master equally with his client.

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6. The Discovery Master's bill shall be submitted to this court and the parties within ten days, and judgment will issue.

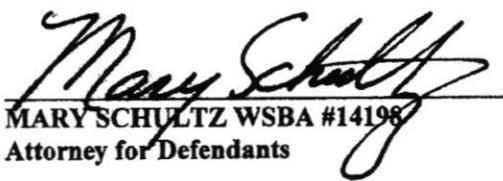
DONE IN OPEN COURT this 9th day of February, 2018.



HON. ANNETTE S. PLESE
Spokane County Superior Court Judge

Presented By:

MARY SCHULTZ LAW, P.S.



MARY SCHULTZ WSBA #14198
Attorney for Defendants

*Approved as to form
Copy received:*

ROBERTS FREEBOURN PLLC

No oral argument / Filed objection only 

KEVIN ROBERTS WSBA #29473
Attorney for Plaintiff

APPENDIX F

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FILED

FEB 28 2018

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

CN: 201402046841

SN: 64

PC: 3

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

SARA RHODES, an individual,
Plaintiff,

v.

STADTMUELLER AND ASSOCIATES, P.S., d/b/a BARNETT, STADTMUELLER & ASSOCIATES, P.S., a Washington professional services corporation; RYAN BARNETT AKA RYAN MOOSBRUGGER and SHARON S. BARNETT AKA SHARON S. KIM, as individuals and a marital community,

Defendants.

NO. 14-2-04684-1

~~PROPOSED~~ ORDER ON SUPPLEMENTAL FEES AND FEE BILL AND DISCOVERY MASTER FEES

Judgment Summaries III and IV

I. JUDGMENT SUMMARY III

- 1. Judgment Creditor(s): Ryan and Sharon Barnett
- 2. Judgment Debtor(s): Kevin R. Roberts; Sara Rhodes
- 3. Judgment Principal -first order *previously entered 02/09/18*: \$ See 2/09/18 order
- 4. Judgment Principal- second order: \$ 7,477.50
- 5. Other Amounts (Interest Accrued): \$ _____
- 6. TOTAL JUDGMENT AMOUNT: \$ 7,477.50
- 7. Judgment to Bear Interest at: 12%
- 8. Attorney for Judgment Creditor Mary Schultz

18901574-0 *WJ* *AN*

[PROPOSED] ORDER ON SUPPLEMENTAL FEES AND FEE BILL AND DISCOVERY MASTER FEES

Page 1 of 3

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II. JUDGMENT SUMMARY IVI

- 1. Judgment Creditor(s): Mary Owen Consulting
- 2. Judgment Debtor(s): Kevin R. Roberts; Sara Rhodes
- 3. Judgment Principal -first order *previously entered 02/09/18*: \$ See 02/09/18 order
- 4. Judgment Principal- second order: \$ 3,812.50
- 5. Other Amounts (Interest Accrued): \$ _____
- 6. TOTAL JUDGMENT AMOUNT: \$ 3,812.50
- 7. Judgment to Bear Interest at: 12%
- 8. Attorney for Judgment Creditor Mary Owen

III. BASIS.

On February 15, 2018, the Court entered its "Order Adopting Discovery Master's Recommendations, Dismissing Plaintiff's Claims and Awarding Fees," entering Judgment Summaries I and II. At para. 4 of that order, Defendants were directed to submit, within ten days, a supplemental fee request for any and all fees incurred from December 10, 2017 to the date of the Discovery Master's second recommendation of January 12, 2018, and the Discovery Master fees, for judgment.

Having reviewed the supplemental pleadings now filed, and the file, the Court ORDERS as follows:

IV. ORDER.

- 1. The Defendants' Supplemental Fee Bill and Discovery Master Fees are approved. Judgments shall issue for those fees bearing interest at 12% per annum.



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2. Defendants are awarded judgment for supplemental fees and costs in the amount of \$7,477.50. **Judgment hereby is entered on this sum.**

3. The Discovery Master, Mary Owen, is awarded fees and costs in the amount of \$3,812.50. **Judgment hereby is entered on this sum.**

4. Per the Court's February 15, 2018 Order, Plaintiff and Plaintiff's counsel are jointly and severally liable for these judgments, for the reasons stated in the February 15, 2018 order.

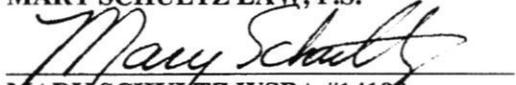
DONE IN OPEN COURT this 27 day of **February, 2018.**



HON. ANNETTE S. PLESE
Spokane County Superior Court Judge

Presented By:

MARY SCHULTZ LAW, P.S.


MARY SCHULTZ WSBA #14198
Attorney for Defendants

Approved as to form
Copy received:

ROBERTS FREEBOURN PLLC

KEVIN ROBERTS WSBA #29473
Attorney for Plaintiff

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APPENDIX G

CN: 201402046841

SN: 83

PC: 4

FILED

JUN 13 2018

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

SARA RHODES, an individual,)	
)	NO. 14-2-04684-1
Plaintiff,)	
)	
Vs.)	
)	OPINION ON RECONSIDERATION
STADTMUELLER AND ASSOCIATES,)	ON MOTION TO AMEND JUDGMENT
PS, RYAN BARNETT aka)	ENTERED 02/28/2018
MOOSEBRUGGER and SHARON)	
BARNETT aka SHARON KIM,)	

BACKGROUND

On January 18, 2018, Defendants moved the Court for a "Motion to Adopt Discovery Master Recommendations, Dismiss Claims, Award Defendant's Fees and Cost, and Assess Discovery Master Fees." Plaintiff was given notice of the motion and paperwork. The Hearing was set for February 9, 2018.

On January 23, 2018, Plaintiff moved to "Challenge the Discovery Master's recommendations and for a Motion to extend time for responses." This was, also, noted for the February 9, 2018 hearing date.

On January 29, 2018, Defendant filed a response to Plaintiff's request and noted that the Discovery Master's appointment order signed by the Court on October 25, 2017, stated no oral argument will be permitted without leave of the Court. In this same response brief, Defendant asked for CR 11 sanctions to be applied "to mitigate the harm caused to the Defendants by unwarranted litigation". (*See Defendant's response filed January 29, 2018 Document 57*). Defendants' attorney filed a Declaration for the basis of her requests.

On February 9, 2018, Plaintiff's attorney wrote a letter to the Court advising that he had noted his challenge to the adoption of the discovery master's recommendations and his request for reconsideration of her ruling, but he did agree there should be no oral argument presented as stipulated in the order for discovery master. Plaintiff's counsel did not address the Defense request to include him personally on the judgment, itself, nor did he note any objection to her proposed judgment summary.

On February 9, 2018, the Court signed Defendant's proposed order adopting the discovery master's recommendations and dismissing the Plaintiff's claims. Included in that was the only proposed judgment which included the Plaintiff's attorney, Kevin Roberts, as the judgment debtor for CR 11 sanctions. Though Plaintiff's counsel wasn't in the original Order and Stipulation (*Document 60, filed February 12, 2018*), he was included in the judgment summary (*Document 59.1, filed February 9, 2018*). This Judgment Summary left the attorney fees blank and for it to be addressed later.

On February 20, 2018, Defense Counsel noted a hearing for February 27, 2018 for amendment of the Judgment to include the costs of attorney fees. Notice was sent to Plaintiff's counsel. Plaintiff's counsel received notice of the motion by email on February 20, 2018 and a copy of the proposed amended judgment and cost bill which included his name as Judgment Debtor along with his client. At no time did the Court receive any objection or notification that Plaintiff's counsel was objecting to the requested amended judgment.

On February 27, 2018, this Court signed the proposed Amended Judgment Summary which included Plaintiff's Counsel as a judgment debtor. The Court emailed copies of the order to Defense and, in turn, it was emailed to Plaintiff's counsel by Defense Paralegal Ingram on the same day.

On March 9, 2018, the Court received notice of the Plaintiff's appeal to Division III.

On May 4, 2018, Plaintiff's counsel, Kevin Roberts, filed a motion to amend the judgment and order. In the motion, Attorney Roberts indicated the Discovery Master had not included him in her ruling nor was he sanctioned in that ruling. Mr. Roberts indicated that he had misread the judgment and assumed he was listed only as the judgment debtor's attorney.

On May 11, 2018, Defendant responded to the Plaintiff's requested motion. The Defendant now argues that Mr. Roberts had received notice of her request not once but for two different hearings and had received all the documentation including her proposed orders and he chose not to respond.

On May 18, 2018, the Court heard argument from the attorneys on this issue and took the matter under advisement.

The Court now issues an opinion on this issue.

OPINION

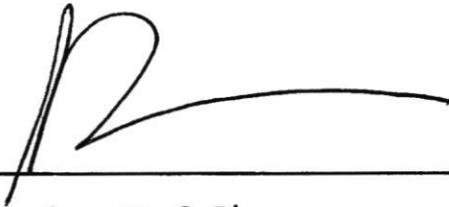
After reviewing the paperwork submitted for the original hearing, the Court noted that the first motion filed and noted by the Defendant indicated the Court was going to hear a motion to ***Adopt the Ruling by the Discovery Master***. There was no mention in the Discovery Master's ruling that ordered CR11 sanctions on Plaintiff's Attorney. The Court understands that Defendants are frustrated with the continued accommodation to the Plaintiff and the time frame involved since this case was filed in 2014. The Court also recognizes this is one of the justification for the Discovery Master finally ruling for Defendants and dismissed the Plaintiff's suit.

Defendant also argues that this case in on appeal and the Court shall not alter the issue on appeal. However, the Plaintiff is appealing the Discovery Masters full on the dismissal and the award of fees. The Court is bound by RAP 7.2 and the Court is not changing the adoption of the Discovery Masters decision. The Washington Supreme Court has ruled that hearing and granting a motion under CR 60 while pending appeal for the same case is procedurally correct. *Metro. Park Dist. V. Griffith* 106 Wn.2d 425, 439 (1986). In another case, the Court has found that if the motion does not alter the very issue on appeal then modifications can be permissible. *Marquis v. Spokane*, 76 Wn. App. 853 (1995).

The Court finds there is good cause to amend the judgment and find that only the Plaintiff's name, Sara Rhodes, shall be listed as the judgment debtor. The Court, also, finds good cause to impose costs on Mr. Roberts for Defendants time in having to respond and appear for this motion. Reasonable costs shall be granted to the Defendant's attorney.

Mr. Roberts shall prepare an amended judgment and order and forward to Ms. Schultz for signature. Once signed and amended, Ms. Schultz shall submit her costs to Mr. Roberts for reasonable fees. Should there be no agreement, the Court will set a presentment hearing.

DATED this 12th day of June, 2018.

A handwritten signature in black ink, appearing to be 'AP', is written over a horizontal line. The signature is stylized and cursive.

Judge Annette S. Plese

APPENDIX H

FILED
Court of Appeals
Division III
State of Washington
12/10/2018 3:20 PM

CN: 201402046841

1 **SN: 87**

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FILED

SEP -7 2018

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE SPOKANE COUNTY

9 SARA RHODES, an individual,

Case No.: 14-2-04684-1

10 Plaintiff,

11 vs.

AMENDED JUDGMENT AND ORDER ON
SUPPLEMENTAL FEES AND FEE BILL
AND DISCOVERY MASTER FEES

12 BARNETT & ASSOCIATES, INC., a
13 Washington corporation, and RYAN
14 BARNETT AKA RYAN MOOSBRUGGER, a
15 married individual

Judgment Summaries III and IV

16 Defendant

17 **I. JUDGMENT SUMMARY III**

- | | | |
|----|--|------------------------------|
| 18 | 1. Judgment Creditor(s): | Ryan Barnett |
| 19 | 2. Judgment Debtor(s): | Sara Rhodes |
| 20 | 3. Judgment Principal – first order <i>previously entered 02/09/18</i> : | \$ <u>See 02/09/18 order</u> |
| 21 | 4. Judgment Principal – second order: | \$ 7,477.50 |
| 22 | 5. Other Amounts (Interest Accrued): | \$ _____ |
| 23 | 6. TOTAL JUDGMENT AMOUNT: | \$ 7,477.50 |
| 24 | 7. Judgment to Bear Interest at: | 12% |
| 25 | 8. Attorney for Judgment Creditor: | Mary Schultz |

17 **II. JUDGMENT SUMMARY IV**

189015740

- | | | |
|----|--------------------------|----------------------|
| 24 | 1. Judgment Creditor(s): | Mary Owen Consulting |
| 25 | 2. Judgment Debtor(s): | Sara Rhodes |

AMENDED JUDGMENT AND ORDER ON
SUPPLEMENTAL FEES AND FEE BILL AND
DISCOVERY MASTER FEES - 1

18906755-3 P92
ROBERTS | FREEBOURN, PLLC
1325 W. 1st Ave., Ste. 303
Spokane, WA 99201
(509) 381-5262

1	3. Judgment Principal – first order <i>previously entered 02/09/18:</i>	\$ <u>See 02/09/18 order</u>
2	4. Judgment Principal – second order	\$ 3,812.50
3	5. Other Amounts (Interest Accrued):	\$ _____
4	6. TOTAL JUDGMENT AMOUNT:	\$ 8,812.50
5	7. Judgment to Bear Interest at:	12%
6	8. Attorney for Judgment Creditor	Mary Owen

III. BASIS

18906755-3

On February 15, 2018, the Court entered its "Order Adopting Discovery Master's Recommendations, Dismissing Plaintiff's Claims and Awarding Fees," entering Judgment Summaries I and II. At para. 4 of that order, Defendants were directed to submit, within ten days, a supplemental fee request for any and all fees incurred from December 10, 2017 to the date of the Discovery Master's second recommendation of January 12, 2018, and the Discovery Master fees, for judgment.

Having reviewed the supplemental pleadings now filed, and the file, the Court ORDERS as follows:

IV. ORDER

1. The Defendants' Supplemental Fee Bill and Discovery Master Fees are approved. Judgments shall issue for those fees bearing interest at 12% per annum.
2. Defendants are awarded judgment for supplemental fees and costs in the amount of \$7,477.50.
3. The Discovery Master, Mary Own, is awarded fees and costs in the amount of \$3,812.50.
4. Per the Court's February 15, 2018 Order, Plaintiff Sara Rhodes is liable for these judgments, for the reasons stated in the February 15, 2018 Order.

//////

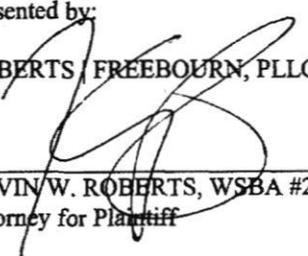
AMENDED JUDGMENT AND ORDER ON
SUPPLEMENTAL FEES AND FEE BILL AND
DISCOVERY MASTER FEES - 2

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DONE IN OPEN COURT this ^{4th} day of September, 2018.


THE HONORABLE ANNETTE S. PLESE

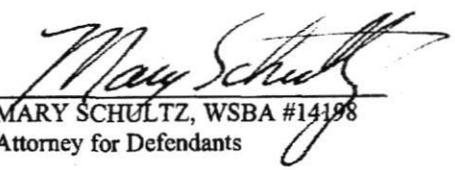
Presented by:


ROBERTS | FREEBOURN, PLLC

KEVIN W. ROBERTS, WSBA #29473
Attorney for Plaintiff

Approved as to form:
Presentment waived:

MARY SCHULTZ LAW, P.S.


MARY SCHULTZ, WSBA #14198
Attorney for Defendants

AMENDED JUDGMENT AND ORDER ON
SUPPLEMENTAL FEES AND FEE BILL AND
DISCOVERY MASTER FEES - 3

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CN: 201402046841
SN: 88
PC: 2

FILED
SEP -7 2018
Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

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

SARA RHODES, an individual,

Plaintiff,

vs.

BARNETT & ASSOCIATES, INC., a
Washington corporation, and RYAN
BARNETT AKA RYAN MOOSBRUGGER, a
married individual

Defendant

Case No.: 14-2-04684-1

ORDER RE: OPINION ON
RECONSIDERATION ON MOTION TO
AMEND JUDGMENT ENTERED
02/28/2018

THIS MATTER having come regularly before the Court without oral argument, and
pursuant to the Opinion of Reconsideration on Motion to Amend Judgment entered February 28,
2018. This Court considered the pleadings on file herein and the motion of the parties.

IT IS HEREBY ORDERED:

1. That only the Plaintiff's name, Sara Rhodes, shall be listed as the judgment debtor *on ~~the~~ judgment summaries III + IV, however;*
2. Good cause exists to impose costs on Mr. Roberts for Defendants time in having
to respond and appear for this motion and reasonable costs shall be granted to the Defendant's
attorney in the amount of \$6,082.50, *and end against Mr. Roberts personally.*

715

ORDER RE: OPINION ON RECONSIDERATION ON
MOTION TO AMEND JUDGMENT ENTERED
02/28/2018 - 1

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~~3. Mr. Roberts shall prepare an amended judgment and order and forward to Ms. Schultz for signature.~~ *See # 2 above.*

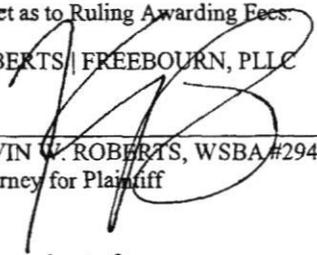
Should there be no agreement, the Court will set a presentment hearing.

DONE IN OPEN COURT this 4 day of September, 2018.



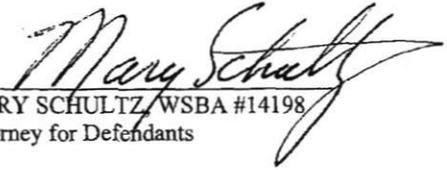
THE HONORABLE ANNETTE S. PLESE

Presented By:
Object as to Ruling Awarding Fees.
ROBERTS | FREEBOURN, PLLC



KEVIN W. ROBERTS, WSBA #29473
Attorney for Plaintiff

Approved as to form:
Presentment waived:
MARY SCHULTZ LAW, P.S.



MARY SCHULTZ / WSBA #14198
Attorney for Defendants

ORDER RE: OPINION ON RECONSIDERATION ON
MOTION TO AMEND JUDGMENT ENTERED
02/28/2018 - 2

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Spokane, WA 99201
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MARY SCHULTZ LAW PS

April 21, 2019 - 9:21 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35920-4
Appellate Court Case Title: Sara Rhodes v. Stadtmueller & Associates, et al
Superior Court Case Number: 14-2-04684-1

The following documents have been uploaded:

- 359204_Briefs_20190421210013D3283008_7762.pdf
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A copy of the uploaded files will be sent to:

- kevin@robertsfreebourn.com
- lauren@robertsfreebourn.com

Comments:

Respondents' Response Brief and Cross Appeal with Appendices A-H

Sender Name: Mary Schultz - Email: Mary@MSchultz.com
Address:
2111 E RED BARN LN
SPANGLE, WA, 99031-5005
Phone: 509-245-3522 - Extension 306

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