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DIVISION II

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43704-0-II

STATE OF WASHINGTON

DIVISION II OF THE COURT OF APPEALS ^{BY} _____
OF THE STATE OF WASHINGTON DEPUTY

ARTHUR WEST,

Appellant,

v.

PORT OF TACOMA, et al.

Respondents.

RESPONSE BRIEF OF PORT OF TACOMA

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ORIGINAL

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I. INTRODUCTION

In 2009, this case started as one of several lawsuits Appellant filed over the Port of Tacoma's due diligence actions to assess potential joint development with the Port of Olympia in Thurston County, named South Sound Logistics Center (SSLC).

Despite Appellant's attempted forays into substantive issues not addressed by the Trial Court, this appeal is confined to the issue of the Trial Court's (proper) exercise of inherent power to discretionarily dismiss a case. This appeal scope does not include any substantive review of land use and public records issues, as the Trial Court did not address them, prior to dismissal. This Appeals Court applies an abuse of discretion standard of review to the inherent dismissal. The Appellant fails to address or satisfy the abuse of discretion review standard, nor can he, under these facts.

The Record shows that Appellant had opportunity before at least four different Courts to pursue any perceived Appellant grievances with the Port of Tacoma over the Port's due diligence for a potential South Sound Logistics Center (SSLC). But in every case, Appellant's actions or inactions prompted the Pierce County Superior Court (twice) and Western District of Washington to each

independently issue the remedy of discretionary dismissal.¹ A fourth tribunal – the Supreme Court of Washington – summarily dismissed the Appellant’s ill-conceived “Personal Restraint Petition” with which the Appellant attempted to avoid paying a contempt order issued by the Trial Court in this case. These dismissals, due to Appellant’s choice of actions /inactions, are no coincidence.

Despite the clear chorus of four different Courts, an unambiguous record of misconduct and an insurmountable standard of review, Appellant brings this appeal, requiring the Port and taxpayers to defend the Trial Court’s proper dismissal. Even in the files of this Appeals Court, Appellant unequivocally self-described his actions in this case as “grasping at straws.” This Appeals Court should agree with that self characterization and dismiss this appeal. In addition, the Port timely requests its fees and costs for responding to this frivolous appeal per RAP 18.9.²

¹ Further, according to his Pre-filing Bar Order that the Western District of Washington issued on these merits, Mr. West’s is now *persona non grata* in the Western District of Washington.

² RAP 18.9(a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or other authorized person preparing a verbatim report of proceedings, who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.

II. RESPONDENT RESTATEMENT OF FACTS

Appellant West filed this case over four years ago, seeking Public Records Act and other relief. The facts of this case necessarily require summaries of other related litigation pursued by Mr. West.

Initial West- Port of Tacoma SSLC PRR Case, Pierce County Cause No. 08-2-043121-1, Division II Cause 43004-5.

In 2008, Mr. West submitted a massive public records request with the Port of Tacoma, seeking all records related to the Port's potential planned South Sound Logistics Center. CP 411. The South Sound Logistics Center (SSLC), the centerpiece of West's records request, referred to the joint planning process undertaken by the Ports of Tacoma and Olympia to evaluate an integrated cargo handling and transportation facility that facilitates the movement of freight from one mode of transport to another at a terminal specifically designed for that purpose. *Id.* Mr. West's public record request was broad, requesting "all records associated with the Project." The request generated a massive records search by the Port of Tacoma. *Id.* The Port actively gathered, reviewed and released records responsive to his request, which generated **tens of thousands** of pages of possible responsive records. *Id.*

Even while the Port was responding to his request, Appellant West filed his PRA suit against the Port, and moved prematurely for show cause. See Pleadings on file from *West v. Port of Tacoma*, Pierce County Cause No. 08-2-043121-1, now Div. II Cause No. 43004-5. The Port opposed. The Pierce County Court (Judge Fleming) set a records release schedule in keeping with the massive PRA request, and the Port fully complied. *Id.* Ultimately, this initial West's SSLC PRR case was dismissed based on Mr. West's failure to prosecute that suit (lapse of 18 months with no Plaintiff action and willful disregard of court Orders) and Mr. West's failure to abide by Case Schedule. *Id.*, CP 411-412. See also Order in Pierce County Cause No 08-2-043121-1 dated January 25, 2011, CP 420-423.

Mr. West appealed that dismissal in January, 2010 but delayed filing his Opening Brief until March 30, 2012. See Docket for Court of Appeals, II-430045 CP 423. The Court struck West's March 30, 2012 Brief, and, it was not until December, 2012, nearly two years after the Notice of Appeal, that the Court accepted Mr. West's Fourth Opening Brief— due to various RAP and ER defects with the various iterations the Appellant filed. See Dkt. in Div. II Cause No. 43004-5, attached as **Ex. 1**.

The Appellant's own description of **this** case in his Fourth Appellant Opening brief in that initial SSLC PRA case is accurate and damning to this instant appeal:

What happened next is hard to understand. The undersigned has tremendous respect for Mr. West's public records act activism and his abilities as a pro se litigant, but Mr. West engaged in what can be described as "**flailing around.**" It appears that Mr. West, frustrated by lengthy delays in this – a public records case – **grasped at straws** and filed multiple attempts in multiple fora to try to compel some kind of a final, appealable order in this case, or, alternatively, a ruling on Mr. West's public record acts [sic] claims.

For example, Mr. West filed an action [this instant case] on October 6, 2009, in Pierce County Superior Court, Cause No. 09-2-14216-1, where the relief that he sought included "Writ of Quid Warranto" in regard to "the clear and undeniable forfeiture of the office of Pierce County judge by Frederick Fleming due to his failing and refusing to issue a determination in Pierce County Cause No. 08-2-043121-1 where plaintiff is seeking disclosure of public records related to the SSLC fiasco."

Appellant's Opening Br. in West v. Port of Tacoma, Div. II Cause No. 43004-5. Emphasis provided, citations omitted, grammar original. Excerpt attached as **Ex. 2.**

**Present West Port of Tacoma SSLC PRR Case
– "Grasping at Straws"
Pierce County Cause No. 09-2-14216-1**

While Appellant West suspended any action on his initial Port of Tacoma SSLC PRA suit, he then filed this **present** and redundant suit on Oct. 6, 2009. CP 1-7. Mr. West again alleged

(among other things) that the Port of Tacoma and various officials violated the Public Disclosure Act. *Id.* Mr. West describes that the centerpiece issue is his complaint with Superior Court Judge Frederick Flemings handing of Mr. West's **initial & on-going SSLC** Public Records Act Complaint, discussed above:

3.4 On or about April 15 of 2008, a Public Records case involving a regional Rail Logistics Center proposed by the Port of Tacoma was submitted to the then Honorable Judge Fleming for disposition, in Pierce County Cause No. 08-2-04312-1.

3.5 Despite the passage of well over a year, and despite the express terms of RCW 42.56.550 which require **the Court** to conduct an in camera review, **respondent Fleming** has willfully failed to decide the issue presented for his determination, and has deliberately obstructed and delayed judicial review. He has also, by his actions, entered an order that required a private contractor to conduct the in camera review. This was unlawful in such review is required to be conducted **by the Court** under the express terms of the aforementioned State Law.

3.6 By such actions, **respondent Fleming has forfeited his office** under the express terms of RCW 2.08.240, and Article 4, Section 20 of the Constitution of the State of Washington.

3.7. A **Writ of Quo Warranto is the proper remedy to effect the ouster of an individual unlawfully exercising the franchise of Judge.**

Id. CP 3. Mr. West also included a SSLC Public Records Act complaint which duplicates the requests made in his initial SSLC PRR case. *Id.* CP 5.

On 10/30/2009, the Court (Honorable Judge Hogan)

granted Pierce County's Motion and dismissed the County³ from the suit. CP 434-435. On November 2, 2009, Judge Hogan recused herself, with the Case to be assigned to a visiting Judge. CP 436. Thereafter on January 26, 2010, the case was assigned to this Court Visiting Grays Harbor Judge Edwards⁴. CP 427.

On May 8, 2010, despite West's knowledge of Port's counsel's Unavailability, and while the Port Counsel was out of state, Appellant advised Port Counsel that he intended to note a motion hearing on May 10, 2010. CP 341. Over Port Counsel's protest, Appellant pursued a Motion and Show Cause in her absence, but failed to confirm the hearing, and failed to advise the Court that Ms. Lake had made her unavailability known. See Plaintiff's Notice of Issue, CP __,⁵ Plaintiff's Motion to Amend and For Order to Show Cause, CP __,⁶ Port's Surreply to Show Cause re- Public Records & Subjoined Dec'l of Counsel, CP __,⁷ and Port Reply

³ The Appellant sued County Prosecutor Mark Lindquist ostensibly to force Mr. Lindquist to prosecute various of the Appellant's alleged bad actors.

⁴ Lapses of time between court rulings and the date of filing reflects time between action in Grays Harbor and transmission of the pleadings to Pierce County for filing.

⁵ The Port will file a supplemental designation of record concurrently with this Brief. RAP 9.6(a).

⁶ The Port will file a supplemental designation of record concurrently with this Brief. RAP 9.6(a).

⁷ The Port will file a supplemental designation of record concurrently with this Brief. RAP 9.6(a).

Re; Public Records, CP ____.⁸ Despite being out of state and given less than two days notice of the intended hearing, Port counsel filed and served on West objection to the hearing noting Port had not been properly served or the hearing confirmed, and reply to the show cause. *Id.*

West proceeded with the May 10th hearing and did not advise the Court of Counsel's absence, objection and/or response to the show cause hearing. The Court signed the Show Cause Order setting return hearing for June 7, 2010. The Court's May 10, 2010 Order was not filed in Pierce County Superior Court until May 18, 2010. CP 342. It was not until eleven days later on May 21, 2010 that West provided oblique notice to Port counsel via email that a Show Cause Order had issued, See **Attachment 1**, CP 254. Port Counsel moved to Reconsider and to vacate the Show Cause Order, and filed Motion to Dismiss. *Id.* Although noted for June 7, the Reconsideration hearing was set over to June 18, 2010 at which time the Trial Court verbally vacated the May 10 Show Cause Order. See June 18, 2010 Clerks Minute Entry⁹:

⁸ The Port will file a supplemental designation of record concurrently with this Brief. RAP 9.6(a).

⁹ The Port will file a supplemental designation of record concurrently with this Brief. RAP 9.6(a).

Cause comes on for hearing at 1:10 p.m.. Petitioner is appearing in person and is not represented by counsel . Respondents are not appearing in person and are represented by counsel * .

* Carolyn Lake is present representing the Port of Tacoma.

Statement: Mr. West

Court vacates the May 10 Order to Show Cause.

Parties and counsel to contact the Grays Harbor Court Administrator to have this matter re-noted when ready.

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The Port's Motion to Dismiss was noted for July 26, 2010¹⁰.

At the July 26, 2010 at hearing on the Port's Motions, Judge David Edwards verbally granted the Port's motion to dismiss the Complaint in part (based on duplicative claims), and signed the Order vacating the May 10 Show Cause Order. CP 340-344. The Court also found Mr. West in contempt at that hearing, and ultimately awarded terms against Mr. West in the amount of \$1,500 payable to the Port of Tacoma. The Court conditioned further proceedings in the case on Mr. West's payment of those terms. *Id.* at 14:4 – 14:17. CP 451. See also July 26, 2010 Clerks Minute Entry CP _:¹¹

¹⁰ See June 30 Note of Issue Port Motion to Dismiss. The Port will file a supplemental designation of record concurrently with this Brief. RAP 9.6(a).

¹¹ The Port will file a supplemental designation of record concurrently with this Brief. RAP 9.6(a).

The Court grants a partial dismissal and finds the Port to be entitled to terms.

Judge Edwards finds Mr. West to be in contempt, due to a verbal outburst. A contempt hearing is scheduled for Monday, August 2nd, 2010 at 8:30 a.m.

THE COURT: Do not interrupt me again, do you [the Appellant] understand?

If you wish to have these Motions that you have previously filed heard by this court, you need to properly note them for hearing. The reason the order to show cause that was entered on May 10th was vacated, was because you did not properly note that motion for hearing. And you failed to disclose to me, communications you had with opposing counsel wherein you knew, one, that they were unavailable, and secondly, that they had responded, and you failed to inform me of that.

Tr. of July 26, 2010 Hearing, 13:11-13:21, CP 450-451.

Visiting Judge Edwards set a contempt hearing for August 2, 2010 and asked Ms. Lake to draw up a proposed Order memorializing the rulings. Mr West failed to appear at the August 2, 2010 hearing; the Court signed the Order of Contempt, and set over presentment of the Order of Partial Dismissal to August 9. See August 2, 2010 Clerks Minute Entry CP __¹². On August 9, 2010, Mr West again failed to appear, and the Court signed the Order Partial

¹² The Port will file a supplemental designation of record concurrently with this Brief. RAP 9.6(a).

Dismissal (filed August 13, 2010). *Id.* at 14:21-22. CP 452. See also August 9, 2010 Clerks Minute Entry CP _¹³.

From July 2010 through April 2012, Mr. West failed to pay his sanctions and took no further action in this case. Instead of curing his contempt and pursuing his remaining claims in this Cause, immediately after the Trial Court signed the Order of Partial Dismissal on July 26, 2010, Mr. West initiated yet two more related but baseless cases.

**Personal Restraint Petition
Supreme Court of Washington
Cause No. 84837-8**

On 26 July 2010, the same day as the Judge Edward's ruling, Mr. West filed a "Personal Restraint Petition and Writ of Habeus Corpus" citing to the Trial Court (Judge Edwards) and also naming Port of Tacoma Legal counsel claiming Counsel acted as "illegal Special Prosecutor". See West Complaint in Washington Supreme Court Cause No. 84837-8, CP 449-453. In Mr. West's "Declaration Re Filing of Criminal Citation by 'Special' Prosecutor Lake and Request for Emergency Stay," of Aug. 2, 2010, he hyperbolically asserted that Port Counsel "assumed the duties" of law enforcement by filing "a citation commencing a criminal proceeding" on July 30,

¹³ The Port will file a supplemental designation of record concurrently with this Brief. RAP 9.6(a).

2010. CP 473. In fact, Port Counsel did nothing more than file two alternate proposed Orders to memorialize the Judge Edwards' July 26, 2010 rulings. CP 438-458. Those proposed orders reflected the Judge's ruling, including Judge Edwards' summary finding that Mr. West was in contempt of court. Id. Mr. West further confused his Supreme Court Personal restraint action matters by filing (1) a Motion for Injunction on July 27, 2010 and (2) a Request for an emergency stay on Aug 1, 2010. CP 464-476. The Motion for Injunction sought to prevent "any further actions in regard to restraint of his person by Judge Edwards or the Grays Harbor Superior Court pending a proper indictment as required by law, based on a citation properly charging acts constituting criminal contempt of Court. CP 464. West's "request for an emergency stay" similarly sought "a stay on and vacation of any punitive proceedings conducted in this matter upon citations filed by 'special' counsel Carolyn Lake pending a proper appearance by Pierce and/or Grays Harbor County." CP 475.

The Supreme Court ultimately determined that Port Counsel had **not** presumed to assume law enforcement duties, and dismissed West's Personal Restraint Petition.¹⁴ See Ruling

Dismissing Personal Restraint Petition, WA Supreme Court Cause No. 84837-8 dated January 19, 2011, CP 480-481. Nonetheless, Mr. West appealed the dismissal filing reconsideration (denied), with the Supreme Court issuing a Certificate Order of Finality on 5 April 2011. CP 482.

**West Federal District Court Action
No. C10-5547 RJB.**

Also on August 6, 2010, days after Judge Edwards signed the Contempt Order and days before Judge Edwards signed the Partial Dismissal Order in this case, Mr. West filed a federal District Court action, also naming Judge Edwards, Judge Fleming, Judge Chushkoff, Tacoma Port Commissioners, and also naming Port of Tacoma counsel claiming Counsel acted as “illegal Special Prosecutor”. See *West Complaint* in No C10-5547 RJB, CP 483-502. West allowed the case to languish, and on June 15, 2011, the Federal Court granted a Motion to Dismiss brought by attorney for the various judges named in the suit (The Honorable Judge(s): Bryan Chushkoff, David Edwards, Frederic Fleming.) CP 504-506. The Court not only granted dismissal as to the named Judges, but

¹⁴ Nor did she or the other Defendants conceivably “restrain” Mr. West in any manner. Judge Edwards signed one of the proposed Orders presented by Ms. Lake, and Mr. West apparently sought appellate review of that Order via the Personal Restraint Petition.

also as to all parties and all causes of action, including as to the Port of Tacoma and Port Commissioners (named individually) and as to "Special Prosecutor Lake" the Port's general counsel named in the suit. CP 473-502. An excerpt from the Federal Court's Order reveals the basis for the dismissal action:

This action arises from a prior Washington State case brought by Plaintiff Arthur West.

The Plaintiff does not identify the court orders that he contests, and does not cite a set of fact from which his claims arise. Nevertheless, he claims injury by Defendants' "wrongful application of **the contempt policy.**" which "transform[ed] the process of securing records under [the Washington Public Records Act] RCW 42.56 into a procedural morass." (Pl. West's Complaint, Dkt. # I, at p. 3]. He alleges that the PRA has "become a **vehicle of oppression**" subjecting him to a "litigious gauntlet of arcane and prejudicial technical procedures." [Dkt. #1, 3 at p. 3]. As a result, West claims he has been "**subjected to a culture of prejudice and discrimination . . . that is reminiscent of the social customs of apartheid in South Africa.**" [Dkt.5 #1, at p. 41. West also claims that Defendants have generally violated his constitutional rights.

Plaintiff's claims that the Defendants have engaged in a "**conspiracy to exercise unlawful powers,**" and have generally violated his constitutional rights and "also the ancient rights protected under the 9th [sic] Amendment, and established in the Magna Carta" are not claims from which relief can be granted and do not meet Twombly's "plausible" standard.

This Court lacks subject matter jurisdiction over Plaintiff's claims, and Plaintiff fails to state a claim upon which relief can be granted. Defendants' Motion to Dismiss all claims under Fed. R. Civ. P. 12(b)(I) and (12)(b)(6) is GRANTED,

and Plaintiff's claims are DISMISSED, in their entirety
WITH **PREJUDICE**.

CP 503-4. After the Federal Court dismissed his case in full on June 15, 2011, Mr. West **again** filed for Reconsideration; denied by Order dated July 7, 2011. CP 507. Also on July 7, 2011, the Federal Court (Judge Leighton) issued a Show Cause in which it observed Mr. West's track record of unsuccessful and bizarre filings at the Federal Court level, and announced its intention to issue an Order restraining Mr. West's ability to file matters unless preapproved by the Court or while represented by counsel, and to impose sanctions. CP 508-512. Mr. West pursued various unsuccessful appeals of the Federal Court's Order, with the Mandate from the 9th Circuit Court ultimately issuing February 14, 2012. CP 519.

Federal Bar Oder, *In re West*
Case no. 05547-RBL

On October 6, 2011, Judge Leighton opened a new case *sua sponte*, and filed the bar order against West from case No. C10-5547 RJB, discussed above, copy attached. CP 513-518.

Attachment 2. The Order bars Mr. West from any new filings in the Western District of Washington. *Id.* On November 2, 2011, the Appellant appealed his bar order in Case No. 05547-RBL. The Ninth Circuit of the United States Court of Appeals dismissed the

appeal for failure to prosecute, twice. See Dkt. nos. 5 & 10 in Cause No. 11-35918 (9th Cir. Ct. App.), copy attached as **Ex. 3**.

Direct Costs to the Taxpayers

One consequence of these “detours” Appellant West pursued related to this case, i.e. filing three separate lawsuits in federal and state legal forums, was the very real, added expense borne by the Port through its taxpayers to defend against each related suit filed by the Appellant. The price is no small sum:

Arthur West v. Port of Tacoma, Case No. 08-2-042312-1 (Pierce County Super. Ct.): 555.5 hrs. Attorney fees: **\$146,984.50 and Costs: \$17,160.40**

Arthur West v. Brian Chushcoff, David Edwards, Fredrick Flemming, Special Prosecutor Lake, Connie Bacon, Richard Marzano, Don Johnson, Clare Petrich, Don Meyer, Terry Willis, Mark Wilson, Al Carter, Grays Harbor County, Pierce County, Maytown Sand and Gravel, LLC, Sam Reed, Port of Tacoma, Case No. C10-5547-RBL (W.D. Wash): 46.3 hrs. Attorney fees: **\$12,119.00 Costs: \$240.27**

In re Personal Restrain of Arthur West by Port of Tacoma and Grays Harbor, Case No. 84837-8 (Wash. 2011): 52.9 hrs. Attorney fees: **\$10,979.50 Costs: \$131.28**

The combined totals paid by the Port of Tacoma for these West matter came to: **Attorney fees: \$170,083.00 Costs: \$17,531.95**. See CP 772-773. These now-outdated totals reflect those presented to the Trial Court. See *Order of Dismissal* 9:20-10:12. CP 772-773.

Trial Court's Final Dismissal of this Case

After a long hiatus, on March 19, 2012, the Court set a status conference for April 6, 2012 in this Case. CP 407-408. On March 29, 2012 Legal Counsel for West appeared. CP409. The Port's April 5 response to the Court's Status Conference Notice included its notice of intent to file a Motion to Dismiss based on Mr. West's extended lapse in his pursuit of this case, and based on the Court's inherent authority to dismiss for abuse of process. CP 410-523. Thereafter in late April, 2012, Appellant served a deposition notice. CP 524-542. On May 23, 2012, the Port filed a Motion to Quash the deposition, with hearing noted for June 1.. CP 606-670. At the June 1 hearing, the Port stated its intention to file the dismissal Motion that day, where upon the Court set a hearing date of June 12 for the Port's Dismissal Motion, West's Motion to reschedule Hearing dates and ruling on attorneys fees. Clerk's Entry of June 1, 2012. CP 671.

Cause comes on for hearing at 1:05 p.m.. Petitioner is not appearing in person and is represented by counsel Stephanie Bird. Respondent is not appearing in person and is represented by counsel Caroline Lake.

Ms. Lake presents opening statements. Ms. Lake informs the Court she will be filing a motion to dismiss today and she requests the quashing of a deposition.

At 1:10 pm Ms. Bird addressed the Court regarding her view that these proceedings are unnecessary and that the plaintiff is willing to reschedule the deposition for June 18, 2012. Ms. Bird presented arguments opposing the dismissal of this case and the plaintiff's intention to request new trial dates. Ms. Bird also requested attorney's fees.

The Court schedules a motion hearing for Tuesday, June 12, 2012 at 1:30 pm. Motions to be heard are: Port of Tacoma's motion for dismissal, Plaintiff's motion for rescheduling trial dates and the Court will rule on attorney's fees.

Court adjourned at 1:18 pm.

FILED

On June 12, 2012, Judge Edwards granted full dismissal to the Port. CP 764-778. And see Clerk's Entry of June 12, 2013. CP 709:

Cause comes on for hearing at 2:29 p.m.. Petitioner is not appearing in person and is represented by counsel Stephanie Bird. Respondent is not appearing in person and is represented by counsel Caroline Lake.

Ms. Lake presents arguments in support of the motion to dismiss.

At 2:44 pm Ms. Bird presents arguments.

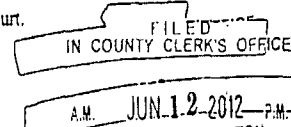
The Court states Mr. West refused to comply with the sanction orders for a year and a half.

The Court finds it is clear Mr. West has deliberately disobeyed the orders of this court.

The Court believes Mr. West's conduct has interfered with the procedures of the Court

The Court grants the Port's motion for dismissal and signs the order in open court.

Court adjourned at 2:55 pm.



A revised Order (to address appealability) was filed on August 24, 2012 nunc pro tunc to June 12, 2012. CP764-778. Copy attached On July 10, 2012, the Appellant filed this appeal.¹⁵

III. ANALYSIS

The above record evidences that Mr. West has expended his efforts in every direction to diffuse, contest and obfuscate, rather than to comply with the long outstanding August 2010 Court Order in this case, and timely prosecute his Public Records Act claim.

¹⁵ This Appeal has also been marked by Appellant-caused delays. In late December, the Appellant failed to pay the Court Reporter for transcription per the (first) Statement of Arrangements. Transcripts were not filed until mid-February. Since RAP pegs the briefing due date to the filing of transcripts, the non-payment caused delay. Then, on April 16, 2013, the eve of the (delayed) due date for the Appellant's Opening Brief, the Appellant filed a Motion to Consolidate this case with another matter. Then, the Appellant withdrew the Motion, and finally filed an Opening Brief on May 1, 2013.

The Trial Court below exercised its discretion properly and consistent with long standing recognition of this judicial authority. “Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates.” *Anderson v. Dunn*, 6 Wheat. 204, 227, 5 L.Ed. 242 (1821). This appeal should be denied.

A. Washington Trial Courts undisputedly have vested inherent authority to dismiss cases.

Washington Courts have “such powers as are essential to the existence of the court and necessary to the orderly and efficient exercise of its jurisdiction.” *State v. Gilkinson*, 57 Wn.App. 861, 865, 790 P.2d 1247 (Div. 2, 1990). The courts derive authority to govern court procedures from Article IV, § 6 of the Washington Constitution. *City of Fircrest c. Jensen*, 158 Wn.2d 384, 395, 143 P.3d 776 (2006). Additionally, “inherent power is authority not expressly provided for in the constitution but which is derived from the creation of a separate branch of government and which may be exercised by the branch to protect itself in the performance of its constitutional duties.” *In re Mowery*, 141 Wn.App. 263, 281, 169 P.3d 835 (Div. 1, 2007); quoting *In re Salary of Juvenile Director*, 87 Wn.2d 232, 552 P.2d 163 (1976).

The Court's power to discretionarily dismiss a case for unacceptable litigation practices is "inherent." *See Business Services*, 174 Wn.2d at 308 ("The sole question is whether CR 41 (b)(1) applies to this case to limit the trial court's inherent discretion to dismiss."); *Snohomish County v. Thorpe Meats*, 110 Wn.2d 163, 166, 750 P.2d 1251 (1988) ("A court of general jurisdiction has inherent power to dismiss actions for lack of prosecution..."); *Wallace v. Evans*, 131 Wn.2d 572, 577-578, 934 P.2d 662 (1997) ("[T]he trial court's inherent discretion [to manage its affairs, so as to achieve the orderly and expeditious disposition of cases, to assure compliance with the court's rulings and observance of hearing and trial settings which are made] is not questioned by our interpretation.").

B. Trial Court Expressly Ruled on & Found Each Criterion for Discretionary Dismissal Is Met.

"Dismissal is an appropriate remedy where the record indicates that '(1) the party's refusal to obey [a court] 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.'" *Will v. Frontier Contractors, Inc.*, 121 Wn.App. 119, 129, 89 P.3d 242 (Div. 2, 2004); quoting *Rivers v. Washington State*

Conference of Mason Contractors, 145 Wn.2d 674, 686, 41 P.3d 1175 (2002).

- 1. The record expressly shows the Appellant's refusal to obey a court order was willful or deliberate, the first element is met.**

The Trial Court's Order Granting the Port's Motion to Dismiss, CP 764-778, expressly concludes that the Appellant willfully and or deliberately disobeyed a court order.

Petitioner West's failure to timely prosecute this PRA case and failure to timely abide by the Court's Sanction Order was without justification or cause, and therefore willful.

In addition, Plaintiff chose to pursue extended and unfounded litigation actions in various courts, all to avoid complying with the sanctions issued by the Court, failed to timely pay costs imposed against him by this Court and failed to timely pursue the issues in this cause with a lapse of nearly two years (July 2010 through March 2012).

Order Granting Port Motion to Dismiss 13 ¶¶ 15-16. CP 776. The first element for dismissal is satisfied.

- 2. The record expressly shows the Appellant's actions substantially prejudiced the Port, the second element is met.**

In its Order Granting the Port's Motion to Dismiss, 764-778, subheading "**Substantial Prejudice to the Port,**" emphasis original, the Court concluded that the Appellant substantially prejudiced the Port.

18. This is a Public Records Act case, in which potentially, a "per

day” penalty is at issue.

19. Imposition of a “per day” penalty is mandatory.
20. Each day of the Petitioner’s delay adds to the risk of the Port incurring a per day penalty.
21. Public Records cases are by nature fact dependent. Witness memories are affected and lessened by the extended lapse of time.
22. The extended lapse of time in this case substantially prejudices the Port and is directly attributable to Plaintiff West’s own actions.
23. Thus West’s pattern of delay represents real potential for substantial prejudice against the Port in this case.
24. In addition, the Port is substantially prejudiced due to the Port’s willful and protracted failure to pay contempt sanctions Order by this Court and Plaintiff’s pursuit of frivolous related litigation in other Courts rather than to prosecute his matter in this Court, which required the Port to litigate West’s other lawsuits and filings, while continuing to invest attorney time in the instant matter, at a substantial cost to the Port taxpayers.

On Appeal, the Appellant flatly failed to address the Court’s findings regarding prejudice. Instead, the Appellant suggests – for the first time on appeal - that the end results of the Appellant’s frivolous extracurricular pursuits should relate back to the instant case. *Appellant’s Br. 6*:

“Where Mr. West’s pursuit of closely-related litigation in Federal Court and in the Supreme Court [of Washington] already resulted in stringent and harsh sanctions against him – the imposition of a bar order against him – does not the conclusion that the pursuit of closely-related litigation is a basis for dismissal in this case actually operate as an impermissible limitation of Mr. West’s constitutional right of access to the courts?”

The answer is no, the law is clear that trial courts may consider the

actions of litigants in other forums when involuntarily dismissing cases. *Mcneil v. Powers*, 123 Wn.App. 577, 97 P.3d 760 (Div. 3, 2004). The actions considered here by the Trial Court include the Appellant's ill-conceived 2008 lawsuit against the Port, The Appellant's ludicrous Supreme Court of Washington "Personal Restrain Petition" citing to the Trial Court and opposing counsel in this case, and also West's 2010 Federal lawsuit against the Port of Tacoma and its legal counsel. All of these proceedings were on the record before Hon. Edwards. *See Appellant's Br. 8*. The Trial Court properly found that the taxpayer-funded Port had been prejudiced by the Appellant's refusal to respect or obey legal processes and orders. Further, the Trial Court expressly and correctly found that Appellant-caused extensive delay in this case hinders the Port's ability to defend. Therefore, the second element of prejudice to the Port is met.

3. The Trial Court expressly considered – and previously imposed - a lesser sanction, the third and final element is met.

The Trial Court' expressly considered lesser sanctions, and concluded that a lesser sanction would not do:

25. The Court also finds no lesser sanction will do.
26. The Court also notes that Mr. West has been previously found in contempt and fined in this matter (\$1500), and bar orders were issued against Mr. West,

all by Courts in litigation directly related to this matter.

27. These previous sanction shave not cured Mr. West's abuses of process.
28. The sanction of dismissal for want of prosecution and abuse or process recognizes and cures the substantial prejudice caused to the Port, and no lesser sanction will do.

Order Granting Port Motion to Dismiss. CP 764-778. The third and final element is satisfied.

C. Sanction of Dismissal Warranted

The sanction levied against Appellant is well-supported by and consistent with the very lengthy history of Washington Court sanctions for litigant malfeasance, which date back to statehood. A Trial Court's inherent authority to dismiss has been upheld for a variety of conduct that positively pales in comparison to the machinations of Appellant West:

- *McDaniel v. Pressler*, 3 Wn. 636, 638, 29 P. 209 (1892): Courts have authority to dismiss lawsuits for abandonment and also for plaintiff's disobedience of an order concerning the proceedings in an action.
- *Plummer v. Weill*, 15 Wn. 427, 430-431, 46 P. 648 (1896): Where the character of the attorneys and parties are not of issue, party's brief that refers to the opposing party in language that is grossly improper and unseemly [as here] warrants discretionary dismissal effectuated through the striking of the offensive brief.
- *Jackson v. Standard Oil of California*, 8 Wn.App. 83, 505 P.2d 139 (Div. 2, 1972); *Rev. denied*: Plaintiff expresses dissatisfaction with court order, leaves courtroom, dismissal with prejudice granted.

- *State ex rel. Clark v. Hogan*, 49 Wn.2d 457, 464, 303 P.2d 290 (1956): Inherent dismissal due to refusal to plead further an incoherent complaint.
- *State ex rel. Washington Water and Power Co. v. Superior Court for Chelan County*, 41 Wn.2d 484, 494, 250 P.2d 536 (1953): Court's inherent dismissal powers upheld despite stipulation to waive CR 41-governed dismissal among the parties.
- *National City Bank of Seattle v. International Trading co. of America*, 167 Wn. 311, 316-317, 9 P.2d 81 (1932): Court holds in dicta that CR 41 precursor does not forbid exercise of the inherent power of a court to dismiss an action "whenever in the interests of justice he may deem that the proper course to pursue."
- *Stickney v. Port of Olympia*, 35 Wn.2d 239, 241, 212 P.2d 821 (1950): Parties to the action are entitled to have the trial court consider and determine whether the action should be dismissed for want of prosecution independent of [CR 41 predecessor Rule] because plaintiff failed to continue making filings in the case for a protracted period, then noted a trial to escape operation of CR 41-predecessor.

In *Stickney*, The Supreme Court of Washington granted dismissal in favor of the Port of Olympia. The *Stickney* court held that the Port of Olympia was entitled to a discretionary dismissal for lack of diligent prosecution regardless of whether the language in CR 41 was satisfied - because the lack of noted trial date served to preserve all of the Court's discretion to dismiss the case. 35 Wn.2d at 241. ("The parties to the action are entitled to have the trial court consider and determine whether the action should be dismissed for

want of prosecution independent of Rule 3¹⁶”). Emphasis provided. The Port here is entitled to the same outcome. The Appellant failed to pay sanctions in this case; failed to timely pursue his “claims”, and frivolously pursued related but still baseless litigation in multiple forums elsewhere.

Appellant West’s misbehaviors far exceed the conduct of prior litigants in other Washington State cases that resulted in discretionary dismissal. As just one example, the Appellant **admits** that he failed to show up at his own contempt hearing in this case. This Appeals Court should leave undisturbed the Trial Court’s valid exercise of discretion; discretionary dismissal is both supported and richly deserved on these facts.

D. Abuse of Discretion Standard of Review Applies.

Trial courts have broad discretion to manage their courtrooms and conduct trials in order to achieve the orderly and expeditious disposition of cases. *In re Marriage of Zigler and Sidwell*, 154 Wn.App. 803, 815, 226 P.3d 202 (Div. 3, 2010); citing *State v. Johnson*, 77 Wn.2d 423, 426, 462 P.2d 933 (1969). When reviewing a dismissal due to unacceptable litigation practices, also

¹⁶ The precursor rule to CR 41.

referred to interchangeably as a “discretionary dismissal¹⁷” or “inherent dismissal¹⁸” throughout Washington case law, the standard of review is abuse of discretion: “When the Court’s inherent power to dismiss for want of prosecution is at issue the trial court’s decision is reviewed under the abuse of discretion standard.” *Stickney v. Port of Olympia*, 35 Wn.2d 239, 241, 212 P.2d 821 (1950); *see also Business Services of America II v. Wafertech, LLC*, 174 Wn.2d 304, 316 274 P.3d 1025, 1031 (2012, C.J. Madsen, dissenting). The sole dispositive issue in this appeal is whether the trial court abused its discretion in dismissing the case due Appellant’s lack of Prosecution beyond that described by CR 41(b)(1). It did not.

To find abuse of discretion in this involuntary dismissal for unacceptable litigation practices requires the high standard of finding the trial court decision to dismiss was “manifestly unreasonable” or “based on untenable grounds.” *Woodhead v. Discount Waterbeds, Inc.*, 78 Wn.App. 125, 131, 896 P.2d 66 (Div. 1, 1995); *citing Hizey v. Carpenter*, 119 Wn.2d 251, 268, 830 P.2d 646 (1992). The criteria cannot be met here.

¹⁷ *Business Services of America II, Inc. v. Watertech LLC*, 174 Wn.2d 304, 309 274 P.3d 1025 (2012).

¹⁸ *Snohomish County v. Thorp Meats*, 110 Wn.2d 163, 173, 750 P.2d 1251 (1988).

“We do not reverse a discretionary decision absent a clear showing that the trial court's exercise of its discretion was manifestly unreasonable or exercised on untenable grounds or for untenable reasons.” *City of Puyallup v. Hogan*, 168 Wn.App. 406, 423-424, 277 P.3d 49 (Div. 2, 2012).

A discretionary dismissal will be reviewed for an abuse of discretion. *Rivers v. Wash. State Conference of Mason Contractors*, 145 Wn.2d 674, 684-85, 41 P.3d 1175 (2002); *see also Woodhead v. Discount Waterbeds, Inc.*, 78 Wn.App. 125, 129, 896 P.2d 66 (1995) (a court has the discretion to dismiss an action based on a party's willful noncompliance with a reasonable court order). A court abuses its discretion only if its decision is manifestly unreasonable or based on untenable grounds. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). A trial court's exercise of discretion is manifestly unreasonable if no reasonable person would concur with the Court's view when the Court applies the correct legal standard to supported facts. *Mayer v. Sto Indu., Inc.*, 156 Wn.2d 677, 684 (2006); *quoting State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

A trial court's exercise of discretion rests upon untenable grounds if the trial court relies upon unsupported facts or applies

the wrong legal standard. *Id.* Here, all three trial courts which were subject to the Appellant's grievances are in concurrence, and discretionarily dismissed the Appellant. The Ninth Circuit summarily affirmed one of the discretionary dismissals. These multiple concurrences and affirmations of the Trial Court's action, along with the record below, eviscerates the "no reasonable person would concur" argument the Appellant might proffer and extinguishes this appeal.

E. The Record Supports Affirming Dismissal.

The United State Supreme Court established in *Link v. Wabash RR*, a standard of conduct that suffices to affirm a Court's discretionary dismissal of a case. "The authority of a court to dismiss sua sponte for a lack of prosecution has generally been considered an 'inherent power' governed not by rule or statute but by the control *necessarily vested* in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Link v. Wabash R. Co.*, 370 U.S. 626, 628-629, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962). Emphasis added. In *Link*, the plaintiff, through counsel, had been in telephonic contact with the court twice pertaining to a status conference; once the day before a scheduled conference and once on the morning of the missed status

conference. *Link*, 370 U.S. at 627. The afternoon prior to the conference, counsel first informed the court that he might have a conflicting deposition to attend. *Id.* Counsel phoned the morning of the conference and still prior to the conference, and confirmed to the court that the he would not attend, and suggested two make-up dates that same week, including the following day. *Id.* Despite this, the *Link* court dismissed the case just two hours after the scheduled status conference. *Id.* at 628-629.

Here, the *Link* plaintiff's conduct pales in comparison to that of the instant Appellant. The Appellant's brief speaks for itself in attesting to the Appellant's vexatious conduct. First, the Appellant self-describes this case as all of "difficult to explain," "grasping at straws," and "flailing around" tangential to the 2008 Port of Tacoma case. *Appellant's Opening Br. in West v. Port of Tacoma*, Div. II Cause No. 43004-5. Emphasis provided, citations omitted, grammar original. Excerpt attached as **Ex. 2**.

The Appellant's own Opening Brief here recounts the Appellant diversionary action to file a writ of habeus corpus in federal court in response to a receiving a \$1,500 sanction in this case. *Appellant Opening Br.* 43-45. That particular filing resulted in the Appellant's loss of pro se litigation privileges in the Western

District of Washington. *Id.*, CP 513-518. The Appellant also filed the state-law equivalent of a habeas writ with the Supreme Court of Washington, citing to Trial Court Judge Edwards and Port Counsel. At each extracurricular turn, including within this case, the Appellant concocted fantastical nexus to various authority figures, and personally sued those victims as well. In this case, the Appellant personally sued each of the Port of Tacoma Commissioners for Public Records Act Relief, the former Executive Director of the Port, and the Pierce County Prosecutor. Compl. 1, CP 1-7. In conducting the case, the Appellant secreted information from the Court (Tr. of July 26, 2010 Hearing, 13:11-13:21, CP 450-451), waited over one and a half years to pay sanctions in this case (*Appellant's Br. 33*), and, now, on appeal, expressly construes the issuance of sanctions as a sword - a license to not move the case along for a term of years, during which time, the Appellant engaged in extensive vexatious extracurricular activities to the financial detriment of the Port and others. *West Opening Br. 33*. In light of this record, Appellant's assertion that his only misdeed here involved filing claims duplicative of those in the 2008 Port of Tacoma case constitutes a non persuasive, unduly rose-colored recounting of the record here.

Appellate courts are loath to substitute their discretion for that of the trial court, which is what the Appellant actually requests. *A.G. v. Corporation of Catholic Archbishop of Seattle*, 162 Wn.App. 16, 25, 271 P.3d 249 (Div. 1, 2011), and cases cited therein. (“An appellate court does not substitute its own judgment for that of the trial court, but rather, looks to whether the court’s exercise of discretion was manifestly unreasonable, or made for untenable reasons.”); accord *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971), *Overruled on other grounds by RCW 71.05.390, explained by Seattle Times Co. v. Benton County*, 99 Wn.2d 251, 263 661 P.2d 964 (1983).

The Supreme Court of Washington recently held such substitution of judgment to be reversible error. *Teter v. Deck*, 174 Wn.2d 207, 226, 274 P.3d 336 (2012) (“We will not substitute our own judgment in evaluating the scope and effect of that misconduct”).

Here, the Appellant asks that this Court engage in exactly the judgment substitution that the Supreme Court expressly prohibits. West’s invitation to substitute judgment and this appeal should be summarily rejected on the grounds that the Appellant requests

relief that the Court cannot and should not grant under 168 Wn.App. 406, 423-424, and its long line of prior cases in accord.

Prior courts have “allowed discretionary dismissals for failures to appear, filing late briefs, and similarly egregious sorts of behavior.” *Business Services of America*, 174 Wn.2d 304, 311, 274 P.3d 1025 (2012). “Failure to prosecute does not fall within CR 41 (b)(1) for example, when the plaintiff fails to prosecute that action by failing to appear at trial.” *Id. citing Wallace v. Evans*, 131 Wn.2d 572, 578, 934 P.2d 662 (1997). “Such dilatoriness also occurs, for example, when there is a failure to appear at a pretrial conference in combination with general dilatoriness.” *Business Services of America, citing Link v. Wabash R.R.*, 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962). Here, the Appellant engendered a ruling of contempt, failed to attend the hearing regarding his own contempt of court, and then ignored the ensuing ruling for years. Clerk’s Memorandum of August 2, 2010, CP 355. The Appellant admits to not paying sanctions for over eighteen months. *Appellant’s Br.* 18 (“Meanwhile in this case, time had lapsed...”) Therefore, *Business Services of America* is directly on point and reinforces the propriety of the Trial Court’s discretionary dismissal in this case.

The record below supports finding -at the very least- general

dilatoriness on the part of the Appellant. Public Records Act matters are entitled to efficient judicial review, because defendants are subject to a per day penalty. Here, the docket clearly demonstrates that the Appellant dragged on this Public Records Act matter for longer than three years. This delay alone constitutes “general dilatoriness” under *Link*. Appellant West has, in fact, gone well above and beyond “general dilatoriness.” Inexcusable and unprofessional dilatoriness demonstrated by the Appellant in this case includes:

- The Appellant willfully scheduled sham hearing dates on noticed unavailability dates, Tr. of July 26, 2010 Hearing, 13:11-13:21, attached as Ex. 7 to Dec’l of Counsel, CP 450-451;
- The Appellant failed to pay contempt fine prerequisite to proceeding, West Br. 18;
- The Appellant no-showed his own contempt hearing, CP 355;
- Appellant filed for habeas corpus relief in Federal Court instead of paying his contempt fine, The West Complaint in No C10-5547 RJB, CP 483-502 ;
- The Appellant personally sued the judge and opposing counsel in this case, twice, Supreme Court of Washington Cause No. 84837-8 & C10-5547 RJB (W. Dist. Wash.);
- The tone and decorum of the appellant’s pleadings fall below professional standards and disrespect the time of all involved parties.

The Appellant’s dilatoriness punctuated virtually every juncture of this litigation; exceeding the level of “general” dilatoriness. The “general” dilatoriness test adopted by the Supreme Court of Washington and most recently articulated in *Business*

Services of America comes from the Supreme Court of the United States *Link v. Wabash R.R.* In that case, the a party's attorney failed to move along a case, and also provided what the court found to be an inadequate excuse for missing a pretrial hearing. *Link*, 370 U.S. at 633. Here, the veritable laundry list of dilatory tactics and extracurricular activities employed by the Appellant tells a story of not only general dilatoriness, but also categorical and intentional dilatoriness. The Appellant's no-show at his own contempt hearing, and following years-long avoidance of paying the ensuing sanctions coupled with all other dilatoriness provided proper grounds for the Trial Court to exercise discretion to dismiss the case. See *Link, viz-a-viz Business Servies of America, supra*. The Appellant cannot show any abuse of discretion. Therefore, this Court should affirm the Trial Court.

F. Public Policy Supports Affirming the Dismissal.

Since the beginning in Washington State, the dilatory litigation and extracurricular conduct categorically demonstrated¹⁹ by the Appellant warranted harsh sanction. "References and comments of a personal nature...would divert attention from the points at issue". "Such objectionable matter shall be stricken from

¹⁹ At present count, Port Counsel has been involved in defending approximately one dozen of Appellant's lawsuits.

the files.” *Plummer v. Weil*, 15 Wn. 427, 46 P. 648 (1896).

Washington Courts are not required to powerlessly stand by and provide a forum for unacceptable litigation practices and abuse of legal process. *Wallace v. Evans*, 131 Wn.2d 572, 577, 934 P.2d 662 (1997). Courts have an inherent discretionary power to dismiss cases in order to sanction unacceptable litigation practices. *Id.* The inherent power of the court to dismiss actions for dilatoriness of prosecution was delineated in *State ex rel. Dawson v. Superior Court*, 16 Wn.2d 300, 304, 133 P.2d 285 (1943) as follows:

A court of general jurisdiction has the inherent power to dismiss pending actions if they are not diligently prosecuted, and it is its duty to do so in the orderly administration of justice. The dismissal of an action for want of prosecution, in the absence of statute or rule of court creating the power and guiding its action, is in the discretion of the court.

Gott v. Woody, 11 Wn.App. 504, 506, 524 P.2d 452 (Div. 2, 1974).²⁰

In this state, inherent authority to dismiss provides the remedy available to the countless victims of Appellant’s abuse of process, including the Respondent Port, and this remedy has been realized here through the discretion of Honorable Edwards in this case. *Order Denying Reconsideration*, CP 657-661.

²⁰ Coincidentally, the landmark decision upholding inherent dismissal powers also involved another one of the Appellant’s frequent litigation targets as Respondent. *Stickney v. Port of Olympia*, 35 Wn.2d 239, 241, 212 P.2d 821 (1950): “The parties to the action are entitled to have the trial court consider and determine whether the action should be dismissed for want of prosecution independent of [CR 41 predecessor Rule].”

The Pierce County Superior Court properly remedied for Appellant's unacceptable, dilatory and vexatious litigation practices by granting the involuntary dismissal. By extension of these practices, Appellant here seeks only an impermissible second bite at the litigation apple under the guise of this appeal, where in fact the ONLY proper scope is limited to whether the Pierce County Superior Court acted in a manifestly unreasonable manner or on untenable grounds in dismissing Appellant's case in its discretion. *Puyallup v. Hogan*, 168 Wn.App. 406, 423-424, 277 P.3d 49 (Div. 2, 2012). The Court did not act unreasonable, and this appeal should be denied.

G. Appellant's Arguments Improper and or Not Persuasive.

Despite all of the above, and despite self-describing this case as "grasping at straws," the Appellant now insists that this Court do what it cannot: substitute its discretion for that of the Trial Court. The Appellant seeks to strip the Trial Court of its inherent authority to dismiss cases and manage proceedings through several inappropriate mechanisms. This Court should reject these improper attempts.

1. Appellant's Extensive Use Of Untimely And Waived Arguments Should Be Rejected.

The Appellant untimely raised many arguments for the first

time here on appeal. RAP 2.5(a).²¹ The Appellant could have raised the new arguments before the Trial Court, but did not. Therefore, the Appellant waived certain arguments.

On appeal, Appellant seems to take issue with findings of fact included in the Order that the appellant chose to sign in open court on June 12, 2012, the same day that the case was dismissed. See Clerk's Memorandum of June 12, 2012, CP 709. The Appellant did not take exception to the order, request time to edit the order for entry on a later date, nor otherwise raise any of the arguments seen for the first time here on appeal. *Id.* Therefore, as a preliminary matter, the Appellant waived most or all of his "issues."

The First assignment of error calls out a specific Finding of Fact, 13, in the Order of Dismissal. Br. 1. Fact 13 notes that the Appellant filed PRA claims duplicative of those in the Appellant's 2008 case against the Port of Tacoma. The Appellant admits that duplicative claims existed, and then seems to argue that the

²¹ (a) Errors Raised for First Time on Review. The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction. A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error which was not raised by the party in the trial court if another party on the same side of the case has raised the claim of error in the trial court.

inclusion of some differing PRA claims renders the statement “Mr. West also included a Public Records Act complaint in this present suit, which duplicates the requests made in his first PRR case. See West Complaint at para 4.[]2.” It was “subpart” of the claim in cited Paragraph 4.2 that was dismissed as duplicative. *Order of Partial Dismissal* 4:8-11. CP 403-406. Therefore, the Appellant’s issue is merely an untimely exercise in semantics. The Port has confidence that the Trial Court would have rejected this argument on the grounds identified.

The Second assignment of error concerns another waived argument. Br. 1. The Appellant correctly notes that on July 26, 2010, the Trial Court imposed a \$1,500 sanction against the Appellant. *Id.* Now, for the first time on appeal, the Appellant argues that the \$1,500 sanction should have sufficed to cure all of the Appellant’s misbehaviors. *Id.* Again, the Appellant did not raise any of the arguments regarding sufficiency of the \$1,500 sanction against the Appellant before the trial court. This new argument on appeal is also symptomatic of the Appellant’s rose-colored recounting of the record in this case – it ignores the satellite court actions, bar order, and missed contempt hearing that followed the issuance of the \$1,500 terms.

The Third and Fourth assignments of error regard the amazing amount of attorney fees that the Port of Tacoma taxpayers have had to pay to defend the Port against the Appellant's interconnected lawsuits, described above. The Appellant states for the first time on appeal that the 2008 case is not sufficiently entangled with this case for the Court to have considered the fees in that 2008 case. Br. 4-5. This is wrong. In addition to containing duplicative claims of the 2008 PRA case in this matter and the Appellant having admittedly filed this matter due to "flailing around" in the 2008 case, the Appellant personally sued Judge Edwards of this case and Judge Fleming of the 2008 case in the same Federal Court Complaint, and accused Judge Edwards and Judge Fleming of various conspiracies against the Appellant's civil rights. See West Complaint in No C10-5547 RJB, CP 483-502. Therefore, the Court properly considered the 2008 PRA case proceeding and all related expenditures when dismissing this case. The Appellant's untimely challenge to this factual issue should be ignored, and does not drown out or even dilute the many, many reasons the Court had to exercise inherent authority to dismiss this case.

Also on appeal for the first time, the Appellant claims that

paying \$1,500 terms imposed against the Appellant, over one year after the terms were imposed, should “purge the sanction” or otherwise limit the Trial Court’s inherent authority. Br. 6. (Appellant likely paid an amount equal to the sanction in court filing fees to litigate his bizarre tangential claims citing to the Trial Court Judge and Opposing Counsel in this case as far the Ninth Circuit, instead of paying the sanction). The Appellant did not raise nor could have sustained this new-on-appeal argument in front of the Trial Court if it had been timely raised, so the Court should decline to hear it for the first time on appeal per RAP 2.5.

Further, this Appellant argument would require the Trial Court and this Appeals Court to ignore the totality of West’s multiple mis-steps which occurred **after** the sanctions were imposed in July 2010. Accepting only for argument, that West’s two years late payment may have “cured” his initial misdeed, it still does not mitigate in any way the **later** laundry list of West’s delay and distractions. The fact that Mr West persisted in his misconduct even after the \$1500 sanction was imposed supports the Trial Court’s finding that more was needed, and that no lesser sanction than dismissal would do.

In Issue Number Nine, the Appellant dishonestly states that

no objectionable conduct occurred between July 26 and dismissal in 2012. This ignores Appellant's truancy of his own contempt hearing on August 9, 2010 (CP 355), ignores the after-filed ill-conceived Personal Restraint Petition, ignores the after-filed Federal Lawsuit that resulted in banishment from the Western District of Washington, and ignores that the Appellant paid to file these vexatious proceedings instead of timely paying his \$1,500 sanction in this underlying case, etc.

2. Discretionary dismissals are constitutional.

The Appellant also conflates the sanction in this case with the sanction in other cases (such as the federal bar order). The Appellant incorrectly argues that discretionary dismissal impairs the Appellant's right of access to the Court. *Br.* 6-7. This was rejected by the Supreme Court of the United States in the *Link* case, *supra*, a decision with which Washington Courts are in accord. *Business Services of America*, 174 Wn.2d at 308; citing *Link v. Wabash R.R.*, 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962). Also in *Link*, the behaviors of the dismissed paled in comparison to the behaviors here. Discretionary dismissals are constitutional.

3. The Appellant's Personality Is Not A Legal Issue.

Appellant argues (apparently) that he is actually a savant,

and that fault lies with both the Court and the Port for failing to appreciate the “dint of Mr. West’s persistence and intelligence” by which the judiciary is apparently graced at times, such as this instant. *Appellant’s Br.* 1. The Court should reject this argument as off-topic and patently false. The Court should notice what this Appeals Court actually found recently as it pertains to Mr. West :

His concern seems to be that the Ports of Tacoma and Olympia are -- hark back to totalitarian regimens, citing Nazi culture and Mein Kampf, that this is a slippery slope of collaborators I think is what he calls the -- no, I'm sorry, collaboration as facilitators to hide things from the public. That seems to be his focus as that there's some huge totalitarian conspiracy.

RP 16:12-18 in *West v. Thurston County*, Div. II Cause No. 40865-1-II, copy attached as **Ex. 4** hereto.

4. Appellant’s Arbitrary and Capricious Argument Torpedoes Appellant’s Own Appeal

Appellant concedes that trial courts have the inherent authority to dismiss cases for litigant misconduct. Appellant concedes that such a dismissal is reviewed for abuse of discretion. *See Appellant’s Br.* 34. However, Appellant then goes on to argue that an ***even higher standard*** applies, imposing a standard Appellant has not and cannot met: “But the problem is not only with the decision to impose a sanction here but also with the Trial Court’s choice of sanction: dismissal (while the decision to impose a

sanction is review for abuse of discretion, the choice of sanction itself is reviewed by applying the arbitrary, capricious, or contrary to law standard of review.” *Br. 42*. The Arbitrary and Capricious Standard is a **much higher** standard of review than abuse of discretion, defined as: “Arbitrary and capricious action has been defined as willful and unreasoning action, without consideration and in disregard of facts and circumstances. Where there is room for two opinions, action is not arbitrary and capricious even though one may believe an erroneous conclusion has been reached.” *Pierce Cnty. Sheriff v. Civil Serv. Comm'n of Pierce Cnty.*, 98 Wash. 2d 690, 695, 658 P.2d 648 (1983). Here, the Appellant ruined his own arbitrary and capricious argument by immediately thereafter listing the numerous other sanctions imposed against the Appellant on these merits, which are consistent with the Trial Court’s ruling. West Opening *Br. 42-43*. These included the federal bar order, summary dismissal of the Personal Restraint Petition, and the monetary penalty in this case. At least three consistent judicial opinions on handling the Appellant’s misconduct were on the record before the Trial Court in this case. The Trial Court did not act “without consideration and in disregard of facts and circumstances”, but rather had knowledge of these similar facts and

rulings. The Trial Court also actually imposed a different, less severe, monetary sanction before ultimately dismissing the case. Appellant flatly has not met his burden when applying the arbitrary and capricious standard. Dismissal is warranted.

H. Port Should Be Awarded Fees & Costs

The Port requests attorney fees and costs based on this frivolous appeal. RAP 18.1²² RCW 4.84.185,²³ and RAP 18.9.²⁴ A

²² RAP 18.1. **(a) Generally.** If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.

(b) Argument in Brief. The party must devote a section of its opening brief to the request for the fees or expenses. Requests made at the Court of Appeals will be considered as continuing requests at the Supreme Court. The request should not be made in the cost bill. In a motion on the merits pursuant to rule 18.14, the request and supporting argument must be included in the motion or response if the requesting party has not yet filed a brief.

²³ **4.84.185. Prevailing party to receive expenses for opposing frivolous action or defense.** In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the non-prevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

²⁴ **RULE 18.9 VIOLATION OF RULES**

(a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or other authorized person preparing a verbatim report of proceedings, who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules **to pay terms or compensatory damages to any other party who has been**

lawsuit is frivolous when it cannot be supported by any rational argument on the law or facts. *Tiger Oil Corp. v. Department of Licensing*, 88 Wash.App. 925, 938, 946 P.2d 1235 (1997). Here, the Appellant self-describes his own present lawsuit as “grasping at straws.”

The Appellant failed to timely and properly prosecute its case below, and failed to identify, raise, and brief the proper legal issues on appeal. Yet, the Appellant still presses on, requiring scarce Port taxpayer dollars to be spent once again defending against off topic and baseless claims, this time brought through a licensed attorney. The Port requests this Court to order Appellant West to pay its attorney fees and costs for having to respond yet again to these frivolous matters. RAP 18.1, RAP18.9 and or RCW 4.84.185.

An appeal is clearly without merit if the issues on review: (1) are clearly controlled by settled law; (2) are factual and supported by the evidence; or (3) are **matters of judicial discretion** and the decision was clearly within the discretion of the trial court or administrative agency. *State v. Rolax*, 104 Wn.2d 129, 132, 702 P.2d 1185 (1985), emphasis provided. Although any one prong

harmd by the delay or the failure to comply or to pay sanctions to the court.

under *Rolax* will suffice to entitle the Port to a fee award, this appeal meets all three prongs. It is well settled since ancient times that courts have the ability to discretionarily dismiss cases. The docket here clearly demonstrates that the prerequisites for a discretionary dismissal are met.

Under RAP 18.1 (a), a party on appeal is entitled to attorney fees if a statute authorizes the award. RAP 18.9 authorizes the Court to award compensatory damages when a party files a frivolous appeal. *Kearney v. Kearney*, 95 Wn. App. 405, 417, 974 P.2d 872, review denied, 138 Wn.2d 1022 (1999).

An appeal is frivolous if there are “no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility’ of success.” *In re Recall of Feetham*, 149 Wn.2d 860, 872, 72 P.3d 741 (2003) (quoting *Millers Cas. Ins. Co. v. Briggs*, 100 Wn.2d 9, 15, 665 P.2d 887 (1983)). This appeal is frivolous. West presents no debatable point of law, his appeal (yet again) lacks merit, and the chance for reversal is nonexistent. This was true in his pleadings before the Superior Court; it remains true now. The Appellant was given the several opportunities for a graceful exit, without a monetary penalty to him, but he chooses to persist. Pursuing a frivolous appeal

justifies the imposition of terms and compensatory damages.

Eugster v. City of Spokane (2007) 139 Wash.App. 21, 156 P.3d 912.

IV. CONCLUSION

The Appellant has asked this Court to do what it cannot: substitute its discretion for that of the Trial Court. This Court should affirm the Trial Court's exercise of discretion because the record reflects the Trial Court properly considered all the necessary evidence and made all required findings for an involuntary dismissal, and proper applied the factual findings to law. The Court also should award the Port its attorney fees.

Dated this 19th day of June 2013.

GOODSTEIN LAW GROUP PLLC



Carolyn A. Lake, WSBA #13980
Seth Goodstein, WSBA #
Attorneys for Port of Tacoma

DECLARATION OF COUNSEL

I, Carolyn Lake, under penalty of perjury under the laws of the State of Washington declare under that the following is true and correct.

1. I am legal counsel for Respondent Port et al herein.

2. Attached hereto is a true and correct copy of the following various filings and attachments thereto, all of which are part of the record below:

- a. West May 21, 2010 Email to Port Counsel in which West provided oblique notice to Port counsel that a Show Cause Order had issued. **Attachment 1**, CP 254.
- b. October 6, 2011, bar order against West from case **No. C10-5547 RJB** by Federal Court Judge Leighton. CP 513-518. **Attachment 2)**
- c. Trial Court's revised Order of Dismissal (to address appealability) filed on August 24, 2012 nunc pro tunc to June 12, 2012. CP 764-778. Copy attached. **Attachment 3.**

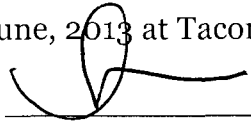
3. Below is a true and correct copy of pleadings on file with this Court or the below named courts for which this Appeals Court may take judicial notice:

- a. Dkt. in *West v. Port of Tacoma*, (Initial West v, Port of Tacoma SSLC PRA case) Div. II Cause No. 43004-5, attached as **Ex. 1.**
- b. *Appellant's Opening Br.* in *West v. Port of Tacoma*, Div. II Cause No. 43004-5. Emphasis provided, citations omitted, grammar original. Excerpt attached as **Ex. 2.**
- c. The Ninth Circuit of the United States Court of Appeals' Two Dismissal Orders of West's appeal of his

bar order in Case No. 05547-RBL, for failure to prosecute. *See* Dkt. nos. 5 & 10 in Cause No. 11-35918 (9th Cir. Ct. App.), copy attached as **Ex. 3**.

- d. Division II Appeals Court RP 16:12-18 in *West v. Thurston County*, Div. II Cause No. 40865-1-II, copy attached as **Ex. 4** hereto.

Dated this 19th day of June, 2013 at Tacoma, Washington.



Carolyn A. Lake


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Appellate Court Case Summary

Case Number: 430045
Filing Date: 01-07-2011
Coa, Division II

Event Date	Event Description	Action
01-07-11	Notice of Appeal	Filed
01-10-11	Case Received and Pending	Status Changed
01-10-11	E-mail	Received by Court
01-11-11	Letter	Sent by Court
01-11-11	Status Review	Filed
01-14-11	Receipt for Filing Fee	Received by Court
01-14-11	Other filing	Filed
01-18-11	Motion - Other	Filed
01-18-11	Letter	Sent by Court
01-19-11	Affidavit of Service	Filed
01-19-11	Letter	Sent by Court
01-31-11	Answer to motion	Filed
01-31-11	Affidavit of Service	Filed
02-01-11	Supplemental Pleadings	Filed
02-02-11	Letter	Sent by Court
02-04-11	Ruling on Motions	Filed
02-09-11	Filing fee	Received by Court
02-14-11	Affidavit of Service	Filed
02-17-11	Letter	Sent by Court
02-28-11	Findings & Conclusions	Filed
03-21-11	Notice of Appeal to Supreme Court	Filed
03-21-11	Letter	Sent by Court
04-11-11	Letter	Sent by Court
04-25-11	Statement of Grounds for direct Review	Filed
04-28-11	Letter	Sent by Court
04-28-11	Motion to Dismiss	Filed
05-09-11	Motion to Extend Time to File	Filed
05-09-11	Ruling on Motions	Filed
05-11-11	Payment for Sanction	Filed
05-11-11	Designation of Clerks Papers	Filed
05-11-11	Statement of Arrangements	Filed
05-25-11	Answer to Stmt of Grounds for direct rev	Filed
05-27-11	Telephone Call	Received by Court
06-23-11	Notice of Unavailability	Filed
06-27-11	Clerk's Papers	Filed
07-08-11	Report of Proceedings	Filed

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About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Directions

Coa, Division II
 950 Broadway
 Ste 300, MS TB-06
 Tacoma, WA 98402-4454

Map & Directions

253-593-2970[General Information]
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What is this website? It is an index of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. This index can point you to the official or complete court record.

EXHIBIT 1

1?

07-13-11	Report of Proceedings	Received by Court
08-03-11	Letter	Sent by Court
08-03-11	Court's Mot for Sanct for Fail to file	Filed
08-04-11	Report of Proceedings	Filed
08-08-11	Report of Proceedings	Received by Court
08-24-11	Notice of Unavailability	Filed
09-07-11	Motion to Extend Time to File	Filed
09-07-11	Ruling on Motions	Filed
09-26-11	Motion to Extend Time to File	Filed
09-27-11	Ruling on Motions	Filed
09-27-11	Report of Proceedings	Filed
09-30-11	Report of Proceedings	Received by Court
09-30-11	Telephone Call	Received by Court
10-03-11	Report of Proceedings	Filed
10-05-11	Report of Proceedings	Received by Court
11-23-11	Other	Information - not filed
12-02-11	Notice of Appearance	Filed
12-08-11	Motion for Transfer from C/a	Filed
12-09-11	Letter	Sent by Court
12-13-11	Answer to motion	Filed
12-15-11	Ruling terminating Review	Filed
12-15-11	Affidavit of Service	Filed
12-15-11	Report of Proceedings	Filed
12-15-11	Record Ready	Status Changed
12-15-11	Reply to Response	Filed
12-19-11	Report of Proceedings	Received by Court
01-17-12	Motion to Modify Ruling	Information - not filed
01-30-12	Supreme Court case file (pouch)	Received by Court
01-31-12	Letter	Sent by Court
02-02-12	Clerk's Papers	Received by Court
02-02-12	Motion to Extend Time to File	Filed
02-08-12	Supplemental Designation of Clerk's Papers	Filed
02-10-12	Ruling on Motions	Filed
02-14-12	Supplemental Designation of Clerk's Papers	Filed
03-01-12	Motion to Extend Time to File	Filed
03-02-12	Objection	Filed
03-07-12	Supplemental Clerk's Papers	Filed
03-09-12	Reply to Response	Filed
03-14-12	Supplemental Clerk's Papers	Filed
03-15-12	Ruling on Motions	Filed
03-19-12	Appellants brief	Information - not filed
03-20-12	Letter	Sent by Court
03-30-12	Appellants brief	Information - not filed
04-27-12	Motion to Extend Time to File	Filed
04-27-12	Ruling on Motions	Filed
05-29-12	Notice of Unavailability	Filed
05-30-12	Motion to Extend Time to File	Filed
05-31-12	Motion to Strike	Filed
06-04-12	Ruling on Motions	Filed
06-08-12	Motion to Extend Time to File	Filed

You can contact the court in which the case was filed to view the court record or to order copies of court records.

How can I contact the court?

Click [here](#) for a court directory with information on how to contact every court in the state.

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No. You must consult the local or appeals court record.

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You must consult the court record to verify all information.

Can I use the index to find out someone's criminal record?

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NO
- ▶ **Guarantee the identity**

6/18/13

Washington Courts - Search Case Records

06-12-12	Response to motion	Filed
06-13-12	Ruling on Motions	Filed
06-14-12	Reply to Response	Filed
06-19-12	Ruling on Motions	Filed
06-19-12	E-mail	Sent by Court
06-19-12	Letter	Received by Court
06-20-12	Respondents brief	Information - not filed
07-09-12	Appellants brief	Information - not filed
08-03-12	Motion to Strike	Filed
08-07-12	Motion to Extend Time to File	Filed
08-08-12	Respondents brief	Information - not filed
08-15-12	Ruling on Motions	Filed
09-07-12	Appellants Reply brief	Not filed
09-10-12	Response to motion	Filed
09-14-12	Motion to Extend Time to File	Filed
09-20-12	Reply to Response	Filed
09-24-12	Reply to Response	Filed
09-24-12	Motion to Strike	Filed
10-04-12	Response to motion	Filed
10-05-12	Notice of Association of Counsel	Filed
10-11-12	Reply to Response	Filed
10-12-12	Notice of Unavailability	Filed
10-19-12	Ruling on Motions	Filed
11-08-12	Appellants brief	Filed
11-19-12	Notice of Unavailability	Filed
11-21-12	Motion for Dismissal	Filed
11-21-12	Motion to Strike	Filed
11-29-12	Response to motion	Filed
12-07-12	Motion to Extend Time to File	Filed
12-07-12	Response	Filed
12-10-12	Ruling on Motions	Filed
12-10-12	Ruling on Motions	Filed
12-10-12	Reply to Response	Information - not filed
12-10-12	Ruling on Motions	Filed
01-14-13	Ready	Status Changed
01-14-13	Motion to Extend Time to File	Filed
01-14-13	Respondents brief	Filed
01-25-13	Ruling on Motions	Filed
01-31-13	Screened	Status Changed
02-13-13	Appellants Reply brief	Filed
03-01-13	Notice of Unavailability	Filed
03-15-13	Other brief	Sent by Court
04-01-13	Motion to Strike	Filed
04-05-13	Other brief	Received by Court
04-08-13	Response to motion	Filed
04-15-13	Reply to Response	Filed
04-18-13	Ruling on Motions	Filed
05-23-13	Check case Information	Filed
12-31-20	E-mail	Filed

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No. 43004-5

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

(Supreme Court, No. 85510-2; Pierce County
Superior Court Cause No. 08-2-04312-1)

ARTHUR WEST,

Appellant,

v.

PORT OF TACOMA, et al.,

Respondent

APPELLANT'S SECOND REVISED OPENING BRIEF

Stephanie M. R. Bird
Cushman Law Offices, P.S.
924 Capitol Way South
Olympia, WA 98501

206-812-3144
Attorneys for Appellant

EXHIBIT 2

What happened next is hard to understand. The undersigned has tremendous respect for Mr. West's public records act activism and his abilities as a pro se litigant, but Mr. West engaged in what can be described as "flailing around." CP 1236-1246. It appears that Mr. West, frustrated by the lengthy delays in this – a public records act case – grasped at straws and filed multiple attempts in multiple fora to try to compel some kind of a final, appealable order in this case, or, alternatively, a ruling on Mr. West's public record acts claims.⁴ CP 1236-1246.

For example, Mr. West filed an action on October 6, 2009, in Pierce County Superior Court, Cause No. 09-2-14216-1, where the relief that he sought included a "Writ of Quo Warranto" in regard to the "clear and undeniable forfeiture of the office of Pierce County judge by Frederick Fleming due to his failing and refusing to issue a determination in Pierce County Cause No. 08-2-043121-1, where plaintiff is seeking disclosure of public records related to the SSLC fiasco." CP 1236.

Likewise, on April 7, 2009, Mr. West composed a letter to Pierce County

⁴ While Mr. West's tactics may have been overly confrontational, he was frustrated at the delay of the adjudication of his case resulting from the refusal of the Trial Court to follow RCW 42.56.550(3) and decide whether the Port had violated the PRA at any one of the show cause hearings noted by Mr. West, from the many stricken hearings and the unavailability of the Trial Court.

**General Docket
United States Court of Appeals for the Ninth Circuit**

Court of Appeals Docket #: 11-35918 **Docketed:** 11/07/2011
Nature of Suit: 3890 Other Statutory Actions
 In re Arthur West
Appeal From: U.S. District Court for Western Washington, Tacoma
Fee Status: Paid

Case Type Information:
 1) civil
 2) private
 3) null

Originating Court Information:
District: 0981-3 : 3:11-mc-05022-RBL
Trial Judge: Ronald B. Leighton, District Judge
Date Filed: 10/06/2011
Date Order/Judgment: 10/06/2011 **Date Order/Judgment EOD:** 10/06/2011 **Date NOA Filed:** 11/03/2011 **Date Rec'd COA:** 11/04/2011

Prior Cases:

07-73094	Date Filed: 08/03/2007	Date Disposed: 04/02/2009	Disposition: Denied - Memorandum
08-35785	Date Filed: 09/22/2008	Date Disposed: 10/05/2010	Disposition: Affirmed - Memorandum
09-35672	Date Filed: 07/21/2009	Date Disposed: 10/09/2009	Disposition: Rule 42-1 Dismissal - Clerk Order
09-35832	Date Filed: 09/16/2009	Date Disposed: 11/01/2010	Disposition: Affirmed - Judge Order
09-36066	Date Filed: 12/02/2009	Date Disposed: 12/07/2010	Disposition: Affirmed - Judge Order
10-35608	Date Filed: 07/08/2010	Date Disposed: 08/26/2010	Disposition: Jurisdictional Defects - Judge Order
11-35602	Date Filed: 07/15/2011	Date Disposed: 10/19/2011	Disposition: Affirmed - Judge Order
11-35603	Date Filed: 07/15/2011	Date Disposed: 10/19/2011	Disposition: Affirmed - Judge Order
89-35433	Date Filed: 06/22/1989	Date Disposed: 11/07/1990	Disposition: Affirmed - Opinion
89-35845	Date Filed: 12/05/1989	Date Disposed: 11/07/1990	Disposition: Reversed, Remanded - Memorandum
94-35412	Date Filed: 04/29/1994	Date Disposed: 04/04/1995	Disposition: Affirmed - Memorandum
94-36015	Date Filed: 10/21/1994	Date Disposed: 03/15/1995	Disposition: Rule 42-1 Dismissal - Clerk Order
97-36118	Date Filed: 12/09/1997	Date Disposed: 03/20/2000	Disposition: Reversed, Remanded - Opinion
98-35681	Date Filed: 07/21/1998	Date Disposed: 03/22/2000	Disposition: Remanded - Memorandum
99-35828	Date Filed: 08/20/1999	Date Disposed: 12/20/1999	Disposition: Rule 42-1 Dismissal - Clerk Order

Current Cases:















	Lead	Member	Start	End
Companion	10-35909	11-35602	07/15/2011	
Related	10-35909	11-35603	07/15/2011	
	10-35909	11-35604	07/15/2011	
	10-35909	11-35918	11/07/2011	
	10-35909	12-35712	08/30/2012	
	11-35602	11-35603	07/15/2011	
	11-35602	11-35604	07/15/2011	
	11-35603	11-35604	07/15/2011	
	11-35604	11-35918	11/07/2011	
	11-35918	12-35712	08/30/2012	

In re: ARTHUR SCOTT WEST, I In Re - Appellant,	Arthur Scott West, I Direct: 360-943-7470 [NTC Pro Se] 120 State Ave NE #1497 Olympia, WA 98501
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EXHIBIT 3

In re: ARTHUR SCOTT WEST, I,

Appellant.

11/07/2011	 <u>1</u> 19 pg, 348.69 KB	DOCKETED CAUSE AND ENTERED APPEARANCES OF APLT IN PRO PER AND NO OTHER APPEARANCE. SEND MQ: No. The schedule is set as follows: Fee due from Appellant Arthur Scott West I on 11/03/2011. Appellant Arthur Scott West I opening brief due 02/13/2012. [7956544] (KM)
11/09/2011	 <u>2</u> 2 pg, 98.14 KB	Filed clerk order (Deputy Clerk: CKP): A review of the district court docket reflects that appellant has not paid the docketing and filing fees for this appeal. Within 21 days from the date of entry of this order, appellant shall: (1) file a motion with this court to proceed in forma pauperis; (2) pay \$455.00 to the district court as the docketing and filing fees for this appeal and provide proof of payment to this court; or (3) otherwise show cause why the appeal should not be dismissed for failure to prosecute. If appellant fails to comply with this order, the appeal will be dismissed automatically by the Clerk under Ninth Circuit Rule 42-1. [7959882] (CKP)
12/07/2011	 <u>3</u>	Received notification from District Court re: payment of docket fee. Amount Paid: USD 455.00. Date paid: 12/07/2011. [7991990] (KM)
04/04/2012	 <u>4</u> 1 pg, 79.33 KB	Filed order (Deputy Clerk: AF) Dismissing case for failure to prosecute (Cir. Rule 42-1) Pursuant to Circuit Rule 42-1, this appeal is dismissed for failure to file opening brief., This order served on the district court shall constitute the mandate of this court. [8127354] (AF)
04/17/2012	 <u>5</u> 15 pg, 474.02 KB	Filed Appellant Sir Arthur Scott West, I motion for reconsideration of dismissal. [8144342] (EL)
04/19/2012	 <u>6</u> 1 pg, 22.24 KB	Filed order (Appellate Commissioner) Appellant's motion to reinstate the appeal is granted. The opening brief is due May 21, 2012. A pro se briefing packet shall be provide to the appellant under separate cover. As there is no appearance by appellee, upon the receipt of the opening brief, this case is ready for calendaring. (Pro Mo) [8146826] (MS)
04/19/2012	 <u>7</u>	Sent pro se breifing packet by mail to Appellant Sir Arthur Scott West. [8146857] (MS)
11/01/2012	 <u>8</u> 1 pg, 82.3 KB	Filed order (Deputy Clerk: EU) Dismissing case for failure to prosecute (Cir. Rule 42-1) Pursuant to Circuit Rule 42-1, this appeal is dismissed for failure to file opening brief. This order served on the district court shall constitute the mandate of this court. [8384394] (EU)
11/13/2012	 <u>9</u> 2 pg, 73.35 KB	Filed Appellant Sir Arthur Scott West, I motion to reconsider or to vacate dismissal on the basis that the clerk refused to file appellant's brief. no proof of service [8401985] (JFF)
12/26/2012	 <u>10</u> 1 pg, 26.13 KB	Filed order (Appellate Commissioner): The appellant's motion for reconsideration of the dismissal of this appeal pursuant to Ninth Circuit Rule 42-1 is construed as a motion to reinstate this appeal. So construed, the motion is denied without prejudice to a renewed motion accompanied by the opening brief. See General Order 2.4, General Orders of the United States Court of Appeals for the Ninth Circuit (a motion to reinstate is to be accompanied by correction of the defect that caused the dismissal). Although the appellant states that the opening brief is attached to the appellant's motion to reinstate, the court does not have a record of receiving the opening brief. The appellant's motion for en banc reconsideration is denied. Any renewed motion must be filed on or before January 28, 2013, and accompanied by the opening brief. (Pro Mo) [8453064] (MS)
01/28/2013	 <u>11</u> 3 pg, 103.01 KB	Filed Appellant Sir Arthur Scott West, I motion to vacate dismissal or reinstate case. Served on 01/23/2013. [8495113] (WP)
01/28/2013	 <u>12</u> 37 pg, 1.63 MB	Received original and 1 copy of Appellant Sir Arthur Scott West, I opening brief (Informal: Yes) 38 pages. Served on. Major deficiencies: motion to reinstate pending. [8495118] (WP)
02/07/2013	 <u>13</u> 1 pg, 22.27 KB	Filed order (Appellate Commissioner): Appellant's motion to reinstate this appeal is granted. The Clerk shall file the opening brief received January 28, 2013. As there is no appearance by appellee, briefing is complete. (Pro Mo) [8505049] (MS)
02/07/2013	 <u>14</u> 37 pg, 1.65 MB	Filed original and 7 copies of Appellant Sir Arthur Scott West, I (Informal: No) opening brief of 38 pages. No service date [8505578] (WP)

- Documents and Docket Summary
- Documents Only

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COURT OF APPEALS, DIV. II
FOR THE STATE OF WASHINGTON

ARTHUR WEST,)	NO. 40865-1-II
)	
Plaintiff,)	
)	
vs.)	
)	
WASHINGTON ASSOCIATION OF)	
CITIES, THURSTON COUNTY,)	
WASHINGTON STATE DNR,)	
WASHINGTON STATE, PORT OF)	
OLYMPIA, HANDS ON CHILDREN'S)	
MUSEUM, LOTT, JOHN DOE)	
ENVIRONMENTAL CONSULTANTS,)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
OF ORAL ARGUMENT
HEARD BEFORE THE COURT OF APPEALS, DIVISION II
(FROM TAPED PROCEEDINGS)

BE IT REMEMBERED that the foregoing proceedings were taken from the oral argument heard before the Court of Appeals, Division II, on May 25, 2012, before THE HONORABLE CHRISTINE QUINN-BRINTNALL, THE HONORABLE MARYWAVE VAN DEREN, and THE HONORABLE JOEL PENOYAR.

MS. STEPHANIE M.R. BIRD, ESQ., Cushman Law Offices, PS, 924 Capitol Way South, Olympia, WA, 98501-1210, appearing on behalf of the Appellant, Arthur West.

CAROLYN A. LAKE, ESQ., Goodstein Law Group, PLLC, 501 South G Street, Tacoma, WA 98405, appearing on behalf of the Respondent Port of Olympia.

MR. MARK ALLEN ANDERSON, ESQ., Patterson, Buchanan, Fobes, Leitch & Kalzer, 2112-3rd Avenue, Suite 500, Seattle, WA, 98121-2326, appearing on behalf of the Respondent Thurston County.

EXHIBIT 4

Proceedings Transcribed by: Catherine M. Vernon, CSR, RPR

1 to the records of the SSLC and EBRP and fraudulently and
2 conspired to misrepresent the public availability of records
3 related to such projects." That's the most of the specifics
4 that Mr. West gives with respect to his request for Declaratory
5 Judgment.

6 We made a standing argument pointing out that he lacks
7 standing. He didn't cite any injury specific to him, didn't
8 show how he was within the zone of interest, how there was no
9 injury of fact, and how it was really a non-judicable
10 controversy because he didn't give the facts, enough facts to
11 the Court or the Port to be able to rule.

12 JUSTICE VAN DEREN: His concern seems to be that the
13 Ports of Tacoma and Olympia are -- hark back to totalitarian
14 regimens, citing Nazi culture and *Mein Kampf*, that this is a
15 slippery slope of collaborators I think is what he calls the
16 -- no, I'm sorry, collaboration as facilitators to hide things
17 from the public. That seems to be his focus as that there's
18 some huge totalitarian conspiracy.

19 MS. LAKE: The hyperbolic approach in -- is consistent
20 with Mr. West's writing and pleading and it's that very nature
21 that makes it impossible for the Port to present or defend,
22 except to point out that he fails to provide any facts that
23 would support any claim. And so, therefore, it was appropriate
24 to dismiss based upon failure to state a claim upon which relief
25 can be granted.

From: A West
To: Carolyn Lake
Subject: Show Cause Order, Bacon, et al
Date: Friday, May 21, 2010 8:23:36 AM
Attachments: Order_PCO_Declaration.doc

M s.Lake

Apparently my new law clerk from the Pierce County Sheriff's Office has succeeded in running the blockade and filing the show cause order for June 7, 2010 with the Pierce County Clerk.

Since there appears to be a conflict, please let me know if you are available at an earlier date for a hearing.

Thank you.

Arthur west

P.S., attached, the latest in me & (di)julio

The mama pajama rolled out of bed
And worked for the Association
When the plaintiff found out he began to shout
And started an investigation
Not Paul Simon

_____ Information from ESET NOD32 Antivirus, version of virus signature
database 5136 (20100521) _____

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

ATTACHMENT 1

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

IN RE ARTHUR WEST

MC11-5022RBL

BAR ORDER AGAINST PLAINTIFF
ARTHUR WEST IN THE WESTERN
DISTRICT OF WASHINGTON

THIS MATTER comes before the United States District Court, in the Western District of Washington, on the Court's own motion in response to the filings of pro se Plaintiff Arthur West, and upon West's response to this Court's Order to Show Cause. The Court orders that West be permanently barred from further litigation in this District.

I. INTRODUCTION

Arthur West has filed or joined at least forty-nine cases in Washington state courts. He has been a party to eighteen cases in the Western District of Washington since 1999, four in the last year alone. *See* Appendix A. The vast majority of those cases were dismissed. *See West v. United States Sec'y of Transp. et al.* 06-05516-RBL, Order Granting Def.'s Mot. to Dismiss, Dkt. #59, at p. 4 ("[N]one of the purported bases for subject matter jurisdiction cited in the amended complaint provide even an arguably valid basis for the exercise of jurisdiction over the claims asserted in the amended complaint against the U.S. Army Corps of Engineers."); *West v.*

1 *United States Sec'y of Defense et al*, 07-5580-RBL, Order Granting Def.'s Mot. to Dismiss., Dkt.
2 #41, at p. 11 ("Plaintiff produces no evidence beyond his bare allegations"); *West v. Johnson et*
3 *al*, 08-5741-RJB, Order Granting Def.'s Mot. to Dismiss, Dkt. #114, at p. 6 ("Plaintiff's
4 'everything but the kitchen sink' approach leaves the [defendants] to guess which violation each
5 is alleged to be responsible for"); *West v. Thurston County of et al*, 99-05913-FDB-JKA, Dkt.
6 #15, at p. 3 ("Plaintiff's Complaint is conclusory and sets forth no facts or law which would
7 support his claim against *any* of the named Defendants" (emphasis in original)); and *West et al v.*
8 *Weyerhaeuser Co. et al*, 08-00687-RSM, Order of Dismissal, Dkt. #48, at p. 1 ("The complaint is
9 difficult to decipher").

10
11 West is also subject to an order issued by Judge Benjamin Settle of this District, barring
12 West from further legal action against any state or federal judge, any commissioner or employee
13 of Thurston County, Thurston County itself, any commissioner or employee of King County,
14 King County itself, and the Patterson Buchanan law firm. See *West v. Maxwell*, 10-5275-BHS,
15 Bar Order, Dkt.# 59, at p. 19–20. Judge Settle found that West's litigation was "frivolous and
16 harassing" and that West himself is a "vexatious litigant." *Id.* at 11.

17
18 West's complaints rarely articulate a cognizable injury. Instead, West appears to use
19 these pleadings to vent outlandish frustrations with state and federal authority. See *West v.*
20 *Chushkoff et al.*, no. 10-5547-RBL, West's Complaint, Dkt. #1, at p. 4 ("[West] is subjected to a
21 culture of prejudice and discrimination against citizens in the Courts that is reminiscent of the
22 social customs of apartheid in South Africa."); *West v. Hilyer et al.*, no. 10-05395-RBL, West's
23 Reply, Dkt. #45, at p. 5 ("West has been and continues to be damaged by costs incurred in
24 discovering and responding to the takeover of democratic government perpetrated under false
25 color of law by the AWC and its unholy bretheren [sic] of darkness"); and *McCall v. Intercity*
26
27
28

1 *Transit et al.*, no. 10-5564-RBL, West's Resp. and Decl., Dkt. #34, at p. 2 (claiming injury from
2 Intercity Transit's "scorched earth and extortionate attorney tactics").

3 Furthermore, West rarely, if ever, makes claims supported by fact or law. *See West v.*
4 *Chushkoff et al* (accusing the AWC of "racketeering" under the Racketeer Influence and Corrupt
5 Organizations Act, 18 U.S.C. §1962, without any facts to support a claim under RICO or fraud
6 of any kind); *West v. Hilyer et al* (attempting to sue the judge and defendants of a prior state
7 court action, for conspiring and colluding against him resulting in unfavorable court rulings); and
8 *McCall v. Intercity Transit et al* (joining a lawsuit, the underlying action of which he had no
9 personal knowledge).
10

11 II. AUTHORITY

12
13 Courts may bar vexatious litigants from filing frivolous and harassing lawsuits. "District
14 courts have the inherent power to file restrictive pre-filing orders against vexatious litigants with
15 abusive and lengthy histories of litigation." *Weissma v. Quail Lodge, Inc.*, 179 F.3d 1194, 1197
16 (9th Cir. 1999). These bar orders "may enjoin the litigant from filing further actions or papers
17 unless he or she first meets certain requirements, such as obtaining leave of the court or filing
18 declarations that support the merits of the case." *Id.*
19

20 Pro se pleadings and motions are liberally construed. *See Balistreri v. Pacifica Police*
21 *Dept.*, 901 F.2d 696, 699 (9th Cir. 1990); *Bretz v. Kelman*, 773 F.2d 1026, 1027 n. 1 (9th Cir.
22 1985) ("[W]e have an obligation where the petitioner is pro se . . . to construe the pleadings
23 liberally and to afford the petitioner the benefit of any doubt."). However, despite the generous
24 latitude afforded to pro se plaintiffs, judicial review of "frequently diffuse" pro se filings must
25 remain within the bounds of common sense. *McKinney v. DeBord*, 507 F.2d 501, 504 (9th Cir.
26 1974).
27
28

III. BAR ORDER

1
2 **Plaintiff Arthur West is barred from further litigation in the U.S. District Court,**
3 **Western District of Washington.**

4 Even under the most generous reading of any of Arthur West's endless complaints, this
5 Court concludes that West is a vexatious litigant that has abused his privilege to request judicial
6 relief. He has clogged this Court's docket with an unending string of factually and legally
7 meritless claims, wasting precious judicial resources, and distracting the Court from other
8 pleadings worthy of the Court's time and attention.

9
10 As a sanction of this incessant and baseless litigation under Rule 11 of the Federal Rules
11 of Civil Procedure, the Court hereby ORDERS as follows:


- 12 1. Plaintiff Arthur West will file NO NEW ACTIONS in the Western District of
13 Washington while this Order is pending, absent leave of court. Any attempted filing
14 will be returned by the Clerk of Court's office (in Tacoma or Seattle) to the Plaintiff.
15 undocketed.
16
- 17 2. In the event West seeks to commence a new action, he shall make a pre-filing
18 affirmative showing to this Court that: (1) any proposed cause of action is within the
19 jurisdiction of this Court; (2) the claim asserted meets the requirements of the Federal
20 Rules of Civil Procedure, particularly Rule 8, and is not subject to immediate
21 dismissal under the Rules, particularly Rule 12(b)(6); and (3) West has alleged a
22 cognizable injury and otherwise has standing to bring his action in federal court. The
23 Court will review any pre-filing that Plaintiff presents and determine whether a new
24 action shall be opened. In the event the Court determines that the pre-filing does not
25 meet the criteria above, it will not be opened and will be instead docketed in this
26 Miscellaneous case and no further action will be taken.
27
28

1 3. Violation of this Order may result in the imposition of sanctions.

2 The Clerk of Court is directed to send a copy of this Order to Plaintiff Arthur West.

3
4 **IT IS SO ORDERED.**

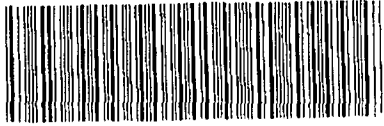
5 Dated this 6th day of October, 2011.

6
7 

8 RONALD B. LEIGHTON
9 UNITED STATES DISTRICT JUDGE

APPENDIX A

1				
2				
3	<u>2:08-cv-00687-RSM</u>	West et al v. Weyerhaeuser Company et al	Filed 05/01/08	closed 04/08/09
4	<u>3:06-cv-05516-RBL</u>	West v. United States Secretary of Transportation et al	filed 09/08/06	closed 12/17/07
5				
6	<u>3:07-cv-05580-RBL</u>	West v. United States Secretary of Defense et al	filed 10/22/07	closed 06/18/08
7	<u>3:08-cv-05741-RJB</u>	West v. Johnson et al	filed 12/12/08	closed 09/10/09
8	<u>3:09-cv-05456-BHS</u>	John Doe #1 et al v. Reed et al	filed 07/28/09	
9	<u>3:10-cv-05275-BHS</u>	West v. Maxwell et al	filed 04/22/10	closed 09/01/10
10	<u>3:10-cv-05381-RBL</u>	West v. Northern Spotted Owl Policy Work Group et al	filed 05/28/10	closed 11/08/10
11				
12	<u>3:10-cv-05395-RBL</u>	West v. Hilyer, et al.,	filed 06/04/10	closed 06/15/11
13	<u>3:10-cv-05547-RBL</u>	West v. Chushkoff et al	filed 08/05/10	closed 06/15/11
14	<u>3:10-cv-05564-RBL</u>	McCall et al v. Intercity Transit et al	filed 08/11/10	closed 06/15/11
15	<u>3:11-cv-05205-RBL</u>	West v. Port of Tacoma et al	filed 03/16/11	
16	<u>3:89-cv-00014-JET</u>	West v. Jones, et al	filed 01/06/89	closed 02/13/90
17	<u>3:92-cv-05469-FDB</u>	West v. Bartholemew, et al	filed 09/21/92	closed 08/25/94
18	<u>3:93-cv-05174-RJB</u>	West v. Eikenberry, et al	filed 04/09/93	closed 03/23/94
19	<u>3:96-cv-05179-RJB</u>	West v. Secretary of Defense, et al	filed 03/18/96	closed 12/15/00
20	<u>3:96-cv-05453-RJB</u>	West v. Trans Secretary of, et al	filed 05/13/96	closed 11/13/02
21	<u>3:98-cv-05300-RJB</u>	West, et al v. Secy of Transp. et al	filed 06/03/98	closed 06/15/99
22	<u>3:99-cv-05193- FDB-JKA</u>	West v. Thurston County of, et al	filed 04/02/99	closed 05/13/99
23				
24				
25				
26				
27				
28				



09-2-14216-1 39080749 ORDSM 08-24-12

(Visiting) JUDGE EDWARDS
GRAY
2:30 PM

~~2012 AUG 22 PM 2:44~~

FILED
IN COUNTY CLERK'S OFFICE

A.M. AUG 24 2012 P.M.
PIERCE COUNTY WASHINGTON
KEVIN STOCK County Clerk
BY _____ DEPUTY

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

ARTHUR S. WEST,
Petitioner,
v.
PORT OF TACOMA, et al
Respondent.

No. 09-2-14216-1

ORDER OF DISMISSAL
REVISED NUNC PRO TUNC
To June 12, 2012

This matter came regularly before the Court this 12th day of June 2012 upon the Defendant Port of Tacoma et al's Motion to Dismiss. Plaintiff West appeared through legal Counsel Stephanie Bird, and the Port of Tacoma appeared by and through its undersigned attorneys, the GOODSTEIN LAW GROUP PLLC, Carolyn A. Lake. Based on the pleadings submitted, the records and files herein, and argument of the parties, the Court issues the following:

FINDINGS OF FACT

1. This public records litigation was filed over three years ago by Petitioner West.
2. The facts of this case necessarily require summaries of other related litigation pursued by Mr. West.

First West PRR Case
Pierce County Cause No. 08-2-043121-1.

3. In 2008, Mr. West submitted a large public records request with the Port of

ORDER GRANTING PORT MOTION TO DISMISS
1 of 15
120726 f pldg port proposed REVISED & STIPULATED ORDER as to all parties DISMISSAL.docx

GOODSTEIN LAW GROUP PLLC
501 South G Street
Tacoma, WA 98405
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FAX 253.779.4411
ORIGINAL

1 Tacoma, seeking all records related to the Port's potential planned South Sound
2 Logistic Center.

- 3 4. The South Sound Logistics Center (SSLC), the centerpiece of the records
4 request, referred to the joint planning process undertaken by the Ports of
5 Tacoma & Olympia to evaluate an integrated cargo handling and transportation
6 facility that facilitates the movement of freight from one mode of transport to
7 another at a terminal specifically designed for that purpose.
- 8 5. Mr. West's public record request was broad, requesting "all records associated
9 with the Project." The request has generated a massive records search by the
10 Port of Tacoma.
- 11 6. The Port actively gathered, reviewed and released records responsive to his
12 request, which generated **tens of thousands** of pages of possible responsive
13 records.
- 14 7. While the Port was responding to his request, Plaintiff West filed suit against
15 the Port, and moved prematurely for show cause. See Pleadings on file from
16 Pierce County Cause No. 08-2-043121-1. The Port opposed. The Peirce County
17 Court (Judge Fleming) set a records release schedule in keeping with the large
18 request, and the Port fully complied.
- 19 8. Ultimately, Mr. West's first PRR case was dismissed based on Mr. West's failure
20 to prosecute that suit (lapse of 18 months with no Plaintiff action and willful
21 disregard of court Orders) and Mr. West's failure to abide by Case Schedule. See
22 Order dated January 25, 2011 attached to the April 4, 2012 Declaration of
23 Counsel Lake on file herein (hereinafter "Decl. of Lake") at **Ex. 1**.

1 9. Mr. West appealed that dismissal in January, 2010 but delayed filing his
 2 Opening Brief until March 30, 2012. See Docket for Court of Appeals, II-
 3 430045 attached to this Decl. of Lake at **Ex. 2.**

4 **Present West PRR Case**
 5 **Pierce County Cause No. 09-2-14216-1**

6 10. While the first PRA was "on hold", Mr. West filed this **present** suit on Oct. 6,
 7 2009. See West Complaint on file herein in Cause No. 09-2-14216-1. See Decl.
 8 of Lake at **Ex. 3.**

9 11. Mr. West's complaint again alleges (among other things) that the Port of
 10 Tacoma and various officials violated the Public Disclosure Act. *Id.*

11 12. Mr. West describes in this Cause that the centerpiece issue of his case was his
 12 complaint with Superior Court Judge Frederick Flemings handing of Mr. West's
 13 **first & on-going** Public records act complaint:

14 3.4 On or about April 15 of 2008, a Public Records case involving a
 15 regional Rail Logistics Center proposed by the Port of Tacoma was submitted to
 16 the then Honorable Judge Fleming for disposition, in Pierce County Cause No.
 17 08-2-04312-1.

18 3.5 Despite the passage of well over a year, and despite the express terms
 19 of RCW 42.56.550 which require **the Court** to conduct an in camera review,
 20 **respondent Fleming** has willfully failed to decide the issue presented for his
 21 determination, and has deliberately obstructed and delayed judicial review. He
 22 has also, by his actions, entered an order that required a private contractor to
 23 conduct the in camera review. This was unlawful in such review is required to

24 **Fnt1: 3. 1.1 This is an action for a declaratory ruling in regard to a pattern of secrecy and negligent
 25 administration at the Port of Tacoma that has cost the public over a Quarter of a Billion Dollars
 (250,000,000) in needless expenditures for mismanaged projects.**

1.1 Plaintiff will show that Defendant Port of Tacoma Commissioners (and Executive Director Tim Farrell)
 negligently failed to exercise due care in supervising their staff and contractors, **violated their fiduciary duties
 to administer the Port in the Public interest, and maintained a culture of secrecy and a pattern of
 obstruction** of the Public Disclosure Act to conceal and obscure their wrongful actions in wasting **hundreds of
 millions of dollars** on mismanaged boondoggles, including the SSLC and the Blair Hylebos NYK terminal
 project.

ORDER GRANTING PORT MOTION TO DISMISS

3 of 15
 (20726 f pldg.port proposed REVISED & STIPULATED ORDER as to all
 parties. DISMISSAL docx

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501 South G Street
 Tacoma, WA 98405
 253.779.4000
 FAX 253.779.4411

1 be conducted **by the Court** under the express terms of the aforementioned
2 State Law.

3 3.6 By such actions, **respondent Fleming has forfeited his office**
4 under the express terms of RCW 2.08.240, and Article 4, Section 20 of the
5 Constitution of the State of Washington.

6 3.7. **A Writ of Quo Warranto is the proper remedy to effect the**
7 **ouster of an individual unlawfully exercising the franchise of Judge.**

8 See West Complaint herein at para 3.4- 3.7.

9 13. Mr. West also included a Public Records Act complaint in this present suit,
10 which duplicates the requests made in his first PRR case. See West Complaint
11 at para 4.12.²

12 14. On 10/30/2009, the Court (Honorable Judge Hogan) granted Pierce County's
13 Motion and dismissed the County from the suit. Dec of Lake **Ex 4.**

14 15. On November 2, 2009, Judge Hogan recused herself, with the Case to be
15 assigned to a visiting Judge. Dec of Lake **Ex 5.**

16 16. Thereafter the case was assigned to this Court Visiting Grays Harbor Judge
17 Edwards. Dec of Lake **Ex 6.**

18 17. In May 2010, despite Port's counsel's Notice of Unavailability on file, Mr. West
19 pursued a Motion and Show Cause in her absence, and failed to advise the
20 Court that Ms Lake had made her unavailability known.

21 ² 4.2 By their acts and omissions, the Port of Tacoma and its agents violated the Public Records Act,
22 RCW 42.56, for which they are liable for the relief requested below

23 See *West Complaint* at para 4.2. Mr. West describes that his records request consisted of:

- 24 1. All physical copies of SSLC related or other records presently being withheld by the Port or
25 its agents from any person or entity, including the allegedly "newly disclosed" October Surprise
26 SSLC records which continue to be illegally withheld.
- 27 2. All billing statements, invoices, and communications 2006 to present involving or about
28 Ramsey Ramerman, Foster Pepper, or other counsel providing advice or services in regard to
29 Public Disclosure issues.
- 30 3. All billing statements, invoices, or communications 2004 to present with or concerning
31 "Judge" Terry Lukens or Judge Flemming
- 32 4. All communications with friends of Rocky Prairie or their representatives 2007 to
33 present, to include any denials of requests for disclosure and any "privilege" logs.

ORDER GRANTING PORT MOTION TO DISMISS

GOODSTEIN LAW GROUP PLLC

- 1 18. Thereafter, on July 26, 2010, at hearing to rule on determine (1) the Port of
2 Tacoma's Motion to Dismiss the Petitioner's Complaint and (2) a Presentment
3 and Entry of an Order Vacating a Show Cause Order, Judge Dave Edwards
4 granted the Port's motion to dismiss the Complaint in part (based on
5 duplicative claims), and vacated the Show Cause Order. See Transcript of 26
6 July 2010 hearing Dec of Lake Ex 7.
- 7 19. The Court also found Mr. West in contempt at that hearing, and ultimately
8 awarded terms against Mr. West in the amount of \$1,500 payable to the Port of
9 Tacoma. The Court conditioned further proceedings in the case on Mr. West's
10 payment of those terms. Id.
- 11 20. Visiting Judge Edwards then asked Ms. Lake to draw up a proposed Order
12 memorializing the rulings. The order was signed August 9, 2010 (filed August
13 13, 2010). Dec of Lake Ex 8.
- 14 21. From August 2010 through April 2012, Mr. West failed to pay his sanctions and
15 took no further action in this case, and was barred from doing so until his
16 sanctions are paid.
- 17 22. Immediately after this Court signed the Order of Partial Dismissal in July 2010,
18 Mr. West initiated two more related cases.

19 **Personal Restraint Petition**

- 20 23. On 26 July 2010, the same day as the Judge Edward's ruling, Mr. West filed a
21 personal restraint petition citing to this Court (Judge Edwards) and also
22 naming *Port of Tacoma Legal counsel claiming Counsel acted as "illegal Special*
23 *Prosecutor"*. See West Complaint in Washington Supreme Court Cause No.
24 84837-8 and No C10-5547 RJB, in which West named various Courts, Port of

1 Tacoma Commissioners and Port Legal Counsel personally. See Decl. of Lake at
2 **Ex.9**

3 24. In Mr. West's "Declaration Re Filing of Criminal Citation by 'Special' Prosecutor
4 Lake and Request for Emergency Stay," of Aug. 2, 2010, he hyperbolically
5 asserted that Port Counsel "assumed the duties" of law enforcement by filing "a
6 citation commencing a criminal proceeding" on July 30, 2010.

7 25. In fact, Port Counsel did nothing more than file two alternate proposed Orders
8 to memorialize the Judge Edwards' July 26, 2010 rulings. *See Transcript and*
9 *Orders, Ex 7 and 8 to Dec of Lake.* Those proposed orders reflected the
10 Judge's ruling, including Judge Edwards' summary finding that Mr. West was
11 in contempt of court. *Id.*

12 26. Mr. West further confused the Personal restraint action matters by filing (1) a
13 Motion for Injunction on July 27, 2010 and (2) a Request for an emergency stay
14 on Aug 1, 2010.

15 27. The Motion for Injunction sought to prevent "any further actions in regard to
16 restraint of his person by Judge Edwards or the Grays Harbor Superior Court
17 pending a proper indictment as required by law, based on a citation properly
18 charging acts constituting criminal contempt of Court. *See West's Motion for*
19 *Injunction and Supplemental Authority in Support of PRP Petition and Writ of*
20 *habeas Corpus* at 1. *See Decl. of Lake at Ex.10*

21 28. The "request for an emergency stay" similarly sought "a stay on and vacation of
22 any punitive proceedings conducted in this matter upon citations filed by
23 'special' counsel Carolyn Lake pending a proper appearance by Pierce and/or
24 Grays Harbor County." *See West's Declaration Re Filing of Criminal Citation*

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1 by "Special" Prosecutor Carolyn Lake and Request for Emergency Stay at 3.
 2 See Decl. of Lake at **Ex.11**. In other words, Mr. West apparently attempted to
 3 seek a stay of proceedings in the underlying Grays Harbor visiting Judge action
 4 until one or both of the Counties respond to Mr. West's Petition.

5 **29.** The Supreme Court ultimately determined that Port Counsel had not
 6 presumed to assume law enforcement duties.³ See Ruling Dismissing Personal
 7 Restraint Petition, WA Supreme Court Cause No. 84837-8 dated January 19,
 8 2011, Dec of Lake. **Ex 12**.

9 **30.** Mr. West continued to pursue the Personal Restraint Petition, filing
 10 reconsideration (denied) Order denying West Motion to Modify Deputy
 11 Commissioner's Ruling dated 30 March 2011, and Supreme Court Certificate
 12 Order of Finality dated 5 April 2011. Dec of Lake, **Ex 12**.

13 **West Federal District Court Action**
 14 **No. C10-5547 RJB.**

15 **31.** Also on August 6, 2010, the **same** day Judge Edwards signed the Partial
 16 Dismissal Order in this case, Mr. West filed a federal District Court action, also
 17 naming Judge Edwards, Judge Fleming, Judge Chushkoff, Tacoma Port
 18 Commissioners, and also naming Port of Tacoma counsel claiming Counsel
 19 acted as "illegal Special Prosecutor". See West Complaint in No C10-5547 RJB.
 20 See Decl. of Lake at **Ex.13**.

21 **32.** On June 15, 2011, the Federal Court issued an Order of Dismissal responding to
 22 a Motion to Dismiss brought by attorney for the various judges named in the

23 ¹ Nor did she or the other Defendants conceivably "restrain" Mr. West in any manner. Judge Edwards signed one
 24 of the proposed Orders presented by Ms. Lake, and Mr. West apparently sought appellate review of that Order via
 the Personal Restraint Petition.

1 suit (The Honorable Judge(s): Bryan Chushkoff, David Edwards, Frederic
2 Fleming.)

3 33. The Court not only granted dismissal as to the named Judges, but also as to all
4 parties and all causes of action. Therefore the matter was dismissed as to the
5 Port of Tacoma and Port Commissioners (named individually) and as to
6 "Special Prosecutor Lake" the Port's general counsel named in the suit. See
7 Decl. of Lake at **Ex.14**.

8 34. Excerpt from the federal Court's Order reveals the basis for the dismissal
9 action:

10 This action arises from a prior Washington State case brought by
11 Plaintiff Arthur West.

12 The Plaintiff does not identify the court orders that he contests, and does
13 not cite a set of fact from which his claims arise. Nevertheless, he claims
14 injury by Defendants' "wrongful application of **the contempt policy.**"
15 which "transform[ed] the process of securing records under [the
16 Washington Public Records Act] RCW 42.56 into a procedural morass."
17 (Pl. West's Complaint, Dkt. # 1, at p. 3]. He alleges that the PRA has
18 "become a **vehicle of oppression**" subjecting him to a "litigious
19 gauntlet of arcane and prejudicial technical procedures." [Dkt. #1, 3 at p.
20 3]. As a result, West claims he has been "**subjected to a culture of
21 prejudice and discrimination . . . that is reminiscent of the
22 social customs of apartheid in South Africa.**" [Dkt.5 #1, at p. 41.
23 West also claims that Defendants have generally violated his
24 constitutional rights.

18 Plaintiff's claims that the Defendants have engaged in a "**conspiracy to
19 exercise unlawful powers,**" and have generally violated his
20 constitutional rights and "also the ancient rights protected under the 9th
21 [sic] Amendment, and established in the Magna Carta" are not claims
22 from which relief can be granted and do not meet Twombly's "plausible"
23 standard.

22 This Court lacks subject matter jurisdiction over Plaintiff's claims, and
23 Plaintiff fails to state a claim upon which relief can be granted.
24 Defendants' Motion to Dismiss all claims under Fed. R. Civ. P. 12(b)(1)
and (12)(b)(6) is GRANTED, and Plaintiff's claims are DISMISSED, in
their entirety **WITH PREJUDICE.**

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35. After the Federal Court dismissed his case in full on June 15, 2011, Mr. West **again** filed for Reconsideration. The Federal Court denied reconsideration by Order dated July 7, 2011. See Decl. of Lake at **Ex.15**

36. Also on July 7, 2011, the federal Court (Judge Leighton) issued a Show Cause in which it observed Mr. West's track record of unsuccessful and bizarre filings at the federal Court level. The Court announced its intention to issue an Order restraining Mr. West's ability to file matters unless preapproved by the Court or while represented by counsel, and to impose sanctions. See Decl. of Lake at **Ex.16.**

37. On October 6, 2011, Judge Leighton issued a bar order against West, a copy of which is attached. (federal courts). The Order bars Mr. West from any new filings in the Western District of WA. See Decl. of Lake at **Ex.17.**

38. Mr. West pursued various unsuccessful appeals of the Federal Court's Order, with the Mandate from the 9th Circuit Court ultimately issuing February 14, 2012. See Decl. of Lake at **Ex.18.**

39. The above history evidences that Mr. West has expended his efforts in every direction to diffuse, contest and obfuscate, rather than to comply with the long outstanding August 2010 Court Order in **this** case, and thus timely prosecute this Public Records Act claim.

40. As a consequence of these "detours" Plaintiff pursued related to this case, i.e. filing three separate lawsuits in federal and state legal forums, the Port through its taxpayers was required to spend money to defend against each. The price the Port paid for Mr. West's forays into the various courts as he unsuccessfully

1 attempted to avoid this Court's Order is no small sum:

2 *Arthur West v. Port of Tacoma*, Case No. 08-2-042312-1 (Pierce County Super.
3 Ct.): 555.5 hrs. Attorney fees: \$146,984.50 and Costs: \$17,160.40

4 *Arthur West v. Brian Chushcoff, David Edwards, Fredrick Flemming, 'Special*
5 *Prosecutor Lake, Connie Bacon, Richard Marzano, Don Johnson, Clare*
6 *Petrich, Don Meyer, Terry Willis, Mark Wilson, Al Carter, Grays Harbor*
7 *County, Pierce County, Maytown Sand and Gravel, LLC, Sam Reed, Port of*
8 *Tacoma*, Case No. C10-5547-RBL (W.D. Wash): 46.3 hrs. Attorney fees:
\$12,119.00 Costs: \$240.27

9 *In re Personal Restrain of Arthur West by Port of Tacoma and Grays Harbor,*
10 Case No. 84837-8 (Wash. 2011): 52.9 hrs. Attorney fees: \$10,979.50 Costs:
11 \$131.28

12 41. The combined totals paid by the Port of Tacoma for these West matter came to:
13 **Attorney fees: \$170,083.00 Costs: \$17,531.95.** See Decl. of Lake,
14 subjoined to Port's Reply In Support of Dismissal filed June 11, 2012.

15 42. In March 2012, the Court set a status conference for April 5, 2012 in this Case.

16 43. In response, the Port indicated its intention to file a Motion to Dismiss based
17 on Mr. West's extended lapse in his pursuit of this case, and based on the
18 Court's inherent authority to dismiss for abuse of process.

19 44. On March 29, 2012 Legal Counsel for West appeared.

20 45. In April, 2012, Legal counsel for West filed a Note of Issue to set a trial date for
21 this matter, and served a deposition notice.

22 46. The Port filed a Motion to Quash, and on June 1, 2012 filed its Motion to
23 Dismiss.

1 47. The Court set a hearing date of June 12 on the Port's Motion to Dismiss.

2 48. Parties briefed the issues, and appeared at hearing on June 12, 2012.

3 Based on the above Findings, the Court makes the following:

4 **CONCLUSIONS OF LAW**

5 **CR 41 Dismissal**

- 6 1. CR 41(b)(1) provides that a civil action "shall be" dismissed for want of
7 prosecution whenever the plaintiff fails to note the matter for trial or hearing
8 within one year.
- 9 2. CR 41(b)(2) provides for dismissal of a case by Clerk of the court in all civil
10 cases in which no action of record has occurred during the previous 12 months.
- 11 3. To obtain a dismissal under Civil Rule 41, it must be shown that: (1) that an
12 issue of law or fact was outstanding for a year; (2) that the complainant failed to
13 note it for trial within one year after the issue arose; and (3) that the failure to
14 note the cause for trial was not caused by the defendant. *McDowell v. Burke*, 57
15 Wash. 2d 794, 796, 359 P.2d 1037, 1038 (1961), *Simpson v. Glacier Land Co.*,
16 63 Wash. 2d 748, 751, 388 P.2d 947, 949 (1964) (reciting same elements under
17 Rule 41).
- 18 4. The obligation of going forward to escape the operation of CR 41(b) always
19 belongs to the plaintiff and not to the defendant. *McDowell v. Burke*, 57 Wash. 2d
20 794, 796, 359 P.2d 1037, 1038 (1961), citing *State ex rel. Washington Water Power*
21 *Co. v. Superior Court*, 41 Wash.2d 484, 250 P.2d 536, 539 (1953).
- 22 5. From July 23, 2010 date to March 26, 2012, a term lasting more than one year,
23 Plaintiff West took no action in this case.
- 24 6. "A cause must be dismissed if it is clearly within the purview of [CR41(b)]; no

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1 element of discretion is involved." *Franks v. Douglas*, 57 Wash. 2d 583, 585, 358
 2 P.2d 969, 971 (1961); *State ex rel. Goodnow v. O'Phelan*, 6 Wash. 2d 146, 154, 106
 3 P.2d 1073, 1076 (1940).

4 **Court's Inherent Authority To Dismiss For Abuse of Process**

5 7. The Port seeks dismissal of-right for failure to prosecute pursuant to CR 41, and
 6 upon this Court's discretionary inherent capacity to dismiss this case due to
 7 Plaintiff's pattern of unacceptable litigation practices.

8 8. Washington courts draw authority to involuntarily dismiss cases from several
 9 sources: CR 41(b), a non-discretionary dismissal of right for want of
 10 prosecution, or from the Court's discretionary authority to manage cases that
 11 have not been diligently prosecuted where the circumstances would not
 12 ordinarily be governed by the circumstances outlined CR 41(b). *Woodhead v.*
 13 *Discount Waterbeds, Inc.*, 78 Wn.App. 66, 68, 896 P.2d 66, (Div. 1 1995).

14 9. The purposes of CR 41 are at least twofold: first, to protect litigants from
 15 dilatory litigation practices, and second, to prevent the cluttering of court
 16 records with unresolved and inactive litigation. *Nicholson v. Ballard*, 7
 17 Wn.App. 230, 231-32, 499 P.2d 212 (Div. 2 1972) *overruled on other grounds*
 18 *by Vaughn v. Chung*, 119 Wash. 2d 273, 830 P.2d 668 (1992), *quoting Franks v.*
 19 *Douglas*, 57 Wash.2d 583, 358 P.2d 969 (1961).

20 10. Courts draw discretionary power to dismiss cases from the first sentence of CR
 21 41(b).⁴ *Id.*

22 11. CR 41(b)(1) "Involuntary Dismissal for Lack of Prosecution" in no way limits the

23 ⁴ "For failure of the plaintiff to prosecute or to comply with these rules or any order of the
 24 court, a defendant may move for dismissal of an action or of any claim against him or her." CR
 41(b).

1 discretionary capability of courts to involuntarily dismiss cases.

2 12. An involuntary dismissal is reviewed for abuse of discretion and is only
3 overturned if manifestly unreasonable or based upon untenable grounds. *Hizey*
4 *v. Carpenter*, 119 Wash.2d 251, 268, 830 P.2d 646 (1992).

5 13. Dismissal is an appropriate remedy where the record indicates that "(1) the
6 party's refusal to obey [a court] order was willful or deliberate,
7 (2) the party's actions substantially prejudiced the opponent and
8 (3) the trial court explicitly considered whether a lesser sanction would
9 probably have sufficed." *See Rivers*, 145 Wash.2d at 686, 41 P.3d 1175.

10 14. A party's disregard of a court order without reasonable excuse or
11 justification is deemed willful.

12 **Mr. West's Abuse of Process**

13 15. Petitioner West's failure to timely prosecute this PRA case and failure to
14 timely abide by the Court's Sanction Order was without justification or excuse,
15 and was therefore willful.

16 16. In addition, Plaintiff choose to pursue extended and unfounded litigation
17 actions in various courts, all to avoid complying with the sanctions issued by
18 this Court, failed to timely pay costs imposed against him by this Court and
19 failed to timely pursue the issues in this cause with a lapse of nearly two years
20 (July 2010 through March 2012).

21 17. Plaintiff's actions provide this Court with ample grounds to support
22 discretionary dismissal for abuse of process.

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1 **Substantial Prejudice to Port**

2 18. This is a Public Records Act case, in which potentially, a "per day" penalty is at
3 issue.

4 19. Imposition of a "per day" penalty is mandatory.

5 20. Each day of the Petitioner's delay adds to the risk of the Port incurring a per day
6 penalty.

7 21. Public Records cases are by nature fact dependant. Witness memories are
8 affected and lessened by the extended lapse of time.

9 22. The extended lapse of time in this case substantially prejudices the Port and is
10 directly attributable to Plaintiff West's own actions.

11 23. Thus West's pattern of delay represents real potential for substantial prejudice
12 against the Port in this case.

13 24. In addition, the Port is substantially prejudiced due to Plaintiff's willful and
14 protracted failure to pay contempt sanctions Order by this Court and Plaintiff's
15 pursuit of frivolous related litigation in other Courts rather than to prosecute
16 his matter in this Court, which required the Port to litigate West's other
17 lawsuits and filings, while continuing to invest attorney time in the instant
18 matter, at a substantial cost to the Port taxpayers.

19 **No Lesser Sanction Will Suffice**

20 25. The Court also finds no lesser sanction will do.

21 26. The Court also notes that Mr. West has been previously found in contempt and
22 fined in this matter (\$1500), and bar orders were issued against Mr. West, all by
23 Courts in litigation directly related to this matter.

24 27. These previous sanctions have not cured Mr. West's abuses of process.

1 28. The sanction of dismissal for want of prosecution and abuse of process
2 recognizes and cures the substantial prejudice caused to the Port, and no lesser
3 sanction will do.

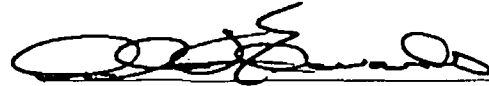
4 Based on the above Findings of Fact and Conclusions of Law, the Court enters the
5 following:


6 **ORDER**

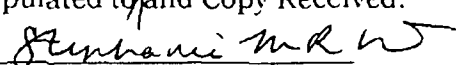
- 7 1. The Court grants the Port's Motion to Dismiss as to all remaining parties.
- 8 2. This matter is Dismissed with prejudice.
- 9 3. This Revised Order is *nunc pro tunc* to the date the Original Order was
10 entered June 12, 2012.

FILED
IN COUNTY CLERK'S OFFICE
AUG 24 2012 P.M.
PIERCE COUNTY WASHINGTON
KEVIN STOCK COUNTY CLERK
BY _____ DEPUTY

11 DATED this 22nd August 2012.

12 
13 _____
14 Honorable Judge Edwards

14 Stipulated to and Presented by:
15 GOODSTEIN LAW GROUP PLLC
16 By 
17 Carolyn A. Lake, WSBA #13980
18 Attorneys for Respondent Port

18 *as to the dismissal applying to all remaining parties and being effective nunc pro tunc*
19 Stipulated to and Copy Received: 
20 Stephanie Bird, WSBA # 36859
21 Attorney for Plaintiff Arthur West

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DIVISION II

2013 JUN 19 PM 2:49

STATE OF WASHINGTON

BY _____
DEPUTY

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ARTHUR WEST APPELLANT,	NO. 43704-0-II
V.	DECLARATION OF SERVICE
PORT OF TACOMA RESPONDENT.	

The undersigned declares that I am over the age of 18 years, not a party to this action, and competent to be a witness herein. I caused this Declaration and the following documents:

1. RESPONSE BRIEF OF PORT OF TACOMA


to be served on June 19, 2013 to be served on the following parties and in the manner indicated below:

Stephanie Bird
Cushman Law Firm
924 Capitol Way S
Olympia, WA, 98501-1210
StephanieBird@CushmanLaw.com

by United States First Class Mail
 by Legal Messenger
 by Facsimile
 by Electronic Mail

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

Dated this 19th day of June 2013 at Tacoma, Washington.



Seth S. Goodstein

ORIGINAL