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No. 65209-5-I

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

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RAYMOND J. PELLETTI

Respondent - Appellee,

V.

DUTCH VILLAGE MALL

Plaintiff - Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR WHATCOM COUNTY  
HON. IRA J. UHRIG, JUDGE  
No. 10-2-00311-4

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**OPENING BRIEF OF THE APPELLANT**

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JAY LEI, OWNER  
DUTCH VILLAGE MALL  
PO BOX 9324  
TACOMA, WA 98490

ON BEHALF OF DUTCH VILLAGE MALL  
AND HIMSELF

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## **I. INTRODUCTION**

This appeal is about denial of self-representation and procedural abuse by an attorney. Plaintiff-Appellant filed a legal action in a superior court. Defendant's attorney contacted him, but upon learning Plaintiff's intent to represent his own company pro se, the attorney ignored him but harboring a secret weapon to ambush. When Plaintiff filed the default motion for failure to answer, the Defendant's attorney launched a surprise attack that Plaintiff was not a lawyer and was not allowed to represent his company. Taking advantage of the court's inbuilt trust in his "attorney status" and working against a pro se, the attorney successfully had the trial court signed two orders without findings of fact and conclusions of law, denied Plaintiff's representation and obtained two sanctions. It prevented the meritorious action from progressing for over eight months.

## **II. ISSUES PRESENTED**

1. Is the right of a person to handle his own matters including his legal matter a liberty right protected under the United States Constitution and the Constitution of the Washington State? Specifically,

Can the owner of a single-person limited liability company represent his own company and his wholly owned interest in a legal proceeding?

2. If the owner of a single-person LLC is ultimately determined not allowed to represent his own company, should he be punished for filing a Complaint on behalf of his company at the time when there was no statute prohibiting owner representation and also no case precedent forbidding it under the Washington State case law?
3. Whether the CR11 sanction is proper and appropriately entered against the Plaintiff under the facts and circumstances of this case?
4. Whether sanctions are warranted against the Defendant or the Defendant's attorney in light of the facts and circumstances of this case?
5. Whether the underlying case should be reinstated or continue under another appropriate caption without further delay?

### **III. ASSIGNMENT OF ERRORS**

The trial court did not enter findings of fact and conclusions of law, so the error assignment may not be accurate:

1. Trial court erred by allowing Defendant to challenge Plaintiff's standing belatedly after his default.
2. Trial court erred in accepting unserved and unfiled proposed order and supporting papers from Defendant, and signing the order.
3. Trial court erred in not finding Defendant's default when Defendant *de factoly* defaulted, but instead sanctioning Plaintiff for

unknown reasons.

4. Trial court erred in not observing defendant attorney's numerous court rule violations and overly relying on his "attorney status".
5. Trial court erred in issuing orders and sanctions based on unsettled law or erroneous application of law.
6. Trial court erred in sanctioning Plaintiff and issuing Orders without entering findings of facts and conclusions of law.

The trial court abused its discretionary power in one or more of the above.

#### **IV. STATATMENT OF FACTS**

##### **A. Events that Led to the Motion for Default**

1. Plaintiff Appellant, Jay Lei, owns a single-person limited liability company, Dutch Village Mall. Defendant Respondent, Raymond J. Pelletti, signed two 18-month leases with the Plaintiff on September 29, 2009. See leases attached as Exhibit 2 and 3 to Petitioner's Response filed May 13, 2010 in Court of Appeals. Three months later, Defendant walked away from the lease without any excuse. After an exhaustive effort to persuade Defendant to comply with the lease failed, Plaintiff informed Defendant that he had no choice but to take legal action. Plaintiff then received a strong-worded cancellation notice from the Defendant. See

notice attached to Petitioner's Response as Exhibit 1. The notice reflected the Defendant's then state of the mind and quoted in part:

This is a notice of cancellation of the individual leases...

There will be no further lease payments, no late fees, no additional rents, no interest charges, no administrative fees... nor any penalty costs of any kind, type or definition after January 31, 2010.

There are no late fees, no additional rents, no interest charges, no administrative sublet fee... nor any penalty costs of any kind, type or definition for the period of the lease from Sept 29, 2010 to Jan 31, 2010.

*id*

2. On January 28, 2010, Plaintiff emailed Defendant a preliminary Summons and Complaint. Next day, Defendant's attorney, Steven Shropshire, contacted Plaintiff asking him to call back and asking if he was representing the Dutch Village Mall LLC himself. Plaintiff responded he was representing the LLC and further informed he would call back same day. See January 29 emails, CP at 4 -14.

3. About an hour later, Plaintiff called. Mr. Shropshire did not pick up the phone. Plaintiff left a message. Neither Mr. Shropshire, nor Mr. Pelletti called back. See same day phone record, CP at 4-14. Mr. Shropshire was in the office on the day of January 29. He was informed Plaintiff would call him at his request. See January 29 phone record and same day multiple emails, CP 4-14. The next day he didn't call back

either. He never called back or responded to that phone message in any other way.

4. On February 3, 2010 Plaintiff formally served the Summons and Complaint. February 18, 2010, Defendant served a notice of appearance but did not answer the Complaint. CP 52-58, 50-51.

5. By February 24, 2010, the 20-day answer period had passed and there was no Answer from the Defendant. There was also no response from the Defendant or Defendant's attorney to the previous phone message. Knowing Mr. Shropshire was in his office on the day of January 29 and purposely didn't answer the phone and now didn't answer the Complaint either, Plaintiff knew the lawsuit could not move forward. He then filed a motion for default on February 26, 2010. CP 48-49.

#### **B. Communications before Motion Hearing**

6. After receiving the motion for default, Defendant filed the Answer on March 5, 2010 which Plaintiff received on March 9. The Answer virtually denied everything including the obvious fact of unpaid rent and utilities. The denials also did not meet the substance of the averments as required by the CR 8. See Defendant's Answer to Plaintiff's Complaint, CP 42-45.<sup>1</sup>

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<sup>1</sup> There is an error on the county record and in the Index. The Answer was filed as Plaintiff's Answer to Plaintiff's Complaint. The Answer also included a counter claim, but Defendant did not pay a filing fee as required by the court rule.

7. On March 9, 2010, Plaintiff confirmed the motion calendar with the trial court. Minutes later, Defendant's attorney called Plaintiff asking him to strike the default motion. A few emails then followed in which the Defendant's attorney demanded that Plaintiff strike the motion and Plaintiff asked him to follow the procedures or request a continuance. See March 10 to March 11 emails, CP 4-14.

8. On March 11, 2010, Plaintiff called the Defendant's attorney, Mr. Shropshire, again offering a continuance, at the same time requested that he at least respond to the motion or gave a reason why he didn't timely Answer. Plaintiff further stated that he was willing to strike the motion if the attorney would not keep ignoring him and the cause could proceed. The attorney responded: "Let's just go to the court" and vowed Plaintiff would lose. See March 11 phone record and Mar 11 email, CP 4-14.

### **C. Motion for Default Hearing**

9. The Motion for Default was heard on March 12, 2010. During the hearing, Plaintiff watched the court reporter winked at the Defendant's attorney, signaling something. The attorney then submitted a proposed order and other supporting documents to the court. Both the order and the supporting documents had never been served upon Plaintiff.

See Exhibit C: Trial Court Record; Also see Index to CP (There is no record of filing or service of response to default motion).

10. The hearing started with Plaintiff's discussion of the Defendant's default, then it quickly shifted to the Plaintiff's standing/capacity issue. After the capacity issue, the court abruptly ended the hearing and signed Defendant's order denying the default motion and entered a sanction against Plaintiff without any explanation. See March 12, 2010 Verbatim Report. The court never asked why Defendant didn't answer the Complaint within the required 20-day period. Nor did Defendant provide any "excusable neglect" for his default. *Id*

11. Plaintiff tried to bring the default issue back and hoped the court would at least order Defendant to follow rules in the future. The court stopped Plaintiff.<sup>2</sup> *Id* at 8. At the beginning of the hearing Plaintiff pointed out Defendant also failed to respond to the motion, he did not get a comment from the court either. *Id* at 4. Plaintiff also was not able to raise objections to the unserved order and documents that Defendant submitted to the court due to the abrupt ending. Surprised by the briefness of the proceeding, Plaintiff made a bewildered statement in the end: "Is it done, your honor!?" That statement was deleted from the verbatim report.

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<sup>2</sup> Plaintiff was polite and the court stopped him because it thought Plaintiff wanted to continue with the LLC issue (the capacity issue). See Audio CD of the verbatim report.

See Exhibit A: March 12 Verbatim Report Corrections, and Exhibit B: the matching Audio CD for March 12 Verbatim Report.

12. The Order submitted by the Defendant is not only not served by the Defendant but also misleading. It states “finds as follows” but actually has no finding, nor does it leave any space for the court to enter the finding. The Order states in relevant part:

This matter having come before the court... the court having heard from all parties and reviewed the pleadings and papers herein, finds as follows:

- 1) Plaintiff’s motion for default is hereby denied.
- 2) ----

See March 12, 2010 Order.

Immediately follows “finds as follows” are decrees, not findings, but the court signed the Order without questioning Mr. Shropshire. The court’s second Order was signed in exact same manner. See April 9, 2010 Order. The court ended up issuing two Orders without “Findings of Fact and Conclusions of Law.”

Following is the court rule regarding signing of orders:

- (1) Generally. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law.

Court Rule 52(a) (1), and following is the court rule regarding serving of the proposed orders:

(2) Notice of Presentation. No order or judgment shall be signed or entered until opposing counsel have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment...

Court Rule 54(f) (2).

**D. The Days that Followed**

13. After the motion hearing on March 12, Plaintiff walked out of the courtroom and immediately saw Defendant's attorney waiting for him outside like a victorious Napoleon. Plaintiff made a comment that he misled the court. The attorney replied with a cynical smile on his face: "Well, that's how the court work"?

14. In the following days. Plaintiff served Defendants several documents. Defendant responded to none of them. On March 17, 2010, Plaintiff served a Discovery Request. See declaration of service, CP 33. Defendant did not respond to this request and there is no record that Defendant ever filed or served a response. Exhibit C: Trial Court Record; Also see Index to CP. On March 23, Plaintiff served a Motion for Reconsideration. CP 30. Defendant also never responded to that Motion. See Exhibit C: Trial Court Record and Index to CP. Plaintiff also requested through several emails that Defendant acknowledge receipt of Discovery Request. Defendant responded to none of the emails. See emails from March 19 to March 23, CP 4-14. All of this happened before

Plaintiff was formally denied of representation and Defendant had an obligation to respond.

**E. Motion to Strike Pleadings and Motion for Discretionary Review**

15. After the Defendant obtained denial of default order, Defendant moved to strike Plaintiff's pleadings. The motion was heard on April 9, 2010. Plaintiff responded with a request for voluntary dismissal without prejudice both in writing and in the oral argument. The court denied Plaintiff's request and entered the order striking pleadings and another CR 11 sanction against the Plaintiff. See Plaintiff's Response to Defendant's Motion, CP 24-29, and April 9, 2010 Verbatim Report at 12.

16. Plaintiff filed an appeal on the same day of the hearing. Following Plaintiff's filing, Defendant filed four documents in the Court of Appeals trying to have the appeal dismissed or the trial court's orders affirmed without a review. See Court of Appeals filing record April 28, May 7 and May 11.

17. Defendant filed a letter on April 28, 2010 in which it requested the Appellate Court affirm the order pursuant to RAP 18.14 motion on merits. RAP 18.14 motion is improper and Plaintiff pointed this out to him in a response. See Petitioner's Response to Letter at 4 filed on May 4. RAP 18.14(b) specifies motion on merits to be filed after the

Brief. Defendant did not stop. On May 7, Defendant filed another RAP 18.14 full motion on merits with supporting (response) brief. Defendant's tactics succeeded in the unwary trial court. Defendant did again in Appellate Court trying to have the case dismissed before the case (the brief) was even presented.

18. On May 11, just three days before hearing on the review motion, Defendant filed a third motion, motion for continuance or strike review motion. *Id.* The motion was served on Plaintiff just one day before hearing leaving him just a few hours to respond. In this motion, Defendant argued, *inter alia*, that the Appellate Court is without jurisdiction. It is without jurisdiction because of an automatic clause that the Defendant's attorney drafted into the Order and the trial court unwarily signed for him now apparently automatically dismissed Plaintiff's case with prejudice.

19. On April 14, 2010 the Court of Appeals heard oral arguments from both parties and carefully confronted the arguments. On May 26, the Court issued a well-reasoned written ruling, denied Defendant's motions and accepted the review.

## **V. ARGUMENT PART ONE – SELF REPRESENTATION**

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with

certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

-- Declaration of Independence , 1776

We the People of the United States, in Order to form a more perfect Union, establish Justice ... and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

-- Preamble of the United States Constitution, 1787

American history is replete with glorious stories about liberties and freedom. The concept of life, liberty and happiness that the Founding Fathers so heroically fought and dearly sacrificed is now becoming a universally accepted principle of humanity, and America has proudly become the beacon of freedom envied by the millions of people around the world.

While we live under the freedom and enjoy the precious fruits of liberty, we so very often forget the fragility of the liberty, fragility not because of enemies wanting to destroy it but because of ourselves lacking appreciation of it, thus as the mankind progresses and society complexes, laws are enacted, often hurriedly, to accommodate new interests at the encroachment of the liberty rights.

At issue is the fundamental liberty right, the right of a person to handle his own matter vs. the new laws that might have affected such a right.

Today, the entirety of the laws of our nation has surpassed the volumes of Britanica by the thousands. It is difficult to wade through the labyrinth of case laws and statutes, but as America's value system and one of the most valuable assets of the Mankind, the liberty issue is paramount that it behooves a serious analysis to distill the true spirit of the law rather than a perfunctory application of letters of the law.

**A. The Right of a Person to Handle His Own Matter Including Legal Matter is a Fundamental Liberty Right and Constitutional Right.**

The right of a person handling his own matter or conducting his own business is a *priori* natural right. The fact that in this country a person has never before been denied of eating or sleeping or choosing his own career or representing himself in legal proceedings is not because of government acquiescence, but because such a right is a natural right or fundamental liberty right revered under our legal system.

The United States legal system is founded on the guiding principle of natural rights and natural law. Liberty is one of those rights. Many constitutional scholars such as John Reed and Michael Zuckert agree that the natural rights philosophy propounded by the Enlightenment thinkers such as John Locke, Thomas Hobbes and Montisques is one of the corner stones of America's political legal system. Legal scholar, Robert L.

Clinton also argued that the United States Constitution rests on common law and common law in turn rests on classical natural law foundation.<sup>3</sup>

By natural law foundation of a legal system is meant a legal system that regards the natural law as the fundamental universal moral standard and puts a person's natural rights first. The positive law or the civil law, is developed to protect the natural rights and not vice versa. It is also meant PRACTICALLY that such natural rights like eat, sleep, work and handling one's own business must be utmostly respected. English Philosopher, John Locke called the natural rights *Propriu*: Life, Liberty and Property. Other great thinkers such as Thomas Hobbes and Rousseau regard those rights as men's innate rights endowed by the God Nature and part of our mankind. It is for the protection of Life, Liberty and Property that mankind entered the civil society.

An examination of the United States Constitution and the Constitution of the Washington State reveals that the Founding Fathers indeed adopted this as the guiding principle in establishing the United States Constitution. The concept of Life, Liberty and Property figured very prominently in both Constitutions.

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<sup>3</sup> Michael Zuckert wrote two books, both expounded the intellectual foundations of the nation and confirmed many legal historian's view of the Enlightenment's influences on American legal system. See references. Robert Clinton also argued the U.S. Constitution rests on a common law and classical natural law foundation. See references.

The Preamble of the United States Constitution stated Liberty as one of the main reasons that the People establish the constitution. It says: “We the People of the United States, in Order to form a more perfect Union, establish Justice ... and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

The Fourteenth Amendment further articulated the importance of Life, Liberty and Property and requirements for all states to protect these rights. For the relevant part, the Fourteenth Amendment stated:

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The text of the Fourteenth Amendment signifies Life, Liberty and Property are not only the constitutional rights under the United States Constitution, but also these rights must not be taken away by any state without due process. The use of the words of privileges and immunities further signifies that these rights are inherent and absolute and any state law that abridges the privileges or immunities of the people enjoying protection of these rights shall be universally invalid.

The Washington State Constitution confirmed this. Article I, Section 1 and Section 3 of the Washington State Constitution stated all rights are inherent in the people and government derives its right from the people and the life, liberty and property of the people shall not be deprived without due process. The actual texts are as follows:

SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

An examining of the historical documents of the Founding Fathers further reveals this conviction among the Founding Fathers. For example, The Pennsylvania Constitution of 1776 declared: "That all men... have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending life and liberty...." George Mason, one of the Founding Fathers of the country stated in his draft for the Virginia Declaration of Rights, "all men are born equally free," and hold "certain inherent natural rights, of which they cannot, by any compact, deprive or divest their posterity". Virginia Declaration of Rights, 1776. The Declaration of Independence authored by Thomas Jefferson declared: "We hold these truths to be self-evident, that all men are created equal and are

endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” *Supra*.

The speeches of many of the Founding Fathers also reveal Framers’ purpose and sentiment of the people at the time when the United States Constitution was established. For example, reflecting on the newly adopted United States Constitution in 1787, James Madison, the author of the Constitution, said: “The happy Union of these States is a wonder; their Constitution a miracle; their example the hope of Liberty throughout the world.” John Adams also stated: “The United States of America have exhibited, perhaps, the first example of governments erected on the simple principles of NATURE; and if men are now sufficiently enlightened to disabuse themselves of artifice, imposture, hypocrisy, and superstition, they will consider this event as an era in their history.”

Thus as a *priori* natural right, a person’s right to handle his own matter and represent himself in a legal proceedings is a fundamental liberty right and constitutional right. Natural liberty rights are inherent rights, unalienable and immutable. “To renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duties... Such a renunciation is incompatible with man’s nature....” Rousseau.

Therefore with such importance and constitutional magnitude, any state law that purported to deny a person’s right to handle his own

business and legally representing himself must be examined under the strict constitutional scrutiny and under the universal moral standard of the natural law and the human rights.

Faretta supports the personal handing of one's own legal matter and self-representation. In the case *Faretta v. California*, 422 U.S. 806, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975), the United States Supreme Court ruled a defendant in a criminal case has a right to represent himself without counsel. The court stated the right of counsel is "part of due process of law guaranteed by the fourteenth amendment", however necessary the assistance of counsel is still an assistance. Faretta at 818. The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant. Faretta at 820. The Sixth Amendment, when naturally read, thus implies a right of self-representation. Faretta at 822.

In reaching that conclusion, the court engaged in an extensive discussion of common law history and the history of American Colonies and the period leading to the establishment of constitution. It pointed out that the right of self-representation was guaranteed in many colonial charters and declarations of rights as well as in many state constitutions after the Declaration of Independence. Faretta at 829, 830. The court argued the right to counsel was clearly thought to be supplemental the

primary right of the accused to defend himself and there is no evidence that Framers ever doubted the right of self-representation, or imagined that this right might be considered inferior to the right of assistance of counsel. Faretta at 832.

But then, how does the court reconcile the fact that in the Sixth Amendment the right of the assistance of counsel is specifically enumerated and the right of self representation is not? Not to mention the right to self representation is superior to that right of counsel, even if they are equally important as both are constitutional rights, the right of self representation should be enumerated somewhere in the constitution but it's not. Also, how does this right of self-representation in a criminal defense case translates into a universal right of self-representation in the civil case? The court answers the former as follows:

It is one thing to hold that every defendant, rich or poor, has the right to the assistance of counsel, and quite another to say that a State may compel a defendant to accept a lawyer he does not want.

Where the defendant will not voluntarily accept representation by counsel, the potential advantage of a lawyer's training and experience can be realized, if at all, only imperfectly. To force a lawyer on a defendant can only lead him to believe that the law contrives against him.

Personal liberties are not rooted in the law of averages. The right to defend is personal. The defendant, and not his lawyer or the State, will bear the personal consequences of a

conviction. It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage.

Ibid, 834

Underlying these arguments is clearly a personal liberty issue or the issue of natural rights. The United States Supreme Court reached deep into the roots of our legal system and drew this conclusion that personal right of choice whether to represent himself or seek assistance of counsel is more fundamental than the right of counsel which is merely a procedural guarantee to achieve the former goal of fair and equal justice. Perhaps we can shed more lights on this issue by looking into a legal system that is antithetical to our system.

Under the former communist political legal system,<sup>4</sup> a person's natural liberty rights are not recognized. When he is born, he immediately becomes the property of the nation, and from there, the government. The government will raise him (through guaranteed jobs to parents), educate him and determine his lifetime job.<sup>5</sup> He is then said to be appropriated for the noble cause of communism.<sup>6</sup> Thus, in the former eastern block countries not only the food is rationed as we know in the western world, but also a person (manpower) is rationed.

Under such a system, the daily supplies are rationed, sleeping hours are regulated (sometimes), starting own business is illegal, moving from one place to another place to live is unlawful and choosing one's own career is not allowed. In general under the communist system, a person does not have any natural rights. All rights if any are conferred by the government or law, and since human life constitutes an infinite possible activities there is no such law developed to confer rights.

This leads to the necessary outcome that is people generally live under the sufferance of the government. But since there is no explicit rights and people live under the sufferance of the government, the

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<sup>4</sup> Things have greatly changed. Real communism virtually does not exist any more. This description refers to the former communist system.

<sup>5</sup> Many people aspired to be a judge or doctor or professor, but may end up being assigned a permanent career as a sewer cleaner and get stuck with it for all life.

government acquiescence can be broken any time. Thus, the system impact peoples daily lives in such a way as if two invisible laws are collectively governing them. One: a universal *ex post facto law*, the other: a law operating to the opposite effect of the *due process*.<sup>7</sup>

This brings to light the fundamental difference of the foundations of the two legal systems. The communist political legal system is built on the unrealistic ideology of “ultimate transcendence of mankind” and does not recognize a person’s innate rights. Our legal system is rooted in human nature and founded on the natural rights philosophy. It is from this deep grasp of the fundamental philosophy of our legal system that our Supreme Court found in the Sixth Amendment an embedded constitutional right of self representation and regard it superior to the right of the assistance of counsel. It is for this same reason and implicit in Faretta as well that not just the right of self representation in criminal cases but in all civil cases the self presentation is a constitutional right and part of the supreme right of Life, Liberty and Property.

**B. The Owner of a Single Person Limited Liability Company Should Not Be Denied of His Right to Handle His Own Legal Matter and Represent His Own Company in Legal Proceedings.**

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<sup>6</sup> Vladimir Lenin, the first leader of the Soviet Union, said in his 1917 speech to a group of Bolshevik: “It is true liberty is precious; so precious that it must be carefully rationed.”

<sup>7</sup> It is difficult to summarize this in a few sentences.

**a. The Owner of a Single Person Limited Liability Company Representing His Own Company Is Handling His Own Matter.**

A single person limited liability company is a one-member limited liability company according to the standard terminology in the statute.<sup>8</sup> RCW 25.15. Although it is considered a separate legal entity, by definition the owner of the single person LLC strictly owns 100% of his company or undivided whole interest of the company. Such owner bears all the risks and receives all benefits of the company. Unlike corporation, a single person limited liability company is not allowed to sell shares. RCW 25.15.115. He can only assign or sell his interest according to the membership agreement, or if the agreement doesn't exist, he has to sell as if it is a sole proprietary. *Id.* If the owner does sell part of his interest, he is suppose to immediately amend the certificate of formation or re-register as a new company. RCW 25.15.075 (2). If he does, his company is no longer a single-member limited liability company anymore. It becomes a partnership LLC company.

By definition a single-person limited liability company has to be a single owner company at present time and at all time. Therefore, other than the limited liability status accorded to the owner by the statute, there

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<sup>8</sup> Plaintiff refers to Llc company in general instead of his company in order to discuss this issue of the law less emotionally and to have this issue resolved more generally so that in the future there is a clear reference as to this issue. Plaintiff will discuss the specifics relating to his Llc company separately below.

is no difference in any respect between a single person limited liability company and a sole proprietary business. Like the sole proprietary business, the owner of the LLC makes all the decisions and bears all risks. In its very essence, a single person limited liability company is a sole proprietor. Like the owner of the sole proprietorship, when the owner of a single person LLC represents his company in a legal proceeding, he is in the true sense representing himself.

This very essence of a single person limited liability company as a *de facto* sole proprietor is supported by several statutory designations. For example, Internal Revenue Services treats a single person limited liability company as a disregarded entity. For IRS it is simply a sole proprietary or defaulted to a sole proprietary. IRS Publication 3402 at 3. The owner of the company can file its tax as a sole-proprietorship and it does not need to pay double tax, one at a company level, the other at individual level like the corporations. Also, RCW 25.15.245 stated limited liability company interest is personal property. A member has no interest in specific limited liability company property. *Id.* This in effect is treating a limited liability company as a disregarded legal entity as IRS does. Further, the owner of a single-person LLC can also own his own intellectual property.

Because a single-person LLC is in its very essence a sole proprietary business, and because he is his company and his company is him, he

represents the entirety of his company and the two are inseparable. For this reason, the owner of a single person LLC representing his own company in a legal proceeding is in essence representing himself. Like a sole proprietorship owner who has never been denied of representing himself, the owner of the single person LLC should not be denied of his right to represent himself.

**b. Limited liability Statute Does Not Intend to Deprive the Owner of a Single Person Limited Liability Company of His Right to Represent His Own Company.**

Limited liability company is a relatively new form of business in the United States. The first state that enacted LLC legislation is Wyoming. Wyo Stat §17-15-103. It was enacted for the purpose to attract capital and promote the state economy. Washington State did not enact its LLC statute until 1994. The act was popular among small businesses because of its flexibility and limited liability protection, which would otherwise be unavailable to small businesses unless they adopt the complex corporation format. Unfortunately, the new statutes created numerous problems and led to many uncertainties and lawsuits. In 1996, the National Conference of Commissioners on Uniform State Laws developed and approved the Uniform Limited Liability Company Act in an effort to improve the situation. In the Prefactory Note of ULLCA, it stated a long list of problems:

...Unfortunately, this lack of uniformity manifests itself in basic but fundamentally important questions, such as: may a company be formed and operated by only one owner; may it be formed for purposes other than to make a profit; whether owners have the power and right to withdraw from a company and receive a distribution of the fair value of their interests...

...do the owners have the right to sue a company and its other owners in their own right as well as derivatively on behalf of the company; may general and limited partnerships be converted to limited liability companies ...

Uniform Limited Liability Company Act 1996, 2. ULLCA further stated:

Practitioners and entrepreneurs struggle to understand the law governing limited liability companies organized in their own State and to understand the burgeoning law of other States. Simple questions concerning where to organize are increasingly complex. Since most state limited liability company acts are in their infancy, little if any interpretative case law exists.

Uniform Limited Liability Company Act 1996, 2.

The problem at hand is that the limited liability company is a separate legal entity, therefore arguably the owner of an LLC may not represent his company in a legal proceeding, since representing the company means representing a separate entity. But as it was pointed out earlier, the owner of a single person LLC is in essence representing himself just as a proprietary business owner does, thus, the issue is Substance vs. Formality. Further, when it comes a single person limited liability company, it is merely, as we have seen earlier, a superficial entity

without substance, and some statutes and several regulatory bodies have already considered it a disregarded entity.

Examining the Washington State LLCA as well as many other states' LLCA reveals there is not even one statute that intended to limit the owner of a single person limited liability company to exercise his right to handle his own business or representing himself in legal proceeding. In fact, virtually every state enacted the LLCA for the same purpose to give business flexibility and protection so as to attract business and investment. None of the states intended to give a single-person LLC the flexibility on the one hand and deprive its right to handle its own business on the other hand. The perceived restriction of separate legal entity on the owner of a single-person LLC is merely an unintended byproduct of the statute. A statute is void if the standard to be applied is very vague. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 629, 104 S. Ct. 3244, 82 L. Ed. 2d 462. Likewise, an unintended part of the statute should not be construed and applied for different purposes.

Limited liability company statute is new. As ULLCA pointed out: "...most state limited liability company acts are in their infancy, little if any interpretative case law exists." *Id.* Therefore, care must be taken not to apply the statute without analysis and arrive at the opposite effect of the purpose of the statute.

**c. There Is No Public Interest And No Public Policy Benefit to Deprive the Right of the Owner of a Single Person LLC to Represent His Own Company.**

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." *Washington v. Glucksberg*, 521 U.S. 702, 719, 117 S. Ct. 2258 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.* at 720, 117 S. Ct. 2258; see also *Reno v. Flores*, 507 U.S. 292, 301-302, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993).

Since the right of a single-person LLC owner representing his own company is a constitutional right, such a right enjoys heightened protection. Washington Courts traditionally adopts a three-prong approach to the analysis of substantive due process in balancing out public interest: whether the regulation (1) is aimed at achieving a legitimate public purpose, (2) uses means that are reasonably necessary to achieve that purpose, and (3) is unduly oppressive on the person regulated. *Ramm v. Seattle*, 66 Wn. App. 15, 830 P.2d 395. Here, the purpose of not

allowing a nonlawyer to represent another person is to protect the public interest. Since the owner of a single person LLC is representing himself, there is no public interest involved at all. The regulation fails in each of the above three prongs, and there is no benefit to the public to deprive the owner of his right to represent his own company and his wholly owned interest.

**d. Disallowing the Owner of a Single-person LLC to Represent His Own Company Does Not Fit the Reality and Practicality of Everyday Life.**

In recent years limited liability company has become increasingly popular among small businesses due to reform spearheaded by the National Conference of Commissioners on Uniform State Laws. *Id.* Just Washington alone, there are thousands of single-person LLCs by the state register and the numbers are rapidly increasing.

These sole owners of LLCs like their sole proprietary counterparts are engaging in many different tasks everyday, ranging from conducting transactions, to managing the company's legal or financial matters, marketing and sales, to cleaning their own offices. All of these daily tasks if performed for someone else require a license under various Washington State statutes. If the "separate legal entity" status in the limited liability statutes is interpreted literally, these people are violating multiple

Washington laws on a daily bases since even cleaning an office bathroom requires a license and these owners will all become unlicensed the janitors.

There is a big difference between corporation and limited liability company. There is no similarity between corporation and single-person limited liability company except that artificial “separate legal status”, and as has been shown earlier, a “superficial status” when it comes a single person limited liability company.

Corporation laws were established over two hundred years ago when the only businesses that adopted the corporation format were large business such as Standard Oil and Union Pacific. Because of its association with many people, corporation’s legal businesses are traditionally handled by attorneys. Since then, attorney representation becomes *stare decisis*. But limited liability company is a new creature. It is a vast array of different types of businesses. At one end there are large corporations since corporation itself can own LLC; at the other end is simply the sole proprietorship. Thus, the analysis of application of laws to an LLC requires a deeper analysis than just a blank reference to a separate legal entity. A fair and well-grounded legal solution benefits the case law and all future similarly situated single person limited liability companies and benefits the public.

## **VI. ARGUMENT PART TWO – ORDERS AND SANCTIONS**

The trial court issued two Orders, one on March 12, 2010 which denied Plaintiff's motion for default order and entered a sanction against Plaintiff with amount reserved; the other on April 9, 2010 which struck Plaintiff's pleadings (denied self-representation) and entered a combined sanction of \$1000.00. It then followed with the filing of a judgement against Plaintiff in that amount on April 14, 2010.

### **A. Plaintiff Should Not Be Denied of Representing his Own Company And Should Not Be Punished for Filing a Complaint on Behalf of the Company When the Law on Owner Representation of LLC Is Unsettled.**

Plaintiff is an owner of a single-person limited liability company. For reasons set forth above in Part I, he has a right, and should be allowed, to represent his own company.

Plaintiff filed a legal action in a superior court under his company name. As a sole owner of an LLC, it is natural to think of the company name first. He had never thought the name would be an issue and would be used by the opponent. Plaintiff owns the company, Dutch Village Mall, LLC. Dutch Village Mall is also the name of the property. In this case, there is no difference that Plaintiff filed the action under the company name or under his personal name. Had the Defendant told Plaintiff his "belief" that the owner of an LLC might not represent his own

company, Plaintiff would be glad to file the action under his personal name or the property name. Defendant specifically asked Plaintiff about his representation before Plaintiff filed the Complaint. Unfortunately, he concealed his intent and ambushed Plaintiff.

As elaborated in earlier chapters, limited liability company statutes are relatively new. Washington State enacted the LLC statute in 1994 and there have been problems with the statute and case laws are still evolving as stated in ULLCA. *Supra*. Unlike the corporation case law, which has over two hundred years of history and is matured, very little case law authority exists for limited liability companies. Plaintiff did a thorough search after the issue was brought up. He couldn't find any case law authority in Washington State on this issue, nor did Defendant find any. There is also no statutes prohibiting the owner of a single person limited liability company representing his own company.

Thus, the law on the owner representation of a single person LLC is unsettled. Given the fundamental principle of our legal system that rights are reserved by the people and a person is free to do anything unless the law specifically forbids it, even if it is ultimately determined the owner of a single person LLC cannot represent his own company, it is reasonable that Plaintiff filed the Complaint by exercising his legal right. Every American is entitled to be informed as to what the government commands

or forbids. *Cramp v. Bd. of Pub. Instruction of Orange County*, 368 U.S. 278, 287, 82 S. Ct. 275, 7 L. Ed. 2d 285 (1961). *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). Also when an area of the law involved is developing, courts should not dismiss an action on the pleadings. *Bravo v. Dolsen Companies*, 125 Wn.2d 745, 751(1995). Likewise, Plaintiff's pleadings should not be stricken and he should not be punished because doing so violates not only his constitutional right as set forth earlier but also violates the fundamental principle of our legal system. This is particularly true in light of the Defendant's tactics in this case.

**B. Defendant's Challenge of Plaintiff's Standing Has Nothing to Do With CR 11.**

Defendant challenged Plaintiff's standing or capacity in filing this lawsuit on behalf of his company. Defendant's challenge has nothing to do with CR 11 rules. Under corporation case law, a corporation must be represented by a licensed lawyer in the court. Because of clear authority over two hundred years and the *stare decisis* doctrine, a corporation's pleadings are expected to be filed by an attorney with proper signatures. Therefore, when a corporation owner who is not a licensed attorney files the pleadings it is considered unsigned or incorrectly signed by an attorney and the CR 11 Rules apply. See this court's previous rulings on corporation representations: *Biomed Comm. Inc v. Dept of Health Bd. Of*

*Pharmacy*, 146 Wn. APP. 929, 193 P.3d 1093 (2008). *Finn Hill Masonry, Inc. v. Dep't of Labor & Indus.*, 128 Wn. App. 543, 545, 116 P.3d 1033 (2005).

The instant case however involves a limited liability company and the owner is a sole owner of the company. Putting aside the fundamental differences discussed above between a corporation and a single-owner LLC, the best can be said in this case is, since an LLC in appearance has a same “artificial legal entity” as a corporation, may be, “by extension”, it’s pleadings also need to be signed by a lawyer. Thus, in the absence of the authority, Defendant is not challenging the “required signatures” of a lawyer, but challenging the Plaintiff’s capacity or lack of capacity/standing. It has nothing to do with CR 11. CR 11 refers to attorney signatures and whether or not an attorney is required to represent a single person LLC is still to be determined. The trial court’s imposition of CR 11 sanction is therefore an erroneous application of the law in this regard.

**C. The Purpose of CR 11 Sanction Is to Deter Baseless Filing and Curb Abuses.**

The purpose of CR11 is to deter baseless filings and to curb abuses of the judicial systems. *Bryant v. Joseph Tree, Inc.* 119 Wn.2d 210, 217, 829 P.2d 1099 (1992). CR 11 deals with two types of filings: those

lacking factual or legal basis and those made for improper purposes. *Hicks v. Edwards*, 75 Wn. App 156, 162, 876 P.2d 953 (1994). *MacDonald v. Korum Ford*, 80 Wn. App. 877, 884, 912 P.2d 1052 (1996).

Neither Plaintiff's filing: Plaintiff's Complaint or Plaintiff's Motion for Default is a baseless filing or is for improper purposes. Plaintiff's motion is based on a solid fact that Defendant failed to answer the Complaint and thus *de factoly* defaulted. Plaintiff filed and served the Complaint on February 3, 2010. Defendant did not answer by the end of the 20-day period, February 24, 2010. Defendant did not answer until after the motion for default was served on him. Defendant himself admitted it (He admitted filing the Answer on March 5, 2010. See Brief of the Respondent in Opposition to Discretionary Review at 5 and CP 34, Brief in Support of Motion to Strike Pleadings.

Plaintiff's Complaint also does not violate CR 11. It is well grounded in facts and based on relevant laws and statutes. A copy of the Complaint is submitted for Appellate Court's examination. See CP 52-58. Plaintiff neither filed the Complaint baselessly, nor did he file it improperly.

Without trial court's findings of fact and conclusions of law, it is difficult to speculate the reason of trial court's sanction, but baseless filing

or improper purpose, delay or abuse of system certainly is not the reason. In fact, it is Plaintiff's filing of the motion for default that finally made Defendant file the belated Answer. Without that motion, Plaintiff would never hear from him. It is the Defendant who defaulted and violated the court rules. Trial court's not finding Defendant's *de facto* default, instead sanctioning Plaintiff for rightfully bringing the factual default motion is groundless and the sanction should be reversed.

**D. CR 11 Is Not Designed for Harassment or Threats**

CR 11 is not designed to be used as a weapon by an attorney to harass or threaten the other party. So far, the Defendant's attorney used it to an extreme. In all the documents it handed over to the trial court and in all oral arguments, Defendant requested a CR 11 term or sanction despite of completely lacking basis. See March 12 Order, CP 41-42; also see Brief in Support of Motion to Strike, CP 34-38 and April 9 Order, CP 17-20; as well as March 12 Verbatim Report and April 9 Verbatim Report. Similarly, it asked for fees and terms under RAP 18.9 in Appellate Court before the Review was even accepted, but was rejected. See Respondents Brief in Opposition to Review filed May 7 and Appellate court's record on the review hearing. This type of abuse of CR 11 rule, if widespread, will

send shockwave through judicial system and paralyze the courts' function.

It should not be tolerated by the court.

**E. Defendant Waived His Right to Challenge Standing or Capacity**

Court Rule 12 provides in relevant part:

(a) When Presented. A defendant shall serve his answer within the following periods: (1) Within 20 days, exclusive of the day of service, after the service of the summons and complaint upon him pursuant to rule 4;

*Id.*

Court Rule 12 further provides:

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted.

*Id.* Emphasis added

Defendant's challenge of Plaintiff's standing is a challenge of one of the above preliminary procedural issues. The rule requires that Defendant respond or challenge either in a responsive pleading or in a separate motion prior to the pleading. The purpose of this rule is to

dissolve these fatal procedural issues before further proceedings to save court resources and unnecessary pleadings from parties. Defendant neither filed a motion to challenge Plaintiff's standing/capacity prior to his pleading, nor incorporated his challenge in his responsive pleading (the Answer). Instead, he raised the capacity issue after Plaintiff brought for hearing the motion for default. Defendant planned a tactical attack but the attack violated the above court rules and by his own action, Defendant waive his right for challenging standing.

**F. Defendant Misled the Trial Court by Submitting Unserved Proposed Order and Papers, And the Trial Court Did Not Enter Findings of Facts and Conclusions of Law.**

As stated earlier in the Statement of Facts, Defendant never responded to Plaintiff's motion for default. Even after Plaintiff offered the Defendant's attorney for continuance and specifically requested response from him, the attorney refused. The Court Rules provide the following with regard to the proposed orders and judgement:

(2) Notice of Presentation. No order or judgment shall be signed or entered until opposing counsel have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment...

Court Rule 54(f) (2).

With such clear language of court rules or mandate, Defendant completely disregarded it. During the motion hearing, Defendant's attorney submitted the Proposed Order and supporting papers to the court at the signaling of the court reporter and the court took it without questioning him. Not only the Order and papers were not served on Plaintiff or filed with the court, but also the Order was submitted with the words: "finds as follows" as if there was a finding, but actually did not. It also did not leave any space for the court to enter the findings, therefore even if the court wanted to enter the findings, it could not do so. But the court didn't see it and signed the Order without entering the findings. See March 12 Order as well as April 9 Order. None of the Orders include Findings of Facts and Conclusions of Law.

Defendant's attorney misled the trial court and court overly trusted his "attorney status" as well.

It is a well-accepted principle that to justify orders or to facilitate Appellate review, a trial court must enter findings of fact and conclusions of law and set forth its reasons. *Alderwood Assocs. v. Wash. Env'tl. Council*, 96 Wn.2d 230, 233-34, 635 P.2d 108 (1981)

In the Supreme Court case, *Bryant v. Joseph Tree, Inc.*, the Supreme Court stated that in imposing CR 11 sanctions, it is incumbent upon the court to specify the sanctionable conduct in its order. The court

must make a finding. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219-20, P.2d 1099, (1992). In the *State v. S.H. May*, the Court of Appeals holds that the trial court could not impose a sanction without entering an express finding that the public defender association acted in bad faith *State v. S.H. May*, 95 Wn. App 741, 742 (1999).

In *Just Dirt, Inc. v. Knight Excavating*, the Court of Appeals reversed CR 11 sanction and attorney fees. It stated: “trial courts must exercise their discretion on articulable grounds, making an adequate record so the appellate court can review a fee award. *Mahler v. Szucs*, 135 Wn.2d, 398, 435, 957 P.2d 632 (1998). *Just Dirt, Inc. v. Knight Excavating*, 138 Wn. App. 409, 412 (2007). The court further stated: “It is Just Dirt's duty as the prevailing party to procure formal written findings supporting its position, and it must "abide the consequences" of its failure to fulfill that duty.” In *Bryant v. Joseph Tree, Inc.*, the Court of Appeals reversed the sanctions against the Plaintiff's attorneys and imposed CR 11 sanctions against the Defendant's attorney after independently reviewing the factual and legal basis of the sanction. *Bryant v. Joseph Tree, Inc.* 57 Wn. App. 107, (1990). And the Supreme Court affirmed the Court of Appeals reversal. *Bryant v. Joseph Tree, Inc.* 119 Wn.2d 210, 829 P.2d 1099 (1992).

The trial court's sanction against Plaintiff should be reversed.

### **G. Defendant's Delays and Tactics**

Facts are laid out in Section IV. Each is supported by evidence in the CP and other reports. From the evidences it is clear that Defendant has never intended to have the case tried on merits. Once the Defendant learned Plaintiff would represent his LLC pro se, he stopped the phone and refused to answer and respond. Other than the Answer, which he filed after default, Defendant failed to respond to all of the followings: (1) Motion for Default, (2) Discovery Request, (3) Motion to Reconsider, (4) Requests for acknowledgment. Defendant completely took the law in his own hand. See section IV and its references to evidence.

Besides delay and refusal, Defendant engaged in several other violative tactics. These include (1) improper challenging of standing in a default motion instead of properly challenging it in a pleading, (2) filing baseless pleading (Answer) without any investigation, (3) submit to court orders and papers without filing and service, (4) use CR11 as threats, (5) improper filing RAP 18.14 motion for merits twice to deceive and to have the case prematurely dismissed. See section IV and its references to evidence.

### **H. Defendant's Pleadings**

## 1. Defendant's Answer to the Complaint

Defendant's Answer to the Complaint is completely baseless and lacked minimal investigation required by CR 11. See Defendant's Answer to Plaintiff's Complaint, CP 42-45 and Complaint for Damages, CP 52-58 for comparison. Court Rule 11 stated in part:

(a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record...

The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

CR 11(a). Emphasis added.

Court rule 8 defines requirement for responsive pleadings and quoted in relevant part as follows:

(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny

only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in rule 11.

CR 8(b). Emphasis added.

Plaintiff's Complaint from 3.4 to 3.15 is quoted in part as follows:

3.4 Prior to closing his coffee shop and brokerage office, Mr. Pelletti talked to every other tenant at the Mall, suggesting mall's business was bad and rents were sill too high. Mr. Pelletti also urged several tenants to send Plaintiff lease cancellation notices and ask for lower rents. Mr. Pelletti further urged two tenants to jointly hang up "Out of Business Sale" signs in front of their stores. After instigating the collective actions and setting the stage to pressure Plaintiff, Mr. Pelletti then notified Plaintiff that he would sell his business and suggested Plaintiff to lower rent for his buyer or "Plaintiff would end up with more empty spaces".

...

3.10 Between January 6, 2010 and January 20, 2010, Plaintiff requested payments numerous times including sending a default notice to Defendant, Defendant did not pay rent. When the rent payment did finally arrive on January 21, the envelope revealed a wrong address and wrong city code. Defendant flipped the postal box numbers and addressed it to a city hundred miles away, causing the mail to be delivered to that city and put into someone else's box and then forwarded to Plaintiff's city and put yet again into another person's box.

...

3.12 On January 23, 2010, a potential lessee made Defendant an offer to take over his lease. Opportunity arrived for Defendant to legally transfer his lease and be free from future obligations. Defendant rejected the offer. On January 26, Defendant sent Plaintiff a notice unilaterally and unlawfully cancelled the lease. Defendant announced he would not fulfil his lease contract and will not pay any future obligations.

3.13 As of today, January 31, 2010, Defendant is in arrears of various payments totaling of \$3684.89 and that number is growing as the Defendant's obligations accrue.

...

3.15 Additional Facts:

Plaintiff's Complaint at 2-3

From 3.4 to 3.15 of the Complaint, there are total of 12 detail and specifically designated averments like these, the Defendant's Answer answered with one general denial without any substance:

As for paragraph 3.4 through 3.15, inclusive, of the Complaint, Defendant admits that defendant had several communications with Mr. Jay Lei regarding the rental of the coffee shop but denies the remainder.

Defendant's Answer to Plaintiff's Complaint 1.6 at 2

This is clearly a baseless filing. The general denial violated CR 11(a)(1)(3)(4) as well as CR 8(b).

## **2. RAP 18.14 Motion for Merits**

Defendant filed RAP 18.14 Motion for Merits twice in the Appellate Court. The first is an objection letter filed on April 28, 2010 in

which it requested the Appellate Court affirm the underlying Order pursuant to RAP 18.14 motion on merits. Plaintiff pointed out in a response that RAP 18.14 is improper. Defendant did not stop. On May 7, Defendant filed another RAP 18.14 full motion on merits with supporting (response) brief which filled with untruthful statements.

RAP 18.14 provided in part:

(b) Time. A party may submit a motion on the merits to affirm any time after the opening brief has been filed. A party may submit a motion on the merits to reverse any time after the respondents brief has been filed.

RAP 18.14 is designed for motions after the party's brief has been filed. Defendant tried to have the order affirmed or case dismissed even before Plaintiff had an opportunity to present his case. Defendant clearly filed RAP motion for an improper purpose. Defendant's conduct in the Appellate court is consistent with his trial court conducts except it is more subdue. Defendant's tactics succeeded in the trial court. He tried to see if Appellate Court would make the same mistake in his favor as the trial court did. Defendant violated the RAP 18.9 and sanction is warranted.

I. Defendant's Conducts Are the Exact Reason the CR 11 Was Adopted

J. The Cause Should Resume Without Further Delay

## VII. CONCLUSION

Based on foregoing, Plaintiff, Jay Lei, respectfully requests that the CR 11 sanction against Plaintiff be reversed; that the cause be allowed to go forward under the right caption without further delay.

Plaintiff further requests that CR 11 terms and RAP 18.9 terms be awarded to Plaintiff; and that Plaintiff be awarded reasonable court costs and fees incurred in this unnecessary lengthy cause.

Plaintiff petitions this court to uphold the constitutional right of the thousands of sole owners of limited liability companies in handing their own businesses including legal business.

Dated this 19th day of October, 2010

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

Jay Lei, Plaintiff-Appellant  
Dutch Village Mall

## EXHIBIT A - Appellate Cause # 65209-5-1

### Corrections to March 12, 2010 Verbatim Report Based on Audio CD

Plaintiff Appellant contacted the court reporter many times by phone and mail requesting correction of errors, but could not obtain her cooperation. This correction is attached to the Brief as Exhibit A. The correction is based on the audio CD from the trial court and the CD is attached as Exhibit B.

Plaintiff wishes the appellate court have a correct copy to review. The audio is very difficult to hear on a regular computer and some parts are not audible. Following are the errors and alterations that can be heard:

1. Parallel with line 1 of page 6 of the verbatim report, Plaintiff can be heard reading a Supreme Court decision: "...Litigation is inherently formal. All parties are burdened by formal time limits and procedures. Complaints must be served and filed timely and in accordance with the rules. As must appearance, Answers, subpoenas and notice of appeals..." Here in the verbatim report, the word "Answers" is deleted from the Supreme Court statement. As the court knows the hearing from which this verbatim report was transcribed is about Defendant's failure to Answer the Complaint.
2. On page 4, line 14, the voice in the audio says: "...the Washington State adopted the Civil Procedures of the Federal Law, the Federal Civil Rules, and according to..." The verbatim report transcribed it into: " the Washington State Civil Procedures, the Federal Civil Rules and according to ...".
3. On page 5, line 23, Plaintiff's voice says "... the formal procedure must be observed", the transcript changed it to: "... the formal procedure must be absurd."
4. On page 8, line 12, Mr. Shropshire can be heard saying: "And I left a blank in there. I included some emails..." In the report the email part is truncated and replaced with "your honor, if--" which comes from a different voice. This part is extremely difficult to hear and overlapped with other voices. Plaintiff hopes the court can discern it.
5. At end of the proceeding, Plaintiff uttered in surprise: "Is it done your honor?!" This part is deleted from the record. This part is the loudest and clearest part in the audio. The voice may still not sound like a surprise voice to others, but it is, because Plaintiff does not usually use loud voices.

**EXHIBIT C - Appellate Cause # 65209-5-1**

Trial court filing Record.

CASE#: 10-2-00311-4 JUDGMENT# NO JUDGE ID: 1  
 TITLE: DUTCH VILLAGE MALL VS RAYMOND J PELLETTI  
 FILED: 02/02/2010  
 CAUSE: COM COMMERCIAL DV: N

RESOLUTION: DATE:  
 COMPLETION: DATE:  
 CASE STATUS: STY DATE: 04/09/2010 ON DISCRETIONARY REVIEW/STAY  
 ARCHIVED:  
 CONSOLIDT:  
 NOTE1:  
 NOTE2:

----- PARTIES -----

CONN.	LAST NAME, FIRST MI TITLE	LITIGANTS	DATE
PLA01	DUTCH VILLAGE MALL		
DEF01	PELETTI, RAYMOND J		
ATD01	SHROPSHIRE, STEVEN LANE	1	
BAR#	24265		

----- APPEARANCE DOCKET -----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
	02/02/2010	\$FFR	FILING FEE RECEIVED	230.00
1	02/02/2010	SM	SUMMONS	
2	02/02/2010	CMP	COMPLAINT FOR DAMAGE & OTHER RELIEFS	
3	02/18/2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
4	02/18/2010	NTAPR ATD01	NOTICE OF APPEARANCE SHROPSHIRE, STEVEN LANE	
5	02/25/2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
6	02/26/2010	MTAF	MOTION AND DECLARATION FOR DEFAULT ORDER	
7	02/26/2010	PROR	PROPOSED ORDER OF DEFAULT & DEFAULT JUDGMENT	
8	02/26/2010	RCP	ACKNOWLEDGMENT - RECEIPT OF SERVICE/AMY HOOVER	
9	02/26/2010	NTMTDK ACTION	NOTE FOR MOTION DOCKET MOTION FOR DEFAULT ORDER	03-12-2010C1
10	03/05/2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
11	03/05/2010	AM	PLTF'S ANSWER TO PLTF'S COMPLAINT	
12	03/12/2010	MTHRG JDG01	MOTION HEARING JUDGE IRA UHRIG, DEPT 1	
	03/12/2010	CTRN CTR01	COURT REPORTER NOTES COURT REPORTER LAURA PEACH	
13	03/12/2010	OR	ORDER DENYING PLTF'S MOTION FOR DEFAULT JUDGMENT	
		JDG01	JUDGE IRA UHRIG, DEPT 1	
14	03/22/2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
15	03/22/2010	MT	MOTION TO STRIKE PLTF'S PLEADINGS	
16	03/22/2010	BR	BRIEF IN SUPPORT OF MOTION TO	

## -----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
17	03/22/2010	PROR	STRIKE PLTF'S PLEADINGS PROPOSED ORDER STRIKING PLTF'S PLEADINGS	
18	03/22/2010	NTMTDK ACTION	NOTE FOR MOTION DOCKET MOTION TO STRIKE PLTF'S PLEADINGS	04-09-2010C1
19	03/23/2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
20	03/23/2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
21	03/23/2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
22	03/23/2010	AN	ANSWER TO DEFTS COUNTERCLAIMS	
23	03/23/2010	MTRC	MOTION FOR RECONSIDERATION	
24	03/23/2010	NTMTDK ACTION	NOTE FOR MOTION DOCKET MOTION FOR RECONSIDERATION	04-09-2010C1
25	04/05/2010	AFSR	DECLARATION OF SERVICE	
26	04/05/2010	RSP	PLAINTIFFS RESPONSE TO DEFENDANTS MOTION	
27	04/05/2010	PROR	PROPOSED ORDER DENYING DEFENDANTS MOTION TO STRIKE PLTF'S PLEADINGS	
28	04/05/2010	PROR	PROPOSED ORDER OF DISMISSAL	
29	04/07/2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
30	04/07/2010	WT	WITHDRAWAL OF MOTION FOR RECONSIDERATION	
31	04/09/2010	MTHRG JDG01	MOTION HEARING JUDGE IRA UHRIG, DEPT 1	
	04/09/2010	CTRN CTR	COURT REPORTER NOTES COURT REPORTER SANDRA SULLIVAN	
32	04/09/2010	NTDRCA	NT OF DISCR. REVIEW TO CT OF APPEAL DIVISION I (\$280.00 PAID)	
33	04/09/2010	OR JDG01	ORDER STRIKING PLTF'S PLEADINGS JUDGE IRA UHRIG, DEPT 1	
34	04/13/2010	DCLRM	DECLARATION OF MAILING NOTICE OF DISCRETIONARY REVIEW	

=====END=====

RECEIVED  
COURT OF APPEALS  
DIVISION ONE  
OCT 20 2010

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

DUTCH VILLAGE MALL,

Petitioner,

v.

RAYMOND J. PELLETTI,

Respondent.

No. 65209-5-I

DECLARATION OF SERVICE

FILED  
COURT OF APPEALS  
DIVISION ONE  
2010 OCT 20 11:5:02

I Alexander Kn am a resident of the State of Washington, over the age of eighteen years and not a party to the above entitled action.

On the date set forth below, I delivered via first class U.S. mail postage prepaid a true and correct copy of the following documents to the Defendant's attorney of record Steven L. Shropshire at the address of Shropshire Law Firm, PLLC, 1223 Commercial Street, Bellingham, WA 98225:

1. Opening Brief of the Appellant
2. Corrections to March 12, 2010 Verbatim Report Based on Audio CD
3. Audio CD of the Verbatim Report
4. Declaration of Service

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

Dated this 19 day of October 2010, in Tacoma, WA

Alex Kn