

Court of Appeals Cause No. 73917-4-I

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

ELLEN TAFT AND ARTHUR CHAMPERNOWNE,

Appellants,

v.

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

Respondents.

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COURT OF APPEALS
STATE OF WASHINGTON
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BRIEF OF APPELLANTS

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I. ASSIGNMENTS OF ERROR

A. ASSIGNMENTS OF ERROR

Error No. 1

The trial court committed error by deferring to the Co-Op decision to involuntarily terminate Ms. Taft's membership when the Co-Op membership conferred a property interest and Washington case law requires courts to carefully scrutinize such decisions.

- a. The Co-Op failed to give Ms. Taft reasonable notice of the alleged offenses she had committed and a full and fair opportunity to defend herself.
- b. The question of whether reasonable notice was given to Ms. Taft is a disputed question of material fact.
- c. The trial court was obliged to consider all facts and factual inferences in Ms. Taft's favor.

Error No. 2

The trial court committed error by upholding the Co-Op decision to terminate Ms. Taft's membership when:

- a. The Co-Op failed to identify a viable cause for involuntary termination supported by Bylaw 2.9.
- b. The Co-Op arbitrarily and unreasonably interpreted Policies B5 and B6 as supporting its decision to involuntarily terminate Ms. Taft's membership, but these policies solely govern the Co-Op General Manager. The Co-Op floor manager testified to that fact, the Co-Op attorney conceded that fact at summary judgment, and the trial court understood that Policies B5 and B6 do not pertain to members.
- c. The question whether the Co-Op arbitrarily and unreasonably interpreted Policies B5 and B6 is a disputed issue of material fact.

- d. The trial court was obliged to consider all facts and factual inferences in Ms. Taft's favor.

Error No. 3

The trial court committed error by upholding the Co-Op decision to terminate Ms. Taft's ownership/membership when there is a disputed issue of material fact whether Ms. Taft's actions gave cause for termination, and:

- a. The trial court was obliged to view all evidence and evidentiary inferences in a light most favorable to Ms. Taft.

Error No. 4

The trial court committed error by denying Ms. Taft's Cross-Motion for Summary Judgment and concluding she had been given reasonable notice of cause for involuntary ownership/membership termination.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue No. 1

Whether the trial court committed error by deferring to the Co-Op decision to involuntarily terminate Ms. Taft's membership when the Co-Op membership conferred a property interest on Ms. Taft, and Washington case law requires courts to carefully scrutinize such decisions, and:

- a. Did the Co-Op fail to give Ms. Taft reasonable notice of the alleged offenses causing termination; and thus, a full and fair opportunity to defend herself when such notice is required when a membership confers a property interest?
- b. Did the trial court erroneously conclude that Ms. Taft got reasonable notice when that was a disputed issue of material fact?
- c. Did the trial court abdicate its duty to view that fact in Ms. Taft's favor?

Issue No. 2

Did the trial court commit error by upholding the Co-Op decision to terminate Ms. Taft's membership when:

- a. The Co-Op failed to identify a viable cause for involuntary termination supported by its Bylaw 2.9?
- b. The Co-Op arbitrarily and unreasonably interpreted Policies B5 and B6 as supporting its involuntary termination decision when such policies solely pertained to the general manager?
- c. The question of whether the Co-Op arbitrarily and unreasonably interpreted Policies B5 and B6 is a disputed issue of fact?
- d. Such disputed issues of material fact should have been construed in Ms. Taft's favor?

Issue No. 3

Whether the trial court committed error by upholding the Co-Op's decision to terminate Ms. Taft's ownership/membership when there is a disputed issue of material fact about whether Ms. Taft's conduct constituted cause for termination as defined by Bylaw 2.9:

- a. Whether the trial court was obliged to view evidence and evidentiary inferences about Ms. Taft's conduct in her favor.

Issue No. 4

Whether the trial court committed error by denying Ms. Taft's Cross-Motion for Summary Judgment and concluding that the Co-Op had given her reasonable notice of conduct constituting cause for involuntary termination of her ownership/membership.

II. PROCEDURE BELOW

The trial court dismissed all of Ellen Taft's claims on summary judgment, upholding the Central Co-Op's decision to expel her from membership. Ms. Taft had filed a cross-motion for summary judgment, asking the court to rule that the Central Co-Op Board had failed to give her reasonable notice of her alleged offenses. The trial court concluded that the Co-Op had given Ms. Taft reasonable notice. After dismissal, Ms. Taft timely sought reconsideration of the trial court decision, and the trial court denied reconsideration.

III. STANDARD OF REVIEW

When reviewing a summary judgment order, an appellate court engages in the same inquiry as the trial court. *See Mutual of Enumclaw Ins. Co. v. Jerome*, 122 Wn.2d 157, 160, 856 P.2d 1095 (1993); *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). On motion for summary judgment, “[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Civil Rule 56(c). Summary judgment is inappropriate unless “the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact and that the

moving party is entitled to judgment as a matter of law.” *Sheehan v. Central Puget Sound Regional Transit Authority*, 155 Wn.2d 790, 797, 123 P.3d 88 (2005). In reviewing the evidence on summary judgment, all the facts and reasonable inferences from the facts must be viewed in the light most favorable to the non-moving party. *Brutsche v. City of Kent*, 164 Wn.2d 664, 671, 193 P.3d 110 (2008). “If reasonable minds can reach different conclusions, summary judgment is improper.” *Kalmas v. Wagner*, 133 Wn.2d 210, 215, 943 P.2d 1369 (1997).

IV. INTRODUCTION

Most of us have a pet peeve, justified and correct but perhaps not shared by everyone. Ellen Taft’s pet peeve is people bringing pet dogs – dogs that are not service animals trained to help a person with a disability – into grocery stores and restaurants. Ms. Taft follows rules and wants other people to do the same.

Staff at the Central Co-Op, where Ms. Taft had been a member-owner for nearly 20 years, disliked her insistence that they differentiate between pets and service animals, and also apparently disliked being reported to the Health Department for allowing pets. They also disliked her uncomfortable questions, her demands, and her blunt manner.

The Co-Op is not a purely voluntary, social club where people are required to make nice in order to belong. It is a member-owned

corporation which owes its very existence to the fact that people like Ms. Taft invest money in order to share in the corporate profits and have a say in the running of the store.

Anyone can shop in the Co-Op, without being an owner. Paying money to be an owner brings heightened responsibilities and privileges, and the right to a share in the profits. It also gives protection against arbitrary action by the Co-Op staff and Board. Ms. Taft exercised her rights as an owner to have a say in the running of the Co-Op – specifically, to attempt to get the Co-Op to comply with health department rules about pet animals. In response, the Co-Op terminated her ownership without sufficient notice and meaningful opportunity to be heard. The Co-Op terminated her membership without a basis in the bylaws, based instead on staff's dislike of Ms. Taft, acting arbitrarily and in bad faith. She had been a member-owner of the Co-Op for two decades without any problems, until she complained to management and to the Health Department about pet dogs in the market.

NOTE REGARDING MISTAKE IN INDEX TO CLERK'S PAPERS: Subject No. 31 of the Index to Clerk's Papers states that it is "RESPONSE, SUMM JDGMENT & CROSS MTN," but it is not. Ellen Taft's Response to Summary Judgment is at Subject No. 26 at Pages 150-173 of the record. Subject No. 31 is "Additional Authority that Ms. Taft submitted to the Trial Court.

V. FACTUAL BACKGROUND

The Central Co-Op d/b/a Madison Market (hereafter “Co-Op”) is a “member-owned, democratically-operated” cooperative grocery store and café formed under the Nonprofit Miscellaneous Mutual Corporations Act, Chapter 24.08 RCW. CP 29: 23-26. Ellen Taft was a member-owner of the Co-Op for nearly 20 years. CP 271:21-23. She shopped there frequently – in fact, almost exclusively – because she liked shopping where she had an ownership interest. CP 132-134; CP 188-189. The Co-Op store carried products she considered to be important to her health and could not buy elsewhere. She took her responsibility as an owner of the democratically operated grocery store and café seriously. CP 188-189; CP 274: 1-7. She participated in Co-Op governance and made suggestions and comments about operations, as encouraged by Co-Op bylaws. CP 188-189; CP 275: 23-25. *See* A-1. These usually pertained to suggestions of products to carry, or inquiries about the corporation’s financial well-being. CP 274: 1-7; CP 151:8-14; CP 188-189. For two decades she enjoyed participating in the overall life of the Co-Op, which enriched her experience while shopping there.

But, Ms. Taft believed that the Co-Op was willfully violating health codes barring pets from grocery stores and cafés, and the presence of pet dogs distressed her and affected her while she shopped. It also

bothered her deeply as an owner who cared about the organization. Ms. Taft had often seen dogs in the store and café that appeared to be merely pet dogs, not service dogs. She had never seen Co-Op staff asking questions of the dog owners; instead, staff appeared to deal with the superfluous dogs in the café by ignoring them. CP 272: 13-21; CP 152: 3-11; CP 189.

A. June 2013 Argument, Health Department Inspection, and Aftermath

On June 27, 2013, Ms. Taft saw a dog in the Co-Op and asked the cashiers to find out whether it was a pet or a service dog. They told her, incorrectly, that they were not allowed to ask about the dog because of the Americans with Disabilities Act (ADA). Ms. Taft replied that the ADA actually does allow two questions to be asked: (1) whether the dog is a service animal needed because of a disability; and (2) what tasks or services is the dog trained to perform. She asked to speak to a manager, who also refused to ask the customer about the dog. Ms. Taft described the interaction as “a heated discussion.” CP 272: 13-21; CP 152: 3-11.

Ms. Taft was concerned about the apparent lack of staff training. She called the Seattle-King County Department of Health and asked it to educate the Co-Op about the food safety regulations barring pet animals in places that prepare and sell food, and about the proper way to handle

ADA-protected service animals. CP 273: 15-20. The Health Department inspected the Co-Op the next day. The Health Department summarized her complaint:

Caller was at the grocery store yesterday (6-27-13) at around 11:30 a.m. Saw a non-service animal in the store. Spoke to a male staff member and manager, Jessica; both stated per caller “they cannot ask if the animal is a service animal so no one ever ask [sic] them to leave store. Caller stated that this is an ongoing problem but no one wants to do anything to prevent it.

CP 137; CP 152: 24-25; CP 273: 15-20.

No animals happened to be in the store and café while the inspector was there. The health inspector’s report reminded the Co-Op that they must ensure that any animals in the store and café are service animals, and reminded the Co-Op what questions may be asked to ascertain whether a dog is indeed a service animal. CP 137.

A few days later, on July 3, 2013, Co-Op Floor Manager Douglas Peterson telephoned Ms. Taft and told her, angrily, that her shopping privileges would be revoked if she complained about dogs in the store again. Because of this threat, Ms. Taft did not complain about dogs in the store and café again. CP 141: 3; CP 273: 9-13.

Mr. Peterson’s declaration on summary judgment described the June 2013 incident and July 3 telephone call thus:

On June 27, 2013 I received notice from front-end staff members Alexander DuBois and Jessica Daw that they had experienced a heated confrontation with Ms. Taft. After compiling information from staff, I initiated a telephone call to Ms. Taft on July 3, 2013. During this call I spoke to

Ms. Taft about the incident and informed her that yelling at Co-Op staff and shoppers was not appropriate, and if this behavior occurred again she would not be allowed to shop at the Co-Op.

Declaration of Douglas Peterson. CP 141, ¶3.

B. December 7, 2013 Phone Call from Douglas Peterson

About six months later, on December 4, 2013, Ms. Taft received another angry phone call from Mr. Peterson. He told her that he was revoking her shopping privileges and she was not allowed in the Co-Op. When Ms. Taft asked why, he told her that it was because of an incident in November. When she asked him why he had waited a month to talk to her about it, he did not respond. When she asked for details about the alleged incident, he told her that he was going to send her a letter. Ms. Taft never received any letter from him, although she looked through the mail meticulously for weeks. CP 274: 8-12, CP 188.

Since Mr. Peterson's promised letter never arrived, Ms. Taft had to guess as to the basis for his actions. The only incident she could remember was a conversation during the week before the phone call. Ms. Taft had asked a cashier why the Co-Op never responded to her customer comment cards, and asked "whether the Co-Op was out of debt yet." CP 188; CP 273: 21-25; CP 274: 1-7.

The Co-Op claimed later that there had been an incident involving a dog in the store on November 14. The Co-Op gave Ms. Taft no details about this alleged incident until after it had already terminated her

membership; once given details, she denied having been involved in any such incident. Douglas Peterson's trial court declaration stated:

On November 14, 2013 Ms. Taft again engaged in a hostile confrontation with a shopper and staff. I received communication of this incident through a customer feedback form and communication from Co-Op staff member Marcus Chavez. In addition, after the incident I spoke with the shopper in the store which was consistent with my communication with Mr. Chavez and the shopper's comment form. After speaking with the shopper and Mr. Chavez and reviewing information related to the incident, I believed that she had ignored the warning provided to her on July 3, 2013. As a result, on December 6, 2013 I sent a letter to Ms. Taft informing her that due to her repeated inappropriate communications with Co-Op staff and customers most recently on November 14, 2013 she was no longer welcome to shop at the Co-Op. In the letter I reminded her about her previous incident from June of 2013 and the warning she received to refrain from such future incidents as a condition to continue shopping at the Co-Op. After sending the letter I spoke her on the telephone and reiterated that she was no longer welcome to shop at the Co-Op.

Attached hereto as Exhibit A is a true and correct copy of the copy of the letter I sent to Ms. Taft described in Paragraph 4 of my declaration.

Declaration of Douglas Peterson. CP 141, ¶4. The letter attached to Mr. Peterson's declaration is undated. As quoted above, he claimed it was sent to Ms. Taft on December 6, and that he telephoned her after sending the letter. Their telephone call was on December 4. She never received the letter. CP 274: 13-16; CP 190-191; CP 141, ¶4. Mr. Peterson's declaration demonstrates, at most, one warning not to address the issue of

dogs in the café and grocery store. According to his declaration, the second incident was what caused him to ban Ms. Taft from the premises.

C. Ms. Taft's Two Letters to the Co-Op Board of Trustees, and Co-Op's Claim that Ms. Taft had Never Been a Member

After the December phone call, Ms. Taft's attorneys sent two letters to the Co-Op Board of Trustees ("Board"), in December 2013 and February 2014, pointing out that the Bylaws gave Mr. Peterson no authority to call members and revoke their shopping privileges. *See Koler Declaration, Exs. 2 and 3. CP 190-193. See A-5.* These letters also informed the Board that its own Bylaws required a certain procedure to be followed to involuntarily terminate membership, and pointed out that the Co-Op had not followed that procedure. The Co-Op Board did not respond. CP 191; CP 195-196.

Finally, about three months after the first letter from Ms. Taft's attorney, the Co-Op Manager called Ms. Taft's counsel and claimed that the Co-Op did not need to follow the termination procedure in the Bylaws because Ms. Taft was not a member. CP 179:15-19; CP 186-189. Ms. Taft immediately sent a letter attaching her membership card, which showed she was a member and had been one for nearly 20 years. CP 186-189; CP 195. In that letter, Ms. Taft also explained why she believed Mr. Peterson had revoked her shopping privileges. CP 186-189. At that time, Ms. Taft and her attorneys had still never received Mr. Peterson's promised letter explaining the basis for his angry December 2013 phone call. In fact, they never saw any such letter until one was attached to the

Defendants' Motion for Summary Judgment in the present case. CP 181: 10-14; CP 186-189; CP 199-205. The Co-Op did not produce it in response to discovery requests.¹

D. Termination Proceeding by the Co-Op Board

On May 8, 2014, Ms. Taft received a letter, dated April 28, informing her that “the Board of Trustees has decided to terminate your membership.” The letter warned that they would bar her from their premises on pain of prosecution for trespass. This was the first notice Ms. Taft received that the Board itself was contemplating termination. The letter made the following charges:

[D]ue to your actions at the Co-Op including the verbal abuse of shoppers and workers as well as your continued refusal to refrain from such activity even after repeated warnings, Central Co-Op's Board of Trustees has decided to terminate your membership. . . .

Based on your current actions the Board believes that you have repeatedly violated two important policies and are creating an unsafe shopping experience for customers as well as mistreating staff. Board Policy B5 states “the General Manager shall not cause or allow treatment of staff in any way that is unfair, unsafe, unclear or undignified.” Dan Arnett, the General Manager, has informed the board of your repeated actions towards customers and staff. As well he has informed the board of his actions to ensure that the organization remain compliant with these policies. . . .

¹ Ellen Taft's Interrogatories and Requests for Production required information about alleged warnings given to her about misconduct. The Co-Op failed to give such information and claimed that many of its responses were provided in “supporting records and documents relative to this Interrogatory and will be produced in response to the included RFP [Requests for Production]. Ms. Taft's Summary Judgment Response notes that no documents were provided at all. See Response. CP 156-159. See A-4.

We feel that our staff has provided ample communication warning you to change your behavior in the store or you will be banned. . . .

You have until Sunday May 18th to provide written explanation of your actions to the board. The board will take your statement into consideration before voting for an official termination of your membership.

CP 121. *See* A-6.

The charging letter included no facts alleged against Ms. Taft relating to specific incidents, nor were there any statements or other documents attached. It did not say what these “repeated actions towards customers and staff” were. It did not contain any detail about what Mr. Arnett’s “actions to ensure that the organization remain compliant” were. It contained no specific factual allegations that Ms. Taft could admit, deny, or explain.

Ms. Taft’s attorney, Mark Adams, sent a written response asking for clarification of the charges. CP 123-125. *See* A-5. He pointed out that “Due process, not to mention a fair reading of your Bylaw 2.9, requires that you give details of the charges upon which you propose to base termination, so the recipient can respond.” CP 123-125. In this letter, he and Ms. Taft made their best attempt at providing the demanded “written explanation,” given the vagueness of the accusation. They explained Ms. Taft’s actions in the only incident from which she had ever received a warning from staff. This was Ms. Taft’s best guess at what the Co-Op was referring to:

Like most of us, Ellen Taft is aware of the obvious, potential hazards to sanitation and safety when dogs and other pets are allowed inside a store where food is sold and consumed. Last summer she called attention to a pet dog inside the store and asked a staff member to inquire of the owner if the dog was a bona fide service animal. The staff person refused, but the customer immediately volunteered that the dog was merely a pet and departed the store. Another time, a staff person refused Ms. Taft's request to inquire if a dog was a service animal, saying that the ADA prohibited the question. Ms. Taft knew otherwise. She requested that the Health Department send someone to instruct the staff on the responsibilities of store owners to ask whether a dog is a service animal or pet. After these incidents, in July of 2013, a Co-Op staff member told Mrs. Taft over the telephone not to request staff enforcement of regulations pertaining to service animals. In this regard, the ADA says that "service animals must be harnessed, leashed, or tethered" in ordinary circumstances, and that staff are allowed to ask two questions: (1) is the dog a service animal required because of a disability? (2) What work or task has the dog been trained to perform? The Seattle Office for Civil Rights echoes ADA policy (see enclosed copies). Notwithstanding these regulations, when Mrs. Taft was told not to raise the service animal issue again, she complied; since that telephone conversation last July she has not raised the issue at the Co-Op. There has been no "repeat violation."

On the morning of December 7, 2013, one Douglas Peterson, position unknown at the Co-Op, called Mrs. Taft to proclaim, in an angry tone of voice, that her "shopping privileges" were being terminated. He stated that an incident had occurred on November 14, but Ms. Taft replied that no incident had occurred. Mrs. Taft asked him why, if an incident had occurred, had he taken so long to respond. He had no answer.

CP 123-125. Mr. Adams pointed-out that the allegations in the charging letter were "vague and conclusory" and pointed-out the difficulty of

explaining behavior when the Co-Op had not specified what behavior needed explaining. CP 125.

The Board did not respond and clarify the grounds on which it proposed to terminate Ms. Taft's membership. Instead, it sent Ms. Taft a letter dated June 25, 2014, informing her that it had voted on June 9 to terminate her membership. The Board's letter informing her that she had been terminated stated:

Reasons and details for the consideration of Ms. Taft's membership termination have been given verbally and in writing. If Ms. Taft requires more detail about how her actions created an unsafe and undignified work and retail environment, following are a few statements:

"I did have an interaction which involved her [Ms. Taft][sic] making a large scene and yelling at me in the store because of a dog. I can give you specifics if you like, but put simply, she is rude and harassing and refuses to calm down and speak with you once she gets started." – Staff member June 28, 2013

"In the mid-afternoon of Thursday the 14th, I was helping a customer at the info desk when a woman [Mrs. Taft][sic] loudly interrupted verbally, and by physically inserting herself between me and the customer, 'you need to call your manger [sic] right now and ask that man if that's a service dog.' Her arm was outstretched pointing at a regular customer and his small service dog, who was less than two arms lengths away. I said, 'Ma'am I'll be right with you', and attempted to finish my sentence to the customer I was helping, when she interjected again, louder and still pointing at the other customer. 'This very serious, [sic] you need to call you manger [sic] right now and ask that man if that's a service dog.' At this point the customer with the service animal responded to her 'This is my service animal.'" – Staff member, November 16, 2013

“Today when I entered the Co-Op and was met [sic] by a woman insisting and pointing at me and my dog saying animals/pets aren’t allowed – she repeated this several times, each one with more anger, spite and venom. Needless to say I was shocked and scared. Truthfully and matter of fact ‘my do [sic] is a service animal’ Employee X was cool under the unprovoked verbal explosion and misguided tonal attack. It’s unfortunate fellow shoppers, even those versed in the ADA rules can’t practice simple kindness and consideration.” – Customer, November 14, 2013

CP 127-129. *See* A-6.

As the Board acknowledged in the first-quoted paragraph above, these statements had not been provided previously to Ms. Taft and her attorney. This was the first time Ms. Taft had received any description of the alleged November 14 incident. By then, it was too late; her membership had already been terminated. Ms. Taft’s attorney asked the Board in writing to reconsider, pointing out the Board’s procedural errors and how it had violated Co-Op bylaws and fundamental fairness, but received no response. CP 131-135.

E. Trial Court Proceedings

Ms. Taft sued in King County Superior Court, asking for an injunction to restore her wrongfully-terminated ownership/membership interest in the Co-Op. CP 1-12. The Co-Op moved for summary judgment. CP 28-48. As an exhibit to its summary judgment motion, the Co-Op produced an undated letter from Douglas Peterson that purported to be the letter he claimed to have sent in December 2013. CP 145. The Co-Op also attached to its motion for summary judgment a handwritten

account by “Phillip” on a customer comment card about an alleged November 2013 incident. CP 112-113. Neither Ms. Taft nor her attorneys had ever seen these documents prior to the Motion for Summary Judgment. The Co-Op had not given them to Ms. Taft and her attorneys prior to the Board action to terminate her membership. The Co-Op did not produce them in response to Ms. Taft’s extensive and specific interrogatories and requests for production. CP 156-159; CP 199-205; CP 278: 13-24; CP 277: 3-4. *See* A-4.

During oral argument, the Co-Op conceded that the only two policies it had alleged Ms. Taft had violated were inapplicable to her because they pertain solely to the General Manager, not to members. RP 8: 4-7; RP 9: 6-7; RP 9: 8-10; RP 9: 18-25; RP 10: 2-4. The trial court also demonstrated it understood this.

The trial court questioned whether Ms. Taft’s interest in shopping at the Co-Op justified court action. Counsel pointed-out that Ms. Taft’s membership is of great value to her. She enjoys shopping at the Co-Op, which carries products that she cannot get at any other store. These products are very important to her health and well-being. CP 271: 21-23; CP 189. RP 19; RP 27: 19-21. Further, counsel informed the Court that Ms. Taft believes her reputation has been damaged by the Co-Op’s arbitrary termination of her membership based on allegations of misconduct that she was not afforded the opportunity to refute. RP 19: 1-5. Counsel for Ms. Taft further pointed-out to the court that Ms. Taft has a property interest in the Co-Op – i.e., the right to profit sharing. RP 19:

19-25; RP 20: 1-4; RP 189; RP 279: 3-6. The trial court's statements during oral argument indicated that it believed termination of a Co-Op membership was not sufficient harm to warrant recourse to the courts:

I mean, but if that is the case, I mean, she has other recourse. I mean, she can sue them for defamation or a whole host of other, you know, legal remedies that she may have. But we're only dealing with membership of an organization here and whether or not they're entitled — she got sufficient notice. The bylaws doesn't [sic] specify to what detail she needs to get.

RP at 19. Ms. Taft's counsel pointed-out that the Co-Op Bylaws do grant Ms. Taft other privileges and a property interest in addition to "membership in an organization." RP 19: 19-25; RP 20: 1-4.

The trial court granted summary judgment. *See* A-9. Ms. Taft moved for reconsideration, which was denied on the grounds that she had raised the argument that there were material facts in dispute for the first time on reconsideration. CP 289 (page 1 of Order). *See* A-10. The Plaintiffs' Response to Defendants' Motion for Summary Judgment and Cross-Motion for Summary Judgment had, in fact, pointed-out several material facts in dispute and argued that they precluded summary judgment for the Co-Op. CP 159-160. The Court also found that Ms. Taft's interest in the Co-Op was not a property interest and did not entitle her to "heightened duties of fairness and good faith" and that therefore the court must give deference to the Co-Op's interpretation of its bylaws to conclude that she had adequate notice:

Second, Plaintiffs assert that Taft's former membership in the Co-Op amounted to a "property interest," citing *State v.*

Corgiat, 50 Wash. 95, 96 P. 689 (1908). This Court concludes it did not. Taft's arguments that the Co-Op had heightened duties of fairness and good faith before it could revoke the membership, and that the Court reviews these acts under a heightened standard, are not persuasive. Rather, Washington Courts afford deference to a Board's interpretation of its own bylaws. *See Couie v. Local Union No. 1849 United Bhd. Of Carpenters and Joiners of Am.*, 51 Wn.2d 108, 115, 316 P.2d 473 (1957).

Order on Reconsideration. CP 290.

F. Relevant Co-Op Bylaws and Written Policies

The Co-Op is a membership-based, member-owned corporation formed under Chapter 24.08 RCW and as such is governed by its Bylaws, Articles of Incorporation, and other written policies. CP 29. Under the Co-Op's Bylaws and Articles of Incorporation, payment of the membership equity fee conferred the right to share in corporate profits based on annual store expenditures. *See* Bylaws at §V, Patronage Dividends. Article of Incorporation VI; Bylaw 2.8 states that members have voting rights and the right to attend Board meetings and membership meetings; to review minutes of Board and Nominating Committee meetings; to access the Co-Op's books and records "at any reasonable time;" and to petition for changes in governing documents. Bylaw 3.1 gives members the right "to pose questions of and make comments to management" at any member meeting. Governing Policy B4 provides that the General Manager "shall not allow owners [members] to be uninformed or misinformed of their rights and responsibilities." *See* A-1, A-2, and A-3.

Executive Governance Policy B5 (“Treatment of Customers”), which Ms. Taft was charged with violating, provides that the General Manager “shall not be unresponsive to customer needs,” which includes implementing “a system for soliciting and considering customer opinion regarding preferences, product requests, complaints and suggestions fairly, respectfully and in a timely manner.” It also provides that the General Manager “shall not ... allow an unsafe shopping experience for our customers.” This policy is expressly categorized as “Policy Type: Executive Limitations.” This policy was adopted in June 2013, the same month as Ms. Taft’s complaint to the Health Department and Mr. Peterson’s first angry telephone call.

Governing Policy B6 (“Staff Treatment and Compensation”), which Ms. Taft was charged with violating, provides:

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

The GM will not:

1. Operate without written personnel policies that:
 - a. Clarify rules for staff.
 - b. Provide for fair and thorough handling of grievances in a way that does not include the board as a participant in the grievance process.
 - c. Are accessible to all staff.
 - d. Inform staff that employment is neither permanent nor guaranteed.
2. Cause or allow personnel policies to be inconsistently applied.

3. Fail to provide adequate documentation, security and retention of personnel records and all personnel related decisions.

4. Establish compensation and benefits that are internally or externally materially inequitable.

5. Change the GM's own compensation and benefits, except as his or her benefits are consistent with a package for all other employees.

6. Leave staff unfamiliar with the Board's governance policies.

CP 80. This policy is expressly categorized as "Policy Type: Executive Limitations." Like Policy B5 above, this policy was adopted in June 2013, the same month as Ms. Taft's complaint to the Health Department and Mr. Peterson's first angry telephone call. *See* A-3.

Bylaw 2.9 sets forth specifically the process and basis upon which the Co-Op can terminate a membership against the member's will:

Membership may be terminated involuntarily by the Board for cause after the member is provided written notice of the reasons for the proposed termination and has an opportunity to respond in person or in writing. Cause may include but is not limited to intentional or repeated violation of any provision of the Co-op's bylaws or policies, actions that will impede the Co-Op from accomplishing its purposes, actions or threats that adversely affect the interests of the Co-Op or its members, willful obstruction of any lawful purpose or activity of the Co-Op, or breach of any contract with the Co-Op.

The Co-Op bylaws and policies contain no provision demanding specific member conduct, addressing shopping demeanor, topics of speech, or manner of speech. CP 168: 17-23; CP 169: 12-25.

VI. SUMMARY OF ARGUMENT

The Co-Op is governed by Bylaws and written policies, which recognize that members have an ownership interest that cannot be terminated without cause, notice, and an opportunity to be heard. These Bylaws – and Washington case law – required that the Board act only upon evidence that Ms. Taft violated Co-Op Policies and Bylaws. The Bylaws and Washington law both required that the Board give Ms. Taft reasonable notice of the specific allegations of misconduct that, it claimed, gave cause for termination. The Board’s April 28, 2014 charging letter referred to the text of Executive Limitation Policies B5 and B6, and made vague references such as “your actions,” “your current actions,” “repeatedly violated two important policies,” “behavior,” “conduct,” and “verbal abuse of shoppers and workers”. CP 121. The April 28 letter, which essentially operated as a complaint or charging document, failed to give enough information about what evidence the Board was considering in its termination decision to allow Ms. Taft to have a meaningful opportunity to be heard. The Board did not respond to Ms. Taft’s written request for greater detail so that she could respond to the allegations, but terminated her ownership and membership interest. *See* A-6.

Furthermore, the Co-Op acted unreasonably and arbitrarily by terminating Ms. Taft’s ownership and membership interest without

identifying any bylaw or policy that she violated – apart from Policies B5 and B6, which the Co-Op conceded at oral argument do not apply to Ms. Taft. RP 9-10. The Co-Op breached its duty to treat Ms. Taft fairly and in good faith by basing its decision to terminate her membership not on the Bylaws, but on the fact that she was a difficult personality for the Co-Op staff to deal with and had been branded a troublemaker.

Several disputed issues of material fact exist in this case that made it inappropriate for the trial court to dismiss the case on summary judgment:

1. Whether the Co-Op gave Ms. Taft sufficient and reasonable notice of the alleged conduct that was the basis for the Board's action to expel her from membership and take away her ownership interest;
2. Whether the Board unreasonably and arbitrarily determined that Policies B5 and B6, which the Co-Op and the trial court both acknowledged expressly apply only to the General Manager, not to members, established cause for termination under Bylaw 2.9;
3. Whether the Board breached its duty to treat Ms. Taft fairly and in good faith when it involuntarily terminated her membership and ownership interests; and
4. Whether the Board demonstrated that there was cause for involuntary membership termination under the Bylaws.

CP 159-160.

VII. ARGUMENT

A. The Co-Op Terminated Ms. Taft's Ownership Interest Without Reasonable Notice and a Meaningful Opportunity to

be Heard, and the Trial Court Should Not Have Granted Summary Judgment

i. Ms. Taft's Ownership and Membership in the Co-Op is a Property Interest that Cannot be Terminated Arbitrarily

Under the Co-Op's Bylaws and Articles of Incorporation, payment of the membership equity fee conferred the right to share in corporate profits based on annual store expenditures. *See* Bylaws at §V, Patronage Dividends.² *See* Articles of Incorporation. *See* Policy B4. Thus, upon joining the corporation as an owner/member and paying the membership assessment, Ms. Taft acquired a property interest in the Co-Op and the right to have a say in its operations, in addition to the right to use the Co-Op's facilities. *See* Bylaw 2.3 Membership Equity Contribution³; Bylaw

² Articles of Incorporation – Article VI - Rights and Priorities

Section 1. No member shall have any property rights whatsoever in the Co-Op or any of its assets by reason of his membership, except for those property rights set forth in this Article VI.

Section 3. In calling or purchasing or in paying over any monies supplied as book credits, capital funds or allocated reserves, the Co-Op may rely solely upon its own records and shall not be liable to any person other than the person appearing by its records to be the owner thereof and entitled to receive money thereon.

Section 4. ... Each member and patron of the Co-Op does hereby make, constitute, and appoint the Co-Op such member and patron's attorney-in-fact for him and in his name, place, and stead, for his use and benefit, to sign, endorse, and deliver to the Co-Op such portion of the cash portion of such member and patron's patronage dividend as may be necessary to satisfy any indebtedness of such member and patron to the Co-Op. CP 57-58.

³ 2.3 Membership Equity Contribution; Membership Fee. Prior to the adoption of these Restated Bylaws, an applicant for membership has been required to pay to the Co-Op a membership equity contribution of at least \$5.00 and then pay to the Co-Op an additional \$5.00 towards their membership equity contribution each month in which a merchandise purchase is made at the Co-Op, until the member's total membership equity contribution reaches \$60.00. Hereafter, new applicants for membership shall be required to pay to the Co-Op a membership equity contribution in such total amount and payable in such manner as the Board of Trustees may determine from time to time. A member's membership equity contribution shall be refundable as provided in these Bylaws. In addition, the Board of Trustees may impose, and from time to time adjust, a non-refundable membership fee.

2.10 Return of Membership Equity Contribution, Return of Other Equity⁴;

Bylaw 5.6 Unclaimed Property.

The Co-Op did not have the right to arbitrarily terminate Ms. Taft's ownership and membership rights.

It may be stated, as the general rule, that a society, the members of which become entitled to privileges or rights of property therein, may not exercise its power of expulsion without notice to the member, or without giving him an opportunity to be heard. It is a fundamental principle of law, recognized in every court of justice, that no man shall be condemned or prejudiced in his rights without an opportunity to be heard. A society, or select number of its members, to whom authority is given in the premises, is a court when passing on the rights of its members. . . . [I]t is against natural justice to proceed against one's rights without giving him an opportunity to be heard in defense of them.

State v. Corgiat, 50 Wash. 95, 98, 96 P. 689 (1908). If a member is wrongfully expelled from a corporation, courts will require reinstatement.

Otto v. Journeyman Tailors' Protective and Benevolent Union, 75 Cal. 308, 17 P. 217 (1888), cited with approval in *Corgiat*. Thus, when termination implicates a property interest, courts carefully scrutinize the transaction to determine "whether the cause of expulsion was sufficient in

⁴ 2.10 Return of Membership Equity Contribution; Return of Other Equity. A member's membership equity contribution shall be returned upon termination of membership in the Co-Op, under terms determined by the Board, provided that the Board has determined that the membership equity contribution is no longer required by the Co-Op. With regard to any other equity contributed by a member to the Co-Op, in the event the membership of any member shall terminate for any reason whatsoever, such member shall not thereupon become entitled to demand or receive any interest in the property or assets of the Co-Op, but shall be entitled only to receive payment of his or her book credits, capital funds or allocated reserves as and when payment thereof would have been received had he or she remained a member.

law, whether the corporation proceeded in accord with the law, upon reasonable notice to the member, and whether the hearing and expulsion were in good faith and in compliance with its charter and bylaws.” Fletcher, *Cyclopedia of Corporations* (revised ed. 2009) §5704.

The Co-Op claimed below that courts review termination decisions in a highly deferential manner and accept the wisdom of the corporate board about termination. This is incorrect. The case cited in support of the Co-Op’s argument dealt with voluntary social clubs whose members had no property interest in the corporation’s profits. *Garvey v. Seattle Tennis Club*, 60 Wn.App. 930, 933, 808 P.2d 1155 (1991). Also, the Co-Op and trial court accorded importance to *Couie v. Local Union No. 1849 United Broth. of Carpenters and Joiners of America*, 51 Wn.2d 108, 316 P.2d 473 (1957). But *Couie* held that deference should be given to a corporate board’s decision interpreting its own bylaws *unless* the board construes its bylaws in an arbitrary and unreasonable manner. Moreover, as the authorities below demonstrate, there is a baseline notice requirement, grounded in fundamental fairness, that exists independently of whatever notice procedures are set forth in the bylaws. CP 171.

ii. Washington Law Required the Co-Op to Give Ms. Taft Reasonable Notice of the Allegations Against Her Before – Not After – it Terminated Her Ownership and Membership Interest

In *Corgiat*, the plaintiff belonged to a mutual benefit corporation providing sick, disability, and death benefits in exchange for payment of a

membership assessment and dues. The plaintiff published an article that affected the association president and he was expelled from the association. The court held that the plaintiff could not be expelled without notice of the allegations against him and the opportunity to be heard in his own defense. *Corgiat*, 50 Wn. at 98. Similarly, *Hendryx v. People's United Church of Spokane*, 42 Wn. 336, 84 P. 1123 held that “a church cannot expel a member without charges, notice or trial.” Because adequate notice of a proposed deprivation of rights is an essential element of fundamental fairness, courts in many jurisdictions, including Washington, have held that “for the action of a corporation in expelling a member for cause to be valid, it is essential that there be a trial or hearing against the member with reasonable notice to the member and a fair opportunity to be heard.” Fletcher, *Corporations* §5702. The “charges must be sufficiently definite to enable the member to know their precise nature.” *Id.* at 788. Boards must observe standards of fundamental fairness and grant a member subject to expulsion a full and fair opportunity to be heard, because they stand in for the courts in adjudicating the rights of their members. *Corgiat*, 50 Wn. at 98.

Not only does a member have the right to be heard before termination, but also to know the specific allegations – in other words, “**to be notified of the accusation** and an opportunity to make his defense.” *Corgiat*, 50 Wn. at 98 (emphasis added). Adequate notice of the causes for termination is crucial. “[T]he **right to be advised in advance of the charges** is a fundamental right to which the petitioner would be entitled

even without the bylaw provision.” *Nametra v. American Soc. of Travel Agents Inc.*, 28 Misc.2d 291, 292, 211 NYS.2d 655, 657 (1961)(emphasis added). CP 162-166. *See* A-1.

A fair opportunity to respond requires that a member has already been fully informed of the allegations against her upon which the corporation might act; otherwise, that opportunity to respond is illusory. In *Nametra*, some notice was given to the petitioner ahead of the hearing, but additional charges not previously disclosed were served on the petitioner at the hearing, and the “fundamental right” to adequate notice “was not satisfied where charges are considered of which petitioner was not advised in advance of trial.” *Id.* “The rights of confrontation and cross-examination, like the right of notice, are fundamental rights.” *Id.* Even where a corporation’s bylaws fail to provide for full notice, “the law steps in and supplies the omission.” *Seehorn v. Supreme Council Catholic Knights of America*, 68 S.W. 949, 950, 95 Mo.App. 233 (1902) (invalidating suspension for lack of notice), *cited in* Fletcher, *Corporations* §5702 n. 10. The fundamental right to be heard also requires specificity in the allegations. *See McCune v. Wilson*, 237 So.2d 169, 170 (Fla. S.Ct. 1970) (association “failed to adhere to fair standards set out in its own procedural regulations... in that the Committee failed to give fair and adequate notice, failed to give notice of charges with adequate particularity, and otherwise failed to provide a fair and impartial hearing”), *cited with approval* in Fletcher § 5702 n. 12.

iii. The Co-Op Failed to Give Ms. Taft Reasonable Notice of the Allegations She Needed to Defend Against Before Terminating Her, and Whether Notice Was Sufficient Was a Material Fact in Dispute

Here, Ms. Taft was not given fair advance notice of the charges against her because the Board's charging letter was extremely vague. It accused her of violating Executive Limitation Policies B5 and B6 by "creating an unsafe environment for shoppers" and "treating staff in an undignified manner," but gave no information about what words or actions by Ms. Taft gave rise to those conclusions.⁵ The letter alleged that Ms. Taft had "repeatedly" violated Co-Op policies and had ignored "repeated warnings" of those violations, but provided no clue as to what words or actions by Ms. Taft violated those policies. CP 121. In fact, as later documented by the papers the Co-Op filed on summary judgment, Ms. Taft had received only one warning: Douglas Peterson's July 2013 phone call telling her to stop talking about dogs in the café and store. RP 18: 15-18; CP 124-125; CP 272-273; CP 276: 12-14. The Board's June 25 letter, sent after its decision had already been made, acknowledged that

⁵ Policy B5 states: Policy Type: **Executive Limitations**

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

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

The **GM** shall not:

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

Policy B6 states, in pertinent part: Policy Type: **Executive Limitations**

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

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

[Emphasis added.]

the Co-Op had not previously given Ms. Taft details of the allegations against her: “[i]f Ms. Taft requires more detail... here are a few statements”. CP 175: 13-18; CP 179: 12-14; CP 180: 10-12; CP 181: 17-22.

Giving Ms. Taft ten days to respond to the April 28 charging letter was an empty gesture. The charging letter did not give the slightest information about what actions or behaviors Ms. Taft was accused of and needed to explain. It did not state how she violated the cited policies, nor did it give any details about incidents that, if proved, would give cause to terminate Ms. Taft’s membership under Bylaw 2.9. Instead, the Board complained vaguely of “your current actions,” “such activity,” “your repeated actions towards customers and staff,” “your behavior,” and “your actions.” CP 125; CP 121.

Even the most specific allegation in the charging letter was vague and conclusory. This read: “Unfortunately, due to your actions at the Co-Op including the verbal abuse of shoppers and workers as well as your continued refusal to refrain from such activity even after repeated warnings, Central Co-Op’s Board of Trustees has decided to terminate your membership.” CP 121. The term “verbal abuse” is subjective. RP 20-21; CP 133-135; CP 275: 23-25. What one person considers being direct, blunt, or demanding, another person may consider “verbal abuse.” CP 274: 1-8. Stating that Ms. Taft engaged in “verbal abuse” was not sufficiently specific to allow her to adequately defend herself against the allegations. CP 123-125; CP 133-134; CP 188-189; CP 276: 12-14.

Whether words are “verbal abuse,” being a subjective judgment, is an issue of fact that would be decided by a jury after hearing what words she was accused of using, and hearing Ms. Taft’s side of the story.

In his written response to the April 28 letter, Ms. Taft’s attorney pointed-out to the Board that its letter was insufficiently specific to allow Ms. Taft to answer the charges. He requested detail about incidents the Board believed justified termination. He reminded the Board that “a fair reading of your Bylaw 2.9, requires that you give details of the charges upon which you propose to base termination, so the recipient can respond.” *See* Koler Decl. Ex. 4. Nevertheless, the Board did not respond with specifics until after it had taken its action and terminated Ms. Taft’s membership. CP 124-125; CP 133. The Board was notified that its charging letter was defective and chose not to fix the problem.

In the June 25, 2014 letter informing Ms. Taft that her membership had been terminated, the Board wrote: “Reasons and details for the consideration of Ms. Taft’s membership termination have been given verbally and in writing. If Ms. Taft requires more detail about how her actions created an unsafe and undignified work and retail environment, following are a few statements...” The letter quotes the June 28, 2013 employee complaint and the November 14, 2013 customer and employee complaint. CP 127-129. This letter, sent after the Board had already taken its action, was the first time that either Ms. Taft or her attorney had seen these complaints. The Board apparently felt that Ms. Taft was not

entitled to see these allegations before defending herself, but only afterwards. Under Washington law, it was wrong.

Nor did the Co-Op give Ms. Taft sufficient notice of the underlying Bylaws or Policies that she had allegedly violated and how her actions constituted a violation. The Board's April 28, 2014 letter was the first time Ms. Taft had been told that she was violating Executive Limitation Policies B5 and B6. Moreover, because these policies bind only the Co-Op General Manager and not members, Ms. Taft had never seen these policies and did not know of their existence. CP 275: 5-22; CP 276: 1-11; CP 277: 18-23; CP 278: 4-9. She did not pledge to uphold those policies when she joined because they did not exist at the time. The Board adopted Executive Limitation Policies B5 and B6 in 2013; these are not the policies Ellen Taft agreed to uphold when she paid her equity contribution approximately two decades ago. Her membership application stated: "I hereby apply for membership in the Central Co-Op's Madison Market under the conditions and policies stated in the introductory brochure..." CP 110. The terms of the policies themselves do not give sufficient notice because they expressly apply only to the General Manager, not to members.

It is a genuine issue of material fact in dispute whether the Board's charging letter giving Ms. Taft a deadline to submit "a written explanation

of her behavior” provided sufficient notice to allow Ms. Taft to meet the allegations against her. Whether notice is sufficient is a question of fact. *Associated Petroleum Products, Inc. v. Northwest Cascade, Inc.*, 149 Wn.App. 429, 203 P.3d 1077 (2009). In that case, the Court held that a genuine issue of material fact should have prevented the trial court from granting summary judgment because there was a material fact in dispute – whether Associated gave adequate and reasonable notice of new, ‘time on-site’ fueling charges. *Id.* at 435. It held that reasonable notice is notice fairly to be expected or required under the particular circumstances and whether notice is reasonable is ordinarily a question of fact for the jury. *Id.*, citing *Cascade Auto Glass v. Progressive Casualty Ins.*, 135 Wn.App. 760, 767, 145 P.3d 1253 (2006), and *Lano v. Osberg Const. Co.*, 67 Wn.2d 659, 409 P.2d 466 (1965).

B. The Board Interpreted its Bylaws in an Arbitrary and Unreasonable Manner, Failing to Identify a Cause for Involuntary Termination Supported by the Bylaws

The Co-Op acted unreasonably and arbitrarily in basing Ms. Taft’s termination on its Executive Limitation Policies B5 and B6, which everyone now agrees do not apply to Ms. Taft. CP 167: 24-25; CP 168-169. RP 9-10. The April 28 charging letter alleged that she was subject to termination for violating “two important policies” – referring to B5 and B6. Involuntary termination for policy violations requires “*repeated* violations of the Co-Op’s bylaws or policies.” Bylaw 2.9 (emphasis

added). The Co-Op did not identify a policy or bylaw that actually applied to Ms. Taft and that she had violated. The failure to do so rendered its decision entirely arbitrary. CP 168.

Floor Manager Douglas Peterson testified at his deposition that Executive Limitation Policies B5 and B6 do not apply to Co-Op members. *See* Koler Declaration at Ex. 1. CP 244. The Co-Op's attorney admitted during questioning by the trial judge that these policies only apply to the General Manager, not to customers like Ms. Taft. The trial court itself stated that these policies do not apply to Ms. Taft. RP 9-10. The Co-Op failed to cite any other bylaw or policy that Ms. Taft violated. There is no underlying violation of a bylaw or policy to give cause for involuntary termination under Bylaw 2.9.

Below, the Co-Op urged that the court must give deference to the Board's construction of the bylaws, citing *Couie v. Local Union No. 1849 United Broth. of Carpenters and Joiners of America*, 51 Wn.2d 108, 316 P.2d 473 (1957). But *Couie* also holds that deference to the Board's construction is inappropriate in the face of an "arbitrary and unreasonable" interpretation of Co-Op bylaws. *Couie*, 51 Wn.2d 115. The Board's construction in this case is arbitrary and unreasonable: it claimed it was terminating Ms. Taft's membership for "repeated violations of policy." Yet it failed to identify a policy that applied to her. It is arbitrary and unreasonable to require her to abide by policies that, everyone agrees, do not apply to members/owners at all. Because the Co-Op construed its Bylaws in an arbitrary and unreasonable manner, that

interpretation is not entitled to this Court's deference. CP 168-169: 1-6; CP 170; CP 231-232.

Furthermore, bylaws must be construed against the corporation and in favor of the member/owner. *Fletcher on Corporations*, §5968. In the context of involuntary termination, the reviewing court must construe Policies B5 and B6, as well as Bylaw 2.9, in Ms. Taft's favor. CP 167, lines 1-9. Claiming that Ms. Taft "repeatedly violated" policies by "abusive" conduct in violation of Executive Limitation Policies B5 and B6, in the absence of any written policy demanding specific member conduct and addressing shopping demeanor, topics of speech, or manner of speech, is an arbitrary and unreasonable construction of Co-Op bylaws and policies to which the courts owe no deference whatsoever. CP 168-169.

This disputed question should have kept the trial court from granting summary judgment; whether conduct is reasonable is a question of fact. *M. W. and A. W. v. Dept. of Social and Health Services*, 110 Wn.App. 233, 39 P.3d 993 (2002). CP 160: 14-19; CP 230: 3-15, CP 231: 6-25. In that case, a minor sued the Department of Social and Health Services (DSHS), alleging that several employees were negligent in examining her for sexual abuse. DSHS argued that it has a statutory duty to investigate allegations of child abuse and that its examination was reasonable. The trial court granted DSHS's motion for summary judgment. The minor appealed, contending that there remained a genuine

issue of material fact as to whether the investigation was reasonable. The Court of Appeals reversed and remanded for trial.

C. Whether Ms. Taft Engaged in Misconduct Was a Disputed Issue of Material Fact that Should Have Precluded Summary Judgment

As demonstrated above, the Co-Op failed to identify any applicable bylaw or policy that Ms. Taft violated, because Executive Limitation Policies B5 and B6 do not apply to members. There are no bylaws or policies about how member-owners must speak to staff or other shoppers. CP 168-169. There are no bylaws or policies barring owner/members from questioning how the store and café are run; to the contrary, the bylaws contemplate that they should take an active role in improving the Co-Op. There are no bylaws or policies barring members from being blunt, direct, demanding, displeased, or even unpleasant, or requiring members to be kind, compassionate, friendly, happy, and pleased while they are in the store, on pain of termination. CP 169, lines 8-25. Even assuming the Co-Op could terminate a member for conduct that does not violate a bylaw or policy – which it cannot – there was a clear conflict of evidence in the record that should have kept the trial court from granting summary judgment, particularly since the trial court was obliged to view all evidence in the light most favorable to Ms. Taft, the non-moving party. CP 272: 13-17. *See* CR 56.

Viewing the record in the light most favorable to Ms. Taft, the trial court could not rightfully have concluded that she had violated any Co-Op

policies or bylaws justifying termination. The record paints a picture of a blunt and direct person who was demanding that Co-Op staff comply with the law barring dogs in public places where food is prepared and sold unless they are bona fide service animals, and who made a complaint to the Health Department, triggering an inspection. The record shows that Co-Op staff were irritated and angry with Ms. Taft and considered her “rude and harassing.” But, Ms. Taft testified in her declaration that she always directed her questions and concerns to Co-Op staff, not to other customers directly. This is even verified by the handwritten account of “Phillip,” who describes a woman speaking to the staff member, not to him directly. Ms. Taft testified in her declaration that she never addressed Co-Op staff in a rude or abusive manner. CP 272, lines 13-14, lines 22-23. She testified that she heeded Mr. Peterson’s angry July 3, 2013 verbal warning that she must never address a staff member again about dogs in the café and store. CP 273: 15-16: 21-25. She also testified that no “incident” occurred in November 2013. CP 124; CP 188; CP 189; CP 273: 21-25; CP 274: 13-17.

After reading the documents that the Co-Op provided in support of its motion for summary judgment – documents that it did not produce in discovery and that Ms. Taft had never seen before the summary judgment motion – it appears that the alleged incident in November was the “Phillip” incident. However, it was clear from documents in the record, including previous letters from counsel, that Ms. Taft had to guess what so upset Douglas Peterson in November, and concluded that it must have

been when she asked a cashier why nobody ever responded to her comment cards and whether the Co-Op was “out of debt yet”. CP 274: 1-17; CP 188. This provides further evidence calling into question the Co-Op’s version of events.

Whether Ms. Taft’s naturally boisterous voice and blunt mannerisms constituted misconduct was a question of fact, and it was clearly in dispute. CP 232: 19-35. Being human and thus liable to become defensive when called out for failure, the staff members being told they were breaking the law and being asked to change probably were defensive and probably did feel as though Ms. Taft’s words were “verbal abuse” and “mistreatment.” CP 272; CP 274: 1-8. However, whether Ms. Taft’s demands actually were “verbal abuse” and “mistreatment,” rather than a blunt and direct demand from a member/owner that the Co-Op follow the law, after repeated violations of that law, was a question of fact for a jury and was not properly decided on summary judgment. CP 231; CP 160: 10-16.

D. The Co-Op Acted Arbitrarily and Not in Good Faith by Terminating Ms. Taft for Reasons Not Based on its Bylaws and Policies, but on Staff’s Dislike of Ms. Taft

As demonstrated above, membership in the Co-Op confers a property interest, requiring that members be treated fairly and in good faith upon expulsion. CP 162: 3-6. Further, RCW 24.06.153(a) obliges the directors of a Nonprofit Miscellaneous and Mutual Corporations Act to “discharge the officer’s duties... in good faith.” *See* RCW

24.06.153(a). Whether a party acted fairly and in good faith is a question of fact. *Galbraith v. Tapco Credit Union*, 88 Wn.App. 939, 946 P.2d 1242 (1997). CP 160: 17-19; CP 230: 17-32. *Galbraith* holds that “just cause” means a fair and honest cause requiring good faith on the part of the party exercising the power. 88 Wn.App. at 954. Here, there was significant evidence in the record on summary judgment that would have allowed a finder of fact to determine that the Co-Op did not act in good faith, and the trial court erred in granting summary judgment, when it was obliged to view the evidence and all inferences from the evidence in the light most favorable to Ms. Taft.

The Co-Op’s actions appear to be motivated by dislike of Ms. Taft by the Co-Op staff. Mr. Peterson called Ms. Taft and angrily berated her for confronting staff about pet dogs in the café not right after the incident itself, but after she called the Seattle King County Health Department and triggered an inspection. CP 141, ¶3; CP 137. The Co-Op claims that it gave Ms. Taft “repeated warnings” about supposed “repeated behavior,” but can produce evidence of only one warning and two alleged incidents. CP 124; CP 272: 13. Staff did not like having their constant failure to follow the law about dogs in cafés and stores pointed out to them. They did not like Ms. Taft’s uncomfortable questions about why they never responded to her comment card requests and suggestions. They did not like having her ask, while standing in the checkout line, whether the Co-Op was out of debt yet. CP 134; CP 188. At least one staff member called her “rude and harassing.” They were defensive when she

confronted them about these issues and subjectively experienced her questions and demands as “verbal abuse” and “mistreatment.” Whether this dislike for Ms. Taft was the true basis on which the Co-Op terminated her ownership and membership interest was a material fact that should have been submitted to a jury, not decided on summary judgment.

VIII. THE TRIAL COURT ERRONEOUSLY FAILED TO GRANT MS. TAFT’S CROSS-MOTION FOR SUMMARY JUDGMENT

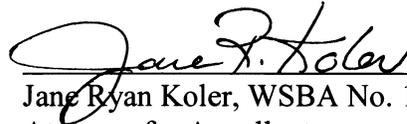
Ms. Taft noted a cross-motion for summary judgment claiming that she had not received reasonable notice of the alleged offenses constituting cause for involuntary termination of her ownership/membership in the Co-Op. CP 150. The Co-Op presented no response. CP 207-214. In granting summary judgment, the trial court held that the Co-Op had given Ellen Taft reasonable notice. CP 224. Had the trial court viewed all evidence and evidentiary inferences in Ms. Taft’s favor, as Civil Rule 56 demands. It should have granted summary judgment to Ellen Taft on the issue of reasonable notice.

IX. CONCLUSION

For the reasons above asserted, this Court should reverse the grant of summary judgment and grant summary judgment to Ms. Taft on the issue of reasonable notice and remand for trial.

DATED this 29th day of January, 2016.

Respectfully submitted,

A handwritten signature in black ink, reading "Jane R. Koler". The signature is written in a cursive style with a large initial "J" and "R".

Jane Ryan Koler, WSBA No. 13541
Attorney for Appellants
Land Use and Property Law, PLLC
6659 Kimball Drive, Suite B-201
Gig Harbor, WA 98335
Telephone: (253) 853-1806

IX. APPENDIX

A-1..... Central Co-Op Bylaws

A-2..... Article of Incorporation VI

A-3..... Central Co-Op Executive Limitation Policies B4, B5 and B6

A-4..... Co-Op Response to Interrogatories and Requests for Production

A-5..... Taft’s March 5, May 14, and August 29, 2014 Letters to Co-Op

A-6..... Co-Op’s April 28 and June 25, 2014 Letters to Taft

A-7..... Declaration of Ellen Taft

A-8..... Response to Motion for Summary Judgment

A-9..... Trial Court’s Decision on Summary Judgment

A-10..... Trial Court’s Ruling on Motion for Reconsideration

**BYLAWS
OF
Central Co-op
(As Restated _____)**

**SECTION I
ORGANIZATION**

1.1 Name. The name of the organization shall be Central Co-op (henceforth "the Co-op").

1.2 Purposes. The purposes for which the Co-op is formed are as stated in the Articles of Incorporation.

**SECTION II
MEMBERSHIP**

2.1 Eligibility. Any person regardless of race, nationality, political opinion, sex, sexual preference, disability, age, or religious belief, shall be eligible to become a member of the Co-op by following the procedures set forth in these Bylaws.

2.2 Admission. Any eligible person may be admitted to membership upon submitting an application and investing equity in an amount and on such terms as determined by the Board of Trustees (hereinafter "the Board").

2.3 Membership Equity Contribution; Membership Fee. Prior to the adoption of these Restated Bylaws, an applicant for membership has been required to pay to the Co-op a membership equity contribution of at least \$5.00 and then pay to the Co-op an additional \$5.00 towards their membership equity contribution each month in which a merchandise purchase is made at the Co-op, until the member's total membership equity contribution reaches \$60.00. Hereafter, new applicants for membership shall be required to pay to the Co-op a membership equity contribution in such total amount and payable in such manner as the Board of Trustees may determine from time to time. A member's membership equity contribution shall be refundable as provided in these Bylaws. In addition, the Board of Trustees may impose, and from time to time adjust, a non-refundable membership fee.

2.4 Duration; Transferability. Membership shall be for the life of the member and shall be non-transferable.

2.5 Active Membership; Definition: To be deemed an "active" member, a member shall be current in his or her equity contribution due to the Co-op, shall keep the Co-op informed of any changes in the member's name, current address and other contact information and shall patronize the Co-op at least once per year. In addition, for an active member to be considered to be in "good standing", he or she shall abide by these Bylaws and the policies and decisions of the Co-op and the Board.

2.6 Voting; Eligibility for Board. Only “active” members in good standing shall be allowed to vote or be elected to serve on the Board of Trustees. Each such “active” member shall only be entitled to one vote. Voting shall be conducted consistent with RCW 24.06.110 as it now exists or may hereafter be amended or successor statute.

2.7 Inactive Membership. An “active” member shall become “inactive” if he or she ceases to meet the requirements set forth in the Articles of Incorporation or these Bylaws. “Inactive” members shall not have a vote in the selection of the Board of Trustees, amendment of the Bylaws and Articles, or in any other proposals to the Co-op membership. Such members shall have the right to become “active” by complying with the conditions set forth in the Bylaws.

2.8 Rights. In addition to the right to vote and to serve on the Board, active members have the right to attend meetings of the Board, to receive notice of and attend membership meetings, review minutes of the Board meetings, to obtain information concerning the actions of the Board and to access the books and records of the Co-op for proper purpose at any reasonable time. Active members have the right to petition, and to approve amendments to these Bylaws and the Articles of Incorporation as described in these bylaws. All rights and responsibilities of members are subject to the bylaws as they may be amended from time to time, and to policies and decisions of the Co-op or the Board.

2.9 Termination of Membership. A member may terminate his or her membership voluntarily at any time by written notice to the Co-op. The Board may terminate the membership of any member who has been inactive for ten (10) years. Membership may be terminated involuntarily by the Board for cause after the member is provided written notice of the reasons for the proposed termination and has an opportunity to respond in person or in writing. Cause may include but are not limited to intentional or repeated violation of any provision of the Co-op's bylaws or policies, actions that will impede the Co-op from accomplishing its purposes, actions or threats that adversely affect the interests of the Co-op or its members, willful obstruction of any lawful purpose or activity of the Co-op, or breach of any contract with the Co-op.

2.10 Return of Membership Equity Contribution; Return of Other Equity. A member's membership equity contribution shall be returned upon termination of membership in the Co-op, under terms determined by the Board, provided that the Board has determined that the membership equity contribution is no longer required by the Co-op. With regard to any other equity contributed by a member to the Co-op, in the event the membership of any member shall terminate for any reason whatsoever, such member shall not thereupon become entitled to demand or receive any interest in the property or assets of the Co-op, but shall be entitled only to receive payment of his or her book credits, capital funds or allocated reserves as and when payment thereof would have been received had he or she remained a member.

2.11 Unclaimed Property. All unclaimed patronage dividends or distributions or funds payable on redeemed book credits, capital funds and allocated reserves shall revert to the Co-op at the discretion of the Board at any time after one year from the end of the fiscal year during which such distributions or redemptions have been declared.

2.12 Non transferability. Membership rights and member equity may not be transferred in any manner.

SECTION III MEMBER MEETINGS

3.1 Annual Meeting. A membership meeting shall be held each year as determined by the Board. The purpose of such meetings shall be for the members to hear reports on operations and finances, to review issues that vitally affect the Co-op, and to transact such other business as may properly come before the meeting. The annual meeting of members need not involve a physical assembly at a particular geographic location if the meeting is held by means of electronic or other remote communications with members, in a fashion that the Board determines will afford members a reasonable opportunity to read or hear the proceedings substantially concurrently with their occurrence, to vote by electronic transmission on matters submitted to a vote by members, and to pose questions of and make comments to management, subject to such procedural guidelines and limitations as the Board may adopt. Members participating in an annual meeting by means of electronic or other remote communications technology in accordance with any such procedural guidelines and limitations shall be deemed present at the meeting for all purposes under RCW Chapter 24.06.

3.2 Special Meetings; Member Petitions. Special meetings of the membership may be called by the Board, either by decision of the Board or in response to a written petition. A petition from members must be signed by the greater of 5% or 500 of active members who have been active members for at least ninety (90) days. The purpose of the petition must be explicitly written. A 60-day period for signature collection is allowed, and the petition remains valid for presentation to the Board for 90 days from start of signature collection. If the Board determines not to take the action demanded in the petition or fails to take such action, then notice of a special meeting shall be issued to the membership. In the case of a petition, notice of the special meeting will be issued within ten (10) days after a presentation of the petition to the Board, and the Special Meeting will be held not more than 90 and not less than 30 days of the notification being sent. No business shall be conducted at that special meeting except that specified in the notice of meeting. The Board shall act favorably on the petition demand if it achieves at least a 2/3rds vote of a 5% quorum of active members. Otherwise, the vote of the active members on the petition demand is advisory only.

3.3 Notice of Meetings; Electronic Notification. Notice of the date, time, place and purpose of each meeting of the membership shall be posted in a conspicuous place at the Co-op and on its website and communicated to members not less than ten nor more than fifty days before the date of the meeting. Notice shall be delivered personally, by mail or by electronic transmission, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each active member entitled to vote at such meeting. The Co-op may (i) post information or materials on an electronic network not less than thirty days prior to the meeting at which such information or materials will be considered by members; and (ii) delivering to those members who are eligible to vote a notification, either in a meeting notice or in such other reasonable form as the Board may specify, setting forth the address of the electronic network at which and the date after which such information or materials will be posted and available for viewing by members eligible to vote, together with comprehensible instructions

regarding how to obtain access to the information and materials posted on the electronic network. The Co-op shall, at its expenses, provide a copy of such information or materials in a written or other tangible medium to any member who is eligible to vote and so requests.

3.4 Voting. Voting shall be accomplished through methods and means established by the Board. Notice of the vote shall be posted in a conspicuous place at the Co-op and on its website, and shall be delivered not less than four (4) weeks prior to the end of the election period. Unless otherwise stated in the Articles of Incorporation, or these Bylaws, or required by law, all questions shall be decided by a vote of a majority of the members voting thereon. Proxy voting is not allowed.

3.5 Quorum. At any meeting of the members considering the adoption of a proposal (other than amendments to the Articles of Incorporation) which is required by the provisions of Chapter 24.06 to be adopted by at least two-thirds of the votes cast by active members present at the meeting in person or by mail, or by electronic transmission, a quorum shall be 5% of the total votes which active members are entitled to cast in person or by mail, or by electronic transmission. For any other vote of members considering the adoption of a proposal which requires a simple majority of the votes cast by active members present at the meeting in person or by mail or by electronic transmission, a quorum shall be 5% of the total number of active members or 1000 members, whichever is less.

SECTION IV BOARD OF TRUSTEES

4.1 Composition. The Board shall be composed of nine Trustees from among the active members of the Co-op. One of the nine Trustees shall be an active member elected by and from the paid employees of the Co-op according to the election rules established by the employees. This person (referred to as the "Employee-elected Employee Trustee") shall have the right to vote as a Trustee and also have the same legal and fiduciary duty as every Trustee. The Employee-elected Employee Trustee is an ex-officio position and not representative of a separate class of membership. Of the other eight Trustees elected by the membership, no more than one may be an employee of the Co-op at one time (referred to as a "Member-Elected Employee Trustee"). This Bylaw shall not have the effect of shortening the term of any incumbent Trustee even if the number of Trustees exceeds nine. No direct report to the General Manager shall be permitted to serve as a Trustee. Members of a nuclear family or of a household may not serve on the Board at the same time.

4.2 Nominating Committee; Nominating Petitions. The "Nominating Committee" shall be a members' committee, elected by and reporting directly to the members. The powers and duties of the Nominating Committee shall be to recruit candidates for the Board of Trustees and the Nominating Committee, nominate the most qualified candidates while striving for a contested election, and oversee the election process as herein provided. The Nominating Committee shall ensure that the nomination and election processes are carried out in a fair and timely manner and shall work year-round, beginning recruitment soon after a Board election. The Nominating Committee shall be assured a budget, approved by the Board, sufficient to carry out its duties. The Nominating Committee shall consist of three members elected by the membership who do not have any overriding conflict of interest with the Co-op. The elected

Nominating Committee members may appoint additional members as needed to aid in the nominations process. No individual may serve on both the Board and the Nominating Committee at the same time. No more than one member of the Nominating Committee may be a paid employee of the Co-op. Candidates for the Board and for the Nominating Committee may be nominated by the Nominating Committee or by petitions signed by 1% or 100 active members, whichever is more. Petitions must be submitted to the Nominating Committee at least ninety-five days before the date of the annual meeting. Nominating Committee members and Trustees shall be elected by members at the annual membership meeting by a plurality of votes cast. Periodically, as may be necessary, Nominating Committee members shall be elected for one or two-year terms in order to assure that no more than two terms expire in each year. Candidates receiving the highest number of votes shall be given the longest available terms. At other times, Nominating Committee members shall be elected for two-year terms. Nominating Committee members shall hold office until their successors are elected or until their offices are terminated sooner in accordance with these Bylaws. If a Nominating Committee member decides to run for the Board, that member shall withdraw from the Nominating Committee before submitting a statement of candidacy. The term of office of a Nominating Committee member may be terminating prior to its expiration in any of the following ways: (1) voluntarily by a Nominating Committee member upon notice to the Co-op; (2) automatically upon terminating of membership in the Co-op; (3) after written notice and an opportunity to respond in person or in writing, a Nominating Committee member may be removed by the decision of 2/3rds of the Board for conduct contrary to the Co-op, failure to follow Co-op policies, or an inability to perform the committee's duties and responsibilities and (4) by action at a meeting of members whenever the best interest of the Co-op would thereby be served. In the event that the Nominating Committee is unable to perform its duties due to the loss of Nominating Committee members, the Board shall appoint member volunteers to the Nominating Committee. The Board shall inform the members in a timely manner of any such action.

4.3 Terms and Elections. Elections shall occur annually, in a manner prescribed by the Board. Elections for the Employee-elected Employee Trustee shall occur on the same schedule as for membership elected Trustees. Trustees shall serve a term of three (3) years and shall serve staggered terms so that approximately one-third (1/3) of the Board is elected each year. No Trustee may serve more than three (3) consecutive terms.

4.4 Powers and Duties. Except for matters for which member voting is required by RCW Chapter 24.06 or these Bylaws, (i.e., amendment of the Articles of Incorporation, amendment of these Bylaws, approval of a merger or consolidation, approval of the sale, lease, exchange or other disposition of all or substantially all of the property and assets of the Co-op or approval of the voluntary dissolution of the Co-op) the Board shall have full power to govern the Co-op, including, but not limited to, hiring the General Manager and evaluating management performance, establishing compensation, if any, for the Board, adopting and revising from time to time policies and procedures not inconsistent with the Articles of Incorporation and these Bylaws, and assuring that the mission of the Co-op is carried out. Separation from the Board for any reason requires continued confidentiality on all matters involving the Co-op until there has been general public disclosure or unless it is clear that such information is a matter of public record or common knowledge.

4.5 Vacancies. Any vacancy among Trustees elected by the members may be filled by appointment by the Board. A Trustee so appointed shall complete the pertinent term. A vacancy in the Employee-elected Employee Trustee position shall be filled by appointment of paid employees to complete the Employee-elected Employee Trustee's remaining term.

4.6 Removal. After written notice and an opportunity to respond in person or in writing, a Trustee may be removed by the decision of 2/3 of the remaining Trustees for conduct contrary to the Co-op, failure to follow Board policies, or an inability to perform the Trustee's duties and responsibilities. A Trustee will also be removed by the Board in response to a petition demand if the petition achieves at least a 2/3rds vote of a 5% quorum of active members.

4.7 Meetings. The Board shall hold regular meetings as established by the Board. Special meetings may be called by or at the request of the President or a simple majority of Trustees. Meetings will be open to the membership except when executive session is officially called for confidential or proprietary matters including, but not limited to: labor relations or personnel issues, contract negotiations, discussion of strategic goals or business plans, the disclosure of which would adversely impact the Co-op's position in the marketplace, and/or discussion of a matter that may, by law or contract, be considered confidential.

4.8 Notification. Notice of regular meetings shall be deemed sufficient if a schedule is developed and notice is conspicuously posted on the Co-op premises and on its public website at least seven (7) days prior to the regular meeting. All trustees shall be notified, in writing (or electronically) of changes to the regular meeting schedule at least ten (10) days in advance. The time and place of all special meetings shall be posted conspicuously on the Co-op premises and on its public website not more than one day after calling of the meeting.

4.9 Action without a Meeting. Any action required or permitted to be taken at a meeting of the Board may be taken by written or oral action affirmed by a consensus of Trustees minus one, provided reasonable effort is made to contact all Trustees. A record of any such action shall be recorded in the minutes of the next Board meeting. The action is effective when affirmed by all of the Trustees, unless a different effective time is provided in the action.

4.10 Quorum. A majority of the current Trustees shall constitute a quorum, and no decisions will be made without a quorum. In the event the Board drops below a quorum, the member-elected Nominating Committee will appoint trustees to achieve a quorum.

4.11 Conflicts of Interest. Trustees shall be under an obligation to disclose their actual or potential conflicts of interest in any matter under consideration by the Board. Trustees having such a conflict shall remove or recuse themselves from discussion and decision of the matter, unless otherwise determined by the Board. Trustees who are employees of the Co-op shall recuse themselves from discussion and decision concerning the performance and compensation of the General Manager.

4.12 Officers. The officers of the Co-op Board of Trustees shall be a President, one or more Vice Presidents, a Secretary and a Treasurer, each of whom shall be elected by the Board from among its members. No Trustee who is a paid employee shall serve as President, Vice

President, or Treasurer. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board.

4.13 Indemnification. The Co-op shall indemnify and reimburse each present, past and future Trustee for any claim or liability (including expenses and attorneys' fees actually and reasonably incurred in connection therewith) to which such person may become subject by reason of being a Trustee. Such indemnification shall be made only if it is determined by the Board that the Trustee acted in good faith in the reasonable belief that his or her action was in the best interests of the Co-op, or as otherwise allowed by law.

SECTION V PATRONAGE DIVIDENDS

5.1 Patronage Dividends. The Co-op shall return the Co-op's net distributable surplus to its members annually as a patronage dividend, subject to the provisions of this Article V. As used in these Bylaws, the term "net distributable surplus" means (a) the annual earnings from the Co-op's sales attributable to the patronage of its members minus (b) any reserves the Board of Trustees decides to retain for necessary or appropriate business purposes or contingencies. The Co-op shall calculate members' patronage dividends in proportion to their purchases from the Co-op during the year, subject to the provisions of this Article V. The Co-op shall be entitled to take into account losses for prior years when calculating its net distributable surplus. The Co-op also reserves the right to retain as unallocated retained earnings the net distributable surplus if and to the extent the amount is insufficient to justify the expense of allocating the same to members.

5.2 Annual Determination. The Board of Trustees shall decide after the close of the Co-op's fiscal year whether a net distributable surplus exists for that year, how and when to distribute patronage dividends, and any other related matters, based on the Board's policies.

5.3 Payment and Compliance. The Co-op shall pay patronage dividends within the time frames provided in, and according to the Internal Revenue Service Code and Treasury Department regulations to qualify for income tax deductions for the Co-op. The Co-op may distribute patronage dividends in cash, merchandise credits, or book credits evidenced by a qualified written notice of allocation or a non-qualified written notice of allocation as defined in 26 U.S.C. Section 1388, other property, or any combination of these methods as the Board of Trustees may determine from time to time. Any patronage dividend distributed as a book credit and evidenced by a qualified written notice of allocation or a non-qualified written notice of allocation shall be designated as such by the Board in accordance with the provisions of 26 U.S.C. Section 1388. Any part of a patronage dividend that the Board elects not to pay in cash, merchandise credits or other property and pays in the form of a book credit is called the retained patronage dividend.

5.4 Application of Retained Patronage Dividend. The Board of Trustees may apply any part of an member's retained patronage dividend to cover that member's unpaid membership dues or capital contributions for that year and future years. The Co-op shall hold the retained patronage dividends in revolving patronage dividend accounts in the names of the receiving members, and may apply the retained patronage dividends toward the Co-op's capital needs.

Members will not accrue interest or other monetary return on their retained patronage dividends, and the same shall be nontransferable except as provided otherwise in the Articles of Incorporation. The Co-op shall be entitled to offset against retained patronage dividend accounts the amount of any losses subsequently sustained by the Co-op, in such manner as the Board may reasonably determine.

5.5 Repayment of Retained Patronage Dividends. At any time, the Co-op may pay some or all of the retained patronage dividends to qualifying members if the Board of Trustees decides the funds are no longer required by the Co-op. Members will receive retained patronage dividends in the order of the oldest outstanding amounts on a pro rata basis from these amounts. If the Co-op dissolves as a corporation, it shall pay retained patronage dividends to members in the order of priority specified in the Articles of Incorporation. If the remaining funds are insufficient to repay all retained patronage dividends, members will receive retained patronage dividends in proportion to their revolving account balances at the time of dissolution. Retained patronage dividends are available at all times to pay amounts otherwise due and payable to the Co-op. The Board of Trustees may in its discretion pay retained patronage dividends to qualifying members in cash, as merchandise credits, or any combination of cash and merchandise credits. The Board may in its discretion establish the terms and conditions governing the issue and use of merchandise credits, including any period within which merchandise credits must be used or forfeited.

5.6 Unclaimed Property. Pursuant to RCW 23.86.160 which the Co-op has elected to apply to it pursuant to RCW 24.06.032, all unclaimed patronage dividends or funds payable on redeemed retained patronage dividends, book credits capital funds or allocated reserves shall revert to the Co-op, at the discretion of the Board at any time after one year from the end of the fiscal year during which such distributions or redemptions have been declared.

5.7 Treatment of Nominal Amounts. The Board of Trustees may exclude from distribution any patronage dividend that is so small that it does not justify the cost of distribution. These nominal amounts may not be distributed at any time to other members.

5.8 Tax Provision. If the Co-op distributes part of its net distributable surplus as a patronage dividend, and then discovers it cannot deduct some part of the same as a patronage dividend under the Internal Revenue Code and applicable regulations, then the Co-op and its Board of Trustees deem that all of the patronage dividend declared shall come from earnings or income that does qualify for a deduction under the revenue laws. This designation shall occur regardless of whether the Board adopted a resolution or act that makes specific reference to the source of revenues for the dividend.

5.9 Tax Consent. Each person who hereafter applies for and is accepted to membership in the Co-op, and each member of the Co-op on the effective date of this bylaw who continues as a member after such date shall, by such act alone, consent and agree that the amount of any distributions with respect to his or her patronage which are made in written notices of allocation (as defined in 26 USC 1388(b)) will be taken into account by him or her at their stated dollar amounts in the manner provided in 26 USC 1385(a)-(b) in the taxable year in which such written notices of allocation are received.

SECTION VI
AMENDMENTS

These Bylaws may be amended at any regular or special meeting of the membership called for that purpose by a two-thirds (2/3rds) vote of the "Active Members" (as that term is defined in the Bylaws) present in person or by mail or by electronic transmission at such meeting; provided, however, that if the total vote shall be less than 5% of the total Active Members, then the proposed amendments shall fail of adoption.

**ARTICLES OF INCORPORATION
OF
Central Co-op
(As Restated _____)**

**ARTICLE I
NAME**

The name of this corporation is Central Co-op (referred to hereinafter as the Co-op).

**ARTICLE II
DURATION**

The duration of this corporation shall be perpetual.

**ARTICLE III
PURPOSES**

The purposes for which the Co-op is formed are:

1. To provide wholesome food and products that are produced and distributed in a manner respectful of the earth and its people;
2. To provide educational resources to engage members and empower the community;
3. To engage in the business of buying and selling goods and services according to cooperative principles and values in a financially sound manner; and
4. To engage in all such activities as are incidental or conducive to attainment of the purposes of the Co-op, and to exercise all powers now or hereinafter permitted by the State of Washington for corporations formed under the Miscellaneous and Mutual Corporations Act, Chapter RCW 24.06 as it now exists or may hereafter be amended. In addition to any other rights and powers granted under RCW Chapter 24.06, pursuant to RCW 24.06.032 the Co-op does hereby expressly elect to avail itself of the additional rights and powers granted to cooperative Co-ops under RCW 23.86.105(1), 23.86.160, 23.86.170, and under RCW 23.86.030(1) and (2).

**ARTICLE IV
MEMBERSHIP**

The qualifications and rights and responsibilities of the members and the manner of their admission to membership and termination of membership shall be as provided in the Bylaws (and any rules, regulations, or policies adopted by the Board of Trustees pursuant thereto) as they now exist or may hereafter be amended or established.

ARTICLE V
BOOK CREDITS, CAPITAL FUNDS, AND ALLOCATED RESERVES

Section 1. The Co-op shall have no capital stock.

Section 2. The Co-op, through its Board of Trustees, shall have the power to establish book credits, capital funds, and other reserves (allocated or unallocated) to provide funds for corporate purposes in the manner provided by the Bylaws by retains from margins or proceeds otherwise payable to the members or by other methods of collection. The designation, preferences, limitations, and relative rights of each class or series of book credits, capital funds, and reserves shall be determined by the Board of Trustees upon issuance or creation of the same.

Section 3. The amounts supplied as book credits or to the various classes of capital funds and other allocated reserves shall be credited to the respective persons by whom supplied, and the books of the Co-op shall indicate the amounts credited to each such person.

Section 4. The holders of book credits, capital funds, and allocated reserves shall have no vote or voice in the management or control of the Co-op by virtue of their ownership thereof, nor shall they have any preference in the distribution of assets except as provided in these Articles of Incorporation.

Section 5. Book credits, capital funds, and allocated reserves shall be nontransferable except in the case of death, operation of law, bona fide transfer for security purposes only to the Co-op, a bank or other financial institution, intrafamily transfer, or transfer to an existing member or person who will become a member, or a transfer by gift to any person organized and operated as a nonprofit organization as defined in RCW 84.36.800(4) that also possesses a current tax exempt status under the laws of the United States (a "Permitted Transfer").

Section 6. The Co-op may and it hereby reserves the right at any time, or from time to time, to call, purchase, redeem, retire, cancel, or reissue, for any reason, any or all of its then outstanding book credits, capital funds, or allocated reserves in such amounts as the Board of Trustees may determine by paying to the respective holders thereof or by depositing to their order at the office of the Co-op a sum or sums equal to the stated amount thereof as shown on the books and records of the Co-op. Written notice of such deposit shall be given to the holders of record of such book credits, capital funds, or allocated reserves so purchased or called by mailing such notice to their last known address as shown by the records of the Co-op.

Section 7. In the event the membership of any member shall terminate for any reason whatsoever, such member shall not thereupon become entitled to demand or receive any interest in the property or assets of the Co-op, but shall be entitled only to receive payment of its interest in any book credits, capital funds, or other allocated reserves as and when determined by the Board of Trustees.

ARTICLE VI
RIGHTS AND PRIORITIES

Section 1. No member shall have any property rights whatsoever in the Co-op or any of its assets by reason of his membership, except for those property rights set forth in this Article VI.

Section 2. No permitted transfer of any interest in book credits, capital funds, or other allocated reserves shall be of any effect, or entitle the transferee to be paid or to receive any money from the Co-op until evidence of such transfer satisfactory to the Co-op shall be submitted to the Co-op.

Section 3. In calling or purchasing or in paying over any monies supplied as book credits, capital funds or allocated reserves, the Co-op may rely solely upon its own records and shall not be liable to any person other than the person appearing by its records to be the owner thereof and entitled to receive money thereon.

Section 4. No permitted transfer of any interest in book credits, capital funds or allocated reserves shall be valid until all claims of the Co-op against the registered holder thereof have been paid in full. The Co-op shall have the right to offset any indebtedness of a patron to the Co-op against: (a) any sums payable by the Co-op to such member or patron; (b) such member or patron's book credits, capital funds, and allocated reserves in the Co-op; and/or (c) the cash portion of any patronage dividend payable by the Co-op to such member or patron. Each member and patron of the Co-op does hereby make, constitute, and appoint the Co-op such member and patron's attorney-in-fact for him and in his name, place, and stead, for his use and benefit, to sign, endorse, and deliver to the Co-op such portion of the cash portion of such member and patron's patronage dividend as may be necessary to satisfy any indebtedness of such member and patron to the Co-op.

Section 5. In the event any member shall dissent from those certain corporate actions described in RCW Chapter 24.06 to which such member is allowed to dissent thereunder, such member shall only be entitled to receive payment of his interest in any book credits, capital funds or other allocated reserves at the actual consideration contributed to the Co-op therefor, or the fair value thereof, whichever is less.

Section 6. The Board of Trustees may distribute all or any portion of the net earnings of the Co-op attributable to patronage sourced business to members in proportion to the business of each with the Co-op, all as provided in the Bylaws.

Section 7. In the event of liquidation of the Co-op, voluntary or involuntary, the assets of the Co-op shall be applied upon the liabilities of the Co-op in the following order of priority: (a) to payment of all indebtedness and liabilities of the Co-op other than that represented by the Co-op's book credits, capital funds, or allocated reserves; (b) to payment of the face value of all book credits, capital funds, pro rata; (c) to payment of any patronage returns due for the then current fiscal year, pro rata; and (d) if any balance remains, it shall be distributed to such nonprofit organization(s), tax exempt under IRC Section 501(c)(3), as the Board of Trustees

shall designate. If there is insufficient money available to fully satisfy claims in any category, payments to that category shall be made pro rata.

ARTICLE VII
BOARD OF TRUSTEES

The management of this Co-op shall be vested in a board of not less than five (5) trustees, as determined by the Bylaws. They shall be elected or appointed at such time, in such manner, and for such term of office, and may be removed from office, as the Bylaws may prescribe.

ARTICLE VIII
TRUSTEES AND OFFICERS LIABILITY; INDEMNIFICATION

Section 1. Pursuant to RCW 24.06.035(2), a member of the Board of Trustees or an officer of this Co-op shall not be individually liable to the Co-op, or its members in their capacity as members for conduct within his or her official capacity as a trustee or officer, except for acts or omissions that involve intentional misconduct or a knowing violation of the law, or that involve a transaction from which the trustee or officer will personally receive a benefit in money, property, or services to which the trustee or officer is not legally entitled.

Section 2. Any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, including those by or in the right of the Co-op, whether civil, criminal, administrative, or investigative by reason of the fact that he or she is or was a trustee, officer, employee, or agent of the Co-op, or who, while acting in such capacity is or was serving at the request of the Co-op as a trustee, director, officer, partner, employee or agent of another corporation, cooperative, partnership, joint venture, trust, or other enterprise, shall be indemnified by this Co-op against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement, actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of this Co-op, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plead of nolo contendere or its equivalent, shall not of itself be determinative that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Co-op, or with respect to any criminal action or proceeding, that he or she had reasonable cause to believe that his or her conduct was unlawful. It is the intention of this section that the Co-op shall indemnify such persons to the fullest extent permitted by law but that this section shall not be construed to indemnify any such person to an extent that shall be unlawful. The Co-op may procure insurance to cover any indemnity provided for in this Article. The foregoing rights of indemnification are not exclusive of any other rights to which such person may be entitled under any law, statute, Bylaw, agreement, vote of Board of Trustees, members, or otherwise, and such rights are specifically preserved.

ARTICLE IX
AMENDMENTS

These Articles of Incorporation may be amended at any regular or special meeting of the membership called for that purpose by a two-thirds (2/3rds) vote of the "Active Members" (as that term is defined in the Bylaws) present in person or by mail or by electronic transmission at such meeting; provided, however, that if the total vote shall be less than 10% of the total Active Members, then the proposed amendments shall fail of adoption.

Central Co-op

GOVERNANCE POLICIES

Policy Type: Executive Limitations

Policy Title: B4 – Ownership Rights and Responsibilities

The General Manager (GM) shall not allow owners to be uninformed or misinformed of their rights and responsibilities.

The GM will not:

1. Create or implement an owner equity system without the following qualities:
 - a. The required owner equity, or fair share, is determined by the Board.
 - b. Owners are informed that equity investments are a) at risk, and b) generally refundable, though the Board retains the right to withhold refunds when necessary to protect Central Co-op's financial viability.
 - c. Equity will not be refunded if such refunds would lead to a net decrease in total owner paid-in equity, or would risk, cause or exacerbate non-compliance with any Financial Condition policy or if there are outstanding debts owed to the cooperative by an owner that matches or exceeds the equity held in the owner's name.
2. Implement a patronage dividend system that does not
 - a. Comply with IRS regulations or Washington State Law.
 - b. Allow the Board to examine a range of options and implications, so the Board can make a timely determination each year concerning how much, if any, of Central Co-op's net profit will be allocated and distributed to owners.

Policy Type: Executive Limitations

Policy Title: B5 – Treatment of Customers

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

The GM shall not:

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

Policy Type: Executive Limitations

Policy Title: B6 - Staff Treatment and Compensation

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

The GM will not:

1. Operate without written personnel policies that:
 - a. Clarify rules for staff.
 - b. Provide for fair and thorough handling of grievances in a way that does not include the board as a participant in the grievance process.
 - c. Are accessible to all staff.
 - d. Inform staff that employment is neither permanent nor guaranteed.
2. Cause or allow personnel policies to be inconsistently applied.
3. Fail to provide adequate documentation, security and retention of personnel records and all personnel related decisions.
4. Establish compensation and benefits that are internally or externally materially inequitable.
5. Change the GM's own compensation and benefits, except as his or her benefits are consistent with a package for all other employees.
6. Leave staff unfamiliar with the Board's governance policies.

1 INTERROGATORY NO. 2: : Disclose all of the reasons why the Central Co-Op (“Co-
2 Op”) Board revoked Ms. Taft’s membership.

3 ANSWER: Although a review of the relevant documents in this matter further support
4 the Co-op’s decision to revoke Ms. Taft’s membership, to put it simply, her membership was
5 revoked due to repeated abusive behavior toward staff and customers despite receiving
6 warnings and an explanation of the expected behaviors of a member.

7
8 INTERROGATORY NO. 3: Given the fact that pets being taken into businesses where
9 food is prepared and sold is a nationwide issue, disclose all of the reasons why the Co-Op
10 Board and staff punished Ms. Taft for bringing ADA requirements about service pets to the
11 attention of the Co-Op staff.

12 ANSWER: OBJECTION, again the interrogatory asserts facts which are not necessary
13 true or at issue in this matter nor does the Co-op believe it was “punish[ing] Ms. Taft”.
14 Accordingly, no answer is required and counsel drafting such interrogatories knows or should
15 know that such an interrogatory is improper to submit.

16
17 INTERROGATORY NO. 4: The May 8, 2014 letter from the Co-Op Board to Ms. Taft
18 states that “due to your actions at the Co-op including the verbal abuse of shoppers and
19 workers, as well as your continued refusal to refrain from such activity even after repeated
20 warnings, Central Co-op Board of Trustees has decided to terminate your membership.”
21 Disclose the date and content of the “repeated warnings” Co-Op staff and the Board gave to
22 Ms. Taft about her alleged misconduct.

23 ANSWER: Pursuant to CR 33(c) the supporting records and documents relative to this
24 interrogatory are/will be produced in response to the included RFPs herein.

25
PLAINTIFFS’ FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO DEFENDANT CENTRAL CO-
OP AND DEFENDANTS’ ANSWERS/RESPONSES/OBJECTIONS
THERE TO - 2

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

1
2 INTERROGATORY NO. 5: Specify what member of the staff or Board gave Ms. Taft
3 “repeated warnings” of her alleged misconduct that were referenced in the May 8, 2014 letter
4 from the Co-Op Board to Ms. Taft

5 ANSWER: Doug Peterson and Jessica Daw.
6

7 INTERROGATORY NO. 6: How did the staff or Board member document the
8 warnings given to Ms. Taft of her alleged misconduct referenced in the May 8, 2014 Board
9 letter to Ms. Taft.

10 ANSWER: Emails, formal statements, and discussions with the General Manager.
11

12 INTERROGATORY NO. 7: Provide the date and content of each warning given to Ms.
13 Taft of her alleged misconduct referenced in the May 8, 2014 Board letter to Ms. Taft.

14 ANSWER: Pursuant to CR 33(c) the supporting records and documents relative to this
15 interrogatory are/will be produced in response to the included RFPs herein.
16

17 INTERROGATORY NO. 8: Provide the name of each Board member or staff member
18 who gave Ms. Taft a warning that she needed to refrain from the alleged verbal abuse of
19 shoppers and workers if she wanted to continue being a member of the Central Co-Op.

20 ANSWER: Staff do not provide such written warnings. The Board sent a letter. The
21 Board members were at that time: Kate Cox, Elaine Nonneman, Shannon Tyman, Nick Selzler,
22 Shaula Massena, Young Han, Cynthia Pristell, Brian Bessembinders, and Dean Decrease.
23
24
25

1 INTERROGATORY NO. 9: : Specify the date and content of each such warning
2 referenced in number 8 above.

3 ANSWER: Pursuant to CR 33(c) the supporting records and documents relative to this
4 interrogatory are/will be produced in response to the included RFPs herein.

5
6 INTERROGATORY NO. 10: Describe every instance of Ms. Taft's conduct in which
7 she allegedly verbally abused other Co-Op shoppers.

8 ANSWER: Pursuant to CR 33(c) the supporting records and documents relative to this
9 interrogatory are/will be produced in response to the included RFPs herein. For those that are
10 not documented, staff members can attest to those that are known. Obviously, the Co-op
11 believes there might be other instances that were not reported by shoppers or were not
12 witnessed by staff or management. Thus, the Co-op is unable to describe "every instance" as
13 this interrogatory improperly assumes could be done.

14
15 INTERROGATORY NO. 11: Specify the name of the individual who reported such
16 alleged misconduct, and date of such conduct specified above.

17 ANSWER: Pursuant to CR 33(c) the supporting records and documents relative to this
18 interrogatory are/will be produced in response to the included RFPs herein.

19
20 INTERROGATORY NO. 12: Specify all steps taken to notify Ms. Taft that she had
21 engaged in alleged misconduct and the dates such contact with Ms. Taft were made.

22 ANSWER: Phone calls, letters, and personal interactions. Dates of these can be found
23 in the letters and reports provided in response to this discovery under CR 33(c).

1 INTERROGATORY NO. 13: Disclose all efforts made by the Co-Op Board or Co-Op
2 management to educate employees about questions allowed to be asked of persons with
3 animals in the Co-Op under the ADA.

4 ANSWER: OBJECTION this Interrogatory is not likely to lead to the discovery of
5 admissible evidence. Without waiving this objection, the Co-op's efforts have passed health
6 department inspections and follow the guidelines provided.

7 INTERROGATORY NO. 14: Disclose all reasons the Central Co-Op staff did not
8 approach individuals with animals present in the Co-Op and ask questions allowed by the ADA
9 about animals (e.g., "Is the animal a service animal required because of a disability?"
10 And,"What work or task has the animal been trained to perform?")

11 ANSWER: OBJECTION this Interrogatory is not likely to lead to the discovery of
12 admissible evidence.

13
14 INTERROGATORY NO. 15: Disclose what authority staff member Douglas Petersen
15 had to call Ms. Taft on December 7, 2012, and tell her that her shopping privileges had been
16 revoked.

17 ANSWER: Mr. Petersen has the authority granted to him or delegated to him by the
18 General Manager.

19
20 INTERROGATORY NO. 16: Disclose all dates on which Co-Op staff gave Ms. Taft
21 specific notice that she was violating Co-Op Bylaws. (Identify the name of the staff member,
22 the content of the notification, and how the notification was made.)

1 ANSWER: Staff has no reason or obligation to handle the matter concerning this
2 Interrogatory and, thus did not do so. It would seem that Ms. Taft is confused with the roles
3 different people have in the administration and management of the Co-op.

4
5 INTERROGATORY NO. 17: Disclose all dates on which Co-Op staff gave Ms. Taft
6 notice that she was violating specific Co-Op Governance Policies. (Identify the name of the
7 staff member, the content of the notification, and how the notification was made.)

8 ANSWER: See Answer to Interrogatory No. 16, above. Other than the General
9 Manager, staff do not normally concern themselves with the governing policies of the Co-op,
10 they do uphold the operating policies, however.

11
12 INTERROGATORY NO. 18: Disclose every occasion, including dates, on which Ms.
13 Taft allegedly created an “unsafe shopping experience for customers” including every fact
14 supporting such claims that are referenced in the May 8, 2014 Board letter to Ms. Taft.

15 ANSWER: Pursuant to CR 33(c) the supporting records and documents relative to this
16 interrogatory are/will be produced in response to the included RFPs herein.

17
18 INTERROGATORY NO. 19: Specify all reasons explaining how Ms. Taft was given a
19 full and adequate opportunity to provide a written explanation to the Board of her alleged
20 misconduct when no evidence of specific instances of misconduct was referenced in the May 8,
21 2014, Board letter to Ms. Taft.

22 ANSWER: Pursuant to CR 33(c) the supporting records and documents relative to this
23 interrogatory are/will be produced in response to the included RFPs herein.

1 INTERROGATORY NO. 20: Specify all reasons why the opportunity allegedly
2 afforded to Ms. Taft to explain her actions accorded by the May 20, 2014, Board letter was a
3 full and fair opportunity to respond, when that letter was sent to an address where neither Ms.
4 Taft nor her attorney were available, and such letter did not reach Ms. Taft's attorney until after
5 expiration of the deadline for response.

6 ANSWER: OBJECTION, this interrogatory is based on the apparent misunderstanding
7 of the facts and/or of the Co-op's obligations in this regard. The member, Ms. Taft, received a
8 notice and the Co-op has no obligation to send a member's attorney anything. The evidence of
9 inappropriate behavior was overwhelming and incapable of being ignored. No contradictory
10 evidence had been presented by Ms. Taft in the many months during which she was made fully
11 aware that her behavior was inappropriate.

12
13 REQUEST FOR PRODUCTION NO. 21: Provide copies of all written warnings of the
14 Co-Op staff to Ms. Taft.

15 RESPONSE: OBJECTION, again, the staff does not provide "written warnings" and
16 has no reason to do so when phone calls suffice and personal interactions were documented.
17 Just as written warnings are not necessarily provided to a shop lifter, parking violators, or those
18 that violate the solicitation policies.

19
20 REQUEST FOR PRODUCTION NO. 22: Provide copies of all written warnings of the
21 Co-Op staff Board to Ms. Taft.

22 RESPONSE: OBJECTION, it is unclear what the "staff Board" is referring to,
23 regardless documents will be produced as detailed above.

24
25
PLAINTIFFS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO DEFENDANT CENTRAL CO-
OP AND DEFENDANTS' ANSWERS/RESPONSES/OBJECTIONS
THERE TO - 7

Williams, Kastner & Gibbs PLLC
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CERTIFICATE OF SERVICE

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

Jane Koler, #WSBA 13541
Land Use & Property Law, PLLC
6659 Kimball Drive, Suite B-201
P.O. Box 2509
Gig Harbor, WA 98335
Telephone: (253) 853-1806
Fax: (206) 381-0101

VIA
 U.S. Mail, Postage Prepaid
 ABC Legal Services
 Express Mail
 E-Mail: jane@jkolerlaw.com

Signed at Seattle, Washington this 11th day of February, 2015.

s/Daniel A. Brown
WILLIAMS, KASTNER & GIBBS PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Telephone: (206) 628-6600
Fax: (206) 628-6611
Email: dbrown@williamskastner.com

PLAINTIFFS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO DEFENDANT CENTRAL CO-
OP AND DEFENDANTS' ANSWERS/RESPONSES/OBJECTIONS
THERE TO - 9

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

Mr. Dan Arnett
General Manager
1600 E. Madison
Seattle, WA 98122

March 5, 2014

Dear Mr. Hecht,

RE: Ellen Taft's Membership

Mark Adams, my lawyer, explained to me that Madison Market does not believe that I am a member of the Central Co-op. However, I would like you to furnish me with records of our original membership application from the early 1990's to verify that my husband joined rather than me. At the time, I joined Central Co-op, it was still on 12th Avenue East.

I have checked the only membership card either of us have and it is signed by me, Ellen Taft, not Arthur Champernowne. It also says on that the card is non-transferable. If the member is listed as Arthur Champernowne, perhaps it is because, when we joined he had a credit card and I did not. At any rate, I enclose a photo-copy of my membership card, which is signed with my name and says MEMBER-OWNER'S SIGNATURE. I am willing to show the card to the board.

As a result in my belief that I am the member, I will use my membership privileges to describe my side of the story, which up until now has never been considered. As an American, I believe that my constitutional rights to defend myself should be extended to a co-operative organization. Please see the enclosed Statement.

I will also resume shopping at the co-op until the Board goes through the process to formally revoke my membership.

Sincerely yours,

Ellen Taft

Enclosure: Photo-copy of Membership card
Statement of Ellen Taft
Backstory

Statement of Ellen Taft

MEMBERSHIP

As a result in my belief that I am the member, I will use my membership privileges to describe my side of the story, which up until now has never been considered. As an American, I believe that my constitutional rights to defend myself should be extended to a co-operative organization.

I joined the Central Co-op when it was still on 12th Ave E in the early 90's when I had a young baby and my husband was working 60 hours per week at Microsoft. Although I don't remember the exact details of the membership, I do have my membership card, which is signed as Ellen Taft, not Arthur Champernowne. I have spoken to Arthur and he does not have a card. If the membership is listed as Arthur Champernowne, perhaps it is because at that point he had a credit card and I did not. At any rate, I enclose a photocopy of the membership card, which is signed with my name and says MEMBER-OWNER'S SIGNATURE. I am willing to show it to the board.

REVOCAION OF SHOPPING PRIVILEGES

In my opinion, the event which precipitate the phone call from Doug Petersen on Dec. 7 was a result of a conversation I had with a cashier on Dec. 6. I went through the line and casually asked the cashier (a tall man of about 30 years of age, with curly dark hair and a full beard, with very dark skin) if the co-op was out of debt. I mentioned that I was very disappointed that none of the comment cards I had filled out over the years had ever been answered. I also mentioned that years ago, before Costco had started selling bulk items of green toilet paper and household cleaning products, I had tried to get the co-op to sell them but they had said no. I had also asked the co-op to sell bulk orders of brown rice, but this had also been refused. The cashier remain silent but looked at me oddly.

The very next day Dec. 7. A man named Doug Petersen, who did not state why he was authorized to make the decision, called to say that my shopping privileges were being revoked because of some incident with a dog on Nov. 14. I said that there had been no incident on Nov. 14, and if there had been why had he waited so long to deal with it. Doug Petersen adamantly said that I would be getting a letter soon. I looked through the mail meticulously for weeks and no letter ever arrived.

Clearly the action on Dec. 7 was a result of my remarks on Dec. 6. Yet in the byelaw it says that, as a member, I am obliged to make suggestions.

Backstory

- 1) I began shopping at Madison Market regularly when Rainbow Grocery closed down because I have a restrictive diet and cannot have sugar, and have acid reflux, which means I can only eat goat's milk and yogurt.

I have noticed that the staff at Madison Market has been lax about asking customer whether or not their dogs are service animals. Once, I asked an employee to ask a customer if their dog was a service animal, the employee refused, but the customer who was sitting at the café section, immediately said that her dog was a pet and left the store.

Last summer, I asked the cashiers to ask someone whether or not the animal was a service animal. All the cashiers adamantly stated that they "were not allowed to ask anyone if it was a service animal" which is common misinterpretation of the ADA. I asked for a manager, the manager said the same thing.

A heated discussion ensued. After that I believe I got a phone call. I decided not mention anything about dogs. I also called the Seattle King County Health Department to let them know that Madison Market was misinformed about the ADA.

According to the ADA, the store owner has the right to ask if it is a service dog, and the right to ask for what specific tasks the dog has been trained. The store does not have the right to ask for verification that the dog is a service dog, nor what the owner's disability is. If someone has a dog in the store and the owners have not asked if it is a service dog, the store owner is responsibility for the damages and the insurance will not pay for it. If the store owner does ask and it is a faux service animal, then the liability rests with the dog owners.

As a member of the co-op, I am also an owner and am responsible for the success of the store. A major lawsuit could ensure if a faux service dog enters the store and bites someone, which could result in a bankruptcy.

There was no incident, as Doug Petersen says, on Nov 14.

LAND USE &
PROPERTY LAW

A Professional Limited Liability Company

6659 Kimball Drive, Suite B-201
P.O. Box 2509, Gig Harbor, Washington 98335
Tel. (253) 853-1806
mark@landuselawwa.com
Mark Harris Adams of Counsel

May 14, 2014

Kate Cox, President
Central Co-Op Board of Trustees
1600 E. Madison
Seattle, WA 98122

RE: Termination of Ellen Taft Membership
Member No. 29362

Dear Ms. Cox:

I represent Ellen Taft with respect to your proposed termination of her Co-op membership. In your letter of May 8, 2014, which followed by two months Mrs. Taft's letter of March 5 to your manager, Mr. Arnett, you gave her until May 18 to show cause as to why her membership should not be terminated. Your proposed reasons for termination are:

- (1) Mrs. Taft's alleged creation of an "unsafe shopping experience for our customers," and
- (2) Mrs. Taft's alleged "treatment of staff in any way that is unfair, unsafe, unclear [sic] or undignified."

I have discussed these allegations with my client. It appears that you, and perhaps the other board members, have received misinformation about Ms. Taft. Allow me to correct the record. You say that Ms. Taft has "repeatedly violated two important policies." We do not understand where you got the notion she "repeatedly" did anything that could be construed as a violation of policy.

Here are the facts, which largely arose before you became board president. Like most of us, Ellen Taft is aware of the obvious, potential hazards to sanitation and safety when dogs and other pets are allowed inside a store where food is sold and consumed. Last summer she called attention to a pet dog inside the store and asked a staff member to inquire of the owner if the dog was a bona fide service animal. The staff person refused, but the customer immediately volunteered that the dog was merely a pet and departed the store. Another time, a staff person refused Ms. Taft's request to inquire if a dog was a service animal, saying that the ADA prohibited the question. Ms.

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Taft knew otherwise. She requested that the Health Department send someone to instruct the staff on the responsibilities of store owners to ask whether a dog is a service animal or a pet. After these incidents, in July of 2013, a Co-op staff member told Mrs. Taft over the telephone not to request staff enforcement of regulations pertaining to service animals. In this regard, the ADA says that "service animals must be harnessed, leashed, or tethered" in ordinary circumstances, and that staff are allowed to ask two questions: (1) *Is the dog a service animal required because of a disability?* (2) *What work or task has the dog been trained to perform?* The Seattle Office for Civil Rights echoes ADA policy (see enclosed copies). Notwithstanding these regulations, when Mrs. Taft was told not to raise the service animal issue again, she complied; since that telephone conversation last July she has not raised the issue at the Co-op. There has been no "repeat violation."

On the morning of December 7, 2013, one Douglas Petersen, position unknown at the Co-op, called Mrs. Taft to proclaim, in an angry tone of voice, that her "shopping privileges" were being terminated. He stated that an incident had occurred on November 14, but Ms. Taft replied that no incident had occurred. Mrs. Taft asked him why, if an incident had occurred, had he taken so long to respond. He had no answer.

My colleague, Jane Koler, responded in a letter dated December 11, 2013, by pointing out that Mrs. Taft had never received any written notice of a proposed termination of membership and the reasons therefore, as required by your Bylaw 2.9. That letter was met with two months of silence. I followed with another letter on February 20, 2014. To that date we had received no communication from the Co-op after the two hostile telephone calls in July and December. Finally, on March 4, 2014, Mr. Arnett, identifying himself as the Co-op's general manager, called me to say that because Mrs. Taft is not a member, the Co-op did not have to follow membership termination procedures. Judging from your recent letter, however, you have re-thought that position and accept that she is, in fact, a member of more than 20 years' standing.

It's interesting that the Nov/Dec 2013 "Board Note to Owners" states: "You have input forms at the front desk and opportunities to talk with trustees in the hour before our regular second Tuesday board meetings. We look forward to opening more avenues of communication between Board and owners. The best prospects for Central Co-op's future lie in the engagement of its ownership." And yet, nobody has responded to any of the written comments my client has submitted.

I have several questions for you, starting with this: Where are the "repeated" violations by Mrs. Taft of any Co-op regulation? Kindly provide documentation of this allegation.

Moreover, looking at your first proposed reason for termination, what has she supposedly done to create an "unsafe shopping experience"? It seems obvious that pointing out the presence of pet dogs inside a grocery store is the polar opposite of

Kate Cox, Central Co-Op
May 14, 2014
Page 3 of 3

creating an unsafe environment. Did Mrs. Taft allegedly threaten anyone? Display a weapon? Scatter hazardous material? What, pray tell, do you think she did that is "unsafe"? I'd be happy to take this question to a jury, if it comes to that.

Also: What do you allege she did to treat staff in an "unfair, unsafe, unclear [whatever that means], or undignified" manner? What are the particulars of this allegation? Due process, not to mention a fair reading of your Bylaw 2.9, requires that you give details of the charges upon which you propose to base termination, so the recipient can respond.

Finally: Why on earth does your operation come across as so chaotic? People make angry phone calls to members, no complaints are put in writing until now, you can't decide if she's a member or not, you invite comments and input from the membership but have never replied to comments submitted by my client; and now you cite vague and conclusory reasons for wanting to terminate her membership, giving her barely a week to respond -- after the Co-op was silent for two months. The mind boggles. It's not hard to imagine that a jury would relish hearing about the messiness of your operation, especially in a situation where a member, in an effort to assure a safe shopping environment, simply tried to assure that the ADA is being applied properly.

Ellen Taft spent \$5,125.95 at the Co-op last year. She and her husband have been loyal members for more than 20 years. You are treating her shabbily here. We look forward to hearing, promptly, your legitimate reasons why that is so.

Sincerely,

LAND USE & PROPERTY LAW, PLLC



Mark Harris Adams
Attorney

MHA/jl

Enclosures

Service Animals Must Be Under Control

Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

Inquiries, Exclusions, Charges, and Other Specific Rules Related to Service Animals

- When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.
- A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the dog is out of control and the handler does not take effective action to control it or (2) the dog is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.
- Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.
- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals.
- If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal.
- Staff are not required to provide care or food for a service animal.

Miniature Horses

In addition to the provisions about service dogs, the Department's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

For more information about the ADA, please visit our website or call our toll-free number.

ADA Website

www.ADA.gov

To receive e-mail notifications when new ADA information is available,

visit the ADA Website's home page and click the [link](#) near the top of the middle column.

[ADA Information Line](#)

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Guide to Service Animals in Public Places

 City of Seattle Office for Civil Rights

Federal, state and local laws require that places normally open to the public must allow trained service animals to accompany people with disabilities onto the premises.

This includes businesses, agencies, government offices, health clinics, etc.

WHAT IS A SERVICE ANIMAL?

A service animal is any animal that has been trained to perform tasks for the benefit of a person with a disability. Under the law, a service animal is not considered a pet. Dogs are the most common service animals but other species (cats, birds etc.) also can be service animals.

Service animals can perform many types of tasks for someone with a disability.



Guide dogs are used by people with visual impairments. Other service animals are trained to alert a deaf person to sounds, to alert an individual with seizure disorder to an oncoming seizure, to carry and pick up things for someone who uses a wheelchair, or to help with balance.

There are no legal requirements for service animals to be specifically identified. Some (but not all) service animals wear special collars and harness. Some (but not all) are licensed or "certified" and/or have identification papers.

"No-pets" policies do not apply to service animals. You must make an exception for them.

RESPONSIBILITIES OF BUSINESSES

- **Businesses cannot require a person with a disability to show proof of a disability or certification of a service animal's status.** You may ask a person with an animal if it is a service animal required because of a disability, if you are not certain that an animal is a service animal.
- **Businesses cannot restrict the areas where a service animal can go.** A service animal must be allowed to accompany a person with a disability everywhere that other people normally are allowed to go, unless the animal's presence creates a basic change to your business operation or threat to safety.
- **Businesses cannot restrict access to service animals because of health regulations.** The Americans with Disabilities Act (ADA) takes priority over local or state laws or regulations.
- **Businesses are not responsible for a service animal while a person with a disability is on the premises.** Care or supervision of a service animal is solely the responsibility of the animal's owner.
- **Businesses may exclude a service animal from your premises when its behavior poses a direct threat to the health or safety of others.** Businesses do not have to accommodate a service animal when doing so would result in a fundamental alteration to the nature of the business.

For more information:

Seattle Office
for Civil Rights
206-684-4543
TTY 206-684-4503



www.seattle.gov/civilrights

Information will be provided in alternate formats to people with disabilities upon request

service_animals_walletcard_10-05

LAND USE &
PROPERTY LAW

A Professional Limited Liability Company

6659 Kimball Drive, Suite B-201
P.O. Box 2509, Gig Harbor, Washington 98335
Tel. (253) 853-1806
Landuselawwa.com
Jane Koler - Mark Adams of Counsel

August 29, 2014

Kate Cox, President
Central Co-Op
1900 E. Madison
Seattle, WA 98122

Sent Via E-Mail
katecox@centralboard.coop

And to:

CENTRAL CO-OP BOARD OF TRUSTEES:

Elaine Nonneman, 1st Vice President
1600 E. Madison
Seattle, WA 98122

Elaine Nonneman
226 21st Avenue E
Seattle, WA 98112

Shannon Tyman, 2nd Vice President
1600 E. Madison
Seattle, WA 98122

Shannon Tyman
1900 E. Madison
Seattle, WA 98122

Shaula Massena, Treasurer
1600 E. Madison
Seattle, WA 98122

Shaula Massena, Treasurer
1521 2nd Avenue, Apt. 3503
Seattle, WA 98101-4582

Nick Selzer, Secretary
1600 E. Madison
Seattle, WA 98122

Nick Selzer
1900 E. Madison
Seattle, WA 98122

Brian Bessembinders, Director
1600 E. Madison
Seattle, WA 98122

Brian Bessembinders
1015 NE Ravenna Blvd.
Seattle, WA 98105-2605

Dean DeCrease, Director
1600 E. Madison
Seattle, WA 98122

Dean DeCrease
1900 E. Madison
Seattle, WA 98122

Young Han, Director
1600 E. Madison
Seattle, WA 98122

Young Han
4108 192nd Place SW
Lynnwood, WA 98036-5632

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Board of Trustees, Central Co-Op
August 29, 2014
Page 2 of 5

Cynthia Pristell, Director
1600 E. Madison
Seattle, WA 98122

Cynthia Pristell
1900 E. Madison
Seattle, WA 98122

RE: Termination of Ellen Taft Membership
Member No. 29362

Dear Board Members:

I represent Ellen Taft who was a member and thus an owner of the Central Co-Op. Recently, the Co-Op in a series of illegal, unauthorized actions, terminated her membership and seized her property – her ownership of part of the Central Co-Op. The unusual, ultra vires acts of employees and the Board all represent a breach of the Board members' fiduciary duties, owed both to the organization and Ms. Taft.

Washington law requires that directors act in good faith, and abide by their fiduciary duties to uphold the governing documents of the organization, including its bylaws and mission statement. The Co-Op's Mission Statement specifies that the Co-Op is "dedicated to sustainable practices and community accountability."

It is important to note that when Board members breach their fiduciary duties, Washington courts hold them personally liable. Riss v. Angel, 131 Wn.2d 612 (1997) is a grim reminder of this fact. In the Riss case, the Washington Supreme Court held that board members had made unauthorized decisions deviating from corporate documents and awarded an association member over \$200,000.00 to compensate for damages.

In its treatment of Ms. Taft, the Board has totally ignored the objectives of the Co-Op Mission Statement. Employee Peterson, on December 7, 2013, the day after Ms. Taft had made inquiries of a Co-Op employee about whether (1) the Co-Op had been able to retire its debt; and (2) why members receive no response to constructive comments, called Ms. Taft and "terminated her shopping privileges" apparently because she had expressed concerns about the Co-Op's management of its affairs – her comments were directed toward helping the Co-Op be a more "sustainable" organization.¹ She has a vested interest as an owner in the Co-Op. Although employee Peterson told Ms. Taft that her shopping privileges had been rescinded, no section of the Co-Op Bylaws authorized his action.

But, rather than supporting the Mission Statement policy of being accountable to the community and making the Co-Op a sustainable organization, the Board condoned imposing punishment on Ellen Taft for articulating concerns about Co-Op practices; Ms. Taft, as an owner, had made many constructive suggestions about how the Co-Op

¹ The Meriam Webster Dictionary defines sustainable as "able to last or continue for a long time."

might increase its financial stability or secure a larger market share.² Further, Ms. Taft, as a loyal Co-Op member, has spent a substantial sum of money at the Co-Op each year; last year she spent over \$5,000.

Tacitly approving Mr. Peterson's ad hoc punishment of Ms. Taft, the Board neither reinstated her membership nor afforded her the termination for cause protections provided by Paragraph 2.9 of the Bylaws. The Board did nothing despite the fact that it received two letters from Ms. Taft's attorney, pointing out that employee Peterson had no authority to terminate her "shopping privileges." After a second letter from Ms. Taft's attorney, the general manager of the Co-Op, Mr. Arnett, called Ms. Taft's attorney and told him that because Ms. Taft is not a member of the Co-Op, she was not entitled to the protections specified in the Bylaws.

But, that was not the case. After Ms. Taft proved her membership of over 20 years at the Co-Op, on May 8, 2014, the Board sent her a letter terminating her membership, claiming that Ms. Taft allegedly engaged in conduct that "created an unsafe shopping experience for customers" and treated staff in "an unfair, unsafe, unclear or undignified manner." Although the May 8, 2014 Board letter gave Ms. Taft the opportunity to provide "a written explanation" of her actions to the Board, she did not have the slightest notice of what acts she had been accused of that created an unsafe shopping environment or what conduct constituted the "unfair, unsafe, unclear or undignified" treatment of staff.

The Board abdicated its duty, imposed by the Bylaws and other governing documents, to give Ms. Taft a meaningful opportunity to defend her membership rights. In a letter sent by the Board on May 20, 2014, she was given a "second and final opportunity" to explain her actions, but, once again failed to provide any notice about exactly how Ms. Taft had acted to create an unsafe shopping environment or had treated the staff in an "unfair, unsafe, unclear or undignified manner." And, Ms. Taft was never given an opportunity to address the false allegations.

The Board, in its June 25, 2014 letter explaining that Ms. Taft's membership had been revoked, apparently finally realized that it had to provide some factual support for its claim that Ms. Taft had created an unsafe shopping environment and had treated Co-Op staff in an "unfair, unsafe, unclear or undignified manner." It claimed for the first time – over 6 months after a staff member announced the decision to "terminate her shopping privileges," that 2 incidents caused the Board to terminate her membership. Oddly, the Board never once addressed such allegations in its prior correspondence with Ms. Taft's attorneys.

² On the occasion of her December 6, 2013 comment, Ms. Taft had recently commented that the Co-Op might consider selling organic rice in bulk; and also selling in bulk by prepaid order, environmentally sustainable cleaning products and paper goods (e.g., paper towels and toilet paper.)

The reasons for denying Ms. Taft her Co-Op ownership privileges have been a moving target. She was initially told (1) her shopping privileges had been revoked; (2) she was not, in fact, a member and not afforded termination for cause protections as a result; (3) she was a member after all, but her treatment of staff created an unsafe shopping environment, causing termination of her membership; yet she had never been advised of this on any previous occasion. The June 25, 2014 Board letter accused her, for the first time, of committing two bad acts in June and November of 2013.³

Ms. Taft vehemently denies that these incidents occurred. Further, had the November 14, 2013 incident actually occurred, it is doubtful that the Co-Op staff would have allowed Ms. Taft to continue shopping in the store. Ms. Taft has many receipts showing that she was in the store on numerous occasions between November 14, 2013 and December 7, 2013.

If such an emotionally charged encounter had occurred on November 14, 2013 between Ms. Taft and a customer as alleged, Co-Op action should have occurred long before Mr. Peterson's December 7, 2013 phone call. Ms. Taft strenuously objects to the Board's reliance on false incidents to support their decision to terminate her membership. Be advised, that use of such statements could result in a defamation action being asserted against Board members.

Significantly, the June 25, 2014 letter acknowledged that Ms. Taft had filed a complaint with the Seattle-King County Department of Health about the Central Co-Op's failure to comply with ADA service dog standards. Ms. Taft, as an owner of the Co-Op, was actually being proactive about the safety of shoppers and employees in the market; quite the opposite of engaging in conduct that "created an unsafe shopping experience for customers." That report, and Ms. Taft's concern about Co-Op compliance with such standards, is the actual reason that Ms. Taft was terminated; the Co-Op retaliated against Ms. Taft for being a whistleblower. The Board should be advised that both federal and state policies protect whistleblowers. And State law demands that directors comply with their fiduciary duties or be subject to personal liability.

Although the mission statement charges the Board with running an organization that is "accountable to the community," when Ms. Taft validly raised issues regarding Co-Op governance, the Board retaliated against her for being a whistleblower.

³ In June of 2013, Ms. Taft had a discussion with a staff member about ADA compliance. The staff member erroneously maintained that it was against the law for the Co-Op staff to ask individuals entering the store with dogs whether the animal was a service dog; Ms. Taft and the Co-Op employee had a difference of opinion about this issue. After that discussion, a Co-Op employee called Ms. Taft and told her that it was inappropriate to conduct such discussions with staff. Ms. Taft never again had such a discussion. The November 14, 2013 incident is a total fabrication.

Board of Trustees, Central Co-Op
August 29, 2014
Page 5 of 5

I urge you, as Board members, to reconsider your illegal decision to terminate Ms. Taft's membership. The decision which the Board made runs afoul of the Bylaws and other Co-Op governance documents. Such a reinstatement would avoid the wear and tear of a lawsuit to reinstate Ms. Taft's membership as well as a damage claim for your breach of fiduciary duties. We need a response to this letter no later than October 15, 2014. If we fail to receive a response, we will have no choice but to file a lawsuit.

Sincerely,

LAND USE & PROPERTY LAW, PLLC



Jane Ryan Koler
Attorney

JRK/jl

Copy: Patricia Spencer, Registered Agent
Central Co-Op



1600 E Madison
Seattle, WA 98122

p. 206.329.1545
f. 206.329.9957

centralcoop.coop

April 28, 2014

Mrs. Ellen Taft:

Unfortunately, due to your actions at the Co-op including the verbal abuse of shoppers and workers as well as your continued refusal to refrain from such activity even after repeated warnings, Central Co-op's Board of Trustees has decided to terminate your membership.

According to the Co-op's bylaws the Board of Trustees has the right to involuntarily terminate a membership for cause. Cause may include but is not limited to intentional or repeated violation of any provision of the Co-op's bylaws or policies. Based on your current actions the Board believes that you have repeatedly violated two important policies and are creating an unsafe shopping experience for customers as well as mistreating staff. Board Policy B5 states "the General Manager shall not allow an unsafe shopping experience for our customers." And Board Policy B6 states "the General Manager shall not cause or allow treatment of staff in any way that is unfair, unsafe, unclear or undignified." Dan Arnett, the General Manager, has informed the board of your repeated actions towards customers and staff. As well he has informed the board of his actions to ensure that the organization remain compliant with these policies.

Feeling safe and respected while shopping or working at Central Co-op is an essential value of the organization and is not taken lightly by either the General Manager or the Board of Trustees. We feel that our staff has provided ample communication warning you to change your behavior in the store or you will be banned. If your membership is terminated: Your equity will be refunded to you at the address we have on file; you will be banned from the store premise; the police will be contacted if you trespass.

You have until **Sunday May 18th** to provide written explanation of your actions to the board. The board will take your statement into consideration before voting for an official termination of your membership. Any communication explaining your actions should be emailed to the Board President, Kate Cox at KateCox@centralboard.coop or mailed to the co-op attention: Board of Trustees.

Thank you,
Kate Cox, President
Central Co-op Board of Trustees

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to Att'y



1600 E Madison
Seattle, WA 98122

p. 206.329.1545
f. 206.329.9957
centralcoop.coop

June 25, 2014

Ms. Taft,

This letter is to inform you that Central Co-op's Board of Trustees did vote to terminate your membership on June 9, 2014 effective immediately. Your equity in the Co-op will be refunded to you at the address we have on file. You are banned from the store premise and the police will be contacted if you trespass.

As the current board president I would like to take a moment to address some of the questions raised by your attorney and explain the reasons for the board's decision. It was based not on the points raised in your attorney's letter concerning the store's compliance with ADA codes, but on repeated instances of your verbally abusive behavior toward staff and other customers.

First, the letter from your attorney stated: "We do not understand where you got the notion she 'repeatedly' did anything that could be construed as a violation of policy."

Central Co-op's staff provided documentation to the board of several specific incidents during 2013 when Mrs. Taft acted inappropriately in the store harassing either staff or shoppers. Including an incident on June 27, 2013 when two staff reported being verbally abused by Ms. Taft. On July 3, 2013 one of the Co-op's staff manager's contacted Ms. Taft by telephone and informed her that she was not to communicate directly with any customer in the Co-op about their service animal and that any communication with staff must be respectful. Ms. Taft was further informed that she would be banned from the store if she could not follow these rules.

Second, your attorney states: "Notwithstanding these regulations, when Ms. Taft was told not to raise the service animal issue again, she complied; since that telephone conversation last July she has not raised the issue at the Co-op. There has been no 'repeat violation.'

On November 14, 2013 a written complaint was received from a customer stating Ms. Taft had verbally attacked him while shopping. This qualified as a violation of the terms for Ms. Taft to continue shopping at the Co-op.

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Third, your attorney states: "It seems obvious that pointing out the presence of pet dogs inside a grocery store is the polar opposite of creating an unsafe environment."

Central Co-op's staff are employed and trained to maintain a safe retail space for themselves and customers. If Ms. Taft had a concern about animals in the store she could have respectfully notified staff of that concern and allowed the staff to address the issue. It was not Ms. Taft's job or responsibility to approach customers directly with her concerns or to verbally berate staff for not taking the action she saw fit. Just because Ms. Taft was a member of the Co-op did not give her the right to direct the operations of the store. Additionally, Ms. Taft did report a violation to the King County Health Department, which was promptly followed by an inspection. The Co-op satisfactorily passed that inspection.

In fact, Ms. Taft's actions created an unsafe environment for staff by creating a fear of verbal attack.

Fourth, your attorney stated: "Due process, not to mention a fair reading of your Bylaw 2.9, requires that you give details of the changes upon which you propose to base termination..."

Bylaw 2.9 actually states "Membership may be terminated involuntarily by the Board for cause after the member is provided written notice of the reasons for the proposed termination..." Reasons and details for the consideration of Ms. Taft's membership termination have been given verbally and in writing. If Ms. Taft requires more detail about how her actions created an unsafe and undignified work and retail environment, following are a few statements:

"I did have an interaction which involved her[Ms. Taft] making a large scene and yelling at me in the store because of a dog. I can give you specifics if you like, but put simply, she is rude and harassing and refuses to calm down and speak with you once she gets started." – Staff member June 28, 2013

"In the mid-afternoon of Thursday the 14th, I was helping a customer at the info desk when a woman [Mrs. Taft] loudly interrupted verbally, and by physically inserting herself between me and the customer, 'you need to call your manger right now and ask that man if that's a service dog.' Her arm was outstretched pointing at a regular customer and his small service dog, who was less than two arm lengths away. I said, 'Ma'am I'll be right with you', and attempted to finish my sentence to the customer I was helping, when she interjected again, louder and still pointing at the other customer, 'This very serious, you need to call you manger right now and ask that man if that's a service dog.' At this point the customer with the service animal responded to her 'This is my service animal.'" – Staff member, November 16, 2013

"Today when I entered the Co-op and was met by a woman insisting and pointing at me and my dog saying animals/pets aren't allowed – she repeated this several times, each one with more anger, spite and venom. Needless to say I was shocked and scared. Truthfully and matter of fact 'my do is a service animal.' Employee X was cool under the unprovoked verbal explosion and misguided tonal attack. It's unfortunate fellow shoppers, even those versed in the ADA rules can't practice simple kindness and consideration." – Customer, November 14, 2013

said I would pay dog + 2 Taft did not pay – *ask on feed*

Finally, your attorney stated: "Why on earth does your operation come across as so chaotic?"

To that I respond we are not perfect. Central Co-op is a large and complex organization that is doing it's best to serve all of its 13,000 members. The Board of Trustees is made up of dedicated volunteers who are focused on high-level oversight and long-term strategic visioning. When your attorney's letter was sent in Dec. 2013, our board presidency had just changed. The board was striving to adhere to new governance policies, which delineate the respective roles and responsibilities of board and management. We were informed in January that somewhere in the Co-op's history the name of record on Ms. Taft's membership, and its rights, were inappropriately transferred to her husband's name, Arthur Champernowne. Thus the Board believed Ms. Taft did not have an individual membership, and her complaint did not require the attention of the board.

Conducting a deeper investigation into old records, the staff later discovered the membership did belong to Ms. Taft, and the new information was relayed to the board at their April meeting. Following the April meeting and further verification of reasons Ms. Taft was barred from the store, a notice was sent to Ms. Taft regarding the board's decision to consider terminating her membership and giving her time to respond. When the board had not received any information by the May board meeting it was decided to extend the decision timeline in order to give Ms. Taft more time to respond.

In the two letters from her legal representative the only justification given for Ms. Taft's behavior was that she was attempting to enforce compliance with ADA regulations. Again, it is Central Co-op's staff who are tasked with enforcing rules and regulations and not Ms. Taft. The Board did not consider this a valid justification for the verbal abuse of shoppers and workers and unanimously voted to terminate Ms. Taft's membership.

Thank you,
Kate Cox, President
Central Co-op Board of Trustees

Dec 6

A-6

HONORABLE SAMUEL CHUNG
AUGUST 14, 2015
9:00 AM

**KING COUNTY SUPERIOR COURT
FOR THE STATE OF WASHINGTON**

ELLEN TAFT, a married woman, and
ARTHUR CHAMPERNOWNE, a married
man, and their marital community,

Plaintiffs,

v.

CENTRAL CO-OP, a Washington nonprofit
corporation, **GEORGE ARNETT**, a married
man, **JANE DOE ARNETT**, a married
woman, and their marital community,

Defendant.

No. 14-2-29240-6 SEA

**DECLARATION OF ELLEN TAFT
IN SUPPORT OF PLAINTIFFS'
RESPONSE TO MOTION FOR
SUMMARY JUDGMENT AND CROSS-
MOTION FOR SUMMARY JUDGMENT**

I am over the age of 18 and have personal knowledge of the following facts.

I had been a member in good standing at Central Co-Op for almost 20 years. I enjoyed having an equity ownership interest in the Co-Op and took my role seriously. I also enjoyed shopping there because it carries products that I can only get at the Co-Op.

The Board of the Central Co-Op terminated my membership at the June 9, 2014, Board meeting. My membership was terminated without my being given a full and fair opportunity to

1 respond to allegations that I had "repeatedly" violated Co-Op policies, of which I had no
2 knowledge.

3 The June 25, 2014, letter announcing that the Board had voted to terminate my
4 membership claimed that several specific incidents led to the Board decision to terminate my
5 membership:

6 (1) A June 28, 2013 incident involving me and a staff member. The claim alleged
7 that I made a large scene, yelling at the staff member because of a dog.

8 (2) An alleged November 14, 2013 incident involving a complaint received from a
9 customer claiming that I had verbally attacked him while he was shopping with a dog.

10 (3) An November 16, 2013 staff statement about an alleged November 14, 2013
11 incident claiming an encounter between a customer with a small poodle and me. (See #2
12 above.)

13 I did not receive repeated warnings, and I never interacted with customers. On June
14 27, 2013, I informed a staff member that they should question whether the many dogs in the
15 store were indeed service dogs; the Co-Op Café serves food. I was concerned because I
16 frequently saw people carrying dogs who appeared to be pets with apparently able bodied
17 owners, but never saw staff approach such owners and ask the questions permissible under
18 the Americans with Disabilities Act ("ADA").

19 The staff member told me it was against the law to question individuals with dogs, but it
20 is not. Under the ADA, staff may ask two questions: (1) is the dog a service animal required
21 because of a disability, and (2) what work or task has the dog been trained to perform?

22 I did not confront and speak to either staff or customers in an abusive, aggressive,
23 confrontational manner; and I never spoke to a customer at all. The Co-Op's account of my
24 June 27 conversation with a staff member about service dogs is incorrect. I did not point my
25 finger in Mr. Dubois' face and shout at him. But, the claim that Mr. Dubois told me he was not

1 allowed to confront shoppers is correct. The supervisor that came out – Jessica Daw, Store
2 Support Coordinator (“SSC”) -- also told me that they are not allowed to ask shoppers whether
3 their dog is a service animal.

4 In the Co-Op’s summary judgment motion they have a statement about how they handle
5 shoppers with dogs; but this is a different version of the story that I was told during the June 27
6 conversation. At that time the policy was that staff members were not allowed to confront
7 shoppers with dogs. Apparently, their new policy is that a member of the SSC team is
8 supposed to ask the shopper if their dog is a service animal.

9 After this interaction in June of 2013, Mr. Peterson called me at my home. He
10 addressed me in an extremely unprofessional and angry manner. He told me that I was never
11 to approach a staff member or address issues pertaining to pets and service animals again. I
12 tried to calmly defuse the situation by explaining my side of the interaction. He cut me off. He
13 did not warn me that my shopping privileges would be revoked.

14 Given the vehemence of Mr. Peterson’s response, I decided not to raise the issue of pet
15 dogs in the Co-Op again. My response to this disrespectful call was to telephone the Seattle
16 King County Health Department, since on an earlier occasion I had approached a staff
17 member about a dog sitting in the café, and before the staff member could say anything, the
18 dog owner freely admitted that it was a pet and voluntarily left. I hoped that if a knowledgeable
19 third party could explain the ADA rules that maybe the Co-Op would start monitoring the
20 numerous dogs in the store.

21 The Summary Judgment motion also describes a November 14, 2013, alleged
22 complaint of which I never received notice. The Co-Op has an ever changing story about this
23 incident. Although it claims that it gave me written notice by a letter dated December 6, 2013
24 from Doug Peterson, alleging I had created an unsafe shopping experience for “our
25 customers,” I never received such a letter, nor do I recall any “incident” on this date.

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1 I visited the Co-Op several times between November 14 and December 5, 2013.
2 During one of these visits, while checking out, I asked the cashier if the Co-Op had gotten out
3 of debt and expressed my disappointment that none of my numerous comment cards had ever
4 been answered. I also mentioned two ideas for product lines I had given them that I thought
5 would have made a lot of money; bulk orders of rice, and bulk orders of environmentally
6 friendly household products. The Bylaws of the Co-Op state that it is my "duty" as a Co-Op
7 member to make suggestions.

8 But, apparently these questions were seen as an attack on the Co-Op. The morning
9 after my December 5th visit-- December 6, 2013 -- Doug Petersen, who appears to have an
10 extreme anger management problem, called again; this time to tell me that my shopping
11 privileges had been revoked. He indicated that there had been an incident on November 14,
12 2013.

13 My credit card records indicate that I had been in the store eight times since the alleged
14 incident on November 14. When I told Mr. Peterson that no incident had taken place on
15 November 14, and asked him what it was and why it had taken three weeks to notify me, I did
16 not get a satisfactory response. Doug Peterson said I would be getting a letter soon. I looked
17 through the mail meticulously for weeks and no letter ever arrived.

18 Those were the two contacts I had with Co-Op staff about my alleged inappropriate
19 conduct. I believe the reason the staff revoked my shopping privileges and that the Board
20 subsequently terminated my membership is that I complained to the Health Department that
21 the staff was not approaching individuals with dogs to ascertain whether they were service
22 animals. They retaliated against me for me being a whistleblower.

23 This has not been an open and straight-forward process. I should have been given
24 notice of the reasons the Co-Op was suspending my membership and an opportunity to
25 defend myself as the Bylaws require. But, I was not. The termination process occurred behind

1 defend myself as the Bylaws require. But, I was not. The termination process occurred behind
2 closed-doors and in the absence of notice of my alleged offenses. The Co-Op never offered
3 me a hearing and an opportunity to confront my accusers, hear their alleged evidence against
4 me, or cross-examine them.

5 Further, the policies I was accused of violating (B5 and B6) are personnel policies that
6 pertain to the General Manager. Policy B5 - "Treatment of Customers" is an "Executive
7 Limitation Policy Type" and requires the General Manager to treat customers in a particular
8 manner. It states:

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

11 *The GM shall not:*

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

18 I was accused of violating a policy pertaining solely to mandatory duties imposed on the
19 General Manager – his duty to solicit member/customer suggestions, provide customers with a
20 safe shopping experience, and have facilities with appropriate accessibility. It is entirely
21 unclear why my alleged violation of Policy B5 would cause my membership to be terminated
22 when that policy expressly addresses the General Manager's "Treatment of Customers." I am
23 not the Co-Op's General Manager; it is inappropriate to claim that I am guilty of violating a
24 personnel policy solely pertaining to the General Manager's execution of his duties.

25 In fact, the conversations that I had with Co-Op staff regarding pet dogs in the store and
submitting suggestions to the Co-Op are actually in line with the duties that the General
Manager is tasked with performing, and member involvement that the Co-Op encourages.

1 Further, my Co-Op membership was additionally terminated for alleged, repeated
2 violations of another policy which also only applies to the duties of the General Manager.
3 Policy B6, which is likewise an "Executive Limitation," imposes duties on the General Manager
4 for "Staff Treatment and Compensation." I was found to have committed repeated violations of
5 Policy B6 that imposes obligations on the General Manager to treat staff fairly. It states:

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

8 The other requirements in Policy B6 also specifically impose duties on the General
9 Manager and do not, by their own terms, impose any obligations on members.¹ Not only had I
10 not been given notice of these policies as a Co-Op member; but, by their express terms, the
11 policies do not govern member conduct in the Co-Op.

12 I was given absolutely no notice of such incidents and no opportunity to respond to
13 them prior to termination. I should have been accorded a full and fair opportunity to respond to
14 such allegations; they are untrue.

15 Although my attorney wrote a letter to the Co-Op Board on December 11, 2013 about
16 the unauthorized revocation of my shopping privileges by floor manager Doug Peterson, the
17 Board did not bother to respond. Finally, when my attorney wrote a second letter on February
18 21, 2014, the Co-Op manager Mr. Arnett called the attorney and informed him that the Co-Op
19 had no obligation to respond to such correspondence because I was not a Co-Op member.

20 _____
21 ¹ Policy B6

The GM will not:

- 22 1. Operate without written personnel policies that:
 - 23 a. Clarify rules for staff.
 - 24 b. Provide for fair and thorough handling of grievances in a way that does not include the board as a
25 participant in the grievance process.
 - 26 c. Are accessible to all staff.
 - 27 d. Inform staff that employment is neither permanent nor guaranteed.
- 28 2. Cause or allow personnel policies to be inconsistently applied.
- 29 3. Fail to provide adequate documentation, security and retention of personnel records and all personnel
30 related decisions.
- 31 4. Establish compensation and benefits that are internally or externally materially inequitable.
- 32 5. Change the GM's own compensation and benefits, except as his or her benefits are consistent with a
33 package for all other employees.
- 34 6. Leave staff unfamiliar with the Board's governance policies.

Declaration of Ellen Taft – Page 6

1 But I have been a member since at least 2000, and submitted a copy of my membership card
2 to the general manager to prove that fact.

3 In the undated letter from Doug Peterson attached to his declaration with the summary
4 judgment motion – the letter I never received -- there was no mention of me violating Co-Op
5 policies. The first allegation that I had violated Co-Op policies was in a letter dated May 8,
6 2014 from Board President Kate Cox, announcing that they had decided to terminate my
7 membership privileges. In this letter, I was given 10 days to respond to the accusation that I
8 repeatedly violated policies I had never heard of, and that by their express terms, govern the
9 conduct of the General Manager, rather than Co-Op members.

10 Prior to termination of my membership, I was not given the slightest notice that I was
11 violating policies governing the General Co-Op, and that my alleged violation of such policies
12 would result in termination of my Co-Op membership.

13 I never received any notice of the alleged incidents on which the Co-Op based its
14 decision to terminate my membership. The June 25, 2014 letter from the Board, announcing
15 that they had voted to terminate my membership on June 9, 2014, based on my violation of
16 executive policies, of which I had never seen in my life, included references to incidents of
17 alleged misconduct. I was never given notice of such incidents prior to my termination.

18 When I joined the Co-Op, I signed a membership card agreeing to be bound by the
19 Articles of Incorporation, the Bylaws, and the policies in the introductory brochure. The
20 introductory brochure, as I recall, contained language about the advantages of shopping in a
21 member-owned facility. It did not contain personnel policies B5 and B6, which expressly
22 address requirements imposed on the General Manager. I never received copies of policies
23 B5 and B6, which is not surprising because these policies clearly do not apply to members.
24
25

1 Although the Co-Op Board on June 9, 2014, voted to terminate my membership, it is
2 inaccurate to claim that I had repeatedly violated Co-Op policies; and repeated violation of
3 policies is the expressed Co-Op Bylaw requirement for termination of a membership.

4 When I joined the Co-Op, the policies I was charged with observing are those set forth
5 in the introductory brochure, the Articles of Incorporation, and Bylaws of the Central Co-Op.
6 There was no mention of the General Manager's policies. My membership application stated:

7 *I hereby apply for membership in Central Co-op's Madison Market*
8 *under the conditions and policies stated in the introductory*
9 *brochure and the Articles of Incorporation and Bylaws of Central*
10 *Co-op.*

11 This has been an odd and unusual process. Although we propounded discovery
12 requests on the Co-Op seeking information about complaints and warnings to me, the very first
13 time I saw Mr. Peterson's undated letter to me about the revocation of shopping privileges was
14 when I received a copy of Mr. Peterson's June 24, 2015 declaration in support of the motion
15 for summary judgment; the letter which I had never received was attached to it. The Co-Op
16 failed to provide answers to discovery seeking information about my alleged violations of Co-
17 Op policies, alleged misconduct, and alleged warnings given to me about such conduct.

18 The summary judgment motion states that I received "multiple warnings" about my
19 alleged abusive conduct. (See Summary Judgment page 2, line 8.) Although the Co-Op
20 claims that it "began documenting" alleged verbal attacks on staff and shoppers in June of
21 2013 (Motion for Summary Judgment, page 4, lines 14-15), it is odd that the Co-Op, in
22 response to my Interrogatories and Requests for Production, failed to provide any details about
23 such alleged warnings and no documentation was ever supplied.

24 It is clear my attorneys attempted to get concrete details about the alleged Co-Op
25 warnings to me. Despite repeated requests in discovery asking Central Co-Op to disclose the
dates of alleged warnings to me, not a single detail was provided in their responses to
numerous interrogatories and requests for production seeking such information.

1 This has been very frustrating. My membership was terminated for not abiding by
2 policies governing the duties of the General Manager that I had never seen. Further, such
3 policies were not policies I agreed to uphold when I signed my membership card and paid my
4 equity payment to the Co-Op. Because I have made an equity contribution, I have an
5 ownership interest in the Co-Op. I should have been accorded fair treatment as an owner with
6 an equity interest.

7 I declare under penalty of perjury that the foregoing is true and correct.

8 DATED this 3rd day of August, 2015.

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10 By: 
11 Ellen Taft

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KING COUNTY SUPERIOR COURT
FOR THE STATE OF WASHINGTON

ELLEN TAFT, a married woman, and
ARTHUR CHAMPERNOWNE, a married
man, and their marital community,

Plaintiffs,

v.

CENTRAL CO-OP, a Washington nonprofit
corporation, DAN ARNETT, a married man,
JANE DOE ARNETT, a married woman,
and their marital community,

Defendant.

No. 14-2-29240-6 SEA

DECLARATION OF SERVICE

I, Jennifer Lord, hereby state as follows:

I am over the age of 18 years, competent to testify, and certify to the following
based on my own knowledge and belief.

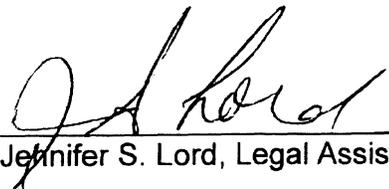
On the date below, I sent Plaintiffs' **Declaration of Ellen Taft in Support of
Plaintiffs' Response to Motion for Summary Judgment and Cross-Motion for
Summary Judgment** and this Declaration of Service to the following in the form(s)
noted:

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

Via U.S. Mail – Postage Prepaid
 Via Legal Messenger
 Via E-mail: wwalsh@cozen.com
And to: R Bowman@cozen.com

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

DATED this 3rd day of August, 2015, at Gig Harbor, Washington.


Jennifer S. Lord, Legal Assistant

HONORABLE SAMUEL CHUNG
AUGUST 14, 2015
9:00 AM

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**KING COUNTY SUPERIOR COURT
FOR THE STATE OF WASHINGTON**

ELLEN TAFT, a married woman, and
ARTHUR CHAMPERNOWNE, a married
man, and their marital community,

Plaintiffs,

v.

CENTRAL CO-OP, a Washington nonprofit
corporation, **GEORGE ARNETT**, a married
man, **JANE DOE ARNETT**, a married
woman, and their marital community,

Defendant.

No. 14-2-29240-6 SEA

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT
AND
CROSS-MOTION FOR
SUMMARY JUDGMENT**

CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiffs move for summary judgment on the issue of notice; the Co-Op did not give Ellen Taft sufficient notice of her alleged offenses allowing her to adequately defend herself against the Co-Op's accusations. This motion is supported by the Declarations of Ellen Taft and Jane Koler, dated August 3, 2015.

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1 **INTRODUCTION**

2 This is a case of an overzealous food cooperative attempting to cover, belatedly, its
3 ham-handed termination of a member's shopping privileges and membership. If the
4 corporation had simply followed its own Bylaws and Governing Policies, the member would not
5 have felt compelled to hire a lawyer to defend her rights and would not be embroiled in a court
6 battle.

7 **FACTUAL BACKGROUND**

8 Ellen Taft was a member of the Central Co-Op for nearly 20 years. Before the Co-Op
9 terminated her membership, she frequently shopped at the Co-Op because she liked shopping
10 in a facility in which members have an ownership interest. She also preferred shopping there
11 because the Co-Op carried products she uses that are only sold there. Ms. Taft took very
12 seriously her responsibility as an owner, conferred by the Bylaws, to participate in Co-Op
13 Governance. She made suggestions and comments about Co-Op affairs; the Bylaws
14 contemplate and encourage such member engagement.

15 For example, Central Co-Op Bylaw 2.8 states that members have not only voting rights,
16 but the right to attend Board meetings and membership meetings; to review minutes of Board
17 and Nominating Committee meetings; to access the Co-Op's books and records "at any
18 reasonable time"; and to petition for changes in Co-Op governing documents. Furthermore,
19 Bylaw 3.1 gives members the right "to pose questions of and make comments to management"
20 at any member meeting.

21 In the same spirit of encouraging member participation in Co-Op operations, the Co-
22 Op's Governing Policy B4 provides that the General Manager "shall not allow owners
23 [members] to be uninformed or misinformed of their rights and responsibilities," and Policy B5
24 says that the General Manager "shall not be unresponsive to customer needs," which includes
25 implementing "a system for **soliciting and considering customer opinion regarding**

1 **preferences, product requests, complaints and suggestions fairly, respectfully and in a**
2 **timely manner.**"

3 But, Ellen Taft's membership privileges in the Central Co-Op were apparently
4 terminated involuntarily because she advised a staff member in June of 2013, that obvious pet
5 animals were lounging in the Co-Op café and in the arms of Co-Op shoppers. She asked a
6 staff member why the Co-Op staff did not make inquiries about whether the dogs were service
7 animals. When the staff member told Ms. Taft that it was illegal to ask shoppers such
8 questions; she told the staff member that under the Americans with Disabilities Act ("ADA"),
9 two questions could be asked – (1) whether an animal is a service dog, and (2) what task it
10 was trained to perform? Despite the ADA's provisions, the staff member continued to insist
11 that no question could be posed to shoppers.

12 On the heels of this interaction with staff, Co-Op floor manager Doug Peterson called
13 Ms. Taft and told her, angrily and bluntly, that she was prohibited from addressing the topic of
14 service dogs with staff. Ms. Taft heeded this warning while continuing to shop at the Co-Op.

15 Ms. Taft had observed many animals that were obviously pets during her numerous
16 shopping excursions to the Co-Op, yet she never saw Co-Op staff asking ADA-permitted
17 questions of the dog owners. She was especially concerned because the Co-Op café serves
18 food. Her response to Mr. Peterson's diatribe was to complain to the Seattle King County
19 Health Department.¹

20 In early December of 2013, Ms. Taft got another angry phone call from Floor Manager
21 Peterson, who informed her that her shopping privileges were being revoked. When Ms. Taft
22 asked why, he told her that it was based on an incident in November.

23 _____
24 ¹ The Health Department report summarized the Taft complaint as follows:
25 Caller was at the grocery store yesterday (6-27-13) at around 11:30 a.m. Saw a non-service animal in the store. Spoke to a male staff member and manager, Jessica; both stated per caller "they cannot ask if the animal is a service animal so no one ever ask [sic] them to leave store. Caller stated that this is an ongoing problem but no one wants to do anything to prevent it.

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1 When Ms. Taft asked Mr. Peterson why he had waited a month to approach her about
2 the alleged incident, he did not respond. When she asked for details about the alleged
3 incident, he told her that he was going to send her a letter. Ms. Taft submitted an account of
4 these events attached to a letter she sent to the Co-Op dated March 5, 2014, in which she
5 explained that she never received the letter that Mr. Peterson had promised. See Koler
6 Declaration at Exhibit 1. ("Doug Peterson said I would be getting a letter soon. I looked
7 through the mail meticulously for weeks and no letter ever arrived.") Her attorney, in a
8 February 21, 2014 letter to the Co-Op also explained that she had never gotten the promised
9 Peterson letter. See Koler Declaration at Exhibit 2.

10 Ms. Taft saw the undated Peterson letter for the first time as Exhibit A to his declaration
11 in this Summary Judgment proceeding. Neither she nor her attorney ever got a copy of the
12 undated letter. Nor did the Co-Op produce it in response to Ms. Taft's First Interrogatories and
13 Requests for Production.

14 During the week before Mr. Peterson's angry phone call on December 6, 2013, Ms. Taft
15 had asked the Co-Op cashier why the Co-Op never responded to her customer comment
16 cards, and inquired whether the Co-Op was out of debt yet. See Koler Declaration at Exhibit 1,
17 Ms. Taft's "Backstory" attached to her March 5, 2014 letter.

18 Ellen Taft's attorneys sent two letters to the Co-Op stating that the Bylaws conferred no
19 authority on Mr. Peterson to call members and revoke their shopping privileges. See Koler
20 Declaration at Exhibit 2 and Exhibit 3. Ms. Taft's attorneys also advised the Co-Op that the
21 Bylaws addressed a procedure for involuntary membership termination and that the Co-Op
22 had deviated from it. But, the Co-Op did not bother to respond to such letters.

23 Finally, in early March of 2014, the Co-Op Manager called Ms. Taft's attorney and
24 explained that the Co-Op did not need to follow the termination procedure presented in the
25 Bylaws because Ellen Taft was not a Co-Op member. Ms. Taft sent a letter dated March 5,

1 2014 attaching her membership card showing that she was in fact a member [for nearly 20
2 years], and explaining why she believed that Mr. Peterson had revoked her shopping
3 privileges. See Koler Declaration at Exhibit 1.

4 Ms. Taft received her first letter from the Co-Op Board dated May 8, 2014; it announced
5 the Co-Op intention to terminate her membership for "repeatedly violating" two Co-Op policies.
6 The Co-Op claimed that she violated Policy B5 by "creating an unsafe shopping experience for
7 customers," and Policy B6 by treating staff in "an unfair, unsafe, unclear or undignified
8 manner."

9 Although the May 8 letter gave her the opportunity to defend against the above
10 accusations by submitting a letter no later than Sunday, May 18, it provided not the slightest
11 notice about how Ms. Taft had allegedly violated Policies B5 and B6, which apply to the duties
12 of the General Manager. Ms. Taft's attorney, in his May 14, 2014 letter, demanded specific
13 notice about what Ms. Taft had allegedly done to create an "unsafe shopping experience," and
14 how she had treated staff an "unfair, unsafe, unclear or undignified manner." See Koler
15 Declaration at Exhibit 4. But, although Bylaw 2.9 only allows termination after giving the
16 member "written notice of the reasons for the proposed termination" and "opportunity to
17 respond in person or in writing," the Board terminated her membership.

18 Ms. Taft was totally deprived of a fair and adequate opportunity to respond to reasons
19 for the proposed termination. The Board voted on June 9, 2014, to terminate Ms. Taft's
20 membership, and in its June 25, 2015 letter to Ms. Taft advising her of the termination, for the
21 first time, the Board disclosed two specific incidents allegedly demonstrating violation of
22 Policies B5 and B6. Although Board correspondence and the Co-Op's Motion for Summary
23 Judgment repeat the refrain that Ms. Taft was repeatedly warned that her violation of Co-Op
24 policies B5 and B6 would lead to termination of her membership, the very first notice that she
25

1 got from the Board about her alleged violation of those policies was its June 25, 2014 letter
2 advising her that her membership had been terminated for repeated violations.

3 Oddly, the Co-Op terminated Ms. Taft's membership for violating Executive Policies that
4 pertain to the duties of the General Manager. The policies, described as "Executive
5 Limitations," address how the General Manager is to execute his/her duties. Policy B5
6 addresses the General Manager's treatment of customers.² Policy B6 addresses the General
7 Manager's treatment of his staff.³ There is not the slightest notice that the "Executive
8 Limitation Policies" govern members and dictate a code of conduct for them.

9 Although the Board claims that it gave Ms. Taft "repeated warnings" about her alleged
10 violations of the Executive Limitations Policies B5 and B6, it failed to explain how these
11 policies pertained to terminating her membership; they solely govern the Co-Op General
12 Manager.

13
14 ² Policy B5 states:

15 Policy Type: Executive Limitations

16 Policy Title: B5 – Treatment of Customers

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

18 The GM shall not:

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

19 ³ Policy B6 states:

20 Policy Type: Executive Limitations

21 Policy Title: B6 - Staff Treatment and Compensation

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

23 The GM will not:

1. Operate without written personnel policies that:
 - 24 a. Clarify rules for staff.
 - 25 b. Provide for fair and thorough handling of grievances in a way that does not include the board as a participant in the grievance process.
 - c. Are accessible to all staff.
 - d. Inform staff that employment is neither permanent nor guaranteed.
2. Cause or allow personnel policies to be inconsistently applied.
3. Fail to provide adequate documentation, security and retention of personnel records and all personnel related decisions.
4. Establish compensation and benefits that are internally or externally materially inequitable.
5. Change the GM's own compensation and benefits, except as his or her benefits are consistent with a package for all other employees.
6. Leave staff unfamiliar with the Board's governance policies.

1 The Co-Op also failed to provide information about such violations and warnings in its
2 responses to Ms. Taft's First Interrogatories and Requests for Production. The Co-Op's
3 Summary Judgment Motion states that they "began documenting alleged verbal attacks on
4 staff and shoppers in June of 2013." Summary Judgment page 4, lines 14-17. But, in its
5 discovery responses, the Co-Op failed to provide any documentation of such alleged
6 misconduct. Nor did the Co-Op produce a single document in response to Ms. Taft's Requests
7 for Production. For example, neither the undated letter from Mr. Peterson which was attached
8 to his Declaration, nor the handwritten account of the alleged November 14 incident were
9 provided.

10 **INTERROGATORY NO. 4:** The May 8, 2014 letter from the Co-Op
11 Board to Ms. Taft states that "due to your actions at the Co-op
12 including the verbal abuse of shoppers and workers, as well as your
13 continued refusal to refrain from such activity even after repeated
14 warnings, Central Co-op Board of Trustees has decided to terminate
15 your membership." Disclose the date and content of the "repeated
16 warnings" Co-Op staff and the Board gave to Ms. Taft about her
17 alleged misconduct.

18 **ANSWER:** Pursuant to CR 33(c) the supporting records and
19 documents relative to this interrogatory are/will be produced in
20 response to the included RFPs herein.

21 **No such documents were provided.**

22 **INTERROGATORY NO. 6:** How did the staff or Board member
23 document the warnings given to Ms. Taft of her alleged misconduct
24 referenced in the May 8, 2014 Board letter to Ms. Taft.

25 **ANSWER:** Emails, formal statements, and discussions with the
General Manager.

INTERROGATORY NO. 7: Provide the date and content of each
warning given to Ms. Taft of her alleged misconduct referenced in the
May 8, 2014 Board letter to Ms. Taft.

ANSWER: Pursuant to CR 33(c) the supporting records and
documents relative to this interrogatory are/will be produced in
response to the included RFPs herein.

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No documents were produced addressing warnings to Ms. Taft; no documents were produced at all.

INTERROGATORY NO. 9: Specify the date and content of each such warning referenced in number 8 above.

ANSWER: Pursuant to CR 33(c) the supporting records and documents relative to this interrogatory are/will be produced in response to the included RFPs herein.

No documents were produced addressing warnings to Ms. Taft; no documents were produced at all.

INTERROGATORY NO. 11: Specify the name of the individual who reported such alleged misconduct, and date of such conduct specified above.

ANSWER: Pursuant to CR 33(c) the supporting records and documents relative to this interrogatory are/will be produced in response to the included RFPs herein.

No documents were produced stating the name of the individual who reported such conduct; no documents were produced at all.

INTERROGATORY NO. 12: Specify all steps taken to notify Ms. Taft that she had engaged in alleged misconduct and the dates such contact with Ms. Taft were made.

ANSWER: Phone calls, letters, and personal interactions. Dates of these can be found in the letters and reports provided in response to this discovery under CR 33(c).

No documents were produced addressing the steps taken to warn Ms. Taft that she had engaged in misconduct; no documents were produced at all.

INTERROGATORY NO. 16: Disclose all dates on which Co-Op staff gave Ms. Taft specific notice that she was violating Co-Op Bylaws. (Identify the name of the staff member, the content of the notification, and how the notification was made.)

ANSWER: Staff has no reason or obligation to handle the matter concerning this Interrogatory and, thus did not do so. It would seem

1 that Ms. Taft is confused with the roles different people have in the
2 administration and management of the Co-op.

3 **INTERROGATORY NO. 17:** Disclose all dates on which Co-Op staff
4 gave Ms. Taft notice that she was violating specific Co-Op
5 Governance Policies. (Identify the name of the staff member, the
6 content of the notification, and how the notification was made.)

7 **ANSWER:** See Answer to Interrogatory No. 16, above. Other than
8 the General Manager, staff do not normally concern themselves
9 with the governing policies of the Co-op, they do uphold the
10 operating policies, however.

11 **INTERROGATORY NO. 18:** Disclose every occasion, including
12 dates, on which Ms. Taft allegedly created an "unsafe shopping
13 experience for customers" including every fact supporting such claims
14 that are referenced in the May 8, 2014 Board letter to Ms. Taft.

15 **ANSWER:** Pursuant to CR 33(c) the supporting records and
16 documents relative to this interrogatory are/will be produced in
17 response to the included RFPs herein.

18 **No documents were produced addressing how Ellen Taft created an unsafe
19 experience for customers; no documents were produced at all.**

20 **REQUEST FOR PRODUCTION NO. 21 [sic]:** Provide copies of all
21 written warnings of the Co-Op staff to Ms. Taft.

22 **RESPONSE:** OBJECTION, again, the staff does not provide
23 "written warnings" and has no reason to do so when phone calls
24 suffice and personal interactions were documented. Just as written
25 warnings are not necessarily provided to a shop lifter, parking
violators, or those that violate the solicitation policies.

REQUEST FOR PRODUCTION NO. 22 [sic]: Provide copies of all
written warnings of the Co-Op staff Board to Ms. Taft.

RESPONSE: OBJECTION, it is unclear what the "staff Board" is
referring to, regardless documents will be produced as detailed
above.

**No documents were produced addressing staff or Board warnings to Ms. Taft; no
documents were produced at all.**

1 **REQUEST FOR PRODUCTION NO. 23 [sic]:** Provide all
2 documentation of Ms. Taft's conduct that created "an unsafe
3 shopping experience for customers," including every fact allegedly
4 supporting such claims referenced in the May 8, 2014, Board letter
5 to Ms. Taft.

6 **RESPONSE:** OBJECTION, this seems to be an Interrogatory as
7 opposed to an actual RFP with the wording of "including every fact
8 allegedly supporting such claims" Regardless, documents will
9 be produced as detailed above.

10 **No documents were produced.**

11 See Koler Declaration at Exhibit 5.

12 Although the Board claimed that Ms. Taft "repeatedly violated" Executive Limitation
13 Policies applying to the General Manager, Ms. Taft had not been issued a copy of those
14 policies. And, there is no indication in her signed membership application, or in the policies
15 themselves, that she was charged with complying with them. Her membership application
16 stated:

17 *I hereby apply for membership in Central Co-op's Madison Market
18 under the conditions and policies stated in the introductory
19 brochure and the Articles of Incorporation and Bylaws of Central
20 Co-op.*

21 The Board's justification for terminating Ms. Taft's membership has been a continuing,
22 unfolding story. The Summary Judgment Motion contains apparently a newly minted
23 description of how the Co-Op complies with ADA service animal requirements, and includes
24 two documents that Ms. Taft has never seen – the Peterson letter and "Phillip's" handwritten
25 account of his observations of Ms. Taft the day he was shopping with his grey poodle in his
26 arms. (Probably not a service dog.) See Taft Declaration.

27 **THERE ARE SIGNIFICANT DISPUTED ISSUES OF MATERIAL FACT THAT PREVENT**
28 **SUMMARY JUDGMENT**

29 A significant disputed issue of material fact prevents summary judgment -- whether the
30 Co-Op afforded Ms. Taft reasonable notice of its alleged reasons for termination and a
31 reasonable and fair opportunity to defend herself against such accusations. As indicated

1 above, Ms. Taft testifies in her Declaration that the Board's May 8, 2014 letter advising her that
2 the Board intended to terminate her membership for violation of Policies B5 and B6, failed to
3 specify what acts Ms. Taft committed that violated such Executive Limitation policies. Whether
4 reasonable notice was provided is a question of fact. See Taft Declaration.

5 Further, the Co-Op claims that a June 27, 2013 incident, and a November 14, 2013
6 incident, caused the Co-Op to terminate her membership. Ms. Taft's Declaration paints a
7 different version of the June 27 incident – the Co-Op staff member flatly told her that the ADA
8 prohibits asking any questions about service animals, which is incorrect. And she denies that
9 she confronted a customer or staff member on November 14, 2013. See Taft Declaration.

10 Additionally, there is a third disputed issue of material fact – whether Ms. Taft's two
11 alleged conversations with a Co-Op staff member about asking allowed ADA questions to
12 segregate service animals from pets constitutes cause for termination under Bylaw 2.9, when
13 policies B5 and B6 exclusively apply to the General Manager.

14 There is also a fourth disputed issue of material fact – whether two alleged
15 conversations with staff about ADA allowed questions constitutes a "repeated violation of any
16 provisions of the Bylaws or policies." See Bylaw 2.9, Termination.

17 There is a fifth disputed issue of material fact – whether the Co-Op violated the demand
18 imposed by Washington law to treat Ms. Taft fairly and in good faith in determining to expel
19 her. See Hendryx v. People's United Church, 42 Wash. 336, 344, 84 P. 1123 ("there was an
20 implied obligation or contract that members would be fairly treated and good faith would be
21 maintained between them" in the termination context.)

22 Such disputed issues of material fact prevent summary judgment because they pertain
23 directly to whether there is just cause under Bylaw 2.9 to terminate Ms. Taft. Further, in
24 evaluating the Co-Op's motion for summary judgment, all evidence and evidentiary inferences
25 must be construed in a light most favorable to Ms. Taft, the non-moving party. See CR 56.

1 **CONTRARY TO DEFENDANTS' CLAIM, WHEN TERMINATION IMPLICATES A**
2 **PROPERTY INTEREST, COURTS CAREFULLY SCRUTINIZE THE MATTER --**
3 **ELLEN TAFT'S CO-OP MEMBERSHIP CONFERRED A PROPERTY INTEREST**

4 The Co-Op corporate documents – its Bylaws and Articles of Incorporation – show that
5 upon payment of her membership assessment, Ellen Taft acquired a property interest in the
6 Co-Op. See *Bylaws at §V, Patronage Dividends*.

7 The Co-Op claims incorrectly that courts review termination decisions in a highly
8 deferential manner and accept the wisdom of the corporate board about termination. But,
9 when termination implicates a property interest, courts carefully scrutinize the transaction.
10 Courts review expulsion of a member to determine “whether the cause of expulsion was
11 sufficient in law, whether the corporation proceeded in accord with the law, upon reasonable
12 notice to the member, and whether the hearing and expulsion were in good faith and in
13 compliance with its charter and bylaws.” *Fletcher, Cyclopedia of Corporations* (revised ed.
14 2009) §5704; *State v. Corgiat*, 56 Wash. 95, 98, 96 P. 689 (1908) (*Corgiat* advanced the rule
15 that a corporation, when members “become entitled to privileges or rights of property therein,
16 may not exercise its power of expulsion without notice to the member and an opportunity to be
17 heard.”)

18 In such a context, if the member were wrongfully expelled, the member will be
19 reinstated. *Id. Otto v. Journeymen Tailors' Protective and Benevolent Union*, 75 Cal 308, 17 P
20 217 (cited with approval in *State Ex. Rel Cicoria v. Corgiat*, 50 Wn. at 98); *State of Washington*
21 *v. Corgiat*, 50 Wash 95, 96 P 689 (concluded that a mutual benefit corporation, providing sick,
22 disability and death benefits in exchange for payment of a membership assessment and dues
23 could not expel a member, who had published an article about the association president
24 without notice of the alleged charge and an opportunity to be heard in his defense); *Hendryx v.*
25 *People's United Church of Spokane*, 42 Wash 336, 84 P 1123 (held that church members
 expelled without notice or a trial had been invalidly terminated and thus remained members of

1 the church and had standing to challenge the church pastor's appropriation of church
2 property)("a church cannot expel a member without charges, notice or trial").

3 The Bylaws show that payment of the membership equity fee conferred a property
4 interest: the right to share in corporate profits based on annual store expenditures. Section V
5 of the Bylaws governs "Patronage Dividends." Thus, the deferential review the Co-Op urges
6 would violate Washington law.

7 **WASHINGTON CASES DEMAND FAIR NOTICE AND FAIR OPPORTUNITY TO DEFEND**
8 **ONESELF AGAINST CHARGES IN CONTEXT OF TERMINATION**

9 The right to adequate notice of a proposed deprivation of rights is an essential element
10 of fundamental fairness. Courts in many jurisdictions, including Washington, have held that
11 "for the action of a corporation in expelling a member for cause to be valid, it is essential that
12 there be a trial or hearing against the member with reasonable notice to the member and a fair
13 opportunity to be heard." *Fletcher, Corporations* §5702. The "charges must be sufficiently
14 definite to enable the member to know their precise nature." *Id.* at p 788. Washington Courts
15 support the position that boards must observe standards of fundamental fairness and grant the
16 member subject to expulsion a full and fair opportunity to be heard; especially in the context of
17 ownership of a membership that confers a property interest. *State of Washington v. Corgiat*,
18 50 Wn. 95, 98, 96 P 689 (1908) advances the following general rule:

19 A society, the members of which become entitled to privileges or
20 rights of property may not exercise its power of expulsion, without
giving to him an opportunity to be heard.

21 Fletcher cites *Corgiat* at §5702 note 10. *Corgiat* emphasizes that not only does the member
22 have an absolute opportunity to be heard, but has the right "to be notified of the accusation
23 and an opportunity to make his defense." *Corgiat* at 50 Wn. 98.

24 Courts in Washington and other United States jurisdictions emphasize the crucial
25 importance of giving adequate notice of the causes for termination. *Nametra v. American*
Society of Travel Agents Inc., 28 Misc.2d 291, 211 NYS.2d 655 (1961) (cited by *Fletcher*,

1 §5702 note 12) held that “the right to be advised in advance of the charges is a fundamental
2 right to which the petitioner would be entitled even without the bylaw provision.” 211 NYS.2d
3 657. That case held that initially, adequate notice was given but at the hearing, additional
4 charges were served on petitioner. Nametra held that the right to adequate notice “was not
5 satisfied where charges are considered of which petitioner was not advised in advance of trial.”
6 *Id.* Further, Nametra criticized the quality of evidence on which the corporation based its
7 termination decision: “the entire case against it consisted of reading complaints from persons
8 not present.” The rights of confrontation and cross-examination, like the right of notice, are
9 fundamental rights. These rights were not satisfied in the instant case.” Nametra set aside the
10 expulsion order and reinstated the membership of Mr. Nametra.

11 In Seehorn v. Supreme Council Catholic Knights of America, 68 SW 949, 95 Mo.App
12 233 (1902) (Fletcher, §5702 cites at note 10) the court held that “it is the fundamental law of
13 the land that before a citizen can be affected in either his personal or property rights, he is
14 entitled to notice of the proceedings against him and the opportunity afforded him of being
15 heard in defense of such rights.” The court held that the act of suspension... “was invalid
16 because of want of notice to the deceased.” 68 SW 950. In that case, although the bylaws did
17 not “provide for notice to the member of the intended suspension, the “law steps in and
18 supplies the omission.” *Id.* Fletcher, Corporations §5702, cites at note 10. See McCune v.
19 Wilson, 237 So.2d 169 (Fla.S.Ct. 1970) (cited with approval in Fletcher, Corporations §5702
20 cites at note 12; (McCune invalidated a termination decision by Chapter No. 24 of the
21 American Society of Real Estate Appraisers because the corporation failed to give notice of
22 the charges with adequate particularity and otherwise failed to provide a fair and impartial
23 hearing).

24 Here, Ms. Taft was not given fair notice of the charges against her. The May 8, 2014
25 Board letter accused her of violating two Board policies – B5 and B6 – by “creating an unsafe

1 environment for shoppers” and “treating staff in an undignified manner,” but failed to provide
2 the slightest detail about how she might have violated such policies. She was given ten days
3 to present a written defense to the accusation that she had “repeatedly” violated Co-Op
4 policies and ignored “repeated warnings” of such violations.

5 But, the May 8, 2014 letter was the very first time the Board had notified Ms. Taft that
6 she had repeatedly violated Co-Op policies B5 and B6. Not only that, Ms. Taft had never seen
7 these policies promulgated in 2008, and did not know of their existence.

8 Although Ms. Taft was accorded the opportunity to present a written defense to the
9 Board within ten days of the May 8, 2014 letter, this was an empty gesture. The Co-Op did not
10 give her the slightest information about how she might have violated such policies. Ms. Taft’s
11 attorney, in response to the Board announcement in its May 8, 2014 letter alleging that her
12 membership was being terminated, demanded specific notice of the “repeated violations of two
13 important policies.” He stated:

14 Where are the "repeated" violations by Mrs. Taft of any Co-op
15 regulation? Kindly provide documentation of this allegation.

16 ... what has she supposedly done to create an "unsafe shopping
17 experience"? It seems obvious that pointing out the presence of
18 pet dogs inside a grocery store is the polar opposite of creating an
19 unsafe environment. Did Mrs. Taft allegedly threaten anyone?
20 Display a weapon? Scatter hazardous material? What, pray tell,
21 do you think she did that is "unsafe"?

22 Also: What do you allege she did to treat staff in an "unfair, unsafe,
23 unclear [whatever that means], or undignified" manner? What are
24 the particulars of this allegation?

25 The letter reminded the Co-Op that “... a fair reading of your Bylaw 2.9, requires that you give
details of the charges upon which you propose to base termination, so the recipient can
respond.” See Koler Declaration at Exhibit 4.

Although the May 14, 2014 response letter from Ms. Taft’s attorney indicated that it was
impossible to respond to the Co-Op’s letter and demanded further notice of demonstrating how

1 Ms. Taft violated policies B5 and B6, the Board totally ignored that request. Then, in its June
2 25, 2014 letter announcing that the Board had voted to terminate Ms. Taft's membership,
3 apparently attempting to provide factual justification for its decision; Board President Kate Cox,
4 **after** announcing the Board's decision to terminate Ms. Taft's membership, stated that "If Ms.
5 Taft requires more detail about how her actions created an unsafe and undignified work and
6 retail environment, following are a few statements:"

7 *I did have an interaction which involved her [Ms. Taft] making a
8 large scene and yelling at me in the store because of a dog. I can
9 give you specifics if you like, but put simply, she is rude and
10 harassing and refuses to calm down and speak with you once she
11 gets started. – Staff member June 28, 2013*

12 The above statement appears to have been solicited; it reads as if it is a response to a
13 fishing expedition looking for anyone, possibly at a staff meeting, who may have had an
14 interaction with Ellen Taft.

15 The two statements below are dated November 14, and November 16, 2013, but are
16 about the same alleged incident on November 14:

17 *Today when I entered the Co-op and was met by a woman insisting
18 and pointing at me and my dog saying animals/pets aren't allowed
19 – she repeated this several times, each one with more anger, spite
20 and venom. Needless to say I was shocked and scared. Truthfully
21 and matter of fact 'my do [sic] is a service animal.' Employee X
22 was cool under the unprovoked verbal explosion and misguided
23 tonal attack. It's unfortunate fellow shoppers, even those versed in
24 the ADA rules can't practice simple kindness and consideration." –
25 Customer, November 14, 2013*

26 *In the mid-afternoon of Thursday the 14th, I was helping a customer
27 at the info desk when a woman [Mrs. Taft] loudly interrupted
28 verbally, and by physically inserting herself between me and the
29 customer, 'you need to call your manger [sic] right now and ask that
30 man if that's a service dog.' Her arm was outstretched pointing at a
31 regular customer and his small service dog, who was less than two
32 arm lengths away. I said, 'Ma'am I'll be right with you', and
33 attempted to finish my sentence to the customer I was helping,
34 when she interjected again, louder and still pointing at the other
35 customer, 'This very serious [sic], you need to call you manger [sic]*

1 *right now and ask that man if that's a service dog.' As this point the*
2 *customer with the service animal responded to her 'This is my*
3 *service animal.'"* – Staff member, November 16, 2013

4 It is apparent from both statements that Ms. Taft was neither confronting nor arguing
5 with the other customer; she was attempting to get the staff member to ask the appropriate
6 ADA allowed questions about the tiny dog the man was carrying.

7 Unfortunately, the Board did not choose to supply "more details about how her actions
8 created an unsafe and undignified work and retail environment" until **after** the Board had voted
9 to terminate her membership. Bylaw 2.9, in the context of involuntary membership termination,
10 specifies that "membership may be terminated involuntarily by the Board for cause **after the**
11 **member is provided written notice of the reasons for the proposed termination and has**
12 **an opportunity to respond in person or in writing.**

13 The Co-Op, ignoring the request for notice from Ms. Taft's attorney about the alleged
14 offenses leading to her termination, completely failed to give her adequate notice and thus
15 eviscerated her opportunity to respond to such allegations and defend herself. The Board
16 violated its own Bylaws and disobeyed its implied contract and obligation to ensure that
17 members are treated fairly, and that the Board will operate in good faith. See *Hendryx*, 42
18 Wn.App 336.

19 This Court should grant Ms. Taft's cross-motion for summary judgment. The evidence
20 before it shows that the Co-Op failed to give Ms. Taft reasonable notice of the charges against
21 her and thus prevented her from defending against the charges that she "repeatedly" violated
22 Co-Op bylaws or policies.

23 **COURTS STRICTLY CONSTRUE BYLAWS TERMINATING MEMBERSHIPS IN**
24 **CORPORATIONS WHEN SUCH MEMBERSHIPS CONFER A PROPERTY INTEREST TO**
25 **ENSURE THAT BYLAWS AUTHORIZE TERMINATION DECISION**

 A well-respected commentator on corporations explains that, in the context of
membership termination, bylaws are strictly construed:

1 Bylaws providing for expulsion from membership are penal in
2 character and will be strictly construed. Nothing can be taken by
3 intendment or implication to effect an expulsion under a bylaw but
4 the cause of expulsion must fall strictly within the express terms of
5 the bylaws.

6 W. Fletcher, Cyclopedia of the Law of Corporations (revised ed. 2009) §5698

7 Further, "any uncertainty in the meaning of bylaws of an incorporated, beneficial
8 association with reference to the suspension of members will be resolved in favor of **the**
9 **members.**" Connelly v. Masonic Met. Ben Assn., 68 Conn. 552, cited with approval by Grand
10 Aerie, Fraternal Order of Eagles v. Bank of Washington, 13 Wn.2d 131, 124 P.2d 203 (1942);
11 Fletcher §5698.

12 There must be strict adherence to bylaws in context of expelling a corporation member;
13 and members may only be expelled for causes strictly specified in the bylaws. If there is not
14 strict adherence to causes specified for membership termination in the bylaws or articles of
15 incorporation, membership will be reinstated by the courts. Fletcher, §5698; See Otto v.
16 Journeyman Tailors' Protective and Benevolent Union, 75 Cal. 308, 17 P. 217 (1888). (Otto,
17 cited with approval by the Washington Supreme Court in State v. Corgiat, 50 Wash. 991) (Otto
18 reinstated a member who had only committed an offense punishable by a fine rather than
19 suspension. The court held that the Board had trumped-up a conspiracy charge to justify
20 suspension and evade fact that member had initially been terminated for a cause only
21 penalized by a fine.)

22 Courts review expulsion of a member to determine "whether the cause of expulsion was
23 sufficient in law, whether the corporation proceeded in accord with the law, upon reasonable
24 notice to the member, and whether the hearing and expulsion were in good faith and in
25 compliance with its charter and bylaws." Fletcher, Corporations §5704.

As a pretext for terminating Ms. Taft's membership, the Board determined that Ms. Taft
had violated Co-Op policies governing the General Manager. But, the Board made that claim

1 for the first time in its May 8, 2014 letter, apparently searching for justification to revoke Ms.
2 Taft's membership. The Co-Op claimed that Ms. Taft had violated policies B5 and B6,
3 addressing exclusively the General Manager's execution of his duties.

4 Policy B5 states:

5 *Policy Type: Executive Limitations*

6 *Policy Title: B5 – Treatment of Customers*

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

8 *The GM shall not:*

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

13 Policy B6 states, in pertinent part:

14 *Policy Type: Executive Limitations*

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

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

18 To repeat, the policies give not the slightest hint that they pertain to Co-Op members and
19 constitute a code of conduct for them; the terms of the policies solely address the general
20 manager and his duties. Strictly construing those policies of the Co-Op against the Co-Op,
21 such policies do not apply to members and should not have been used as the basis for
22 terminating Ms. Taft's membership. The Executive Policies governing the General Manager
23 neither govern the conduct of Co-Op members nor support the Board's decision to expel Ms.
24 Taft. And, the Executive Governance Policies addressing the General Manager's execution of
25 his duties were not among the policies Ellen Taft promised to uphold when she joined the Co-
Op. Her membership application stated:

1 *I hereby apply for membership in Central Co-op's Madison Market*
2 *under the conditions and policies stated in the introductory*
3 *brochure and the Articles of Incorporation and Bylaws of Central*
 Co-op.

4 Ms. Taft's Introductory Brochure addressed policies about shopping in a member-
5 owned cooperative and participating in governing the cooperative. It did not address the
6 General Manager's duties. See Taft Declaration.

7 **THE ARTICLES OF INCORPORATION AND BYLAWS DO NOT PROHIBIT MS. TAFT'S**
 CONDUCT; THEY AUTHORIZE IT

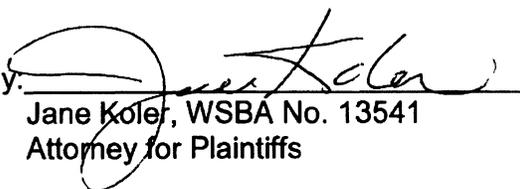
8 There is no provision in either the Co-Op Articles of Incorporation or Bylaws that prohibit
9 Ms. Taft's conduct; the Bylaws actually encourage and authorize her conduct. The Bylaws
10 invite members to participate in Co-Op operations and governance. See Bylaws 2.8 and 3.1.

11 Ms. Taft was extremely concerned about the Co-Op allowing apparent pet dogs to come
12 into the Co-Op and violate health regulations that prohibit dogs in places where food is
13 prepared; the Co-Op has a café within the store. She shopped in the Co-Op frequently and
14 never once observed Co-Op staff approach individuals who entered the store with small pets
15 not wearing ADA vests in their arms or baby carriers to ask them the ADA permitted questions.
16 Such dogs appeared not to be service dogs. See Taft Declaration. Although the ADA and
17 Health regulations prohibit pets in food establishments, such regulations do permit service
18 animals. The Co-Op is claiming that Ms. Taft, by addressing staff members about this topic
19 on two occasions engaged in conduct that justified terminating her membership. But, Bylaws
20 2.8 and 3.1, and Policy B5, contemplate that members will actively engage in the running of
21 the Co-Op and make suggestions to the Co-Op. That very conduct, encouraged by these
22 documents, is why the Co-Op terminated Ms. Taft's membership. Because the Bylaws and
23 Policies authorized Ms. Taft's conversation with staff about issues concerning Co-Op
24 operations, Ms. Taft's membership should be reinstated. She has not engaged in any conduct
25 justifying her termination. And she does not recall an incident on November 14, 2013.

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DATED this 3rd day of August, 2015.

LAND USE & PROPERTY LAW, PLLC

By: 
Jane Koler, WSBA No. 13541
Attorney for Plaintiffs

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**KING COUNTY SUPERIOR COURT
FOR THE STATE OF WASHINGTON**

ELLEN TAFT, a married woman, and
ARTHUR CHAMPERNOWNE, a married
man, and their marital community,

Plaintiffs,

v.

CENTRAL CO-OP, a Washington nonprofit
corporation, **DAN ARNETT**, a married man,
JANE DOE ARNETT, a married woman,
and their marital community,

Defendant.

No. 14-2-29240-6 SEA

DECLARATION OF SERVICE

I, Jennifer Lord, hereby state as follows:

I am over the age of 18 years, competent to testify, and certify to the following
based on my own knowledge and belief.

On the date below, I sent Plaintiffs' ***Plaintiffs' Response to Motion for
Summary Judgment and Cross-Motion for Summary Judgment*** and this

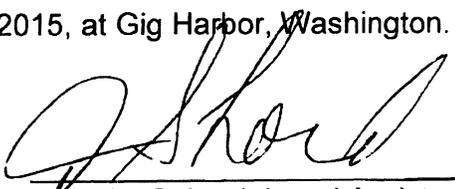
Declaration of Service to the following in the form(s) noted:

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

Via U.S. Mail – Postage Prepaid
 Via Legal Messenger
 Via E-mail: wwalsh@cozen.com
And to: R Bowman@cozen.com

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

DATED this 3rd day of August, 2015, at Gig Harbor, Washington.


Jennifer S. Lord, Legal Assistant

THE HONORABLE SAMUEL CHUNG
Date of Hearing: July 24, 2015 at 10:00 a.m.

Aug. 14

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

ELLEN TAFT, a married woman, and ARTHUR
CHAMPERNOWNE, a married man, and their
marital community,

Plaintiff(s),

v.

CENTRAL CO-OP, a Washington nonprofit
corporation, DAN ARNETT, a married man,
JANE DOE ARNETT, a married woman, and
their marital community,

Defendants.

Cause No.: 14-2-29240-6SEA

~~PROPOSED~~ ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

THIS MATTER having come on duly and regularly before the undersigned Judge of
the above entitled Court upon the Defendants Central Co-Op and Dan Arnett's Motion for
Summary Judgment, and the Court having considered the following:

1. Defendants Central Co-Op and Dan Arnett's Motion for Summary Judgment;
2. Declarations of Douglas Peterson and Dean DeCrease in support thereof, and all exhibits attached thereto; and
3. Plaintiff's response to Motion for Summary Judgment with supporting declarations and exhibits (if any);
4. Defendants Central Co-Op and Dan Arnett's reply with supporting declarations and exhibits;

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT - I

LAW OFFICES OF
COZEN O'CONNOR
A PROFESSIONAL CORPORATION
999 THIRD AVENUE
SUITE 1900
WELLS FARGO CENTER
SEATTLE, WASHINGTON 98104
(206) 340-1000

LEGAL\23331609\1

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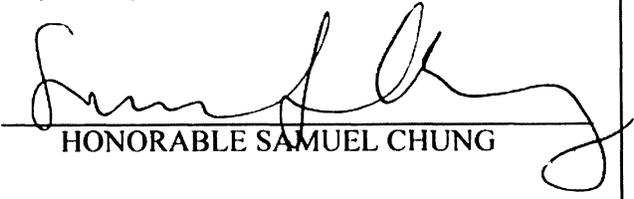
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and the Court otherwise deeming itself fully advised, it is

ORDERED, ADJUDGED, AND DECREED that Defendants Central Co-Op and Dan Arnett's Motion for Summary Judgment is hereby GRANTED and claims against them are dismissed with prejudice.

DONE IN OPEN COURT this 17th day of August, 2015.


HONORABLE SAMUEL CHUNG

Presented by:

COZEN O'CONNOR

By: /s/ Robert L. Bowman

William H. Walsh, WSBA #21911
Robert L. Bowman, WSBA #40079
Attorneys for Defendants Central Co-Op and Dan Arnett

The Court finds that Plaintiff received sufficient and reasonable notice per section 2.9 of the bylaws. The Co-ops April 28, 2014 letter provided notice re "verbal abuse of shoppers and workers" and gave Plaintiff an opportunity to respond.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies, under penalty of perjury under the laws of the State of Washington, that I electronically filed the foregoing document via the King County Clerk's eFiling system, and also caused the following attorneys to be served in the manner indicated below:

Jane Koler, WSBA #13541
Land Use & Property Law, PLLC
6659 Kimball Drive
Suite B-201
Gig Harbor, WA 98335
p: (253) 853-1806
jane@jkolerlaw.com

- Via Messenger
- Via Fax
- Via U.S. Mail
- Via ECF Notification
- Via E-mail (**PER AGREEMENT**)
- Via Overnight Delivery

DATED this 26th day of June, 2015.

/s/ Diane M. Finafrock
Diane M. Finafrock

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FILED
KING COUNTY WASHINGTON

SEP 21 2015

SUPERIOR COURT CLERK
BY Susan Bone
DEPUTY

**SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY**

ELLEN TAFT and ARTHUR
CHAMPERNOWNE,

Plaintiffs,

v.

CENTRAL CO-OP, GEORGE ARNETT
and JANE DOE ARNETT,

Defendants.

NO. 14-2-29240-6 SEA

**ORDER DENYING RESPONDENT'S
MOTION FOR RECONSIDERATION**

Clerk's Action Required

This matter is before the Court on Plaintiffs' Motion for Reconsideration. Specifically, Plaintiffs move this court to reconsider its previous order granting summary judgment dismissal of their lawsuit against Central Co-op and George and Jane Doe Arnett. Plaintiffs assert that, under CR 59(a)(7), the Court should reconsider its previous order because "disputed material facts" preclude dismissal under CR 56. For the following reasons, this Court DENIES Plaintiffs' motion for reconsideration.

First, Plaintiffs' argument that material factual issues preclude summary judgment is made for the first time in their motion for reconsideration. In their earlier briefing to this Court in response to Defendants' Motion for Summary Judgment,

Plaintiffs asserted that the Defendant Co-Op had failed to provide proper notice. Plaintiffs also expressly argued they were entitled to judgment as a matter of law on the same issues. See Taft's Response to Motion for Summary Judgment at page 17, lines 18-21. CR 59 does not permit a party to raise new arguments for the first time in a motion for reconsideration. Wilcox v. Lexington Eye Inst., 130 Wn. App. 234, 241, 122 P.3d 729 (2005). "CR 59 does not permit a plaintiff to propose new theories of the case that could have been raised before entry of an adverse decision." Plaintiffs did not identify any genuine material factual issue requiring resolution at trial before this Court granted summary judgment in favor of the Defendants. Accordingly, this Court does not consider Plaintiffs' new factual arguments.

Second, Plaintiffs assert that Taft's former membership in the co-op amounted to a "property interest," citing State v. Corgiat, 56 Wash. 95, 96 P. 689 (1908). This Court concludes it did not. Taft's arguments that the co-op had heightened duties of fairness and good faith before it could revoke the membership, and that the Court reviews these acts under a heightened standard, are not persuasive. Rather, Washington Courts afford deference to a Board's interpretation of its own bylaws. See Couie v. Local Union No. 1849 United Bhd. Of Carpenters and Joiners of Am., 51 Wn.2d 108, 115, 316 P.2d 473 (1957).

Plaintiffs' motion for reconsideration is DENIED.

Dated this 18th day of September, 2015


Judge Samuel S. Chung

Court of Appeals Cause No. 73917-4-I

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

ELLEN TAFT AND ARTHUR CHAMPERNOWNE,

Appellants,

v.

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

Respondents.

DECLARATION OF SERVICE OF BRIEF OF APPELLANTS

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DECLARATION OF SERVICE

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

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

On the 29th day of January, 2016, I placed in the USPS Priority Mail at the address listed below, a true and correct copy of "*Brief of Appellants*" to:

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

and to:

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

DATED this 29th day of January, 2016, at Gig Harbor, Washington.

By: 

Jennifer S. Lord

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DIVISION 1

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