

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Feb 13, 2013, 3:47 pm  
BY RONALD R. CARPENTER  
CLERK

No. 88062-0

RECEIVED BY E-MAIL

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

James Kumar, Ranveer Singh, Asegedew Gefe, and Abbas Kosymov,

Petitioners,

v.

Gate Gourmet, Inc.,

Respondent.

---

**RESPONDENT'S BRIEF**

---

CROWELL & MORING LLP  
S. Shane Sagheb (*pro hac vice*)  
515 S. Flower Street, 40<sup>th</sup> Floor  
Los Angeles, CA 90071-2258  
Telephone: (213) 622-4750  
Facsimile: (213) 622-2690

LITTLER MENDELSON, P.C.  
Pamela Salgado (Bar no. 22741)  
Rachelle L. Wills (Bar no. 34237)  
One Union Square  
600 University Street, Suite 3200  
Seattle, WA 98101-3122  
Telephone: (206) 623-3300  
Facsimile: (206) 447-6965

 ORIGINAL

**TABLE OF CONTENTS**

	<b>PAGE</b>
I. INTRODUCTION .....	1
II. ANSWER TO PETITIONERS' ASSIGNMENT OF ERROR .....	5
III. STATEMENT OF THE CASE.....	6
IV. ARGUMENT .....	9
A. The Employees' Claim for Failure to Accommodate under WLAD is Barred as a Matter of Law.....	9
1. WLAD Does Not Expressly Require Employers to Accommodate Their Employees' Religious Beliefs.....	10
2. WLAD Also Does Not Implicitly Require Employers to Accommodate Their Employees' Religious Beliefs.....	11
3. The Employees Offer No Legitimate Basis to Overturn Short. ....	14
i. Title VII Does Not Imply a Duty to Accommodate. ....	15
ii. Discrimination Theories Do Not Imply a Duty to Accommodate.....	18
iii. The Washington Constitution Does Not Imply a Duty to Accommodate.....	20
iv. Public Policy Does Not Imply a Duty to Accommodate. ....	21
B. The Employees' Claim for Disparate Impact Discrimination under WLAD is Barred as a Matter of Law .....	22
1. The Employees Suffered No Adverse Employment Action. ....	23
2. The Employees Did Not Make a Prima Facie Showing of Disparate Impact Discrimination.....	25
i.	

C.	The Employees' Claim for Civil Battery was Barred as a Matter of Law. ....	29
D.	The Employees' Negligent Infliction of Emotional Distress Claim was Barred as a Matter of Law. ....	31
V.	CONCLUSION.....	36

## TABLE OF AUTHORITIES

	Page(s)
<b>CASES</b>	
<i>Aliotta v. Bair</i> , 614 F.3d 556 (D.C. Cir. 2010).....	23, 24
<i>Bishop v. State</i> , 77 Wn. App. 228, 889 P.2d 959 (1995).....	34, 35
<i>Campbell v. Washington</i> , 129 Wn. App. 10, 118 P.3d 888 (2005).....	24
<i>Coleman v. The Quaker Oats Co.</i> 232 F.3d 1271 (9 <sup>th</sup> Cir. 2000).....	23
<i>Dewey v. Reynolds Metal Co.</i> , 429 F.2d 324 (6 <sup>th</sup> Cir. 1970), affirmed by an equally divided Court, 402 U.S. 689 (1971).....	15, 16
<i>E-Z Loader Boat Trailers, Inc. v. Travelers Indem. Co.</i> , 106 Wn.2d 901, 726 P.2d 439 (1986).....	18
<i>Garratt v. Dailey</i> , 46 Wn.2d 197, 279 P.2d 1091 (1955).....	6, 29, 31
<i>Grant v. Spellman</i> , 99 Wn.2d 815, 664 P.2d 1227 (1983).....	21
<i>Grimwood v. Univ. of Puget Sound, Inc.</i> , 110 Wn.2d 355, 753 P.2d 517 (1988).....	12
<i>Hiatt v. Walker Chevrolet Co.</i> , 120 Wn.2d 57, 837 P.2d 618 (1992).....	passim
<i>Hunsley v. Giard</i> , 87 Wn.2d 424, 553 P.2d 1096 (1976).....	32, 34
<i>Johnson v. Chevron U.S.A., Inc.</i> , 159 Wn. App. 18, 244 P.3d 438 (2010).....	20

<i>Kirby v. City of Tacoma</i> , 124 Wn. App. 454, 98 P.3d 827 (2004) .....	24
<i>North Coast Enterprises, Inc., v. Factoria Partnership</i> , 94 Wn. App. 855, 974 P.2d 1257, review denied, 138 Wn.2d 1022 (1999) .....	27
<i>Oliver v. Pac. Northwest Bell Telephone Co., Inc.</i> , 106 Wn.2d 675, 724 P.2d 1003 (1986) .....	25, 26, 27
<i>Reyes v. Pharma Chemie, Inc.</i> , 8:11CV228, 2012 U.S. Dist LEXIS 128990, 116 Fair Empl. Prac. Cas. (BNA) 69 (D. Neb. September 11, 2012) .....	24
<i>Riehl v. Foodmaker, Inc.</i> , 152 Wn.2d 138, 94 P.3d 930 (2004) .....	20
<i>Riley v. Bendix Corp.</i> , 464 F.2d 1113 (5 <sup>th</sup> Cir. 1972) .....	15
<i>Riste v. Eastern Wash. Bible Camp, Inc.</i> , 25 Wn. App. 299, 605 P.2d 1294 (1980) .....	11
<i>Short v. Battle Ground Sch. Dist.</i> , 169 Wn. App. 188, 279 P.3d 902 (2012), recon. den., 2012 Wash. App. LEXIS 2082 (Sept. 6, 2012) .....	passim
<i>Shutt v. Sandoz Crop Protection Corp.</i> , 944 F.2d 1431 (9th Cir. 1991) .....	26, 28
<i>Smith v. Jackson</i> , 544 U.S. 228 (2005) .....	28
<i>Snyder v. Med. Serv. Corp. of Eastern Washington</i> , 145 Wn.2d 233, 35 P.2d 1158 (2001) .....	passim
<i>State v. Humphries</i> , 21 Wn. App. 405, 586 P.2d 130 (1978) .....	30
<i>State v. Simmons</i> , 59 Wn.2d 381, 368 P.2d 378 (1962) .....	30

*Trans World Airlines, Inc. v. Hardison*,  
432 U.S. 63, 97 S. Ct. 2264, 53 L. Ed. 2d 113 (1977).....15

*Watson v. Fort Worth Bank & Trust*,  
487 U.S. 977, 108 S. Ct. 2777, 101 L. Ed. 2d 827 (1988).....27, 28

**STATUTES**

42 U.S.C. § 2000e (“Title VII”).....2

RCW 49.60.010, *et seq.* .....2, 8

RCW 49.60.040(7)(d) .....9, 17, 19

RCW 49.60.180 .....4

RCW 41.56.122 .....21

**OTHER AUTHORITIES**

Const. art. I, § 11.....20

WAC 162-22-065.....9, 17

## I. INTRODUCTION

The appeal of James Kumar, Ranveer Singh, Asegedew Gefe and Abbas Kosymov (the “Employees”), employees of Gate Gourmet, Inc. (“Gate Gourmet”), lacks merit. The Employees seek direct review of the trial court’s order granting Gate Gourmet’s motion to dismiss their First Amended Class Action Complaint with prejudice. Gate Gourmet submits that the trial court’s order is sound and that it must not be disturbed. Each of the Employees’ claims is barred as a matter of law.

In their First Amended Class Action Complaint, the Employees asserted, on behalf of themselves and others similarly situated, four causes of action, *i.e.*, the first for Failure to Accommodate as Violation of Washington’s Law Against Discrimination, the second for Disparate Impact as Violation of Washington’s Law Against Discrimination, the third for Civil Battery, and the fourth for Negligent Infliction of Emotional Distress. Each cause of action was premised on the allegation that Gate Gourmet failed to accommodate the Employees’ religious beliefs. In summary, the Employees alleged that the food prepared by Gate Gourmet and offered to its employees during meal breaks did not satisfy the tenets of some of the employees’ religions, that Gate Gourmet altered its menu in

response to a complaint made by one of the Employees, and that it later reverted to its former preparation and menu.

The Employees brought their claims only under Washington state law, electing to reserve any claim they may have under federal law. This election doomed the Employees' case. Although federal law, *i.e.*, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e ("Title VII"), expressly requires employers to reasonably accommodate covered employees' religious beliefs, the laws of the State of Washington, *i.e.*, Washington's Law Against Discrimination ("WLAD"), RCW 49.60.010, *et seq.*, do not.

The operative provision of WLAD, on which the Employees relied in their amended complaint, provides in its entirety as follows:

It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification: PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved: PROVIDED, That this section shall not be construed to require an employer to establish employment goals or quotas based on sexual

orientation.

(2) To discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, or any intent to make any such limitation, specification, or discrimination, unless based upon a

bona fide occupational qualification: PROVIDED,  
Nothing contained herein shall prohibit advertising in  
a foreign language.

RCW 49.60.180.

Addressing RCW 49.60.180, this Court in *Hiatt v. Walker Chevrolet Co.*, 120 Wn.2d 57, 837 P.2d 618 (1992), recognized that no express obligation to accommodate employees' religious beliefs exists under WLAD. The Court in *Hiatt* declined to rule whether such an obligation nevertheless may be implied. *Id.*, 120 Wn.2d at 64. The Court of Appeals determined recently that no such implied duty exists. *Short v. Battle Ground Sch. Dist.*, 169 Wn. App. 188, 279 P.3d 902 (2012), recon. den., 2012 Wash. App. LEXIS 2082 (Sept. 6, 2012).

The Employees claim in their appeal that *Short* was decided incorrectly and that reasonable accommodation based on religion should be implied. None of the authorities on which the Employees rely supports this conclusion. In fact, the federal authorities on which the Employees rely determined whether a reasonable accommodation obligation existed under Title VII based on **express** statutory or regulatory language, not based on any inference. Given the absence of express statutory or regulatory language imposing a duty under WLAD to accommodate employees' religious beliefs, the Employees' appeal must be rejected.

## II. ANSWER TO PETITIONERS' ASSIGNMENT OF ERROR

The Employees contend that the trial court erred in granting Gate Gourmet's motion to dismiss with prejudice. Gate Gourmet submits that the trial court committed no error. Gate Gourmet further answers the Employees' statement of issues to be resolved on this appeal as follows:

Issue No. 1: "Whether under state law, such as WLAD Chapter 49.60 RCW, employers may refuse to accommodate employees' creeds and sincerely held religious beliefs?"

Answer to Issue No. 1: Yes. Based on the precedent of this Court in *Hiatt*, as well as the Court of Appeals' recent decision in *Short*, no such duty to accommodate exists under WLAD, the only statutory scheme at issue.

Issue No. 2: "Whether there are any facts, real or hypothetical, that would lead to a finding that Gate Gourmet's actions disparately impacted the class in violation of WLAD?"

Answer to Issue No. 2: No. The Employees' claim for alleged disparate impact discrimination is barred as a matter of law, in that (a) the Employees suffered no adverse employment action, and (b) the Gate Gourmet policy about which they complain was discretionary and subjective. Furthermore, the Employees may not now present this issue,

as they failed to identify it in their Statement of Grounds for Direct Review.

Issue No. 3: “Whether there are any facts, real or hypothetical, that may sustain Kumar’s claim of battery?”

Answer to Issue No. 3: No. Gate Gourmet’s offering of food choices to its employees does not constitute a battery under the standard articulated by this Court in *Garratt v. Dailey*, 46 Wn.2d 197, 200, 279 P.2d 1091 (1955).

Issue No. 4: “Whether there are any facts, real or hypothetical, that may sustain Kumar’s claims for negligent infliction of emotional distress?”

Answer to Issue No. 4: No. Emotional distress that purportedly arises from workplace conduct is not actionable under a negligent infliction theory, according to this Court’s opinion in *Snyder v. Med. Serv. Corp. of Eastern Washington*, 145 Wn.2d 233, 245, 35 P.2d 1158 (2001).

### **III. STATEMENT OF THE CASE**

The Employees, on behalf of themselves and a putative class of similarly situated employees, asserted in their First Amended Class Action Complaint (“FAC”) various state law statutory and common law claims, all premised on the theory that Gate Gourmet was legally obligated to

accommodate their religious beliefs. The Employees claimed that meals prepared by Gate Gourmet and offered to them did not satisfy the tenets of their religious beliefs. Specifically, the Employees offered the following allegations, the truth of which has been presumed for purposes of Gate Gourmet's motion to dismiss before the trial court, as well as the instant appeal.

The Employees are current employees of Gate Gourmet. Clerk's Papers ("CP") at 15 (FAC, ¶¶ 2.1, 2.3, 2.5, 2.7). Mr. Kumar is Hindu, Mr. Singh is vegetarian,<sup>1</sup> Mr. Gefe is Orthodox Christian, and Mr. Kosymov is Muslim. CP at 15 (FAC, ¶¶ 2.2, 2.4, 2.6, 2.8). They work at Gate Gourmet's unit located at SeaTac airport. CP at 16 (FAC, ¶ 3.3).

Gate Gourmet supplies meals to its employees. CP at 16-17 (FAC, ¶¶ 3.5, 3.6). The Employees claimed that these meals do not always satisfy the restrictions imposed by their religions and beliefs. They alleged, for instance, that some of the food supplied is made of beef, which cannot be consumed by Hindus, and that some is made of pork, which cannot be consumed under Judaic and Islamic Law. CP at 17, 18 (FAC, ¶¶ 3.6.2, 3.6.3, 3.11). They further alleged that other food is not

---

<sup>1</sup> Gate Gourmet contends that vegetarianism is not a religion. However, this contention was not the basis for its motion to dismiss, and the issue need not be resolved here.

prepared properly, *e.g.* that vegetarian food options are prepared with animal by-products such as chicken broth or dairy products, and that “kosher” or “halal” offerings are prepared with utensils used for all meat dishes, including pork dishes. CP at 18, 19 (FAC, ¶¶ 3.12, 3.14).

Also according to the FAC, Mr. Kumar “confronted the Gate Gourmet management over the potentially offensive contents of the beef-and-pork meatballs,” and “also tried to explain the importance of food preparation, handling, and contents...” CP at 19-20 (FAC, ¶¶ 3.16, 3.17). The FAC added, “Mr. Kumar and others submitted written comments requesting accommodation and indicating that the company policies offended their religious and moral sensibilities, and suggesting inexpensive solutions to the problem.” CP at 20 (FAC, ¶ 3.17). The Employees alleged further that in response to Mr. Kumar’s confrontation, Gate Gourmet did make certain adjustments to its menu (*i.e.*, it “switched over to a turkey-meat meatball”), but then reverted to preparation of meatballs made with beef and pork. CP at 19 (FAC, ¶ 3.16).

Gate Gourmet filed a motion to dismiss the FAC pursuant to CR 12(b)(6), on the ground that no obligation to accommodate the Employees’ religious beliefs existed under WLAD, RCW 49.60.010, *et seq.* CP at 58-75. In support of its motion, Gate Gourmet relied primarily

on the decision of this Court in *Hiatt, supra*, and the recent decision of the Court of Appeals in *Short, supra*. The Superior Court (Hon. Mary Yu) agreed with Gate Gourmet that no obligation to accommodate exists, and it dismissed all of the Employees' claims with prejudice. CP at 118-120. The Employees seek review of that decision.

#### IV. ARGUMENT

A. The Employees' Claim for Failure to Accommodate under WLAD is Barred as a Matter of Law.

Neither the state legislature, nor the Washington State Human Rights Commission ("HRC"), has obligated employers to reasonably accommodate their **employees' religious beliefs**. In contrast, both the legislature and the HRC have expressly required employers to reasonably accommodate **disabled employees**. See RCW 49.60.040(7)(d); WAC 162-22-065. The legislature and the HRC thus are well aware of their authority to impose a reasonable accommodation duty upon employers. The fact that they have not seen fit to amend WLAD or to promulgate a new regulation requiring employers to reasonably accommodate their employees' religious beliefs reflects their intention not to obligate employers in this manner. The decisions of this Court in *Hiatt, supra*, and, more recently, the Court of Appeals in *Short, supra*, are entirely

consistent with this conclusion. Consequently, no set of facts, whether real or hypothetical, may be alleged by the Employees to state a cause of action for failure to accommodate their religious beliefs.

1. *WLAD Does Not Expressly Require Employers to Accommodate Their Employees' Religious Beliefs.*

Rather than focus on WLAD, the statutory scheme that serves as the basis of the FAC, the Employees rely heavily in their Appellant's Brief upon federal law, particularly cases decided under Title VII. The Employees appear to justify this reliance by claiming that this Court in *Hiatt* "declined to address whether the federal and state standards are identical," with regard to the issue of whether employers have a duty to accommodate their employees' religious beliefs. Appellant's Brief at 15, n. 6. However, the Employees' claim is erroneous. In *Hiatt*, the Court, in fact, addressed at length the issue of whether state and federal laws are identical with regard to any duty employers may have to accommodate their employees' religious beliefs. In particular, the Court compared the express language of WLAD to that of Title VII and concluded that federal and state law are different. Specifically, the Court held:

[F]ederal and state law against religious discrimination in employment are significantly different. Federal law expressly imposes an affirmative duty upon an employer to accommodate

the religious beliefs and practices of its employees. Washington law contains no such express requirement.

*Hiatt, supra*, 120 Wn.2d at 61-62 (Footnote omitted.)

Based upon these express differences between the federal and state discrimination laws, the Court “disapprove[d] that portion of the Court of Appeals decision in this case which assumes that our state statute against discrimination based on creed is identical to the federal law.” *Id.* at 64.<sup>2</sup> In light of this binding precedent, WLAD indisputably does not expressly require employers in Washington to accommodate their employees’ religious beliefs.

2. *WLAD Also Does Not Implicitly Require Employers to Accommodate Their Employees’ Religious Beliefs.*

Although it concluded that WLAD does not contain an express accommodation requirement, this Court in *Hiatt* declined to opine whether a duty to accommodate may be implied in WLAD. *Id.* at 64. This question was answered recently by the Court of Appeals in *Short*.

---

<sup>2</sup> “Creed” is defined as “a system of religious beliefs.” *Short, supra*, 169 Wn. App. 188 at 201, n. 18, quoting *Riste v. Eastern Wash. Bible Camp, Inc.*, 25 Wn. App. 299, 302, 605 P.2d 1294 (1980). Any suggestion by the Employees that “creed” and religion are different thus is meritless. See Appellant’s Brief at 15.

The plaintiff in *Short* was a “devout Christian woman with deeply held religious beliefs.” *Short, supra*, 169 Wn. App. at 191. She claimed that a supervisor repeatedly directed her to lie to co-workers and that lying violated her religious beliefs. *Id.* at 194. Based on this and other conduct by the employer, the plaintiff took a leave of absence and thereafter resigned. *Id.* at 195. She filed a civil action alleging that her employer failed to accommodate her religious beliefs, *inter alia*.

The employer in *Short* filed a motion for summary judgment, arguing that WLAD did not recognize a claim for failure to accommodate religious beliefs. The court agreed and affirmed the trial court’s order granting summary judgment in the employer’s favor. In reaching this conclusion, the court engaged in an exhaustive analysis of the applicable law regarding accommodation of religious beliefs, considering cases interpreting not only WLAD, but also federal law, *i.e.*, Title VII,<sup>3</sup> and the laws of other states. In particular, the court relied on the decision in *Hiatt*.

In *Hiatt* our Supreme Court had the opportunity to adopt the federal standard and to recognize a religious failure-to-accommodate claim under WLAD; but it chose not to do so. *Hiatt*, 120 Wn.2d at 64. The Court noted that the religious

---

<sup>3</sup> While state courts may consider federal authorities, as the Employees urge this Court to do (*see* Appellant’s Brief at 17-18), such authorities are merely “a source of guidance” and are not binding. *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 361-62, 753 P.2d 517 (1988).

discrimination provisions in the federal Title VII and the state WLAD were “significantly different.” *Hiatt*, 120 Wn.2d at 61. In particular, Title VII expressly imposed an affirmative duty on employers to accommodate their employees’ religious beliefs and practices, but WLAD did not contain such an explicit requirement. *Hiatt*, 120 Wn.2d at 61-62. [Footnote omitted.]

*Short, supra*, 169 Wn. App. at 200-01.

The court in *Short* also recognized that “some states have interpreted their state antidiscrimination statutes to include an implied religious ‘failure-to-accommodate’ claim, even where their statutes do not expressly impose a religious duty-to-accommodate requirement.” 169 Wn. App. at 202 (footnote omitted). However, the court declined to follow such interpretations “without any indication from the legislature or the HRC that such a claim was originally contemplated.” *Id.*

The same concerns that our Supreme Court recognized in *Hiatt* still exist today: Not only has our legislature not seen fit to amend WLAD to include a religious duty-to-accommodate requirement some 20 years after *Hiatt*’s publication, but also the HRC has not filled in the gaps with interpretive guidelines or regulations that might conform our state statute to the increased protections recognized under federal law.

*Id.*

In providing the rationale supporting its conclusion, the court in *Short* elaborated as follows:

[W]here government branches tasked with establishing public policies relating to WLAD have remained silent, despite sweeping changes at the federal level, we cannot judicially promulgate legislation or administrative regulations to fill this void. Short fails to prove that there is currently a cognizable claim for religious discrimination based on a failure-to-accommodate theory under WLAD; and we decline to adopt one judicially without further guidance or action from our legislature or the HRC. Therefore, we hold that the superior court did not err in dismissing counts I and II of Short's amended complaint on summary judgment.

*Id.* at 203.

This Court in *Hiatt* and, more recently, the Court of Appeals in *Short* could not have been more clear – no cause of action for failure-to-accommodate religious beliefs exists under Washington law. Accordingly, the Employees' failure to accommodate claim is barred as a matter of law, and the trial court properly dismissed it.

3. *The Employees Offer No Legitimate Basis to Overturn Short.*

The Employees claim that the Court of Appeals in *Short* decided the issue incorrectly and that a duty to accommodate nevertheless should be implied in WLAD. The authorities on which the Employees rely do not support their argument, however.

i. Title VII Does Not Imply a Duty to Accommodate.

The Employees rely on federal decisions interpreting Title VII. However, as noted above, this Court in *Hiatt* recognized that federal authorities interpreting Title VII do not control, given the significant difference between WLAD and Title VII.

Moreover, the authorities on which the Employees rely concluded that a duty exists under Title VII to accommodate employees' religious beliefs based not on any implication from an outside source, but based either on the express language of Title VII, itself, or the express language of the EEOC's written guidelines regarding Title VII. *See Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 66, 97 S. Ct. 2264, 53 L. Ed. 2d 113 (1977) (the EEOC's 1967 guidelines, as well as the text of the 1972 amendments to Title VII, both of which expressly referenced the employer's duty to accommodate employees' religious beliefs, served as the basis for the Court's conclusion that such an obligation exists under federal law); *Riley v. Bendix Corp.*, 464 F.2d 1113 (5<sup>th</sup> Cir. 1972) (same);

The decision in *Dewey v. Reynolds Metal Co.*, 429 F.2d 324 (6<sup>th</sup> Cir. 1970), affirmed by an equally divided Court, 402 U.S. 689 (1971), similarly supports the notion that a duty to accommodate should not be

implied, although it does so for a different reason. In *Dewey*, the Sixth Circuit Court of Appeals declined to impose a duty to accommodate employees' religious beliefs because in 1966, when the plaintiff in that case was discharged, the language of neither Title VII, nor the EEOC's guidelines contained any such duty. *Id.* at 336. In concluding that no duty to accommodate existed, the court relied on the express statutory and regulatory language in existence at the relevant time, rather than implying a duty from some other source. The court's decision in *Dewey* thus contradicts the Employees' claim here that "[t]he duty to accommodate was *always implicit* in the original statute." (Emphasis added.) See Appellant's Brief at 20. (Notably, the Employees cite no authority, whatsoever, in support of that claim.)

Similar to *Dewey*, neither the text of WLAD, nor the text of the regulations issued pursuant to WLAD, references any express duty to accommodate employees' religious beliefs, as this Court in *Hiatt* has already recognized. The Employees argue that although no express duty to accommodate religious beliefs exists, such a duty should exist. As the court in *Short* observed, however, the state legislature and the HRC have had ample opportunity since *Hiatt* to add language to WLAD or the

regulations to impose such an obligation, but they have chosen not to do so. Their silence is deafening.

Both the legislature and the HRC have experience drafting language imposing a reasonable accommodation obligation on employers, *i.e.*, in the context of providing accommodation rights favoring disabled employees. *See* RCW 49.60.040(7)(d); WAC 162-22-065.

Notwithstanding this experience, the legislature and the HRC have elected not to draft any language imposing an obligation to accommodate employees' religious beliefs. Plainly, neither body intended to impose such a duty upon employers. In light of these circumstances, there is no basis for the courts to imply one. *See Short, supra*, 169 Wn. App. at 203 (“where government branches tasked with establishing public policies relating to WLAD have remained silent, despite sweeping changes at the federal level, we cannot judicially promulgate legislation or administrative regulations to fill this void”).

The Employees here fail to show why *Short's* reliance on the absence of this statutory and regulatory activity is improper. In fact, they fail even to address the fact that neither the legislature, nor the HRC, has acted.

No reason exists to imply a duty to accommodate. Thus, *Short* should not be overturned, and the trial court's decision in the instant case should be affirmed.

ii. Discrimination Theories Do Not Imply a  
Duty to Accommodate.

The Employees also rely on this Court's decision in *E-Z Loader Boat Trailers, Inc. v. Travelers Indem. Co.*, 106 Wn.2d 901, 726 P.2d 439 (1986), and suggest that the theoretical existence of a disparate impact discrimination claim somehow implies the existence of a reasonable accommodation obligation. Specifically, the Employees claim that the duty to accommodate is "a necessary inference in the general prohibition against discrimination." Appellant's Brief at 21. *E-Z Loader Boat Trailers* does not, however, support any such inference. The issue in that case was whether insurance coverage existed for an employment discrimination case in which the plaintiffs alleged that they were discharged based on their sex and age. The facts of the case and the Court's decision on the insurance coverage issue have no application to the instant action.

The Employees cite no other authority supporting their claim that discrimination based on a disparate impact theory implies a legal duty to

accommodate. In fact, no such inference reasonably may be drawn because the concepts differ in a highly significant respect. As discussed in section B.1. of this Respondent's Brief, a legal claim for disparate impact discrimination, like a claim for disparate treatment discrimination, requires a showing that employees suffered an adverse employment action, such as discharge or demotion. In the absence of such a showing, no discrimination claim may be maintained. In contrast, a claim for failure to reasonably accommodate, when such a claim is recognized (in disability cases for example), requires no such showing.<sup>4</sup> Thus, discrimination and failure to accommodate, when viable, are separate and distinct legal

---

<sup>4</sup> WLAD expressly provides for a duty to accommodate disabled employees under the following circumstances, none of which mandates the presence of an adverse employment action:

Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

RCW 49.60.040(7)(d).

theories of recovery. *See Johnson v. Chevron U.S.A., Inc.*, 159 Wn. App. 18, 27-28, 244 P.3d 438 (2010) (statute prohibiting disability discrimination “gives rise to a cause of action for at least two different claims: for failure to accommodate, when the employer fails to take steps “reasonably necessary to accommodate an employee’s condition,” and for disparate treatment, when the employer discriminates against an employee because of the employee’s condition”), quoting *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 145, 94 P.3d 930 (2004) (footnotes omitted). One such legal theory is not a “necessary inference” of the other.

iii. The Washington Constitution Does Not  
Imply a Duty to Accommodate.

Nor does the Washington Constitution’s protection of religious freedom, upon which the Employees also rely, compel any finding that a duty to reasonably accommodate should be implied. As the Employees state, the Constitution guarantees religious freedom and provides that “no one shall be molested or disturbed in person or property on account of religion.” Const. art. I, § 11. The terms “molested” and “disturbed” are indicia of intentional discriminatory conduct, *i.e.*, disparate treatment discrimination. Nothing in this language refers to accommodating

religious beliefs in an employment setting, and the Employees cite no authority to the effect that any such obligation is intended by this language. Thus, the Constitution does not support the Employees' claim that this obligation should be implied.

iv. Public Policy Does Not Imply a Duty to Accommodate.

Finally, the Employees claim that public policy implies a reasonable accommodation duty. In support, they rely on Justice Williams' concurring opinion in *Grant v. Spellman*, 99 Wn.2d 815, 664 P.2d 1227 (1983). *Grant* is inapposite, however. The Court in that case addressed a statute that exempted public employees from any obligation to pay union dues based on their religious beliefs. *See* RCW 41.56.122. Neither the facts of that case, nor the law in question, is analogous to the issues presented in the instant case. Moreover, the Employees' policy argument is unsupported by any controlling state authority. The only state law precedent addressing the issue rejects the Employees' argument that the courts should look to federal law. *Hiatt* and *Short* have recognized that no such claim exists under state law and that federal law does not apply. Thus, no set of facts, whether real or hypothetical, may be alleged

to state a cause of action for failure to accommodate religious beliefs. The Employees' reasonable accommodation claim was properly dismissed.

B. The Employees' Claim for Disparate Impact

Discrimination under WLAD is Barred as a Matter of Law.

The Employees' disparate impact discrimination cause of action also is premised on Gate Gourmet's alleged failure to accommodate the religious beliefs of its employees. CP at 25 (FAC, ¶ 5.10) ("Gate Gourmet's failure to accommodate the sincerely held beliefs of the vegetarian employees causes a disparate impact on that protected class").<sup>5</sup> The Employees' disparate impact claim thus is merely derivative of the failure to accommodate claim. The Employees may not pursue a failure to accommodate claim simply by attaching a different label to the cause of action. For the same reason that Plaintiffs' failure to accommodate claim fails, so too must their disparate impact claim. Inasmuch as Gate Gourmet had no obligation under Washington law to accommodate the religious beliefs of its employees, it cannot have legal responsibility for the consequences of any such failure to accommodate.

---

<sup>5</sup> Although the FAC suggested that this cause of action also might be premised on the Employees' national origin, the Employees clarified that it was based only on their religions. CP at 83.

The Employees' disparate impact discrimination claim fails for two additional reasons: (1) the Employees have not suffered any "adverse employment action" as a consequence of Gate Gourmet's meal policy; and (2) they cannot establish a *prima facie* case of disparate impact discrimination because Gate Gourmet's food procedures were subjective and discretionary. Each of these reasons is reviewed in detail below.

1. *The Employees Suffered No Adverse Employment Action.*

In its motion to dismiss, Gate Gourmet argued, *inter alia*, that no disparate impact claim may stand because the Employees did not allege that they suffered any adverse employment action. In their Appellant's Brief, the Employees fail even to address this issue, thereby conceding the point. Gate Gourmet nevertheless reiterates its argument here.

In both disparate treatment and disparate impact discrimination cases, the employee must establish that he suffered an "adverse employment action." *Aliotta v. Bair*, 614 F.3d 556, 566 (D.C. Cir. 2010) ("Under either a disparate treatment or disparate impact theory of discrimination, plaintiffs must show they suffered an adverse employment action"); *Coleman v. The Quaker Oats Co.*, 232 F.3d 1271, 1291 (9<sup>th</sup> Cir. 2000) ("When challenging *an adverse employment action* under the

ADEA, an employee may proceed under two theories of liability: disparate treatment or disparate impact”) (emphasis added); *Reyes v. Pharma Chemie, Inc.*, 8:11CV228, 2012 U.S. Dist LEXIS 128990, 116 Fair Empl. Prac. Cas. (BNA) 69 (D. Neb. September 11, 2012), *citing Aliotta*.

“Adverse employment action” in the context of employment discrimination cases is a term of art. Mere inconvenience does not qualify. “An adverse employment action involves ‘a change in employment conditions that is more than an “inconvenience or alteration of job responsibilities”’ such as reducing an employee's workload and pay.” *Campbell v. Washington*, 129 Wn. App. 10, 22, 118 P.3d 888 (2005), *quoting Kirby v. City of Tacoma*, 124 Wn. App. 454, 465, 98 P.3d 827 (2004). *See also Aliotta, supra*, 614 F.3d at 566 (“This court has defined an ‘adverse employment action’ as ‘a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing significant change in benefits’”) (citations omitted).

Here, the Employees did not allege that any of them has been discharged, demoted or disciplined. None was alleged to have suffered a reduction in pay or a significant change in their job responsibilities. They

alleged no significant change in any of the terms and conditions of their employment. Accordingly, they failed to plead any “adverse employment action” in support of their discrimination claim. Their disparate impact claim therefore fails as a matter of law.

2. *The Employees Did Not Make a Prima Facie Showing of Disparate Impact Discrimination.*

In addition, the Employees failed to make a *prima facie* showing of disparate impact discrimination. This Court addressed the showing needed to establish a claim for disparate impact discrimination in *Oliver v. Pacific Northwest Bell Telephone Co., Inc.*, 106 Wn.2d 675, 724 P.2d 1003 (1986). “Discrimination claims under RCW 49.60 may be brought under one of two theories, either ‘disparate impact’ or ‘disparate treatment’.” *Id.*, 106 Wn.2d at 678. “To establish a *prima facie* case of disparate impact, the plaintiff must prove: (1) a facially neutral employment practice, (2) falls more harshly on a protected class.” *Id.* at 679 (footnote omitted). The Court in *Oliver* concluded that the plaintiffs there, who alleged that their employer’s discipline policy pertaining to dishonest conduct had a disparate impact based on race, failed to satisfy these two elements of their *prima facie* case. As to the first element, in particular, the Court concluded that the discipline policy in question was

not “facially neutral.” “In Washington, in order for an employment practice to be characterized as facially neutral and therefore subject to analysis under disparate impact, a plaintiff must demonstrate that he is attacking an employment practice that includes objective, nondiscretionary features.” *Id.* at 680. The discipline policy in *Oliver* was not “facially neutral” because it was “discretionary and subjective” in that it did not require automatic termination when an employee committed a dishonest act. Instead, the employer addressed conduct that fell under the policy on a case-by-case basis. *Id.* at 680. As a result, “disparate impact analysis is inapplicable to the facts of this case....” *Id.* at 681. *See also Shutt v. Sandoz Crop Protection Corp.*, 944 F.2d 1431, 1434 (9th Cir. 1991) (“In Washington ... disparate impact analysis does not extend to subjective, discretionary employment practices”).

Gate Gourmet’s meal policy, likewise, is “discretionary and subjective.” The allegations of the Employees’ own pleading established this fact. Specifically, the Employees alleged that after “Mr. Kumar confronted ... Gate Gourmet management over the potentially offensive contents of the beef-and-pork meatballs..., Gate Gourmet switched over to a turkey-meat meatball.” CP at 19 (FAC, ¶ 3.16). The Employees alleged further that Gate Gourmet later “reverted back to the beef-and-pork

meatballs without informing its employees.” *Id.* The fact that, according to the Employees’ own allegation, Gate Gourmet revised its menu in response to one of the Employees’ complaints demonstrates that its meal practice was “discretionary and subjective.”<sup>6</sup> Because Gate Gourmet changed its practice, that practice was not automatic and, thus, was not “objective” and “nondiscretionary,” as required under *Oliver*. Based on the discretion that the Employees admit Gate Gourmet exercised with regard to its meal practice, the Employees were unable to make a *prima facie* case of disparate impact discrimination, and their claim was properly dismissed.

In their Appellant’s Brief, the Employees now claim, “The nondiscretionary requirement is likely no longer needed.” *See* Appellant’s Brief at 26. In support of this claim, the Employees rely on *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 108 S. Ct. 2777, 101 L. Ed. 2d 827 (1988). The Employees’ reliance on *Watson* is misplaced, however.

Although the Employees are correct that the Court in *Watson* held that a disparate impact analysis **under Title VII** may be based on

---

<sup>6</sup> The Employees are bound by this admission. The Employees may not attempt to capitalize on hypothetical facts that are inconsistent with their pleading. *North Coast Enterprises, Inc., v. Factoria Partnership*, 94 Wn. App. 855, 858-59, 974 P.2d 1257, review denied, 138 Wn.2d 1022 (1999) (hypothetical facts must be “consistent with the complaint”).

subjective employment practices, they fail to point to any authority showing that this rule applies under WLAD. In fact, it does not -- the State of Washington continues to recognize that discretionary practices do not give rise to disparate impact actions.

Well after the United States Supreme Court issued its opinion in *Watson*, it recognized that its holding in that case did not necessarily apply to statutory schemes other than Title VII. *See Smith v. Jackson*, 544 U.S. 228, 240 (2005) (“the scope of disparate-impact liability under ADEA is narrower than under Title VII”). Consistently, three years after *Watson*, the Ninth Circuit in *Shutt, supra*, 944 F.2d at 1434, citing *Watson*, confirmed that “[i]n Washington ... disparate impact analysis does not extend to subjective, discretionary employment practices.” Gate Gourmet relied on *Shutt* in its motion to dismiss. Notably, the Employees fail to address that decision in their Appellant’s Brief.

In sum, the Employees’ disparate impact claim was not supported by a nondiscretionary, objective policy or procedure. The trial court therefore properly dismissed their cause of action for disparate impact discrimination.

C. The Employees' Claim for Civil Battery was Barred as a Matter of Law.

The Employees' alternate theory of civil battery likewise fails as a matter of law. According to the FAC, the acts of serving pork and beef meals, not telling employees that meals included pork and beef, and not labeling this food constituted a civil battery. CP at 26 (FAC, ¶¶ 5.14-5.16). No actual physical or emotional injury was alleged to have been suffered by any of the Employees as a consequence of this alleged battery. The Employees alleged only that "the feeding of meat to the vegetarian class members *may* have caused actual harm." CP at 27 (FAC, ¶ 5.18). No authority supports the conclusion that a claim for civil battery may be maintained under these circumstances.

To state a claim for civil battery, the Employees were required to allege an "intentional infliction of a harmful bodily contact upon another." *Garratt v. Dailey*, 46 Wn.2d 197, 200, 279 P.2d 1091 (1955). The Employees' allegations did not meet this standard for three independent reasons. First, there was no "bodily contact upon another" here. In fact, there was no "bodily contact" of any sort, as evidenced by the absence of any allegation of any actual bodily harm suffered by any of the Employees. Moreover, the Employees allege that it is their own act of

eating this food that constitutes “touching.” CP at 26 (FAC, ¶¶ 5.15, 5.16). There is no authority that a party’s own “touching” of himself or herself satisfies the “bodily contact upon another” element. The concept espoused by the Employees, in fact, is antithetical to the requisite element. By definition, the infliction of harmful bodily contact must be “upon another,” not upon oneself.

Second, contrary to the Employees’ claim (*see* Appellant’s Brief at 28), to be actionable, any alleged touching also must involve an application of force. *State v. Humphries*, 21 Wn. App. 405, 409, 586 P.2d 130 (1978) (confirming that spitting may constitute a battery, the court relied on Illinois law to the effect that spitting is “an application of force to the body of the victim”).<sup>7</sup> In contrast to the act of spitting, the act of offering food does not constitute an “application of force to the body of the victim.” Because of the absence of any application of force by Gate Gourmet, the Employees’ claim of battery fails.

---

<sup>7</sup> *State v. Humphries* is applicable here, notwithstanding the fact that it addressed a criminal battery. Civil and criminal battery claims overlap. *See State v. Simmons*, 59 Wn.2d 381, 388, 368 P.2d 378 (1962) (“In criminal law, as in civil cases, an act does not constitute an assault, or an assault and battery, if the person on or against whom it is committed freely consents to the act, provided he or she is capable of consenting, and the act is one to which consent may be given, and the consent is not obtained by fraud”) (citation omitted). (Emphasis added.)

Third, assuming *arguendo* that the Employees adequately alleged harmful bodily contact and the application of force, they nevertheless failed to allege the requisite intent by Gate Gourmet to cause such contact. As the Supreme Court held in *Garratt*, the Employees were required to show that Gate Gourmet knew with “substantial certainty” that its conduct would result in harmful bodily contact. *Garratt, supra*, 46 Wn.2d at 201-02. The FAC’s allegations failed to satisfy this standard for intent. The Employees alleged merely that their touching of the food offered to them “was intended by Gate Gourmet as evidenced by their actions in providing it to them for their consumption.” CP at 52 (FAC, ¶¶ 5.15, 5.16). There was no allegation, however, that Gate Gourmet intended to engage in any “touching” of the Employees or even to cause any bodily harm, let alone that it had a “substantial certainty” that harmful bodily contact would occur.

Each of these defects independently warranted dismissal by the trial court of the Employees’ battery cause of action.

D. The Employees’ Negligent Infliction of Emotional Distress Claim was Barred as a Matter of Law.

To state a claim for negligent infliction of emotional distress, the Employees were required to plead the elements of duty, breach of duty,

proximate cause and damage. *Snyder v. Med. Serv. Corp. of Eastern Washington*, 145 Wn.2d 233, 243, 35 P.3d 1158 (2001). “Not every act which causes harm results in legal liability.” *Id.*, quoting *Hunsley v. Giard*, 87 Wn.2d 424, 434, 553 P.2d 1096 (1976).

The Employees’ cause of action for negligent infliction of emotional distress relied on the identical allegations of the failure-to-accommodate cause of action. Specifically, the FAC alleged that Gate Gourmet owed Plaintiffs a duty “to accommodate their religious and sincerely held beliefs, or to inform them that its food offerings and preparation was inconsistent with such beliefs.” CP at 27 (FAC, ¶ 5.21). The FAC alleged further that “A duty to accommodate also inheres in the mandates of Title VII and the Washington Law Against Discrimination.” *Id.* Of course, as noted above, the Employees elected to bring their failure to accommodate claim under WLAD only; they consciously omitted any claim under Title VII of the Civil Rights Act of 1964.

This cause of action for negligent infliction of emotional distress failed because the Employees did not adequately plead the first element essential to such a claim – duty. As discussed above, the WLAD does not recognize any duty of an employer to accommodate the religious beliefs of its employees. Nor is any such duty recognized under Washington’s

common law. Absent any Washington statutory or common law duty to accommodate the religious dietary restrictions of its employees, the Employees failed to state a cognizable claim for negligent infliction of emotional distress.

In addition, this cause of action failed because, as this Court recognized in *Snyder*, there is “no duty for an employer to provide employees with a stress free workplace.” *Snyder, supra*, 145 Wn.2d at 243. The plaintiff in *Snyder* alleged a claim for negligent infliction of emotional distress, as well as other claims, including a claim for failure to accommodate her disability, all arising from a dispute with her employer. The plaintiff’s claims were premised on the following events: (1) the plaintiff’s supervisor mocked the plaintiff after the plaintiff objected to the supervisor’s proposal that employees work on a Saturday without extra compensation; (2) the supervisor thereafter confronted the plaintiff, poked her in the chest, and accused her of being insubordinate; and (3) after the plaintiff went to her therapist and was diagnosed with posttraumatic stress disorder, the employer refused the plaintiff’s requests to return to work in another department or with a different supervisor. *Id.* at 237-38. This Court upheld summary judgment in the employer’s favor. With regard to the negligent infliction of emotional distress claim, in particular, the Court

based its decision on the absence of any duty the employer had to the plaintiff to maintain a stress-free environment.

Absent a statutory or public policy mandate, employers do not owe employees a duty to use reasonable care to avoid the inadvertent infliction of emotional distress when responding to workplace disputes.

*Id.* at 244, quoting *Bishop v. State*, 77 Wn. App. 228, 234-35, 889 P.2d 959 (1995).

The Court in *Snyder* justified this conclusion by relying on other precedent on the subject. Relying on *Hunsley v. Giard, supra*, for example, the Court in *Snyder* recognized that “actions predicated on mental distress, like actions predicated on products liability or medical malpractice, must be subject to limitations imposed by the courts.” *Snyder, supra*, 145 Wn.2d at 245. “To set such limitations we stated ‘the defendant's obligation to refrain from particular conduct is owed only to those who are *foreseeably* endangered by the conduct and only with respect to those risks or hazards whose likelihood made the conduct unreasonably dangerous.’” *Id.*, quoting *Hunsley, supra*, 87 Wn.2d at 436. “Conduct is unreasonably dangerous when its risks outweigh its utility.” *Id.*, quoting *Bishop, supra*, 77 Wn. App. at 234. The Court in *Snyder* was definitive with respect to the role of the courts in addressing the utility of

permitting employers to handle workplace disputes – the courts do not get involved.

The utility of permitting employers to handle workplace disputes outweighs the risk of harm to employees who may exhibit symptoms of emotional distress as a result. The employers, not the courts, are in the best position to determine whether such disputes should be resolved by employee counseling, discipline, transfers, terminations or no action at all. While such actions undoubtedly are stressful to impacted employees, ***the courts cannot guarantee a stress-free workplace.*** [Emphasis added.]

*Snyder, supra*, 145 Wn.2d at 245, quoting *Bishop, supra*, 77 Wn. App. at 234.

In their Appellant's Brief, the Employees claim that Gate Gourmet mischaracterized the holding in *Snyder* in its argument to the trial court. Appellant's Brief at 30, n.12. Gate Gourmet's argument to the trial court regarding *Snyder* was identical to the argument above. As is evident from the quotations from the decision, Gate Gourmet's argument is faithful to the Court's holding.

The Employees' negligent infliction of emotional distress claim here arises from a workplace dispute. The dispute relates to the Employees' claims that the food Gate Gourmet offered them included inappropriate ingredients, was prepared improperly, or was not adequately

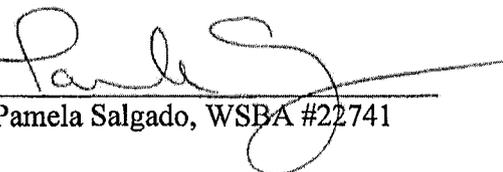
labeled. According to this Court's decision in *Snyder*, Gate Gourmet has no duty to avoid infliction of emotional distress on the Employees with regard to any workplace dispute arising from the failure to accommodate those beliefs, and the trial court was not authorized to second-guess Gate Gourmet's decisions with regard to accommodations, even if those decisions may have caused the Employees stress. Accordingly, the trial court appropriately dismissed with prejudice the Employees' negligent infliction of emotional distress cause of action.

#### V. CONCLUSION

Based on the law applicable to the claims brought by the Employees, the trial court properly dismissed those claims with prejudice. There is no basis to disturb that decision.

Respectfully submitted,

LITTLER MENDELSON, P.C.

By:   
Pamela Salgado, WSBA #22741

CROWELL & MORING LLP

By:   
S. Shane Sagheb  
(admitted *pro hac vice*)

## CERTIFICATE OF SERVICE

I am a resident of the State of Washington, over the age of eighteen years, and not a party to the within action. My business address is One Union Square, 600 University Street, Ste. 3200, Seattle, WA 98101. On February 13, 2013, I served a copy of the foregoing document:

### RESPONDENT'S BRIEF

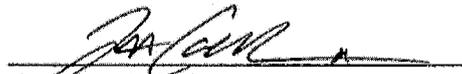
by causing a copy of the document(s) listed above to be personally served to the person(s) at the address(es) set forth below.

Aaron V. Roche, WSBA #31525  
D. James Davis, WSBA #43141  
Mark Symington, WSBA #45013  
ROCKE LAW GROUP, PLLC  
601 Union Street, Suite 4200  
Seattle, WA 98101  
[aaron@rockelaw.com](mailto:aaron@rockelaw.com)  
[dj@rockelaw.com](mailto:dj@rockelaw.com)

Seth A. Rosenberg  
Rosenberg Law Group, PLLC  
1700 7th Ave, Floor 21  
Seattle, WA 98101-1397  
[seth@rosenberglawgroup.net](mailto:seth@rosenberglawgroup.net)

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

Executed on February 13, 2013, at Seattle, Washington.

  
Scott W. Callahan

## OFFICE RECEPTIONIST, CLERK

---

**To:** Callahan, Scott W.  
**Subject:** RE: Kumar et al v. Gate Gourmet, Inc. - Case No. 88062-0 - Email filing of Respondent's Brief

Received 2-13-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

---

**From:** Callahan, Scott W. [<mailto:scallahan@littler.com>]  
**Sent:** Wednesday, February 13, 2013 3:33 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Salgado, Pam; Wills, Rachelle L.; Holiday, Tiffany D.  
**Subject:** Kumar et al v. Gate Gourmet, Inc. - Case No. 88062-0 - Email filing of Respondent's Brief

To whom it may concern:

Attached please find the following **Respondent's Brief**. The case information is as follows:

**Case Name:**

Kumar et al v. Gate Gourmet, Inc.

**Case Number:**

88062-0

**Filer information:**

Name: Pamela Salgado, Attorney for Respondent/Defendant Gate Gourmet, Inc.  
Phone: 206-381-4928  
WSBA #22741  
Email: [psalgado@littler.com](mailto:psalgado@littler.com)

Thank you.

**Scott Callahan**, Legal Assistant  
206.381.4901 direct [scallahan@littler.com](mailto:scallahan@littler.com)  
One Union Square, 600 University Street, Suite 3200 | Seattle, WA 98101-3122

**Littler** | [littler.com](http://littler.com)  
Employment & Labor Law Solutions Worldwide

----

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this document (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or

· recommending to another party any transaction or matter addressed herein.

This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply email and delete all copies of this message.

To reply to our email administrator directly, send an email to [postmaster@littler.com](mailto:postmaster@littler.com)

Littler Mendelson, P.C.  
<http://www.littler.com>