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72794-0

NO. 72794-0

COURT OF APPEALS STATE OF WASHINGTON  
DIVISION I

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IDALIE MUÑOZ MUÑOZ,

Appellant.

v.

MATTHEW J. BEAN,

Respondent.

---

BRIEF OF RESPONDENT

---

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## I. INTRODUCTION

Plaintiff-Appellant Idalie Muñoz Muñoz has patently violated numerous Rules of Appellate Procedure throughout the proceedings in this court. These violations have culminated in her presentation of an unintelligible brief containing repetitive, meritless issues presented for review. *See* RAP 10.3(a)(4), (a)(6). Mr. Bean, and likely this court, is unable to discern what precise legal issue Ms. Muñoz presents to support her claim for reversal. Ms. Muñoz herself even concedes in her most recent submission to this court that “Appellant’s Opening Brief refiled on 6/5/15 (sic), is not about Mr. Bean’s acts of legal malpractice.” Appellant’s Reply on Motion for Reconsideration, p. 16.

It appears Ms. Muñoz’s strategy on appeal is to attempt to convolute the superior court proceedings, particularly those proceedings following the grant of summary judgment, in the hope this court will remand and give her a second chance.

This court should deny Ms. Muñoz’s appeal and affirm the rulings of the trial court. First, the trial court did not abuse its discretion when it denied Ms. Muñoz’s request to continue the motion for summary judgment because she did not in any manner satisfy the requirements for obtaining a continuance. Second, granting summary judgment was proper where Ms. Muñoz presented no evidence in support of any of her causes

of action. Third, the trial court acted within its discretion in denying reconsideration, where Ms. Muñoz did not prove reconsideration was warranted. Finally, this court should award Mr. Bean is reasonable costs and attorney fees for having to defend against this appeal, which clearly has no merit.

## II. ASSIGNMENTS OF ERROR

### *Assignments of Error*

Defendant-respondent Matthew J. Bean (hereinafter “Mr. Bean”) assigns no error to the decisions of the superior court.

### *Issues Pertaining to Assignments of Error*

Mr. Bean believes that Ms. Muñoz misstates the sole issue before this court, which is more properly expressed as follows:

Whether the trial court correctly entered summary judgment dismissal of Ms. Muñoz’s claims, denied reconsideration of that decision, and denied an extension of time, where:

- (1) Mr. Bean’s summary judgment motion challenged the sufficiency of Mr. Muñoz’s evidence;
- (2) Ms. Muñoz offered no admissible proof of any of the elements of her various causes of action;
- (3) Ms. Muñoz filed no briefing or affidavits in opposition to Mr. Bean’s summary judgment motion and failed to show what evidence she

intended to discover;

(4) Ms. Muñoz belatedly requested an extension of time a week after her summary judgment response was due, and only two days before the hearing;

(5) the superior court exercised its discretion in denying the extension;

(6) Ms. Muñoz's only basis for reconsideration was an unsupported claim that she was too ill to attend the hearing on summary judgment; and

(7) Ms. Muñoz did not offer any evidence or testimony to meet any basis for reconsideration under CR 59.

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

This legal-malpractice case arises out of Mr. Bean's representation of Ms. Muñoz in an employment-discrimination action against the United States Government, Department of Commerce. CP 1-25, 45-1299.

#### **A. The underlying employment discrimination case was dismissed because it had no merit.**

The underlying action arose from Ms. Muñoz's brief employment with the United States Census Bureau. CP 1312. Ms. Muñoz was hired as a media specialist on February 2, 2008, and was terminated less than a year later. *Id.* Ms. Muñoz hired attorney Patricia Rose and sued the federal government for employment discrimination. CP 1361. For reasons unknown, Ms. Muñoz fired Ms. Rose as her attorney, filed an amended complaint pro se, and later retained Mr. Bean. CP 1312.

**1. Mr. Bean was Ms. Muñoz's attorney for approximately five months, during which time no action prejudicial to her case was taken.**

After being retained in late December 2012, Mr. Bean set to work to draft a second amended complaint. CP 1312-13. After extensive research and analysis of the facts and issues relating to Ms. Muñoz's case, Mr. Bean believed certain claims in Ms. Muñoz's amended complaint were factually and legally without merit. CP 1313. For example, Mr. Bean did not believe she had a meritorious claim under the Family Medical Leave Act (FMLA), 29 U.S.C. § 2601, *et seq.*, because she had not been employed for a full 12 months, as the FMLA requires, and it did not provide for a private cause of action in Ms. Muñoz's case. CP 1313.

When Mr. Bean discussed this and the other issues relating to the amended complaint with Ms. Muñoz, they could not agree as to which claims in her amended complaint had merit and which should be dismissed. CP 1313. When they could not reach an agreement, Mr. Bean advised Ms. Muñoz to get a second opinion on the merit of her claims. *Id.* She refused to do so and continued insisting all her claims be included in the second amended complaint. *Id.* Mr. Bean explained to Ms. Muñoz that despite her insistence to the contrary, if he as her attorney believed the claims were frivolous, CR 11 prohibited his bringing them. CP. 1503.

Mr. Bean advised Ms. Muñoz that if she continued insisting on

bringing frivolous claims, he must withdraw as her attorney. CP. 1504. When Ms. Muñoz again insisted he bring the frivolous claims, Mr. Bean filed a Motion to Withdraw. CP. 1537-38. His motion was intentionally vague as to the reasons for his withdrawal, saying only that his continued representation could result in a violation of RPC 1.2 and/or CR 11. CP 1502-04, 1537-38. On May 10, 2011, less than five months after the representation began, Judge John Coughenour accepted Mr. Bean's withdrawal. CP 1504.

During the short time Mr. Bean represented Ms. Muñoz, none of her claims were dismissed, no discovery was conducted, no pleadings were amended, and no deadlines passed. CP 1314. In fact, the only act of record taken by Mr. Bean throughout the entire course of his representation was attending a routine status conference. *Id.*

**2. After Mr. Bean's withdrawal, Ms. Muñoz retained all of her causes of action to pursue, and she is still doing so.**

After Mr. Bean withdrew, Ms. Muñoz engaged in discovery with the Department of Commerce. CP 1314. In the course of pursuing her case, Ms. Muñoz sought, and was granted, multiple continuances. *Id.* Almost a year after Mr. Bean withdrew, the government moved for summary judgment, at which point Ms. Muñoz filed a second amended complaint, defeating the government's motion. CR 1315. Ms. Muñoz and

the government then engaged in more discovery, after which the government again moved for summary judgment, which was granted in part. *Id.* On February 19, 2013, 21 months after Mr. Bean withdrew as Ms. Muñoz's attorney, the government moved for summary judgment on her remaining claims. *Id.* The government's motion was granted. *Id.*

**3. Ms. Muñoz's underlying claim is still pending before the Ninth Circuit Court of Appeal.**

After summary judgment dismissal of her underlying case, Ms. Muñoz appealed the matter to the Ninth Circuit Court of Appeals. CP 1332. The matter is still pending before the Ninth Circuit. *Id.*

**B. Ms. Muñoz had no evidence of legal malpractice and did not oppose Mr. Bean's summary judgment.**

On March 3, 2014, Ms. Muñoz filed this legal-malpractice action, which also included claims for misrepresentation, breach of contract, infliction of emotional distress, breach of fiduciary duties, and violation of the Consumer Protection Act. CP 1-38. Ms. Muñoz served Mr. Bean on May 30, 2014. CP. 41. On June 3, 2014, Lee Smart, P.S., Inc. appeared on Mr. Bean's behalf. CP 42. On June 9, 2014, Ms. Muñoz filed a 102-page amended complaint, with more than 1,000 pages of exhibits. CP 45-1299.

**1. Mr. Bean attempted to engage in discovery with Ms. Muñoz, however it quickly became apparent she had no evidence to support any of her claims.**

On June 18, 2015, Mr. Bean served interrogatories and requests for production on Ms. Muñoz. CP. 1328. On July 8, 2014, Ms. Muñoz served her answers and responses. CP. 1328. Ms. Muñoz did not meaningfully respond to the discovery requests, so Mr. Bean's counsel sent her a letter outlining the deficient discovery responses and setting a CR 26(i) telephone discovery conference. CP 1344-47; 1349. Ms. Muñoz refused to conduct the conference over the phone, and insisted the conference occur at a library in Federal Way, Washington. CP 1351. Counsel objected to this location as inconvenient and unnecessary. CP 1354. Rather than incur the expense and inconvenience of traveling to Federal Way for a discovery conference, counsel advised Ms. Muñoz he was cancelling the discovery conference, and did not intend to pursue any more discovery. CP 1592-93. Mr. Bean's counsel also advised Ms. Muñoz of the intention move for summary judgment of her claims. *Id.*

**2. Ms. Muñoz served several discovery requests on Mr. Bean, all of which Mr. Bean answered.**

Between June 17, 2014, and July 3, 2013, Ms. Muñoz served 10 sets of discovery on Mr. Bean. CP 1329. The discovery requests were essentially indiscernible, and merely requested copies of the same documents Ms. Muñoz had submitted with her amended complaint. See 5797146.doc

App. A.

Upon receipt of the first set of her discovery requests, counsel initially wrote to Ms. Muñoz and advised her the responsive documents would be prepared, and sent to her on a CD, as is a common practice for attorney in this jurisdiction. App. B. However, inspection of Ms. Muñoz's discovery requests revealed they all contained the following instruction:

PLAINTIFF (sic) hereby demands that Defendants produce the following DOCUMENTS (sic) at the office of the above named attorney for Defendants, within thirty (30) days of service of this request[.]

App. A, p.1. Accordingly, in accordance with her instructions, Mr. Bean's counsel made all the responsive documents available at his office for her inspection and copying. CP 1329. Ms. Muñoz never came to defense counsel's office to inspect the documents. *Id.*

**C. Mr. Bean moved for summary judgment, challenging the sufficiency of Ms. Muñoz's evidence supporting all her claims.**

On September 26, 2014, Mr. Bean moved for summary judgment. CP 1311-1327. Mr. Bean brought his motion under *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L. Ed. 2d 265 (1986) and *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 770 P.2d 182 (1989), challenging the sufficiency of the evidence supporting all of Ms. Muñoz's causes of action. *Id.* Mr. Bean noted his summary judgment for hearing

before the Honorable Samuel Chung on October 24, 2014. CP 1309.

Ms. Muñoz's response was due October 13, 2014. CP 1551; *see also* CR 56(c). October 13 came and went without Ms. Muñoz filing a response. CP 1551. Accordingly, on October 20, 2014, Mr. Bean filed a reply indicating that no response had been made and putting Ms. Muñoz on notice that Mr. Bean intended to present his proposed order for entry at 1:30 p.m. on October 24, 2014. CP. 1551-1555.

Also on October 20, 2014, seven days after her summary judgment response was due, Mr. Muñoz filed a request for an extension of time to respond to Mr. Bean's motion for summary judgment. CP. 1556. Ms. Muñoz stated she had not been able to timely complete her response due to an unspecified illness. *Id.* Other than asserting she had been ill, Ms. Muñoz offered no authority or justification for an extension. *Id.*

The next day, October 21, 2014, Ms. Muñoz filed a Reply to Mr. Bean's Reply on Summary Judgment. CP. 1564-65. In her Reply, Ms. Muñoz requested that the trial court grant her motion for an extension; she did not address the merits of any of the issues raised by Mr. Bean's motion for summary judgment. *Id.*

On October 22, 2014, Mr. Bean responded to the motion for extension. CP. 1567-76. In his response, Mr. Bean asked that the trial the court deny Ms. Muñoz's motion because there was no sufficient basis for

an extension, since Ms. Muñoz had not complied with either the procedures or requirements of CR 56(f) or CR 6. *Id.*

The hearing on Mr. Bean's summary judgment occurred on October 24, 2014. CP 1671. Attorney Christopher Winstanley of Lee Smart, P.S., Inc. appeared for Mr. Bean; Ms. Muñoz did not appear for the hearing. CP 1671. At hearing, the trial court denied Ms. Munoz's motion for a continuance. *Id.*, CP 1674.

The trial court then granted Mr. Bean's motion for summary judgment and dismissed all of Ms. Muñoz's causes of action. CP 1671-72. On the record, the trial court made clear that although Ms. Muñoz was proceeding pro se, she had sufficient knowledge and information to be able to represent herself in court, and summary judgment was appropriate. RP 6-7.

**D. The court denied Ms. Muñoz's motions for reconsideration.**

Ms. Muñoz then moved for reconsideration of the court's orders denying her motion for an extension and granting of summary judgment. CP 1682-1703, 1704-37. On reconsideration, Ms. Muñoz submitted documentation to support her assertion that she was ill. CP 1685-1702; 1707-11. She also submitted a document purporting to be a draft of her response to Mr. Bean's motion for summary judgment and a draft of a

document purporting to be a motion to strike some portion of Mr. Bean's motion for summary judgment. CP 1713-1737. The trial court denied the motions for reconsideration based on the pleadings. CP 1781. This appeal followed.

#### **IV. SUMMARY OF ARGUMENT**

This court should affirm the trial court's dismissal of this action for several independent reasons. First, Ms. Muñoz has failed to assign any particular meaningful error to the trial court's grant of summary judgment or denial of reconsideration, which as a matter of law constitutes a waiver of such claim. Such waiver is buttressed by Ms. Muñoz's numerous violations of applicable Rules of Appellate Procedure and her failure to produce an intelligible appeal brief.

Second, Ms. Muñoz failed to present any admissible evidence to support a *prima facie* case for any of her causes of action.

Third, the trial court acted well within its sound discretion in denying Ms. Muñoz's request for a continuance of the motion for summary judgment because she (a) did not make the request until two days before the hearing, well after her briefing was due; (b) provided no reason for her delay in obtaining the evidence to support her case, and (c) did not identify what evidence would be discovered to support her case.

Finally, the trial court properly denied Ms. Muñoz's motion for

reconsideration because she presented no proper basis for reconsideration.

In sum, numerous independent grounds exist to affirm the trial court. Because this appeal lacks any colorable merit, this court should sanction Ms. Muñoz and award Mr. Bean his costs and reasonable attorney fees he has been forced to incur because of this baseless appeal.

## V. ARGUMENT

### A. **Ms. Muñoz’s failure to identify any substantive legal errors pertaining to the grant of summary judgment requires the court to affirm.**

An appellant’s brief must provide “[a] separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error.” RAP 10.3(a)(4). “[W]hen an appellant fails to raise an issue in the assignments of error, in violation of RAP 10.3(a)(3)<sup>1</sup>, and fails to present any argument on the issue or provide any legal citation, an appellate court will not consider the merits of that issue.” *State v. Olson*, 126 Wn.2d 315, 321, 893 P.2d 629 (1995) (emphasis in original). “Appellate courts will only review a claimed error that is included in the assignment of error or clearly disclosed in the associated issue pertaining thereto and is supported by argument and citations to legal authority.” *Vern Sims Ford, Inc. v. Hagel*,

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<sup>1</sup> *State v. Olson* was decided in 1995, prior to amendment of the Rules of Appellate Procedure. The citation to RAP 10.3(a)(3) is now codified in RAP 10.3(a)(4). This section of the rule is identical to the pre-amendment version of the rule.

42 Wn. App. 675, 683, 713 P.2d 736 (1986).

Ms. Muñoz does not address her burden of presenting specific facts to oppose Mr. Bean's summary judgment motion. *Young*, 112 Wn.2d at 225-26. Nor does she address whether the court erred by granting summary judgment when (1) Mr. Bean challenged the sufficiency of all her evidence, (2) she did not file an opposition to the motion or appear for oral argument, or (3) move or an extension under CR 56(f) by showing what additional evidence she would obtain if given a continuance. Additionally, Ms. Muñoz does not refer to, or mention, the grounds for reconsideration, nor does she address whether her presentation of medical evidence satisfied those grounds.

Rather, Ms. Muñoz argues that the trial court applied a supposed double standard to her by allowing Mr. Winstanley to attend the hearing on behalf of Mr. Bean. Ms. Muñoz then dedicates most of her brief to maligning defense counsel for supposedly blocking her access to evidence. Those factual assertions are not only patently false and offensive, but they are wholly irrelevant. None of them has any bearing on her appeal.

First, Ms. Muñoz cites no legal authority mandating denial of summary judgment on the sole ground the responding party was ill, particularly when the first notice of such illness and request for an extension came **after** the deadline for responding to the motion. Second,

Ms. Muñoz cites no authority that illness alone is a sufficient basis for an extension under CR 56(f) or CR 6, or that illness compels a trial court to grant reconsideration. Third, Ms. Muñoz’s pro se status does not compel forgiveness of any of these shortcomings. A pro se litigant, such as Ms. Muñoz, is required to follow procedural and substantive laws. “The law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks the assistance of counsel.” *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993) (quoting *In re Marriage of Wherley*, 34 Wn. App. 344, 349, 661 P.2d 155 (1983)). Ms. Muñoz nevertheless fails to cite even one authority to support her arguments in favor of reversal. Because she has not done so, this court may assume Ms. Muñoz made a diligent search but found no such authority. *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). Without authority to support her positions, her claims fail as a matter of law.

In sum, Ms. Muñoz’s failure to address the substantive legal issues germane to this appeal, coupled with her failure to cite any supporting authority, constitutes a waiver of any argument that reversal is warranted.

**B. The trial court acted well within its discretion in denying Ms. Muñoz’s request for a continuance because she did not satisfy the requirements of CR 56(f) or CR 6.**

Ms. Muñoz’s Motion to Request Extension of Time to Respond to Defendant’s Motion for Summary Judgment, though it lacks citation to any legal authority, was in substance a CR 56(f) motion for a continuance. CP 1556. The court properly denied Ms. Muñoz’s continuance because she made the request well after her opposition to summary judgment was due, and it did not satisfy the requirements for a continuance under either CR 56(f) or CR 6.

A trial court’s decision on a motion for a continuance under either CR 56(f) or CR 6 will not be disturbed on appeal absent a manifest abuse of discretion. *Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989) (trial court’s grant or denial of a motion for continuance under CR 56(f) will not be disturbed absent a showing of manifest abuse of discretion); *Lewis v. Bell*, 45 Wn. App. 192, 196, 724 P.2d 425 (1986); *Davies v. Holy Family Hospital*, 144 Wn. App. 483, 500, 183 P.3d 283 (2008) (under CR 6, trial court’s decision to enlarge a time period reviewed for an abuse of discretion). A trial court abuses its discretion when it exercises it in a manifestly unreasonable manner or bases it upon untenable grounds or reasons. *State v. Stenson*, 132 Wn.2d 668, 701, 940

P.2d 1239 (1997), *cert. denied*, 523 U.S. 1008, 118 S. Ct. 1193, 140 L. Ed. 2d 323 (1998).

**1. The trial court did not abuse its discretion under with CR 56(f) in denying Ms. Muñoz's continuance.**

CR 56(f) governs continuances of a motion for summary judgment and provides:

Should it appear from the affidavits of a party opposing the motion that **for reasons stated**, the party cannot present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as it just.

CR 56(f) (emphasis added).

Relief under this rule is not automatic. The party requesting relief has the burden of proof, and this relief should be denied when:

(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.

*Vant Leven v. Kretzler*, 56 Wn. App. 349, 352-53, 783 P.2d 611 (1989); *see also Turner*, 54 Wn. App. at 693 (the court should deny a request for continuance when plaintiff cannot satisfy these elements.)

*Turner* is instructive. The defendant physician moved for summary judgment based on an affidavit of his own that the treatment he

rendered to plaintiff met the standard of care. The plaintiff responded with an affidavit from his expert that did not mention CR 56(f), did not request a continuance, and did not mention the defendant. On appeal, plaintiff conceded summary judgment was properly granted on the record before the trial court, but argued the trial court abused its discretion in not granting a continuance, even though plaintiff's affidavit did not state what discovery was contemplated or why the discovery could not have been pursued prior to the summary judgment proceeding. *Turner*, 54 Wn. App. at 693. The Court of Appeals affirmed, based on above three-part test.

As in *Turner*, Ms. Muñoz failed to offer the requisite testimony establishing a reason why the evidence necessary to support her case had not been sought, what additional evidence would have been established through additional discovery, and how that evidence would raise a genuine issue of material fact to defeat summary judgment. CP 1556. She simply said she had been sick and needed more time. *Id.* Even in her motion for reconsideration, she simply provided additional evidence of her illness, but none of the information CR 56(f) requires to justify a continuance. CP 1704-11. In light of this absence of evidence, the trial court was well within its discretion to deny Ms. Muñoz's request for an extension of time.

**2. The trial court acted well within its discretion under CR 6 in denying Ms. Muñoz's continuance.**

Continuances under CR 6 are governed by the following rule:

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion: (1) with or without motion or notice, order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect[.]

CR 6(b)(1)-(2). Eight factors govern whether a delay resulted from excusable neglect:

(1) the prejudice to the opponent; (2) the length of the delay and its potential impact on the court of judicial proceedings; (3) the cause for the delay, and whether those causes were within the reasonable control for the moving party; (4) the moving party's good faith; (5) whether the omission reflected professional incompetence, such as ignorance of the procedural rules; (6) whether the omission reflected an easily manufactured excuse that the court could not verify; (7) whether the moving party had failed to provide for a consequence that was readily foreseeable; and (8) whether the omission constituted a complete lack of diligence.

*Keck v. Collins*, 181 Wn. App. 67, 84, 325 P.3d 306 (2014) (citing 15 Karl B. Tegland, *Wash. Prac.: Rules Practice* § 48:9, at 346 (2d ed. 2009) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 113 S.Ct. 1489, 123 L. Ed. 2d 74 (1993))).

In *Keck*, the appellants filed an affidavit in support of summary

judgment 10 days after the deadline, on the day before the hearing on summary judgment. *Keck*, 181 Wn. App. at 85. Considering the eight factors in the context of a motion to strike the affidavit, the Court of Appeals reversed the trial court's striking of the affidavit where the appellant's counsel acted in good faith in all aspects surrounding getting the affidavit, and external factors beyond the appellant's control prevented appellant from obtaining the necessary evidence. *Id.* at 85-86.

In contrast, Ms. Muñoz did not offer any evidence or even an affidavit of what evidence she would submit if given more time. In addition, she had plenty of time to develop the evidence necessary to support her case, but Ms. Muñoz did not indicate any legitimate reasons for the delay in presenting it. Finally, Ms. Muñoz did not request an extension until after her response was due, and her request said only that she had been sick, and did not provide a note from a doctor, nor did it indicate that she had made any other good-faith effort to meet the deadlines imposed by the civil rules. As such, the trial court was well within its discretion in denying Ms. Muñoz's motion for a continuance under CR 6.

Since the trial court did not abuse its discretion under either CR 56(f) or CR 6 when it denied Ms. Muñoz's request for a continuance, the trial court properly proceeded to hearing on Mr. Bean's motion for

summary judgment, and dismissed her unsupported claims. *Messerly v. Asamera Minerals, (U.S.) Inc.*, 55 Wn. App. 811, 819, 780 P.2d 1327 (1989) (“[W]hen a motion to stay a hearing is not properly supported, the court has a right and duty to hear the motion for summary judgment on the bases of the showing before it.”)

However, even if this court determines an extension should have been granted, summary judgment should still be affirmed on its merits, as discussed more fully below.

**C. The standard of review is de novo for the trial court’s order on summary judgment, but this court may affirm on any ground that the record supports.**

This court engages in the same inquiry as the trial court when reviewing a summary judgment order. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Summary judgment is appropriate if 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. CR 56(c). However, “[a] trial court’s decision will be affirmed on appeal if it is sustainable on any theory within the pleadings and the proof.” Tegland, 2A *Wash. Prac.: Rules Practice* RAP 2.5 (6th ed. 2010); see also *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 493, 933 P.2d 1036 (2007). This court ordinarily may not reverse a trial court on a theory not raised before that

court. *State v. Peterson*, 29 Wn. App. 655, 663, 630 P.2d 480 (1981).

**D. This court should affirm summary judgment because Ms. Muñoz did not generate a genuine issue of material fact as to each element of any of her claims.**

Summary judgment is appropriate where the evidence presented demonstrates “no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *Seattle Police Officers Guild v. City of Seattle*, 151 Wn.2d 823, 830, 92 P.3d 243 (2004); *see also* CR 56(c). Material facts are those facts on which the outcome of the litigation depends. *Seattle Police Officers Guild*, 151 Wn.2d at 830. If the moving party, which here was Mr. Bean, demonstrated the absence of a genuine issue of material fact, the non-moving party (Ms. Muñoz) was required to set forth specific facts showing a genuine issue for trial. *See Young*, 112 Wn.2d at 225. A moving party, such as Mr. Bean, can meet his burden simply by pointing out the absence of evidence to support the plaintiff’s case. *Id.*

Once Mr. Bean met his burden, Ms. Muñoz could not rely on the bare allegations in her pleadings, but was required to set forth specific facts showing a genuine issue of material fact for trial. CR 56(e); *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 795, 64 P.3d 22 (2003). Moreover, Ms. Muñoz could not defeat summary judgment by relying on mere possibility, conjecture, or speculation. *Attwood v. Albertson’s Food*

*Ctrs., Inc.*, 92 Wn. App. 326, 330, 966 P.2d 351 (1988).

**1. Ms. Muñoz offered no evidence to support her cause of action of legal malpractice.**

A plaintiff in a legal malpractice case must prove four elements:

(1) The existence of an attorney-client relationship which gives rise to a duty of care on the part of the attorney to the client; (2) an act or omission by the attorney in breach of the duty of care; (3) damage to the client; and (4) proximate causation between the attorney's breach of the duty and the damage incurred.

*Hizey v. Carpenter*, 119 Wn.2d 251, 260-61, 830 P.2d 646 (1992). The absence of any element precludes recovery. *See Bowman v. Two*, 104 Wn.2d 181, 185-86, 704 P.2d 140 (1985). To survive summary judgment, Ms. Muñoz was required to demonstrate a genuine issue of fact as to **each** element to avoid dismissal. *See See Clark County Fire Dist. No. 5 v. Bullivant Houser Bailey, P.C.*, 180 Wn. App. 689, 699, 324 P.3d 743 (2014). This burden exists because the failure of a party seeking relief to prove an essential element of his case necessarily renders all other facts immaterial. *Young*, 112 Wn.2d at 225. This comports with the policy behind summary judgment, which is to "avoid a useless trial when no genuine issue of material fact remains to be decided." *Neilson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wn.2d 255, 262, 956 P.2d 312 (1998).

Here, summary judgment must be affirmed for three substantive

reasons, none of which Ms. Muñoz addresses in her brief. First, Ms. Muñoz did not offer any *prima facie* evidence of breach of the standard of care; indeed, she did not timely respond to the motion and she did not attend the hearing on the matter. Second, she produced no *prima facie* evidence that she suffered damages. Third, Ms. Muñoz did not produce any *prima facie* evidence of proximate cause between the alleged breach and her alleged damage.

a. **Ms. Muñoz failed to produce the required expert testimony to establish breach of the relevant standard of care.**

A plaintiff cannot sustain a professional malpractice claim without expert testimony of the defendant’s professional peer to support the claim. *McKee v. American Home Prods. Corp.*, 113 Wn.2d 701, 706-07, 782 P.2d 1045 (1989). Stated more succinctly:

[T]o establish the standard of care required of professional practitioners, the standard must be established by the testimony of experts who practice in the same field. The duty of physicians must be set forth by a physician, the duty of structural engineers by a structural engineer and that of any expert must be proven by one practicing in the same field – by one’s peer.

*Id.* (citing *Young*, 112 Wn.2d 216) (emphasis added). This is especially true in legal-malpractice actions, because “[l]aw is admittedly a highly technical field beyond the knowledge of the ordinary person.” *Walker v. Bangs*, 92 Wn.2d 854, 857, 601 P.2d 1279 (1979).

Ms. Muñoz therefore could not prove her legal malpractice claim unless she provided the testimony of someone equivalent to Mr. Bean's peer. She did not. The record is devoid of any admissible evidence from Mr. Bean's peer that he breached the standard of care of an attorney in Washington. Ms. Muñoz offered no evidence generating an issue of fact as to whether Mr. Bean's professional conduct violated the "degree of care, skill, diligence, and knowledge commonly possessed and exercised by a reasonable, careful and prudent lawyer in the practice of law in this jurisdiction." *Cook, Flanagan & Berst v. Clausing*, 73 Wn.2d 393, 395, 438 P.2d 865 (1968). Ms. Muñoz cannot rely on conclusory assertions that Mr. Bean breached the standard of care. Rather, she was required to submit admissible evidence to support that theory. *Young*, 112 Wn.2d at 225. Because Ms. Muñoz did not produce expert testimony to support her legal malpractice claim, dismissal was proper.

**b. Ms. Muñoz failed to produce evidence of her damages or proximate cause.**

Ms. Muñoz offered no evidence she suffered damages proximately caused by Mr. Bean. In a legal-malpractice claim, the burden of proving proximately caused damage remains squarely with the plaintiff. *Daugert v. Pappas*, 104 Wn.2d 254, 258-60, 704 P.2d 600 (1985). The measure of damages for legal malpractice is the amount of loss actually sustained as a

result of the attorney's conduct. *Id.* at 683 (citations omitted).

Proximate cause in a legal malpractice case is determined by the “but for” test. *Griswold v. Kilpatrick*, 107 Wn. App. 757, 760, 27 P.3d 246 (2001). The plaintiff-client bears the burden of demonstrating that “but for” the attorney's negligence, the client would have obtained a better result. *Daugert*, 104 Wn.2d at 263. This necessarily involves two steps. The first question is whether the lawyer's alleged conduct caused the client's underlying action to be lost or compromised. *Shepard Ambulance, Inc. v. Helsell, Fetterman, Martin, Todd & Hokanson*, 95 Wn. App. 231, 235-36, 974 P.2d 1275 (1999). The second question is whether the client would have fared better but for the lawyer's alleged mishandling of the underlying cause of action. *Id.*

Therefore, Ms. Muñoz needed to present proof that (1) Ms. Bean's conduct lost or compromised Ms. Muñoz's underlying claims; and (2) Ms. Muñoz would have fared better in her underlying case but for Mr. Bean's alleged malpractice. Ms. Muñoz failed to show either. She offered no evidence of how she was damaged, and she offered no evidence as to the effect Mr. Bean's less-than-five-month representation had on her underlying case, nor any evidence how she would have achieved a better result. Rather, the only support for her claim of legal malpractice was her speculation Mr. Bean committed malpractice, which is insufficient as a

matter of law. *See, e.g., Griswold*, 107 Wn. App. at 760-63 (plaintiff's speculative evidence that she could have obtained a better settlement in the absence of attorney's negligence was insufficient to establish proximate cause); *Sherry v. Diercks*, 29 Wn. App. 433, 628 P.2d 1336 (1981) (plaintiff failed to establish proximate cause in legal malpractice action against attorney who allowed default judgment to be taken against him, where plaintiff did not show that, had the underlying action been defended, he would have prevailed or achieved a better result). Accordingly, since Ms. Muñoz offered no evidence of damages or proximate cause, the trial court properly dismissed her claim.

**2. Ms. Muñoz offered no evidence to support her cause of action for intentional or negligent misrepresentation.**

Intentional misrepresentation is the same thing as fraud. The nine elements of intentional misrepresentation are: (1) a representation of an existing fact; (2) materiality; (3) falsity; (4) the speaker's knowledge of its falsity; (5) intent of the speaker that it should be acted upon by the plaintiff; (6) plaintiff's ignorance of the falsity; (7) plaintiff's reliance on the truth of the representation; (8) plaintiff's right to rely upon the representation; and (9) damages suffered by the plaintiff. *Carlile v. Harbour Homes, Inc.*, 147 Wn. App. 193, 193 P.3d 280 (2008). Proof of these elements must be by clear, cogent, and convincing evidence. *Brummett v. Washington's*

*Lottery*, 171 Wn. App. 664, 288 P.3d 48 (2012).

With respect to negligent misrepresentation, a plaintiff must prove all of the following by clear, cogent, and convincing evidence: (1) that the defendant supplied false information; (2) that was being used to guide the plaintiff in her business dealings; (3) that was negligently obtained or communicated; (4) that the plaintiff reasonably relied upon; and (5) that proximately caused damages to the plaintiff. *Van Dinter v. Orr*, 157 Wn.2d 329, 138 P.3d 608 (2006); *ESCA Corp. v. KPMG Peak Marwick*, 135 Wn.2d 820, 826, 959 P.2d 651 (1998); *see also Guntheroth v. Rodaway*, 107 Wn.2d 170, 175-76, 727 P.2d 982 (1986) (where standard of proof for a cause of action is clear, cogent, and convincing, a plaintiff responding to a motion for summary judgment must present proof adequate to meet that standard).

Ms. Muñoz submitted no evidence to support any element of her claim for either intentional or negligent misrepresentation after Mr. Bean challenged the sufficiency of her evidence. CP 1319-21. Since she did not respond to Mr. Bean's motion for summary judgment with any affidavits or other forms of evidence, she in fact did not submit any evidence at all, and certainly no evidence that would have been able to meet the heightened evidentiary standard required for misrepresentation claims. Moreover, even if this court were to scour the record, the court

would find no evidence to support a claim for either intentional or negligent misrepresentation because none exists. The trial court properly dismissed Ms. Muñoz's emotional distress claims.

**3. Ms. Muñoz offered no evidence to support her cause of action for breach of contract.**

The caption of Ms. Muñoz's Amended Complaint contains a cause of action for breach of contract. CP 45. However, she does not actually allege a cause of action for breach of contract at any point in her Amended Complaint. See CP 45-146. Also, she does not address the claim on appeal. Accordingly, she has abandoned this claim. See *Green v. Normandy Park*, 137 Wash. App. 665, 688, 151 P.3d 1038 (2007) (abandoned issues will not be addressed on appeal). In addition, Ms. Muñoz does not have a claim for breach of contract because her claims sound entirely in tort, not in contract. See *Davis v. Davis Wright Tremaine, LLP*, 103 Wn. App. 638, 14 P.3d 146 (2000).

However, Ms. Muñoz nevertheless failed to prove her cause of action for breach of contract. A claim for breach of contract presents a question of law that the superior court may decide on summary judgment. See, e.g., *Mayer v. Pierce County Med. Bureau, Inc.*, 80 Wn. App. 416, 909 P.2d 1323 (1995); *Voorde Poorte v. Evans*, 66 Wn. App. 358, 362, 832 P.2d 105 (1992); *Marquez v. Univ. of Wash.*, 32 Wn. Ap. 302, 306,

648 P.2d 94 (1982). “A breach of contract is actionable only if the contract imposes a duty, the duty is breached, and the breach proximately causes damages to the claimant.” *NW Indep. Forest. Mfrs. V. Dep’t of Labor & Indus.*, 78 Wn. App. 707, 712, 899 P.2d 6 (1995).

Here, Ms. Muñoz offered no evidence in support of her claim for breach of contract. She did not show how Mr. Bean breached the contract during the short period of time he represented her, nor did she even allege which contract provision Mr. Bean breached. She offered no evidence as to how she was damaged, nor how such damages were proximately caused by Mr. Bean’s breach. The trial court would have properly dismissed this cause of action, had Ms. Muñoz not abandoned it, since Ms. Muñoz provided absolutely no evidence for this claim.

**4. Ms. Muñoz offered no evidence to support her cause of action for intentional or negligent infliction of emotional distress.**

In a legal-malpractice case, a plaintiff may recover emotional distress damages only when significant emotional distress is foreseeable from the sensitive or personal nature of the representation or when the attorney's conduct is particularly egregious. *Schmidt v. Coogan*, 181 Wn.2d 661, 671, 335 P.3d 424 (2014). Simple malpractice resulting in pecuniary loss that causes emotional upset does not support emotional-distress damages. *Id.* Therefore, Ms. Muñoz may not pursue claims of

either intentional or negligent infliction of emotional distress whatsoever, since this is simply a legal malpractice action arising out of representation that was not personal or sensitive in nature, even if she could prove those claims.

Ms. Muñoz did not and cannot prove such claims. To establish a claim for intentional infliction of emotional distress (outrage), Ms. Muñoz must have shown (1) extreme and outrageous conduct; (2) intentional or reckless infliction of emotional distress; and (3) that the plaintiff suffered severe emotional distress. *Kloepfel v. Bokor*, 149 Wn.2d 192, 66 P.3d 630 (2003). In regard to this claim, “the emotional distress must be inflicted intentionally or recklessly; mere negligence is not enough.” *Grimsby v. Samson*, 85 Wn.2d 52, 59, 530 P.2d 291 (1975).

As to negligent infliction of emotional distress, “[l]ike all negligence claims, a negligent infliction of emotional distress claim requires duty, breach, proximate cause, and injury.” *Snyder v. Med. Serv. Corp. of E. Wash.*, 98 Wn. App. 315, 988 P.2d 1023 (1999) citing *Hunsley v. Giard*, 87 Wn.2d 424, 434-35, 553 P.2d 1096 (1976)). “In order to recover for negligent infliction of emotional distress, a plaintiff’s emotional response must be reasonable under the circumstances, and be corroborated by objective symptomatology.” *Hegel v. McMahon*, 136 Wn.2d 122, 132, 960 P.2d 424 (1998) (citing *Hunsley*, 87 Wn.2d at 436).

To satisfy objective symptomology, a “plaintiff’s emotional distress must be susceptible to medical diagnosis and proved through medical evidence.” *Id.* at 135.

Ms. Muñoz offered no evidence to support her emotional distress claims, and they were properly dismissed. Ms. Muñoz did not submit a declaration of other evidence showing any of the elements of either cause of action. Accordingly, since Ms. Muñoz failed to offer any evidence sufficient to support a cause of action of any type of emotional distress, and it was properly dismissed.

**5. Ms. Muñoz offered no evidence to support her cause of action for breach of fiduciary duties.**

To recover for breach of fiduciary duty Ms. Muñoz must prove:

- (1) the existence of a duty owed, (2) breach of that duty, (3) resulting injury, and (4) that the claimed breach proximately caused the injury.

*Micro Enhancement Intern., Inc. v. Coopers & Lybrand, LLP*, 110 Wn. 412, 433-34, 40 P.3d 1206 (2002) (citing *Miller v. U.S. Bank of Wash.*, 72 Wn. App. 416, 426, 865 P.2d 536 (1994)). *See also Taylor v. Bell*, 85 Wn. App. 270, 286-87, 340 P.3d 951(2014) (proximate cause is “an essential element of [plaintiff’s] claims for malpractice and breach of fiduciary duty”); *Senn v. Northwest Underwriters, Inc.*, 74 Wn. App. 408, 414, 875 P.2d 637 (1994) (citing *Interlake Porsche & Audi, Inc. v. Bucholz*, 45 Wn. App. 502, 509, 728 P.2d 597 (1986), *rev. denied* 107 Wn.2d 1022 (1987))

(claims for breach of fiduciary duty against corporate officer and director required proof of causation of harm); *McCormick v. Dunn & Black, P.S.*, 140 Wn. App. 873, 895, 167 P.3d 610 (2007), *rev. denied*, 163 Wn.2d 1042, 187 P.3d 270 (2008) (proximate cause is necessary element of breach of fiduciary duty claim).

For the reasons discussed above with respect to Ms. Muñoz's legal-malpractice claim, as a matter of law she cannot prove proximate cause as to her breach of fiduciary duty claim. First, she offered no testimony, expert or otherwise, that Mr. Bean did not fully comply with his duties during the less than five months he represented her. Second, she did not produce any evidence of her claimed damages that were somehow caused by the alleged breach. Finally, she offered absolutely no evidence to show that any alleged breach proximately caused her alleged damages. Simply put, since Ms. Muñoz did not offer any evidence to support her claim the trial court properly dismissed it.

**6. Ms. Muñoz offered no evidence to support her cause of action for violation of the Consumer Protection Act (CPA).**

To establish a violation of Washington's CPA, RCW 18.86 *et seq.*, a plaintiff must establish (1) that the defendant engaged in an unfair or deceptive act or practice; (2) that occurred in trade or commerce; (3) that impacts the public interest; (4) that the plaintiff suffered injury to her

business or property; and (5) the injury is causally linked to the unfair or deceptive act. *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 602, 200 P.3d 695 (2009). Failure to support even one of the five elements is fatal to a CPA claim. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784, 719 P.2d 531 (1986).

However, actions of negligence and malpractice are not violations of the Act, “since those claims go to the competence and strategy of lawyers, and not the entrepreneurial aspects of the practice.” *Short v. Demopolis*, 103 Wn.2d 52, 60-61, 691 P.2d 163 (1984); *Eriks v. Denver*, 118 Wn.2d 451, 464, 824 P.2d 1207 (1992) (citation omitted). Only the entrepreneurial aspects of the practice of law fall within the “trade or commerce” definition of the CPA. *Short*, at 60-61. The entrepreneurial aspects of the practice of law include ‘how the price of legal services is determined, billed, and collected and the way a law firm obtains, retains, and dismisses clients. *Id.*

Here. Ms. Munoz’s claims against Mr. Bean are, at best, claims of legal malpractice, directed at his competence and strategy. Ms. Munoz has not made allegations about the entrepreneurial aspects of Mr. Bean’s practice. Accordingly, the CPA does not apply, and the trial court properly dismissed her claim.

**E. The trial court acted well within its discretion in denying Ms. Muñoz’s motions for reconsideration, because she did not provide any reason in fact or law to support reconsideration.**

Ms. Muñoz moved for reconsideration of the court’s denial of her motion for a continuance, and the granting of summary judgment. CP 1682-1703; CP 1704-1737. The trial court properly denied reconsideration both times.

**1. The denial of reconsideration is not properly before this court on appeal because Ms. Muñoz did not raise it.**

As an initial matter, Ms. Muñoz did not actually appeal denial of her reconsideration motions, because she did not assign error to the decision, raise it as an issue on appeal, or brief the issue. See RAP 10.3(a)(4), (6); *McKee v. Am. Home Products, Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045 (1989) (appellate courts “will not consider issues on appeal that are not raised by an assignment of error or are not supported by argument and citation of authority); *Ang v. Martin*, 154 Wn.2d 477, 487, 114 P.3d 637 (2005) (approving proposition that when appellant fails to raise issue in the assignments of error and fails to present argument on the issue or provide legal citation, an appellate court will not consider the merits of that issue). Therefore, these matters are not properly before this court on review.

**2. The trial court was within its discretion to reject the one basis of fact upon which Ms. Muñoz relied in support of reconsideration.** Even if Ms.

Muñoz had properly appealed denial of reconsideration, the decision should not be overturned. Motions for reconsideration are addressed to the sound discretion of the trial court; a reviewing will not reverse a trial court's ruling absent a showing of manifest abuse of discretion. *Perry v. Hamilton*, 51 Wn. App. 936, 938, 756 P.2d 150 (1988); *Weems v. North Franklin Sch. Dist.*, 109 Wn. App. 767, 37 P.3d 354 (2002) (motions for reconsideration are reviewed for an abuse of discretion). A trial court abuses its discretion when it exercises it in a manifestly unreasonable manner or bases it upon untenable grounds or reasons. *Stenson*, 132 Wn.2d 668 at 701. CR 59 governs motions for reconsideration. CR 59(a) sets out the grounds for seeking reconsideration and expressly requires, “[a] motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.” CR 59(b).

**a. Ms. Muñoz offered insufficient reasons in fact or law to justify reconsideration.**

Ms. Muñoz's only ground for reconsideration on both motions was she was sick. CP 1682-83; CP 1704-05. Under CR 59, the court denied

both motions<sup>2</sup>. CP 1781. Although the trial court did not elaborate on its decision, its order shows the court considered the requirements of CR 59, since the order states that it is made “under CR 59.” CP 1781. The trial court found Ms. Muñoz’s illness insufficient to warrant reconsideration. Since there is nothing to indicate the trial court abused its discretion in denying reconsideration, the ruling should be upheld.

**F. This court should reject Ms. Muñoz’s miscellaneous arguments.**

As discussed *supra*, this court should affirm the decisions of the trial court. However, by way of further clarification for this court, and to respond to the other miscellaneous contentions in Ms. Muñoz’s appeal brief, Mr. Bean offers the following responses:

**1. The trial court did base its ruling on summary judgment on the pleadings.**

Ms. Muñoz assigns error to the fact the trial court did not base its ruling on summary judgment on the pleadings. App. Br., Assignment of Error no. 1a, p.1. There is no basis for this assignment of error, as the trial court did base its ruling on the pleadings.

The Clerk’s Minutes make this very clear: “Court relies **on the pleadings before** [it], and GRANTS defendant’s motion for summary

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<sup>2</sup> The trial court entered only one order on reconsideration, despite there being two motions for reconsideration. CP 1781.

judgment.” CP 1671 (boldface added). The court’s order on summary judgment provides further evidence of the basis for the court’s ruling, saying, “THIS MATTER, having come before the Court on Defendant Matthew J. Bean’s Motion for Summary Judgment, the court **having reviewed the records and files herein[.]**” CP 1672 (emphasis added). The order goes on to list the pleadings the trial court considered, including (1) Mr. Bean’s Motion for Summary Judgment; (2) Mr. Bean’s declaration; (3) Mr. Wright’s declaration; (4) Mr. Bean’s Reply, and (5) Mr. Mooney’s declaration. CP 1672.

Despite Ms. Muñoz’s bare assertion to the contrary, the trial court based its rulings on the pleadings. The Clerk’s Minutes and the Order on Summary Judgment make this abundantly clear. The trial court clearly, and properly, decided summary Mr. Bean’s motion for summary judgment on the pleadings.

**2. The trial court correctly allowed Mr. Winstanley, a licensed member of the Washington State Bar, to appear on behalf of Mr. Bean at the summary judgment hearing.**

Ms. Muñoz’s brief, and her other appellate filings in this matter, make much of the fact that attorney Christopher Winstanley attended the hearing on summary judgment, rather than Mr. Wright or Mr. Mooney. App. Br., Assignments of Error Nos. 1b, 2, 3, 3a, 3b, pp. 1-2. Any

arguments based on this fact lack merit and are frivolous. Ms. Muñoz misapprehends the concept of a defendant appearing.

A notice of appearance, if made, must be signed by either the defendant or the defendant's attorney. CR 4(a)(3). Although a defendant usually appears through counsel, it is the defendant who appears, not the defense counsel. CR 4; *see also Tiffin v. Hendricks*, 44 Wn.2d 837, 843, 271 P.2d 683 (1954). Actions by an attorney authorized to appear for a client are binding on the client at law and in equity. *Rivers v. Wash. State Conference of Mason Contractors*, 145 Wn.2d 674, 679, 41 P.3d 1175 (2002). An attorney who voluntarily appears on behalf of a client is presumed to be authorized to do so. *Molloy v. Union Transfer, Moving & Storage Co.*, 60 Wn. 331, 335-36, 111 P. 160 (1910). The party on whose behalf the attorney has appeared has the right to challenge the appearance of that attorney, not the opposing party. *See* RCW 2.44.020; *State ex rel. Turner v. Briggs*, 94 Wn. App. 299, 304-05, 971 P.2d 581 (1999) (orders entered without client authority are voidable and may be vacated).

Here, Lee Smart, P.S., Inc. appeared for, and represented Mr. Bean in this action from the outset. CP 42. Mr. Winstanley, an associate attorney at Lee Smart, P.S., Inc., attended the hearing on summary judgment on Mr. Bean's behalf. RP 3. Mr. Bean does not challenge Mr. Winstanley's attendance at the hearing and has made no effort to

challenge Mr. Winstanley's or Lee Smart, P.S., Inc.'s voluntary appearance in this matter. Therefore, Mr. Winstanley was authorized to attend the hearing on summary judgment, and it was proper for him to argue the motion. In contrast, since he was not her attorney and his client authorized his appearance, Ms. Muñoz had no standing to challenge Mr. Winstanley's appearance. Therefore, all of Ms. Muñoz's assignments of error relating to the fact Mr. Bean was not present at the summary judgment hearing because Mr. Winstanley attended are without merit, and cannot serve as a basis for reversal.

**a. The trial court did not apply a double standard with respect to Ms. Muñoz failing to appear for the hearing.**

Ms. Muñoz argues that the trial court applied a double standard when it dismissed her claims because she did not appear at the hearing and Mr. Bean appeared through Mr. Winstanley, who Ms. Muñoz believes lacked standing to appear. App. Br., Assignment of Error No. 3, p. 1. This argument is false and groundless.

First, Ms. Muñoz misapprehends the basis for the court's ruling on summary judgment, which was the merits of the action shown by the summary judgment pleadings, not the fact Ms. Muñoz had failed to attend. The Clerk's Minutes make this very clear: "Court relies **on the pleadings before** [it], and GRANTS defendant's motion for summary judgment."

CP 1671 (emphasis added). The trial court expressly, and properly, decided Mr. Bean's motion for summary judgment on the pleadings, not based on Ms. Muñoz's failure to attend the hearing.

Second, as discussed *supra*, Mr. Bean appeared at the hearing through Mr. Winstanley, who was his duly authorized representative and a licensed member of the Washington State Bar Association. RP 3. In contrast, Ms. Muñoz, who chose to act as her own attorney in this matter, did not appear, and did not send an authorized representative. *Id.* Because she chose to act as her own attorney, Ms. Muñoz's personal presence was required at the hearing on summary judgment. *In re Marriage of Olson*, 69 Wn. App. at 626 ("The law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks the assistance of counsel"). Since she chose to act as her own attorney and did not attend, she was unrepresented at the hearing. Accordingly, the trial court did not apply any supposed "double standard" to Ms. Muñoz.

**3. The trial court was not required to wait an hour for Ms. Muñoz to appear at the hearing on summary judgment.**

Ms. Muñoz assigns error to the fact that the trial court started the summary judgment hearing without waiting an hour for her to appear. App. Br. at 5, Assignment of Error No. 13. Ms. Muñoz believes this showed bias against her. App. Br. at 44. This argument has no merit, and

the trial court did not err.

Ms. Muñoz cites to no proof in the record that she was simply running late and she would have attended hearing if it started later. In fact, Ms. Muñoz does not even argue as much. Rather, she argues in her Motion to Reconsider she was unable to attend due to an illness. CP 1682-83. Accordingly, even if the trial court had delayed the hearing by an hour, there is no evidence she would have showed up for the hearing.

Second, and more importantly, the trial court was not required to wait an hour. Ms. Muñoz argues RCW 12.04.160 required the court to delay the duly noted hearing on summary judgment. App. Br. at 5, Assignment of Error No. 13. It does not. RCW 12 contains the civil procedure for district courts; the motion for summary judgment was pending in King County Superior Court. Additionally, RCW 12.04.160 governs a party's appearance in an action for the recovery of a debt before a justice of the peace, not at a hearing in superior court. Simply stated, this statute does not apply to this situation, and it does not require the superior court to wait for an hour before beginning any proceedings. Accordingly, it was not error for the trial court to proceed with the summary judgment when Ms. Muñoz did not appear at the time noted for hearing. Notably, even though the trial court was not required to do so, it did wait 20 minutes for Ms. Muñoz to appear at the hearing. RP 3.

**4. The order in which filings were entered into the court docket did not affect the court's rulings.**

Ms. Muñoz's brief makes much of the order in which certain filings were listed on the docket, and claims such "reverse listing" caused the court to error when ruling on summary judgment.<sup>3</sup> App. Br. at 32-37. There is no merit to this argument. First, trial court based its ruling on summary judgment on the pleadings before it, not on order of filings listed in the docket. CP 1672. In fact, other than Ms. Muñoz's statements in her brief, there is no evidence in the record the court was even aware of order in which the filings were listed in the docket, since it was irrelevant to the summary judgment hearing.

Second, in making the argument, Ms. Muñoz overlooks a crucial fact: her request for a continuance was nine days late. CR 56(c) requires all responding affidavits, including those contemplated by CR 56(f), to be submitted 11 calendar days before the hearing on summary judgment. CR 56(c). Ms. Muñoz did not submit her request until two days before the hearing, even if she did submit it two hours and 23 minutes before Mr. Bean filed his Reply. CP 1556; App. Br. 32. Accordingly, regardless of

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<sup>3</sup> To the best of his ability to discern her argument, Mr. Bean believes Ms. Muñoz's position is that since her request for a continuance was listed in the docket after Mr. Bean's Reply on Summary Judgment, the court did not consider her request for a continuance before it ruled on Mr. Bean's Motion for Summary Judgment.

the order in which it was listed in the docket, it was still over a week late, and did not contain any of the information CR 56(f) requires.

Finally, the Report of Proceedings clearly shows the court did consider her request for a continuance before considering Mr. Bean's motion, which is the order in which Ms. Muñoz believes the pleadings should have been considered. RP 3. As such, the trial court heard the motions in the order in which Ms. Muñoz's believes it should have. The court did not error.

**G. Ms. Muñoz's Statement of the Case violates RAP 10.3(a)(5).**

Ms. Muñoz's Statement of the Case – her description of the discovery process and counsel's actions therein, the basis for the court's rulings on the various motions, the standing of Bean's counsel, and her description of Bean's positions with respect to her motion for an extension of time – is inaccurate, argumentative, and fails to properly refer to the record. It repeatedly violates RAP 10.3(a)(5). This court should disregard it. *Hous. Auth. Of Grant County*, 105 Wn. App. 178, 184-85, 19 P.3d 1081 (2001) (self-serving statements in appellate brief that are unsupported in record will not be considered on appeal).

The Statement of the Case is so fraught with inaccuracies and error that the 50-page limit of RAP 10.4(b) precludes Mr. Bean from addressing

them all. Nevertheless, one of these mischaracterizations bears mention.

- 1. Mr. Bean did not obstruct discovery or in any other way prevent Ms. Muñoz from developing her case.**

Ms. Muñoz's brief states:

**6. For a period of two months (6/12/14-8/12/14) Defending Party and Muñoz engaged in a series of discovery exchanges** – including Plaintiff's 10 sets of requests for discovery and production of documents, to which Defendant Objected.

7. Defendant Party began to sabotage the discovery process by various means: Initially, Defendant Party proposed (**6/20/14**) to provide Muñoz with a CD of documents responsive to Plaintiff's requests for production, which Muñoz confirmed in writing on **6/26/14**.

8. Later on, in response to Plaintiff's discovery requests, Defending Party reneged on that mutual agreement and insisted that Muñoz obtain responsive discovery documents only by going to Defending Party's offices and doing her own copying, at her expense.

9. Additionally, throughout the two-month discovery period cited above, Defending Party insisted on holding the discovery conference only by telephone and only at arbitrary dates and times set by Defending Party during Muñoz's work hours.

10. Defending party refused to confer in-person with Muñoz at a neutral public location and was a no-call, no-show for an in-person conference arranged by Muñoz (**8/6/14**).

11. The ongoing discovery process was completely derailed when Defendant abruptly ended discovery on **8/12/14**, exactly two months after Defendant initiated discovery.

12. At Defendant's pre-arranged telephone discovery conference schedule for 4:00 PM on **8/12/14**, someone alleging to be "Dan Mooney" representing Defending

Party **called at 4:03 PM on 8/12/14** to cancel the telephone conference and to end all discovery proceedings.

**13.** Defending party confirmed their ending of discovery in a letter dated **8/12/14**.

App. Br. at 9-11 (emphasis in original). This section is objectionable not only because it does not contain a single citation to the record as RAP 10.3(a)(5) requires, but it is a gross mischaracterization of what actually transpired and has no place in the Statement of the Case.

Mr. Bean did not sabotage the discovery process or attempt to block Ms. Muñoz from obtaining any evidence to support her claims, and all her statements to the contrary are demonstrably false. First, Mr. Bean did not abruptly end the discovery process, but rather elected not to move to compel her further answers; Mr. Bean did not try to prevent Ms. Muñoz from obtaining or pursuing any discovery she wanted. CP 1592-3.

Second, Mr. Bean scheduled the discovery conference during work hours, on weekdays, and attempted to schedule it during times Ms. Muñoz said she was available. CP 1347, 1349, 1354. Finally, the discovery conference did not occur because Ms. Muñoz refused to conduct it over the telephone and Mr. Bean did not want to incur the cost of having counsel travel to Federal Way just to tell her what the deficiencies were in her discovery responses, especially, when the Civil Rules specifically authorized such a conference by telephone. *See* CP 1354, 1592-3.

With respect to Ms. Muñoz's allegation that Mr. Bean first agreed to produce the documents responsive to her requests for production on a CD, and then changed his position and only agreed to produce them at his office, Ms. Muñoz is completely off base. In reality, upon receipt of her discovery requests, counsel initially wrote to Ms. Muñoz and advised her the responsive documents would be prepared, and sent to her on a CD, as is a common practice for attorneys in this jurisdiction. App. B. However, Ms. Muñoz's discovery requests all contained the following instruction:

PLAINTIFF (sic) hereby demands that Defendants produce the following DOCUMENTS (sic) at the office of the above named attorney for Defendants, within thirty (30) days of service of this request[.]

App. A. Accordingly, counsel produced the documents consistent with her instructions, and the responsive documents were produced at counsel's office for her inspection and copying. CP 1329. However, Ms. Muñoz never came to counsel's office to inspect the documents. *Id.*

Finally, Mr. Bean did not abruptly end the discovery process. Rather, after encountering substantial difficulties in conducting discovery and facing mounting costs, Mr. Bean opted instead to forego additional discovery and move to dismiss her claims once it became apparent Ms. Muñoz had no evidence to support her claims. Defense counsel then wrote to Ms. Muñoz to confirm cancellation of the discovery conference, which had also been done by a voicemail left on Ms. Muñoz's phone.

Mr. Bean did nothing to prevent Ms. Muñoz from continuing discovery, and the record is devoid of any attempts by her to compel discovery, if in fact Mr. Bean was obstructing her. Accordingly, it is patently false for Ms. Muñoz to allege that Mr. Bean attempted to obstruct her access to evidence.

**H. Ms. Muñoz’s frivolous appeal and numerous violations of the Rules of Appellate Procedure mandate sanctions, including an award of Mr. Bean’s costs and reasonable attorney fees.**

RAP 18.9(a) allows this court to “order a party ... who ... files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.” Such terms are warranted here for several reasons, and Mr. Bean asks that the court interpret this section as a request made pursuant to RAP 18.1.

A court has the power to require a party to pay damages if that party files a “frivolous” appeal. RAP 18.9(a). “An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there [is] no reasonable possibility of reversal.” *Fay v. N.W. Airlines, Inc.*, 115 Wn.2d 194, 200-01, 796 P.2d 412 (1990). Applying this standard, this court previously awarded a respondent all reasonable attorney fees incurred on appeal because a

party's appeal was "totally devoid of merit that there was no reasonable possibility of reversal." *Foisy v. Conroy*, 101 Wn. App. 36, 43, 4 P.3d 140 (2000). Supporting this rationale is the Ninth Circuit Court of Appeals' recognition that "[t]he decision to appeal should be a considered one...**not a knee-jerk reaction to every unfavorable ruling.**" *In re George*, 322 F.3d 586, 591 (9th Cir. 2002) (emphasis added; internal quotation marks and citations omitted).

In *Foisy*, the appellant's arguments on appeal were completely meritless. *Foisy* argued the judge's acts were invalid because the judge had not posted a surety bond, and that official acts had no effect because of a defect in the judge's oath of office. The Court of Appeals held the plaintiff's appeal was frivolous because it presented no debatable issues and was so totally devoid of merit that there was no reasonable possibility of reversal.

Ms. Muñoz's appeal is similarly frivolous. The legal authorities cited in this brief, and the absence of such authorities in Ms. Muñoz's brief, show that this appeal is totally devoid of merit. There is no reasonable possibility of reversal. Ms. Muñoz cites no authority for her claims on appeal. She has not even, at this late point in the proceedings, come forward with any evidence to support any of her claims. Even assuming Ms. Muñoz were correct that opposing counsel blocked her

access to evidence, which they did not, she has at no point in time offered any indication as to what evidence she believed she would discover, and how that evidence would support any of her claims.

Moreover, Ms. Muñoz has systematically violated the RAPs:

- Ms. Muñoz's opening brief repeatedly violates RAP 10.3, such that it is functionally unintelligible.
- Ms. Muñoz repeatedly disregarded RAP 9.6 by submitting as clerk's paper **every** document filed in this matter. RAP 9.6(a) encourages the parties to designate only those pages as clerks' papers that are necessary to review the issues on appeal.
- Muñoz also plainly disregards RAP 9.12, which limits the record on appeal of an order on summary judgment. Ms. Muñoz's excessive designation of clerk's paper unnecessarily increased the cost of this appeal.

Each of these violations, and certainly all of them taken together, justify sanctions in this frivolous appeal.

## **VI. CONCLUSION**

This court should affirm the trial court's grant of summary judgment and award Mr. Bean attorney fees and costs for a frivolous appeal. The issues in this case involved well-settled legal principles and undisputed facts. Ms. Muñoz made no attempt to meet her prima facie

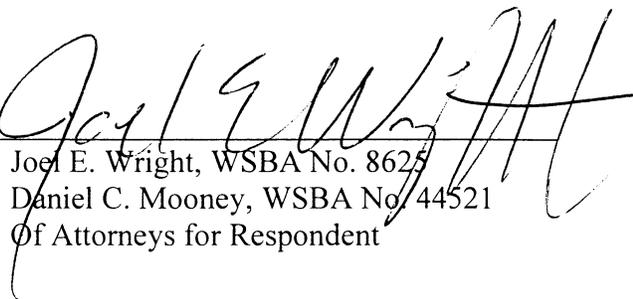
burden before the trial court, and her malpractice claim is without merit as the record on review shows. Similarly, she cites no legal authority in support of her claim or her appeal.

Ms. Muñoz has repeatedly violated court rules. Her appeal is clearly without merit and lacks any reasonable possibility of reversal. Mr. Bean requests that this court affirm the trial court's grant of summary judgment and award reasonable attorney fees and costs on appeal.

Respectfully submitted this 20<sup>th</sup> day of August, 2015.

LEE SMART, P.S., INC.

By:



Joel E. Wright, WSBA No. 8625  
Daniel C. Mooney, WSBA No. 44521  
Of Attorneys for Respondent

**DECLARATION OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on August 20, 2015, I caused service of the foregoing pleading on each and every attorney of record herein:

**VIA LEGAL MESSENGER**

Ms. Idalie Muñoz Muñoz  
326 South 327th Lane  
Federal Way, WA 98003

Court of Appeals, Division 1  
600 University Street  
One Union Square  
Seattle, WA 98101

DATED this 20th day of August, 2015 at Seattle, Washington.



\_\_\_\_\_  
Susan Munn, Legal Assistant

RECEIVED  
COURT OF APPEALS  
DIVISION ONE  
AUG 20 2015

## **APPENDIX**

1. Plaintiff's Request for Production
2. Correspondence from counsel to Ms. Munoz

# **APPENDIX A**

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14 JUN 17 AM 9:57

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR COUNTY OF KING

IDALIE MUNOZ MUNOZ,

Plaintiff, pro se

vs

MATTHEW J. BEAN,

Defendant

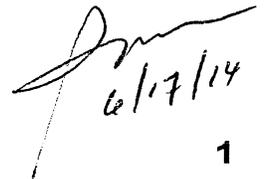
No. 14-2-06613-9 SEA

**PLAINTIFF'S REQUEST  
FOR PRODUCTION OF  
DOCUMENTS, SET ONE,  
RE 2K SERIES DOCUMENTS**

**TO:** Defendant Matthew J. Bean and his Attorney(s) of Record:

**REQUESTS FOR PRODUCTION**

PLAINTIFF hereby demands that Defendants produce the following DOCUMENTS at the office of the above named attorney for Defendants, within thirty (30) days of service of this request, or at such other time and place, or in such other manner, as may be mutually agreed upon by the parties:

  
6/17/14  
1

**REQUEST FOR PRODUCTION NO. 1.**

1. PLEASE TAKE NOTICE THAT pursuant to Washington Civil Rules 26 and 34, I, Idalie Muñoz Muñoz, Plaintiff pro se in the above-captioned case (“Plaintiff”), demands that on Thursday, July 17, 2014, at 4:00 PM, Defendant produce authenticated hard copies of the information in the attached “Plaintiff’s List of Documents for Discovery (01)” including documents described as original “emails” or otherwise “electronically stored information” related to the electronic correspondence from Defendant Matthew J. Bean and his representatives to Plaintiff.

2. All documents demanded shall either be produced as they are kept in the usual course of business, or be organized and labeled to correspond with the categories contained in this demand.

**REQUEST FOR PRODUCTION NO. 2.**

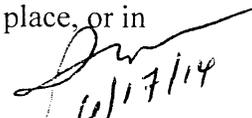
ANY and ALL computer backup media containing information and/or files requested in these Requests for Production, as described in the attached “**Plaintiff’s List of Documents for Discovery (01).**”

**REQUEST FOR PRODUCTION NO. 3.**

ANY and ALL DOCUMENTS sufficient to determine all telephone calls, e-mails or facsimile transmissions between DEFENDANT and Plaintiff between 9/7/10 and 6/16/11, as related to the attached “**Plaintiff’s List of Documents for Discovery (01).**”

**INSTRUCTIONS**

A. Responding Party is hereby requested, pursuant to Washington Civil Rules 26 and 34, to serve a written response under oath within thirty (30) days after service of this request, to which you may add five (5) days if this request is served by mail, or at such other time and place, or in

  
6/17/14  
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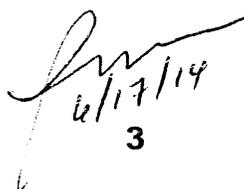
such other manner, as may be mutually agreed upon by the parties. Such response is to include the following statements: (1) whether Defendant will comply with the photocopying or other acceptable authenticated reproduction of the requested documents; and (2) whether Responding Party lacks the ability to comply. If Responding Party objects to the whole or any part of the request, specific grounds for the objection must be stated in the response.

**B.** All originals and copies of the items requested, which are in the possession, custody and/or control of responding party or are otherwise available to responding party, which are responsive to the above requests, shall be produced and identified.

**C.** If any DOCUMENT (as described in the attached “**Plaintiff’s List of Documents for Discovery(01)**”) herein requested was formerly in the possession, custody and/or control of Responding Party and has been lost or destroyed, Responding Party shall submit, in lieu of such DOCUMENT, a written statement which (1) describes in detail the nature of the DOCUMENT and its contents, (2) identifies the person who prepared or authored the DOCUMENT, (3) identifies the person to whom the DOCUMENT was sent, if applicable, (4) specifies the date on which the DOCUMENT was prepared or transmitted, or both, (5) specifies, if possible, the date on which the DOCUMENT was lost or destroyed, and (6) if destroyed, the conditions of or reasons for such destruction and the person requesting or performing the destruction.

**D.** Pursuant to Washington Civil Rules 26 and 34, DOCUMENTS are to be produced either as they are kept in the usual course of business or organized and labeled to correspond with the categories in this demand.

**E.** DOCUMENTS being produced shall be maintained in their original format. Attachments to a document shall not be unfastened. DOCUMENTS shall not be scrambled or otherwise jumbled and shall be produced in a way which preserves their identity.

  
6/17/14  
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**F.** Whenever the item being produced is a file, the folder or other container of it shall be produced with it.

**G.** All DOCUMENTS requested herein refer to the time period beginning **9/17/10 up to and including 6/16/11.**

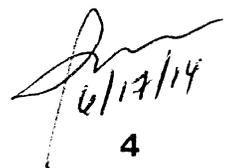
**H.** Whenever a DOCUMENT falling within the request is withheld from production, according to a claim of privilege or otherwise, you are requested to provide a listing of such DOCUMENTS containing a description of the DOCUMENTS and a description of the claim of privilege sufficient to enable propounding party to present a motion to the court to compel production of same.

**I.** Every Request for Production herein shall be deemed a continuing Request for Production, and Defendant is to supplement its answers promptly if and when Defendant obtains responsive documents which add to or are in any way inconsistent with Defendant's initial production.

**J.** These discovery requests are not intended to be duplicative. All requests should be responded to fully and to the extent not covered by other requests. If there are documents that are responsive to more than one request, please note and produce each such document first in response to the request that is more specifically directed to the subject matter of the particular document.

### **DEFINITIONS**

**K.** "DOCUMENT" or "DOCUMENTS" includes all drafts and all finalized and/or executed writings, and includes all electronic recordings of any information whether that information is electronic mail or other form of electronic means of preserving information and/or is stored on a "hard" disk, 5 ¼" or 3 ½" disk, laser disk, magnetic or other tape, personal computer or

  
6/17/14  
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mainframe computer. If YOU do not have custody or control of the original, the term "DOCUMENT" or "DOCUMENTS" shall also include any carbon or photograph or any other copies, telephone messages, reproductions or facsimiles thereof. If YOU have custody or control of the original and copies, reproduction or facsimiles, the term "DOCUMENT" or "DOCUMENTS" shall mean the original of any copy or reproduction or facsimile that is in any way different from the original.

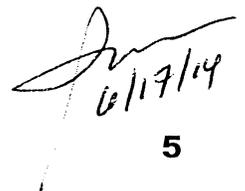
**L.** As used herein, "DEFENDANT" refers to defendant Matthew J. Bean.

**M.** As used herein, the terms "YOU" and "YOUR" refers to DEFENDANT, individually and collectively, and his or her, its or their affiliates and parent company and anyone acting on their, her or its behalf, including, but not limited to, past and present officers, directors, shareholders, agents, employees, representatives, affiliates, attorneys, accountants, investigators, or anyone else acting in their, her or its interest, on their, her or its behalf, or at their, her or its request, and each of them.

**N.** As used herein, the term "PERSON" includes ANY natural person, firm, association, organization, partnership, business, trust, corporation, limited liability company, joint venture or public entity.

**O.** As used herein, the terms "RELATE TO," "RELATED TO," and/or "RELATING TO" mean discuss, support, refute, reflect, mention, embody, pertain to, involve, comprise, respond to, concern, contain, summarize, memorialize, evidence, refer to, or connect in any way legally, factually or logically with, the matter therein.

**P.** As used herein, "COMMUNICATION" or "COMMUNICATIONS" includes any contacts between or among two or more PERSONS, and includes without limitation, written contact by such means as letters, memoranda, telegrams, telexes, electronic mail or any other



Handwritten signature and date: 6/17/14

DOCUMENTS, and oral contact by such means as face-to-face meetings and telephone conversations.

**Q.** As used herein, the term "ANY" as well as "ALL" shall be construed to include "each" and "every" within their meanings.

**R.** In these Requests, the terms "and" and "or" have both conjunctive and disjunctive meanings so as to be inclusive of any documents which otherwise may be excluded from production.

**S.** In these Requests, the use of the singular includes the plural and the use of the plural includes the singular, so as to be inclusive of any DOCUMENTS which may otherwise be excluded from production.

### **CLAIMS OF PRIVILEGE**

**T.** Pursuant to WA ER 502 and applicable state laws, with respect to each DOCUMENT called for by this demand, as to which YOU make any objection on the grounds that any privilege (including, without limitation, the attorney-client privilege or the attorney work-product privilege) applies, separately state the following: (1) the nature of the DOCUMENT (i.e., handwritten notes, correspondence, memoranda, tape recording, etc.), (2) the date of or upon the DOCUMENT, (3) the name, business address and present position of each PERSON who participated in its preparation, (4) the position at the time the DOCUMENT was prepared of each PERSON who participated in its preparation, (5) the name, business address and present position of each PERSON to whom the DOCUMENT or any copy thereof was addressed, sent, or provided, (6) the position, as of the time the DOCUMENT was prepared and as of the time it was received, of each PERSON to whom it or any copy thereof was addressed, sent, or provided, (7) the name, business address, and present position of each PERSON by whom the DOCUMENT

was seen or to whom it or any part thereof was disclosed, (8) the position, as of the time the DOCUMENT or any part thereof was seen or disclosed, of each PERSON who has seen or to whom the DOCUMENT or any part thereof was disclosed, (9) each and every present custodian of said DOCUMENT and every copy thereof, (10) the subject matter(s) of said DOCUMENT and every portion thereof, (11) the basis of the claim of privilege, and (12) if the basis of the claim of privilege is the attorney-work product doctrine, identify the proceeding for which the DOCUMENT was prepared.

**U. The attached "Plaintiff's List of Documents for Discovery (01)" contains a listing and/or description of all documents requested for production in the demand herein; specifically, Defendant's email correspondence to Plaintiff covering the period dating from 9/7/10 to 6/16/11, identified as the 2K Series of Exhibits, emails from Matthew J. Bean to Idalie Muñoz Muñoz, filed with Plaintiff's First Amended Complaint on 6/3/14 (Sub#8). For easy reference, the format generated for "Plaintiff's List of Documents for Discovery (01)" is based on Plaintiff's document "List of Documents in Support of Claims" filed with Plaintiff's First Amended Complaint on 6/3/14 (Sub#8). The list contains <sup>38</sup> one-sided pages with Plaintiff's initials on each page.**

June 17, 2014

*Idalie Muñoz Muñoz*  
 Idalie Muñoz Muñoz, Plaintiff pro se  
 5004 30<sup>th</sup> Avenue South  
 Seattle, WA 98108  
 (206) 861-3382

*June 17, 2014*

*June 17/14*  
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**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

*Idalie Munoz Munoz*  
*June 17, 2014*

<p><b>1K1</b> =IMM to Bean, emails,</p> <p><b>1K2</b> =IMM WSBA Grievance &amp; Bean's Response related,</p> <p><b>3K0</b> = IMM lawsuit C10-1475 proceedings up to Dkt 21 where the Court GRANTED (the 1<sup>st</sup>) extension of trial date</p> <p><b>3K1</b> = Notice of Appeal &amp; Acceptance of Appeal</p> <p><b>3K2</b> = 9<sup>th</sup> Circuit Appeal Opening Brief for a comprehensive description of C10-1475 proceeding.</p> <p><b>4K</b> = Miscellaneous, Selected Attachments &amp; Exhibits from 1K, 2K and 3K</p> <p><b>5K</b> = Pending discovery</p>	<p>•</p> <p><b>2K</b> = Bean to IMM, emails, e mail attachment &amp; mails</p>	
<p>•</p>	<p>•</p>	
<p align="center"><b>1K1 Series</b>                  IMM Emails to Bean in Chronological Order</p>	<p><b>2K Series</b>                  • Bean Emails to IMM in Chronological Order</p>	
<p>Mon Day Year</p> <p><b>(1K1 Series #)</b></p> <p>Time-code = yy<b>mmdd</b>hhmm A/P                  e.g., 1009171224P = 2010, Sep 17, 12:24 PM</p> <p>1K1# suffixed by letters = Attachments                  Attachments are reserved.                  Selected Attachments = in 4K Series                  Non-selected attachments are referable in Dkt 50, 51, 52, 53 &amp; 101 of C10-1475 case.                  "Text" = abridged text in document</p>	<p>Brief description, Remarks, Comments and Cross-Reference</p>	<p><b>(2K Series #)</b></p> <p>yy<b>mmdd</b>hhmm A/P</p> <p>"Text" = abridged text in document for ease of reference purpose only. Please refer to the actual text for full content.</p>
<p>9/17 2011</p>	<p>This space is for Defendant's production of 2K101-102</p>	<p>• (1)<b>2K101-102</b> Bean to IMM, 1009170159P</p>

**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
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*Idalie*  
*6/17/14*

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

	This space is for Defendant's production of 2K101-102	<ul style="list-style-type: none"> <li>Responding to IMM 1K101</li> <li>"...Thanks for contacting ...give me a call on Tuesday ..."</li> </ul>
9/21	This space is for Defendant's production of 2K103.	<ul style="list-style-type: none"> <li>(2)<b>2K103</b> Bean to IMM,</li> <li>• <b>100921</b>1026A</li> <li>Responding to IMM 1K102</li> <li>"I asked a question of ... I know about the procedural aspect ... Can you tell ... if have filed ..."</li> </ul>
9/23	This space is for Defendant's production of 2K104.	<ul style="list-style-type: none"> <li>(3)<b>2K104</b> Bean to IMM,</li> <li>• <b>100922</b>0108P</li> <li>" ... I am very familiar with ... I do take ...strong on the merit on contingency ...Cost to trial ... be at least \$5000 ... If you're still ... give me a call on Monday ..."</li> </ul>
12/6	This space is blank.	<ul style="list-style-type: none"> <li>• 12/6</li> </ul>
12/7		<ul style="list-style-type: none"> <li>• 12/7</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>

**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

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*6/17/14*

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

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**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

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**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

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**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
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6/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

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12/7	[Redacted]	<p>12/7</p> <ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>
12/7	[Redacted]	<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> </ul> <p>(12/8/2011)</p>
12/8	This space is for Defendant's production of 2K105.	<ul style="list-style-type: none"> <li>• (4)2K105 Bean to IMM,</li> <li>• 1012080248P</li> </ul> <p>Responding to 1K(109)  "... I understand you needed to work ... @ home. What happened on 12/16?..."</p>

**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

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6/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

<p>This space is for Defendant's production of 2K106.</p>	<p>(5) <b>2K106</b> Bean to IMM,  <ul style="list-style-type: none"> <li>• 10<b>1208</b>0248P</li> </ul> <p>"... I see what you did on 12/16 ... and they are saying that you didn't ... What proof ...?"</p> </p>
<p>This space is for Defendant's production of 2K107.</p>	<p>(6) <b>2K107</b> Bean to IMM,  <ul style="list-style-type: none"> <li>• 10<b>1208</b>0248P</li> </ul> <p>"... I need to see the complaint. Do you have a cause of action under 5CFR 432? ... If ... wouldn't ... before the MSPB?"</p> </p>
<p>This space is blank.</p>	<p>12/8</p> <ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul> <p>(12/9/2011)</p>
<p>This space is for Defendant's production of 2K108.</p>	<p>(7) <b>2K108</b> Bean to IMM,  10<b>1209</b>0928A  Responding to Munoz to Bean  <ul style="list-style-type: none"> <li>• 1012090100A</li> <li>• "... The last file is unreadable on my WORD program. ... I still need ...?"</li> </ul> </p>

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**Plaintiff's List of Documents For Discovery (01)**

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**Plaintiff's List of Documents for Discovery (01)**

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1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

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**Plaintiff's List of Documents For Discovery (01)**

Idane Munoz Munoz v Matthew J. Bean  
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6/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

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12/10		12/10
12/13	This space is for Defendant's production of 2K109.	(12/13/2010) (8)2K109 Bean to IMM, 1012130935A Responding to IMM to Bean,

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6/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

	This space is for Defendant's production of 2K109.	12100425P "I'm happy to meet with you ... I don't want to put Joe ... Other than that, I could get you in ..."
	This space is for Defendant's production of 2K110.	(9)2K110 Bean to IMM, • 1012131155A " ...Any time on Wednesday is good ... My advice is to keep this totally ... This is what we can do ... my impression ... must be kept confidential. ... to excuse ... for that portion ..."
	This space is for Defendant's production of 2K111.	(10)2K111 Bean to IMM, • 1012131247P "... 1:00 it is. See you then."
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12/17 to 12/19		
12/20	This space is blank.	This space is blank.
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**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

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10/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

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12/22	This space is for Defendant's production of 2K112.	<p>(12/22/2010)</p> <p>(11) <b>2K112</b> Bean to IMM,</p> <p>10<b>1222</b> 1149A</p> <p>This space is blank.</p>
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**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

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6/17/14

**Plaintiff's List of Documents for Discovery (01)**

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1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

<p>12/25 to 12/27 12/28</p>	<p>This space is blank.</p>	<p>This space is blank.</p>
	<p>This space is for Defendant's production of 2K113</p>	<p>• (12/28/2010)</p> <p>•</p> <p>(12)2K113 Bean to IMM, • 101228 1028A</p> <p>“... We need to discuss the situation ... I am planning to withdraw from representation ...”</p>
	<p>This space is for Defendant's production of 2K114.</p>	<p>• (13)2K114 Bean to IMM, • 101228 1203P</p> <p>“We can wait until next week ... My concerns are ... 1. You filed ... against ... This is unacceptable. ... 2. ... implication ... is you do not trust me ... 3. You ... now sent the signal ... I am not in charge ... is embarrassing to me ... It does not bode well for the future ...”</p> <p>(12/30/2010)</p>
<p>12/30</p>	<p>This space is for Defendant's production of 2K115.</p>	<p>• (14)2K115 Bean to IMM, • 101230 0120P</p> <p>“ ... Can you give me a call at 2:00 today?”</p>

**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

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**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

<p>This space is for Defendant's production of 2K116.</p>	<p>(15)<b>2K116</b> Bean to IMM, 10<b>1230</b> 0220P “ ... Can you send us ... specific documents....I want ... evidencing ... orientation and ... indicating your start date ... as well as the notice of termination.”</p>
<p>12/30 This space is for Defendant's production of 2K117, 2K118, 2K119, 2K120.</p>	<p>(16)<b>2K117</b> Bean to IMM, 10<b>1230</b> 0242P “ ... There is no jury demand in the complaint. ... <b>We're researching what we can do about this now.</b>”</p> <p>(17)<b>2K118</b> Bean to IMM, 10<b>1230</b> 0257P “... But the box was not a check ...A judge may decide ... but there is no guarantee. ... Judge Coughnour is a very strict adherent to the civil rules. I could imagine him ... <b>I wouldn't count on a jury trial at this point. I also wouldn't recommend a bench trial.</b> ... My advice is ...”</p> <p>(18)<b>2K119</b> Bean to IMM, 10<b>1230</b> 0300P “... We check ... (FRCP 38) ... going to file an amended complaint with a jury demand. ... The should be sufficient....”</p> <p>(19)<b>2K120</b> Bean to IMM, 10<b>1230</b> 0308P “ ... The ... Act ... exclusive means for .... See Spencer v Straw ...”</p>

**Plaintiff's List of Documents For Discovery (01)**

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

	<p>This space is for Defendant's production of 2K121.</p>	<p>(20)2K121 Bean to IMM, 101230 0313P Bean emailed RA #3 to Munoz for her signature on 12/30. As he did on 12/22/2011, he wrote nothing in the email text to tell Munoz that the document he wanted Munoz to sign was NOT the same as he originally offered on 12/16/2010, RA #1, which terms Munoz indicated agreeing on and was expecting a typo-free version to be sent to her by mail.</p> <p>2K139, 1K200(Ex03)</p>
12/31	<p>This space is blank.</p>	<p>12/31</p> <p>(1/2/2011)</p>
1/2	<p>This space is blank.</p>	<p>1/2</p>

**Plaintiff's List of Documents For Discovery (01)**

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6/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

1/2	This space is blank.	<ul style="list-style-type: none"> <li>•</li> </ul>
	This space is blank.	<ul style="list-style-type: none"> <li>•</li> </ul>
1/3	This space is for Defendant's production of 2K122, 2K124, 2K123, 2K126-128.	<p>(1/3/2011)</p> <ul style="list-style-type: none"> <li>• (21)<b>2K122</b> Bean to IMM, 100<b>103</b>1041A “... this all assumes ... you were employed for a calendar year, correct?”</li> <li>• (22)<b>2K124</b>, Bean to IMM, 110<b>103</b>1043A “ ... <b>need signed agreement.</b> ...”</li> <li>• (23)<b>2K123</b> Bean to IMM, 110<b>103</b>0139P “ ... Are you covered under this? ... in the except service ... subchapter II of Chapter 75. ...”</li> <li>• (24)<b>2K126-128</b>, Bean to IMM, 110<b>103</b>0143P “ ... §7511. Definition ...How current is this ... (a)... (b)...(c)... by this subchapter.”</li> </ul>
1/4	This space is for Defendant's production of 2K125.	<p>(25)<b>2K125</b> Bean to IMM, 11<b>0104</b>0618P “... You still have to show ... you</p>

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

	<p>This space is for Defendant's production of 2K125.</p>	<p>are protected under the statute ... Everything ... apply only to ...who have a year of service or more. You don't ... If fired you on 2/6, you would be protected; that why they hurried up and fired you on 2/2."</p>
<p>1/5</p>	<p>This space is for Defendant's production of 2K129-131.</p>	<p>(26)2K129-131, Bean to IMM, 110105 1219A "... This theory takes us back to the MSPB .... If there are any cases ....time were extended coverage due to pre-anniversary date annual leave issues ..."</p>
<p>1/5</p>	<p>This space is blank.</p>	<p>1/5</p>
<p>1/6 to 1/10</p>		
<p>1/11</p>		<p>1/11</p>

**Plaintiff's List of Documents For Discovery (01)**

Idaine Muñoz Muñoz v Matthew J. Bean  
14-2-066139 SEA

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*[Signature]*  
6/17/14

**Plaintiff's List of Documents for Discovery (01)**

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1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

	This space is blank.	(1/12/2011)
1/12	This space is for Defendant's production of 2K132.	(27)2K132 Bean to IMM, • 1101120920A • "... I have reviewed all of this ... We are at the same place ... you were not employed for a year ... performance guidelines do not apply. ...I understand you were not credited for the days you should have been credited ... just means ... for Days in December, not ... February after you were terminated."
1/13	This space is for Defendant's production of 2K133-136.	(28)2K133-136 Bean to IMM, • 1101140914P • "... We can meet on Monday. 10:00? ..."
1/14	This space is blank.	(1/15/2011)

**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

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*[Handwritten Signature]*  
6/17/14

**Plaintiff's List of Documents for Discovery (01)**

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1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

1/15	This space is blank.	1/15
1/16 to 1/18 1/19	This space is for Defendant's production of 2K137.	(1/19/2011)  (29)2K137 Bean to IMM,  • 1101190349P “... point us to United States v. Fausto ... So, I believe ...BUT, that doesn't mean we can't use the procedural violation against them ...jury is ... more skeptical of the Census's position if they didn't follow ... own rules ... I will send you a copy of the signed attorney-client agreement today”  This space is blank.

**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

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*[Signature]*  
6/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

1/21	This space is for Defendant's production of 2K138, 2K139.	<ul style="list-style-type: none"> <li>(30)2K138 Bean to IMM, 1101210547P</li> <li>(31)2K139 Bean to IMM, 1101210613P</li> </ul>
1/21 to 1/23		<ul style="list-style-type: none"> <li></li> </ul>
1/24	This space is for Defendant's production of 2K140.	<ul style="list-style-type: none"> <li>(32)2K140 Bean to IMM, 1101240658P</li> <li>"I can hold off another week ... but I want a new complaint filed before the status conference"</li> <li>On the same day, Bean emailed as an attachment of RA#9 to Munoz</li> </ul>
1/25		<ul style="list-style-type: none"> <li></li> </ul> <p>(1/26/2011)</p>
1/26	This space is for Defendant's production of 2K141.	<ul style="list-style-type: none"> <li>(33)2K141 Bean to IMM, 1101260921P</li> <li>"... Here's the deal with appeals ... A case can be dismissed ... A case can be dismissed at summary judgment, if ... At trial ... a serious error in the ... instructions."</li> </ul>
1/27	This space is for Defendant's production of 2K142.	<ul style="list-style-type: none"> <li>(34)2K142 Bean to IMM, 1101270400P</li> <li>"... Could you please send me ..."</li> </ul>

**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

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**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

	<p>This space is for Defendant's production of 2K143.</p>	<p>(35)2K143 Bean to IMM,  <ul style="list-style-type: none"> <li>• 1101270406P</li> <li>• "... DOC DAO 202-751 ... Could you please send also ... of this ..."</li> </ul> </p>
1/28	<p>This space is blank.</p>	<p>1/28  <ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> </ul> </p>
1/29 to 1/30	<p>This space is blank.</p>	<p>(1/31/2011)</p>
1/31	<p>This space is for Defendant's production of 2K144.</p>	<p>(36)2K144 Bean to IMM,  <ul style="list-style-type: none"> <li>• 1101310700P</li> <li>• "... I still haven's seen ... the Final Agency Decision or your personnel file ... Do you have any, or do you just have the removal papers? (That may be the whole point of your case, that there is NO DOCUMENTATION to establish poor performance ... there should still be documentation of the EEO process, which I'd like to review ..."</li> </ul> </p>
1/31	<p>This space is blank.</p>	<p><ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul></p>

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**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

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6/17/14



**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

	<p>This space is for Defendant's production of 2K145-147.</p>	<p>opportunity ... then they didn't engage in ... in good faith. ... Did they ever ask you to provide additional documentation ? ...”</p>
2/4		
2/4	<p>This space is for Defendant's production of 2K148.</p>	<p>(38)2K148 Bean to IMM,  <ul style="list-style-type: none"> <li>• 1102041217A</li> </ul> <p>“... I am going to come to my office and draft ... We have the status conference next week ... I want that done right away....”</p> </p>
	<p>This space is for Defendant's production of 2K149.</p>	<p>(39)2K149 Bean to IMM,  <ul style="list-style-type: none"> <li>• 1102040518P</li> </ul> <p>“... See you at 11:00. ...”</p> </p>
	<p>This space is for Defendant's production of 2K150.</p>	<p>(40)2K150 Bean to IMM,  <ul style="list-style-type: none"> <li>• 1102040731P</li> </ul> <p>“... Please print the weekly report ...”</p> </p>
2/5	<p>This space is for Defendant's production of 2K151.</p>	<p>(41)2K151 Bean to IMM,  <ul style="list-style-type: none"> <li>• 1102050817P Re [No Subject] Message contains attachments <ul style="list-style-type: none"> <li>• #2 Amended Complaint re Pleading.doc</li> </ul> </li> </ul> </p>

**Plaintiff's List of Documents For Discovery (01)**

22  
*[Handwritten Signature]*  
9/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

<p>This space is for Defendant's production of 2K152.</p>	<p>(42) <b>2K152</b> Bean to IMM,          • 1102050820P          Message contain attachments          • Blank complaint 1<sup>st</sup> Amended.doc          "Here is a complaint I've filed in USDC ... You can cut and paste your allegation and complaints, ... etc I will need it Monday morning ... because ..."          This space is blank.</p>	
<p>This space is for Defendant's production of 2K153.</p>	<p>(43) <b>2K153</b> Bean to IMM,          • 1102050820P, re          "Here is a complaint I've filed in USDC ..."          This space is blank.</p>	
<p>2/6</p>	<p>This space is blank.</p>	<p>2/6</p>
<p>2/6</p>	<p>This space is blank.</p>	<p>2/6</p>

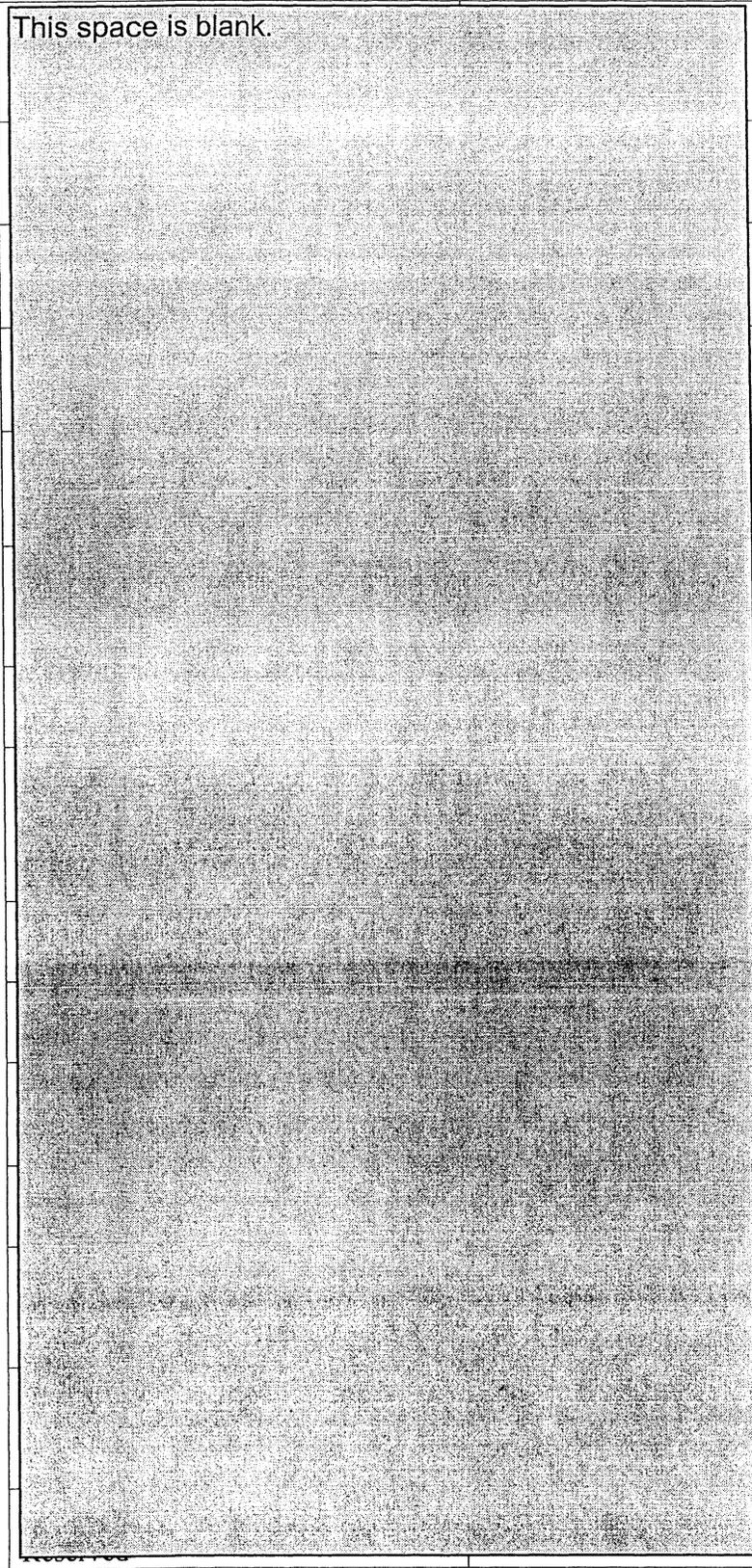
**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

23  
*[Handwritten signature]*  
6/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

2/6	<p>This space is blank.</p> 	2/6
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24  
*[Handwritten signature]*  
6/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

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		2/6
		2/6
		2/6
		2/6

**Plaintiff's List of Documents For Discovery (01)**

Ildare Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

25  
*[Signature]*  
6/17/14

**Plaintiff's List of Documents for Discovery (01)**

26

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

	This space is blank.	
2/6		
2/6		
2/6		(2/7/2011)
2/7	This space is for Defendant's production of 2K154.	(44)2K154 Bean to IMM, 1102071638P Gleaton. Pdf "... FMLA case. Base on this case, I think it is reasonable to plead an FMLA claim as well. ..."
2/7		2/7

**Plaintiff's List of Documents For Discovery (01)**

Idane Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

26  
6/17/14

**Plaintiff's List of Documents for Discovery (01)**

27

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

2/7	This space is blank.	2/7
2/7		2/7

**Plaintiff's List of Documents For Discovery (01)**

Idane Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

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6/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

	This space is blank.	
2/7		
2/7		2/7
2/7		2/7
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**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

28  
*[Signature]*  
6/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

	<p>This space is blank.</p>	
2/8	<p>This space is blank.</p>	<p>(2/8/2011)</p> <p>This space is blank.</p>
2/9	<p>This space is for Defendant's production of 2K155-161.</p>	<p>(45)2K155-161 Bean to IMM, • 1102090531P RE: Gleaton.pdf</p> <p>“... Unfortunately, the FMLA claim is out. The FMLA doesn’t apply to federal workers. There is what I would call a “little FMLA contained in the 5 USC, but you have no remedy there....”</p>
2/10	<p>This space is for Defendant's production of email from Bean to Munoz dated 2/10/11 at 6:46 PM, RE: Gleaton. pdf.</p>	<p>2/10</p> <p>• Bean to Munoz, 1102100646P RE: Gleaton. Pdf</p> <p>“...Here’s the catch 22. We are arguing ... wrongly discharged because ... terminated before ... could become an eligible employee under .... Chapter 63 of</p>

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6/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

		title 5. ... But you couldn't be an eligible employee under the FMLA ... §2611 Definitions ...."
2/11	This space is blank.	2/11
2/11		2/11
2/12		2/12
2/13		2/13

**Plaintiff's List of Documents For Discovery (01)**

Idalie Munoz Munoz v Matthew J. Bean  
14-2-066139 SEA

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6/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

	This space is blank.	
2/14		<ul style="list-style-type: none"> <li>• (2/15/2011)</li> </ul>
2/15	This space is for Defendant's production of 2K162-163, 2K164-165.	<ul style="list-style-type: none"> <li>• (46)2K162-163 Bean to IMM, 1102150942P</li> <li>• (47)2K164-165 Bean to IMM, 1102150942P</li> </ul> <p>re Response to 1K180  "... I can talk to you tomorrow ... I discussed the FMLA with ... She is not claiming ... We can leave that claim in ... As far as the wrongful termination ... I can't filed it for two reasons ... I have researched ... but have found no precedent ... I strongly recommend ... seek a second (or third) opinion ..."</p>
2/16	This space is for Defendant's production of 2K166-172.	<ul style="list-style-type: none"> <li>• (2/16/2011)</li> <li>• (48)2K166-172 Bean to IMM, 1102160515P</li> </ul>

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6/17/14

**Plaintiff's List of Documents for Discovery (01)**

**32**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

	<p>This space is for Defendant's production of 2K166-172.</p>	<p>"... Please call me at 12:30 to discuss.... I have been rescheduled filing ... several times already ..."</p>
	<p>This space is for Defendant's production of 2K173-180</p>	<p>(49)2K173-180 Bean to IMM, 1102161035P, "... I've pretty much made up my mind to withdraw from the case ..." (2/17/2011)</p>
2/17	<p>This space is for Defendant's production of 2K181-190.</p>	<p>(50)2K181-190 Bean to IMM, 1102170547P " ... First of all, it is not acceptable to me ... I am very torn over this ... because ... I think you have a good case ... there is no question ... go forward and get a good settlement offer ... we might even win at trial ... I can't have a situation ... I don't want to litigate this case for a year ...you need to hire an attorney who shares your theory ... It is entirely possible I made a mistake in not terminating when you filed ... after you retained me ..." <p>This space is blank.</p></p>
	<p>This space is for Defendant's production of 2K191-198.</p>	<p>(51)2K191-198 Bean to IMM, 1102170547P <p>This space is blank.</p></p>

**Plaintiff's List of Documents For Discovery (01)**

Idane Muñoz Muñoz v Matthew J. Bean  
14-2-066139 SEA

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2/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

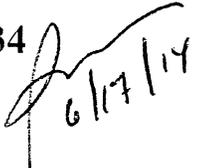
2/18	This space is blank.	(2/18/2011) 2/18 • • • • • • (2/19/2011)
2/19	This space is for Defendant's production of 2K199-207.	• (52)2K199-207 Bean to IMM, • 1102191218A
2/20 to 2/28	This space is blank.	• (3/1/2011)
3/1	This space is for Defendant's production of 2K208	• (53)2K208 Bean to IMM, • 1103010913P Continued representation  "... Do you want to meet or should I go ahead and file the motion to withdraw? ..."
3/2	This space is blank.	•

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6/17/14

**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

3/3	This space is blank.	
3/4	This space is for Defendant's production of 2K209.	<ul style="list-style-type: none"> <li>• (3/4/2011)</li> <li>(54)2K209 Bean to IMM,</li> <li>• 1103041034P</li> </ul> <div data-bbox="1073 470 1487 810" style="border: 1px solid black; padding: 5px;"> <p>This space is blank.</p> </div>
3/15	This space is blank.	<ul style="list-style-type: none"> <li>• 3/15</li> </ul>
5/17	This space is for Defendant's production of 2K210.	<ul style="list-style-type: none"> <li>• (56)2K210 Bean to IMM,</li> <li>1105170622P</li> </ul> <p>"... You case file ... You have a ... balance ... you can come by and retrieve ..."</p>
5/18	This space is for Defendant's production of 2K211.	<ul style="list-style-type: none"> <li>• (57)2K211 Bean to IMM,</li> <li>1105180608P</li> </ul> <p>"... Per your request ... we are making ... I will make arrangement to have the ...shipped ..."</p>
5/20	This space is for Defendant's production of 2K212	<ul style="list-style-type: none"> <li>• (58)2K212 Bean to IMM,</li> <li>1105200903P</li> </ul>

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**Plaintiff's List of Documents for Discovery (01)**

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1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

	This space is for Defendant's production of 2K212.	"... Cheryl is out ill ..."
5/24	This space is for Defendant's production of 2K213.	(59)2K213 Bean to IMM, • 1105241024P  "We are sending the check ..."
5/31	This space is for Defendant's production of 2K214.	(60)2K214 Bean to IMM, • 1105311002P  "... I have sent you the entire file except for the email exchange ... my "work product" meaning my evaluation of the case .... In my correspondence to you ..."
6/2	This space is for Defendant's production of 2K215-217.	(61)2K215 Bean to IMM, • 1106020828P  "... I have attached a copy of ... if you have not received ... I will then stop payment ... and issue a new ..."
6/13	This space is blank.	6/13 •
6/16	This space is for Defendant's production of 2K218.	(62)2K218 Bean to IMM • 1106160934P  "... I just received a copy of your motion today ...I was surprised ... We have sent ... it has not been cashed ... the reason there is a potential ethical conflict is that ... the position you put me in was ... Under RPC 1.16, ... if the representation will result in ... I

**Plaintiff's List of Documents For Discovery (01)**

Idane Muñoz Muñoz v Matthew J. Bean  
14-2-066139 SEA

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**Plaintiff's List of Documents for Discovery (01)**

1K1=IMM to Bean, 1K2=WSBA, 3K= District Court ; 2K = Bean to IMM

		had no choice but to withdraw ... I did not tell the court about the conflict because ...I did not think it would be beneficial to you ... you were pursuing frivolous claims ..."
	This space is for Defendant's production of 2K220.	(63)2K220 Bean to IMM • 1106160234P
		This space is blank.
7/7	This space is blank.	7/7 •

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*Adalberto Muñoz Muñoz*  
*June 17, 2014*

**Plaintiff's List of Documents For Discovery (01)**

Idalberto Muñoz Muñoz v Matthew J. Bean  
14-2-066139 SEA

*Adalberto Muñoz Muñoz*  
*6/17/14*

# **APPENDIX B**

June 20, 2014

Joel E. Wright  
Jeffrey P. Downer  
Sam B. Franklin  
Gregory P. Turner  
Steven G. Wraith  
Michelle A. Corsi  
Kenneth E. Hepworth  
Craig L. McIvor  
Marc Rosenberg  
Rosemary J. Moore  
Peter E. Sutherland  
Bradley D. Westphal  
Dirk J. Muse  
William L. Cameron  
Timothy D. Shea  
Pamela J. DeVet

Ms. Idalie Munoz Munoz  
5004 30th Avenue South  
Seattle, WA 98108

Re: *Munoz v. Bean – Requests for Production*  
Matter ID: 04369-014159

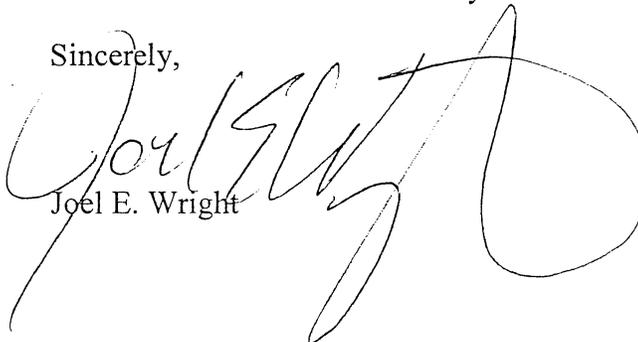
Dear Ms. Munoz:

This letter is to acknowledge that we are in receipt of your Request for Production of Documents, Set One, RE 2K Series Documents, and have begun compiling the responsive documents.

When the time comes for production, we will produce these documents on a CD, with the documents in PDF format. If you would like to receive hard copies of the documents, we will make the documents available for you to photocopy, provided you pay the copying fees.

Please advise my office if you are amenable to receiving the production electronically only, or if you will require hard copies, in which case we will arrange a time for you to have copies made once the documents are ready.

Sincerely,



Joel E. Wright

JW/dcm

Marlena D. Dietzway  
Melinda R. Drogseth  
Spencer N. Gheen  
Aaron P. Gilligan  
Jackie L. Jensen  
Daniel C. Mooney  
Melody A. Retallack  
David L. Sanders  
Colin J. Troy

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Donna M. Young  
Sherry H. Rogers  
Mary DePaolo Haddad  
John C. Versnel, III

Nelson T. Lee  
1920-2004  
Fred T. Smart  
1917-2012  
John Patrick Cook  
1934-2001  
David L. Martin  
1942-2012