

73895-0

73895-0

No. 73895-0-1

COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON

Matthew Beams	Respondent
Daniel Hurley	Respondent
Mike LaGrange	Respondent
Sue Bennett	Respondent
Ken Burnes	Respondent
Safeway Inc.	Respondent

Hatsuyo Harbord ^v Appellant/Petitioner/Pro se

Brief of Petitioner

2016 MAR 19 9 24 AM '16
COURT OF APPEALS DIV I
STATE OF WASHINGTON

I Introduction

Matthew Bean

(1) Matthew Bean who was Appellant's ex-attorney between 2011 through 2013.

Appellant paid Matthew Bean to represent for unemployment job training hearing.

It was around November/December in 2011. Hearing was "telephone conference".

Appellant gave Matthew Bean for telephone conference number.

Matthew Bean called wrong telephone number on the conference day.

Appellant questioned which telephone number called? He told me that

he knew what he was doing. No response from the Court for 8 minutes.

Appellant was almost lost her benefit. Matthew Bean called wrong number.

Appellant requested Matthew Bean to call a specific Court hearing number.

Finally, We reached the judge and witness.

(2) Safeway Inc. denied Appellant to go back to school because Safeway Inc.

claimed that Appellant was "a video clerk" and nothing to do with "Bookkeeper".

Appellant was hired as 2nd Bookkeeper in September 2004.

In October 2004, former 2nd Bookkeeper left. Then, in November 2004,

suddenly former head bookkeeper left. Appellant became the head Bookkeeper.

At employment job training hearing, Safeway Inc. did not call or show up at the

(3) Safeway Inc. waisted Tax money to have employment job training Court hearing.

(4) Matthew Bean told me to pay for investigation against Safeway Inc.

Appellant paid investigation fees.

(5) Matthew Bean prepared the Court document to file against Safeway Inc.

That day Matthew Bean's legal assistance was day off. Matthew Bean

told me to file at King County Superior Court.

(6) Matthew Bean told Appellant to pay \$10,000 when the document was filed.

Appellant paid \$10,000. He did not show all of Attorney's fees.

(7) Appellant asked what was Bean's plan for Appellant's case. Matthew

Bean did NOT answer.

(8) Appellant's case was less than \$75,000.

(9) Matthew Bean called Appellant that he would go to his vacation, meanwhile

another attorney would take care of Appellant's case to go to US District Court??

Matthew Bean gave Appellant for wrong conference day. It was one week different.

Appellant called US District Court to find true conference day. [Exhibit A]

(10) On August 6, 2013 at US District Court, Appellant told Matthew Bean that

Appellant's case was less than \$75,000. Defendant/Safeway Inc./Daniel

Hurley and Matthew Bean went outside the Courtroom. Later, Both came back to the Courtroom. Matthew Bean told me to "Don't talk, keep mouth shut, Don't speak" DEF/Daniel Hurley and Matthew Bean were talking with the Judge.

(11) Appellant questioned Matthew Bean about Appellant's case, He did NOT answer any of Appellant's questions.

(12) Matthew Bean said he wanted to talk to Appellant's spouse, Appellant gave her permission to talk about her case. When Appellant's spouse went to Matthew Bean's office, Matthew Bean did NOT discuss about Appellant's case with Appellant's spouse.

(13) Appellant asked Matthew Bean to file to go back to King County Superior Court. Matthew Bean did not ^{ASK} say any of Appellant's questions.

(14) Appellant rescheduled her appointments due to school schedule, Matthew Bean told Appellant that he would charge even reschedule from \$10,000 fund.

(15) One day Matthew Bean called Appellant that Defendant/Daniel Hurley is filing something. Appellant asked Matthew Bean that what is he filing? Matthew Bean did not know. SAID HE

(16) After October 01, 2013, Matthew Bean told Appellant to sign a paper.

When Appellant went to Matthew Bean's office, he brought a paper which stipulated Protective Order Document #19 Exhibit A² acknowledgment & agreement to be Bond. [Exhibit

Appellant asked for what am I signing? Then Matthew Bean brought

the stipulated protective Order which Appellant have any idea what she needed to sign for it. Appellant asked Bean to contact

Daniel Hurley to ask many questions which Appellant had.

Matthew Bean refused to call Daniel Hurley to set up a conference with Appellant.

(17) Appellant wrote questions about "Stipulated Protective Order" to Matthew Bean, but he did not explain to Appellant.

(20) Appellant went to Daniel Hurley's office to find answer why filed "Stipulated Protective Order" without notifying the Appellant.

DEF/ Daniel Hurley refused to explain about "Stipulated Protective Order".

(21) On 11/13/2013 at Matthew Bean's office, Matthew Bean forced Appellant to sign for "Acknowledgment of Stipulated Protective Order" without

completely understanding why I needed to do this stipulated Protective Order.

Then Matthew Bean threaten to sign to bind with stipulated Protective Order. Matthew Bean's threats were "If you do not sign this paper, I (Bean) will quite your case." Appellant signed under duress.

After Appellant signed under duress, Matthew Bean told Appellant that "From Now on, keep your mouth shut, Don't speak up."
Is this called "Professional Care?"

(22) Next day, I filed the document "I signed under duress." (Exhibit A)

(23) Matthew Bean called Appellant's home and left a message that "Daniel Hurley wants to talk to you (Appellant)."

(24) One of questions was what do these numbers mean 26? 33? 34? 37?

Matthew Bean told Appellant that "Just numbers."

(25) Appellant asked Matthew Bean to file to the Court for "Oppose Stipulated Protective Order." Matthew Bean did not respond Appellant's request. Later Appellant found the Court document Docket #19 "Stipulated Protective Order" was signed by both (DEF/Daniel Hurley and Matthew Bean). Matthew Bean did not show Appellant for this both signatures

document.

(26) Appellant Fired Matthew Bean. Appellant does NOT need to be threatened by former attorney.

(27) Matthew Bean Filed with US Distric Court to withdraw from Appellant's attorney.

(28) Matthew Bean left a message to tell the Court to keep him as PLA's attorney (Appellant).

(29) After Appellant found about Judge's order on 10/01/2013 (Stipulated Protective Order), Appellant requested former PLA's attorney (Matthew Bean) to return all documents included confidential material during October 2013 until what's going on Appellance's case which Appellant did not know former PLA's attorney had signed on Document # 19 (Stipulated Protective Order). Matthew Bean did not return all documents until US District Judge ordered Doc # 44 and granted himself to withdraw from Appellant's case. [Exhibit]

(30) Fraudulent Misrepresentation by Matthew Bean

Daniel Hurley

(1) Daniel Hurley who is Safeway Inc's attorney in case # 72731-1-1 (#13-2-2/008-85EA).

(2) Daniel Hurley who is one of defendants in case # 73895-0-1 (#14-2-26-220-55EA).

(3) Appellant's background

Appellant was hired as 2nd Bookkeeper in September 2004.

On October 2004, former 2nd Bookkeeper left.

On November 2004, head Bookkeeper left suddenly.

Appellant became a head Bookkeeper after former Bookkeeper left.

Appellant was a head Bookkeeper until December 2008, (more than four (4) years. Then Mike LaGrange demoted Appellant to Video counter and Bookkeeper without title until firing on May 07, 2011.

Appellant work at Safeway Inc from September 2004 through May 7, 2011 as Bookkeeper with and without title for six (6) years and eight (8) months. When Mike LaGrange demoted Appellant, he claimed that Appellant had 150 transaction errors without showing any evidence to Appellant. If Mike LaGrange had any evidence, he would show Appellant.

Appellant's background

On 4/5/2011, Mike LaGrange accused Appellant for "stalking employees?"

On 4/6/2011, Mike LaGrange (Port Angeles store manager) and Ken Barnes (Security Dept) accused Appellant for "stealing Company's information?" and for "suspicious activity?"

On 5/7/2011, Appellant found out that Appellant was fired.

Appellant send a letter to Mike LaGrange (Port Angeles store manager) "For what reasons am I fired?"

Appellant mailed on May 9, 2011.

7010 0780 0000 9856 5202

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 80.44
Certified Fee	\$2.85
Return Receipt Fee (Endorsement Required)	\$2.30
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$ 85.59

Postmark: PORT ANGELES WA 98362 MAY 9 2011

Sent To: Mike LaGrange Safeway #1492
 Street, Apt. No.: 110 E 3rd St
 or PO Box No.:
 City: Port Angeles, WA 98362

"Every employer must, upon written request by a discharged employee, furnish a signed written statement setting forth the reason for the discharge and the effective date thereof. This statement must be furnished within 10 working days after receipt of the request." [Thompson v. St. Regis Paper Co., 102 Wn. 2d 219, 685 P. 2d 1081 (1984)].

Mike LaGrange FAILED to answer the reason for the discharge.

Mike LaGrange FAILED to furnish his statement within 10 working days after receipt of the request.

Appellant's background

Sue Bennett who is "Labor Relation Manager" and Mike LaGrange's boss.

Mike LaGrange and Ken Burnes Forced, threaten and coerced Appellant to write

① Why am I stalking?

② Why am I stealing Company information?

③ Why am I doing suspicious acts?

These accusation injured or destroyed Appellant's reputation of by libel or slander

It called "Defamation" to Appellant.

- As DEF/Daniel Hurley FAILED to answer the reason for the discharge.
- As DEF/Daniel Hurley FAILED to furnish his statement within 10 working days after receipt of the request.
- DEF/Daniel Hurley FAILED Code of Professional Responsibility, obstruction of access to evidence from May 2013.

(4) On 9/24/2013 DEF/Daniel Hurley Filed "Stipulated Protective Order" to US District Court without binding Appellant. Why?

"Stipulated Protective Order" is called "unbletter protection Rule 26(c)".

This order benefits Safeway Inc.

DEF/Daniel Hurley and former Matthew Bean filed this "stipulated Protective order" without Appellant.

(5) US District Court Case # 2:13-cv-01127-JCC Docket # 44 Page 2 of 3
 stated "ORDERS that all documents marked Confidential be returned to Defendant," (line 3 through line 4)
 and stated "Defendant is directed to file a notice with the Court once material marked Confidential has been returned. At that time, the Court will vacate the Stipulated Protective Order." (line 19 through line 20)

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Print Name) <input type="checkbox"/> Date of Delivery</p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p>Daniel P Hurley K&L GATES LLP 925 Fourth Ave. Suite 2000 Seattle, WA 98104-1155</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number</p> <p>7012 3050 0000 2577 5297</p>	<p>PS Form 3811, Postmark 2004 Date of Return Receipt 10/25/13 02-M-154</p>

Appellant returned 16 pages Confidential material. Appellant did not heard from Defendant/Daniel Hurley. Appellant tried to call K&L Gates PLL and tried to talk to a Receptionist.

Receptionists told Appellant that they could not talk to Appellant by instruction from Daniel Hurley. (Erin, Anne, black woman, and etc.)

Appellant tried to talk to legal assistant Michelle. Receptionists told Appellant that Daniel Hurley's legal assistant Michelle could not talk to Appellant because she was not a lawyer.

Appellant left multiple times called Daniel Hurley and left messages, Daniel Hurley did not call back.

Appellant filed the document to U.S. District Court with 16 pages confidential material on 4/28/14. (2nd submission). Appellant did not hear DEF/Daniel Hurley vacated "Stipulated Protective Order" from U.S. District Court case # 2:13-cv-01127-JCC. As of today, DEF/Daniel Hurley still holds Rule 26(c). It should be vacated "Stipulated Protective Order." [Exhibit E]

(6) DEF/Daniel Hurley filed "DEF's motion for Summary Judgment" and he claimed that this case # 14-2-26220-5 SEA is same as case # 13-2-21008-8 SEA. [CR 60(b)(1) irregularity to obtaining an order, CR 60(b)(4) misrepresentation, CR 60(b)(3) the judgment is void, Appellant returned confidential material. CR 60(b)(11).

(7) On 7/15/15 Declaration of D. Hurley Page 1, line 6 through line 9. It stated "2. Attached hereto as Exhibit A is a true a correct copy of a facsimile from Plaintiff that I received after 2:00 PM. on July 13, 2015, along with the system email to which it was attached. I have no agreement with Plaintiff to accept service

of documents in this case via facsimile. [Exhibit F]

Bottom of this document show that "K&L Gates LLP STE 2900 Seattle, WA 98104
telephone (206) 637 7580, Facsimile (206) 637 7022 which on the publish.

(8) Case 2:13-cv-01127-JCC Document 19 10/01/13 Page 1 of 10 (line 3 through 5)
It stated "Plaintiff, Hatzuro Harbord ("Plaintiff") and Defendant Safeway Inc.
("Defendant") the "parties") hereby stipulate to and petition the court to enter
the following Stipulated Protective Order. The parties acknowledge that this
agreement is consistent with LCR 26(4). [Exhibit D]

Appellant did NOT agree to stipulate and petition to the Court. DEF/Daniel
Hurley only wants.

Appellant did NOT acknowledge for this agreement. DEF/Hurley only wants.

(9) DEF/Daniel Hurley FAILED to serve a copy of his court documents.
Appellant questions and demand for DEF/Daniel Hurley's proof of mailing
because DEF/Daniel Hurley claimed so many letters and documents which
Appellant did NOT receive.

(10) DEF/Daniel Hurley Filed many document to the Court, except he did not
send a copy of the document which he filed. Appellant did not have enough time to
file because DEF/Hurley did not serve his documents to Appellant. Unfair professional Acts.
Appellant Filed to Appeals Court for "extra ordinary circumstance RAP 8.8(b).

DEF/Daniel Hurley FAILED to serve a copy of Notice of hearings and DEF's motion for Summary Judgment, and other documents.

(1) Appellant checked Translator Dept. before hearing. It should be someone for translator on 9/17/2015. Strange things that same translator in this case. The translator could not translate in Japanese for "res judicata," "collateral estoppel" to Appellant.

(2) DEF/Daniel Hurley submitted: Document #67 Motion for DEF's motion (himself)

@ DEF's motion to Summary Judgment in case #13-2-21008-8 SEA

And DEF's motion to Summary Judgment in case #14-2-26220-5 SEA.

Then Daniel Hurley claimed that case #13-2-21008-8 SEA and case #14-2-26220-5 SEA are same, the prohibition against claim splitting, given the filing and resolution of Plaintiff's prior lawsuit against Safeway in King County Superior Court

Appellant did not file for Summary Judgment, DEF/Daniel Hurley did.

Why is Appellant received "Sanction?" It should be "sanction"

against DEF/Daniel Hurley.

② Dec # 67 line 1 through line 8 states: "While difficult to decipher, Plaintiff's claims against Safeway and its employees, Lagrange, Bennett, and Burnes, clearly relate to her prior employment with Safeway." As a result, it is unnecessary to address the "merits" of any of her claims against these defendants, because those claims are barred by (a) res judicata, collateral estoppel, and the prohibition against claim-splitting given the filing and resolution of Plaintiff's prior lawsuit against Safeway in King County Superior Court, the "First Lawsuit", and/or (b) applicable statutes of limitation, given that Safeway discharged Plaintiff in May 2011.

First, DEF/Daniel Hurley filed "DEF's motion to Summary Judgment in case #13-2-2/008-85EA, then Second, DEF/Daniel Hurley filed "DEF's motion to Summary Judgment in case #14-2-26220-55EA.

Then DEF/Daniel Hurley mislead to Appellant's Fault. Then DEF/Hurley mislead to "Sanction against Appellant."

Appellant did not file "Summary Judgment" DEF/Daniel Hurley did. Appellant did not bring same things twice. Why Appellant needs to pay for Sanction for \$6,632.50. Why is Judge investigated both cases?

Both cases (#13-2-2/008-85EA and #14-2-26220-55EA) were filed by DEF/Daniel Hurley's Summary Judgments.

AND (b) applicable statutes is NOT expired. DEF/Daniel Hurley and former PLA's attorney filed "Stipulated Protective Order" was filed on 9/24/13.

Appellant believes that 3 years from 9/24/13. It means "Applicable statutes

is NOT expired. Judge did not hear what Plaintiff wanted to say.

Judge was Presumption of this case.

Judge did NOT give any time to explain Plaintiff side at all.

This case had Two separated Summary Judgments. First, Matthew

Bean brought his Summary Judgment. Second, Daniel Hurley (Mike

LaGrange, Sue Bonnett, Ken Burnes, and Safeway Inc.)

(13) DEF/Daniel Hurley FAILED to talk with Appellant to set "ADR" at US

District Court on March 2014. "ADR" means Alternative Disposition Resolu

(14) DEF/Daniel Hurley FAILED to vacate "stipulated Protective Order" at

US District Court even Appellant send "16 pages confidence material

to DEF/Daniel Hurley.

(15) DEF/Daniel Hurley FAILED to talk with Appellant to "delay vacating

stipulated Protective Order Rule 26(c)"

(16) DEF/Daniel Hurley AVOID to talk to Appellant for case #13-2-21008-8

SEA after removing from US District Court. For conference.

(17) DEF/Daniel Hurley FAILED to confirm with deposition date.

(18) DEF/Daniel Hurley FAILED to confirm "ADR conference".

Appellant contacted DEF/Daniel Hurley to set up "ADR" conference ordered by Judge Kimberly Prochnau. DEF/Daniel Hurley said "Judge Chung?" and "Thursday following week"

Appellant went to couple Judges to find "who, when, where, what, How"

Appellant went to Judge's room to double check the conference.

DEF/Daniel Hurley and DEF/Jody Duvall cancelled the "ADR" conference and did not tell Appellant about the cancellation.

(19) DEF/Daniel Hurley FAILED to serve a copy of Respondent's Brief to Appellant. This cause to delay Appellant's schedule.

(20) DEF/Daniel Hurley FAILED to tell before filing "Stipulated Protective Order to US District Court.

(21) DEF/Daniel Hurley FAILED serve many documents to Appellant. Appellant could not file many responsive.

(22) DEF/Daniel Hurley FAILED to give Appellant's specific documents.

- 401K information

- wages stubs with complete document included Tax, 401k and so on.

- Appellant personal files.

- Work related injuries at Safeway Inc.

- Fraudulent Misrepresentation.

.. Safeway stocks

These items are NOT confidential material.

(23) DEF/Daniel Hurley FAILED to give Appellant for work related injuries documentations (In March 2008, In May 2008, December 2010, July 2010).

(24) Appellant sent 16 pages Confidential material to DEF/Daniel Hurley (2nd time).

Appellant mailed her document and 16 pages Confidential material to DEF/Daniel Hurley. See below and Next page. DEF/Daniel Hurley did not vacate Rule 26(c) from US District Court.



Proof of Delivery

[Close Window](#)

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number: 1Z2X47732401282872
Service: UPS NEXT DAY AIR
Special Instructions: Signature Required
Delivered On: 04/29/2014 9:48 A.M.
Delivered To: K&L GATES
925 4TH AVE
2900
SEATTLE, WA, US 98104
Signed By: C MERRETT

Comet

Left At: Mail Room

Thank you for giving us this opportunity to serve you.

Sincerely,

UPS

Tracking results provided by UPS: 01/09/2015 3:19 P.M. ET

[Print This Page](#)

[Close Window](#)

FILED _____ ENTERED _____
LODGED _____ RECEIVED _____

Honorable John C. Coughenour

APR 28 2014

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

1

BY ^{AT SEATTLE}
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

HATSUYO "SUE" HARBORD,

Plaintiff

V

SAFEWAY INC., a Delaware corporation,

defendant

No. 2:13-cv-01127-JCC
Appeal from the judge's order on 1st of
April, 2014.
28 U.S.C 1447 (c) motion to remand the
case on the basis of any defect other than
lack of subject matter jurisdiction
Before remove to King County Superior
Court, the defendant has to vacate rule 26
(stipulated protective order) from this case.
Judge's order was to return confidential
material only to defendant Safeway, Mr.
Hurley.
Plaintiff motion to amend additional
defendant.

- immidit response
- Requested for hearing
- Handed to court clerk for confidence material (Donna)

After Judges' order on 04/01/2014

Following notice of removal dated 1st of April, 2014, plaintiffs hereby move this Court for an order granting leave to amend Plaintiff's complaint for damages and remanding this matter for further proceedings to King County Superior Court. This motion is made pursuant to 28 U.S.C. 1447 (c) counterclaim in 337 proceeding.. With respect to any counterclaim removed to a district court pursuant to section 337 (c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, ..." and supported by following points and authorities, and by the declaration of Hatsuyo Harbord.

[I] Argument of points and authorities

1. The Court should Grant plaintiff leave to amend FRCP 15 (2)

The Court should grant Plaintiff leave to amend her complaint for damages. Amendment of pleadings is governed by Civil Rule 15 (a). this rule (a) states "a party may amend the party's pleading only by leave of court or by written consent of the adverse party: and leave shall be freely given when justice so requires." FRCP 15 (2).

"Leave to amend "shall be freely given when Justice so requires": this rule is to be carefully noticed. (Moore, Federal Practice (2d ed. 1948), 15.08, 15.10. (if the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendments, etc.-the leave sought should, as the rules require, be "freely given. [Foman v. Davis, 371 U.S.178, 83 S.Ct. 227 (1962)].

(25) Following Correct Action Notice which one of DEE/Daniel Hurley's evidence.

CORRECTIVE ACTION NOTICE

<input checked="" type="checkbox"/> Written	<input type="checkbox"/> Verbal	Name: <u>Sue Harbord</u>	Employee Number: <u>83535858</u>	Hire Date:	Job Title: <u>officer</u>
Division: <u>1492</u>	Department: <u>Foot Cad</u>	Union Local:			

- SUBJECT(S) OF EMPLOYEE PROBLEM**
- | | | | |
|--|--|---|---|
| <input type="checkbox"/> Affect Operational to Horse | <input type="checkbox"/> Disrupts for Established Rule | <input type="checkbox"/> Inproper Check out Procedure | <input type="checkbox"/> Unexcused Absence |
| <input type="checkbox"/> Carelessness | <input type="checkbox"/> Dress Code/ Grooming | <input type="checkbox"/> Priority | <input checked="" type="checkbox"/> Violation of Policy and Procedure |
| <input type="checkbox"/> Customer Complaint | <input type="checkbox"/> Failure to Cooperate | <input type="checkbox"/> Quality of Work | <input type="checkbox"/> Wasting Time |
| <input type="checkbox"/> Discourtesy | <input type="checkbox"/> Failure to Follow Instructions | <input type="checkbox"/> Quality of Work | <input type="checkbox"/> W/C Violation |
| <input type="checkbox"/> Disregard for Safety | <input type="checkbox"/> Failure to work scheduled shift | <input type="checkbox"/> Tardiness | |
| <input type="checkbox"/> Other: | | | |

Specific behavior or action that is leading to the discipline, exclude date, date and description.

On 3-18-08 Sue suffered an on-the-job injury. She did not report the accident until 5-16-08.

What policy, procedure or practice was violated? Please be specific.

Immediate reporting policy

What was the impact of the behavior or action on the department, division or company?

What is the desired behavior or action? Please be specific.

Sue needs to report all injuries to management within 24 hours of injury.

Describe further disciplinary action if needed. Specify dates in which you will follow up, including any safety policy and general info. Managers Statement.

Further instances will result in suspension and/or termination.

Has this employee been counseled or disciplined for a similar violation? If so, please give reference for counseling and date(s).	Prior Counseling? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date(s):
Has a Corrective Action Notice been issued for a similar violation? If so, give date(s).	Prior Corrective Action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date(s):
Has this employee previously been suspended? If so, when, why and for how long?	Prior Suspension? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date(s):

Corrective action required for this incident. If action includes suspension, length of suspension is required.

Discard Initial Verbal Written Suspension-Other

Length of suspension: _____

*Please understand that the purpose of this Corrective Action is to provide feedback and assist you in meeting the performance standards of this position. Future violations of a similar nature will result in progressive discipline, up to and including suspension and/or termination.

Employee Signature: _____

Supervisor Signature: _____ Date: 6/12/08

Employee Signature: H. Harbord

Supervisor Signature: _____ Date: 7/18/08

Distribution: 1 copy to D.O. for Human Resources; 1 copy given to employee; 1 copy kept at employee's work location.

Appellant filed work related injury by the way, except management did not know how to file the paperwork. Next day Appellant went to the store to file, Mike LaGrange told Appellant to file at the doctors' office,

Mike LaGrange did NOT give medical papers to Appellant. Later. He told Appellant to sign. except Mike LaGrange's handwriting was so small.

Mike LaGrange told Appellant that it costed \$7,000 for Appellant's injury.

"An employer may also be subject to criminal penalties (as much as \$100,000 and/or six months in jail for the first offense) if the employer:

- knowingly removes a required safeguard;
- knowingly and willfully violates a safety standard and the violation results in the death of an employee; or
- disobeys an order of immediate restraint issued by the department.

An employer who knowingly makes a false statement in any document required to be filed or maintained pursuant to WISHA can be fined up to \$10,000 and/or imprisoned for up to six months.
RCW 49.17.190

Appellant did follow the Company's policy.

Safeway Inc. fabricated Appellant's injury by Mike LaGrange.

Appellant knew some of employees had similar incidents!

This case is NOT Fully adjusted.

Appellant asks the Court for extension of time to finish without interference from

DEF/Daniel Hurley.

Damages caused by Daniel Hurley & Matthew Bean

1 warning or has progressed beyond the point of a verbal warning. The purpose of a CAN is to
2 provide the Store's employees with a written notification of their improper workplace actions
3 and offer them the opportunity to correct their actions before the Store's disciplinary response
4 escalates to termination. CANs also provide the Store with a written record of employee
5 conduct so that the Store can identify patterns and make determinations as to whether a
6 certain employee has, in fact, changed their wrongful conduct over time. While Safeway
7 often offers its employees the opportunity to correct their conduct, some conduct warrants
8 termination without progressive discipline. For example, the Store does not allow an
9 employee to correct his or her conduct before termination if he or she steals from the Store.

10 10. On June 13, 2008, Plaintiff was issued her first CAN for failing to report an on-
11 the-job injury she suffered on May 14, 2008. Attached hereto as Exhibit A and incorporated
12 herein by reference is a copy of the CAN issued to Plaintiff on June 13, 2008. Plaintiff was
13 issued the CAN despite having previously signed at least two documents acknowledging her
14 understanding of and willingness to comply with Safeway's immediate injury reporting
15 policy. Attached hereto as Exhibit B and Exhibit C are copies of documents Plaintiff signed
16 acknowledging her understanding of and willingness to comply with Safeway's immediate
17 injury reporting policy. As part of this CAN, Plaintiff was counseled that future instances of
18 similar conduct would result in suspension or termination.

19 11. Plaintiff was issued another CAN on June 13, 2008, for failure to follow
20 instructions, quality of work, and productivity. Attached hereto as Exhibit D and
21 incorporated herein by reference is a copy of the second CAN issued to Plaintiff on June 13,
22 2008. Plaintiff was unwilling to change her work habits and showed no improvement in her
23 consistently poor productivity despite being retrained multiple times on her regular job duties.
24 Plaintiff also improperly worked overtime. At or around the time the CAN was delivered, I
25 met with Plaintiff and Bill Bokovoy, Plaintiff's union representative, to discuss her
26 inadequate work performance. After the CAN was delivered, Plaintiff was provided

DECLARATION OF MICHAEL
LAGRANGE - 4

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE (206) 623-7510
FACSIMILE (206) 623-7022

21
H. Harbord PO Box 112 Sequim WA 98382 360-681-3327

#68-114

Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HATSUYO "SUE" HARBORD,

Plaintiff,

v.

SAFEWAY INC.,

Defendant.

CASE NO. 2:13-cv-01127-JCC

STIPULATED
PROTECTIVE ORDER REGARDING
HANDLING OF CONFIDENTIAL
MATERIAL

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, Plaintiff Hatsuyo Harbord ("Plaintiff") and Defendant Safeway Inc. ("Defendant") the "parties" hereby stipulate to and petition the court to enter the following Stipulated Protective Order.

The parties acknowledge that this agreement is consistent with LCR 25(a). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2/10 of 14

68-120

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Hatsuyo "Sue" Harbord vs. Safeway Inc.*, Case No. 2:13-cv-01127-JCC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

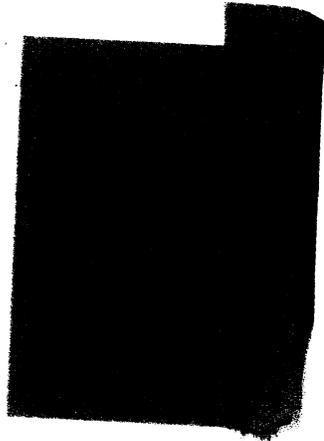
Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

26 11 of 14



THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HATSUYO "SUE" HARBORD,

Plaintiff,

v.

SAFEWAY INC.,

Defendant.

CASE NO. C13-1127-JCC

ORDER

This matter comes before the Court on Plaintiff's motion to withdraw as counsel (Dkt. No. 24). The Court finds oral argument unnecessary and hereby GRANTS the motion.

Under Local Civil Rule 83.2(b)(1), an attorney is ordinarily permitted to withdraw until sixty days before the discovery cut-off date. Trial in this matter is currently scheduled for November 17, 2014, and the discovery cut-off is not until July 18, 2014. Counsel has represented that he seeks to withdraw both because of conflicts with his client that may result in a violation of Model Rule of Professional Conduct 1.2, and because Plaintiff has been unwilling to communicate with him. (Dkt. No. 24 at 1-2.) The motion is GRANTED and Plaintiff's counsel is permitted to withdraw. Plaintiff is authorized to proceed *pro se*. See W.D. Wash. Local Civ. R. 83.2(b)(4).

There are issues related to the stipulated protective order entered on October 1, 2013. (Dkt. No. 19.) Defendant has requested that, because of these potential issues, all documents

1 produced under this order and marked Confidential be returned to Defendant, even though
2 professional-conduct rules might otherwise suggest they should be provided to Plaintiff. (Dkt.
3 No. 27 at 2.) The Court agrees with this request and the reasoning behind it and ORDERS that all
4 documents marked Confidential be returned to Defendant.

5 Plaintiff has indicated that she still wishes to obtain legal assistance, and the Court is
6 unclear about whether she is seeking another attorney. The Clerk is directed to send Plaintiff a
7 copy of the "Pro Se Packet," along with this Order. In particular, the Court notes pages 38 and 39
8 of the manual, which list resources for obtaining legal assistance.¹ In the meantime, the Court
9 changes none of the case-management deadlines established at the August 6 status conference,
10 because at the present time the deadlines are still appropriate. (Dkt. No. 17.)

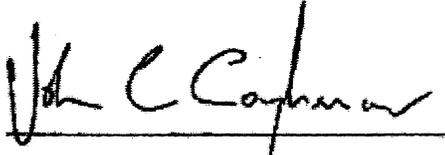
11 The motions that Plaintiff herself has filed were not properly submitted because she had
12 not been designated as appearing *pro se*. See W.D. Wash. Local Civ. R. 83.2(b)(4). Even so, in
13 the interest of judicial economy, the Court addresses Plaintiff's primary argument from these
14 motions, which is her objection to the Stipulated Protective Order. Plaintiff has made a number
15 of representations about the Stipulated Protective Order. The Court recognizes that the Stipulated
16 Protected Order will not hinder Plaintiff's presentation of her case, and the Court is sympathetic
17 to Defendant's argument that it has relied on this Order. (Dkt. No. 33.) Ultimately, however, the
18 Court is reluctant to keep in place a document that Plaintiff now says was signed under duress.
19 Accordingly, Defendant is directed to file a notice with the Court once material marked
20 Confidential has been returned. At that time, the Court will vacate the Stipulated Protective
21 Order. Plaintiff does not need to file any further submissions on this subject.

22 The parties are reminded that mediation pursuant to Local Civil Rule 39.1 must be
23 completed by March 14, 2014. (Dkt. No. 17.) The Clerk is respectfully directed to include a copy
24 of Local Civil Rule 39.1 with the materials being sent to Plaintiff.

25
26 ¹ Plaintiff is also directed to the court's website, which includes a section of resources for
pro se litigants, at www.wawd.uscourts.gov/pro-se.

1 For the foregoing reasons, the motion for withdrawal of counsel (Dkt. No. 24) is
2 GRANTED. The Clerk is respectfully directed to send Plaintiff copies of the "Pro Se Packet"
3 and Local Civil Rule 39.1 along with this Order.

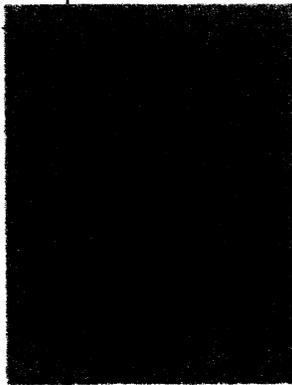
4 DATED this 6th day of January 2014.
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11 John C. Coughenour
12 UNITED STATES DISTRICT JUDGE
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FILED

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KING COUNTY
HONORABLE TIMOTHY A. BRADSHAW
SUPERIOR COURT CLERK
HEARING: JULY 2, 2015 AT 1:00 PM
WITH ORAL ARGUMENT
CASE NUMBER: 14-2-26220-5 SEA



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

HATSUYO "SUE" HARBORD,

Plaintiff,

v.

SAFEWAY INC.; DANIEL P. HURLEY;
MATTHEW BEAN; MIKE LAGRANGE;
SUE BONNETT and KEN BARNES,

Defendants.

No. 14-2-26220-5 SEA

MOTION FOR SUMMARY
JUDGMENT BY DEFENDANTS
SAFEWAY INC., DANIEL P.
HURLEY, MIKE LAGRANGE, SUE
BONNETT AND KEN BARNES

I. INTRODUCTION AND RELIEF REQUESTED

Defendants Safeway Inc. ("Safeway"), Daniel P. Hurley, Mike Lagrange, Sue Bonnett and Ken Barnes (collectively, the "Safeway Defendants"), through their undersigned counsel, move this Court for an order dismissing with prejudice all claims brought against them by *pro se* Plaintiff Hatsuyo Harbord ("Plaintiff"), a former Safeway employee. The Safeway Defendants are filing this Motion prior to answering any of the three Complaints (collectively, "Complaints") filed by Plaintiff,¹ because they have not been properly served with any Complaint. The Safeway Defendants have been compelled to file this Motion, because Plaintiff has refused to voluntarily dismiss her lawsuit, despite being informed by the undersigned counsel that her claims are frivolous and sanctionable.

¹ See Dkt. No. 1 ("Complaint 1"), No. 20 ("Complaint 2") and No. 22 ("Complaint 3").

MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS SAFEWAY INC., DANIEL P.
HURLEY, MIKE LAGRANGE, SUE BONNETT
AND KEN BARNES - 1

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1 While difficult to decipher, Plaintiff's claims against Safeway and its employees,
2 Lagrange, Bonnett and Barnes, clearly relate to her prior employment with Safeway.² As
3 a result, it is unnecessary to address the "merits" of any of her claims against these
4 defendants, because those claims are barred by: (a) res judicata, collateral estoppel, and
5 the prohibition against claim-splitting, given the filing and resolution of Plaintiff's prior
6 lawsuit against Safeway in King County Superior Court (Case No. 13-2-21008-8) (the
7 "First Lawsuit"); and/or (b) applicable statutes of limitation, given that Safeway
8 discharged Plaintiff in May 2011.

9 While even more difficult to ascertain, Plaintiff's claims against Hurley clearly
10 pertain to his representation of Safeway in the First Lawsuit and focus on the routine
11 stipulated protective order he entered into with Plaintiff's former attorney. These claims
12 must also be dismissed because: (1) Hurley is absolutely immune from such claims; and
13 (2) even if not, Plaintiff cannot articulate any cognizable claim against Hurley; and (3)
14 even if she could, she cannot establish with competent evidence the necessary elements of
15 any claim against Hurley.

16 II. STATEMENT OF FACTS

17 A. Plaintiff's Prior Employment with Safeway

18 Safeway is a large retail grocer with supermarkets, manufacturing, and processing
19 plants throughout the United States and Canada. Declaration of Daniel P. Hurley
20 ("Hurley Decl.") ¶2, Ex. A at 2.³ Safeway maintains a retail grocery store in Port Angeles
21 (the "Store"), which employs approximately 125 employees. *Id.* Mike Lagrange is the
22 Store's manager and oversees all operations at the Store, including employee hiring and
23

24 ² See Compl. 1 (Dkt. 1) at p. 8 ("This is wrongful termination, retaliation, discrimination, work injury,
harassment.").

25 ³ Exhibits A, B, and C, the Declarations of Mike Lagrange, Sue Bonnett, and Ken Barnes submitted
respectively herewith, are the same declarations these individuals submitted in support of Safeway's
dispositive motion in the First Lawsuit.

MOTION FOR SUMMARY JUDGMENT BY
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28

1 termination decisions. *Id.* at 1-2. Store Manager Lagrange approved the hiring of
2 Plaintiff as an office clerk and bookkeeper on September 5, 2004. *Id.* at 2-3. After
3 engaging in repeated efforts over the course of several years to address serious concerns
4 regarding Plaintiff's work performance and conduct, culminating in an investigation
5 involving Safeway's Labor Relations Manager Sue Bonnett and Loss Prevention
6 Investigator Ken Barnes, Lagrange and Bonnett ultimately made the decision to terminate
7 Plaintiff's employment effective May 6, 2011. *Id.* ¶3, Ex. A at 3-13; ¶4, Ex. B at 1-3; ¶5,
8 Ex. C at 1-3.

9 **B. Plaintiff's First Lawsuit Against Safeway**

10 On May 24, 2013, while represented by Defendant Matthew Bean of Bean Porter
11 Hawkins PLLC, Plaintiff filed a Complaint against Safeway in King County Superior
12 Court ("State Court") related to her prior employment with Safeway in which she alleged
13 that Safeway "discriminated against and/or retaliated against [her] on the basis of her age,
14 race, national origin, color or other protected characteristic" in violation of the
15 Washington Law Against Discrimination, Chapter 49.60 RCW ("WLAD"), and
16 wrongfully terminated her in violation of public policy. *Id.* ¶6, Ex. D at 4. Safeway,
17 represented by Hurley of K&L Gates LLP, removed the case to the U.S. District Court for
18 the Western District of Washington (Case No. 2:13-cv-01127-JCC) ("Federal Court") on
19 the basis of diversity of citizenship on July 1, 2013. *Id.* ¶2.

20 1. The Stipulated Protective Order in Federal Court

21 While Plaintiff's First Lawsuit was proceeding in Federal Court, Safeway provided
22 written responses and produced documents in response to Plaintiff's First Interrogatories
23 and Requests for Production. *Id.* ¶7. Some of the documents requested included
24 confidential information, such as personal information pertaining to non-party Safeway
25 employees and financial and/or proprietary information pertaining to Safeway and/or its

29
MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS SAFEWAY INC., DANIEL P.
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1 customers. Id. Accordingly, Hurley conferred with Plaintiff's attorneys at the time, Bean
2 and Christine Porter, and obtained their agreement to the form of, and authority to add
3 their electronic signature to: (i) a Stipulated Motion for Entry of Stipulated Protective
4 Order Regarding Handling of Confidential Material Pursuant to LCR 26(C)(2); and (ii) an
5 accompanying [Proposed] Stipulated Protective Order Regarding Handling of
6 Confidential Material based on the Model Stipulated Protective Order of the Federal
7 Court. Id. ¶¶7-8, Exs. E & F; Declaration of Matthew J. Bean (Dkt. No. 14) at ¶¶ 3-4.
8 Hurley filed those documents with the Federal Court on September 24, 2013, and Judge
9 John C. Coughenour of the Federal Court entered the Stipulated Protective Order on
10 October 1, 2013. Hurley Decl. ¶10, Ex. G.

11 On November 8, 2013, without the involvement of Bean, Plaintiff filed a
12 document with the Federal Court challenging the Stipulated Protective Order based on
13 what appeared to be her fundamental misunderstandings regarding the function, purpose,
14 and effect of the Stipulated Protective Order. *Id.* ¶11, Ex. H. Bean subsequently filed a
15 document on November 14, 2013, signed by Plaintiff on November 13, stating: "Plaintiff
16 Hatsuyo Harbord hereby submits that she has read the [Stipulated Protective Order].
17 Harbord understands the order and will abide by it." *Id.* ¶12, Ex. I. However, one day
18 later, on November 15, 2013, Plaintiff filed a document in which she claimed that she had
19 signed the prior filing on November 14 "under duress" from Bean. *Id.* ¶13, Ex. J.

20 On November 21, 2013, Bean filed a Motion to Withdraw as counsel for Plaintiff.
21 *Id.* ¶14. While that Motion was pending, Plaintiff continued to file documents without the
22 involvement of Bean, including confusing documents seeking the removal of the
23 Stipulated Protective Order. *Id.* On January 6, 2014, the Federal Court granted Bean's
24 Motion to Withdraw as Plaintiff's counsel and authorized Plaintiff to proceed *pro se.* *Id.*,
25 Ex. K. While noting that the routine Stipulated Protective Order would "not hinder

MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS SAFEWAY INC., DANIEL P.
HURLEY, MIKE LAGRANGE, SUE BONNETT
AND KEN BARNES - 4

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1 Plaintiff's presentation of her case," the Federal Court was "reluctant to keep in place a
2 document that Plaintiff now says was signed under duress." *Id.* at 2. Accordingly, the
3 Federal Court stated that it would vacate the Stipulated Protective Order after receiving
4 notice from Safeway that Plaintiff had returned all material that Safeway had labeled as
5 "Confidential" pursuant to that order (which amounted to less than 60 of the more than
6 1,100 pages of documents produced). Hurley Decl. ¶¶14-15, Ex. K at 2.

7 What should have been a simple process of Plaintiff and Bean working together to
8 ensure that (1) Plaintiff received Bean's complete case file, including copies of documents
9 previously produced by Safeway in a format Plaintiff could use (hard copy, presumably),
10 and (2) all "Confidential" documents were returned to Safeway, instead spiraled into a
11 seemingly endless sequence of filings by Plaintiff in which she continued to challenge the
12 Stipulated Protective Order and claimed that she was unable to sort the documents to
13 return those which were labeled "Confidential." *See, e.g., id.* ¶20, Ex. N. Hurley, as
14 counsel for Safeway, repeatedly attempted to assist Plaintiff in meeting her obligation to
15 return these documents.⁴

16 On February 21, 2014, before she had returned any "Confidential" documents or
17 otherwise acknowledged that she had destroyed any such documents, Plaintiff filed the
18 first of a series of documents seeking remand to State Court by challenging the amount-in-
19 controversy requirement of 28 U.S.C. § 1332 and offering conflicting assertions that her
20 claims were for "less than \$75,000." *Id.* ¶25, Ex. S at 10, Ex. T at 6 ("I will seek as much
21 as the court will allow at King County Court, but if I award more than \$75,000, then I
22 would give excess money to charity of my choice"). On April 1, 2014, the Federal Court
23

24 ⁴ *See* Hurley Decl. ¶15-24, Exs. L, O-R (showing Hurley's extensive efforts to communicate with Plaintiff
25 to effect the return of the "Confidential" documents, including listing the documents by Bates numbers and
re-producing all documents in hard copy excluding a narrowed list of less than 30 "Confidential"
documents).

1 issued an order finding that Safeway "failed to provide sufficient evidence that the amount
2 in controversy exceeds \$75,000" and remanding the case to State Court. *Id.* ¶27, Ex. U
3 (at 2, 8).

4 On or about April 28, 2014, months after the Federal Court issued the order to
5 Plaintiff to return the confidential documents and nearly four weeks after that court's
6 order granting Plaintiff's motion to remand the matter to State Court, Plaintiff sent some
7 of the pages of "Confidential" material to Hurley. *See* Compl. 2 at ¶11. Hurley thus sent
8 Plaintiff a letter on May 2, 2014, informing her that, given the remand and the Federal
9 Court's lack of jurisdiction and her presumed return of any "Confidential" documents, the
10 Stipulated Protective Order "no longer has any effect and you may disregard it." *Id.* ¶28,
11 Ex. U.
12

13 2. Plaintiff's Failure to Respond to Safeway's Discovery Requests

14 On October 10, 2013, consistent with the procedures set forth in Civil Rules 33
15 and 34, Safeway served Plaintiff's former attorney, Bean, a copy of Defendant Safeway
16 Inc.'s First Interrogatories and Request for Production to Plaintiff Hatsuyo "Sue" Harbord
17 (the "Discovery Requests"). *Id.* ¶29. Five months later, after receiving no response
18 whatsoever from Plaintiff to these Discovery Requests, Safeway filed a Motion to Compel
19 Responses to Discovery in Federal Court on March 11, 2014, detailing Safeway's efforts
20 to get Plaintiff to respond to the Discovery Requests. *Id.*, Ex. W. Plaintiff did not
21 respond to this motion, and the Federal Court terminated the motion before issuing a
22 ruling, given its decision to remand the matter to State Court. *Id.* ¶27, Ex. U at 7-8. After
23 Safeway's continued efforts after remand to obtain Plaintiff's responses to these same
24
25

MOTION FOR SUMMARY JUDGMENT BY
DEFENDANT'S SAFEWAY INC., DANIEL P.
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1 Discovery Requests were also unsuccessful, Safeway filed a Motion to Compel Responses
2 to Discovery in State Court on August 20, 2014 (nearly 10 months after the discovery was
3 first served). *Id.* ¶30, Ex. X. On September 8, the State Court entered an order granting
4 Safeway's motion, ordering Plaintiff to pay Safeway's reasonable costs incurred in
5 preparing the motion, requiring Plaintiff to respond to the Discovery Requests within 10
6 days, and warning Plaintiff that her "failure to follow this order and provide timely
7 discovery may result in dismissal of the action." *Id.* ¶31, Ex. Y. In a second order issued
8 that same date, the State Court denied motions of Plaintiff and noted that Plaintiff
9 "appears to be believe that the discovery rules do not apply to her. That is incorrect." *Id.*
10 ¶32, Ex. Z. Plaintiff still failed to respond in any way to the Discovery Requests. *Id.* ¶32.

11
12
13 3. The State Court Grants Safeway's Motion to Dismiss Plaintiff's Claims

14 On October 24, 2014, the State Court heard oral argument on Defendant Safeway
15 Inc.'s Motion to Dismiss and Motion for Summary Judgment, in which Safeway sought
16 dismissal of all of Plaintiff's claims on two independent bases: (1) as a sanction pursuant
17 to CR 37(d) for, *inter alia*, her refusal to comply with the order to respond to the
18 Discovery Requests; and (2) pursuant to CR 56(c). *Id.* ¶33, Ex. AA. The Court granted
19 Safeway's motion on both bases and ordered that "all claims of Hatsuyo 'Sue' Harbord
20 against Safeway are DISMISSED WITH PREJUDICE." *Id.* ¶34, Ex. BB. On the same
21 date, the Court entered an order requiring Plaintiff to pay Safeway \$2,600 for expenses it
22 incurred in connection with Plaintiff's continued and ongoing refusal to respond to the
23 Discovery Requests, which Plaintiff to date has not paid. *Id.* ¶35, Ex. CC.

24
25 4. Plaintiff is Pursuing an Appeal of the Dismissal of Her First Lawsuit

MOTION FOR SUMMARY JUDGMENT BY
DEFENDANT'S SAFEWAY INC., DANIEL P.
HURLEY, MIKE LAGRANGE, SUE BONNETT
AND KEN BARNES - 7

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1 Even after the State Court granted Safeway's motion for summary judgment on
2 October 24, 2014, Plaintiff continued to file a staggering number of repetitive, misguided
3 and unfounded motions and other documents, just as she had previously done in both the
4 State and Federal Courts. *See id.* ¶¶36-37, Ex. DD (State Court docket) & Ex. FF
5 (Federal Court docket). Plaintiff filed her notice of appeal of the dismissal of her First
6 Lawsuit on November 21, 2014. *Id.* ¶38, Ex. FF. Her prolific filing of befuddling
7 documents has only continued at the Court of Appeals, and after obtaining various
8 extensions of time, her appellate brief is currently due on June 15, 2015. *Id.* ¶39, Ex. GG
9 (appellate docket).
10

11 **C. Plaintiff's Second Lawsuit Against Safeway**

12 1. Plaintiff Has Not Properly Served the Safeway Defendants in this Lawsuit

13
14 Prior to the dismissal of Plaintiff's First Lawsuit, Plaintiff filed a Complaint in this
15 matter on or about September 23, 2014, naming as defendants Safeway, three Safeway
16 employees (Lagrange, Bonnett and Barnes), Hurley (Safeway's primary attorney in the
17 First Lawsuit), and Bean (Plaintiff's former attorney in the First Lawsuit). Compl. 1 (Dkt.
18 No. 1). In fact, it appears that Plaintiff has filed no less than three different Complaints in
19 this case. Dkt. Nos. 1, 20 & 22. However, Plaintiff has never personally served any of
20 the Safeway Defendants with any complaint in this case, nor has she filed with the Court
21 any affidavit or other appropriate proof of service documenting compliance with the
22 requirements of CR 4, despite being alerted months ago by counsel for the Safeway
23 Defendants as to his position on this issue. Hurley Decl. ¶40, Ex. HH at fn.1. While
24 Plaintiff mailed copies of the Complaints to the Safeway Defendants, none of the Safeway
25

MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS SAFEWAY INC., DANIEL P.
HURLEY, MIKE LAGRANGE, SUE BONNETT
AND KEN BARNES - 8

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1 Defendants had any agreement with Plaintiff to waive the requirements of service or to
2 accept service of any original complaint via mail.⁵ Moreover, Plaintiff did not file a
3 Confirmation of Joinder of Parties, Claims, and Defenses pursuant to LCR 4.2 (Case
4 Schedule, Dkt. No. 2), which requires a plaintiff to indicate whether all parties have been
5 served or have waived service. Hurley Decl. ¶43. On April 2, 2015, Defendant Hurley
6 filed (and served by mail) a Notice of Appearance in this matter on behalf of himself and
7 the other Safeway Defendants, expressly noting that the appearance was without waiver of
8 "objections as to improper service (including insufficient process and insufficient service
9 of process) or jurisdiction." Dkt. No. 25.

11 2. Counsel for the Safeway Defendants Cautions Plaintiff Regarding CR 11

12 On February 20, 2015, counsel for the Safeway Defendants mailed a letter to
13 Plaintiff in which he informed her that her Complaint against the Safeway Defendants
14 violates CR 11 because it "is not 'well grounded in fact' or 'warranted by existing law,'
15 and it appears to be for an 'improper purpose,' including to 'harass' and 'cause
16 unnecessary delay and needless increase in the cost of litigation.'" Hurley Decl. ¶40, Ex.
17 III at pp.1-2 (quoting CR 11). The letter explained with illustrative citations to legal
18 authority that Plaintiff's claims against Safeway and its employees were barred by (i) the
19 doctrine of res judicata and the prohibition against claim-splitting, given Plaintiff's First
20
21

22 _____
23 ⁵ Counsel for the Safeway Defendants has informed Plaintiff that he will accept service of a summons and
24 complaint on behalf of the Safeway Defendants if Plaintiff indicates her agreement that the applicable
25 complaint for the Safeway Defendants to answer is the most recently filed complaint (Dkt. No. 22), as the
Safeway Defendants should not be put to the additional cost and burden of responding to each of the three
unfounded Complaints. Hurley Decl. ¶41, Ex. II at pp. 2-3 (letter noting lack of service and offering to
accept service); Dkt. No. 46 at pp. 2-3 (4/24/15 filing noting lack of service and offering to accept service).
Plaintiff has not responded to this offer or otherwise addressed the issue of service under CR 4. *Id.* ¶42.

MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS SAFEWAY INC., DANIEL P.
HURLEY, MIKE LAGRANGE, SUE BONNETT
AND KEN BARNES - 9

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1 Lawsuit and its dismissal; and (ii) the applicable statutes of limitation, given that Safeway
2 terminated Plaintiff's employment more than three years before she filed her Complaint in
3 this action. *Id.* at 1-4. The letter also noted that Plaintiff's Complaint set forth no cause of
4 action against Hurley and her allegations against him were unfounded and based on her
5 misunderstanding of applicable rules and law. *Id.* at 2 & fn.3. The letter specifically
6 explained that Hurley acted properly when he conferred with Bean (Plaintiff's attorney at
7 the time), rather than Plaintiff, to reach agreement on the routine Stipulated Protective
8 Order and that it would have been violation of Washington Rule of Professional Conduct
9 4.2 for him to directly communicate with Plaintiff at that time. *Id.* The letter cautioned
10 Plaintiff that if she failed to voluntarily dismiss the Safeway Defendants and thus forced
11 them to file a motion for summary judgment, the Safeway Defendants would seek
12 sanctions pursuant to CR 11 to recover the reasonable fees incurred in bringing such a
13 motion. *Id.* at 3. Plaintiff did not respond to this letter. Hurley Decl. ¶40.

16 3. The Court Grants Defendant Bean's Summary Judgment Motion

17 On April 3, 2015, this Court heard oral argument on Defendant Matthew J. Bean's
18 CR 56 Motion for Summary Judgment. Dkt. No. 27. While Plaintiff's specific claims
19 against Bean were unclear, they clearly relied on her assertion that he acted improperly
20 during the course of her First Lawsuit by agreeing with Safeway's counsel (Hurley) to
21 jointly file the Motion for the Stipulated Protective Order. *See, e.g.*, Compl. 1 at 2, 9-10;
22 Compl. 2 at 3-5, 9; Compl. 3 at 4-6, 10-13. The Court granted Bean's motion, noting in
23 its oral ruling that Plaintiff offered no evidence that Bean's actions violated the attorney
24 judgement rule. Dkt. No. 28 (order granting motion and incorporating oral ruling; Audio
25

MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS SAFEWAY INC., DANIEL P.
HURLEY, MIKE LAGRANGE, SUE BONNETT
AND KEN BARNES - 10

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1 Log Dr W965). After the Court granted Bean's motion, counsel for the Safeway
2 Defendants sent Plaintiff another letter in which he: again addressed the CR 4 service
3 issues as to the summons and complaint; insisted that Plaintiff cease attempting to directly
4 mail or hand-deliver other documents under CR 5 to Safeway and its employees (and
5 instead only send them to counsel); cautioned Plaintiff to again review the February 20,
6 2015 letter, setting forth additional information regarding the baseless nature of her
7 lawsuit; and again warned Plaintiff that the Safeway Defendants expected to pursue
8 monetary sanctions and those potential sanctions would only increase if she continued in
9 her refusal to drop her claims against the them. Hurley Decl. ¶41, Ex. II. Plaintiff did not
10 respond. *Id.* ¶41.

11 III. ISSUES PRESENTED

12 1. Are Safeway, Lagrange, Bonnett and Barnes entitled to summary judgment
13 because all of Plaintiff's claims against them are barred by res judicata, the prohibition on
14 claim splitting, collateral estoppel, and the statutes of limitation?

15 2. Is Hurley entitled to summary judgment because Plaintiff does not and
16 cannot identify any cognizable cause of action against him or establish the necessary
17 elements of any cause of action?

18 IV. EVIDENCE RELIED UPON

19 Safeway relies upon the Hurley Declaration and all exhibits attached thereto, as
20 well as the papers and pleadings on file with the Court.

21 V. ARGUMENT

22 A. Summary Judgment Standard

23 A motion for summary judgment is properly granted where "there is no genuine
24 issue as to any material fact and . . . the moving party is entitled to a judgment as a matter
25 of law." CR 56(c). A defendant has two alternative approaches when seeking summary

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1 judgment: (1) establish through affidavits its version of the facts and allege that there is no
2 genuine issue of material fact; or (2) identify those portions of the record demonstrating
3 the absence of competent evidence to support an essential element of the plaintiff's case.
4 *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wn. 2d
5 59, 70, 170 P.3d 10 (2007). In responding, the nonmoving party cannot rely on the
6 allegations made in its pleadings, but rather must set forth specific facts by affidavits or as
7 otherwise provided by CR 56 to show that there is a genuine issue for trial. *Young v. Key*
8 *Pharm., Inc.*, 112 Wn. 2d 216, 225, 770 P.2d 182, (1989) (citing CR 56(e)). If the
9 nonmoving party fails to make a showing sufficient to establish the existence of an
10 element essential of that party's case, then the trial court should grant the motion. *Id.*

11 In this case, Plaintiff's claims against Safeway, Lagrange, Bonnett and Barnes are
12 merely an attempt to re-litigate the same meritless claims that were dismissed in Plaintiff's
13 First Lawsuit, and thus they are barred by res judicata. These claims are also barred by
14 the applicable statute of limitations. With regard to Plaintiff's claims against Hurley, she
15 simply does not and cannot identify any cognizable cause of action against him, much less
16 offer competent evidence to satisfy the elements of any cause of action.

17 **B. Plaintiff Cannot Avoid Summary Judgment in Her First Lawsuit by Filing a**
18 **Second Lawsuit Against Safeway and its Employees**

19 Plaintiff previously filed a lawsuit against Safeway on May 24, 2013, broadly
20 alleging that Safeway "discriminated against and/or retaliated against [her] on the basis of
21 her age, race, national origin, color or other protected characteristic" in violation of the
22 WLAD and wrongfully terminated her in violation of public policy allegedly for engaging
23 in protected activity of complaining about lunch and meal breaks. Hurley Decl. ¶6, Ex. D
24 at 2-4. After seventeen months of litigation, during which Plaintiff filed a staggering
25 number of documents in both the Federal and State Courts (*see id.*, Exs. DD & EE) and

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1 had ample opportunity to conduct discovery, develop her case, and add any claims and
2 additional defendants in accordance with applicable court rules, the State Court granted
3 Safeway's motion for summary judgment and dismissed all of Plaintiff's claims against
4 Safeway with prejudice on October 24, 2014. *Id.*, Ex. BB. Plaintiff is now pursuing an
5 appeal of this ruling. *Id.*, Ex. FF.

6 Plaintiff filed her first Complaint in the present case against Safeway and its
7 employees on September 23, 2014, a month before the State Court granted Safeway's
8 motion to dismiss her First Lawsuit. Compl. 1. While it is difficult to discern all of the
9 specific claims Plaintiff is attempting to assert in this lawsuit against these defendants, her
10 claims clearly relate to the same events that were at issue in the First Lawsuit regarding
11 the termination of her employment in May 2011 and she can set forth no competent
12 evidence of any allegedly wrongful acts by the defendants subsequent to her termination.
13 Consequently, under these circumstances, res judicata and collateral estoppel should bar
14 Plaintiff's current claims against Safeway and its employees.

15 1. Plaintiff's Claims are Barred by Res Judicata

16 Under the doctrine of res judicata (or claim preclusion), a plaintiff is barred from
17 litigating claims that either were, or should have been, litigated in a former action.
18 *Schoeman v. New York Life*, 106 Wn.2d 855, 859, 726 P.2d 1 (1986). The purpose of this
19 doctrine is "to prevent piecemeal litigation and ensure the finality of judgments."
20 *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 99, 117 P.3d 1117
21 (2005).⁶ Accordingly, dismissal on the basis of res judicata is appropriate in cases where
22 there was a final judgment on the merits in the prior action⁷ and the moving party proves a
23

24 ⁶ See also *Landry v. Luscher*, 95 Wn. App. 779, 780-81, 976 P.2d 1274 (1999) (as a general matter,
Washington law prohibits claim splitting—the filing of two separate lawsuits based on the same event).

25 ⁷ *Pederson v. Potter*, 103 Wn. App. 62, 67, 11 P.3d 833 (2000) (for res judicata to apply, there must have
been a final judgment on the merits in the prior action).

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1 concurrence of identity between the two actions in four respects: (1) subject matter; (2)
2 claim or cause of action; (3) persons and parties; and (4) the quality of the persons for or
3 against whom the claim is made. *Spokane Research & Def. Fund*, 155 Wn.2d at 99. In
4 this case, each of the necessary elements are satisfied and res judicata should thus
5 preclude Plaintiff from employing the powerful tools of civil litigation to further burden
6 Safeway and its employees with a second costly and vexatious lawsuit.

7 As an initial matter, the court in Plaintiff's First Lawsuit entered a final judgment
8 on the merits in that case by entering an order that dismissed Plaintiff's claims with
9 prejudice both: (1) pursuant to CR 56,⁸ noting that "there are no triable issues of material
10 fact supporting Plaintiff's allegation that Safeway violated the Washington Law Against
11 Discrimination or that Safeway's discharge of her employment was wrongful or in
12 violation of public policy"; and (2) as a sanction for her willful refusal to participate in the
13 discovery process, as evidenced by, among other things, her refusal to provide any
14 discovery in response to Safeway's Discovery Requests, despite a court order compelling
15 her to do so.⁹ Hurley Decl. ¶34, Ex. BB.

16 *a. Prongs 1 and 2: The Subject Matter and Claims are the Same*

17 Even a cursory comparison of the Complaint in Plaintiff's First Lawsuit with the
18 three Complaints she has filed in the instant matter (Dkt. Nos. 1, 20 & 22) establishes that
19 the subject matter and claims as to Safeway and its employees in this lawsuit are the same
20

21 _____
22 ⁸ See 14A Karl B. Fogland, *Washington Practice: Civil Procedure* § 35.41, at 573 (2nd ed. 2009) (a
summary judgment has res judicata effect) (citations omitted).

23 ⁹ There appears to be a lack of relevant caselaw as to whether a dismissal as a CR 37 sanction for refusal to
24 follow a court order to provide discovery constitutes a judgement on the merits for purposes of res judicata.
25 However, allowing a plaintiff to file a second lawsuit to bring the same claims that were previously
dismissed for this reason would effectively nullify the power granted to courts pursuant to CR 37(b)(2) to
dismiss an action when a plaintiff flatly refuses to comply with a discovery order. Moreover, giving such a
dismissal the effect of a final judgment for purposes of res judicata does not close off the dismissed party
from the appropriate avenue of relief—i.e., an appeal if the CR 37 dismissal sanction was not justified.

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1 as those that were decided in the First Lawsuit. In short, Plaintiff is attempting to re-
2 litigate her challenge to Safeway's decision to terminate her employment in May 2011 by
3 making bald assertions regarding the various roles its employees (Defendants Lagrange,
4 Bonnett and Barnes) played in the events that precipitated that decision and again
5 claiming that the decision to terminate her employment was motivated by discrimination
6 or retaliation or otherwise amounted to a wrongful termination.¹⁰ Specifically, in support
7 of her claims in this lawsuit, Plaintiff is attempting to rely on allegations regarding the
8 same events and actions taken by Safeway through its defendant employees Lagrange,
9 Bonnett, and Barnes (e.g., the suspension of Plaintiff pending Safeway's investigation into
10 her actions, review of store security video and efforts to collect information from Plaintiff
11 during this investigation, and the resulting decision to discharge Plaintiff) that she
12 attempted to rely on in her First Lawsuit.¹¹ Safeway addressed these claims and the
13 relevant factual background in detail in its dispositive motion in the First Lawsuit and the
14 State Court resolved those claims in Safeway's favor. Hurley Decl. ¶¶33-34, Exs. AA
15 (dispositive motion) & BB (order granting motion). Accordingly, the subject matter and
16 causes of action between the First Lawsuit and the present lawsuit are the same for
17 purposes of the application of res judicata, given: (i) Plaintiff's obvious attempt in both
18 lawsuits to challenge the termination of her employment by relying on the same
19 transactional nucleus of facts with regard to the actions of Safeway's employees; (ii) the
20

21 ¹⁰ Compare Plaintiff's Complaint at ¶¶ 3.2-5.2 (Ex. D to the Hurley Decl.) in the First Lawsuit (challenging
22 the events that preceded, and the reasons for, her termination, including the security video and the roles of
23 Lagrange and Bonnett, and alleging discrimination/retaliation/wrongful termination) with the three
24 Complaints filed in the present lawsuit, all of which focus on and make allegations related to Safeway's
25 decision to terminate Plaintiff and the roles of individual Safeway employees in that decision. See Compl. 1
at 2, 8 (naming Lagrange and Bonnett and asserting "wrongful termination, retaliation, discrimination, work
injury, harassment"); Compl. 2 at 2, 15-16 (same, and making allegations regarding pre-termination
investigatory actions of Lagrange, Bonnett and Barnes); Compl. 3 at 2-3, 14 (making allegations regarding
pre-termination investigatory actions of Lagrange, Bonnett and Barnes).

¹¹ See *supra*, p. 15, fn. 10 [the preceding fn].

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1 State Court's prior rejection of Plaintiff's claim that her termination was motivated by
2 unlawful discrimination or retaliation or was contrary to public policy, combined with her
3 apparent attempt to reassert these same claims here and her failure to articulate any other
4 cognizable claims against Safeway or its employees¹²; and (iv) the fact that Plaintiff had
5 more than seventeen months during the First Lawsuit to develop her case and add
6 additional claims and defendants.¹³

7 *b. Prongs 3 and 4: Lagrange, Bonnett, Barnes and Safeway Constitute*
8 *the Same Persons and Parties, and the Same Quality of Persons*

9 Res judicata also applies because the parties and quality of persons involved in the
10 First Lawsuit are the same as those involved in this lawsuit. Specifically, while Safeway
11 was the only named defendant in the First Lawsuit, for purposes of the current lawsuit,
12 Defendants Lagrange, Bonnett and Barnes should be construed as the same party as
13 Safeway based on their privity with Safeway. *See Thompson v. King Cnty.*, 163 Wn. App.
14 184, 192-195, 259 P.3d 1138 (2011) (discussing general rule of privity between employer
15 and employee).¹⁴

16 ¹² Plaintiff also appears to be alleging that Safeway's employees violated various statutes of the Washington
17 Criminal Code, Title 9A RCW. *See* Compl. 2 at 15, 17 (citing RCW 9A statutes for criminal "harassment,"
18 "coercion", "unlawful imprisonment"); Compl. 3 at 14-15 (same). These statutory crimes are inapplicable
19 here, as Plaintiff has no authority to bring such claims in civil court. Regardless, Plaintiff certainly cannot
20 not set forth competent evidence to support the elements of these crimes.

21 ¹³ *See Pederson*, 103 Wn. App. at 72 (to assess whether causes of action are identical, a court may consider:
22 (1) whether the rights or interests established in the prior judgment would be destroyed or impaired by the
23 prosecution of the second action; (2) whether substantially the same evidence is presented in the two
24 actions; (3) whether the suits involved infringement of the same right; and (4) whether the two suits arise out
25 of the same transactional nucleus of facts); *Kuhlman*, 78 Wn. App. 115, 124, 897 P.2d 365 (1995) (finding
the same subject matter even where the claims were different, because the basis of the claims was the
plaintiff's alleged deprivation of a constitutional right and tortious harm resulting from false allegations);
Hisle v. Todd Pac. Shipyards Corp., 151 Wn.2d 853, 865, 93 P.3d 108 (2004) (res judicata applies not only
to points upon which the court was actually required to form an opinion and pronounce a judgment, but to
every point which properly belonged to the subject of litigation, and which the parties might have brought
forward at the time); *See* 14A Karl B. Tegland, *Washington Practice: Civil Procedure* § 35.25, at 527 (2nd
ed. 2009) ("The issue of whether the subject matter of the two proceedings is the same usually overlaps with
the issue of whether the cause of action or claims are also the same.")

¹⁴ *See also Ensley v. Pitcher*, 152 Wn. App. 891, 905-07, 222 P.3d 99 (2009) (finding employer/employee
relationship sufficient to establish privity, thereby satisfying the (a) same persons and parties and (b) quality

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1 The circumstantially similar case of *Kuhlman v. Thomas* illustrates the proper
2 application of privity between employer and employee to satisfy the same parties and
3 quality of persons requirements for res judicata. In that case, a plaintiff-employee who
4 had been disciplined for allegedly harassing female co-workers brought an action against
5 his employer claiming the employer breached his employment contract and used a
6 disciplinary procedure that violated his right to due process. 78 Wn. App. at 118. This
7 action was dismissed. *Id.* The plaintiff subsequently brought another lawsuit against
8 individual officers and employees of the plaintiff's employer, alleging due process
9 violations, defamation and wrongful interference with a business expectancy. *Id.* The
10 court found that while these individuals were not parties in the first action, they shared
11 privity with the employer in that action, because the employer's liability in the first
12 lawsuit was premised entirely on the actions of its employees. *Id.* at 121-22. Specifically,
13 the plaintiff complained that the employees' accusations of harassment were false and
14 that, as a consequence, the employer's officials had wrongfully suspended and demoted
15 him. *Id.* The suit against the employer was therefore essentially a suit against its
16 employees; in other words, whether the employer violated the plaintiff's rights turned on
17 the propriety of the conduct of its employees. *Id.* Having defended that suit, the employer
18 essentially acted as the employees' representative and protected their interests. *Id.* Under
19 these circumstances, the *Kulman* court determined that the employer and its employees
20 must therefore be viewed as sufficiently the same, if not identical, and res judicata applied
21 to bar the plaintiff's second lawsuit against the employees. *Id.* at 121-25.

22 Here, like *Kuhlman*, while Safeway was the only named defendant in the First
23 Lawsuit, in that action Plaintiff was attempting to hold Safeway liable for the actions of its
24

25 of persons requirements of res judicata; the "quality of persons" requirement of res judicata simply requires
a determination of which parties in the second suit are bound by the judgment in the first suit).

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1 individual employees specifically, the efforts of Lagrange, Bonnett and Barnes to
2 investigate concerns regarding Plaintiff's work performance and conduct (including by,
3 among other things, reviewing footage from store security cameras and requesting
4 information from Plaintiff) and the resulting decision of Lagrange and Bonnett to
5 terminate Plaintiff's employment in May 2011.¹⁵ The court rejected Plaintiff's claims that
6 those actions were unlawful when it granted Safeway's motion for summary judgment.
7 Hurley Decl., Ex. BB. While Plaintiff could have attempted to assert and establish claims
8 for personal liability of Lagrange, Bonnett and Barnes in the First Lawsuit in addition to
9 her claims against Safeway, the fact that she failed to do so does not defeat the shared
10 identity of the parties here, where she is again attempting to challenge these same actions
11 and decisions by asserting claims against Lagrange, Bonnett and Barnes as individual
12 defendants. *See, e.g., Ensley*, 152 Wn. App. at 902-03 (patron's lawsuit against bartender
13 for negligent over-service was barred by res judicata based on dismissal of patron's prior
14 action against bartender's employer, where employer's liability in the first action turned
15 solely on theory of vicarious liability for bartender's actions). Consequently, res judicata
16 bars Plaintiff from re-litigating these same issues and claims against Safeway's employees
17 (and Safeway) in the present lawsuit, as Plaintiff does not (and cannot) identify any
18 cognizable causes of action against Lagrange, Bonnett or Barnes that would fall outside
19 the scope of this bar.¹⁶

20 2. Plaintiff's Claims are Barred by Collateral Estoppel

21
22 ¹⁵ See Hurley Decl, Ex. AA (Safeway's summary judgment motion in the First Lawsuit) at 2-12 (detailing
23 history of problems with Plaintiff's performance and conduct and the events in Spring 2011 that precipitated
24 the termination of her employment, including the respective roles of Lagrange, Bonnett and Barnes); *supra*
25 p. 15, fn. 10 (identifying sameness of Plaintiff's First Lawsuit and the present case with regard to the factual
assertions and legal claims pertaining to Safeway and its employees).

¹⁶ For example, Plaintiff does not (and cannot) identify any cause of action against any individual defendant
in this case that is independent of the facts and causes of action asserted against Safeway in the First
Lawsuit that could result in a finding of independent liability of an individual defendant without conflicting
directly with the State Court's ruling in the First Lawsuit that Safeway was not liable.

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1 Plaintiff's claims are also barred by collateral estoppel. Collateral estoppel, or
2 issue preclusion, prevents re-litigation of an issue after the party estopped has already had
3 a full and fair opportunity to present its case. *Hanson v. City of Snohomish*, 121 Wn.2d
4 552, 561, 852 P.2d 295 (1993). The requirements for application of the doctrine are: (1)
5 the issue decided in the prior adjudication must be identical with the one presented in the
6 second; (2) the prior adjudication must have ended in a final judgment on the merits; (3)
7 the party against whom the plea is asserted was a party or in privity with a party to the
8 prior adjudication; and (4) application of the doctrine must not work an injustice. *Id.* at
9 562. Here, the issue of whether Safeway and its employees were motivated by unlawful
10 discriminatory or retaliatory animus or instead had legitimate business reasons for their
11 actions in reaching the decision to terminate Plaintiff's employment was previously
12 resolved with a final judgment in Plaintiff's First Lawsuit by the State Court's granting of
13 Safeway's motion for summary judgment,¹⁷ and the application of collateral estoppel will
14 not work an injustice given that Plaintiff had seventeen months to engage in discovery and
15 prepare her case in the First Lawsuit.

16 **C. Plaintiff's Claims against Safeway and its Employees Are Time Barred**

17 To the extent any of Plaintiff's claims against Safeway and its employees in the
18 present lawsuit are distinct from those asserted in her First Lawsuit and not barred by res
19 judicata or collateral estoppel, they are nonetheless barred by applicable statutes of
20 limitation. As noted above, Plaintiff's employment was terminated effective May 6, 2011,
21 more than three years before she filed her initial Complaint (Dkt. No. 1) in this case on
22 September 26, 2014. Consequently, notwithstanding the fact that Plaintiff fails to clearly
23

24 ¹⁷ See *Supra* Part II.B.3; 14A Karl B. Tegland, Washington Practice: Civil Procedure § 35:44 at 557 and §
25 35:42 at 573 (2nd ed. 2009). ("The cases defining the term *final judgment on the merits* in the context of res
judicata should also serve to define the term in the context of collateral estoppel."; "There is at least some
suggestion that summary judgments may have collateral estoppel effects.")

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1 identify her purported causes of action, she does not (and cannot): (a) assert any causes of
2 action against Safeway, Lagrange, Bonnett or Barnes that have statutes of limitations that
3 extend beyond three years; or (b) establish that Safeway, Lagrange, Bonnett or Barnes
4 took any actions within three years of the filing the present lawsuit that could support any
5 cause of action against them (or that there are any facts that could toll any applicable
6 statute of limitations).¹⁸

7 For example, Plaintiff's Complaints generally reference claims for wrongful
8 termination, discrimination, retaliation and harassment.¹⁹ The statutes of limitation
9 applicable to these claims do not exceed three years. See, e.g., *Milligan v. Thompson*, 90
10 Wn. App. 586, 591, 953 P.2d 112 (1998) (three-years for claims arising under the
11 WLAD); *Danny v. Laidlaw Transit Servs., Inc.*, 165 Wn.2d 200, 207, 193 P.3d 128 (2008)
12 (three years for wrongful discharge in violation of public policy). Moreover, to the extent
13 Plaintiff's other vague and unsupported allegations are construed any additional cause of
14 action (e.g., "work injuries," citations to inapplicable Title 9A RCW Washington Criminal
15 Code statutes related to "harassment," "coercion", "unlawful imprisonment"²⁰), the
16 applicable statutes of limitations for such alleged personal injuries would be three years or
17 less. See, e.g., *Milligan*, 90 Wn. App. at 592 (three years for personal injury actions)
18 (citing RCW 4.16.080(2)); RCW 4.16.100 (two years for false imprisonment).
19 Accordingly, application of the statutes of limitation requires (and provides an
20 independent basis for) the dismissal of all of Plaintiff's claims against Safeway and its
21 employees.

22
23 ¹⁸ Moreover, because Plaintiff did not personally serve Safeway and the defendant employees within ninety
24 days of filing her initial complaint (Dkt. No. 1), the applicable statutes of limitation continue to run until
25 proper service is accomplished. See CR 3(a); RCW 4.16.170; *Fox v. Croff*, 16 Wn. App. 893, 894-896, 559
P.2d 1376 (1977).

¹⁹ See Compl. 1 at 8; Compl. 2 at 15-16 (same).

²⁰ See Compl. 2 at 15-16; Compl. 3 at 14-15.

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1 **D. Plaintiff Does Not and Cannot State or Establish the Elements of Any**
2 **Cognizable Claim Against Hurley**

3 Plaintiff's three Complaints in this case set forth a litany of confusing factual
4 assertions regarding her First Lawsuit, including an array of inflammatory and unfounded
5 allegations or suggestions of wrongdoing by Hurley in his role as counsel for Safeway.²¹
6 These allegations only reveal Plaintiff's failure to understand (and/or refusal to accept and
7 follow) the law and applicable court rules. In short, Plaintiff cannot identify any legal
8 claim against Hurley, much less establish the facts necessary to support any such claim.

9 As a threshold issue, even if the groundless assertions in her Complaints could be
10 supported by admissible evidence (they cannot), Hurley has absolute immunity pursuant
11 to the litigation privilege for the actions he took as counsel for Safeway during the course
12 of the First Lawsuit. See *McNeal v. Allen*, 95 Wn. 2d 265, 267, 621 P.2d 1285 (1980)
13 ("The privilege of attorneys is based upon a public policy of securing to them as officers
14 of the court the utmost freedom in their efforts to secure justice for their clients."); *Jeckle*
15 *v. Crotty*, 120 Wn. App. 374, 386, 85 P.3d 931 (2004) (finding attorneys absolutely
16 immune from plaintiff's claims of, *inter alia*, outrage, infliction of emotional distress and
17 civil conspiracy arising from the attorneys' representation of parties in lawsuits brought
18 previously against plaintiff); *Wynn v. Karin*, 163 Wn.2d 361, 369, 181 P.3d 806 (2008)
19 (application of immunity is a question of law). Moreover, Plaintiff's claims against
20 Hurley amount to her confused and unfounded assertions that he violated various Rules of
21 Professional Conduct in his prior representation of Safeway in the First Lawsuit. See, e.g.,
22 Compl. 1 at ¶¶3.13, 4.1-4.3; Compl. 2 at ¶¶4.1-4.3; Compl. 3 at ¶16. Such assertions

23 ²¹ While irrelevant to and unnecessary for the resolution of this Motion, contrary to Plaintiff's unsupportable
24 assertions to the contrary: every action Hurley took during his representation of Safeway in the First Lawsuit
25 was in compliance with all applicable rules and laws; Hurley did not misrepresent any fact or law to Plaintiff
or take any action that was intended to deceive Plaintiff; and Hurley in fact went to great lengths in an effort
to communicate with Plaintiff by providing frequent written correspondence addressing her concerns and
providing context to his actions, which appears to have been entirely ignored by Plaintiff. Hurly Decl. ¶47.

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1 cannot support any cause of action against him. *See Hizey v. Carpenter*, 119 Wn.2d 251,
2 830 P.2d 646 (1992) ("Because the ... RPC explicitly, and in what we deem to be clear
3 and unambiguous language, disclaim any intent to create civil liability standards, we
4 refuse to hold their violation creates a cause of action for malpractice.").

5 Furthermore, even setting aside Plaintiff's failure to identify a sustainable cause of
6 action against Hurley, the unfounded assertions in her Complaints fail to identify any
7 wrongdoing by Hurley and instead simply reveal Plaintiff's own confusion and lack of
8 understanding of applicable law. For example, while Plaintiff's Complaints are difficult
9 to decipher, what is clear is that the primary issue in her dispute with Hurley is her flatly
10 incorrect position that Hurley acted improperly when he worked with Defendant Bean,
11 Plaintiff's counsel at the time, to reach agreement on the routine Stipulated Protective
12 Order that was filed and approved by Judge Coughenour when this matter was before the
13 Federal Court, rather than communicating directly with her at that time and obtaining her
14 signature on the stipulation. *See, e.g.*, Compl. 1 at 2, 9-10; Compl. 2 at 3-5, 7, 9-10, 18-
15 19; Compl. 3 at 4-6, 10-11, 12; *supra* Part II.B.1. Of course, what Plaintiff fails to
16 understand (or refuses to accept) is that it was Hurley's responsibility to work with her
17 legal representative at that time, and that it would have been a violation of Rule of
18 Professional Conduct 4.2 for Hurley to bypass her attorney and communicate directly with
19 her regarding any matter related to her lawsuit against Safeway.²²

20 Plaintiff also fails to (and simply cannot) explain how she was harmed by the
21 routine Stipulated Protective Order, which: was based on the Federal Court's model order
22 for the handling of confidential information; gave both parties equal protections; did not
23

24 ²² RCP 4.2, "Communication with Person Represented by Counsel," provides as follows: "In representing a
25 client, a lawyer shall not communicate about the subject of the representation with a person the lawyer
knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other
lawyer or is authorized to do so by law or a court order."

MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS SAFEWAY INC., DANIEL P.
HURLEY, MIKE LAGRANGE, SUE BONNETT
AND KEN BARNES - 22

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1 prevent the filing (or guarantee the sealing) of any materials obtained in discovery; and (in
2 Judge Coughenour's words) did "not hinder Plaintiff's presentation of her case." *Supra*,
3 Part II.B.1. Furthermore, this Court has granted Defendant Bean summary judgment on
4 Plaintiff's claim that he acted improperly by agreeing to enter into the Stipulated
5 Protective Order. The Court did so because Plaintiff failed to offer evidence that could
6 support a finding that Bean violated the attorney judgment rule by agreeing to the
7 Stipulated Protective Order. *Supra*, Part II.C.3. Accordingly, Hurley's actions in working
8 with Bean to agree to this order cannot support any cause of action against Hurley.

9 Plaintiff also seems to claim that Hurley acted improperly by not filing a document
10 with the Federal Court attesting to Plaintiff's return of all documents received in discovery
11 from Safeway that were labeled "Confidential," so that the Stipulated Protective Order
12 could be vacated. Compl. 2 at 10-11; Compl. 3 at 8, 13. However, this accusation ignores
13 the fact that by her own admission Plaintiff did not return any of these materials to Hurley
14 (as Safeway's counsel) until April 28, 2014 (Compl. 3 at 7), weeks after the Court's April
15 1, 2014 order remanding the First Lawsuit to State Court and after repeated notices from
16 the Federal Court that it lacked jurisdiction over the matter and thus was no longer the
17 proper place to file submissions. Hurley Decl. ¶¶44-46, Exs. JJ, KK, & LL. Accordingly,
18 Hurley sent a letter to Plaintiff on May 2, 2015, in which he (i) explained that he did not
19 deem it appropriate or necessary to file anything regarding the vacation of the Stipulated
20 Protective Order given the remand of the matter and the Federal Court's lack of
21 jurisdiction, but (ii) assured her that, as far as Safeway was concerned, "the Court's
22 Protective Order no longer has any effect or application and [she] may disregard it" and
23 she was "released from any obligations" under that order. *Id.* ¶28, Ex. V.

24 Plaintiff also seems to be asserting that during the First Lawsuit Hurley did not
25 produce a copy of her "personal file" from her time as an employee of Safeway. Compl. 1

MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS SAFEWAY INC., DANIEL P.
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1 at ¶ 3.13; Compl. 2 at ¶3.42. This assertion illustrates the absurd and harassing manner in
2 which Plaintiff has proceeded in both the First Lawsuit and this matter. Contrary to
3 Plaintiff's assertion, Safeway's employee file for Plaintiff was included among the more
4 than 1,100 pages of documents that Safeway produced to Plaintiff on three different
5 occasions in response to discovery requests that were served on Safeway when Plaintiff
6 was represented by Bean. Hurley Decl. ¶¶15-17. On the second and third occasions when
7 Hurley produced this file and other documents directly to Plaintiff, she refused to accept
8 the mailing and returned the documents to Hurley, despite the fact that Judge Kimberly
9 Prochnau had ordered her in open court to accept the documents. *Id.* ¶¶17-19.
10 Accordingly, her suggestion that she has a cause of action against Hurley because she did
11 not receive her personnel file compounds the sanctionable nature of this action.²³

12 VI. Conclusion

13 In short, Plaintiff's allegations against Safeway Defendants are completely without
14 foundation in law or fact, and are thus sanctionable. For the reasons stated above,
15 Safeway requests that the Court grant this Motion.

16 DATED this 1st day of June, 2015.

17 K&L GATES LLP

18
19 By 
20 Daniel Hurley, WSBA # 32842
21 Attorney for Defendants
22 Safeway Inc., Daniel P. Hurley, Mike
LaGrange, Sue Bonnett and Ken Barnes

23 ²³ Plaintiff's allegation of wrongdoing with regard to Safeway's obligations to produce documents is
24 particularly galling given the repeated efforts of Hurley to produce documents to her in the First Lawsuit
25 and the fact that the court sanctioned Plaintiff in the First Lawsuit for flatly refusing to respond in any way
to Safeway's discovery efforts, despite a court order requiring her to do so. *Supra*, Part II.B.2 & 3. Plaintiff
even persists in this case in insisting that she had no obligation to comply with Civil Rules 26, 33 and 34 in
the First Lawsuit. *E.g.*, Comp. 1 at ¶3.11 (denying obligations to comply with CR 26, 33 and 34) and
Compl. 2 at ¶3.36 (same).

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MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS SAFEWAY INC., DANIEL P.
HURLEY, MIKE LAGRANGE, SUE BONNETT
AND KEN BARNES - 24

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Honorable Timothy A. Bradshaw
Hearing: July 2, 2015 at 1:00pm
With Oral Argument

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

HATSUYO "SUE" HARBORD,

Plaintiff,

v.

SAFEWAY INC.; DANIEL P. HURLEY;
MATTHEW BEAN; MIKE LAGRANGE;
SUE BONNETT and KEN BARNES,

Defendants.

No. 14-2-26220-5 SEA

[PROPOSED] ORDER GRANTING
MOTION FOR SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANTS SAFEWAY INC.,
DANIEL P. HURLEY, MIKE
LAGRANGE, SUE BONNETT AND
KEN BARNES

THIS MATTER came before the Court on July 2, 2015, on the Motion for Summary Judgment by Defendants Defendant Safeway Inc., Daniel P. Hurley, Mike Lagrange, Sue Bonnett and Ken Barnes (the "Motion for Summary Judgment"). This Court has considered the arguments of the parties offered on July 2, 2015 and the records and pleadings on file in this matter, including:

- 1. the Motion for Summary Judgment;
 - 2. the Declaration of Daniel P. Hurley, including all exhibits thereto;
 - 3. Plaintiff's opposition papers to the Motion for Summary Judgment, if any;
- and

[PROPOSED] ORDER GRANTING MOTION FOR SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS SAFEWAY INC., DANIEL P. HURLEY, MIKE LAGRANGE, SUE BONNETT AND KEN BARNES - 1

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4. Daniel P. Hurley, Mike Lagrange, Sue Bonnett, and Ken Barnes' reply in support of the Motion for Summary Judgment and any exhibits and declarations attached thereto.

Upon review and consideration of the evidence, any and all of Plaintiff's claims against Defendants Safeway Inc., Daniel P. Hurley, Mike Lagrange, Sue Bonnett and Ken Barnes (collectively, the "Safeway Defendants") and Plaintiff's action against the Safeway Defendants are **DISMISSED WITH PREJUDICE**. Plaintiff's claims against Defendants Safeway Inc., Mike Lagrange, Sue Bonnett and Ken Barnes are dismissed with prejudice as those claims are barred by res judicata and the prohibition of claim splitting, collateral estoppel, and the statutes of limitation. Plaintiff's claims against Defendant Hurley are dismissed with prejudice as Plaintiff has failed to identify any cognizable cause of action against Hurley or to establish the elements of any cognizable cause of action.

NOW, THEREFORE, being fully informed, **IT IS HEREBY ORDERED** that the Motion for Summary Judgment is **GRANTED**, and it is further **ORDERED, ADJUDGED, and DECREED** that all claims of Plaintiff Hatsuyo "Sue" Harbord against the Safeway Defendants are **DISMISSED WITH PREJUDICE**.

DONE IN OPEN COURT this ____ day of _____, 2015.

THE HONORABLE TIMOTHY A. BRADSHAW
King County Superior Court Judge

[PROPOSED] ORDER GRANTING MOTION FOR SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS SAFEWAY INC., DANIEL P. HURLEY, MIKE LAGRANGE, SUE BONNETT AND KEN BARNES - 2

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PRESENTED BY:

K&L GATES LLP

By

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Approved as to Form, Copy Received,
And Notice of Presentment Waived

By

Hatsuyo Harbord, *Pro Se*

[PROPOSED] ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT IN FAVOR OF
DEFENDANTS SAFEWAY INC., DANIEL P.
HURLEY, MIKE LAGRANGE, SUE BONNETT
AND KEN BARNES - 3

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68-138

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HATSUYO "SUE" HARBORD,

CASE NO. C13-1127-JCC

Plaintiff,

ORDER

v.

SAFEWAY INC.,

Defendant.

This matter comes before the Court on Plaintiff's motion to withdraw as counsel (Dkt. No. 24). The Court finds oral argument unnecessary and hereby GRANTS the motion.

Under Local Civil Rule 83.2(b)(1), an attorney is ordinarily permitted to withdraw until sixty days before the discovery cut-off date. Trial in this matter is currently scheduled for November 17, 2014, and the discovery cut-off is not until July 18, 2014. Counsel has represented that he seeks to withdraw both because of conflicts with his client that may result in a violation of Model Rule of Professional Conduct 1.2, and because Plaintiff has been unwilling to communicate with him. (Dkt. No. 24 at 1-2.) The motion is GRANTED and Plaintiff's counsel is permitted to withdraw. Plaintiff is authorized to proceed *pro se*. See W.D. Wash. Local Civ. R. 83.2(o)(4).

There are issues related to the stipulated protective order entered on October 1, 2013. (Dkt. No. 19.) Defendant has requested that, because of these potential issues, all documents

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1 produced under this order and marked Confidential be returned to Defendant, even though
2 professional-conduct rules might otherwise suggest they should be provided to Plaintiff. (Dkt.
3 No. 27 at 2.) The Court agrees with this request and the reasoning behind it and ORDERS that all
4 documents marked Confidential be returned to Defendant.

5 Plaintiff has indicated that she still wishes to obtain legal assistance, and the Court is
6 unclear about whether she is seeking another attorney. The Clerk is directed to send Plaintiff a
7 copy of the "Pro Se Packet," along with this Order. In particular, the Court notes pages 38 and 39
8 of the manual, which list resources for obtaining legal assistance.¹ In the meantime, the Court
9 changes none of the case-management deadlines established at the August 6 status conference,
10 because at the present time the deadlines are still appropriate. (Dkt. No. 17.)

11 The motions that Plaintiff herself has filed were not properly submitted because she had
12 not been designated as appearing *pro se*. See W.D. Wash. Local Civ. R. 83.2(b)(4). Even so, in
13 the interest of judicial economy, the Court addresses Plaintiff's primary argument from these
14 motions, which is her objection to the Stipulated Protective Order. Plaintiff has made a number
15 of representations about the Stipulated Protective Order. The Court recognizes that the Stipulated
16 Protected Order will not hinder Plaintiff's presentation of her case, and the Court is sympathetic
17 to Defendant's argument that it has relied on this Order. (Dkt. No. 33.) Ultimately, however, the
18 Court is reluctant to keep in place a document that Plaintiff now says was signed under duress.
19 Accordingly, Defendant is directed to file a notice with the Court once material marked
20 Confidential has been returned. At that time, the Court will vacate the Stipulated Protective
21 Order. Plaintiff does not need to file any further submissions on this subject.

22 The parties are reminded that mediation pursuant to Local Civil Rule 39.1 must be
23 completed by March 14, 2014. (Dkt. No. 17.) The Clerk is respectfully directed to include a copy
24 of Local Civil Rule 39.1 with the materials being sent to Plaintiff.

25
26 Plaintiff is also directed to the court's website, which includes a section of resources for
pro se litigants, at www.wawd.uscourts.gov/pro-se.

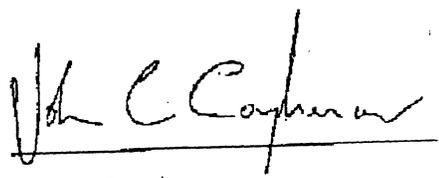
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For the foregoing reasons, the motion for withdrawal of counsel (Dkt. No. 24) is
GRANTED. The Clerk is respectfully directed to send Plaintiff copies of the "Pro Se Packet"
and Local Civil Rule 39.1 along with this Order.

DATED this 6th day of January 2014.


John C. Coughenour
UNITED STATES DISTRICT JUDGE

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ORDER
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