

Grievant: Jennifer Schweickert
c/o Mark Kimball, Esq.
MDK Law
777 108th Ave NE, Suite 2000
Bellevue, WA 98004

DELIVERED VIA E MAIL

Natalea Skvir
Washington State Bar Association
1325 4th Avenue, Ste. 600
Seattle, WA 98101 2539

February 10, 2016

Re: ODC File: 15-01950, John David Du Wors

Dear Ms. Skvir,

This letter is to make the WSBA aware that I am requesting a review of the dismissal or at the very least an extension of another 60 days to allow for me to compile additional information regarding the questionable behavior of Attorney John Du Wors and to highlight ethical violations which I do not believe the WSBA adequately considered.

To briefly recap, I filed a grievance initially because of Mr. Du Wors' refusal to respond or take any action with respect to my request for files related to IP I had purchased. The IP was purchased from Hunts Point Ventures ("HPV"), which at that point was in receivership, as well as in litigation against Mr. Du Wors for his representation of HPV. The IP was sold to me by the Receiver for HPV, who also signed a release on behalf of HPV for me to obtain all files related to the IP directly from Mr. Du Wors. The Receiver asserted the files should be obtained from Mr. Du Wors, who had been legal counsel for HPV and had prosecuted actions on that IP. After the grievance was filed, Mr. Du Wors asserted the basic defense that he had no ethical obligation to me because he was counsel for HPV and I was never his client, and it was thus permissible to ignore me. In addition, he produced an affidavit signed by the Receiver which stated that it was actually *the Receiver* who had the files, which contradicted the Receiver's earlier statements that I should obtain the files from Mr. Du Wors (making it even more strange that if this was so, why did the Receiver execute a release for me to obtain the files from Mr. Du Wors). Not coincidentally, this affidavit was executed concurrently with a CR2A agreement that memorialized a \$205,000 settlement between HPV and Mr. Du Wors. It was apparent on its face that as a part of the settlement negotiation, Mr. Du Wors had demanded the Receiver execute this affidavit (that Mr. Du Wors himself had prepared) in order to make it appear as if it had been the Receiver who had always possessed the files. Furthermore, this affidavit was produced *after* Mr. Du Wors filed a lawsuit against me for personal damages expressly on the basis I had filed a "frivolous" bar complaint against him, clearly with the intent to portray

himself as an innocent and aggrieved party in his litigation against me. Indeed, he has tried to capitalize on this in his pleadings by stating that I supposedly had no basis to file my bar complaint since it had always been the Receiver who had the files.

In a related case, Mr. Phillips, my husband, who has his own grievance against Mr. Du Wors ODC File No. 13 01639, objected to the Receiver's request to destroy all of HPV books and records as a part of winding up the Receivership. (See Exhibit A). Honorable Samuel Chung issued an order that the Receiver must retain all records for six (6) month from February 2, 2016. (See Exhibit B). Mr. Phillips argued that the records of HPV demonstrated that Mr. Du Wors operated HPV from his IOLTA Trust account, was the de facto manager of HPV, and caused serious harm and damage to the IP, which enabled the receiver to obtain a \$205,000 settlement.

There are any number of ethical violations for the bar to consider.

RPC 1.15(A) – Safeguarding Property

- (c) A lawyer must hold property of clients and third persons separate from the lawyer's own property. (3) A lawyer must identify, label and appropriately safeguard any property of clients or third persons other than funds. The lawyer must keep records of such property that identify the property, the client or third person, the date of receipt and the location of safekeeping. The lawyer must preserve the records for seven years after return of the property.
- (d) A lawyer must promptly notify a client or third person of receipt of the client or third person's property.
- (f) Except as stated in this Rule, a lawyer must promptly pay or deliver to the client or third person the property which the client or third person is entitled to receive.

Mr. Du Wors represented HPV and was solely responsible for prosecuting its IP. I acquired the IP from HPV. I am the successor in interest to the property for which Mr. Du Wors was the prior attorney. Mr. Du Wors owes HPV a prior duty to safeguard its property and confidences. Does he not owe the same duty to a successor in interest to the very same property which he had previously prosecuted, such as myself? In other words, if Company A sells its assets to Company B, is the attorney for Company A thereby relieved from any obligations to Company B? The answer is obvious to any attorney other than Mr. Du Wors, who decided he owed me no such duty. Essentially, upon receiving the IP, I became a former client of Mr. Du Wors by virtue of the fact that he was the attorney who handled all litigation related to the IP. Once I obtained the property of HPV, at the very least, he owed me the same duties he owed HPV – to safeguard and protect property related to the IP, in this case, the records and files he refused to turn over to me and later dissembled were to be obtained from the Receiver. Under RPC 1.15(A), I am, at the very least, either a former client or a third party who had a right to the property (records and files) in Mr. Du Wors' possession.

RPC 1.9 – Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

RPC 3.1 – Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

RPC 4.4 – Respect for the Rights of Third Person

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Mr. Du Wors has sued me for 'Abuse of Process' and 'Malicious Prosecution' because I filed the aforementioned bar complaint against him. If you accept that Mr. Du Wors did in fact owe me a duty of care as the successor in interest to the property for which he was the attorney, then he has violated RPC 1.9, 3.1, and 4.4 by filing a lawsuit against me. He is representing himself in a matter that is substantially related and in which his client's interests (his own) are materially adverse to his former client (me), simply by virtue of the fact that I asserted my right to obtain the files he refused to provide.

Furthermore, in violation of RPC 3.1, his lawsuit is frivolous on its face because it violates ELC 2.12 which forbids any lawsuit against a grievant and makes any statements made therein to be absolutely privileged. Despite this, Mr. Du Wors continues to prosecute his lawsuit against me. (See Exhibit C). My attorney filed a motion to dismiss (see Exhibit D) and replied to Mr. Du Wors' response. (See Exhibit E). Every action taken by Mr. Du Wors within this litigation was designed to harass, intimidate, and retaliate against me in violation of RPC 4.4.

I am requesting that the WSBA re examine Mr. Du Wors conduct regarding his total dismissiveness of me as a former client in seeking files I was entitled to, the near magical appearance of the affidavit signed by the Receiver that re cast history to make me as the bad actor, and the subsequent absurdity of his litigation against me. I otherwise urge the court to postpone dismissing my grievance against Mr. Du Wors until the court hears arguments on February 22, 2016 on my Motion to Dismiss his lawsuit.

Very truly yours,

Jennifer Schweickert

EXHIBIT “A”

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

8 MARK PHILLIPS,

9 Plaintiff,

10 v.

11 CHAD HAROLD RUDKIN AND ELIZABETH
12 RUDKIN, STEPHEN JAMES SCHWEICKERT, and
13 JANE DOES 1 THROUGH 4,

14 Defendants.

15 MARK E. PHILLIPS,

16 Plaintiff,

17 v.

18 HUNTS POINT VENTURES, INC., and
19 HUNTS POINT VENTURE GROUP, LLC,

20 Defendants.

21 In the Receivership of:

22 HUNTS POINT VENTURES, INC., a Washington
23 Corporation,

24 JOYCE P. SCHWEICKERT,

25 Plaintiff,

26 v.

27 HUNTS POINT VENTURES, INC., a Washington
28 Corporation,

29 Defendant.

30 No.: 13-2-07233-5 SEA

31 OBJECTION TO RECEIVER'S MOTION
32 RE: DESTRUCTION OF HPV'S BOOKS
33 AND RECORDS

34 No.: 13-2-20353-7 SEA (consolidated with
35 13-2-07233-5 SEA)

36 No.: 13-2-40014-6 SEA (consolidated with
37 13-2-07233-5 SEA)

38 No.: 13-2-42759-1 SEA (consolidated with
39 13-2-07233-5 SEA)

1 COMES NOW Mark Phillips, Pro Se, in Response to the Receiver's Recent Motion among
2 other things, to terminate the receivership including the destruction of books and records of Hunts
3 Point Ventures ("HPV").

4 Over the past 3 years, Phillips, and all investors, consultants, and loan holders in HPV have
5 brought suit against its corporate counsel, John Du Wors. Du Wors represented Phillips and HPV and
6 operated HPV from spring of 2010 to fall of 2012 to his sole benefit causing the insolvency of HPV.
7 Attorney Du Wors was the highest paid individual and had complete control over HPV's assets
8 including its bank account – which was run out of his IOLTA account. Discovery on Du Wors in the
9 number of actions against him have yielded little to no usable spreadsheet, invoice, and records
10 reconstruction of how Du Wors fleeced HPV, except that \$465,000 went into Du Wors' control or
11 IOLTA based on some claim. (See HPV v. Du Wors Case No. 15-2-06869-5-SEA). Yet, to date, no
12 board resolution, e-mail approval, investor disclosure, or host of other procedures were made available
13 to the litigants. Representations made orally and in the moving papers presented by Receiver of HPV,
14 Mark Calvert, was that he painstakingly reconstructed every penny that went into HPV and out,
15 presumably justifying the \$290,133.39 in Receivership fees from November 2013 through February of
16 2015 and the \$117,914.65 of legal expenses by Karr Tuttle. Presumably, the fruits of this labor were
17 the reconstructed records which demonstrated the bad acts by Mr. Du Wors that justified the
18 settlement of the Receiver's action on behalf of HPV against Mr. Du Wors for the financial damage he
19 caused the company's finances and to the mismanagement of its patent portfolio.
20

21 The constellation of HPV civil litigation has now concluded with Du Wors settling with
22 Phillips' bankruptcy estate for \$75,000 and HPV for almost \$280,000. During this time, a bar
23 grievance with the Washington Bar Association has been stayed pending resolution of the civil
24 litigation. The books and records of HPV, the paper trial painfully constructed by the Receiver over
25

1 the course of two years, now is potentially at risk of being destroyed. These records, which cost HPV
2 dearly (with the application of at least 5 creditors seeking six-figure sums, the sole creditor payment to
3 Sandy Hoover received \$28,279.89 from the Receivership after the sale of HPV's intellectual
4 property; the Receiver himself and his attorneys (Receivership billed HPV \$308,040.94 and Karr
5 Tuttle billed \$175,392.07 for a grand total of \$483,433.01) currently seek payment of a generously
6 discounted total of \$229,378.17 or 88% of the total Estate Funds) have been paid nearly a quarter of
7 million dollars to reconstruct what occurred at HPV and their work product should be preserved for the
8 ongoing investigation. This would seem to be a very small burden for the Receivership to bear.

9 The WSBA matter (ODC File No. 13-01639) will re-commence as it was deferred until the
10 pending litigation (Phillips v Du Wors and HPV v Du Wors) concluded. By way of the July 14, 2015
11 letter, disciplinary counsel Mr. Redman wrote to Du Wors and grievant Phillips to "**retain all records,**
12 **files and accounts related to the grievance.**" However, the Receiver now brings this motion to,
13 along with other things, seek "court approval to destroy the books and records of the Receivership
14 immediately following the discharge of the Receiver. It is burdensome to the Receiver to retain these
15 files." (See p. 6, line 19-22, declaration of Mark Calvert). It is unclear why preserving these records
16 is "burdensome." However, if the Court is inclined to grant the request of the Receiver to no longer be
17 the custodian of the files, Phillips' respectfully proposes the following:
18

19 The Receiver gather the books and records of HPV in physical form – boxes and files, and
20 seals them and provide hard drive size requirements for the digital records such as QuickBooks, digital
21 invoices, and spreadsheets, and Phillips will provide the hard drive or flash memory. Upon sealing of
22 the aforementioned materials, Phillips and the Receiver will propose a 3rd party, in the event that Mark
23 Kimball and Brandon Wayman of MDK Law are not sufficiently chain of custody custodians, so that
24 the records may be safely stored in the event an investigating body would like access to them.
25

In sum, there exists reasons to deny the Receiver's motion in so far as he requests to destroy the books and records of HPV. To the degree it is actually burdensome – to date the receiver has not separately invoiced or shared with the Court the cost of data retention. Nor as he explained whether his attorneys at Karr Tuttle will be retaining a separate client file of these same records. There exists current investigation by the WSBA where a subpoena for the books and records of HPV may be very well contemplated. And finally, although the Receiver has stated under oath that he is making available the intellectual property records and delivered them on or about January 5, 2016 to MDK Law, Ms. Schweickert, who requested those records, requires more time to fully evaluate the completion of the files.

RESPECTIVELY SUBMITTED this 8th day of January, 2016.

markphillips
Mark Phillips, Pro-See

EXHIBIT “B”

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MARK PHILLIPS,
Plaintiff,

v.

CHAD HAROLD RUDKIN AND
ELIZABETH RUDKIN, STEPHEN JAMES
SCHWEICKERT, and JANE DOES 1 through
4.

Defendants.

NO. 13-2-07233-5 SEA

[~~PROPOSED~~ REVISED] ORDER
GRANTING RECEIVER'S MOTION TO (1)
APPROVE SETTLEMENT; (2) APPROVE
FINAL REPORT AND ACCOUNTING; (3)
AUTHORIZE FINAL DISBURSEMENTS;
(4) AUTHORIZE DESTRUCTION OF
RECORDS; (5) EXONERATE THE BOND,
DISCHARGE AND RELEASE RECEIVER;
(6) TERMINATE RECEIVERSHIP; AND
(7) DISMISS REMAINING LITIGATION
AGAINST HPV

CLERK'S ACTION REQUIRED

NO. 13-2-20353-7 SEA (consolidated with
13-2-07233-5 SEA)

MARK E. PHILLIPS,

Plaintiff,

V.

HUNTS POINT VENTURES, INC. AND
HUNTS POINT VENTURES GROUP, LLC

Defendants

In the Receivership of:

HUNTS POINT VENTURES, INC., a
Washington Corporation,

NO. 13-2-40014-6 SEA (consolidated with
13-2-07233-5 SEA)

ORDER GRANTING MOTION TO (1) APPROVE SETTLEMENT;
(2) APPROVE FINAL REPORT AND ACCOUNTING; ETC. - I
#1024534 v1 / 45608-002

KARR TUTTLE CAMPBELL
701 Fifth Avenue, Suite 3300
Seattle, Washington 98104
Main: (206) 223 1313
Fax: (206) 682 7100

1 FURTHER ORDERED that the Receiver is authorized to pay the fees and costs of the
2 Receiver and Karr Tuttle Campbell as compensation for services rendered to the receivership estate
3 on a pro rata distribution of remaining funds of approximately 60% to the Receiver and 40% to Karr
4 Tuttle Campbell, as shown below; it is
5

Receiver	\$136,558.51
Karr Tuttle Campbell	\$92,819.66
	\$229,378.17

8 FURTHER ORDERED that the Receiver's proposed distribution of the remaining funds is
9 hereby approved and the Receiver is authorized and directed to distribute accordingly; it is
10

11 FURTHER ORDERED that the Receiver's bond for Ten Thousand Dollars, issued by
12 International Fidelity Insurance Company (Bond # SEIFSU0567688), is hereby exonerated; it is
13

14 FURTHER ORDERED that the litigation brought by Mark Phillips and Joyce Schweickert
15 against HPV in the consolidated cases, No. 13-2-20353-7 SEA and No. 13-2-42759-1 SEA is hereby
16 DISMISSED; it is
17

18 FURTHER ORDERED that the Receiver shall exclusively maintain and retain all records
19 in this matter for a period of six (6) months following the entry of an order terminating the
20 receivership, after which time the Receiver is authorized to dispose of all books and records of the
receivership, it is
21

22 FURTHER ORDERED that following the Receiver's disbursement of the above funds in
23 in accordance with this order, the Receiver shall be released and forever discharged from its duties
24 in this receivership, any and all assets of the estate not administered are abandoned, and the
receivership shall be terminated.
25

EXHIBIT “C”

RECEIVED FOR FILING
KITSAP COUNTY CLERK

DEC 15 2015

DAVID W. PETERSON

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP**

10 JOHN DAVID DU WORS, an individual,
11 Plaintiff,

12 v.

13 JENNIFER SCHWEICKERT,
14 Defendants.

NO. **15 2 02482 7**
SUMMONS

SUMMONS-1

28
NEWMAN DU WORS LLP

2101 Fourth Ave., Suite 1500
Seattle, Washington 98121
(206) 274-2800

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8 **SUPERIOR COURT OF THE STATE OF WASHINGTON**
 IN AND FOR THE COUNTY OF KITSAP
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10 JOHN DAVID DU WORS, an individual,

11 Plaintiff,

12 v.

13 JENNIFER SCHWEICKERT,

14 Defendants.

NO.

SUMMONS

1 TO THE DEFENDANT, JENNIFER SCHWEICKERT:

2 A lawsuit has been started against you in the above entitled court by JOHN DAVID DU
3 WORS, plaintiff. Plaintiff's claims are stated in the written complaint, a copy of which is served
4 upon you with this summons.

5 In order to defend against this lawsuit, you must respond to the complaint by stating your
6 defense in writing, and by serving a copy upon the person signing this summons within twenty
7 (20) days after the service of this summons, excluding the day of service, or a default judgment
8 may be entered against you without notice. A default judgment is one where plaintiff is entitled to
9 what it asks for because you have not responded. If you serve a notice of appearance on the
10 undersigned person, you are entitled to notice before a default judgment may be entered.

11 You may demand that the plaintiff file this lawsuit with the court. If you do so, the
12 demand must be in writing and must be served upon the person signing this summons. Within 14
13 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service
14 on you of this summons and complaint will be void.

15 If you wish to seek the advice of an attorney in this matter, you should do so promptly so
16 that your written response, if any, may be served on time.

17 This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the State
18 of Washington.

19
20 DATED this 11th day of November, 2015.

21
22 By:


John Du Wors, WSB No. 33987
John@newmanlaw.com

23
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25 Attorney for Plaintiff

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

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10 JOHN DAVID DU WORS, an individual,

11 Plaintiff,

12 v.

13 JENNIFER SCHWEICKERT,

14 Defendant.

NO.

COMPLAINT FOR DAMAGES

I. INTRODUCTION

1. Plaintiff John David Du Wors (“Plaintiff”) brings this complaint for damages and injunctive relief against Defendant Jennifer Schweickert (“Defendant”).

2. Plaintiff is an attorney who represented criminal defendant Mark Phillips in a trial for alleged white collar fraud. That case related to Phillips' alleged misappropriation of funds from MOD Systems, Inc. Phillips served as chief executive officer for that company.

3. Defendant Jennifer Schweickert is Mr. Phillips' wife. At Mr. Phillips' behest, Ms. Schweickert brought claims against Mr. Du Wors for, *inter alia*, fraud. The trial court dismissed Ms. Schweickert's claims on summary judgment with prejudice. In retaliation for that dismissal, Ms. Schweickert submitted a bar complaint against Mr. Du Wors. Mr. Du Wors brings this action for abuse of process and malicious prosecution seeking damages and injunctive relief for Ms. Schweickert's repeated misuse of legal processes to vindicate the felony conviction of her husband.

II. PARTIES, JURISDICTION AND VENUE

4. This Court has original jurisdiction over the subject matter of this action pursuant to RCW § 2.08.010.

5. This Court has personal jurisdiction over Defendant pursuant to RCW § 4.28.080.

6. Venue is proper in Kitsap County pursuant to RCW § 4.12.020(3) because

7. Defendant Schweickert is a resident of King County Washington.

8. Plaintiff Du Wors is a resident of Kitsap County.

9. A portion of the facts of this case arose in Kitsap County.

III. FACTS

10. In early 2011, Plaintiff John Du Wors represented a criminal defendant named Mark Phillips in a white collar fraud prosecution styled USA v. Mark Phillips, U.S.D.C W.D. WA, case no. 2:10-cr-00269-JCC.

11. After Mr. Phillips was convicted of felony fraud, Mr. Phillips served a period of years in federal prison. Upon release from prison, Mr. Phillips demanded that Mr. Du Wors pay

Mr. Phillips several hundred thousand dollars. When Mr. Du Wors rejected the demand, Mr. Phillips submitted a bar grievance against Mr. Du Wors, which was rejected. And Mr. Phillips initiated malpractice litigation against Mr. Du Wors. Mr. Phillips' malpractice litigation was resolved for a nominal sum after Mr. Phillips declared bankruptcy.

12. Concurrently, Phillips' wife, Defendant Jennifer Schweickert, initiated litigation against Mr. Du Wors at Mr. Phillips' behest. That case was filed before Judge Ricardo Martinez in the U.S. District Court for the Western District of Washington, case no. Case No. 2:13-cv-00675-RSM. The court in that case dismissed Ms. Schweickert's claims with prejudice on summary judgment.

13. In retaliation for the dismissal, Ms. Schweickert submitted a bar grievance against Mr. Du Wors even though Ms. Schweickert has never been Mr. Du Wors' client.

14. Ms. Schweickert's bar grievance was entirely without merit, as Ms. Schweickert was never Mr. Du Wors' client, they have never met and they have never had dealings besides a brief phone call in 2011.

IV. FIRST CAUSE OF ACTION

(Abuse of process)

15. Plaintiff reincorporates and realleges paragraphs 1 through 14 as though fully stated herein.

16. In filing her lawsuit and bringing her complaint, Ms. Schweickert was motivated by an ulterior purpose to accomplish an object not within the proper scope of those legal processes.

17. In undertaking those legal processes, Ms. Schweickert acted in a manner not proper in the regular prosecution of proceedings.

V. SECOND CAUSE OF ACTION

(Malicious prosecution)

18. Plaintiff reincorporates and realleges paragraphs 1 through 17 as though fully stated herein.

19. Ms. Schweickert's lawsuit was instituted by Defendant Schweickert.

1 20. That proceeding was instituted out of malice.
2 21. The lawsuit was terminated on the merits in favor of Plaintiff Du Wors.
3 22. Mr. Du Wors suffered injury and/or damage as a result of the prosecution.

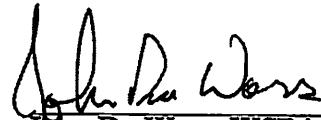
4 **VI. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff John Du Wors requests the following relief:

6 23. Compensatory damages in an amount to be proved at trial;
7 24. Injunctive relief, preventing further misuse of legal process against Mr. Du Wors;
8 25. Attorney's fees, legal costs, and interest; and
9 26. Such other and further relief as the Court deems appropriate.

10
11 DATED this 11th day of November, 2015.

12 By:

13 
14 John Du Wors, WSBA No. 33987
15 John@newmanlaw.com

16 Attorney for Plaintiff

EXHIBIT “D”



**Superior Court of Washington
County of Kitsap**

JOHN DAVID DU WORS,
Plaintiff/Petitioner

JOHN DAVID DU WORS,
Attorney for Plaintiff/Petitioner
vs.

JENNIFER SCHWEICKERT,
Defendant/Respondent

REED YURCHAK,
Attorney for Defendant/Respondent

No. 15-2-02482-7

**PLAINTIFF DU WORS' COPY
MOTION TO DISMISS
CIVIL MOTION CALENDAR
HEARING DATE: 1/15/16 9:00 AM**



**Superior Court of Washington
County of Kitsap**

JOHN DAVID DU WORS,
Plaintiff/Petitioner

JOHN DAVID DU WORS,
Attorney for Plaintiff/Petitioner
vs.

JENNIFER SCHWEICKERT,
Defendant/Respondent

REED YURCHAK,
Attorney for Defendant/Respondent

No. 15-2-02482-7

NOTE FOR MOTION DOCKET

(NTMTDK)

TO THE CLERK OF THE COURT AND
TO: JOHN DAVID DU WORS

Please take notice that the undersigned will bring on for hearing:

NATURE OF MOTION: MOTION TO DISMISS

The hearing is to be held:

DATE: January 15th, 2016

TIME: 9:00AM

AT: JUDGE/DEPARTMENT NO.
Superior Court of Kitsap County
614 Division Street
Port Orchard, WA 98366

COURT REPORTER REQUESTED:

YES NO

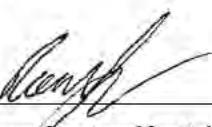
ELECTRONIC RECORDER ACCEPTABLE:

YES NO

COURT COMMISSIONER MAY HEAR THIS MOTION:

YES NO

DATED: December 29, 2015

Signed: 

Lawyer for: Jennifer Schweickert
Address: 40 Lake Bellevue Dr. #100
Bellevue, WA 98005
Telephone: 425-941-6659

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8 **SUPERIOR COURT OF THE STATE OF WASHINGTON**
9 **IN AND FOR THE COUNTY OF KITSAP**

10 JOHN DAVID DU WORS, an individual,

11 Plaintiff,

12 v.

13 JENNIFER SCHWEICKERT, an individual,

14 Defendants.

15 **Case Number: 15-2-02482-7**

16 **DEFENDANT SCHWEICKERT'S**
17 **MOTION TO DISMISS**
18 **CR 12(b)(6)**

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I. RELIEF REQUESTED

Defendant Jennifer Schweickert moves the court for dismissal of plaintiff's, attorney John Du Wors', complaint (the "Complaint) pursuant to CR 12(b)(6) of the causes of action for "abuse of process" and "malicious prosecution." Defendant further reserves the right to request CR 11 sanctions against attorney John Du Wors, for bringing suit frivolously against defendant without good cause or merit and in retaliation for defendant's filing of a bar complaint with the Washington State Bar Association ("WSBA").

II. ISSUES PRESENTED

1. Whether a cause of action for abuse of process can be made against a party for filing a bar complaint against an attorney?
2. Whether a cause of action for malicious prosecution can be made against a party for filing a bar complaint against an attorney?
3. Whether CR 11 sanctions are appropriate against the attorney for prosecuting those causes of action against a grievant who filed the bar complaint?

III. STATEMENT OF FACTS

The gravamen of Plaintiff's Complaint against Defendant can be distilled to one simple issue: taking offense at the fact the Defendant requested Plaintiff to provide her copies of files. As evidenced by the actual filing of a legal complaint in Kitsap County Superior Court, Plaintiff is representing that he has been so damaged by the fact that Defendant complained of not receiving those files, after waiting a full 5 months, that she now must pay damages to compensate for the harm she has caused. Make no mistake, Plaintiff, who filed the suit *pro se*, is actually a sophisticated, veteran attorney who keeps a downtown Seattle patent litigation firm. He apparently believes his, and the court's time, is well-spent on litigating frivolous complaints out of malice and spite. The Court is encouraged not to indulge him.

The saga between the litigants began in 2013. Defendant filed suit against a company to which she had loaned money (Hunts Point Ventures, LLC, “HPV”), and against the attorney who represented that company at the time she made the loan (plaintiff Du Wors). While the claims against plaintiff Du Wors were dismissed on summary judgment, defendant obtained a \$260,000 judgment against HPV, and thereafter acquired all the intellectual property (IP) owned by HPV from the receiver for HPV, Mr. Mark Calvert. While acting as the attorney for HPV, Mr. Du Wors and his law firm were responsible for prosecuting actions for violations of the patents and for ensuring that the patents were maintained and valid. Following the purchase of the intellectual property, which purchase was approved by the court, defendant consulted with her attorneys regarding all of the associated documentation surrounding the IP and the IP litigation that she would require to maintain the value of the IP. On July 8, 2015, defendant’s attorney, Mr. Brandon Wayman, exchanged e-mails with Ms. Stephanie Lakinski, an attorney representing Mr. Calvert in his capacity as the receiver for HPV. The exchange was as follows:

Ms. Lakinski: What IP litigation documents are you referring to? All of the court documents should be available to the public. Is there something else?

Mr. Wayman: Any discovery related documentation on or any research done by Du Wors' firm to locate any potential Defendants. I can contact Du Wors' firm directly to attempt to obtain the documents, but I wanted to see if the receiver has anything as I assume it will be difficult to get anything from Du Wors

Ms. Lakinski: I do not believe we have received anything along those lines from DuWors.

Based upon the representations of the attorney for the receiver, Ms. Lakinski, the defendant requested that her attorneys contact Mr. Du Wors to request full documentation from his firm's files regarding the IP. On July 13, 2015, defendant's attorneys, Mr. Mark Kimball and Mr. Wayman, wrote to Mr. Du Wors regarding defendant's request for files relating to the intellectual property she had acquired. Mr. Du Wors did not respond to this initial letter, not even to provide a courtesy response stating that he had provided the files to the receiver.

1 In September, 2015, defendant requested that her attorneys send a follow-up letter to Mr.
2 Du Wors and if necessary to seek assistance from the receiver, Mr. Calvert. Mr. Calvert did
3 respond, and provided an Authorization for Release of Legal Files directed specifically to Mr.
4 Du Wors and his firm. The release, written by Mr. Calvert and/or his attorneys, was specific,
5 stating:

6 You are hereby authorized to release any and all documents, *including but not*
7 *limited to pleadings, discovery, correspondence, notes, records and reports,*
8 *investigative reports, and all other information written or otherwise recorded,*
9 *for Hunts Point Ventures, Inc. contained in the file of or relating to all legal*
proceedings involving the following intellectual property... (emphasis added).

10 The release authored by Mr. Calvert listed all the intellectual property purchased by the
11 defendant and **directed** Mr. Du Wors and his firm to release such information to her attorneys.
12 **Mr. Calvert made no mention to defendant's attorneys that he was already in possession of the**
13 **files and that he would provide them.** Subsequently, on September 10, 2015, Ms. Schweickert's
14 attorneys sent a follow-up letter to Mr. Du Wors stating:

16 As of the date hereof, we have not received a response to our letter to you dated
17 July 13, 2015.

18 As I am sure you are aware, RPC 1.16 states that a lawyer must take reasonably
19 practicable steps to return client property, including papers and documents, to the
client at the termination of the representation. Attached please find an
20 Authorization for Release of Legal Files executed by Cascade Capital Group,
LLC on behalf of Hunts Points Ventures, Inc. We again demand that your firm
21 provide a copy of all files, including but not limited to pleadings, discovery,
correspondence, notes, records and reports, investigative reports, and all other
22 information written or otherwise recorded, for Hunts Point Ventures, Inc.
23 contained in the files of or relating to all legal proceedings involving the
intellectual property listed on the attached Release. A hard drive can be provided
24 upon request.

25 Please contact my office if you have any questions or concerns.

1 Mr. Du Wors chose to ignore this letter as well, making no response to defendant's
2 attorneys or defendant. On November 1, 2015, having received no response from Mr. Du Wors,
3 defendant filed a formal grievance with the WSBA based upon his non-communication, lack of
4 diligence, and refusal to safeguard the property of a former client. Mr. Du Wors was informed of
5 this grievance on November 8. Mr. Du Wors then almost immediately served this Complaint on
6 defendant on November 12, which was unfiled, for abuse of process and malicious prosecution.
7 Defendant demanded Mr. Du Wors file the suit so that she could Answer it. After filing the
8 lawsuit on December 15, 2015, Mr. Du Wors immediately moved for a default order, despite the
9 fact that defendant could not have answered the Complaint until it was filed. In addition, Mr. Du
10 Wors demanded that defendant immediately attend a deposition unilaterally scheduled for
11 December 23, 2015.

12 In response to the WSBA grievance, Mr. Du Wors finally provided a substantive
13 response to the request for the IP files. Included in the response from Mr. Du Wors was a newly
14 executed declaration from Mr. Calvert (the "Calvert Declaration"), dated December 12, 2015, in
15 which the receiver for HPV now claims that Mr. Du Wors had previously provided copies of the
16 files associated with patent litigation following termination of his representation of HPV and that
17 he consented to Mr. Du Wors' disclosure of the files to defendant. (Exhibit A) The Calvert
18 declaration stated that Mr. Du Wors need not "produce those files a second time, because they
19 [Mr. Du Wors] had already produced a client copy to me [Mr. Calvert] earlier this year." Lastly,
20 Mr. Calvert invited defendant to request the files from him as she had not requested them to date.
21 The Calvert declaration was prepared by Mr. Du Wors' own private counsel. Quite oddly, it
22 **contradicted** the prior statements made by Mr. Calvert's attorneys regarding the files, it **patently**
23 **contradicted** his own "Authorization" which had been provided just months prior, and it
24 **contradicted** statements by Mr. Calvert's office that defendant should contact Mr. Du Wors for
25 the files.¹

26
27 ¹ The Calvert declaration fails to explain why, if those documents had already been produced, he simply didn't
28 provide them earlier to defendant, especially in light of the fact he provided defendant with a specific, written

1 Despite the anomalies, defendant accepted the Calvert declaration at face value.
2 Accordingly, on December 21, 2015, defendant notified the WSBA of the declaration and of the
3 fact that the files could be obtained from Mr. Calvert, so that the WSBA could take appropriate
4 steps with the grievance as it related to the request of client files. Mr. Du Wors was copied on
5 this letter. (Exhibits B, C, D). On December 29, 2015, defendant learned of possibly reason
6 why. A settlement was reached on December 12, 2015 to resolve ongoing litigation by HPV
7 against John Du Wors for his professional negligence in his prior representation of HPV. After a
8 9.5 hour mediation, a CR2A was executed. (Exhibit E) Actually attached to the CR2A was the
9 Calvert Declaration despite it having nothing to do with that litigation. Because the Receivership
10 obtained substantial funds in the settlement (\$205,000) which directly benefited the Receiver and
11 his attorneys, it is apparent he was induced to sign the declaration prepared by Mr. Du Wors due
12 to the apparent necessity to “confirm[] the scope of the sale of the Estate’s intellectual property
13 to [defendant].” (Ex. E at para. 4). The declaration, drafted by Mr. Du Wors counsel,
14 incredulously distinguishes the defendant’s purchase of the IP from the defendant’s purchase of
15 the files related to the IP! And thus, serves to apparently justify that defendant had no right to
16 request the files – and ergo, had no right to file her bar complaint! This is the epitome of
17 lawyering and post-hoc rationalizations at which Mr. Du Wors excels. Laughably, the Calvert
18 declaration still tries to account for the fact that Mr. Calvert, many months previously, had
19 signed his Authorization for the release of the files, by saying, ‘well, I guess defendant can still
20 have them anyway, and oh, it turns out that I “Calvert” had the files all along!’ Mr. Du Wors’
21 naked attempt to shift the blame to Mr. Calvert, occurring within the context of a sizeable
22 settlement, and done to discredit defendant and save face with the WSBA, is truly pathetic.

23 True to form, since filing the Kitsap County lawsuit, Mr. Du Wors has been aggressively
24 litigating the case. On December 9, 2015, he served interrogatories and requests for production,
25 seeking to collect e-mails between defendant and her husband, and between defendant and her

26
27 authorization for the files from Mr. Du Wors. There is no explanation by Mr. Calvert why he didn’t just provide the
28 documents to defendant *instead* of providing the initial Authorization.

1 mother. Mr. Du Wors informally threatened to depose defendant several times. He then noted
2 defendant's deposition for December 23, 2015 without prior consultation or a courtesy call to
3 check her availability during the holidays. In addition, he threatened to acquire 3rd party claims
4 from other defendants involved in the HPV litigation in order to assert additional claims against
5 defendant Schweickert. (Exhibits F, G, H)

6 However the only" factual" basis asserted by Mr. Du Wors' Complaint in support of his
7 two causes of action was that defendant filed the bar complaint in "retaliation" for the court's
8 dismissal of a lawsuit defendant filed against Mr. Du Wors in federal court. That suit was
9 brought against Mr. Du Wors for his role in inducing defendant's investment of \$200,000 in
10 HPV, the vast majority of which went to benefit Mr. Du Wors **personally**. But the timeline
11 rebuts Mr. Du Wors "causation" of this claim; that lawsuit against Mr. Du Wors was dismissed
12 in January, 2015, long before the defendant's bar complaint was ever filed; moreover, the bar
13 complaint was due to circumstances completely unrelated to the dismissed lawsuit. The bar
14 complaint is specifically limited to Mr. Du Wors failure to provide the documents that defendant
15 believed she was entitled, and needed to protect her investment.

16 In summary, the WSBA *and* Mr. Du Wors have been notified regarding the change of
17 circumstances arising from the Calvert declaration, despite the contradicting statements made by
18 the receiver under oath, the statements made by the receiver's counsel in email, and the
19 receiver's signed Authorization For Release of Legal Files. Incredibly, this sequence of events is
20 the basis for Mr. Du Wors' claim that defendant is "retaliating" against him to such a degree that
21 it justifies the filing of this poorly drafted, poorly reasoned Complaint for abuse of process and
22 malicious prosecution.

23

24 IV. ARGUMENT

25 **A. Standard of Review**

26 1) **The Allegations In The Complaint Do Not Satisfy *Twombly* and *Iqbal***

1 To survive a motion to dismiss under CR 12(b)(6), it is not enough that a claim for relief
2 be merely “possible” or conceivable; instead, it must be “plausible on its face.” *Iqbal v.*
3 *Ashcroft*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v.*
4 *Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). A claim for relief is
5 plausible when “the plaintiff pleads factual content that allows the court to draw the reasonable
6 inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Twombly*, 550
7 U.S. at 556). This standard is “not akin to a ‘probability requirement,’ but it asks for more than a
8 sheer possibility that a defendant has acted unlawfully.” *Id.* To cross the line from conceivable
9 to plausible, a complaint must contain a sufficient quantum of “factual matter” alleged with a
10 sufficient level of specificity to raise entitlement to relief above the speculative level. *Twombly*,
11 550 U.S. at 555. If “a complaint pleads facts that are ‘merely consistent with’ a defendant’s
12 liability, it ‘stops short of the line between possibility and plausibility of “entitlement to relief.”’”
13 *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557).

14 When reviewing a Rule 12(b)(6) motion, the Court is not bound to accept as true: labels,
15 conclusions, formulaic recitations of the elements, or legal conclusions couched as factual
16 allegations. *Twombly*, 550 U.S. at 555. “A pleading that offers ‘labels and conclusions’ or a
17 formulaic recitation of the elements of a cause of action will not do.” Nor does a complaint
18 suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Iqbal*, 556
19 U.S. at 678. Rather, a plaintiff must plead sufficient “factual content [to] allow [] the court to
20 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

21 Plaintiff Du Wors’s complaint is legally conclusory and contains virtually no facts that
22 support either of the Complaint’s causes of action and must be dismissed. Both causes of action
23 in attorney John Du Wors’ Complaint simply parrot the common law elements that must be met
24 to sustain those causes of action. The facts pleaded in the Complaint refer to prior litigation
25 between the parties and between defendant’s significant other and attorney John Du Wors; facts,
26 which are irrelevant in the instant matter. The only facts actually pleaded in support of the
27 Complaint are that defendant filed a bar complaint and “Ms. Schweickert has never been Mr. Du

1 Wors' client." *See Complaint*, p. 5, para. 13. As discussed in greater detail below, Ms.
2 Schweickert had a legitimate basis to file the bar complaint that had nothing to do with whether
3 she had been attorney John Du Wors' prior client. Moreover, even if she had no basis to file a
4 bar complaint, attorney John Du Wors' Complaint still fails as a matter of law, is frivolous on its
5 face, and should be dismissed.

6

7 2) **Plaintiff's Complaint Fails To State Any Claims For Which Relief Can Be**
8 **Granted Because, As A Matter Of Law, The Complaint Fails To Allege Facts**
9 **That Could Satisfy The Elements Of Abuse Of Process And Malicious**
10 **Prosecution**

11 A trial court's ruling on a CR 12(b)(6) motion to dismiss for failure to state a claim is a
12 question of law. *Berst v. Snohomish County*, 114 Wn.App. 245, 251, 57 P.3d 273 (2002). A
13 court should grant a CR 12(b)(6) motion only if "it appears beyond doubt that the plaintiff can
14 prove no set of facts, consistent with the complaint, which would entitle the plaintiff to relief."
15 *Bowman v. John Doe*, 104 Wn.2d 181, 183, 704 P.2d 140 (1985); *Orwick v. Seattle*, 103 Wn.2d
16 249, 254, 692 P.2d 793 (1984). For the purposes of such a motion, the plaintiff's factual
17 allegations are presumed true." *Lawson v. State*, 107 Wn.2d 444, 448, 730 P.2d 1308 (1986). A
18 complaint survives a CR 12(b)(6) motion if any state of facts could exist under which the court
19 could sustain the claim for relief. *Lawson*, 107 Wn.2d at 448; *Bowman*, 104 Wn.2d at 183;
20 *Orwick*, 103 Wn.2d at 255. The court need not accept legal conclusions as correct. *See Orwick*,
21 103 Wn.2d at 254; *State ex rel. Pirak v. Schoettler*, 45 Wn.2d 367, 370, 274 P.2d 852 (1954).

22 3) **Request For Judicial Notice**

23 Generally, in ruling on a CR 12(b)(6) motion to dismiss, the trial court may only consider
24 the allegations contained in the complaint and may not go beyond the face of the pleadings.
25 *Brown v. MacPherson's, Inc.*, 86 Wash.2d 293, 297, 545 P.2d 13 (1975) ("On a CR 12(b)(6)
26

1 motion, no matter outside the pleadings may be considered ... and the court in ruling on it must
2 proceed without examining depositions and affidavits which could show precisely what, if
3 anything, the plaintiffs could possibly present to entitle them to the relief they seek.”). But the
4 trial court may take judicial notice of matters that are a part of the public record if their
5 authenticity cannot be reasonably disputed in ruling on a motion to dismiss. *See Berge v.*
6 *Gorton*, 88 Wash.2d 756, 763, 567 P.2d 187 (1977). ER 201(b) authorizes the court to take
7 judicial notice of a fact that is “not subject to reasonable dispute in that it is ... capable of
8 accurate and ready determination by resort to sources whose accuracy cannot reasonably be
9 questioned.” Documents whose contents are alleged in a complaint but which are not physically
10 attached to the pleading may also be considered in ruling on a CR 12(b)(6) motion to dismiss.
11 *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 717, 189 P.3d 168 (2008).

12 While the submission of extraneous materials by either party normally converts a CR
13 12(b)(6) motion to a motion for summary judgment, if the court can say that no matter what facts
14 are proven within the context of the claim, the plaintiff would not be entitled to relief, the motion
15 remains one under CR 12(b)(6). *See Loger v. Washington Timber Prods., Inc.*, 8 Wn. App. 921,
16 924, 509 P.2d 1009, *review denied*, 82 Wash.2d 1011 (1973). In such a case, the presentation of
17 extraneous evidence would be immaterial. *Loger*, at 924. In *Loger*, the trial judge considered
18 matters outside the pleadings to enable him to understand the context of the CR 12 motion so as
19 to rule on it as a matter of law, without reaching or resolving any factual dispute. *Id.* at 926.

20 Defendant Schweickert, accordingly, requests that the Court take judicial notice of the
21 following documents, as either being within the public record, or are documents of which it
22 would be proper for the court to take judicial notice, or are provided to aid the court in its
23 understanding of CR 12 motion. Attached as Exhibits are:

24 A) Declaration of Mark Calvert
25
26 B) Defendant’s bar complaint against John Du Wors, dated November 1, 2015
27
28 C) Mr. Du Wors’ response to bar complaint, dated December 7, 2015

1 D) Defendant's withdrawal of bar complaint, dated December 21, 2015 (redacted to
2 exclude extraneous exhibits unrelated to the instant matter)

3 E) CR2A Settlement between HPV and John Du Wors

4 F) Notice of Deposition; Letter to Meet and Confer

5 G) Interrogatories and Requests for Production

6 H) Letter to Mr. Du Wors from attorney Reed Yurchak and Response

7 **B. Plaintiff's Complaint Fails to Plead Plausible Claims For Abuse Of Process**

8 Under Washington law, a claim for abuse of process is defined as: "(1) the existence of
9 an ulterior purpose - to accomplish an object not within the proper scope of the process, and (2)
10 an act in the use of legal process not proper in the regular prosecution of the proceedings. The
11 mere institution of a legal proceeding even with a malicious motive does not constitute an abuse
12 of process. *Fite v. Lee*, 11 Wn. App. 21, 27-28, 521 P.2d 964 (1974); *R.A. Hanson Co. v. Aetna*
13 *Ins. Co.*, 26 Wn. App. 290, 612 P.2d 456 (1980). It has also been described as:

14 [T]he gist of the tort is not commencing an action or causing process to issue
15 without justification, but misusing, or misapplying process justified in itself for an
16 end other than that which it was designed to accomplish. The purpose for which
17 the process is used, once it is issued, is the only thing of importance. ...
18 The improper purpose usually takes the form of coercion to obtain a collateral
19 advantage, not properly involved in the proceeding itself, such as the surrender of
20 property or the payment of money, by the use of the process as a threat or a club.
21 There is, in other words, a form of extortion, and it is what is done in the course
22 of negotiation, rather than the issuance or any formal use of the process itself,
23 which constitutes the tort. The cases have involved such extortion by means of
24 attachment, execution, garnishment, or sequestration proceedings, or arrest of the
25 person, or criminal prosecution, or even such infrequent cases as the use of a
26 subpoena for the collection of a debt. The ulterior motive or purpose may be
27 inferred from what is said or done about the process, but the improper act may not
28 be inferred from the motive.
Batten v. Abrams, 28 Wn. App. 737, 746-7, 626 P.2d 984 (1981) (citing *B.W. Prosser, Torts* § 121, at 856-58 (4th ed. 1971)).

1 There are very few case law decisions in the country that are on point with the facts in the
2 instant action. That is, can a party maintain an action against another for abuse of legal process
3 when the only process is the filing of a bar complaint with the regulatory agency (in this
4 instance, the WSBA). One court has interpreted such facts in the context of both a bar complaint
5 being filed and a subsequent filing of a legal complaint for malpractice. Unequivocally, the
6 court held that a plaintiff is entitled to absolute immunity for statements made in connection with
7 a bar grievance. *See Field v. Kearns*, 43 Conn. App. 265 (1996). The court based its reasoning
8 upon the fact that statements in judicial or quasi-judicial proceedings are entitled to absolute
9 immunity for the content of statements made therein. *Id.* at 271. In addition, the court held that
10 bar proceedings, as *sui generis* proceedings, are *quasi-judicial* in nature. *Id.* at 273.

11 The Rules for Enforcement of Lawyer Conduct (“ELC”) in Washington also state that bar
12 proceedings are neither criminal, nor civil, but are *sui generis* in character. ELC 10.14(a). As a
13 general rule, witnesses in judicial proceedings are absolutely immune from suit based on their
14 testimony. *Bruce v. Byrne-Stevens & Associates Engineers, Inc.*, 113 Wn.2d 123, 125 (1989).
15 The immunity of parties and witnesses from subsequent damages liability for their testimony in
16 judicial proceedings is well established in English common law. *Cutler v. Dixon*, 4 Co. Rep.
17 14b, 76 Eng. Rep. 886 (Q.B. 1585); *Anfield v. Feverhill*, 2 Bulst. 269, 80 Eng. Rep. 1113 (K.B.
18 1614); *Henderson v. Broomhead*, 4 H. & N. 569, 578, 157 Eng. Rep. 964, 968 (Ex. 1859); *see*
19 *Dawkins v. Lord Rokeby*, 4 F. & F. 806, 833-834, 176 Eng. Rep. 800, 812 (C.P. 1866); *Briscoe v.*
20 *LaHue*, 460 U.S. 325, 330-31, 75 L.Ed.2d 96, 103 S.Ct. 1108 (1983). The rule is equally well-
21 established in American common law. *See Lawson v. Hicks*, 38 Ala. 279, 285-88 (1862); *Myers*
22 *v. Hodges*, 53 Fla. 197, 208-10, 44 So. 357, 357-61 (1907); *Smith v. Howard*, 28 Iowa 51, 56-57
23 (1869); *Gardemal v. McWilliams*, 43 La. Ann. 454, 457-58, 9 So. 106, 108 (1891); *Burke v.*
24 *Ryan*, 36 La. Ann. 951, 951-52 (1884); *McLaughlin v. Cowley*, 127 Mass. 316, 319-20 (1879);
25 *Cooper v. Phipps*, 24 Or. 357, 363-64, 33 P. 985, 986-87 (1893); *Shadden v. McElwee*, 86 Tenn.
26 146, 149-54, 5 S.W. 602, 603-05 (1887); *Cooley v. Galyon*, 109 Tenn. 1, 13-14, 70 S.W. 607,
27 610 (1902); *Chambliss v. Blau*, 127 Ala. 86, 89-90, 28 So. 602, 603 (1900).

28

1 Plaintiff's claim for abuse of process fails as a matter of law. First, a proceeding
2 instituted by the filing of a bar complaint is a *sui generis* proceeding that is quasi-judicial in
3 nature. It is not legal process as contemplated by an action for abuse of process. Second, even if
4 a bar complaint is a legal process, Washington State law makes clear that a witness who gives
5 testimony in the form of filing a complaint is entitled to witness immunity. Certainly, the WSBA
6 did not envision that a complaining witness of ethical misconduct should potentially be subjected
7 to retributive action by the attorney who receives the complaint, due to the potentially severe
8 limiting affect on witnesses to freely report potential misconduct.

9 Second, a claim for abuse of process requires that two elements be met: (1) the existence
10 of an ulterior purpose - to accomplish an object not within the proper scope of the process, and
11 (2) an act in the use of legal process not proper in the regular prosecution of the proceedings.
12 As the record plainly shows, when construed in a light most favorable to the non-moving party,
13 the defendant had no ulterior purpose in the filing of her bar complaint. The complaint was filed
14 in good faith in order to receive the files pertaining to IP litigation that defendant purchased from
15 HPV that attorney John Du Wors, and him alone, represented at all relevant times. Defendant
16 had no other ulterior purpose, and attorney John Du Wors' Complaint does not plead any facts in
17 support of such a purpose.

18 Next, attorney John Du Wors' Complaint pleads no facts to support that defendant
19 committed an act that was not proper in the regular prosecution of the proceedings. The
20 Complaint simply alleges an earlier action filed by defendant in the Western District Court of
21 Washington that was dismissed on summary judgment, and which has absolutely no relevance to
22 the matter at hand. Again, to sustain a cause of action for abuse of process, the Complaint must
23 at least facially plead facts that support that the defendant committed an act *within* the
24 prosecution of *that* proceeding that was not proper. No such facts were and cannot be pleaded in
25 the context of defendant's filing of the bar complaint.

26 **C. Plaintiff's Complaint Fails to Plead Plausible Claims For Malicious Prosecution**
27

1 Malicious prosecution actions are not favored in law. *Bender v. Seattle*, 99 Wn.2d 582,
2 602-03, 664 P.2d 492 (1983); *Peasley v. Puget Sound Tug & Barge Co.*, 13 Wn.2d 485, 496, 125
3 P.2d 681 (1942). Washington courts strictly limit the right to bring suit for malicious
4 prosecution, “reasoning that such suits intimidate prospective litigants and that the public policy
5 favors open courts in which a plaintiff may fearlessly present his case.” *Gem Trading Co. v.*
6 *Cudahy Corp.*, 22 Wash.App. 278, 283, 588 P.2d 1222 (1978), *aff’d*, 92 Wash.2d 956, 603 P.2d
7 828 (1979).

8 In order to maintain an action for malicious prosecution, a plaintiff must plead and prove
9 the following elements: (1) that the prosecution claimed to have been malicious was instituted or
10 continued by the defendant; (2) that there was want of probable cause for the institution or
11 continuation of the prosecution; (3) that the proceedings were instituted or continued through
12 malice; (4) that the proceedings terminated on the merits in favor of the plaintiff, or were
13 abandoned (though the a malicious prosecution claim can be raised as a counterclaim under
14 RCW 4.24.350); and (5) that the plaintiff suffered injury or damage as a result of the
15 prosecution. *Hanson v. City of Snohomish*, 121 Wash.2d at 558, 852 P.2d 295 (*quoting Peasley*,
16 13 Wash.2d at 497, 125 P.2d 681); *Bender v. City of Seattle*, 99 Wash.2d 582, 593, 664 P.2d 492
17 (1983); *Banks v. Nordstrom, Inc.*, 57 Wash.App. 251, 255-56, 787 P.2d 953 (1990).

18 While actions for malicious prosecution began as a remedy for unjustifiable criminal
19 proceedings, Washington law also recognizes this remedy where a civil suit has been wrongfully
20 initiated. RCW 4.24.350(1); *see, e.g., Hanson v. Estell*, 100 Wash.App. 281, 286-87, 997 P.2d
21 426 (2000); *Gem Trading Co. v. Cudahy Corp.*, 92 Wash.2d 956, 964, 603 P.2d 828 (1979);
22 *accord Prosser and Keeton on the Law of Torts* § 120 at 889 (W. Page Keeton ed., 5th ed. 1984)
23 (“The action of malicious prosecution, which began as a remedy for unjustifiable criminal
24 proceedings, has been undergoing a slow process of extension into the field of the wrongful
25 initiation of civil suits.”).

26 In Washington a malicious prosecution claim arising from a civil action requires the
27 plaintiff to prove two additional elements: (6) arrest or seizure of property and (7) special injury

1 (meaning injury which would not necessarily result from similar causes of action). *Gem*
2 *Trading*, 92 Wash.2d at 963-64, 603 P.2d 828; *see also Petrich v. McDonald*, 44 Wash.2d 211,
3 216-22, 266 P.2d 1047 (1954). Although the malicious prosecution plaintiff must prove all
4 required elements, malice and want of probable cause constitute the gist of a malicious
5 prosecution action. *Hanson*, 121 Wash.2d at 558. As such, proof of probable cause is an
6 absolute defense to a claim of malicious prosecution. *Brin v. Stutzman*, 89 Wash.App. 809, 819,
7 951 P.2d 291 (1998); *Hanson*, 121 Wash.2d at 558.

8 Looking at each element in turn, plaintiff cannot meet any of the seven elements of a
9 malicious prosecution action; and, moreover, defendant can demonstrate she had probable cause
10 for the filing of her bar complaint:

11 (1) That the prosecution claimed to have been malicious was instituted or continued by
12 the defendant

13 The defendant had a good faith basis to file the bar complaint against Mr. Du Wors.
14 Attorney Mr. Du Wors' refusal to acknowledge defendant's prior request for files, coupled with
15 the receiver's and his attorney's assertions that she must obtain the files from him, and waiting
16 for over 5 months for a response, is *prima facie* evidence of a lack of malicious intent, especially
17 in light of the fact that the bar complaint was the only mechanism which finally compelled Mr.
18 Du Wors to respond.

21 (2) That there was want of probable cause for the institution or continuation of the
22 prosecution

23 The court in *Brin* defined "probable cause" in the civil context:

24 A civil plaintiff need not have the degree of certainty as to the existence of the
25 facts on which the proceedings is based that is required of a prosecutor in a
26 criminal proceeding. Instead, the civil plaintiff must have a reasonable belief that
the relevant facts can be established through the trial process.

Brin, 89 Wash.App. at 817 (quoting Restatement (Second) of Torts § 675 cmt. d. (1977)).

In *Estell*, the parties had been involved in litigation involving property boundaries. The plaintiff's claims were dismissed on summary judgment, as well as the defendant's counter-claim for malicious prosecution. The appellate court found that despite the dismissal of plaintiff's claims on summary judgment, this was "not determinative of the legitimacy of their arguments..." and because plaintiff's "suit was 'neither frivolous nor brought maliciously, as there were legitimate issues' requiring resolution by the court," there was thus "probable cause" to defeat the counterclaim for malicious prosecution. *Estell*, 100 Wash.App. at 430.

As the record makes clear, the defendant had “a reasonable belief that the relevant facts can be established” in the filing of the bar complaint. The defendant had made numerous written requests directly to attorney John Du Wors for a copy of the files, which requests were ignored by Mr. Du Wors. Defendant’s attorney, Brandon Wayman, had received confirmation from the receiver’s attorney for HPV that attorney John Du Wors was in possession of the files to which defendant was entitled. Defendant had a right to the files and attorney John Du Wors, up to the point of filing the bar complaint, had effectively ignored defendant’s requests. Only after the filing of the bar complaint, and in response to it, did attorney John Du Wors present a declaration from the receiver of HPV that the files had already been produced to the Receiver. By any measure, the defendant had a good faith basis (and thus ‘probable cause’) to request the bar to investigate her grievance against attorney John Du Wors for violations of RPC 1.16.

(3) That the proceedings were instituted or continued through malice

As a term of law,

[m]alice ... has a broader significance than that which is applied to it in ordinary parlance. The word "malice" may simply denote ill will, spite, personal hatred, or vindictive motives according to the popular conception, but in its legal significance it includes something more. It takes on a more general meaning, so that the requirement that malice be shown as part of the plaintiff's case in an action for

1 malicious prosecution may be satisfied by proving that the prosecution complained
2 of was undertaken from improper or wrongful motives or in reckless disregard of
3 the rights of the plaintiff. Impropriety of motive may be established in cases of this
4 sort by proof that the defendant instituted the criminal proceedings against the
plaintiff: (1) without believing him to be guilty, or (2) primarily because of hostility
or ill will toward him, or (3) for the purpose of obtaining a private advantage as
against him.

5 *Peasley v. Puget Sound Tug & Barge Co.*, 13 Wash.2d 485, 497, 502, 125 P.2d 681
6 (1942)), aff'd 22 Wash.App. 278, 588 P.2d 1222 (1978) (*quoting* Newell, *Malicious*
7 *Prosecution* (1892), 237, § 3; 34 Am. Jur. 728, *Malicious Prosecution*, § 45; 38 C.J.
421-425, *Malicious Prosecution*, §§ 60-67; 3 Restatement, *Torts* (1938), § 668).

8 As the defendant's bar complaint makes clear, it was not brought with malice, but
9 was brought in a good faith basis to obtain the litigation files related to the IP she had
10 purchased. Moreover, as discussed *infra*, a bar complaint is not an "action" for which a
11 claim for malicious prosecution can be brought, and thus, it cannot be brought with malice.
12

13 (4) That the proceedings terminated on the merits in favor of the plaintiff, or were
14 abandoned

15 RCW 4.24.350 requires that a malicious prosecution counterclaim be based on an
16 "action," not merely a factual allegation.

17 In any action for damages, whether based on tort or contract or otherwise, a claim or
18 counterclaim for damages may be litigated in the principal action for malicious
19 prosecution on the ground that the action was instituted with knowledge that the same
20 was false, and unfounded, malicious and without probable cause in the filing of such
action, or that the same was filed as a part of a conspiracy to misuse judicial process by
21 filing an action known to be false and unfounded.
RCW 4.24.350(1)

22 "Action 'in its legal sense means a lawsuit brought in a court, a formal complaint with
23 the jurisdiction of a court of law.'" *Brin*, 89 Wash.App. at 816 (*quoting Black's Law Dictionary*
24 28 (6th ed.1990)); *see also Biggs v. Vail*, 119 Wash.2d 129, 136, 830 P.2d 350 (1992). A
25 counterclaim for malicious prosecution under RCW 4.24.350 may be maintained in the same
26
27

1 cause of action, but can only be based on an improperly filed cause of action and not on an
2 invalid factual allegation made in support of a cause of action that is otherwise supported by
3 probable cause. *Id.* at 817.

4 Plaintiff cannot meet his burden of proving this element as a matter of law. First, a bar
5 complaint is not an “action.” As discussed, *supra*, a bar complaint is *quasi-judicial* in nature and
6 is filed with an administrative body, and not with a court. Should attorney John Du Wors
7 attempt to argue that his Complaint was not filed as a counterclaim, and that RCW 4.24.350(1)
8 does not mandate the filing of such an action as a counterclaim, defendant would note: a)
9 plaintiff filed his Complaint shortly after the bar complaint was filed, and both remain pending,
10 and b) the statute is nonetheless clear that a claim for malicious prosecution be filed in response
11 to an “action,” whether independently or as a counterclaim. Third, the Defendant has given
12 notice of her intent to “abandon” that portion of her bar complaint that pertained only to the
13 production of files. However, that does not mean the “proceeding terminated in favor of
14 plaintiff.” The WSBA always has the final say on whether to pursue ethical violations and
15 determine what, if any, ethical violations occurred. *See ELC 5.3(e)* (stating, “None of the
16 following alone requires dismissal of a grievance: the unwillingness of a grievant to continue the
17 grievance, the withdrawal of the grievance, a compromise between the grievant and the
18 respondent, or restitution by the respondent). Finally, while the defendant’s bar complaint may
19 have been based on an invalid factual allegation, attorney John Du Wors only produced the
20 affidavit from the receiver *after* defendant had filed her complaint, the withholding of that
21 information did not make the filing of the bar complaint improper. Mr. Du Wors had at least two
22

1 prior opportunities to respond to defendant's requests, and months in which to make that
2 response.

3 (5) That the plaintiff suffered injury or damage as a result of the prosecution

4
5 The plaintiff cannot demonstrate any injury or damage as a result of a bar complaint.
6 As noted above, a bar complaint is not an "action" at law; it cannot cause injury or damage.
7 Moreover, the filing of a bar complaint is not an action that the party can "prosecute." It is a
8 *quasi-judicial* action in which the WSBA makes an independent determination whether to
9 prosecute or dismiss. *See* ELC 5.3 "Investigation of Grievance." In other words, a finding of
10 misconduct is not made by the party bringing the grievance; the misconduct is a determination
11 by the WSBA that an attorney violated an ethical rule. There can be no "injury" regardless of
12 what the WSBA determines, as the inquiry concerns only whether a lawyer acted in compliance
13 with his/her ethical duties as an attorney.

14 (6) Arrest or seizure of property

15 There has been no arrest or seizure of property.

16 (7) Special injury (meaning injury which would not necessarily result from similar causes
17 of action)

18 There cannot be any special injury, as no injury can result merely from a proceeding into
19 whether an attorney complied with his/her duties under the RPCs.

20
21 **V. CONCLUSION**

22 Based upon the facts and pleadings herein, plaintiff's complaint must be dismissed for
23 failure to state a viable cause of action. More importantly, CR 11 sanctions are appropriate
24 against the plaintiff. Attorney John Du Wors is a sophisticated IP attorney with a downtown
25 Seattle office. He has been in practice for over 10 years. On its face, he knowingly filed a
26 complaint that had absolutely no merit for the purpose of retaliation against defendant for filing

1 her bar complaint: he filed the complaint in Kitsap County, despite the fact that defendant lives
2 in King County; his office is in Seattle; the relevant facts and events all occurred in King
3 County; he vigorously pursued discovery knowing the matter was frivolous, even demanding a
4 deposition on December 23, 2015, just two days before Christmas, and served interrogatories
5 requesting production of all personal emails between defendant and her friends, family, and
6 significant other. Mr. Du Wors clearly sought to harass and embarrass defendant.

7 Defendant requests dismissal of attorney John Du Wors' Complaint and leave to brief the
8 court on the issue of attorney fees and sanctions under CR 11.

9 Dated this 28th day of December, 2015

10
11 */s/ Reed Yurchak*
12 Reed Yurchak, WSBA #37366
13 Law Office of Reed Yurchak
14 40 Lake Bellevue Dr. #100
15 Bellevue, WA 98005
16 Tel: 425-941-6659
17 Fax: 425-654-1205
18 Email: yurchaklaw@gmail.com
19 *Attorney for Defendant*
20
21
22
23
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25
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27
28

EXHIBIT “A”

1

2

3

4

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6

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

7

JENNIFER SCHWEICKERT, an individual,

8

Plaintiff,

9

vs.

10

JOHN DAVID DU WORS, an individual; and
11 NEWMAN DU WORS, LLP,

12 Defendants.

13

MARK CALVERT states and declares as follows:

14

1. I am over the age of 18, competent to testify to the matters set forth herein, and
15 testify based on my personal knowledge.

16

2. I am, through my company, the receiver for Hunts Point Ventures, Inc. (HPV).

17

3. Previously, John Du Wors, and the law firm of Newman Du Wors, served as
18 patent litigation counsel to HPV.

19

4. Following the termination of representation of HPV by John Du Wors and
20 Newman Du Wors, Newman Du Wors through its counsel furnished me with HPV's client
21 copy of files associated with that patent litigation and other matters upon which Newman Du
22 Wors represented HPV (the "Files").

23

5. Recently, on behalf of HPV, I sold a large portion of HPV's intellectual
24 property, including its issued patents, to Jennifer Schweickert.

25

No.

DECLARATION OF MARK CALVERT

DECLARATION OF MARK CALVERT - 1

5839525.doc

LEE·SMART

P.S., Inc. • Pacific Northwest Law Offices

1600 One Convention Place • 701 Pike Street • Seattle • WA • 98101-3929
Tel. 206.624.7990 • Toll Free 877.624.7990 • Fax 206.624.5944

1
2 6. I did not, however, sell or assign Ms. Schweickert the Files, or any aspect of
HPV's standing as a former client of Newman Du Wors.
3

4 7. I understand Ms. Schweickert may contend that she now has rights to the Files
by virtue of her purchase of HPV's intellectual property. The purchase and sale agreement (a
5 copy of which is attached as Exhibit A) and the King County Superior Court Order confirming
6 the sale of assets to Ms. Schweickert (the "Order") provide that she only purchased intellectual
7 property assets of HPV and related rights, not the Files.
8

9 8. While I have consented to Newman Du Wors' disclosure of the Files to Ms.
Schweickert, I have not demanded that Newman Du Wors produce those files a second time,
10 because they already produced a client copy to me earlier this year.
11

12 9. If Ms. Schweickert desires a copy of the Files, I am happy to provide what I was
given to her as a courtesy, but she has not requested that to date.
13

14 I declare under penalty of perjury under the laws of the State of Washington, that the
15 foregoing is true and correct to the best of my knowledge.
16

17 EXECUTED this 12 day of December, 2015 at BELLEVUE, Washington.
18

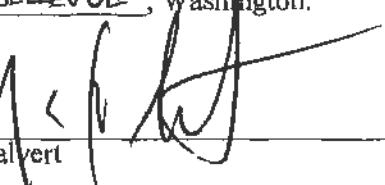
19 By: 
Mark Calvert

EXHIBIT “B”

Submitted at 11/1/2015 7:11:23 PM. You may print this screen for your records. You will receive an email confirmation at the email address you provided. Mail any additional information with your grievance file number to our office address or send it to the email address caa@wsba.org. You will receive an email confirmation at the email address you provided.
Confirmation number: 201511010004

GRIEVANCE AGAINST A LAWYER



Office of Disciplinary Counsel
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

GENERAL INSTRUCTIONS

- Read our information sheet [Lawyer Discipline in Washington](#) before you complete this form, particularly the section about consent to disclosure of your grievance to the lawyer.
- If you have a disability or need assistance with filing a grievance, call us at (206) 727-8207. We will take reasonable steps to accommodate you.
- Please note that this form is only for new grievances. *If you have already filed a grievance, do not use this form to send us additional information.* Mail any additional information to the address above.
- If you provide an email address, you will receive a confirmation email upon submitting your grievance. *We will communicate with you by letter after we review your grievance.*

INFORMATION ABOUT YOU

Schweickert, Jennifer

Last Name, First Name, Middle Initial

c/o Mark Kimball, Law Office of Kimball

Address

777 108th Ave NE, #2000

Address Line 2

Bellevue, WA 98004

City, State, and Zip Code

United States

Country

2066079415

Phone Number

Alternate Phone Number

jps214@mac.com

Email Address

INFORMATION ABOUT THE LAWYER

Du Wors, John David

Last Name, First Name

2101 Fourth Avenue

Address

Suite 1500

Address Line 2

Seattle, WA 98121

City, State, and Zip Code

United States

Country

2062742800

Phone Number

Bar Number (if known)

INFORMATION ABOUT YOUR GRIEVANCE

Describe **your** relationship to the lawyer who is the subject of your grievance:

Other: I purchased a previous client's assets.

Is there a court case related to your grievance?

No

If yes, what is the case name and file number?

Explain your grievance in **your own words**. Give all important dates, times, places, and court file numbers. You may attach additional materials by using the file upload feature below.

Six months ago, I purchased the assets of a company called Hunts Point Ventures, Inc. (HPV) of which John Du Wors was their attorney. Mr. Du Wors was sued by virtually every 3rd parties related to HPV, and is currently being sued by HPV through the receiver. The asset purchase was through a general court appointed receiver and approved by the court. Upon approval from the court, my attorneys Mark Kimball and Brandon Wayman e-mailed and sent letters to Mr. Du Wors, his attorneys, and Newman & Du Wors for them to turn over a hard copy and electronically stored files relating to his (and a half dozen other attorney's) representation of HPV of which hundreds of thousands of dollars were billed, and questionably extracted from the company.

The receiver has additionally signed a waiver for the release of the HPV files to me; there is no ambiguity that I am the rightful and current owner of these files and have the right to request and receive the files. Mr. Du Wors has refused to respond to our requests for HPV's files and property - even after an offering to provide a hard drive, we would also accept a link through box.com or any other suggestion of a cloud based solution.

However, Mr. Du Wors has failed to return the client materials back to its owner - me. It has been six months. I was advised to file a complaint with the WA bar association regarding Du Wors' conduct - refusal to return client materials.

I am concerned that Mr. Du Wors will play some unprofessional tactic like provide me with low resolution JPEGS of each of the files, or worse, do something illegal: destroy his records including e-mails, and files, including working documents like Word, Excel, Powerpoint and or other editable files and provide unintelligible single image files jumbled in a meaningless hierarchy of folders and not provide the files as they are normally maintained on the servers of Newman and Du Wors or on Box.com. This is the tactic that he played with discovery and had to be ordered and was compelled to produce discovery over again.

I am also fearful of my address being disclosed to Mr. Du Wors, as he has a history of violence against women, his wife and his daughter. It would make me feel safer if we could send correspondence through Mr. Kimball's office, I have used Mr. Kimball's address above, if the Bar need my personal address I can provide that upon request.

It is clear from the past 3 years of litigation by HPV and all of Du Wors' past clients that he intends to make every request and effort of those involved investing in HPV to move on as expensive and obstructive as possible. There is no litigation regarding this matter between me and Du Wors and the return of a former client files (HPV) to me, the new owner.

It is my hope that the WA Bar would open this matter and investigate it independent of the many open or pending claims against Du Wors (through the Bar and through the Courts), in order to expedite the inquiry into Mr. Du Wors' behavior and breach of the professional rules of conduct regarding returning of client files. This matter is simple. And ensure that Du Wors or his office does not delete, alter, or otherwise tamper with the working files which they performed on behalf of HPV. And finally, to have the entire work product by Du Wors' office, for which he claims that he solely worked for HPV and its interests, to be turned over to me, its owner, in its entirety with the oversight of the bar. This includes the final PDF documents files with the various courts, working files, in the working directories, and the emails in Outlook's native format PST.

If the bar would like the order authorizing the sale of assets to me, the receiver's waiver, or any other correspondence between Mr. Kimball's office and Mr. Du Wors, then please feel free to contact Mr. Mark Kimball or Mr. Brandon Wayman and I will authorize any effort to provide these documents to your offices in a timely matter.

Thank you for your attention to this matter.

Attached Files:

AFFIRMATION

I affirm that the information I am providing is true and accurate to the best of my knowledge. I have read [Lawyer Discipline in](#)

Washington and I understand that all information that I submit can be disclosed to the lawyer.

EXHIBIT “C”

NEWMAN DUWORS

SENT VIA MESSENGER AND EMAIL

December 7, 2015

Felice Congalton
Associate Director
Office of Disciplinary Counsel
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539
Email: caa@wsba.org

Re: OCD File No. 15-01950

I. Introduction

The purpose of this letter is to respond to the bar grievance (the "Grievance")¹ of grievant Jennifer Schweickert ("Grievant") on behalf of respondent John Du Wors ("Respondent"). In the Grievance, Grievant Schweickert alleges that she purchased two patents (the "Patents") previously owned by a corporation called Hunts Point Ventures, Inc. Years ago, Respondent represented Hunts Point Ventures, Inc. in prosecuting claims for infringement of the Patents; Respondent has never represented Grievant Schweickert. Grievant Schweickert alleges in the Grievance that following her purchase of the Patents from Hunts Point Ventures, Grievant demanded the production of Hunts Point Ventures' litigation client files (the "Files") from Respondent's law firm, Newman Du Wors, LLP, and that Respondent refused to produce them. These allegations apparently constitute the sole bases for Grievant Schweickert's Grievance.

As discussed more fully below, Respondent answers Grievant Schweickert's Grievance allegations as follows:

- 1) Although Grievant Schweickert did purchase the Patents from the receivership estate of Hunts Point Ventures, the King County Superior Court receivership order approving the sale (the "Order"), a copy of which is attached as Exhibit B, does not say that Grievant Schweickert acquired any entitlement to Hunts Point Ventures' litigation Files, or to its standing as a former client of Respondent to demand those files – rather, the Order reveals that Grievant Schweickert only purchased the Patents from Hunts Point Ventures;

¹ A copy of the Grievance is attached as Exhibit A.

² As reflected on the date-received stamp on Exhibit A, Respondent received the Grievance on November 6th, 2015, although it is dated November 4th, 2015. The Grievance notice advises Respondent to provide a response to the Grievance within thirty (30) days, which would be November 6, assuming the thirty (30) day period is measured from the date of receipt. November 6, 2015 was a Sunday, and so Respondent is submitting this response on Monday, November 7, 2015, the first business day following the November 6, 2015, thirty (30) day deadline.

- 2) Because the King County Superior Court's Order on the sale of the Patents to Grievant Schweickert does not provide for Grievant Schweickert's purchase of, or other entitlement to, Hunts Point Ventures' litigation Files, the furnishing of those files by Respondent or his law firm to a third party such as Grievant Schweickert would constitute an ethics violation, because the files still belong to Hunts Point Ventures' receivership estate;
- 3) Although Grievant claims Hunts Point Ventures somehow consented to the disclosure of the Files to Grievant Schweickert, Grievant counsel's letter demanding those Files (the "Demand Letter")³ did not contain any such explanation of consent, nor any written document evidencing it;
- 4) Respondent and his law firm, Newman Du Wors, already voluntarily produced a complete copy of the Files to Hunts Point Ventures following termination of representation, when Hunts Point Ventures was placed in judicial receivership (the transmittal letters for which are attached as Exhibits C and D⁴), meaning Respondent and his law firm have satisfied any obligation they had to turn over the Files to Hunts Point Ventures such that Hunts Point Ventures can, itself, transfer those files to Grievant Schweickert if Hunts Point Ventures has actually agreed to do so; and
- 5) In truth, Grievant Schweickert's Grievance is an act of retaliation for her failure to prevail in the lawsuit she previously brought against Respondent and his law firm: a case styled *Schweickert v. Hunts Point Ventures, Inc., et al*, U.S.D.C. W.D.WA Case No. 2:13-cv-00675-RSM (the "Lawsuit")⁵ in which U.S. District Judge Ricardo Martinez issued a summary judgment order dismissing with prejudice Grievant Schweickert's claims against Respondent and his law firm on January 5, 2015.

A detailed discussion is set forth below.

II. Discussion

A. Respondent has never represented Grievant Schweickert, and she has no right to the litigation Files that are the subject of her Grievance.

The genesis of this dispute centers around the prior felony prosecution and conviction of Grievant Schweickert's husband, an individual named Mark Phillips. In the spring of 2011, Grievant's husband, Mr. Phillips, was tried and convicted of federal felony fraud

³ A copy of the demand letter is attached as Exhibit F.

⁴ Respondent would be happy to direct his retained counsel to replicate the production of client files previously made to the Hunts Point Ventures receivership so the Bar Association can confirm Respondent's obligation was met in this regard.

⁵ A copy of the entire docket for that case may be found at <www.newmandocket.com/huntspoint/schweickert>, and Judge Martinez' summary judgment order is docket no. 80.

for embezzlement of millions of dollars of funds from a technology company he had served as chief executive officer. (See <http://www.seattlepi.com/local/article/Busted-tech-genius-i-have-done-nothing-wrong-1466943.php>.) Respondent served as Mr. Phillips' criminal defense counsel at his felony trial before federal Judge Coughenour. And briefly in 2011, Respondent and his law firm also served as patent litigation counsel for Hunts Point Ventures, Inc., an entity Grievant's Husband, Mr. Phillips, claims to be co-founder and owner of.

Following the prison release of Grievant Schweickert's husband, Mark Phillips, Mr. Phillips and Ms. Schweickert initiated litigation against a variety of parties, including investors in entities Mr. Phillips had looted, the other shareholders in Hunts Point Ventures, and Respondent; Grievant Schweickert filed litigation against most of the same parties. Supreme Court Justice Mary Yu, before she left the trial court bench, dismissed Mr. Phillips' claims on summary judgment, and issued an \$80,000 Rule 11 sanctions order against Mr. Phillips, and his litigation counsel.

Plaintiff's claims are neither well grounded in fact or warranted by existing law, and Plaintiff's counsel, Mr. Yurchak, failed to reasonably investigate the legal and factual bases for the claims and pleadings he certified in this case.

(See Sanctions Order, Exhibit E.) As a result of the litigation, Mr. Phillips was forced to declare chapter 7 bankruptcy, and Hunts Point Ventures was placed into judicially supervised receivership. The receiver with custody of Hunts Point Ventures' assets is named Mark Calvert.

Immediately following the opening of the Hunts Point Ventures' receivership estate, Mr. Calvert, through his attorney, Diana Carey (a partner at the law firm of Karr Tuttle Campbell), demanded all client Files in the possession of Respondent and/or his law firm, relating to Hunts Point Ventures, Inc. Respondent and his law firm produced all requested Files to the Receiver Calvert through attorney Sam Franklin, the outside litigation counsel Respondent had retained to defend the litigation claims asserted by Grievant Schweickert and her husband, Mr. Phillips. (See Ex.'s C-D.)

While the bankruptcy disposed of Mr. Phillips' litigation claims against Respondent and his law firm, the litigation claims of his wife, Grievant Schweickert, were dismissed with prejudice on summary judgment by U.S. District Court Judge Ricardo Martinez, who ruled:

For the reasons stated herein, the Court hereby ORDERS that Defendant John Du Wors' Motion for Summary Judgment (Dkt. # 80) is GRANTED. All claims in Plaintiff's First Amended Complaint asserted against Defendant Du Wors shall be

DISMISSED. As the record of evidence has shown the underlying alleged misrepresentations and asserted wrongful act to be nonactionable as a matter of law, the Court finds that any further amendment would be futile. Accordingly, the dismissal of Plaintiff's claims against Defendant Du Wors shall be WITH PREJUDICE.

(See Lawsuit, Dkt. No. 80 at 10:24-11:5.) Grievant Schweickert was required to pay litigation costs to Respondent. (Id.)

Angry that her and her husband's litigation claims had been dismissed, Grievant Schweickert purchased the Patents from Hunts Point Ventures in an apparent effort to gain standing to assert client rights, and further bring suit, against Respondent and his law firm. But Grievant's understanding of what she purchased is incorrect. As the King County Superior Court's Order reveals, Grievant Schweickert only purchased the Patents, not Hunts Point Ventures' client rights.

And although Grievant Schweickert claims in her Grievance that she obtained a waiver and consent from Hunts Point Ventures that somehow entitles her to Hunts Point Ventures' attorney client privileged client Files, Respondent and his law firm have never received any evidence of it. Grievant's outside litigation counsel's July 13, 2015 Demand Letter did not contain any mention of waiver or consent by Hunts Point Ventures. Nor did it contain any documents relating to any such waiver or consent. It only contained the court Order memorializing the sale of the Patents to Schweickert. Accordingly, Respondent concluded at the time that he would be ethically prohibited from producing Hunts Point Ventures' Files to Grievant Schweickert.

B. Because the Files belong to the Hunts Point Ventures receivership, Respondent is ethically prohibited from producing them to Grievant Schweickert.

Unless Hunts Point Ventures has executed some document waiving privilege and entitling Grievant Schweickert to its privileged and confidential Files, Washington's Rules of Professional Conduct ("RPC") prohibit disclosure of those Files to Grievant Schweickert. RPC 1.6(a) provides that "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent...." In relation to the Patents and the Files, Hunts Point Ventures was Respondent's client, and Respondent has never received evidence of Hunts Point Ventures' consent to disclosure of the Files. Therefore, Respondent has never been ethically or legally permitted to meet Grievant Schweickert's demand for the Files as set forth in her Demand Letter.

C. Respondent has satisfied his ethical obligations be producing the Files to the Hunts Point Ventures Receiver.

Aside from general ownership principles, a client's right to its legal files is explained in WSBA Formal Opinion 181⁶ which analyzes former RPC 1.16(d) (the "Opinion"). As the Opinion explains, a lawyer is required "upon termination of representation, to take steps to the extent reasonably practical to protect a client's interests including surrendering papers and property to which the client is entitled. Subject to limited exceptions, this Rule obligates the lawyer to deliver the file to client." But neither the Opinion, nor former RPC 1.16(d) require a lawyer to produce that file more than once. And neither the Opinion, nor former RPC 1.16(d) require a lawyer to produce a client file to a party that is not the client who owns the file.

Respondent and his law firm satisfied their ethical obligations by making the production described in Exhibits C and D. The Opinion and former RPC 1.16(d) only require the furnishing of a client file once following termination of representation. As described in Exhibits C and D, Respondent and his law firm produced to the Hunts Point Ventures receivership literally all documents making up any part of the Files. Given that Respondent need not expend the labor or cost of making that production more than once, any further transfers of the Files must be made by the Hunts Point Ventures receivership.

And even if a lawyer were required to produce a client file more than once, that requirement would not change Respondent's obligations here, because Grievant Schweickert has never been his client. The Opinion and former RPC 1.16(d) only require the furnishing of a client file to a *client* upon the client's request. Respondent's former client—Hunts Point Ventures—has not requested the production of the Files, let alone their transfer to Grievant Schweickert. Nor has the Hunts Point Ventures receiver ever criticized the completeness of Resopndent's production of the Files as reflected by Exhibits C and D.

D. Grievant Schweickert's bar complaint is retaliatory.

Grievant Schweickert brings this Grievance in retaliation for the total-merits based failure of her Lawsuit and the corresponding cost judgment she suffered. She, along with Mr. Phillips, have waged an onslaught of lawsuits and/or bar Grievances against nearly a dozen parties and attorneys, seeking some sort of vindication for her husband's felony conviction for fraud and embezzlement of shareholder funds. In the hope that the Bar Association would not learn the factual context behind her Grievance, she deliberately omits most of the above facts from her Grievance. She also ignores the Bar grievance form's requirement that she apprise the bar whether her Grievance relates to litigation: she claims it doesn't, although it overwhelmingly does. Respondent welcomes the opportunity to furnish the Bar Association with further facts and evidence elucidating Grievant Schweickert and her husband's misuse of the litigation and bar grievance process for their own revenge-based motives.

⁶ <http://www.wsba.org/> /media/Files/Licensing_Lawyer%20Conduct/Discipline/Client%20Files.ashx.

III. Conclusion

Grievant Schweickert claims Respondent has violated the Rules of Professional Conduct by failing to give her an attorney client privileged litigation file that belongs to another party. The rules governing Respondent's obligations in this regard are that he provide his former client a copy of its litigation file upon termination of representation, and that he not disclose such files to third parties without client consent. The Files at issue in this case belong to Respondent's former client, Hunts Point Ventures; Respondent provided that client a complete copy of the Files upon termination; and there is no evidence Hunts Point Ventures has ever consented to allowing Grievant Schweickert to acquire the Files. Therefore, Respondent respectfully submits that he has complied entirely with his obligations under the Rules of Professional Conduct, Grievant Schweickert's Demand Letter was legally improper, and the Grievance should be rejected with prejudice and this file closed.

Respectfully,

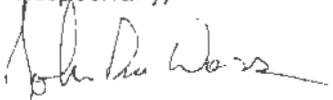

John Du Wors

Exhibit A



WSBA

OFFICE OF DISCIPLINARY COUNSEL

RECEIVED

NOV - 6 2015

NEWMAN | DUWORS

Acknowledgment That We Have Received A Grievance

Date: November 4, 2015 ODC File: 15-01950

To the Grievant:

We received your grievance against a lawyer and opened a file with the file number indicated above. We are requesting a written response from the lawyer. You generally have a right to receive a copy of any response submitted by the lawyer. After we review the lawyer's response, if it appears that the conduct you describe is not within our jurisdiction, does not violate the Supreme Court's Rules of Professional Conduct (RPC), or does not warrant further investigation, we will write you a letter to tell you that. If we begin an investigation of your grievance, we will give you our investigator's name and telephone number. If, as a result of an investigation and formal proceeding, the lawyer is found to have violated the RPC, either the Disciplinary Board or the Supreme Court may sanction the lawyer. Our authority and resources are limited. We are not a substitute for protecting your legal rights. We do not and cannot represent you in legal proceedings. If you believe criminal laws have been broken, you should contact your local police department or prosecuting attorney. There are time deadlines for both civil and criminal proceedings, so you should not wait to take other action.

Grievances filed with our office are not public information when filed, but **all information related to your grievance may become public**. Our office handles a large number of files. We urge you to communicate with us only in writing, including any objection you have to information related to your grievance becoming public, until we complete our initial review of your grievance. You should hear from us again within four weeks.

Request for Lawyer Response

To the Lawyer:

The grievance process is governed by the Rules for Enforcement of Lawyer Conduct (ELC). Although we have reached no conclusions on the merits of this grievance, we are requesting your preliminary written response. If you do not respond to this request within thirty (30) days from the date of this letter, we will take additional action under ELC 5.3(h) to compel your response. You must personally assure that all records, files, and accounts related to the grievance are retained until you receive written authorization from us, or until this matter is concluded and all possible appeal periods have expired.

Absent special circumstances, and unless you provide us with reasons to do otherwise, **we will forward a copy of your entire response to the grievant**. If the grievant is not your client, or you are providing personal information, please clearly identify any information to be withheld and we will forward a copy of your redacted response to the grievant, informing the grievant that he or she is receiving a redacted copy. Decisions to withhold information may be considered by a review committee of the Disciplinary Board. If you believe further action should be deferred because of pending litigation, please explain the basis for your request under ELC 5.3(d).

Sincerely,

Felice P. Congalton
Associate Director

Original: Grievant: Jennifer Schweickert
cc: Lawyer: John David Du Wors (with copy of grievance)

DO NOT SEND US ORIGINALS. We will scan and then destroy the documents you submit.

Exhibit B

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FILED
KING COUNTY, WASHINGTON

JUN 25 2015

SUPERIOR COURT CLERK
BY Andy Groom
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MARK PHILLIPS,

Plaintiff,

v.

CHAD HAROLD RUDKIN AND ELIZABETH
RUDKIN, STEPHEN JAMES SCHWEICKERT, and
JANE DOES 1 through 4,

Defendants.

MARK E. PHILLIPS,

Plaintiff,

v.

HUNT'S POINT VENTURES, INC. AND HUNT'S
POINT VENTURES GROUP, LLC

Defendants.

In the Receivership of:

HUNT'S POINT VENTURES, INC., a Washington
Corporation,

JOYCE P. SCHWEICKERT.

Plaintiff,

v.

HUNT'S POINT VENTURES, INC., a Washington
Corporation

Defendant.

NO. ~~13-2-07233-5 SEA~~

~~PROPOSED~~ ORDER ON RECEIVER'S
MOTION FOR AN ORDER
APPROVING THE SALE OF ASSETS

NO. 13-2-20353-7 SEA (consolidated
with 13-2-07233-5 SEA)

NO. 13-2-40014-6 SEA (consolidated
with 13-2-07233-5 SEA)

NO. 13-2-42759-1 SEA (consolidated
with 13-2-07233-5 SEA)

ORDER RE: RECEIVER'S MOTION FOR AN ORDER
APPROVING THE SALE OF ASSETS - 1
#985888 v1 / 45608-002

KARR TUTTLE CAMPBELL
701 Fifth Avenue, Suite 3300
Seattle, Washington 98104
Main: (206) 223 1313
Fax: (206) 682 7100

1 THIS MATTER came on before the court on the motion of General Receiver Cascade
2 Capital Group, LLC ("Receiver") to approve the proposed sale of estate assets, commonly referred
3 to as the "Intellectual Property", as well as whatever hard prototypes, code, trademarks, copyrights,
4 name and public disclosure documents that may be owned by Hunts Point Ventures, Inc. ("HPV")
5 (collectively, with the Intellectual Property, the "Property") to Jennifer Schweickert for [REDACTED]

6 [REDACTED] . The Court having reviewed the Receiver's Motion and the
7 Supporting Declaration of Mark Calvert, including a copy of the purchase and sale agreement
8 related to the Receiver's proposed sale of the Property, and the Court finding that the Receiver has
9 given proper notice of the motion, that the relief requested is in the best interest of the receivership
10 estate, and there being no objections to the Receiver's motion, or any objections having been
11 overruled, it is hereby

12 ORDERED that the Receiver's motion is granted; it is

13 FURTHER ORDERED that the proposed sale of the Property, including the Intellectual
14 Property as defined below, to Jennifer Schweickert on the terms and conditions set forth in the
15 Purchase and Sale Agreement ("PSA") attached as Exhibit A to the Declaration of Mark Calvert.
16 including the purchase price, is hereby APPROVED

17 • App. No. 11/683,765 (Pub. No. 20080222155, September 11, 2008)
18 • App. No. 11/974,918 (Pub. No. 20080133546, June 5, 2008)
19 • App. No. 11/725,181 (Pub. No. 20080125080, May 29, 2008)
20 • App. No. 09/975,749 (Pub. No. 20020045961, Notice of appeal filed March 16, 2007 –
21 appealing examiner's rejection of claims 28-37)
22 • App. No. 09/975,736 (Pub. No. 20020046315, Notice of appeal filed June 14, 2007 –
23 appealing examiner's rejection of claims 1-14)
24 • App. No. 09/975,748 (Pub. No. 20020045960, Notice of appeal filed June 20, 2007 –
25 appealing examiner's rejection of claims 1-20)
26 • App. No. 11/679,338 (Pub. No. 20080208739, August 28, 2008)
27 • Patent No. 7,574,272 B2
28 • Patent No. US 7,667,123 B2
29 • Patent No. US 7,779,064 B2

1 It is

2 FURTHER ORDERED that the Receiver is authorized to execute the PSA and any other
3 documents reasonably necessary to consummate the sale of the Property contemplated by this
4 order, and to take such other actions as are necessary and appropriate to close the sale; it is
5

6 FURTHER ORDERED that the sale of the Property shall be free and clear of any and all
7 liens and of all rights of redemption;

8 FURTHER ORDERED that the Receiver is authorized to distribute the net proceeds from
9 the sale of the Property first to Sandy Hoover in full payment of her secured claim, and then to
10 the Receiver, in partial satisfaction of the allowed administrative claims of the Receiver and its
11 professionals, as follows:

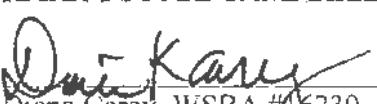
12

- 13 • \$28,279.89 to Sandy Hoover as payment in full of her (1) \$20,000 secured claim
14 pursuant to an order of the court dated January 9, 2015, plus interest of
15 \$3,835.00, and (2) \$4,444.89 award for attorney fees, pursuant to an order of the
court dated February 10, 2015; and
- 16 • \$21,720.11 to the Receiver for partial payment of the approved fees and costs
owed to the Receiver and his professional(s).

17
18 DATED this 24th day of June, 2015

19
20
21 The Honorable Samuel Chung

22 PRESENTED BY:
23 KARR TUTTLE CAMPBELL

24 
25 Diana Carey, WSBA #06239
26 Stephanie R. Lakinski, WSBA #46391
27 701 Fifth Avenue, Suite 3300
28 Seattle, WA 98104
(206) 223-1313
dcarey@karrtuttle.com
slakinski@karrtuttle.com
29 Attorneys for the Receiver

ORDER RE: RECEIVER'S MOTION FOR AN ORDER
APPROVING THE SALE OF ASSETS - 3
#985888 v1 / 45608-002

KARR TUTTLE CAMPBELL
701 Fifth Avenue, Suite 3300
Seattle, Washington 98104
Main: (206) 223 1313
Fax: (206) 582 7100

Exhibit C

LEE · SMART

P.S., Inc. · Pacific Northwest Law Offices

1800 One Convention Place, 701 Pike Street
Seattle, Washington 98101-3929Tel. 206.624.7990
Fax 206.624.5944Toll Free 877.624.7990
Web www.leesmart.com

April 1, 2014

Joel E. Wright
Philip B. Grennan
Jeffrey P. Downer
Sam B. Franklin
Gregory P. Turner
Steven G. Wraith
Michelle A. Corsi
Kenneth E. Hepward
Craig L. McIvor
Marc Rosenberg
Rosemary J. Moore
Peter E. Sutherland
A. Janay Ferguson
Bradley D. Westphal
Dirk J. Muse
William L. Cameron

Natalie M. Cain
Pamela J. DeVet
Melinda R. Drogosh
Spencer N. Gleis
Aaron P. Gilligan
Jackie L. Jenson
Matthew J. McCarthy
David M. Norrman
Melody A. Retallack
Michael P. Ryan
David L. Sanders
Timothy D. Shea
Corm J. Troy
Dan J. Von Seggern

Of Counsel
Donna M. Young
Sherry H. Rogers
Mary DePietro Hauck

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

Ms. Diana K. Carey
Karr Tuttle Campbell
701 5th Ave., Suite 3300
Seattle, WA 98104

Re: *Preliminary Response to Subpoena to Du Wors*
Matter ID: 06498-013193

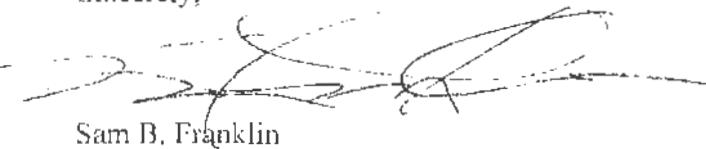
Dear Ms. Carey:

This letter follows our discussions regarding your client's second subpoena of March 18, 2014 and Ms. Stephanie Laksinski's clarification of your earlier subpoena. Please find enclosed a disc containing additional documents related to John DuWors's representation of Hunts Point Ventures, Inc., which respond in part to these subpoenas. Please note that our client's efforts to provide you with requested documents is not a waiver of our objections to the subpoena.

Our client's cost for producing the disc is \$25.00. Please remit this amount to our firm. The time expended in preparing the disc has not been assessed, pending our further discussions with you regarding the costs related to your subpoena. Our time to date is in excess of 25.0 hours.

Please contact me to discuss these issues further at your earliest convenience.

Sincerely,


Sam B. Franklin

SBF/AJF/cxw

cc: Client

Exhibit D

LEE · SMART

P.S. Inc. • Pacific Northwest Law Offices

1800 One Convention Place, 701 Pike Street
Seattle, Washington 98101-3929Tel. 206.624.7990
Fax 206.624.5944Toll Free 877.624.7990
Web www.leesmart.com

February 14, 2014

Joel E. Wright
Philip B. Graham
Jeffrey P. Dowdier
Sam B. Franklin
Gregory P. Turner
Steven G. Wraith
Michelle A. Corsi
Kenneth E. Hopworth
Craig L. McIver
Marc Rosenberg
Rosemary J. Moore
Peter F. Sutherland
A. Janay Ferguson
Brucy D. Westphal
Dirk J. Muse
William L. Cameron

Ms. Diana K. Carey
Karr Tuttle Campbell
701 5th Ave., Suite 3300
Seattle, WA 98104

Re: *Preliminary Response to Subpoena to Du Wors*
Trial Date: 1/12/2015
Matter ID: 06498-013193

Dear Ms. Carey:

This letter follows my telephone calls to you regarding your client's subpoena. Please find enclosed a disc containing documents related to John DuWors's representation of Hunts Point Ventures, Inc., which respond in part to your February 7, 2014 subpoena. The disc contains documents responsive to topics 1, 3, 4, and 5. Please note that our client's efforts to provide you with requested documents is not a waiver of our objections to the subpoena.

Our client's cost for producing the disc is \$25.00. Please remit this amount to our firm. The time expended in preparing the disc has not been assessed, pending our further discussions with you regarding the costs related to your subpoena. Our time to date is in excess of 5.0 hours.

Please be aware that a number of matters asserted in the subpoena have no basis in fact. For example, our client cannot respond to a request for a "Corner Office Account." Additionally, Mr. DuWors did not act "as defense attorney during Stephen Schweickert's DUI arrest and criminal defense." It is apparent that the receiver has been provided with suspect information from a number of sources making allegations from self-interest.

Please contact me to discuss these issues further at your earliest convenience.

Sincerely,


Sam B. Franklin

SBF/AJF/cxw

cc: Client

Exhibit E

Hearing Date: Thursday, May 15, 2014
Without Oral Argument

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

MARK PHILLIPS,

Plaintiff,

The Honorable Mary Yu

No. 13-2-07233-5 SEA

CHAD HAROLD RUDKIN and ELIZABETH RUDKIN, STEPHEN JAMES SCHWEICKERT, and JANE DOES 1 THROUGH 4.

~~PROPOSED~~ ORDER GRANTING
CHAD AND ELIZABETH RUDKIN'S
REQUEST FOR FEES

MARK PHILLIPS.

defendants.

No. 13-2-20353-7 SEA (consolidated with
13-2-07233-5 SEA)

HUNT'S POINT VENTURES, INC. and
HUNT'S POINT VENTURE GROUP, LLC,

Defendants.

In the Receivership of:

No. 13-2-40014-6 SEA (consolidated with
13-2-07233-5 SEA)

HUNTS POINT VENTURES, INC., a
Washington Corporation.

Plaintiff

V.

HUNTS POINT VENTURES, INC., a
Washington Corporation.

No. 13-2-42759-1 SEA (consolidated with
13-2-07233-5 SEA)

Defendant.

[PROPOSED] ORDER GRANTING RUDKINS' REQUEST FOR FEES - 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 467-4400 FAX (206) 447-9700

1 THIS MATTER came on regularly pursuant to Chad and Elizabeth Rudkin's Request For
2 Fees Pursuant To CR 11 And RCW 4.84.185 ("Request For Fees"). The Court reviewed the
3 records and files herein, including:

4 1. Chad And Elizabeth Rudkin's Request For Fees;
5 2. Declaration Of Joel B. Ard In Support Of Rudkins' Request For Fees, and
6 Exhibits attached thereto;
7 3. Plaintiff's Response, ~~Plaintiff's~~ & Decl of Reed Yurchak *with exhibits*
8 4. Rudkins' Reply, ~~Plaintiff's~~
9 5. _____

10 _____
11 _____
12 _____
13 _____
14 _____
15 Having considered the pleadings and admissible submissions in this case, it is HEREBY
16 ORDERED, ADJUDGED and DECREED that:

16 *per Judge Yu's 4-30-14 order,*
17 Plaintiff's claims are neither well grounded in fact nor warranted by existing law, and
18 Plaintiff's counsel, Mr. Yurchak, failed to reasonably investigate the legal and factual bases for
19 the claims and pleadings he certified in this case. Chad and Elizabeth Rudkin, therefore, are
20 entitled to an award of ~~\$143,500.00 as compensation for~~ reasonable attorneys' fees and costs
21 accrued in their defense of Plaintiff's frivolous suit against them. *in an amount TBD*
22 *once the court is provided with billing records*
23 *detailing the tasks performed, the amount of time*
24 *spent & by whom.*

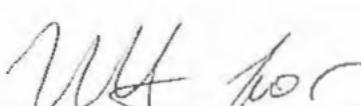
25 /
26 /
[PROPOSED] ORDER GRANTING RUDKINS'
REQUEST FOR FEES - 2

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3100
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

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11 Pursuant to RCW 4.84.185 and CR 11, Plaintiff, Mark Phillips, and Plaintiff's counsel,
12 Reed Yurchak, are ORDERED to pay the Rudkins, within 15 days of this order, \$143,500.

13 *M*
14 DATED this 30 day of May 2014.

15 
The Honorable Mary Yu

16
17 Presented by:
18 FOSTER PEPPER PLLC

19 /s/ Joel B. Ard
20 Joel B. Ard, WSBA #40104
21 Rylan L.S. Weythman, WSBA #45352
22 1111 Third Avenue, Suite 3400
23 Seattle, Washington 98101-3299
24 Telephone: (206) 447-4400
25 Facsimile: (206) 447-9700
26 E-mail: ArdJo@foster.com,
Weyr@foster.com
27 Attorneys for Chad and Elizabeth Rudkin

28
29
30 [PROPOSED] ORDER GRANTING RUDKINS'
31 REQUEST FOR FEES - 3

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

Exhibit F



MDK | Law

Washington's Business Law Firm™

Mark D. Kimball, J.D., LL.M.
Also Admitted in:
New York
United States Supreme Court
United States Tax Court

Mark G. Niehoff, B.A.B.A.
Corporate Paralegal

James P. Ware, J.D.
United States Tax Court

July 13, 2015

John Du Wors
Newman Du Wors
2101 Fourth Avenue
Suite 1500
Seattle, WA 98121

Re: Hunts Point Ventures, Inc.

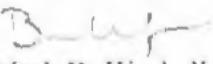
Dear Mr. Du Wors:

On June 24, 2015 the King County Superior Court approved the sale of the intellectual property of Hunts Point Ventures, Inc. ("Hunts Point") to Jennifer Schweickert. A true and correct copy of the court's order is attached hereto.

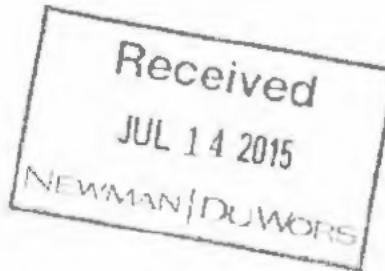
We have been informed by Mark Calvert, receiver for Hunts Point, that Hunts Point is not in possession of any electronic files pertaining to the lawsuits filed by you and your firm related to the intellectual property of Hunts Point. We hereby request that your firm provide a copy of all files, including all discovery prepared and received, for any lawsuit filed or prepared by you or your firm related to the intellectual property of Hunts Point. A hard drive or thumb drive can be provided upon request.

Please contact my office if you have any questions or concerns.

Very truly,
MDK Law


Mark D. Kimball
Brandon P. Wayman
Attorneys for Jennifer Schweickert

Encl.



Brandon P. Wayman, J.D.
Oregon

Joel T. Murray, MSc., J.D.

Nahal Nabavinejad, J.D.

Courtney Bhatt, J.D.
California

Linda S. Fang, J.D.
California

RECEIVED

JUN 24 2015

JUDGE SAMUEL S. CHUNG
DEPARTMENT 15

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MARK PHILLIPS,

Plaintiff,

Y

CHAD HAROLD RUDKIN AND ELIZABETH RUDKIN, STEPHEN JAMES SCHWEICKERT, and JANE DOES 1 through 4,

Defendants.

MARK E. PHILLIPS,

Plaintiff,

v

HUNTS POINT VENTURES, INC. AND HUNTS
POINT VENTURES GROUP, LLC

Defendants.

In the Receivership of:

HUNTS POINT VENTURES, INC., a Washington Corporation,

JOYCE P. SCHWEICKERT

Plaintiff

1

HUNT'S POINT VENTURES, INC., a Washington
Corporation

Defendant

NO. 13-2-07233-5 SEA

[PROPOSED] ORDER ON RECEIVER'S
MOTION FOR AN ORDER
APPROVING THE SALE OF ASSETS

NO. 13-2-20353-7 SEA (consolidated
with 13-2-07233-5 SEA)

NO. 13-2-40014-6 SEA (consolidated
with 13-2-07233-5 SEA)

NO. 13-2-42759-1 SEA (consolidated
with 13-2-07233-5 SEA)

ORDER RE: RECEIVER'S MOTION FOR AN ORDER
APPROVING THE SALE OF ASSETS - 1
#985888 v1 / 45608-002

KARR TUTTLE CAMPBELL
701 Fifth Avenue, Suite 3300
Seattle, Washington 98104
Main: (206) 223 1313
Fax: (206) 682 7100

1 THIS MATTER came on before the court on the motion of General Receiver Cascade
2 Capital Group, LLC ("Receiver") to approve the proposed sale of estate assets, commonly referred
3 to as the "Intellectual Property", as well as whatever hard prototypes, code, trademarks, copyrights,
4 name and public disclosure documents that may be owned by Hunts Point Ventures, Inc. ("HPV")
5 (collectively, with the Intellectual Property, the "Property") to Jennifer Schweickert for [REDACTED]
6

7 [REDACTED] The Court having reviewed the Receiver's Motion and the
8 Supporting Declaration of Mark Calvert, including a copy of the purchase and sale agreement
9 related to the Receiver's proposed sale of the Property, and the Court finding that the Receiver has
10 given proper notice of the motion, that the relief requested is in the best interest of the receivership
11 estate, and there being no objections to the Receiver's motion, or any objections having been
12 overruled, it is hereby
13

14 ORDERED that the Receiver's motion is granted; it is
15

16 FURTHER ORDERED that the proposed sale of the Property, including the Intellectual
17 Property as defined below, to Jennifer Schweickert on the terms and conditions set forth in the
18 Purchase and Sale Agreement ("PSA") attached as Exhibit A to the Declaration of Mark Calvert,
19 including the purchase price, is hereby APPROVED

20

- 21 • App. No. 11/683,765 (Pub. No. 20080222155, September 11, 2008)
- 22 • App. No. 11/974,918 (Pub. No. 20080133546, June 5, 2008)
- 23 • App. No. 11/725,181 (Pub. No. 20080125080, May 29, 2008)
- 24 • App. No. 09/975,749 (Pub. No. 20020045961, Notice of appeal filed March 16, 2007 –
25 appealing examiner's rejection of claims 28-37)
- 26 • App. No. 09/975,736 (Pub. No. 20020046315, Notice of appeal filed June 14, 2007 –
27 appealing examiner's rejection of claims 1-14)
- 28 • App. No. 09/975,748 (Pub. No. 20020045960, Notice of appeal filed June 20, 2007 –
29 appealing examiner's rejection of claims 1-20)
- 30 • App. No. 11/679,338 (Pub. No. 20080208739, August 28, 2008)
- 31 • Patent No. 7,574,272 B2
- 32 • Patent No. US 7,667,123 B2
- 33 • Patent No. US 7,779,064 B2

1 It is

2 FURTHER ORDERED that the Receiver is authorized to execute the PSA and any other
3 documents reasonably necessary to consummate the sale of the Property contemplated by this
4 order, and to take such other actions as are necessary and appropriate to close the sale; it is
5

6 FURTHER ORDERED that the sale of the Property shall be free and clear of any and all
7 liens and of all rights of redemption;

8 FURTHER ORDERED that the Receiver is authorized to distribute the net proceeds from
9 the sale of the Property first to Sandy Hoover in full payment of her secured claim, and then to
10 the Receiver, in partial satisfaction of the allowed administrative claims of the Receiver and its
11 professionals, as follows:

12

- \$28,279.89 to Sandy Hoover as payment in full of her (1) \$20,000 secured claim
13 pursuant to an order of the court dated January 9, 2015, plus interest of
14 \$3,835.00, and (2) \$4,444.89 award for attorney fees, pursuant to an order of the
15 court dated February 10, 2015; and
- \$21,720.11 to the Receiver for partial payment of the approved fees and costs
16 owed to the Receiver and his professional(s).

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18 DATED this 11 day of February, 2015

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EXHIBIT “D”

Jennifer Schweickert
c/o Mark Kimball
MDK Law and Associates P.S.
77 108th Avenue NE, #2000
Bellevue, WA 98004

DELIVERED VIA E MAIL

December 21, 2015

Natalea Skvir
Disciplinary Counsel
nataleas@wsba.org
(206) 239 2123

Felice P. Congalton
Washington State Bar Association
1325 4th Avenue, Suite 600
Seattle, WA 98101 2539

Re: ODC File: 15 01950
My grievance against lawyer John David Du Wors
Reply to Mr. Du Wors Response

Dear Ms. Natalea Skvir and Ms. Felice P. Congalton:

I have reviewed the materials sent to me on December 8th, 2015 including Mr. Du Wors' response. I have also received a recent declaration from Mr. Calvert, which states among other things, that Mr. Du Wors provided copies of files associated with patent litigation¹ following termination of his representation of HPV and that he consented to Mr. Du Wors' disclosure of the files to me. He reiterated that Mr. Du Wors need not "produce those files a second time, because they [Mr. Du Wors] had already produced a client copy to me [Mr. Calvert] earlier this year."² Finally, Mr. Calvert invites me to request the files from him as I had not requested that to date.³ Amazingly, Mr. Calvert signed the declaration apparently drafted by Lee Smart, Mr. Du Wors' personal counsel.

I believe this declaration forecloses my grievance as I was under a much different understanding. Therefore, I respectfully request that the WSBA close my grievance against Mr. Du Wors as it relates to the request of client files. I apologize for any misunderstanding on my part that may have consumed any unnecessary resources. I am copying Mr. Du Wors on this letter and e mail as a courtesy.

¹ Exh b t A, Dec arat on of Mark Ca vert dated December 12, 2015, p. 1, para. 4

² Ib d, p. 2, para. 8

³ Ib d, p. 2, para. 9.

I would, however, like to share with the WSBA my [reasons and] good faith basis in the belief that I had authorization to access the Files from Mr. Du Wors.

On July 8th, 2015, my attorney Mr. Brandon Wayman shared with me communication as a result of my interest in IP related legal documents following the acquisition of the HPV patents. Mr. Wayman exchanged e mails with Ms. Stephanie Lakinski, an attorney representing Mr. Calvert in his capacity as the receiver of HPV. The exchange is provided below⁴:

Ms. Lakinski: *What IP litigation documents are you referring to? All of the court documents should be available to the public. Is there something else?*

Mr. Wayman: *Any discovery related documentation on or any research done by Du Wors' firm to locate any potential Defendants. I can contact Du Wors' firm directly to attempt to obtain the documents, but I wanted to see if the receiver has anything as I assume it will be difficult to get anything from Du Wors.*

Ms. Lakinski: ***I do not believe we have received anything along those lines from Du Wors.***

On July 13, 2015, my attorneys Mr. Mark Kimball and Mr. Wayman wrote to Mr. Du Wors regarding my request for files relating to the intellectual property that I acquired.⁵ Mr. Du Wors, in his response, refers to this "Demand Letter". As far as I am aware, Mr. Du Wors did not respond to this initial letter, not even a courtesy response stating, "I provided everything to the receiver" or a courtesy phone call.

In September, I requested that my attorneys provide a follow up letter to Mr. Du Wors and if possible seek assistance from Mr. Calvert. Mr. Calvert provided us with an Authorization for Release of Legal Files directed specifically at Mr. Du Wors and his firm.⁶ The release was specific stating:

"You are hereby authorized to release any and all documents, including but not limited to pleadings, discovery, correspondence, notes, records and reports, investigative reports, and all other information written or otherwise recorded, for Hunts Point Ventures, Inc. contained in the file of or relating to all legal proceedings involving the following intellectual property:"

The release listed all the intellectual property that I purchased and directed Mr. Du Wors and his firm to release such information to my attorneys or its representatives.

⁴ Exh b t B, E-ma between Stephan e Lak nsk and Brandon Wayman on Ju y 8th, 2015 Re: Schwe ckert/HPV

⁵ Exh b t C, Letter between MDK Law and Mr. Du Wors Re Hunt Po nt Ventures, Inc. F e Request dated Ju y 13, 2015

⁶ Exh b t D, Author zat on for Re ease of Lega F es to Du Wors and Newman and Du Wors LLP, dated September 2015

On September 10, 2015, MDK Law sent the follow up letter⁷ to Mr. Du Wors stating: "As of the date hereof, we have not received a response to our letter to you dated July 13, 2015.

As I am sure you are aware, RPC 1.16 states that a lawyer must take reasonably practicable steps to return client property, including papers and documents, to the client at the termination of the representation. **Attached please find an Authorization for Release of Legal Files executed by Cascade Capital Group, LLC on behalf of Hunts Points Ventures, Inc.** We again demand that your firm provide a copy of all files, including but not limited to pleadings, discovery, correspondence, notes, records and reports, investigative reports, and all other information written or otherwise recorded, for Hunts Point Ventures, Inc. contained in the files of or relating to all legal proceedings involving the intellectual property listed on the attached Release. A hard drive can be provided upon request.

Please contact my office if you have any questions or concerns." (emphasis added)

Mr. Brandon Wayman of MDK Law who had the September 10th, 2015 letter delivered via ABC Legal Service, Inc. will provide a declaration to this effect upon request.

Mr. Du Wors did not respond. My husband, Mr. Phillips contacted the receivership's office to investigate whether or not they could request the files, but the receivership was currently suing Mr. Du Wors for professional negligence, breach of fiduciary duty, unjust enrichment, conversion, and breach of contract and the case was not in discovery.⁸

On November 1st, 2015, I felt that I had had enough and needed to file a formal grievance with the Washington State Bar Association. In that grievance, I also raised a concern regarding the disclosure of my personal address to Mr. Du Wors based in large part of his domestic violence history against his wife and teenage daughter.⁹ Mr. Du Wors' recently filed Kitsap lawsuit¹⁰ against me alleges abuse of process and malicious prosecution, claims which are not only without merit, but constitute borderline retaliatory harassment, especially in light of the fact that one week after filing his complaint, he has scheduled my deposition for this Wednesday, December 23, 2015.¹¹

On December 3rd, 2015, I delivered a demand to Mr. Du Wors to file his Kitsap lawsuit against me, which he did on December 15th, 2015. On December 7th, 2015, I personally served

⁷ Exh b t E, Letter from MDK Law to Mr. Du Wors Re: Hunts Po nt Ventures, Inc. F e Request dated September 10th, 2015 and the attached Author zat on For Re ease of Lega F es

⁸ Exh b t F, HPV v. Du Wors, Wh taker, Newman & Newman, Newman & Du Wors Case No. 15-2-06869-5

⁹ Exh b t G, State of Wash ngton v. Du Wors, Fe ony Comp a nt Un awfu Impr sonment dated October 12, 2012; Ba nbr dge v Du Wors, Cr m na Comp a nt 4th Degree Assau t dated August 4th, 2014; Du Wors Un awfu Impr sonment Judgment and Sentence dated August 19th, 2014

¹⁰ Exh b t H, Du Wors v Schwe ckert K tsap County Case No. 15-2-02482-7

¹¹ Mr. Du Wors, rece ved my Gr evance on November 6th then served me less than a week ater, December 12th, w th h s un- f ed K tsap awsu t.

Mr. Du Wors process of service of an un filed complaint for declaratory relief regarding the files in which I was seeking. It was only then, after this tortured history of trying to get the files that I am entitled to, that on December 12th, 2015, Mr. Du Wors provided me with the signed Mr. Calvert declaration which I discussed in detail above.

Since filing the Kitsap County lawsuit, Mr. Du Wors has been aggressively litigating the case.¹² On December 9th, 2015, he served interrogatories, and requests for production, seeking to collect e mails between myself and my husband and my mother. Mr. Du Wors is also seeking for me to produce “any and all communications by or between you and/or Mark Phillips” – or communications that I don’t have. Mr. Du Wors informally threatened to depose me several times (in disregard of what the civil rules allow).¹³ He then noted my deposition for December 23, 2015. He has threatened to acquire 3rd party claims to assert against me.

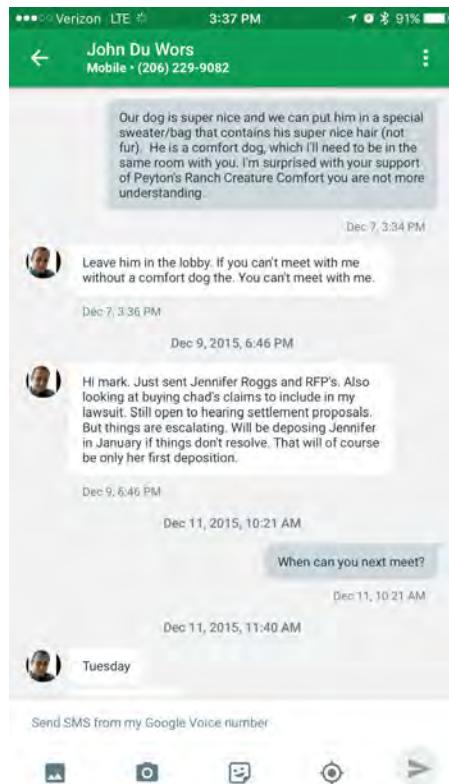


Fig. 1, Text thread between Mr. Du Wors and Mr. Phillips.

And finally, he claims that my bar complaint is in retaliation for my claims against him being dismissed in federal court.

It is true that my lawsuit against Mr. Du Wors was dismissed. I had sued Mr. Du Wors for his role in inducing my investment of \$200,000, the vast majority of which went directly into

¹² Exh b t I, P a nt ff Du Wors’ t gat on aga nst me nc ud ng 1) Interrogator es, 2) RFP, 3) Mot on for Entry of Defau t, and a V deotaped Depos t on

¹³ See F g. 1, Text thread from Mr. Du Wors to Mr. Ph ps on December 9th, 2015 6:46 PM

Mr. Du Wors pocket, in a sham.¹⁴ The weekend prior to the decision by the federal court to dismiss Mr. Du Wors, he had offered me \$50,000 to settle the case. Mr. Du Wors is a sophisticated liar and he got away with what he did to me, but in the end, nonetheless, I was able to secure a sizable judgment against HPV, the corporation to whom I made the loan and which Mr. Du Wors controlled.¹⁵

Mr. Du Wors also claims that I acted at the behest of my husband, Mr. Phillips. Mr. Phillips also sued Mr. Du Wors in King County Case No. 14 2 03111 4, and the trustee in Mr. Phillips' bankruptcy settled the matter for \$75,000. In the end, this is all smoke and mirrors. I simply sought the intellectual property files plain and simple. All of Mr. Du Wors' misdirection has nothing to do with my good faith belief that I could request the legal files related to the intellectual property I purchased from HPV and the work product of over \$465,000 of legal fees billed by Mr. Du Wors to HPV, see Exhibit F p. 9 para. 53.

Finally, Mr. Du Wors in his December 7th response stated:

1. “3) Although Grievant claims Hunts Point Ventures somehow consented to the disclosure of the Files to Grievant Schweickert, **Grievant counsel’s letter demanding those Files (the “Demand Letter”) did not contain any such explanation of consent, nor any written document evidencing it;**” p. 2, para. 2 emphasis added.
2. “A. Respondent has never represented Grievant Schweickert, and **she has no right to the litigation Files that are subject of her Grievance.**” p. 2, para A emphasis added.
3. “**And although Grievant Schweickert claims in her Grievance that she obtained a waiver and consent from Hunts Point Ventures that somehow entitles her to Hunts Point Venture’s attorney client privilege client Files, Respondent and his law firm have never received any evidence of it.**” p. 4, para. 4 emphasis added.
4. “Unless Hunts Point Ventures has executed some document waiving privilege and entitling Grievant Schweickert to its privileged and confidential Files...In relation to the Patent and the Files, Hunts Point Ventures was Respondent’s client, and **Respondent has never received evidence of Hunts Point Ventures’ consent to disclosure of Files.**” p. 4, para. 6 emphasis added.
5. “**Respondent’s former client – Hunts Point Ventures – has not requested the production of the Files, let alone their transfer to Grievant Schweickert.**” p. 5, para. 3 emphasis added.
6. “**...and there is no evidence Hunts Point Ventures has ever consented to allowing Grievant Schweickert to acquire the Files.**” p. 6, para. 1 emphasis added.

Yet, as I explained above, on September 10th, 2015, Mr. Kimball and Mr. Wayman sent Mr. Du Wors and his firm the letter attached as Exhibit E. It appears Mr. Du Wors is intentionally making false representations to the Washington State Bar Association.

¹⁴ Exh b t J, Schwe ckert v HPV F rst Amended Comp a nt dated Ju y 24th, 2013

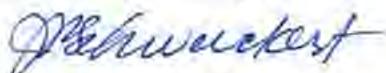
¹⁵ Exh b t K, Schwe ckert v HPV Judgment dated March 12th, 2015

In summary, I am withdrawing my grievance against attorney Mr. Du Wors due to the declaration from the receiver and my request to him for the files. It appears that despite the contradicting statements by the receiver under oath and his counsel and his signed Authorization For Release of Legal Files and Mr. Du Wors' response to the Washington State Bar Association, there appears to be great resistance to furnishing \$465,000 worth of legal work. Incredibly, this sequence of events is the basis for Mr. Du Wors' claim that I am retaliating against him, and, in his mind, justifies the filing of a legal complaint against me for abusive use of process.

However, I had a good faith basis to request the files, and Mr. Du Wors, in my understanding, did not have a good faith basis to ignore my request. Notwithstanding the grievance against Mr. Du Wors regarding the files, I did sue him in federal court and every financial contributor in HPV sued Mr. Du Wors, including Mr. Phillips, whose claims were settled for \$75,000 in his bankruptcy estate.

The fact that it must come to this is absurd: the filing of a bar complaint, the deliberate misstatements made by Mr. Du Wors in this regard, the filing of a frivolous legal action against me. All of this could all have been easily avoided by simply having open and honest communication with me and/or simply providing the files as requested, as is his duty as former legal counsel of HPV.

Sincerely,



Jennifer P. Schweickert

Enclosure

EXHIBIT “B”

From: Stephanie R. Lakinski [mailto:slakinski@karrtuttle.com]
Sent: Wednesday, July 8, 2015 4:38 PM
To: bwayman@mdklaw.com
Cc: Diana K. Carey
Subject: RE: Schweickert/HPV

Brandon,

I do not believe we have received anything along those lines from Du Wors.

Best of luck,
Stephanie

STEPHANIE R. LAKINSKI
ATTORNEY | SLAKINSKI@KARRTUTTLE.COM | OFFICE: 206.224.8079
KARR TUTTLE CAMPBELL | 701 Fifth Avenue, Suite 3300 | Seattle, WA 98104 | www.karrtuttle.com

From: Brandon Wayman [<mailto:bwayman@mdklaw.com>]
Sent: Wednesday, July 08, 2015 1:20 PM
To: Stephanie R. Lakinski
Subject: RE: Schweickert/HPV

Any discovery related documentation or any research done by Du Wors' firm to locate any potential Defendants. I can contact Du Wors' firm directly to attempt to obtain the documents, but I wanted to see if the receiver has anything as I assume it will be difficult to get anything from Du Wors.





Brandon P. Wayman, J.D.
MDK Law
777 108th Avenue NE, Suite 2000
Bellevue, WA 98004
Office: 425.455.9610
Fax: 425.455.1170
bwayman@mdklaw.com
www.mdklaw.com

From: Stephanie R. Lakinski [<mailto:slakinski@karrtuttle.com>]
Sent: Wednesday, July 8, 2015 1:15 PM
To: Diana K. Carey; bwayman@mdklaw.com
Cc: Mark Calvert (mark@cascadecapitalgroup.com)
Subject: RE: Schweickert/HPV

Brandon,

What IP litigation documents are you referring to? All of the court documents should be available to the public. Is there something else?

Stephanie

STEPHANIE R. LAKINSKI
ATTORNEY | SLAKINSKI@KARRTUTTLE.COM | OFFICE: 206.224.8079
KARR TUTTLE CAMPBELL | 701 Fifth Avenue, Suite 3300 | Seattle, WA 98104 | www.karrtuttle.com

EXHIBIT “C”



Mark D. Kimball, J.D., LLM
Also Admitted In
New York
United States Supreme Court
United States Tax Court

Mark G. Niehoff, BABA
Corporate Paralegal

James P. Ware, J.D.
United States Tax Court

Brandon P. Wayman, J.D.
Oregon

Joel F. Murray, MSc, J.D.

Natali Nabavinejad, J.D.

Courtney Bhatt, J.D.
California

Linda S. Fang, J.D.
California

July 13, 2015

John Du Wors
Newman Du Wors
2101 Fourth Avenue
Suite 1500
Seattle, WA 98121

Re: Hunts Point Ventures, Inc.

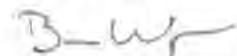
Dear Mr. Du Wors:

On June 24, 2015 the King County Superior Court approved the sale of the intellectual property of Hunts Point Ventures, Inc. ("Hunts Point") to Jennifer Schweickert. A true and correct copy of the court's order is attached hereto.

We have been informed by Mark Calvert, receiver for Hunts Point, that Hunts Point is not in possession of any electronic files pertaining to the lawsuits filed by you and your firm related to the intellectual property of Hunts Point. We hereby request that your firm provide a copy of all files, including all discovery prepared and received, for any lawsuit filed or prepared by you or your firm related to the intellectual property of Hunts Point. A hard drive or thumb drive can be provided upon request.

Please contact my office if you have any questions or concerns.

Very truly,
MDK Law


Mark D. Kimball
Brandon P. Wayman
Attorneys for Jennifer Schweickert

Encl.

EXHIBIT “D”

AUTHORIZATION FOR RELEASE OF LEGAL FILES

To John DuWors and Newman DuWors LLP:

You are hereby authorized to release any and all documents, including but not limited to pleadings, discovery, correspondence, notes, records and reports, investigative reports, and all other information written or otherwise recorded, for Hunts Point Ventures, Inc. contained in the file of or relating to all legal proceedings involving the following intellectual property:

- 1) App. No. 11/683,765 (Pub. No. 20080222155, September 11, 2008)
- 2) App. No. 11/974,918 (Pub. No. 20080133546, June 5, 2008)
- 3) App. No. 11/725,181 (Pub. No. 20080125080, May 29, 2008)
- 4) App. No. 09/975,749 (Pub. No. 20020045961, Notice of appeal filed March 16, 2007 – appealing examiner's rejection of claims 28-37)
- 5) App. No. 09/975,736 (Pub. No. 20020046315, Notice of appeal filed June 14, 2007 – appealing examiner's rejection of claims 1-14)
- 6) App. No. 09/975,748 (Pub. No. 20020045960, Notice of appeal filed June 20, 2007 – appealing examiner's rejection of claims 1-20)
- 7) App. No. 11/679,338 (Pub. No. 20080208739, August 28, 2008)
- 8) Patent No. US 7,574,272 B2
- 9) Patent No. US 7,667,123 B2
- 10) Patent No. US 7,779,064 B2

to MDK Law, 777 108th Ave NE, Suite 2000, Bellevue, WA 98004, or to any representative, attorney or investigator from said firm. I specifically authorize the release to said individuals of information pertaining to confidential attorney-client communications, if such are a part of your records.

Facsimile of this Authorization, and retransmission of any signed facsimile Authorization, will be the same as delivery of an original.

DATED this ____ day of September, 2015.

Hunts Point Venture, Inc.

By:



Cascade Capital Group, LLC, a Washington limited liability company as Receiver of Hunts Point Ventures, Inc.

By: Mark Calvert – Managing Member

EXHIBIT "E"



Mark D. Kimball, J.D., LL.M.
Also Admitted in
New York
United States Supreme Court
United States Tax Court

Mark G. Niehoff, B.A.B.A.
Corporate Paralegal

James P. Ware, J.D.
United States Tax Court

Brandon P. Wayman, J.D.
Oregon

Joel F. Murray, MSc., J.D.

Nahal Nabavinejad, J.D.

Courtney Bratt, J.D.
California

Linda S. Fang, J.D.
California

September 10, 2015

John Du Wors
Newman Du Wors
2101 Fourth Avenue
Suite 1500
Seattle, WA 98121

Re: Hunts Point Ventures, Inc.

Dear Mr. Du Wors:

As of the date hereof, we have not received a response to our letter to you dated July 13, 2015.

As I am sure you are aware, RPC 1.16 states that a lawyer must take reasonably practicable steps to return client property, including papers and documents, to the client at the termination of the representation. Attached please find an Authorization for Release of Legal Files executed by Cascade Capital Group, LLC on behalf of Hunts Points Ventures, Inc. We again demand that your firm provide a copy of all files, including but not limited to pleadings, discovery, correspondence, notes, records and reports, investigative reports, and all other information written or otherwise recorded, for Hunts Point Ventures, Inc. contained in the files of or relating to all legal proceedings involving the intellectual property listed on the attached Release. A hard drive can be provided upon request.

Please contact my office if you have any questions or concerns.

Very truly,
MDK Law

Mark D. Kimball
Brandon P. Wayman
Attorneys for Jennifer Schweickert

AUTHORIZATION FOR RELEASE OF LEGAL FILES

To John DuWors and Newman DuWors LLP:

You are hereby authorized to release any and all documents, including but not limited to pleadings, discovery, correspondence, notes, records and reports, investigative reports, and all other information written or otherwise recorded, for Hunts Point Ventures, Inc. contained in the file of or relating to all legal proceedings involving the following intellectual property:

- 1) App. No. 11/683,765 (Pub. No. 20080222155, September 11, 2008)
- 2) App. No. 11/974,918 (Pub. No. 20080133546, June 5, 2008)
- 3) App. No. 11/725,181 (Pub. No. 20080125080, May 29, 2008)
- 4) App. No. 09/975,749 (Pub. No. 20020045961, Notice of appeal filed March 16, 2007 – appealing examiner's rejection of claims 28-37)
- 5) App. No. 09/975,736 (Pub. No. 20020046315, Notice of appeal filed June 14, 2007 – appealing examiner's rejection of claims 1-14)
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- 7) App. No. 11/679,338 (Pub. No. 20080208739, August 28, 2008)
- 8) Patent No. US 7,574,272 B2
- 9) Patent No. US 7,667,123 B2
- 10) Patent No. US 7,779,064 B2

to MDK Law, 777 108th Ave NE, Suite 2000, Bellevue, WA 98004, or to any representative, attorney or investigator from said firm. I specifically authorize the release to said individuals of information pertaining to confidential attorney-client communications, if such are a part of your records.

Facsimile of this Authorization, and retransmission of any signed facsimile Authorization, will be the same as delivery of an original.

DATED this ____ day of September, 2015.

Hunts Point Venture, Inc.

By:



Cascade Capital Group, LLC, a Washington limited liability company as Receiver of Hunts Point Ventures, Inc.

By: Mark Calvert – Managing Member

EXHIBIT "E"

CR2A AGREEMENT

This CR2A Agreement (“Agreement”) is entered into by and between John David Du Wors, John Whitaker, Newman & Newman, Attorneys at Law, LLP (collectively the “Defendants”) and Cascade Capital Group, LLC in its capacity as the duly appointed general receiver (the “Receiver”) of the receivership estate of Hunts Point Ventures, Inc. (the “Estate”) pending in King County Superior Court, Consolidated Case No. 13-2-07233-5 SEA (the “Receivership Action”), in settlement of all claims, known or unknown, that were alleged or which could have been alleged by the Receiver or the Defendants in the case known as Hunts Point Ventures, Inc. v. John David Du Wors, et al., King County Superior Court Case No. 15-2-06869-5 SEA (the “State Court Action”), which matter was removed and remains pending in the U.S. District Court for the Western District of Washington, Case No. 15-CV-979-MJP (the “Federal Court Action”) (collectively the State Court Action and the Federal Court Action are referred to as the “Litigation”). A separate settlement and release agreement will be drafted.

1. The terms set out in this Agreement are a global settlement between the Defendants and the Receiver of the Litigation (the “Global Settlement”). The Receiver, the Estate, and the Defendants mutually release all claims, known or unknown, that were or could have been raised in the Litigation and agree to stipulate to the entry of a dismissal for both the Federal Court Action and the State Court Action with prejudice and without costs to either party, pending approval of the Global Settlement by the court in the Receivership Action.

2. In consideration for the mutual release of all claims contemplated in this Agreement, the Defendants agree to cause to be paid to the Estate, Two Hundred and Five Thousand Dollars (\$205,000) (the “Settlement Sum”). Payment of the Settlement Sum shall be made by the Defendants to the Estate within ten (10) days following approval of the Global Settlement by the court in the Receivership Action or 30 days from execution of the release and receipt by defendants’ counsel of release, whichever is longer. Defendants agree the Receiver may bring the motion to approve the Global Settlement on shortened time. Stipulations to the entry of a dismissal shall be filed in both the Federal Court Action and the State Court Action by the Receiver and the Defendants within five (5) business days of payment of the Settlement Sum.

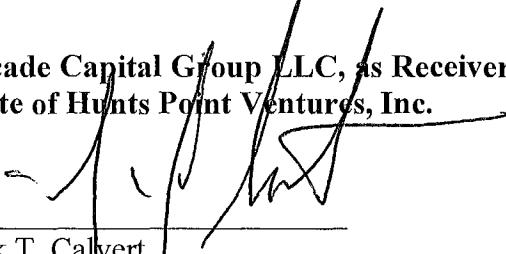
3. The Receiver agrees to sign a declaration in the form attached as Exhibit A confirming the scope of the sale of the Estate’s intellectual property to Jennifer Schweickert.

4. The mediator Armand J. Kornfeld retains jurisdiction to decide any disputes that arise as to the interpretation of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

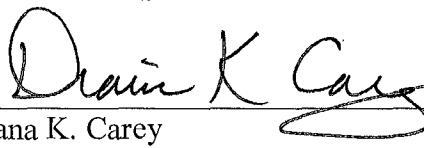
**Cascade Capital Group LLC, as Receiver for the
Estate of Hunts Point Ventures, Inc.**

Dated: 12/10/2015

By: 
Mark T. Calvert
Its: Managing Director

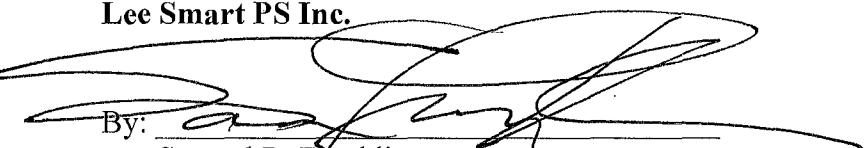
Karr Tuttle Campbell

Dated: 12/10/2015

By: 
Diana K. Carey
Attorneys for the Receiver

Lee Smart PS Inc.

Dated: 12/10/15

By: 
Samuel B. Franklin
Attorneys for John David Du Wors and Newman &
Newman Attorneys at Law, LLP

Newman & Newman Attorneys at Law, LLP

Dated: 12/10/15


Derek A. Newman on behalf of Newman &
Newman Attorneys at Law, LLP and John David
Du Wors (on telephonic approval)

Dated: 12/10/2015

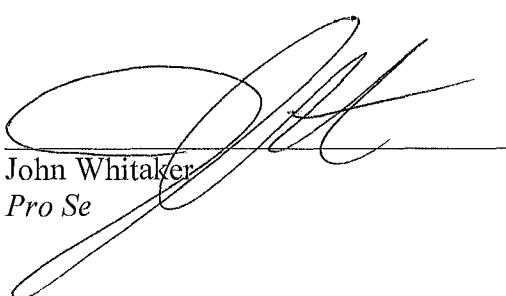

John Whitaker
Pro Se

Exhibit A

1
2
3
4
5
6

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

7 JENNIFER SCHWEICKERT, an individual,
8 Plaintiff,
9
10 vs.
11 JOHN DAVID DU WORS, an individual; and
12 NEWMAN DU WORS, LLP,
13 Defendants.

No.

DECLARATION OF MARK CALVERT

13 MARK CALVERT states and declares as follows:
14
15 1. I am over the age of 18, competent to testify to the matters set forth herein, and
testify based on my personal knowledge.
16
17 2. I am, through my company, the receiver for Hunts Point Ventures, Inc. (HPV).
18
19 3. Previously, John Du Wors, and the law firm of Newman Du Wors, served as
patent litigation counsel to HPV.
20
21 4. Following the termination of representation of HPV by John Du Wors and
Newman Du Wors, Newman Du Wors through its counsel furnished me with HPV's client
22 copy of files associated with that patent litigation and other matters upon which Newman Du
Wors represented HPV (the "Files").
23
24 5. Recently, on behalf of HPV, I sold a large portion of HPV's intellectual
property, including its issued patents, to Jennifer Schweickert.
25

DECLARATION OF MARK CALVERT - 1
5839525.doc

LEE SMART

P.S., Inc. • Pacific Northwest Law Offices

1800 One Convention Place • 701 Pike Street • Seattle • WA • 98101-3929
Tel. 206.624.7990 • Toll Free 877.624.7990 • Fax 206.624.5944

6. I did not, however, sell or assign Ms. Schweickert the Files, or any aspect of HPV's standing as a former client of Newman Du Wors.

7. I understand Ms. Schweickert may contend that she now has rights to the Files by virtue of her purchase of HPV's intellectual property. The purchase and sale agreement (a copy of which is attached as Exhibit A) and the King County Superior Court Order confirming the sale of assets to Ms. Schweickert (the "Order") provide that she only purchased intellectual property assets of HPV and related rights, not the Files.

8. While I have consented to Newman Du Wors' disclosure of the Files to Ms. Schweickert, I have not demanded that Newman Du Wors produce those files a second time, because they already produced a client copy to me earlier this year.

9. If Ms. Schweickert desires a copy of the Files, I am happy to provide what I was given to her as a courtesy, but she has not requested that to date.

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 12 day of December, 2015 at BELLEVUE, Washington.

By: Mark Calvert

DECLARATION OF MARK CALVERT - 2
5839525.doc

LEE-SMART

P.S., Inc. • Pacific Northwest Law Offices

1800 One Convention Place • 701 Pike Street • Seattle • WA • 98101-3929
Tel. 206.624.7990 • Toll Free 877.624.7990 • Fax 206.624.5944

PURCHASE AND SALE AGREEMENT OF INTELLECTUAL PROPERTY

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of 5/11/15, 2015 (the "Effective Date") by and between Cascade Capital Group, LLC, in its capacity as the court-appointed general receiver for Hunts Point Ventures, Inc. (the "Receiver"), and Jennifer Schweickert, an individual resident of the State of Washington ("Buyer").

RECITALS:

A. On November 20, 2013, Chad and Elizabeth Rudkin on behalf of Hunts Point Ventures, Inc. executed an assignment for the benefit of creditors (the "Assignment") pursuant to RCW 7.08 to Cascade Capital Group, LLC, and consented to appointment of a general receiver.

B. The Assignment contained a Schedule B -- List of Potential Property, which described ten (10) patents and patent applications, and which was described in Section I.G.iv of Schedule B of the Assignment, and which is replicated in Exhibit 1 attached hereto (the "Intellectual Property").

C. The Receiver was appointed as general receiver for all assets of Hunts Point Ventures, Inc. (the "Assets") by a court order (the "Appointment Order") dated November 25, 2013, in Cause No. 13-2-40014-6 SEA, which was later administratively consolidated under Cause No. 13-2-07233-5 SEA, (the "Receivership") of the Superior Court of Washington for King County (the "Receivership Court").

D. The Appointment Order authorizes the Receiver to liquidate the Assets, for the benefit of whomever the Receivership Court may determine to be entitled to the Assets or their proceeds.



E. Olympic Patent Works informed the Receiver of various defects in the Intellectual Property, including, without limitation: 1) possible assignment of the patents to third parties; 2) one issued patent re-examination was terminated by the United States Patent and Trademark Office ("USPTO") due to a failure to include a notice of appeal; 3) five patent applications were abandoned; and 4) one patent application could not be located on the USPTO Patent Application Information Retrieval system as ever filed or registered.

F. Buyer desires to purchase the Intellectual Property, and the Receiver has informed the Buyer that the Intellectual Property will be sold "as is" and with no guarantees whatsoever as to its status before the USPTO or as to whether the Receiver ultimately has legal title to some or all of the Intellectual Property. The Receiver has provided the Buyer, who is represented by

#982831 v2 / 45608-002
#985064 v2 / 45608-002

Exhibit A

counsel, with the opportunity to seek due diligence with regard to the status of the Intellectual Property. The Receiver is not aware whether Buyer has exercised that right to perform due diligence on the Intellectual Property.

H. In addition to the Intellectual Property, Buyer has further indicated a desire to purchase any hard prototypes, code, trademarks, copyrights, name and public disclosure documents (collectively with the Intellectual Property, the "Property") that may or may not be owned by Hunts Point Ventures, Inc.

I. Other than as proposed in this Agreement, the Receiver has not sold or otherwise assigned any interest in the Property.

J. On or about March 12, 2015, the U.S. District Court for the Western District of Washington, Cause No. 13-CV-675, entered a judgment for Buyer against Hunts Point Ventures, Inc. in the principal amount of \$200,000, plus simple interest at the annualized rate of 8% calculated to a total of \$60,000 as of March 12, 2015 (the "Judgment").

K. Buyer now desires to purchase the Property, and Receiver desires to sell that Property, on the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, Buyer and Receiver agree as follows:

I. PURCHASE AND SALE

1.1. Agreement to Buy and Sell. Subject to all of the terms and conditions of this Agreement, Receiver hereby agrees to sell and convey to Buyer and Buyer hereby agrees to acquire and purchase from Receiver all of Receiver's right, title and interest in the Property, except for any pending law suits filed by Hunts Point Ventures, Inc. against third parties, but including any and all legal or other claims, or rights therein, which may have accrued related to or arising out of the subject Property during the period of time in which title or ownership of the Property was owned by Hunts Point Ventures, Inc. or during the pendency of the receivership described above.

1.2. Purchase Price. The purchase price to be paid by Buyer to Receiver for the

Judgment and the Loan.

2. ADDITIONAL AGREEMENTS OF THE PARTIES

2.1. Receiver's Representations and Warranties. Receiver hereby represents, warrants and covenants to and agrees with Buyer that Receiver has the power and authority to consummate the transactions contemplated by this Agreement, and that this Agreement and all documents to be executed by Receiver in connection herewith are, or when delivered shall be, duly authorized and valid, binding and enforceable obligations of Receiver, provided Receiver has received the approval of this Agreement and transaction contemplated herein of the King County Superior Court after notice to all parties in the Receivership.

NO OTHER REPRESENTATIONS OR WARRANTIES OF THE RECEIVER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO REPRESENTATIONS OR WARRANTIES ARE MADE BY THE RECEIVER WITH RESPECT TO THE PROPERTY OR THE TRANSACTION. BUYER ACKNOWLEDGES THAT THE RECEIVER IS NOT GIVING, MAKING, OR PERFORMING ANY ACT THAT CONSTITUTES, EXPRESSLY OR IMPLIEDLY, A WARRANTY OF THE TITLE PERTAINING TO THE PROPERTY OR WITH REGARD TO ANY STATUS OF THE PROPERTY BEFORE THE USPTO. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE RECEIVER DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE TITLE AND OWNERSHIP, MAINTENANCE, CONDITION, OR MARKETABILITY OF THE PROPERTY. THE PROPERTY IS TO BE TRANSFERRED TO THE BUYER IN ITS PRESENT CONDITION, "AS IS" WITH ALL FAULTS. BUYER AFFIRMS THAT BUYER HAS INDEPENDENTLY, AND IN BUYER'S SOLE JUDGMENT, ELECTED TO ENTER INTO THIS AGREEMENT, AND HAS NOT RELIED UPON ANY STATEMENT OR REPRESENTATION OF THE RECEIVER IN ENTERING THIS AGREEMENT.

2.2. Buyer's Representations and Warranties. Buyer hereby represents, warrants and covenants to and agrees with Receiver as follows:

2.2.1. Buyer's Investigation and Release. (a) Buyer acknowledges that except as explicitly set forth herein, there are no representations or warranties of any kind whatsoever, express or implied, made by Receiver in connection with this Agreement and the purchase of the Property by Buyer; (b) Buyer has had (or has chosen not to have) fully investigated the Property and all matters pertaining thereto; (c) Buyer is not relying (and shall not rely) on any statement or representation of Receiver, its agents or its representatives nor on any information supplied by Receiver, its agents or its representatives; (d) Buyer, in entering into this Agreement and in completing its purchase of the Property, is relying, and shall rely, entirely on her own investigation of the Property; (e) Buyer's decision to purchase the Property on the terms and conditions hereof has been, and at all times shall be, made solely and exclusively in reliance on Buyer's own review, inspection and investigation of the Property and any documents or information relating to the Property; and (f) **BUYER SHALL PURCHASE THE PROPERTY IN ITS "AS IS" CONDITION AS OF THE EFFECTIVE DATE.**

2.2.2. Authority. Buyer has the power and authority to own the Property and to consummate the transactions contemplated by this Agreement. This Agreement and all documents to be executed by Buyer in connection herewith are, or when delivered shall be, duly authorized and valid, binding and enforceable obligations of Buyer.

2.2.3. Consents. Buyer is not required to obtain any consents or approvals to consummate the transactions contemplated in this Agreement.

2.3. Conditions Precedent to Consummation of the Sale. The Receivership Court shall have entered an order in the Receivership authorizing the sale of the Property to Buyer pursuant to this Agreement free and clear of all liens and other encumbrances and all rights of redemption, as contemplated by RCW 7.60.260(2) (the "Sale Order"), and the effect of the Sale Order shall not have been delayed, superseded, or subject to stay pending appeal. The Receiver shall promptly move for approval of this Agreement from the Receivership Court after mutual execution of this Agreement.

2.4. Buyer's Release. UPON THE RECEIVERSHIP COURT'S APPROVAL OF THE SALE ORDER, AND EFFECTIVE WITHOUT THE NECESSITY OF BUYER EXECUTING ANY FURTHER DOCUMENTS IN CONNECTION THEREWITH, BUYER SHALL FOREVER RELEASE THE RECEIVER AND HUNTS POINT VENTURES, INC., AND ITS EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS, SERVANTS, ATTORNEYS, AFFILIATES, SUBSIDIARIES, SUCCESSORS AND ASSIGNS AND ALL PERSONS, FIRMS, CORPORATIONS AND ORGANIZATIONS IN ITS BEHALF (COLLECTIVELY, "RELEASED PARTIES") FROM ANY AND ALL CLAIMS THAT SHE MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST ANY OF THE RELEASED PARTIES FOR ANY COSTS, LOSSES, LIABILITIES, DAMAGES, EXPENSES (INCLUDING WITHOUT LIMITATION ATTORNEYS FEES), JUDGMENTS (INCLUDING WITHOUT LIMITATION THE "JUDGMENT" AS REFERENCED IN RECITAL ¶ J ABOVE AND THE LOAN REFERENCED IN RECITAL ¶ E ABOVE), DEMANDS, ACTIONS OR CAUSES ARISING FROM OR RELATED TO OR AFFECTING HUNTS POINT VENTURES, INC., OR THE RECEIVER, INCLUDING BUT NOT LIMITED TO, THIS AGREEMENT OR THE PROPERTY. THIS RELEASE INCLUDES CLAIMS OF WHICH BUYER IS PRESENTLY UNAWARE OR WHICH BUYER DOES NOT PRESENTLY SUSPECT TO EXIST WHICH, IF KNOWN BY BUYER, WOULD MATERIALLY AFFECT BUYER'S RELEASE TO RECEIVER.

3. GENERAL PROVISIONS

3.1. Counterparts. This Agreement may be executed in faxed or emailed counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

3.2. Entire Agreement. This Agreement contains the entire integrated agreement between the parties respecting the subject matter of this Agreement and supersedes all prior and contemporaneous understandings and agreements, whether oral or in writing, between the parties respecting the subject matter of this Agreement.

3.3. Legal Advice; Neutral Interpretation; Headings. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attribution to such party as the source of the language in question. Headings used in this Agreement are for convenience of reference only and shall not be used in construing this Agreement.

3.4. Choice of Law. This Agreement shall be governed by the laws of the State of Washington.

3.5. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

3.6. Exhibits. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement.

3.7. Relationship of Parties. The parties agree that their relationship is that of Receiver and Buyer, and that nothing contained herein shall constitute either party the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form of business organization between the parties hereto, nor is either party granted any right or authority to assume or create any obligation or responsibility on behalf of the other party, nor shall either party be in any way liable for any debt of the other.

3.8. Further Acts. Each party agrees to perform any further acts and to execute, acknowledge and deliver any documents, which may be reasonably necessary to carry out the provisions of this Agreement. In particular, the Receiver hereby agrees that it will, from time to time, execute and deliver such further instruments of assignment and transfer as may be reasonably requested by Buyer to implement and effectuate this Agreement and the assignment and transfer of the Property, including, but not limited to recording any and all assignment and transfer documents concerning the Intellectual Property with the USPTO.

3.9. Attorneys' Fees. In the event of any litigation involving the parties to this Agreement to enforce any provision of this Agreement, to enforce any remedy available upon default under this Agreement, or seeking a declaration of the rights of either party under this Agreement, the prevailing party shall be entitled to recover from the other such attorneys' fees

and costs as may be reasonably incurred, including the costs of reasonable investigation, preparation and professional or expert consultation incurred by reason of such litigation. All other attorneys' fees and costs relating to this Agreement and the transactions contemplated hereby shall be borne by the party incurring the same.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

RECEIVER: Cascade Capital Group, LLC, a Washington limited liability company as Receiver of Hunts Point Ventures, Inc.

By: 

Name: Mark Calvert

Its: Managing Member

BUYER: Jennifer Schweickert, an individual residing in the State of Washington, as her sole and separate estate

By: 

Jennifer Schweickert

Exhibit 1: Intellectual Property

App. No. 11/683,765 (Pub. No. 20080222155, September 11, 2008)
App. No. 11/974,918 (Pub. No. 20080133546, June 5, 2008)
App. No. 11/725,181 (Pub. No. 20080125080, May 29, 2008)
App. No. 09/975,749 (Pub. No. 20020045961, Notice of appeal filed March 16, 2007 – appealing examiner's rejection of claims 28-37)
App. No. 09/975,736 (Pub. No. 20020046315, Notice of appeal filed June 14, 2007 – appealing examiner's rejection of claims 1-14)
App. No. 09/975,748 (Pub. No. 20020045960, Notice of appeal filed June 20, 2007 – appealing examiner's rejection of claims 1-20)
App. No. 11/679,338 (Pub. No. 20080208739, August 28, 2008)
Patent No. US 7,574,272 B2
Patent No. US 7,667,123 B2
Patent No. US 7,779,064 B2

EXHIBIT "F"

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP**

JOHN DAVID DU WORS, an individual,

Plaintiff,

V.

JENNIFER SCHWEICKERT and JOHN
DOE SCHWEICKERT,

Defendants.

NO. 15-2-02482-7

**NOTICE OF VIDEOTAPED
DEPOSITION OF JENNIFER
SCHWEICKERT**

TO: JENNIFER SCHWEICKERT, Defendant

AND TO: MARK KIMBALL, Counsel of Record

PLEASE TAKE NOTICE that the deposition of Jennifer Schweickert will be taken at the request of Plaintiff in the above entitled action. This deposition will commence at 10:00 a.m. on December 23, 2015, at the offices of Newman Du Wors LLP, located at 2101 Fourth Avenue, Suite 1500, Seattle, Washington 98121. Said oral examination will be recorded by audio, audiovisual and stenographic means.

This oral examination will be subject to continuance or adjournment from time to time, or place to place until completed.

DATED December 7, 2015.

By:


John Du Wors

Attorney for Plaintiff

SENT VIA FIRST CLASS MAIL

December 21, 2015

Jennifer Schweickert
c/o Mark Kimball, Esq.
MDK Law and Associates
777 108th Ave NE, Ste. 2170
Bellevue, WA 98004

Re: Proposed CR 37 Meet and confer

Dear Ms. Schweickert:

I am advised via text message by your husband, Mark Phillips, that you are giving formal notice of intent not to appear for your properly noticed deposition Wednesday at 10 am. Please note that we do not agree to continue your deposition at this time, but we welcome a CR 37 meet and confer on a motion for protective order should you desire to bring one. If you fail to appear for your deposition, we will bring a motion to compel and seek sanctions.

In furtherance of that motion, we propose to meet and confer with you telephonically on Wednesday, December 23, 2015 at 11 am. Unless you propose an alternate time for a meet and confer that takes place no later than Wednesday at noon, I will telephone you at 11 am. Because you have designated Mark Kimball's office as your contact information, I will telephone his general line and ask for you—please advise in writing if there is an alternate number I should call.

Regards,

John Du Wors
John Du Wors

EXHIBIT “G”

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP**

JOHN DAVID DU WORS, an individual,

NO.

Plaintiff,

V.

JENNIFER SCHWEICKERT and JOHN
DOE SCHWEICKERT.

PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO
DEFENDANTS JENNIFER
SCHWEICKERT AND JOHN DOE
SCHWEICKERT

Defendants.

Plaintiff John David Du Wors hereby propounds the following interrogatories to Defendants Jennifer Schweickert and John Doe Schweickert pursuant to CR 26 and 34. The interrogatories should be answered in full and the original returned within thirty (30) days of the date of service of this request. The answers should be provided to the offices of Newman Du Wors, 2101 Fourth Avenue, Suite 1500, Seattle, Washington 98121. You should respond to each discovery questions in accordance with the instructions and definitions set forth below.

L. INSTRUCTIONS

1. Pursuant to CR 26 and 33, You are to answer each of these discovery requests separately, fully, and under oath.

2. For each answer, identify each person who provided any of the information or any documents set forth in the answer and the information or documents that the

1 person provided.

2 3. In answering these discovery requests, unless otherwise specified, You are
3 to furnish all information known to You at the time of answering, regardless of whether
4 this information is possessed by You or Your employees, agents, representatives,
5 affiliated corporations, investigators, or by Your attorneys or their employees, agents,
6 representatives or investigators.

7 4. These discovery requests shall, to the fullest extent permitted by law, be
8 deemed continuing, so as to require You, without further request from Plaintiff, to
9 provide supplemental answers within fifteen (15) days of acquiring any additional
10 information, knowledge, or belief pertaining to the subject matter of any interrogatory.

11 5. If You cannot answer any of the following interrogatories after exercising
12 due diligence to secure the full information to do so, so state and answer to the extent
13 possible, specifying Your inability to respond in full, stating whatever information or
14 knowledge You have concerning the unanswered portion, and detailing what You did in
15 attempting to secure the unknown information. If You do know the name of a person or
16 entity that may have such information, the name, address, telephone number, and the
17 nature of the information known by such person or entity shall be disclosed in Your
18 answer.

19 6. If You withhold under a claim of privilege any information or document
20 called for by any discovery request, state the following:

21 a. the basis for withholding the information;
22 b. the identity of all persons who possess the information;
23 c. the date and place of, and the identity of, all persons involved in any
24 communications that bear on the information called for by the discovery request; and
25 d. in general, the substance of the document.

26 7. For each and every answer to these discovery requests, state all the facts
27 relied upon, and provide the evidentiary basis (identifying documents, witnesses, and
28 other sources) for each fact identified.

1 8. A question that seeks information contained in, information about, or
2 identification of any document may be answered by providing a copy of such document
3 for inspection without a request for production.

4 9. Provide all responsive information for the entire time period specified by an
5 interrogatory. If certain information responsive to a discovery request applies only to part
6 of the period of time specified by the interrogatory, state the dates between which such
7 discovery request applies.

8 10. The singular form of a noun or pronoun shall be considered to include
9 within its meaning the plural form of the noun or pronoun so used and vice versa; the use
10 of the masculine form of a pronoun shall be considered to include within its meaning the
11 feminine form of the pronoun so used and vice versa; and, the use of any tense of any verb
12 shall be considered to include within its meaning all other tenses of the verb.

13 11. Whenever it is necessary to bring within the scope of these interrogatories
14 information that otherwise might be construed to be outside their scope, "any" should be
15 understood to include and encompass "all"; "all" should be understood to include and
16 encompass "any"; "or" should be understood to include and encompass "and"; and,
17 "and" should be understood to include and encompass "or."

18 12. The use of the words "include(s)" and "including" should be construed to
19 mean without limitation.

20 13. The terms "present" or "presently" refer to the date of service of these
21 interrogatories and shall continue through resolution of this litigation.

22 14. The term "discovery request" refers to these interrogatories.

23 15. The term "answers" refers to Your answers and/or responses to these
24 interrogatories.

25 16. Plaintiff will move to preclude You from presenting evidence regarding
26 responsive matters You have failed to set forth in Your answers.

INTERROGATORIES

2 **INTERROGATORY NO. 1.** State each and every email address you have used to send
3 or receive email during the period of March 1, 2011 through present date.

4 | RESPONSE:

DATED December 9, 2015.

By:

John Du Wors, WSBA No. 33987
john@newmanlaw.com

Attorney for Plaintiff

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP**

JOHN DAVID DU WORS, an individual,

Plaintiff,

V.

JENNIFER SCHWEICKERT and JOHN
DOE SCHWEICKERT,

Defendants.

NO.

**PLAINTIFF'S REQUEST FOR
PRODUCTION TO DEFENDANTS
JENNIFER SCHWEICKERT AND
JOHN DOE SCHWEICKERT**

TO: Jennifer Schweickert and John Doe Schweickert, Defendants

Pursuant to CR 26 and 34, Plaintiff hereby requests that Defendants produce for examination and copying by attorneys and/or agents of Plaintiff any documents identified herein which are in the actual or constructive possession, custody, care, or control of Defendants and which are not privileged or attorney work-product. All documents are to be produced at the offices of Newman Du Wors, 2101 Fourth Avenue, Suite 1500, Seattle, Washington 98121 on the thirtieth (30th) day after service of these Request for Production or at that time on the next succeeding business day if such date is not a business day.

Production may be accomplished by mailing complete and clear copies of all requested documents with a response to the above attorneys at the above office. You should respond to each discovery question in accordance with the instructions and definitions set forth below.

I. INSTRUCTIONS

1. Pursuant to CR 26 and 34, You are to respond to each of these discovery requests separately, fully, and under oath.

2. For each response, identify each person who provided any of the information or documents set forth in the response and the information or documents that the person provided.

3. In responding to these discovery requests, unless otherwise specified, You are to furnish all information known to You at the time of response, regardless of whether this information is possessed by You or Your employees, agents, representatives, affiliated corporations, investigators, or by Your attorneys or their employees, agents, representatives or investigators.

4. These discovery requests shall, to the fullest extent permitted by law, be deemed continuing, so as to require You, without further request from Plaintiff, to provide supplemental responses within fifteen (15) days of acquiring any additional information, knowledge, or belief pertaining to the subject matter of any discovery request.

5. If You cannot respond to any of the following discovery requests after exercising due diligence to secure the full information to do so, so state and respond to the extent possible, specifying Your inability to respond in full, stating whatever information or knowledge You have concerning the unanswered portion, and detailing what You did in attempting to secure the unknown information. If You do know the name of a person or entity that may have such information, the name, address, telephone number, and the nature of the information known by such person or entity shall be disclosed in Your response.

6. If You withhold under a claim of privilege any information or document called for by any discovery request, state the following:

- a) the basis for withholding the information;
- b) the identity of all persons who possess the information;

- c) the date and place of, and the identity of, all persons involved in any communications that bear on the information called for by the discovery request; and
- d) in general, the substance of the document.

7. For each and every response to these discovery requests, state all the facts relied upon, and provide the evidentiary basis (identifying documents, witnesses, and other sources) for each fact identified.

8. A question that seeks information contained in, information about, or identification of any document may be responded to by providing a copy of such document for inspection without a request for production.

9. Provide all responsive information for the entire time period specified by the discovery request. If certain information responsive to a discovery request applies only to part of the period of time specified by the discovery request, state the dates between which such discovery request applies.

10. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used and vice versa; the use of the masculine form of a pronoun shall be considered to include within its meaning the feminine form of the pronoun so used and vice versa; and, the use of any tense of any verb shall be considered to include within its meaning all other tenses of the verb.

11. Whenever it is necessary to bring within the scope of these discovery requests information that otherwise might be construed to be outside their scope, "any" should be understood to include and encompass "all"; "all" should be understood to include and encompass "any"; "or" should be understood to include and encompass "and"; and, "and" should be understood to include and encompass "or."

12. The terms "present" or "presently" refer to the date of service of these requests for production and shall continue through resolution of this litigation.

13. The term "discovery request" refers to these requests for production.

14. The term "responses" refers to Your responses and/or answers to these

requests for production.

15. Plaintiff will move to preclude You from presenting evidence regarding responsive matters You have failed to set forth in Your response.

II. DEFINITIONS

Unless the context clearly indicates otherwise, the following words and phrases are defined and used herein as follows:

1. The term "Communications" includes any and all phone conversations, emails, correspondence, meetings, conferences, instant messaging, text messaging, memoranda, or any record of oral communication.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1. Please produce any and all communications by or between you and/or Mark Phillips that contain any of the following (whether capitalized or not): "Linke", "Newman", "Du Wors", "Duwors", "John", "Derek", "sue", "lawsuit", "law", "suit", "bar", "Steve", "Chad", "Rudkin", "Elizabeth", "WSBA", "grievance", "sanctions", "Rule", "Mary", "Yu", "Martinez", "Judge", "Ricardo" and/or "complaint".

RESPONSE:

REQUEST FOR PRODUCTION NO. 2. Please produce any and all communications by or between you and/or Joyce Schweickert that contain any of the following: "Linke", "Newman", "Du Wors", "Duwors", "John", "Derek", "sue", "lawsuit", "law", "suit", "bar", and/or "complaint", "invest", "Mark", "Phillips", "Chad", "Rudkin", and/or "Elizabeth".

RESPONSE:

1 DATED December 9, 2015.
2
3
4
5

By:


John Du Wors, WSBA No. 33987
john@newmanlaw.com

6 Attorney for Plaintiff
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EXHIBIT “H”

LAW OFFICE OF REED YURCHAK

ATTORNEY AT LAW

40 LAKE BELLEVUE DR. #100

BELLEVUE, WA 98005

TELE: (425) 941-6659 FAX: (425) 654-1205

DELIVERED VIA E-MAIL

December 23, 2015

John Du Wors, WSBA #33987
Newman & Du Wors, LLP
2101 Fourth Ave., Suite 1500
Seattle, Washington 98121

**RE: Notice of Appearance; Proposed CR 37 Meet and confer
Du Wors v. Schweickert, Kitsap Co. Case No. 15-2-02482-7**

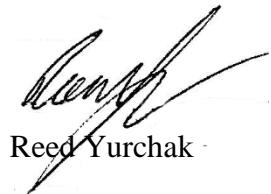
Dear Mr. Du Wors:

I am writing to notify you of my appearance in the above-captioned case. Please direct all future communications regarding this matter and Ms. Schweickert to my office. I also wanted to briefly respond to your Proposed CR 37 Meet and confer letter you sent December 21, 2015 and the scheduled phone call you have with her at 11:00 a.m. this morning.

Given that I am newly appearing and have limited availability, I am asking to reschedule your meet and confer for next week. Please provide me with a proposed time. I am not presently available for your meet and confer this week.

Regards,

LAW OFFICE OF REED YURCHAK



Reed Yurchak

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

JOHN DAVID DU WORS, an individual,

Case Number: 15-2-02482-7

Plaintiff,

NOTICE OF APPEARANCE

v

JENNIFER SCHWEICKERT, an individual.

Defendants.

TO: The Clerk of the above-entitled Court; and

TO: John Du Wors, Pro-Se Plaintiff

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that Defendant, Jennifer P. Schweickert, hereby appears in the above-entitled cause by the undersigned attorney and undersigned attorney at the address below stated.

Reed Yurchak, Esq.
Law Office of Reed Yurchak
40 Lake Bellevue, Ste. 100
Bellevue, WA 98005

Dated this 23 day of December, 2015

Reed Yurchak, WSBA #37366
Attorney for Defendant



Reed Yurchak <yurchaklaw@gmail.com>

re: Du Wors v. Schweickert

John Du Wors <John@newmanlaw.com>
To: Reed Yurchak <yurchaklaw@gmail.com>
Cc: Chy Eaton <Chy@newmanlaw.com>

Wed, Dec 23, 2015 at 11:23 AM

Mr. Yurchak,

As we advised by letter, the meet and confer must take place today if it is going to take place at all. I am available until 3 pm. We will be submitting our moving papers tomorrow morning for a 12/31 hearing. Please feel free to contact me to discuss.

Regards,

John Du Wors
[Quoted text hidden]

EXHIBIT "E"

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

JOHN DAVID DU WORS, an individual,

Plaintiff,

V.

JENNIFER SCHWEICKERT, an individual,

Defendants.

Case Number: 15-2-02482-7

**DEFENDANT'S REPLY BREIF TO
PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO DISMISS
AND REQUEST TO STRIKE**

L.

INTRODUCTION AND MOTION TO STRIKE

Mr. Du Wors' response memorandum to defendant's Motion to Dismiss is, on the whole, legally improper, not brought within the proper scope for a 12(b)(6) motion, and interpleads improper facts and allegations that are outside the scope of plaintiff's own complaint. Plaintiff spends an inordinate amount of time in his response focused on a non-litigant to these proceedings – Mark Phillips. In fact, quite oddly, the bulk of the response is focused on matters tangential to the allegations raised in plaintiff's complaint, including, allegedly, “a concerted borage [sic] of civil and administrative complaints.” (Opposition at ¶ 3). Whether or not Mark Phillips played any role in either the prior litigation brought by defendant or in her filing of the

1 bar complaint against Mr. Du Wors is irrelevant. Mark Phillips is not named as a defendant;
2 there is no allegation in Plaintiff's complaint for a cause of action for "conspiracy" to commit
3 any of the causes of action. Under a 12(b)(6) motion, the court cannot consider matters outside
4 of the complaint; it must stand as it has been pleaded. In this instance, there is a rather great
5 disconnect between Mr. Du Wors' response, which impugns Mark Phillips as the instigator for
6 much of the conduct aggrieved, and yet he is conspicuously absent as a defendant in the
7 complaint. For the purposes of this 12(b)(6) motion, the defendant urges the court to strike from
8 Mr. Du Wors' response all mention of matters unrelated and irrelevant to the proceedings at
9 hand. Lest the court need any reminder, the proceedings at hand concern only whether defendant
10 *alone* is liable for committing acts that constitute abuse of process and malicious prosecution.¹
11

12 Plaintiff is alarmingly and unnaturally fixated on Mark Phillips, a former client and
13 current husband of Defendant.² But a review of the relevant pleadings conclusively rebuts
14 Plaintiff's bizarre allegations of a "wild scheme" or "borage [sic] of complaints" in concert
15 between them. Defendant sued Mr. Du Wors because of his statements made to Defendant as the
16 attorney for Hunts Point Ventures, which statements helped induce her investment in HPV. As
17 Defendant's bar complaint against Mr. Du Wors makes clear, she was complaining solely
18 because of his failure to produce documents to which she and her counsel believed her entitled.
19 By contrast, Plaintiff requests this Court to suspend disbelief and attribute ulterior motives to
20

21 ¹ Plaintiff argues in his Opposition that the Court should strike the "facts" raised in Defendant's motion to
22 dismiss, while allowing him to include extraneous "facts" to support his woeful pleading. This is obtuse; the
23 reference to other "evidence" by Defendant is to other pleadings and Court rulings; documents and evidence
24 of which this Court may take judicial notice.

25 ² Plaintiff does not hide his motivations in filing this lawsuit, nor does he attempt to provide a patina of
26 paucity that the motivation is really his desire to "avenge" his former client, Mark Phillips. The Opposition's
27 opening line admits this fact: "The genesis of this dispute is that defendant Jennifer Schweickert's husband,
Mark Phillips, was convicted of federal felony fraud in Spring 2011, and sentenced to roughly four years in
jail." (Opposition at ¶1). Plaintiff believes that this argument supports his cause, rather than making him
look the obsessive, quixotic figure his pleadings reveal.

1 filings and pleadings that contract those very documents; and his bogey-man is always the same:
2 Mark Phillips. Whether third parties, such as Mark Phillips, played any role in propagating the
3 defendant's actions is an issue for the trier of fact at some distant date; it is not relevant at all to
4 whether the facts, as pleaded in the complaint, are legally sufficient to support its causes of
5 action. But plaintiff's Opposition is predicated upon such obfuscation and misdirection, because
6 the Complaint filed by Plaintiff is a poorly drafted, bizarre attempt to extract his revenge on a
7 former client, with whom he is obsessed, and, by extension, his former client's current wife.
8 These naked motivations cannot, as a matter of law, demonstrate a possibility of recovery based
9 upon the clear allegations of the Complaint, and further demonstrate that Defendant is entitled to
10 dismissal of the Complaint.
11

12 **II.**

13 **PLAINTIFF'S COMPLAINT MUST FAIL AS A MATTER OF LAW**

14 **A. LEGAL STANDARD UNDER RULE 12(b)(6)**

15 For the reasons already stated in defendant's motion to dismiss, Mr. Du Wors' complaint
16 has no basis at law and is factually insufficient, as pleaded, to support any legal relief. On a
17 12(b)(6) motion, a challenge to the legal sufficiency of the plaintiff's allegations must be denied
18 unless no state of facts which plaintiff could prove, consistent with the complaint, would entitle
19 the plaintiff to relief on the claim. *Brown v. MacPherson's, Inc.*, 86 Wn.2d 293, 545 P.2d 13
20 (1975); *Grimsby v. Samson*, 85 Wn.2d 52, 530 P.2d 291, 77 A.L.R.3d 436 (1975); *Hofto v.*
21 *Blumer*, 74 Wn.2d 321, 444 P.2d 657 (1968); *Barmum v. State*, 72 Wn.2d 928, 435 P.2d 678
22 (1967). As stated in *Brown*,

23 A CR 12(b) (6) motion questions only the legal sufficiency of the allegations in a
24 pleading. But since this legal determination cannot always be made in a vacuum, it

1 may be necessary to postulate factual situations which might form the basis for the
2 pleading. No reason appears why one such "hypothetical" situation should not be that
3 which the complaining party contends actually exists. The court need not find that
4 any support for the alleged "facts" exists or would be admissible at trial, as it should
5 on a summary judgment motion. The question under a CR 12(b) (6) motion is
6 basically a legal one, and the "facts" are considered only as a conceptual backdrop for
7 the legal determination defeats a 12(b)(6) motion if it is legally sufficient to support
8 plaintiff's claim.

9 *Brown v. MacPherson's, Inc., supra* at 298 n. 2.

10 Mr. Du Wors' complaint fails to state any actual facts or suggest any facts that might lead
11 to a hypothetical scenario, upon which any relief could be granted. The complaint merely pleads
12 that defendant "initiated litigation against Mr. Du Wors at Mr. Phillips' behest..." which was
13 dismissed on summary judgment, and that "in retaliation for the dismissal, Ms. Schweickert
14 submitted a bar grievance against Mr. Du Wors even though Ms. Schweickert has never been
15 Mr. Du Wors' client." (Complaint, ¶¶ 12 and 13). ***These are the only facts pleaded in support***
16 ***of the causes of action for abuse of process and malicious prosecution.*** Based upon these facts,
17 Mr. Du Wors summarily argues: "in filing her lawsuit and bringing her [bar] complaint, Ms.
18 Schweickert was motivated by an ulterior purpose to accomplish an object not within the proper
19 scope of those legal processes." (Complaint, ¶ 16). In support of the malicious prosecution
20 claim, the complaint states, "Ms. Schweickert's lawsuit was instituted by Defendant
21 Schweickert," (Complaint, ¶ 19) and "That proceeding was instituted out of malice."
22 (Complaint, ¶ 20).

23 It is plain upon the face of the complaint that there are no "facts" pleaded in support of
24 the causes of action. The "facts" are actually just a recitation of the statutory elements, and as
25 such, are legally conclusory. The complaint merely repeats the statutory elements of those
26
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1 causes of action without asserting any hypothetical or actual facts in support of them. As the
2 Opposition purports to summarize the complaints compliance with the pleading requirements:

3 (1) Defendant Schweickert initiated both the lawsuit and the bar complaint; (2) that both
4 proceedings lacked a foundation of probably [sic] cause; (3) that both proceedings were
5 driven by malice, specifically Defendant Schweickert's desire to obtain revenge for her
6 husband's criminal conviction; and (4) that both proceedings were dismissed in
7 Plaintiff's favor."

8 (Opposition at ¶ 5)

9 Such conclusory statements not only require the suspension of disbelief and the
10 acceptance that the pleadings filed by Defendant were only a "cover" for some other nefarious,
11 unnamed plot; but they fail to refer this Court to any "facts" that would prove any possibility of
recovery by Plaintiff.

12 Next, the two "facts" as described in the complaint, that defendant initiated litigation
13 against Mr. Du Wors and filed a bar complaint in retaliation when that litigation was dismissed,
14 cannot be massaged or construed to support any finding of liability for either abuse of process or
15 malicious prosecution.

16 **B. THERE CAN BE NO CAUSE OF ACTION FOR STATEMENTS MADE
TO THE WSBA**

17 Statements made by a grievant to the WSBA are protected communications. The Rules
18 for Enforcement of Lawyer Conduct specifically state:

19 "Communications to the Association, Board of Governors, Disciplinary Board, review
20 committee, hearing officer, disciplinary counsel, adjunct disciplinary counsel,
21 Association staff, or any other individual acting under authority of these rules, are
22 absolutely privileged, and no lawsuit predicated thereon may be instituted against any
23 grievant, witness, or other person providing information."

24 ELC 2.12

25 Plaintiff has filed a lawsuit and continues to prosecute it expressly upon that basis. (See
26 Complaint, ¶¶ 12 and 13: stating the bar complaint was filed in retaliation for the dismissal of
27

1 defendant's prior litigation against Mr. Du Wors, and ¶ 16, stating that the lawsuit and bar
2 complaint was motivated by an ulterior purpose to accomplish an object not within the proper
3 scope of those legal processes). Despite being an attorney, who should have a higher knowledge
4 of the law than a lay person, and despite the clear prohibition against maintaining *any* cause of
5 action based upon statements made to the WSBA, Mr. Du Wors filed and persists in prosecuting
6 this complaint. The cause of action for abuse of process must fail as a matter of law since the
7 complaint pleads that the litigation coupled with the bar complaint were a part of the same series
8 of conduct motivated with the same ulterior purpose to accomplish an object not within the scope
9 of that legal process.

10

11 **C. PLAINTIFF'S DISMISSAL ON SUMMARY JUDGMENT, ALONE, IS**
12 **NOT AN ADEQUATE BASIS TO SUPPORT HIS CAUSES OF ACTION**

13 Even standing alone, as pleaded in the complaint, the simple fact of defendant's prior
14 litigation being dismissed on summary judgment cannot form an adequate basis to support the
15 legal sufficiency of plaintiff's causes of action. As already explicated in defendant's motion to
16 dismiss, the mere institution of a legal proceeding even with a malicious motive does not
17 constitute an abuse of process. *Fite v. Lee*, 11 Wn. App. 21, 27-28, 521 P.2d 964 (1974).
18 Further, the tort of abuse of process requires the misapplying of process for an end other than
19 that which it was designed to accomplish, usually in the form of coercion, to obtain a collateral
20 advantage, not properly involved in the proceeding itself. There are no facts, hypothetical or
21 otherwise, that supports that defendant's prior litigation was filed for some ulterior purpose and
22 was not designed to accomplish the purpose for which it was filed. In fact, plaintiff included a
23 copy of the summary judgment motion as Exhibit C to his Motion to Compel, which makes
24 plainly clear the findings of the court. It is startling, and indicative of the level of frivolousness
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of Mr. Du Wors' complaint, that that court did not state the litigation was in bad faith, or was brought with any improper motive or purpose. And yet, here comes Mr. Du Wors, alleging the same. It is further worth noting that Mr. Du Wors was represented in that litigation by the law firm of LEE SMART P.S., INC., and that the other defendants were represented by the law firm of FOSTER PEPPER PLLC. However after summary judgment was granted as to those defendants, no party brought any motion for sanctions against defendant for having pleaded or filed her complaint with any of her causes of action that did not have a valid, legal or factual basis.³ That court was in the best position to make any such determination "regarding abuse of process" or "bad faith," and yet Mr. Du Wors avoided making any such allegation for an entire year, filing his complaint *only after* defendant filed a bar complaint against him *for conduct that plaintiff admits was unrelated to that prior litigation*. As plaintiff clearly pleaded in his own complaint, Mr. Du Wors' complaint was prompted by defendant's filing of the bar complaint. (Complaint, ¶¶ 12, 13). Despite the absolute privilege found in ELC 2.12, Mr. Du Wors improperly pleads the act of filing a bar complaint as a "fact" that supports his poorly drafted, poorly reasoned complaint against Defendant. Furthermore, Mr. Du Wors must not have felt he had a sufficient factual support to bring his causes of action, including for "abuse of process," until defendant had filed her bar complaint. This timing of events, in light of ELC 2.12, underscores the frivolousness of Mr. Du Wors' complaint, and highlights the fact that he is the *only party* who has "retaliated" against defendant by his use of the legal process.

³ Defendant did obtain some relief from that litigation in the form of a judgment for \$200,000 plus annualized 8% interest of \$60,000 against the corporation that she had loaned money for which Mr. Du Wors was counsel.

1 Third, it is worth noting that virtually all case law surrounding abuse of process claims
2 involves a scenario where that cause of action is brought as a counter-claim. In other words,
3 abuse of process is rarely seen as a stand-alone cause of action in a complaint precisely because
4 its elements require that it be raised in response to litigation that is brought to accomplish a
5 purpose not within the proper scope of the process. As will not surprise this court, there was no
6 counter-claim filed against defendant in her litigation, and there was no allegation in that lawsuit
7 (as there isn't in Mr. Du Wors' current Complaint), that the prior litigation was brought to
8 accomplish some "ulterior" purpose.

9

10 **D. THE FACTS ARE LEGALLY INSUFFICIENT AS A MATTER OF LAW TO
11 SUPPORT THE MALICIOUS PROSECUTION CAUSE OF ACTION**

12 With respect to the malicious prosecution cause of action, the motion to dismiss focused
13 solely on whether the bar complaint could form the factual basis to constitute a cause of action
14 for 'malicious prosecution.' Applying the same statutory analysis to whether defendant's prior
15 litigation constitutes a malicious prosecution, plaintiff's complaint is still legally deficient. With
16 respect to the element of probable cause and malice, plaintiff's complaint pleads no facts in
17 support of the defendant having a lack of probable cause (a reasonable belief that she could
18 establish the relevant facts), and of having malice (undertaken from improper or wrongful
19 motives or in reckless disregard of the rights of the plaintiff). Again, the summary judgment
20 order contains the findings of the court which make no such findings. Last, Mr. Du Wors
21 provides no facts in support of his allegation that he suffered injury or damage (which would be
22 dubious, since his malpractice carrier assigned counsel and covered the costs of the defense), and
23 has pleaded no facts that there was any arrest or seizure of property or special injury. In fact, Mr.
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1 Du Wors ability to obtain damages based on the defendant's bar complaint is specifically
2 precluded. The ELC rules prohibit such recovery:

3 A respondent lawyer may not seek to charge a grievant a fee or recover costs from a
4 grievant for responding to a grievance unless otherwise permitted by these rules.
ELC 2.13(b)

5 Again, the proper venue and time to avail himself of relief as an aggrieved party has long
6 since passed – and that decision was undoubtedly made upon the basis that the findings in the
7 court's summary judgment order foreclosed such opportunity. This court should not so indulge
9 Mr. Du Wors.

10 **III.**

11 **CONCLUSION**

13 Based upon the facts and pleadings herein, plaintiff's complaint must be dismissed for
14 failure to state a viable cause of action. In short, plaintiff has filed a complaint against defendant
15 for having filed a bar complaint against him; despite the fact that bar complaint are privileged
16 communications and that a "respondent lawyer may not seek to charge a grievant a fee or recover
17 costs from a grievant for responding to a grievance." More importantly, based upon plaintiff's
18 bizarre conduct and assertions in this case, CR 11 sanctions are appropriate against the plaintiff.
19 Defendant requests dismissal of attorney John Du Wors' Complaint and leave to brief the court
20 on the issue of attorney fees and sanctions under CR 11.

22 Dated this 26th day of January, 2016



23
24 Reed Yurchak, WSBA #37366
25 Attorney for Defendant
26
27
28