

## INDEX TO APPENDICES

Ninth Circuit Court	Appendix A. .... Page
Copy of cover sheet and supplement excerpt records by Mr. Baker at AGO. . . . .	A to 1A **
Docket#44-1, by honorable Ronald B. Leighton, why he only recommended Title VII action against DSHS only when I filed my Title VII action against all defendants? By his Own discretion and biased decision, he has discriminated against me. . . . .	.2A to 3A**
Copy of cover sheet and supplement excerpt records filed by Mr. Baker.....	.10A to 11A**
Docket#44-1, by honorable Chief Judge Ricardo S. Martinez's order. . . . .	4A to 6A**
Docket#44-1, by honorable judge Ronald B. Leighton's order, refused to recuse Himself from my case, and dismissed all defendants from my lawsuit . . . . .	.7A to 26A**
Docket#22, March 4, 2020 by honorable judge Canby and Gould. . . . .	.27A to 28A**
Docket#47, June 11, 2020 by honorable judge Canby and Gould. . . . .	.29A to 30A**
Docket#55, August 7, 2020 by judges Schroeder, Hawkins and Lee . . . . .	31A to 34A**
Docket#61, November 3, 2020 by honorable Schroeder, Hawkins and Lee dismissed all defendants or respondents from my already granted the amended cross-appeal in Dkt#22 and reconsideration. . . . .	35A**
Dkt#63, Notice filed by Ms. Rebecca Lopez on December 12, 2020. . . . .	36A**
Dylan Oxford refused to approve my annual leave balance over 240 hours.. . . .	.37A**
Letter or notice dated June 1, 2020 to me and I replied and filed my motions and court Granted Dkt#49, 51,52,53,54,55, and deputy clerk rescanned in Dkt#56 and 57.....	.38A**
Pamela Anderson, filed court document on June 5, 2020, instead of her represented attorney Mr. Brian J. Baker. Is this legal? Why did the Ninth Circuit court accept this?.. . . .	.39A **
Letter or notice dated July 14, 2020 by Stephanie Lee. . . . .	.40A**

Dara Kaleel, Deputy Clerk filed ORDER, March 2, 2020. ....	41A**
Amended Cross-Appeal, 58 pages, filed on December 11, 2019. ....	42A**
Idolina Reta's email correspondence to me that the face to face interview in mid-January 2019 After Mr. Arturo Haro provided record to WSHRC and after I completed and returned an Interrogative Questions for her; however, they changed their mind and interview did not Occur with WSHRC, staff member Sharon Ortiz, Jeremy Page, Idolina Reta or Becky Moore who might be related to Timothy Francis-Moore, who was fired by DSHS and me. 43A **	
My letter dated January 14,2019 to Jeremy Page and Sharon Ortiz at WSHRC that I requested For them to keep my case open and I still wanted a face-to-face meeting with them and I gave this letter to Ms. Deborah Gonzales(DG). . . . .	44A-45A **
Jeremy Page's email to Mr. Arturo Haro, DSHS Investigator for my 2018 WSHRC/EEOC Investigation regarding my 31 completed job applications. ....	46A**
Tamarra Henshaw, HCA Executive Office Assistant for Sue Birch, HCA Director responded To me via the email that Ms. Sue Birch declined to meet with me regarding my personnel issue and they sent me an email on May 25, 2018. ....	47A **
Brenda Aguirre-Rogers, DSHS Executive Assistant to Cheryl Strange, DSHS Secretary responded to me via the email that they were not going to meet with me and the email sent to me on May 24,2018. ....	48A**
Robert Bouffard, HCA Human Resources Director declined and refused to help me with my Personnel issue/EEOC matters and he sent me an email on May 4, 2017. ....	49A **
My email to Perry Gordon, AFSCME UNION representative in Olympia, WA regarding my	

Meeting with him on May 2, 2017 and told him that Jason Watson was not honest with me and it turned out that he assisted and represented my DSHS x-employee Timothy Francis-Moore.. 50A\*\*

My email communication July 17, 2019 to Agata Moges, who accepted a completed Interview Questionnaire Form from me regarding my EEOC charge for 2018 with WSHRC. . . . .51A\*\*

Jody Costello, HCA Risk Management and supervisor of Robert Bouffard declined to meet with me and refused to help me with my HCA personnel issue and EEOC matter . . . . . 52A\*\*

My email response to the letter or notice dated July 8, 2015 and this was a second notice and the first letter or notice dated June 1, 2015 from George Taylor, HCA Privacy Officer regarding the client's PHI; this was their set up to make sure that I did have a bad record for my employment. If you see my meeting with Ms. Sharon Pecheos, HCA HRD consultant; she and I reviewed my personnel record together and she had assured me that no negative activity in my personnel file. This was their bullying me and retaliating me again after I had submitted my letter of resignation to Ms. Paula Williamson, HCA HRD FMLA Coordinator in May 2015.. . . . .53A \*\*

June 1, 2015 letter or notice from George Taylor at HCA HRD. . . . .54A \*\*

July 8, 2015 letter or notice from George Taylor at HCA HRD again and this is the bully and Retaliation coming from them. . . . . 55A to 56A \*\*

Copy of first page of 66 confidential documents submitted to EEOC on July 29, 2015 and EEOC Lost these documents, misplaced or destroyed by someone at EEOC office in Seattle and I had to provide the same copy again to Ms. Toni Haley on September 16, 2015. I thought that EEOC is supposed to be a safe place for me and my personnel matter and confidential documents.65A

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June 8, 2015, Ms. Leigh J. Swanson, Chief Torts at AGO confirmed that she had received my Tort's claim. ....66A \*\*

July 13, 2015, Ms. Leigh J. Swanson confirmed that my supplemental evidences or information had been received from June 9, 2015 and June 29, 2015 and that she had forwarded these documents or information to an assigned AGO's Torts Claim Investigator. ....67A \*\*

August 4, 2015, Ms. Leigh J. Swanson responded to me that AGO had completed my Tort's claim investigation and determined "it is without merit," and I did not have computer skills for my MAPS 3 position. This was a lie. As a former social services supervisor, I was required to work on excel and Microsoft word at DSHS to run data and reports for the upper-management team member. If my employer's word were true and they did acknowledge that I was lack of computer skills, why did they refuse to train me in 2013 and 2014 and why did they had to wait until 2015. I know why because they wanted to see me fail miserably at HCA and that is a reason why they did not approve the Excel, SQL, BATS courses for me and they even cancelled my medical coding training in February 2014 in the last minute after Ms. Thuy Hua-Ly had registered and approved for me to attend out of state from February 10, 2014 to February 14, 2014 (see email from Vanessa Balch, Executive Assistant. Also, if my HCA employer's word were true that my FMLA approved and why did Ms. Jean Bui my immediate supervisor refused for me to take sometimes off from work and she had complaint about me and my poor attendance and I had given way too much work assignments for Mr. Gary Blair to do and I needed to be at work(see my email communication with Mr. Gary Blair dated March 24, 2015 and his email Strings to me from page 92A to 95A who was one of my many witnesses at HCA and he saw the bully, retaliation and discrimination occurred to me at HCA. By the way, none of my witness statement had been in either HCA, AGO and EEOC investigations combined even though I had

informed the EEOC intake investigator Ms. Haley who were my witnesses. I am not sure if the rest of witness had been called in for my HCA, AGO and EEOC charges' investigation. If they did, obviously their witness statements were not reported in the HCA, AGO, and EEOC combined investigations. ....68A \*\*

Notice or letter dated February 28, 2019 by Ms. La Dona Jensen regarding the release of records to me, 671 pages..... 69A to 70A \*\*

Eileen A. Sherlock at DSHS responded to me on August 21, 2014 and I informed her that I was fearful of my DSHS x-employee and he should not know where I worked and in what unit and that any public disclosure record should have been handled DSHS upper-management team members because I was no longer with DSHS agency and moved on to another state agency with HCA and she should check with DSHS. Prior to my employment with HCA, DSHS employer and I had our agreement regarding this personnel matter in June 2013 and there was an incident report that I created for Ms. Gloria Marshall-Perez and Mr. Dan Owens and I gave it to Ms. Jeannie WilsonBeard, DSHS Region 3 Confidential Secretary.....71A \*\*

I reported to Dylan Oxford my other supervisor on March 2, 2015 that I saw my x-employee in the HCA building and I was fearful of him and I was tearful in front of Oxford. And, Oxford told me that he did not want anything to do with DSHS personnel issue or DSHS investigation and he wanted me to focus doing my work and fixed the OPPS fee schedules for him and we needed to correct all mistakes, and he ignored all of my angers, frustration and madness when we had our meeting at 2:02PM on this day, and I told him that Eileen A. Sherlock and her supervisor had been notified about this serious personnel matters. However, they all ignored my issues that I had raised with them. ....72A \*\*

Dr. Valerie Sutherland authorized for me to take one week off work dated February 12, 2014 due to my depression and anxiety. ....	73A **
My email to Dylan Oxford asked for his permission to go home early because I was not feeling well and had depression and anxiety on October 20, 2014 .....	74A **
My email to Dylan Oxford asked for his permission to go home early because I was not feeling well and had depression and anxiety on February 13, 2015. ....	75A **
Mr. Myron Toyama, DSHS HRD Investigative Unit Supervisor responded to Cherie L. Willhide at DSHS Public Disclosure Unit that he did not write up his report after he met with me on February 20, 2014. DSHS called me in for my x-DSHS employee's investigation and EEOC investigation and this was the same month that my supervisor had cancelled my medical coding in the last minute because they were so angry with me. ....	76A **
Ms. Cherie L. Willhide at DSHS Public Records Dept. responded to me that she needed Mr. Timothy Francis-Moore's permission in order to release the 48 pages of DSHS public record request#201605-PRR-822. In this DSHS report, it showed many names of DSHS and HCA upper-management participated or involved with my x-employee personnel issues ..	77A **
Myron Toyama, DSHS Investigative Unit Supervisor and I met and cooperated and provided answers to his questions and I was there with him about 41 minutes on Feb. 20, 2014 ..	78A **
Eileen A. Sherlock, DSHS public record unit, forwarded the public record disclosure request dated August 1, 2014 from Mr. Moore for me to respond to him. Again, DSHS employer was supposed to handle this personnel issue. We had our agreement after we fired our x-employee that DSHS was going to handle x-employee's personnel issue since I was no longer with DSHS. This agreement was in my email outlook at DSHS in June 2013. ....	79A **

I have been seeing Dr. Trenton Williams at Rainier Associates regarding my depression and anxiety and personnel issue with x-employee and investigation and no one wanted to take my personnel matter or issue seriously at HCA and DSHS, June 24, 2014. This email also showed Many staff members at the upper-management level involved or participated in my x-employee's DSHS personnel and his EEOC charge with WSHRC agency. . . . .80A \*\*

Ms. Sharon Pecheos met with me and reviewed my personnel file and referred me to the Employee's Advisory Program (EAP) regarding my depression, anxiety and I reported to her that I was fearful of my x-employee on this dated August 18 and 21, 2014... 81A to 83A \*\*

March 26, 2015, Ms. Nicole Rivera, HCA Training Coordinator, met with me and registered Excel, SQL, and BATS for me to attend and she said your supervisor is supposed to send you to these courses training long time ago and these courses are existed and available to staff. I told her that Dylan Oxford kept telling me that there was no budget and no courses available for my MAPS 3 position, and that was a lie. Then, she informed me to file the EEOC complaint. I also her told about that I received the bully by Andrew Steers and Dylan Oxford did not do anything about it because Steers is his friend and under his supervision in the same unit. I was tearful in front of her. I could not believe that Dylan Oxford had lied to me. She registered these courses for me and she told me to give it to my new supervisor to approve so that I could attend and learned the skills that I needed for my MAPS3 position. I told her that I had my meeting with Jean Bui my new immediate supervisor at 3:00 PM and had her approved those courses for me. And, I saw Ms. Bui had her meeting with Mr. Scot Palafox at 2:00PM in her office on this same day. Not sure what their meeting was all about. However, my meeting did not go well at all with Jean Bui at 3:00PM. Bottom line is this, my meeting with her was all about blaming on me for all the mistakes that we had in our OPPS fee schedules and that I was responsible for all of the

mistakes, she complaint about my poor attendance and I needed to be at work and improve my attendance and that I shouldn't give my work assignments for Mr. Gary Blair to do. I explained to her that I had my human right to take sometimes off for my FMLA approval and she did not want to hear that; she went further this program is my responsibility and I should be on my own and why I did not know the job after 1 year at HCA. I tried to explain to her that Dylan did not train me and of course she did not want to hear that. She even compared me with other unit member Wendy Penquite who had been hired after me a year later in October or November of 2014. I told her that Wendy had her chance to be a successful employee and she just attended the medical coding training and I did not have my chance as other employees at HCA .. 86A\*\*

My email to Thuy Hua-Ly, HCA Financial Chief Officer for Hospital Finance Section, which is my unit under her supervision, and I did not hear from her or Vanessa Balch. The last thing I knew was they had intentionally cancelled my medical coding on purpose because they were angry with me and I did not find this out until in February 2014.. . . . . 88A \*\*

This page shows Ms. Nicole Rivera at HCA registered these courses for me when I met with her on March 26, 2015 at 11:00 AM. . . . . 89A\*\*

This paged shows Ms. Jean Bui refused to approve this course and the rest of them for me at 3:00 PM during our meeting on March 26, 2015 in her office. . . . . 90A\*\*

Paula Williamson at HCA FMLA sent me her letter or notice dated June 15, 2015 that HCA Had accepted my voluntary separation effective June 11, 2015. My letter to her was dated May 26, 2015. On June 1, 2015 and July 8, 2015, HCA employer and some staff alledgely accused me that I had saved the client's PHI in my personal home computer, and I did not.. . . 91A\*\*

Mr. Gary Blair's witness statements in support of my claim . . . . . 92A to 95A \*\*



My awful and depressive meeting with Jean Bui on March 26, 2015. I told her about these two staff members had set me up and wanted me to get in trouble with her and she did not want to hear about my complaint. This meeting had been cancelled and she did not hear it. I told her about all of problems for the April and July 2014 OPPS fee schedules and that I could not fix them myself and I needed Gary Blair to help me with those fee schedules and she said no because this OPPS program is my program and I was responsible for all mistakes and not Mr. Blair. However, she had no problem for La Shauna Penn assisted Rachel Dreon with her program and Lillian Eborra assisted Mary O'Hare with her program. I believe Jean Bui wanted to see me fail as her employee. I do not know what her meeting with Mr. Scott Palafox all about at 2:00 PM on March 26, 2015 prior to my meeting with me at 3:00 PM. All I knew, they did not look happy from seeing thru her office glass window .....96A \*\*

Jean Bui's email dated March 25, 2015, she listed all of her demands for me to do my job duties without the necessary and required job skills training for my MAPS 3 position at HCA and she refused for me to ask anyone in the unit for help with my job duties. My HCA Training Record and my PDP that Dylan Oxford and I both signed in 2013 and 2014 do not lie ....97A \*\*

My meeting with Jean Bui on March 18, 2015 was another horrible meeting and I received the bully and retaliation by her. On this day, she not only complaint about my lack of knowledge with my duties for my MAPS 3 position, but she also asked me about what was going on with the ASC program. I told her that that program was not my responsibility and that was Mr. Blair's responsibility in addition for him to help and manage the OPPS fee schedules for my program. Then, she went on and asked why there were so many mistakes with the OPPS fee schedules and I told her that when Mary Sam and Ming Wu helped to publish all of OPPS fee schedules, we had not problem and no issue and all work assignments had been double checked by Dylan

Oxford prior to sending them to Mary Sam or Ming Wu to publish in our HCA website page. However, when Vesna Agina took over Mary Sam's duties, many OPPS fee schedules had incorrect rates and problems with them. And, I had brought this problem up with Oxford and he said we needed to get together with Gary Blair and Grant Stromsdorfer to fix all mistakes..98A

Dylan Oxford refused to approve my annual leave balance over 240 hours and I had to cancel my trip plan. He had an authority to approve or deny my request when he was still my supervisor prior to his lasting working in the unit on Friday, March 13, 2015, but he had no problem to approve this type of leave for other employees in the unit. .... 99A \*\*

Michael Otter-Johnson, HCA HRD Supervisor approved my FMLA for one base year from August 18, 2014 through August 17, 2015. When Jean Bui took over the unit and became my immediate supervisor as of March 16, 2015 she refused for me to take the FMLA approval time off and demanded that I needed to improve my poor attendance. .... 100A \*\*

Dylan Oxford forced me to justify my medical reason on this form before he could agree to approve my work schedule/shift change notice and others in the unit did not have to. Only two persons (Mr. Blair and I) in the unit had 8:00AM-5:00PM working hours-Monday thru Friday in the unit. Others in the unit all had their flexible hours since the day that they had been hired by Dylan Oxford or Mr. Scott Palafox. This is the discrimination. .... 101A\*\*

My HCA Training Record from July 1, 2013 to March 26, 2015(last physical at work day)..102A  
\*\*

Dylan Oxford's HCA Training Record shows he was an untrained and inexperience supervisor.  
103A \*\*

July 23, 2014, I had asked Dylan Oxford to train me for my job duties and he refused to do so. His answer was I had not time for you and too many meetings to attend or projects to do for his supervisor.....104A -to-105A \*\*

Jean Bui's email demands of me and her expectations for me to do my job duties without any necessary and required job skills training for my MAPS 3 position.....106A \*\*

Dylan Oxford wanted me to keep track of jail payments but no training for this. In addition, when we switched payment method from old APC to new implemented EAPG payment, I did not receive this EAPG training payment method and Dylan Oxford did the July 2014 for our unit when we first implemented. .... 107A \*\*

Again, on February 5, 2015, Dylan Oxford refused to train me on the EAPG payment method..108A. \*\*

Kathy King, ITS 4 and Andrew Steers, ITS5 (Dylan's friend) managed the ODS and CNSI data program and for my program. My HCA employer did not train me to do these job duties. When I did not know, I received the bully by Mr. Steers and Dylan did not do anything about it. They gave me other duty assignments: out of state contract, back-up Air Ambulance Services, out of state payments, and subcommittee work group meetings, etc.....109A to 113A \*\*

Vessna Agina and Johnna Ziegler, Supervisor, got me in trouble with Jean Bui, and it was a set up. Jean Bui did not want to hear about this when I had brought this up with her. ...114A \*\*

DSHS responded to 201805-PRR-1868 604 HRD Direct Response regarding the 31 completed job applications with the State of Washington. They showed either reject, not qualified or not referred to hiring manager. .... 115A \*\*

I asked the ninth circuit court to respond to my rehearing en banc request (Dkt64, November 17, 2020)..... 116A\*\*

19-35801's case summary and this page shows history and background of my case...117A**	
19-36059's case summary and these pages show history and background of my case from December 13, 2019 to November 20, 2020. ....118A to124A **	
February 5, 2016 Intake Questionnaire Form updated . ....125A to 127A **	
Unit On the Spot Award at Pierce West CSO, November 27, 2000. ....128A **	
19-35801, record request. ....129A **	
<b>U.S. District Court</b>	<b>Appendix B</b>
Civil Cover Sheet, March 6, 2019, filed my civil lawsuit on this day with Mr. Stefin and I have checked all appropriate boxes and requested for a jury demand trial. .... 1B **	
My April 18, 2019 amended filing of 42 pages and my case had been assigned to the honorable judge Theresa L. Fricke (TLF) on this day.....2B**	
Ms. Toni Haley's email confirmation on September 17, 2015 that she had received copy of 66 pages of documents from me ..... 4B **	
Letter or notice dated February 5, 2016, she asked me to pick an option. .... .5B to 6B **	
My email response to Ms. Haley dated February 10, 2016 that I did not want to pick any option that she had recommended and that I wanted to wait for her or EEOC to complete the investigation and I also asked her to update the Apt.803 to my address..... 7B **	
I mailed my letter dated February 15, 2016 to Ms. Haley and replied to her request.....8B**	
Professional Development Plan(PDP) September 2013, Dylan Oxford and I signed...10B to 12B **	
Professional Development Plan(PDP) October 2014, Dylan Oxford and I signed. ....13B to 15B **	

February 26, 2019, I showed up at EEOC office in Seattle, and the worker at reception refused to help me and turned me away. This is the discrimination. ....	16B**
3:19-cv-05171-RBL's case summary from most recent dates 12/13/2019 to last date 08/02/2019 show my case history and background with the U.S. District court.....	17B to 21B
Notice of Rights-To-Sue from December 12, 2018 from Roderick Ustanik. ....	22B **
Notice of Rights-To-Sue from March 1, 2019 from Kristine Jensen Nube and her letter to me dated March 4, 2019. ....	23B**
Notice of Charge of Discrimination from July 26, 2018 from Nancy Sienko. ....	24B **
Notice of Charge of Discrimination from April 16, 2015 from Nancy Sienko. ...	25B to 26B **
Email communication on March 4, 2019 with Roderick Ustanik, EEOC. ....	27B **
These two pages show the colonoscopy specialist or doctor poke me during my colonoscopy procedured. ....	28B to 29B **
Dr. Thinh Xuan Ho's medical report.. ....	30B **
Dylan Oxford forced me to fix 19 fee schedules for him without taking lunch many days. ...	31B **
Dr. Jill C. Kinney's medical report from July 5, 2015. ....	32B**
Michael Otter-Johnson responded to EEOC, Hattie Y. Reed.....	34B **
My completed WSHRC Interrogative Questions and returned to Idolina Reta. ....	35B**
Attorney, Gregory Silvey, AGO's Attorney, April 11, 2019 email response that he was going to investigate about the complaint that I filed with AGO for the discrimination and he did not do as he stated and this is the discrimination . ....	36B **
My email communication with Kurt Spiegel, AFSCME UNION Supervisor. ....	37B**
Stephanie CAO9Operations Manager during COVID19 and denied of my case in	

Docket number 61 and 63 and the December 1, 2020 response. .... 38B \*\*

Mr. David Stillman responded to Ms. Sharon Ortiz at WSHRC that we did not discriminate against Mr. Timothy Francis-Moore, my x-employee, his letter dated February 28, 2014, attached page 1 and last page and Mr. David Stillman, ESA Secretary declined to meet and refused to help me with my personnel issues. Total attached pages: 4. .... 39B

Note: All of the above records in Appendix A and Appendix B came from the electronic case files with the 9<sup>th</sup> Circuit court and the U.S. District Court. There are available to the U.S. Supreme Court in the electronic case files at these two courts. The U.S. Supreme Court can access to my electronic case files. Due to the financial hardship, I have attached and mailed some evidences along with my this second amended petition for a writ of certiorari, see \*\*

And, there are many more evidences in the electronic case files with both courts. Today, I am filing my second amended petition for a writ of certiorari under rule 33.2 and forma pauperis. The 9<sup>th</sup> Circuit court honorable judge Canby and Gould have granted my \$505 docket filing fee waiver under forma pauperis (attached Docket #22, March 4, 2020), and I respectfully request the U.S. Supreme Court to grant and waive the \$300 docket filing fee me. Thank you.

END INDEX TO APPENDIX A THRU A129 AND B THRU 39B

NO.19-36059

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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KANHA BOUNCHANH,

Plaintiff - Appellant,

v.

WASHINGTON STATE HEALTH CARE AUTHORITY, et al,

Defendants - Appellees.

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ON APPEAL FROM THE  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

No. 3:19-cv-05171-RBL  
The Honorable Ronald B. Leighton  
United States District Court Judge

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**SUPPLEMENTAL EXCERPTS OF RECORD – VOLUME I**

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-A-

## INDEX TO SUPPLEMENTAL EXCERPTS OF RECORD

Date	Dkt #	Document	Vol.	Pages
03/02/20	152	Order	I	1-2
11/25/19	146	Order on Review of Motion for Recusal	I	3-5
11/22/19	145	Order Denying Motion to Recuse	I	6-8
11/15/19	143	Order	I	9-22
03/02/20	153	Judgment In a Civil Case	II	23
12/11/19	150	Amended Notice of Appeal	II	24-25
12/11/19	150-1	Exhibit 001	II	26-27
12/11/19	150-2	Exhibit 002	II	28-34
12/11/19	150-3	Exhibit 003	II	35-36
12/11/19	150-4	Exhibit 004	II	37
12/11/19	150-5	Exhibit 005	II	38
12/11/19	150-6	Exhibit 006	II	39
12/11/19	150-7	Exhibit 007	II	40-69
12/11/19	150-8	Exhibit 008	II	70-77
12/10/19	149	Notice of Appeal	II	78
12/10/19	149-1	Exhibit 001	II	79-84
12/10/19	149-2	Exhibit 002	II	85-86
12/10/19	149-3	Exhibit 003	II	87-93
12/10/19	149-4	Exhibit 004	II	94-95
12/10/19	149-5	Exhibit 005	II	96
12/10/19	149-6	Exhibit 006	II	97
12/10/19	149-7	Exhibit 007	II	98
12/10/19	149-8	Exhibit 008	II	99-135
09/09/19	116	Response to Motion	II	136-142
04/18/19	007	Amended Complaint	II	143-184
04/18/19	007-1	Praecipe	II	185
03/10/20		3:19-cv-05171-RBL Docket	II	186-192

- 1A -



HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KANNHA BOUNCHANH,

Plaintiff,

v.

WA STATE HEALTH CARE  
AUTHORITY,

Defendant.

CASE NO. C19-5171RBL

ORDER

THIS MATTER is before the Court on its own Motion. The Court granted the federal and state Defendants' Motions to Dismiss with prejudice and without leave to amend, but provided Plaintiff Bounchanh an opportunity to amend his Title VII claims against the DSHS. [Dkt. # 143]. Bounchanh did not amend his claim and instead appealed this and other Orders [Dkt. # 149].

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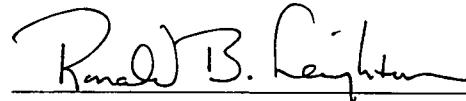
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- Z A -

1 Therefore, Bounchanh's Title VII claim remains defective and it is DISMISSED with  
2 prejudice and without leave to amend. The Clerk shall enter a Judgment in the Defendants' favor  
3 on all of Plaintiff Bounchanh's claims. The case is closed.

4 IT IS SO ORDERED.

5 Dated this 2<sup>nd</sup> day of March, 2020.

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8 Ronald B. Leighton  
9 United States District Judge  
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- 3A -

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KANNHA BOUNCHANH,

Plaintiff,

v.

WA STATE HEALTH CARE  
AUTHORITY, et al.,

Defendants.

CASE NO. C19-5171-RBL

ORDER ON REVIEW OF  
MOTION FOR RECUSAL

On November 18, 2019, Plaintiff Bounchanh filed a Motion seeking to disqualify the Honorable Ronald B. Leighton in this matter. Dkt. #144. On November 22, 2019, Judge Leighton issued an Order declining to recuse himself and, in accordance with this Court's Local Rules, referring that decision to the Chief Judge for review. Dkt. #145; LCR 3(f). The Court will not address the other rulings contained in that Order.

A judge of the United States shall disqualify himself in any proceeding in which his impartiality "might reasonably be questioned." 28 U.S.C. § 455(a). Federal judges also shall disqualify themselves in circumstances where they have a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding. 28 U.S.C. § 455(b)(1). Pursuant to 28 U.S.C. § 144, "whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending

1 has a personal bias or prejudice either against him or in favor of any adverse party, such judge  
2 shall proceed no further therein, but another judge shall be assigned to hear such proceeding.”  
3 “[A] judge’s prior adverse ruling is not sufficient cause for recusal.” *United States v. Studley*,  
4 783 F.2d 934, 939 (9th Cir. 1986); *see also Taylor v. Regents of Univ. of Cal.*, 993 F.2d 710, 712  
5 (9th Cir. 1993) (“To warrant recusal, judicial bias must stem from an extrajudicial source.”).

6 On November 15, 2019, the Court dismissed many of Plaintiff’s claims on the basis that  
7 several defendants were entitled to sovereign immunity and certain claims were time-barred or not  
8 cognizable as a matter of law. *See* Dkt. #143. Plaintiff now seeks recusal of Judge Leighton  
9 because of the Court’s decision that dismissed Plaintiff’s claims and ordered Plaintiff to file an  
10 amended complaint. Dkt. #144 at 9. Plaintiff argues that because of this adverse ruling, the Court  
11 has “discriminated against him based on his race, national origin, disability, age and sexual  
12 orientation,” and violated his human rights, the Civil Rights Act of 1964, the Americans with  
13 Disabilities Act (“ADA”), and the Americans with Disabilities Act Amendments Act (“ADAAA”).  
14 *Id.*

15 Plaintiff’s Motion contains various allegations that the Court and its staff discriminated  
16 against him. These claims include that Judge Leighton failed to “take all related admissible and  
17 undisputable evidences into account” in reaching his decisions and that court staff “attempted to  
18 hide some evidences from my case.” *Id.* at 4. Plaintiff references several orders in this case in  
19 which the Court ruled adversely again him. *Id.* at 2. Plaintiff also indicates that the case was  
20 originally assigned to a magistrate judge, the Honorable Theresa Fricke, and then reassigned to  
21 Judge Leighton. *Id.* at 4.

22 Nothing presented in Plaintiff’s Motion convinces the Court that the standards for recusal  
23 have been met. All of Plaintiff’s allegations of discrimination and human rights violations are  
24

1 factually and/or legally unsupported. Because these unsupported and conclusory allegations are  
2 insufficient to demonstrate the appearance of bias or prejudice, the Court finds no evidence upon  
3 which to reasonably question Judge Leighton's impartiality.

4 Accordingly, the Court hereby ORDERS that Judge Leighton's refusal to recuse himself  
5 from this matter is AFFIRMED. The Clerk SHALL provide copies of this order to Plaintiff and  
6 to all counsel of record.

7  
8 DATED this 25 day of November, 2019.

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11 RICARDO S. MARTINEZ  
12 CHIEF UNITED STATES DISTRICT JUDGE  
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1 HONORABLE RONALD B. LEIGHTON

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 KANNHA BOUNCHANH,

10 Plaintiff,

11 v.

12 WA STATE HEALTH CARE  
13 AUTHORITY, et al.,

14 Defendants.

CASE NO. C19-5171RBL

ORDER DENYING MOTION TO  
RECUSE

15 THIS MATTER is before Plaintiff Bounchanh's Motion to Recuse [Dkt. # 144]. This  
16 Court recently dismissed the bulk of Bounchanh's claims against the bulk of the defendants,  
17 determining that they were largely time time-barred, that the defendants had immunity from  
18 them, or that the claims were not cognizable as a matter of law. [See Order at Dkt. # 143]. The  
19 Order gave Bounchanh 30 days to file an amended complaint remedying the deficiencies of his  
20 claim against the remaining potential defendant, DSHS.

21 Bounchanh now claims that his lawsuit was "timely" and that this Court "once again"  
22 "discriminated against him based on his race, national origin, disability, age and sexual  
23 orientation," and violated his human rights, the Civil Rights Act of 1964, the ADA, and the  
24 ADAAA.

- 7A -

1 Under the Local Rules of this District, a motion for recusal is addressed first to the  
2 presiding judge, and if the judge does not recuse voluntarily, the matter is referred to the chief  
3 judge for review. *See* LCR 3(e). This Court therefore considers McAllister's motion in the first  
4 instance.

5 A federal judge should recuse himself if "a reasonable person with knowledge of all the  
6 facts would conclude that the judge's impartiality might reasonably be questioned." 28 U.S.C.  
7 § 144; *see also* 28 U.S.C. § 455; *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th Cir.  
8 1993). This objective inquiry is concerned with whether there is the appearance of bias, not  
9 whether there is bias in fact. *See Preston v. United States*, 923 F.2d 731, 734 (9th Cir. 1992); *see*  
10 *also United States v. Conforte*, 624 F.2d 869, 881 (9th Cir. 1980). In the absence of specific  
11 allegations of personal bias, prejudice, or interest, neither prior adverse rulings of a judge nor his  
12 participation in a related or prior proceeding is sufficient" to establish bias. *Davis v. Fendler*,  
13 650 F.2d 1154, 1163 (9th Cir. 1981). Judicial rulings alone "almost never" constitute a valid  
14 basis for a bias or partiality motion. *Liteky v. United States*, 510 U.S. 540, 555 (1994).

15 Bounchanh's ten-page Motion to Recuse is filled with accusations of discrimination,  
16 cover-ups, conspiracies and "hiding" his evidence, aimed at the Court and its staff (and at the  
17 defendants). Bounchanh's claims of bias all derive from the Court's adverse decision(s) in this  
18 litigation. He asks the Chief Judge to "recuse" Judge Leighton and assign his case to a different,  
19 unbiased judge.

20 Bounchanh has made no showing of even the appearance of any bias or prejudice or lack  
21 of impartiality on the part of the Court. Conclusory allegations of discrimination and bias are not  
22 enough, particularly where they are based only on ruling made in this case. Judicial rulings are  
23 "almost never" sufficient to meet the recusal threshold.

24

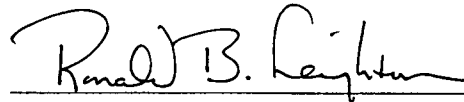
-8A-

1 For these reasons, Court will not voluntarily recuse itself from this case. Bounchanh's  
2 Motion for Recusal [Dkt. #144] is **DENIED**. Under LCR 3(e), this Matter is **REFERRED** to  
3 Chief Judge Martinez for review.

4 The Court will **STAY** the 30-day period for filing an amended complaint against DSHS,  
5 addressing and correcting the flaws outlined in the Court's Order, from the date of this Order to  
6 the date of Judge Martinez's Order reviewing it.

7 IT IS SO ORDERED.

8 Dated this 22<sup>nd</sup> day of November, 2019.

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11 Ronald B. Leighton  
12 United States District Judge  
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- 9A -



NO.19-36059

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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KANHA BOUNCHANH,

Plaintiff - Appellant,

v.

WASHINGTON STATE HEALTH CARE AUTHORITY, et al,

Defendants - Appellees.

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ON APPEAL FROM THE  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

No. 3:19-cv-05171-RBL  
The Honorable Ronald B. Leighton  
United States District Court Judge

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**SUPPLEMENTAL EXCERPTS OF RECORD – VOLUME II**

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- 10 A -

## INDEX TO SUPPLEMENTAL EXCERPTS OF RECORD

Date	Dkt #	Document	Vol.	Pages
03/02/20	152	Order	I	1-2
11/25/19	146	Order on Review of Motion for Recusal	I	3-5
11/22/19	145	Order Denying Motion to Recuse	I	6-8
11/15/19	143	Order	I	9-22
03/02/20	153	Judgment In a Civil Case	II	23
12/11/19	150	Amended Notice of Appeal	II	24-25
12/11/19	150-1	Exhibit 001	II	26-27
12/11/19	150-2	Exhibit 002	II	28-34
12/11/19	150-3	Exhibit 003	II	35-36
12/11/19	150-4	Exhibit 004	II	37
12/11/19	150-5	Exhibit 005	II	38
12/11/19	150-6	Exhibit 006	II	39
12/11/19	150-7	Exhibit 007	II	40-69
12/11/19	150-8	Exhibit 008	II	70-77
12/10/19	149	Notice of Appeal	II	78
12/10/19	149-1	Exhibit 001	II	79-84
12/10/19	149-2	Exhibit 002	II	85-86
12/10/19	149-3	Exhibit 003	II	87-93
12/10/19	149-4	Exhibit 004	II	94-95
12/10/19	149-5	Exhibit 005	II	96
12/10/19	149-6	Exhibit 006	II	97
12/10/19	149-7	Exhibit 007	II	98
12/10/19	149-8	Exhibit 008	II	99-135
09/09/19	116	Response to Motion	II	136-142
04/18/19	007	Amended Complaint	II	143-184
04/18/19	007-1	Praecipe	II	185
03/10/20		3:19-cv-05171-RBL Docket	II	186-192

-11A-

1 HONORABLE RONALD B. LEIGHTON

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 KANNHA BOUNCHANH,

CASE NO. 3:19-cv-05171-RBL

10 Plaintiff,

ORDER

11 v.

12 WA STATE HEALTH CARE  
13 AUTHORITY, et al.,

14 Defendants.

15 I. INTRODUCTION

16 THIS MATTER is before the Court on Defendants' Motions to Dismiss.<sup>1</sup> (Dkt. ## 97 &  
17 98). Pro se plaintiff Kannha Bounchanh has also filed four motions: Motion for Copy of the  
18 Transcript or Partial Records (Dkt # 134), Motion for Leave to Appeal *in forma pauperis*  
19 (Dkt # 118), Motion for Court Appointed Counsel in Title VII Action (Dkt # 133), and a Motion  
20 to Request Scheduling the Jury Demand Trial Date (Dkt # 115).

21  
22  
23 <sup>1</sup> This Order resolves two motions to dismiss filed by all remaining defendants. The State Defendants (AGO, DSHS,  
24 HCA and their individual employees) filed one motion (Dkt # 97), and the Federal Defendants (the EEOC and its individual employees) filed the other (Dkt # 98).

- 12A -

1 Bounchanh worked for the Department of Social and Health Services until 2013 and the  
2 Washington Health Care Authority until 2015. The circumstances of his departure from either  
3 job are not clear, but he appears to have voluntarily resigned.

4 In 2015, Bounchanh complained to the EEOC that HCA had discriminated against him.  
5 The gist of his claims was that the agency and its employees failed to reasonably accommodate  
6 his disability, discouraged him from taking leave for his health conditions, and bullied and  
7 retaliated against him. Bounchanh also claimed that HCA discriminated<sup>2</sup> against him because of  
8 his race, national origin, sexual orientation, age, and disability. The EEOC found no probable  
9 cause to pursue Bounchanh's claims. He received an EEOC right-to-sue letter on May 13, 2016,  
10 but he did not sue. The letter notified Bounchanh that he had to sue HCA within 90 days, or he  
11 would lose his right to sue based on the charges in his complaint.

12 In 2018, Bounchanh applied for several jobs at DSHS. He was not hired, and he again  
13 complained to the EEOC. He claimed that DSHS discriminated against him based on his race,  
14 sexual orientation, age, and disability, and retaliated against him for participating in another  
15 employee's unrelated EEOC claim, and because of his prior EEOC complaint (about HCA). The  
16 EEOC again found no probable cause to pursue Bounchanh's claims. Bounchanh received a  
17 second EEOC right-to-sue letter on January 25, 2019.

18 On March 6, 2019, Bounchanh sued his former employers (and 41 other defendants<sup>3</sup>) for  
19 employment discrimination. His Amended Complaint largely repeats the claims he made in both  
20

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21 <sup>2</sup> Bounchanh claims that he sought to amend his 2015 EEOC complaint to include allegations that DSHS "teamed  
22 up" with HCA to discriminate against him. EEOC's right-to-sue letter did not address those amended claims  
(perhaps because he had not worked at DSHS for more than 180 days, even then). Even if the EEOC had sent a  
right-to-sue letter about DSHS's "2015 conduct," Bounchanh would have had the same 90 days to sue.

23 <sup>3</sup> The Court previously dismissed Bounchanh's claims against his union, (the American Federation of State, County  
24 and Municipal Employees (Dkt # 68), and the state agency (WSHRC) that investigated his 2018 discrimination  
complaint (Dkt. # 102).

-13A-

1 his 2015 and 2018 EEOC complaints. Additionally, Bounchanh claims that numerous employee  
2 defendants violated the Health Insurance Portability and Accountability Act (“HIPAA”) when  
3 they spoke to his doctor and obtained his confidential medical information. He also claims that  
4 they violated the Family and Medical Leave Act (“FMLA”) by discouraging him from taking  
5 leave for personal medical conditions.

6 Bounchanh also claims that DSHS, HCA, and their employees violated Title VII of the  
7 Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (“ADEA”), the  
8 Americans with Disabilities Act of 1990 (“ADA”), the ADA Amendments Act of 2008  
9 (“ADAAA”) when they bullied, retaliated, and discriminated against him because of his race,  
10 age, sex, disability, and for complaining to the EEOC in 2015.

11 Bounchanh also sued the entities that investigated his claims in 2015 and 2018—the  
12 Equal Employment Opportunity Commission, the Washington State Human Rights Commission,  
13 and Washington State Attorney General’s Office.<sup>4</sup> Bounchanh claims that the EEOC violated  
14 HIPAA when it allegedly lost or mishandled the “confidential documents” that he submitted with  
15 his 2015 EEOC complaint. Bounchanh does not and cannot claim that he was ever an employee  
16 of any of these agencies or that he applied for a job with them. He claims instead that they  
17 negligently investigated his claims about HCA and DSHS because they found no probable cause  
18 to pursue Bounchanh’s claims and declined to do so. Bounchanh claims these agencies similarly  
19 violated Title VII, the ADA, ADAAA, ADEA, and FMLA even though they did not employ him.

20 All remaining Defendants move to dismiss Bounchanh’s remaining claims. First, each  
21 Defendant argues correctly that there is no private right of action under HIPAA. HCA argues that

22  
23 <sup>4</sup> Bounchanh sued the AGO for failing to investigate an undescribed but possibly related tort claim against HCA and  
24 its employees in 2015. The AGO determined that his tort claim did not have merits and declined to pursue it.  
Bounchanh never sued HCA or its employees for the tort claim, but now sues AGO for negligently investigating it.

1 all Bounchanh's FMLA claims are time-barred. FMLA claims are subject to a two-year  
2 limitations period. Bounchanh left HCA in 2015 and did not sue until 2019.

3 HCA also argues that Bounchanh's Title VII, ADA, ADAAA, and ADEA claims arise  
4 from the violations he described in his 2015 EEOC complaint and are time-barred. A plaintiff  
5 has 90 days from the date of a right-to-sue letter to sue for the violations alleged in an EEOC  
6 complaint. Bounchanh received his right-to-sue letter on May 13, 2016 but did not sue until  
7 March 6, 2019—1027 days later.

8 Defendants also argue that Bounchanh's similar claims based on the events he  
9 complained about to the EEOC in 2018 are fatally flawed, even if they are not time-barred. The  
10 individual employee defendants correctly point out that the ADA, ADEA, and Title VII do not  
11 permit claims against individual employees—those claims may be asserted only against  
12 employers. EEOC and AGO argue that they have sovereign immunity from Bounchanh's claims  
13 against them, because they never employed him. They argue that because they are immune, the  
14 Court does not have subject matter jurisdiction over Bounchanh's claims.

15 DSHS similarly argues that, as a state agency, it has Eleventh Amendment immunity  
16 from Bounchanh's ADA and ADEA claims. Finally, DSHS argues that while the Court does  
17 have jurisdiction over Bounchanh's Title VII claim against it, that claim is not plausible because  
18 Bounchanh has failed to plead any facts supporting even an inference that DSHS discriminated  
19 against him when it did not hire him in 2018.

20 None of Bounchanh's numerous filings or motions address any of these arguments. He  
21 asks the Court to allow a jury to hear his claims and to view his evidence, reiterates that the  
22 EEOC and the AGO did not properly investigate his claims (dating to 2015) about his treatment  
23 at the HCA and DSHS. He again claims that DSHS, the HCA, and their individual employees  
24

-15A-

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22 EEOC and the AGO did not properly investigate his claims (dating to 2015) about his treatment  
23 at the HCA and DSHS. He again claims that DSHS, the HCA, and their individual employees  
24

- 15A -

1 bullied, retaliated and discriminated against him. But he fails to articulate how any of the alleged  
2 conduct is actionable under the authorities cited in the Motions.

### 3 I. DISCUSSION

#### 4 A. Legal Standard

5 When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) or  
6 12(b)(6), the court construes the complaint in the light most favorable to the non-moving party.  
7 *See Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005); *Wolfe*  
8 *v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). Generally, the court must accept as true all  
9 well-pleaded allegations of material fact and draw all reasonable inferences in favor of the  
10 plaintiff. *See Wyler Summit P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998).

11 In a motion to dismiss under Rule 12(b)(1), the plaintiff bears the burden of proving that  
12 the court has subject matter jurisdiction to decide the case. *See Kokkonen v. Guardian Life Ins.*  
13 *Co.*, 511 U.S. 375, 377 (1994). A complaint must be dismissed under Fed. R. Civ. P. 12(b)(1) if  
14 the defendants are entitled to sovereign immunity. *Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th  
15 Cir. 2015) (explaining that sovereign immunity is “quasi-jurisdictional in nature” and therefore  
16 appropriately considered under Rule 12(b)(1)).

17 Dismissal under Fed. R. Civ. P. 12(b)(6) may be based on either the lack of a cognizable  
18 legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri*  
19 *v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff's complaint must allege  
20 facts to state a claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662,  
21 678 (2009). A claim has “facial plausibility” when the party seeking relief “pleads factual  
22 content that allows the court to draw the reasonable inference that the defendant is liable for the  
23 misconduct alleged.” *Id.* Although the court must accept as true the Complaint's well-pled facts,  
24 conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper



1 12(b)(6) motion to dismiss. *Vazquez v. Los Angeles Cty.*, 487 F.3d 1246, 1249 (9th Cir. 2007);  
2 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff’s obligation  
3 to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions,  
4 and a formulaic recitation of the elements of a cause of action will not do. Factual allegations  
5 must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*,  
6 550 U.S. 544, 555 (2007) (citations and footnotes omitted). This requires a plaintiff to plead  
7 “more than an unadorned, the-defendant-unlawfully-harmed-me-allegation.” *Iqbal*, 556 U.S. at  
8 678 (citing *id.*). A pro se Plaintiff’s complaint is to be construed liberally, but like any other  
9 complaint it must nevertheless contain factual assertions sufficient to support a facially plausible  
10 claim for relief. *Id.*

#### 11 **B. No Private Right of Action**

12 “HIPAA itself provides no private right of action.” *Webb v. Smart Document Sols., LLC*,  
13 499 F.3d 1078, 1081 (9th Cir. 2007). It allows DSHS (only) to penalize organizations for  
14 violating the statute. *See* 42 U.S.C. § 1320d-5. Bounchanh cannot sue Defendants under HIPAA  
15 for mishandling or obtaining his medical records. Defendants’ Motions to Dismiss Bounchanh’s  
16 HIPAA claims are GRANTED and those claims are DISMISSED with prejudice and without  
17 leave to amend.

#### 18 **C. Time-barred Claims**

19 FMLA requires an employee to file any claims “not later than 2 years after the date of the  
20 last event constituting the alleged violation for which the action is brought” 29 U.S.C § 2617(c).  
21 Bounchanh sued nearly four years after his last day of employment with HCA—well beyond the  
22 FMLA’s two-year limitations period. Each of Bounchanh’s FMLA claims are time-barred.  
23 Defendants’ Motion to Dismiss his FMLA claims are GRANTED and those claims are  
24 DISMISSED with prejudice and without leave to amend.

1 An aggrieved party must complain to the EEOC within 180 days of the unlawful  
2 employment practice before suing an employer for violating Title VII, ADA, ADEA, or  
3 ADAAA. 42 U.S.C. § 2000e-5(e)(1). A plaintiff has 90 days to sue from the date he receives his  
4 right-to-sue letter from the EEOC. 42 U.S.C. § 2000e-5(f)(1); *Surrell v. California Water Serv.*  
5 *Co.*, 518 F.3d 1097, 1104 (9th Cir. 2008). These same time limitations apply to employment  
6 discrimination claims under ADEA and Title I of the ADA.<sup>5</sup> 29 U.S.C. § 626(e); 42 U.S.C. §  
7 12117.

8 Bounchanh complained to the EEOC that HCA had discriminated against him in 2015,  
9 and he received a right-to-sue letter on May 13, 2016. The 90-day period to sue began to run  
10 when the EEOC notified him that it would not pursue his claim. Bounchanh did not sue until  
11 March 6, 2019, 1027 days after he received his right-to-sue letter. Defendants' Motion to  
12 Dismiss Bounchanh's Title VII, ADEA, ADA, and ADAAA claims against HCA and its  
13 individual employees arising from his 2015 EEOC complaint are GRANTED and those claims  
14 are DISMISSED with prejudice and without leave to amend.

15 **D. No Personal Liability**

16 The remaining employee defendants argue that Bounchanh cannot sue the individual  
17 employees for employment discrimination. Title VII, ADA, and ADEA do not permit employees  
18 to be sued in their individual capacity. *See, e.g., Pink v. Modoc Indian Health Project, Inc.*, 157  
19 F.3d 1185, 1189 (9th Cir. 1998) ("[C]ivil liability for employment discrimination does not  
20 extend to individual agents of the employer who committed the violations, even if that agent is a

21 \_\_\_\_\_  
22 <sup>5</sup> Defendants correctly argue that Bounchanh's ADA claims are subject to the 90-days limitations period because  
23 employment discrimination claims arise under Title I of the ADA. *Zimmerman v. Oregon Dep't of Justice*, 170 F.3d  
24 1169, 1176 (9th Cir. 1999). Bounchanh also sues under ADAAA, which amended certain Title II and III ADA  
claims to a four-year limitations period. Defendants correctly argue that ADAAA does not impact the 90-day  
limitations period for Bounchanh's Title I ADA claims. All Bounchanh's ADAAA claims are dismissed because  
ADAAA does not apply to employment disability discrimination claims.

1 supervisory employee.”). The liability schemes under Title VII and ADEA “both limit civil  
2 liability to the employer.” *Miller v. Maxwell's Int'l Inc.*, 991 F.2d 583, 587–88 (9th Cir. 1993)  
3 (citing 42 U.S.C. § 2000e–5(g) (1988) and 29 U.S.C. § 626(b) (1988)). Further, because “Title I  
4 of the ADA adopts a definition of ‘employer’ and a remedial scheme that is identical to Title  
5 VII,” the Ninth Circuit has ruled that individual defendants cannot be held personally liable for  
6 violations of Title I of the ADA. *Walsh v. Nevada Dep't of Human Res.*, 471 F.3d 1033, 1038  
7 (9th Cir. 2006); *see* 42 U.S.C. §§ 12111(5)(a), 12117(a).

8 Bounchanh cannot sue DSHS, AGO, or EEOC’s individual employees under Title VII,  
9 the ADA, and ADEA and they cannot be held personally liable for employment discrimination  
10 by the employer. Defendants’ Motions to Dismiss Bounchanh’s remaining Title VII, ADEA, and  
11 ADA claims against the individual employee defendants are GRANTED and those claims are  
12 DISMISSED with prejudice and without leave to amend.

### 13 E. Sovereign Immunity

14 EEOC argues that because it never employed Bounchanh, it has sovereign immunity  
15 from Bounchanh’s Title VII, ADA, and ADEA claims. It cannot be sued in its capacity as an  
16 investigatory agency. The United States or a federal agency may not be sued unless it has  
17 consented to suit, or Congress has waived its immunity. *See United States v. Dalm*, 494 U.S.  
18 596, 608 (1990); *City of Whittier v. U.S. Dep't of Justice*, 598 F.2d 561, 562 (9th Cir. 1979). The  
19 Eleventh Amendment also bars federal court actions for damages brought by a citizen against a  
20 State without the State’s consent or a valid Congressional abrogation of immunity. *Seminole*  
21 *Tribe of Fla. v. Florida*, 517 U.S. 44, 54–55 (1996). Waivers and abrogation of sovereign  
22 immunity must be “unequivocally expressed” and “unmistakably clear” in the statute’s language.  
23 *See Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 73 (2000) (quoting *Dellmuth v. Muth*, 491 U.S.  
24 223, 228 (1989)); *United States v. Nordic Village, Inc.*, 503 U.S. 30, 34 (1992). Where the

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1 United States or a State is entitled to sovereign immunity, the Court lacks subject matter  
2 jurisdiction and dismissal is required. *See Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir.  
3 1985).

4 For federal agencies, Title VII, ADA, and ADEA waive sovereign immunity for  
5 discrimination lawsuits by employees and job applicants against the agency as an employer. *See*,  
6 *e.g.*, 42 U.S.C. § 2000e-5(f)(3) (Title VII). But none of the statutes waive an agency's immunity  
7 when they are acting in an investigatory capacity, and not as an employer. *See, e.g., Leitner v.*  
8 *Potter*, No. C05-5674RBL, 2008 WL 750584, at \*2 (W.D. Wash. Mar. 18, 2008).

9 Bounchanh does not claim that EEOC employed him or that he applied to work there.  
10 Instead, Bounchanh claims only that EEOC negligently investigated his employment  
11 discrimination complaints.<sup>6</sup> The Court has no jurisdiction over Bounchanh's claims against  
12 EEOC in its investigatory capacity because Congress waived EEOC's sovereign immunity only  
13 when sued as an employer. Defendants' Motion to Dismiss Bounchanh's remaining ADA,  
14 ADEA, and Title VII claims against EEOC is GRANTED and those claims are DISMISSED  
15 with prejudice and without leave to amend.

16 AGO argues that it never employed Bounchanh and has Eleventh Amendment immunity  
17 from Bounchanh's Title VII, ADA, and ADEA claims. It argues that it cannot be sued in its  
18 capacity as a state investigatory agency. The immunity provided by the Eleventh Amendment  
19 extends to State agencies because they are effectively "arms of the state." *Alaska Cargo Transp.,*  
20 *Inc. v. Alaska R.R. Corp.*, 5 F.3d 378, 379–80 (9th Cir. 1993). Congress has not abrogated a  
21 State's Eleventh Amendment under ADA and ADEA. *Bd. of Trustees of Univ. of Alabama v.*

22  
23 <sup>6</sup> Bounchanh's claims against the EEOC and AGO, seemingly for negligent investigation, are also fatally flawed  
24 because that is not a viable cause of action. *See Pettis v State*, 98 Wash. App. 553 (1999) (finding no common law or  
statutory claim for negligent investigation).

1 *Garrett*, 531 U.S. 356, 360 (2001) (analyzing Title I of the ADA); *Kimel*, 528 U.S. at 92  
2 (analyzing the ADEA). But Congress did abrogate a State's Eleventh Amendment immunity  
3 when it is sued as an *employer* under Title VII. See *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976); 42  
4 U.S.C. § 2000e-5(f)(3).

5 Bounchanh's claims against the AGO are fatally flawed for similar reasons to his claims  
6 against EEOC. AGO is a State agency and Congress did not abrogate its immunity under ADA  
7 or ADEA. Bounchanh also did not sue AGO as an employer. He sued it for negligently  
8 investigating his tort claim. Congress abrogated AGO's Eleventh Amendment immunity under  
9 Title VII only as an employer, not as an investigatory agency. Defendants' Motion to Dismiss  
10 Bounchanh's remaining ADA, ADEA, and Title VII claims against AGO is GRANTED and  
11 those claims are DISMISSED with prejudice and without leave to amend.

12 DSHS argues it has Eleventh Amendment immunity from Bounchanh's ADA and ADEA  
13 claims. Congress did not abrogate DSHS's Eleventh Amendment immunity as a State agency  
14 under ADA and ADEA. However, the Court has jurisdiction over his Title VII claims because  
15 Bounchanh sued DSHS as his employer. Defendants' Motion to Dismiss Bounchanh's remaining  
16 ADA and ADEA claims against DSHS is GRANTED and those claims are DISMISSED with  
17 prejudice and without leave to amend.

18 **F. Failure to State a Claim**

19 This leaves Bounchanh's Title VII claim against DSHS arising from his 2018 EEOC  
20 complaint. Bounchanh complained to the EEOC in 2018 that he applied to 31 jobs at DSHS and  
21 "other state government agencies" but did not receive any offers because DSHS discriminated  
22 against him. Dkt # 7 at 30. DSHS argues that Bounchanh has failed to plead any facts supporting  
23 even an inference that DSHS discriminated against him when it did not hire him in 2018.

24

- 22A

1 A fundamental factual element of an employment discrimination claim is that the  
2 defendant employed the plaintiff, or the plaintiff applied to work for them. *See Sheppard v.*  
3 *David Evans & Assoc.*, 694 F.3d 1045, 1049 (9th Cir. 2012). A plaintiff can establish a prima  
4 facie case of employment discrimination by showing: “(i) that he belongs to a [protected class];  
5 (ii) that he applied and was qualified for a job for which the employer was seeking applicants;  
6 (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position  
7 remained open and the employer continued to seek applicants from persons of complainant’s  
8 qualifications.” *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

9 Bounchanh’s 2018 EEOC claims against DSHS for employment discrimination are not  
10 plausible. Bounchanh has failed to provide any information on the types of jobs he applied for,  
11 how many of those jobs were with the DSHS, his qualifications for those jobs, what other  
12 comparable people were hired in lieu of him, or under what theory he was allegedly wronged for  
13 not receiving these jobs. Dkt # 97 at 11. Bounchanh’s disorganized, conclusory Complaint insists  
14 that he suffered several types of discrimination:

15 [Bounchanh was] rejected, denied, not qualified and/or not referred to a hiring  
16 manager by DSHS Human Resource Recruiters while other applicants, or other  
17 applicants with disabilities, underage [sic] of 40 and/or over 40, different race,  
national origin, and different sexual orientation had their opportunity and chance  
to be hired.

18 Dkt # 7 at 33. But Bounchanh’s allegations offer nothing more than speculation that DSHS’s  
19 hiring committee discriminated against him and refused to consider him for employment because  
20 of a protected status. Bounchanh’s theory of how DSHS discriminated against him is not  
21 plausible and is insufficient to survive dismissal under Rule 12(b)(6).

22 This leaves the issue of whether Bounchanh should be allowed to amend his complaint  
23 for the second time. Leave to amend a complaint under Rule 15(a) “shall be freely given when  
24

-23A-

1 justice so requires.” *Carvalho v. Equifax Info. Services, LLC*, 629 F.3d 876, 892 (9th Cir. 2010)  
2 (citing *Forman v. Davis*, 371 U.S. 178, 182 (1962)). This policy is “to be applied with extreme  
3 liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003)  
4 (citations omitted). In determining whether to grant leave under Rule 15, courts consider five  
5 factors: “bad faith, undue delay, prejudice to the opposing party, futility of amendment, and  
6 whether the plaintiff has previously amended the complaint.” *United States v. Corinthian*  
7 *Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) (emphasis added). Among these factors, prejudice to  
8 the opposing party carries the greatest weight. *Eminence Capital*, 316 F.3d at 1052. A proposed  
9 amendment is futile “if no set of facts can be proved under the amendment to the pleadings that  
10 would constitute a valid and sufficient claim or defense.” *Gaskill v. Travelers Ins. Co.*, No. 11-  
11 cv-05847-RJB, 2012 WL 1605221, at \*2 (W.D. Wash. May 8, 2012) (citing *Sweaney v. Ada*  
12 *County, Idaho*, 119 F.3d 1385, 1393 (9th Cir.1997)).

13 Bounchanh has failed to state a plausible Title VII claim against DSHS relating to his  
14 2018 job applications. Even though the Complaint is inadequate, dismissal is not the proper  
15 remedy at this time. The Court cannot say at this stage that amendment would be futile.  
16 Bounchanh shall file a proposed amended complaint against DSHS for Title VII violations  
17 surrounding his 2018 job applications (consistent with his complaint to EEOC) within 30 days. If  
18 Bounchanh fails to timely and plausibly amend his complaint, the case will be dismissed. The  
19 amended complaint must set forth specific facts, rather than just conclusions, and must tell a  
20 plausible story that amounts to a plausible Title VII claim. The complaint shall include  
21 information on the types of jobs he applied for, how many of those jobs were with the DSHS, his  
22 qualifications for those jobs, that people with his same qualifications were hired in lieu of him,  
23  
24

— 26A —

1 and under what theory he was allegedly wronged for not receiving these jobs. In short, he must  
2 plausibly state a timely claim for employment discrimination against DSHS.

3 Defendants' Motion to Dismiss Bounchanh's remaining Title VII claims against DSHS is  
4 DENIED conditioned on Bounchanh's timely submission of a plausible amended complaint.

5 **G. Bounchanh's Pending Motions**

6 The Ninth Circuit dismissed Bounchanh's appeal for lack of jurisdiction because  
7 Bounchanh appealed an order that is not final or appealable. Dkt # 138. Bounchanh's appeal  
8 related motions (Dkt ## 118, 134) are DENIED as moot.

9 Bounchanh's Motion to Request Scheduling the Jury Demand Trial Date (Dkt # 115) is  
10 DENIED; the Court will schedule a trial date in due course if any claims remain un-dismissed  
11 under Rule 12. Bounchanh's Motion for Court Appointed Counsel (Dkt # 133) is also DENIED.  
12 In a civil case, courts have discretion to appoint counsel and generally do so only under  
13 "exceptional circumstances." *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569  
14 (9th Cir. 1995). "A finding of exceptional circumstances requires an evaluation of both the  
15 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in  
16 light of the complexity of the legal issues involved." *Wilborn v. Escalderon*, 789 F.2d 1328,  
17 1331 (9th Cir. 1986) (internal quotations omitted). These factors must be viewed together before  
18 reaching a decision on whether to appoint counsel under § 1915(e)(1). *Id.* Bounchanh falls far  
19 short of this demanding standard as he has not shown any likelihood of success on the merits.

20 **II. CONCLUSION**

21 For the above reasons, Federal Defendants' Motion to Dismiss (Dkt # 98) is GRANTED  
22 with prejudice and without leave to amend. State Defendants' Motion to Dismiss is GRANTED  
23 in part (Dkt # 97). All other claims against the State Defendants are dismissed with prejudice and  
24 without leave to amend, *except* for Bounchanh's Title VII claim against DSHS relating to his

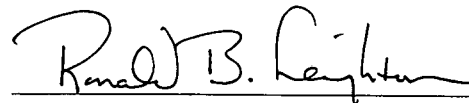


1 2018 job applications. Bounchanh has 30 days to file a proposed second amended complaint  
2 against DSHS for Title VII violations relating to his 2018 job applications.

3 Plaintiff's Motion for Transcripts (Dkt #134) and Motion for Leave to Appeal *In Forma*  
4 *Pauperis* (Dkt #118) are DENIED as moot. Plaintiff's Motion for Court Appointed Counsel (Dkt  
5 # 133) and Motion to Request Scheduling the Jury Trial (Dkt # 115) are DENIED.

6 IT IS SO ORDERED.

7 Dated this 15<sup>th</sup> day of November, 2019.

8  
9 

10 Ronald B. Leighton  
11 United States District Judge  
12  
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20  
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-26A-

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

MAR 4 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

KANNHA BOUNCHANH,

Plaintiff-Appellant,

v.

WASHINGTON STATE HEALTH CARE  
AUTHORITY, AKA HCA; et al.,

Defendants-Appellees.

No. 19-36059

D.C. No. 3:19-cv-05171-RBL  
Western District of Washington,  
Tacoma

ORDER

Rec'd Mon  
03/09/20

DK# 22  
(03/04/2020)

Before: CANBY and GOULD, Circuit Judges.

The court has reviewed the parties' responses to this court's January 9, 2020 order to show cause. A review of the district court docket reflects that on March 3, 2020 the district court entered a final order dismissing the remaining Title VII claim against Department of Social and Health Services, and entered a final judgment. Accordingly, the January 9, 2020 order to show cause is discharged and this appeal shall proceed.

Appellant's motion to proceed in forma pauperis (Docket Entry Nos. 2, 5) is granted. *My filing fee for appeal of \$505 is waived + granted by these two judges. (PB)*

Appellant's motion for appointment of counsel (Docket Entry Nos. 3, 6) is denied because a review of the record indicates that this appeal lacks sufficient merit to warrant the appointment of counsel. *See Bradshaw v. Zoological Soc'y of*

— 27 A —

*Diego*, 662 F.2d 1301 (9th Cir. 1981). No motions for reconsideration, clarification, or modification of this denial shall be filed or entertained.

Appellant's motion to consolidate this appeal with closed appeal No.

19-35801 (Docket Entry No. 8) is denied.

*records request from district court 10/24/19 (3 pages)*

Appellant's motions for extension of time to file motions for relief (Docket

Entry Nos. 16, 19) are granted. Appellant's emergency motions have been filed.

The emergency motions for relief (Docket Entry Nos. 17, 18) are denied.

*(1-30-20) 11 pages*

*Amended emergency*

*11 pages - denied*

Appellant's motion to have this court respond to his requests (Docket Entry

No. 20) is denied as moot because all pending motions have now been addressed.

The Clerk shall file appellant's opening brief received on December 24, 2019 (Docket Entry No. 9). The answering brief is due April 6, 2020. Appellant's optional reply brief is due within 21 days after service of the answering brief.

*42 pages Amended cross-appeal*

Because appellant is proceeding without counsel, the excerpts of record requirement is waived. See 9th Cir. R. 30-1.2. Appellees' supplemental excerpts of record are limited to the district court docket sheet, the notice of appeal, the judgment or order appealed from, and any specific portions of the record cited in appellees' brief. See 9th Cir. R. 30-1.7.

*-28A-*

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUN 11 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

KANNHA BOUNCHANH,

Plaintiff-Appellant,

v.

WASHINGTON STATE HEALTH CARE  
AUTHORITY, AKA HCA; et al.,

Defendants-Appellees.

No. 19-36059

D.C. No. 3:19-cv-05171-RBL  
Western District of Washington,  
Tacoma

ORDER

DK#47

Before: CANBY and GOULD, Circuit Judges.

Appellant's motions for reconsideration of the March 4, 2020 order (Docket Entry No. 24, 25) are denied. *See* 9th Cir. R. 27-10. No motions for reconsideration, clarification, or modification of this denial shall be filed or entertained.

All future motions filed by appellant are referred to the panel that will be assigned to hear the merits of this case.

Appellees EEOC, Toni Haley, and Nancy Sienko's motion for summary affirmance filed on April 3, 2020 will be addressed by separate order.

The opening brief has been filed. The answering briefs of the AFCME Union, et al. (Docket Entry No. 29), Sharon Ortiz, et al., (Docket Entry No. 40), and Pamela Anderson, et al. (Docket Entry No. 45) have been filed. Appellant's

Optional reply brief and any response to the April 3, 2020 motion for summary  
affirmance are due within 21 days after the date of this order.

-30A-

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

AUG 7 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

KANNHA BOUNCHANH,

Plaintiff-Appellant,

v.

WASHINGTON STATE HEALTH CARE  
AUTHORITY, AKA HCA; et al.,

Defendants-Appellees.

No. 19-36059

D.C. No. 3:19-cv-05171-RBL  
Western District of Washington,  
Tacoma

ORDER

DK#55

Before: SCHROEDER, HAWKINS, and LEE, Circuit Judges.

Kannha Bounchanh appeals pro se from the district court's judgment dismissing his action alleging federal claims arising out of his employment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6). *Hebbe v. Pliler*, 627 F.3d 338, 341 (9th Cir. 2010). We affirm.

The district court properly dismissed Bounchanh's Health Insurance Portability and Accountability Act ("HIPAA") claims because HIPAA "provides no private right of action." *Webb v. Smart Document Sols., LLC*, 499 F.3d 1078, 1081 (9th Cir. 2007).

The district court properly dismissed Bounchanh's (1) Title VII claims against Washington State Health Care Authority and (2) Family and Medical

-3/A-

Leave Act (“FMLA”) claims because Bounchanh failed to file his action within the applicable statutes of limitations. *See* 29 U.S.C. § 2617(c) (setting forth limitations periods for FMLA claims); 42 U.S.C. § 2000e-5(f)(1) (setting forth 90-day period in which Title VII complainant may bring a civil action).

The district court properly dismissed Bounchanh’s Title VII claims against Washington State Department of Social and Health Services because Bounchanh failed to allege facts sufficient to state a plausible claim. *See Freitag v. Ayers*, 468 F.3d 528, 541 (9th Cir. 2006) (elements of a Title VII retaliation claim); *Costa v. Desert Palace, Inc.*, 299 F.3d 838, 847 (9th Cir. 2002) (en banc) (“Title VII prohibits discrimination ‘because of’ a protected characteristic[.]”).

The district court properly dismissed Bounchanh’s remaining claims against the state and federal agencies as barred by sovereign immunity, and against the individual defendants because there is no individual liability. *See Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 360 (2001) (Eleventh Amendment bars suits against states for money damages under Title I of the Americans with Disabilities Act (“ADA”)); *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 91-92 (2000) (Age Discrimination in Employment Act (“ADEA”) does not abrogate states’ Eleventh Amendment immunity); *Fitzpatrick v. Bitzer*, 427 U.S. 445, 452 (1976) (Title VII abrogates Eleventh Amendment immunity when the state is sued “as employer”); *Ward v. EEOC*, 719 F.2d 311, 313-14 (9th Cir. 1983) (no express or implied cause

of action against the Equal Employment Opportunity Commission (“EEOC”) by employees of third parties); *see also Walsh v. Nev. Dep’t of Human Res.*, 471 F.3d 1033, 1037-38 (9th Cir. 2006) (individual defendants may not be held personally liable under Title I of the ADA); *Miller v. Maxwell’s Int’l Inc.*, 991 F.2d 583, 587-88 (9th Cir. 1993) (individual defendants cannot be held liable for damages under Title VII or ADEA).

The district court properly dismissed Bounchanh’s claims against AFSCME Council 28 because Bounchanh failed to allege facts sufficient to state a plausible claim. *See Fleming v. Yuma Reg’l Med. Ctr.*, 587 F.3d 938, 942 (9th Cir. 2009) (Title I of ADA covers the employer-employee relationship but does not cover other relationships); *Adcock v. Chrysler Corp.*, 166 F.3d 1290, 1292 (9th Cir. 1999) (Title VII protection requires an employment relationship); *Barnhart v. N.Y. Life Ins. Co.*, 141 F.3d 1310, 1312-13 (9th Cir. 1998) (entitlement to protection under the ADEA requires an employee relationship); *see also Diaz v. Int’l Longshore & Warehouse Union, Local 13*, 474 F.3d 1202, 1205 (9th Cir. 2007) (“[T]he duty of fair representation does not extend to persons who are not employees in the bargaining unit.” (citation and internal quotation marks omitted)).

The district court did not abuse its discretion by denying Bounchanh’s motion for recusal of the district judge because Bounchanh failed to establish any ground for recusal. *See United States v. McTiernan*, 695 F.3d 882, 891-92 (9th

-33A-  
3



Cir. 2012) (setting forth standard of review and circumstances requiring recusal).

The district court did not abuse its discretion by denying Bounchanh's motion for appointment of counsel because Bounchanh failed to demonstrate exceptional circumstances. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth standard of review and "exceptional circumstances" requirement).

We reject as without merit Bounchanh's contentions that the district court engaged in misconduct, committed due process violations, and erred by failing to schedule a jury trial.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

The motion for summary affirmance filed by the EEOC, Haley, and Sienko (Docket Entry No. 30) is granted.

Bounchanh's motions for an extension of time to file a reply brief and for leave to file multiple reply briefs (Docket Entry Nos. 48 and 52) are granted. The Clerk will file the reply briefs received at Docket Entry Nos. 51 and 53.

All other pending motions and requests are denied.

**AFFIRMED.**

-34A-

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

NOV 3 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

KANNHA BOUNCHANH,

Plaintiff-Appellant,

v.

WASHINGTON STATE HEALTH CARE  
AUTHORITY, AKA HCA; et al.,

Defendants-Appellees.

No. 19-36059

D.C. No. 3:19-cv-05171-RBL  
Western District of Washington,  
Tacoma

ORDER

DK#61  
11/03/2020, ID:  
11880208

Before: SCHROEDER, HAWKINS, and LEE, Circuit Judges.

Bounchanh's motion for reconsideration (Docket Entry Nos. 58 and 59) is  
denied. *See* 9th Cir. R. 27-10.

All other pending motions are denied.

No further filings will be entertained in this closed case.

-35A-

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

NOV 12 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

KANNHA BOUNCHANH,

Plaintiff - Appellant,

v.

WASHINGTON STATE HEALTH  
CARE AUTHORITY, AKA HCA; et  
al.,

Defendants - Appellees.

No. 19-36059

D.C. No. 3:19-cv-05171-RBL

U.S. District Court for Western  
Washington, Tacoma

MANDATE

11/12/2020, ID:

11890005

DK#63

The judgment of this Court, entered August 07, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule  
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Rebecca Lopez  
Deputy Clerk  
Ninth Circuit Rule 27-7

-36A-

Case 19-36059, 04/06/2020, ID: 11652213, Dkt 33, page 126 of 264  
02-25-17 Rec'd from HCA 264 RB

Hostetler, Rachel (HCA)

From: Oxford, Dylan (HCA)  
Sent: Tuesday, March 3, 2015 9:15 AM  
To: Bui, Jean (HCA)  
Cc: Bounchanh, Kannha S. (HCA)  
Subject: FW: Leave

Good morning Jean!

Exhibit  
#000034

Below is Kannha's plan for utilizing his annual leave prior to his anniversary date. I didn't think it was quite appropriate for me to approve his next four months of leave without your approval ☺

-D

From: Bounchanh, Kannha S. (HCA)  
Sent: Tuesday, March 03, 2015 7:13 AM  
To: Oxford, Dylan (HCA)  
Cc: Bounchanh, Kannha S. (HCA)  
Subject: RE: Leave

Good morning Dylan,

I talked to Gary about taking my time off to reducing my annual leaves yesterday. I understand that he is taking time off this month like the third week of March. Between now and prior to August 9<sup>th</sup> (my anniversary date), I would like to take the following days off so that I can bring down my annual leave outstanding balances.

Below are the days that I would like to take time off from work:

Friday, March 6<sup>th</sup>  
Friday, April 10<sup>th</sup>  
Friday, April 17<sup>th</sup>  
Friday, April 24<sup>th</sup>  
Friday, May 8<sup>th</sup>  
Friday, May 15<sup>th</sup>  
Friday, May 22<sup>nd</sup> and Tuesday, May 26<sup>th</sup>  
Friday, June 12<sup>th</sup>  
Friday, June 19<sup>th</sup>  
Friday, June 26<sup>th</sup>  
Thursday, July 2<sup>nd</sup> and Monday, July 6<sup>th</sup>  
Friday, July 17<sup>th</sup>  
Friday, July 24<sup>th</sup>

Please let me know if the above plan sounds good to you so that I can submit my leave slips to you for your approval.

Thank you very much, and I wish you a nice day.

Take care,

Kannha Bounchanh

Example: As my supervisor, he has appointed authority to make his professional decision to approve or deny my leave request but he did not make his decision,

He made me wait and delay my plan, and it made impossible to buy my ticket or plan my vacation trip.

And with  
Case 3:19-cv-05171-RBL  
06/06/2019,  
DKT 31-1, page 36  
of 232.

-37A-

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

JUN 01 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

KANNHA BOUNCHANH,

Plaintiff - Appellant,

v.

WASHINGTON STATE HEALTH  
CARE AUTHORITY, AKA HCA; et  
al.,

Defendants - Appellees.

No. 19-36059

D.C. No. 3:19-cv-05171-RBL

U.S. District Court for Western  
Washington, Tacoma

**ORDER**

The answering brief and the supplemental excerpts of record submitted on  
May 29, 2020 by Sharon Ortiz; et al., are filed.

No paper copies are required at this time.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Stephanie M. Lee  
Deputy Clerk

Ninth Circuit Rule 27-7

Why did this court  
accept and grant  
this request and filing  
from Ms. Sharon  
Ortiz, WSHRC Executive  
Director, appellee or  
defendant, employee of WSHRC agency?  
Should these records file by Ms. Celeste T. Stokes  
or Mr. Earl Sutherland who  
represents WSHRC and her? Is this legal?  
For me, why I have to go thru their attorney  
to obtain records?  
-38A-

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

JUN 05 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

KANNHA BOUNCHANH,

Plaintiff - Appellant,

v.

WASHINGTON STATE HEALTH  
CARE AUTHORITY, AKA HCA; et  
al.,

Defendants - Appellees.

No. 19-36059

D.C. No. 3:19-cv-05171-RBL  
U.S. District Court for Western  
Washington, Tacoma

**ORDER**

The answering brief and the supplemental excerpts of record submitted on  
June 5, 2020 by Pamela Anderson; et al., are filed.

No paper copies are required at this time.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Stephanie M. Lee  
Deputy Clerk  
Ninth Circuit Rule 27-7

Why did this court  
accept and grant  
this request and  
filing from Pamela

Anderson, appellee or defendant, or  
employee of AGO? Should these  
records file by Mr. Brian J. Baker,  
AGO's Attorney, who represents her?  
Is this legal? For me, I had to go thru  
Mr. Baker to request for  
records.

-39A-



Office of the Clerk  
**United States Court of Appeals for the Ninth Circuit**  
Post Office Box 193939  
San Francisco, California 94119-3939  
415-355-8000

Molly C. Dwyer  
Clerk of Court

July 14, 2020

---

**To:** Kannha Bounchanh

**From:** Molly C. Dwyer, Clerk of Court  
By: Stephanie M. Lee, Deputy Clerk

**Re:** Receipt of a Deficient Brief of Appellant on 07/08/2020

USCA No. 19-36059

Kannha Bounchanh v. WA State Health  
Care Authority, et al

---

The referenced brief cannot be filed for the following reason(s):

- Multiple briefs submitted: Appellant may file only one principal brief and one reply brief. *See 9th Cir. R. 28-5. Within 14 days from the date of this notice, please either file a motion requesting permission to file multiple briefs or submit a single substitute brief accompanied by a separate motion to file a substitute brief.* If you do not file a timely motion within 14 days of this notice, the multiple briefs will be stricken from the docket.

The following action has been taken with respect to the brief received by the Court:

- *The deficiency by appellant is judged to be serious. We cannot file your brief.*

*I replied to the court's request  
(See Dkt #48 and Dkt #52  
granted). See Dkt #49, 51, 52, 53,  
54, 55, 56, 57, ~~62~~ my replies  
to the court and reconsideration  
requests, and denied  
- 40A - Dkt #60 expedited hearing.*

Case 3:19-cv-05171-RBL Document 153 Filed 03/02/20 Page 1 of 1

**UNITED STATES DISTRICT COURT**  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KANNHA BOUNCHANH,

Plaintiff,

v.

WA STATE HEALTH CARE  
AUTHORITY, et al.,

Defendants.

**JUDGMENT IN A CIVIL CASE**

CASE NUMBER: C19-5171RBL

- ☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- ☒ **Decision by Court.** This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

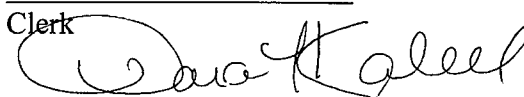
**THE COURT HAS ORDERED THAT**

All of Plaintiff's claims against all defendants are DISMISSED with prejudice and without leave to amend. Judgment is entered in favor of Defendants on all of Plaintiff Bounchanh's claims.

DATED: March 2, 2020

William M. McCool

Clerk

Deputy Clerk

- 41A -



**Additional material  
from this filing is  
available in the  
Clerk's Office.**