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APPENDIX A- OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED OCTOBER 23, 2024

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 23-35421 D.C.

No. 3:23-cv-05128-BHS

Western District of Washington, Tacoma

ORDER

KEVIN SCOTT BJORNSON,

Plaintiff-Appellant, versus

EQUIFAX INFORMATION SERVICES, LLC,

Defendant-Appellee. MEMORANDUM*

Appeal from the United States District Court for the Western District of Washington Benjamin H. Settle, District Judge, Presiding

Submitted October 16, 2024**

Before: SILVERMAN, R. NELSON, and MILLER, Circuit Judges.

Kevin Scott Bjornson appeals pro se from the district court's judgment dismissing his action alleging defamation and a violation of the Fair Credit Reporting Act FCRA. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal on the basis of the applicable statute of limitations and This

disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). under Federal Rule of Civil Procedure 12(b)(6). *Cholla Ready Mix, Inc. v. Civish,* 382 F.3d 969, 973 (9th Cir. 2004). We affirm.

The district court properly dismissed Bjornson's action as time- barred because Bjornson failed to file the action within the applicable statutes of limitations. See 15 U.S.C. § 1681p stating that FCRA action must be filed within two years after plaintiff discovers the violation or five years after the violation occurs, whichever is earlier); Wash. Rev. Code § 4.16.100(1) setting forth two-year statute of limitations for defamation actions under Washington law; *Drew v. Equifax Info. Servs., LLC,* 690 F.3d 1100, 1109-10 (9th Cir. 2012) explaining that constructive discovery triggers the FCRA's two-year limitations period); *Herron v. KING Broad. Co.,* 746 P.2d 295, 300 (Wash. 1987) (adopting the "single publication rule" for defamation actions and rejecting the view that "each publication of a defamatory utterance" constitutes a separate cause of action).

The district court did not abuse its discretion in denying Bjornson leave to amend because amendment would be futile. See *Cervantes v. Countrywide Home Loans, Inc.,* 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is

proper if amendment would be futile).

The district court did not abuse its discretion in denying Bjornson's motions to strike Equifax and its counsel's various filings, to disqualify Equifax's counsel, The district court did not abuse its discretion in denying Bjornson's motions to strike Equifax and its counsel's various filings, to disqualify Equifax's counsel, and to sanction Equifax and its counsel. See *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 807 (9th Cir. 2002) explaining that district courts have inherent power to control their dockets" and this court *will reverse a district court's litigation management decisions only if it abused its discretion* (citation and internal quotation marks omitted)).

Bjornson's motion to strike the answering brief and excerpts of record, set forth in the reply brief and at Docket Entry No. 17, is denied. Bjornson's motion to sanction Equifax, set forth in the reply brief, is denied. Equifax's request for judicial notice of the docket in Bjornson's prior action, set forth in the answering brief, is granted **AFFIRMED.**

APPENDIX B - FINAL JUDGEMENT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA, FILED MAY 25, 2023

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA

KEVIN SCOTT BJORNSON,

Plaintiff, v.

EQUIFAX INFORMATION SERVICES LLC,

Défendant.

CASE NO. 3:23-cv-05128-BHS

ORDER

This matter comes before the Court on Defendant Equifax Information Services LLC's Motion to Dismiss Plaintiff Kevin Scott Bjornson's Complaint for failure to state a claim, Dkt. 11 Equifax argues that both of Bjornson's claims against it, defamation and violation of the Fair Credit Reporting Act ("FCRA"), were filed past the applicable limitation's periods. The Court agrees with Equifax and therefore grants Equifax's motion and dismisses Bjornson's complaint with prejudice.

I. BACKGROUND

Bjornson sued Equifax in February 2023 alleging defamation and violations of the FCRA. Dkt. 1. Bjornson alleges Equifax defamed him in an answer,

filed October 20, 2020, in a previous lawsuit he filed against *Equifax, Bjornson v. Equifax,* 20-cv-5449 RJB (W.D. Wash.). See generally Dkt. 1. He further alleges that Equifax violated the FCRA, which appears to be the same claim he asserted in his previous suit. Id.

Equifax argues that both of Bjornson's claims are subject to a two-year limitations period and are therefore time-barred. Dkt.11 at 3 (citing RCW 4.16.100(1)); Dkt.11 at 5 (citing 15 U.S.C. § 1681p). Bjornson argues that his claims did not accrue until his friend, Scott Semans, reviewed Bjornson's previous case against Equifax when considering

whether to help him finance the purchase of a home. See generally Dkt.13; see also Dkt.1 at 38.

Bjornson also moves the Court to strike Equifax's counsel's Notice of Appearance and disqualify its counsel, to strike Equifax's Motion to Dismiss, and to sanction Equifax and its counsel. Dkt.13. Bjornson additionally moves the Court to strike Equifax's reply, Dkt.14, as untimely. Dkt.17-1.

Each motion is addressed below.

II. DISCUSSION

A. Equifax's Motion to Dismiss is Granted.

Dismissal under Federal Rule of Civil Procedure 12(b)(6) may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't,* 901 F.2d 696, 699 (9th Cir.1988). A plaintiff's complaint must allege

facts to state a claim for relief that is plausible on its face. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

A claim has "facial plausibility" when the party seeking relief "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. Although the Court must accept as true the complaint's well-pled facts, conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper Rule 12(b)(6) motion to dismiss. *Vazquez v. Los Angeles Cnty.*, 487 F.3d 1246, 1249 (9th Cir.2007); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

"[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and footnotes omitted).

This requires a plaintiff to plead "more than an unadorned, the defendant unlawfully-harmed-me accusation." Iqbal, 556 U.S. at 678 (citing Twombly,550 U.S. at 555). Equifax argues that Bjornson's defamation claim accrued on October 20, 2020, when it filed its Answer in the previous lawsuit, and is therefore barred by the two-year limitations period enumerated in RCW 4.16.100(1). Dkt. 11 at 3–4.

Bjornson does not dispute the applicability of RCW

4.16.100(1), but he argues that Equifax's answer was not "published" in 2020 because it was not on "public display" and was not accessed by anyone until July 2022. Dkt. 13 at 8–16. He argues the availability of the document through PACER does not qualify as publication because a member of the public would have to apply for and pay to access the document and that no one did so until July 2022. Id

In Washington, courts apply the "single publication rule" for defamation claims. *Momah v. Bharti, 144 Wn. App.* 731, 752 (2008). Under that rule, "any one edition of a book or newspaper, or any one radio or television broadcast, is a single publication." Id. (internal quotation omitted). The rule applies to publication on websites. *Habib v. Matson Navigation Co., Inc., 4 Wn. App.* 2d 1019, 2018 WL 3026090, at *4 (2018) (unreported case). "Statements are generally considered to be 'published' for purposes of the rule when they are first made available to the public." Id. A "separate and distinct communication" can give rise to a new cause of action, "but it is irrelevant whether the same person or a new person received the communication." Id.

The question is therefore whether Equifax's filing of the complaint on PACER can be considered "publication." Bjornson argues that posting a document to PACER cannot qualify as "publication" because an individual must request access and pay a fee to view the document. Dkt. 13 at 10. Equifax argues that "[a] court filing is a public document, available to all, and, therefore, 'is a form of aggregate communication in that it is intended for a broad, public audience.'" Dkt. 11 at 4 (quoting *Oja v. U.S.*

Army Corps of Engineers, 440 F.3d 1122, 1131 (9th Cir. 2006)) (internal quotation omitted).

Regardless of whether payment was required to access Equifax's answer, the answer was "published" when Equifax filed it. Court documents are public. See, e.g., *O'Brien v. Tribune Pub. Co.*, 7 Wn. App. 107, 117 (1972) ("[T]he filing of a pleading is a public and official act in the course of judicial proceedings."); *Falls v. Vernal,* 2021 WL 5264252, at *2 (C.D. Cal. May 6, 2021) ("The Court's files are publicly available for copying through the Clerk's office or for printing through the electronic docketing service CM/ECF and PACER, both of which are available on the internet and can be found on the Court's website[.]").

Any allegedly defamatory statements Equifax made in its answer were published on October 20, 2020, and Bjornson's defamation claim accrued on that date. It does not matter that the relevant individual did not access the document until 2022, only when the actual publication occurred. The limitations period therefore expired in October 2022, four months before Bjornson filed this lawsuit. His defamation claim is time- barred, Equifax's motion to dismiss that claim is **GRANTED,** and Bjornson's defamation claim is **DISMISSED** with prejudice.

Equifax argues that Bjornson's FCRA claim is also time-barred because it is based on alleged violation of the FCRA that occurred prior to him filing his complaint in the 2020 case. Dkt. 11 at 5. Bjornson argues that his FCRA claim did not accrue until 2022 because (1) he did not have a copy of the relevant report in 2020, and (2) "[t]he alleged report had not been published to a third party as defined by FCRA

1681p(1)." Dkt. 13 at 16. He argues the publishing requirement was not satisfied until 2022 when Semans accessed the report. Id.

An FCRA claim may be brought by the earlier of: "(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or (2) 5 years after the date on which the violation that is the basis for such liability occurs." 15 U.S.C.§ 1681p. Equifax argues that Bjornson knew about the alleged violation at the time he filed his complaint in the 2020 case, evidenced by the fact that he cites to his own complaint for support of that claim in this case. Dkt. 11 at 5.

The Court again agrees with Equifax that Bjornson's FCRA claim is time-barred. Regardless of when Semans accessed the credit report, Bjornson knew about the report and the allegedly false information at the time he filed his complaint in the prior action in 2020. See Dkt. 1 at 46 (citing his 2020 complaint in support of his claim that Equifax admitted to reporting false and inaccurate information on his consumer credit report). Equifax's motion to dismiss Bjornson's FCRA claim is **GRANTED**, and that claim is **DISMISSED** with prejudice.

On a 12(b)(6) motion, "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990). However, where the facts are not in dispute, and the sole issue is whether there is liability as a matter of substantive law, the court may deny leave to amend.

Albrecht v. Lund, 845 F.2d 193, 195–96 (9th Cir. 1988).

Because Bjornson's claims are time-barred, his pleadings could not be cured by the allegation of other facts. Therefore, the Court will not grant him leave to amend.

B. Bjornson's Motions are Denied.

Bjornson's motions are without merit, aside from his motion to strike Equifax's reply. Equifax's reply was, in fact, late without explanation. Nevertheless, the reply advances no argument, and the Court did not consider it in any of its rulings.

Bjornson's motion to strike Equifax's reply, Dkt. 17-1, is therefore **DENIED** as moot.

Bjornson's motion to strike Equifax's motion to dismiss is also **DENIED**. He provides no reason why Equifax's motion was improper. The motion was proper, timely, and meritorious. Bjornson's motions to strike Equifax's counsel's Notice of Appearance, to disqualify Equifax's counsel, and to sanction both Equifax and its counsel are all **DENIED**. Bjornson's allegations against Equifax's counsel are largely unclear, although he appears to assert that the representation amounts to a conflict of interest because the same counsel represented Equifax in the parties' previous litigation. This clearly does not amount to a conflict of interest.

ORDER

Therefore, it is hereby **ORDERED** that Defendant Equifax Information Services LLC's Motion to Dismiss, Dkt. 11, is **GRANTED.** Plaintiff Kevin Scott

Bjornson's Motion to Strike Equifax's Reply, Dkt. 17-1, is **DENIED** as moot. Bjornson's Motion to Strike Equifax's Motion to Dismiss, his Motion to Strike Equifax's counsel's Notice of Appearance, his Motion for Sanctions, and his Motion to Disqualify Equifax's Counsel are all **DENIED.** Bjornson's Complaint is **DISMISSED** with prejudice. The Clerk shall enter a **JUDGMENT** and close the case. Dated this 25th day of May, 2023.

APPENDIX C- ORDER DENYING PETITIION FOR REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 30, 2024

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 23-35421 D.C. No. 3:23-cv-05128-BHS

Western District of Washington, Tacoma ORDER

KEVIN SCOTT BJORNSON,

Plaintiff-Appellant,

versus

EQUIFAX INFORMATION SERVICES, LLC,

Defendant-Appellee.

Before: SILVERMAN, R. NELSON, and MILLER, Circuit Judges.

Bjornson's petition for panel rehearing (Docket Entry No. 24) is denied. No further filings will be entertained in this closed case.

APPENDIX D- EXHIBIT K AFFIDAVIT OF SCOTT SEMANS DENIAL OF CREDIT TO PETITIONER

FILED FEBRUARY 24, 2023 AFFIDAVIT OF SCOTT RAYMOND SEMANS

From: Scott Raymond Semans WASHINGTON STATE DRIVERS LICENSE # **(REDACTED),**

On the behalf of: Kevin Scott Bjornson D.O.B **(REDACTED)** SOC SEC # **(REDACTED)**

RE: DEFAMATORY STATEMENTS MADE AGAINST KEVIN SCOTT BJORNSON BY EQUIFAX INC

AFFIDAVIT

Around the end of July 2022, I received a phone call from a friend of mine named Kevin Scott Bjornson. We have known one another for several years, having met at the Entrepreneurs' Club in King County. Both of us are in business; Kevin specializes in lighting and lighting fixtures and I specialize in coins and collectibles.

During our telephone conversation, Kevin explained to me that he had won a case in the 9th Circuit Court of Appeals against USAA Federal Savings Bank. He began by explaining that he had sued five defendants originally, among them

Equifax.

Kevin stated that he had filed disputes against each of the banks in 2018 and that they had failed to respond to his disputes. He stated that after the

banks failed to comply, he reached out to Equifax notifying them and requested that Equifax resubmit the investigations on his behalf acting as an intermediary throughout the dispute process. Kevin stated that he also refiled his disputes with TransUnion and Experian.

Kevin explained that even after filing reinvestigations with Equifax, the various banks continued to ignore his disputes. He also stated that Equifax had a duty to handle his disputes once notified of the illegal reporting and collection practices of the banks, and that Equifax had done nothing and therefore became co-defendants to his claims. Sometime later, he told me that there were several properties that he had been looking at in the Aberdeen area just west of Olympia WA. As the conversation progressed, Kevin expressed an interest in borrowing $10,000.00 for a home down-payment, and possibly of my also co-signing his mortgage. He was having difficulty with lenders because Equifax had failed to block the banks from reporting illegally on his Equifax credit report. I told Kevin that I would consider the request and get back to him.

Kevin's protests made me a bit suspicious, so I decided to review his court case starting with the US District Court. The records showed that Kevin had filed his case in the US District Court for the Western District of Washington. There were five defendants involved in the suit: Equifax, Bank of America, First National Bank of Omaha, Discover Card, and USAA Federal Savings Bank. As I scrolled through the documents filed by each of the defendants, one document in particular caught my attention: "Docket

Entry 111, the Answer filed by the Defendant Equifax Inc. and their attorney Helen McFarland on 10/20/20".

Equifax stated that Kevin had a car repossessed, that he was dead, that he had some inaccurate information concerning his social security number, and that he had filed some initial disputes with Equifax which required his response. Equifax further stated they had requested that he provide them with proof that he was living by submitting certain documentation from the SSA! Equifax further stated that Kevin is a natural person residing in the State of Virginia.

I had not seen Kevin for several years and barely been in contact since his move from Seattle. After reading this, I contacted him and told him that I did not feel comfortable with lending him the money or helping him with financing. I explained that the issues in Equifax's response were concerning. Kevin claimed that everything I mentioned was a lie.

He told me I could check his most recent amended complaint to confirm his statements. I did so and was not able to find any evidence that Kevin had filed any complaint(s) or amended complaint(s) concerning a defaulted car loan; or that he was reported deceased; or that he was living or had ever lived in Virginia.

Although I know Kevin personally, I did not feel comfortable lending money to or co-signing any mortgages for him until the Equifax allegations have been cleared up. Other prospective lenders, who don't know him, likely would be even more dismissive.

Kevin later contacted me and requested that I provide him with an affidavit in regards to events mentioned above. I agreed that I would be willing to provide a sworn statement that he could us as evidence in court.

Signed /s/ Scott Raymond Semans Date 12/27/2022
NOTARY PUBLIC ACKNOWLEDGEMENT

State of Washington County of King

I have sufficient evidence by verification of valid identification that Scott Raymond Semans is the person who signed and sworn to (or affirmed) the foregoing Declaration before me on 27 Dec 2022 (date) (Seal or stamp) **(STAMPED) P CARTER TAYLOR** Notary Public State of Washington Commission # 151476 My Comm, Expires Oct 8, 2026

Signature /s/ Carter Taylor, Date 27 De 2022
Notary Public My appointment expires: 8 Oct 2026

APPENDIX E-DEFENDANT-APPELLEE EQUIFAX INFORMATION SERVICES LLC'S CORRECTED EXCERPTS OF RECORD INDEX— VOLUME 1 of 1,

FILED OCTOBER 18, 2023

No. 23-35421

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Kevin Scott Bjornson, Plaintiff-Appellant,

v.

Equifax Information Services LLC, Defendant-Appellee.

On Appeal from the United States District Court for the Western District of Washington

No. 3:23-cv-05128-BHS-U.S.

Hon. Benjamin H. Settle

DEFENDANT-APPELLEE EQUIFAX INFORMATION SERVICES LLC'S CORRECTED EXCERPTS OF RECORD — VOLUME 1 of 1

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(All documents redacted pursuant to FRAP 25(a)(5); Plaintiff- Appellant's contact and signature information also redacted)

APPENDIX F- PETITIONERS PETITION FOR PANEL REHEARING

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Kevin Scott Bjornson, Plaintiff-Appellant,

v.

Equifax Information Services LLC, Defendant-Appellee.

No. 23-35421

District Court or

BAP Case No. 3:23-cv-05128-BHS

PETITION FOR PANEL REHEARING

1. The Appellant hereby request for a rehearing of the panel on the following grounds. The Appellant believes that he raised points that the panel overlooked which established his rights to his action(s).

POINTS OVERLOOKED BY THE PANEL

i. Amend his Complaint.

ii. That his Complaint contained the elements required to establish a Defamation under the "*Discovery Rule*" tolling the statute of limitations.

And making the filing by the Appellant in the U.S. District Court within the Statute of limitations.

iii. That the same qualification(s) for Defamation under the "*Discovery Rule*" apply to the Appellants Fair Credit Reporting Act claims.

iv. The Appellants rights to Amend his Complaint in the U.S. District Court where the Appellant has shown that a valid claim does exist.

v. The prejudiced raised against the Appellant by allowing for Seyfarth Shaw LLP to Represent Equifax while a conflict of interest.

vi. The Appellants Constitutional Rights under the 14th Amendment to a "Due Process of law, and to *"Equal Protection of the laws"*.

SUPPORTING ARGUMENT

1. The Appellants Defamation and FCRA claims:

I. Its clear from the Appellants Complaint filed in the U.S. District Court (ER 88-89) and the Affidavit of Scott Raymond Semans exhibit K(ER 188-191) that Bjornson's entered into his negotiations with Semans without having been denied and financing based on the Defamatory Publication. Even though Bjornson did tell Semans about the 9th Circuit case he still did not have any knowledge of any specified denial of credit that would result of it. It was not until after Semans reviewed the Court decision(s) that he discovered the Defamatory statements (See ER 88-89, and ER 189- 191). At the point of *"Discovery"* Bjornson had no idea what decision Semans would make. It was not until after

> Semans contacted Bjornson (initially verbally and then by Affidavit) did Bjornson become aware of all of the elements regarding the financial injury sustained to him as a result of the Defamatory statements. (See ER 189-190).

However, the Appellee, in their CR12(b)(6) Motion to dismiss admitted that the Discovery Rule applies "where harm is sustained but the plaintiff has no means of being aware of it". And then stated that the rule does not apply citing *"Kittinger v. Boeing co.*, 21 Wn. App. 484, 487, 585 P.2d 812,814 (1978)" (See footnote ER 195). *Kittinger v. Boeing co* was overruled by both the Supreme Court of the State of Washington and the 9th Circuit Court of Appeals.

II. In 2010 the 9th Circuit Court of Appeals utilized the Revised Code for the State of Washington and the governing case laws for the State of Washington to develop the *"Discovery Rule"* when applied to libel forms of Defamation in *"JM Martinac Shipbuilding Corp. v. Washington,* 363 F. App'x 529, 531 (9th Cir. 2010)". *JM Martinac Shipbuilding Corp. v. Washington* sets forth a set of Washington Supreme Court Rulings in order to establish and define the proper application of the "Discovery Rule" in libel defamation cases.

a. In the *"Matter of Estates of Hibbard,* 118 Wash.2d 737, 826 P.2d 690, 696 (1992) (en banc)" the court analyze and define what constitutes and act of "Discovery". In the "Matter of Estates of Hibbard" the court ruled that discovery is not just when a party should have known but when they suffer an actual damage in the following statement:

    i. *However, the court in Grumman*

indicated that the statute begins to run upon discovery that a defective product caused the harm and not simply when the apparent cause of the harm is discovered." Estates of Hibbard, 118 Wn. 2d 737, 749 (Wash. 1992), (applying the discovery rule to a libel claim)" supporting *JM Martinac Shipbuilding Corp. v. Washington,* 363 F. App'x 529, 531 (9th Cir. 2010).

b. And therefore, the Appellee's reliance on *"Kittinger v. Boeing co.*, 21 Wn. App. 484, 487, 585 P.2d 812,814 (1978)" to defeat the "Discovery Rule" is based on simply when the apparent cause of the harm was discovered and not when the product caused harm as defined in *"Estates of Hibbard". "Kittinger v. Boeing co"* has been specifically overruled in the State of Washington and the Appellant therefore affirms the Appellee's admission that the "Discovery Rule" does apply "where harm is sustained" (See footnote ER 195). Applying the principle of stare decisis *"Miller v. Gammie,* 335 F.3d 889, 900 (9th Cir. 2003)"

II. Under the 14th Amendment of the United States Constitution the Appellant is entitled to a "Due Process of Law" and an "Equal Protection of the Law". The Appellant believes that the court has overlooked his right to the "Discovery Rule". See *Vanelli v. Reynolds Sch. Dist. No.* 7, 667 F.2d 773, 777 (9th Cir. 1982)." *Llamas v.*

Butte Comm. Coll. Dist, 238 F.3d 1123, 1128 (9th Cir. 2001).

III. In his Complaint filed in the U.S. District Court, Bjornson clearly explained how he discovered that he had suffered a financial injury. (See ER 88-89). The Appellee never contested those elements as being barred under the "Discovery Rule". Nor laid any claim(s) to a privilege in order to defeat a claim supported by the "Discovery rule" as set forth in *"JM Martinac Shipbuilding Corp. v. Washington, 363 F.* App'x 529, 531 (9th Cir. 2010)".

IV. The 9th Circuit Court of Appeals has explicitly ruled on this Issue. JM Martinac Shipbuilding Corp filed suit against The State of Washington for claims arising out of Defamation. The court noted the 2-year statute of limitations presented under RCW 4.16.100(1) automatically tolls whenever a claim for Defamation meets the "Discovery Rule" test as prescribed by "JM Martinac Shipbuilding Corp. v. Washington".

As follows:

i. *subject to the applicable provisions of chapter 4.16 RCW pertaining to the tolling and extension of any statute of limitation, no claim under this chapter may be brought more than three years from the time the claimant discovered or in the exercise of due diligence should have discovered the harm and its cause.*

ii. *However, the court in Grumman indicated that the statute begins to run upon discovery that a defective product caused the harm and not simply when the apparent cause of the harm is discovered". "Estates of Hibbard,* 118 Wn. 2d 737, 749 (Wash. 1992)".

b. The Court Stated that the "Discovery Rule's purpose was as follows:

i. *The discovery rule reflects a judicial determination to balance the possibility of stale claims against the unfairness of precludinc justified causes of action where a plaintiff is unable to ascertain within the statute of limitations period that a wrong has been committed. U.S. Oil,* at 93. *"North Coast Air v. Grumman Corp.*, 111 Wn. 2d 315, 331 (Wash. 1988).

c. The Court in Estates of Hibbard sets the statute of limitations as follow:

ii. *Furthermore, the Legislature, concerned that the Ohler rule (postponing accrual of an action until plaintiff reasonably knows all the essential elements of a possible cause of action) would unjustifiably extend a statute of limitations period, modified the rule by enacting RCW 7.72.060(3) to provide that "no claim under this chapter may be brought more than three*

years from the time the claimant discovered or in the exercise of due diligence should have discovered the harm and its cause.

Supported by "chapter 4.16 RCW pertaining to the tolling and extension of any statute of limitation Estates of Hibbard, 118 Wn. 2d 737, 751-52 (Wash. 1992).

iii. The Appellant presented the elements required in order to maintain an action under the Discovery Rule as presented by *"JM Martinac Shipbuilding Corp. v. Washington"* and delineated in "Matter of Estates of Hibbard". From the time the apparent cause of the harm is discovered until the product actually caused the harm; in each scenario the Court analyzed the essential elements of possible cause of action, i.e., "duty, breach, causation, and damages *"Estates of Hibbard,* 118 Wn. 2d 737, 747 (Wash. 1992).

j. As follows:

i. (Duty): In the case of *Estates of Hibbard*, the court recognized that individuals have a duty to exercise reasonable care in their actions.

ii. (Breach): In Estates of Hibbard, the court examined whether the defendant's actions fell short of what would be expected from a reasonably prudent person in similar circumstances.

iii. (Causation): Actual cause is established if it can be shown that but for the defendant's breach, the plaintiff would not have suffered harm. Proximate cause involves evaluating whether

the harm was a foreseeable result of the defendant's actions. The court in Estates of Hibbard emphasized that both elements must be satisfied for liability to be imposed.

iv. (Damages): In Estates of Hibbard, damages can include both economic losses (such as medical expenses and lost wages) and non-economic losses (such as pain and suffering). The court highlighted that damages must be proven with sufficient evidence and must directly relate back to the breach and causation established earlier in the analysis.

v. The Appellant in his Complaint clearly states the elements required to maintain an action under the "Discovery Rule". He included:

a. A clear statement of claims. (i.e. that Scott Semans read the defamatory statements and denied him financing which was an actual damage as a result of the defamatory Statements.

b. Factual allegations supporting lack of prior knowledge (Bjornson clearly stated that the act of Defamation through Semans commenced around the end of July 2022. And concluded with Semans providing Bjornson a "Sworn" Affidavit around the end of December 2022 concerning the events leading up to the Defamation being viewed by Semans and his decision as a result of the Defamatory Statements not to finance Bjornson (See ER 189-191).

c. Evidence of reasonable diligence. The Appellant showed by the preponderance of evidence that he

had no knowledge that Semans would decide to deny him financing. Until Semans read the Defamatory statements on the Defamatory Statements (See ER 88-89 and ER 188- 191).

d. Specific details regarding discovery timelines. The Appellant proved (and which was admitted by the Appellee) that the end of July 2022 was the date that Scott Semans began his review of the Defamatory court filings. And that Semans decided to deny Bjornson financing as shown in the "Sworn Affidavit" of Scott Semans notarized on the 27th of December 2022 and provided to Bjornson (See ER 189-191 and ER 195- 196).

e. Compliance with statutory filing requirements. (Based on the "Discovery Rule" the Appellant filed his Complaint in the U.S. District Court on the 16th of February 2023 just 52 days after Scott Semans provided a 'Sworn Affidavit" on the 27th of December 2022 (See ER 189-191). The Appellant therefore meets the conditions prescribed in *"JM Martinac Shipbuilding Corp, Estates of Hibbard, North Coast Air v. Grumman Corp*, and *Johnson v. Boeing Co* for maintaining an action for Defamation Libel, under the "Discovery Rule".

f. Therefore, the Appellant believes that the 9th Circuit Court of Appeals overlooked the following 2 factors:

a. The Appellants right to Amend his Complaint to further establish his claims under the "Discovery Rule" as stipulated in the following case standard:

i. *"We have held that "[a] pro se litigant must be given leave to amend his or her complaint." Noll v. Carlson,* 809 F.2d 1446, 1448 (9th Cir. 1987) *(internal quotation marks omitted). "Safouane v. Fleck,* 226 F. App'x 753, 767 (9th Cir. 2007)".

a. And Secondly:

ii. *"Upon remand, the district court should permit the Safouanes to attempt to amend their complaint to allege facts, if such exist." Safouane v. Fleck,* 226 F. App'x 753, 767 (9th Cir. 2007).

V. The fact that the Appellants current claim(s) meet the standards of prescribed by law to maintain an action under the "Discovery Rule"; Noting that the "Discovery Rule" does not explicitly stipulate the format in which a Complaint must be filed, but instead stipulates which elements must be met in order to maintain an action under the "Discovery Rule". Applying the "Discovery Rule" to both the Appellants

Defamation and FCRA claims.

VI. The principle of stare decisis dictates that lower courts must follow precedents set by higher courts within their jurisdiction unless those precedents are explicitly overturned or modified by subsequent rulings from higher courts as follows:

i. *Justice Kennedy expressed the same concept in terms of a definition of stare decisis in County of Allegheny v. ACLU Greater Pittsburgh Chapter,*492 U.S. 573, 109 S.Ct. 3086, 106 L.Ed.2d 472 (1989). *"As a general rule, the principle of stare decisis directs us to adhere not only to the holdings of our prior cases, but also to their explications of the governing rules of law."* Id. at 668, 109 S.Ct. 3086 *(Kennedy, J., concurring in part and dissenting in part). Miller v. Gammie, 335 F.3d 889, 900 (9th Cir. 2003).*

VII. The Appellant utilizes case laws that are established through the 9th Circuit Court of Appeals in 2010 and backed by Washington State Supreme Court Rulings which stem from 1988-1992 with further support from the Legislation in the Revise Code of the State of Washington as currently held by chapter 4.16 RCW pertaining to the tolling and extension of any statute of limitation and RCW 7.72.060(3) to provide that *"no claim under this chapter may be brought more than three years".*

VIII. Likewise, the United States Supreme Court in *"Randall v. Sorrell*, 548 U.S. 230, 243-44 (2006)" established the doctrine deciding which opinion and case law(s) the court should follow.

> *a. The Court has often recognized the "fundamental importance" of stare decisis, the basic legal principle that commands judicial respect for a court's earlier decisions and the rules of law they embody. See Harris v. United States*, 536 U. S. 545, 556-557 (2002) *(plurality opinion) (citing numerous cases). The Court has pointed out that stare decisis "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" United States v. International Business Machines Corp.*, 517 U. S. 843, 856 (1996) *(quoting Payne v. Tennessee*, 501 U. S. 808, 827 (1991)), *Randall v. Sorrell*, 548 U.S. 230, 243-44 (2006).

i. Since the "JM Martinac" the same case law standards have been enforced by the U.S. District Court for the Western District of Washington as follows:

a. "Under the discovery rule, the limitations period does not begin to run until plaintiff knew or, in the exercise of diligence, should have known the facts giving rise to the claim." *Johnson v. Boeing Co., Civil Case No.* C17-0706RSL, 2 (W.D. Wash.

Nov. 7, 2017).

IX. While Washington State did adopt the "Single Publication Rule" in 1987 *"Herron v. KING Broadcasting Co.*, 109 Wash. 2d 514, 746 P.2d 295 (1987)". In 2010 the 9th Circuit Court of Appeals ruled on a case which set a new precedence for "Libel Defamation". The Appellant's FCRA claims also fall under the "Discovery Rule" and therefore the same statutory and governing case laws; i.e. the "Discovery Rule" also applies to his claims of Defamation and to his FCRA claims as stated herein. And the Appellant holds that he should have had the right to Amend his Complaint at minimum in order to establish or clarify his FCRA claims under the "Discovery Rule".

X. The Appellant also contends that his original Complaint did meet the threshold as stipulated by the governing case laws and as mentioned herein. In order to maintain an action under the "Discovery Rule". And even if the court was to rule that there was some sort of lacking The Amendment of the Complaint would not have been futile.

1. The Appellants Motions to Strike:

I. The Appellee did not file their Reply until 04/17/2023 late and a clear violation of the Local Rules (See ER 264-267). Likewise, it was a violation of the Appellants Rights to Due Process as the Appellant did in fact file a "Sureply" Motioning the court to Strike the Reply (See ER 268-271).

II. The Local Rules for the U.S. District Court for the Western District of Washington at Tacoma. State the following: "LCR7(b)(3) Reply Brief. The moving party may, within the time prescribed in LCR 7(d), file with the clerk, and serve on each party that has appeared in the action, a reply brief in support of the motion, together with any supporting material of the type described in subsection (1).

III. LCR 7(b)(3) Explicitly states that the Reply Brief is *"reply brief in support of the motion"* That Motion being the Appellee's CR12(b)(6) Motion to dismiss now had no Defense against the Appellants Response and "Motion(s) to Strike" (See ER 200-219). The Appellee also failed to Respond to the Appellants Motion(s) to Strike (See ER 280-281). The last sentence of LCR 7(b)(2) Obligation of Opponent states the following: "If a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit". Governing case law state the following for failure to Respond:

b. "The failure of an opposing party to file points and authorities in response to any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney's fees, constitutes a consent to the granting of the motion." Easley Collection Serv. of Nev., 910 F.3d 1286, 1290 (9th Cir. 2018)".

IV. Seconding these arguments is the fact that not only did the Appellee's Reply (ER 264-267) fail to Deny the allegations presented by the Appellant in his Response ER 200-219). But the fact that the Appellant Motioned the Court to

Strike the Reply of the Appellee under the following case standard which should also be afford the right of Equal Protection of law under Section 1 of the Fourteenth Amendment of the Constitution.

Case standard as follows:

a. *Before granting dismissal for failure to follow local rules, the Court must consider several factors, including "(1) the public's interest in expeditious resolution of litigation"; "(2) the court's need to manage its docket"; "(3) the risk of prejudice to the defendants"; "(4) the public policy favoring disposition of cases of their merits"; and "(5) the availability of less drastic sanctions" "(Ghazali,* 46 F.3d at 53 (quoting *Henderson v. Duncan,* 779 F.2d 1421, 1423 (9th Cir.1986)) (internal quotation marks omitted).

i. *Where the U.S. District Court local rules prescribe the following:*

a. LCR 7(b)(3) Reply Brief. *"The moving party may, within the time prescribed in LCR 7(d), file with the clerk, and serve on each party that has appeared in the action, a reply brief in support of the motion, together with any supporting material of the type described in subsection (1).* In the U.S. District Court for the Western District of Washington, Local Civil Rule 7(d)(3) specifies the timeframes for filing responses and replies to motions.

ii. According to this rule: Any reply papers shall be filed and received by the opposing party no later

than 21 days after the filing date of the motion.

b. *"Parties have an obligation to respond to motions. See C.D. Cal. R.* 7-9; see also *Ferdik v. Bonzelet,* 963 F.2d 1258, 1261 (9th Cir. 1992) *(district courts have power to "manage their dockets without being subject to the endless vexatious noncompliance of litigants").* The public's interest in expeditious resolution of litigation is clearly served when parties file oppositions to substantive motions. This factor also "always favors dismissal." *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999),*Patel v. City of Los Angeles*, No. 18- 55983, 3 (9th Cir. Jan. 30, 2020)".

iii. The Appellant affirms his rights to a Due process of law as mandated by the United States Constitutions Fourteenth Amendments guarantee "due process". The Appellant also affirms his Constitutional rights under the "The Equal Protection Clause of the Fourteenth Amendment". Which mandates that individuals in similar situations be treated equally under the law. As seen in *Patel v. City of Los Angeles,* No. 18-55983, 3 (9th Cir. Jan. 30, 2020)" The Appellant's case has the exact same scenario and therefore the Appellant is entitled to Equal Protection.

1. The Motion(s) for Disqualification.

I. The Appellant now looks at the Motion(s) contained within his Motion(s) to Strike and the first Motion was to Disqualify both the Attorney

and firm of the Appellee. Bjornson lays out that it was Seyfarth Shaw and their Attorney Heather Mcfarland acting on behalf of Equifax Information Services LLC. That filed the erroneously, falsified, and defamatory statement(s) with the U.S District Court on behalf of Equifax. And that all attorney's, assistants, employees, and agent's associated with Seyfarth Shaw LLP are key interest to the Appellant. And further are required to testify before the court in-regards to both the interest of the Plaintiff Kevin Scott Bjornson and that of Equifax Information Services LLC (See ER 200-207).

II. Secondly the Appellant states that the entire law firm is subject to privileged information as to how the Defamatory remarks came into existence. If there was any conspiracy in-regards to such statements. And did Equifax know about the statements or is there evidence to show that Seyfarth Shaw LLP was actually behind the defamatory statements. (See ER 200-207). And does Seyfarth have special knowledge as to how the Defamation occurred. That being the Appellants Constitutional Rights may become hindered by Equifax's representation. If the court would allow Seyfarth to represent Equifax it would be a prejudice against the Appellant. As they would be subject to discovery procedures to provide deposition(s), Interrogatories, and to testify before the court. The Appellant believes that the Appellee's lawyer and law firm represent an direct Constitutional Prejudice against the Plaintiff and his rights to a due process and a fair trial.

II. Some of the governing case laws say the following:

c. *As stated in Redd v. Shell Oil Co., supra, "lawyer conflict of interest problems ought to be brought up long before the date of trial in an atmosphere which does not cast a shadow over the trial itself."* 518 F.2d at 316. *Trust Corp.'s failure to timely object and its lengthy delay in filing a motion to disqualify cannot be tolerated where, as here, disqualification would certainly cast a shadow over the trial. Trust Corp. of Montana v. Piper Aircraft Corp.*, 701 F.2d 85, 88 (9th Cir. 1983).

d. *This court has warned that a "motion to disqualify a law firm can be a powerful litigation tactic to deny an opposing party's counsel of choice." In re Cty. of L.A.*,223 F.3d 990, 995 (9th Cir. 2000); see also *Optyl Eyewear Fashion Int'l Corp. v. Style Cos.*,760 F.2d 1045, 1050 (9th Cir.1985) (motions to disqualify *"subjected to particularly strict judicial scrutiny"). We are mindful of the drastic nature of disqualification.* See HRCP 1.9. comment 4, *Reading Int'l, Inc. v. Malulani Grp., Ltd.,* 814 F.3d 1046, 1053 (9th Cir. 2016).

III. The Appellant again affirms his rights to Due Process of Law under the Equal Protection clause of the Fourteenth

Amendment of the United States Constitution.

IV. CLOSING

1. The Appellant believes that the 9th Circuit Court of Appeals most notably overlooked his rights as stated by "the Discovery Rule" pertaining to both his Libel Defamation claims and his Fair Credit Reporting Act claims. The Appellant therefore respectfully ask that the court approve this Petition for Rehearing.

Signed /s/

Kevin Scott Bjornson Date: 06/04/2025

Name: Kevin Scott Bjornson

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