

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON

Robert A. Johnson v. Raven Wood Homeowners Association

No. 3:24-cv-05087-TLF (W.D. Wash. Jan. 20, 2026) · No. 3:24-cv-05087-TLF · Decided January 20, 2026

SUMMARY

The United States District Court for the Western District of Washington denied Robert A. Johnson’s motion to strike Defendant Carl E. Krieger’s answer. The court held that the answer was not impermissibly redundant, that Krieger’s attorney-fee counterclaim was not a basis for striking the answer, that his representation and signatures complied with Federal Rule of Civil Procedure 11, and that changed circumstances permitted him to litigate defenses and counterclaims despite the court’s prior rulings.

CASE DETAILS

COURT	United States District Court for the Western District of Washington
WRITING FOR THE COURT	Theresa L. Fricke
JURISDICTION	United States District Court for the Western District of Washington
DECIDED	January 20, 2026
DOCKET	3:24-cv-05087-TLF
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 12(f) to strike portions of Defendant Carl E. Krieger's answer, including allegedly redundant material, a counterclaim for attorney's fees, assertions concerning official-capacity representation, and defenses or counterclaims allegedly barred by the Court's prior summary-judgment ruling.
STANDARD OF REVIEW	A Rule 12(f) motion to strike is evaluated to determine whether challenged matter is redundant or otherwise improper and whether striking it would avoid expenditure of time and money on spurious issues. Application of the law-of-the-case doctrine is discretionary.
PRECEDENTIAL VALUE	unpublished
PARTIES	Robert A. Johnson v. Raven Wood Homeowners Association

TOPICS

pleadings

civil procedure

attorney fees

default

summary judgment

PRACTICE AREAS

civil procedure

civil rights

fair housing

attorney fees

pleadings

QUESTIONS PRESENTED

1. Whether Krieger's answer contained impermissibly redundant material subject to being stricken under Federal Rule of Civil Procedure 12(f).
2. Whether Krieger could assert a request or counterclaim for attorney's fees in his answer in this Fair Housing Act and civil-rights litigation.
3. Whether Krieger's signature on the answer and his identification as pro se constituted impermissible hybrid representation under Federal Rule of Civil Procedure 11(a).
4. Whether the Court's prior summary-judgment ruling and the law-of-the-case doctrine precluded Krieger from litigating defenses, counterclaims, or attorney's fees after the order of default was overturned.

HOLDINGS

1. The answer was not impermissibly redundant because Krieger asserted that he acted as an official representative and agent of the homeowners association, making overlap between his conduct and the entity's conduct legally relevant; the Rule 12(f) challenge was therefore meritless.
2. Krieger's request for attorney's fees was not a viable basis for striking the answer. The Fair Housing Act permits a court, in its discretion, to award reasonable attorney's fees and costs to a prevailing party, and a defendant may recover fees when the plaintiff's action is frivolous, unreasonable, or without foundation.
3. Krieger's signature on the answer and identification of himself as pro se did not violate the Federal Rules of Civil Procedure or constitute impermissible hybrid representation because defense counsel had entered an appearance and also signed the answer.
4. The prior summary-judgment ruling did not preclude Krieger from litigating defenses, asserting facts, admitting or denying allegations, or pursuing a counterclaim for attorney's fees because changed circumstances existed after the order of default was overturned and Krieger had not previously participated in the case.

KEY QUOTATIONS

"The motion is DENIED. Defendant's request for attorney's fees concerning plaintiff's motion to strike (Dkt. 96 at 1, 5) will be addressed by separate order after additional briefing." (at 1)

"Here, there are changed circumstances, and the Court declines to apply law of the case. The previous order of default is not in effect, and therefore Mr. Krieger must have an opportunity to litigate his defenses" (at 5)

FACTUAL BACKGROUND

Krieger served as an official representative and agent of Raven Wood Homeowners Association and asserted that he acted within the scope of his employment. After the Court overturned an order of default against Krieger, he participated in the litigation and filed an answer containing defenses and a request for attorney's fees. Krieger signed the answer, and defense counsel also signed it after entering an appearance. Johnson sought to strike the answer based on redundancy, alleged hybrid representation, the attorney-fee counterclaim, and the prior summary-judgment ruling.

PROCEDURAL HISTORY

The Court previously entered an order of default against Krieger, later overturned that order on September 30, 2025, allowing Krieger to participate in the case. Before Krieger's participation, the Court had entered scheduling orders and a summary-judgment decision concerning the entity defendant. Johnson then moved to strike Krieger's answer. The Court denied the motion and reserved Krieger's request for attorney's fees for a separate order after additional briefing.

DISPOSITION

other

CASES CITED

- Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010)
- Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993)
- Houser v. City of Redmond, 91 Wn.2d 36, 40 (1978)
- New Jersey Coalition of Rooming and Boarding House Owners v. Mayor and Council of City of Ashbury Park, 152 F.3d 217, 225 (3d Cir. 1998)
- Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402 (1968)
- Leeds v. Watson, 630 F.2d 674, 677 (9th Cir. 1980)
- Indep. Fed'n of Flight Attendants v. Zipes, 491 U.S. 754, 758-759 (1989)
- Christiansburg Garment Co. v. Equal Emp. Opportunity Comm'n, 434 U.S. 412, 421-422 (1978)
- Green v. Mercy Housing, Inc., 991 F.3d 1056, 1057-1059 (9th Cir. 2021)
- Hughes v. Rowe, 449 U.S. 5, 15-16 (1980) (per curiam)
- Miller v. L.A. Cnty. Bd. of Educ., 827 F.2d 617, 620 (9th Cir. 1987)
- Durrett v. Jenkins Brickyard, Inc., 678 F.2d 911, 914 n.3 (11th Cir. 1982)
- Botosan v. Fitzhugh, 13 F. Supp. 2d 1047 (S.D. Cal. 1998)
- Thomas v. Bible, 983 F.2d 152, 154-155 (9th Cir. 1993)
- Hall v. City of Los Angeles, 697 F.3d 1059, 1067 (9th Cir. 2012)
- United States v. Lummi Nation, 763 F.3d 1180, 1185 (9th Cir. 2014)
- Stacy v. Colvin, 825 F.3d 563, 567 (9th Cir. 2016)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 5 AT
TACOMA 6 ROBERT A JOHNSON, Case No. 3:24-cv-05087-TLF 7 Plaintiff, v. ORDER
DENYING PLAINTIFF'S 8 MOTION TO STRIKE RAVEN WOOD HOMEOWNERS 9
ASSOCIATION, 10 Defendants. 11 This matter comes before the Court on plaintiff's motion to
strike. Dkt. 90. 12 Defendant Carl E. Krieger responded to the motion, and plaintiff filed a reply.

Dkt. 96, 13 97. The motion is DENIED. Defendant's request for attorney's fees concerning
plaintiff's 14 motion to strike (Dkt. 96 at 1, 5) will be addressed by separate order after additional
15 briefing. 16 I. Introduction 17 Plaintiff contends Defendant Krieger's answer is procedurally
defective because 18 it allegedly contains redundant material and improperly asserts a
counterclaim at this 19 stage of the litigation.

Plaintiff also asserts that Defendant Krieger may not assert any 20 defenses or seek relief in an
official capacity and is prohibited from bringing a 21 counterclaim precluded by the Court's prior
summary judgment ruling. Plaintiff also 22 contends that Defendant Krieger is not entitled to
recover attorney fees, because 23 plaintiff has brought civil rights claims, and the Fair Housing
Act includes a fee-shifting 24 1 provision.

In addition, Plaintiff also argues that Krieger's answer should be stricken due 2 to a "hybrid
representation". Neither party has requested oral argument. 3 II. Discussion 4 A. Defendant
Krieger's Answer is not Impermissibly Redundant, and 5 Defendant's Attorney's Fees
Counterclaim is not Improper. 6 Plaintiff asserts that under Fed. R. Civ. P. 12(f), Defendant
Krieger should be 7 precluded from making redundant assertions in his Answer. "[T]he function of
a 12(f) 8 motion to strike is to avoid the expenditure of time and money that must arise from 9
litigating spurious issues by dispensing with those issues prior to trial." Whittlestone, Inc. 10 v.
Handi-Craft Co., 618 F.3d 970, 973 (9th Cir.

2010) (quoting *Fantasy, Inc. v. Fogerty*, 11 984 F.2d 1524, 1527 (9th Cir. 1993)). A corporation can
"act only through its agents", 12 and if an agent acts within the scope of their employment the
agent's actions are the 13 actions of the principal. *Houser v. City of Redmond*, 91 Wn.2d 36, 40
(1978). Plaintiff 14 does not identify actions taken by Mr. Krieger that would fall outside the scope
of his 15 employment as an official representative and agent of the Raven Wood Homeowner's 16
Association; because defendant asserts he was acting as an official representative of 17 the non-
profit defendant there is necessary redundancy, so plaintiff's argument under 18 Rule 12(f) is
meritless.

19 Plaintiff also asserts that attorney's fees are not a proper counterclaim. Yet the 20 Fair Housing
Act statute allows the parties to claim attorney's fees and the plain 21 language of the statute
includes plaintiffs and defendants. 42 U.S.C. § 3613 (c)(2) ("the 22 court, in its discretion, may
allow the prevailing party... a reasonable attorney's fee and 23 costs.").

Although the statutory language would seem to give the trial court discretionary authority to grant or deny a party's application for an attorney's fee award, "in fact, a district court's discretion not to grant attorney's fees and costs in civil rights cases is tightly cabined." *New Jersey Coalition of Rooming and Boarding House Owners v. Mayor and Council of City of Ashbury Park*, 152 F.3d 217, 225 (3d Cir.

1998). In a civil rights case, the successful plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968) (interpreting 42 U.S.C. § 2000a-3(b)); *Leeds v. Watson*, 630 F.2d 674, 677 (9th Cir. 1980) (analysis under 42 U.S.C. § 1988); *New Jersey Coalition*, 152 F.3d at 255, n.6 ((citing *Indep.*

Fed'n of Flight Attendants v. Zipes, 491 U.S. 754, 758-759 (1989) (observing that similar language in fee statutes of the different civil rights provisions should be interpreted alike)). A defendant may recover attorney's fees if plaintiff's lawsuit is "groundless or without foundation"; the Court must first make a finding that "the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith", or "the plaintiff continued to litigate after it clearly became so." *Christiansburg Garment Co. v. Equal Emp.*

Opportunity Comm'n, 434 U.S. 412, 421-422 (1978); *Green v. Mercy Housing, Inc.*, 991 F.3d 1056, 1057-1059 (9th Cir. 2021) (applying the *Christiansburg* reasoning to trial court's award of costs to defendant under the Fair Housing Act). Yet, the court must be cautious, in cases with a pro se plaintiff, in evaluating whether to award attorney's fees to a defendant.

See *Hughes v. Rowe*, 449 U.S. 5, 15-16 (1980) (per curiam); *Miller v. L.A. Cnty. Bd. Of Educ.*, 827 F.2d 617, 620 (9th Cir. 1987). Plaintiff also seems to be arguing that Defendant Krieger should not have requested attorney's fees in a counterclaim. Dkt. 90 at 6.

The defense argues that attorney's fees are an item of "special damage" under Fed. R. Civ. P. 9(g) and must be specifically stated. Dkt. 96 at 4-5. Normally, attorney's fees are requested after judgment, and the request is made by motion. Fed. R. Civ. P. 54(d)(2); see *Durrett v. Jenkins Brickyard, Inc.*, 678 F.2d 911, 914 n.3 (11th Cir. 1982) (stating that defendant's "counterclaim" was a premature motion for attorney's fees rather than an independent claim).

Defendants have cited to Fed. R. Civ. P. 9(g), and there is authority to support the proposition that attorney fees in a civil rights case should be alleged in a pleading as special damages. See *Botosan v. Fitzhugh*, 13 F. Supp. 2d 1047 (S.D. Cal. 1998). This is not a viable reason to strike the defendant's answer. B. Plaintiff's Arguments Regarding Official Capacity Lack Merit.

Plaintiff argues Defendant Krieger is not allowed to sign the Answer, because this suggests "hybrid representation". This argument lacks merit because defense counsel entered a notice of

appearance on behalf of Mr. Krieger. Dkt. 81, 82. Mr. 17 Krieger has signed the Answer, and one of his attorneys also signed. This complies with 18 Fed. R. Civ. P. 11(a).

Therefore, he is represented by counsel, and the fact he added 19 his signature and identified himself as “pro se” on the Answer does not violate the 20 Federal Rules of Civil Procedure. If Mr. Krieger is representing himself pro se as an 21 individual to the extent that plaintiff asserts any claims against him for conduct outside 22 the scope of his employment as one of defendant’s official representatives, and also is 23 represented by counsel as to conduct taken within the scope of his employment in 24 1 leadership for the Raven Wood Homeowner’s Association, the Court will address this as 2 the case progresses.

3 C. The Court’s Previous Ruling Denying Summary Judgment Does Not 4 Preclude Defendant Krieger from Litigation of Defenses, Counterclaims, 5 or Attorney’s Fees. 6 Mr. Krieger did not participate as a pro se party, or through counsel, until the 7 Court overturned the order of default, after the Court granted his motion on September 8 30, 2025. Dkt. 77, 86, 87.

The Court’s scheduling orders prior to September 30, 2025, 9 and the summary judgment decision filed by the Court on April 4, 2025 (Dkt. 46), did not 10 include Mr. Krieger. 11 Plaintiff argues the Court’s summary judgment decision precludes Mr. Krieger 12 from defending himself by asserting facts and admitting or denying allegations in the 13 Complaint, bringing affirmative defenses, or bringing a counterclaim for attorney’s fees.

14 The law of the case doctrine provides “a court is generally precluded from 15 reconsidering an issue that has already been decided by the same court, or a higher 16 court in the identical case.” Thomas v. Bible, 983 F.2d 152, 154 (9th Cir. 1993). It is a 17 judicial doctrine that aims to promote the efficiency of the courts, but it is not mandatory; 18 the court retains ultimate discretion in determining whether to apply it.

Hall v. City of Los 19 Angeles, 697 F.3d 1059, 1067 (9th Cir. 2012). It applies to issues “decided explicitly or 20 by necessary implication.” United States v. Lummi Nation, 763 F.3d 1180, 1185 (9th Cir. 21 2014). If applied, exceptions only exist for clear error, intervening changes in the law, or 22 substantially different evidence introduced on remand. Stacy v. Colvin, 825 F.3d 563, 23 24 1 567 (9th Cir.

2016). The Court may depart from the law of the case doctrine if there are 2 “changed circumstances” or to remedy “manifest injustice.” Thomas, 983 F.2d at 155. 3 Here, there are changed circumstances, and the Court declines to apply law of 4 the case.

The previous order of default is not in effect, and therefore Mr. Krieger must 5 have an opportunity to litigate his defenses, regardless of the Court’s summary 6 judgment ruling concerning the entity defendant, Raven Wood Homeowners’ 7 Association. 8 III. Conclusion 9 Plaintiff’s motion to strike on the basis of law of the case therefore is DENIED. 10 The

defendant's request for attorney's fees for plaintiff's motion will be addressed, but in 11 a separate order after more complete briefing by the parties.

12 13 14 Dated this 20th day of January, 2026. 15 16 17 A Theresa L. Fricke 18 United States
Magistrate Judge 19 20 21 22 23 24

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