

**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

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**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 24 1 authority to grant or deny a party's application for an attorney's fee award, "in fact, a 2 district court's discretion not to grant attorney's fees and costs in civil rights cases is 3 tightly cabined." *New Jersey Coalition of Rooming and Boarding House Owners v. 4 Mayor and Council of City of Ashbury Park*, 152 F.3d 217, 225 (3d Cir.

1998). 5 In a civil rights case, the successful plaintiff "should ordinarily recover an 6 attorney's fee unless special circumstances would render such an award unjust." 7 *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968) (interpreting 42 8 U.S.C. § 2000a-3(b)); *Leeds v. Watson*, 630 F.2d 674, 677 (9th Cir. 1980) (analysis 9 under 42 U.S.C. § 1988); *New Jersey Coalition*, 152 F.3d at 255, n.6 ((citing *Indep.*

10 *Fed'n of Flight Attendants v. Zipes*, 491 U.S. 754, 758-759 (1989) (observing that 11 similar language in fee statutes of the different civil rights provisions should be 12 interpreted alike)). A defendant may recover attorney's fees if plaintiff's lawsuit is 13 "groundless or without foundation"; the Court must first make a finding that "the 14 plaintiff's action was frivolous, unreasonable, or without foundation, even though not 15 brought in subjective bad faith", or "the plaintiff continued to litigate after it clearly 16 became so." *Christiansburg Garment Co. v. Equal Emp.*

*Opportunity Comm'n*, 434 U.S. 17 412, 421-422 (1978); *Green v. Mercy Housing, Inc.*, 991 F.3d 1056, 1057-1059 (9th Cir. 18 2021) (applying the *Christiansburg* reasoning to trial court's award of costs to defendant 19 under the Fair Housing Act). 20 Yet, the court must be cautious, in cases with a pro se plaintiff, in evaluating 21 whether to award attorney's fees to a defendant.

See *Hughes v. Rowe*, 449 U.S. 5, 15- 22 16 (1980) (per curiam); *Miller v. L.A. Cnty. Bd. Of Educ.*, 827 F.2d 617, 620 (9th Cir. 23 1987). 24 1 Plaintiff also seems to be arguing that Defendant Krieger should not have 2 requested attorney's fees in a counterclaim. Dkt. 90 at 6.

The defense argues that 3 attorney's fees are an item of "special damage" under Fed. R. Civ. P. 9 (g) and must be 4 specifically stated. Dkt. 96 at 4-5. 5 Normally, attorney's fees are requested after judgment, and the request is made 6 by motion. Fed. R. Civ. P. 54(d)(2); see *Durrett v. Jenkins Brickyard, Inc.*, 678 F.2d 911, 7 914 n.3 (11th Cir. 1982) (stating that defendant's "counterclaim" was a premature 8 motion for attorney's fees rather than an independent claim).

Defendants have cited to 9 Fed. R. Civ. P. 9(g), and there is authority to support the proposition that attorney fees 10 in a civil rights case should be alleged in a pleading as special damages. See *Botosan 11 v. Fitzhugh*, 13 F. Supp. 2d 1047 (S.D. Cal. 1998). This is not a viable reason to strike 12 the defendant's answer. 13 B. Plaintiff's Arguments Regarding Official Capacity Lack Merit.

14 Plaintiff argues Defendant Krieger is not allowed to sign the Answer, because 15 this suggests "hybrid representation". This argument lacks merit because defense 16 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