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STATE OF WASHINGTON
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No. 101304-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JARED KARSTETTER and JULIE KARSTETTER,
his spouse, who together form a marital community,

Appellants,

v.

KING COUNTY CORRECTIONS GUILD, a nonprofit
Corporation doing business as a labor union

Respondent.

APPELLANT'S RESPONSE TO MOTION TO STRIKE
HIS REPLY TO GUILD'S ANSWER

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INTRODUCTION

On November 14, 2022, after Karstetter filed his Reply to the Guild's Answer to Appellant's Petition to Review, the Clerk of the Court issued a letter in which it indicated it was moving to strike Appellant's Reply based on RAP 13.4(d) and giving Appellant until November 23, 2022 to Reply to its Motion to Strike. RAP 13.4(d) states, *inter alia*, that "a reply to an answer should be limited to addressing only the new issues raised in the answer." As we show below, Karstetter's Reply does address new issues raised in the Guild's Answer and should not be stricken.

ARGUMENT

I. The Guild's Answer Raises New Issues

In *Blaney v. Intern'l Machinists*, 151 Wn.2d 203, 210, fn. 3, 87 P.3d 757 (2004), this Court said:

The District also asserts that Ms. Blaney may not argue that the jury instruction was proper because she "did not file a cross-petition for review or otherwise affirmatively seek review before this Court on that issue." Suppl. Br. of Pet'r at 1 n.1. *RAP 13.4(d)* and *13.7(b)* do **not require Ms. Blaney to "file a cross-petition . . . or . . .**

affirmatively seek review." The rules merely require that the issue be raised. The issue was raised in a lengthy footnote to Ms. Blaney's answer, as well as in repeated references to the erroneous nature of the jury instruction in the District's petition for review (emphasis added).

Here, because the Guild arrogated unto itself several opportunities to raise new issues in its Answer, not raised by Karstetter's Petition to Review, the Clerk's Motion to Strike should be denied.

II. The Guild's Assertion that Karstetter Would Be an Outside Contractor Under the Economic Dependency Test Is a New Issue

Throughout the proceedings below, the Guild has argued that *Hollinsbery's* right to control test governed this case. In its Answer to Karstetter's Motion for Discretionary Review, the Guild raises an alternative theory that even under *Anfinson's* economic dependency test, Karstetter would be an independent contractor (Guild Answer, p. 10).¹ At p. 19 of its Answer, the

¹ The Guild's Issue 1 states "because Karstetter is also an outside contractor under the statutory "economic dependence test..."

Guild discusses “six factors” set forth in the Restatement of Agency that the *Anfinson* Court affirmed. This argument is also new, and prompted Karstetter to address that issue and the conclusion that factual disputes regarding those “factors” should have prevented the trial and appellate court from finding and upholding summary judgment. (Reply, pp. 11-14).

III. The Guild’s Argument of a Panoply of Washington Cases That Require Affirmance of the Decision Below Also Presents A New Issue

The Guild argues that (at pp. 12-16) “Washington courts use the right-to-control test to ascertain employment status for a variety of causes of action,” citing cases not raised in Karstetter’s Petition to Review. The facts and holdings of these cases constituted new issues for this Court to consider. Without the ability to distinguish these cases in a Reply, Appellant would be placed at in unfair position before this Court.

(Answer, p. 10). Karstetter’s Petition to Review does not raise that issue.

IV. The Guild's Assertion that Extending Whistleblower Protection to Independent Contractors Would Expand It Beyond Its Doctrinal Roots is a New Issue Which Merits Response

The Guild relies heavily on language in this Court's decision in *Karstetter I* to assert a new claim that this Court precluded whistleblower retaliation claims by others than in-house attorneys (Answer, pp. 26-29). This Court did not so hold. Rather, because it found that Karstetter had met his CR 12(b)(6) burden of establishing himself to be an employee of the Guild, it remanded his claim for trial.

The Guild attempts to preclude whistleblower protection by repeatedly mentioning this Court's use of the phrase "contract and wrongful discharge suits" (Answer, p. 27). While it may be true that in different circumstances *Karstetter I* could preclude an independent contractor from bringing a contract and wrongful discharge case, *Karstetter I* does not address the issue of whether an independent contractor should be entitled to bring a whistleblower retaliation claim seeking to enforce the public

policy of preventing a wrongdoer from benefitting from its wrongful conduct.²

This situation was not addressed before and should be considered by this Court in review.

CONCLUSION

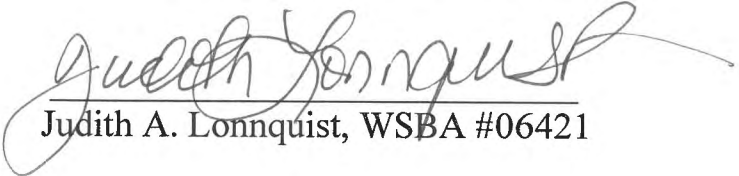
For the reasons addressed herein, Karstetter respectfully requests that the Clerk's motion to strike his Reply to the Guild's Answer be denied.

² See: *Karstetter I* at 685: The Guild's argument undercuts the fundamental purpose of our whistle-blower statutes. Washington's whistle-blower provisions are intended to encourage those with knowledge of institutional wrongs to come forward in order to safeguard the public. See, e.g., RCW 42.40.010, .020(2). Such protection is based on, among other things, the commonsense notion that employers should abide by the law and the intrinsic importance of fairness and justice in protecting individuals trying to "do the right thing." *Banick, supra*, at 1874-77; see *Farnam v. CRISTA Ministries*, 116 Wn.2d 659, 671, 807 P.2d 830 (1991) (stating that *Diocomes'* whistle-blowing protection focuses on the employer's wrongdoing, not the employee's actions). Protecting only those who directly reveal information while sacrificing others who assist them would unjustly narrow the scope of whistle-blower statutes and caution future whistle-blowers to think twice before helping other whistle-blowers.

I hereby certify that this responsive brief contains 868 words.

Dated this 22nd day of November, 2022.

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CERTIFICATE OF SERVICE

I, Kristin LeCLaire, an employee of the Law Offices of Judith A. Lonquist, P.S., declare under penalty of perjury that on the date below, I caused to be served upon the below-listed parties, via the method of service listed below, a true and correct copy of the foregoing document.

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Dated: November 21, 2022



Kristin K. LeClaire

LAW OFFICES OF JUDITH A. LONNQUIST

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