No. 89637-2

SUPREME COURT
OF THE STATE OF WASHINGTON

DEBRA PUGH, AARON BOWMAN and FLOANN BAUTISTA on their own behalf and on behalf of all persons similarly situated,

Plaintiffs/Petitioners,

v.

EVERGREEN HOSPITAL MEDICAL CENTER a/k/a KING COUNTY PUBLIC HOSPITAL DISTRICT #2,

Defendant/Respondent,

WASHINGTON STATE NURSES ASSOCIATION,

Intervenor/Respondent.

Court of Appeals, Division I, No. 68550-3-I

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The principles of accord and satisfaction in Washington are well-established. Both the trial court and the court of appeals concluded that accord and satisfaction applied to 1,157 individual nurses' settlement of potential wage claims with King County Public Hospital District No. 2 ("the District"). The trial court concluded, however, that because the nurses' union lacked standing to bring an action for injunctive relief, the nurses' individual settlements had to be set aside.[1]

The trial court did so at the request of two nurses who had not settled their wage claims with the hospital district and a third nurse who had settled her claims, but developed buyer's remorse. The 1,157 nurses who settled their individual, potential claims bound no one but themselves. The court of appeals' application of accord and satisfaction to the individual settlements with Floann Bautista and the nurses is consistent with, not contrary to, decades of this Court's decisions. The petitioners have not met, and cannot meet, the heavy burden for discretionary review under RAP 13.4(b). This is particularly so because, with the exception of Ms. Bautista, the nurses who settled their cases were not challenging the settlement and are not before the Court.

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[1] Labor unions have standing to bring actions for injunctive relief on behalf of their members. *Int'l Ass'n of Firefighters v. Spokane Airports*, 146 Wn.2d 207, 213-14, 45 P.3d 186 (2002).

II. ISSUES PRESENTED

1. Does the court of appeals' application of well-established principles of accord and satisfaction to individual settlements between nurses and their public hospital district employer warrant discretionary review under RAP 13.4(b)(1) even though no error is asserted regarding application of accord and satisfaction?

2. Is the application of accord and satisfaction to uphold individual settlement agreements a matter of "substantial public interest" that should be determined by this Court?

3. Does the court of appeals' refusal to invalidate settlement agreements, at the request of strangers to those agreements, raise questions of due process for the settling nurses under Washington's Constitution?

4. Is discretionary review appropriate for settlements between parties that affect no one's rights but their own?

III. STATEMENT OF THE CASE

The District operates the 275-bed Evergreen Hospital Medical Center as the cornerstone of its services to residents of King and south Snohomish counties. Its services include medical groups, home care, hospice, and many community health programs, including six satellite clinics. The hospital includes 26 separate, independently-managed medical departments, whose operations are as varied as the medical services

performed. The procedures each department uses to enable registered nurses ("RNs") to take meal and rest breaks vary significantly, depending on the nature of medical care provided, the size of the nursing staff, and the overlap of RNs' duties with other medical professionals.

This case[2] is the second of two lawsuits against the District regarding alleged missed rest breaks and unpaid wages to RNs. The first was filed by Washington State Nurses Association ("WSNA"), the exclusive bargaining unit for the District's RNs ("the *WSNA* lawsuit").[3] This suit, brought by two former Emergency Department ("ED") RNs, Debra Pugh and Aaron Bowman, additionally sought unpaid wages for alleged missed or interrupted meal breaks.

WSNA resolved its claims through a settlement agreement dated February 10, 2011 ("Settlement Agreement"). CP 831-38. During negotiations with WSNA, District representatives internally estimated possible financial exposure of up to $600,000. The estimate was based, in part, on resolutions of other lawsuits brought by WSNA against hospitals over allegations of missed breaks. CP 50, 209-210. The amount made available to settle the RNs' individual claims was $375,000, less than the District's estimated, potential maximum exposure. After the *WSNA*

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[2] King County Superior Court No. 10-2-33125-5 SEA, filed Sept. 17, 2010.

[3] *Wash. State Nurses Ass'n v. King Cty. Pub. Hosp. Dist. No. 2 d/b/a Evergreen Hosp. Med. Ctr.*, King County Superior Court No. 10-2-32896-3 SEA, filed Sept. 15, 2010.

lawsuit was settled and dismissed under CR 41, petitioners inquired into the District's settlement strategy during a deposition and discovered the District's estimate of possible monetary exposure. CP 195, 209, 1139-49.[4]

WSNA kept its members updated on its litigation, and held an information session to answer questions about the Settlement Agreement. CP 57-65, 69-82, 86-89, 891-92. At that meeting, WSNA distributed a "Settlement Information" sheet, detailing the Settlement Agreement and emphasizing in bold print: "**However, you may refuse the settlement money that Evergreen will offer you and press your own claim for back wages.**" CP 59-60, 82. Ms. Pugh attended the meeting and distributed a handout, "The Truth about the Settlement," which advised the RNs of her view of the settlement's effect and encouraged them to join her lawsuit instead:

> 9. Under the Settlement agreement you will have to give up your right to full payment for all missed rest breaks to get anything.
>
> 10. But you have other options than this settlement. There is a different, Class action, lawsuit that has been filed in King County Superior Court seeking full payment for all rest breaks that does not involve WSNA.

CP 60, 84.

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[4] Petitioners sought to intervene in the *WSNA* lawsuit, but their motion was rendered moot by the dismissal. Petitioners appealed WSNA's dismissal in Court of Appeals No. 66857-9-I. CP 189-90, 224-25. The briefing was completed and argument scheduled, but after the trial court in this case ruled in their favor, petitioners dismissed their appeal.

WSNA sent a letter to the RNs, stating that the District would soon send a settlement check to each RN, who would then have the option of settlement by accepting the check. CP 60, 89. The District sent checks and releases to individual RNs, who could decide whether or not to settle their individual claims for missed rest breaks. CP 834. The District notified all 1,253 RNs, when submitting its settlement proposal, of the existence of petitioners' lawsuit. CP 115, 127-28, 1294-95.

Petitioners also communicated with the RNs, urging them to participate in petitioners' lawsuit.[5] They sought to "enjoin Evergreen from attempting to [pay the RNs] in exchange for a release that would bar their participation in this action or undermine this class action." CP 7 (emphasis

[5] The communications included the following email to all District RNs from Ms. Pugh using the District's internal email system:

> Good Morning:
>
> To those of you who do not know me, I am a staff nurse in the ER. Are you tired of never getting all of your breaks or lunches? Aren't you tired of Evergreen utilizing your free labor and not paying the overtime for these missed breaks? **This is YOUR money and what Evergreen is doing is wrong!!!** I have filed a class action against Evergreen (this is separate from WSNA's lawsuit) and all staff at Evergreen are able to join the class action by simply by calling the attorney handling the case. Her name is Annette and she works at:
>
> Breskin Johnson & Townsend PLLC
> 1111 Third Avenue, Suite 2230
> Seattle, WA 98101
> (206) 652-8660
>
> You can also call me if you have any questions at 425-582-7678/253-298-1560 or e mail otp1pete@aol.com. Please pass this on to RN's who no longer work at Evergreen as well as techs and ancillary staff.
>
> Debra Pugh, RN, MSN
> Emergency Department
> Evergreen Hospital

CP 21-28, 67 (emphasis in original). Ms. Bautista remembered the email clearly and agreed with its sentiment. CP 1116-18.

in original). After the trial court denied their motion, CP 93-91, petitioners' counsel sent a letter to the RNs, asserting that his firm could recover more for them and explicitly warning that "[y]ou cannot cash [the settlement] check and be a part of the class action lawsuit over missed rest breaks" and "[i]f you want to be a member of the rest break class action, you should return the check back to Evergreen." CP 107-08, 112-13.

The District and 1,157 RNs settled potential claims for missed rest breaks. CP 1295. Each settling RN received a check and executed a release of "all claims" related to missed rest breaks. CP 1151. Of the 1,253 RNs who received settlement checks, only 19 affirmatively rejected the District's rest break settlement (one of whom later released her claims). CP 1295, 1329.

One of the RNs who settled her rest break claim and executed a release was Ms. Bautista, even though she was unhappy with the amount offered. CP 1122-34. Petitioners amended their complaint to add Ms. Bautista as a putative representative of all RNs who had settled their individual claims. CP 97-105. Because the amended complaint directly challenged the validity of the individual RN settlements, the District tendered defense of the settlements to WSNA under the indemnity provision of the Settlement Agreement. CP 182. WSNA then intervened. CP 176-88, 226-30.

Petitioners asked the court to certify a class of:

> All registered nurses engaged in patient care who have been employed by Evergreen Hospital Medical Center in King County, Washington and who, at any time between September 17, 2007 and the present, were denied rest and/or meal breaks

and a sub-class of:

> All members of the Class who received and cashed a check purporting to waive and resolve their rest break claims with Evergreen.

CP 312.

In response to the motion to certify, the District presented undisputed evidence of its uniform policy that RNs are to receive meal and rest breaks, and the wide variations among its 26 departments in the details of meal and rest break implementation. CP 115-18, 904-73, 1009-17, 1053-58. The District presented unrebutted evidence of the unique nature of nursing practice in the ED with its completely unscheduled patients, where two of the three putative class representatives worked. CP 118, 958-62. Even within the ED, Ms. Pugh testified that "[d]ay shift pretty much always gets their breaks." CP 1035.

The District conferred substantial discretion to department managers to implement break policies because of the wide variation in needs in different practice areas. In the surgery department, to help protect sterile operating rooms from contamination risks, breaks and lunches were combined into an hour-long period, and scheduled in between surgeries.

CP 931-32. The Comprehensive Procedure Center develops its RN schedule the prior day, setting times for breaks in between scheduled medical procedures. CP 1055-56. The manager of the Women's and Children's Services Department (obstetrics, gynecology and *post partum* care) developed a form to track breaks on a daily basis to help ensure that RNs got their rest and meal breaks. CP 943, 950-51. In the Cardiovascular Health and Wellness Center ("CWC"), all patient care (primarily exercise classes and monitoring) is scheduled. There are no "drop-in" patients, so the manager is able to schedule downtime when the RNs and other professionals may take breaks. CP 906-08. In the Critical Care Unit, there is frequent downtime aside from formal breaks and nurses are free to, and do, read, attend to personal business, and eat. CP 922.

Even within departments, individual managers tailor break relief implementation to the particular shift. For example, the pre-op and post-op ward is busier during the day when surgeries are performed, but slower once the surgeries are done. CP 1010. In addition to relief from the regular RNs on a shift, that department's charge nurse, admitting nurse, and manager were available to provide break relief as needed. CP 1009-10.

The make-up of an individual department's staff also affects how managers implement break relief. The Acute Rehabilitation Unit primarily uses a "team" approach to provide RNs with their rest breaks, but its staff

also includes two "case managers," RNs whose primary function is not direct patient care, but who provide break relief as needed. CP 927. In the CWC, RN duties overlap substantially with exercise physiologists, who can provide break relief, CP 905-06, and its manager described a missed break as an "isolated phenomenon." CP 908. The Women's Services Department has RNs trained in labor & delivery and mother-baby care. Labor & delivery RNs can perform the duties of *post-partum* RNs, but the reverse is not true. Admission and triage RNs within the department are available to provide breaks to RNs in direct patient care. CP 972.

A 20-year veteran of the Home Health Department detailed how Home Health RNs deliver care and how she had "never found it difficult to get my breaks." CP 970. None of the RNs in the Radiation Oncology Unit has ever reported missing a rest break. CP 955.

In contrast, Mr. Bowman and Ms. Pugh reported that they were unable to take breaks even on days when the ED's patient load and patient acuity were below average. The ED manager testified that "there was simply no work load explanation for their asserted inability to take breaks." CP 961. Mr. Bowman testified he missed breaks even though he was attending to personal matters "on down time when I didn't have any patients or the patients had gone off for tests when I was not involved in

any kind of patient care." CP 1029. Ms. Pugh's definition of "unremitting work" includes internet surfing for another job while on the clock. CP 961.

In addition to their motion for class certification, petitioners moved for partial summary judgment to invalidate the WSNA Settlement Agreement and the individual releases and to dismiss WSNA from the lawsuit. CP 414-37. The District cross-moved for partial summary judgment, presenting evidence that Ms. Bautista knowingly released her rest break claims. CP 1113-37, 1151, 1266-93.

On March 14, 2012, the trial court issued two orders granting petitioners' motions for class certification and for partial summary judgment, and denying the District's cross-motion. CP 1330-45. The court determined that WSNA lacked standing to sue and to settle its lawsuit; that court approval of the WNSA settlement was required under CR 23(e); and that although the individual releases constituted an accord and satisfaction, they were nonetheless invalid due to the invalidity of the WSNA settlement. The District moved for discretionary review, CP 1346-66, which the court of appeals granted on August 1, 2012.

In its opinion dated October 28, 2013, the court of appeals reversed the trial court's decision on the validity of the WSNA settlement and the individual RN releases. The court held that because the *WSNA* lawsuit was not a class action, court approval of the Settlement Agreement under

CR 23 was not required and the RNs were not denied due process. The court further held that the individual releases constituted an accord and satisfaction. As a result, the court of appeals declined to opine on the District's challenge to the class certification order, noting that it was unclear what remains of the lawsuit, and remanded for a reevaluation of the class certification decision.[6]

IV. ARGUMENT

A. The application of familiar principles governing private resolution of disputes warrants no further review.

Discretionary review is appropriate only where petitioners show that one of the limited bases for further review applies. Here, petitioners have not satisfied any of the prerequisites under RAP 13.4(b). The court of appeals decision is contrary to no decision of this Court or a court of appeals and involves no question under Washington's Constitution or of substantial public importance.

1. There is no dispute that "accord and satisfaction" applies to the RNs' settlements and their individual claims.

The doctrine of accord and satisfaction is part of black letter contract law. *Dodd v. Polack*, 63 Wn.2d 828, 830, 389 P.2d 289 (1964). Each RN who settled potential claims regarding rest breaks entered into an

[6] If the Court were to reverse the court of appeals' decision as to the individual RN settlements, it should remand to the court of appeals to rule on the District's challenge to class certification.

individual contract with the District. The RNs' capacity to contract is unaffected by petitioners' challenge to WSNA's standing to litigate.

The petition identifies no conflict between the decision below and any decision of this Court or the court of appeals. That is because there are none. Whether RNs received rest breaks was disputed. CP 961, 1028-31,[7] 1035; *compare* CP 764-65 *with* CP 922-23. Each settling RN expressly "settle[d] in full all claims [the RN] may have arising out of possible missed breaks." CP 127. Each settling RN also accepted the terms of the settlement between WSNA and the District. *Id.* Further, as part of the settlement, the District undertook to provide *uninterrupted* ten minute rest periods to each RN as part of their 15-minute rest periods, something not required by Washington law. *Meal & Rest Periods for Nonagricultural Workers Age 18 & Over*, Wash. Dep't of Labor & Indus. Admin. Policy No. ES.C.6. Each settling RN received the full amount to which he or she was entitled under the settlement.

In *Perez v. Papps*, 98 Wn.2d 835, 843-44, 659 P.2d 475 (1983), this Court summarized its longstanding application of accord and satisfaction:

> Simply stated, as applicable here, an accord and satisfaction consists of a bona fide dispute, an agreement to settle that dispute, and performance of that agreement. The new contract

[7] Mr. Bowman's definition of a rest break differs from that found in *White v. Salvation Army*, 118 Wn. App. 272, 283-84, 75 P.3d 990 (2003), where workers on break were on call but were "allowed to eat, rest, make personal phone calls, [and] attend to personal business that would not take them away from the facility."

> must rest upon consideration and such consideration exists when there is a dispute and the agreement compromises the parties' differences. (internal citations omitted)

Even if WSNA did lack standing, its standing is irrelevant to the settlements between individual RNs and the District of individual claims.[8]

RCW 49.52.050 was no bar to resolving the wage disputes out of court. Neither it nor RCW 49.52.070 applies to a *bona fide* dispute about wages owed. *Yates v. State Bd. for Cmty. Coll. Educ.*, 54 Wn. App. 170, 176, 773 P.2d 89 (1989). The existence of a *bona fide* dispute regarding whether RNs did or did not receive required breaks is amply demonstrated by the record. The petition should also be denied because on the question of whether other RNs settled for less than might have been recovered through full litigation, the petitioners themselves lack standing. "[A] stranger to a contract may not challenge the contract's validity based on inadequate consideration." *Newport Yacht Basin Ass'n v. Supreme Nw., Inc.*, 168 Wn. App. 56, 80, 277 P.3d 18 (2012). A challenge to the adequacy of consideration is personal to the parties to a contract. *Id.*

[8] The petition does not seek review of the particulars of Ms. Bautista's individual accord and satisfaction on any ground other than WSNA's lack of standing to bring its lawsuit and the contention that her settlement should have been approved by a court.

2. Neither "buyer's remorse" nor third-party objections to others' settlements are matters of "substantial public interest" that warrant further review.

While every case is important to the parties, not every case is of "substantial public interest." Binding Ms. Bautista to her settlement of her individual wage claim is a matter of private, but not public import. Similarly, the court of appeals' refusal to set aside the individual settlements entered into by other RNs at the behest of strangers to the agreements is not of "substantial public interest."[9]

Ms. Bautista was always in the best position to know whether and to what extent she did not get rest breaks (uninterrupted or intermittent) during her shifts. Armed both with that knowledge and knowledge of this lawsuit, she agreed to settle her own potential claims with the District. Her settlement affected no other RN's rights. After learning that RNs whom she knew had missed no breaks had also settled their claims, Ms. Bautista suffered buyer's remorse, CP 1043, and now petitions this Court to review

[9] Even if the general question were of substantial public interest, review here should be denied. In considering whether to review moot decisions on the grounds of "substantial public interest," this Court has refused to exercise that discretion where briefing of the issues below was not thorough, even if the matter might otherwise satisfy the test. *Wash. State Comm'l Passenger Fishing Vessel Ass'n v. Tollefson*, 87 Wn.2d 417, 419, 553 P.2d 113 (1976) (mootness exception not used though applicable because issues inadequately presented). Petitioners raised new issues on appeal relating to enforceability of the settlements, which were rejected by the court of appeals. *Pugh v. Evergreen Hosp. Med. Ctr.*, 177 Wn. App. 348, 361, 311 P.3d 1253 (2013). Where a petitioner develops its case incompletely, this Court should not exercise discretionary review.

the decision that bound her to her settlement. This is not a matter of substantial public interest that warrants review under RAP 13.4(b)(4). The petition asserts substantial public interest twice (Pet. at 3, 11), but offers no explanation of why Ms. Bautista's buyer's remorse presents any greater issue of public interest than any other settling litigant with buyer's remorse. Her private dissatisfaction does not warrant further review, especially in light of Washington's strong public policy that favors private resolution of disputes. *Am. Safety Cas. Ins. Co. v. City of Olympia,* 162 Wn.2d 762, 772, 174 P.3d 54 (2007) (rejecting argument because "we would deter future parties from attempting settlement before resorting to use of the courts. Such result would be directly contrary to established public policy . . . ."); *City of Seattle v. Blume,* 134 Wn.2d 243, 258, 947 P.2d 223 (1997). Turning the District's efforts to estimate worst case exposure into grounds to undo settlements of the claims would deter parties from settling just as surely.

Third-party objections to settlements are of even less public interest than an individual litigant's buyer's remorse. Petitioners cite no authority that third party objections to a settlement provide a basis for court review of others' settlements at all, much less a question of "substantial public interest." Non-settling parties' rights are generally unaffected by others' settlements. *Seafirst Ctr. Ltd. P'ship v. Erickson*, 127 Wn.2d 355, 368-69,

898 P.2d 299 (1995) (former partners' settlement with bank on lease dispute did not affect non-settling partner's right to seek contribution from partners). Non-settling RN's rights were expressly unaffected by the agreement that each individual RN entered into with the District when settling his or her potential rest break claims. CP 127-28.

Petitioners are mistaken that a public interest in protecting absent putative class members is implicated here. Individual settlements by putative class members are permissible without court oversight or approval. *See, e.g., Christensen v. Kiewit-Murdock Inv. Corp.*, 815 F.2d 206, 213 (2nd Cir. 1987); *Weight Watchers of Phil. v. Weight Watchers Int'l*, 455 F.2d 770, 773, 775 (2nd Cir. 1972); *In re M.L. Stern Overtime Litig.*, 250 F.R.D. 492, 500 (S.D. Cal. 2008); *The Kay Co. v. Equitable Prod. Co.*, 246 F.R.D. 260, 262-63 (S.D. W. Va. 2007); *EEOC v. McDonnell Douglas Corp.*, 948 F. Supp. 54, 55 (E.D. Mo. 1996); *Nesenoff v. Muten*, 67 F.R.D. 500, 503 n.4 (E.D.N.Y. 1974); *Jankousky v. Jewel Co.*, 538 N.E.2d 689, 767 (Ill. App. 1989); Debra Lyn Bassett, *Pre-certification Communication Ethics in Class Actions*, 36 GA. L. REV. 353, 356 (2002).

The primary case they rely on, *Diaz v. Trust Territory of the Pac. Islands*, 876 F.2d 1401 (9th Cir. 1989), deals not with individual settlements by putative class members, but with pre-certification dismissal

of claims by class representatives without notice. The court observed that notice to the putative class of pre-certification dismissal is not always required, *id.* at 1408, but was under the circumstances of that case, where the limitations period had nearly expired and putative class members had a subsistence economy and were "separated from each other by hundreds or thousands of miles of ocean." *Id.* at 1411. The settling RNs here were not left out, but opted to settle their rest break claims on their own.

The District clearly informed the putative class members of the existence of this lawsuit and that cashing the checks would exclude them from it. Petitioners and their counsel sent the same message. Because neither the WSNA Settlement Agreement nor the individual settlements had any preclusive effect on non-settling RNs, the substantial public interest requirement of RAP 13.4(b)(4) is not met.

B. Declining further review of a third-party challenge to their settlements raises no due process issues for the settling RNs, but accepting review would.

Individual RNs settled only their own claims through the accord and satisfaction. Petitioners' invocation of "due process" as grounds for discretionary review is wholly misplaced. It is petitioners who seek to dispose of the legal rights of absent parties by invalidating other RNs' settlements. The settling RNs obtained final resolution of their potential claims. Petitioners seek to re-open those claims, with full knowledge that

at least some of the RNs who settled did not miss breaks and would receive nothing if their claims now had to be litigated. Ms Bautista admitted that her anger over settlement payments received by undeserving RNs motivated her to seek to set the agreements aside. CP 1043.

Petitioners assert that due process issues are presented by the individual RNs' entry into settlements with the District. Constitutional due process requires that before a final adjudication is entered, those whose rights or claims are resolved must be given notice and an opportunity to be heard. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985). Here, only the individual claims of settling RNs were resolved by their agreements. This is exactly the private dispute resolution Washington supports.

In contrast, Ms. Pugh and Mr. Bowman did not settle, and remain free to bring their individual claims. Ms. Bautista settled. None of the petitioners are party to, or have their rights or claims resolved by any other RNs' settlements. They are strangers to those contracts, yet ask the Court to invalidate them without the participation of the RNs who were parties.

No due process issues are raised by the court of appeals decision upholding the individual settlement of Ms. Bautista or the settlements of the other RNs. The same cannot be said of petitioners' efforts to invalidate contracts to which they are not parties.

C. The court of appeal's conclusion that WSNA had standing is squarely supported by this Court's decisions, and no court approval is required for RN settlements that affected only the rights of the parties to the settlement.

A union has standing to seek injunctive or other equitable relief on behalf of its members under its own name. *Int'l Ass'n of Firefighters*, 146 Wn.2d at 213-14. Petitioners conceded below that WSNA had standing to seek injunctive relief. Resp'ts Br. at 32, n.20. If WSNA had standing to file its lawsuit, then it had standing to settle its lawsuit. WSNA settled only its claims. Individual RNs later settled theirs. CP 127. Upholding these settlements was fully consistent with Washington's strong policy favoring private resolution of disputes. *Del Rosario v. Del Rosario*, 152 Wn.2d 375, 382, 97 P.3d 11 (2004). "Public policy strongly favors resolving disputes by extrajudicial means." *Yates*, 54 Wn. App. at 176.

Petitioners' examples all involve settlements that affected the ability of others to vindicate their individual rights. Pet. at 12. The very descriptors used – "absent" and "other" – demonstrate the purpose of court approval is to protect those who do not otherwise have a say in resolving their own claims. Court approval of settlements by "class representatives" is important because class representatives' settlements dispose of not only their claim, but all others they purport to represent. Court approval is to prevent class representatives from colluding to the disadvantage of absent

members, not prevent individuals from settling their own claims. *Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1165 (9th Cir. 2013).

In contrast here, every settling RN was able to make an individual decision and resolved only his or her own potential claims, as was their right, consistent with Washington's strong public policy. No court approval was necessary, nor is further review.[10]

V. CONCLUSION

The petition for discretionary review fails to meet any of the limited grounds for further review and should be denied.

Respectfully submitted this 17th day of January, 2014

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[10] *See also* cases collected at page 16, *infra*.

DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on January 17, 2014, I caused service of the foregoing to the following counsel of record:

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Dated: January 17, 2014

Lee Wilson

OFFICE RECEPTIONIST, CLERK

From: Lee Wilson <wilson@lfa-law.com>
Sent: Friday, January 17, 2014 2:59 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: James S. Fitzgerald; John White; Kevin Hansen
Subject: FW: Pugh, et al. v. Evergreen Hospital & WSNA - Case #89637-2
Attachments: Ans.Petition for Review.Evergreen.pdf

Many apologies – I forgot to attach the document to my previous message – here it is:

Ms. Lee Wilson, Assistant to:
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Sent: Friday, January 17, 2014 2:52 PM
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Subject: Pugh, et al. v. Evergreen Hospital & WSNA - Case #89637-2

Case Name: Pugh, et al. v. Evergreen & WSNA, Intervenor/Respondent
Case Number: 89637-2
Filed by: John J. White, Jr.
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Attached is Answer to Petition for Review for filing in the above-referenced matter. Thank you.

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