No. 96146-8

SUPREME COURT
OF THE STATE OF WASHINGTON

RONNIE LEE SHARP, as Administrator of the Estate of Saundra Sharp, deceased,

Petitioner,

v.

LIFE CARE CENTERS OF AMERICA, INC., a Tennessee corporation; CASCADE MEDICAL INVESTORS LIMITED PARTNERSHIP, a Tennessee entity d/b/a LIFE CARE CENTER OF PORT TOWNSEND,

Respondents.

ANSWER TO PETITION FOR REVIEW

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A. Introduction.

Saundra Sharp died after her family insisted that she be transferred, in "end-life status," from Jefferson County Hospital to Life Care Center's Port Townsend rehabilitation facility, rather than to hospice care. (RP 1170, 2241-50, 2278, 3038-39) After a 35-day trial spanning ten weeks, a jury rejected claims of neglect or failure to care by Life Care, the sole defendant remaining after Mrs. Sharp's family settled their claims against Jefferson County Hospital and her treating physician.

The petition for review of the Court of Appeals' decision offers a version of the facts that the jury rejected, in support of a new trial order that did not identify any way in which petitioner had been deprived of a fair trial. Petitioner's claims of "misconduct," raised only after losing their gamble on the jury's verdict, are flatly refuted by the record and the court's rulings during trial. This Court should deny review of the Court of Appeals' unpublished opinion reinstating the jury's defense verdict.

B. Restatement of Issue.

The issue presented by the Court of Appeals' decision is properly framed as:

Whether the Court of Appeals properly reversed an order granting a new trial, entered 16 months after the defense verdict, that

overturned a jury's verdict after a 35-day trial, based upon inaccurate findings of "misconduct" that were refuted by the undisputed record and contradicted contemporaneous rulings during trial, and that did not identify how plaintiff was prejudiced by the alleged misconduct?

C. Argument Why Review Should Be Denied.

The Court of Appeals reversed the order overturning the jury's verdict because the trial court's findings of misconduct and discovery violations, entered after an "extreme" 16-month delay between the motion and the order for new trial, suffer from "significant factual inaccuracies," were contrary to the trial court's own prior rulings and observations during trial, and do not articulate any prejudice to the plaintiff, who did not object to many of the bases asserted for a new trial until the jury rejected plaintiff's claims on the merits. (Op. 1-3, 39-40) Petitioner's assertion that reversing a new trial order should be "nearly impossible" (Pet. 6) does not reflect the proper standard for review, and to the contrary would negate the very purpose of appellate review.

The Court of Appeals' unpublished opinion conflicts with neither this Court's decision in *Teter v. Deck*, 174 Wn.2d 207, 274 P.3d 336 (2012), which requires that a trial court base its order on "tenable grounds," nor any other authority. It is wholly consistent with cases recognizing that parties who "bet on the verdict" cannot later "cry foul,"

and must also demonstrate how claimed misconduct denied them a fair trial. And it properly recognizes that a trial judge may negate the constitutional role of the jury under Wash. Const. art I, § 21 only by finding that the court, a party, or its counsel has demonstrably hindered the jury's truth-finding function. Otherwise, it is the party who prevailed at trial who is deprived of a jury trial and the jury's verdict. This Court should deny review of the Court of Appeals' unpublished opinion, which carefully applies these well-established principles.

1. The Court of Appeals correctly applied the proper standard in reversing a new trial order based on untenable grounds.

The Court of Appeals applied the correct standard of review, holding that the trial court has discretion under CR 59 to set aside a jury's verdict, but that discretion is abused if "the factual findings are not supported by the record . . . based on an incorrect standard . . . . [and] if a trial court ignores its own prior rulings." (Op. 3-4, quoting *Teter,* 174 Wn.2d at 220, ¶ 24, and *Clark v. Teng,* 195 Wn. App. 482, 492, ¶ 17, 380 P.3d 73 (2016), *rev. denied,* 187 Wn.2d 1016 (2017)) The Court of Appeals did not "contradict[] this oft-cited standard" (Pet. 7), but rigorously applied it to each ground of alleged "misconduct" upon which the trial court relied in vacating the jury's verdict and ordering a new trial.

The Court's exhaustive review demonstrates that the record not only fails to support, but in fact contradicts, most of the findings of misconduct and discovery violations, which the trial court found to justify a new trial only if considered cumulatively. Far from being "sufficiently troubled to make a record of [its] concerns about defense counsel's conduct" during trial, as in *Teter*, 174 Wn.2d at 225, ¶ 34, the trial court here instead made a record that both parties were continuing to engage in discovery up to and during trial, and expressly rejected claims of defense counsel misconduct.[1] (*See, e.g.*, RP 1330, 3568; App. Br. 10-16; Reply Br. 8-10) Further, unlike in *Teter*, where the trial court found prejudice "under the appropriate standard," 174 Wn.2d at 225, ¶ 34, the trial court here instead "assumed the existence of prejudice," finding the effect of purported discovery violations and counsel misconduct on the jury's verdict (with which the trial judge apparently disagreed) "unknowable." (Op. 5-6) The Court of Appeals correctly held that in this "unique setting, the trial court order granting a new trial fails." (Op. 39)

[1] The trial court, a visiting judge from Kitsap County, expressed frustration that Jefferson County local rules do not impose a discovery cutoff date. (RP 1322-23, 1330; App. Br. 10-11, 16) But that does not mean that the defendant or defense counsel committed misconduct by timely responding to plaintiff's discovery requests, made up to and during trial.

The trial court's discretion in granting a new trial "is not without limits." *Thompson v. Grays Harbor Community Hosp.*, 36 Wn. App. 300, 307, 675 P.2d 239 (1983); *Clark*, 195 Wn. App. at 497, ¶ 26 (although this Court grants "'great deference' to the trial court on the scope of misconduct and resulting prejudice, *it is not absolute deference*") (emphasis added). (*See* Op. 3-4) Petitioner's argument to the contrary undermines not only the appellate court's fundamental role as a court of review, but the "inviolate" right to trial by jury and the jury's role as "the final arbiter of the . . . evidence." *Cox v. Charles Wright Academy, Inc.*, 70 Wn.2d 173, 176-77, 422 P.2d 515 (1967). The Court of Appeals correctly held that it should reverse a new trial order "if the factual findings are not supported by the record," "if it is based on an incorrect standard," or "if a trial court ignores its own prior rulings when finding misconduct." (Op. 4, quoting *Teter*, 174 Wn.2d at 220, ¶ 24, and *Clark*, 195 Wn. App. at 492, ¶ 17) Its unpublished opinion is not a basis for further review.

2. The Court of Appeals' unpublished opinion, requiring actual misconduct that prejudices a party's right to a fair trial, does not conflict with *Teter*, *Alcoa*, or any other decision.

While dressing it in different adjectives (Pet. 6: "nearly insurmountable; Pet. 11: "especially deferential;" Pet. 13: "frankly impossible"), petitioner essentially continues to advance the

extraordinary claim that a trial court's conclusory assertion that misconduct must have caused prejudice is unreviewable. (*See* Resp. Br. 10-11; Rep. Br. 15-18) This argument ignores the plain language of CR 59(a), which authorizes a new trial only if one of the rule's enumerated grounds "materially affect[s] the substantial rights of [the moving] parties." It also disregards *Teter*'s express requirements that misconduct warranting a new trial under CR 59(a)(2) be prejudicial in the context of the entire record, objected to at trial, and not cured by the court's instructions to the jury during trial. 174 Wn.2d at 226, ¶ 36.

Petitioner's assertion that the Court of Appeals' unpublished decision conflicts with this Court's decisions in *Teter* and *Aluminum Co. of Am. v. Aetna Cas. & Sur. Co.*, 140 Wn.2d 517, 998 P.2d 856 (2000) (hereinafter *Alcoa*) (Pet. 9) fails to acknowledge that this Court affirmed the *denial* of a new trial in *Alcoa*. It also ignores the stark contrast between the substantial record, documented at trial, of actual and prejudicial misconduct the trial court relied upon in *Teter* and the absence of such a record here.

In *Teter*, the trial court granted a new trial where "defense counsel's misconduct prevented a fair trial." 174 Wn.2d at 214-15, ¶ 13. Then-Judge Steven González granted a new trial less than a

month after entry of judgment on the defense verdict, based on extensive findings that accurately documented defense counsel's misconduct and its prejudicial effect on the jury. Unlike here, the findings supporting the new trial order in *Teter* were consistent with the court's contemporaneous observations and rulings during trial. Judge González "made a record of his concerns" with counsel's misconduct during trial, noting on the record his "displeasure" with counsel's repeated "disregard for protocol and rules of evidence" and "attempts to circumvent the court's ruling on admissibility" of evidence. 174 Wn.2d at 213-14, ¶¶ 11-12. In affirming the trial court, this Court held the Court of Appeals had improperly "substituted its own judgment for that of the trial court" because the record supported the findings of "repeated instances of misconduct after warnings by the court," which in turn supported the trial court's "finding that the cumulative effect of the misconduct warranted a new trial." 174 Wn.2d at 223-25, ¶¶ 29-34.

The Court of Appeals' decision is consistent with *Teter* and with *Clark*, decided four years later, in which Division One applied *Teter* to reverse an order granting a new trial. 195 Wn. App. at 492-93, ¶¶ 16-18. In *Clark*, the trial court overturned a defense verdict on the grounds defense counsel had violated pretrial orders prohibiting

suggestion of fault or causation by nonparties, finding "the cumulative effect of defense counsels' misconduct clearly casts doubt on whether a fair trial occurred." 195 Wn. App. at 491, ¶ 13. As here, however, the "core examples of misconduct identified by the trial court" in its new trial order were "fatally flawed;" the court "heavily relied on inaccurate facts" and "ignored its [prior] rulings authorizing defense counsel to question causation" by attributing plaintiff's injury to a nonparty's actions. *Clark*, 195 Wn. App. at 484, ¶ 1, 493, ¶ 19.

As in *Clark*, Division One here properly did not "ignore the factual inaccuracies in the key examples of misconduct identified by the trial court." 195 Wn. App. at 496, ¶ 24. For instance (and as just one example), Division One correctly recognized that the trial court erroneously found two purported instances involving a defense expert's testimony as "key examples" of "defense attorney misconduct." (FF 7, CP 3228; FF 20, CP 3236-37; Op. 8-13; *see* App. Br. 34-36; Reply Br. 3-5, 8-10) The first alleged "violation" was in response to what the trial court considered defense counsel's "appropriate" question (RP 3538-39, 3568) while the second "violation" came in response to a juror question *asked by the judge*, "with no apparent communication between defense counsel and the witness." (Op. 12; *see* RP 4309-16)

There is nothing "complex" about these errors (Pet. 18 n.6),[2] which in any event do not justify petitioner's improper attempt to incorporate unsuccessful arguments by attaching his motion for reconsideration as a basis for review in this Court.

Division One also recognized in *Clark* that appellate review of an order granting a new trial "is generally limited to the trial court's reasons for granting a new trial." 195 Wn. App. at 492, ¶ 17 (quoted source omitted). Because "the trial court did not identify . . . independent acts of misconduct that alone would support a new trial" – relying instead on the cumulative effect of the claimed misconduct – the "court's finding of prejudice [was] contrary to the record." *Clark*, 195 Wn. App. at 496-97, ¶¶ 24, 26. The Court of Appeals here also correctly recognized that the trial court had failed to apply the correct standard of prejudice by misinterpreting *Gammon v. Clark Equipment Co.*, 38 Wn. App. 274, 686 P.2d 1102 (1984), *aff'd*, 104 Wn.2d 613, 707 P.2d 685 (1985) (Pet. 7, 18-19), to "allow[] a new trial

[2] The Court of Appeals was also rightly concerned in this case that the trial court's post-trial findings were made 16 months after the trial and verdict. (Op. 3) Far from demonstrating "thorough" review by the trial court (Pet. 19), a delay of over a year between any briefing and the decision on a new trial, which was based on inaccurate findings made without the benefit of a verbatim report of proceedings and inconsistent with the court's own contemporaneous rulings during trial, speaks to the wisdom of the statutory requirement that judges rule on matters before them within 90 days. RCW 2.08.240.

on the vague and general supposition that a discovery violation has an unknowable impact on the moving party's right to a fair trial," and "assum[ing] the existence of prejudice without conducting the proper analysis." (Op. 5-7, 40; CP 3077-79, 3237-38)

The Court of Appeals did not "divide and conquer" (Pet. 6) to reinstate the jury's verdict here. In order to *cumulatively* justify vacating a jury's verdict, the claimed grounds for a new trial must actually be misconduct or discovery violations. Division One expressly "consider[ed] the [trial] court's general determination that Life Care's discovery violations prevented a fair trial in the context of each of the alleged instances of misconduct and discovery abuse" and correctly concluded that the record does not support the trial court's "vague and general observations about prejudice." (Op. 7-8, 40)

While "a new trial is a potential remedy for discovery abuse" (Op. 5), neither *Gammon* nor the "great deference" given to "the court's finding of prejudice for discovery violations" allows a trial court to overturn a jury's verdict "on the mere speculative and unknown impact of any act of misconduct or discovery abuse." (Op. 6-7) To the contrary, Washington precedent, including the *Alcoa* case relied upon as a basis for review under RAP 13.4(b)(1), requires the trial court to find actual prejudice before granting the extraordinary remedy of

reversing a jury's verdict and ordering a new trial. *Alcoa*, 140 Wn.2d at 539-40; *Collings v. City First Mortg. Servs., LLC*, 177 Wn. App. 908, 920, ¶ 25, 317 P.3d 1047 (2013), *rev. denied*, 179 Wn.2d 1028 (2014); *Spratt v. Davidson*, 1 Wn. App. 523, 526, 463 P.2d 179 (1969).

In *Spratt*, the Court reversed an order granting a new trial based on the trial court's speculation that there was a "possibility" that a juror's temporary indisposition during plaintiff's closing, and defense counsel's need for a recess during closing, may have affected the jury's verdict for the defendant:

> The existence of a mere possibility or remote possibility of prejudice is not enough. This is especially true if we are confined to the reasons stated in the order granting the new trial because of the absence of sufficient detail raising a reasonable doubt that the plaintiff received a fair trial. Even after amplification of the order by recourse to the record, it is apparent that the trial court was thinking in terms of possibilities rather than reasonable doubt that plaintiff received a fair trial.

1 Wn. App. at 526. The Court returned to this principle in *Clark*, noting that plaintiff "cites no authority that prejudice exists when the same testimony alleged to be defense misconduct is also before the jury in the form of" evidence submitted by the plaintiff. 195 Wn. App. at 497, ¶ 26. (*See* App. Br. 32-34)

This Court's discovery sanctions cases also require actual prejudice for a new trial based on a discovery violation. In *Burnet v.*

Spokane Ambulance, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997), this Court held that a trial judge must analyze whether "the disobedient party's refusal to obey a discovery order was willful or deliberate *and substantially prejudiced the opponent's ability to prepare for trial*" prior to imposing a "harsh" sanction. (emphasis added) *See also Blair v. Ta-Seattle East No. 176*, 171 Wn.2d 342, 348, ¶ 15, 254 P.3d 797 (2011) ("Although a trial court generally has broad discretion to fashion remedies for discovery violations, when imposing a severe sanction," "the record must show . . . *substantial prejudice arising from*" the violation) (emphasis added, quoted source omitted). The Court of Appeals' unpublished opinion applying these principles to reinstate the jury's verdict conflicts with neither *Teter* nor any of this Court's sanctions cases.

3. The three examples of "misconduct" petitioner relies upon as grounds for further review instead demonstrate the trial court's factual errors and unwarranted presumption of prejudice.

Petitioner has now abandoned reliance on all but three of the grounds the trial court concluded justified a new trial – in effect conceding that, as the Court of Appeals held, the other bases relied upon to overturn the jury's verdict 1) were not supported by the record, 2) were inconsistent with decisions made during trial, 3) were waived by or 4) did not prejudice plaintiffs – or that they suffered all

four deficiencies. In order to cumulatively justify a new trial, of course, the identified grounds must actually be misconduct or discovery violations. Attached to this Answer is the Appendix to Life Care's Opening and Reply Briefs updated to reflect the Court of Appeals' discussion and resolution of each ground that the trial court concluded cumulatively justified overturning the jury's verdict. Addressed here are the factual errors and lack of prejudice in the three incidents petitioner now claims are the reason the Court of Appeals should not have reinstated the jury's verdict, which to the contrary demonstrate the nature of the trial court's errors:

a. Plaintiff waived any objection and established no prejudice as a result of the claimed late disclosure of the duplicative wound care records.

The new trial order failed to "establish that late disclosure of [the venous ulcer stasis] records had any impact on Sharp's ability to adequately prepare for trial" because the trial court "did not address Life Care's argument that the venous ulcer stasis records are duplicative of information contained in Saundra's previously disclosed medical chart." (Op. 18) Not only had Life Care produced these records two weeks before trial (and four days before a 30(b)(6) deposition on Mrs. Sharp's care) (CP 565, 2719), but plaintiff never asked for any relief for the supposed "late" disclosure of this

"duplicative information." (Op. 17, quoting RP 1328: trial court reminding plaintiff, "if you seek relief as a result of that disclosure and that line of questioning, you need to prepare something for me to rule on. I'm not going to do it ad hoc") The Court of Appeals properly held that a losing party may not gamble on and then seek reversal of a verdict after a 10-week trial when petitioner "did not seek any of the relief suggested by the court" relating to the pre-trial disclosure of a "wound care book" that contained the very records timely disclosed in Mrs. Sharp's medical chart. (Op. 18)

b. Plaintiff received all the relief requested for the "late" disclosure of Yakimenko, who had been identified as a caregiver since the first discovery requests.

Division One deferred to the trial court's observation "that [nursing supervisor] Yakimenko's testimony that she interacted with Saundra was a surprise," but accurately recognized that the trial court failed to "articulat[e] any particular prejudice resulting from the surprise." (Op. 26) Life Care timely produced Ms. Yakimenko's personnel file on November 19, two days after plaintiff first identified her as a caregiver from medical records that Life Care timely produced months before trial. (CP 2879, 2885; Ex. 200 at 212, 216) Ms. Yakimenko first testified on December 8, but plaintiff waited an additional two weeks before alleging any late disclosure.

Plaintiff thoroughly cross-examined Ms. Yakimenko about her care of Mrs. Sharp, granting petitioner the only relief he sought below – the trial court did not excuse her as a witness so that plaintiff could recall her. (RP 3368-87, 3413, 3451; *see* App. Br. 42-43) Plaintiff neither requested additional time to prepare for cross-examination nor asked to recall Ms. Yakimenko. (Op. 27) Ms. Yakimenko's testimony that she saw Mrs. Sharp on eight occasions (RP 3370-73) in any event was "cumulative to the observations by nurses giving direct care and was on largely undisputed topics." (Op. 26) Division One correctly held "there was no showing that lack of notice inhibited Sharp's ability to adequately cross-examine Yakimenko" or "to prepare for trial." (Op. 27)

c. Plaintiff, who had and used Dr. Forbes' notes at trial, waived any objection to the claimed late disclosure of notes kept by Life Care's independent contractor.

Plaintiff had, and used, Dr. Forbes' meeting notes at trial. Although Division One in this one instance found that the "record does support the finding that the notes were responsive" to plaintiff's discovery requests, it also properly recognized "the prejudice resulting from Life Care's 'late disclosure' of the meeting notes depends in part on the extent of the delay." (Op. 29) Far from "concealing" Dr. Forbes' meeting from plaintiff (Pet. 17), Life Care's regional nursing director

and vice president both testified they "didn't know that that meeting took place." (RP 1774-76, 3305) Nor did Life Care withhold the notes from plaintiff until a defense witness "brought them to trial" (Pet. 17); plaintiff introduced the notes through his own witness, a former Life Care employee, in his case-in-chief. (RP 1729, 1744)

Indeed, "the record contains no mention of how or when Sharp [first] became aware" of the notes. (Op. 29 n.86) That plaintiff sought no relief for any "delay in obtaining the notes," which he introduced and the trial court admitted over Life Care's objection (Op. 28-29; RP 1795-96), substantially undermines the claim, made for the first time at oral argument in Division One, that plaintiff first "received the notes when one of the nurses testified" on November 18, 2014. (Op. 29 n.86) *See Clark*, 195 Wn. App. at 497, ¶ 26 (no "prejudice exists when the same testimony alleged to be defense misconduct is also before the jury in the form of a plaintiff's exhibit").

At trial, petitioner did not object to the supposed late disclosure of the "wound care book" (App. Br. 38), or Dr. Forbes' meeting notes (App. Br. 44-45), along with a host of other supposed discovery violations that petitioner has now abandoned as a basis for new trial, including the "punch detail," which Life Care timely produced (App. Br. 46-51), the Guide to Infection Control (App. Br.

39-40), and staffing ratios (which Life Care at any rate "overproduced" by giving plaintiff the defense's work product analysis of staffing in the facility during Mrs. Sharp's stay). (App. Br. 13, 19, 50, 52-53) Petitioner never moved for a mistrial. And during trial, the trial court granted petitioner all the relief requested because of *any* supposed misconduct or evidentiary or discovery violations. The law is clear these are not, in hindsight, grounds for a new trial. *Clark*, 195 Wn. App. at 492, ¶ 17; CR 59(a)(8) (requiring an "[e]rror of law occurring at the trial *and objected to at the time* by the party making the application") (emphasis added); *Estate of Stalkup v. Vancouver Clinic, Inc., P.S.*, 145 Wn. App. 572, 584-85, ¶ 29, 187 P.3d 291 (2008) (App. Br. 27, 31) (reversing order granting new trial following a defense verdict where plaintiff did not timely object at trial; the "trial court was belatedly ruling on an objection never made or preserved for review and, in effect, substituting its judgment of the weight to be given [to witness'] testimony for the jury's judgment").

This Court recently emphasized the importance of objecting during trial to counsel misconduct, reversing Division Two's grant of a new trial because counsel failed to object during trial in *Gilmore v. Jefferson County Public Transp. Benefit Area*, 190 Wn.2d 483, 503-04, ¶ 45, 415 P.3d 212 (2018). A party also waives a claim that he suffered

the requisite *actual* prejudice from a discovery violation by gambling on a verdict rather than seeking relief at the time of the violation. *Spratt*, 1 Wn. App. at 526. (Op. 5-7, 18) Because the "core examples" of misconduct found by the trial court were "fatally flawed," *Clark*, 195 Wn. App. at 484, ¶ 1, and because the trial court relied on a "vague and general" assumption of prejudice from the cumulative effect of "unknown unknowns," the Court of Appeals' conclusion that the trial court's findings of misconduct, individually or combined, cannot sustain the new trial order, presents no grounds for review. (Op. 6, 39-40)

4. The Court of Appeals' meticulous examination of the grounds for new trial asserted in the new trial order does not call for exercise of this Court's revisory jurisdiction.

In complaining that the Court of Appeals "minutely examined" the grounds proffered by the trial court for vacating the verdict and granting plaintiff a do-over before a different jury (Pet. 6), petitioner at base is complaining that Division One did its job. This Court denied review in *Clark*, 187 Wn.2d 1016, 388 P.3d 762 (2017), in which Division One also reversed an order granting a new trial because the trial court had relied on similar inaccurate and inconsistent findings of misconduct. This Court's precedents do not compel absolute deference to a trial court's flawed new trial ruling, as petitioner suggests in urging review under RAP 13.4(b)(4) because

"the same appellate court continues to defy this Court's precedents and to substitute its judgment for the trial courts.'" (Pet. 20)

5. Petitioner is not entitled to fees either below or in this Court.

Petitioner identifies as an issue (Pet. 2) but does not argue the reversal of the trial court's fee award when the jury's verdict was reinstated. (Op. 40) Respondent reserves the right to independently argue the trial court's errors in awarding fees to petitioner if this Court accepts review. (App. Br. 58-61; Rep Br. 19-20)

D. Conclusion.

This Court should deny review of the Court of Appeals' unpublished opinion reinstating the jury's verdict after a 10-week, 35-day trial.

Dated this 20th day of September, 2018.

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NEW TRIAL GROUNDS	ADDRESSED IN BRIEFS	INACCURATE FACTS	INCONSISTENT WITH TRIAL MANAGEMENT DECISIONS	WAIVER/ FAILURE TO OBJECT	NO PREJUDICE	COA OPINION
Dr. von Preyss Friedman	App. Br. 34-36 Reply Br. 3-5, 8-10	X	X		X	No violation (Op. 10) No misconduct (Op. 12)
Mr. Fletcher	App. Br. 36-37 Reply Br. 5, 9-10	X	X		X	No misconduct (Op. 16)
Late disclosure of wound care book	App. Br. 38 Reply Br. 9, 12			X	X	No violation because waiver and no prejudice (Op. 18)
Amended witness list	App. Br. 38-39 Reply Br. 6-7	X	X		X	Possible misconduct but no prejudice (Op. 21)
Guide to Infection Control	App. Br. 39-40 Reply Br. 13	X			X	Possible violation but no prejudice (Op. 23)
Ms. Yakimenko	App. Br. 40-43 Reply Br. 9-11	X	X	X	X	Should have disclosed but no prejudice (Op. 26-27)
Dr. Forbes' meeting notes	App. Br. 44-45 Reply Br. 13	X			X	Discovery violation but no prejudice (Op.29)
Production of punch detail	App. Br. 46-48 Reply Br. 13	X			X	No violation (Op. 32)
Punch detail as raw data	App. Br. 48-51 Reply Br. 11	X	X	X	X	No violation because waiver and no prejudice (Op. 32)
Mr. Thompson	App. Br. 43-44 Reply Br. 11	X			X	Should have disclosed but no prejudice (Op. 33) No misconduct (Op. 34)
Discovery re staffing ratios	App. Br. 52-53 Reply Br. 13	X		X	X	No violation or misconduct (Op. 36)
Binding 30(b)(6) testimony	App. Br. 53-54 Reply Br. 11		X	X	X	Single discovery violation but no prejudice (Op. 38)

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on September 20, 2018, I arranged for service of the foregoing Answer to Petition for Review, to the Court and to the parties to this action as follows:

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DATED at Seattle, Washington this 20th day of September, 2018.

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September 20, 2018 - 2:30 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	96146-8
Appellate Court Case Title:	Ronnie Lee Sharp v. Life Care Centers of America, et al.
Superior Court Case Number:	14-2-02125-1

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