NO. 97279-6
(Court of Appeals No. 77507-3-1)

IN THE SUPREME COURT
FOR THE STATE OF WASHINGTON

SAFE ACQUISITION LLC, a Washington corporation; LUCIDY, LLC, a Washington corporation, and SCOTT FONTAINE, an individual,

Plaintiffs – Appellants,

v.

GF PROTECTION, INC., d/b/a Guardian Fall Protection, a Washington corporation,

Defendant – Respondent

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

GF Protection Inc.[1] ("GFP" or "Respondent") respectfully submits that Appellants SAFE Acquisition, LLC, Lucidy, LLC, and Scott Fontaine's (collectively, "Appellants" or "SAFE") Petition for Review should be denied because the Court of Appeals' decision does not conflict with any decision of this Court or with Washington public policy.

The Court of Appeals properly determined that Appellants were not entitled to strike a provision in a settlement agreement in separate litigation between GFP and its former executive, by which he agreed not to cooperate with Appellants in their litigation against GFP but was permitted to testify or produce documents in compliance with any valid subpoena. The Court of Appeals also did not commit probable error by declining to review the trial court's denial of Appellants' motion to compel discovery relating to GFP's assignment of the license agreements at issue in the underlying case, where the information sought was not relevant to Appellants' claims and were outside the scope of discovery.

A. The trial court correctly denied Appellants' motion to strike a settlement term between GFP and its former President

Marquardt, GFP's long-time President and CEO, was terminated after GFP discovered his serious malfeasance, including an alleged

[1] GF Protection Inc. recently changed its name to GF Transition Inc.

kickback scheme. *See GF Protection, Inc. v. Marquardt*, King County Superior Court, Case No. 15-2-23472-2. As part of the resolution of claims arising from Marquardt's breaches of fiduciary duties, he signed a settlement agreement with GFP which, among other restrictions, barred him from cooperating with Appellants to the detriment of the company, except pursuant to subpoena (the "Other Litigation Clause").

The settlement agreement did not silence Marquardt. In fact, he testified pursuant to subpoena and is free to testify at trial pursuant to subpoena. The law allows that a company's former fiduciary be subject to reasonable post-employment restraints, Washington courts have recognized a strong public policy favoring settlement over litigation, and similar clauses are commonplace in Washington executive contracts. Finally, Appellants' failure to move the trial court for leave to depose Marquardt after the close of discovery demonstrates they were not deprived of any opportunity to prepare for trial due to trial court error.

B. The Appeals Court correctly declined to review the trial court's denial of Appellants' motion to compel discovery

In August 2017, GFP entered an Equity Purchase Agreement by which it transferred its business assets including the licenses at issue in this case (along with hundreds of other contracts) to Gemini Acquisition Holdings LLC. On the eve of trial and after the close of discovery,

Appellants moved to compel GFP to produce nearly all of its documents relating to the sale. GFP voluntarily disclosed redacted details about the sale showing that GFP retained all liability and assets relating to this litigation, and that the SAFE contracts were not separately valued as part of the sale and had no impact on the purchase price, but withheld highly confidential information irrelevant to Appellants' claims.

The Court of Appeals did not commit probable error in declining to grant discretionary review of the trial court's denial of Appellants' motion to compel, where SAFE failed to establish that the discovery sought would be relevant to whether GFP breached the license agreements, or any damages caused by GFP's alleged contract breach.

II. ANSWER TO ISSUES PRESENTED FOR REVIEW

GFP does not seek review of any issues decided by the Court of Appeals, and answers the two issues presented in the Petition as follows:

1. The trial court's and Court of Appeals' decisions denying Appellants' motion to strike a provision of a settlement agreement between GFP and its former executive, by which he agreed not to voluntarily cooperate with Appellants in litigating against GFP but was free to comply with any valid subpoena for testimony or documents, did not violate *Wright v. Group Health* or Washington public policy.

2. The Court of Appeals did not commit probable error by

declining to review the trial court's denial of Appellants' motion to compel discovery regarding GFP's assignment of the license agreements at issue in the underlying litigation, where GFP produced redacted portions of the Equity Purchase Agreement sufficient to identify the assignee and confirm that GFP retained all liability and assets regarding this litigation, GFP's principal testified that the licenses were not separately valued as part of and did not impact the purchase price of the assignment transaction, and Appellants never moved to reopen discovery or to serve additional discovery after the discovery cutoff.

III. COUNTER-STATEMENT OF THE CASE

This commercial dispute concerns two license agreements for the manufacture and sale of fall protection and roofing products between GFP and Mr. Fontaine's two companies, SAFE and Lucidy. Less than three years after licensing its products to GFP and receiving $500,000 in advance royalty payments in addition to monthly royalties, Appellants commenced this lawsuit. CP 1-14; Supplemental Clerk's Papers ("SCP"), GFP's Answer at 21-22. Appellants allege that GFP failed to exercise commercially reasonable efforts. CP 1-14. GFP denies these claims, and the license agreements do not promise any specific sales or volumes with respect to any product or customer. SCP, GFP's Answer.

The case was stayed at the lower court on the eve of trial, to allow resolution of Appellants' three separate requests for discretionary appellate review, involving several underlying orders by the trial court. This appeal is the last extant, and is before this Court for a determination whether to grant discretionary review after the Court of Appeals upheld the trial court's refusal to strike the clause of the settlement agreement between GFP and its former President and declined to review its denial of the discovery motion, and declined reconsideration.

A. The parties engaged in extensive discovery for over one year

Three months before the original June 2017 trial date, Appellants requested a continuance to allow additional time for discovery. SCP, Order Granting Pls.' Mot. to Continue Trial Date. The trial court granted Appellants' request, allowing an additional five months to complete discovery. *Id.* Ultimately, the parties produced voluminous documents and conducted numerous depositions before the close of discovery on August 7, 2017. SCP, GFP Opp. to Pls.' Mot. to Compel at 2.

Both Appellants and GFP scheduled several depositions in the weeks leading up to the scheduled close of discovery. CP 167. GFP's former President and CEO, Marquardt, was among several witnesses GFP sought to depose. *Id.* In July 2017, GFP subpoenaed Marquardt for documents and testimony and scheduled the deposition to occur on August

1, 2017. CP 167, 180. When Marquardt indicated a scheduling conflict, GFP agreed to accommodate his travel schedule by moving the deposition. CP 167, 180. Marquardt's counsel preferred August 7, 2017, which also happened to be the discovery cutoff. The deposition was scheduled accordingly, with notice to Appellants' counsel. CP 167, 182.

In total, Mr. Marquardt was deposed for approximately six hours. CP 184-85, 191. GFP ensured Appellants were afforded the opportunity to question Marquardt. CP 186. During deposition, Appellants' counsel questioned Marquardt about a settlement agreement he previously executed with GFP, which arose from a separate lawsuit relating to his termination by GFP. CP 187-90. Marquardt acknowledged that among other provisions, the settlement restricted him from disclosing GFP's confidential information. CP 189.

B. The Other Litigation Clause protected GFP's reasonable concerns that a former fiduciary was divulging its confidences

Despite the trial court's earlier denial of Appellants' motion to compel production of Marquardt's personnel file, Appellants requested the entire settlement agreement between GFP and Marquardt. CP 193. In an act of good faith and after the discovery cutoff, GFP agreed to and did provide Appellants with the pertinent clause, which reads:

> Other Litigation. Marquardt agrees that he shall not assist, directly or indirectly, SAFE, Lucidy, or Scott Fontaine in

> separate litigation or other proceeding adverse to GFP and/or its officers and directors. For purposes of this agreement, assist includes, but is not limited to, providing advice, information, and serving as a witness. Marquardt may respond to a properly served and noticed subpoena by making statements in a deposition pursuant to such subpoena or producing documents in direct response to such subpoena. Marquardt shall provide no assistance to this litigation voluntarily, or without notice to GFP consistent with the rules governing subpoenas. This paragraph does not diminish or lessen Marquardt's ongoing obligations to not disclose Confidential Information to competitors such as SAFE, as further set forth in paragraph II(D), above.

Id.; CP 157-58.

The Other Litigation Clause was a negotiated term (among others) in Marquardt's settlement agreement that was included after GFP discovered Mr. Marquardt was actively e-mailing with Appellants and their attorney about this litigation. CP 176-78. Marquardt was represented by counsel when the settlement agreement was negotiated. CP 167. As a former fiduciary of GFP for nearly ten years who had access to GFP's confidential information, Marquardt's assistance in the litigation implicated GFP's reasonable concerns that he was divulging confidential information. CP 158. Indeed, Appellants had asked Marquardt to submit a business plan for the licensed products and produced e-mails include Marquardt and Appellants' discussion of potential vendors and manufacturers for the licensed products. CP 176-78.

GFP consistently maintained that the Other Litigation Clause merely prevents Marquardt from voluntarily assisting Appellants in litigation adverse to GFP, but does not prevent him from being called to testify pursuant to a subpoena. CP 160. Nonetheless, Appellants moved "to strike" the Other Litigation Clause from Marquardt's settlement agreement, even though they were not a party to the contract. CP 77-84. The trial court denied Appellants' motion and specifically held that the contractual prohibition did not prohibit Marquardt from answering a subpoena to testify at trial. CP 216-17.

C. GFP transferred its business operating assets and contracts pursuant to the Equity Purchase Agreement

On August 11, 2017, GFP executed an Equity Purchase Agreement, pursuant to which GFP transferred business operating assets and contracts to Gemini Acquisition Holdings LLC ("Gemini"). CP 129. Along with hundreds of other contracts, GFP assigned to Gemini the two license contracts at issue in this case. CP 129-30. However, GFP retained all rights and liabilities with respect to claims associated with the present litigation. SCP, Unredacted Ex. 1 to Johnson Decl.; CP 130.

After the discovery cutoff, Appellants requested that GFP produce the Equity Purchase Agreement in its entirety and "any other responsive documents relating to the sale of GFP and/or the change in ownership of

the licensed products" pursuant to Requests for Production Nos. 3, 12, 13, and 16. CP 61. Appellants' cited requests include the following:

> **REQUEST FOR PRODUCTION NO. 3:** Produce all documents containing or discussing communications with third parties regarding purchase or sale of any of the Licensed Products.
>
> **REQUEST FOR PRODUCTION NO. 12:** Produce all communications between Darrin Erdahl and Phil Williams regarding any of the Licensed Products.
>
> **REQUEST FOR PRODUCTION NO. 13:** Produce all communications between Darrin Erdahl and Jasson Farrier regarding any of the Licensed Products.
>
> **REQUEST FOR PRODUCTION NO. 16:** Produce all communications between Darrin Erdahl and anyone not named above regarding any of the Licensed Products.

SCP, GFP Opp. to Pls.' Mot. to Compel at 3.

GFP maintained that the Equity Purchase Agreement was neither responsive to the discovery requests nor relevant to the claims at issue in the lawsuit, including because the SAFE and Lucidy contracts were among hundreds of contracts assigned, were not separately valued, and had no independent impact on the purchase price. *Id*., CP 130.

Nonetheless, in a good faith effort to reduce motions practice, GFP provided redacted portions of the Equity Purchase Agreement to confirm the transfer of the contracts and to identify GFP's retention of rights and liabilities associated with the litigation. SCP, GFP Opp. to Pls.' Mot. to Compel at 3. It was necessary for GFP to redact much of the Equity

Purchase Agreement because the transaction documents include many highly confidential—and irrelevant—transaction details that are protected from disclosure by a strict confidentiality provision. CP 130, 135.

Appellants moved to compel GFP to produce the complete Equity Purchase Agreement and related documents and communications pertaining to Appellants or the licensed products, and to depose GFP owner Darrin Erdahl for a second time. CP 15-25. The trial court denied the motion, reasoning that the documents sought were not relevant to the claims and issues in the case, and were beyond the scope of the discovery requests, and Appellants failed to establish good cause to conduct additional discovery. CP 213-14. Appellants never moved to reopen discovery, for leave to propound new discovery requests after the discovery cutoff, or for the trial court to review the documents *in camera*.

D. The Court of Appeals Decision

The Court of Appeals issued its opinion on March 25, 2019, upholding the trial court's determination that the Other Litigation Clause did not violate *Wright v. Group Health* or Washington public policy because it allowed Marquardt to testify or produce documents in response to a subpoena. App. at 1-14. In so ruling, the Court of Appeals noted the Supreme Court's emphasis that *Wright* "shall not be construed in any manner . . . so as to *require* an employee of a corporation to meet ex parte

with adverse counsel," and "[held] only that a corporate party, or its counsel, may not *prohibit* its nonspeaking/managing agent employees from meeting with adverse counsel." App. at 9 (quoting *Wright*). The Court of Appeals continued:

> Because an employee or former employee is not required to agree to speak with adverse counsel, the employee is free to decline to do so voluntarily. Logically, the employee is also free to agree with the employer/former employer that they will decline to engage in that communication voluntarily. There is no evidence in the record that Marquardt did not voluntarily enter into the settlement agreement in which he agreed not to communicate voluntarily with SAFE. GFP did not unilaterally block SAFE's access to Marquardt. This does not violate the policy articulated in *Wright.*

Id. The Court of Appeals found that the Other Litigation Clause explicitly allowed Marquardt to testify or produce documents in response to a subpoena, such that SAFE's access to Marquardt was not "blocked," nor was he barred from participating in the underlying proceeding. *Id.* at 9-10.

The Court of Appeals declined to accept discretionary review of the trial court's denial of Appellants' motion to compel discovery, on grounds that the trial court had not committed obvious or probable error by finding that Appellants had failed to show that the discovery sought was relevant to determine whether GFP had breached the parties' contracts and if so, the damages caused by GFP's alleged breach.

IV. ARGUMENT

A. The Appeals Court properly refused to strike the Other Litigation Clause

In order for this Court to take review, Appellants must show that the Court of Appeals' decision conflicts with a decision of the Supreme Court, or involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b). Neither is true.

1. The Court of Appeals' decision comports with *Wright*

The Other Litigation Clause does not violate *Wright ex rel. Wright v. Group Health Hospital*, 103 Wn.2d 192, 691 P.2d 564 (1984). *Wright's* holding is explicitly narrow: "We hold only that a corporate party, or its counsel, may not *prohibit* its nonspeaking/managing agent employees from meeting with adverse counsel." *Id.* at 203; App. at 9.

The present case is distinct from *Wright* in at least two significant regards. First, *Wright* is expressly limited to non-managerial employees. *Id*. Marquardt, in contrast, is the former President and CEO of GFP. As a former fiduciary of GFP, he has knowledge of GFP's confidential business information and information protected by the attorney-client privilege. Second, GFP did not "prohibit" Marquardt from assisting Appellants in this litigation. Rather, Marquardt voluntarily entered into the settlement agreement with GFP. App. at 9. He thus knowingly and voluntarily

waived his right to communicate voluntarily with SAFE, and "GFP did not unilaterally block SAFE's access to Marquardt." *Id.*

As the Appeals Court summarized, "GFP did not block SAFE's access to Marquardt, as it claims. He is free to testify pursuant to a subpoena, at which time counsel for GFP would be present to object to any disclosure of confidential information or information protected by the attorney-client privilege." App. at 9. Accordingly, the policy against a unilateral prohibition of access articulated in *Wright* was not violated. *Id.; see Wright*, 103 Wn.2d at 203 ("This opinion shall not be construed in any manner, however, so as to *require* an employee of a corporation to meet ex parte with adverse counsel."). Further, "[b]ecause an employee or former employee is not required to agree to speak with adverse counsel, the employee is free to decline to do so voluntarily. Logically, the employee is also free to agree with the employer/former employer that they will decline to engage in that communication voluntarily." App. at 9.

2. The Court of Appeals' decision does not conflict with Washington public policy

A contract term is unenforceable on public policy grounds when the interest in enforcement of the term is "clearly outweighed by a public policy against the enforcement of such terms." *State v. Noah*, 103 Wn. App. 29, 50, 9 P.3d 858 (2000) (citing RESTATEMENT (SECOND) OF

CONTRACTS § 178 (1981)), *review denied*, 143 Wn.2d 1014 (2001). A contract does not violate Washington public policy where it is not "prohibited by statute, condemned by judicial decision, or contrary to the public morals . . . ." *State Farm Gen. Ins. Co. v. Emerson*, 102 Wn.2d 477, 481, 687 P.2d 1139 (1984) (citation omitted). Rather, an agreement is contrary to public policy only if it has a tendency to be evil, against the public good, or injurious to the public. *King v. Riveland*, 125 Wn.2d 500, 511, 886 P.2d 160 (1994).

The public policy exception to the private right to contract is narrow. For example, Washington courts will not invoke public policy to override an otherwise proper contract even if the terms of the contract may be harsh. *See, e.g.*, *State Farm*, 102 Wn.2d 477 (clause in homeowner's policy did not violate public policy because insured failed to show exclusion was injurious to public or undermined sense of security for individual rights). In addition, courts are reluctant to invoke public policy to undermine contractual terms when there is no legislation or court decision that prohibits the clause. *See Cary v. Allstate Ins. Co.*, 130 Wn.2d 335, 340-41, 922 P.2d 1335 (1996).

In contrast, Washington courts have long recognized an "express public policy" in encouraging settlement over litigation. *Noah*, 103 Wn. App. at 50, citing *City of Seattle v. Blume*, 134 Wn.2d 243, 258, 947 P.2d

223 (1997); *Am. Safety Cas. Ins. Co. v. City of Olympia*, 162 Wn.2d 762, 772, 174 P.3d 54 (2007); *Seafirst Ctr. Ltd. P'ship v. Erickson*, 127 Wn.2d 355, 365, 898 P.2d 299 (1995). In keeping with this strong public policy favoring settlement, Washington courts have found that a voluntary agreement to refrain from communication is not unenforceable on public policy grounds. *See, e.g., Noah*, 103 Wn. App. at 51 (affirming enforcement of settlement agreement that prohibited party from harassing the other, noting the Supreme Court's "recognit[ion] that knowing and voluntary waivers of constitutional rights are valid."); *Moore v. Blue Frog Mobile, Inc.*, 153 Wn. App. 1, 221 P.3d 913 (2009) (company's reasonable belief that former executive breached non-disparagement clause in severance agreement supported a *bona fide* dispute that no further payments were owed), *review denied*, 168 Wn.2d 1020 (2010).

3. The Other Litigation Clause does not violate the Washington RPC and is not "witness tampering"

Appellants further contend that the Court of Appeals "sidestepped" consideration of whether the Other Litigation Clause violates RPC 3.4 or is tantamount to "witness tampering," by "ignor[ing] the impact of RPC 3.4 and misread[ing] *Wright*." Pet. at 12-13. However, the Court of Appeals reviewed and rejected both of those arguments (App. at 7-9), finding that *Wright* was expressly limited to unilateral prohibitions on

access to nonmanagerial employees, and that because the Other Litigation Clause did not block Appellants from access to Marquardt, as it allowed him to testify pursuant to subpoena, and was entered into voluntarily[2] by Marquardt, it did not contravene *Wright* or Washington public policy.

Appellants' arguments based on the RPCs hinge on their misreading of the scope of *Wright.* Comment five to RPC 3.4 does note that Model Rule 3.4(f) was not adopted because it is inconsistent with *Wright*; however, as drafted, the Model Rule is inconsistent with *Wright's* narrow holding because the Model Rule generally allows a lawyer to request a person other than a client to refrain from voluntarily giving relevant information to another party if the person is an employee of their client. For example, a lawyer's request that non-managerial employees of its corporate client not meet *ex parte* with adverse counsel might implicate committee's concerns about the adoption of RPC 3.4. *Cf.* App. at 18. However, *Wright* does not address what companies and their former executives can agree to in the context of a private settlement agreement.

In fact, similar clauses are routine provisions in Washington employers' executive contracts. If *Wright* precluded employers from

[2] Appellants argue that the settlement agreement was not "voluntary" because "Marquardt's only 'choice' was to reject a settlement he wanted, solely to protect Plaintiffs' right to talk with him, or to accept." Pet. at 13, n. 8. By that flawed logic, no contract term could ever be "voluntary," since negotiations require a give and take.

entering post-employment agreements with former executives that limited voluntary assistance in matters adverse to the company, then virtually every non-disparagement clause would be unenforceable. That is clearly not what Washington law provides. *See, e.g.*, *Blue Frog*, 153 Wn. App. 1.

Finally, this case is readily distinguishable from those cited by Appellants, which involve bribes or undue intimidation against testifying. For example, in *Synergetics, Inc. v. Hurst*, 2007 WL 2422871 (E.D. Mo. Aug. 21, 2007), the court addressed an inducement that a witness not *testify at trial*. In *Ty Inc. v. Softbelly's Inc.*, 353 F.3d 528 (7th Cir. 2003), the Seventh Circuit remanded a case where the trial judge failed to investigate what *could* have been witness tampering related to a witness' testimony *at trial*. In contrast, GFP did not attempt to silence Mr. Marquardt from testifying; in fact, it anticipated he would be called as a witness at trial and subpoenaed him for deposition accordingly.

Finally, to the extent that Appellants now argue that because Marquardt was deposed on the last day of discovery, they were effectively prevented from communicating with him, the record shows that the deposition was scheduled at the request of Marquardt and his counsel, Appellants had the opportunity to question Marquardt during the deposition, and Appellants never asked the trial court for relief from the

discovery deadline in order to subpoena him for a second deposition, effectively conceding that pre-trial access to Marquardt was unnecessary.

B. The Court of Appeals properly declined to exercise discretionary review of the trial court's discovery order

The Court of Appeals did not commit probable error in declining to grant discretionary review of the trial court's discovery order because the trial court's order was not probable error, and did not alter the status quo or substantially limit Appellants' freedom to act. RAP 2.3(b)(2).

"A trial court has broad discretion under CR 26 to manage the discovery process and, if necessary, to limit the scope of discovery." *Nakata v. Blue Bird, Inc.*, 146 Wn. App. 267, 277, 191 P.3d 900 (2008) (citing CR 26(b) and *Rhinehart v. Seattle Times Co.*, 98 Wn.2d 226, 232, 654 P.2d 673 (1982), *aff'd*, 467 U.S. 20, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984)), *review den.*, 165 Wn.2d 1033 (2009)). Trial courts are afforded broad discretion in fashioning discovery orders, in particular when protecting parties from fishing expeditions that needlessly interfere with litigants' privacy. *See Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 629, 818 P.2d 1056 (1991). A discovery order of the trial court is reviewable only for an abuse of discretion. *Id.* (citation omitted).

The trial court properly determined the information sought was neither relevant nor within the scope of Appellants' discovery requests.

Contrary to Appellants' arguments, additional information about the Equity Purchase Agreement was not necessary to determine the proper party or real party in interest, or whether a judgment in this case ultimately could be enforced against GFP.[3] Appellants allege that GFP breached the contracts at issue—not Gemini Acquisition Holdings LLC. CP 1-14. The portions of the Equity Purchase Agreement produced by GFP clearly state that Gemini Acquisition Holdings LLC acquired the contracts, and GFP retained all liability and assets with respect to this litigation. SCP, Unredacted Ex. 1 to Johnson Decl. Nor was the additional discovery necessary to value[4] Appellants' products, as the record shows that Appellants' contracts and products were not separately valued and did not independently impact the purchase price. CP at 130.

Moreover, GFP did not "unilaterally" determine relevance as Appellants suggest. Pet. at 18. The trial court expressly held that the documents sought were not relevant for purposes of Appellants' claims, and outside the scope of Appellants' discovery requests. CP 214. The trial court was intimately familiar with the facts of this case and was in the best position to determine what was relevant. *See Magana v. Hyundai*

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[3] To the extent that Appellants seek termination of the licenses (Pet. at 17), they are free to pursue that remedy (if they have not already achieved it) against the purchaser.

[4] Appellants now argue that information regarding the Equity Purchase Agreement would somehow be relevant to the "marketability" of the licensed products. Pet. at 17. But "marketability" in that context is simply a proxy for "value."

Motor Am., 167 Wn.2d 570, 583, 220 P.3d 191 (2009). Appellants' request for information related to the sale on the eve of trial[5] was nothing more than a fishing expedition intended to delay trial.

Finally, although Appellants argue that they should not have been obligated to show "good cause" to conduct additional discovery after the discovery cutoff (Pet. at 19), Appellants never moved the trial court to reopen discovery or for leave to conduct additional discovery after the discovery cutoff. Instead, they moved to compel discovery that was beyond the scope of their requests, and never sought an *in camera* review of the documents. Having failed to request such relief or to make *any* argument to the trial court why discovery should be reopened, Appellants should not be permitted to make such new arguments on appeal.

V. ATTORNEY'S FEES AND COSTS

GFP requests that its costs and reasonable attorneys' fees be awarded in responding to this Petition under RAP 14.2, RAP 18.1 and pursuant to the contracts between the parties.

VI. CONCLUSION

The Petition should be denied as the Court of Appeals decision does not conflict with a decision of this Court, or public policy.

[5] Appellants also err in arguing that there was "no trial date set" when they sought the discovery; as recognized by the Court of Appeals, "a September [2017] trial date was in place when the motion for additional discovery was made." App. at 13.

Dated this 1st day of July, 2019, at Seattle, Washington.

STOKES LAWRENCE, P.S.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 1st day of July, 2019, I caused a true and correct copy of the foregoing document, "ANSWER TO PETITION FOR REVIEW" to be electronically filed and emailed to the following counsel of record:

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