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COURT OF APPEALS DIVISION III  
OF THE STATE OF WASHINGTON

#368050

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STATE OF WASHINGTON, Respondent,

v.

DORIS MARIE GREEN a/k/a Lopez, Appellant

and

MERIDITH EUGENE TOWN, Appellant.

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OPENING BRIEF AND ARGUMENT OF PETITIONER-APPELLANTS

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## STATUTORY PROVISION AT ISSUE

- (1) In order to file an actionable claim for compensation under this chapter, the claimant must establish by documentary evidence that:
- (a) The claimant has been convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence;
  - (b)(i) The claimant is not currently incarcerated for any offense; and  
(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the claim;
  - (c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or  
(ii) The claimant's judgment of conviction was reversed or vacated and the charging document dismissed on the basis of significant new exculpatory information or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the charging document dismissed; and
  - (d) The claim is not time barred by RCW 4.100.090.
- (2) In addition to the requirements in subsection (1) of this section, the claimant must state facts in sufficient detail for the finder of fact to determine that:
- (a) The claimant did not engage in any illegal conduct alleged in the charging documents; and
  - (b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.
- (3) Convictions vacated, overturned, or subject to resentencing pursuant to *In re: Personal Detention of Andress*, 147 Wn.2d 602 (2002) may not serve as the basis for a claim under this chapter unless the claimant otherwise satisfies the qualifying criteria set forth in RCW 4.100.020 and this section.

(4) The claimant must verify the claim unless he or she is incapacitated, in which case the personal representative or agent filing on behalf of the claimant must verify the claim.

(5) If the attorney general concedes that the claimant was wrongly convicted, the court must award compensation as provided in RCW 4.100.060.

(6)(a) If the attorney general does not concede that the claimant was wrongly convicted and the court finds after reading the claim that the claimant does not meet the filing criteria set forth in this section, it may dismiss the claim, either on its own motion or on the motion of the attorney general.

(b) If the court dismisses the claim, the court must set forth the reasons for its decision in written findings of fact and conclusions of law.

R.C.W. 4.100.040

## INTRODUCTION

This is the consolidated appeal of the Superior Court’s denials of Claimant-Appellants Doris Green’s and Meridith Eugene Town’s verified Complaints for Compensation for Wrongful Conviction under the 2013 Wrongly Convicted Person’s Act (“WCPA” or “Act”), RCW 4.100 *et seq.* The WCPA is a remedial statute designed to address a unique harm: wrongful conviction. RCW 4.100.010; *Larson v. State*, 194 Wn. App. 722, 735-36, 375 P.3d 1096 (2016).

Ms. Green and Mr. Town were both wrongfully convicted during the now-discredited Wenatchee “sex ring” scandal. In November 1999, after Ms. Green served almost five years in prison, the State joined her in securing vacatur of her convictions and dismissal of the charges against her on the bases, *inter alia*, of police misconduct and that no crime was committed. Mr. Town served six years of incarceration before the State likewise joined him in June 2000 in securing vacatur of his convictions and dismissal of the charges against him on the same bases. Both filed timely verified Complaints for Compensation under the WCPA.

Despite their innocence, and the State having previously agreed to dismissal of the charges against them, the State moved to dismiss the WCPA claims. The Superior Court granted the State’s motions to dismiss. Although the facts set forth in the verified complaints were previously

agreed to by the State and were supported by prior court rulings and filings, and no challenge was made to the fact that Green and Town had been wrongfully incarcerated, the lower court found that Claimants failed to satisfy the Act's pleading standards by failing to attach adequate documentary evidence in support of their contentions. Shockingly, given the remedial nature of the Act, the trial court denied Claimants' request for leave to amend the complaints to supplement the documentation and instead dismissed *with* prejudice. This timely appeal followed.

#### **ASSIGNMENT OF ERRORS**

The Superior Court erred in dismissing with prejudice Green's and Town's Complaints for Compensation for Wrongful Conviction. This appeal raises questions of first impression under the WCPA:

ISSUE ONE: Are claims under the WCPA "special proceedings" under CR 81, and what standards should apply at the pleading stages of claims under the Act?

ISSUE TWO: Were Green's and Town's complaints sufficient to comply with the statute?

ISSUE THREE: If the complaints are deficient, did the lower court err in dismissing the complaints with prejudice, rather than affording Claimants leave to amend and remedy any pleading deficiencies?

## STATEMENT OF THE CASE

### I. The Wenatchee “Sex Ring” Scandal

In January 1994, Wenatchee Police Department Detective Robert R. Perez was appointed lead investigator for the Chelan and Douglas Counties’ Interdisciplinary Sexual Abuse Team. DG CP at 4; MET CP at 3; Ombud. Rev. at 8.<sup>1</sup> From the outset of his oversight of the sexual abuse unit, Detective Perez utilized his family’s two new foster daughters to support a vast number of sexual abuse charges against dozens of alleged perpetrators. DG CP at 3-4; Ombud. Rev. at 15-16. Specifically, soon after

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<sup>1</sup> The record in Doris Green’s appeal consists of the Clerk’s Papers in her case, and citations are referred to herein as “DG CP.” The record in Meridith Eugene Town’s case can be found in the Clerk’s Papers in his case, and citations to are denoted, “MET CP.” The transcript from the consolidated motion to dismiss hearing conducted on February 28, 2018, is cited as “RP.” Lastly, the Office of the Family and Children Ombudsman conducted a full-scale independent review of the Wenatchee investigations, cited here in as “Ombud. Rev.” See Vicki Wallen et al., *State of Wash., 1998 Review of the Wenatchee Child Sexual Abuse Investigations* (1998). The Report was previously filed with the Superior Court in Complainants’ personal restraint petitions. See Town Personal Restraint Petition, Case No. 94-1-00136-2, Ex. at 66. It is also online, see [https://www.digitalarchives.wa.gov/GovernorGregoire/ofco/reports/ofco\\_1998.pdf](https://www.digitalarchives.wa.gov/GovernorGregoire/ofco/reports/ofco_1998.pdf) (last checked 5/28/20), and is cited in scholarly articles. E.g., Heather L. McKimmie, *Repercussions of Crawford v. Washington: A Child’s Statement to A Washington State Child Protective Services Worker May Be Inadmissible*, 80 Wash. L. Rev. 219, 222 n.19 (2005); Jacqueline McMurtrie, *Unconscionable Contracting for Indigent Defense: Using Contract Theory to Invalidate Conflict of Interest Clauses in Fixed-Fee Contracts*, 39 U. Mich. J.L. Reform 773, 780 n.31 (2006). Pseudonyms used in the Ombudsman Review include: Detective Perez is called Detective Palmer; Ms. Green is called Mrs. Grant; the Holt family is called the Hulls; and the Town family is referred to as the Tobin family.

they were placed in his home, the 10- and 11-year-old foster children, in response to Perez's questioning, claimed to have been raped or sexually molested by virtually every adult they knew, claimed that the same had happened to almost every child they knew, and spoke of child-swapping orgies. DG CP at 5; Ombud. Rev. at 30. These allegations snowballed, as some adults and children succumbed to Perez's pressure-laden interrogations by telling bizarre stories of sex orgies involving children and naming friends, neighbors, and relatives as participants. DG CP at 5.

In all, these allegations and others led to 43 arrests for thousands of charges of rape and molestation. DG CP at 5-6. Many of the accused were illiterate or mentally ill. DG CP at 6. Twenty-five defendants were convicted. Ombud. Rev. at i. Of those, 18 have since had their convictions set aside and most of the remaining accused received suspended sentences or were released in the wake of the exonerations on credit for time served. DG CP at 6.

Since then, "[t]he Wenatchee investigations have been the focus of intense and enduring controversy." Ombud Rev. at i. Judge Kleinfeld of the Ninth Circuit summarized it thusly:

Wenatchee Washington seems to have been among the many towns engulfed by sexual witchhunts in the 1980's and 1990's. Its newly appointed child abuse detective on his first child sex molestation case, together with its much more experienced social workers, and its prosecutors, filed 29,727 charges of child abuse against 43 men and women. At the end of it all, few charges stood up in court .... Many of the others convicted in the Wenatchee sex prosecutions have had their convictions overturned on appeal. The Washington Court of Appeals has appointed a judge to conduct a formal inquiry into what went wrong in its criminal justice system. The affair has been popularly regarded as a Northwestern Salem.

*Devereaux v. Abbey*, 263 F.3d 1070, 1083 and n.2 (9th Cir. 2001)

(Kleinfeld, J., joined by Pregerson, J., and Wardlaw, J., concurring in part, dissenting in part) (citing Dorothy Rabinowitz, *Reckoning in Wenatchee*, The Wall Street Journal, September 21, 1999 (“The 1994-95 child sex abuse witch-hunt in Wenatchee, Wash., resulted in a massive frame-up.”); Paul Craig Roberts, *Saved by Pursuit of the Truth*, The Washington Times, April 6, 2000; Mike Barber, *Wenatchee Haunted By Investigations*, Seattle Post-Intelligencer, September 10, 1999; and Dorothy Rabinowitz, *Reckoning in Wenatchee*, The Wall Street Journal, September 21, 1999 (“Whitman County Superior Court Judge Friel stated that ‘no rational trier of fact would believe these allegations.’”)).

## **II. Doris Green’s conviction and exoneration**

As part of his Wenatchee sexual abuse unit activity, Detective Perez investigated allegations that both parents of the Holt family were

supposedly raping their children. *State v. Green*, 86 Wn. App. 1019, 1997 WL 266794, \*1 (3d Div. 1997); Ombud Rev. at 15. Although the Holt children had not made accusations against Doris Green, Perez ordered Ms. Green to come in for questioning because her landlord had supposedly told Perez that Green allowed the Holts to babysit her children. *Id.*; DG CP at 4. Ms. Green is a mentally limited adult who reads at only a third-grade level. DG CP at 4. Perez claimed that during this interview, Green spontaneously confessed to having had sex with three of the Holts' children. DG CP at 4; 1997 WL 266794, at \*2.

In January 1995, a jury convicted Green of three counts of rape and molestation, and she was sentenced to 23.5 years in prison. DG CP at 5; 1997 WL 266794, at \*1. After Ms. Green had served approximately five years of the sentence for her wrongful conviction, she filed a personal restraint petition, Case No. 94-1-00434-5. The petition attached documentation of her innocence, filed under seal. The prosecuting attorney joined Green's appellate counsel in a motion asking that Green's convictions be vacated and she be released, based on police misconduct, ineffective assistance of counsel, and evidence that the crime never occurred. DG CP at 1-2. In November 1999, with the State's agreement, the appeals court set aside the convictions. DG CP at 8; *see also In re J.A., E.A., C.C., F.R.*, 98 Wn. App. 1051, 1999 WL 1271873, \*1 (3d Div. 1999)

(“On November 17, 1999, Ms. Green’s personal restraint petition was granted and the judgment and sentence [were] vacated.”). The State dismissed the charges in January 2000. DG CP at 8. In the WCPA proceedings below, the State agreed to the accuracy of these facts. *See* RP at 6 (the State twice informing the Court that the facts are not in dispute).

### **III. Meridith Eugene Town’s conviction and exoneration**

Meridith Eugene Town was also caught up in Detective Perez’s fraudulent investigation. Perez claimed that Mr. Town confessed to committing numerous sex offenses; but Town maintained that Perez threatened and intimidated him until he signed a purported confession that he had not read, much less vocalized. MET CP at 4. Facing evidence of a supposed confession to various sex crimes and with the police’s suppression of exculpatory evidence, on June 9, 1994, Town pled guilty to four counts of second-degree rape and molestation and was sentenced to twenty years in prison, avoiding potential lifelong imprisonment. *Id.* at 1.

Town served six years before his convictions were vacated. *Id.* at 1-2. Specifically, Town filed a personal restraint petition, Case No. 94-1-00136-2, attaching under seal: newly discovered medical and psychological reports refuting the abuse allegations; new evidence refuting the claims in the police reports; and new evidence uncovering a pervasive pattern of police misconduct in the Wenatchee sex ring cases. The

prosecutor joined Town's counsel in asking the court to vacate Town's convictions and immediately release him on the grounds that the crimes had never taken place, there was evidence of police misconduct, and Town did not receive effective assistance of counsel. *Id.* at 1-2. In June 2000, Town's personal restraint petition was granted, his convictions were vacated, charges against him were dismissed, and he was released from prison. *Id.* at 2. In the WCPA proceedings below, the State agreed to the accuracy of these facts, as set forth in Claimant Town's complaint. *See* RP at 6 (the State twice informing the Court that the facts from the complaints are not in dispute).

#### **IV. Green and Town's Complaints for Compensation for Wrongful Conviction**

On July 25 (Town) and July 27 (Green), 2016, Claimants each filed a Complaint for Compensation for Wrongful Conviction, under RCW 4.100 *et seq.* DG CP at 1; MET CP at 1. This was within the three-year authorization period following enactment of the 2013 statute. RCW 4.100.090. Both complaints included a verification attesting, under penalty of perjury, that the claims in the complaints were true and correct. DG CP at 11; MET CP at 11.<sup>2</sup> The State answered each complaint and filed motions to dismiss, alleging pleading and procedural defects. DG CP at 12

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<sup>2</sup> Town's verification was signed via his sister, Janet M. Brown, who had power of attorney.

and MET CP at 12 (answers); DG CP at 16 and MET CP at 16 (motions to dismiss); DG CP at 17 and MET CP at 17 (memoranda in support of motions to dismiss).

After briefing and consolidated argument on the motions, on April 11, 2019, in substantially identical opinions, the lower court dismissed the complaints with prejudice. DG CP at 164; MET CP at 105. The court's bases for both dismissals were the same. First, the court ruled that a verified complaint is insufficient to satisfy the statutory requirement regarding documentary evidence to establish an actionable claim for compensation. MET CP at 104 and DG CP at 163 (citing RCW 4.100.040). The court held that, moreover, even if a verified complaint could meet the requirements of establishing the claim via documentary evidence, the complaints did not establish that Claimants' "judgment[s] of conviction [were] reversed or vacated and the charging document[s] dismissed on the basis of significant new exculpatory information[.]" MET CP at 104; DG CP at 163-64. Additionally, according to the court, the information in the complaints did not qualify as "significant new exculpatory information" qualifying for compensation. MET CP at 105; DG CP at 164. Finally, the court ruled that because Claimants failed to file the documentary evidence required by RCW 4.100.040(1) to make the claims actionable before expiration of the limitations period, there was no

curing the defect, so the court dismissed the complaints with prejudice. MET CP at 105; DG CP at 164. On May 9, 2019, Claimants filed this timely appeal. MET CP at 106; DG R at 165.

### **SUMMARY OF THE ARGUMENT**

The lower court erred in dismissing Claimants' complaints with prejudice. This Court should find that the verified complaints sufficiently comply with the statutory requirements, particularly since: (1) the facts of the complaints were not only uncontested, but expressly agreed to by the State; (2) Claimants' verifications constitute "documentary evidence"; and (3) additional documentary evidence was available via judicial notice of court opinions in collateral proceedings and of previously filed documents in Claimants' personal restraint petition cases. Alternatively, even if the Court finds the complaints deficient, when complaints lack allegations or supporting documentation that the court finds to be statutorily required, Washington courts liberally grant pleaders leave to amend so that a plaintiff may conform the complaint to the pleading requirements and the case can be decided on the merits instead of technicalities. *See, e.g., In re Det. of Turay*, 139 Wn.2d 379, 390-91, 986 P.2d 790, 796 (1999). This should be especially the case here, given the remedial purpose of the statute. *See Larson v. State*, 194 Wn. App. 722, 725 (2016).

The lower court's refusal to permit the routine request for leave to amend the complaints in this case was patently erroneous, particularly so in the context of these proceedings. The supposed pleading deficiencies that the court focused on could be easily remedied, and Claimants should be allowed to do so should the Court find that the pleading requirements—which must be liberally construed—are not already met. Either way, reversal of the Superior Court's dismissal of the complaints is warranted.

## **ARGUMENT**

### **I. Claims under the WCPA are “Special Proceedings” under CR 81.**

The WCPA is a comprehensive statute passed in 2013 that created a new proceeding and procedure for bringing “a claim for compensation against the state.” RCW 4.100.020. A claim for compensation against the State is filed in the superior court where the criminal action arose. RCW 4.100.030. The Act sets out substantive requirements to be met in order to file an “actionable claim for compensation,” including that they be accompanied by “documentary evidence.” RCW 4.100.040. At the pleading stage, the State can concede a claim or seek its dismissal, as can the trial court. *Id.* Ultimately, after the pleading stage, a claim must be proved by clear and convincing evidence. RCW 4.100.060. If a claim is

granted, the Act sets forth remedies—both monetary and non-monetary—for wrongfully convicted individuals. RCW 4.100.060.

Before enactment of the WCPA, the State of Washington had no mechanism for compensating the wrongfully convicted, and this statutory remedy was created to fill this gap. RCW 4.100.010. Indeed, with the WCPA the Legislature recognized that “persons convicted and imprisoned for crimes they did not commit have been uniquely victimized,” including the “tremendous injustice by being stripped of their lives and liberty,” the pain of imprisonment and further trauma from being “later stigmatized as felons.” *Id.*

In sum, there is no question, as this Court already held, that the WCPA “is remedial in nature, and ‘remedial statutes are liberally construed to suppress the evil and advance the remedy.’” *Larson v. State*, 194 Wn. App. 722, 725 (2016) (quoting *Go2net, Inc. v. FreeYellow.com, Inc.*, 158 Wn.2d 247, 253, 143 P.3d 590 (2006), in turn quoting *Kittilson v. Ford*, 23 Wn. App. 402, 407, 944 (1979)).

This Court should find that—consistent with its remedial purpose and own set of rules—that the WCPA is a “special proceeding” under CR 81. Civil Rule 81 provides that the Civil Rules do not apply where they would be “inconsistent with rules or statutes applicable to special proceedings.” While there are no hard and fast rules, the Washington

Supreme Court has recognized that special proceedings include “those proceedings created or completely transformed by the legislature,” as opposed to actions known to the common law. *Putman v. Wenatchee Valley Med. Ctr., P.S.*, 166 Wn. 2d 974, 982 (2009).

The text and structure of the Act confirms that this is a special proceeding. For example, a typical civil plaintiff need only file a complaint that includes a “short plain statement of the claim showing the pleader is entitled to relief,” CR8, and the allegations therein are presumed true at the early stages of the litigation. By contrast, a claim for compensation under the WCPA must present a claim with the support of “documentary evidence” RCW 4.100.040.

In addition, the Legislature relaxed the rules of evidence in order to permit the wrongfully convicted wider latitude in showing their innocence that accounts for the “difficulties of proof caused by the passage of time.” RCW 4.100.060(3); *see Larson*, 194 Wn. App. at 740, ¶27.

The upshot of this being a special proceeding, as explained below, is that it demonstrates the impropriety of the lower court’s ruling: rather than loosening the pleading requirements or interpreting them in light of the remedial purpose of the statute, a holding that a WCPA claim cannot be “timely,” and cannot be timely amended if all “documentary evidence” is not adduced within the statute of limitations creates a hurdle to recover

even greater than that of typical civil actions. Certainly, in creating a broader remedy, the Legislature could not have intended such a result.

## **II. Standards of Review**

No court has yet adjudicated the standard of review for dismissal of a WCPA claim under RCW 4.100.040(6) related to an argument that the pleading does not meet the “filing criteria,” set forth therein. As a matter of first impression, this Court should fashion a rule that dismissal is reviewed *de novo*, that all well-pleaded facts must be assumed true, and that all inferences must be taken in favor of the WCPA claimant when assessing the filing criteria.

These rules are analogous to motions under CR 12(b)(6), which allows parties to address alleged pleading deficiencies by bringing a motion asserting that the complaint fails “to state a claim upon which relief can be granted.” Wash. Super. Ct. Civ. R. 12. *See also In re C.M.F.*, 179 Wn.2d 411, 431, 314 P.3d 1109, 1118 (2013) (discussing CR 12(b)(6) as the appropriate vehicle for arguing that statutory pleading requirements were not met). Courts review CR 12(b)(6) dismissals *de novo*, and presume all well-pled facts alleged in the complaint are true. *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206, 209 (2007). Thus, this Court should likewise assume the truth of the facts alleged and conduct a *de novo* review of the lower court’s dismissal of the WCPA complaints on

the pleadings. To the extent that this appeal also turns on interpretation of the WCPA, questions of statutory interpretation are reviewed *de novo* as well. *Williams v. Tilaye*, 174 Wn.2d 57, 61, 272 P.3d 235, 237 (2012).

Many of the same concerns—the adequacy of the complaints and the courts’ goal of deciding cases on their merits—are implicated by WCPA motions to dismiss as by CR 12(b)(6) motions. Moreover, though a special proceeding under CR 81, the WCPA does not designate any alternative set of standards for evaluating the sufficiency of pleadings. *See* RCW 4.100.040 (6)(a). Accordingly, the Court should apply CR 12(b)(6) jurisprudence in the WCPA context, so long as doing so is consistent with the remedial purpose of the Act and its other unique provisions.

### **III. Claimants’ Complaints Are Sufficient and the Court Erred in Dismissing Them**

#### **A. The Pleading Requirements for WCPA Compensation**

The rules of statutory interpretation require courts to “ascertain and, carry out the Legislature’s intent, and if the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *Associated Press v. Washington State Legislature*, 194 Wn.2d 915, 920, 454 P.3d 93, 96 (2019).

In order to “file an actionable claim for compensation” under the Wrongly Convicted Persons Act, “claimants must establish by

documentary evidence” that: (a) the claimant has been convicted of a felony, sentenced to imprisonment, and served at least part of the sentence; (b) the claimant is not currently incarcerated and was not serving a concurrent sentence for another crime during the imprisonment; (c) the claimant was pardoned on innocence grounds or the claimant’s conviction was reversed or vacated and the charging document dismissed “on the basis of significant new exculpatory information” or, *inter alia* the claimant was not retried and the charging document dismissed; and (d) the claim is not time barred. RCW 4.100.040. Unlike complaints in typical civil actions, *see* CR 8, or even documents verified by an attorney, *see* CR 11, complaints brought under the WCPA must be verified *by the claimant* unless he or she is incapacitated. RCW 4.100.040(4).

Under CR 12(b)(6), dismissal of a complaint is appropriate “only if it appears beyond doubt that the plaintiff cannot prove any set of facts which would justify recovery.” *Keodalah v. Allstate Ins. Co.*, 194 Wn.2d 339, 345, 449 P.3d 1040, 1044 (2019) (citation omitted). In adjudicating the motion, a “plaintiff’s allegations are presumed to be true and a court may consider hypothetical facts not included in the record.” *Id.* Motions under CR 12(b)(6) “should be granted ‘sparingly and with care’ and ‘only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief.’” *Id.*

(quoting *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 329-30, 962 P.2d 104 (1998)).

In civil cases, the question of the sufficiency of the evidence supporting the claims in a complaint is reserved for summary judgment. *Macias v. Saberhagen Holdings, Inc.*, 175 Wn.2d 402, 408, 282 P.3d 1069, 1073 (2012) (“Summary judgment is appropriate if ‘there is no genuine issue as to any material fact’ and ‘the moving party is entitled to judgment as a matter of law.’ CR 56(c).”). Similarly, the sufficiency of the evidence question, under a heightened clear and convincing standard under the WCPA, is reserved for a post-pleading inquiry as well. RCW 4.100.060. Indeed, under .060, the court considers the “weight and admissibility of evidence,” and must do so in light of the circumstances brought out under the Act, which often involve the passage of time during which the claimant was wrongfully incarcerated. RCW 4.100.060(3).

## **B. Claimants’ Complaints Are Sufficiently Pled Under the WCPA**

### **1. Between the verifications, prior court rulings, and previously filed court documents available for judicial notice, there is enough documentary evidence available for the initial pleading stage**

There is no doubt that WCPA pleadings must be construed liberally in light of their remedial purpose. Likewise, the Civil Rules

provide that “all pleadings shall be so construed as to do substantial justice.” CR 8(f). Here, these rules must be applied to find that Claimants’ complaints’ verifications and their references to previously filed court documents—documents that are available for judicial notice and that prove the claims alleged—suffice to meet the filing requirement for establishing Claimants’ WCPA claims by documentary evidence. At argument on the motions, the State expressly agreed that the facts set forth in Claimants’ complaints are undisputed. *See* RP at 6 (“Your Honor, the facts are identical and they’re not in dispute[.]”); *Id.* (“So the facts are not in dispute here.”). And there is also no dispute that Claimants’ complaints allege each of the required elements of a WCPA claim. *See* DG CP at 16; MET CP at 16. In that context, the verifications supporting those allegations, along with the previously filed court documents, suffice to meet the pleading requirements.

For starters, as required by the Act, Claimants’ complaints each attach a verification, attesting to the truth of the claims made in the respective complaint under penalty of perjury. DG CP 11; MET CP 11. Verifications have the same legal effect as an affidavit—both serve to “assure the truthfulness of the pleadings and to discourage claims without merit....” *Crosby v. Cty. of Spokane*, 137 Wn.2d 296, 301, 971 P.2d 32, 36 (1999) (citing RCW 9A.72.085; *Gordon v. Seattle–First Nat’l Bank*, 49

Wn.2d 728, 731, 306 P.2d 739 (1957); and quoting *Griffith v. City of Bellevue*, 130 Wn.2d 189, 194, 922 P.2d 83 (1996)). Such attestations are routinely treated by the courts as “documentary evidence.” *See, e.g., State v. Abd-Rahmaan*, 154 Wn.2d 280, 289, 111 P.3d 1157, 1161 (2005); *Hoffman v. Kittitas Cty.*, 194 Wn.2d 217, 222, 449 P.3d 277, 280 (2019). Accordingly, the verifications attached to the complaints are documentary evidence supporting the truth of the uncontested claims in the complaints.

Additionally, both the complaints and counsel during argument on the motions to dismiss referenced court documents available for judicial notice to provide additional documentary support for the claims. DG CP at 2; MET CP at 2; RP at 12-14, 22. *See McAfee v. Select Portfolio Servicing, Inc.*, 193 Wn. App. 220, 226, 370 P.3d 25, 29 (1st Div. 2016) (“in a motion to dismiss, the trial court may take judicial notice of public documents if their authenticity cannot reasonably be contested, and the court may also consider documents whose contents are alleged in a complaint but not physically attached to the pleadings.”) (citation omitted).

Moreover, because the documents from the collateral personal restraint cases constituting new exculpatory evidence pertained to allegations of child sexual abuse, they were filed under seal. *See In re Personal Restraint Petition of Meridith Eugene Town*, Case No. 94-1-

00136-2, exhibits filed under seal; *In re Personal Restraint Petition of Doris Marie Green*, Case No., Case No. 94-1-00434-5, exhibits filed under seal; GR 15(e)(3) (restricting the public use of sealed documents in a civil case). This made judicial notice, rather than attachment of the documents to the complaint, a reasonable avenue for providing documentation to the court.

In addition to the documents filed in the personal restraint petition proceedings, there are prior court rulings providing documentation of some of the statutory standards. See *In re J.A., E.A., C.C., F.R.*, 1999 WL 1271873, at \*1 (“On November 17, 1999, Ms. Green’s personal restraint petition was granted and the judgment and sentence [were] vacated.”); *Green v. City of Wenatchee*, 148 Wn. App. 351, 356, 199 P.3d 1029, 1031 (3d Div. 2009) (the court explaining, “Ms. Green filed a personal restraint petition .... The State first agreed that Ms. Green should receive a new trial, but ultimately elected to dismiss the charges with prejudice on December 28, 1999. Her criminal conviction was vacated.”); *Id.*, 148 Wn. App. at 355 (the court noting that Ms. Green was convicted of felonies, sentenced to imprisonment, and served part of her sentence). This, too, can satisfy the statute’s establishment-by-documentary-evidence requirement for actionable claims. Wa. R. Ev. ER 201; *In re Adoption of B.T.*, 150

Wn.2d 409, 414, 78 P.3d 634, 636 (2003) (ER 201 allows courts “to take judicial notice of adjudicative facts.”).

Courts routinely find that “[d]ocuments whose contents are alleged in a complaint but which are not physically attached to the pleading may ... be considered in ruling on a CR 12(b)(6) motion to dismiss.” *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wash. 2d 820, 827, 355 P.3d 1100, 1103 (2015) (quoting *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 726, 189 P.3d 168 (1st Div. 2008)); *see also Friends of N. Spokane Cty. Parks v. Spokane Cty.*, 184 Wn. App. 105, 125, 336 P.3d 632, 640-41 (3d Div. 2014) (“Documents whose contents are alleged in a complaint but not attached may be submitted for consideration in ruling on a CR 12(b)(6) motion ... especially if the parties do not dispute the authenticity of the documents and the documents do not constitute testimony.”) (citations omitted); *Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App. 838, 844, 347 P.3d 487, 491 (1st Div. 2015). Here, the State did not dispute the authenticity of the available court documents; rather, it delineated them during argument. *See* RP at 12-14. Thus, the documentary evidence requirement can be met via judicial notice, even without the verifications.

Finally, it is noteworthy that the plain language of the WCPA does not require a claimant to *attach* documents to a complaint; rather the claimant need only *establish* by documentary evidence that the statutory

pleading requirements are met. RCW 4.100.040. *Nat'l Sur. Corp. v. Immunex Corp.*, 176 Wn.2d 872, 890, 297 P.3d 688, 696 (2013) (treating requirement that party “establish” element as synonymous with “prove”); *Miller v. Dalton*, No. 35163-7-III, 2018 WL 4488317, at \*28 (Wash. Ct. App. Sept. 18, 2018) (same). But the WCPA statute clearly does not require a sufficiency of the evidence hearing in order to just file a claim, nor does the statute set up any mechanism for doing so. Instead, the WCPA requires the claimant to plead that he or she can establish the claim by documentary evidence (RCW 4.100.040), and *then* if the complaint is properly pled, the statute requires an evidentiary hearing on the sufficiency of that proof to obtain relief. *See* RCW 4.100.060 (“In order to obtain a judgment in his or her favor, the claimant must show by clear and convincing evidence that” the statutory requirements are met).

The absence of any evidentiary proof standard in Section .040, and the presence of an evidentiary proof standard in Section .060, makes it clear that the Legislature intended that the adjudication of the sufficiency of the evidence happen later in the proceeding (under .060), not at the initial pleading stage (under .040). To interpret the statute otherwise would be nonsensical and render Section .060 redundant or obsolete. Thus, this Court should reject the Superior Court’s faulty statutory interpretation. *See Fray v. Spokane Cty.*, 134 Wn.2d 637, 648, 952 P.2d 601, 606 (1998)

(“Courts should interpret statutes to avoid absurd or strained results so as not to render any language superfluous.”) (citation omitted).

Dismissing Claimants’ complaints because counsel referenced uncontested court orders and previously filed documents that prove the statutory elements, while failing to attach them to the complaints, is the ultimate form-over-substance ruling and should be reversed. There are no disputes about the underlying facts or the authenticity of the documents that, in addition to the verifications, prove the allegations in the complaints. Claimants’ complaints are sufficiently pled.

## **2. The Superior Court’s contrary ruling was erroneous**

First, the court below held that if Claimants were not required to attach additional documentary evidence, beyond their verifications, it would render the statute’s documentary evidence requirement superfluous. But, as explained above, the statute does not actually specify that the documentary proof must be attached. Rather, it sets forth that the claimant must “must establish by documentary evidence” (RCW 4.100.040) and then sets forth the burden of proof and mechanism for adjudicating the sufficiency of that proof in Section .060. Thus, it is the Superior Court’s reading that renders Section .060 superfluous and must therefore be rejected. Alternatively, even if this Court finds that the statute does require

that claimants attach the proofs to their complaints, the Superior Court erred by failing to take judicial notice of the court documents—documents “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”—proving Claimants’ claims. *In re adoption of B.T.*, 150 Wn.2d at 414 (citing ER 201). There is abundant new evidence of innocence that would be available for Claimants to present at a section .060 adjudication.

Second, the lower court also found the verifications attached to the complaints inadequate by collapsing the summary judgment stage with the motion to dismiss stage and examining the sufficiency of the evidence, rather than simply asking whether basic pleading requirements were met. DG CP at 163-64; MET CP at 104-05. This too was error. Instead, this Court’s “liberal notice pleading rules are intended ‘to facilitate the full airing of claims having a legal basis.’” *State v. LG Elecs., Inc.*, 186 Wn.2d 169, 183, 375 P.3d 1035, 1043 (2016) (citation omitted) (holding that even when alleged dismissal basis is jurisdictional, courts should still grant dismissal sparingly and allow an opportunity to develop the facts first). The WCPA reserves fact-finding for the adjudication stage (RCW 4.100.060), and the Superior Court’s premature factual adjudication was erroneous.

**IV. Alternatively, the Court Erred in Dismissing the Complaints with Prejudice**

**A. Leave to Amend WCPA Complaints Must Be Granted Freely**

The WCPA does not contain any express provision concerning the amendment of claims for compensation. And, as explained above, there are good reasons to find that a pleading that alleges facts concerning all of the requirements of .040, and is independently verified (under penalty of perjury), satisfies the “filing requirement” of .040—actual evidentiary issues come at a *later* stage. At minimum, and even assuming amendment were required based upon a complaint that includes factually sufficient allegations but not enough evidence at the time of filing, there is every reason to believe the Legislature intended to give wrongfully convicted individuals at least the same—if not broader—latitude in generating adequate pleadings than in typical civil cases. For one, that serves the statutory purpose of providing remedies to the wrongfully convicted, as announced in RCW 4.100.010. Likewise, a claimant must be allowed, best they can, to *obtain* additional evidence during discovery, after their attorneys can issue subpoenas or seek other documentation, and the Court “must give due consideration to difficulties of proof caused by the passage of time or by release of evidence pursuant to a plea, the death or unavailability of witnesses, the destruction of evidence, or other factors

not caused by the parties.” RCW 4.100.060. While this rule applies at a later stage, it strongly indicates that the Legislature did not intend for Claimants under the Act to have no chance to prove their claims if they did not “attach” the right documents to their pleading.

In sum, this Court should find that WCPA claimants have substantial latitude in providing “documentary evidence” at the pleading stage, and in seeking amendment of those pleadings, as consistent with the Legislature’s recognition of the “difficulties of proof caused by the passage of time.” RCW 4.100.060(3).

The Civil Rules require the same result. The Rules provide, “Leave to amend a pleading ‘shall be freely given when justice so requires.’” *Afoa v. Port of Seattle*, 191 Wn.2d 110, 130, 421 P.3d 903, 914 (2018) (quoting CR 15; and citing *Caruso v. Local Union No. 690*, 100 Wn.2d 343, 349, 670 P.2d 240 (1983)). The Washington Supreme Court, in analyzing CR 15’s authorization of leave to amend a complaint, clarifies, “Shall means shall. It imposes ‘a mandatory duty.’ This ideal of ‘freely’ granting the right to amend is well integrated into our jurisprudence, and, as we have articulated amendments ‘have *always been* ... liberally allowed.’” *Wilson v. Horsley*, 137 Wn.2d 500, 513, 974 P.2d 316, 323 (1999) (*en banc*) (internal citations omitted; emphasis added by the Court). Leave to amend to cure pleading defect is necessary to ““facilitate a proper decision on the

merits’, and not to erect litigation process.” *Id.* (quoting *Caruso*, 100 Wn.2d at 349, and *Conley v. Gibson*, 355 U.S. 41, 48 (1957)).

Indeed, this requirement is particularly important because courts must guard against “relying on form over substance to deny a litigant his or her day in court.” *Nat’l Parks Conservation Ass’n v. Washington Dep’t of Ecology*, 460 P.3d 1107, 1111 (Wash. Ct. App. Div. 2 2020) (citing *First Fed. Sav. & Loan Ass’n of Walla Walla v. Ekanger*, 93 Wn.2d 777, 781 (1980) (“[W]henver possible, the rules of civil procedure should be applied in such a way that substance will prevail over form.”)); *see also In re Det. of Turay*, 139 Wn.2d at 390-91 (“Washington’s appellate courts have strived to elevate substance over form, and decide cases on their merits.”) (citing *Vaughn v. Chung*, 119 Wn.2d 273, 280, 830 P.2d 668 (1992) (“the civil rules contain a preference for deciding cases on their merits rather than on procedural technicalities”); *Weeks v. Chief of State Patrol*, 96 Wn.2d 893, 895, 639 P.2d 732 (1982) (the “present rules were designed to allow some flexibility in order to avoid harsh results”); *First Fed. Sav. & Loan Assoc. v. Ekanger*, 93 Wn.2d 777, 781, 613 P.2d 129 (1980) (“whenever possible, the rules of civil procedure should be applied in such a way that substance will prevail over form”); *In re Saltis*, 94 Wn.2d 889, 896, 621 P.2d 716 (1980) (substantial compliance with procedural rules is sufficient because ““delay and even the loss of lawsuits

[should not be] occasioned by unnecessarily complex and vagrant procedural technicalities.” (citation omitted)).

Accordingly, under the Civil Rules, unless an amendment unduly prejudices a party, leave to amend must be freely given. *See Herron v. Tribune Pub. Co.*, 108 Wn.2d 162, 166, 736 P.2d 249, 253 (1987) (“Leave to amend should be freely given ‘except where prejudice to the opposing party would result.’ *Caruso*, 100 Wn.2d at 349, 640 P.2d 240; see also 6 C. Wright & A. Miller, at § 1473.”). Potential prejudice arises when an amendment causes undue delay, unfair surprise, or trial complications. *Herron*, 108 Wn.2d at 166. It is debatable the State could *ever* be prejudiced by amendment of a WCPA claim, given its superior information and resources were used to criminally prosecute the claimant in the first place. Regardless, even assuming prejudice could possibly be shown, none of the concerns articulated in the caselaw are implicated here. Moreover, “the fact that the material in the amended pleading could have been included in the original pleading will not preclude amendment, absent prejudice to the nonmoving party.” *Id.* (citing *Caruso*).

**B. Should This Court Find Any Pleading Defect,  
Claimants Should be Granted Leave to Amend  
Their Complaints**

Because no prejudice would have ensued from allowing Claimants leave to amend their complaints, the lower court erred by dismissing the

complaints with prejudice. When counsel below asked for leave to amend the complaints to add the documents the Superior Court sought, the State did not contend that such a grant would be prejudicial. *See* RP 22 (Claimants’ counsel arguing, “if the Court is not satisfied with taking judicial notice, then we should be given sufficient time to simply supplement the record with all the documents that the State now objects have not been submitted.”); RP 21 (Claimants’ counsel arguing that the State would not be prejudiced by the delay of allowing supplementation of the complaints) RP 26-27 (the State’s response to Claimants’ argument, not asserting prejudice). This omission was because no arguable prejudice would have resulted from allowing Claimants leave to amend their complaints. The State could not have credibly claimed unfair surprise from court documents it had seen previously, there was no trial to complicate, and any delay would have been minimal.

The lower court, however, erroneously held that it would be futile for Claimants to amend their complaints to add the judicially noticeable documentation referenced in the complaints and at oral argument in support of their allegations because any amendments would be filed after the expiration of the statute of limitations and therefore necessarily must fail. MET CP 105 and DG CP 164 (holding, “Plaintiff has failed to timely file the documentary evidence required by RCW 4.100.040(1) to make his

claim actionable, and the time to do so expired on July 28, 2016.”).

According to the court, because Claimants attached only their verifications to their complaints, they failed to file actionable claims within the statutorily designated timeframe and that defect could not be cured. DG CP163-64; MET CP 104-05.

This Court, however, rejects such a draconian approach. *See, e.g., Prosser Hill Coal. v. Cty. of Spokane*, 176 Wn. App. 280, 287-88, 309 P.3d 1202, 1206 (3d Div. 2013). In *Prosser Hill Coal*, a defendant argued that the statute at issue required petitions contesting land use decisions be filed and served within 21 days, but the plaintiff’s necessary amendment to his complaint, to make it compliant with the statutory requirements, did not take place until after the 21-day filing limitations period had expired. *Id.* This Court flatly rejected the argument that this was an incurable lapse. Noting that “CR 15(c) provides that an ‘amendment relates back to the date of the original pleading,’” the Court held that the curative amendment did not render the petition untimely. *Id.*

For even more compelling reasons—the nature of the proceedings and the Legislature’s recognition that evidence might degrade over time—the same result is required here. Here, there is no dispute that the complaints were timely filed. Thus, any curative amendment to the complaints would relate back to the date of filing and likewise be timely.

*Id. See also Basin Paving Co. v. Contractors Bonding & Ins. Co.*, 123 Wn. App. 410, 414, 98 P.3d 109, 111 (3d Div. 2004) (when the purpose of providing parties with adequate notice of the basis of the claims against them has been served, amendments to the claim relate back to the date of filing).

The WCPA is a remedial statute and nothing about it suggests that the Legislature intended the courts to infer rejection of the flexible pleading amendment regime universally recognized by Washington courts in other contexts. Instead, the interests of justice fall squarely on the side of freely allowing WCPA complaint amendments.

The WCPA was unanimously passed by the Washington State Legislature to ensure reparations to those who were “victims of a system that did not work for them, and the horrific circumstance [that do] not end when they are released.” 2013 Washington House Bill No. 1341, Washington Sixty-Third Legislature - 2013 Regular Session (Staff Summary of Public Testimony before the Judiciary Committee) (Mar. 8, 2013). The hearings on the WCPA acknowledged that for the wrongfully convicted, “[s]ome lost up to 17 years while incarcerated, and lost their businesses and the opportunity to earn money for retirement. They have had trouble securing housing and work. They need financial help and medical care. They cannot be given the years back or have the chance to

watch their children grow up, but they can be given a package to rebuild their lives.” *Id.* The hearings also recognized that “Washington is a national leader in equality and justice,” and the WCPA is intended to further that leadership. *Id.* In signing the Act into law, the Governor declared:

I am pleased to join 27 states and the District of Columbia to provide compensation to individuals who have been wrongly convicted in Washington state of a felony offense and imprisoned as a result. While the impact on the person and his or her family cannot be quantified, some measure of compensation will help those wrongly convicted get back on their feet.

Governor’s Statement Upon Partial Veto, May 08, 2013, 2013 WA H.B. 1341. Rigidly adhering to form over substance in order to dismiss complaints without allowing leave to amend and cure any defects defies these goals. Holding former wrongfully convicted prisoners, many of whom will likely seek compensation *pro se*, to strict pleading standards with no room for error correction through pleading amendment runs contrary to the remedial nature of the WCPA.

Accordingly, at a minimum, Claimants respectfully ask for leave to amend their complaints.

## CONCLUSION

Claimants' complaints are sufficient to overcome the basic pleading requirements. Should this Court find otherwise, Claimants respectfully ask this Court to reverse the Superior Court's dismissal and remand the cases for amendment of Claimants' complaints.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I, David B. Owens, an attorney, certify that on June 12, 2020 I caused the foregoing **Opening Brief and Argument of Petitioner-Appellants** to be delivered upon all counsel of record via the Court's electronic filing system.

/s/David B. Owens

**LOEVY & LOEVY**

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