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Supreme Court No. 88298-3

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IN THE SUPREME COURT  
STATE OF WASHINGTON

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SHAUN LaCOURSIERE, a single individual,

Petitioner,

v.

CAMWEST DEVELOPMENT, INC., a corporation organized under  
Washington law, and ERIC H. CAMPBELL, an individual,

Respondents.

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**PETITIONER'S SUPPLEMENTAL BRIEF**

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## I. INTRODUCTION

Washington's Wage Rebate Act, RCW chapter 49.52 (the "WRA") is part of a larger statutory scheme designed to protect employees' rights to receive all compensation they are owed by reason of their employment. The WRA protects all employees, whether their right to compensation arises under a statute, an ordinance, or, as in this case, under a contract. This Court has repeatedly confirmed that as a remedial statute, the WRA must be liberally construed to protect employees' rights.

The Superior Court's decision to grant summary judgment dismissal of Petitioner Shaun LaCoursiere's WRA claim and the Court of Appeals' decision affirming that dismissal failed to serve the WRA's fundamental purpose of protecting employees from unlawful rebates of their compensation. The Court of Appeals concluded that Mr. LaCoursiere's earned bonuses were not "wages" for purposes of the WRA and that even if the bonuses were "wages," there was no unlawful rebate by Respondents CamWest Development, Inc. ("CamWest"), and its president, Eric Campbell,<sup>1</sup> despite the fact that CamWest awarded Mr. LaCoursiere the bonuses, taxed him on the complete amount of the bonuses, deducted the complete amount of the bonuses against its own taxes, and then, when it fired him, failed to pay Mr. LaCoursiere the

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<sup>1</sup> Mr. LaCoursiere will refer to both defendants, CamWest and Mr. Campbell, collectively as "CamWest" for the purpose of this supplemental brief.

portion of the bonuses that had been deposited into a capital account for a related entity's limited liability company.

In addition, the Court of Appeals' conclusion that CamWest was entitled to its attorneys' fees and costs failed to comply with the WRA's remedial purpose of protecting employees' right to their earned compensation. Despite the WRA's unambiguous one-way fee shifting provision, the Court of Appeals held that Mr. LaCoursiere's WRA claim was really a claim for breach of contract, and thus, that CamWest could recover its fees and costs based on a prevailing party fee provision in Mr. LaCoursiere's Employment Agreement. As detailed below, the Court of Appeals' decision that CamWest may recover its fees and costs is contrary to both law and public policy.

For the reasons set forth below, Mr. LaCoursiere respectfully requests that the Court reverse the Superior Court's order granting summary judgment for CamWest and remand this case to the Superior Court with instructions consistent with the Court's ruling.

## **II. ARGUMENT**

### **A. Summary of Argument**

This case presents two issues of first impression, which this Court reviews de novo. *See Mohr v. Grantham*, 172 Wn.2d 844, 859, 262 P.3d 490 (2011) (explaining that "[a]n order granting summary judgment is reviewed de novo"); *State v. Sanders*, 169 Wn.2d 827, 866, 240 P.3d 120

(2010) (noting that “[w]hether to award costs and attorney fees is a legal issue reviewed de novo”).

First, the Court should reverse the Superior Court’s summary judgment dismissal of Mr. LaCoursiere’s WRA claim and hold that an employer violates the WRA when it deposits a portion of an employee’s earned bonuses into a related entity’s capital account, withholds payroll taxes from the deposited portion of the bonuses, and then fails to pay the employee the full amount deposited into the capital account when the employee is terminated. As detailed below, the bonuses Mr. LaCoursiere earned are compensation due by reason of employment and, thus, are “wages” under Washington’s wage and hour laws. This compensation was unlawfully rebated and he did not knowingly submit to the rebate, notwithstanding the fact that he signed the Employment Agreement and the LLC Agreement.

Second, the Court should affirm the Superior Court’s order denying CamWest’s motion for attorneys’ fees and costs and hold that a prevailing party fee provision in an employment contract is unenforceable against an employee who has sued to recover wages under Washington’s wage statutes. As discussed below, the Court of Appeals’ decision awarding CamWest its fees and costs conflicts with this Court’s precedent confirming the strong pro-employee policy underlying Washington’s wage statutes, including the WRA. The Court should adopt the analysis set

forth in its recent decision in *Gandee v. LDL Freedom Enters., Inc.*, 176 Wn.2d 598, 293 P.3d 1197 (2013), which held that a “loser pays” fee provision in a contract is unconscionable, and thus unenforceable, when the plaintiff brings a claim under a remedial statute that provides for one-way fee shifting. *See Gandee*, 176 Wn.2d at 605-606.

**B. The Court Should Reverse the Superior Court’s Summary Judgment Dismissal of Mr. LaCoursiere’s WRA Claim**

**1. The Court Must Interpret the WRA Broadly to Best Advance Its Legislative Purpose of Ensuring Employees Receive All Compensation Due by Reason of Employment**

“Ultimately, in resolving a question of statutory construction, this court will adopt the interpretation which best advances the legislative purpose.” *Bennett v. Hardy*, 113 Wn.2d 912, 928, 784 P.2d 1258 (1990). This Court has repeatedly confirmed that the “fundamental purpose” of the WRA is

[t]o protect the wages of an employee against any diminution or deduction therefrom by rebating, underpayment, or false showing of overpayment of any part of such wages....In other words, the aim or purpose of the act is to see that the employee shall realize the full amount of the wages which by statute, ordinance, or contract he is entitled to receive from his employer, and which the employer is obligated to pay, and further, to see that the employee is not deprived of such right, nor the employer permitted to evade his obligation by a withholding of a part of the wages...

*Ellerman v. Centerpoint Prepress, Inc.*, 143 Wn.2d 514, 520, 22 P.3d 795 (2001) (internal citations and marks omitted); *see also Morgan v. Kingen*, 166 Wn.2d 526, 538, 210 P.3d 995 (2009) (explaining that the WRA “establishes a strong policy in favor of ensuring the payment of the full amount of wages earned”).

To prevail on his WRA claim based on CamWest’s unlawful rebate of his wages, Mr. LaCoursiere must establish: (1) that the earned bonuses CamWest retained were “wages,” as defined by Washington’s wage and hour laws; (2) that CamWest “collect[ed] or receive[d] from” Mr. LaCoursiere “any part of [those] wages”; and (3) that Mr. LaCoursiere did not “knowingly submit[ ]” to CamWest’s unlawful rebate of the bonuses. *See* RCW 49.52.050(1), RCW 49.52.070. As detailed below, Mr. LaCoursiere has satisfied all of these elements, and the Court should reverse the Superior Court’s order granting summary judgment for CamWest.

## 2. Mr. LaCoursiere’s Bonuses Were “Wages”

For the purpose of Washington’s wage statutes, “wage” is broadly defined to mean “compensation due to an employee by reason of employment.” RCW 49.46.010(2) (emphasis added). “Wages” are not limited to an employee’s salary or hourly pay, and the term includes deferred compensation in a variety of forms. *See, e.g., Bates v. City of Richland*, 112 Wn. App. 919, 940, 51 P.3d 816 (2002) (holding that retired

employees' recovery of underpaid pension amounts was "wages" for purposes of recovering fees under RCW 49.48.030); *McGinnity v. AutoNation, Inc.*, 149 Wn. App. 277, 285, 202 P.3d 1009 (2009) (holding unpaid vacation benefits are "compensation due by reason of employment"); *Naches Valley Sch. Dist. No. JT3 v. Cruzen*, 54 Wn. App. 388, 399, 775 P.2d 960 (1989) (holding sick leave cashout pay qualifies as "wages" because it "constitutes an entitlement to compensation for services performed"); *Dautel v. Heritage Home Ctr., Inc.*, 89 Wn. App. 148, 151-53, 948 P.2d 397 (1997) (noting that commissions are considered "wages" under Washington wage statutes). As Division III succinctly explained in *McGinnity*, "if the employee gets the money on account of having been employed, then the money is wages in the sense of 'compensation by reason of employment.'" *McGinnity*, 149 Wn. App. at 284.

Whether, and when, an employee bonus is considered "wages" for purposes of Washington's wage statutes, including the WRA, is an issue of first impression in this Court.<sup>2</sup> The Court of Appeals relied on Division II's 2001 decision in *Byrne v. Courtesy Ford, Inc.* and held that Mr. LaCoursiere's bonuses were "discretionary" and, as such, were not "wages" but "mere gratuities." *LaCoursiere v. CamWest Dev., Inc.*, 172

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<sup>2</sup> The Court of Appeals cited this Court's 1933 decision in *Powell v. Republic Creosoting Co.*, but that case predates enactment of the WRA. See *LaCoursiere*, 172 Wn. App. at 150-151 (citing *Powell*, 172 Wash. 155, 156, 19 P.2d 919 (1933)).

Wn. App. 142, 150-152, 289 P.3d 683 (2012) (citing *Byrne*, 108 Wn. App. 683, 690-91, 32 P.3d 307 (2001)).

*Byrne* is both factually and legally distinguishable. The alleged “bonus” at issue in *Byrne* was a television the employee won at an auction. *Byrne*, 108 Wn. App. at 685. At these auctions, which the employee “periodically” attended, he would purchase cars on behalf of his employer, a car dealership, and the auction house would then bill the dealership for the cars. *Id.* At the auction in question, a raffle ticket for a television was issued for each car purchased, and the employee won the television. *Id.* The employer’s position was that the television belonged to the employer; when the employee refused to return it, he was fired and then sued the employer, alleging, among other claims, that the employer fired him “in retaliation for his lawful refusal to return wages to his employer.” *Byrne*, 108 Wn. App. at 686.

The legal issue before the *Byrne* court was whether the television was “wages” for purposes of RCW chapter 49.52. *Byrne*, 108 Wn. App. at 688. Division II “agree[d] that ‘wages’ should be defined broadly in the context of employers’ demands for wage rebate[,]” and that the television could be considered a “bonus” (and thus, “wages”), but only if the employee was “regularly paid in televisions” and the televisions were “given regularly so as to create an expectation that it will continue.” 108 Wn. App. at 689 (citing *Simon v. Riblet Tramway Co.*, 8 Wn. App. 289,

293, 505 P.2d 1291 (1973)). Only then would the television, a “discretionary bonus,” qualify as “compensation under an implied contract.” *Byrne*, 108 Wn. App. at 690. Because the facts in *Byrne* did not give rise to “an implied contract and reliance,” Division II held that the television “was not compensation as a bonus.” *Id.* at 691.

The “implied contract” standard relied upon in *Byrne* is a far narrower test than “compensation due by reason of employment.” Moreover, the rebated bonus payments at issue here are in no way analogous to the television set “bonus” in *Byrne*. Mr. LaCoursiere earned bonuses for three years in a row, which CamWest paid. CP 162-63. The bonuses were paid on the same day every year, March 15. CP 317-19. He earned the bonuses based on his performance. CP 292, 297-98. CamWest took payroll taxes from the earned bonuses, including the portion of each bonus paid into the LLC capital account. CP 322, 344. It cannot be disputed that unlike the television won in a raffle at issue in *Byrne*, the bonuses were compensation due to Mr. LaCoursiere by reason of his employment by CamWest.

Nor does the fact that CamWest had discretion over whether to award Mr. LaCoursiere a bonus and discretion to determine the amount of the bonus mean that the unlawfully rebated portion of his bonuses are not compensation due by reason of employment. *Cf. Simon*, 8 Wn. App. at 290-293 (holding that employee’s bonus was “earned wages” despite the

fact that “the amount thereof is discretionary with the employer”). The monies at issue here are portions of bonuses that Mr. LaCoursiere became entitled to after CamWest exercised its discretion. Once CamWest decided to and did pay Mr. LaCoursiere a bonus – as it did for the years 2005, 2006 and 2007, which bonuses were always paid March 15 of the following year – that bonus qualified as compensation due by reason of employment.

For the above reasons, the Court should hold that Mr. LaCoursiere’s bonuses were wages for purposes of RCW chapter 49.52.

3. CamWest Violated RCW 49.52.050(1) When It Taxed Mr. LaCoursiere on the Entire Amount of His Earned Bonuses But Refused to Pay Him In Full When He Was Terminated

An employer violates the WRA when it “collect[s] or receive[s] from any employee a rebate of any part of wages theretofore paid by such employer to such employee[.]” RCW 49.52.050(1). This Court has not defined the perimeters of what constitutes a “rebate” under the WRA, but the Court has explained that an employer may not be “permitted to evade his obligation” to pay an employee his or her wages “by a device calculated to effect a rebate of a part of them[.]” *See State v. Carter*, 18 Wn.2d 590, 621, 142 P.2d 403 (1943). *Carter* did not establish any limits on the type of “devices” that may not be used “to effect a rebate.” *See id.* A liberal construction of “rebate” is appropriate and indeed, required. *See Ellerman*, 143 Wn.2d at 520 (wage statutes are “liberally construed to

advance the Legislature's intent to protect employee wages and assure payment").

Here, there is no dispute that CamWest awarded the bonuses, after determining Mr. LaCoursiere earned this compensation because of his work performance, taxed him on the entire bonus amount, but then refused to pay him the previously earned bonuses in full when he was terminated. Because Mr. LaCoursiere could be terminated at any time, CamWest retained sole discretion as to whether the percentage of the bonus allocated to the LLC capital account would ever be paid to him, or, as it happened, whether CamWest would retain the benefit for itself, as it did when the LLC loaned these funds to CamWest.

The Court of Appeals held that because the bonuses were apportioned between the LLC capital account and a payment to Mr. LaCoursiere at the time CamWest decided to award each bonus, as agreed by the parties, "there was no rebate to CamWest." *LaCoursiere*, 172 Wn. App. at 151-52. In other words, the Court of Appeals concluded that for wages to be "rebated," the actual money must first be paid directly to the employee and then be returned to the employer. Here, however, the entire bonus was constructively paid to Mr. LaCoursiere – indeed, he was taxed on the entire bonus – before a portion was returned to CamWest to be deposited in the capital account.

The Court should hold that CamWest's refusal to pay Mr. LaCoursiere the full amount of his earned bonuses was an unlawful rebate of wages.

4. Mr. LaCoursiere Did Not "Knowingly Submit" to CamWest's Rebate of Portions of His Earned Bonuses

The WRA provides that a prevailing employee may recover double damages, attorneys' fees and costs. RCW 49.52.070. The only exception to an employee's recovery of "the benefits of this section" is when an employee "has knowingly submitted to [the employer's] violations" of the WRA. *See id.* As this Court recently explained in a case construing exemptions to RCW chapter 49.46, the Minimum Wage Act, a remedial statute "is given a liberal construction" and "exemptions from its coverage 'are narrowly construed and applied only to situations which are plainly and unmistakably consistent with the terms and spirit of the legislation.'" *Anfinson v. Fedex Ground Package Sys., Inc.*, 174 Wn.2d 851, 870, 281 P.3d 289 (2012) (quoting *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 301, 996 P.2d 582 (2000)).

This Court has never confirmed what test should be applied to determine whether an employee has "knowingly submitted" to his or her employer's violation of RCW chapter 49.52. The two published Court of Appeals decisions that consider the "knowing submission" exception, however, make clear that the standard is high: an employer must present "substantial evidence" to show that an employee "deliberately and

intentionally deferred to [the employer] the decision of whether the employee would ever be paid.” See *Chelius v. Questar Microsystems, Inc.*, 107 Wn. App. 678, 682-83, 27 P.3d 681 (2001) (emphasis added) (affirming trial court’s findings of fact, based on substantial evidence, that employees did not “knowingly submit” to unlawful withholding of wages despite “evidence that the parties’ contract was modified by an oral agreement that any payment of wages due was conditioned on the company having sufficient funds at the time to pay”); *Durand v. HIMC Corp.*, 151 Wn. App. 818, 832, 836-37, 214 P.3d 189 (2009) (affirming trial court’s findings of fact, based on “substantial evidence,” that plaintiff “always expected to be paid the full amount he was entitled to under his contract”).

Mr. LaCoursiere submits that, as in *Chelius* and *Durand*, whether he “knowingly submitted” to CamWest’s retention of part of his earned bonuses – wages on which he had already been taxed – is a question for the finder of fact. CamWest must prove, by substantial evidence, that Mr. LaCoursiere “deliberately and intentionally deferred to [CamWest] the decision of whether [he] would ever be paid.” See *Chelius*, 107 Wn. App. at 682-83 (emphasis added).

CamWest maintains that Mr. LaCoursiere “knowingly submitted” to CamWest’s rebate of part of his bonuses based on his purported agreement to “a Bonus Structure in which the decision of whether he

would receive bonuses was at the discretion of – or deferred to – CamWest.” Respondents’ Br. at 38. The relevant question, however, is whether Mr. LaCoursiere knowingly forfeited the right to ever receive the compensation he had earned after CamWest exercised its discretion and determined (1) that Mr. LaCoursiere was entitled to a bonus for a given year; (2) that Mr. LaCoursiere would be taxed for the entire bonus; and (3) that Mr. LaCoursiere would be paid only a portion of the bonus immediately, with the other portion deposited in the LLC’s capital account. In other words, there is no dispute that Mr. LaCoursiere agreed that a portion of his bonuses would be deferred compensation. But whether he “knowingly submitted” to giving up the right to receive the deferred portion of the bonuses – upon which he had already paid payroll taxes – is another question.

Mr. LaCoursiere’s signing of the Employment Agreement and LLC Agreement is not dispositive of whether he “knowingly submitted” to CamWest’s unlawful rebate of his compensation. The LLC Agreement makes clear that the vesting schedule – which CamWest uses to justify its retention of Mr. LaCoursiere’s earned compensation – applies to Mr. LaCoursiere’s share of the fair market value of the LLC, not to payment of his earned bonuses. *See* CP 195-96. As an LLC member, Mr. LaCoursiere was to receive one “Unit” for each dollar of capital contributed to the LLC. CP 176. When he ceased to be a member of the

LLC – for example, if CamWest terminated him – the company would purchase his units. CP 195. The vesting schedule in the LLC Agreement<sup>3</sup> provided that the purchase price for Mr. LaCoursiere’s units would vary based on how long he had been a member of the LLC; for example, to receive 100 percent of the Units’ value, the purchase and sale would have to occur after the fourth anniversary of his membership in the LLC. CP 195-96. A Unit’s purchase price was calculated based on the fair market value of the LLC divided by the number of Units held by members as of the date the price was determined. CP 195. In other words, the vesting schedule applied to Mr. LaCoursiere’s share of the value of the LLC. *See id.* The vesting schedule did not apply to the amount of the earned bonuses paid into the LLC capital account. *Id.*

For these reasons, the Court should reverse the Superior Court’s order dismissing Mr. LaCoursiere’s WRA claim.

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<sup>3</sup> The Court of Appeals erred when it concluded that the Employment Agreement “made it clear that...the capital account funds were subject to a vesting and forfeiture schedule” and that Mr. LaCoursiere knew of the vesting schedule when he signed the Employment Agreement. *See LaCoursiere*, 172 Wn. App. at 153. The Employment Agreement does not include the vesting schedule, *see* CP 102-107, and Mr. LaCoursiere was not provided with the LLC Agreement until a year after he began work at CamWest, at which point the company had already declared his bonus. *See* CP 102 (Employment Agreement “entered into effective as of January 1, 2005”); CP 208 (Mr. LaCoursiere’s signed acknowledgment of LLC Agreement, dated March 15, 2006).

**C. The Court Should Affirm the Superior Court's Order Denying CamWest's Request for Fees**

1. The WRA Does Not Permit an Employer to Recover Its Fees and Costs When It Prevails on a Claim for Violations of RCW 49.52.050(1)

As noted above, the “fundamental purpose” of the WRA “is to protect the wages of an employee against any diminution or deduction therefrom” by his or her employer. *Ellerman*, 143 Wn.2d at 520. The remedies available under the WRA confirm its remedial purpose. As a civil penalty for a violation of RCW 49.52.050, RCW 49.52.070 makes an “employer and any officer, vice principal or agent of any employer” liable for “twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney’s fees.” RCW 49.52.070. The WRA’s fee shifting provision is not reciprocal, however, and a prevailing employer cannot recover its fees pursuant to RCW 49.52.070. *See id.*

The purpose of the WRA’s one-way fee shifting provision is to “provide[ ] an effective mechanism for recovery even when wage amounts wrongfully withheld may be small.” *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 159, 961, P.2d 371 (1998). That said, Washington’s wage statutes do not distinguish between an employee’s ability to recover his or her fees and costs based on the amount of the rebated wages or on the basis for the payment obligation. *See, e.g.*, RCW 49.52.050(2) (forbidding employers to “pay any employee a lower wage than the wage

such employer is obligated to pay such employee by any statute, ordinance or contract") (emphasis added); *Gaglidari v. Denny's Restaurants, Inc.*, 117 Wn.2d 426, 450-51, 815 P.2d 1362 (1991) (fees awarded under RCW 49.48.030 for breach of employment contract). For this reason, the Court should reject CamWest's suggestion that because Mr. LaCoursiere is "assert[ing] a contractually created payment obligation" rather than a payment obligation arising under the Minimum Wage Act, his WRA claim is subject to a different standard with respect to CamWest's ability to recover fees.

2. A Prevailing Party Fee Provision in a Contract Is Unenforceable Against an Employee Who Has Brought a Claim for Violation of Washington's Wage Statutes

"The legislative purpose of fee shifting is to provide an incentive for private enforcement of congressional statutory policy." *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 376, 798 P.2d 799 (1990). "If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the public interest[.]" *Id.* (internal citations and mark omitted). Awards to plaintiffs bringing claims under fee shifting statutes "encourage attorneys to take potentially risky cases with clients who frequently cannot afford to pay an attorney." *Id.*

This Court's past decisions make clear that the purpose of the WRA's fee shifting provision is to encourage employees to pursue their

right to be paid all compensation due by reason of employment. *See, e.g., Schilling*, 136 Wn.2d at 159. The Court of Appeals' decision to ignore the express language of the WRA and to rely on the prevailing party fee provision in the Employment Agreement as a basis for awarding fees and costs to CamWest for prevailing on Mr. LaCoursiere's WRA claim undermines the "fundamental purpose" of the WRA.

This Court has recently considered the enforceability of a "loser pays" fee provision in a contract when the plaintiff brings a claim under another remedial statute, the Consumer Protection Act ("CPA").<sup>4</sup> *See Gandee*, 176 Wn.2d at 605-606. In *Gandee*, the plaintiff brought claims for violation of the Debt Adjusting Act, chapter 18.28 RCW and the CPA. 176 Wn.2d at 601-602. The defendant moved to compel arbitration based on the debt adjustment agreement with the plaintiff, which included an arbitration clause with a fee provision providing that "[t]he prevailing party in any action or proceeding related to this Agreement shall be entitled to recover reasonable legal fees and costs, including attorney's fees which may be incurred." *Gandee*, 176 Wn.2d at 602. The Court affirmed the trial court's order denying the motion to compel arbitration, noting that "[b]ecause the 'loser pays' provision serves to benefit only [the defendant] and, contrary to the legislature's intent, effectively chills [the

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<sup>4</sup> *See* RCW 19.86.090 (providing that the CPA "shall be liberally construed that its beneficial purposes may be served").

plaintiff's] ability to bring suit under the CPA[,]” it was unenforceable.  
*Id.* at 606.

In *Gandee*, this Court approvingly cited the Court of Appeals' 2009 decision in *Walters v. A.A.A. Waterproofing, Inc.*, where Division I considered the same issue before the Court here: whether a prevailing party fee provision in a contract is enforceable against an employee who has brought statutory wage claims. *See Gandee*, 176 Wn.2d at 606 (citing *Walters*, 151 Wn. App. 316, 211 P.3d 454 (2009)). In *Walters*, the plaintiff sued his employer for overtime pay “in violation of the wage, hour, and labor laws of the State of Washington.” 151 Wn. App. at 321. The employer moved to compel arbitration based on an arbitration clause in the plaintiff's employment agreement, which also included a prevailing party fee provision. *Id.* at 320.

Citing RCW 49.52.070 as well as RCW 49.46.090(1) and RCW 49.48.030, the *Walters* court noted that “[u]nder Washington law, a plaintiff who prevails in an action brought under the wage and hour laws is statutorily entitled to an award of reasonable attorney fees and costs in the action.” 151 Wn. App. at 321-22. Explaining that “the risk that if [the plaintiff/employee] loses, he will have to pay [the defendant/employer's] expenses and legal fees...is an enormous deterrent to an employee contemplating a suit to vindicate the right to overtime pay[,]” the Court of Appeals held that “in the context of an employee's suit where the

governing statutes provide that only a prevailing employee will be entitled to recover fees and costs, a reciprocal attorney fees provision is unconscionable and, therefore, unenforceable.” *Walters*, 151 Wn. App. at 324-25.

The analysis in *Gandee* and *Walters* does not apply solely to arbitration, and it does not derive meaning from the fact that an arbitration agreement is at issue. The general principle set forth by this Court in *Gandee* and by the Court of Appeals in *Walters* is equally applicable here: a prevailing party fee provision does not trump a one-way fee shifting provision in a remedial statute. The Court should affirm the Superior Court’s decision denying CamWest’s motion for fees and costs.

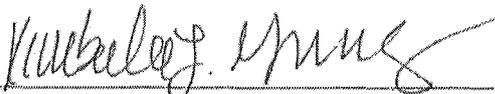
### III. CONCLUSION AND RELIEF REQUESTED

For the aforementioned reasons, Mr. LaCoursiere respectfully requests that the Court reverse the Superior Court’s order granting summary judgment for CamWest and remand this case to the Superior Court with instructions consistent with the Court’s ruling. Should the Court determine that there is no genuine issue of material fact with respect to whether Mr. LaCoursiere has satisfied the elements of his WRA claim, Mr. LaCoursiere respectfully requests that the Court direct entry of summary judgment in his favor and an order permitting him to request his attorneys’ fees and costs pursuant to RCW 49.52.070. In addition, Mr. LaCoursiere respectfully requests that the Court award him his attorneys’

fees and costs incurred in this appeal, pursuant to RAP 18.1 and RCW  
49.52.070.

RESPECTFULLY SUBMITTED AND DATED this 9th day of  
August, 2013.

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**CERTIFICATE OF SERVICE**

I certify that on August 9, 2013, I caused a true and correct copy of the foregoing to be served on the following via the means indicated:

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*Attorney for Respondents*

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 9th day of August, 2013.

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Dear Supreme Court Clerk:

Attached for filing in *LaCoursiere v. CamWest Development, Inc.*, Supreme Court No. 88298-3 is Petitioner's Supplemental Brief, with an Certificate of Service.

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Pursuant to the parties' agreement regarding electronic service, I am copying Respondents' counsel on this email.

Respectfully,

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