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Supreme Court NO. 1010117

IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON

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RUSSELL MARTIN,  
Appellant.

V.  
CITY OF LAKEWOOD CITY

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ON APPEAL  
FROM THE DIVISION III COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
CAUSE NO. No. 385426-III  
TRIAL COURT PIERCE COUNTY SUPERIOR COURT  
CAUSE NO. 20-2-00980-3

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ANSWER BRIEF OF RESPONDENT / (APPELLANT DIV III)

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### **III. INTRODUCTION**

To obtain discretionary review in this Court, The State Supreme Court, through RAP 13.4(b)(1-4) places the onus here on the City to demonstrate that the Division III Court of Appeals decision either:

In this matter, the issues that were before Division III on review related to the Order Granting City's Motion for Summary Judgment initially entered the 2<sup>nd</sup> of July 2020 and then corrected and supplemented on the 28<sup>th</sup> of August 2020 by the City/Appellant proffered to the trial court the Order Granting City's Motion for Summary Judgment. The original order was drafted and submitted by the counsel for the City of Lakewood and provided to the court in open court on the 2<sup>nd</sup> of July 2020. The proposed order was handed up for signature. The court signed the Order Granting City's Motion for Summary Judgment in open court on the 2<sup>nd</sup> of July 2020. On the 9<sup>th</sup> of July 2020, the Plaintiff/Appellant/ (now) Respondent filed and served a Notice of Appeal. On the 11<sup>th</sup> August 2020, David Byrne, the Clerk of Division II of the Court of Appeals sent a letter indicating that the Court of Appeals was rejecting the findings as they did not comply RAP 9.12. Clerk Byrne indicated that an order complying with RAP 9.12 would need

to be filed by the 31<sup>st</sup> of August 2020. On the 28th of August 2020 the City's provided an amended order, which also notably incorporated substantive changes which cured the defect and included Jeremy Vahle's declaration.

This case was transferred to Division III due to administrative overload at Division II as a result of the impacts of the Covid-19 pandemic.

This matter is now before this court upon a Petition for review by the Appellant, the City of Lakewood, and the City argues that there is basis to grant a petition for review with respect to only one of the 4 prongs set out under RAP 13.4(b)(1-4)

1. the Division III decision was in conflict with a published appellate decision.

Principally, it appears that the City's contention that Division III erred on a theory that the decision in this matter was in contravention of the holding in *Dotson v. Pierce County*, 13 Wn. App. 2d 455, 464 P.3d 563 (2020) and previous related published cases in the Courts of Appeal. This contention is not legally nor factually supported and is misplaced and as set out below in the body of the brief that the City/ Appellant's Petition for review is without merit.

The second assignment of error asserted by the City/ Appellant as to the Division III decision was effectively as follows: that Division III erred in entering summary judgment in favor of the

Respondent/ Plaintiff, Mr. Martin based Jeremy Vahle's declaration.

It appears that the City/Appellant's second assignment of error which the argue would be a basis to support a petition for discretionary review doesn't effectively assert or rely upon any criteria as set out in RAP 13.4(b)(1), RAP 13.4(b)(2), RAP 13.4(b)(3), nor RAP 13.4(4). Further, the second assignment of error relates to an assertion that is not supported by the record. Specifically, this appeal was filed regarding an Order Granting City's Motion for Summary Judgment filed on the 2<sup>nd</sup> of July 2020 and then corrected/ amended on the 28<sup>th</sup> of August 2022 at the direction of Court of Appeals on 2.

The record is clear, The Order Granting City's Motion for Summary Judgment, entered on the 2<sup>nd</sup> of July 2020, which was drafted and proffered to the court by the City, contained no findings that Jeremy Vahle's declaration was untimely. In the numbers of the order, items enumerated 1-9, as set out at there is no finding by the court that the Declaration was "untimely."

The error assigned by the City/Appellant references a document, the Declaration of Jeremey Vahle, that the city incorporated into the corrected/ Amended Order Granting City's Motion for Summary Judgment, entered on the 28<sup>th</sup> of August 2020. In summary, the City's second assignment of error doesn't assert facts or law that meet the criteria set out in RAP 13.4. Additionally, the second assignment of error is not supported by the record and

relates to issues that actually were not before the Division III Court of Appeals.

The assignment of error reviewed by the Division III related to the court's finding as set out in the Order Granting City's Motion for Summary Judgment and the Order Granting City's Motion for Summary Judgment. For the above reasons the City's Petition for Review regarding the second assignment of error should be denied for any or all of the above state reasons and this position is supported by the argument below.

Finally, any focus upon findings that were made related to the issue of costs is an attempt to address the substantive issues before Division II on a separate appellate matter currently before the court on a separate Petition for Review filed prior to this matter.

The Plaintiff/ Respondent respectfully requests this Court to affirm, Division III, in the finding that Division III was correct in the manner in which it determined the answer to the singular question of whether the trial court committed error. Specifically, that the trial court engaged in an abuse of discretion, as there was a material issue of fact before the court on the 2<sup>nd</sup> of July 2020 and the court made findings without reviewing the evidence before it. For the above reason and analysis set out below it is respectfully requested that this court deny the City/Appellant's Petition for Review.



#### **IV. STATEMENT OF THE CASE**

##### **A. Procedural History.**

On the 3<sup>rd</sup> of February 2020, the Appellant, Russell Martin, filed and complaint for Disclosure of Public Records, C.P. 1-10. On the 20<sup>th</sup> of April 2020, the City filed a Motion for Summary Judgement. C.P. 11 – 26.

On or about the 28<sup>th</sup> of May 2020, the Appellant's Counsel appeared via zoom and requested a motion to continue. Transcript of the Proceedings, May 28, 2020, Pg. 5. A motion to continue was also filed a motion relating to the issue. Transcript of the Proceedings, May 28, 2020, Pg. 5. The basis of the motion was related to the facts surrounding a Mr. Martin's wife being in intensive care in the Hospital during the opening weeks of the pandemic with a very serious medical as it was related to brain-related functioning, regarding a stroke. Transcript of the Proceedings, May 28, 2020, Pg. 5. On the 28<sup>th</sup> of May 2020, the court was informed that although Mr. Martin had been extremely limited in his ability assist counsel during this time period. Transcript of the Proceedings, May 28 , 2020, Pg. 6-7.

The court was informed that the City was aware of the medical leave that had been taken by the Plaintiff as he was an employee of the City of Lakewood. Transcript of the Proceedings, May 28, 2020, Pg. 8. The court granted the continuance

finding no prejudice to the City. Transcript of the Proceedings, May 28, 2020, Pg. 13.

On the 28<sup>th</sup> of May 2020, the Court addressed the next issue which was scheduling, and the court indicated as follows:

I think we are good to go for an-person hearing at any time the parties want to have that. I am aware, based on Mr. Harvey's record, there may be issues actually having some communication and contact. Although, I think at this point, it looks like you've filed a response. So are you ready and prepared -- I mean, obviously, Lakewood gets an opportunity to file a reply. Transcript of the Proceedings, May 28, 2020, Pg. 15-16.

The City responded as follows:

"I don't think we need to file a reply. I took the five minutes Mr. Harvey gave me to read the response and it's irrelevant. "Indicated that they were "We're prepared to argue it right now." Transcript of the Proceedings, May 28, 2020, Pg. 16.

The Appellant inquired about being physically present and the court indicated that this was going to be the case on the 2<sup>nd</sup> of July 2020. Transcript of the Proceedings, May 28, 2020, Pg. 20.

On the 23<sup>rd</sup> of June 2020, the City, although indicating on the 28<sup>th</sup> of May 2020, filed a reply that was 195 pages in length with attachments. CP 82-279. On the 1<sup>st</sup> of July 2020, the Appellant filed a five (5) page declaration relating by Lakewood Police Officer Jeremy Vahle relating to the City's procedures and possession of documents that were not provided to Officer Martin.

On the 2<sup>nd</sup> of July 2020, the court moved forward with the Summary Judgement Hearing. Transcript of the Proceedings, July 2, 2020 (Volume 1), Pg. 5

The City moved to strike Officer Vahle's declaration. Transcript of the Proceedings, July 2, 2020 (Volume 1), Pg. 6. The court indicated that it had not reviewed the declaration. Transcript of the Proceedings, July 2, 2020 (Volume 1), Pg. 6. The City's motion to strike was not granted. However, the trial court found Officer Vahle's declaration was "completely irrelevant", although the trial court had not reviewed the declaration of Officer Vahle. Transcript of the Proceedings, July 2, 2020 (Volume 1), Pg. 29.

On the 2<sup>nd</sup> of July 2020, the trial court granted summary judgement finding there were no material facts in dispute. Transcript of the Proceedings, July 2, 2020 (Volume 1), Pg. 29-30. Immediately, upon the court's ruling the City provided the court pre-written findings and the court signed off on the findings. Transcript of the Proceedings, July 2, 2020 (Volume 1), Pg. 32, CP286-289.

The first paragraph of the order read as follows:

"Based on consideration of the pleadings, motions, memoranda of law and declarations provided, it is hereby ORDERED that:" CP286.

The Order Granting City's Motion for Summary Judgment, entered on the 2<sup>nd</sup> of July 2020, which was drafted and proffered to

the court by the City contains no findings that Jeremy Vahle's declaration was untimely. CP 286-289. The City never addressed the motion to strike the declaration again.

On the 9<sup>th</sup> of July 2020, the Plaintiff filed a Notice of Appeal with respect to the court's granting summary Judgement on the 2<sup>nd</sup> of July 2020. C.P. 290-295.

On August 11, 2020, Division II of the Court of Appeals sent a letter indicating that the Order Granting Summary Judgment signed and filed in the 2<sup>nd</sup> of July 2020 did not comply with RAP 9.12. The letter indicated that such orders specify the documents and other evidence which was called to the attention of the trial court in considering summary judgment. In summary the letter indicated that there was substantive content missing from the original Order of Summary Judgement submitted to the court by the City and entered on the 2<sup>nd</sup> of July 2020. Division II of the Court of Appeal set a date for which to cure the substantive defect with a compliance date for corrections set to be made by August 31, 2020.

On the 28<sup>th</sup> of August 2020, when the topic was raised by the plaintiff that there was a need to correct a substantive defect counsel for the City indicated as follows:

And for my part, your Honor, I believe the Court of Appeals **may have been put off by the footer** that I left on there. I do a lot of my own typing, and frankly, I just didn't look at it. I cribbed from the stipulation and dismissal. That's why it said stipulation and dismissal on the footer. And I

believe that's where the Court of Appeals had trouble with it Under RAP findings 9.12. They didn't understand that it was just a simple order of dismissal of summary judgement.

Transcript of the Proceedings, August 28, 2020 (Volume 3), Pg. 69.

However, the proffered amended Order on Summary

Judgement filed on the 28<sup>th</sup> of August 2020 actually reflected a

substantive change in line with the rules and in the first

paragraph as follows (*italics and bold for emphasis*):

based on consideration of the pleadings, motions, memoranda of law and declarations provided, **and particularly the following: City's Motion for Summary Judgment and Declarations of O'Flaherty, Pitts, and McDougal; Plaintiff's Response to City's Motion and Declarations of Martin and Harvey; City's Reply to Plaintiff's Response and Declarations of O'Flaherty, Lawler and Pitts; *Plaintiff's Declaration of Vahle***, it is hereby ORDERED that:... CP296.

It is important to highlight the difference between this and the original language, noting again the language that was found to be defective:

"Based on consideration of the pleadings, motions, memoranda of law and declarations provided, it is hereby ORDERED that:" CP286.

On the 28<sup>th</sup> of August 2020 the City's amended order also notably incorporated Officer Vahle's declaration by reference as part of the process and decision making by the court. On the 1<sup>st</sup> of September 2020, Jodie Thompson of Division II of the Court of Appeals provided notice to the City and the plaintiff that the appeal of the matter filed on the 9<sup>th</sup> of July 2022 relating to Summary Judgement had been perfected and had been attributed Case No. 55031-8-II by the Court of

Appeals. This matter was transferred to Division III due to Covid related overloads in caseloads in Division II and was decided on the 28<sup>th</sup> of April 2022.

The City filed no motions to address the trial courts Order Granting City's Motion for Summary Judgment, or to have any factual or legal defects addressed or corrected relating to the order filed on the 1<sup>st</sup> of September 2020. The only changes to the 2<sup>nd</sup> of July 2020 were made due to the rejection letter referenced above from Division II, Court of Appeals, David Byrne.

On the 18<sup>th</sup> of September 2020, the plaintiff timely filed a Notice of Appeal relating to the Court's entry of the Findings for Attorney's fees. This Notice of Appeal was filed to address the second action by the trial court, the ordering of costs. This appeal is the sole subject matter of the appeal under from the Division II, Court of Appeals decision entered in this matter on Court of Appeals No. 55221-3-II. Further, the courts order on the 1<sup>st</sup> of September 2020, , i.e. the entry of an order for costs was the sole issue before Division II, Court of Appeals and now this court. The ruling on that issue was issued on the 1<sup>st</sup> of March 2022. (See attachment A below).

## **B. Substantive Facts**

Russell Martin is a Police Officer and has been employed by the City of Lakewood in that capacity by the since 2004. CP 45-52. Russell Martin has been a member of the collective bargaining unit

which represents Lakewood Police Officers, the Lakewood Independent Police Guild, since the formation of the Guild. CP 56 Over the past 16 years, Russell Martin has become familiar with the employees of the City of Lakewood outside of the Police Department and with the policies and procedures of the City of Lakewood, including those independent of the Police Department's. C.P. 56-57.

Russell Martin has been active in Union/ Guild business during the time he has a member of the Lakewood Independent Police (LPIG) Guild President, specifically in assisting the LPIG President, Jeremy Vahle with guild related activities during the tenure of his presidency from at least 2017 through the fall of 2019. CP 57.

On the 2nd of May 2019, the investigation was completed, and the findings were entered in Russel Martin's matter and his portion of PSS # 2019 PSS004. was finalized or concluded. CP 57. Officer Vahle's matter under PSS # 2019-PSS004. wasn't concluded until approximately 2 weeks later. CP 57. On the 16th of May 2019, Officer Vahle received notice regarding the disposition of his matter under PSS # 2019-PSS004.. From the 22nd of February 2019 until the 16th of May 2019, Office Vahle was still under the restrictions preventing him from discussing his matter. CP 57. On or about the 2nd of May 2019, when Russell Martin was informed that that he had been exonerated with respect to his investigation under PSS # 2019-PSS004. CP 57. On the 2nd of May 2019, Russell Martin contacted Lt. Lawler and made an oral request for records relating to the

investigative file relating to the PSS # 2019-PSS004 matter. CP 57. Initially, on the 2nd of May 2019 Lt. Lawler, the supervisor of the Professional Standards Unit, informed Russell Martin that he could provide the investigation to him. CP 57.

However, later the same day, on the 2nd of May 2019, after Lt. Lawler granted the oral request by Russell Martin, Lt. Lawler contacted Russel Martin and then later denied his request to be provided the records related to PSS # 2019-PSS004. CP 58 Lt. Lawler is in a supervisory capacity with respect to Svea Pitts in the Professional Standards Unit. CP 58

On or about the 2nd of May 10, 2019, Russell Martin became aware that the same allegations made against him were also made as against Officer Jeremy Vahle under PSS # 2019-PSS004 and that these had been sustained as to Officer Vahle. CP 58. Specifically, on the 14th of May 2019, as to PSS # 2019-PSS004 Russell Martin made a written public records request to the City of Lakewood through the portal for public records requests; stating as follows: "All documents and recordings related to PSS#2019-PSS004." CP 58

There is no evidence that a request for clarification was sent by the City relating to this request. The request appears to be clear and understandable on its face. Russell Martin's request relating to "PSS#2019-PSS004" which was a reference to an internal affairs investigation case number from the Professional Standards Unit. Prior and throughout the time that PSS # 2019- PSS004 was



initiated Officer Jeremy Vahle was the President of the Lakewood Independent Police Guild. CP 58.

After Russell Martin had been served with the allegations related to PSS #2019-PSS-004 and before his matter was completed on the 2nd of May 2020, he became aware of a petition within the LPIG going around for a recall vote of the LPIG Jeremy Vahle. CP 60. A primary concern and basis for Russell Martin's public record request was to allow for him to understand what was done in the investigation under PSS # 2019-PSS004, to discover who was interviewed and what information supported the decision- making process. CP.61

In summary a primary purpose for the request was to enable Russell Martin to try to understand how he was exonerated, and Jeremy Vahle was not. CP 61. Russell Martin was attempting to engage in legitimate union activity in a search for information. CP 61. Lakewood Police Sgt. Charles Porsche was the immediate supervisor of the officer whose honesty was the subject of concerns of Officer Jeremy Vahle and Russell Martin, which in turn resulted in the investigation referenced above at PSS# 2019-PSS004.

CP.62. Sgt. Charles Porsche was interviewed as part of PSS # 2019-PSS004. CP. 62 Sgt. Charles Porsche's interview was not provided by the City of Lakewood responsive to the Public Records request under PSS# 2019- PSS004 until after the filing of this lawsuit by Mr. Martin. CP 62 Sgt. Charles Porsche's consent forms for his video

interview were also not provided by the City of Lakewood responsive to my Public Records request under PSS# 2019-PSS004 until after the filing of the lawsuit. CP 62. The file containing Porsche's interview provided in response to the second request was labeled in part "2019PSS003---004," indicating it was part of the PSS003 file as well as the PSS004 file. CP at 14.

Jeremy Vahle provided a sworn statement highlighting how he came to be in possession of the items that were not provided to Russ Martin in PSS # 2019-PSS004. CP. 280 -285. These items, i.e , the video interview of Sgt. Porsche and related consent forms were provided to Jeremy Vahle by Lakewood clerk Svea Pitts within days of the request made by Russ Martin. These Items were provided not via a public records request. They were provided by the City to Jeremy Vahle as were part of the PSS # 2019-PS004 file in relation to his disciplinary matter. CP.283.

Jeremy Vahle's declaration details when his investigation closed. C.P. 282-283. Although, the trial court didn't even read Jeremy Vahle's declaration on the 2<sup>nd</sup> of July 2020, when summary judgement was ordered. However, it appears the trial court had read it by the 28<sup>th</sup> of August 2020, after the appeal of summary judgement had been filed. Transcript of the Proceedings, July 2, 2020 (Volume 1), Pg. 6, and Transcript of the Proceedings, August 28, 2020 (Volume 3), Pgs. 111-112. Specifically, the trial court stated as follows on the 28<sup>th</sup> of August 2020:

THE COURT: So the City concedes that there potentially could have been a delay damage type complaint if the Porche interview was in fact contained in a file but not provided until a second request was made?

MS. McKAIN: (Nods head up and down.)

THE COURT: As I understand the City's filings in this case up until that summary judgment motion when I think Ms. Pitts changed her tune a little bit about cross-reference, --

MS. Mc KAIN: Right.

THE COURT: -- even the City was under the impression up to that time that there may have been some cross-reference here. And like you said, "Oh, we may not have produced this."

MS. Mc KAIN: Yeah.

THE COURT: So doesn't that in and of itself make it not a frivolous lawsuit, since --..

Transcript of the Proceedings, August 28, 2020 (Volume 3), Pgs. 111-112.

It is clear that the only corrections to the record made by the trial court after the filing of the Notice of Appeal were made on the 28<sup>th</sup> of August to 2020 relating to this appeal were at the top of page 1 of the Amended Order Granting City's Motion for Summary Judgment. CP 296. These are set out above and nowhere in the Amended Order Granting City's Motion for Summary Judgment entered on the 28<sup>th</sup> of August 2022 did the court make any other material changes.

### **C. Argument**

The underlying issues relating to the granting of summary judgment was not the subject matter of this appeal. The only issue before Division II Court of Appeals was the related to Order

Granting City's Motion for Summary Judgment entered on the 2<sup>nd</sup> of July 2020 and the Amended Order Granting City's Motion for Summary Judgment entered on the 28<sup>th</sup> of August 2020. Division III committed no error regarding this matter.

It has been established that this court reviews Summary Judgment and questions of statutory interpretation and allegations of agency violations of the PRA de novo. *Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, 715, 261 P.3d 119 (2011). In this matter the court is reviewing the decisions relating to the granting of an Order Granting City's Motion for Summary Judgment pursuant to violations of RCW 42.56. Summary judgment is appropriate where "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." CR 56(c).

This court has found that an aspect of de novo review requires that the reviewing court when considering the record on appeal, that solely consists of declaration or documentary evidence, the reviewing court reviewing stands in the same position as the trial court on credibility issues. *Service Emps. Int'l Union Local 925 v. University of Wash.*, 193 Wn.2d 860, 866, 447 P.3d 534 (2019).

The trial court made factual findings by determining Jeremy Vahle's declaration was "totally irrelevant." As a matter of law this

finding was improper without the benefit of an evidentiary hearing with testimony. *Hume v. Am. Disposal Co.*, 124 Wn.2d 656, 677, 880 P.2d 988 (1994), Additionally, as a matter of law the trial courts finding relating to Jeremy's Vahle's declaration was a violation of the applicable standard for evaluating motions for summary judgment. *Id.*

With respect to the first assignment of error, the Court of Appeals for Division III appropriately distinguished *Dotson v. Pierce County*, 13 Wn. App. 2d 455, 466, 464 P.3d 563 (2020) on the facts with respect to this matter. The key facts rendering *Dotson* in opposite with respect to this matter relate to the numerous instances of clear overlap between Investigation file # PSS004 and Investigation file # PSS003. The facts in the instant case referenced were the interview forms that were cross referenced in both Investigation file # PSS004 and Investigation file # PS003 as to Charles Porsche. In addition to the fact that the interview of Charles Porsche is referenced in both Investigation file # PSS004 and Investigation file # PSS003. In the instant matter it is clear that there was a substantive relationship between both PSS004 and PSS004.

As to the first assignment of error, Division III committed no error as to established law or decisions from the Court of Appeals. Assignment of error number 1 is without merit and the Petition for

review should be denied.

Assignment of error number 2 does not assert error within RAP 13.4, A petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The facts are that the court made nine findings in the Order Granting Summary Judgment and the Amended Order Granting Summary Judgment. There was no finding by the court relating to Lakewood Police Officer Jeremy Vahle's to timeliness declaration. The City prepared and proffered both the Order Granting Summary Judgment and the Amended Order Granting Summary Judgment.

It is well-established law that an unchallenged finding of fact will be accepted as verities upon appeal. *State v. Hill*, 123 Wn.2d 641,644, 870 P.2d 313,315 (1994) (citing to *In re Riley*, 76 Wash.2d 32, 33, 454 P.2d 820, cert. denied, 396 U.S. 972, 90 S.Ct. 461, 24 L.Ed.2d 440 (1969); *Tomlinson v. Clarke*, 118 Wash.2d 498, 501, 825 P.2d 706 (1992). )

Assignment of error number two should not be granted for multiple reasons. First, it doesn't meet any of the criteria set out under RAP 13.4(1-4). Second, the facts upon which the City are arguing are not supported by the pleadings two separate Orders Granting Summary Judgment. Finally, it appears that the City is attributing error to Division III that arguably the City invited. Finally, the City appears to be asserting error that was not raised to Division III. The City's second assignment of error is without merit and should be denied.

The Plaintiff/Appellant takes no issue with the analysis engaged in by Division III.

The decision by Division III as made without error. The decision by Division III did not conflict with a decision of this court. The decision by Division II did not conflict with a published Court of Appeals decision. The decision by Division III did not raising a significant constitutional question. The decision by Division III is not one of substantial public interest.

In summary, the City failed to meet any of the criteria required to allow for granting a Petition for Review. The Plaintiff respectfully requests that the Petition for Review be denied for the above stated reason.

#### **D. Attorney's Fees and Cost**

In line with RAP 18.1(b) and RAP 14.1, 14.3, this is the first briefing as a Respondent in this matter before this court. The Respondent, upon viewing the arguments of the City to this court

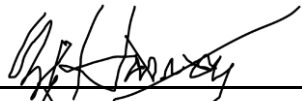
believes they are without merit and therefore request in the event that the Plaintiff is found to have substantially prevailed that the Plaintiff/ Respondent be awarded attorney's fees and the cost incurred for the preparation and costs of the briefing before this court.

## V. CONCLUSION

The panel of Judges in Division III, Court of Appeals did not err. The City/ Petitioner failed to meet the standards and criteria for review as set out engaged in RAP 13.4. In the event this court denies the petition for review, the Plaintiff/ Respondent request and order granting attorneys fees and costs in reliance upon RAP 14 and RAP 18.1(b). The Plaintiff/ Respondent respectfully request this Court deny the Petition for Review filed by the City and uphold the decision of the entire panel from Division III, court of appeals.

13<sup>th</sup> of July 2022

Respectfully submitted,



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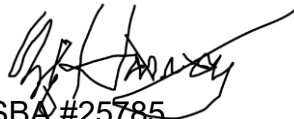
ALAN E. HARVEY, WSBA #25785  
Attorney for the Plaintiff/ Respondent



## CERTIFICATE OF COMPLIANCE

This document contains 4767 words, excluding the parts of the document exempted from the word count by RAP 18.17.(10) Petitions for review, answers, and replies (RAP 13.4): 5,000 words (word processing software) or 20 pages (typewriter or handwritten).

The word limitations exclude words in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits).




ALAN E. HARVEY, WSBA #25785  
Attorney for the Plaintiff/ Respondent

**I. CERTIFICATE OF PERSONAL SERVICE AND ELECTRONIC SERVICE**

I hereby certify that on 13<sup>th</sup> of July 2022, I filed the foregoing in with the Clerk of the Washington State Supreme Court and had the above in this matter which was electronically served upon counsel for City:

NAME	Email Address and/or Service by the Appeals portal
Washington State Supreme Court 950 Broadway, Suite 300 Olympia, WA 98402	By portal
Eileen McKain Assistant City Attorney City of Lakewood 6000 Main Street SW Lakewood, WA 98499	By Portal Email: <a href="mailto:emckain@cityoflakewood.us">emckain@cityoflakewood.us</a>

DATED this 13<sup>th</sup> day of July 2022

  
\_\_\_\_\_  
ALAN E. HARVEY, WSBA #25785  
Attorney for the Plaintiff

# NORTHWEST LEGAL ADVOCATES

July 13, 2022 - 4:30 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 101,011-7  
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