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Court of Appeals No. 73847-0-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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VICTOR TERENCE WASHINGTON,

Plaintiff-Appellant,

v.

GROUP HEALTH COOPERATIVE,

Defendant-Respondent.

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF

WASHINGTON FOR KING COUNTY

The Honorable Judge Rietschel.

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APPELLANT'S REPLY BRIEF

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## I. ARGUMENTS IN REPLY

### A. GHC's Restatement of the Facts is Inaccurate

Group Health Cooperative's ("GHC's") restatement of the case and accompanying facts in its response made numerous material misrepresentations of the record and in some cases, fabricated facts. GHC is permitted to have aggressive advocates to represent its interests, however they are not allowed to aid GHC with willful misrepresentations, intentional ignorance, planned prejudicial misconduct and a closing argument designed to mislead, misrepresent, inflame and prejudice. Mr. Washington has established in his opening brief and in this reply brief that GHC's conduct during trial constituted misconduct and this misconduct was prejudicial in the context of the entire record. As discussed in appellants brief and this reply, Mr. Washington shows as a matter of law that GHC violated the Washington State Law against Discrimination.

### B. GHC Incorrectly Claims Washington Accepts but Delays Employment With Group Health to Accommodate his Bankruptcy Petition

First, the issue of bankruptcy has no place in a disability discrimination trial. GHC, based on the unsworn testimony and opinion of its attorney, claimed in its response brief and throughout trial, with special focus during closing argument that Mr. Washington:

Deliberately delayed his employment start date at Group Health in order to submit a declaration to the bankruptcy court swearing as

of March 15, 2012 when Washington presented such sworn testimony, he in fact had a prospect of income during the upcoming year given his anticipated Group Health employment, making his sworn testimony to the bankruptcy court dishonest. *See* Response Brief, at 31.

GHC in its brief is telling this Court that GHC, “set forth a February 29, 2012 target start date for Washington to begin employment”. *See* Response Brief, at 5. And GHC continues with its inflammatory opinion that “Washington” chose not to begin his employment because he intended to commit some nefarious act of perjury and bankruptcy fraud. GHC conceals it was impossible for Mr. Washington to start work on February 29, 2012 as GHC falsely claims. A GHC email dated February 27, 2012 (Ex. 2) sent by GHC’s HR representative shows that GHC had not finished Mr. Washington’s background check. This GHC Human Resources email states to a GHC manager the status of Mr. Washington’s background check as of February 27, 2012 was incomplete.

“A quick update on Terence (Washington), right now the HR Service Center is still processing his background check. Since he has lived internationally, the background check has taken longer than normal.” Ex. 2

GHC’s own process of a background check was taking longer and thus created a delay. GHC never communicated the contents of the email to the jury, nor did GHC include this in its response brief to the court. Next, Ex. 184 shows that GHC’s background check was not completed until March

15, 2012. Even after the background check was complete, GHC did not formally extend Mr. Washington an actual offer in writing until March 30, 2012. Ex 75, CP 69. GHC made no official commitment to hire Mr. Washington until March, 30, 2012, which GHC concealed from the jury with the inflammatory effect of making Mr. Washington out to be a criminal. GHC in its closing argument, took this misconduct further stating to the jury that:

“After he had accepted an offer with Group Health Cooperative on March 1st of 2012, Mr. Washington filed a Petition for Bankruptcy with the United States Bankruptcy Court. He sought to avoid \$650,000 in debt.” Closing Argument page 2.

This statement to the jury during closing argument was flagrant with the intent to mislead and inflame the jury. Ex 75 shows there was no formal offer on March 1 of 2012. As discussed earlier, GHC did not present Mr. Washington an official offer on February 29 or March 1 as GHC’s counsel claimed. Rather, they tendered the offer March 30, 2012. CP 691 Ex 75. Needless to say the issue of bankruptcy had zero probative value, it was irrelevant to the Washington State Law against Discrimination (WLAD), and GHC failed to comply with the Rules of Evidence, the discovery rules and more. GHC created this bankruptcy issue to sidestep the WLAD by ambushing Mr. Washington at trial, and GHC used three pages of the trial transcript of the closing argument alone

to focus on bankruptcy in this disability discrimination case. Closing Argument at 2-5.

GHC's conduct is remarkably similar to the conduct of the attorney in *Restraint of Glasmann*, 175 Wn.2d 696, 704, 286 P.3d 673 (2012), where the court concluded the attorney's conduct showed, "misconduct was so flagrant and ill-intentioned that an instruction would not have cured the prejudice." *See Glassman* at 703. GHC's multi-pronged misconduct was the backbone of its defense. Although *Glasmann* was a criminal matter, GHC's conduct during closing argument was as improper and prejudicial as the prosecuting attorney's conduct in *Glasmann*. Also like *Glasmann*, Mr. Washington has demonstrated a substantial likelihood that the misconduct affected the jury verdict.

**C. GHC Falsely Claims that Sims' Documented an Alleged Argumentative Attitude in Washington's Second Quarter Performance Review When in Fact Mr. Washington Insisted on his Legal Right for Medical Accommodation During the August 9, 2012 Meeting**

- 1. Respondent's brief misrepresents the record that Mr. Sims documented Mr. Washington's performance review as him being argumentative. *See* Response Brief, at 11.**

When Mr. Sims was asked at trial, "Where in Mr. Washington's performance review does it say, "argumentative nature?" Mr. Sims responded "It's not in here." RP 373. As discussed in Mr. Washington's

opening brief, a little over 3 weeks before Mr. Washington was terminated by Mr. Sims, he wrote him a perfect performance review with all green marks “G” which is the highest rating and nothing but positive comments. *See* Appellants Opening Brief, at 10, RP 355, 357, CP 541

2. **Regarding the August 9, 2012 Meeting, GHC in its response brief states that Mr. Sims had a “contentious conversation with Washington on the morning of August 9, 2012”.** *See* Response Brief, at 16.

During this conversation it is undisputed that Mr. Washington protested his work schedule change because he needed accommodation to do his job and he discussed his “heart issue” with Mr. Sims. RP 126-130, 394-395, CP 1-3, 652-653. GHC admits, “Sims decided to terminate Mr. Washington’s employment because he believed Mr. Washington was a person that was argumentative.” *See* Response Brief, at 41. There is no dispute that there was an intense morning meeting on August 9<sup>th</sup> when Mr. Washington asserted his legal right and protested a change to his schedule due to need for medical accommodation. *See* Appellant’s Opening Brief, at 11-13, CP 473-476, RP 415-417. The meeting centered around Mr. Washington’s need of an adjusted work schedule and his justified insistence on this medical need and legal right. *Id.* Mr. Washington’s Pulmonologist, Dr. Raghu stated at trial that Mr. Washington has had

“persistent symptoms of fatigue. “ RP 700, 710. 717. Fatigability has been a medical issue related to Mr. Washington’s disabilities going back to 2005 where Dr. Raghu first discussed them in his medical notes in December 2005. *See* Appellants Opening Brief at 5-7, CP 595, 600.

**3. GHC’s Contention That Mr. Sims Believed Mr. Washington was, “A person that was argumentative and entirely unwilling to compromise in any way with regard to his work and work schedule” is false. *See* Response Brief, at 16.**

GHC in its brief admits that Mr. Sims’ specific complaint was Mr. Washington’s opposition to his “work schedule.” This when connected to: (1) Mr. Sims’ knowledge Mr. Washington had a “heart issue” and he was going to the cardiologist this same day (August 9, 2012), (2) GHC concealed their knowledge of the material fact of Mr. Washington’s “heart issue,”(3) The 8:12am email Mr. Washington sent with the subject, “medical condition notification,” and (4) Mr. Sims initiated termination at 10:00 am, solidifies the fact that Mr. Washington was exercising his legal right under WLAD public policy. *See* Appellants Brief at 13, 15, 43 RP 394-395 and Ex.12. Accordingly, Mr. Washington was terminated after he gave notice of disability and he lawfully protested his medical needed adjusted work schedule being ignored. RP 436. *See* Appellants Brief, at 32-34.

4. **At trial, Mr. Sims states he terminated Mr. Washington due to him being argumentative with the established procedures to work, “Standard Working Hours,” but there is no such thing as Standard Working Hours for others on Mr. Sims’ team.**

Mr. Sims’ trial testimony show there are no, “standard working hours,” despite him initially saying Mr. Washington was, in part, terminated for such, as follows:

Q: Argumentative in nature and working with leadership was to accept the standard working hours, right?

SIMS: That’s correct.

Q: But you testified earlier when I was asking you, there were no standard working hours, is that right?

SIMS: That’s correct.

*See Appellants Opening Brief, at 11, 39-40, Ex. 10, RP 42.*

Mr. Sims, who terminated Mr. Washington, makes it clear that about 7:00 am on August 9, 2012 that Mr. Washington protested his adjusted work schedule being taken away and Mr. Sims acknowledged he had issues with Mr. Washington’s protest; **“it was the argumentative nature in changing his shift back to a regular work schedule -- or to his original work schedule that was concerning.”** RP 436. (emphasis added).

5. **Mr. Sims at trial testified that Mr. Washington told him that his directive was “unfair” and “wasn’t right” and “he (Mr. Washington) refused to change back” to his original work schedule because of his medical needs.**

GHC admits they knew Mr. Washington had heart issues and was going to UWMC that morning. RP 394-395, 415. Mr. Washington protested on August 9, 2012 and emailed formal/written notice of “Medical condition Notification” in an 8:12 am email on August 9, 2012. *See* Appellants Opening Brief, at 13, Ex. 9. GHC terminated Mr. Washington the next day. *See* Appellant Opening Brief, at 13, Ex. 10. Despite the multiple notifications received by GHC regarding Mr. Washington’s disabilities, GHC’s position is that Mr. Washington never notified them, despite overwhelming evidence to the contrary. *See* Appellants Opening Brief, at 14-16. GHC in a September 2012 letter states:

“you did not state or imply in any way that you had a disability, that you needed an accommodation.” Ex 12, *See* Appellants Opening Brief, at 13.

At trial, it became clear that GHC concealed material facts when Mr. Sims admitted Mr. Washington had “heart issues” and was seeing a doctor at UWMC the day before his termination. RP 394-395,

As a matter of law, GHC wrongfully terminated Mr. Washington in violation of public policy under the new standard the Washington State Supreme court established in *Rose v. Anderson Hay & Grain Co.*, \_\_\_ Wn.2d \_\_\_ (No. 90975-0, 2015). At 10:00 am this same morning of August 9, 2012, Mr. Sims sent an email to begin the process of his sudden

expedited termination of Mr. Washington. Ex 18, RP 359-361, CP 487-492, 518-519. On the next day Mr. Washington was terminated. Ex. 10 See Appellants Opening Brief, at 12 RP 354-355, 365-366. This establishes a proximity in time connection or causal requirement required by *Wilmot v. Kaiser Aluminum & Chem Corp.*, 118 Wn.2d at 68-69. See Appellants Opening Brief, at 33-34.

**D.   GHC’s Claim That Part of the Termination Decision Hinged on the Fact that Washington was Unable to Attend an Afternoon Work Meeting is a Misrepresentation of the Record which Shows the Meeting was not Mandatory**

GHC misrepresents the record when they stated, “Washington is unwilling to attend the afternoon work meeting.” See Respondent’s Brief, at 12. This meeting GHC identifies that they denote as EX 103, was in fact a *voluntary* meeting that was forwarded on just a few hours before the vendors arrived to sell their product. Shortly after the July 17th meeting, Mr. Burton alleges he spoke to Mr. Sims about Mr. Washington’s unavailability to attend afternoon meetings and stated to Sims: “[W]e need to talk with [Washington] because he’s missing meetings that are happening later in the day.” See Respondent’s Brief, at 12. The response brief conceals the fact that Burton admitted during cross-examination during trial that the meeting was *voluntary* and that Burton said, “*I never said that it was mandatory.*” (emphasis added). RP 514, 401-402

GHC continues to misrepresent the record by asserting that Mr. Sims said Mr. Washington “missed meetings.” *See* Response Brief, at 12. Yet, in Mr. Sims’ trial testimony, he could not articulate any missed meetings except a voluntary meeting regarding vendors as discussed with Mr. Burton testimony. RP 402, *See* Appellants Brief, at 11. Mr. Sims testified, “I don’t have a specific meeting that I can recall.” RP 401.

Multiple misrepresentation of the record by GHC in its response brief illustrate GHC’s inability to provide evidence, let alone, substantial evidence to support the verdict.

**E.     GHC Wrongly Applies the Law When they State That “Washington Refused to Resume Working His Regular Schedule without Disclosing Any Disability or Requesting a Reasonable Accommodation”**

- 1.     GHC admits that at approximately 6:00 am to 7:00 am on August 9, 2012, they told Mr. Washington he would not be allowed an adjusted work schedule.**

GHC in its response brief states that Mr. Sims was unable to get anything as to why Mr. Washington was unable to change his adjusted schedule... “It was just a constant argument.” *See* Respondent’s Brief, at

15. Specifically, GHC’s response brief says Sims asked:

“Whether he (Washington) had any family or medical conditions that prevented him from staying at work until 2:30 p.m. each day, but Washington provided no information indicating that either was the case. Washington referred only generally to his need to attend some upcoming medical appointments that were *“heart-related.”* *See* Respondent’s Brief, at 15. (emphasis added).

GHC finally admits that Mr. Washington informed them of “medical appointments that were heart related” in its response brief after nearly 3 years of concealing and misrepresenting the material fact they knew Mr. Washington had disabilities before they terminated him. *See* Appellants Opening Brief, at 14-15, 20-21, RP 394-395. Mr. Washington was disabled as defined by RCW 49.60.180(2). As a matter of law “he (Mr. Washington) had to go to the University of Washington Medical for heart issues” is notification of Mr. Washington’s disability. RP 394-395, *See* Appellants Opening Brief, at 15. GHC’s response was to terminate Mr. Washington, which squarely violated WLAD (failure to accommodate, disability discrimination) and wrongful termination in violation of public policy. *See* Appellants Opening Brief, at 29-43.

2. **In *Martini v. Boeing Co.*, this Court concluded in its opinion that a “condition is a handicap if it is either medically cognizable or is perceived to exist, and Lords' heart condition qualified under either provision.”**

Under remarkably similar circumstances to Mr. Washington’s, in *Martini v. Boeing Co.*, 137 Wn.2d 357, 971 P.2d 45 (1999), *Martini* had a heart condition and sleep apnea and it qualified under either provision as a disability. Based on this Court’s reasoning in *Martini v. Boeing* and RCW 49.60.180(2), this admission of GHC in its own response brief that they had notice of Mr. Washington’s heart condition and immediately fired him

the next day, constitutes, under the law, that GHC had notice Mr. Washington was disabled. GHC failed to accommodate Mr. Washington. This does not even include the other numerous documented notifications of disabilities displayed in the appellant's opening brief. *See* Appellants Opening Brief, at 14-16.

**3. GHC further admits in its response brief that shortly after the August 9, 2012 meeting regarding GHC telling Mr. Washington to change his adjusted schedule that:**

“Sims terminated Washington’s employment at Group Health. At that time, Sims did not *believe* Washington was a person with a disability who required any accommodation, and at no time during Washington’s employment did Washington inform Sims otherwise.” *See* Respondent’s Brief, at 18 (*emphasis added*).

Mr. Sims’ *beliefs* about Mr. Washington’s condition are irrelevant.

Mr. Sims acknowledges in his testimony that he knew Mr. Washington had “heart issues” and had to go to the University of Washington Medical Center (UWMC) for those issues. *See* Respondent’s Brief, at 15, RP 394-395. Pursuant to *Martini v. Boeing Co*, the Washington Law Against Discrimination, and RCW 49.60.180(2), when Mr. Washington informed Mr. Sims’ of his heart condition, he met his burden of notification of his disability while GHC failed to meet its legal burden to accommodate Mr. Washington. In GHC’s response, it is asking this Court to extend Mr.

Washington's burden well beyond what settled Washington case law requires and to absolve GHC of its burden to accommodate.

**F. In Martini, the Appellant Met with Boeing EAP Counselors and They Knew that Martini had Some Level of Depression and Anxiety and Thus had Notice of the Disability.**

This Court found Boeing knew Martini was about to begin treatment. The Court determined that this was sufficient notice to Boeing to trigger a duty to “investigate further into the nature and impact of Martini's depression disability.” *See Martini v. Boeing*. GHC admitted they knew Mr. Washington had doctor appointments on August 9, 2012, for a heart condition which thus triggered a duty to “investigate” just as this Court determined in *Martini*. RP 394-395. GHC failed to meet its burden under *Martini v Boeing*, *Goodman v. Boeing* and *Frisino v. Seattle School District No. 1*, Wash. Ct. App., Div. One, No. 63994-3-1 (March 21, 2011), As a matter of law GHC failed to accommodate Mr. Washington. This is dispositive.

**G. GHC's Statement That During Trial Washington Provides Testimony About his Military Service History Dates That are Inconsistent on his Resume is Irrelevant, Misleading and Intended to Distract from GHC's Severely Prejudicial Conduct**

GHC's focus on Mr. Washington's resume is a smoke screen to cover up knowingly false accusations by GHC to the jury that Mr.

Washington did not produce a military document called a DD 214, which they never asked for during discovery. *See* Appellants Opening Brief, at 20-22, 45. GHC manufactured this DD 214 issue as a tool with ill intent to mislead the jury to believe that Mr. Washington was not a United States Military Veteran despite GHC's possession of voluminous veteran records of Mr. Washington's (see documents appendix motion of new evidence the court is reviewing) that irrefutably established evidence to the contrary. *Id*

At closing GHC made comments about Mr. Washington's Veteran status to the jury, including:

"We never saw the veteran's card. And in fact if there was a veteran's card in his wallet, why didn't he ever produce it to Group Health. It just doesn't add up". Defense Closing, 6.

GHC fabricated an issue in this disability discrimination trial concerning the validity of Mr. Washington's honorable voluntary military service to this country, with questions during cross-examination that had a dishonest basis and a closing argument that questioned whether Mr. Washington even served in the military at all

Furthermore, GHC's counsel's name and address appear on veteran documents they received. *See Appendix*. This Court has these veteran documents before them in the motion to provide additional evidence and the accompanying appendix that proves GHC knew without

a doubt Mr. Washington was a United States Military Veteran. GHC maliciously attacked a US Military Veteran as not being a veteran when they had veteran medical records that irrefutably established such. If GHC and its counsel will knowingly make false attacks on the validity of Mr. Washington's military service, they will likely do it again in the future to defend WLAD actions brought by others.

**H.   GHC Willfully Misrepresents the Court Record that There is no Evidence that Mr. Washington had a Disability Requiring Reasonable Accommodation**

GHC continues to willfully misrepresent the court record and repeatedly engage in intentional ignorance when they claim there is no evidence to support Mr. Washington's disability. *See* Respondent's Brief, at 18. First, GHC ignores WLAD's definition of disability which in part says a disability, "is medically cognizable or diagnosable; or (ii) Exists as a record or history; or is perceived to exist whether or not it exists in fact. *See Hale v. Wellpinit School Dist. No. 49*, 165 Wn.2d 494, 198 P.3d 1021 (2009), RCW 49.60.040 (25)(a). Mr. Washington's medical conditions are cognizable, diagnosed and exist as record of history.

GHC's own expert's written report confirms Mr. Washington's diagnosed disabilities from her review of Mr. Washington's medical records. Below are excerpts directly from their experts report (Ex. 182):

**GHC Expert Excerpt 1** of review UWMC medical records, “Mr. Washington was diagnosed as having moderate sleep fragmentation and **severe obstructive sleep apnea after polysomnography on February 10, 2006.**” *See* Ex. 182 GHC Expert Report, at 19.

**GHC Expert Excerpt 2** UWMC medical records “**Cardiomyopathy in March, 2006, Dr. Fishbein, Cardiology UW**” *See* Ex. 182 GHC Expert Report, at 16.

**GHC Expert Excerpt 3** UWMC medical records “**In April, 2006, Dr. Raghu noted that Mr. Washington had sarcoidosis based on clinical findings**” *See* Ex. 182 GHC Expert Report, at 15.

**GHC Expert Excerpt 4** Dr. Ly medical records “Later that year November 9, 2009, Dr. Ly, primary care, met with Mr. Washington for **chief complaints of fatigue and low energy.** Monthly testosterone injections were reported to help with energy, sleeping, ‘moody swing’ and trouble sleeping, more than oral medication.” *See* Ex. 182 GHC Expert Report, at 1

The court record contains numerous other UWMC medical records that GHC throughout its brief claim do not exist. Below are a few excerpts of medical records years prior to Mr. Washington’s GHC employment and one record 4 months after his termination.

**Ex. 77 - UWMC Neurology- October 2007**

“**PAST MEDICAL HISTORY:** 1. Possible sarcoid. 2. Congestive heart failure with left ventricular diastolic dysfunction. 3. Obstructive sleep apnea. 4. Obesity. 5. Hypertension. 6. Gastroesophageal reflux disease. 7. Hypotestosteronism, unknown etiology.”

**Ex 76 - UWMC Cardiology-November 2007**

“**PAST MEDICAL HISTORY:** 1. History of mild LV dysfunction with recent echo showing normal LV function. Normal coronary arteries. 2. Frequent premature beats. 3. Atypical chest pain and light-headedness

with hospitalization in 2007. 4. History of sleep apnea intolerant of CPAP. 5. Hypertension. “

**EX 73 - UWMC UROLOGY - December 2012**

“PAST MEDICAL HISTORY: Significant for high blood pressure as well as cardiomyopathy with PVCs and has been evaluated in the Cardiology Department at the University in the past (last seen by Cardiology on August 17, 2012), see Cardiology note. Past medical history is significant for left ventricular systolic dysfunction, premature ventricular contractions, history of atypical chest pain, sleep apnea, hypogonadism, high blood pressure, gastroesophageal reflux, history of obesity, and history of sarcoid.”

**I. GHC Misrepresents Testimony that Dr. Raghu said That “Mr. Washington is a Gentleman who Does not Have a Diagnosis of Sarcoid”**

The aforementioned statement from GHC’s Response Brief, is not what Dr. Raghu said at trial. *See* Response Brief, at 27. The trial record shows that Dr. Raghu confirmed that he diagnosed Mr. Washington with the inflammatory immune system disease of Sarcoidosis as follows:

Q: You’ve described Mr. Washington as a Gentleman with Sarcoidosis, is that correct, Doctor?

DR. RAGHU: With the clinical diagnosis of sarcoidosis, yes. RP 714

GHC in its response brief used partial and misleading statements by Dr. Raghu, while they omitted others, for example Dr. Raghu wrote medical notes that confirm diagnosed Cardiomyopathy (heart disease) and Sleep Apnea. First Dr. Raghu’s medical notes state “Victor Washington is a 42 year old obese/overweight gentleman who has

cardiomyopathy.”.....Then later in the note, Dr. Raghu goes on in this note to state, “He also has sleep apnea.” CP 595, 596.

**J. GHC Incorrectly states on Page 47 of its Response Brief that Substantial Evidence Supports the Verdict**

GHC was only able to *tell* the court that they have substantial evidence, but they did not *show* substantial evidence with any listing or illustrations in the record, not to mention many misrepresentations. GHC cannot produce substantial evidence because of its own admissions, direct evidence of emails and numerous other undisputed records, *See* Appellants Opening Brief.

In *Sommer v. DSHS*, 104 Wn. App.160, 173 (2001), Sommer, who was disabled and needed accommodation, appealed a jury verdict in DSHS’s favor because the evidence did not match the verdict. This Court found, “Sommer presented substantial evidence that he had a disability and notified DSHS of his disability” and this Court went on to say as a matter of law, that DSHS did not present, “substantial evidence that DSHS lacked notice of Sommer's disability.” *Sommer* at 171. As a result, this Court overturned the jury verdict that favored the Defense and concluded that Sommer as a matter of law, had substantial evidence to show disability discrimination and thus returned the case back for a new trial on

damages only. *Id* at 172. We ask this Court to do likewise in Mr.

Washington's case for the same reasons.

**K.     GHC States in its Response Brief on Page 48 and 49  
that its Counsel did not Engage in Prejudicial  
Misconduct at Closing**

GHC violated the WLAD and instead of following the public policy of WLAD and allowing Mr. Washington's reasonable request for accommodation of a small adjusted work schedule of about 90 minutes, as set forth in appellant's opening brief, they instead did not accommodate his requests and filled its response brief with concealment, misrepresentation and extensive prejudicial misconduct.

Elements of GHC's closing argument have been discussed in the appellants opening brief, and this reply brief, however, the sum of the misconduct is too extensive to list. The Washington State Supreme Court in *State v Walker*, 180 Wn.2d 1002, 321 P.3d 1206 (2014) reversed the jury verdict due to, "egregious misconduct" during closing argument. The court stated that an attorney does not have the right, "to present derogatory depictions of the defendant, or to express personal opinions on the defendant's guilt." *Walker* at 1004. In the submitted briefs, this Court has seen GHC's derogatory depictions of Mr. Washington's bankruptcy, military service, sex life, calling him, "Big Mac Daddy", and more. Another example during closing argument is GHC's counsel opinion of

Mr. Washington's credibility in which he told the jury that Mr. Washington "lies", "lied" and other judgments of his credibility over 15 times in closing. Oftentimes the topic was unrelated to the issue of disability discrimination and not supported by the record. GHC is asking the court to construe WLAD in such a manner that would render it ineffective with respect to the Supreme Court's intent. *Larry Currier v. Northland Services Inc.*, 332 P.3d 1006, 182 Wn.App. 733, 741 (Ct. App. Div. 1 2014). The Washington Supreme Court has often asserted that the WLAD:

"is a "public policy of the highest priority." The legislature enacted the WLAD to eliminate and prevent discrimination in Washington. The legislature has directed that the provisions of the WLAD "shall be construed liberally for the accomplishment of the purposes thereof." 11 RCW 49.60.030, *Larry Currier V. Northland Services* Div 1 2014 at 740.

## II. CONCLUSION

For all the aforementioned reasons, this Court should remand the case to King County Superior Court for a new trial for damages only and also order Mr. Washington's immediate reinstatement to his previous position at GHC.

Respectfully submitted this 29<sup>th</sup> day of June, 2016.



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Corey Evan Parker  
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Attorney for Appellant

**CERTIFICATE OF SERVICE**

I, Corey Evan Parker, certify under penalty of perjury under the laws of the United States and of the State of Washington that on June 29, 2016, I caused to be served the document to which this is attached to the party listed below in the manner shown next to their name:

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