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No. 96264-2

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

CERTIFICATION FROM  
THE UNITED STATES  
DISTRICT COURT FOR  
THE WESTERN DISTRICT  
OF WASHINGTON

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VALERIE SAMPSON and DAVID RAYMOND, on their own behalf and  
on behalf of all others similarly situated,

Petitioners/Plaintiffs,

v.

KNIGHT TRANSPORTATION, INC., an Arizona corporation, KNIGHT  
REFRIGERATED, LLC, an Arizona limited liability company, and  
KNIGHT PORT SERVICES, LLC, an Arizona limited liability company,

Respondents/Defendants.

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**Errata to Respondents/Defendants' Answering Brief**

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Paul Cowie  
John Ellis  
SHEPPARD, MULLIN,  
RICHTER & HAMPTON, LLP  
Four Embarcadero Center  
Seventeenth Floor  
San Francisco, California 94111  
Tel: 415.434.9100  
Fax: 415.434.3947

Karin Vogel  
SHEPPARD, MULLIN,  
RICHTER & HAMPTON, LLP  
501 West Broadway  
19th Floor  
San Diego, California 92101  
Tel: 619.338.6500  
Fax: 619.234.3815

Anthony Todaro  
Jeffrey DeGroot  
DLA PIPER LLP (US)  
701 Fifth Avenue, Suite 6900  
Seattle, Washington 98104-7029  
Tel: 206.839.4800  
Fax: 206.839.4801

Attorneys for Respondents/Defendants

Respondents/Defendants Knight Transportation, Inc., Knight Refrigerated, LLC and Knight Port Services, LLC hereby submit this errata with regard to their Answering Brief filed on November 29, 2018. In one sentence on page 11 and in two paragraphs on pages 37-38 of Defendants' Answering Brief, Defendants cite to and quote from the dissenting opinion in *Hill v. Xerox Bus. Servs., LLC*, 191 Wn.2d 751 (2018) without indicating the citations are to the dissent. This omission was unintentional and occurred because of the fact that the majority and dissenting opinions in *Hill* are in agreement on the points supported by the citations.<sup>1</sup>

#### ERRATA

The sentence on page 11 of Defendants' Answering Brief beginning with "This Court in *Hill v. Xerox Bus. Servs., LLC*, 191 Wn.2d 751, 764 (2018) explained that..." should read as follows (corrections are highlighted):

This Court in *Hill v. Xerox Bus. Servs., LLC*, 191 Wn.2d 751, 761-62 (2018) explained that the Department of Labor and Industries

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<sup>1</sup> Defendants were alerted to the mistake by a statement on page 17 of Plaintiffs' December 21, 2018 Reply Brief: "Indeed, much of the language on which Knight relies is taken from the dissenting opinion, a fact Knight neglects to mention." See Answering Br. at 37-38 (quoting from *Hill*, 191 Wn.2d at 764-65 (Stephens, J., dissenting))." In fact, most of Defendants' citations to and quotations from *Hill* were to the majority opinion. See Answering Br. at 36-37.

“describes ‘[p]iece rate employees’ [] as ‘usually paid a fixed amount per unit of work.’” *Accord Hill*, 191 Wn.2d at 764 (“‘[p]iece rate employees are usually paid a fixed amount per unit of work’—for example, \$0.75 per apple picked, \$0.10 per widget produced, or \$5.00 per mile driven.”) (Stephens, J., dissenting); *see also* Wn.Dep’t of Labor & Indus., Emp’t Stds. Admin. Policy ES.A.8.2.

\* \* \*

The last paragraph starting on the bottom of page 37 though the first paragraph starting on the top of the page 38 of Defendants’ Answering Brief should read as follows (corrections are highlighted):

Later in the decision, *Hill* explained how “the regulations implementing the MWA make an exception to [the] right to earn the minimum wage for every hour worked: **they permit workweek averaging for employees who are ‘paid on a commission or piecework basis, wholly or partially,’**” citing WAC 296-126-021. *Id.* at 761. **The dissent in *Hill* agreed with the majority opinion and described** how “minimum wage compliance under Washington law is determined differently for piece-rate employees than for hourly employees. When an employee is paid on a piecework basis, as opposed to an hourly basis, employers may use workweek averaging to determine whether the

employee's overall compensation complies with the MWA. *See* WAC 296-126-021; Wash. Dep't of Labor & Indus., Emp't Stds. Admin. Policy ES.A.3." *Hill*, 191 Wn.2d at 764-65 (Stephens, J., dissenting). Consistent with the majority, the *Hill* dissent quoted from the Ninth Circuit with approval: "**In other words, as long as the total wages paid for a given week, divided by the total hours worked that week, averages to at least the applicable minimum wage, the piece-rate employee's compensation complies with Washington law.**" *Hill*, 191 Wn.2d at 765 (Stephens, J., dissenting) (quoting *Hill*, 868 F.3d at 759 (9th Cir.) (emphasis added)).

Plaintiffs cannot avoid these clear and unequivocal statements, and their reliance on the *Hill* is puzzling. Although the specific issue **before** the Court in *Hill* was whether a particular compensation structure qualified as a piecework plan under WAC 296-126-021, **both the majority and dissenting Justices** clearly agreed that if it was a piecework plan, workweek averaging would be permissible. *Hill*, 191 Wn.2d at 761 & 764-66. Indeed, there would have been no point in answering the certified question if this were not the case.

December 28, 2018

SHEPPARD, MULLIN, RICHTER &  
HAMPTON, LLP

*s/ John Ellis*

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Paul Cowie, *admitted pro hac vice*  
John Ellis, *admitted pro hac vice*  
SHEPPARD, MULLIN, RICHTER &  
HAMPTON, LLP  
Four Embarcadero Center  
Seventeenth Floor  
San Francisco, California 94111  
Tel: 415.434.9100  
Fax: 415.434.3947  
E-mail: [pcowie@sheppardmullin.com](mailto:pcowie@sheppardmullin.com)  
E-mail: [jellis@sheppardmullin.com](mailto:jellis@sheppardmullin.com)  
Karin Vogel, *admitted pro hac vice*  
SHEPPARD, MULLIN, RICHTER &  
HAMPTON, LLP  
501 West Broadway  
19th Floor  
San Diego, California 92101  
Tel: 619.338.6500  
Fax: 619.234.3815  
E-mail: [kvogel@sheppardmullin.com](mailto:kvogel@sheppardmullin.com)

AND

DLA PIPER LLP (US)

*s/ Anthony Todaro*

---

Anthony Todaro, WSBA No. 30391  
Jeffrey DeGroot, WSBA No. 46839  
DLA PIPER LLP (US)  
701 Fifth Avenue, Suite 6900  
Seattle, Washington 98104-7029  
Tel: 206.839.4800  
Fax: 206.839.4801  
E-mail: [anthony.todaro@dlapiper.com](mailto:anthony.todaro@dlapiper.com)  
E-mail: [jeffrey.degroot@dlapiper.com](mailto:jeffrey.degroot@dlapiper.com)  
Attorneys for Respondents/Defendants

CERTIFICATE OF SERVICE

I certify that on December 28, 2018, I caused a true and correct copy of the foregoing to be filed with the Washington Supreme Court and served upon counsel as indicated below:

Toby J. Marshall, WSBA No. 32726  
Erika L. Nusser, WSBA No. 40854  
TERRELL MARSHALL LAW GROUP PLLC  
936 North 34th Street, Suite 400  
Seattle, Washington 98103-8869  
Tel: (206) 816-6603  
Fax: (206) 319-5450  
E-mail: tmarshall@terrellmarshall.com  
E-mail: enusser@terrellmarshall.com

*AND*

Hardeep S. Rekhi, WSBA No. 24579  
Gregory A. Wolk, WSBA No. 28946  
REKHI & WOLK, P.S.  
529 Warren Avenue North, Suite 201  
Seattle, Washington 98109  
Tel: (206) 388-5887  
Fax: (206) 577-3924  
E-mail: hardeep@rekhiwolk.com  
E-mail: greg@rekhiwolk.com

*Attorneys for Plaintiffs*

///

Anthony Todaro, WSBA No. 30391  
Jeffrey DeGroot, WSBA No. 46839  
DLA PIPER LLP (US)  
701 Fifth Avenue, Suite 6900  
Seattle, Washington 98104-7029  
Tel: (206) 839-4800  
Fax: (206) 839-4801  
E-mail: anthony.todaro@dlapiper.com  
E-mail: jeffrey.degroot@dlapiper.com

*Attorneys for Respondents/Defendants*

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Dated this 28th day of December, 2018.

*/s/ Sarah Smith*  
\_\_\_\_\_  
Sarah Smith

**SHEPPARD MULLIN RICHTER & HAMPTON LLP**

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- pcowie@sheppardmullin.com
- rachel.evans@dlapiper.com
- tmarshall@terrellmarshall.com

**Comments:**

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Sender Name: John Ellis - Email: jellis@sheppardmullin.com  
Address:  
4 Embarcadero Street  
17th Floor  
San Francisco, CA, 94111  
Phone: (415) 744-2912

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