Supreme Court No. 1029926
Court of Appeals No. 85901-3-I

SUPREME COURT OF THE STATE OF WASHINGTON

EIGHT IS ENOUGH, LLC,

Plaintiff/Respondent,

v.

CYNTHIA OHLIG,

Defendant/Petitioner,

and

ALL OTHER RESIDENTS and OCCUPANTS,

Defendants.

RESPONSE TO RESPONDENT'S STATEMENT OF ADDITIONAL AUTHORITY

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Garrand v. Cornett supports Cynthia Ohlig's Petition for review. Ohlig agrees with *Garrand* that trial courts may "award damages … *for the period of unlawful detainer*" regardless of whether the eviction was based on failure to pay rent. (Emphasis added). *Garrand,* however, confuses the issue by conflating the terms "damages" and "rent." The confusion created by *Ohlig* and now *Garrand* requires this Court's review.

Ms. Ohlig asks this Court whether a court, when hearing evictions based on something other than pay-or-vacate notices, may issue judgment for rent that accrued *prior* to expiration of the eviction notice? *Garrand* only holds courts may issue judgments for damages incurred post-holdover. It does not hold courts may enter judgments for rent accrued *prior* to holdover. *Garrand* is in conflict with *Ohlig*, which held courts may enter judgments for rent accruing prior to expiration of the eviction notice, regardless of the eviction's basis. *Ohlig* at 18.

After *Garrand,* the Court has even greater reason to find review is warranted. By loosely using the term "rent," conflating it with "damages," *Garrand* confuses the issue. For example, "[t]he trial court did not lack statutory authority to award *rent damages* for the period of Cornett's unlawful detainer." Pg. 17. But "rent" is different than "damages." Rent is the contracted amount for renting a home prior to expiration of a pay-or-vacate notice. *Sprincin King St. Partners v. Sound Conditioning Club, Inc.*, 84 Wn. App. 56, 63 (1996). Damages are the "fair market value of the use of the premises" after the notice expires. *Id.*

Garrand also mistakenly states that different rules govern issuance of judgments at show cause hearings than judgments entered at trials. *Garrand* at 17. But RCW 59.18.410(1), which only permits rent judgments "if the alleged unlawful detainer is based on default in the payment of rent," applies to judgments entered at show cause as well as after trial. *See* RCW 59.18.410(6).

Between the conflicting, sometimes confusing, mandates of *Garrand* and *Ohlig*, courts will continue to reach diverging conclusions about when to award rent judgments. There is a substantial public interest in this Court providing clear guidance.

CERTIFICATE OF WORD COUNT

Pursuant to RAP 18.17(b), I, Carrie Graf, counsel for Petitioner Cynthia Ohlig, hereby certify that the word count for this brief is 350 words, which does not include any appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images. This brief therefore complies with the rule, which limits a brief to 350 words. I certify that I prepared this document in Microsoft Word, and that this is the word count Microsoft Word generated for this document.

Respectfully submitted,

Dated this 18th day of June, 2024

/s/ Carrie Graf
Carrie Graf, WSBA #51999
Attorney for Petitioner Cynthia Ohlig

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this 18th day of June 2024, I caused to be delivered by E-service via the Washington State Appellate Courts' Portal, a true a correct copy of this RESPONSE TO RESPONDENT'S STATEMENT OF ADDITIONAL AUTHORITIES, addressed to the following:

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SIGNED at Olympia WA, this 18th day of June, 2024.

/s/ Carrie Graf
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