No. 103616-7

SUPREME COURT
OF THE STATE OF WASHINGTON

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SNAP! MOBILE, INC.,

Respondent,

v.

MICHAEL ARGYROU, et al.,

Petitioners.

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# ANSWER TO PETITION FOR REVIEW

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page(s)**

**FEDERAL CASES**



**STATE CASES**

**RULES AND REGULATIONS**



**OTHER AUTHORITIES**

## A. Introduction.

Snap! Mobile, Inc. (Snap!), obtained a judgment against a competitor in Idaho after proving it tortiously interfered with the employment contracts of 42 Snap! employees. Separately, Snap! filed this action against several of its former employees, petitioners here, for breach of their employment contracts. Petitioners asserted claim and issue preclusion as defenses.

In an unpublished decision, the Court of Appeals rejected petitioners' contention that the Idaho judgment in Snap!'s favor precluded its claims in this action. The Court of Appeals also—at the petitioners' urging—applied issue preclusion, holding they could not relitigate the existence and breach of their contracts with Snap! because, as petitioners conceded, the issues in the two actions were identical and their interests were adequately represented in Idaho.

The Court of Appeals' unpublished decision does not warrant review. Petitioners invited, indeed insisted, the Court of Appeals apply issue preclusion; their complaint that its application violates their due process rights is without merit. The Court of Appeals' decision also does not involve any issue of substantial public interest, only what petitioners admit is a "novel" and "unusual" situation—a request by a defendant to give preclusive effect to a judgment *in favor* of the plaintiff. This Court should deny review.

## B. Restatement of Issues Raised by Petitioners.

1. Should this Court decline review of the Court of Appeals' decision because petitioners invited it to apply issue preclusion and because they conceded below, as they do in this Court, that the issues in the Washington and Idaho actions—the existence and breach of their contracts—are identical and that their interests were adequately represented in Idaho?

2. Is the Court of Appeals' holding that petitioners are not in privity with Snap!'s competitor in the absence of an agency relationship consistent with this Court's established rule that privity does not "'arise from the mere fact that persons as litigants are interested in the same question or in proving or disproving the same state [or set] of facts.'" *Afoa v. Port of Seattle*, 191 Wn.2d 110, 131, ¶44, 421 P.3d 903 (2018) (quoting *United States v. Deaconess Med. Ctr. Empire Health Services*, 140 Wn.2d 104, 111, 994 P.2d 830 (2000)).

3. Do petitioners' allegations of "internal contradictions" in the Court of Appeals' decision merit this Court's review under RAP 13.4(b)(4)?

## C. Restatement of the Case.

Snap!, founded in 2013, invested millions in developing a revolutionary online platform to assist sports teams, coaches, and teachers to raise money through online donation campaigns. (CP 302, 725) Petitioners are

former Snap! sales representatives that signed non-disclosure, non-compete, and non-solicitation agreements as part of their employment contracts with Snap!. (CP 20–94)

Petitioners all left Snap! to work as independent contractors for its Idaho-based competitor Vertical Raise. (CP 535–72, 648–57, 826–33, 1340–49, 1366–73) Petitioners were 10 of 42 Snap! employees Vertical Raise poached to compete with Snap! and acquire Snap!'s trade secrets. (*See, e.g.*, CP 787: text message from a petitioner asking for disclosure of confidential Snap! contacts so he could "f*** snap over"; CP 594, 598–641: emails showing a petitioner asked for spreadsheets compiling Snap!'s confidential information *after* accepting an offer from Vertical Raise but *before* leaving Snap!; *see also* CP 2422: list of former Snap! employees recruited by Vertical Raise)

Vertical Raise's campaign against Snap! was directed by its CEO Paul Landers, who repeatedly solicited

confidential information from former Snap! employees and then sent Vertical Raise employees and contractors that information to compete with Snap!. (*See, e.g.*, CP 147–48, 159, 161, 163, 202, 645–46, 1061) For example, Landers sent an email to every Vertical Raise sales representative with a spreadsheet based on Snap!'s confidential information that he called "The Belichick" because it was the "ultimate playbook to win." (CP 231)

Snap! successfully sued Vertical Raise and Landers in its home state of Idaho on claims for tortious interference with contract, unfair competition, and misappropriation of trade secrets, obtaining a $1 million judgment. (CP 1379–81) Landers testified in the Idaho jury trial that he and Vertical Raise did not "micromanage" their sales representatives but rather "just set them up" to "go get the business" and that their sales representatives, including petitioners, breached their contracts with Snap! despite

Vertical Raise's and Lander's instruction not to "violate past agreements." (CP 1541)

Snap! separately filed this action asserting breach of contract claims and seeking injunctions against petitioners in King County Superior Court, consistent with their employment contracts, all of which contained a clause requiring suit be brought "exclusively in King County Superior Court." (*See, e.g.*, CP 24) Petitioners asserted the doctrines of claim preclusion (res judicata) and issue preclusion (collateral estoppel) as affirmative defenses and moved for summary judgment arguing that the Idaho judgment barred Snap!'s claims. (CP 2364–88) The trial court dismissed the action on petitioners' summary judgment motion. (CP 1887–1905)

Division One reversed in an unpublished opinion. *Snap! Mobile, Inc. v. Argyrou*, Cause No. 83766-4-I, 2023 WL 8895085 (Dec. 26, 2023), *amended on denial of recon.*

(Oct. 14, 2024).[1] Division One held that claim preclusion did not bar Snap!'s claims against petitioners because the parties in the Idaho action and this action were not identical. 2023 WL 8895085, at **3–5. Division One rejected petitioners' argument they were in privity, and thus should be considered the same party as Vertical Raise for purposes of claim preclusion, reasoning that independent contractors are generally not in privity with their principals and that, as demonstrated by Landers' testimony, rather than defending petitioners' interests in Idaho, Vertical Raise and Landers "disclaimed responsibility for the[ir] actions" in the Idaho lawsuit. 2023 WL 8895085, at **4–5.

Regarding issue preclusion, Division One held that it applied to "the specific issues of the existence of the

[1] This answer cites to the Westlaw version of the opinion. The slip opinion is attached to the petition as appendix A.

contracts and whether the former Snap employees breached those contracts" because "the parties agree as to the preclusive effect of the Idaho case on" those issues. 2023 WL 8895085, at *5. Division One held that issue preclusion did not apply to the issue of damages because Snap! sought damages in King County caused by petitioners' ongoing breaches after December 2020, the cutoff for damages in Idaho. 2023 WL 8895085, at *6. Division One denied petitioner's motions for reconsideration and publication. (*See* Pet. appendix B)

## D. Argument Why Reviewed Should be Denied.

### 1. The Court of Appeals did not violate the petitioners' due process rights by accepting their invitation to apply issue preclusion.

The Court of Appeals correctly held that issue preclusion prevents petitioners from relitigating the existence and breach of their contracts with Snap!. That holding is not a violation of due process and does not

warrant review under RAP 13.4(b)(3). It is instead the natural consequence of petitioners' own demand that the Court of Appeals "apply collateral estoppel to the Idaho judgment." (Resp. Br. 44; *see also* Pet. 17: "[t]he workers argued for issue preclusion on liability against Snap")

Issue preclusion prevents relitigation of "issues that have actually been litigated and necessarily and finally determined in the earlier proceeding." *Christensen v. Grant Cnty. Hosp. Dist. No. 1*, 152 Wn.2d 299, 307, 96 P.3d 957 (2004). Issue preclusion can be raised as an affirmative defense by a defendant, *e.g.*, *Christensen*, 152 Wn.2d at 304–05, or "offensively" by a plaintiff against a defendant to prevent "a defendant from relitigating the issues which the defendant previously litigated and lost." *Hadley v. Maxwell*, 144 Wn.2d 306, 311, 27 P.3d 600 (2001) (quoted source omitted). In either case, "the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication."

*Hadley*, 144 Wn.2d at 311 (quoted source omitted); *see also Christensen*, 152 Wn.2d at 307.

This case is—as petitioners admit—"novel" but not for the reasons they assert. (Pet. 12) As the Court of Appeals recognized, this case is unique because, although Snap! prevailed in Idaho, petitioners nonetheless sought "to assert [issue preclusion] against Snap." 2023 WL 8895085, at *6. As they have throughout this case, petitioners argue that issue preclusion "result[s] in summary judgment against Snap [in Washington]" because the issues in Washington "have already been resolved by the Idaho judgment." (Pet. 17 n.5) But petitioners have never addressed the gaping hole in this logic—if the Idaho court found that they signed and breached contracts with Snap!, how does barring relitigation of that finding absolve them of liability?

As the Court of Appeals held, it does not. Rather, because petitioners themselves "agree that both the Idaho

lawsuit and the current case involve the identical issue of [their] breach of their Snap sales representative agreements," they are precluded from relitigating "the specific issues of the existence of the contracts and whether [they] breached those contracts." 2023 WL 8895085, at *5. Simply put, because Snap! *prevailed* on the existence and breach of petitioners' contracts in Idaho, barring relitigation of those issues means it also prevails on them in this action.

What the petitioners effectively did—and what they now belatedly regret—is invite "offensive" issue preclusion against themselves. That the Court of Appeals accepted their invitation is not "a staggering constitutional violation," even assuming it would have been error to apply issue preclusion without their invitation. (Pet. 6) It is well-established that "[e]rror of 'whatever kind' committed at a party's invitation may not be complained of by that party on appeal." 15A Douglas Ende, Wash. Prac., Handbook on

Civil Procedure § 88.4 (2024 ed.) (quoting *State v. Studd*, 137 Wn.2d 533, 546, 973 P.2d 1049 (1999)). That is true "[e]ven [for] constitutional error." Ende, *supra*, § 88.4 (listing cases); *see also Humbert/Birch Creek Const. v. Walla Walla Cnty.*, 145 Wn. App. 185, 192, ¶13, 185 P.3d 660 (2008) ("the invited error doctrine is constitutional because [h]e is not denied due process *by the state* when such denial results from his own act") (internal quotation and quoted source omitted; emphasis in original).

Accordingly, the Court of Appeals did not deprive petitioners of "a 'full and fair opportunity to litigate' their claims"—they disclaimed that opportunity. (Pet. 7) Even now petitioners stress they are "*not* taking issue with Vertical Raise's defense . . . in Idaho" and they do *not* want "the opportunity to relitigate the issue[s] in the new action." (Pet. 12 (emphasis added); *see also* Pet. 13: "the workers were satisfied with Vertical Raise's representation [in] Idaho and were not seeking the opportunity to

represent themselves in Washington") Petitioners steadfastly maintain this position even though the Court of Appeals correctly observed that "[r]ather than defend their interests" in Idaho, Landers "distanced himself from their actions" and "disclaimed responsibility for the actions of former Snap employees." 2023 WL 8895085, at *5.

In short, having invited the Court of Appeals to apply issue preclusion, petitioners cannot complain it did so.[2] There is nothing unfair about binding petitioners to the Idaho court's finding they breached their contracts with

[2] This is true even though Snap! did not seek summary judgment below, because "when the facts are not in dispute, [an appellate court] may grant summary judgment to the nonmoving party." *In re Grant*, 199 Wn. App. 119, 135, ¶31, 397 P.3d 912 (2017); *see also Dependency of A.S.*, 101 Wn. App. 60, 72, 6 P.3d 11, *rev. denied*, 141 Wn.2d 1030 (2000), *cert. denied*, 532 U.S. 930 (2001) ("Under RAP 12.2, appellate courts are authorized to affirm, modify or reverse a trial court order without further proceedings, when doing so would be a useless act or a waste of judicial resources.").

Snap! when—even in this Court—they disclaim any desire to relitigate that finding.

### 2. The Court of Appeals' decision is consistent with Washington precedent holding privity does not exist between independent contractors and their principles or between defendants asserting the other is at fault.

Because the Court of Appeals' decision is consistent with established precedent regarding privity, the decision does not warrant review under RAP 13.4(b)(1)–(2). (Pet. 8–14) This Court has rejected the notion that privity "'arise[s] from the mere fact that persons as litigants are interested in the same question or in proving or disproving the same state [or set] of facts.'" *Afoa v. Port of Seattle*, 191 Wn.2d 110, 131, ¶44, 421 P.3d 903 (2018) (alteration in original) (quoting *United States v. Deaconess Med. Ctr.*, 140 Wn.2d 104, 111, 994 P.2d 830 (2000)); *see also Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 764, 887 P.2d 898 (1995) (quoting *Owens v. Kuro*, 56 Wn.2d 564,

568, 534 P.2d 696 (1960)). Rather, privity for preclusion purposes arises "[i]f two persons have a relationship such that one of them is vicariously responsible for the conduct of the other." *Restatement (Second) of Judgments* § 51 (1982); *see also Glover for Cobb v. Tacoma Gen. Hosp.*, 98 Wn.2d 708, 720, 658 P.2d 1230 (1983) (citing Restatement § 51 with approval), *abrogated on other grounds by Crown Controls, Inc. v. Smiley*, 110 Wn.2d 695, 756 P.2d 717 (1988).

Privity does not exist between an independent contractor and its principal because "[a] principal generally is not vicariously liable for the acts of an independent contractor." *DeWater v. State*, 130 Wn.2d 128, 137, 921 P.2d 1059 (1996); *see also* 6 Wash. Prac., Wash. Pattern Jury Instr. Civ. 50.11 (7th ed. April 2022 Update) ("One who engages an independent contractor is not liable to others for the negligence of the independent contractor."). Vicarious liability for the acts of an

independent contractor arises only when "the principal retains the right to control the manner and means of work." *DeWater*, 130 Wn.2d at 137; *see also Wilcox v. Basehore*, 187 Wn.2d 772, 789, ¶46, 389 P.3d 531 (2017) ("The crucial distinction [between an agent and independent contractor] is the right to control."); *Restatement (Second) of Torts* § 414 (1965) ("One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others . . . .").

The Court of Appeals' decision scrupulously adheres to this established law. The Court recognized petitioners "were not VR employees" but "agreed to work for VR as independent contractors" and thus "vicarious liability cannot serve as the foundation for privity." 2023 WL 8895085, at *4. Petitioners do not dispute that they were independent contractors.

Petitioners instead misstate their legal relationship with Vertical Raise by arguing privity exists based on their "principal-agent relationship" with Vertical Raise. (Pet. 9, citing *Kuhlman v. Thomas*, 78 Wn. App. 115, 897 P.2d 365 (1995)) "An independent contractor is generally *not* considered an agent because the contractor acts in his own right and is not subject to another's control." *Kelsey Lane Homeowners Ass'n v. Kelsey Lane Co.*, 125 Wn. App. 227, 235, 103 P.3d 1256 (2005) (emphasis added). *Kuhlman* does not establish a contrary principle but held that "the *employer/employee* relationship is sufficient to establish privity." 78 Wn. App. at 121–22 (emphasis added).

The Court of Appeals also correctly held that privity did not exist between petitioners and Vertical Raise and Landers because they did not protect petitioners' interests in Idaho. 2023 WL 8895085, at **4–5. "A nonparty is in privity with a party if that party adequately represented the nonparty's interest in the prior proceeding." *Feature*

*Realty, Inc. v. Kirkpatrick & Lockhart Preston Gates Ellis, LLP*, 161 Wn.2d 214, 224, ¶14, 164 P.3d 500 (2007). This type of privity does not exist where the defendant in one action asserts that a defendant in another action is at fault for the plaintiff's injuries. *See Afoa*, 191 Wn.2d at 130–32, ¶¶43–46.

In *Afoa*, for example, a baggage handler at SeaTac airport sued four airlines in federal court for injuries he suffered while working for a cargo company and separately sued the Port of Seattle in state court for the same injuries. 191 Wn.2d at 116–18, ¶¶5–9. The federal court granted summary judgment to the airlines because the plaintiff did not "provide factual allegations sufficient to conclude the airlines retained control over [his] work." 191 Wn.2d at 117, ¶7. The Port then asserted an "empty chair defense" in state court alleging the airlines were at fault for the plaintiff's injuries; a jury agreed and assigned 74.8 percent fault to the airlines. 191 Wn.2d at 117–18, ¶¶7–8. The plaintiff

appealed the state court judgment, arguing the airlines and the Port were in privity and thus the summary judgment order in federal court should have barred the Port from alleging the airlines were at fault in the state suit. 191 Wn.2d at 130–32, ¶¶43–46.

This Court rejected that argument and affirmed, stressing that "the Port argued the airlines were at fault in the instant action." 191 Wn.2d at 132, ¶45; *see also Thompson v. King Cnty.*, 163 Wn. App. 184, 195, ¶22, 259 P.3d 1138 (2011) (no privity between defendants in first and second action because defendants in first action only "protected their own interests in the first action"); *Taylor v. Sturgell*, 553 U.S. 880, 900, 128 S. Ct. 2161, 2176, 171 L. Ed. 2d 155 (2008) ("[a] party's representation of a nonparty is 'adequate' for preclusion purposes only if, at a minimum . . . [t]he interests of the nonparty and her representative are aligned").

*Afoa* parallels this case, underscoring that the Court of Appeals' decision is consistent with Washington law. Like the Port in *Afoa*, Vertical Raise and Landers sought to defend their actions in the Idaho lawsuit by deflecting blame to the petitioners. Landers testified in Idaho that "when we hire guys they're independent contractors" and that he and Vertical Raise did not "micromanage" their sales representatives but rather "just set them up" to "go get the business" while advising them not to "violate past agreements." (CP 1541)

Petitioners' argument that the Court of Appeals' decision is unusual for relying on Landers' testimony is meritless. (*See* Pet. 10–11) The issues and positions taken in a prior proceeding "may be proved through the admission of the transcript, pleadings, or orders from the first proceeding." *Lemond v. State, Dep't of Licensing*, 143 Wn. App. 797, 806, ¶16, 180 P.3d 829 (2008); *see also Afoa*, 191 Wn.2d at 131–32, ¶¶44–45 (examining testimony

of Port agents in first action); *In re Moi*, 184 Wn.2d 575, 582–83, ¶¶12–13, 360 P.3d 811 (2015), *cert. denied*, 580 U.S. 1025 (2016) (examining defendant's testimony in first trial), *as amended* (Jan. 25, 2017); *Loveridge*, 125 Wn.2d at 764–68 (examining consent decree between defendant and the Equal Employment Opportunity Commission from first case); *Kuhlman*, 78 Wn. App. at 121–22 (comparing complaints in each action).

Petitioners' contention that adequate representation is established simply "because [a] lawyer was the same in both cases" is also meritless. (Pet. 12) This Court has rejected the assertion "that sharing counsel or an insurer establishes privity." *Afoa*, 191 Wn.2d at 132, ¶45. Regardless, petitioners do not have the same lawyers as did Vertical Raise and Landers. (*Compare* CP 258, *with* CP 1384)

Finally, petitioners mistakenly rely on a partial quote from *In re Coday*, 156 Wn.2d 485, 502, 130 P.3d 809

(2006), *cert. denied*, 549 U.S. 976 (2006) to argue that adequate representation is established any time a defendant "had a 'significant stake in the outcome of the contest and invested significant resources in pursuing all viable grounds for the contest.'" (Pet. 11) Vertical Raise and Landers did not pursue all viable grounds for contesting Snap!'s claims in Idaho. Vertical Raise and Landers *could* have defended the Idaho lawsuit by arguing petitioners never breached their contracts with Snap!, but did not. They instead conceded petitioners breached their contracts and blamed petitioners for the breaches.

Petitioners also ignore that *Coday* "represent[s] an exception to strict adherence to the privity rule of res judicata" for "actions brought by voters on behalf of the general body politic." *Stevens Cnty. v. Futurewise*, 146 Wn. App. 493, 505, ¶21, 192 P.3d 1 (2008), *rev. denied*, 165 Wn.2d 1038 (2009). Petitioners' application of *Coday* to ordinary civil litigation would establish privity in virtually

every case since all defendants have an interest in avoiding liability and are likely to invest significant resources defending themselves.

Petitioners' expansive view of privity, not the Court of Appeals' decision, conflicts with Washington precedent. This Court should deny review.

### 3. There is nothing contradictory about the Court of Appeals' decision.

There is no conflict between the Court of Appeals' holdings on claim preclusion and issue preclusion. (*See* Pet. 14–19) The Court of Appeals did not hold, as petitioners allege, that they were in privity with Vertical Raise and Landers for purposes of issue preclusion but not claim preclusion. Rather, as explained above, the Court of Appeals held (1) that issue preclusion applied because petitioners invited its application, and (2) that petitioners were not in privity with Vertical Raise and Landers for purposes of claim preclusion. Even if the Court of Appeals'

decision was inconsistent, as petitioners concede, that is not grounds for review under RAP 13.4(b). (Pet. 14 n.4)

Petitioners erroneously argue that the Court of Appeals holdings on claim and issue preclusion conflict because "the workers' argument for issue preclusion against Snap was *predicated on the workers being in privity with Vertical Raise*." (Pet. 18) (emphasis in original) But, as the Court of Appeals explained, this argument "conflates the distinct doctrines of issue and claim preclusion" because, unlike claim preclusion, which requires that *all* of the parties in the first and second suit be identical or in privity, issue preclusion only requires that *one* of them be the same—"the *party against whom [issue preclusion]* is asserted." 2023 WL 8895085, at **5–6 (alteration in original) (emphasis in original); *see also Loveridge*, 125 Wn.2d at 763 (claim preclusion requires identical "persons and parties").

Accordingly, whether petitioners were in privity with Vertical Raise and Landers was irrelevant to issue preclusion because petitioners invoked the doctrine against Snap!, apparently not realizing they were inviting issue preclusion against themselves. Petitioners' invocation of issue preclusion against their own interests explains why "they are bound by the Idaho judgment for issue preclusion purposes" despite the fact they were not "a party to the Idaho action, nor were in privity with a party to the Idaho action." (Pet. 15–16)

Moreover, because Snap! prevailed in Idaho the Idaho judgment would not preclude Snap!'s claims against petitioners, even if petitioners were in privity with Vertical Raise and Landers. It is black letter law that "[a] judgment *against* one person liable for a loss does not terminate a claim that the injured party may have against another person." *Restatement (Second) of Judgments* § 49 (emphasis added); *see also Crown Controls*, 110 Wn.2d at

704–06 ("a creditor may recover judgments against both the principal and the agent") (citing *Restatement (Second) of Judgments* § 49). A plaintiff is permitted to obtain judgments against each party responsible for their injury because every defendant has a concurrent "obligation to make redress" and "[n]o reason suggests itself why the legal confirmation of one obligation should limit or extinguish the other." *Restatement (Second) of Judgments* § 49, cmt. a.[3] The Court of Appeals correctly recognized as much, explaining that "the fact that VR and Landers were

[3] While a plaintiff may obtain multiple judgments, "one liable person's *payment* . . . eliminates any other person's liability." *Pac. 5000, L.L.C. v. Kitsap Bank*, 22 Wn. App. 2d 334, 342–43, ¶¶35–37, 511 P.3d 139 (2022) (citing *Restatement* §§ 49–50) (emphasis in original). When the Court of Appeals issued its opinion, Vertical Raise and Landers had not paid the Idaho judgment. Petitioners assert the Idaho judgment has now been paid in full by attaching as appendix C to their petition materials from the Idaho action that are not part of the record in this action, in violation of RAP 10.3(a)(8) and RAP 13.4(e). Regardless, as reflected in appendix C, the Idaho judgment has not been fully satisfied because the parties still dispute the interest owed on the Idaho judgment.

held liable for injury to Snap based on [petitioners'] actions will not necessarily preclude claims against [petitioners] for the same conduct." 2023 WL 8895085, at *3 n.5 (citing *Restatement (Second) of Judgments* § 49).

Indeed, as with issue preclusion, petitioners invert the consequence of applying claim preclusion in arguing it should, as the trial court ruled, shield them from liability. (*See* Pet. 19 n.6) "[A] judgment is binding upon parties to the litigation and persons in privity with those parties." *See Loveridge*, 125 Wn.2d at 764. Thus, if, as petitioners insist, "they are in privity [with Vertical Raise and Landers] and . . . claim preclusion should apply" (Pet. 19 n.7), then they would be bound by the Idaho judgment *in favor* of Snap!, not absolved of liability.

As petitioners' arguments make clear, it is their analysis—not the Court of Appeals'—that has gone "awry." (Pet. 17) Petitioners' fundamental misconception of preclusion law appears to arise from their belief that it was

somehow improper for Snap! "to litigate in Washington the exact same facts and issues" resolved in Idaho instead of "implead[ing] [petitioners] in the Idaho case." (Pet. 3–4) But "[i]t is too well settled to need citation of authority that joint tort-feasors may be sued either jointly or severally." *Marshall v. Chapman's Est.*, 31 Wn.2d 137, 146, 195 P.2d 656 (1948). This is true even "when the conduct of the actual wrongdoer is legally chargeable to more than one person, as when both a servant and his master are liable for the acts of the servant." *Restatement (Second) of Judgments* § 49; *see also Cordova v. Holwegner*, 93 Wn. App. 955, 962, 971 P.2d 531 (1999) (a plaintiff "can sue both the employer and the employee or either separately" because an employer is "not a necessary[] party in an action against an employee") (internal quotation omitted) (quoted source omitted).

Snap! appropriately sued petitioners in Washington, especially in light of the jurisdictional and procedural

hurdles to joining petitioners in the Idaho action.[4] This Court has previously rejected petitioners' interpretation of claim preclusion, which would require a plaintiff to join all potential defendants in a single action. *See Marshall*, 31 Wn.2d at 145 (holding claim preclusion did not apply because plaintiffs "had the right to sue [the first defendant] and the [sheriff] separately and were not compelled to join them in [first] action" and rejecting argument claim preclusion applied because "the sheriff could or should have been made a party to" first suit); *see also United States v. Lacey*, 982 F.2d 410, 412 (10th Cir. 1992) (rejecting application of claim preclusion that would "effectively create a 'mandatory joinder' rule of procedure,

[4] As Snap! explained (Reply Br. 2–14), impleading respondents in the Idaho action would have required both Snap! and petitioners to waive the forum selection clause establishing King County as the exclusive venue. Snap! would also have to overcome the barrier to personal jurisdiction occasioned by the fact that none of the petitioners reside in Idaho but work remotely as independent contractors.

since, in order to avoid the [claim preclusion] bar, a plaintiff would be required to join all possible defendants when suing one party.") (internal quotation omitted) (quoted source omitted).

In short, it is petitioners' own arguments and misconception of preclusion law that make this case "unusual," not the Court of Appeals' decision. (Pet. 14 n.4) Petitioners' idiosyncratic and mistaken interpretation of preclusion law does not involve any issues of substantial public interest under RAP 13.4(b)(4).

**E. Conclusion.**

This Court should deny review of the Court of Appeals' unpublished decision.

*I certify that this answer is in 14-point Georgia font and contains 4,603 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).*

Dated this 13th day of December, 2024.

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**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on December 13, 2024, I arranged for service of the foregoing Answer to Petition for Review, to the court and to the parties to this action as follows:

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**DATED** at Brooklyn, New York this 13th day of December, 2024.

*/s/ Andrienne E. Pilapil*
Andrienne E. Pilapil

# SMITH GOODFRIEND, PS

## December 13, 2024 - 3:12 PM

### Transmittal Information

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