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KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE #: 22-2-09850-3 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

CITY OF SEATTLE, SEATTLE POLICE  
DEPARTMENT,

Petitioner,

v.

SEATTLE PARKING ENFORCEMENT  
OFFICERS' GUILD, ARBITRATOR  
RICHARD EADIE and JONATHAN SKEIE,

Respondents.

No.

PETITION FOR WRIT OF CERTIORARI

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specifically informed that “[a]ny form of harassment or discrimination will not be tolerated at the City.” E-36 at p. 5.

**D. There Is No Dispute That Mr. Skeie Made A Race-Based Statement That Offended His Co-Workers And Negatively Impacted The Workplace**

**1. The Statement**

Mr. Skeie was discussing a documentary that argues the mass incarceration of African-American men is an extension of slavery, called *The 13th*, with a co-worker. In that context, and in a serious and non-joking manner, Mr. Skeie said “Well, I don’t know why we can’t just bring back lynching.” E-2; E-4 at SPD\_JS000102; Hearing Tr. V1 29:10-12; 33:2-4.

**2. The Complaint**

On June 23, 2020, a group of PEOs met with Assistant Chief Eric Greening to raise concerns of African American employees within the PEO Unit. E-1. This meeting was the first time that the PEOs mentioned Mr. Skeie’s lynching statement to SPD management. E-1 at p. 4; *see also* Tr. V1 23:17-24:8.

**3. The Investigation**

The next day, on June 24, 2020, Greening forwarded the PEOs’ concerns to Employee Relations Adviser and EEO Investigator Rebecca McKechnie, requesting an investigation. E-1, p. 1; Tr. V1 23:17-24:8. Ms. McKechnie commenced the investigation shortly thereafter.

Through her investigation, Ms. McKechnie learned that on the morning of June 9, 2020, PEO Candice Lastimado, Mr. Skeie and PEO Tyler Burkhart were logging into computers and checking emails at the beginning of their shift. E-2. PEO Burkhart brought up a documentary on Netflix called *The 13th* and described how the movie explained racial disparities in the U.S. criminal justice system based on the 13th Amendment; specifically, that people of color received harsher penalties than white offenders. *Id.*; Tr. V1 29:5-9. In response, Mr. Skeie said “***Well, I don’t know why we can’t just bring back lynching.***” E-2; Tr. V1 29:10-12. PEO Burkhart was

1 stunned by Mr. Skeie's comment because of the serious manner in which he delivered it. E-4 at  
2 SPD\_JS000102 ; Tr. V1 33:2-4.

3 Seeing PEO Lastimado's reaction, PEO Burkhart advised Mr. Skeie that he was offending  
4 PEO Lastimado. Tr. V1 29:10-17. PEO Lastimado confirmed her offense because lynching was a  
5 punishment imposed on people simply for being black. *Id.* at 29:18-22. In response, Mr. Skeie  
6 lashed out, telling PEO Lastimado "don't talk to me for the rest of the day." Tr. V2 44:6-12. PEO  
7 Lastimado, upset by the comment, cried in the locker room. *Id.* at 45:4-7. She confided in  
8 coworkers, two of whom are African-American and also cried after hearing Mr. Skeie's statement.  
9 *Id.* at 47:8-14. Later, Mr. Skeie sent an "empty apology," text message to PEO Lastimado that  
10 failed to acknowledge the damaging statement made. *Id.* at 49:8-17.

11 Mr. Skeie admitted to making the comment, and *that he meant to express his desire for*  
12 *Black Lives Matter protestors to be hanged dead.* E-5; Tr. V1 33:23-34:1; 34:16-23. Mr. Skeie  
13 admitted he was upset about Black Lives Matter protestors who he understood were protesting  
14 police misconduct and asking for fair treatment of African Americans.<sup>2</sup> *Id.* at SPD\_JS000248.

15 Mr. Skeie's statement damaged his working relationship with PEO Lastimado and many  
16 coworkers. Tr. V1 39:18-23; Tr. V2 49:25- 50:16. After news of Mr. Skeie's conduct spread,  
17 coworkers began taking sides and shunning PEO Lastimado. Tr. V2 50:17-51:4. The division in  
18 the unit became so severe that Ms. McKechnie held an urgent meeting of supervisors to cease  
19 conversations about any investigations related to the Unit. E-15; Tr. V1 59:4-60:4. Ms. McKechnie  
20 also requested training for PEOs and supervisors on race and social justice issues from the City's  
21 Office of the Employee Ombud. E-17 ("As a reminder, this [OEO racism training] was  
22 necessitated by the struggles and division that the unit has had since the recent investigation  
23 concerning a racist remark by PEO Jonathan Skeie."); Tr. V1 60:15-62:24.

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26 <sup>2</sup> Mr. Skeie was apparently upset because, late the prior evening, SPD had left its East Precinct building in Capitol Hill following weeks of protests outside the Precinct against perceived racism in policing. E-5.

1 At the conclusion of her investigation, Ms. McKechnie reasonably determined the  
2 uncontested comment related to a group of individuals based on their African-American race. She  
3 further determined that a comment in favor of lynching was, on its face, threatening and  
4 intimidating in nature. *Id.* at 38:1-20. Ms. McKechnie found that Mr. Skeie had violated SPD  
5 policy 5.040 and the City of Seattle Personnel Rule 1.1, which provide that “discrimination and  
6 harassment” are “strictly prohibited,” and that “the City of Seattle will not tolerate harassment of  
7 its employees by co-workers” or others. E-6; Tr. V1 38:1-42:10.

8 From the outset, Interim Police Chief Adrian Diaz believed Mr. Skeie’s misconduct likely  
9 constituted a terminable offense, as SPD has no tolerance for racist rhetoric. Tr. V2 at 152:13-22,  
10 153:7-25.

#### 11 **E. The *Loudermill* Hearings**

12 After two *Loudermill* hearings, SPD decided to terminate Mr. Skeie’s employment. The  
13 first *Loudermill* hearing took place on January 14, 2021, during which Mr. Skeie and his SPEOG  
14 representatives were permitted to present Chief Diaz with information they believed should be  
15 considered in determining an appropriate level of discipline. Tr. V2 154:8-17. PEOs interact with  
16 the public on a daily basis, often in heated situations (e.g., issuing a parking ticket or helping to  
17 control foot and vehicle traffic at public events). *Id.* at 161:13-22. Chief Diaz did not believe SPD  
18 could continue to employ a PEO who endorsed lynching, particularly when Mr. Skeie did so in  
19 response to near daily protests in Seattle over perceived racism in policing here and across  
20 America. *Id.* at 154:18-155:10. Chief Diaz had particular insight into the damage such a statement  
21 could inflict due to his experience working in demographic community outreach and acting as the  
22 Race and Social Justice coordinator for SPD. *Id.*

23 Mr. Skeie was again permitted to present his case to Chief Diaz during a second *Loudermill*  
24 hearing, which he attended with SPEOG representatives. Tr. V2 156:1-12. Chief Diaz determined  
25 termination of employment was the appropriate level of discipline. *Id.* at 159:4-16; E-31.  
26 Termination was consistent with the discipline imposed for other instances of racial discrimination

1 or harassment. Tr. V2 102:22-103:10 (termination for posting derogatory statements about Islam);  
2 *Id.* at 103:11-104:24; E-19 (posting a message on social media about sending a package bomb to  
3 Barack Obama); U-20 at SPD\_JS001805-1809; *Novisedlak v. Seattle Police Department*, PSCSC  
4 No. 20-01-011 (May 5, 2021) (racist statements); Tr. V2 97:17-98:12; E-28, E-29 (referred to an  
5 individual of African descent as “Kunta Kinte”); Tr. V2 94:3- 96:17; E-26, 27 (violated dispatch  
6 policies as well as SPD’s prohibition against biased policing).

7 **F. SPEG Grievs the Termination**

8 In response to Chief Diaz’s decision to terminate the employment of Mr. Skeie, SPEG  
9 filed a Step 3 grievance, which SPD assigned to former City Labor Negotiator Ned Burke. *Id.* at  
10 59:2-6. The purpose of a Step 3 grievance hearing is for the grievant and his representative to meet  
11 with the Labor Negotiator, ask questions and present their case. *Id.* at 58:14-20.

12 SPEG attended the Step 3 meeting through its representatives, but Mr. Skeie was not  
13 present. *Id.* at 60:20-61:2. During the meeting, SPEG admitted Mr. Skeie made the statement.  
14 *Id.* at 61:16-25.

15 Following the hearing with SPEG, Mr. Burke recommended that Chief Diaz deny  
16 SPEG’s grievance. *Id.* at 67:24-68:2. Chief Diaz denied SPEG’s grievance and SPD terminated  
17 Mr. Skeie’s employment on February 4, 2021. E-25, E-31.

18 **G. The Arbitration and Award**

19 An arbitration hearing was held on November 5 and November 9, 2021. On January 26,  
20 2022, Arbitrator Eadie issued his ruling that termination of Mr. Skeie’s employment was  
21 “excessive and not commensurate with prior cases.” He ruled that Jonathan Skeie “be restored to  
22 his position as a Seattle Parking Enforcement Officer subject to serve a thirty-day suspension, with  
23 credit for time served.” In so ruling, the Arbitrator focused on Mr. Skeie’s apology and otherwise  
24 clean disciplinary record, while improperly minimizing the context and impact the statement  
25 caused.

26 Importantly, the Award found that Mr. Skeie made the racist statement:

1 Skeie's statement was extremely offensive and properly subject to disciplinary  
2 action. He should have known that such remarks were offensive and had a better  
3 understanding of the implications of the history of "lynching" in this country. It is  
his responsibility to understand the words he uses, and is responsible for harm that  
the use of them causes.

4 Award at 5.

5 The Award did not make a finding regarding racial animus behind Mr. Skeie's statement.  
6 The Award avoided discussion and findings regarding the context of the statement, which was  
7 made while discussing a film about oppression and systemic racism in America, as perpetuated by  
8 the judicial system's disparate incarceration of African-American individuals. The film was being  
9 discussed in the context of the Black Lives Matter movement that similarly protested the unequal  
10 treatment of African-Americans by law enforcement, resulting in the murder of George Floyd,  
11 Eric Garner, Philando Castile, Breonna Taylor and others. In reference to those protestors, Mr.  
12 Skeie said - in all sincerity - "why can't we just bring back lynching," meaning he wished to hang  
13 dead those who supported and advocated for the rights of African-American citizens.

14 The Award found Mr. Skeie's text message apology to Ms. Lastimado on June 9, 2020 and  
15 June 11, 2020 to be sincere, based on the text alone as Mr. Skeie refused to testify. However, the  
16 Award did not address Ms. Lastimado's testimony that Mr. Skeie did not apologize for making the  
17 statement. Rather, he only apologized for *the effect* his statement had on Ms. Lastimado. Tr. V2  
18 49:8-17. While Mr. Skeie took trainings (subjects on which he had previously been trained), he  
19 did so only after notice of discipline.

20 The Award violated public policy by finding either the apology or the trainings mitigated  
21 Mr. Skeie's outrageous statement.

## 22 V. ARGUMENT

### 23 A. Legal Standard for Vacating an Arbitrator's Award

24 Washington Courts must vacate an arbitrator's decision when an arbitrator has exceeded  
25 his or her legal authority. *Clark County*, 150 Wash.2d at 245. Washington courts hold that an  
26 arbitrator exceeds his or her legal authority when their decision violates an explicit, well-defined,



1 and dominant public policy, such as this state’s public policy against racial discrimination in the  
2 workplace. *Int’l Union of Operating Eng’rs, Local 286 v. Port of Seattle*, 176 Wn.2d 712, 721,  
3 295 P.3d 736 (2013) (“*Port of Seattle*”); *Kitsap Co.*, 167 Wn.2d. at 436; *City of Seattle, Seattle*  
4 *Police Department v. Seattle Police Officers’ Guild*, 17 Wash.App.2d 21, 37, 484 P.3d 485 (Wash.  
5 App. 2021); *City of Prosser v. Teamsters Union Local 839*, 2022 WL 1151427, \*6 (Wash. App.  
6 2022) (unpublished). Here, the Arbitrator violated that public policy by restoring Mr. Skeie to his  
7 position despite the severity and impact of his racist statement and his subsequent actions.

8 The WLAD contains a “clear mandate to eliminate all forms of discrimination” and the  
9 “purpose of the law is to deter and to eradicate discrimination in Washington.” *Port of Seattle*, 176  
10 Wn.2d at 721; *Kitsap Co.*, 167 Wn.2d at 434. The WLAD, therefore, sets forth an explicit, well-  
11 defined, and dominant public policy. *Id.*

12 First, Washington’s public policy against workplace discrimination could not be any more  
13 explicit. The WLAD states, “[t]he right to be free from discrimination... is recognized as and  
14 declared to be a civil right.” *Port of Seattle*, 176 Wn.2d at 721. Second, the public policy against  
15 workplace discrimination is dominant. The WLAD expresses a “public policy of the ‘highest  
16 priority.’” *Id.* at 722.

17 Third, the public policy against workplace discrimination is well-defined.  
18 “[A]ntidiscrimination laws create an affirmative duty for employers to prevent racial harassment  
19 in the workplace by sufficiently disciplining those who engage in harassing behavior.” *Id.* at 722.  
20 “While the laws do not, and cannot, set standards as to the specific amount of discipline who [sic]  
21 is required for specific acts or patterns of harassment, the affirmative duty to *sufficiently* discipline  
22 harassers is well defined.” *Id.* (emphasis in original).

## 23 **B. The Award Violates Public Policy**

24 In *Port of Seattle*, the Washington Supreme Court set out the test to determine if a particular  
25 arbitration decision violates the public policy against workplace discrimination. *Id.* at 723. A court  
26 should “vacate an arbitration award that does not impose sufficient discipline to end current

1 discrimination and prevent future discrimination.” *Id.* However, the court “must balance that  
2 requirement with the general principle that ‘[j]udgments about how a specific employee will  
3 perform after reinstatement if given a lesser sanction are nothing more than an exercise of the  
4 arbitrator’s broad authority to determine appropriate punishments and remedies.’” *Id.* “Thus, the  
5 punishment required to change a specific individual’s behavior is left to the arbitrator, but when  
6 an arbitrator’s punishment is so lenient that it will not deter future discrimination—including  
7 discrimination committed by others—it must be vacated.” *Id.*

8 That is precisely the case here. The Award’s reinstatement of Mr. Skeie is so lenient that it  
9 will not deter future discrimination. The message of the Award is that no matter how vile the  
10 behavior, or how severe and disruptive its impact, a quick text message of half-hearted apology  
11 will erase the consequences. Such a message should not be allowed to stand.

#### 12 **1. Mr. Skeie Advocated Lynching**

13 It cannot be ignored that Mr. Skeie’s racist statement advocated “lynching,” not in the  
14 abstract, but to be used against Black Lives Matter protestors. “Lynching stands as the archetypal  
15 ‘hate’ crime — the historical antecedent of contemporary ‘hate’ crimes and the original model on  
16 which contemporary images and understandings of such crimes are based.” Lu-in Wang, *The*  
17 *Complexities of “Hate”*, 60 Ohio St. L.J. 799, 831 (1999). So powerful are the images invoked by  
18 this crime that the image of a noose, by itself, can be discriminatory. *Williams v. New York City*  
19 *Housing Authority*, 154 F.Supp.2d 820, 824 (S.D.N.Y. 2001); *Turner v. Commonwealth*, 67  
20 Va.App. 46, 59-60 (2016). The Washington Supreme Court found that the noose historically “has  
21 been used as a hateful expression of violence and hostility toward African-Americans—not just  
22 symbolically, but in actual horrific acts of murder. We acknowledge this terrible and tragic history  
23 and condemn the racial violence and threats of violence symbolized by the noose in the strongest  
24 terms possible.” *Port of Seattle*, 176 Wn.2d at 723.

25 Mr. Skeie did not bother with symbols here, as he expressly called for the return of  
26 lynching. The horror of this statement should not be minimized (as it was by the Award):

1 During this country's "lynching era"-the five decades between the end of  
2 Reconstruction and the beginning of the Great Depression, between 1880 and 1930-  
3 at least 2,462 African American men, women, and children died at the hands of  
4 southern mobs. Almost all of their killers were white. The "regional ritual" became  
5 so common that, between 1882 and 1903, it claimed an average of 69 victims per  
6 year in...six states....As startling as these figures are, they actually understate the  
7 level of racial violence in the United States during that period.

8 60 Ohio St. L.J. at 833; *Williams*, 154 F.Supp.2d at 824 ("One study notes that from 1882, the  
9 earliest date for reliable statistics, to 1968, 3,446 African-Americans died at the hands of lynching  
10 mobs...Obviously, these figures underestimate the actual number of blacks who were the victims  
11 of lynchings because such atrocities were underreported, and southern whites frequently attempted  
12 to suppress evidence of mob violence for fear of the enactment of a federal anti-lynching law").

13 Reporting the numbers does not begin to convey the actual horror of these acts:

14 The lynchers, characteristically, were not content merely to kill the victim; the act  
15 of lynching was often transformed into a public spectacle, and sometimes hundreds  
16 or thousands of whites from the surrounding countryside would come to town to  
17 observe the event. The mob inflicted death, death that was the result of  
18 extraordinary, sadistic cruelty. Before death came the victim was tortured,  
19 tormented by having limbs or sexual organs amputated, by being slowly roasted  
20 over a fire. Before or after death the body might be riddled with bullets and dragged  
21 along the ground. After death pieces of the charred remains would often be  
22 distributed as souvenirs to the mob whose members desired a keepsake as a  
23 remembrance of the notable happening. In short, the phenomenon of lynching  
24 exhibited American society in its most ferocious and inhuman manifestation.

25 60 Ohio St. L.J. at 834. These unspeakable acts were aimed at suppressing the entire African  
26 American community. *Id.* at 835-36 ("The use of violence was aimed not just at the individual  
victim but at the black community generally, and the gruesome details of each event were  
publicized widely through the press and word of mouth.").

## 2. The Award Is So Lenient That It Will Not Deter Future Discrimination

The *Port of Seattle* case provides an illustration of why the court found no public policy  
violation in that case, but there is a clear violation here. In *Port of Seattle* the Court found that the  
employee "hung a noose intending to joke with an older white co-worker, and the arbitrator  
essentially found that [the employee] was unaware of the hateful history of the noose, noting that  
[the employee's] impressions of a noose were 'not racial.'" 176 Wn.2d at 723-24. "As a result, the

1 arbitrator found that while [the employee's] actions violated the Port's antiharassment policy, his  
2 actions were 'more clueless than racist.'" *Id.* at 719. The Court stated that it was "bound by the  
3 arbitrator's findings of fact" and "[a]s a result," it "must accept the arbitrator's findings regarding  
4 [the employee's] understanding of the symbolism of the noose, as well as the findings on the effect  
5 of the noose on the other employees in the workplace." *Id.* at 724. While the Court took into  
6 account the specific circumstances of the case, it could not "say that a 20-day unpaid suspension  
7 would not provide sufficient discipline to cause this or other employees to understand the serious  
8 nature of a noose in the workplace and thus prevent a similar incident in the future." *Id.*

9 "In other words, the [*Port of Seattle*] court concluded that the specific circumstances of the  
10 case, as found by the arbitrator, were properly considered as mitigating and necessitated a  
11 conclusion that the arbitrator's award was not too lenient in light of the public policy at issue."  
12 *City of Seattle*, 17 Wash.App.2d at 37. "In the instant case, by contrast, some of the circumstances  
13 the [arbitrator] considered as mitigating were not properly considered as mitigating, and the  
14 circumstances of [the employee's] case, as found by the [arbitrator], necessitate a conclusion that  
15 the [arbitrator's] award was so lenient as to violate the public policy...." *Id.*; *City of Prosser*, 2022  
16 WL 1151427, at \*9 ("We are not determining whether [the employee's] conduct violated anti-  
17 discrimination laws, however...[o]ur issue is whether the legal reasoning the arbitrator applies in  
18 concluding that [the employee's] conduct could not support discipline violates the express, well  
19 defined and dominant policies evinced by the WLAD....").

20 This case is everything that *Port of Seattle* was not, and the mitigating factors considered  
21 by the Arbitrator violate public policy. Here, there is no question of Mr. Skeie's racial animus. He  
22 made the statement that lynching should be brought back while discussing a documentary about  
23 racial bias in law enforcement. And while he later claimed he simply meant "capital punishment"  
24 when he said "lynching," he admitted that he was referring to the extrajudicial hanging of Black  
25 Lives Matter protesters. He said it to a co-worker who was deeply offended and expressed that  
26 offense to Mr. Skeie. He reacted angrily, and his co-worker left and cried in the locker room and

1 expressed her dismay to other co-workers. Further, Mr. Skeie's statements impacted other  
2 coworkers, including the minority employees who raised Mr. Skeie's statement in a meeting with  
3 Assistant Chief Greening.

4 In *Port of Seattle*, the arbitrator found there was no racial animus in the hanging of the  
5 noose, nor was there severe impact on the workplace. 176 Wn.2d at 724. That is the pivotal  
6 difference between this case and *Port of Seattle*. Here, the Arbitrator did not find that there was no  
7 racial animus in Mr. Skeie's statement, nor did he find that the statement did not have a severe  
8 discriminatory impact on co-workers and the workplace. Instead the apology and training are  
9 found to be sufficient mitigating factors.

10 However, in accepting the sincerity of Mr. Skeie's apology based on a text message alone,  
11 not even supported by testimony from Skeie, the Arbitrator's decision substitutes his own  
12 assumptions for evidence. Additionally, he does not take into consideration, or make any findings  
13 regarding, the fact that once the decision to terminate Mr. Skeie's employment was made, his  
14 "sincerity" towards the effect of his statement on Ms. Lastimado disappeared. Instead of accepting  
15 responsibility for his statement, Mr. Skeie blamed Ms. Lastimado for the discipline he received  
16 and caused Ms. Lastimado to be ostracized and isolated from her coworkers and supervisors. The  
17 workplace was poisoned against Ms. Lastimado, the victim of Mr. Skeie's statement, so much so  
18 that her mother (herself a PEO) felt compelled to complain on her daughter's behalf.

19 The Award, which wipes away the stain of advocating the use of lynching against African  
20 American protestors with a texted half-hearted apology, is too lenient to deter future  
21 discrimination.

## 22 VI. APPLICATION FOR WRIT OF CERTIORARI AND PRAYER FOR RELIEF

23 Wherefore, Petitioner asks that the Court issue a Writ of Certiorari, review the Award, and  
24 enter an order vacating the Award as contrary to law and the public policy of Washington and  
25 reinstating the termination.

1 DATED this 27th day of June, 2022

2 K&L GATES LLP

3 By: s/ Todd L. Nunn

4 Todd L. Nunn, WSB1A # 23267

5 Mark S Filipini, WSBA # 32501

6 Jessica S. Kang, WSBA # 44980

7 925 Fourth Avenue

8 Suite 2900

9 Seattle, Washington 98104-1158

10 Tel: +1 206 623 7580

11 Fax: +1 206 623 7022

12 Email: todd.nunn@klgates.com

13 mark.filipini@klgates.com

14 jess.kang@klgates.com

15 Attorneys for Petitioner

16 CITY OF SEATTLE, SEATTLE POLICE

17 DEPARTMENT

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 IN AND FOR THE COUNTY OF KING

9 CITY OF SEATTLE, SEATTLE POLICE  
10 DEPARTMENT,

11 Petitioner,

12 v.

13 SEATTLE PARKING ENFORCEMENT  
14 OFFICERS' GUILD, ARBITRATOR  
RICHARD EADIE and JONATHAN SKEIE,

15 Respondents.  
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No.

[PROPOSED] ORDER PROVIDING A  
WRIT OF CERTIORARI

[CLERK'S ACTION REQUIRED]

1 THIS MATTER came on before the undersigned Chief Civil Department of the King  
2 County Superior Court. The Court considered the following documents:

3 1. The City of Seattle's Petition for Writ of Certiorari, including the  
4 Declaration of Jessica S. Kang, filed in support of such Petition;

5 2. \_\_\_\_\_;

6 3. \_\_\_\_\_.

7 4. The files and records herein.

8 Based on the documents specified herein, the Court is fully advised and, **NOW**  
9 **THEREFORE,**

10 **IT IS HEREBY ORDERED** that:

11 1. A Writ of Certiorari is hereby issued, enabling the Superior Court to review  
12 the labor arbitration decision, attached as Exhibit A to the Declaration of Jessica S. Kang in  
13 Support of the Petition for Writ of Certiorari; and,

14 2. The Clerk of the Court shall assign this matter to a judge and provide a case  
15 schedule for this matter.

16  
17 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022

18  
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20 \_\_\_\_\_  
21 Hon. \_\_\_\_\_,  
22 King County Superior Court  
23  
24  
25  
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1 Presented by:

2 K&L GATES LLP

3  
4 By: /s/ Todd L. Nunn

5 Todd L. Nunn, WSBA # 23267

6 Mark S Filipini, WSBA # 32501

7 Jessica S. Kang, WSBA # 44980

8 925 Fourth Avenue

9 Suite 2900

10 Seattle, Washington 98104-1158

11 Tel: +1 206 623 7580

12 Fax: +1 206 623 7022

13 Email: todd.nunn@klgates.com

14 Attorneys for Petitioner

15 CITY OF SEATTLE, SEATTLE POLICE

16 DEPARTMENT  
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