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

BENTON COUNTY, CLALLAM COUNTY,
COLUMBIA COUNTY, COWLITZ
COUNTY, GRANT COUNTY, JEFFERSON
COUNTY, KING COUNTY, KLICKITAT
COUNTY, LEWIS COUNTY, PIERCE
COUNTY, SAN JUAN COUNTY,
SNOHOMISH COUNTY, WALLA WALLA
COUNTY, YAKIMA COUNTY, and
WASHINGTON STATE ASSOCIATION OF
COUNTIES, a Washington non-profit
association,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendants.

NO.

COMPLAINT FOR DECLARATORY
JUDGMENT

Come now plaintiffs Benton County, Clallam County, Columbia County, Cowlitz County, Grant County, Jefferson County, King County, Klickitat County, Lewis County, Pierce County, San Juan County, Snohomish County, Walla Walla County, Yakima County, and the Washington State Association of Counties (collectively the Counties), which, by and through their undersigned counsel, state and allege as follows.

I. INTRODUCTION

1. On February 25, 2021, the state Supreme Court issued its decision in *State v.*

1 *Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), declaring unconstitutional and void the state simple
2 drug possession statute. As a result of *Blake*, tens of thousands of people convicted of drug
3 possession between 1971 and 2021 were immediately entitled to seek and obtain specific relief
4 from the State of Washington (State) and its district and superior courts, including vacation of
5 those convictions, refund of any legal financial obligations (LFOs) directly attributable to those
6 convictions, resentencing of any sentence impacted by those convictions, and release from
7 custody or community supervision imposed for those convictions.

8 2. Prosecutors, who are elected by county voters but serve as State officials in
9 representing the State in criminal actions, immediately partnered with others in the State’s
10 criminal justice system to implement the *Blake* decision and provide the relief outlined above on
11 the State’s behalf. Those partners included State agencies (e.g., the Department of Corrections
12 (DOC), the Office of Public Defense (OPD), and the Administrative Office of the Courts
13 (AOC)), the State’s superior and district courts, the clerks who serve those courts, and public
14 defenders employed by each county. Acting on behalf of the State to fulfill its *Blake* obligations,
15 county components of the State’s criminal justice system already have taken significant steps to
16 address the issues that have arisen based on *Blake*, including advancing substantial money and
17 expenses with the expectation of State reimbursement.

18 3. In recognition of the State’s responsibility to fund county expenses related to the
19 unprecedented relief required by the *Blake* decision, the Legislature appropriated funds late in the
20 2021 session to facilitate *Blake* compliance over the 2022 (and in some cases 2023) fiscal year.
21 The Legislature appropriated \$44,500,000 to AOC “solely to assist counties with costs of
22 resentencing and vacating the sentences of defendants whose convictions or sentences are
23 affected by the *State v. Blake* decision.” Laws of 2021, ch. 334, § 115(5). The Legislature
24 appropriated \$23,500,000 to AOC “solely to establish a legal financial aid pool to assist counties
25 that are obligated to refund legal financial obligations previously paid by defendants whose
26 convictions or sentences were affected by the *State v. Blake* ruling.” Laws of 2021, ch. 334, §

1 115(6). The Legislature appropriated \$11 million to OPD “solely to assist counties with public
2 defense costs related to vacating the sentences of defendants whose convictions or sentences are
3 affected by the *State v. Blake* decision.” Laws of 2021, ch. 334, § 116(5)(b). The Legislature
4 appropriated additional funds to other State agencies for *Blake*-related tasks. Laws of 2021, ch.
5 334, § 117(8) (Office of Civil Legal Aid), § 223(6)(d) (DOC), § 1221(e) (DOC). The
6 appropriated funds nonetheless are insufficient given the scope of the *Blake* work, only some of
7 which is described above.

8 4. AOC is the State agency charged with distributing certain of the Legislative
9 appropriations described above. AOC’s final distribution plan is outlined in an August 19, 2021¹
10 memorandum with attached matrix (**Exhibit 1**) and a contract that it requires the counties to sign
11 (e.g., **Exhibit 2**) to receive appropriated funds. AOC fully admits that the current funds “will
12 likely be insufficient to cover the total costs of [*Blake*] implementation” (**Exhibit 1**, p. 1, 2).

13 5. The State’s refusal to fully fund its *Blake* responsibilities has delayed access to
14 justice for persons entitled to vacations, LFO refunds, and resentencing. The State, as plaintiff
15 and judgment creditor in the underlying criminal actions, is responsible to indemnify the
16 Counties for all costs incurred in complying with the *Blake* decision, as the Counties have urged
17 (e.g., **Exhibits 3, 4, 8**). But the State has failed to provide the Counties with either adequate
18 funds or methods to raise revenue that would cover the extraordinary expense of *Blake*
19 compliance – a problem compounded by the pandemic-caused backlog faced by the State’s
20 criminal justice system.

21 6. Seeking to monetize the *Blake* decision, a group of plaintiffs brought *The Civil*
22 *Survival Project, et al. v. State of Washington, et al.*, No. 21-2-03266-1 SEA (Wash. Super. Ct.
23 King Cty.) (the *Civil Survival Project* lawsuit), a class action lawsuit in King County Superior
24 Court against the State, King County, and Snohomish County. On August 19, 2021, the
25 plaintiffs amended the complaint to include as defendants all 39 counties in the state and to seek

26 _____
¹ The memo is dated August 5, 2021 but is a substantial revision of the original AOC memo that proposed to distribute funds to cities out of the funds appropriated by the Legislature to counties. AOC wisely abandoned this approach.

1 vacation of all convictions for simple drug possession (**Exhibit 6**). The *Civil Survival Project*
2 lawsuit plaintiffs have asked the court to enter injunctive relief against the defendants and to
3 otherwise force the county defendants to expedite the vacation, resentencing, and refund process
4 of LFOs required by the *Blake* decision. They also seek remedies on behalf of all class members
5 equal to the economic harm that putative class members allegedly have experienced as a result of
6 convictions affected by *Blake*. King County and Snohomish County immediately tendered the
7 *Civil Survival Project* lawsuit to the State seeking defense and indemnification (**Exhibit 4**). The
8 State rejected the tender (**Exhibit 5**). Upon information and belief, the 37 additional counties are
9 likewise tendering defense and indemnification of the *Civil Survival Project* lawsuit to the State.

10 7. Accordingly, the Counties assert claims for declaratory judgment to ensure that
11 the State properly bears the costs incurred as a result of *Blake* and provides relief to those
12 convicted by the State of the statute that the Supreme Court has held is unconstitutional.

13 II. THE PARTIES

14 8. Plaintiff Benton County is a county organized under Title 36 RCW.

15 9. Plaintiff Clallam County is a home rule county organized under the constitution
16 and laws of the State of Washington.

17 10. Plaintiff Columbia County is a county organized under Title 36 RCW.

18 11. Plaintiff Cowlitz County is a county organized under Title 36 RCW.

19 12. Plaintiff Grant County is a county organized under Title 36 RCW.

20 13. Plaintiff Jefferson County is a county organized under Title 36 RCW.

21 14. Plaintiff King County is a home rule county organized under the constitution and
22 laws of the State of Washington.

23 15. Plaintiff Klickitat County is a county organized under Title 36 RCW.

24 16. Plaintiff Lewis County is a county organized under Title 36 RCW.

25 17. Plaintiff Pierce County is a home rule county organized under the constitution and
26 laws of the State of Washington.

1 18. Plaintiff San Juan County is a home rule county organized under the constitution
2 and laws of the State of Washington.

3 19. Plaintiff Snohomish County is a home rule county organized under the
4 constitution and laws of the State of Washington.

5 20. Plaintiff Yakima County is a county organized under Title 36 RCW.

6 21. Plaintiff Walla Walla County is a county organized under Title 36 RCW.

7 22. Plaintiff Washington State Association of Counties (WSAC) is an association of
8 elected county commissioners, councilmembers, and executives from all of Washington's 39
9 counties. Founded in 1906, WSAC regularly advocates before the courts, the Legislature, and
10 state agencies on behalf of Washington counties.

11 23. Defendant State of Washington (the State) is a state, organized and existing under
12 the laws of the United States of America and the U.S. Constitution. As used herein, the State
13 refers to the State of Washington as an entity and does not include its political subdivisions.

14 III. JURISDICTION AND VENUE

15 24. This Court has jurisdiction over this action based on RCW 2.08.010 and RCW
16 7.24.010. Venue is proper in this Court based on (a) RCW 4.12.020 and RCW 4.92.010(2)
17 because the cause, or some part thereof, arose in this county, (b) RCW 4.92.010(1) because King
18 County's principal place of business is in this county, and (c) RCW 36.01.050 because the State
19 resides in this county.

20 IV. FACTS

21 A. Operation of the State's Criminal Justice System

22 25. Pursuant to article IV, section 27 of the Constitution of the State of Washington,
23 all criminal prosecutions of state law are brought in the state's superior and district courts and are
24 conducted in the name of the State of Washington and by its sovereign authority.

25 26. Subject to constitutional limitations, the State (by way of its Legislature) exercises
26 plenary powers to determine what constitutes a crime and the appropriate punishment for that

1 crime. *State v. Varga*, 151 Wn.2d 179, 194, 86 P.3d 139 (2004).

2 27. By statute and constitution, criminal charges in the name and by the authority of
3 the State are initiated and prosecuted by the elected county prosecutor, or in limited situations,
4 the Attorney General. State law requires the prosecutor to appear for the State and prosecute all
5 criminal actions where the State is a party within the geographic boundaries of the prosecutor’s
6 county. RCW 36.27.020 (“The prosecuting attorney shall . . . (3) Appear for and represent the
7 state . . . subject to the supervisory control and direction of the attorney general in all criminal . . .
8 proceedings in which the state . . . may be a party; (4) Prosecute all criminal . . . actions in which
9 the state . . . may be a party . . . and prosecute actions upon forfeited recognizances and bonds
10 and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state . . .”).

11 28. In prosecuting crimes, state law deems that the county prosecutor is a State
12 official with the authority and the mandate to act on the State’s behalf. *E.g.*, Laws of 2008, ch.
13 309, § 1 (“The legislature finds that an elected county prosecuting attorney functions as both a
14 state officer in pursuing criminal cases on behalf of the state of Washington and as a county officer
15 who acts as civil counsel for the county . . .”).

16 29. In so prosecuting crimes, the county prosecutor is an agent of the state. *E.g.*,
17 *Thurston County v. Gorton*, 85 Wn.2d 133, 137, 530 P.2d 309 (1975) (“[T]he prosecutor must
18 conceptually be treated as an agent of the State and not the County.”); *Whatcom County v. State*,
19 99 Wn. App. 237, 250, 993 P.2d 273 (2000) (same).

20 30. All felony cases filed by a county prosecutor are filed in, and adjudicated by, the
21 Superior Court for the State of Washington.

22 31. In adjudicating criminal cases, the Constitution of the State of Washington deems
23 that each judge of the superior court does so as a “state officer” exercising the “judicial power of
24 the state”—not a county—in doing so. Const. art. IV, § 1; *In re Salary of Superior Court Judges*,
25 82 Wash. 623, 627, 144 P. 929 (1914) (superior court judges adjudicate matters “between the
26 state and individuals charged with violating the state laws” as “state officers” not as county

1 officials performing “county functions”).

2 32. As required by article IV, section 26 of the Constitution of the State of
3 Washington, each “county clerk” acts as the “clerk of the superior court.” When functioning as
4 the clerk of the superior court, the clerk is an arm of the court subject to the court’s direction and
5 covered by the court’s immunity. *E.g., Mullis v. U.S. Bankr. Ct. for Dist. of Nevada*, 828 F.2d
6 1385, 1390 (9th Cir. 1987) (court clerks have absolute quasi-judicial immunity when they
7 perform tasks that are an integral part of the judicial process).

8 33. Article IV, section 1 of the Constitution of the State of Washington and RCW
9 3.66.060 vest district courts with the “judicial power of the state.” District courts have
10 concurrent jurisdiction with superior courts over all misdemeanors and gross misdemeanors
11 committed with their respective counties. RCW 3.66.060. District courts maintain their own
12 court clerks. *See* RCW 3.54.020.

13 34. Neither a county’s governing legislative body nor a home rule county’s executive
14 officer has any supervisory authority over judges performing their judicial function, clerks
15 performing functions as court clerks, or prosecutors representing the State in criminal matters.

16 **B. Funding of the State’s Criminal Justice System**

17 35. The general rule, recognized shortly after adoption of the Constitution of the State
18 of Washington, “is that the counties are burdened with the entire cost of the administration of the
19 criminal laws within their boundaries.” *State v. Grimes*, 7 Wash. 445, 447, 35 P. 361 (1893).
20 The Court premised this rule, however, on the State providing counties with sufficient means of
21 funding the State’s criminal justice system. Thus, at the time of the *Grimes* decision, the State
22 specifically allowed counties to retain “all fines and costs collected in criminal cases” “in turn”
23 for that “burden[.]” *See id* (citing § 1335 of Huntley’s Code, corresponding to Code of 1881, ch.
24 89, § 1113).

25 36. Over the years, the State has retreated substantially from allowing counties to fund
26 operations of the criminal justice system through LFOs. As is the State’s prerogative, it has

1 diverted LFOs to the State, decreased the amounts of LFOs imposed for a conviction, limited
2 who must pay LFOs, and limited collections of LFOs.

3 37. Specific to the diversion of LFOs from the counties to the State, the State for the
4 first time in 1897 required the remittance of “fines” to the State’s treasurer. Laws of 1897, ch. 6,
5 § 113. By 1909, the State directed that “the net proceeds of all fines collected within the several
6 counties of the state for breach of the penal laws” be remitted to the State Treasurer for the state
7 school fund. Laws of 1909, ch. 9, § 9. This law “supersede[d]” all “prior statutes” which
8 “provide[d] for the payment to the general fund of the county of moneys . . . collected” “on fines
9 imposed for breaches of the penal statutes.” *Slayden v. Carr*, 94 Wash. 412, 415, 162 P. 529
10 (1917).

11 38. Over the years, the State has earmarked other LFOs for restricted purposes,
12 including for the particular benefit of State agencies. At the same time, the State has increased
13 county criminal justice expenses while limiting the recoverable costs of a prosecution. For
14 example, Laws of 2018, ch. 269, § 6(3) prohibits ordering costs for individuals who currently
15 qualify for a court appointed attorney, regardless of their future ability to pay.

16 39. The portion of LFOs the State currently directs counties to retain to cover the
17 costs of the State’s criminal justice system is severely limited. The approach described in
18 *Grimes*—with the counties covering the administrative costs of the State’s criminal justice
19 system and the State providing funding to facilitate the counties’ actions—no longer exists and
20 has not existed for decades.

21 40. The State has not replaced the funding mechanism of LFOs, nor has it allocated
22 sufficient funds or funding mechanisms for counties to cover the costs of the State’s criminal
23 justice system.

24 41. The State has specified by constitutional provision and by statute the operational
25 costs of the State’s criminal justice system that the counties must bear. For example, with regard
26 to the superior courts, the State has made the counties responsible for half of the judge’s salary

1 (Const. art. IV, § 13), costs related to court house operations (RCW 2.28.139), court reporters
2 (RCW 2.32.210), bailiffs (RCW 2.32.360, .370), and costs to maintain records (RCW 36.23.030).
3 The Legislature also has specified by statute that, with limited exceptions, counties must bear the
4 operational costs of the district courts. RCW 3.62.050 (with limited exception counties
5 responsible for “[t]he total expenditures of the district courts”); RCW 3.58.030 (counties
6 responsible for “compensation” of court personnel); RCW 3.58.050 (counties responsible for
7 “furnish[ing] all necessary facilities for district courts”).

8 **C. The State’s Criminalization of Simple Possession of Drugs and Imposition of Legal**
9 **Financial Obligations**

10 42. In 1971, the State adopted a modified version of the Uniform Controlled
11 Substances Act, including a provision criminalizing possession of a controlled substance with no
12 requirement of knowledge or other mental state. *See* Laws of 1971, ch. 308, § 69.50.401. The
13 State initially codified this crime at RCW 69.50.401(d) and later at RCW 69.50.4013(1). *See*
14 Laws of 2003, ch. 53, §§ 331, 334.

15 43. Following a conviction for simple possession, as established by the Legislature, a
16 person’s sentence includes the imposition of LFOs by the court. *E.g.*, RCW 9.94A.760. For
17 felony convictions, the State defines LFOs as “a sum of money that is ordered by a superior court
18 of the state of Washington for legal financial obligations which may include restitution to the
19 victim, statutorily imposed crime victims’ compensation fees as assessed pursuant to
20 RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys’ fees, and
21 costs of defense, fines, and any other financial obligation that is assessed to the offender as a
22 result of a felony conviction.” RCW 9.94A.030(31). A “fine” is “a specific sum of money
23 ordered by the sentencing court to be paid by the offender to the court over a specific period of
24 time.” RCW 9.94A.030(27). Similar definitions apply to misdemeanor convictions.

25 44. The State specifies both LFOs that the court must impose and LFOs that the court
26 may impose.

1 45. The State controls all aspects of how LFOs may be collected, including the
2 possibility of interest, collection fees, and other fees, and the specifics of how all LFOs paid by a
3 convicted person are to be distributed to various persons, funds, and entities.

4 46. Because prosecutions are brought in the name and by the authority of the State of
5 Washington, the State is the judgment creditor and controls the disposition of any LFOs paid by a
6 convicted defendant. Under RCW 9.94A.760 and similar statutes applicable to misdemeanor
7 convictions, the State instructs State agencies and county officials how to collect and distribute
8 LFOs paid by convicted persons.

9 47. From 1971 through 2003, the State limited the superior court clerk's role with
10 regard to LFOs. By statute, the State directed the clerk to reflect in the court file payments the
11 court received and to disburse those payments as the State directed. During this period, a State
12 agency, the Washington Department of Corrections (DOC), had exclusive responsibility to
13 establish a monthly payment schedule and enforce payment obligations. The DOC also was
14 authorized to accept payments. *See* Laws of 2003, ch. 379, § 14(4) (amending RCW 9.94A.760,
15 striking the requirement that DOC "supervise" compliance with LFO payments); *see also* Final
16 Bill Report, ESSB 5990, at 2 (Wash. 2003) ("Under current law, DOC both bills offenders with
17 outstanding legal financial obligations and engages in collections efforts related to those
18 obligations.") (available at [http://lawfilesexxt.leg.wa.gov/biennium/2003-
19 04/Pdf/Bill%20Reports/Senate/5990-S.FBR.pdf?q=20210819105038](http://lawfilesexxt.leg.wa.gov/biennium/2003-04/Pdf/Bill%20Reports/Senate/5990-S.FBR.pdf?q=20210819105038)).

20 48. By the Laws of 2003, ch. 379, the State appointed superior court clerks to perform
21 many of DOC's prior functions on the State's behalf. From 2003 to the present, the State has
22 directed superior court clerks "to assume the collection of such obligations in cooperation and
23 coordination with the department of corrections and the administrative office for the courts."
24 Laws of 2003, ch. 379, § 13. Acting for the State's benefit in cooperation with DOC and the
25 AOC, the State intended this new approach to "promote an increased and more efficient
26 collection of legal financial obligations and, as a result, *improve the likelihood that the affected*

1 *agencies will increase the collections* which will provide additional benefits to all parties and, in
2 particular, crime victims whose restitution is dependent upon the collections.” *Id.* (emphasis
3 added). As the State’s agent to improve LFO collections, the superior court clerk is paid for its
4 efforts. *See* RCW 36.23.110 (establishment of annual funding formula).

5 49. The State required superior court clerks to cooperate and coordinate their efforts
6 with State agencies, which remained highly involved and integral to LFO collection efforts.
7 Since the 2003 change in the law, DOC has continued to enforce and collect LFOs while a
8 convicted person is in custody or on supervision. *See* RCW 9.94A.760(5). DOC may make
9 mandatory deductions for legal financial obligations from any worker’s compensation benefit an
10 offender receives. AOC is required to provide billing services and maintain a statewide database
11 of offender payments. As part of this effort, AOC is responsible for sending out quarterly LFO
12 billings to each person who owes LFOs to the State. As such, the DOC and the AOC play vital
13 roles in the LFO collection process.

14 50. Pursuant to RCW 9.94A.760(5), persons assessed LFOs for offenses committed
15 after July 1, 2000, must remain under the court’s jurisdiction “until the [financial] obligation is
16 completely satisfied, regardless of the statutory maximum for the crime.” *Id.*

17 51. Since adoption of the simple drug possession statute in 1971 (now codified at
18 RCW 69.50.4013), the LFOs the State has imposed on persons convicted of simple possession
19 have varied over time with the State dedicating the LFO funds to different accounts.

20 52. The State directs the disposition of LFOs in superior court drug possession cases
21 under RCW 10.82.070. From the enactment of the Uniform Controlled Substances Act in 1971
22 to 1984, the State required each “county treasurer” to “transmit[] to the state treasurer, for deposit
23 in the general fund” “the net proceeds of all fines collected . . . for the breach of the penal laws.”
24 Laws of 1967, ch. 122, § 1. In 1984, the State expanded the LFOs subject to the statute to
25 include costs, penalties, and forfeitures, and required that thirty-five percent be remitted to the
26 State. Laws of 1984, ch. 258, § 313. Since 1985, the State has specified that thirty-two percent

1 of those LFOs be remitted to the State’s general fund. RCW 10.82.070; Laws of 1985, ch. 389, §
2 7(2). For district courts, the portion of LFOs remitted to the State is governed by chapter 3.62
3 RCW, of which the State has made various revisions since 1971. *See* RCW 3.62.020(2)
4 (requiring county treasurers to remit thirty-two percent of noninterest money except certain costs
5 to State treasurer).

6 53. LFOs also can include costs under RCW 10.01.160, RCW 10.46.190, RCW
7 36.18.040, or other specifically designated costs awarded by the court for the costs incurred in
8 prosecution and defense. Potential costs for LFOs include witness costs (RCW 2.40.010, RCW
9 10.46.190), jury demand fees (RCW 10.46.190, RCW 10.01.160), court appointed attorney’s
10 fees, Sheriff service fees (RCW 36.18.040), expert fees, Drug Enforcement Fund fees, warrant
11 fees (RCW 10.46.190, RCW 10.01.160), and extradition fees (RCW 10.01.160).

12 54. Other costs, like criminal filing fees, have varied over time from \$25 in 1971 to
13 \$200 currently. The State sets these fees under RCW 38.18.020. The State requires forty-six
14 percent of the filing fee to be remitted to the state general fund. RCW 36.18.025. At various
15 times since 1971, the State has earmarked portions of the filing fee for specific purposes,
16 including the payment of superior court judges. *See* Laws of 1972, 1st Ex. Sess., ch. 20, § 2.

17 55. The State also has imposed a crime victim penalty assessment under RCW
18 7.68.035, which since 1971 has ranged from \$25 to \$500. Over this period, the State has kept
19 100% of the assessment, some lesser percentage, or earmarked it for specific victim-related
20 purposes. *E.g.*, RCW 7.68.035(4), (5) (requiring the assessment be used for “a fund maintained
21 exclusively for the support of comprehensive programs to encourage and facilitate testimony by
22 the victims of crimes and witnesses to crimes” or remitted to the State treasurer).

23 56. The State imposes a DNA collection fee under RCW 43.43.7541 unless the State
24 already has obtained a sample from the convicted person. From July 1, 2002, through June 12,
25 2008, the State required that the entire fee be transmitted to the State. Laws of 2002, ch. 289, §
26 4. Since that time, the State has required 80% of the fee to the State and 20% to the agency

1 responsible for collecting the DNA. Laws of 2008, ch. 97, § 3.

2 57. The State authorizes imposition of a jail fee to offset the costs of incarceration.
3 RCW 9.94A.760.

4 58. The State allows imposition of emergency response costs under RCW 38.52.430,
5 with all payments remitted directly to the agency that incurred the cost. Laws of 2020, ch. 330, §
6 4. The allowable amount has varied over the years.

7 59. Pursuant to RCW 43.43.690, since 1992, the State has authorized a \$100 crime lab
8 fee. The State authorizes the “clerk of the court” to “retain five dollars to defray the costs of
9 collecting the fees” and requires the remainder to be “forwarded to the state general fund.” *Id.*

10 60. The State mandates that any non-indigent person convicted of simple possession
11 be fined an additional \$1000. RCW 69.50.430. Subsequent convictions increase the fine to
12 \$2000. *Id.*

13 61. The LFOs imposed for drug possession in a given case by the Superior Court vary
14 substantially by county of conviction and over time within that county. *See* Wash. State Minority
15 & Justice Commission, *The Assessment and Consequences of Legal Financial Obligations in*
16 *Washington State*, pp. 19-20 (Aug. 2008) (“For drug convictions, for example, the dollar value of
17 the assessed fees and fines ranged from \$500 to \$21,110.”), available at
18 https://media.spokesman.com/documents/2009/05/study_LFOimpact.pdf.

19 62. LFOs often are not paid by the convicted person. In those instances, the State
20 makes any interest, wage garnishment, and collection fees a consequence of the conviction and
21 part of the LFO amount.

22 63. The State also dictates how a superior court clerk must distribute any LFO
23 payments by establishing an order of priority: “(a) First, proportionally to restitution to victims
24 that have not been fully compensated from other sources; (b) Second, proportionally to
25 restitution to insurance or other sources with respect to a loss that has provided compensation to
26 victims; (c) Third, proportionally to crime victims’ assessments; and (d) Fourth, proportionally to

1 costs, fines, and other assessments required by law.” RCW 9.94A.760(2).

2 64. Through legislative enactment, the State has exercised plenary authority to
3 identify potential LFOs, mandate certain LFOs, set the rate of certain LFOs, mandate that
4 superior court clerks collect LFOs, and specify in detail how the superior court clerks and county
5 treasurers must distribute payments toward LFOs.

6 65. The State directed that a substantial portion of the LFOs be paid directly to the
7 State’s treasurer, that certain LFOs go to specified funds to be used for specified purposes, and
8 that certain LFOs go to specific entities that were not the counties. The Counties complied with
9 those directives.

10 66. The majority of LFOs the superior and district court clerks collected on cases
11 where a criminal defendant is entitled to a refund pursuant to *Blake* were disbursed to the State
12 treasurer, to specified funds, or to specific entities that were not the counties.

13 67. The State also directed the counties retain some LFOs to offset their costs
14 associated with their prosecutions of State law and operations of the State courts. The Counties
15 complied with that directive.

16 68. Any LFO sums allocated to counties and transferred to counties have been fully
17 expended for public purposes consistent with the State’s directives. Because the State has
18 limited the revenues and taxing authority of counties available for general fund purposes,
19 counties have no means to refund 50 years of LFOs or cover the expenses of refunding those
20 LFOs without substantially and negatively impacting other general fund public priorities.

21 **D. The *Blake* Decision and Its Implications**

22 69. In February 2021, the state Supreme Court declared Washington’s simple drug
23 possession statute unconstitutional and void because it potentially criminalized the unknowing
24 possession of drugs. *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

25 70. The constitutional problem identified in *Blake* resulted from the Legislature’s
26 choice to criminalize simple possession of drugs without a *mens rea* requirement and not to

1 otherwise address this infirmity despite prior court opinions questioning the statute’s
2 constitutionality. This was a wholly State-created problem. Through RCW 69.50.608, where the
3 State “fully occupies and preempts the entire field of setting penalties for violations of the
4 controlled substances act” and limits counties to “may enact only those laws and ordinances
5 relating to controlled substances that are consistent with this chapter,” the State deprived the
6 counties of any authority to fix the State’s constitutionally invalid simple drug possession statute.

7 71. As a result of the *Blake* decision, persons convicted of drug possession under the
8 statute adopted in 1971 are entitled to vacate their convictions pursuant to CrR 7.8 (superior
9 court) or CrRLJ 7.8 (district court) (together Criminal Rule 7.8). Where a sentence for another
10 crime reflects a conviction for drug possession, a person is entitled to be resentenced. *See State*
11 *v. Ammons*, 105 Wn.2d 175, 187-88, 713 P.2d 719 (1986) (“a prior conviction . . . which is
12 constitutionally invalid on its face may not be considered” in determining offender score).
13 Criminal Rule 7.8 is the “exclusive remedy” for an LFO refund. *Doe v. Fife Municipal Court*, 74
14 Wn. App. 444, 874 P.2d 182 (1994).

15 72. The State’s criminal justice system, which is already under stress due to
16 substantial pandemic-caused backlogs, began responding to the *Blake* decision immediately. In
17 the intervening months since the issuance of the *Blake* decision, the courts, clerks, prosecutors,
18 and public defenders have been working to address the vast implications of the decision. The
19 required tasks to address resentencing, vacation, and LFO refunds over the past 50 years are
20 immense, including:

21 (a) *Identifying and releasing persons from incarceration.* Through a
22 combination of dismissals and vacations, those persons who were serving sentences or
23 pending trial for drug possession alone have been released from the State’s penal
24 institutions (i.e., prisons and local jails);

25 (b) *Recalling and quashing warrants.* Many thousands of warrants related to
26 charges or convictions for drug possession charges were outstanding and are in the

1 process of being quashed or recalled;

2 (c) *Re-sentencings*. Many thousands of persons were serving sentences for
3 which a prior or current drug possession conviction was included in determining their
4 sentence. Those persons are being identified and resentenced, prioritizing those who may
5 be released upon resentencing; and

6 (d) *Vacations of conviction / LFO refunds*. At present, the courts are
7 processing the Criminal Rule 7.8 vacation motions one at a time, but some counties are
8 developing expedited processes. Through the Criminal Rule 7.8 vacation process, if the
9 only conviction was drug possession, the court will order a refund of all LFOs paid.

10 73. In responding and addressing the issues created by the *Blake* decision, the
11 Counties have incurred extraordinary costs. The Counties' work has been well beyond what they
12 customarily perform as part of their involvement in the criminal justice system. It has required
13 the Counties to dedicate personnel and resources to work with all stakeholders, including the
14 prosecuting attorneys, public defenders, judges, court administrators, and superior and district
15 court clerks, to develop a process to address each of the issues raised by the *Blake* decision. That
16 work is difficult and complex because it requires balancing the Counties' finite resources with
17 the need to ensure that the responses required by *Blake* are timely and efficiently implemented.
18 The Counties expect that they will continue to incur extraordinary costs for the foreseeable future
19 based on the number of prior convictions affected by the *Blake* decision.

20 74. Some counties have paid LFO refunds on behalf of the State, who is the judgment
21 creditor, as a consequence of vacating convictions implicated by the *Blake* decision, but with an
22 expectation of reimbursement by the State. Other counties do not have funds available for this
23 purpose.

24 75. Any LFO refunds made by counties have been on behalf of the State, which as a
25 result, owes a debt to those Counties.

26 76. To date, none of the extraordinary costs that counties have incurred or refunds the

1 Counties have paid have been reimbursed by the State.

2 77. The State disputes its obligation to fund the LFO refunds or the substantial
3 expenses counties have incurred in processing those refunds.

4 78. The State disputes its obligation to fund the substantial expenses counties have
5 incurred in resentencing persons in response to *Blake*.

6 **E. Compliance with *Blake* is a State Responsibility**

7 79. No statute makes counties responsible for the unprecedented cost of unwinding
8 fifty years of convictions for simple drug possessions under the *Blake* decision, including the
9 refund of LFOs.

10 80. No statute makes counties responsible for debts owed by the State when a court
11 orders refunds of LFO payments for which the State was the judgment creditor. Such a debt is
12 categorically different from the costs of administration of the criminal laws that historically have
13 been borne by the counties under the arrangement described in *Grimes*.

14 81. In analogous situations, State law requires the State to directly bear the
15 extraordinary costs of the State's criminal justice system.

16 82. For example, a person who is found not guilty of a crime and proves by a
17 preponderance that the not guilty finding was by reason of self-defense (defined as defense of
18 self, family, property, or one in imminent danger of a violent crime) is entitled to reimbursement
19 of costs and expenses (including attorneys' fees) from the State of Washington, whether through
20 the Legislature's sundry claims process outlined at RCW 4.92.040 or otherwise. *City of Seattle*
21 *v. Fontanilla*, 128 Wn.2d 492, 499, 504, 909 P.2d 1294 (1996) ("the statute does not define the
22 specific mechanism by which the defendant is to receive reimbursement"); *State v. Thiessen*, 88
23 Wn. App. 827, 829, 946 P.2d 1207 (1997). The person is not entitled to reimbursement from the
24 political subdivision of the State which prosecuted the action. *Fontanilla*, 128 Wn.2d at 504.

25 83. As another example, when the State wrongly convicts a person because "he or she
26 did not engage in any illegal conduct alleged in the charging documents," such a person "may

1 file a claim for compensation against the state.” RCW 4.100.020. The State, through the
2 Attorney General, covers all administrative expenses related to claims under chapter 4.100 RCW.
3 RCW 4.100.040(5), (6). Upon satisfying the terms of this statute, “the court must order the state
4 to pay” compensation. RCW 4.100.060(5). There is no question that, under this statute, the
5 State, and not any of its political subdivisions, is obligated to pay compensation.

6 84. In *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), following the invalidation of a
7 conviction where retrial will not occur, the Court held that “the State” of Colorado was obligated
8 under the due process clause of the Fourteenth Amendment “to refund fees, court costs, and
9 restitution exacted from the defendant upon, and as a consequence of, the conviction.” *Id.* at
10 1252. “To comport with due process, a State may not impose anything more than minimal
11 procedures on the refund of exactions dependent upon a conviction subsequently invalidated.”
12 *Id.* at 1258.

13 85. The State, in accord with *Nelson v. Colorado*, is obligated under the due process
14 clause of the Fourteenth Amendment to provide a straightforward process with “minimal
15 procedures” to refund LFOs to persons whose convictions for simple drug possession are vacated
16 under *Blake*.

17 86. The Court of Appeals recognizes that it is the State’s obligation to refund all
18 LFOs upon the invalidation of a conviction: “When a criminal conviction is overturned by a
19 reviewing court, the State is obliged to refund fees, court costs, and restitution exacted from the
20 defendant as a consequence of that conviction. The State no longer has a legal claim to this
21 property. Restitution is required.” *State v. Hecht*, 2 Wn. App. 2d 359, 368, 409 P.3d 1146
22 (2018) (citing *Nelson*, 137 S. Ct. at 1252, 1257-58).

23 87. The State has not enacted any statute providing for a simple procedure to refund
24 LFOs following the invalidation of a conviction.

25 88. The State also has not enacted a statute delegating its responsibilities under
26 *Nelson v. Colorado* to the counties, nor has it provided sufficient funds to discharge those

1 responsibilities. Importantly, “[t]he power to delegate is not the power to absolve oneself of
2 responsibility.” *Davison v. State*, 196 Wn.2d 285, 308, 466 P.3d 231 (2020) (Gonzales, J.,
3 concurring).

4 **F. Legislative Appropriations Only Partially Fund State’s *Blake* Responsibilities**

5 89. In recognition of the State’s responsibility to fund the response to *Blake*, the
6 Legislature passed, and the Governor signed, an appropriations bill that allocated limited funds to
7 assist the counties (and only the counties) in addressing *Blake*’s aftermath. Laws of 2021, ch.
8 334. The appropriations bill included three specific appropriations for the counties’ benefit.
9 Laws of 2021, ch. 334, §§§ 115(5), 115(6), 116(5) (**Exhibit 7**).

10 90. The Legislature directed the first appropriation of \$44.5 million to AOC to fund
11 administration costs incurred by counties for resentencing and vacating *Blake* convictions dating
12 back to 1971:

13 \$44,500,000 of the general fund—state appropriation for fiscal year 2022 is
14 provided *solely to assist counties with costs of resentencing and vacating the*
15 *sentences* of defendants whose convictions or sentences are affected by the *State*
16 *v. Blake* decision. Subject to the availability of amounts provided in this section,
17 the office must provide grants to counties that demonstrate extraordinary judicial,
18 prosecution, or defense expenses for those purposes. The office must establish an
19 application process for county clerks to seek funding and an equitable
20 prioritization process for distributing the funding.

Laws of 2021, ch. 334, § 115(5) (emphasis added).

19 91. The Legislature directed the second appropriation of \$23.5 million to AOC to
20 reimburse counties for LFO refunds made “by the count[ies] on behalf of the state”:

21 \$23,500,000 of the general fund—state appropriation for fiscal year 2022 is
22 provided *solely to establish a legal financial obligation aid pool to assist counties*
23 *that are obligated to refund legal financial obligations previously paid by*
24 *defendants whose convictions or sentences were affected by the State v. Blake*
25 *ruling*. County clerks may apply to the administrative office of the courts for a
26 grant from the pool to assist with extraordinary costs of these refunds. State aid
payments made to a county from the pool must first be attributed to any legal
financial obligations refunded by the county on behalf of the state. The office
must establish an application process for county clerks to seek funding and an
equitable prioritization process for distributing the funding.

1 Laws of 2021, ch. 334, § 115(6) (emphasis added).

2 92. The Legislature made a further appropriation of \$11 million to OPD and to
3 provide funds to counties for public defense services related to *Blake*:

4 \$5,500,000 of the general fund—state appropriation for fiscal year 2022 and
5 \$5,500,000 of the general fund—state appropriation for fiscal year 2023 are
6 provided solely to assist counties with public defense costs related to vacating the
sentences of defendants whose convictions or sentences are affected by the *State*
v. Blake decision.

7 Laws of 2021, ch. 334, § 116(5)(b).

8 93. On August 19, 2021, after substantial discussion with the counties and other
9 stakeholders, AOC announced its final allocation of the Section 115 legislative appropriations,
10 which was not responsive to those discussions. With regard to the Section 115(5) appropriation
11 of \$44.5 million for *Blake*-related resentencing and vacation expenses, AOC allocated this
12 money solely on the basis of individuals in DOC custody as of May 31, 2021. The allocation
13 does not account for expenses incurred by counties between the issuance of *Blake* in late
14 February 2021 and the May 31, 2021 date. It also fails to account for any expenses incurred in
15 vacating convictions back to 1971.

16 94. Regardless of flaws in the allocation plan, the \$44.5 million appropriated to the
17 counties falls far short of the true expenses that counties will incur on behalf of the State to
18 implement *Blake* compliance around resentencing and vacations.

19 95. On August 13, 2021, King County and Snohomish County demanded that the
20 State fully fund its *Blake* responsibilities. (**Exhibit 8**). The State has refused to accept the
21 tender.

22 **G. The *Civil Survival Project* Class Action Lawsuit Seeks Recourse against the Counties**
23 **for the State’s Acts, Omissions, and Obligations**

24 96. Within weeks of the *Blake* decision, several individuals and an organization
25 purporting to represent its members and clients filed the *Civil Survival Project* lawsuit seeking to
26 represent a class of plaintiffs who were convicted under RCW 69.50.4013(1) or any similarly

1 deficient predecessor statute. The plaintiffs named as defendants the State, King County, and
2 Snohomish County. In that action, plaintiffs also seek to certify a class of the remaining 37
3 counties in Washington as a proposed defendant class.

4 97. On August 19, 2021, a second amended complaint was filed in the *Civil Survival*
5 *Project* lawsuit naming all 39 Washington counties as individual defendants, including the
6 Counties who are plaintiffs in this lawsuit. (**Exhibit 6**).

7 98. As alleged in the *Civil Survival Project* lawsuit, plaintiffs seek to recover, on their
8 behalf and that of the putative class, LFOs collected, received, or retained by the State for their
9 prior convictions now declared void under *Blake*. They contend that the counties and the State
10 must reimburse them and members of the putative class all LFOs paid, including all interest and
11 penalties associated with the LFOs, since at least 1971.

12 99. Plaintiffs in the *Civil Survival Project* lawsuit allege that there are “tens of
13 thousands of individuals wrongfully penalized under RCW 69.50.4013 who have been charged
14 and/or paid fees, penalties, and other fines, including LFOs, to Washington and Washington’s 39
15 counties,” and cite studies finding over 126,173 persons who have been convicted of possession
16 in Washington since 1999. These Plaintiffs further allege that there are tens of millions of LFOs
17 that the State and the counties are required to reimburse, citing estimates of between \$24 million
18 to \$47 million in LFOs that have been collected by the State, but indicating that the figure likely
19 exceeds \$80 million.

20 100. The *Civil Survival Project* lawsuit Plaintiffs assert three claims. In their first and
21 second claims, plaintiffs seek refunds of the money they paid toward LFOs imposed on their
22 judgments of conviction from the State and the counties. In their third claim, plaintiffs seek a
23 declaratory judgment stating that plaintiffs and members of the putative class are “entitled to
24 recover LFOs” from the State and the counties. They request an award of “actual, compensatory,
25 and nominal/exemplary damages,” attorneys’ fees, prejudgment and post-judgment interest, in
26 addition to other relief from the State and the counties.

1 LFOs upon vacation of the conviction by the State’s superior and district courts, nor has it
2 appropriated sufficient funds to the counties by which the counties may fulfill the State’s Due
3 Process obligation to refund the LFOs.

4 110. The State’s Due Process obligation to refund the LFOs is wholly a State
5 responsibility and is not a county purpose.

6 111. Upon any court ordered refund of LFOs required by *Blake* and Due Process, the
7 State, who was the judgment creditor for the LFOs, becomes indebted to the person owed the
8 refund. A State debt arises anytime a county issues an LFO refund under *Blake* on behalf of the
9 State.

10 112. The State cannot, by Legislative silence or otherwise, force the counties to assume
11 that State debt without violating article VIII, section 6 of the Constitution of the State of
12 Washington which provides, “[N]o part of the indebtedness allowed [to counties] in this section
13 shall be incurred for any purpose other than strictly county . . . purposes.” Const. art. VIII, § 6.
14 Nor can the State balance its budget by transferring its debts to the counties. RCW 43.88.055
15 (balanced budget requirement).

16 113. A justiciable controversy exists among the Counties and the State regarding the
17 parties’ rights and interests as it relates to what party should bear the costs of *Blake* compliance,
18 including required LFO refunds. These rights and interests are direct and substantial, and the
19 determination of the parties’ rights and interests will resolve the dispute. The issues that exist
20 between the parties are genuinely adversarial in character.

21 114. The Counties are entitled to a declaratory judgment in their favor that provides
22 that the State (a) may not force the Counties to assume the debts of the State’s Due Process
23 obligations and (b) must either (i) appropriate sufficient funds to the Counties to address the full
24 expenses of *Blake* compliance, including the refund of any LFOs, or (ii) implement a system with
25 minimal procedures and in which the Counties are reimbursed for any costs, and by which
26 persons may present to the State for payment superior and district court LFO refund orders issued

1 as a result of *Blake*.

2 **VI. SECOND CAUSE OF ACTION – DUTY TO DEFEND AND INDEMNIFY**
3 **(STATE AGENTS)**

4 115. The Counties reallege the above paragraphs.

5 116. Pursuant to RCW 7.24.010 of the Uniform Declaratory Judgments Act, the Court
6 has the power to declare the rights, status and other legal relations of any party including, as
7 provided in RCW 7.24.020, any person whose rights, status or legal relations are affected by a
8 statute. That power includes the right to resolve any question as to the construction of the statute
9 and obtain a declaration of the rights, status, or other legal relations thereunder.

10 117. As provided in RCW 7.24.120, the Uniform Declaratory Judgments Act is
11 remedial and its purpose is to settle and to afford relief from the uncertainty and insecurity with
12 respect to the rights, status, and other legal relations at issue, and it directs the court to liberally
13 construe and administer its provisions.

14 118. As required by the State Constitution, each void prosecution at issue in this case
15 was “conducted in [the] name [The State of Washington] and by its authority.” Const. art. IV, §
16 27. In accordance with this Constitutional mandate, the State brought each action as the plaintiff,
17 and was responsible for the prosecution, conviction, and judgment entered against each
18 defendant for violation of RCW 69.50.4013(1). All judges, prosecutors, and superior and district
19 court clerks were either State officials or agents of the State in performing their duties in the
20 State’s criminal justice system. The State is required to indemnify those officials and agents.
21 *See Restatement (Third) of Agency* § 8.14.

22 119. A justiciable controversy exists among the Counties and the State regarding the
23 parties’ rights and interests as it relates to what party should bear the costs and expenses incurred
24 because of the *Blake* decision. These rights and interests are direct and substantial, and the
25 determination of the parties’ rights and interests will resolve the dispute. The issues that exist
26 between the parties are genuinely adversarial in character.

1 120. The Counties are entitled to a declaratory judgment in their favor that provides
2 that the State is required to indemnify and hold the Counties harmless for all: (a) costs, expenses,
3 attorneys fees, or judgments they incur as a result of the *Blake* decision including all costs,
4 expenses, attorneys fees that they incur to establish and administer a process for reviewing,
5 vacating, and, if required, resentencing defendants affected by the *Blake* decision; (b) monies that
6 the Counties expend to reimburse any LFOs, including any interest on LFOs, to defendants
7 affected by the *Blake* decision; and (c) costs, expenses, attorneys fees, settlement payments, or
8 judgments that they incur in responding, defending, or settling the *Civil Survival Project* lawsuit.

9 **VII. THIRD CAUSE OF ACTION – DUTY TO DEFEND AND INDEMNIFY**
10 **(EQUITABLE INDEMNIFICATION)**

11 121. The Counties reallege the above paragraphs.

12 122. Pursuant to RCW 7.24.010 of the Uniform Declaratory Judgments Act, the Court
13 has the power to declare the rights, status and other legal relations of any party including, as
14 provided in RCW 7.24.020, any person whose rights, status or legal relations are affected by a
15 statute. That power includes the right to resolve any question as to the construction of the statute
16 and obtain a declaration of the rights, status, or other legal relations thereunder.

17 123. As provided in RCW 7.24.120, the Uniform Declaratory Judgments Act is
18 remedial and its purpose is to settle and to afford relief from the uncertainty and insecurity with
19 respect to the rights, status, and other legal relations at issue, and it directs the court to liberally
20 construe and administer its provisions.

21 124. The Counties, who have engaged in no wrongful act, are working to discharge the
22 State’s obligations under *Blake*. As between the Counties and the State, the *Blake* obligations
23 properly belong to the State and should be discharged by the State. Thus, the Counties are
24 entitled to full indemnity from the State for all costs and expenses the Counties incur in
25 discharging the State’s obligations. *See Restatement (First) of Restitution* §76 (“A person who,
26 in whole or in part, has discharged a duty which is owed by him but which as between himself

1 and another should have been discharged by the other, is entitled to indemnity from the other,
2 unless the payor is barred by the wrongful nature of his conduct.”); *Central Washington*
3 *Refrigeration, Inc. v. Barbee*, 133 Wn.2d 509, 513 n.2, 946 P.2d 760 (1997) (applying
4 Restatement rule).

5 125. A justiciable controversy exists among the Counties and the State regarding the
6 parties’ rights and interests as it relates to what party should bear the costs and expenses incurred
7 because of the *Blake* decision. These rights and interests are direct and substantial, and the
8 determination of the parties’ rights and interests will resolve the dispute. The issues that exist
9 between the parties are genuinely adversarial in character.

10 126. The Counties are entitled to a declaratory judgment in their favor that provides
11 that the State is required to indemnify and hold the Counties harmless for all: (a) costs, expenses,
12 attorneys fees, or judgments they incur as a result of the *Blake* decision including all costs,
13 expenses, attorneys fees that they incur to establish and administer a process for reviewing,
14 vacating, and, if required, resentencing defendants affected by the *Blake* decision; (b) monies that
15 the Counties expend to reimburse any LFOs, including any interest on LFOs, to defendants
16 affected by the *Blake* decision; and (c) costs, expenses, attorneys fees, settlement payments, or
17 judgments that they incur in responding, defending, or settling the *Civil Survival Project* lawsuit.

18 **VIII. FOURTH CAUSE OF ACTION –DUTY TO DEFEND AND INDEMNIFY**
19 **(RCW 4.92.060, .070)**

20 127. The Counties reallege the above paragraphs.

21 128. Pursuant to RCW 7.24.010 of the Uniform Declaratory Judgments Act, the Court
22 has the power to declare the rights, status, and other legal relations of any party including, as
23 provided in RCW 7.24.020, any person whose rights, status, or legal relations are affected by a
24 statute. That power includes the right to resolve any question as to the construction of the statute
25 and obtain a declaration of the rights, status, or other legal relations thereunder.

26 129. As provided in RCW 7.24.120, the Uniform Declaratory Judgments Act is

1 remedial and its purpose is to settle and to afford relief from the uncertainty and insecurity with
2 respect to the rights, status, and other legal relations at issue, and it directs the court to liberally
3 construe and administer its provisions.

4 130. Under RCW 4.92.060, and RCW 4.92.070, the Attorney General has a duty to
5 defend and indemnify any state officer, employee, or volunteer whose acts or omissions were
6 purported to be in good faith within the scope of that person’s official duties. Any liability faced
7 by Counties over *Blake*—to the extent it exists—is entirely derivative of the official actions of
8 judges, superior and district court clerks, and prosecutors within the county who are acting as
9 state officials or agents of the State. All actions taken by these individuals were in good faith and
10 within the scope of each person’s official duties. The State has a duty to defend and indemnify
11 these persons.

12 131. A justiciable controversy exists among the Counties and the State regarding the
13 parties’ rights and interests as it relates to what party should bear the costs and expenses incurred
14 because of the *Blake* decision. These rights and interests are direct and substantial, and the
15 determination of the parties’ rights and interests will resolve the dispute. The issues that exist
16 between the parties are genuinely adversarial in character.

17 132. The Counties are entitled to a declaratory judgment in their favor that provides
18 that the State is required to indemnify and hold the Counties harmless for all costs, expenses,
19 attorneys fees, settlement payments, or judgments that they incur in responding, defending, or
20 settling the *Civil Survival Project* lawsuit because this suit is wholly predicated on the good faith
21 actions of judges, superior and district court clerks, and prosecutors who are either State officials
22 or State agents in carrying out their criminal justice functions.

23 **IX. FIFTH CAUSE OF ACTION – ACCOUNTANCY ACT (STATE-COUNTY)**

24 133. The Counties reallege the above paragraphs.

25 134. Pursuant to RCW 7.24.010 of the Uniform Declaratory Judgments Act, the Court
26 has the power to declare the rights, status and other legal relations of any party including, as

1 provided in RCW 7.24.020, any person whose rights, status or legal relations are affected by a
2 statute. That power includes the right to resolve any question as to the construction of the statute
3 and obtain a declaration of the rights, status, or other legal relations thereunder.

4 135. As provided in RCW 7.24.120, the Uniform Declaratory Judgments Act is
5 remedial and its purpose is to settle and to afford relief from the uncertainty and insecurity with
6 respect to the rights, status, and other legal relations at issue, and it directs the court to liberally
7 construe and administer its provisions.

8 136. The State’s Accountancy Act mandates that “[a]ll service rendered by . . . one
9 department . . . to another, shall be paid for at its true and full value by the department . . .
10 receiving the same,” and that “no department . . . shall benefit in any financial manner whatever
11 by an appropriation or fund made for the support of another.” RCW 43.09.210(3).

12 137. The Accountancy Act applies to the State and prohibits the State from receiving
13 services from a county without paying for the true and full value of those services.

14 138. The Accountancy Act requires the State to reimburse the Counties for any
15 appropriations made by the counties to pay debts owed by the State.

16 139. The State is the judgment creditor for all LFOs paid on judgments in the state’s
17 superior and district court.

18 140. Superior and district court clerks are mandated by State law to receive payments
19 from criminal defendants toward satisfying judgments for which the State is the judgment
20 creditor. State law likewise dictates how superior and district court clerks are to disburse those
21 payments.

22 141. State law is silent about whether and by what means superior and district court
23 clerks should process refunds of those payments ordered by the superior and district courts.

24 142. State law allows a criminal defendant in receipt of a court order requiring payment
25 by the State to present that court order to the Legislature for payment. RCW 4.92.040.

26 143. Through recent appropriations, the Legislature has stated its intent that superior

1 and district court clerks should process the refund requests and issue refunds on the State's
2 behalf, subject to reimbursement by the State.

3 144. In recognition of this statement of intent by the Legislature, certain counties are
4 appropriating money (a) to various agencies of the state's criminal justice system to establish
5 systems and processes to expedite the vacation, resentencing, and refund process required by
6 *Blake* and (b) to the superior and district court clerks' offices to pay the refunds on the State's
7 behalf.

8 145. These appropriations are for (a) "service rendered by" the counties "to" the State
9 and therefore the State must pay the counties "for at its true and full value" and (b) the
10 "financial" "benefit" of the State. Therefore, the State must reimburse the counties for these
11 appropriations as required by the Accountancy Act.

12 146. Because the State disputes its obligation described above, a justiciable controversy
13 exists between the Counties and the State. These parties' rights and interests are direct and
14 substantial and the determination of the parties' rights and interests will resolve the dispute. The
15 issues that exist between the parties are genuinely adversarial in character.

16 147. The Counties are entitled to a declaratory judgment in their favor that provides
17 that the State must reimburse the Counties for (a) all expenses incurred in processing the
18 vacations, resentencing, and refunds required by the *Blake* decision and (b) the refunds of LFOs
19 ordered and paid by the Counties as a consequence of the *Blake* decision.

20 **X. SIXTH CAUSE OF ACTION – UNFUNDED MANDATE / ACCOUNTANCY ACT**
21 **(INTRA-COUNTY)**

22 148. The Counties reallege the above paragraphs.

23 149. Pursuant to RCW 7.24.010 of the Uniform Declaratory Judgments Act, the Court
24 has the power to declare the rights, status and other legal relations of any party including, as
25 provided in RCW 7.24.020, any person whose rights, status or legal relations are affected by a
26 statute. That power includes the right to resolve any question as to the construction of the statute

1 and obtain a declaration of the rights, status, or other legal relations thereunder.

2 150. As provided in RCW 7.24.120, the Uniform Declaratory Judgments Act is
3 remedial and its purpose is to settle and to afford relief from the uncertainty and insecurity with
4 respect to the rights, status, and other legal relations at issue, and it directs the court to liberally
5 construe and administer its provisions.

6 151. In 1993, the citizens of Washington State passed Initiative 601 that, in addition to
7 establishing state spending limits, created a requirement that local governments must be
8 reimbursed by the State for the costs of any new programs or increased services imposed on
9 them. This is codified at RCW 43.135.060 and is referred to herein as the Unfunded Mandate
10 statute.

11 152. The Accountancy Act requires that “[a]ll . . . property transferred from, one
12 department . . . [or] institution . . . to another, shall be paid for at its true and full value by the
13 department . . . receiving the same . . . and no department . . . shall benefit in any financial
14 manner whatever by an appropriation or fund made for the support of another.” Based on the
15 statute’s directive and, as interpreted by various Washington Attorney General Opinions and
16 applicable court cases, state law prohibits the County from transferring funds from any fund,
17 including funds from its current expense or general fund, for a use that would benefit another
18 department or fund without receiving true and full value from the receiving department or fund.

19 153. When disbursing LFOs received by criminal defendants, the State directed the
20 county treasurers to disburse those funds in the manner prescribed by statute. The State’s
21 direction as to the disbursements of LFOs has evolved, but during all material times relevant to
22 the *Blake* decision, the State always provided specific directions about how collected LFOs were
23 to be disbursed by the superior and district court clerks on the State’s behalf.

24 154. For instance, in 1982, the Legislature directed each prosecuting attorney to
25 “administer[]” a “comprehensive program[] to encourage and facilitate testimony by the victims
26 of crimes and witnesses to crimes” (Comprehensive Victim Testimony Program) and to fund the

1 program with a portion of the victim penalty assessment (VPA) imposed upon conviction of
2 crimes. RCW 7.68.035(4). Each county treasurer was required to transmit some or all (the
3 percentage changed over the years) of the VPA “into a fund maintained exclusively” for such
4 programs (Victim Testimony Fund).

5 155. County treasurers complied with the directions the Legislature provided.

6 156. Certain of the LFOs that must now be refunded pursuant to *Blake* were previously
7 paid by each county into various funds, including the Victim Testimony Fund.

8 157. The Legislature’s recent appropriations state that the Legislature intends “counties
9 . . . to refund legal financial obligations previously paid by defendants whose convictions or
10 sentences were affected by the *State v. Blake* ruling.” Laws of 2021, ch. 334, § 115(6).

11 158. To refund those LFO payments that counties paid into the various funds, including
12 a Victim Testimony Fund, the Accountancy Act (a) requires that the counties draw from those
13 specific funds and (b) bars the counties from drawing from other sources such as the counties’
14 current expense or general fund.

15 159. The consequence of extracting the money that been deposited into other funds,
16 including the Victim Testimony Fund, is that funding originally provided to those funds is now
17 retroactively eliminated. Because the State mandated the creation of many of the funds and
18 programs, including the Comprehensive Victim Testimony Program, and the funding now is
19 being clawed back, those mandatory programs retroactively have become unfunded, in violation
20 of the Unfunded Mandate statute.

21 160. In addition to the State’s obligation to reimburse the counties for all LFO refunds
22 as alleged in other causes of action, the State has an independent obligation to reimburse the
23 counties for all LFO refunds that reflect moneys deposited into other funds, including the Victim
24 Testimony Fund.

25 161. A justiciable controversy exists between the Counties and the State regarding this
26 obligation. The parties’ rights and interests are direct and substantial, and the determination of

1 the parties' rights and interests will resolve the dispute. The issues that exist between the parties
2 are genuinely adversarial in character.

3 162. The Counties are entitled to a declaratory judgment in their favor that provides
4 that the State must reimburse the Counties for all LFO refunds required by the *Blake* decision
5 that reflect moneys deposited into other funds, including the Victim Testimony Fund.

6 **XI. PRAYER FOR RELIEF**

7 Having stated their claims against the State, the Counties pray for the following relief:

8 1. For an order by the Court declaring the rights, status, and legal relations among the
9 Counties and the State and providing:

10 (a) That the State (a) may not force Counties to assume the debts of the State's
11 Due Process obligations and (b) must either (i) appropriate sufficient funds to the Counties to
12 address the full expenses of *Blake* compliance, including the refund of any LFOs required, or (ii)
13 implement a system with minimal procedures where the Counties are reimbursed for all expenses
14 and persons may present to the State for payment LFO refund orders issued by the superior and
15 district courts as a result of *Blake*.

16 (b) That the State is required to indemnify and hold the Counties harmless for
17 all costs, expenses, attorneys' fees, or judgments they incur as a result of the *Blake* decision
18 including all costs, expenses, attorneys' fees that they incur to establish and administer a process
19 for reviewing, vacating, and, if required, resentencing defendants affected by the *Blake* decision;

20 (c) That the State is required to indemnify and hold the Counties harmless for
21 all monies that the Counties expend to reimburse any LFOs, including any interest on LFOs, to
22 defendants affected by the *Blake* decision;

23 (d) That the State is required to indemnify and hold the Counties harmless for
24 all costs, expenses, attorneys' fees, settlement payments, or judgments that they incur in
25 responding, defending, or settling the *Civil Survival Project* lawsuit;

26 (e) That the Accountancy Act requires that the State reimburse the Counties for

1 (a) all expenses incurred in processing the vacation and refunds required by the *Blake* decision and
2 (b) the refunds of LFOs ordered and paid by the Counties as a consequence of the *Blake* decision;
3 and

4 (f) That the Accountancy Act and the Unfunded Mandate statute require that
5 the State reimburse the Counties for all LFO refunds required by the *Blake* decision that reflect
6 moneys deposited into other funds, including the Victim Testimony Fund.

- 7 2. For an award of the Counties' attorneys' fees and costs as provided under the law;
8 3. For prejudgment and post-judgment interest on all amounts awarded; and
9 4. For such other relief that the Court deems equitable and just.

10 DATED this 14th day of September, 2021.

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EXHIBITS

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Memo, Administrative Office of Courts (Aug. 5, 2021) (Aug. 19, 2021 revision)Exhibit 1

Blake Funding Contract, Administrative Office of CourtsExhibit 2

Letter from Washington Association of Counties (July 19, 2021)Exhibit 3

Letter from King County and Snohomish County (April 2, 2021).....Exhibit 4

Letter from State of Washington (April 13, 2021)Exhibit 5

Second Amended Class Complaint, *The Civil Survival Project, et al. v. King County, et al.*, No. 21-2-03266-1 SEA (King Cty. Super. Ct. Aug. 19, 2021)Exhibit 6

Laws of 2021, ch. 334, §§ 115(5), 115(6), 116(5).....Exhibit 7


Letter from King County and Snohomish County (Aug. 13, 2021)Exhibit 8

EXHIBIT 1



August 5, 2021

TO: Eric Johnson, Executive Director, Washington State Association of Counties
Kim Allen, President, Washington State Association of County Clerks
Russell Brown, Executive Director, Washington Association of Prosecuting Attorneys
Darla McKay, President, Washington State Association of County Auditors
Presiding Judges of Superior Courts
Presiding Judges of District and Municipal Courts

FROM: Christopher Stanley, Chief Financial & Management Officer 

RE: Distribution of Funds, ESSB 5092, Section 115(5-6)

I appreciate the sustained communication our offices have shared since the end of the Legislative Session regarding the distribution of the funds provided by the Legislature to offset extraordinary costs related to the Supreme Court's decision in *State of Washington v. Blake*.

Over the past three months, we have met with stakeholders to discuss various approaches to distributing the funds provided by the Legislature. Our goal has always been to create an equitable and efficient way to distribute these limited funds. There appears to be a broad consensus that these funds will likely not be sufficient to cover the total costs of implementing the *Blake* decision, which means that any distribution formula would not be a limiting formula, but merely a way to allocate these initial funds.

Our proposal concerning funds in Section 115(5) regarding extraordinary costs related to resentencing and vacating convictions would be to allocate funds to counties based on a county's current Department of Corrections *Blake* in-custody and supervision population. While there was some push-back to this approach and suggestions to use a more comprehensive data set, a more extensive data set does not guarantee a more accurate data set. The current data is available now, without need for review or examination for accuracy, and we are prepared to allocate funds to counties by the end of the month based on these figures. A table of allocations for these funds is attached. It should be stressed that these allocations are not limiting figures, and again – there is broad consensus that the funds in Section 115(5) will likely be insufficient to cover the total costs of implementation.

Regarding the funds in Section 115(6) appropriated to assist counties with refunds of legal financial obligations (LFOs), our initial proposal was to use a 10-year "lookback" to allocate these initial funds. Like the DOC data, this data is both reliable and immediately available. We examined the approach of using a more extended period, but the data sources appear to become more challenging to obtain the further back we go in years. As with the funds in Section 115(5), we are

prepared to allocate funds to counties by the end of the month based on these figures. A table of allocations for these funds is attached. Again, it should be stressed here as well that these allocations are *not limiting figures* but merely a starting point for distributing these limited funds.

Ultimately, the cash distribution methodology for both of these funding provisos is simple: Reimbursement of actual expenditures. The allocation formulae referenced above simply help allocate funds in a manner that ensures *all* counties will have the *opportunity* to receive reimbursement for their expenditures. These allocated funds will likely be insufficient to cover the entire cost obligation, and we hope the Legislature will provide more funding in the 2022 Supplemental Budget to fully cover extraordinary costs of vacating and resentencing convictions related to *Blake* as well as cover the costs of refunding *Blake* LFOs.

We have received several letters asking AOC to request additional funds from the Legislature to cover *Blake*-related costs. AOC doesn't believe that it is our role to request these funds, but we are happy to include external requests from members of the justice community and the judicial branch in our presentations to the Board of Judicial Administration and the Supreme Court when those governing bodies are deciding which requests to forward to the Legislature in the 2022 Legislative Session.

I recognize that this information may not be what you wanted to hear; you may still want us to consider alternative allocation methodologies. However, in the interest of moving forward immediately, we are prepared to begin issuing contracts to all 39 counties to set the allocations in place by the end of the month and begin issuing reimbursements soon thereafter. Ultimately, the goal is to begin the work of vacating, resentencing, and refunding individuals impacted by *Blake* and to do that quickly and efficiently in the interest of justice. There's not enough funding to do it all right now, but there's enough to get started, and I hope we can all work together to secure the remaining necessary funds from the Legislature.

As we go forward, I'm open to continuing the conversations around the data to strengthen the case to the Legislature that additional funding will be needed to complete this critical work. If you have further questions or concerns or wish to discuss this further, please reach out to me at Christopher.Stanley@courts.wa.gov.

cc: Senator Christine Rolfes and Ways & Means Committee Leadership
Representative Timm Ormsby and Appropriations Committee Leadership
Scott Merriman, Office of Financial Management
Larry Jefferson, Office of Public Defense
Trisha Newport, Department of Corrections
Judge David Estudillo, President, Superior Court Judges' Association
Judge Charles Short, President, District and Municipal Court Judges' Association
Sharon Swanson, Association of Washington Cities
Association of Washington Superior Court Administrators
District and Municipal Court Administrators

Blake Court Expenses Allocation Matrix

Data Source: *Individuals with a Possession Conviction in DOC Jurisdiction as of 5/31/2021*

Total
44,500,000

County	In-Facility and Supervised DOC Population	Pct	Allocation
Adams	32	0.2%	75,000
Asotin	94	0.5%	221,000
Benton	774	4.1%	1,823,800
Chelan	443	2.3%	1,043,400
Clallam	261	1.4%	615,200
Clark	1,380	7.3%	3,252,400
Columbia	18	0.1%	42,000
Cowlitz	852	4.5%	2,007,900
Douglas	133	0.7%	313,100
Ferry	16	0.1%	37,000
Franklin	311	1.6%	732,300
Garfield	14	0.1%	32,000
Grant	316	1.7%	744,300
Grays Harbor	495	2.6%	1,166,500
Island	103	0.5%	242,100
Jefferson	68	0.4%	160,000
King	2,143	11.3%	5,051,200
Kitsap	626	3.3%	1,475,600
Kittitas	140	0.7%	329,100
Klickitat	85	0.5%	200,000
Lewis	535	2.8%	1,260,500
Lincoln	28	0.1%	65,000
Mason	298	1.6%	702,300
Okanogan	193	1.0%	454,200
Pacific	162	0.9%	381,100
Pend Oreille	21	0.1%	49,000
Pierce	3,013	16.0%	7,102,100
San Juan	6	0.0%	14,000
Skagit	394	2.1%	928,400
Skamania	41	0.2%	96,000
Snohomish	1,325	7.0%	3,123,400
Spokane	1,714	9.1%	4,039,800
Stevens	191	1.0%	450,200
Thurston	1,173	6.2%	2,766,700
Wahkiakum	4	0.0%	9,000
Walla Walla	159	0.8%	374,100
Whatcom	422	2.2%	994,400
Whitman	37	0.2%	87,000
Yakima	865	4.6%	2,038,900
Total	18,885		44,500,000

Blake LFO Pool Distribution

Based on Average 10-Year LFO AR Paid, RCW 69.50.4013

Blake LFO Pool Appropriation	23,500,000
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Court Name	Court Level	Average 10-Year AR Paid	Pct Total	Distribute Blake LFO Pool
ADAMS COUNTY SUPERIOR COURT	Superior	73,005	0.10%	23,661
ASOTIN COUNTY SUPERIOR COURT	Superior	173,623	0.24%	56,271
BENTON COUNTY SUPERIOR COURT	Superior	1,458,351	2.01%	472,652
CHELAN COUNTY SUPERIOR COURT	Superior	481,153	0.66%	155,942
CLALLAM COUNTY SUPERIOR COURT	Superior	183,053	0.25%	59,327
CLARK COUNTY SUPERIOR COURT	Superior	1,657,312	2.29%	537,135
COLUMBIA COUNTY SUPERIOR COURT	Superior	24,096	0.03%	7,810
COWLITZ COUNTY SUPERIOR COURT	Superior	367,294	0.51%	119,040
DOUGLAS COUNTY SUPERIOR COURT	Superior	227,709	0.31%	73,801
FERRY COUNTY SUPERIOR COURT	Superior	28,672	0.04%	9,293
FRANKLIN COUNTY SUPERIOR COURT	Superior	362,774	0.50%	117,575
GARFIELD COUNTY SUPERIOR COURT	Superior	22,788	0.03%	7,386
GRANT COUNTY SUPERIOR COURT	Superior	301,822	0.42%	97,821
GRAYS HARBOR COUNTY SUPERIOR COURT	Superior	133,221	0.18%	43,177
ISLAND COUNTY SUPERIOR COURT	Superior	178,394	0.25%	57,818
JEFFERSON COUNTY SUPERIOR COURT	Superior	103,118	0.14%	33,420
KING COUNTY SUPERIOR COURT	Superior	1,720,256	2.37%	557,535
KITSAP COUNTY SUPERIOR COURT	Superior	807,593	1.11%	261,741
KITTITAS COUNTY SUPERIOR COURT	Superior	229,911	0.32%	74,514
KLICKITAT COUNTY SUPERIOR COURT	Superior	84,635	0.12%	27,430
LEWIS COUNTY CLERK SUPERIOR	Superior	320,517	0.44%	103,879
LINCOLN COUNTY SUPERIOR COURT	Superior	40,056	0.06%	12,982
MASON COUNTY SUPERIOR COURT	Superior	145,504	0.20%	47,158
OKANOGAN COUNTY SUPERIOR COURT	Superior	172,912	0.24%	56,041
PACIFIC COUNTY SUPERIOR COURT	Superior	94,219	0.13%	30,537
PEND OREILLE CO SUPERIOR COURT	Superior	44,000	0.06%	14,260
PIERCE COUNTY SUPERIOR COURT	Superior	1,958,901	2.70%	634,880
SAN JUAN COUNTY SUPERIOR COURT	Superior	52,166	0.07%	16,907
SKAGIT COUNTY SUPERIOR COURT	Superior	426,009	0.59%	138,070
SKAMANIA COUNTY SUPERIOR COURT	Superior	80,962	0.11%	26,240
SNOHOMISH COUNTY SUPERIOR COURT	Superior	995,867	1.37%	322,760
SPOKANE COUNTY SUPERIOR COURT	Superior	1,067,711	1.47%	346,045
STEVENS COUNTY SUPERIOR COURT	Superior	145,438	0.20%	47,137
THURSTON COUNTY SUPERIOR COURT	Superior	711,741	0.98%	230,675
WAHKIAKUM COUNTY SUPERIOR COURT	Superior	35,770	0.05%	11,593
WALLA WALLA CO SUPERIOR COURT	Superior	244,655	0.34%	79,293

Blake LFO Pool Distribution

Based on Average 10-Year LFO AR Paid, RCW 69.50.4013

Blake LFO Pool Appropriation	23,500,000
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Court Name	Court Level	Average 10-Year AR Paid	Pct Total	Distribute Blake LFO Pool
WHATCOM COUNTY SUPERIOR COURT	Superior	579,087	0.80%	187,682
WHITMAN COUNTY SUPERIOR COURT	Superior	147,170	0.20%	47,698
YAKIMA COUNTY SUPERIOR COURT	Superior	324,091	0.45%	105,038
#1 GRAYS HARBOR DISTRICT COURT	District	492,857	0.68%	159,735
#2 GRAYS HARBOR DISTRICT COURT	District	382,864	0.53%	124,086
ASOTIN DISTRICT COURT	District	228,600	0.32%	74,089
BENTON COUNTY DISTRICT COURT	District	5,153,391	7.11%	1,670,214
BRIDGEPORT DISTRICT COURT	District	134,042	0.18%	43,443
CHELAN COUNTY DISTRICT COURT	District	1,390,211	1.92%	450,567
CLALLAM COUNTY DISTRICT COURT #1	District	957,003	1.32%	310,165
CLALLAM DISTRICT COURT #2	District	203,741	0.28%	66,032
CLARK COUNTY DISTRICT COURT	District	3,807,963	5.25%	1,234,161
COLUMBIA COUNTY DISTRICT COURT	District	63,487	0.09%	20,576
COWLITZ COUNTY DISTRICT COURT	District	1,418,147	1.96%	459,621
DOUGLAS DISTRICT COURT	District	567,563	0.78%	183,947
E. KLICKITAT DISTRICT	District	197,656	0.27%	64,060
FERRY COUNTY DISTRICT COURT	District	72,133	0.10%	23,378
FRANKLIN DISTRICT COURT	District	815,172	1.12%	264,197
GARFIELD COUNTY DISTRICT COURT	District	74,272	0.10%	24,072
GRANT COUNTY DISTRICT COURT	District	1,713,935	2.36%	555,487
ISLAND COUNTY DISTRICT COURT	District	695,638	0.96%	225,456
JEFFERSON DISTRICT COURT	District	360,576	0.50%	116,863
KING COUNTY DISTRICT COURT	District	7,143,893	9.85%	2,315,336
KITSAP DISTRICT COURT	District	2,008,010	2.77%	650,796
LEWIS COUNTY DISTRICT COURT LAW AND JUSTICE CENTER	District	1,196,641	1.65%	387,831
LINCOLN COUNTY DISTRICT COURT	District	289,228	0.40%	93,739
LOWER KITTITAS DISTRICT COURT	District	1,205,037	1.66%	390,552
MASON COUNTY DISTRICT COURT	District	854,857	1.18%	277,059
NORTH PACIFIC DISTRICT COURT PACIFIC COUNTY COURTHOUSE	District	148,705	0.21%	48,195
OKANOGAN COUNTY DISTRICT COURT	District	695,304	0.96%	225,348
OTHELLO DISTRICT COURT	District	291,158	0.40%	94,364
PEND OREILLE DISTRICT COURT	District	217,529	0.30%	70,501
PIERCE COUNTY DISTRICT COURT	District	3,924,250	5.41%	1,271,850
RITZVILLE DISTRICT COURT	District	272,468	0.38%	88,307
SAN JUAN DISTRICT COURT	District	197,016	0.27%	63,853
SKAGIT COUNTY DISTRICT COURT	District	1,279,316	1.76%	414,626

Blake LFO Pool Distribution

Based on Average 10-Year LFO AR Paid, RCW 69.50.4013

Blake LFO Pool Appropriation	23,500,000
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Court Name	Court Level	Average 10-Year AR Paid	Pct Total	Distribute Blake LFO Pool
SKAMANIA COUNTY DISTRICT COURT	District	218,172	0.30%	70,709
SNO CO DIST CT CASCADE DIV	District	1,046,020	1.44%	339,015
SNO CO DIST CT EVERETT DIV	District	1,470,000	2.03%	476,427
SNO CO DIST CT EVERGREEN DIV	District	1,255,465	1.73%	406,896
SNO CO DIST CT SOUTH DIV	District	2,092,879	2.89%	678,302
SOUTH PACIFIC DISTRICT COURT	District	233,059	0.32%	75,534
SPOKANE COUNTY DISTRICT COURT	District	3,419,739	4.72%	1,108,337
STEVENS COUNTY DISTRICT COURT	District	329,304	0.45%	106,728
THURSTON COUNTY DISTRICT COURT	District	2,069,723	2.85%	670,797
UPPER KITTITAS DISTRICT COURT	District	515,068	0.71%	166,933
W. KLICKITAT DISTRICT	District	120,021	0.17%	38,899
WAHIAKUM DISTRICT COURT	District	104,461	0.14%	33,856
WALLA WALLA DISTRICT COURT	District	489,382	0.67%	158,609
WHATCOM COUNTY DISTRICT COURT	District	1,877,628	2.59%	608,539
WHITMAN COUNTY DISTRICT COURT	District	797,928	1.10%	258,609
YAKIMA CO DIST CT - YDC -	District	1,811,412	2.50%	587,079
	Total	72,508,478	100.0%	23,500,000

EXHIBIT 2

INTERAGENCY REIMBURSEMENT AGREEMENT IAA22173
BETWEEN
WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS
AND
KING COUNTY

THIS REIMBURSEMENT AGREEMENT (Agreement) is entered into by and between the Administrative Office of the Courts (AOC) and King County, for the purpose of reimbursing King County (County) for extraordinary costs of resentencing and vacating sentences under *Blake* and for the cost of refunding legal financial obligations (LFOs) under the *Blake* decision.

1. PURPOSE

The purpose of this Agreement is to provide reimbursements to assist Counties with extraordinary judicial, prosecutorial, or defense-related costs of resentencing and vacating the sentences of defendants whose convictions or sentences in Superior Court and District Court are affected by the *State v. Blake* decision and to provide reimbursements to assist Counties who have reimbursed or will reimburse LFOs to defendants whose convictions or sentences in Superior Court and District Court are affected by the *State v. Blake* decision.

2. REIMBURSEMENT

- A. Extraordinary Expenses Reimbursement. AOC shall reimburse the County up to a maximum of **\$5,051,200** for extraordinary judicial, prosecutorial, or defense-related costs of resentencing and vacating the sentences of defendants whose convictions or sentences are affected by the *State v. Blake* decision incurred during the period of February 25, 2021 to June 30, 2022. No reimbursement will be made under this Agreement for resentencing or vacation costs incurred after June 30, 2022, and any reimbursement requests in excess of this amount will be denied. If additional funding is appropriated by the Legislature for these purposes, the amount of reimbursement under this Agreement may be increased by agreement of the parties.

- B. LFO Reimbursement. AOC will reimburse the County up to a maximum of **\$2,872,871** for payments made by the County during the period February 25, 2021 to June 30, 2022 pursuant to court order which required reimbursement by the State of Washington of legal and financial obligations. No reimbursement will be made under this Agreement for resentencing or vacation costs incurred after June 30, 2022, and any reimbursement requests in excess of this amount stated in this Section 2 (b) will be denied. If additional funding is appropriated by the Legislature for these purposes, the amount of reimbursement under this Agreement may be increased by

agreement of the parties. Nothing in this Agreement requires the County to make payments pursuant to a court order when the funds available for reimbursement are less than the amount of the payment.

- C. General. AOC shall provide reimbursement to the County for approved and completed reimbursements by warrant or account transfer within 30 days of receipt of a properly completed A-19 invoice and the completed data report as required below.

3. PERIOD OF PERFORMANCE

Performance under this Agreement begins **July 1, 2021**, regardless of the date of execution, and ends on **June 30, 2022**. The period of performance may be amended by mutual agreement of the parties if the Legislature provides additional funding or time for these purposes.

4. TERMS OF REIMBURSEMENT

a) The County shall request reimbursement as follows:

1. The County will submit its A-19 invoices monthly to countyreimbursements@courts.wa.gov. A-19 invoices submitted under this agreement must include:
 - a. Payment documents from the County indicating the amounts expended, the recipients, and the date of expenditure.
 - b. Sufficient information to allow AOC to determine that the costs reimbursed are extraordinary judicial, prosecutorial, or defense-related costs of resentencing and vacating the sentences of defendants whose convictions or sentences are affected by the *State v. Blake*.
 - c. Proper coding for expenses under both 2.A. and B. For King County, expenses under 2.A. must be coded **40117**, and reimbursement under 2.B. must be coded **40100**.
2. The County shall provide a monthly report to AOC that must contain at a minimum:
 - a. A list of any case numbers associated with the services provided;
 - b. A breakdown of expenses by judicial, prosecutorial, and defense-related costs;
 - c. The amount of LFOs reimbursed, with the case number associated with that amount.
 - d. Any positions supported by these funds, broken down by judicial, prosecutorial, and defense-related positions; and
 - e. Data, including case numbers and aggregate data on the number and type of cases:

- i. Vacated under *Blake*;
 - ii. Resentenced under *Blake*; and
 - iii. Being worked on under *Blake*.
- b) By May 1, 2022, the County agrees to report any allocated funds under either 2. A. or B. that it will be unable to spend during the term of the contract, or any additional funds it anticipates needing during the term of the contract should additional funds become available. AOC reserves the right to reallocate funds that are reported to be unable to be spent.

5. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by agreement of the parties. Such amendments are not binding unless they are in writing and signed by personnel authorized to bind each of the parties.

6. GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement must be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency will be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. This Agreement; and
- c. Any other provisions of the agreement, including materials incorporated by reference.

7. WAIVER

A failure by either party to exercise its rights under this Agreement does not preclude that party from subsequent exercise of such rights and is not a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

8. SEVERABILITY

If any provision of this Agreement, or any provision of any document incorporated by reference is held invalid, such invalidity does not affect the other provisions of this Agreement which can be given effect without the invalid provision and to this end the provisions of this Agreement are declared to be severable.

EXHIBIT 3



July 19, 2021

Ms. Dawn Marie Rubio
State Court Administrator
Administrative Office of the Courts
1112 Quince St. SE
P.O. Box 41160
Olympia, WA 98504-1170

SENT VIA ELECTRONIC MAIL

Re: Plan for Reimbursement of County Expenditures related to the Blake decision

Ms. Rubio:

Thank you for your June 29th response to our letter expressing concerns regarding the distribution of Blake funds. Based on your response, we have outstanding concerns regarding the Administrative Office of the Courts' (AOC) approach to and interpretation of the legislative proviso contained in Sec. 115 of ESB 5092. We respectfully ask to meet with you about these concerns. In the meantime, we have outlined our most pressing issues below.

First, we recognize that AOC has been put in a difficult position because the legislative appropriation for the 2021-2022 refund of legal and financial obligations (LFOs) is substantially less than the obligation likely to be incurred by the State. That deficit, however, is not something that should be shifted to counties through the design of a reimbursement plan. The fundamental premise of the distribution of the Blake LFO refund money is that the obligation belongs to the State, and if the counties advance Blake LFO refunds to defendants on the State's behalf, counties must be assured that they will be reimbursed in full.

Second, it is our understanding that (1) AOC will be reimbursing counties that advance payment on behalf of the State for LFOs based on the percentage of the state total of paid LFOs over a 10-year "lookback period," and (2) that AOC plans to reimburse both cities and counties.

We do not understand the use or efficiency of a "lookback period" of 10 years, and if such a period is used it will skew the reimbursement in a manner that is unfair to defendants and counties. We understand you have good information, readily available, regarding the actual amount of LFOs paid by offenders in each county from the mid-1980s to date, a period of about 40 years. This 40-year period is a better choice to use for determining the allocation among the counties. AOC should be using this more comprehensive set of data rather than the limited timeframe currently suggested. The LFO statutes, including those regarding payment of LFOs by indigent offenders, dramatically changed about 10 years ago concerning the imposition and payment of LFOs. Using a limited look back greatly skews what each county should be allocated. For example, we can see that Blake only

LFOs paid in Benton County, going back to 1980, amount to about \$7.2 million. However, during the 10-year lookback period that AOC has proposed, Benton County only collected \$2.6 million on those Blake only cases.

Third, the LFO proviso states that it was specifically allocated to “assist counties” in refunding LFOs. There is nothing in the proviso that grants expenditure authority for AOC to allocate Blake funds to cities. Therefore, AOC must limit Blake reimbursement to counties.

Fourth, it is also our understanding that, with regard to the resentencing and vacation proviso funds, AOC plans to use a maximum reimbursement amount for each county based on a county’s proportional percentage of the most *current* Department of Corrections (DOC) Blake population data. The scope of this reimbursement should not be limited to those *currently* in DOC custody or under supervision. Rather, it should include ALL individuals with Blake cases charged under the statute and/or those who have a drug conviction in their offender score – this should include those from county district, superior, and juvenile courts. (In fact, the same argument can be made for the reimbursement of LFOs.)

Fifth, we understand that AOC will request counties sign contracts with AOC in order to receive Blake LFO reimbursement or extraordinary expenditure funds. While a written document outlining procedures for the County Auditors and County Clerks is appropriate, we do not understand the need or purpose of a contract. For refund of LFOs, all payments will be made pursuant to court orders, which should satisfy any writing requirement. Only the county legislative authority has authority to enter into such contracts. Further, the Blake budget provisos do not require counties to sign a contract in order to receive these funds. The \$44.5 million proviso states that AOC “must establish an application process for county clerks to seek funding” and that AOC “must provide grants to counties” for this purpose. The LFO proviso, in the amount of \$23.5 million, provides that AOC must establish an LFO “aid pool to assist counties that are obligated to refund” LFOs and that county clerks may “apply to the administrative office of the courts for a grant from the pool” for these refunds. We believe it is unnecessary to enter into a contract with the legislative authority in order for counties to be reimbursed for payments they advance on behalf of the State.

Sixth, you note in your June 29th letter that there was broad consensus to set up a scheduling referee and triage defenders to help with Blake. You are not wrong. However, the disagreement with this approach is not whether to implement such a system, but rather with how it should be funded. As we stated previously, we do not believe this system should be paid for out of county proviso funds. Those funds are already insufficient without assigning uses for them that are not recognized by the Legislature.

Seventh, and finally, we disagree with the statement that AOC is simply “the mechanism through which funds are being distributed” to counties, and should not be responsible for securing additional funding for counties. We believe that by putting AOC in the position of acting for the State, the Legislature has placed AOC in a central role for securing all the funding needed to accomplish the task that has begun. In fact, RCW 2.56.030(5) provides that AOC shall “[p]repare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto.” The court system, as you know, has already been severely impacted by the backlog created by COVID-19. The Blake decision creates

an additional layer of backlog and complication. Counties will eventually reach a point at which they can no longer pay the extraordinary costs associated with Blake, further ensuring court backlog to continue indefinitely. Therefore, we believe it is necessary for AOC to *lead* the efforts to seek additional funding to implement the results of the Blake decision and to ensure we have a judicial system in Washington State that can meet not just its normal demands, but also the extraordinary costs from both the COVID-19 pandemic and the Blake decision.

Thank you for your consideration and we look forward to meeting with you soon.

Sincerely,

/s/

Eric Johnson
Executive Director
Washington State Association of Counties

/s/

Russell Brown
Executive Director
Washington Association of Prosecuting Attorneys



/s/

Kimberly A. Allen
President
Washington State Association of County Clerks



/s/

Shoona Riggs
President
Washington State Association of County Auditors



Cc: Sen. Christine Rolfes and Ways & Means Committee Leadership
Rep. Timm Ormsby and Appropriations Committee Leadership
Ramsey Radwan, AOC
Scott Merriman, OFM
Larry Jefferson, OPD
Trisha Newport, DOC
Judge Laura Riquelme, SCJA

EXHIBIT 4



DANIEL T. SATTERBERG
PROSECUTING ATTORNEY



**Snohomish County
Prosecuting Attorney
Adam Cornell**

April 2, 2021

The Hon. Bob Ferguson
Washington Attorney General
1125 Washington Street S.E.
P.O. Box 40100
Olympia, Washington 98504

Re: *Civil Survival Project v. State of Washington, King County and Snohomish County*, King Cy. Sup. Ct. No. 21-2-03266-1 SEA.

Dear General Ferguson:

We are writing on behalf of King County and Snohomish County to tender defense of the above case, including both the duties to defend and indemnify, to the State of Washington. A copy of the First Amended Complaint (“FAC”) is attached for your convenience (“lawsuit”).

The tendered lawsuit is a class action seeking the refund of legal financial obligations (“LFOs”) and the payment of damages related to convictions for drug possession under RCW 69.50.4013. As you are aware, in *State v. Blake*, ___ Wn.2d ___, 481 P.3d 521 (Feb. 25, 2021), the Washington Supreme Court declared the drug possession statute unconstitutional under the due process clauses of our state and federal constitutions because it exceeds Washington’s police powers. The drug possession statute has existed in its current form with the unconstitutional language since 1971 – codified at various times as RCW 69.50.401(c), RCW 69.50.401(d) and RCW 69.50.4013. Over this 50 year period, the State of Washington has convicted well over 100,000 persons for drug possession, which is generally a Class C felony. All of these convictions are now open to challenge. See *Journigan v. Duffy*, 552 F.2d 283, 289 (9th Cir. 1977) (“The statute, if unconstitutional, would be void and the conviction a nullity ab initio.”)

Any and all actions taken by King and Snohomish County in connection with the drug possession statute were taken as agents for the State of Washington through the actions of prosecutors, judges, and county clerks. First, county prosecutors act as agents of the State in prosecuting drug possession cases. Under Washington Const. art. IV, sec.27, the “style of all process shall be, ‘The State of Washington,’ and all prosecutions shall be conducted in its name

Bob Ferguson
Washington Attorney General
Page 2

and by its authority.” Drug possession charges are filed and prosecuted by the county prosecutor, who is fulfilling a function mandated by state law and acting as an agent of the state in prosecuting crimes. *E.g. Thurston Cty. v. Gorton*, 85 Wn.2d 133, 137, 530 P.2d 309, 312 (1975)(“[T]he prosecutor must conceptually be treated as an agent of the State and not the County.”); *Whatcom Cty. v. State*, 99 Wn. App. 237, 250, 993 P.2d 273, 280 (2000). By statute, the prosecutor is required to appear for the State of Washington and prosecute all criminal actions where the state is a party. *See* RCW 36.27.020 (Prosecutor “shall . . . (3) Appear for and represent the state, county, and all school districts subject to the supervisory control and direction of the attorney general in all criminal and civil proceedings in which the state or the county or any school district in the county may be a party; (4) Prosecute all criminal and civil actions in which the state or the county may be a party, defend all suits brought against the state or the county, and prosecute actions upon forfeited recognizances and bonds and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or the county.”). In findings attached to RCW 36.17.020, the Legislature finds that prosecutors “function[] as . . . a state officer in pursuing criminal cases on behalf of the state of Washington.”

Second, Superior Court judges are State officials for all functions relevant to the lawsuit. All felony drug possession cases are tried before the Superior Court for the State of Washington. Although partially paid by counties, Superior Court Judges are state officers. *Riddle v. Elofson*, 193 Wn.2d 423, 428, 439 P.3d 647, 650 (2019). Any resulting conviction for drug possession, including the imposition of any penalties and the payment of LFOs, is entered under the authority of the Superior Court through a judgment and sentence. *See Ralph v. State Dep't of Nat. Res.*, 182 Wn.2d 242, 252, 343 P.3d 342, 347 (2014) (Explaining that Washington Constitution establishes one Superior Court whose jurisdiction does not vary by county.). All penalties that the Superior Court imposes for a drug possession conviction are within the exclusive province of the State. *See* RCW 69.50.608 (“The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act.”). Superior Courts impose LFOs on behalf of the State. *See* RCW 9.94A.030 (“‘Legal financial obligation’ means a sum of money that is ordered by a superior court of the state of Washington...”). LFOs are set exclusively by state statute. *See* RCW 9.94A.760.

Finally, the County Clerk acts as an agent of the state with regard to the matters covered by the lawsuit. By statute, the County Clerk is responsible for maintaining Superior Court records, including the judgment and sentence in a drug possession case. RCW 36.23.030. From 1971 through 2003, the Clerk’s role with LFOs was simply to reflect payments received by the court in the court file and disburse those payments as directed by statute. *See* Laws of 1989, ch. 252 §3. The Department of Corrections (“DOC”) or its predecessor agency was responsible for assisting the Superior Court in establishing a monthly payment schedule and enforcing those payments. *Id.* From 2003 to the present, the Legislature has directed County Clerks “to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative office for the courts.” Laws of 2003, ch. 379 §13. Acting for the State’s benefit in cooperation with DOC, the Legislature intended this new approach to “promote an increased and more efficient collection of legal financial obligations and, as a result,

Bob Ferguson
Washington Attorney General
Page 3

improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in particular, crime victims whose restitution is dependent upon the collections.” *Id.* (emphasis added). As an agent of the State to improve LFO collections, the Clerk is paid for his or her efforts. *See* RCW 36.23.110 (establishment of annual funding formula).

Although the County Clerk facilitates LFO collection, the State directs how LFOs are distributed by the clerks. For example:

- CVPA paid under RCW 7.68.035;
- VUCSA fine under RCW 69.50.430;
- DNA fee paid under RCW 43.43.7541;
- State crime lab fee paid under RCW 43.43.690;
- Local drug fund fee paid under RCW 9.94A.030 and .760.

The Washington Supreme Court, through the Minority and Justice Commission, promulgates a reference guide for the imposition and collection of LFOs. *See* <http://www.courts.wa.gov/content/manuals/Superior%20Court%20LFOs.pdf>. Clerks cannot collect more or less than what the Legislature provides and the Superior Court specifies. In short, the County Clerk serves a ministerial role as an agent of the state in collecting and distributing LFOs under the direction of state statutes and state judges.

Because the recently filed lawsuit seeks to impose liability for functions that counties perform as agents of the state, black letter principles of agent/principal law require the State of Washington to fully defend and indemnify King and Snohomish Counties. *Hollingsworth v. Perry*, 570 U.S. 693, 714, 133 S. Ct. 2652, 2667, 186 L. Ed. 2d 768 (2013) (Duty of principal to defend and indemnify agent is “hornbook law.”). As pointed out in the Restatement (Third) of Agency § 8.14 (2006):

Rights to indemnification in connection with litigation. In the absence of an express contractual provision that requires the principal to indemnify an agent in connection with litigation against the agent, *a principal has a duty to indemnify the agent against expenses and other losses incurred by the agent in defending against actions brought by third parties if the agent acted with actual authority in taking the action challenged by the third party's suit.*

(Emphasis added). Washington Courts regularly cite the Restatement of Agency. *See e.g. Richardson v. Dep't of Labor & Indus.*, 6 Wn. App. 2d 896, 908, 432 P.3d 841 (2018) (citing restatement). Moreover, in light of the restatement, there is no need for a statute specifically recognizing the State’s duty to defend and indemnify its agents under the circumstance of this lawsuit. *See Thurston County*, 85 Wn.2d at 138 (The Legislature is aware of the “existing general law on the subject.”).

Bob Ferguson
Washington Attorney General
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Because this litigation is ongoing, we would appreciate your response to this tender of the lawsuit within seven (7) business days. We will continue to defend this lawsuit pending your decision, but will expect full compensation. We appreciate your consideration of this tender. Further, we look forward to cooperating with your office's defense of this matter.

Thank you.

DocuSigned by:
Kevin Wright
5A9283CDA31444D...

Kevin Wright
Chief Civil Deputy Prosecutor
King County Prosecuting Attorney's Office
Civil Division
King County Courthouse
516 Third Avenue, W400
Seattle, WA 98104
206-477-1120

DocuSigned by:
Jason Cummings
14429C41A12B493...

Jason Cummings
Chief Civil Deputy Prosecutor
Snohomish County Prosecuting Attorney's
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Everett, WA 98201-4060
(425) 388-6330

Cc (w/o attachments):

David Hackett, King County Sr. DPA
T. Shane Harrison, King County DPA
George Marsh, Snohomish County DPA
Bridget Casey, Snohomish County DPA
Joseph Genster, Snohomish County DPA
Paul M. Crisalli, AAG

HON. REGINA S. CAHAN

FILED
2021 MAR 30 02:15 PM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 21-2-03266-1 SEA

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

THE CIVIL SURVIVAL PROJECT,
individually and on behalf of its Members and
Clients, and Irene Slagle, Christina Zawaideh,
and Julia Reardon, individually and on behalf
of the Proposed Plaintiff Class,

Plaintiffs,

v.

STATE OF WASHINGTON, KING
COUNTY, and SNOHOMISH COUNTY,
individually and on behalf of the Proposed
Defendant Class,

Defendants.

No. 21-2-03266-1 SEA

**FIRST AMENDED
CLASS ACTION COMPLAINT**

Plaintiff The Civil Survival Project (“CSP”), on behalf its members and clients, and
Plaintiffs Irene Slagle, Christina Zawaideh, and Julia Reardon (“Class Plaintiffs”) (together, with
CSP, “Plaintiffs”), allege as follows:

I. INTRODUCTION

1.1 Nature of Action. This Action seeks to restore to thousands of Washington
Residents monies collected, received, and retained by – or owed to – Defendants State of
Washington (“Washington”), King County, and Snohomish County (together, “Defendants”),
and 37 other Washington Counties (“Defendant Class members”), as a result of convictions under

1 Washington's strict liability drug possession statute, RCW 69.50.4013,¹ and for further
2 monetary, equitable and injunctive relief necessary to make impacted individuals whole with
3 respect to the harms they suffered.

4 1.2 As the Supreme Court explained in *State of Washington v. Blake*, RCW
5 69.50.4013 "makes possession of a controlled substance a felony punishable by up to five years
6 in prison, plus a hefty fine [of up to \$10,000]; leads to the deprivation of numerous other rights
7 and opportunities; and does all this without proof that the defendant even knew they possessed
8 the substance." No. 96873-0, Wn.2d, 2021 WL 728382, at *1 (Feb. 25, 2021) (en banc).

9 1.3 Such "harsh penalties for such innocent passivity" are unconstitutional, *id.* at *7,
10 resulting in the invalidation of the statute and rendering illegal the convictions of countless
11 Washington residents.

12 1.4 Compounding the harm, in Washington, much like the rest of the United States,
13 drug convictions have hit communities of color disproportionately. Black, Indigenous, and
14 People of Color are impacted disparately by drug convictions. As the *Blake* Court noted, RCW
15 69.50.4013 "has affected thousands upon thousands of lives, and its impact has hit young men of
16 color especially hard." *Id.* at *10.

17 1.5 Judicial intervention is especially crucial to resolve this serious issue impacting
18 thousands of Washington residents. As noted by the Washington Department of Corrections,
19 including most recently in a March 12, 2021 memorandum, in order to address the impact of
20

21 _____
22 ¹ Any and all references to RCW 69.50.4013 in this Complaint include prior versions of
23 Washington's simple drug possession felony statute that imposed strict liability, including RCW
24 69.50.401(d). As the Supreme Court noted, Washington's "legislature intended drug possession
to be a strict liability felony" since at least as early as 1981. *State of Washington v. Blake*, No.
96873-0, Wn.2d, 2021 WL 728382, at *2-3 (Feb. 25, 2021) (en banc) (citing *State v. Cleppe*,
96 Wn.2d 373, 635 P.2d 435 (1981)).

1 *Blake*, “further direction from the courts continues to be necessary in the process of determining
2 next steps.”²

3 1.6 Accordingly, Plaintiff CSP brings claims on its own behalf, and on behalf of its
4 members and clients, and Class Plaintiffs bring claims on their own behalf and on behalf of a
5 class of Washington residents pursuant to Civil Rule (“CR”) 23(a) and (b)(2), (b)(3) and (c)(4),
6 to recover legal financial obligations (“LFOs”)³ wrongfully collected, received, and retained by
7 – or owed to – the Defendants and Defendant Class members, and for further monetary, equitable
8 and injunctive relief necessary to make impacted individuals whole with respect to the harms
9 they suffered.

10 II. JURISDICTION AND VENUE

11 2.1 The Superior Court of Washington has jurisdiction over Plaintiff’s claims
12 pursuant to RCW 2.08.010.

13 2.2 Pursuant to RCW 4.12.025(1), venue in King County is appropriate because
14 Defendant Washington State and Defendant King County reside in this county. Pursuant to RCW
15 36.01.050, venue in King County is further appropriate because this action is brought against
16 King County. Pursuant to RCW 36.01.050, venue is also appropriate as to Snohomish County
17 because, King County is one of the two nearest judicial districts. Pursuant to RCW 4.92.010(1)
18 and (2), venue is further appropriate as to Washington because CSP’s principal place of business
19 is in King County and a substantial part of the cause of action arose in King County.
20

21 ² Washington Department of Corrections, “Update on Supreme Court Ruling That Voids
22 Statute Has Potential Implications for Sentences Imposed by Courts,” March 12, 2021,
available at <https://www.doc.wa.gov/news/2021/03122021p.htm>.

23 ³ Under Washington law: “‘Legal financial obligation’ means a sum of money that is
24 ordered by a superior court of the state of Washington for legal financial obligations which may
include . . . court costs, county or interlocal drug funds, court-appointed attorneys’ fees, and
costs of defense, fines, and any other financial obligation that is assessed to the offender as a
result of a felony conviction.” RCW 9.94A.030.

III. PARTIES

3.1 Plaintiff CSP is a statewide project in Washington dedicated to advancing the rights and interests of formerly incarcerated people. CSP is a project at the Public Defender Association, a not-for-profit corporation that advances alternative approaches to public safety, health and order that reduce reliance on punitive systems and foster healing and stabilization of both individuals and communities.

3.1.1 CSP works with Washington residents with criminal convictions to remove financial, political and legal barriers to reentry, and to alleviate the collateral consequences of mass incarceration – expending substantial resources on these efforts.

3.1.2 CSP is led by and for formerly incarcerated individuals.

3.2 Class Plaintiff Irene Slagle (“Plaintiff Slagle” or “Ms. Slagle”) is a citizen of Washington, and a resident of Snohomish County. Until 2003, she was a resident of King County. On or about August 12, 2002, she was convicted of felony drug possession under RCW 69.50.4013, and forced to pay substantial fees, penalties, and other fines, including LFOs, to Defendants, in King County. She last paid LFOs to King County on or around February 9, 2011.

3.2.1 After her last criminal conviction in 2002, Ms. Slagle underwent treatment for her drug addiction and later secured employment as an intake case manager at Evergreen Manor Treatment Center (now Evergreen Recovery Center) in Everett. For nearly eight years, Ms. Slagle worked in this role to serve others in recovery, often as the first person those individuals would come into contact with at the recovery center. After her tenure at Evergreen Manor Treatment Center, Ms. Slagle worked as a Behavioral Health Navigator at Catholic Community Services, where she assisted individuals experiencing homelessness, addiction, and mental health issues access important social services.

1 3.2.2 For approximately the last four years, Ms. Slagle has worked for
2 Snohomish County Human Services as a Community Services Counselor supporting the
3 County's law-enforcement embedded social worker team, which similarly assists individuals
4 experiencing homelessness, addiction, and mental health issues to access social services.

5 3.3 Class Plaintiff Christine Zawaideh ("Plaintiff Zawaideh" or "Ms. Zawaideh") is a
6 citizen of Washington, and a resident of Snohomish County. In 2013, 2014, and in or around
7 September 2015, she was convicted under RCW 69.50.4013, and forced to pay substantial fees,
8 penalties, and other fines, including LFOs, to Defendants, in Snohomish County. Ms. Zawaideh
9 is currently making payments on her LFO balances, including significant accumulated interest.

10 3.3.1 Since her release from custody on or about October 31, 2016, Ms.
11 Zawaideh sought treatment for her addiction and has sustained no further criminal charges. Ms.
12 Zawaideh maintained steady employment for three years – in fact continuing in a position at
13 MOD Pizza that she began while on work-release – and then, in October 2019, transitioned into
14 a role as a Certified Peer Counselor at a social services agency in Everett, Washington. Ms.
15 Zawaideh uses her past experiences to help give back to those struggling with addiction and
16 entanglement in the justice system, and she specializes in particular in working with at-risk youth.
17 Ms. Zawaideh also engages in broader advocacy efforts on behalf at-risk communities in
18 Snohomish County, including participating in a panel event relating to addiction and recovery in
19 2019 with Mayor of Everett, representatives from area police and fire departments, and a State
20 Representative.

21 3.3.2 Ms. Zawaideh has two children – a three month old and a three year old –
22 and her outstanding LFOs place a significant financial burden on her and her family.

23 3.4 Class Plaintiff Julia Reardon ("Plaintiff Reardon" or "Ms. Reardon") is a citizen
24 of Washington, and a resident of Snohomish County. On or about September 26, 2014, she was

1 convicted under RCW 69.50.4013, and forced to pay substantial fees, penalties, and other fines,
2 including LFOs, to Defendants, in Snohomish County. When the LFOs were imposed on Ms.
3 Reardon, she was homeless, suffering from drug addiction, and unemployed. Over the life of the
4 debt, the interest on Ms. Reardon's debt reached roughly doubled the amount of her principal
5 balance. She last paid LFOs to Snohomish County on or about June 2, 2020.

6 3.4.1 Since her last release from custody in 2014, Ms. Reardon sought treatment
7 for her addiction and has sustained no further criminal charges. After her release from custody,
8 Ms. Reardon was homeless yet was still required to pay a monthly fee for her LFOs. Fortunately,
9 Ms. Reardon participated in the Snohomish County Sheriff's "Office of Neighborhoods"
10 program, which helped her address her drug addiction and find recovery housing in the
11 Snohomish County Diversion Center.

12 3.4.2 Ms. Reardon then, like the other Plaintiffs, began using her past
13 experiences to give back and help others who have struggled with drug addiction and
14 entanglement in the criminal justice system to overcome those challenges, working first at the
15 Diversion Center and then as a Case Manager and Social Services Coordinator for Pioneer
16 Human Services in Everett. In her current role, Ms. Reardon coordinates partnerships for Pioneer
17 Human Services with allied non-profit and government agencies, including organizations and
18 agencies that assist with housing, employment, credit and other social services. She also is an
19 active leader in her church and a State Director for Oxford House, a national non-profit
20 organization that supports recovery housing for people battling addiction and homelessness.

21 3.5 Defendants are governmental entities that have instituted a policy and practice of
22 collecting, receiving, and retaining LFOs as a result of convictions under RCW 69.50.4013.
23 Upon information and belief, Defendants continue to seek payments of LFOs through various
24 collection efforts (including interest) based on convictions under RCW 69.50.4013.

1 convictions, according to the Washington Department of Corrections. The 39 counties have each
2 generated a substantial fraction of those convictions historically, according to recent analysis by
3 the American Equity & Justice Group.⁴ The members of the Plaintiff and Defendant Classes are
4 so numerous that joinder of all members is impracticable. Moreover, the disposition of the claims
5 in a single action will provide substantial benefits to all parties and the Court.

6 4.3 Commonality. There are numerous questions of law and fact common to
7 Plaintiffs, Plaintiff Class members, Defendants, and Defendant Class members. These questions
8 include, but are not limited to, the following:

9 (a) Whether Defendants and the Defendant Class have engaged in a common course
10 of wrongfully collecting, receiving, and retaining LFOs, against the Plaintiff Class;

11 (b) The nature and extent of class-wide injury and the measure of compensation for
12 such injury;

13 (c) Whether declaratory relief is warranted; and

14 (d) Whether injunctive and other equitable relief is warranted.

15 4.4 Typicality. Class Plaintiffs' claims are typical of the claims of the Plaintiff Class.
16 Class Plaintiffs were convicted under RCW 69.50.4013, and had LFOs imposed on them by
17 Defendants, and thus are members of the Plaintiff Class. Class Plaintiffs' claims, like the claims
18 of the Plaintiff Class, arise out of the same common course of conduct by Defendants and are
19 based on the same legal, equitable and remedial theories. Similarly, Defendants' claims are
20 typical of the claims of the Defendant Class. Defendants King County and Snohomish County
21

22
23 ⁴ American Equity and Justice Group, "Disproportionality Analysis: Representation of
24 Race in Drug Offense Cases Compared to Representation of WA County Population," available
at <https://www.thestranger.com/slog/2021/03/17/55910514/new-data-analysis-exposes-wide-racial-disparities-in-drug-possession-convictions-across-washington>.

1 are counties like the Defendant Class. All Defendants and Defendant Class members imposed,
2 collected, received, and retained LFOs from Plaintiffs and the Plaintiff Class.

3 4.5 Adequacy. Class Plaintiffs will fairly and adequately protect the interests of the
4 Plaintiff Class. Class Plaintiffs have retained competent and capable attorneys who have
5 significant experience in complex class action litigation, and its intersection with the criminal
6 legal system. Class Plaintiffs and their counsel are committed to prosecuting this action
7 vigorously on behalf of the Class and have the financial resources to do so. Neither Class
8 Plaintiffs nor their counsel have interests that are contrary to or that conflict with those of the
9 Plaintiff Class. In turn, Defendants will fairly and adequately protect the interests of the
10 Defendant Class because, among other reasons, the interests of the Defendants to defend against
11 Plaintiffs' claims are sufficiently similar to the interests of the members of the Defendant Class.

12 4.6 Declaratory/Injunctive Relief. Through imposing, collecting, receiving, and
13 retaining LFOs, as a result of convictions under RCW 69.50.4013, and other actions, Defendants
14 and the Defendant Class have acted or refused to act on grounds generally applicable to Plaintiffs
15 and the Plaintiff Class, thereby making appropriate classwide declaratory and injunctive relief.

16 4.7 Predominance. Defendants and Defendant Class members have engaged in a
17 common course of conduct toward Class Plaintiffs and members of the Plaintiff Class, including
18 by imposing, collecting, receiving, and retaining LFOs as a result of convictions under RCW
19 69.50.4013. The common issues arising from this conduct that affect Class members predominate
20 over any individual issues, and the calculation of damages will be straightforward and
21 mechanical. Adjudication of these common issues in a single action has important and desirable
22 advantages of judicial economy.

23 4.8 Superiority. Class Plaintiffs and Class members have suffered and will continue
24 to suffer harm and damages as a result of Defendants' and Defendant Class members' unlawful

1 and wrongful conduct. Absent a class action, however, most Class members (both individuals
2 and counties) likely would find the cost of litigating these claims prohibitive. Class treatment is
3 superior to multiple individual suits or piecemeal litigation because it conserves judicial
4 resources, promotes consistency and efficiency of adjudication, provides a forum for small
5 claimants, deters illegal activities, and because under RCW 36.01.050, the Defendant Class
6 members would likely have to be sued individually absent the class mechanism. There will be no
7 significant difficulty in the management of this case as a class action. The Plaintiff Class
8 members are readily identifiable from Defendants' records, and the Defendant Class members
9 have been identified above.

10 4.9 Issue Class. Class Plaintiffs also seek, in the alternative, certification of an
11 issue class, including as to the liability of Defendants and Defendant Class members.

12 V. SUMMARY OF FACTUAL ALLEGATIONS

13 5.1 Common Course of Conduct: Unjust Enrichment/Restitution/Money Had and
14 Received. Upon a conviction for violations under RCW 69.50.4013, Defendants and Defendant
15 Class members impose certain LFOs, some of which are mandatory, on those convicted pursuant
16 to this statute that generally includes fines, fees, and costs. Defendants and Defendant Class
17 members have engaged in a common course of wrongfully collecting, receiving, and retaining
18 LFOs from individuals convicted under RCW 69.50.4013. Defendants and Defendant Class
19 members still seek to collect these monies, hold these monies or have expended them for their
20 own purposes, and, to the best of Plaintiff's knowledge, have not returned them. In addition,
21 Defendants and Defendant Class members seek the payment of LFOs through various collection
22 efforts including the use of third-party collection agencies.

23 5.1.1 Class Plaintiffs and Plaintiff Class members (including clients and
24 members of CSP) have paid certain LFOs to the Superior Courts of the Defendant and Defendant

1 Class member Counties, some of which are then transferred to the State of Washington and some
2 to the Defendant and Defendant Class member Counties, under legal compulsion because of their
3 convictions under RCW 69.50.4013.

4 5.1.2 Given the Washington Supreme Court's decision in *Blake*, the obligation
5 to pay was unlawfully imposed because the predicate convictions were unconstitutional, and
6 these funds must be restored – in equity, good conscience, and justice.

7 5.1.3 Defendants and Defendant Class members have charged, collected,
8 received, and retained such unwarranted payments from Class Plaintiffs and Plaintiff Class
9 members (including CSP's clients and members), and have not returned them, such that
10 Defendants and Defendant Class members have been unjustly enriched and are actively seeking
11 further unjust enrichment by continuing to pursue LFO payments.

12 5.1.4 Class Plaintiffs and Plaintiff Class members (including CSP's clients and
13 members) have consequently also been "depriv[ed] of numerous other rights and
14 opportunities[.]" *Blake*, 2021 WL 728382, at *1, which also must be restored.

15 5.2 Common Course of Conduct: Rescission. Defendants and Defendant Class
16 members and Plaintiffs and Plaintiff Class members entered into contractual plea (and other)
17 agreements that were premised on a mistake: that RCW 69.50.4013 is constitutional. As a result
18 of that mistake, Defendants and Defendant Class members wrongfully collected, received, and
19 retained LFOs from Plaintiffs and Plaintiff Class members convicted under RCW 69.50.4013.
20 These LFOs must be restored to Plaintiffs and Class members, and Defendants and Defendant
21 Class members must take any and all other actions required to restore Plaintiffs and Plaintiff
22 Class members to their pre-contract positions.

23 5.2.1 Defendants and Defendant Class members independently believed that
24 RCW 69.50.4013 was constitutional, which was a mistake.

1 5.2.2 Plaintiffs and Plaintiff Class members independently believed that RCW
2 69.50.4013 was constitutional, which was a mistake.

3 5.2.3 As a result of these mistakes, Defendants and Defendant Class members
4 and Plaintiffs and Plaintiff Class members entered into plea (and other) agreements that resulted
5 in Plaintiffs and Plaintiff Class members paying LFOs and Defendants and Defendant Class
6 Members collecting, receiving, and retaining LFOs.

7 5.2.4 These mistakes changed the bargain for Plaintiffs and Plaintiff Class
8 members, such that Plaintiffs and Plaintiff Class members would not have entered into
9 agreements resulting in the imposition of LFOs if they had been aware that RCW 69.50.4013
10 was unconstitutional.

11 5.2.5 Plaintiffs and Plaintiff Class members had no reason to think the
12 Washington State Supreme Court was going to declare RCW 69.50.4013 unconstitutional when
13 they entered into such agreements with Defendants and Defendant Class members.

14 5.3 Types of Harms Suffered by Individuals. As a result of the Defendants' and
15 Defendant Class members' actions, Plaintiffs and Plaintiff Class members (including clients and
16 members of CSP) have suffered injuries including, but not limited to, unjustified payment of, or
17 subjection to, LFOs. Plaintiffs and Plaintiff Class members have also suffered lost wages while
18 incarcerated, emotional distress, and other collateral consequences including loss of housing,
19 public benefits, student loan eligibility, and access to employment, and injury to credit, as well
20 as other forms of harm.

21 5.4 Injury to The Civil Survival Project. In addition to the harm described above,
22 Defendants' and Defendant Class members' actions have also injured CSP.

23 5.4.1 CSP has been harmed because RCW 69.50.4013 and Defendants' and
24 Defendant Class members' actions frustrated the organization's mission of advancing the rights

1 of formerly incarcerated people, and removing the barriers imposed by criminal convictions on
2 individuals attempting to secure basic opportunities in society, like employment, housing,
3 education, and voting rights. As a result of RCW 69.50.4013, and Defendants' and Defendant
4 Class members' actions, CSP has been forced and will be forced to divert substantial resources
5 to address injuries to Washington residents who were and continue to be affected by RCW
6 69.50.4013, including related to the collateral consequences of their convictions and their
7 obligation to pay LFOs. A large percentage of clients and members of CSP have been convicted
8 of drug possession, and have requested assistance from CSP related to the burdens imposed by
9 those convictions. Since the *Blake* decision, CSP has received (and continues to receive)
10 numerous requests from individuals for assistance in being relieved from the penalties and
11 obligations related to their simple possession convictions, including LFOs.

12 5.4.2 For example, CSP seeks to: (1) educate individuals about the law
13 regarding the consequences of their convictions, including eligibility for relief from those
14 consequences, through full-day workshops and other activities; (2) conduct and support "Game
15 Changer Groups" ("GCGs"), which are run by individuals, including clients and members, who
16 were involved in the criminal justice system, to support individuals with prior convictions; and
17 (3) engage in legislative advocacy that is geared towards changing Washington laws to alleviate
18 barriers arising from previous conviction history, including as to employment, housing, and
19 education.

20 5.4.3 But for RCW 69.50.4013 and the actions of Defendants and Defendant
21 Class members, CSP could devote more of its scarce resources to other efforts regarding the
22 criminal justice system and its organizational mission.

23 5.4.4 CSP also represents in this action the interests of its clients and members,
24 including those in GCGs, who have been convicted under RCW 69.50.4013, and have been

1 C. A declaration that the Defendants' and Defendant Class members' actions
2 complained of herein violate the law, and for further relief as ordered by the Court;

3 D. An order enjoining Defendants and Defendant Class members, as well as their
4 officers, agents, successors, employees, representatives, and any and all persons acting in concert
5 with them, as provided by law, from engaging in the unlawful and wrongful conduct set forth
6 herein;

7 E. An order restoring Plaintiffs and Plaintiff Class members to their position prior to
8 their unlawful convictions and rectifying the harm caused by Defendants and Defendant Class
9 members.

10 F. An award to Plaintiffs and Plaintiff Class members of actual, compensatory, and
11 nominal/exemplary damages, as allowed by law;

12 G. Reasonable service awards to Class Plaintiffs, as allowed by law;

13 H. An award of attorneys' fees and costs to Plaintiffs, as allowed by law;

14 I. An award of prejudgment and post-judgment interest to Plaintiffs, as provided by
15 law;

16 J. Such other and further equitable and legal relief as the Court deems necessary,
17 just, and proper.

18 DATED this 30th day of March, 2021.

19 **FRANK FREED SUBIT & THOMAS LLP**

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*Motion for admission *pro hac vice* pending

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EXHIBIT 5



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division

April 13, 2021

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King County Prosecuting Attorney's Office
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Jason Cummings
Chief Civil Deputy Prosecutor
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Everett, WA 98201-4060

RE: ***The Civil Survival Project v. State of Washington, King County and Snohomish County***
King County Cause No. 21-2-03266-1-SEA

Dear Mr. Wright and Mr. Cummings:

I write in response to your April 2, 2021 letter, in which you seek to tender the defense and ask the State to indemnify the Counties for any damages related to the case of *Civil Survival Project v. State of Washington, King County and Snohomish County*, King County Superior Court Number 21-2-03266-1 SEA. Based on the facts alleged in the complaint and the legal arguments at issue, the Attorney General respectfully declines your requests. Nonetheless, we hope that we can find common interests to work together in finding sensible outcomes. We recognize the importance of not only this case, but the broader policy issues and ramifications raised by *State v. Blake* that will need to be addressed by the Counties and the State in the future.

ATTORNEY GENERAL OF WASHINGTON

Mr. Wright and Mr. Cummings
Page 2
April 13, 2021

Turning to the points raised by your letter, we disagree with the premise that any and all actions by a county prosecutor lead to automatic indemnification by the State of Washington. The counties, their prosecuting attorneys, and their clerks, among others, make discretionary decisions throughout the investigating, charging, conviction, sentencing, and collecting of fees in a criminal case. For this reason alone, a tender of defense and indemnification is inappropriate.

Next, we do not agree that State agencies' maintaining records and facilitating the collection of LFOs warrants defending and indemnifying the counties in this suit. Those agencies are dependent on the information provided by the counties.

Further, it should be noted the counties ultimately receive and have control over a large share of the funds generated from LFOs, which means they have a significant, independent interest in this litigation. Counties are not merely acting as agents, but in their own statutorily and constitutionally created position.

The Attorney General appreciates the position of the counties caused by this case, just as he appreciates the position of all State agencies. We hope to work with the counties as we defend this lawsuit and as we analyze and solve the many issues caused by *Blake* for the betterment of the people of Washington.

Thank you for your letter, and I look forward to working with you throughout this matter.

Sincerely,

/s/ Paul M. Crisalli
PAUL M. CRISALLI
Assistant Attorney General
(206) 389-3822

PMC/CGF

EXHIBIT 6

THE HONORABLE MICHAEL SCOTT

THE HONORABLE MICHAEL SCOTT
JUDGE OF THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

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

THE CIVIL SURVIVAL PROJECT,
individually and on behalf of its Members and
Clients, and Irene Slagle, Christina Zawaideh,
Julia Reardon, Adam Kravitz, Laura
Yarbrough, and Deighton Boyce, individually
and on behalf of the Proposed Plaintiff Class,

Plaintiffs,

v.

STATE OF WASHINGTON, individually, and
KING COUNTY and SNOHOMISH
COUNTY, individually and on behalf of the
Proposed Defendant Class, and ADAMS
COUNTY, ASOTIN COUNTY, BENTON
COUNTY, CHELAN COUNTY, CLALLAM
COUNTY, CLARK COUNTY, COLUMBIA
COUNTY, COWLITZ COUNTY, DOUGLAS
COUNTY, FERRY COUNTY, FRANKLIN
COUNTY, GARFIELD COUNTY, GRANT
COUNTY, GRAYS HARBOR COUNTY,
ISLAND COUNTY, JEFFERSON COUNTY,
KITSAP COUNTY, KITTITAS COUNTY,
KLICKITAT COUNTY, LEWIS COUNTY,
LINCOLN COUNTY, MASON COUNTY,
OKANOGAN COUNTY, PACIFIC
COUNTY, PEND OREILLE COUNTY,
PIERCE COUNTY, SAN JUAN COUNTY,
SKAGIT COUNTY, SKAMANIA COUNTY,
SPOKANE COUNTY, STEVENS COUNTY,
THURSTON COUNTY, WAHKIAKUM
COUNTY, WALLA WALLA COUNTY,
WHATCOM COUNTY, WHITMAN
COUNTY, and YAKIMA COUNTY,

No. 21-2-03266-1 SEA

**SECOND AMENDED
CLASS ACTION COMPLAINT**

1 individually and as putative Defendant Class
2 Members,

3 Defendants.

4 Plaintiff The Civil Survival Project (“CSP”), on behalf its members and clients, and
5 Plaintiffs Irene Slagle, Christina Zawaideh, Julia Reardon, Adam Kravitz, Laura Yarbrough, and
6 Deighton Boyce, on behalf of themselves and all others similarly situated (“Class Plaintiffs”)
7 (together, with CSP, “Plaintiffs”), allege as follows:

8 **I. INTRODUCTION**

9 1.1 Nature of Action. This Action seeks to restore to thousands of Washington
10 Residents Legal Financial Obligations (“LFOs”)¹ collected, received, and retained by – and
11 cancel LFOs still claimed by – Defendants State of Washington (“Washington” or “State”), King
12 County, Snohomish County, and all 37 of the other Washington Counties² (collectively,
13

14 _____
15 ¹ Under Washington law, “‘Legal financial obligation’ means a sum of money that is
16 ordered by a superior court of the state of Washington for legal financial obligations which may
17 include . . . court costs, county or interlocal drug funds, court-appointed attorneys’ fees, and
18 costs of defense, fines, and any other financial obligation that is assessed to the offender as a
19 result of a felony conviction.” RCW 9.94A.030. In this complaint, “Legal financial
obligations” or “LFO” further refers to all interest, collection fees, clerk’s collection fees or
other imposed costs of collections, costs of supervision or sentence-related treatment, and other
fees or costs assessed against Plaintiff Class Members, or that Plaintiff Class Members were
compelled to pay, based on their *Blake* and *Blake-Related* Convictions, as defined below.

20 ² The other Washington Counties are Adams County, Asotin County, Benton County,
21 Chelan County, Clallam County, Clark County, Columbia County, Cowlitz County, Douglas
22 County, Ferry County, Franklin County, Garfield County, Grant County, Grays Harbor County,
23 Island County, Jefferson County, Kitsap County, Kittitas County, Klickitat County, Lewis
County, Lincoln County, Mason County Okanogan County, Pacific County, Pend Oreille
County, Pierce County, San Juan County, Skagit County, Skamania County, Spokane County,
Stevens County, Thurston County, Wahkiakum County, Walla Walla County, Whatcom
County, Whitman County, and Yakima County.

24 ³ King and Snohomish Counties are referred to as "Defendant Class Representatives". All
other Washington Counties are referred to as "Defendant Class Members".

1 “Defendants”³) as a result of convictions under Washington’s voided strict liability drug
2 possession statute, RCW 69.50.4013, and other related convictions as described further below,
3 and for further monetary, equitable and injunctive relief necessary to make impacted individuals
4 whole with respect to the harms they suffered.

5 1.2 Background. For a generation, the State and County Defendants were aggressive
6 participants in a misguided “War on Drugs”⁴ that supercharged mass incarceration in
7 Washington and around the United States, leaving just as many Americans with criminal records
8 as college diplomas.⁵

9 1.3 The United States incarcerates more than two million of its own people at any
10 given time, nearly one percent of its total adult population,⁶ at a rate of approximately 716 people
11 for every 100,000 residents – by far the highest in the world, and more than five times higher
12
13
14

15 ³ The other Washington Counties are Adams County, Asotin County, Benton County,
16 Chelan County, Clallam County, Clark County, Columbia County, Cowlitz County, Douglas
17 County, Ferry County, Franklin County, Garfield County, Grant County, Grays Harbor County,
18 Island County, Jefferson County, Kitsap County, Kittitas County, Klickitat County, Lewis
19 County, Lincoln County, Mason County Okanogan County, Pacific County, Pend Oreille
20 County, Pierce County, San Juan County, Skagit County, Skamania County, Spokane County,
21 Stevens County, Thurston County, Wahkiakum County, Walla Walla County, Whatcom
22 County, Whitman County, and Yakima County.

23 ³ King and Snohomish Counties are referred to as “Defendant Class Representatives.”
24 All other Washington Counties are referred to as “Defendant Class Members.”

⁴ See generally “A Brief History of the Drug War,” Drug Policy Alliance, available at
<https://drugpolicy.org/issues/brief-history-drug-war> (last accessed Aug. 4, 2021).

⁵ “Just Facts: As Many Americans Have Criminal Records as College Diplomas,”
Brennan Center for Justice, available at <https://www.brennancenter.org/our-work/analysis-opinion/just-facts-many-americans-have-criminal-records-college-diplomas> (last accessed Aug.
4, 2021).

⁶ “United States Profile,” Prison Policy Initiative, available at
<https://www.prisonpolicy.org/profiles/US.html> (last accessed Aug. 4, 2021).

1 than most other countries.⁷ This represents a nearly 500% increase in the number of people living
2 behind bars since the War on Drugs began in 1970s.⁸ While the United States accounts for less
3 than five percent of the world’s total population, it accounts for roughly 25 percent of the world’s
4 imprisoned population.⁹ And “scholars have shown that the poor, people of color, sexual
5 minorities, and other marginalized populations have borne the brunt of criminal punishment and
6 police intervention.”¹⁰

7 1.4 In Washington, nearly 475 people per 100,000 are incarcerated – a rate that is
8 roughly equal to the world’s second highest jailer, the Russian Federation.¹¹ In line with the War
9 on Drugs, the rate of incarceration in Washington has exploded from the 1970s, when the State
10 incarcerated less than 200 people per 100,000.¹² Washington also disproportionately
11 incarcerates Black, Indigenous, and People of Color – incarcerating Latinos at a rate of roughly
12 601 people per 100,000, American Indians at a rate of nearly 1,427 per 100,000, and Black
13 people at a rate of nearly 2,372 per 100,000.¹³

14
15 ⁷ “States of Incarceration: The Global Context.” Prison Policy Initiative, available at
<https://www.prisonpolicy.org/global/> (last accessed Aug. 4, 2021).

16 ⁸ Alexes Harris, “After Blake, will Washington state repay victims of the war on drugs?”
17 Crosscut, Apr. 8, 2021, available at <https://crosscut.com/opinion/2021/04/after-blake-will-washington-state-repay-victims-war-drugs>.

18 ⁹ “Does the United States really have 5 percent of the world’s population and one quarter
19 of the world’s prisoners?” April 30, 2015, Washington Post, available at
<https://www.washingtonpost.com/news/fact-checker/wp/2015/04/30/does-the-united-states-really-have-five-percent-of-worlds-population-and-one-quarter-of-the-worlds-prisoners/>.

20 ¹⁰ Benjamin Levin, *Mens Rea Reform and Its Discontents*, 109 J. Crim. L. & Criminology
491, 530 (2019).

21 ¹¹ “States of Incarceration: The Global Context.” Prison Policy Initiative, available at
22 <https://www.prisonpolicy.org/global/> (last accessed Aug. 4, 2021).

23 ¹² “Washington State profile,” Prison Policy Initiative, available at
<https://www.prisonpolicy.org/profiles/WA.html> (last accessed Aug. 4, 2021).

24 ¹³ “Washington State profile,” Prison Policy Initiative, available at
<https://www.prisonpolicy.org/profiles/WA.html> (last accessed Aug. 4, 2021).

1 1.5 Alongside the explosion in rates of incarceration, the criminal legal system has
2 also increased its reliance on LFOs like fines, fees, restitution and related costs associated with
3 citations, court processing, convictions and punishments. In just the past 15 years, it is estimated
4 that Washington has imposed roughly \$343 million in “mandator[y]” costs alone.¹⁴ In
5 Washington, mandatory LFOs “shall be imposed in every case or for every conviction . . .
6 regardless of the defendant’s ability to pay”¹⁵ and further LFOs may also be imposed at the
7 sentencing judge’s discretion.¹⁶ This means that in “Washington state, simple possession of a
8 small amount of cocaine [has even] result[ed] in a \$10,000 fine.”¹⁷

9 1.6 Defendants have aggressively attempted to collect these LFOs, contracting with
10 private debt collection companies, which can impose additional collection costs of up to 50%,
11 and garnishing employment earnings and request bench warrants for arrests related to
12 nonpayment.¹⁸ According to research from University of Washington Professor Alexes Harris,
13 and consistent with Plaintiffs’ experiences as detailed below, some Defendant Counties have
14 regularly incarcerated people for up to 60 days when they failed to make payments on their legal
15

16 _____
17 ¹⁴ Alexes Harris, “After Blake, will Washington state repay victims of the war on drugs?”
18 Crosscut, Apr. 8, 2021, available at <https://crosscut.com/opinion/2021/04/after-blake-will-washington-state-repay-victims-war-drugs>.

19 ¹⁵ Washington Courts, WA State Superior Courts: 2018 Reference Guide on Legal
20 Financial Obligations (LFOs), available at
21 <https://www.courts.wa.gov/content/manuals/Superior%20Court%20LFOs.pdf>.

22 ¹⁶ See, e.g., RCW 10.01.160; RCW 69.50.430(1) (fines for VUCSA offenses mandatory
23 unless court finds indigency); RCW 69.50.401(2)(b) (court may impose fines for convictions
24 for manufacture, possession, or delivery of amphetamines, \$3,000 of which may not be
suspended).

¹⁷ Alexes Harris, “After Blake, will Washington state repay victims of the war on drugs?”
Crosscut, Apr. 8, 2021, available at <https://crosscut.com/opinion/2021/04/after-blake-will-washington-state-repay-victims-war-drugs>.

¹⁸ *Id.*

1 debts, “including those who were unemployed or homeless.”¹⁹

2 1.7 The criminalization of recreational drug possession has been one of the most
3 pernicious weapons in the War on Drugs, and for the past 50 years, perhaps no state in the country
4 criminalized drug possession as broadly as Washington.

5 1.8 State v. Blake. Until this year, Washington law was so overbroad that it even
6 sought to punish the “entirely innocent, unknowing possession” of drugs as a felony offense, in
7 violation of the due process protections of both the United States and Washington Constitutions.
8 *State of Washington v. Blake*, 197 Wn.2d 170, 173, 183 & 186 (2021).

9 1.9 As the Supreme Court explained over five months ago in *Blake*, Washington’s
10 voided former drug possession statute, RCW 69.50.4013, was “unique in the nation” in that it
11 imposed strict criminal liability on virtually all drug possession, even that which was “entirely
12 innocent, unknowing possession.” *Id.* The statute made “possession of a controlled substance a
13 felony punishable by up to five years in prison, plus a hefty fine [of up to \$10,000]; le[d] to the
14 deprivation of numerous other rights and opportunities; and [did] all this without proof that the
15 defendant even knew they possessed [a controlled] substance.” *Id.* at 173.

16 1.10 The law was so overbroad that it would result in felony acts even in the following
17 absurd circumstances: “a letter carrier who delivers a package containing unprescribed Adderall;
18 a roommate who is unaware that the person who shares his apartment has hidden illegal drugs in
19 the common areas of the home; a mother who carries a prescription pill bottle in her purse,
20 unaware that the pills have been substituted for illegally obtained drugs by her teenage daughter,
21 who placed them in the bottle to avoid detection.” *Id.* at 183.

22
23
24 ¹⁹ *Id.*

1 1.11 Explaining Washington’s law in a national context, the *Blake* Court noted that the
2 “North Dakota legislature, the last other state to criminalize passive unknowing possession,
3 amended its drug possession statute by adding a ‘willfulness’ mens rea element in 1989” and the
4 last state court to strike down a similar drug possession statute was 40 years ago. *Id.* at 185
5 (citing *State v. Brown*, 389 So. 2d 48 (La. 1980) (finding unconstitutional unknowing drug
6 possession statute)).

7 1.12 The Court in *Blake* found Washington’s uniquely “harsh penalties for such
8 innocent passivity” unconstitutional, *id.*, and struck down the drug possession statute in its
9 entirety, resulting in void convictions for thousands of Washingtonians.

10 1.13 The *Blake* Court also explained that “drug offenders in particular are subject to
11 countless harsh collateral consequences affecting all aspects of their lives.” *Id.* at 184-85 (citing,
12 e.g., Gabriel J. Chin, Race, *The War on Drugs, and the Collateral Consequences of Criminal*
13 *Conviction*, 6 J. Gender, Race & Just. 253, 259-60 (“Those convicted of drug offenses are subject
14 to a number of additional penalties,” including denial of more than 750 federal benefits,
15 consequences for health care, education, employment, housing, parenting, professional licenses,
16 and others.)); *id.* at n.11 (summarizing ineligibility for student aid, grants, contracts, loans,
17 professional and commercial licenses, federally assisted housing, assistance under state programs
18 funded by part A of title IV of the Social Security Act, benefits under the supplemental nutrition
19 assistance program, passports, job opportunities, and adoption opportunities).

20 1.14 Consistent with the now well-understood fact that aggressive drug enforcement
21 has disproportionately targeted communities of color, the *Blake* Court highlighted that the
22 “impact” of drug enforcement “has hit young men of color especially hard.” *Id.* at 192. (citing
23 *Research Working Grp. of Task Force on Race & Criminal Justice Sys., Preliminary Report on*
24 *Race and Washington’s Criminal Justice System*, 35 Seattle U.L. Rev. 623, 651-56 (2012))

1 (attributing Washington’s racially disproportionate criminal justice system to disparity in drug
2 law enforcement and drug-related asset forfeiture, among many other causes)); *see also id.* at
3 208 (Stephens, J.) (concurring in part and dissenting in part) (“[S]cholars have shown that the
4 poor, people of color, sexual minorities, and other marginalized populations have borne the brunt
5 of criminal punishment and police intervention.”) (quoting Benjamin Levin, *Mens Rea Reform*
6 *and Its Discontents*, 109 J. CRIM. L. & CRIMINOLOGY 491, 530 (2019)).

7 1.15 The failed response to *Blake* and the necessity of this lawsuit. In *Blake*, the
8 Washington Supreme Court underscored the sheer scope of Defendants’ drug prosecutions,
9 noting that the “drug statute that they interpreted has affected thousands upon thousands of
10 lives[.]” *Blake*, 197 Wn.2d at 192.

11 1.16 Indeed, the “astonishing breadth” of the negative impacts of LFOs, and
12 Washington’s drug possession convictions more broadly, especially on communities of color, is
13 well documented and largely undisputed.²⁰

14 1.17 Plaintiffs estimate that the number of individuals affected by the *Blake* decision
15 involves at least tens of thousands of individuals – and likely well above 100,000 individuals –
16 throughout Washington.

17 1.18 In addition to those convicted under the pre-May 13, 2021 version of RCW
18 69.50.4013, the Court’s reasoning in *Blake* also voids convictions for (1) Washington residents
19 prosecuted under the predecessor simple possession statute, RCW 69.50.401(c) (enacted in
20 1971), (collectively, “*Blake* Convictions”²¹); (2) “inchoate” offenses predicated on *Blake*

21 ²⁰ *See, e.g.*, Rich Smith, “New Data Analysis Shows the Astonishing Breadth of the Racial
22 Disparity in Washington’s Drug Possession Convictions,” *The Stranger*, Mar 17, 2021,
23 available at <https://www.thestranger.com/slog/2021/03/17/55910514/new-data-analysis-exposwide-racial-disparities-in-drug-possession-convictions-across-washington>.

24 ²¹ Although previous simple drug possession statutes imposed unconstitutional strict
liability for drug possession back at least to 1951, *see* RCW 69.33.020 (enacted in 1951), later

1 Convictions, such as conspiring to, attempting to, or soliciting possession of a controlled
2 substance (RCW 69.50.407; RCW 9A.28.020; RCW 9A.28.030; RCW 9A.28.040); (3) crimes
3 that require a predicate criminal conviction or charge as an element when the predicate conviction
4 or charge was simple drug possession, such as those where a *Blake* Conviction or charge was the
5 predicate for an unlawful possession of a firearm (RCW 9.41.040), resisting arrest (RCW
6 9A.76.040), bail-jumping (RCW 9A.76.170), or escape (RCW 9A.76.110, RCW 9A.76.120,
7 RCW 9A.76.130) charge; and/or (4) other parallel simple drug possession statutes, including
8 possession of 40g or less of marijuana (pre-May 13, 2021 RCW 69.50.4014), possession of
9 legend (i.e., prescription) drugs without prescription (pre-May 13, 2021 RCW 69.41.030(1),
10 (2)(b)), and possession of counterfeit substances (pre-May 13, 2021 RCW 69.50.4011) (“*Blake-*
11 *Related Convictions*,” and together with *Blake* Convictions, “*Blake* and *Blake-Related*
12 *Convictions*”).²²

13
14
15 _____
16 recodified as RCW 69.33.230 (1959), Plaintiffs seek relief only for convictions beginning
17 under RCW 69.50.401(c) (enacted in 1971) onward in this matter.

18 ²² The statutes referenced herein are intended to provide an illustrative, but not exhaustive
19 list, of the convictions that have been rendered void in light of *Blake*. Affected simple
20 possession statutes include RCW 69.50.4013 (simple possession of a controlled substance,
21 2003-2021), RCW 69.50.401(d) (simple possession of a controlled substance, 1971-2003),
22 RCW 69.50.401(e) (Possession of less than 40g marijuana, 1971-2003) RCW 69.50.4014
23 (Possession of less than 40g marijuana, 2003-2021) RCW 69.41.030 and 69.41.070(3)
24 (Possession of legend drugs, 1973-2003) RCW 69.41.030(1)(2)(b) (Possession of legend drugs
2003-2021); other affected inchoate crimes include RCW 9.01.070 (general criminal attempt,
1901-1975); RCW 9.01.080 (general criminal attempt while armed, 1927-1975);
RCW 9.22.010 (general criminal conspiracy, 1909-1975); RCW 9.22.010 (general criminal
conspiracy, 1909-1975); other affected predicate crimes include RCW 9.41.040(2)(a) (unlawful
possession of a firearm, 2003 on), RCW 9.41.040(1)(b) (unlawful possession of a firearm,
1994-2003), RCW 9A.76.170 (bail jumping, 1975-2020), RCW 9A.76.170 (bail jumping for
trial, 2020 to present), RCW 9A.76.190 (failure to appear or surrender, 2020 to present), RCW
9.31.010 (Escape, 1909-1975), RCW 9A.76.110 (First degree escape, 1975 to present), RCW
9A.76.120 (Second degree escape, 1975 to present), RCW 9A.76.130 (Third degree escape
1975 to present), RCW 9.69.040 (Resisting public officer, 1909-1975), RCW 9A.76.040
(Resisting arrest, 1975 to present).

1 1.19 Judicial intervention is especially crucial to resolve this matter for the thousands
2 of people affected. As the Washington Department of Corrections (“DOC”) noted shortly after
3 the *Blake* decision, in order to address the impact of *Blake*, “further direction from the courts
4 continues to be necessary in the process of determining next steps.”²³

5 1.20 The DOC’s statement has proven even more accurate in light of the State and
6 County Defendants’ response to *Blake*. Following *Blake*, the State of Washington appropriated
7 \$23.5 million for a central pool to assist Counties in refunding LFOs that were wrongly collected
8 from *Blake* Convictions. See Laws of 2021, Ch. 334, § 115(6). But this money is utterly
9 insufficient to address the problem, as representatives from Defendant King County, among
10 others, have publicly remarked.²⁴ The fund will not come close to fully remedying the injuries
11 suffered statewide by the thousands of affected Washingtonians, particularly when considering
12 *Blake*-Related Convictions.

13 1.21 It also has created a chaotic landscape where the Counties are each left to craft
14 their own response to provide – or fail to provide – effective relief to impacted individuals,
15 leading to greatly disparate results absent Court intervention. For example, Defendant Franklin
16 County has stated on its website that: “There are still many unknowns at present time. *There has*
17 *been no guidance or determination* as to how the State of Washington intends to process refunds
18
19

20 ²³ Washington Department of Corrections, “Update on Supreme Court Ruling That Voids
21 Statute Has Potential Implications for Sentences Imposed by Courts,” March 12, 2021,
available at <https://www.doc.wa.gov/news/2021/03122021p.htm>.

22 ²⁴ “King County taxpayers will have to cover costs for drug possession cases that were
23 tossed,” KOMO News, May 12, 2021, available at [https://komonews.com/news-brief-
newsletter/king-county-will-have-to-cover-costs-for-drug-possession-cases-that-were-tossed](https://komonews.com/news-brief-newsletter/king-county-will-have-to-cover-costs-for-drug-possession-cases-that-were-tossed)
24 (last accessed Aug. 4, 2021) (King County Executive explaining that state funds are “not
nearly” enough to address consequences of *Blake*).

1 for any applicable court costs, fines, and fees. . . . Our focus at present time will be to assist with
2 vacating the eligible offenses from conviction history.”²⁵

3 1.22 Defendants King²⁶ and Snohomish Counties²⁷ have created similar processes, and
4 they have taken the litigation position that every one of the estimated thousands upon thousands
5 of individuals affected by *Blake* must *individually* seek relief under their original criminal cause
6 numbers. *See* King and Snohomish County’s April 23, 2021 Motion to Dismiss at n. 1. Such a
7 position is legally erroneous and also impractical. As Defendant King County has stated, *Blake*
8 has resulted “in an unprecedented number of post-conviction motions for relief” and “due to the
9 extreme volume” of inquiries it is receiving, cannot even promise a response to individuals with
10 “less time-sensitive requests” such as LFO inquiries.²⁸ Defendant Snohomish County even
11 appears to concede that this lawsuit is necessary to address the issue of *Blake* and *Blake*-Related
12 LFOs, and the Criminal Division of its Prosecutor’s Office has told Snohomish County’s Public
13 Defender’s Office that it has no plans to address refunds “at this time[.]”²⁹

14 1.23 The already-existing “expungement gap” or “second chance gap” in Washington
15 demonstrates the limited ability of individual claims for relief to actually address the
16

17 ²⁵ Franklin County Prosecutor’s Office, “*State v. Blake*,” available at
18 <http://www.co.franklin.wa.us/prosecutor/statevblake.php> (last accessed Aug. 4, 2021)
(emphasis added).

19 ²⁶ *See* “*Blake* Requests,” King County, available at
20 <https://kingcounty.gov/depts/prosecutor/criminal-overview/blake.aspx> (last accessed Aug. 10,
2021).

21 ²⁷ *See* “*State v. Blake*,” Snohomish County Public Defender, available at
<https://www.snocopda.org/blake/> (last accessed Aug. 10, 2021).

22 ²⁸ *See* “*Blake* Requests,” King County, available at
23 <https://kingcounty.gov/depts/prosecutor/criminal-overview/blake.aspx> (last accessed Aug. 10,
2021).

24 ²⁹ *See* “*State v. Blake*,” Snohomish County Public Defender Association, available at
<https://www.snocopda.org/blake/> (last accessed Aug. 10, 2021).

1 consequences of *Blake*. For example, in 2020, before *Blake*, “60% of those who live burdened
2 with criminal conviction records, or as many as 1 million Washingtonians, [were] potentially
3 eligible” to make use of Washington’s statutory and rule-based process to vacate or seal eligible
4 past convictions. “But less than 3% of individuals eligible for relief, and less than 1% of the
5 charges eligible for relief” had actually received the relief to which they were entitled.³⁰ In fact,
6 at the “current rates of vacation” under the existing process, it is estimated “that it would take
7 over 4,000 years to clear the backlog of charges alone, based on the gap and the actual number
8 of charges that were vacated last year[.]”³¹ *Id.*

9 1.24 Similar processes from county-to-county that require the thousands of people
10 harmed by *Blake* and *Blake*-Related Convictions to try to vindicate their rights one-by-one,
11 frequently without a lawyer, cannot possibly be expected to yield better results. Indeed,
12 Defendant King County has stated that it will not even respond to “pro-se requests for
13 resentencing at this time” because issues such as re-sentencing are too complex to discuss with
14 individuals who are representing themselves.³² While prosecutors should not be discussing
15 resentencing with unrepresented defendants, King County’s position on the issue further
16 illustrates the ineffectiveness of the one-off approach to addressing the many consequences of
17 *Blake*.

18 1.25 In other words, absent a binding, statewide judicial resolution of this case, the
19 State of Washington and more than three dozen Defendant Counties will never adequately

20 ³⁰ Colleen Chien, Zuyan Huang, Jacob Kuykendall, & Katie Rabago, *The Washington*
21 *State Second Chance Expungement Gap*, 1 (Santa Clara University, School of Law, 2020),
22 available at <https://digitalcommons.law.scu.edu/facpubs/971>.

23 ³¹ *Id.*

24 ³² See “*Blake* Requests,” King County, available at
<https://kingcounty.gov/depts/prosecutor/criminal-overview/blake.aspx> (last accessed Aug. 10,
2021).

1 address the consequences of *Blake* in a systematic or equitable fashion, leaving tens of thousands
2 of Washingtonians who were deprived of significant sums of money as a result of Defendants’
3 unconstitutional actions subject to varying levels of relief based on where they happen to live or
4 whether they have access to a lawyer and the court system.

5 1.26 While Defendants have understandably prioritized releasing individuals
6 wrongfully incarcerated for *Blake* Convictions, they have failed to address the monetary
7 consequences of their undisputedly unconstitutional drug prosecutions. In the wake of *Blake*,
8 Defendants must now account for their past actions, including by returning money wrongly taken
9 and cancelling outstanding debts wrongfully imposed.

10 1.27 Accordingly, Plaintiff CSP brings claims on its own behalf, and on behalf of its
11 members and clients, and Class Plaintiffs bring claims on their own behalf and on behalf of a
12 class of Washington residents pursuant to Civil Rule (“CR”) 23(a) and (b)(2), (b)(3) and (c)(4),
13 to recover LFOs wrongfully collected, received, and retained by – or claimed as debts owed to
14 – the Defendants and Defendant Class Members, and for further monetary, equitable and
15 injunctive relief necessary to make impacted individuals whole with respect to the harms they
16 suffered.

17 II. JURISDICTION AND VENUE

18 2.1 The Superior Court of Washington has jurisdiction over Plaintiff’s claims
19 pursuant to RCW 2.08.010.

20 2.2 Pursuant to RCW 4.12.025(1), venue in King County is appropriate because
21 Defendant Washington State and Defendant King County reside in this county. Pursuant to RCW
22 36.01.050, venue in King County is further appropriate because this action is brought against
23 King County. Pursuant to RCW 36.01.050, venue is also appropriate as to Snohomish County
24 because, King County is one of the two nearest judicial districts. Pursuant to RCW 4.92.010(1)

1 and (2), venue is further appropriate as to Washington because CSP’s principal place of business
2 is in King County and a substantial part of the cause of action arose in King County.

3 2.3 Venue is proper to the remaining Counties and Defendant Class Members because
4 if venue is proper as to one defendant, it is proper to all. Wn. Rev. Code Ann. § 4.12.025(1);
5 *see, e.g., Five Corners Family Farm v. State*, 173 Wn.2d 296, 314, 268 P.3d 892 (2011) (“When
6 an action is filed against more than one defendant, venue is proper in any county where at least
7 one defendant resides”).

8 **III. PARTIES**

9 3.1 Plaintiff CSP is a statewide project in Washington dedicated to advancing the
10 rights and interests of formerly incarcerated people. CSP is a project at the Public Defender
11 Association, a not-for-profit organization that advances alternative approaches to public safety,
12 health and order that reduce reliance on punitive systems and foster healing and stabilization of
13 both individuals and communities. CSP provides direct service and support to people rebuilding
14 their lives after criminal convictions. And CSP collects, shares, and creates resources to educate
15 people on the processes to seek relief from the impact of past criminal convictions (for example,
16 to vacate convictions, reduce LFOs, restore voting rights).

17 3.1.1 CSP works with Washington residents with criminal convictions to remove
18 financial, political and legal barriers to reentry, and to alleviate the collateral consequences of
19 mass incarceration – expending substantial resources on these efforts.

20 3.1.2 CSP is led by and for formerly incarcerated individuals. It organizes across the
21 State to help justice-involved individuals escape the cycles of substance use, poverty, and
22 incarceration. CSP houses the Reentry Legal Aid Project, a statewide project that serves clients
23 with LFO relief, record vacates, and other housing and employment barriers related to a past
24 criminal record. The work is performed through mass relief events, in which hundreds of people

1 have been able to obtain relief from their LFOs, as well as through provision of limited legal
2 services. Further, CSP’s model, an organizing model, incorporates “Gamechanger” groups,
3 which bring formerly incarcerated individuals from across the state into one space to receive
4 support and education about the impacts of their prior criminal history.

5 3.1.3 Further, CSP organizes an “Impacted Caucus” during legislative sessions as a
6 gathering space for people who have been impacted by the criminal legal system to come together
7 and learn about reentry-related developments in the legislature. These meetings serve as an
8 educational and organizing tool for formerly incarcerated people across the State of Washington.

9 3.1.4 CSP members and clients in at least 15 Counties throughout the State have
10 contacted CSP about the impact of their *Blake* and *Blake-Related* Convictions. CSP’s ability to
11 provide individual assistance to clients has been hampered by shifting and inconsistent responses
12 to the *Blake* decision by county. And the Counties’ and State’s chaotic and inadequate processes
13 for relief have left CSP unable to educate or actively assist its statewide membership and clients
14 with respect to the processes to vacate and receive restitution for *Blake* and *Blake-Related*
15 Convictions.

16 3.2 Class Plaintiff Irene Slagle (“Plaintiff Slagle” or “Ms. Slagle”) is a citizen of
17 Washington, and a resident of Snohomish County. Until 2003, she was a resident of King
18 County. On or about August 12, 2002, she sustained a *Blake* Conviction, and was forced to pay
19 substantial fees, penalties, and other fines, including LFOs, to Defendants, in King County. She
20 last paid LFOs to King County on or around February 9, 2011.

21 3.2.1 After her last criminal conviction in 2002, Ms. Slagle underwent treatment for her
22 drug addiction and later secured employment as an intake case manager at Evergreen Manor
23 Treatment Center (now Evergreen Recovery Center) in Everett. For nearly eight years, Ms.
24 Slagle worked in this role to serve others in recovery, often as the first person with whom those

1 individuals would come into contact at the recovery center. After her tenure at Evergreen Manor
2 Treatment Center, Ms. Slagle worked as a Behavioral Health Navigator at Catholic Community
3 Services, where she assisted individuals experiencing homelessness, addiction, and mental health
4 issues access important social services.

5 3.2.2 For approximately the last four years, Ms. Slagle has worked for Snohomish
6 County Human Services as a Community Services Counselor supporting the County’s law-
7 enforcement embedded social worker team, which similarly assists individuals experiencing
8 homelessness, addiction, and mental health issues to access social services.

9 3.3 Class Plaintiff Christine Zawaideh (“Plaintiff Zawaideh” or “Ms. Zawaideh”) is a
10 citizen of Washington, and a resident of Snohomish County. In 2013, 2014, and in or around
11 September 2015, she sustained *Blake* Convictions, and was forced to pay substantial fees,
12 penalties, and other fines, including LFOs, to Defendants, in Snohomish County. Ms. Zawaideh
13 is currently making payments on her LFO balances, including significant accumulated interest.

14 3.3.1 Since her release from custody on or about October 31, 2016, Ms. Zawaideh
15 sought treatment for her addiction and has sustained no further criminal charges. Ms. Zawaideh
16 maintained steady employment for three years – in fact continuing in a position at MOD Pizza
17 that she began while on work-release – and then, in October 2019, transitioned into a role as a
18 Certified Peer Counselor at a non-profit organization in King County. Ms. Zawaideh uses her
19 past experiences to help give back to those struggling with addiction and entanglement in the
20 justice system, and she specializes in working with at-risk youth. Ms. Zawaideh also engages in
21 broader advocacy efforts on behalf at-risk communities and individuals impacted by drugs in
22 both King and Snohomish Counties, including participating in a panel event relating to addiction
23 and recovery in 2019 with the Mayor of Lynwood, representatives from area police and fire
24 departments, and a State Representative.

1 3.3.2 Ms. Zawaideh has two children – an infant and a toddler – and her outstanding
2 LFOs place a significant financial burden on her and her family.

3 3.4 Class Plaintiff Julia Reardon (“Plaintiff Reardon” or “Ms. Reardon”) is a citizen
4 of Washington, and a resident of Snohomish County. On or about September 26, 2014, she
5 sustained a *Blake* Conviction, and was forced to pay substantial fees, penalties, and other fines,
6 including LFOs, to Defendants, in Snohomish County. When the LFOs were imposed on Ms.
7 Reardon, she was homeless, suffering from drug addiction, and unemployed. Over the life of the
8 debt, the interest on Ms. Reardon’s debt reached roughly double the amount of her principal
9 balance. She last paid LFOs to Snohomish County on or about June 2, 2020.

10 3.4.1 Since her last release from custody in 2014, Ms. Reardon sought treatment for her
11 addiction and has sustained no further criminal charges. After her release from custody, Ms.
12 Reardon was homeless yet was still required to pay a monthly fee for her LFOs. Fortunately,
13 Ms. Reardon participated in the Snohomish County Sheriff’s “Office of Neighborhoods”
14 program, which helped her address her drug addiction and find recovery housing in the
15 Snohomish County Diversion Center.

16 3.4.2 Ms. Reardon then, like other Plaintiffs, began using her past experiences to give
17 back and help others who have struggled with drug addiction and entanglement in the criminal
18 legal system to overcome those challenges, working first at the Diversion Center and then as a
19 Case Manager and Social Services Coordinator for Pioneer Human Services in Everett. In her
20 current role, Ms. Reardon coordinates partnerships for Pioneer Human Services with allied non-
21 profit and government agencies, including organizations and agencies that assist with housing,
22 employment, credit and other social services. She also is an active leader in her church and a
23 State Director for Oxford House, a national non-profit organization that supports recovery
24 housing for people battling addiction and homelessness.

1 3.5 Class Plaintiff Adam Kravitz is a citizen of Washington, and a resident of Clark
2 County. Mr. Kravitz has sustained numerous *Blake* and *Blake-Related* Convictions, and has been
3 forced to pay substantial fees, penalties, and other fines, including LFOs, to Defendants, in Clark
4 County. Mr. Kravitz’s initial *Blake* Conviction began a vicious cycle of incarceration, LFO debt,
5 and then re-incarceration based on an inability to pay.

6 3.5.1 Like other Plaintiffs, when Defendants prosecuted Mr. Kravitz for these crimes
7 and later subjected him to LFOs for them, he was experiencing homelessness, suffering from
8 addiction, unemployed, and unable to make any meaningful payments. In 2011, a court imposed
9 roughly \$3,000 in LFOs on Mr. Kravitz, making a finding that he had an ability to pay, despite
10 the fact that his public defender eligibility form listed his address as “homeless.” In a subsequent
11 case, a court imposed a further \$4,200 in LFOs for two additional drug possession convictions,
12 and in a following case he received another \$4,200 LFO for a single possession conviction – with
13 the court again finding an ability to pay despite Mr. Kravitz’s status as a person experiencing
14 homelessness. Then a court imposed \$3,200 in LFOs for an attempted possession conviction in
15 2013. Also, in 2013, another court found that Mr. Kravitz was indigent, but nevertheless made
16 a finding that he could have an ability to pay “in the future” and imposed \$1,100 in LFOs for a
17 drug possession conviction. On at least two occasions, Mr. Kravitz was actually jailed for failure
18 to pay LFOs while he was experiencing homelessness.

19 3.5.2 After his last conviction in 2015, Mr. Kravitz successfully completed a drug court
20 program and has not sustained another criminal conviction. In the drug court program, Mr.
21 Kravitz learned about peer support services and sought out a career as a peer counselor. Mr.
22 Kravitz secured a position as a counselor with a non-profit agency in the Vancouver area and
23 spent the next roughly six years in that role with two different organizations. Most recently, Mr.
24 Kravitz worked with a crisis “co-responder” team which assisted law enforcement on emergency

1 and other calls relating to mental health or homelessness issues, the goal of which is to reduce
2 the burden on police in interacting with vulnerable populations and ultimately reduce the use of
3 force in such interactions.

4 3.5.3 In 2016, Mr. Kravitz and his partner helped found a non-profit organization
5 focused on advocacy for people experiencing homelessness and addiction called Outsiders Inn.
6 The organization has grown significantly in the last five years, and in 2020 received grant funding
7 to provide shelter services to individuals in Clark County. Recently, Mr. Kravitz assumed a
8 fulltime role as Executive Director of Outsiders Inn.

9 3.5.4 Despite his extraordinary efforts to turn his own life around and also to uplift the
10 community around him – to the overall benefit of Clark County, its residents and law
11 enforcement, and the State – Mr. Kravitz continues to struggle with the crushing burden of LFOs
12 imposed on him from his *Blake* and *Blake-Related* Convictions. Mr. Kravitz estimates that his
13 total LFO balances range in the tens of thousands, much or most of which is comprised of accrued
14 interest.

15 3.5.5. Mr. Kravitz has also suffered from significant additional collateral consequences
16 from Defendants’ actions and his unconstitutional convictions. For example, Mr. Kravitz
17 struggled for years to find employment and stable housing because his criminal history –
18 comprised almost entirely of drug charges – caused employers and housing providers to reject
19 his applications. Indeed, even when Mr. Kravitz sought to acquire an Agency Affiliated
20 Counselor Credential to pursue his career as a peer counselor, the Washington State Department
21 of Health (“DOH”), because of his past convictions, required him to undergo a drug recovery
22 program (which included regular drug testing) which was duplicative of drug court at his own
23 costs of roughly \$150 per month. To make matters worse, the DOH program was *five years* long,
24

1 while the drug court program, which Mr. Kravitz had already successfully completed, was only
2 one year in duration.

3 3.6 Class Plaintiff Laura Yarbrough is a citizen of Washington, and a resident of
4 Spokane County. In or around May 2005, Ms. Yarbrough was convicted of a *Blake* Conviction
5 and misdemeanor possession of a legend drug in Spokane County, a *Blake-Related* Conviction.
6 As a result of these convictions, Ms. Yarbrough was forced to pay substantial fees, penalties, and
7 other fines, including LFOs, to Defendants in Spokane County.

8 3.6.1 Ms. Yarbrough sustained these convictions when she was in a troubled marriage
9 with an individual who struggled with drug addiction. While she was initially referred to drug
10 court, Ms. Yarbrough failed to complete the program because she was focused on separating
11 from her ex-spouse and it proved too difficult to attend the program's required activities. In
12 particular, Ms. Yarbrough was placed in an out-patient facility that was located approximately
13 one block from her ex-spouse's residence and therefore would see him when entering and exiting
14 the building. When she requested a change of location, the director of the out-patient program
15 denied her request, and Mr. Yarbrough decided to leave the program altogether to avoid any
16 encounters with her ex-spouse.

17 3.6.2 Thereafter, however, Ms. Yarbrough continued to live a drug-free lifestyle and
18 secured steady employment as a cosmetologist. She later completed a paralegal certificate
19 program. Since 2005, she has not sustained any further convictions and, after 22 years as a
20 cosmetologist, retired to help with childcare duties for her grandchildren.

21 3.6.3 The LFOs imposed on Ms. Yarbrough caused significant hardship. Ms.
22 Yarbrough estimates that she spent hundreds or thousands of dollars on her LFOs and accrued
23 interest while struggling to stay afloat as a single working mom for many years. Like countless
24 Plaintiff Class Members, Ms. Yarbrough's LFOs and related financial harms were an especially

1 significant burden because of her status at the economic margins, working day to day and
2 paycheck to paycheck to support herself and her family.

3 3.7 Class Plaintiff Deighton Boyce is a citizen of Washington and a current resident
4 of Kitsap County. Mr. Boyce has sustained numerous *Blake* and *Blake-Related* Convictions, all
5 with accompanying LFOs, across King County, Snohomish County, and Pierce County.

6 3.7.1 Mr. Boyce is an African-American man, and his conviction record suggests he
7 was the target of racial profiling and over-charging by multiple law enforcement and prosecutors’
8 offices. As a teenager, Mr. Boyce was harassed by the police and was overcharged instead of
9 shown leniency for his infractions. Once in King County, the police harassed Mr. Boyce and an
10 officer told him that if he saw Mr. Boyce again, the officer would plant drugs on Mr. Boyce and
11 arrest him. In his early 20s, the police stopped Mr. Boyce while he was driving in Pierce County
12 and gave no reason for doing so. Because Mr. Boyce had lost his license, he was arrested and
13 searched for driving without a license. The police even profiled and harassed Mr. Boyce while
14 he was riding his bicycle past a car accident scene, where numerous other onlookers had gathered,
15 eventually chasing Mr. Boyce, searching him, and arresting him for drug possession.

16 3.7.2 Mr. Boyce’s experiences as a young Black man in the greater Seattle area are
17 consistent with studies documenting the selective enforcement of drug laws against African
18 Americans in the region: “Although racial disproportionality in drug arrests is a concern across
19 the nation, the over-representation of blacks among drug arrestees is especially pronounced in
20 Seattle. Indeed, only one of the other 39 mid-sized cities for which data are available has a higher
21 black-to-white drug arrest rate ratio than that found in Seattle.”³³

22
23 ³³ See Katherine Beckett, *Race and Drug Law Enforcement in Seattle*, Report Prepared
24 for the ACLU Drug Law Reform Project and the Defender Association, September 2008,
available at

1 3.7.3 Like other Plaintiffs and Class Members, Mr. Boyce previously struggled with
2 drug addiction and the problems that frequently accompany the disease – including substance
3 abuse, poverty, and homelessness. It was in this context that Mr. Boyce sustained all his criminal
4 convictions. Mr. Boyce’s struggles were intergenerational, as he grew up in a poor household
5 and his father also struggled with addiction issues.

6 3.7.4 The LFOs imposed on Mr. Boyce made conditions even worse for him. While
7 Mr. Boyce was struggling to keep a roof over his head and pay for basic amenities, he was
8 threatened with incarceration for non-payment of his LFO balances. Indeed, at one point Mr.
9 Boyce believes he was incarcerated for failure to stay current on his LFO payments. When Mr.
10 Boyce was incarcerated in Pierce County, the Department of Corrections also garnished the
11 meager wages he earned for work performed in jail, and the money given to him by friends or
12 family to pay for basic goods from the commissary.

13 3.7.5 In or around 2014, however, Mr. Boyce resolved to battle his addiction and
14 entered an in-patient treatment program, followed by intensive out-patient treatment. Since then,
15 he has not sustained any further convictions, and he continues attending support groups,
16 providing informal support and mentoring for others in the groups. Mr. Boyce has also taken a
17 leadership role in advocacy efforts on behalf of others caught in the vicious cycle of criminal
18 convictions and debilitating collateral consequences, including testifying before the Washington
19 State Legislature about his own experiences struggling to find employment in support of
20 proposed “Ban the Box” legislation. That legislation eventually passed into law and is designed
21 to provide individuals with past criminal records better opportunities to attain employment. Mr.
22 Boyce personally faced substantial difficulties finding employment, even after addressing his

23 _____
24 https://www.aclu.org/files/assets/race20and20drug20law20enforcement20in20seattle_20081.pdf
f.

1 addiction, reacquiring his driver's license, and earning his Commercial Driver's License so that
2 he could work as a truck driver.

3 3.7.6 Despite his turnaround efforts, LFOs continue to haunt Mr. Boyce and his family.
4 Over the years, Mr. Boyce has received letters threatening him with re-incarceration for failure
5 to pay, and he has had to contribute money towards LFO balances instead of towards his basic
6 needs and the needs of his family. Since getting clean, Mr. Boyce has been able to reunite with
7 his children, but on occasion has not been able to contribute to school events and activities
8 because he feared re-incarceration for failure to pay his LFOs and devoted any available income
9 to those balances instead of his children's needs. He has also experienced harassment from
10 private collections agencies contracted by Defendants to collect *Blake* and *Blake-Related* LFOs.

11 3.7.7 Even after the filing and service of the initial Complaint in this lawsuit in March
12 of this year, certain Defendants, including Snohomish County, have continued to accept payment
13 of *Blake* and *Blake-Related* LFOs, including from Mr. Boyce. When Mr. Boyce subsequently
14 asked Snohomish County about whether he would receive a refund of his past LFO payments
15 that are affected by *Blake* and this lawsuit, Snohomish County responded that they had "no idea"
16 as to whether he would receive a refund or what the timeline for such a refund would be.

17 3.8. Defendants are governmental entities that have instituted a policy and practice of
18 collecting, receiving, retaining, and refusing to cancel debt from LFOs as a result of *Blake* and
19 *Blake-Related* Convictions. Defendants continue to seek payments of LFOs through various
20 collection efforts based on *Blake* and *Blake-Related* Convictions and/or have failed to cancel
21 existing LFOs despite the *Blake* ruling.

22 IV. CLASS ACTION ALLEGATIONS

23 4.1 Definition of Classes. This is a bilateral plaintiff and defendant class action
24 brought pursuant to CR 23(a), (b)(2), (b)(3) and/or (c)(4).

1 4.1.1 The Class Plaintiffs bring this case as a class action on behalf of a class (“the
2 Plaintiff Class”) defined as follows:

3 All individuals who, as a result of any *Blake* or *Blake-Related* Convictions, had LFOs
4 imposed against them and/or paid LFOs that were charged, collected, received, or retained by or
5 on behalf of Defendants and/or Defendant Class Members.

6 4.1.2 Plaintiffs Irene Slagle and Deighton Boyce represent a Plaintiff Subclass for King
7 County of all Plaintiff Class Members, as defined above, whose convictions occurred in King
8 County (“King County Subclass”).

9 4.1.3 Plaintiffs Christine Zawaideh, Julia Reardon, and Deighton Boyce represent a
10 Plaintiff Subclass for Snohomish County of all Plaintiff Class Members, as defined above, whose
11 convictions occurred in Snohomish County (“Snohomish County Subclass”).

12 4.1.4 Plaintiffs bring this case against all Defendants, and a Defendant Class
13 represented by Defendant Class Representatives King and Snohomish County, of which all other
14 Washington Counties are members.

15 4.2 Numerosity. There are at least tens of thousands of individuals wrongfully
16 penalized under *Blake* and *Blake-Related* Convictions (and likely over 100,000) who have been
17 charged and/or paid fees, penalties, and other fines, including LFOs, to Washington and
18 Washington’s 39 Counties.³⁴ Nearly 7,000 people are presently on community supervision in
19

20 ³⁴ See Rich Smith, “New Data Analysis Shows the Astonishing Breadth of the Racial
21 Disparity in Washington’s Drug Possession Convictions,” *The Stranger*, Mar 17, 2021,
22 available at [https://www.thestranger.com/slog/2021/03/17/55910514/new-data-analysis-
23 exposes-wide-racial-disparities-in-drug-possession-convictions-across-washington](https://www.thestranger.com/slog/2021/03/17/55910514/new-data-analysis-exposes-wide-racial-disparities-in-drug-possession-convictions-across-washington) (noting that
24 Caseload Forecast Council data indicates 126,175 felony *Blake* Convictions from 1999-2019).
Even this number is likely underinclusive. For example, as to *Blake-Related* Convictions, in
fiscal year 2020 alone, Washington entered 1,156 convictions for felony inchoate possession of
controlled substances, 424 convictions for second-degree unlawful possession of a firearm, 229
convictions for various escape charges, and 305 bail jumping convictions. See Caseload
Forecast Council, Statistical Summary of Adult Felony Sentencing, at 14, Table 2 (Dec. 2020),

1 Washington flowing from simple possession convictions, according to the Washington
2 Department of Corrections.³⁵ Thus, the members of the Plaintiff and Defendant Classes are so
3 numerous that joinder of all members is impracticable. Moreover, the disposition of the claims
4 in a single action will provide substantial benefits to all parties and the Court.

5 4.3 Commonality. There are numerous questions of law and fact common to
6 Plaintiffs, Plaintiff Class Members, Defendants, and Defendant Class Members. These questions
7 include, but are not limited to, the following:

8 (a) Whether Defendants and the Defendant Class have engaged in a common course
9 of wrongfully collecting, receiving, retaining, and refusing to cancel debt from LFOs, against the
10 Plaintiff Class;

11 (b) The nature and extent of class-wide injury and the means of addressing such
12 injury;

13 (c) Whether declaratory relief is warranted; and

14 (d) Whether injunctive and other equitable relief is warranted.

15 4.4 Typicality. Class Plaintiffs' claims are typical of the claims of the Plaintiff Class.
16 Class Plaintiffs were convicted for *Blake* and *Blake-Related* Convictions and had LFOs imposed
17 on them by Defendants, and thus are members of the Plaintiff Class. Class Plaintiffs' claims,
18 like the claims of the Plaintiff Class, arise out of the same common course of conduct by

19 _____
20 available at https://www.cfc.wa.gov/PublicationSentencing/StatisticalSummary/Adult_Stat_Sum_FY2020.pdf. While these broad statistics do not indicate whether and which unlawful
21 possession of a firearm, escape, and bail jumping convictions depended on *Blake* charges or
22 convictions, they demonstrate the possibility of such. Further, this report only includes *felony*
convictions, so does not capture misdemeanor convictions for solicitation of possession of
controlled substances, possession of legend drugs, or possession of 40g or less marijuana.

23 ³⁵ Washington State Department of Corrections, "Supreme Court Ruling That Voids
24 Statute Has Potential Implications for Sentences Imposed by Courts," May 5, 2021, available at
<https://www.doc.wa.gov/news/2021/03052021p.htm>.

1 Defendants and are based on the same legal, equitable and remedial theories. Similarly,
2 Defendants' claims are typical of the claims of the Defendant Class. Defendants King County
3 and Snohomish County are Counties like the Defendant Class. All Defendants and Defendant
4 Class Members imposed, collected, received, and retained LFOs from Plaintiffs and the Plaintiff
5 Class.

6 4.5 Adequacy. Class Plaintiffs will fairly and adequately protect the interests of the
7 Plaintiff Class. Class Plaintiffs have retained competent and capable attorneys who have
8 significant experience in complex class action litigation, and its intersection with the criminal
9 legal system. Class Plaintiffs and their counsel are committed to prosecuting this action
10 vigorously on behalf of the Class and have the financial resources to do so. Neither Class
11 Plaintiffs nor their counsel have interests that are contrary to or that conflict with those of the
12 Plaintiff Class. In turn, Defendants will fairly and adequately protect the interests of the
13 Defendant Class because, among other reasons, the interests of the Defendants to defend against
14 Plaintiffs' claims are sufficiently similar to the interests of the members of the Defendant Class.

15 4.6 Declaratory/Injunctive Relief. Through imposing, collecting, receiving, and
16 retaining LFOs, as a result of *Blake* and *Blake-Related* Convictions, and other actions including
17 refusing to cancel LFOs, Defendants and the Defendant Class have acted or refused to act on
18 grounds generally applicable to Plaintiffs and the Plaintiff Class, thereby making appropriate
19 classwide declaratory and injunctive relief.

20 4.7 Predominance. Defendants and Defendant Class Members have engaged in a
21 common course of conduct toward Class Plaintiffs and members of the Plaintiff Class, including
22 by imposing, collecting, receiving, and retaining LFOs as a result of *Blake* and *Blake-Related*
23 Convictions. The common issues arising from this conduct that affect Class Members
24 predominate over any individual issues, and the calculation of restitution will be straightforward

1 and mechanical. Adjudication of these common issues in a single action has important and
2 desirable advantages of judicial economy.

3 4.8 Superiority. Class Plaintiffs and Class Members have suffered and will continue
4 to suffer harm and damages as a result of Defendants' and Defendant Class Members' unlawful
5 and wrongful conduct. Absent a class action, however, most Class Members (both individuals
6 and Counties) likely would find the cost of litigating these claims prohibitive. Class treatment is
7 superior to multiple individual suits or piecemeal litigation because it conserves judicial resources,
8 promotes consistency and efficiency of adjudication, provides a forum for small claimants, deters
9 illegal activities, and because under RCW 36.01.050, the Defendant Class Members would likely
10 have to be sued individually absent the class mechanism. There will be no significant difficulty
11 in the management of this case as a class action. The Plaintiff Class Members are readily
12 identifiable from Defendants' records, and the Defendant Class Members have been identified
13 above.

14 4.9 Issue Class. Class Plaintiffs also seek, in the alternative, certification of an
15 issue class, including as to the liability of Defendants and Defendant Class Members.

16 V. SUMMARY OF FACTUAL ALLEGATIONS

17 5.1 Common Course of Conduct: Unjust Enrichment/Restitution/Money Had and
18 Received. Defendants and Defendant Class Members have engaged in a common course of
19 wrongfully collecting, receiving, retaining, and refusing to cancel, LFO debts for *Blake* and
20 *Blake-Related Convictions*. Defendants and Defendant Class Members still seek to collect these
21 monies, hold these monies or have expended them for their own purposes (or repurposed them
22 to pay other LFOs), and, to the best of Plaintiff's knowledge, have not returned them or canceled
23 remaining LFO debt. In addition, Defendants and Defendant Class Members seek the payment
24 of LFOs through various collection efforts including the use of third-party collection agencies.

1 5.1.1 Class Plaintiffs and Plaintiff Class Members (including clients and members of
2 CSP) have paid certain LFOs to the Superior Courts of the Defendants and Defendant Class,
3 some of which are then transferred to the State of Washington and some to the Washington
4 Counties, under legal compulsion because of their *Blake* and *Blake-Related* Convictions.

5 5.1.2 Given the Washington Supreme Court’s decision in *Blake*, the obligation to pay
6 was unlawfully imposed because the predicate convictions were unconstitutional, and these funds
7 must be restored and outstanding LFOs canceled – in equity, good conscience, and justice.

8 5.1.3 Defendants and Defendant Class Members have charged, collected, received, and
9 retained such unwarranted payments from Class Plaintiffs and Plaintiff Class Members
10 (including CSP’s clients and members), and have not returned or canceled them, such that
11 Defendants and Defendant Class Members have been unjustly enriched and are actively seeking
12 further unjust enrichment by continuing to pursue LFO payments.

13 5.1.4 Class Plaintiffs and Plaintiff Class Members (including CSP’s clients and
14 members) have consequently also been “depriv[ed] of numerous other rights and
15 opportunities[,]” *Blake*, 197 Wn.2d at 173, which also must be restored.

16 5.2 Common Course of Conduct: Rescission. Defendants and Defendant Class
17 Members and Plaintiffs and Plaintiff Class Members entered into LFO payment contracts,
18 express or implied, that were premised on a mistake: that Plaintiff Class Members’ *Blake* and
19 *Blake-Related* Convictions were constitutional, and were legal bases for Defendants to impose
20 LFOs on them. As a result of that mistake, Defendants and Defendant Class Members wrongfully
21 collected, received, and retained LFOs based on these convictions from Plaintiffs and Plaintiff
22 Class Members, and Defendants and Defendant Class Members have refused to cancel remaining
23 LFO debt. These LFOs must be restored to Plaintiffs and Class Members, and outstanding
24

1 balances canceled, and Defendants and Defendant Class Members must take any and all other
2 actions required to restore Plaintiffs and Plaintiff Class Members to their pre-contract positions.

3 5.2.1 Defendants and Defendant Class Members independently believed that *Blake* and
4 *Blake-Related Convictions* were constitutional and legal bases for LFOs, which was a mistake.

5 5.2.2 Plaintiffs and Plaintiff Class Members independently believed that *Blake* and
6 *Blake-Related Convictions* were constitutional and therefore appropriate legal bases for LFOs,
7 which was a mistake.

8 5.2.3 As a result of these mistakes, Defendants and Defendant Class Members and
9 Plaintiffs and Plaintiff Class Members entered into payment contracts, express or implied, that
10 required Plaintiffs and Plaintiff Class Members to pay LFOs and empowered Defendants and
11 Defendant Class Members to collect, receive, and retain LFOs.

12 5.2.4 These mistakes changed the bargain for Plaintiffs and Plaintiff Class Members,
13 such that Plaintiffs and Plaintiff Class Members would not have agreed to pay LFOs, either
14 expressly or impliedly, if they had been aware that their convictions were unconstitutional and
15 were not legal bases for Defendants to collect LFOs.

16 5.2.5 Plaintiffs and Plaintiff Class Members had no reason to think that their *Blake* and
17 *Blake-Related Convictions* were unconstitutional when they entered into such payment
18 agreements, express or implied, to pay LFOs to Defendants and Defendant Class Members.

19 5.3 Types of Harms Suffered by Individuals. As a result of the Defendants' and
20 Defendant Class Members' actions, Plaintiffs and Plaintiff Class Members (including clients and
21 members of CSP) have suffered injuries including, but not limited to, unjustified payment of, or
22 subjection to, LFOs, and the repurposing by Defendants of LFOs paid by Plaintiffs and Plaintiff
23 Class Members for *Blake* and *Blake-Related Convictions* to pay LFO balances for non-*Blake* &
24 non-*Blake-Related Convictions*. Plaintiffs and Plaintiff Class Members have also suffered lost

1 wages while incarcerated, emotional distress, and other collateral consequences including loss of
2 housing, public benefits, student loan eligibility, and access to employment, injury to credit,
3 immigration consequences, such as deportation, as well as other forms of harm. Collateral
4 consequences also include costs and fees incident to their convictions, such as warrant and
5 booking fees, and other fees or costs assessed against Plaintiff Class Members, or that Plaintiff
6 Class Members were compelled to pay, based on their *Blake* and *Blake-Related* convictions.

7 5.4 Injury to The Civil Survival Project. In addition to the harm described above,
8 Defendants’ and Defendant Class Members’ actions have also injured CSP.

9 5.4.1 CSP has been harmed because Defendants’ and Defendant Class Members’
10 actions regarding *Blake* and *Blake-Related* Convictions frustrated the organization’s mission of
11 advancing the rights of formerly incarcerated people, and removing the barriers imposed by
12 criminal convictions on individuals attempting to secure basic opportunities in society, like
13 employment, housing, education, and voting rights. As a result of Defendants’ and Defendant
14 Class Members’ actions, CSP has been forced and will be forced to divert substantial resources
15 to address injuries to Washington residents who were and continue to be affected by *Blake* and
16 *Blake-Related* Convictions, including related to the collateral consequences of their convictions
17 and their obligation to pay LFOs. Many clients and members of CSP have been convicted of
18 drug possession and have requested assistance from CSP related to the burdens imposed by those
19 convictions. Since the *Blake* decision, CSP has received (and continues to receive) numerous
20 requests from individuals for assistance in being relieved from the penalties and obligations
21 related to their *Blake* and *Blake-Related* Convictions, including LFOs.

22 5.4.2 For example, CSP seeks to: (1) educate individuals about the law regarding the
23 consequences of their convictions, including eligibility for relief from those consequences,
24 through full-day workshops and other activities; (2) conduct and support “Game Changer

1 Groups” (“GCGs”), which are run by individuals, including clients and members, who were
2 involved in the criminal legal system, to support individuals with prior convictions; and (3)
3 engage in legislative advocacy that is geared towards improving Washington laws to alleviate
4 barriers arising from previous conviction history, including as to employment, housing, and
5 education.

6 5.4.3 But for the actions of Defendants and Defendant Class Members, CSP could
7 devote more of its scarce resources to other efforts regarding the criminal legal system and its
8 organizational mission. Further, Defendant and Defendant Class Members’ chaotic and
9 inadequate processes for relief have left CSP unable to educate or actively assist its statewide
10 membership and clients with respect to the processes to vacate and receive restitution for *Blake*
11 and *Blake-Related* Convictions.

12 5.4.4 CSP also represents in this action the interests of its clients and members,
13 including those in GCGs, many of whom have been convicted under *Blake* and *Blake-Related*
14 Convictions, and have been forced by Defendants and Defendant Class Members to pay LFOs
15 and have suffered other injuries as a result of their convictions.

16 5.4.5 The interests CSP seeks to protect are directly germane to its purpose. Amounts
17 paid and owed readily ascertainable based on Defendants’ and Defendant Class Members’
18 records, including publicly available conviction, sentencing, and accounting records, without
19 requiring the direct participation of its clients and members.

20 5.5. Defendants’ Common Course of Conduct. Defendants and Defendant Class
21 Members are all governmental entities that have acted in concert to enforce *Blake* and *Blake-*
22 *Related* statutes, and have engaged in a common course of conduct of imposing, collecting,
23 receiving, and retaining LFOs from individuals convicted for *Blake* and *Blake-Related*
24 Convictions, and refusing to cancel relevant LFO balances that remain. Instead, despite generally

1 acknowledging that they owe refunds to Plaintiffs, Defendants have retained previously collected
2 LFOs from *Blake* and *Blake-Related* Convictions and, in some instances, have started allocating
3 *Blake* and *Blake-Related* Convictions LFOs to cover balances for non-*Blake* and *Blake-Related*
4 Convictions. Defendants and Defendant Class Members are so closely related that they should
5 be treated substantially as a single unit for purposes of this lawsuit.

6 **VI. FIRST CLAIM FOR RELIEF**

7 **Unjust Enrichment / Restitution / Money Had and Received**

8 (Brought by Plaintiffs and Plaintiff Class Against Defendants and Defendant Class)

9 6.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
10 in the preceding paragraphs.

11 6.2 By the actions alleged above, Defendants and Defendant Class Members
12 wrongfully imposed, collected, received and retained monies paid to them under legal
13 compulsion, and refused to cancel LFOs, as a result of *Blake* and *Blake-Related* Convictions that
14 were unconstitutional.

15 6.3 As a result of these unlawful acts, Plaintiff and Plaintiff Class Members have been
16 deprived of money in amounts to be determined at trial, and are entitled to recovery of such
17 damages, including interest thereon.

18 6.4 As a result of these unlawful acts, Plaintiffs and Plaintiff Class Members are
19 further entitled to be restored to their pre-conviction position through monetary and equitable
20 relief, including vacation of convictions, as warranted.

21 **VII. SECOND CLAIM FOR RELIEF**

22 **Rescission**

23 (Brought by Plaintiffs and Plaintiff Class Against Defendants and Defendant Class)

1 8.2 As a result of the unlawful acts described above, Plaintiffs and Plaintiff Class
2 members seek a declaratory judgment, including that: (i) their convictions are void and vacated
3 as unconstitutional; (ii) they are entitled to recover *Blake* and *Blake*-Related LFOs wrongfully
4 collected and retained by Defendants and Defendant Class members; (iii) Defendants and
5 Defendant Class members must cancel any unpaid LFO debt claimed by them on *Blake* and
6 *Blake*-Related Convictions; and (iv) Defendants and Defendant Class members must cease their
7 practice of reallocating *Blake* and *Blake*-Related LFO payments to cover other LFO balances. In
8 the alternative, Plaintiffs and Plaintiff Class members seek a declaratory judgment against
9 Washington, requiring that it order the Defendant Counties and Defendant Class Members to
10 effectuate the relief described above.

11 8.3 Plaintiffs and Plaintiff Class Members (including CSP and its clients and
12 members) also seek further relief including return of LFOs paid, and equitable and declaratory
13 relief that the Court finds proper against Defendants and Defendant Class Members.

14 8.4 Plaintiffs seek their reasonable costs pursuant to RCW 7.24.100.

15 **IX. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff CSP, on its own behalf and on behalf of its clients and members,
17 and the Class Plaintiffs, on their own behalf and on behalf of Plaintiff Class Members, pray for
18 relief against Defendants and Defendant Class Members, as follows:

19 A. Certification of the proposed Plaintiff Class under CR 23(a) and (b)(2), (b)(3)
20 and/or (c)(4), appointment of Plaintiffs’ counsel as counsel for the Plaintiff Class (including the
21 King and Snohomish County Subclasses), and appointment of the Class Plaintiffs as
22 representatives of the Plaintiff Class, as well as appointment of Plaintiffs Irene Slagle and
23 Deighton Boyce as representatives for the King County Subclass and Plaintiffs Christine
24

1 Zawaideh, Julia Reardon, and Deighton Boyce as representatives for the Snohomish County
2 Subclass.

3 B. Certification of the proposed Defendant Class under CR 23(a) and (b)(2), (b)(3)
4 and/or (c)(4), appointment of Defendants King County and Snohomish Counties as Defendant
5 Class Representatives, and their counsel as counsel for the Defendant Class;

6 C. A declaration that the Defendants' and Defendant Class Members' actions
7 complained of herein violate the law, and for further relief as set forth above and as ordered by
8 the Court;

9 D. An order enjoining Defendants and Defendant Class Members, as well as their
10 officers, agents, successors, employees, representatives, and any and all persons acting in concert
11 with them, as provided by law, from engaging in the unlawful and wrongful conduct set forth
12 herein;

13 E. An order restoring Plaintiffs and Plaintiff Class Members to their position prior
14 to their unlawful convictions and rectifying the harm caused by Defendants and Defendant Class
15 Members.

16 F. An award to Plaintiffs and Plaintiff Class Members of actual, compensatory, and
17 nominal/exemplary damages, as allowed by law;

18 G. Reasonable service awards to Class Plaintiffs, as allowed by law;

19 H. An award of attorneys' fees and costs to Plaintiffs, as allowed by law;

20 I. An award of prejudgment and post-judgment interest to Plaintiffs, as provided by
21 law;

22 J. Such other and further equitable and legal relief as the Court deems necessary,
23 just, and proper.

1 DATED this 19th day of August, 2021.

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*Admitted *pro hac vice*

Attorneys for Plaintiffs and the Plaintiff Class

1 CERTIFICATE OF SERVICE

2 I hereby certify that a true and correct copy of the foregoing document was served via
3 King County E-Service and/or email upon the following:

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DATED this 19th day of August 2021.

/s/ Sarah Gunderson
Sarah Gunderson

EXHIBIT 7

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5092

Chapter 334, Laws of 2021
(partial veto)

67th Legislature
2021 Regular Session

OPERATING BUDGET

EFFECTIVE DATE: May 18, 2021

Passed by the Senate April 25, 2021
Yeas 27 Nays 22

DENNY HECK

President of the Senate

Passed by the House April 25, 2021
Yeas 57 Nays 40

LAURIE JINKINS

**Speaker of the House of
Representatives**

Approved May 18, 2021 2:26 PM with
the exception of sections 127(18);
127(13) [137(13)]; 308(18); 738;
1110(9); 955; and 1703, page 1076,
lines 34-35, which are vetoed.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is **ENGROSSED
SUBSTITUTE SENATE BILL 5092** as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

May 19, 2021

**Secretary of State
State of Washington**

1 In order to achieve operating efficiencies within the financial
2 resources available to the legislative branch, the executive rules
3 committee of the house of representatives and the facilities and
4 operations committee of the senate by joint action may transfer funds
5 among the house of representatives, senate, joint legislative audit
6 and review committee, legislative evaluation and accountability
7 program committee, joint transportation committee, office of the
8 state actuary, joint legislative systems committee, statute law
9 committee, and office of legislative support services.

10 NEW SECTION. **Sec. 111. FOR THE SUPREME COURT**

11	General Fund—State Appropriation (FY 2022)	\$9,781,000
12	General Fund—State Appropriation (FY 2023)	\$9,848,000
13	TOTAL APPROPRIATION	\$19,629,000

14 NEW SECTION. **Sec. 112. FOR THE LAW LIBRARY**

15	General Fund—State Appropriation (FY 2022)	\$1,811,000
16	General Fund—State Appropriation (FY 2023)	\$1,821,000
17	TOTAL APPROPRIATION	\$3,632,000

18 NEW SECTION. **Sec. 113. FOR THE COMMISSION ON JUDICIAL CONDUCT**

19	General Fund—State Appropriation (FY 2022)	\$1,650,000
20	General Fund—State Appropriation (FY 2023)	\$1,649,000
21	TOTAL APPROPRIATION	\$3,299,000

22 NEW SECTION. **Sec. 114. FOR THE COURT OF APPEALS**

23	General Fund—State Appropriation (FY 2022)	\$21,818,000
24	General Fund—State Appropriation (FY 2023)	\$22,146,000
25	TOTAL APPROPRIATION	\$43,964,000

26 NEW SECTION. **Sec. 115. FOR THE ADMINISTRATOR FOR THE COURTS**

27	General Fund—State Appropriation (FY 2022)	\$157,168,000
28	General Fund—State Appropriation (FY 2023)	\$81,033,000
29	General Fund—Federal Appropriation	\$2,209,000
30	General Fund—Private/Local Appropriation	\$681,000
31	Judicial Stabilization Trust Account—State	
32	Appropriation	\$6,692,000
33	Judicial Information Systems Account—State	
34	Appropriation	\$60,664,000

1 (b) The center for court research must complete a preliminary
2 report by June 30, 2022, and submit a final report to the appropriate
3 committees of the legislature by June 30, 2023.

4 (5) \$44,500,000 of the general fund—state appropriation for
5 fiscal year 2022 is provided solely to assist counties with costs of
6 resentencing and vacating the sentences of defendants whose
7 convictions or sentences are affected by the *State v. Blake* decision.
8 Subject to the availability of amounts provided in this section, the
9 office must provide grants to counties that demonstrate extraordinary
10 judicial, prosecution, or defense expenses for those purposes. The
11 office must establish an application process for county clerks to
12 seek funding and an equitable prioritization process for distributing
13 the funding.

14 (6) \$23,500,000 of the general fund—state appropriation for
15 fiscal year 2022 is provided solely to establish a legal financial
16 obligation aid pool to assist counties that are obligated to refund
17 legal financial obligations previously paid by defendants whose
18 convictions or sentences were affected by the *State v. Blake* ruling.
19 County clerks may apply to the administrative office of the courts
20 for a grant from the pool to assist with extraordinary costs of these
21 refunds. State aid payments made to a county from the pool must first
22 be attributed to any legal financial obligations refunded by the
23 county on behalf of the state. The office must establish an
24 application process for county clerks to seek funding and an
25 equitable prioritization process for distributing the funding.

26 (7) \$1,782,000 of the general fund—state appropriation for fiscal
27 year 2022 and \$749,000 of the general fund—state appropriation for
28 fiscal year 2023 are provided solely for the implementation of
29 Engrossed Second Substitute House Bill No. 1320 (civil protection
30 orders). If the bill is not enacted by June 30, 2021, the amounts
31 provided in this subsection shall lapse.

32 (8) \$68,000 of the general fund—state appropriation for fiscal
33 year 2022 and \$60,000 of the general fund—state appropriation for
34 fiscal year 2023 are provided solely for the implementation of Second
35 Substitute House Bill No. 1219 (youth counsel-dependency). If the
36 bill is not enacted by June 30, 2021, the amounts provided in this
37 subsection shall lapse.

38 (9) \$110,000 of the general fund—state appropriation for fiscal
39 year 2022 and \$165,000 of the general fund—state appropriation for

1 requirements set forth in the uniform guardianship act in chapter
 2 11.130 RCW. If the amount provided in this subsection is insufficient
 3 to fully fund the local court costs, distributions must be reduced on
 4 a proportional basis to ensure that expenditures remain within the
 5 available funds provided in this subsection. No later than December
 6 31, 2021, the administrative office of the courts will provide a
 7 report on distributions to local courts including, but not limited
 8 to, the amount provided to each court, the number of guardianship
 9 cases funded at each court, costs segregated by attorney appointments
 10 and court visitor appointments, the amount of any pro rata
 11 reductions, and a recommendation on how to forecast distributions for
 12 potential future funding by the legislature.

13 (15) \$375,000 of the general fund—state appropriation for fiscal
 14 year 2022 and \$285,000 of the general fund—state appropriation for
 15 fiscal year 2023 are provided solely for costs to relocate staff from
 16 the temple of justice to another workspace if the omnibus capital
 17 appropriation act provides funding for improvements to the heating,
 18 ventilation, lighting, and plumbing improvements to the temple of
 19 justice. Staff from the administrative office of the courts shall
 20 work with the department of enterprise services and the office of
 21 financial management to acquire temporary space in a state owned
 22 facility that meets the needs of the supreme court. If a state
 23 facility cannot be found, the court may acquire temporary workspace
 24 as it chooses.

25 **NEW SECTION. Sec. 116. FOR THE OFFICE OF PUBLIC DEFENSE**

26	General Fund—State Appropriation (FY 2022).	\$53,975,000
27	General Fund—State Appropriation (FY 2023).	\$54,202,000
28	General Fund—Federal Appropriation.	\$362,000
29	General Fund—Private/Local Appropriation.	\$30,000
30	Judicial Stabilization Trust Account—State	
31	Appropriation.	\$3,896,000
32	TOTAL APPROPRIATION.	\$112,465,000

33 The appropriations in this section are subject to the following
 34 conditions and limitations:

35 (1) \$250,000 of the general fund—state appropriation for fiscal
 36 year 2022 and \$250,000 of the general fund—state appropriation for
 37 fiscal year 2023 are provided solely for the office of public defense
 38 to contract with a free legal clinic that has a medical-legal

1 partnership and that currently provides parent representation to at-
2 risk clients in dependency cases in Snohomish, Skagit, and King
3 counties. Within amounts appropriated, the clinic must provide legal
4 representation to parents who are pregnant or recently postpartum who
5 are at risk of child abuse or neglect reports or investigations.

6 (2) \$900,000 of the general fund—state appropriation for fiscal
7 year 2022 and \$900,000 of the general fund—state appropriation for
8 fiscal year 2023 are provided solely for the purpose of improving the
9 quality of trial court public defense services. The office of public
10 defense must allocate these amounts so that \$450,000 per fiscal year
11 is distributed to counties, and \$450,000 per fiscal year is
12 distributed to cities, for grants under chapter 10.101 RCW.

13 (3) \$5,000 of the general fund—state appropriation for fiscal
14 year 2022 and \$14,000 of the general fund—state appropriation for
15 fiscal year 2023 are provided solely for the implementation of Second
16 Substitute House Bill No. 1219 (youth counsel-dependency). If the
17 bill is not enacted by June 30, 2021, the amounts provided in this
18 subsection shall lapse.

19 (4) \$443,000 of the general fund—state appropriation for fiscal
20 year 2022 and \$683,000 of the general fund—state appropriation for
21 fiscal year 2023 are provided solely for the implementation of
22 Engrossed Substitute House Bill No. 1140 (juvenile access to
23 attorneys). If the bill is not enacted by June 30, 2021, the amounts
24 provided in this subsection shall lapse.

25 (5) \$5,500,000 of the general fund—state appropriation for fiscal
26 year 2022 and \$5,500,000 of the general fund—state appropriation for
27 fiscal year 2023 are provided solely to assist counties with public
28 defense costs related to vacating the sentences of defendants whose
29 convictions or sentences are affected by the *State v. Blake* decision.
30 Of the amounts provided in this subsection:

31 (a) \$400,000 of the general fund—state appropriation for fiscal
32 year 2022 and \$400,000 of the general fund—state appropriation for
33 fiscal year 2023 are provided solely for the office of public defense
34 to provide statewide attorney training, technical assistance, data
35 analysis and reporting, and quality oversight and for administering
36 financial assistance for public defense costs related to *State v.*
37 *Blake* impacts; and

38 (b) \$5,100,000 of the general fund—state appropriation for fiscal
39 year 2022 and \$5,100,000 of the general fund—state appropriation for

EXHIBIT 8

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August 13, 2021

BY EMAIL

Paul Crisalli, Assistant Attorney General
Washington State Attorney General's Office
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

Re: *Blake*: The State's Obligation to Fund the Vacations, Resentencings, and Refunds

Dear Paul:

As you know, we represent King County and Snohomish County (the Counties) in connection with the repercussions of *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021). By letter dated April 2, the Counties tendered to the State the duties to defend and indemnify the Counties in *Civil Survival Project, et al. v. State, et al.*, No. 21-2-03266-1 SEA.

The Counties now make a related but separate demand: that the State agree to fully reimburse the Counties for all amounts they will expend on the State's behalf for resentencings, vacations, and legal financial obligation refunds required by the *Blake* decision. The State's April 13 rejection of the Counties' tender did not explain why the constitutional provisions, case law, and statutes cited by the Counties do not require its acceptance. Further, it did not specify the legal basis for requiring Counties to bear the costs related to ensuring the State's compliance with the *Blake* decision. For the same reasons stated in the Counties' April 2 letter, the State bears sole responsibility for all amounts that the Counties have incurred and will incur because of the *Blake* decision.

We look forward to receiving the State's prompt agreement to reimburse the Counties as outlined above.

Very truly yours,

HARRIGAN LEYH FARMER & THOMSEN LLP



Timothy G. Leyh

TGL:emf

cc: Joseph Genster, Snohomish County Prosecuting Attorney's Office
David Hackett, King County Prosecuting Attorney's Office