No. 102691-9

SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 853139

SAMUEL TUCKER, an individual,

Plaintiff/Petitioner,

v.

SEATTLE CITY LIGHT, a department of THE CITY OF SEATTLE, a municipality, and ANDREW STRONG, an individual,

Defendants/Respondents.

RESPONDENTS' ANSWER TO APPELLANT'S PETITION FOR REVIEW

Submitted by:

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Introduction

Seeking a "sixth bite at the apple," Petitioner Samuel Tucker ("Tucker") attempts to disguise his frivolous petition for review as a noble plea for racial justice, making a mockery of *Henderson v. Thompson* and legitimate claims of race discrimination. Tucker directly or implicitly alleges that the Honorable Karen Donohue is racist, Commissioner Masako Kanazawa is racist, and Judges Janet Chung, Linda Coburn, and Cecily Hazelrigg are racist simply because they have opposed his position on the judgment summary. This Court is next in line to be so accused should it disagree with him.

Tucker's tactic is consistent with his conduct as a bully in the workplace. He began targeting his then supervisor, Andrew Strong ("Strong"), after Strong was promoted into a position that Tucker coveted for himself; soon thereafter Tucker began claiming race discrimination against Strong, without any support whatsoever. In contrast, men and women of color offered sworn testimony regarding Tucker's inappropriate workplace behavior in support of Respondents' Motion for Summary Judgment.

Instead of responding to their statements, Tucker accepted a nuisance-value Offer of Judgment.

That is where this matter should have ended. But for reasons known only to Tucker, he continues to consume judicial and City resources rather than concede the matter is over and move on. There is no merit to his appeal, there is no relief that can be granted, and there is no public interest at stake that might arguably justify consideration of a moot appeal. This Court should not spend any more time entertaining Tucker's frivolous arguments. Review should be denied.

Issues Presented for Review

1. The trial court on two occasions, the Court Commissioner on two occasions, and a unanimous panel of the Court of Appeals carefully considered the same arguments Tucker presents here. *Should this Court reject Tucker's unsupported allegations of racial bias for the last and final time?* **Yes.**
2. Trial courts are sworn to issue justice fairly and impartially and have been instructed by this Court to be alert for implicit bias. Here, Tucker had a full and fair opportunity

to present all evidence of alleged "racial bias" to the trial court, and the trial court entertained his motion for reconsideration when accused of racial bias.

Did the trial court fulfill its judicial obligation despite not specifically holding an evidentiary hearing pursuant to Henderson v. Thompson *on the wording of the judgment summary?* **Yes.**

3. An appeal is frivolous when it cannot be supported by any rational argument on the law or facts or if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there is no reasonable possibility of merit.

Is Tucker's appeal frivolous because it is not supported by any rational argument on the law or facts and there are no debatable issues upon which reasonable minds might differ? **Yes.**

Restatement of the Case

This was an employment matter in which Tucker named as defendants his employer, the City of Seattle, Seattle City Light ("the City"), and his former supervisor, Andrew Strong

(collectively "Respondents"). CP 1. Darnell Cola (black male) and Devonna Johnson (black female) promoted Strong, a white male, over Tucker. Declaration of Jeffrey A. James in Support of Respondent's Answer to Petitioner's Motion for Permission to Amend Appeal ("James Decl.") at ¶ 10, Ex. 8 ("Johnson Decl.") at ¶¶ 2,6,16,17.[1] Tucker thereafter alleged he was discriminated against by Strong and the City because of his race, among other claims. CP 1. He sought $8,453,497 in damages from Respondents. James Decl. at ¶ 4, Ex. 2, 28:1-3. Strong does not have any documented complaints of race discrimination against him, and no one other than Tucker has ever voiced concerns about Strong. Johnson Decl. at ¶ 39.

At the completion of discovery, with there being no evidence whatsoever of discriminatory treatment toward Tucker

[1] Plaintiff/Petitioner did not properly submit the initial Designation of Clerk's Papers to the Court of Appeals in this matter. In order for Defendants/Respondents to submit an Answer and Response to Tucker's Motion for Permission to Amend Appeal to the Court of Appeals, Defendants/Respondents submitted the Declaration of Jeffrey A. James with the relevant pleadings from King County Superior Court, Case No. 21-2-05834-1 SEA. The Court of Appeals included the declaration and attached exhibits in its transmittal of documents to the Supreme Court.

and there being voluminous evidence of Tucker's inappropriate conduct toward women, including women of color, Respondents moved for summary judgment. They supported their motion with declarations from men and women of color who spoke out against Tucker's bullying behavior in the workplace. James Decl. at ¶ 5, Ex. 3. Rather than respond to Respondents' then-pending Motion for Summary Judgment, Tucker accepted an Offer of Judgment for $150,000 plus attorney fees and costs.[2] *Id.* at ¶ 17, Ex. 15. The Offer referenced the City of Seattle, Seattle City Light, and Andrew Strong collectively as "Defendants" but offered to allow judgment against "it" (singular) for $150,000 "in total resolution of any and all claims and allegations by Tucker against, implicating, or involving Defendants" collectively. CP 233-239; CP 600-601; CP 604-605. When Defendants/Respondents made the Offer of Judgment, they intended that the judgment be taken against them collectively, but that the City be the sole payor (aka "judgment debtor") of the

[2] Tucker's acceptance of $150,000 works out to less than 2% of his claimed damages, and less than the City would likely incur in attorney fees through trial at that stage of litigation if it did not prevail on summary judgment, hence the characterization of it as a "nuisance" amount.

$150,000 to Tucker and the award of attorney fees and costs to his counsel. CP 600-601. This is because the City had agreed to defend and fully indemnify Strong from any payment as it determined that all acts as alleged by Tucker occurred in the course and scope of Strong's employment. *Id*.; Seattle Municipal Code ("SMC") 4.64.010 and .020. SMC 4.64.010 states in pertinent part:

> It shall be a condition of employment of City officers and employees that in the event there is made against such officers or employees any claims and/or litigation arising from any conduct, acts or omissions of such officers or employees in the scope and course of their City employment, the City Attorney shall, at the request of or on behalf of the officer or employee, investigate and defend such claims and/or litigation and, if a claim be deemed by the City Attorney a proper one or if judgment be rendered against such officer or employee, the claim or **judgment shall be paid by the City** in accordance with procedures established in this chapter for the settlement of claims and payment of judgments.

(Emphasis added.)

Defendants/Respondents' proposed judgment summary omitted Strong's name because there were concerns about a judgment on Strong's credit history when, per SMC 4.64.010 and .020, he was not responsible for paying the judgment. Further, Defendants/Respondents expressly disclaimed liability in the

Offer **and there was no finding of liability against Strong**. This fact bears emphasizing: Tucker was not the "prevailing party" against Strong as Tucker erroneously asserts in his briefing.[3] Because of this, the trial court agreed that it was correct to list the City as the sole Judgment Debtor on the Judgment Against Defendants and signed the Judgment stating that "judgment in the amount of $150,000 is hereby awarded to Mr. Tucker and against Defendants." CP 264-265. The trial court then signed the Stipulated Judgment on Attorney Fees and Costs in the amount of $328,048.60. CP 728-730.

The City promptly paid the Judgment Against Defendants and Judgment on Attorney Fees and Costs in full, totaling $478,162.68. CP 753-758; CP 761-763, 766-769. Tucker's counsel promptly deposited the checks paid to him by the City, which cleared. *Id.* Tucker's counsel acknowledged he received

[3] Tucker cites to a passing reference to "prevailing party" for purposes of awarding attorney fees under CR 68 in *Washington Greensview Apartment Assocs. v. Travelers Prop. Cas. Co. of Am.*, 173 Wash. App. 663, 671, 295 P.3d 284, 288 (2013). Here, the Offer of Judgment included attorney fees; there was no need to identify a "prevailing party."

full payment of the Judgment and agreed to file a satisfaction of judgment. CP 773.

Rather than filing a satisfaction of judgment as promised—and despite depositing the full $478,162.68 into his bank accounts—Tucker filed a meritless motion for reconsideration of the Judgment Against Defendants, challenging the failure to list Strong on the judgment summary as a "judgment debtor." CP 266-282. He argued that the trial court's failure to list Strong as a debtor, despite the City indemnifying Strong and paying the entirety of the Judgment, was somehow racist. The trial court denied the motion. CP 721-723. Tucker then filed his appeal. CP 731.

In response to Tucker's refusal to file a satisfaction of judgment, the City was forced to bring a CR 60(b)(6) Motion for Relief from Judgment, which was granted by Order dated June 6, 2023. CP 753-758; CP 809-810. Tucker did not timely file a Response to the City's CR 60(b)(6) motion. Tucker filed a Motion for Reconsideration, alleging that the failure to include Strong as a judgment debtor was "supporting white supremacy." CP 811. The Motion for Reconsideration was denied. CP 244. In

response, Tucker brought his request for permission to amend his appeal. The City objected as the Judgment was fully satisfied despite Tucker's baseless assertions.

Court of Appeals Commissioner Kanazawa dismissed this matter, finding that Tucker had no standing to bring his appeal. A three-judge panel of the Court of Appeals unanimously rejected Tucker's Motion to Modify the Commissioner's ruling.

Argument

A. Tucker was not aggrieved by the Court properly entering a Satisfaction of Judgment.

Tucker argues unpersuasively that there is a pressing need to develop a procedure that practitioners may follow to confront perceived racism in the courthouse following acceptance of a CR 68 Offer of Judgment. *See* Petition for Review, p. 14. That procedure already exists and is laid out in CR 7, *i.e.*, an aggrieved practitioner can file a motion. If unsuccessful in the superior court, an aggrieved practitioner can file an appeal or seek discretionary review. *See*, *e.g.*, *Washington Greensview Apartment Assocs. v. Travelers Prop. Cas. Co. of Am.*, 173 Wash. App. 663, 670, 295 P.3d 284, 288 (2013) (construing whether the

trial court erred by denying petitioner's motion for an award of attorney fees after accepting CR 68 Offer of Judgment).

Here, as he openly admits, "[r]ather than tie up the money for months or years, Tucker accepted the money and cashed the checks."[4] Petition for Review, p. 16.

It is wrong for Tucker to argue that the trial court abused its discretion and that the Commissioner (and by extension the Court of Appeals) was somehow complicit in a nefarious act. *See* Petition for Review, p. 16. Tucker is solely responsible for his actions. He was presented with several choices, the first being whether to accept or reject the Offer of Judgment as presented or whether to present a counteroffer; he chose to accept the Offer of Judgment as presented. Second, Tucker faced the choice of whether to accept the checks when tendered; he chose to accept the checks. And, third, he faced the choice of whether to cash the checks and receive payment in full satisfaction of the Judgment prior to pursuing his appeal; he chose to cash the

[4] This statement of justification is not credible given that Tucker first filed his tort claim for damages more than 60 days prior to filing his Complaint for Damages in May 2021, and had already been waiting for "the money" for years. CP 1.

checks. At that point, there was no further relief he could possibly seek and his appeal became moot.

B. Tucker lacks standing to pursue this appeal.

The Commissioner and the Court of Appeals correctly found that Tucker does not have standing to bring an appeal, as he is not an aggrieved party. Standing is not a "personal right" as Tucker contends (without any legal support). RAP 3.1 precludes Tucker's appeal in this matter. RAP 3.1 states, "Only an aggrieved party may seek review by the appellate court." This Court recently held that the Court of Appeals erred by entertaining review of an appellant's appeal where the appellant was not "aggrieved" within the meaning of RAP 3.1, writing as follows:

> While RAP 3.1 does not itself define the term "aggrieved," Washington courts have long held that "[f]or a party to be aggrieved, the decision must adversely affect that party's property or pecuniary rights, or a personal right, or impose on a party a burden or obligation." *In re Parentage of X.T.L.*, No. 31335-2-III, slip op. at 17 (Wash. Ct. App. Aug. 19, 2014) (unpublished), http://www.courts.wa.gov/opinions/pdf/313352.unp.pdf; *State v. Taylor*, 150 Wn.2d 599, 603, 80 P.3d 605 (2003) (stating that an aggrieved party is "one whose personal right or pecuniary interests have been affected"); *Sheets v. Benevolent & Protective Order of Keglers*, 34 Wn.2d 851, 855, 210 P.2d 690 (1949). A party is not aggrieved by a favorable decision and cannot properly appeal from such

> a decision. *Paich v. N. Pac. Ry. Co*., 88 Wash. 163, 165-66, 152 P. 719 (1915). "'[T]he mere fact that a person is hurt in his [or her] feelings, wounded in his [or her] affections, or subjected to inconvenience, annoyance, discomfort, or even expense by a decree, does not entitle [that party] to appeal from it.'" *Elterich v. Arndt*, 175 Wash. 562, 564, 27 P.2d 1102 (1933) (quoting 2 RULING CASE LAW Necessity That Appellant Be Prejudiced § 34, at 53 (1914)).

Randy Reynolds & Assocs. v. Harmon, 193 Wn.2d 143, 150-151 (2019).

Tucker asserts the Commissioner's ruling, and by extension the Court of Appeals' ruling, "is caused by an inability to see racial microaggressions." *See* Petition for Review, p. 19. The biographies of the respective – and respected – jurists suggest otherwise.[5] Ironically, Tucker is the only party that has had complaints sustained against him by women and women of color. As recently as his deposition in this matter he was

[5] *See* *https://www.courts.wa.gov/appellate_trial_courts/bios/?fa=atc_bios.display&folderid=div1&fileID=Kanazawa;* *https://www.courts.wa.gov/appellate_trial_courts/bios/?fa=atc_bios.display&folderid=div1&fileID=chung* *https://www.courts.wa.gov/appellate_trial_courts/bios/?fa=atc_bios.display&folderid=div1&fileID=coburn* *https://www.courts.wa.gov/appellate_trial_courts/bios/?fa=atc_bios.display&folderid=div1&fileID=Hazelrigg*.

unabashedly referring to black female applicants as "colored girls."[6]

Tucker wrongly claims he has not achieved "substantial justice" because of "the trial judge's improper decision to delete the white manager's name from the judgment summaries." Petition for Review, p. 20. Strong's name was not "deleted" from the judgment summary – it was not included. This distinction is material – the trial court did not grant Strong special dispensation because he is white; it agreed there was no benefit or need to include him because by law the judgment creditor was the City. This in no way rendered the justice Tucker obtained from accepting the Offer of Judgment "insubstantial."

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[6] *See*, *e.g.*, James Decl., Ex. 3, pp. 6-7, quoting Deposition of Samuel Tucker:

Q You just referred to these women multiple times as colored girls --
A That's right.
Q -- and you're saying HR was discriminatory?
A No, I'm just saying that those colored girls -- those two colored girls -- I'm just saying those two-colored girls, now, that's the way it was, the two Black ladies. There was two Black ladies. They were colored. They were colored women.

Tucker Dep., 105:20-106:3.

C. Tucker's appeal is moot as no relief can be granted.

As a general rule, appellate courts "do not consider cases that are moot or present only abstract questions." *State v. Beaver*, 184 Wn.2d 321, 330 (2015), citing *State v. Hunley*, 175 Wn.2d 901, 907, 287 P.3d 584 (2012); *see also Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972) (same). "A case is technically moot if the court can no longer provide effective relief." *Hunley*, 175 Wn.2d at 907.

However, "if a case presents an issue of continuing and substantial public interest and that issue will likely reoccur, the court may still reach a determination on the merits to provide guidance to lower courts." *Beaver*, 184 Wn.2d at 330. In deciding whether a moot case presents an issue of continuing and substantial public interest, a court considers: (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance, and (3) the likelihood of future recurrence of the issue. *Id*., 184 Wn.2d at 330-331. The court may also consider the level of adversity between the parties. *Id.*

> The continuing and substantial public interest exception has been used in cases dealing with constitutional

> interpretation, the validity of statutes or regulations, and matters that are sufficiently important to the appellate court. **This exception is not used in cases that are limited to their specific facts.**

(Internal citations omitted; emphasis added.) *Id. See also Orwick, et. al v. The City of Seattle*, 103 Wn. 2d 249, 254, 692 P. 2d 793 (1984) (dismissing appeal because petitioners' claim for relief became moot before trial and they no longer had an existing interest to litigate).

Here, a Judgment was issued based on the agreement of the parties – Respondents made an Offer of Judgment and Tucker accepted that Offer of Judgment. The trial court correctly entered the Judgment on the parties' agreement. The Judgment was paid in full within days of entry. A judgment is satisfied when it has been paid. *Kalid v. Citrix Sys., Inc.*, No. 82822-3-I (Wash. Ct. App. Jan. 31, 2022), citing RCW 4.56.100.

Tucker admitted that the Judgment has been fully satisfied, He acknowledged his appeal is effectively moot by citing a long line of persuasive precedent in his pleading filed with the trial court in opposition to entry of the satisfaction Order:

> "[T]he law is well settled that a satisfaction of judgment is the last act and end of a proceeding." *Dooley v. Cal-Cut Pipe & Supply, Inc*., 197 Colo. 362, 364, 593 P.2d 360,

> 362 (1979), see *Scott v. Denver*, 125 Colo. 68, 241 P.2d 857 (1952); *Cason v. Glass Bottle Blowers Ass'n*, 113 Cal.App.2d 263, 247 P.2d 931 (1952); *Stull v. Allen*, 165 Kan. 202, 193 P.2d 207 (1948). "A satisfaction signifies that the litigation is over, the dispute is settled, the account is paid." *Morris North American, Inc. v. King*, 430 So.2d 592 (Fla. 4th DCA, 1983).

James Decl. at ¶ 19, Ex. 17, 8:6-13.

Tucker continues to waste judicial time and resources on an appeal he acknowledges is moot, arguing that the Supreme Court can still consider moot appeals. Petition for Review, p. 7. None of the factors justifying appellate review of a moot order apply here. Particularly, this case does not fall under any classification of previous justifications for invoking the public interest exception. Such matters included the need to clarify statutory interpretation, significant constitutional questions, and the interest of keeping families together. *Matter of Dependency of L.C.S.*, 200 Wn.2d 91 (2002); *In re Det. Of M.W. v. Dep't of Soc. & Health Servs*., 185 Wn.2d 633 (2016); *In re Swanson*, 115 Wn.2d 21, 25 (1990) (accord); *Beaver*, 184 Wn.2d at 331 (same). Public interest is not triggered when a plaintiff promptly receives full payment of the judgment he accepted. Tucker has

manufactured litigation here for personal reasons, not for the public good.

Tucker's assertion that an adverse finding will trigger a "wave" of excluding defendants from a judgment debtor line is speculative and unrealistic. The purpose of a judgment summary is to establish payment terms for enforcement. Where an individual defendant bears no actual responsibility for payment it serves no societal interest to have that person listed on the judgment summary, nor does it help the judgment recipient. In the case of an action against the City of Seattle, where the ordinance provides that the City shall indemnify the individual and pay any judgment, it serves no purpose, and no public interest is implicated, to include individual defendants in the judgment summary, particularly where there has been no finding of liability.

Applying the factors listed in *In re Marriage of Horner*, 151 Wn.2d 884, 93 P.3d 124 (2004), the nuance of this particular judgment summary is of interest only to Tucker and his counsel (and other than for vindictiveness, it is unclear why even they care) and potentially applicable only to employees of the City

who might be named in lawsuits for actions taken in the course of employment for the City.[7] There is no need for an "authoritative determination" to provide guidance to public officers because the determination of "judgment debtor" is straightforward when the City and an individual employee are named as defendants and the individual is entitled to indemnification under SMC 4.64.010. The issue is not likely to reoccur – this may be the first time it has ever occurred since the City was founded in 1869.[8] The level of "adverseness" is undisputable – but also misguided[9] – and not determinative. What is clear beyond a doubt is that no public interest will be served by allowing Tucker to continue to use the appellate process to make baseless accusations of racism and "white

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[7] Tucker's argument that "this Court needs to intervene to establish limits for what a trial court can do to a CR 68 judgment" is a gross overstatement. The trial court did not profess confusion on how to interpret or apply CR 68. It simply ruled that Strong did not need to be listed as a judgment debtor because he was entitled to indemnification under SMC 4.64.010.

[8] *See* https://www.seattle.gov/cityarchives/seattle-facts/brief-history-of-seattle

[9] One plausible motivation for pursuing this appeal so zealously is Tucker's counsel's personal vendetta; a LEXIS search reveals Tucker's counsel has sued the City more than 10 times.

privilege" against the female judicial officers who have rejected his frivolous arguments.

D. The trial court appropriately applied CR 60.

Tucker's petition ignores that the trial court retains authority to hear and determine post-judgment motions and needs permission from the Court of Appeals only when its decision "will change a decision then being reviewed by the appellate court." RAP 7.2(e). The trial court entering a Satisfaction of Judgment in this matter, to which Tucker's counsel had agreed after depositing the two checks, does not change the decision being reviewed by the appellate court, as it does not affect the judgment. CR 60(b). The Satisfaction of Judgment merely formalized for the record that the Judgment has been satisfied and is no longer a debt to be collected.

Procedurally, Tucker cannot bring any arguments regarding the City's CR 60 motion, other than jurisdictional questions, as he failed to timely bring these arguments to the trial court and the trial court did not take his untimely response into consideration. James Decl., Ex. 18.

Regardless, Tucker's citation to CR 60(e) is misplaced. That section sets forth the "Procedure on Vacation of Judgment." The City never moved to *vacate* the Judgment. Its motion was brought pursuant to CR 60(b), which provides in part, "[o]n motion and upon such terms as are just, the court may relieve a party from a final judgment . . . for the following reasons: . . . (6) The judgment has been satisfied[.]" Procedurally, all that is required is that the motion be made "within a reasonable time," which it was. *Id.* The City's motion did not "affect the finality of the judgment" in any way, which is a matter of judicial record. *Id.* In short, this is yet another baseless argument that in no way justifies Tucker's continued frivolous appeal.[10]

E. Tucker's appeal is frivolous.

An appeal is frivolous if, considering the entire record, the appeal presents no debatable issues upon which reasonable minds might differ and the appeal is so totally devoid of merit

[10] Although Tucker criticizes Respondents from relying on RCW 4.56.100 and CR 60(b)(6) to create a judicial record that the Judgment has been satisfied, he does not point to an alternate means to achieve this result when counsel for one party is not cooperative. Typically, counsel submit a stipulated satisfaction of judgment, which would have occurred here had Tucker's counsel not reneged on his agreement to do so.

that there is no reasonable possibility of reversal. *Cottringer v. Emp't Sec. Dep't*, 162 Wn. App. 782, 790 (2011), citing *Tiffany Family Trust Corp v. City of Kent*, 155 Wn.2d 225, 241 (2005).

Here, there is no debatable issue that when a plaintiff collects and deposits the entirety of the funds owed from a judgment, the judgment is fully satisfied. There is no possibility of reversal, particularly when the judgment fully reflects the parties' agreement. There is no further action to be taken by the trial court.

Tucker's appeal is not based on any law or sound legal argument and there are no debatable issues upon which reasonable minds might differ. His claim of "white supremacy" is utterly absurd. Under the conditions laid out in SMC 4.64.010, the City is *required* to indemnify employees who are sued as a result of acts within the scope of their employment, and indemnification is available for all employees regardless of their race or skin color. Tucker's characterization of the City's unremarkable and legally required indemnification of Strong as "white supremacy" exemplifies the frivolous nature of Tucker's appeal.

In sum, if Tucker held a true belief that the Judgment was entered incorrectly, he should not have accepted and deposited the $478,162.68 in funds before filing his appeal. Yet he did and thus there is no relief that this Court can grant because the Judgment has been fully satisfied. His appeal is frivolous and should be denied.

F. Tucker's attempt to once again weaponize *Henderson* is disgraceful.

Tucker repeatedly quotes from *Henderson v. Thompson*, 200 Wn.2d 417, 421, 518 P.3d 1011, 1016 (2022), *cert. denied*, 143 S. Ct. 2412 (2023), and uses the terms "white supremacy," "white privilege," and "racial microaggressions" in reference to the trial court, the Court of Appeals Commissioner, and the Court of Appeals Judges who denied his Motion to Modify. He likewise asserts he had requested a *Henderson* evidentiary hearing to the trial court, omitting that this was originally suggested by Respondents prior to Tucker accepting the Offer of Judgment.[11]

[11] Respondents planned to seek judicial guidance on how to introduce evidence of Tucker's race-based and gender-based bullying in light of *Henderson*.

The actions of the trial court, the Commissioner and the Court of Appeals are not "chilling" or inconsistent with the *Henderson* ruling, as Tucker claims. *Henderson* has nothing to do with offers of judgment, the mootness doctrine, or any other issue raised here. Tucker's attempt to twist *Henderson* is completely ineffective and belittles this Court's opinion in that case.

G. Defendants are entitled to reasonable fees for having to respond to multiple frivolous motions.

RAP 18.9(a) permits an appellate court to award attorney fees to a party as sanctions, terms, or compensatory damages when the opposing party files a frivolous appellate action. Tucker has forced the City to respond to multiple motions, despite findings that his appeal was frivolous. He ***knew*** that his appeal was moot at the outset yet continued to file motion after motion. Thus, the City respectfully requests that, as a sanction, the Court award it attorney fees associated with having to defend Tucker's frivolous appeal.

Conclusion

The Commissioner's notation ruling accurately sets forth the proceedings below and accurately concludes the appeal

should be dismissed. It was properly affirmed by the Court of Appeals. The Petition for Review should be denied.

I certify that this answer is in 14-point Times New Roman font and contains 4,538 words in compliance with Rule of Appellate Procedure 18.17.

RESPECTFULLY SUBMITTED this 1st day of February 2024.

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CERTIFICATE OF SERVICE

I, Jeffrey A. James, certify under penalty of perjury under the laws of the State of Washington that on February 1, 2024, I caused to be served the document to which this is attached to the parties listed below in the manner shown:

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