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CASE NO. 92629-8

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**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

LIFE DESIGNS RANCH, INC., a Washington Corporation; VINCENT
BARRANCO, an individual, and BOBBIE BARRANCO, an individual,

Appellants,

v.

MICHAEL SOMMER,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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ORIGINAL

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I. IDENTITY OF RESPONDENT

Respondent Michael Sommer (“Sommer”), an individual, submits the following Answer to Life Designs Ranch, Inc., Vincent Barranco, and Bobbie Barranco’s (collectively “LDR”) Petition for Review.

II. STATEMENT OF THE CASE

A. Non-Party HEAL Published A Website Highly Critical of LDR.

Approximately seven (7) pages of detailed criticism of LDR, its practices, and its staff were published on January 21, 2011, by an organization called “HEAL,” on a webpage located at www.heal-online.org/lifedesigns.htm. (CP 289-95) The HEAL website is neither owned nor maintained by Sommer, and he had no role in its creation. Among the accusations against LDR made on the HEAL website are that LDR is run like a cult (CP 294); it illegally exploits the labor of its “students” (CP 294); it illegally calls itself a school (CP 292); one of its staff members worked at another camp, at which a boy died (CP 289); it amounts to paying \$6,000 per month for children to work as ranch hands for the owners (CP 290); it costs more than the annual tuition of Harvard University (CP 292-93); and it charges hidden fees for mandatory additional workshops. (CP 292)

B. LDR's Owners Were Aware of the HEAL Website, But Elected Not To Take Action Against HEAL.

V. Barranco acknowledged that the HEAL website is critical of his program. (CP 118) V. Barranco also testified he became aware of the HEAL website and its contents in the winter of 2012, but has taken no legal action against HEAL or its owner or publisher. (CP 118)

C. Sommer Sent His Son To LDR; A Dispute Developed Between Sommer and LDR Over a Matter of \$12,800.

Sommer entered into a contract to send his son to LDR, for the cost of \$52,200 for a 6 month program, plus \$1,200 in interview fees, plus \$12,000 in "transitional housing." (CP 48) The parties eventually agreed on a 3 month stay. A contract dispute ensued in which Sommer contended LDR had been overcharging him. (CP 48, 237) Sommer believed he had been overcharged by \$12,800, and that he was owed a refund. (CP 237) Sommer subsequently sent an email to Barranco concerning the \$12,800 dispute:

From: Mike Sommer [sommerfam1@gmail.com]
Sent: Tuesday, June 28, 2012 8:57 PM
To: Vince Barranco
Subject: Re: Fee

Vince,

Please review your contract again. It specifically states that any partial months are billed at full and the last month is not refundable. I think you are in a highly indefensible position. The 26K was put into brackets to show that was the amount we were at THE MOST liable for, not the least. I am willing to get legal with this. Are you? I would hope that the most important thing to you is your reputation. We all know how easily reputations can be destroyed, without the legal system even getting involved. But I would go both routes if I have to. You are wrong on all fronts. Please reconsider before we find it necessary to proceed.

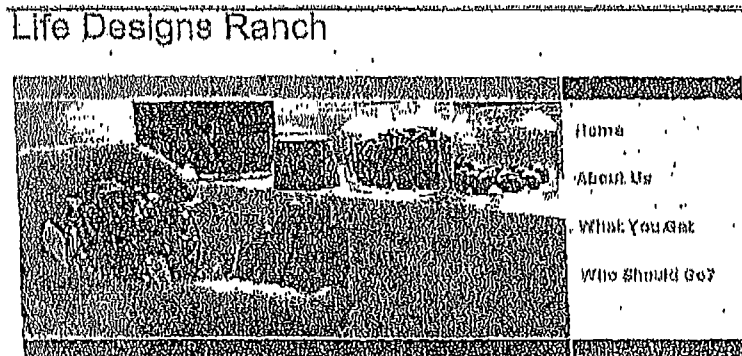
Mike

(CP 257)

The dispute over the \$12,800 was not resolved by the email exchange.

D. Sommer Created A Webpage Critical Of LDR.

Dissatisfied that LDR would not resolve the contract dispute, Sommer contacted the Better Business Bureau, and also registered the domain name www.lifedesignsranchinc.com for free. (CP 239-40) When the Better Business Bureau was unable to help resolve the \$12,800 contract dispute, because LDR refused to participate in the process, Sommer placed the following four pages of content onto the free domain he had registered at www.lifedesignsranchinc.com:



What you need to know before you go.

Are you a young adult or the parent of a young adult looking for a therapeutic environment to work on or strengthen your recovery efforts? If you are and have considered Life Designs Ranch in Clatsop Washington you would be much better off if you looked somewhere else.

The problems with this organization are numerous. Life Designs Ranch claims to help you pursue your life's passions. That is only true if your life passion fits into what the other 11 prisoners and their wardens consider their life passion. The structure is rigid with only individual ideas considered to be an assault on their authority.

Therapeutic environment??? Only for the staff and the owner, Vince Barranco, who finds that charging 12 young adults \$8000 to \$9000 a month for food and housing permits him to pursue his life passions since he really doesn't have to work and has free labor to increase the value of his property.

If you want to look further at least consider alternatives. You will be much better off

<http://www.stmvalleynews.com/substance-abuse-treatment-programs-washington.html>

<http://www.lifedesignsranch.com/> This is the website for Life Designs Ranch, Do not send your

About Us

We are here to try to protect people from the financial and emotional distress that comes with attending Life Designs Ranch.

While the concept sounds good and the marketing is even better this is only good if you need somewhere to warehouse a young adult and keep them from trouble for 5 months. Healing is not done and seems to be very limited in its attempt. Keep your money, go somewhere else, or dedicate yourself to your young adult's recovery. You will be \$44,000 and much richer in experience and recovery.

What you get

A bed

Food

2 or 3 twelve step meetings a week in a very small western Washington community where the only young adults in attendance are those from Life Designs ranch.

A visit to Spokane once a week to restock the ranch

Hours and hours of pure boredom

A visit to the local health club 3 times a week

Experience in how to ride in a van with 11 other individuals endlessly.

A visual experience of pine trees, dead pine trees, falling down pine trees, disintegrated pine trees, and more pine trees,ilver, can't be seen. Mountains, can't be seen. Civilization, can't be seen. But there are pine trees!!!!

Who Should Go?

You should go to Life Designs if:

You consider cleaning home crap a therapeutic adventure (seriously, they have flame's)

You or your parents think it is worth \$44,000 to have food and shelter for 5 months.

You believe that it takes no education or experience with substance abuse, or compassion for the young adult who is recovering from a substance addiction to help them become the person they want to be.

For more info click or cut and paste the link below

<http://www.heal-online.org/lifedesigns.htm>

(CP 248-251)

E. LDR Commenced Suit Against Sommer.

LDR filed suit on March 25, 2013. (CP 1-7) The Amended Complaint asserts causes of action for defamation, intrusion, false light, and interference with business expectancy. (CP 11-19)

F. The Trial Court Denied Life Designs Ranch's Motion for Summary Judgment – Defamation *Per Se*.

On November 20, 2013, LDR moved for partial summary judgment, seeking an order that the content of the four webpages published by Sommer constituted defamation *per se*. (CP 33-46)

V. Barranco submitted a declaration alleging that LDR's business had declined in volume from 2012 to 2013. (CP 49) He asserted that the sole cause of the alleged drop in business was the existence of the Sommer website. (CP 49)

Kimberly Mlinarik provided a declaration stating she did not work at Wilderness Quest in 2007. (CP 65) This declaration appears to have been provided in response to a statement made on the HEAL website, but not on Sommer's website. (*Compare* CP 248-251 *with* CP 289 *and* CP 65)

A response (CP 69-79) and a reply (CP 80-86) were filed, and the trial court ultimately denied the motion, finding that while the content of the webpages published by Sommer was "possibly false," LDR did not establish as a matter of law that the content was defamation *per se*. (CP 88; 89-92)

G. The Trial Court Granted Sommer's Summary Judgment Motion, Holding LDR Could Not Establish The *Prima Facie* Elements Of A Defamation Claim.

Upon completion of fact witness depositions, Sommer moved for summary judgment as to the defamation claim, contending that a) the

complained-of webpage content was not defamatory; and b) LDR lacked evidence of damages. (*See* CP 95-108)

LDR responded with a memorandum (CP 132-189), as well as three declarations. A declaration of Jonathan Gross was submitted, in which Mr. Gross asserted he was qualified to help other people with addiction problems because of his own experience with addiction. (CP 190-91) A declaration of Matt Donahue was submitted, similarly stating that because Mr. Donahue was a former addict, he was qualified to help other people with addiction. (CP 193-194)

Finally, a declaration of Clay Garrett was submitted, which alleged, *inter alia*, that Sommer was a “liar” and that LDR’s business had declined “56%.” (CP 196-230)

Sommer replied (CP 258-280), and after oral argument the trial court dismissed the defamation claim, holding that LDR lacked evidence of damages, and that the alleged defamatory statements fall within the category of rhetorical hyperbole, and are “non-actionable...when considered in the totality of the circumstances.” (*See* CP 297-98) The trial court further held that providing the hyperlink to the HEAL webpage did not expose Sommer to liability. (CP 298)

H. The Trial Court Granted Sommer's Motion To Dismiss LDR's Remaining Claims.

Sommer subsequently moved for summary judgment to dismiss LDR's residual claims of invasion of privacy and interference with a business expectancy. (*See* CP 299-307) After a response (CP 312-334), and a reply (CP 335-342), the trial court granted the Motion to dismiss the remaining claims. (CP 348)

I. The Court of Appeals Affirmed Denial of Summary Judgment to LDR, and Granting Summary Judgment to Sommer.

The Court of Appeals, Division III, affirmed the trial court's disposition of the case in a published opinion, No. 32922-4-III, filed November 12, 2015.

III. ARGUMENT

A. The Appellate Court Properly Affirmed The Trial Court's Denial Of LDR's Summary Judgment Motion, And Petitioner Identifies Neither A Conflicting Decision Nor An Issue Of Substantial Public Interest.

Before the trial court, LDR moved for summary judgment, asking that the trial court find that the contents of the Sommer webpage were defamatory *per se* as a matter of law, and so LDR had no need to prove special damages, but rather could seek general damages. (CP 33-46) As stated by the Court of Appeals, LDR "contends reasonable minds could solely conclude the false content of Mr. Sommer's website exposed it to

hatred, contempt, ridicule, and obloquy, deprived it of public confidence, and injured its business.” (Decision at 5)

The trial court denied the motion, finding that while the content of the webpages published by Sommer was “possibly false,” LDR had not established as a matter of law that the content was defamatory per se. (CP 88-92)

The Court of Appeals affirmed, quoting Washington law explaining that where the allegedly defamatory content “goes far beyond the specifics of a charge of a crime, or of unchastity in a woman, into the more nebulous area of what exposes a person to hatred, [etc.]”, it is generally not defamatory per se as a matter of law. (Decision at 5, *quoting Caruso v. Local Union No. 690*, 100 Wn.2d 343, 354, 670 P.2d 240 (1983)).

LDR argues that this application of *Caruso* “fabricates” an “extreme or serious publication standard.” (Pet. Br. At 6, 8) *Caruso* answers this argument: “The imputation of a criminal offense involving moral turpitude has been held to be clearly libelous *per se*. The instant case is quite different. It deals with the rather vague areas of public confidence, injury to business, etc.” *Caruso* at 353 (*citing Ward v. Painters’ Local 300*, 41 Wn.2d 859, 252 P.2d 253 (1953)).

LDR requested that the trial court determine as a matter of law that the content of the Sommer webpage was defamatory *per se*. The portion of

Caruso quoted and relied upon by the Court of Appeals speaks for itself, and demonstrates that the trial court did not err in denying LDR's defamation per se as a matter of law summary judgment motion.

B. Affirming The Trial Court's Decision That LDR Failed To Submit Evidence To Support Each Element Of Their Claims Is Neither A Conflicting Decision Nor An Issue Of Substantial Public Interest.

A defendant may move for summary judgment by pointing out that the plaintiff lacks evidence to support each element of its claim; if the "plaintiff fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial, then the trial court should grant the motion." *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989) (citation omitted).

In the present case, LDR limited its evidence to conclusory declarations of its owners and employees. There was no attempt to demonstrate the number of page views garnered by Mr. Sommer's website, nor to demonstrate the number of visitors who followed the hyperlink to HEAL, despite these facts being subject to demonstration through a competent expert. LDR attested that its business comes through referrals by education consultants, though LDR submitted no testimony from any education consultant it works with who was either aware of the

Sommer website or had been influenced by it. As described by the Court of Appeals:

The sparse evidence shows (1) a decline in referrals following publication of Mr. Sommer's website despite an increase in traffic to Life Designs' official website, (2) some hearsay by Mr. Garrett about an interaction between Mr. Sommer and Mr. Balagna regarding not making referrals to Life Designs, and (3) no other apparent changes accounting for the referral decline. Mr. Garrett's declaration opining Mr. Sommer's website caused the decline in referrals is conclusory. Mr. Garrett limited his analysis to Life Designs' official website. No evidence shows anyone who visited Life Designs' website visited or was influenced by Mr. Sommer's website. Life Designs has not referred to or produced anyone who did not choose Life Designs because of Mr. Sommer's website. And while Life Designs can show Mr. Sommer talked to Mr. Balagna about not referring anyone to Life Designs, no evidence shows Mr. Balagna took Mr. Sommer's advice and stopped referring clients.

(Decision at 11-12)

LDR simply argues that "proximate cause may be shown by circumstantial evidence." LDR's problem is not what "may be shown," but rather what it actually did and did not submit in resisting the summary judgment motion. LDR did not attempt to prove that anyone other than its own employees viewed the Sommer website; LDR did not attempt to prove that anyone followed the HEAL hyperlink; LDR did not attempt to

prove that the educational consultants it does business with were aware of or influenced by the Sommer website.

It is well settled that conclusory allegations do not create a genuine issue of material fact. LDR limited its response to Sommer's summary judgment motion to the conclusory opinions of its owner and one of its employees, without corroborating evidence (*e.g.* page view, click through, and other analysis of the Sommer website) or corroborating testimony (*e.g.* from an educational consultant with which LDR does business). Its complete failure to present sufficient evidence to withstand the motion is neither an issue of substantial public interest, nor does it put the Court of Appeals' decision in conflict with other decisions.

C. Affirming The Trial Court's Decision That The Claimed Defamation Is Non-Actionable Is Neither A Conflicting Decision Nor An Issue Of Substantial Public Interest.

As described by the Court of Appeals, the alleged defamatory statement must be a statement of fact, not a statement of opinion. (Decision at 7, *citing Davis v. Fred's Appliance, Inc.*, 171 Wn. App. 348, 365, 287 P.3d 51 (2012)). "As the line between fact and opinion 'is sometimes blurry,' we consider the following factors to determine whether a statement is actionable: '(1) the medium and context in which the statement was published, (2) the audience to whom it was published, and (3) whether the statement implies undisclosed facts.'" (Decision at 7-8,

quoting *Dunlap v. Wayne*, 105 Wn.2d 529, 539, 716 P.2d 842 (1986)). “Regarding the first factor, the *Dunlap* court noted statements expressing opinion are found more often in certain contexts. The court should consider the entire communication and note whether the speaker qualified the defamatory statement with cautionary terms of apparency.” (Decision at 8, quoting *Dunlap*, 105 Wn.2d at 539).

Mr. Sommer did not attempt to pass his website off as Life Designs’ official website; the “About Us” section is clear, using “seems” as a word of apparency. *Dunlap*, 105 Wash.2d at 539, 716 P.2d 842; CP at 251. Thus the website suggested opinions, not facts. Furthermore, Mr. Sommer’s website did provide a hyperlink to Life Designs’ official website and expressly said that the link was to “the website for Life Designs Ranch.” CP at 250. From a policy standpoint, allowing businesses to sue any unhappy consumer for what they posted online for defamation would stifle freedom of speech. The internet is a medium where statements expressing opinions in the context of reviewing businesses and services are often found. The medium and context of Mr. Sommer’s website denotes it is opining about the quality of Life Designs’ business, especially when looked at in relation to the other two factors discussed next.

For the second factor, courts should consider “whether the audience expected the speaker to use exaggeration, rhetoric, or hyperbole.” *Dunlap*, 105 Wash.2d at 539, 716 P.2d 842. Here, the audience was the people researching Life Designs. Online search engines retrieved many results for Life Designs; the first result was Life Designs’ official website, the fourth result was Mr. Sommer’s

website, and the fifth result was the HEAL website. The blurb describing Mr. Sommer's website read, "Thinking about going to or sending someone you love to Life Designs Ranch? ? Read this first." CP at 60. This language signaled this was a review and not the official website of Life Designs.

The third factor is "perhaps [the] most crucial" as "[a]rguments for actionability disappear when the audience members know the facts underlying an assertion and can judge the truthfulness of the allegedly defamatory statements themselves." *Dunlap*, 105 Wash.2d at 539-40, 716 P.2d 842; see *Davis*, 171 Wash.App. at 366, 287 P.3d 51 (stating the third factor "addresses whether a listener unknown to the plaintiff can judge the truthfulness of the statement"). "Whether a statement is one of fact or opinion is a question of law unless the statement could only be characterized as either fact or opinion." *Davis*, 171 Wash.App. at 365, 287 P.3d 51. Life Designs discusses three statements in its briefing.

The first criticized statement is: "What you get 2 or 3 twelve step meetings a week in a very small western Washington community where the only young adults in attendance are those from Life Designs ranch." CP at 248. While Mr. Sommer incorrectly described Life Designs as being located in western Washington,¹ this statement was not based on undisclosed facts. Rather, Life Designs' official website states it is located in Cusick, Washington, which is on the eastern side of the state.

¹ Sommer is a resident of the State of Minnesota. Not being from Washington, it is odd that the Court of Appeals, the dissent, and LDR all assume both that Sommer should be familiar with the local vernacular concerning "Western Washington" and "Eastern Washington," and was intending to use the local vernacular in the statement "very small western Washington community." From the perspective of Minnesota, Cusick, Washington is very small, is very western, and is in Washington.

The second statement, "What you get.... A visual experience of pine trees, dead pine trees, falling down pine trees, disintegrated pine trees, and more pine trees. River, can't be seen. Mountains, can't be seen. Civilization, can't be seen. But there are pine trees!!!!" CP at 248. On its website, Life Designs disclosed it is located "on 30 acres overlooking the Pend O'reille River on the international Selkirk Scenic Loop" and the "area boasts a reputation for one of the most undiscovered recreational areas in the northwest." Life Designs Ranch, <http://www.lifedesignsinc.com> (last visited Sept. 9, 2015). The website shows pictures of clients in Life Designs' natural setting. Id.

The third statement is "Who Should Go? You should go to Life Designs if: ... You believe that it takes no education or experience with substance abuse, or compassion for the young adult who is recovering from a substance addiction to help them become the person they want to be." CP at 249. Again, this statement is based on disclosed facts. Life Designs' website discusses the experience and education of its staff. While the compassion of the staff is not directly addressed on Life Designs' website, compassion is a subjective determination and is thus opinion.

Each *Dunlap* factor weighs in Mr. Sommer's favor. Given all, Mr. Sommer's statements were nonactionable as defamation. Even if actionable, Life Designs fails to make a sufficient showing Mr. Sommer's statements proximately caused its damages.

(Decision at 7-11)

LDR's response to the Court of Appeals' analysis is simply to re-iterate its position that three of the statements on the Sommer website were false. (Pet. Br. at 10-13) Those argumentative assertions do not address the substance of the Court of Appeals' analysis, and neither identify an actual conflict with any case of record nor any issue of substantial public interest.

D. Affirming The Trial Court's Decision That LDR Failed To Submit Evidence To Support Each Element Of Its Tortious Interference Claim Is Neither A Conflicting Decision Nor An Issue Of Substantial Public Interest.

LDR's tortious interference claim was actually a re-statement of its defamation claim, and relied upon the same evidence and argument. As noted by the Court of Appeals, "The five elements of a tortious interference with a business expectancy are: "(1) the existence of a valid ... business expectancy; (2) that defendants had knowledge of that [expectancy]; (3) an intentional interference inducing or causing a breach or termination of the ... expectancy; (4) that defendants interfered for an improper purpose or used improper means; and (5) resultant damage." (Decision at 15, *quoting Leingang v. Pierce County Med. Bureau*, 131 Wn.2d 133, 157, 930 P.2d 288 (1997)).

Interfering with a business expectancy is itself insufficient; market competition is inherently an interference. Rather, "To be improper,

interference must be wrongful by some measure beyond the fact of the interference itself, such as a statute, regulation, recognized rule of common law, or an established standard of trade or profession.” *Moore v. Comm. Aircraft Interiors*, 168 Wn. App. 502, 510, 278 P.3d 197 (2012).

The only claim for improper interference on the part of Sommer is the content of the website. That is, the tortious interference claim is predicated upon the content of the website being defamatory.

Moreover, the damages claimed from the alleged tortious interference are likewise predicated upon the defamation claim – that the Sommer website caused an alleged drop in business. As held by the Court of Appeals:

Decisive is the fifth element. Life Designs fails to show resultant damage to its business expectancy. The trial court did not err in dismissing this claim because Life Designs’ conclusory claim of injury to reputation lacks evidentiary support. No client, potential client, or referral source submitted an affidavit establishing they can no longer trust Life Designs or did not choose Life Designs because of Mr. Sommer’s website.

(Decision at 16-17)

E. Affirming The Trial Court’s Decision That The Barrancos, Individually, Failed To Submit Evidence To Support Each Element Of Their Invasion of Privacy Claims Is Neither A Conflicting Decision Nor An Issue Of Substantial Public Interest.

As described by the Court of Appeals:

[A]ll evidence in relation to damages is in reference to Life Designs. Ms. Barranco was not mentioned by name on Mr. Sommer's website; her claim is derivative of Mr. Barranco's claim. Mr. Barranco did not state he personally suffered damage to his reputation or any emotional suffering; rather, all his statements refer to the damages suffered by his business, Life Designs.

(Decision at 18)

LDR argues "But as owners of Life Designs, damage to the Barrancos for invasion of privacy can take the form of decline in its business. *See Brink v. Griffith*, 65 Wn.2d 253, 258, 396 P.2d 793 (1964)." (Pet. Br. at 20). In *Brink*, the Mayor of Medical Lake created a fake dossier of documents designed to look like a mug shot and criminal record of a city employee. *Id.* at 255-56. *Brink* bears no relationship to LDR's claim.

F. Holding That Provision Of A Hyperlink, Without Reproduction Of Contents Of The Destination, Does Not Constitute "Republication" For Purposes Of A Defamation Analysis Is Consistent With Existing Washington Law, And Presents No Issue Of Substantial Public Interest In Itself.

The HEAL website accuses LDR of operating like a cult, among other things. (CP 289-95) The sole reference provided on the Sommer website to HEAL was as follows: "For more info click or cut and paste the link below <http://www.heal-online.org/lifedesigns.htm>." (CP at 249)

As noted by the Court of Appeals, it has been previously held that a person republishes material for defamation purposes when he posts the

entirety of a defamatory article to a website. (Decision at 13, *citing Momah v. Bharti*, 144 Wn. App. 731, 752-53, 182 P.3d 455 (2008).

The Court of Appeals also noted that “While no Washington law is directly on point, a federal court grappling with this same issue used Washington law to hold “a mere reference or URL [Uniform Resource Locator] is not a publication of the contents of the materials referred to.” (Decision at 13-14, *quoting U.S. ex. rel. Klein v. Omeros Corp.*, 897 F.Supp.2d 1058, 1074 (W.D.Wash. 2012)). As also noted by the Court of Appeals, in *Salyer v. S. Poverty Law Center, Inc.*, 701 F.Supp.2d 912, 916 (W.D.Ky. 2009), the court observed:

It appears that the common thread of traditional republication is that it presents the material, in its entirety, before a new audience. A mere reference to a previously published article does not do that. While it may call the existence of the article to the attention of a new audience, it does not present the defamatory contents of the article to that audience. Therefore, a reference, without more, is not properly a republication.

The Court of Appeals concluded:

Because a hyperlink is more like a reference than a separate publication, “[m]aking access to the referenced article easier does not appear to warrant a different conclusion from the analysis of a basic reference.” *Id.* at 917; see also *In re Philadelphia Newspapers*, 690 F.3d 161, 175 (3d Cir 2012) (holding “though a link and reference may bring readers’ attention to the existence of an article, they do not republish the article”).

We are persuaded by *Klein* and *Salyer*. We reason a URL is not qualitatively different from a mere reference. Therefore, we hold Mr. Sommer did not republish allegedly defamatory material when he posted on his website: “For more info click or cut and paste the link below <http://www.heal-online.org/lifedesigns.htm>.” CP at 249.

(Decision at 14-15)

LDR contends that “The Appeals Court, thus, failed to appreciate the nature of hyperlinks,” and argues that “posting a hyperlink to a webpage is the modern day equivalent of placing a file on a library shelf.” (Pet. Br. at 16) Quoting in part a footnote from *Benson v. Or. Processing Serv., Inc.*, 136 Wn. App. 587, 150 P.3d 154 (2007), LDR appears to contend that it believes the HEAL website, with its separate domain name operated by a non-party, to be “the same document” as Sommer’s website. This contention is unsupported by either the *Benson* case or the facts of the present case. *Benson* concerned an unsubscribe link in an email; the footnote quoted in part by LDR reads, in its entirety:

A “link,” “button,” or “hyperlink” is “an electronic link providing direct access from one distinctively marked place in [an electronic] document to another in the same or a different document.” MERRIAM-WEBSTER ONLINE (2006), <http://www.m-w.com/dictionary/hyperlink>. An “unsubscribe” link allows the recipient of an e-mail to notify the sender that the recipient does not wish to receive further e-mail from the sender.

Benson, 136 Wn. App. at 589 n.1.

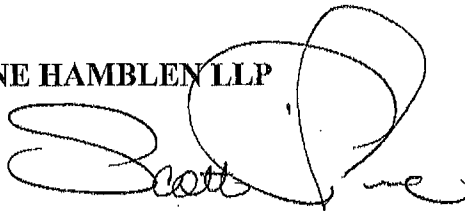
Sommer did not own or operate the HEAL website, and did not host the data for the HEAL website. The hyperlink in question is not a file; it is a reference which, when clicked upon, takes the user to a new location. A reference to a location, which itself does not repeat allegedly defamatory content, is not itself a defamatory “republication,” and LDR identified no authorities to the contrary. The Court of Appeals did not err in holding that, consistent with Washington law, the mere link provided by Sommer in the present case, without any content reproduction, does not constitute a “republication.”

IV. CONCLUSION

Respondent respectfully requests this Court deny the Petition.

RESPECTFULLY SUBMITTED this 11th day of January, 2016.

PAINE HAMBLEN LLP



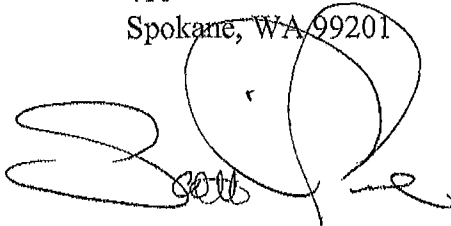
By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of January, 2016, I caused to be served a true and correct copy of **RESPONDENT'S ANSWER TO PETITION FOR REVIEW** to the following:

<input type="checkbox"/>	HAND DELIVERY	Jason T. Piskel
<input checked="" type="checkbox"/>	U.S. MAIL	Nicholas D. Kovarik
<input type="checkbox"/>	OVERNIGHT MAIL	Piskel Yahne Kovarik, PLLC
<input type="checkbox"/>	VIA FACSIMILE	522 W. Riverside Ave., Suite 410 Spokane, WA 99201



Scott C. Cifrese

I:\SPODOCS\00098\00146\PLEAD\01517336.DOC

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Subject: RE: Life Designs Ranch v. Sommer

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Supreme Court Clerk's Office

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Supreme Court No. 92629-8
Life Designs Ranch, Inc., et al. v. Michael Sommer
Court of Appeals No. 32922-4-III

Dear Clerk:

Attached for filing please find Respondent's Answer to Petition for Review. Please acknowledge receipt. Thank you very much.

Scott C. Cifrese
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