No. 99017-4

SUPREME COURT
OF THE STATE OF WASHINGTON

SHAMIM MOHANDESSI and JOSEPH GRACE,

Petitioners,

v.

URBAN VENTURE, LLC, a Washington limited liability company; VULCAN INC., a Washington corporation; 2200 CONDOMINIUM ASSOCIATION, a Washington non-profit corporation; 2200 RESIDENTIAL ASSOCIATION, a Washington non-profit corporation; GARY ZAK, an individual; BRIAN CROWE, an individual, BRANDON MORGAN, an individual and JOHN DOES 1-15; individuals or entities,

Respondents.

RESPONDENTS URBAN VENTURE LLC AND VULCAN INC.'S ANSWER TO PETITION FOR REVIEW

John C. Dippold, WSBA No. 25658
Michael B. King, WSBA No. 14405
S. Jay Terry, WSBA No. 28448
Jason W. Anderson, WSBA No. 30512
Parker R. Keehn, WSBA No. 40555
CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, Washington 98104-7010
Telephone: (206) 622-8020

Attorneys for Respondents/Cross Appellants Urban Venture LLC and Vulcan Inc.

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I. INTRODUCTION

This Court should not prolong the ultimate disposition of Plaintiffs' lengthy and expensive—but entirely baseless—crusade to invalidate the governing documents of the mixed-use condominium at 2200 Westlake Avenue in Seattle, as a means to reduce their share of the condominium's common expenses. The Court of Appeals applied settled law in affirming (1) the dismissal of Plaintiffs' individually asserted claims as barred under the statute of limitations, (2) the dismissal of the claims Plaintiffs purported to assert derivatively on behalf of two condominium owners' associations for lack of standing, and (3) the determination that Plaintiffs were subject to the fee-shifting provision in a settlement agreement that their owners' association made under its authority to make contracts on behalf of the membership as a whole. The Court of Appeals' decision does not conflict with any precedents, nor does Plaintiffs' petition raise any issue of substantial public interest. RAP 13.4(b)(1), (2), (4). This Court should deny the petition and award fees.

II. COUNTERSTATEMENT OF ISSUES

1. *Statute of Limitations.* Because the Master Association Board must apply the percentages in the Master Declaration when allocating common expenses, Plaintiffs' individually asserted claims accrued when that declaration was executed in 2006. Is review unwarranted because the Court of Appeals applied settled law and broke no new ground in holding that the statute of limitations barred those claims?

2. *Derivative Standing.* This Court has never recognized derivative standing for nonprofit members, and the Legislature has deliberately declined to adopt it. Is review unwarranted because the Court of Appeals applied longstanding precedent and followed unambiguous

legislative intent in affirming the dismissal of Plaintiffs' purported derivative claims for lack of standing?

3. *Contract-Making Authority.* The Residential Association acted within its broad statutory authority to make contracts when it settled claims that affected the membership as a whole. Is review unwarranted where the Court of Appeals applied settled law in determining that Plaintiffs were bound by the settlement agreement and its fee-shifting provision?

III. COUNTERSTATEMENT OF THE CASE

A. Urban Venture executed and recorded the "Master" condominium declaration for a four-unit, mixed-use condominium in 2006.

Urban Venture completed a mixed-use development at 2200 Westlake in 2006. That same year, Urban Venture executed and recorded a condominium declaration for the development (the "Master Declaration"). CP 10045–105. That document created a four-unit condominium called *2200, a condominium*. CP 10059 (§ 2.1). The four units are: (1) Commercial Unit (retail shops), (2) Hotel Unit (Pan Pacific Hotel), (3) Food Store Unit (Whole Foods), and (4) Residential Unit (residential condominium). CP 10059 (§ 2.4), 10105. The Residential Unit is itself a sub-condominium, called *2200 Residential, a condominium*, which consists of 259 residential units. *See* CP 10107–66.

2200 and 2200 Residential are each governed by condominium-owners' associations, both organized as nonprofit corporations under chapter 24.03 RCW. *See* CP 10066 (§ 7.1), 10126 (§ 13.1). The 2200 owners' association, which goes by *Master Association* or *MA*, has a four-person board of directors (each unit owner has a seat). CP 10069 (§ 8.2.1). The initial board members Urban Venture appointed to represent the Commercial, Hotel, and

Food Store units—which Urban Venture owned for about ten years—were employed by Vulcan, a company affiliated with Urban Venture. CP 12060, 12600, 13360. Every action by the Master Association Board requires unanimous consent of the four directors—including the Residential Unit's elected director. CP 10070 (§ 8.3).

B. As required by the Condominium Act, chapter 64.34 RCW, the Master Declaration allocates percentage interests in common elements and common expenses among the four units.

A condominium declaration must allocate to each unit a "percentage of undivided interests in the common elements and in common expenses of the association." RCW 64.34.224(1). The Master Declaration bases those percentages on a *Declared Value* for each unit.[1] CP 10054, 10105. The Master Association Board exercises no discretion in allocating common expenses—it must apply the percentages set forth in the declaration. *See* CP 10080 (§ 10.3) ("[A]ll Common Expenses must be assessed against all the Units in accordance with the respective Allocated Interest of each Unit as set forth in Exhibit B."); *see also* CP 10070–71 (§ 8.5.1) (mandating that the Board "shall enforce the provisions of this Declaration"), 10092 (§ 14.1) ("Each Owner shall comply strictly with the provisions of this Declaration[.]").

C. Plaintiffs long criticized the Master Declaration's allocation of common expenses as unlawful and discriminatory, including in a previous lawsuit.

Plaintiff Joseph Grace bought a new residential unit at 2200 Residential in 2006 and bought a second unit during this litigation. CP 13755–57. Plaintiff

[1] Each unit's percentage interest is as follows: (1) Commercial Unit – 6.3%, (2) Hotel Unit – 10%, (3) Food Store Unit – 6.5%, and (4) Residential Unit – 77.2%. CP 10105.

Shamim Mohandessi bought his unit from a prior purchaser in 2010. CP 310. At purchase, Plaintiffs each received a copy of the Master Declaration. CP 600, 10169 (§ f), 10175 (§ gg), 10185, 14381. Grace became a vocal critic of condominium governance, and he ran unsuccessfully for election to the 2200 Residential Association Board multiple times, starting in 2007 (Mohandessi would also later make an unsuccessful run). CP 9468, 13405, 13425, 13432; *see also* CP 12164–65, 12168–70, 12181–82, 13411–12.

Grace challenged the Master Declaration's allocation of common expenses in a previous lawsuit. In 2008, he stopped paying his full Residential Association dues in protest. CP 9413–19, 9444–51, 13401–02, 13766. When the Residential Association sued for unpaid dues, Grace asserted counterclaims challenging various aspects of condominium governance, including the allocation of common expenses of 2200. CP 9426–38; *see also* CP 9453–66. He lost, and the result was affirmed on appeal. CP 9439–42, 9469–71, 9475–77, 9478–81; *see also 2200 Residential Ass'n v. Grace*, 195 Wn. App. 1011, 2016 WL 3982901 (2016) (unpublished, non-precedential per GR 14.1).

D. The 2200 Residential Association released all potential claims on behalf of its membership in a 2012 settlement agreement.

Urban Venture settled construction-defect claims with the two condominiums for $26 million in 2012, without litigation. CP 12079–80, 12515, 12580–89. The settlement agreement, which the Master Association and Residential Association boards approved unanimously, released all then-existing claims and potential claims of any kind—including about the common-expense allocation. CP 12079–80, 12583, 14427.

E. Nine years after the Master Declaration was executed and recorded, Plaintiffs filed this suit primarily challenging the common-expense allocation.

Grace and Mohandessi filed this lawsuit in 2015 and pursued claims against Urban Venture, Vulcan, the Master Association, the Residential Association, and three Master Association Board members. CP 1, 8579–8623. In addition to claims that they asserted individually, they purported to sue derivatively on behalf of the Residential Association and double-derivatively on behalf of the Master Association. CP 8602–14 (claims 10–18). Although Plaintiffs based their claims on several legal theories, at the core of all but one was the notion that the Master Declaration's common-expense allocation is unlawful and discriminatory. *See* CP 8587–8619. The relief Plaintiffs sought—including their sole identified damages—was linked to that challenge. *See* CP 12235, 20410. They sought (1) a declaratory judgment that the Master Declaration's common-expense allocation violated the Condominium Act and (2) the injunctive relief and restitution damages that they maintained would flow from such a determination. *See* CP 8619–20. The one exception was Plaintiffs' twenty-first claim, which sought a declaratory judgment invalidating the 2012 settlement agreement. *Id*.

F. The trial court dismissed all claims on summary judgment and awarded certain attorney's fees under the 2012 settlement agreement. The Court of Appeals affirmed.

After extensive litigation, three amended complaints, and multiple rounds of dispositive motions, the trial court dismissed all claims. The court dismissed the derivative claims for lack of standing, dismissed the claim to invalidate the 2012 settlement for lack of evidence, and dismissed all other

claims based on the three-year statute of limitations in RCW 4.16.080(2). *See* CP 197–205, 2630–36, 8626–32; 5/19/2017 RP 460. The court awarded Defendants some of their fees and costs under the 2012 settlement agreement's fee-shifting provision. *See* CP 12586, 21160–74, 21175–83, 21184–90.

Plaintiffs appealed from the dismissal of their claims, and Defendants cross-appealed seeking additional fees. The Court of Appeals affirmed.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Court of Appeals applied settled law in affirming the dismissal of Plaintiffs' individually asserted claims as barred by the statute of limitations.

There is no dispute that the three-year statute of limitations in RCW 4.16.080(2) applies or that a cause of action accrues when a party has the right to apply to a court for relief, meaning that each element of the cause of action is susceptible of proof.[2] *See Petition* 9 (citing *Haslund v. City of Seattle*, 86 Wn.2d 607, 619, 547 P.2d 1221 (1976)); *Slip Op.* 9–10 (citing *Haslund*). The Court of Appeals followed precedent in concluding that Plaintiffs' causes of action accrued as of the 2006 adoption of the Master Declaration.

The Court of Appeals was correct that each cause of action "arises out [of Plaintiffs'] claim that the original master declaration, and specifically the common element liability allocation, violate[s] the Condominium Act, CPA, or a statutory or common law duty." *Slip Op*. 10;

[2] An action for a declaratory judgment must be brought within a reasonable time, which is determined by analogy to the time allowed by statute for a similar action. *Schreiner Farms, Inc. v. Am. Tower, Inc.*, 173 Wn. App. 154, 159–60, 293 P.3d 407 (2013). For instance, an action for declaratory judgment on a written contract must be brought within six years, based on the six-year statute of limitations for breach of contract. *Id*.

see also id. n.5. Although Plaintiffs assert that this conclusion is "at odds with the evidence" (*Petition* 7), the issue turns not on evidence but on the nature of the wrongs Plaintiffs alleged. And while Plaintiffs may believe that the Court of Appeals misread their complaint, that is not a basis for review by this Court.[3] Regardless, the Court of Appeals did not misread the complaint. To be sure, Plaintiffs stated their individually asserted claims under several legal theories. But at the core of those claims was their contention that the Master Declaration's allocation of common expenses is unlawful and discriminatory.[4] That was the gravamen of the complaint and the ultimate ground for the relief sought.

As the Court of Appeals recognized, the Master Declaration was either valid—or not—in 2006 when it was executed and recorded. *Slip Op.* 10–11. The allocation of interests and common expenses was binding and had immediate effects. The Court of Appeals applied the established, general rule on accrual in rejecting Plaintiffs' argument that a new cause of action accrues each time the Master Association Board adopts a budget using the allocation. Such actions could trigger the limitations period anew only if the Master Association Board had discretion to deviate from the Master Declaration when it did so. Absent such discretion—which the

[3] "As the highest court in the state, the Supreme Court is a court of law, not a court of error correction." 1 WASH. STATE BAR ASS'N, WASH. APPELLATE PRAC. DESKBOOK §18.2(5) (4th ed. 2016) (internal quotation marks omitted).

[4] These included claims 1, 2, 3, 7, and 8 in the Third Amended Complaint. *See* CP 8592–97, 8600–01; *Slip Op.* 11 n.5. Plaintiffs' claim for a declaratory judgment invalidating the 2012 settlement (claim 21) did not focus on the common-expense allocation (*see* CP 8619), but that claim was dismissed not based on the statute of limitations, but for lack of evidence. 5/19/2017 RP 460.

Board lacked—the Board's actions could not have been in breach of any duty.[5] *See Slip Op.* 11–12.

The Court of Appeals also followed precedent in determining that the discovery rule did not apply. *See Slip Op.* 12–14. Where this exception to the general rule applies, accrual is postponed until the plaintiff knew or should have known all of the essential elements of the cause of action. *Matter of Estates of Hibbard*, 118 Wn.2d 737, 744–45, 825 P.2d 690 (1992). But the discovery rule does not apply in every case. It applies to certain torts for which, because of the nature of the wrong, plaintiffs do not or cannot immediately know that they were harmed. *Id*. Plaintiffs never claimed that they did not or could not know that they were harmed. As the Court of Appeals observed, the Master Declaration was a matter of public record and was known to Plaintiffs. *See Slip Op*. 13–14.

Contrary to Plaintiffs' argument, this result is not contrary to the Condominium Act. Plaintiffs point to RCW 64.34.455, under which any person adversely affected by a failure to comply with any provision of the

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[5] In general, when discrimination is alleged, only acts performed with discriminatory motive will trigger a limitations period. *See Antonius v. King County*, 153 Wn.2d 256, 264, 103 P.3d 729 (2004) (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 108–13, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002)). "Discrete injuries that occur within the limitations period—including incorrect payments—that are the inevitable consequences of a decision or action that occurred outside the limitations period are not actionable." *St. Anthony Med. Ctrs. v. Kent*, 748 Fed. Appx. 104, 106 (9th Cir. 2018) (citing *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 628, 127 S. Ct. 2162, 167 L. Ed. 2d 982 (2007), *superseded by statute*, Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5)). Plaintiffs' analogy to an Equal Pay Act claim is inapt. In that context, each discriminatory paycheck within the limitations period is actionable because it represents the employer's exercise of judgment to adhere to the initial pay-setting decision. *See Mikula v. Allegheny County of Pennsylvania*, 583 F.3d 181, 185–86 (3d Cir. 2009). In contrast, the Master Association Board exercises no judgment or discretion in applying the allocation percentages mandated by the Master Declaration.

Act or a condominium's declaration or bylaws "has a claim for appropriate relief." But RCW 64.34.455 is not a statute of limitations. Claims under that statute—like virtually all claims—are subject to applicable statutes of limitations. Even assuming that the allocation were unlawful, Plaintiffs' claims are nevertheless subject to all applicable statutes of limitations.

Nothing about the Court of Appeals' straightforward decision to affirm the dismissal of Plaintiffs' claims as time barred warrants review.

B. The Court of Appeals applied settled law in dismissing the claims Plaintiffs purported to assert derivatively on behalf of the Residential and Master associations.

The Court of Appeals broke no new ground in holding that members of a nonprofit corporation lack standing to assert claims derivatively. The Court of Appeals previously held as much nearly two decades ago, in *Lundberg ex rel. Orient Foundation v. Coleman*, 115 Wn. App. 172, 60 P.3d 595 (2002), *review denied*, 150 Wn.2d 1010 (2003). Plaintiffs rest their argument for review on two premises: (1) derivative actions are available in this context as a matter of common law and (2) the Legislature has not clearly precluded such actions. Both contradict *Lundberg* and are wrong.

1. This Court has never allowed derivative suits by nonprofit members.

Derivative suits are "disfavored." *Haberman v. Washington Pub. Power Supply Sys.*, 109 Wn.2d 107, 147, 744 P.2d 1032, 750 P.2d 254 (1987). The general rule is that a shareholder cannot sue for wrongs done to a corporation "because…the shareholder's interest is too remote to meet the standing requirements." *Gustafson v. Gustafson*, 47 Wn. App. 272,

276–77, 734 P.2d 949 (1987), *review denied*, 109 Wn.2d 1024 (1988). This Court has adopted a "narrow exception" to that rule: where a for-profit corporation's directors are unwilling or unable to bring suit to remedy a wrong, a shareholder may stand in the corporation's shoes and sue on its behalf. *Id.*; *Davis v. Harrison*, 25 Wn.2d 1, 9–10, 167 P.2d 1015 (1946). The Legislature codified the right when it enacted the Washington Business Corporations Act (WBCA), title 23B.07 RCW, by including procedures and requirements for derivative actions. RCW 23B.07.400.

But this Court has never permitted a derivative action on behalf of a nonprofit corporation. Nor can this Court's precedents regarding for-profit corporations be applied to nonprofits by extension, because nonprofit members lack the requisite interest that is a predicate to standing. Without exception, to bring a derivative action, the plaintiff must have had a "proprietary interest" in the corporation when the alleged wrong occurred. *Davis*, 25 Wn.2d at 10–11; *see also Sound Infiniti, Inc. v. Snyder*, 169 Wn.2d 199, 212–13, 237 P.3d 241 (2010); *Haberman*, 109 Wn.2d at 149. That means that the plaintiff must have owned stock in the corporation. *Davis*, 25 Wn.2d at 10–11; *see also* RCW 23B.07.400(1) (requiring for derivative standing that the plaintiff "was a shareholder of the corporation when the transaction complained of occurred").

The Court of Appeals was right to reject Plaintiffs' notion that being Residential Association members by virtue of being unit owners somehow gives them a proprietary interest in the association. Owning shares of stock is the only way to hold a proprietary interest in a corporation. *See* RCW

23B.01.400(35) (defining "shares" as "the units into which *the proprietary interests* in a corporation are divided" (emphasis added)). No person can have a proprietary interest in a nonprofit corporation because nonprofit corporations have neither stock nor shareholders. The Washington Nonprofit Corporation Act (WNCA), chapter 24.03 RCW, forbids nonprofit corporations from having or issuing shares of stock. RCW 24.03.030(1). Nonprofits have members, not shareholders, and those members have "membership rights," not shares of ownership. *See* RCW 24.03.005(15) (defining "member" as "an individual or entity having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws").

The Court of Appeals applied unambiguous statutes, followed its decades-old decision in *Lundberg*, and held consistent with this Court's precedents when it concluded that the absence of a proprietary interest in the form of shares of stock means that Plaintiffs, as members of a nonprofit, lack standing to bring a derivative action under the common law.

2. Application of statutory-interpretation principles shows that the Legislature's omission of authority to pursue derivative suits was deliberate.

Because nonprofit members lack derivative standing under the common law, such standing could exist only if the Legislature granted it. No provision of the WNCA grants derivative standing for claims such as those asserted in this case, and applying statutory-interpretation principles as the Court of Appeals did in *Lundberg* confirms that the Legislature's omission was deliberate.

First, this Court follows the principle that, where a statute contains specific inclusions, omissions are deemed intentional. *Perez-Crisantos v. State Farm Fire & Cas. Co.*, 187 Wn.2d 669, 680, 389 P.3d 476 (2017). Similarly, where the Legislature uses different language in two provisions dealing with a similar subject, the difference is presumed to be intentional. *Id.*; *see also Lundberg*, 115 Wn. App. at 177. In contrast to the WBCA's broad recognition of derivative standing for shareholders, the Legislature authorized derivative actions by nonprofit members only in a single, limited circumstance: when brought "against the officers or directors of the corporation for exceeding their authority." RCW 24.03.040(3). This difference demonstrates the Legislature's intent to deny derivative standing generally to nonprofit members.[6]

Second, when the Legislature adopts some but not all provisions of a model act, this Court presumes that the omissions were intentional. *Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.*, 158 Wn.2d 603, 629, 146 P.3d 914 (2006); *see also Lundberg*, 115 Wn. App. at 177–78. The Legislature modeled the WNCA after the 1964 Model Nonprofit Corporation Act, which did not address derivative standing. The next two editions of that model act, published in 1987 and 2008, expressly granted nonprofit members and directors standing to bring derivative suits if certain

[6] Although Plaintiffs now assert that the breaches of duty they alleged against the Master Association director defendants fit within the WNCA's narrow authorization of derivative actions against directors for "exceeding their authority," that assertion is based on a misreading of the complaint. Although Plaintiffs claimed that the directors had breached their duties under the Master Declaration (*see* CP 8607–09 (claim 12), 8616–19 (claim 20)), they did not allege that the directors exceeded their authority and committed acts that were ultra vires.

requirements are met. AMERICAN BAR ASS'N, MODEL NONPROFIT CORPORATION ACT § 13.02 (3d ed. 2008); AMERICAN BAR ASS'N, REVISED MODEL NONPROFIT CORPORATION ACT § 6.30 (1987). The Legislature has amended the WNCA numerous times since 1987, including six times since the Court of Appeals decided *Lundberg* in 2002. *See* Appx. A. And while some of those amendments incorporated provisions from the revised model act, the Legislature has never seen fit to adopt derivative standing.

As the Court of Appeals held nearly two decades ago in *Lundberg*, these choices by the Legislature lead inescapably to the conclusion that the Legislature intended to deny derivative standing for nonprofit members generally. If no change is made for a substantial time after an appellate decision interpreting a statute, the Legislature is deemed to acquiesce in the court's interpretation. *Washington Indep. Tel. Ass'n v. Washington Utils. & Transp. Comm'n*, 148 Wn.2d 887, 905, 64 P.3d 606 (2003). That is particularly true where the Legislature has amended a statute since its judicial interpretation. *See Woodward v. State*, 4 Wn. App. 2d 789, 796–97, 423 P.3d 890 (2018). The Court of Appeals here wisely decided to follow *Lundberg*, which the Legislature has chosen not to abrogate.[7]

[7] Contrary to Plaintiffs' suggestion, *Lundberg* is not distinguishable on the ground that the plaintiffs there had no proprietary interest. *See Petition* 12. As discussed above, no person has a proprietary interest in a nonprofit corporation. A decision even more recent than the decision in this case confirms that the Court of Appeals here simply applied the principles settled by *Lundberg*. *See Bangerter v. Hat Island Cmty. Ass'n*, 14 Wn. App. 2d 718, 741, 472 P.3d 998 (2020) (affirming dismissal of purported derivative claims on behalf of nonprofit condominium association, citing both *Lundberg* and *Mohandessi*). Tellingly, although a plaintiff homeowner in *Bangerter* filed a petition for review in this Court, he did not raise the derivative-standing issue. *See Pet'n for Review*, No. 99138-3.

Contrary to Plaintiffs' rhetoric, the Court of Appeals' decision does not mean that nonprofit directors have a "free pass" or can act "with impunity." *Petition* 11, 15. The WNCA provides multiple remedies for director misfeasance.[8] Beyond that, any person adversely affected by the failure to comply with the Condominium Act or a condominium's declaration or bylaws can sue for appropriate relief. RCW 64.34.455. The Court of Appeals applied settled law in concluding that Plaintiffs lacked standing to assert claims derivatively on behalf of the Residential Association or double derivatively on behalf of the Master Association. Review is unwarranted.

C. The Court of Appeals applied settled law in holding that Plaintiffs were liable under the 2012 settlement agreement for the attorney's fees Defendants incurred in defeating Plaintiffs' effort to invalidate that agreement.

Plaintiffs are bound by the 2012 settlement agreement under its terms: the Residential Association was a party to the agreement, and the agreement defined "RA" to include each "member" and "unit owner." CP 12580. The Court of Appeals' holding that Plaintiffs are bound by the settlement agreement and subject to its fee-shifting provision is consistent with the Condominium Act, the 2200 Residential Declaration, the settlement agreement, and precedent.

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[8] *See, e.g.,* RCW 24.03.040(2) (authorizing actions against directors for "exceeding their authority"); RCW 24.03.103(1) (authorizing members to remove directors by a two-thirds vote, "with or with cause"); RCW 24.03.266(1) (authorizing an action to dissolve if the directors have acted "in a manner that is illegal, oppressive, or fraudulent" or if "corporate assets are being misapplied or wasted"); RCW 24.03.103(1) (authorizing judicial removal of directors who have "engaged in fraudulent or dishonest conduct with respect to the corporation" if removal is "in the best interest of the corporation").

A condominium owners' association is a form of representative government. In a condominium, "each owner, in exchange for the benefits of association with other owners, must give up a certain degree of freedom of choice which he [or she] might otherwise enjoy in separate, privately owned property." *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 535, 243 P.3d 1283 (2010); *see also Slip Op.* 21 (quoting *Lake*). Association members authorize their elected representatives to conduct certain activities on behalf of the membership body.

As part of that delegation of authority, the Condominium Act broadly grants owners' associations the power to "make contracts and incur liabilities." RCW 64.34.304(1)(e); *see also* RCW 64.34.304(1)(d) (authorizing associations to "institute, defend, or intervene in litigation"). That power plainly extends to settling disputes such as the condominium-defect claims the Residential Association resolved in 2012. *See Bellevue Pac. Ctr. Ltd. P'ship v. Bellevue Pac. Tower Condo. Owners Ass'n*, 171 Wn. App. 499, 505, 287 P.3d 639 (2012).

Plaintiffs' notion that the Residential Association lacked authority to settle because the dispute was not yet in litigation is so devoid of merit that the Court of Appeals didn't bother to address it directly. A settlement agreement is a contract, and the Condominium Act does not limit the broad delegation of power to make contracts. *See* RCW 64.34.304(1)(e). Besides, interpreting the Condominium Act as authorizing condominium owners' associations to resolve disputes only once they result in litigation would yield an absurd result, which this Court avoids when interpreting statutes.

See Spokane County v. Dep't of Fish & Wildlife, 192 Wn.2d 453, 458–60, 430 P.3d 655 (2018). Under Plaintiffs' interpretation, association boards could resolve litigated matters but would be compelled to take every dispute that does not result in litigation—no matter how trivial—to the membership for a vote. Nothing in the Condominium Act suggests that the Legislature intended to so limit an association's contract-making authority.

The Court of Appeals was right to reject Plaintiffs' other arguments because they are based on a flawed premise: that applying the fee provision to them amounts to allowing the Residential Association to incur liabilities on behalf of individual members. No such thing occurred.

The Residential Association plainly acted within its statutory authority to enter into an agreement on behalf of its membership as a whole, to resolve a dispute that affected the entire membership. Plaintiffs are bound by virtue of their status as association members. *See Bellevue Pac. Ctr.*, 171 Wn. App. at 506 (rejecting as "plainly wrong" the argument that a settlement and release executed by a condominium association could not be enforced against the unit owners). If the rule were otherwise, the power to enter into settlements and other contracts would be meaningless because individual unit owners could ignore them. As the Court of Appeals observed in *Bellevue Pacific Center*, "the principle of finality of settlements outweighs any arguments to the contrary." *Id.* at 507–08. Besides, Plaintiffs incurred liability for fees not because of anything the Residential Association did on their behalf, but because they chose to pursue this litigation *against* the Residential Association.

Because the Residential Association acted on behalf of the entire membership in approving the settlement, its attorneys did not represent members individually, and it had no obligation to provide notice and an opportunity to object. As the Court of Appeals observed, nothing in the Condominium Act or the Residential Declaration required as much, and such a requirement would undermine the broad delegation of authority to enter into contracts.[9] The Court of Appeals followed applicable statutes and precedent in holding that Plaintiffs were bound by the settlement agreement. Review is unwarranted.

V. REQUEST FOR FEES

Urban Venture and Vulcan request an award of their fees incurred in preparing this answer on the same basis that the Court of Appeals awarded fees—the Condominium Act, RCW 64.34.455. *See Slip Op*. 25–26; RAP 18.1(j).

VI. CONCLUSION

Plaintiffs do not establish that the Court of Appeals' decision conflicts with any prior decision by the Court of Appeals or this Court, nor does the petition raise any issue of substantial public interest. This Court should deny review and award fees.

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[9] The cases Plaintiffs cite as requiring notice—all from other jurisdictions—are inapposite. For instance, in *Beazer Homes Holding Corp. v. District Court*, 128 Nev. 723, 291 P.3d 128 (2012), an owners' association sought to pursue construction-defect claims where at least some of the defects could differ among individual units. 291 P.3d at 131–32. In those circumstances, the Nevada Supreme Court determined it was error to allow the association to pursue a representative suit without meeting the class-action requirements. *Id*. at 136–37. That differs from the situation here, where Plaintiffs seek to recover common expenses that their owners' association paid; there are no unique claims among the Residential Association membership.

Respectfully submitted this 25th day of January, 2021.

CARNEY BADLEY SPELLMAN, P.S.

By *s/Michael B. King*
John C. Dippold, WSBA No. 25658
Michael B. King, WSBA No. 14405
S. Jay Terry, WSBA No. 28448
Jason W. Anderson, WSBA No. 30512
Parker R. Keehn, WSBA No. 40555
Attorneys for Respondents/Cross Appellants Urban Venture LLC and Vulcan Inc.

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

☒ Via Appellate Portal to the following:

Hozaifa Y. Cassubhai Spiro Harrison 705 Second Ave., Ste. 1300 Seattle WA 98104 hcassubhai@spiroharrison.com	Gregory J. Hollon Daniel M. Weiskopf Claire Martirosian Theresa M. Demonte Matthew J. Campos MCNAUL EBEL NAWROT & HELGREN 600 University St Ste 2700 Seattle WA 98101-4151 dweiskopf@mcnaul.com ghollon@mcnaul.com cmartirosian@mcnaul.com tdemonte@mcnaul.com mcampos@mcnaul.com
Stephen O. Fjelstad Allison N. Peryea Leahy Fjelstad Peryea 901 Fifth Ave., Suite 820 Seattle, WA 98164-1005 stephanfjelstad@leahyps.com Allison.peryea@leahyps.com	Ron Housh 1420 Fifth Avenue, Suite 3000 Seattle, WA 98101-2393 ron@housh.org
Lawrence A. Costich Milton A. Reimers Schwabe, Williamson & Wyatt, P.C. 1420 5th Ave., Suite 3400 Seattle, WA 98101-4010 lcostich@schwabe.com mreimers@schwabe.com	Jeffrey E. Bilanko Carroll, Biddle & Bilanko, LLP 801 Second Ave., Suite 800 Seattle, WA 98104 jbilanko@cbblegal.com

Catherine Wright-Smith Ian C. Cairns Smith Goodfriend, PS 1619 8th Ave N Seattle WA 98109-3007 cate@washingtonappeals.com ian@washingtonappeals.com	

DATED this 25th day of January, 2021.

s/ Patti Saiden
Patti Saiden, Legal Assistant

Appendix A:

Post-*Lundberg* Amendments to the Washington Nonprofit Corporation Act (ch. 24.03 RCW)

Year	Sections Amended
2004[10]	.005, .009, .017, .045, .050, .055, .065, .075, .080, .085, .113, .120, .135, .155, .165, .170, .183, .195, .207, .220, .230, .235, .240, .332, .340, .345, .365, .380, .425, .430, .445, .460, .465,
2009[11]	.050
2010[12]	.266,* .271,* .276,* .405
2011[13]	.105, .115, .230, .350
2015[14]	.005, .017, .045, .046, .047, .048, .050, .055, .060, .145, .175, .180, .183, .200, .205, .207, .245, .300, .302, .305, .310, .315, .325, .335, .340, .345, .350, .365, .370, .380, .390, .395, .405, .425, .445
2016[15]	.550

*Indicates amendment to conform to ABA Revised Model Nonprofit Corporation Act (2008)

[10] Laws of 2004, ch. 265.

[11] Laws of 2009, ch. 202.

[12] Laws of 2010, ch. 212.

[13] Laws of 2011, ch. 336.

[14] Laws of 2015, ch. 176.

[15] Laws of 2016, ch. 166.

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- mcampos@mcnaul.com
- mhenry@schwabe.com
- mlock@mcnaul.com
- mreimers@schwabe.com
- ron@housh.org
- sfjelstad@pstlawyers.com
- shosey@cbblegal.com
- tdemonte@mcnaul.com
- tdo@mcnaul.com
- terry@carneylaw.com

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