Supreme Court No. 1017715

Court of Appeals No. 383644-III

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MADISON EVANS, individually, and as guardian ad litem of R.A.C., a minor child,

Petitioners,

v.

ZACHARY M. FIRL and JANE DOE FIRL, and the marital community composed thereof,

Respondents.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Washington courts have always disfavored default judgments and instead favored resolution of litigations on the merits. Accordingly, Washington law on default judgments is robust and well-settled, including Supreme Court and Court of Appeals precedent detailing the analysis of what is required for such judgments to be upheld or vacated. One such express requirement is "[t]he amount of damages in a default judgment must be supported by substantial evidence." *Little v. King*, 160 Wn.2d 696, 704, 161 P.3d 345 (2007). In essence, "whether or not a default judgment should be set aside is a matter of equity", "not a mechanical test." *Id*. (citing *White v. Holm*, 73 Wn.2d 348, 351, 438 P.2d 581 (1968).

Here, the Court of Appeals correctly applied and followed those established principles and analysis to unanimously vacate the unsubstantiated $800,000 noneconomic damages portion of Plaintiffs' covertly obtained and rubberstamped default judgment, remand for trial on that element of damages, and affirm the liability and the special

damages and costs portions of the judgment. Specifically, following this Court's precedent in *Little* and *White*, the Court of Appeals correctly held that the evidence Plaintiffs proffered to the trial court to support the $800,000 noneconomic damages award was legally insufficient to support the award. The Court of Appeals explained the fact-specific deficiencies in Plaintiffs' evidence and gave non-exclusive examples of how Plaintiffs could have properly supported the award. While the Court of Appeals vacated a portion of the judgment and remanded, it rejected all of Defendant's other challenges.

Unable to effectively challenge the Court of Appeals' correct application of Washington precedent, but still unhappy with the result the Court of Appeals reached, Plaintiffs now petition this Court to accept under RAP 13.4(b)(1) and (4). Neither ground for review is met.

The Court of Appeals' well-reasoned opinion is on all fours with existing precedent. It is not in conflict with any of this Court's decisions, nor does its narrow and fact-specific holding raise an issue of any public interest, let alone

"substantial" public interest. The Court of Appeals did not depart from Washington law or create new law, and its decision has no new or broad impact beyond the parties and unique circumstances of this case. The law on default judgments is well-settled and the Court of Appeals correctly applied it. Plaintiffs ignore that and instead misread and overstate the Court of Appeals' opinion while trying to invent conflicting appellate precedent and issues of substantial public interest where none exist. There is no reason for this Court to accept review. The Court should deny Plaintiffs' petition so this case can be determined on the merits and the parties can have their day in court as Washington law has always favored.

II. COUNTERSTATEMENT OF THE CASE

A. Plaintiffs Covertly Obtained Default Judgment

This case stems from Plaintiffs' covertly obtained order of default and default judgment against defendant Zachary Firl. Mr. Firl's dog bit R.A.C., the minor child of Madison Evans (collectively "Plaintiffs"). Clerk's Papers ("CP") 00002. Plaintiffs, through their attorneys, made a claim to Mr. Firl's

insurer, Allstate Insurance Company ("Allstate"). Plaintiffs' counsel and Allstate then engaged in direct negotiations regarding Plaintiffs' alleged injuries and potential resolution of the claim. CP 00066-67, 70-79. Plaintiffs stated their damages from the dog bite were $335,718.54—including $35,718.54 in past and future medical expenses and $300,000 in general damages—and demanded payment in that amount. CP 00067. After investigating and evaluating information provided by Plaintiffs' counsel, Allstate concluded that the amount of damages was actually $66,731.49 and offered that amount. CP 00067, 79. Allstate received no response, nor any response to its multiple follow-ups to Plaintiffs' counsel. CP 00067, 80-81.

Meanwhile, Plaintiffs quietly filed the underlying lawsuit against Mr. Firl in Kittitas County Superior Court. CP 00001-6, 67. Mr. Firl stated under oath that he was never served with a copy of the summons and complaint. CP 00063-64. And, despite knowing of Allstate's interest, Mr. Firl and Allstate's intent to defend the claim, and Allstate's ongoing attempts to

settle the matter, Plaintiffs did not tell Mr. Firl or Allstate that they had filed suit.

Instead, without notice to Mr. Firl or Allstate, Plaintiffs' counsel obtained an order of default, and then a default judgment for nearly **three times** the amount of damages Plaintiffs previously told Allstate that R.A.C. had suffered. CP 00011-48, 67-68. Prior to seeking the default, Plaintiffs stated their total damages were $335,718.54, which included $300,000 in noneconomic damages. But when they moved for an *unopposed* default judgment, Plaintiffs instead alleged their damages were $834,567.54, including $800,000 in noneconomic damages. *Compare* CP 00042-43, 47-48 and 67. The trial court rubberstamped and entered the requested default judgment without a hearing or any scrutiny to test Plaintiffs' enormous and increased alleged damages claim or requiring them to prove it up with evidence, summarily adopting Plaintiffs' proposed findings of fact and conclusions of law and inflated damages figure. CP 00040-48; Verbatim Report of Proceedings ("RP") 5.

Only after obtaining the order of default and moving for a default judgment did Plaintiffs' reveal to Allstate that they had filed a lawsuit against Mr. Firl, doing so in a letter that Allstate received on the same day the default judgment was entered. CP 00042-43, 68, 82. The letter did not disclose the *actual* status of that litigation, conspicuously omitting any mention of the order of default already entered and the $835,000 default judgment, and instead misleadingly implied that the lawsuit was not beyond mere filing. CP 00068, 82.

B. The Trial Court Failed to Consider the Existence of a Prima Facie Defense to Damages and Refused to Vacate the Judgment

Allstate then scrambled to determine the status of the case and learned that the inflated and unsubstantiated default judgment had already been entered against the unwitting Mr. Firl. CP 00052-59, 68. Allstate hired an attorney for Mr. Firl, who moved to vacate the default judgment. CP 00052-59, 68, 84-85. Mr. Firl testified under oath at the hearing on his motion to vacate that he would have been at work on the day of the purported service at his house and that

neither he nor his roommates were served with process. CP 00063-64; RP 16-20. Plaintiffs presented no testimony to the contrary and called no witnesses. RP 20-21.

Mr. Firl further challenged the damages awarded in the default judgment as excessive, unsupported, and unreasonable, raising a prima facie defense to the damages award. CP 00056-58; RP 23-24, 26. Specifically, he argued that while Plaintiffs' counsel had provided some evidence of R.A.C.'s past and alleged future medical expenses, they did not present evidence sufficient to support the $800,000 noneconomic damages portion of the judgment, particularly when that amount of damages nearly tripled from Plaintiffs' prior pronouncement of the amount and was far beyond what Allstate evaluated the amount to be. CP 00056-58.

The trial court refused to vacate the inequitably obtained judgment entirely or to revisit the damages award to actually require Plaintiffs to provide sufficient evidence to support the amount. Instead, the trial court focused solely on Mr. Firl's argument that he had not been served. The trial court did not

address or rule on any of Mr. Firl's other challenges, including his prima facie defense to noneconomic damages, either in its verbal comments or its written order. RP 29-31; CP 00052-59, 123.

C. The Court of Appeals Correctly Reversed the Noneconomic Damages Portion of the Default Judgment.

Mr. Firl appealed and a unanimous panel of the Court of Appeals (Division 3) said "not so fast" regarding the judgment. It affirmed the judgment as to liability and special damages, but reversed and vacated the $800,000 noneconomic damages portion of default judgment and remanded for a trial solely on that element. *Evans v. Firl*, __ Wn. App. 2d __, 523 P.3d 869, 873 (2023). In fairness to both parties, each will now have their day in court and Plaintiffs merely need to prove their alleged damages; liability has already been established.

The Court of Appeals correctly held that Mr. Firl presented a prima facie defense to noneconomic damages and that Plaintiffs did not present legally sufficient evidence to support the $800,000 noneconomic damages award in the

excessive default. *Evans*, 523 P.3d at 883, ¶¶63-66. In doing so, the Court of Appeals properly applied well-settled Washington law on the entry and maintenance of default judgments announced by this Court in *White v. Holm*, 73 Wn.2d 348, 438 P.2d 581 (1968) and *Little v. King*, 160 Wn.2d 696, 161 P.3d 345 (2007) and the Court of Appeals in *Shepard Ambulance, Inc. v. Helsell, Fetterman, Martin, Todd & Hokanson*, 95 Wn. App. 231, 241, 974 P.2d 1275 (1999) and *Calhoun v. Merritt*, 46 Wn. App. 616, 731 P.2d 1094 (1986). *See Evans*, 523 P.3d at 879-881, ¶¶44-52, 883, ¶¶63-66.

The Court of Appeals appropriately tested the sufficiency of Plaintiffs' evidence proffered in support of the award of $800,000 in noneconomic damages—a challenge that the trial court failed to consider. *Id.* at 883, ¶¶63-66. It correctly concluded that the trial court abused its discretion by not vacating the noneconomic damages award when the *only* evidence presented in support of the judgment was: (i) R.A.C.'s $26,067.79 in medical bills; (ii) an estimate that a possible future scar revision surgery would cost $8,500 to $10,000; and

(iii) a skeletal hearsay summary of six settlements allegedly negotiated by Plaintiffs' counsel for other clients, which counsel mischaracterized to the trial court in its briefing as "Jury Verdicts." *Compare* CP 00090 and 96 with CP 00028-29, ¶¶5-10; *Evans*, 523 P.3d at 883, ¶¶63-66. The Court of Appeals also explained the various failings in the evidence Plaintiffs presented and provided some non-exclusive, illustrative examples of how Plaintiffs could have presented legally sufficient evidence to support the alleged noneconomic damages (*e.g.*, witness testimony, actual jury verdicts, medical records, photos, etc.). *Evans*, 523 P.3d at 883, ¶¶63-66.

The Court of Appeals' application of existing law, its analysis, and its holding are squarely in line with this Court's holding in *White* and *Little*, as well as the Court of Appeals opinions in *Shepard* and *Calhoun*. Plaintiffs do not argue otherwise, but instead mischaracterize and contort the Court of Appeals' decision as "mudd[ying] the waters" for review of default judgments and creating a new, "higher evidentiary burden" to uphold such judgments. Pet. for Rev. at 2. No such

thing occurred. Rather, the Court of Appeals followed settled law from this Court and correctly applied it. Plaintiffs do not argue otherwise; they just don't like the result the Court of Appeals reached.

Accordingly, this Court should deny review. The Court of Appeals' decision is not in conflict with any of this Court's decisions, nor is there any issue of substantial public importance raised necessitating this Court's review.

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

Plaintiffs rely solely on RAP 13.4(b)(1) and (4). Neither applies.

A. The Court of Appeals' Decision is Harmonious with Supreme Court Precedent, Not in Conflict With It

Review is not warranted under RAP 13.4(b)(1) unless the decision of the Court of Appeals is in conflict with a decision by this Court. Plaintiffs ignore that the Court of Appeals decision applied and is in line with *White* and *Little* (as well as Court of Appeals decisions). Instead, Plaintiffs argue the Court

of Appeals decision is in conflict with this Court's decision in *Rasor v. Retail Credit Co.*, 87 Wn.2d 516, 554 P.2d 1041 (1976) and creates some new requirement to prove noneconomic damages. Plaintiffs are wrong.

Plaintiffs misconstrue the Court of Appeals' decision to incorrectly suggest that it creates a new standard requiring general damages to be fixed with mathematical certainty and to be supported by witness testimony. The Court of Appeals required nothing of the sort.

Rather, the Court of Appeals readily acknowledged the inexact and discretionary nature of noneconomic damages, but correctly noted that a plaintiffs must still provide "sufficient evidence to support a damages award" to give it a "reasonable basis" rather than rely on "mere speculation or conjecture." *Evans*, 523 P.3d at 880, ¶48. The problem for Plaintiffs—as aptly explained by the Court of Appeals—was that they did not present sufficient evidence to provide that reasonable basis, engaging instead in speculation and conjecture. *Id*. at 883, ¶63-66.

In so holding, the Court of Appeals pointed out various failings in Plaintiffs' proffered evidence and gave illustrative examples how they could have carried their burden to support the damages award (*e.g.*, witness testimony, actual jury verdicts, medical records, photos, etc.). *Id*. Plaintiffs incorrectly isolate and seize on the witness testimony example as though it were a new evidentiary requirement. The plain text of the Court of Appeals' decision created no such requirement, new or otherwise. Rather, the Court of Appeals merely said that witness testimony or medical records, photos, jury verdicts, or additional information about the settlements, etc., was one of many, non-exclusive ways a plaintiff can provide the "substantial evidence" *Little* requires to support a damages award in a default judgment. *Id*. Indeed, the Court of Appeals expressly acknowledged the well-established rule that "the party moving for a default judgment need only present substantial evidence" (*Evans*, 523 P.3d at 879, ¶44) and then applied that rule, noting "[i]t is not difficult to present legally sufficient evidence of bona fide noneconomic damages in an

uncontested default judgment hearing." *Id.* at 883, ¶66. Plaintiffs have only themselves to blame and are simply unhappy with the result the Court of Appeals reached after applying the correct rule of law.

Specifically, the Court of Appeals relied on and applied this Court's rule in *Little*, which plainly states: "[t]he amount of damages in a default judgment must be supported by substantial evidence." 160 Wn.2d 696, 704. The Court of Appeals also relied on Court of Appeals' precedent in *Shepard Ambulance, Inc. v. Helsell, Fetterman, Martin, Todd & Hokanson*, 95 Wn. App. 231, 974 P.2d 1275 (1999).[1] Lastly, the Court of Appeals relied on and applied this well-settled law against the backdrop of the *White* factors and this Court's pronouncement in *Little* that the *White* factors/considerations "is not a mechanical test; whether or not a default judgment should be set aside is a matter of equity." *Evans*, 523 P.3d at 883, ¶¶63-66.

[1] This Court denied review in *Shepard Ambulance*. *See Shepard Ambulance, Inc. v. Helsell, Fetterman, Martin, Todd & Hokanson*, 140 Wn.2d 1007, 999 P.2d 1259 (2000) (denying review).

In *Shepard*, the Court of Appeals held that "the default award . . . could be vacated if there was not substantial evidence to support the award of damages." 95 Wn. App. at 242. It reached that conclusion by relying on the reasoning of *Calhoun v. Merritt*, 46 Wn. App. 616, 731 P.2d 1094 (1986) and held that "it would be inequitable and unjust to deny a motion to vacate the damages portion of the default judgment on the ground that the defendant failed to present a valid defense where the pain and suffering award warranted further discovery." *Shepard*, 95 Wn. App. at 241 (citing *Calhoun*, 46 Wn. App. at 620-21). *Shepard* further stated that for purposes of affirming a default judgment damages award, "[e]vidence is substantial if it is sufficient to persuade a fair-minded, rational person of the truth of the declared premise." In *Little*, this Court cited *Shepard* in reiterating the maxim—applied by the Court of Appeals here— that "[t]he amount of damages in a default judgment must be supported by substantial evidence." *Id.* at 704.

The Court of Appeals here did not reach a decision or apply law in "conflict with a decision of the Supreme Court". It did the exact the opposite. It correctly relied on and applied *Little*, *White*, *Shepard*, and *Calhoun* to test the scant evidence Plaintiffs presented in support of their default judgment and concluded such evidence was not substantial enough to support the $800,000 noneconomic damages award.

The Court of Appeals' well-reasoned decision in no way conflicts with this Court's holding in *Rasor*. *Rasor* has nothing to do with default judgments. It is inapposite here and instead addressed challenges to the sufficiency of the evidence on a motion for a directed verdict. 87 Wn.2d at 533.

In *Rasor*, this Court examined a jury award and stated that while noneconomic damages did not need to be proven with "mathematical certainty," "all awards must be supported by competent evidence." *Id*. at 531 (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350, 94 S. Ct. 2997, 3012, 41 L. Ed. 2d 789 (1974)) (internal quotations omitted). The import of

Rasor is that a jury award must be in "the range of substantial evidence in the record." *Id.* (citation omitted).

Here, however, there was no jury award at issue, but rather a default judgment. Regardless, like *Little*, *Rasor* stands for the unremarkable and axiomatic proposition that a damages award—no matter the context—must be supported by sufficient evidence even though noneconomic damages by nature are difficult to define and not subject to mechanical calculation. The Court of Appeals recognized this and its decision that Plaintiffs' proffered evidence was legally insufficient is harmonious with *Rasor* and other Washington precedent.

The Court of Appeals did not require from Plaintiffs "proof of a specific [actual dollar value] for general damages" as Plaintiffs wrongly contend. Rather, in line with *Rasor* and *Little*, the Court of Appeals merely required legally sufficient evidence to support the damages award and found Plaintiffs' evidence insufficient. It did not focus on "evidence which assigns an *actual dollar value* to the injury."

Rather, it focused on the void of evidence presented, holding the following evidence was not "substantial evidence" sufficient to support the noneconomic damages award: (1) medical bills of $26,067.79; (2) *possible* future scar revision surgery estimated $8,500 to $10,000; and (3) speculative hearsay about six vague settlements by Plaintiffs' counsel brokered in *other* litigations with *different* facts and circumstances (*i.e.*, comparing apples and oranges). The holding is in an entirely different context and posture than the jury award in *Rasor*, and even if *Rasor* had some bearing in this case, the Court of Appeals' decision is perfectly aligned with *Rasor* by requiring "competent evidence" to support the damages award. Whether called "competent evidence" or "substantial evidence," the bedrock principle of *Rasor* and *Little* is the same: damages must be supported by sufficient evidence and not speculation and conjecture. Here, the Court of Appeals held Plaintiffs proffered insufficient evidence. Far from requiring "mathematical precision," the Court of Appeals simply found that "[g]iven a conclusive defense of legally

insufficient supporting evidence, it was an abuse of discretion not to vacate the award of noneconomic damages." *Evans*, 523 P.3d at 883, ¶66.

Lastly, the Court of Appeals certainly did not create any new evidentiary "requirement" of witness testimony, as Plaintiffs incorrectly assert. It simply said witness testimony is one of *many* ways to sufficiently support a damages award. Nor did it alter in any way the existing sufficiency of the evidence requirement for default judgments. Instead, it applied existing law on the sufficiency of evidence to the facts in this case, holding that here "[a] declaration from [an attorney] offer[ing] allegations and conclusory statements in support of her opinion" as to the amount of damages she obtained in other prior settlements is just that: "her speculative opinion." *Evans*, 523 P.3d at 883, ¶65. Even if *Rasor* pertained to default judgments, trial courts do not need "guidance" from this Court on settled law of requisite substantial evidence. Regardless, the "need" for "guidance" standard Plaintiffs invent is not the real

standard for this Court to accept review. Plaintiffs' request for review under RAP 13.4(b)(1) fails.

B. The Court of Appeals' Decision Does Not Raise An Issue of Substantial Public Interest

The Court of Appeals' decision does not raise an issue of public interest, let alone the ***substantial*** public interest required to justify review under RAP 13.4(b)(4).[2] "[T]he circumstances of the particular case dictate" the Court's analysis and the outcome when determining whether a default judgment should be set aside. *White*, 73 Wn.2d at 352; *accord Little*, 160 Wn.2d at 703. The Court of Appeals applied the well-established precedent of *Little*, *White*, *Shepard*, and *Calhoun* to the unique circumstances of this case, holding that the trial court abused its discretion by not vacating the noneconomic damages portion of

[2] *Cf, e.g., Matter of Williams*, 197 Wn.2d 1001, 484 P.3d 445 (2021) (Granting review and holding that "[t]he chaos wrought by COVID-19 at the Coyote Ridge [Correctional Center] heavily affected correctional facilities, and the [Washington State Department of Corrections'] efforts in responding to this constantly changing threat, constitutes an ongoing issue of substantial public interest within the meaning of RAP 13.4(b)(4)"); *Matter of Arnold*, 189 Wn.2d 1023, 408 P.3d 1091 (2017) (granting review and holding that "the adoption of a horizontal stare decisis rule is an issue of substantial public interest that merits this court's review under RAP 13.4(b)(4).")

the default judgment because it was not supported by substantial evidence.

This very narrow holding—where the Court of Appeals also affirmed the liability portion of the judgment and amount of special damages—has no impact or application beyond this case and the individual parties, let alone an impact on a broader, substantial public interest. The Court of Appeals simply applied existing law to the unique facts of this case and held that Plaintiffs' proffered evidence of noneconomic damages was legally insufficient. Its holding is limited to the facts of this particular case. Nor do Plaintiffs make any showing (or even suggest) that this issue is likely to arise or repeat in future cases on different facts.

From a public interest standpoint, the holding furthers the long-established policy disfavoring default judgments and favoring the resolution of controversies "on the merits rather than by default." *Little*, 160 Wn.2d at 703 (citations omitted); *Morin v. Burris*, 160 Wn.2d 745, 754, 161 P.3d 956 (2007). The Court of Appeals acknowledged that policy, noting that

"[a]n abuse of discretion is more readily found when the trial court *denies* a trial on the merits than when a judgment is set aside and a trial is had." *Evans*, 523 P.3d at 877, ¶28 (emphasis in the original) (citing *White*, 73 Wn.2d at 351-52). Vacating a default judgment with unsupported noneconomic damages entered without a hearing or scrutiny and then ignored again by trial court on a motion to vacate does not raise an issue of substantial public interest. (Nor do Plaintiffs provide any reason to think these unique circumstances would ever arise again, let alone arise regularly enough to elevate this to an issue of substantial public importance).

Plaintiffs overread the Court of Appeals' decision and conflate the issue here with the separate circumstance of courts analyzing jury verdicts for substantial evidence to argue an issue of substantial public interest exists. *See* Pet. for Rev. at 13, 18-19. Plaintiffs are wrong.

The Court of Appeals' discussion of a prima facie defense to non-economic damages in the default judgment context (as recognized in *Shepard* and endorsed in *Little*) makes

only a passing reference to CR 50, which allows judgment as a matter of law "where there is no legally sufficient evidentiary basis for a reasonable jury to find or have found for that party with respect to that issue." *Evans*, 523 P.3d at 880-81, ¶49, n.5 (quoting *Coogan v. Borg-Warner Morse Tec Inc.*, 197 Wn.2d 790, 812, 490 P.3d 200 (2021). The Court of Appeals did not rely on CR 50 or case law regarding whether to set aside jury verdicts in reaching its narrow holding on a default judgment. Plaintiffs misread and mischaracterize the Court of Appeals' analysis and decision in an effort to concoct an issue of "substantial public interest."

Instead, the Court of Appeals correctly applied "CR 55 and the case law construing it," heeding this Court's advice in *Little* that "[t]he fact that a default judgment was entered without the court independently assessing the evidence is a factor that weighs in favor of allowing a trial on the merits." *Evans*, 523 P.3d at 881, ¶¶51-52 (citing *Little*, 160 Wn.2d at 724). It then correctly noted that "[b]ecause no hearing was held [by the trial court on Plaintiffs' motion for default

judgment], the shortcomings in the written submissions were never compensated for by testimony." *Id.* at 883, ¶64.

This discussion of vacating default judgments certainly does not mean—as Plaintiffs incorrectly suggest—that the Court of Appeals imposed a "new requirement" for "plaintiffs in jury trials." Pet. for Rev. at 25. Rather, the Court of Appeals merely held that Plaintiffs failed to provide *any* evidence to compensate for "shortcomings" in the insufficient showing they made to support a default judgment on noneconomic damages or explain "why the $750,000 and $50,000 would be reasonable measures of R.A.C.'s and Ms. Evans's noneconomic damages." *Evans*, 523 P.3d at 883, ¶65.

Lastly, Plaintiffs then spends pages arguing that they did present "substantial evidence" to support the noneconomic damages award. They did not, as the Court of Appeals correctly explained, but regardless, simply disagreeing with the Court of Appeals' outcome after it applied the proper law to the facts is no basis for this Court to accept review under RAP 13.4(b)(4).

The Court of Appeals simply applied established evidentiary standards to the unique facts of this case and Plaintiffs are displeased with the outcome. The Court of Appeals did not announce new or contradictory rules and its decision has no implication beyond this case. Vacating the unsubstantiated noneconomic damages portion of a default judgment for a trial on the merits is not an issue of substantial public interest warranting review.

IV. CONCLUSION

Review by this Court of the Court of Appeals' decision is not warranted under either RAP 13.4(b)(1) or (4). The Court of Appeals acknowledged and followed this Court's existing precedent and correctly applied it, and its narrow holding on the facts and equities of this case does not raise an issue of substantial public interest. The decision is also harmonious with the long-established policy disfavoring default judgments and favoring resolution of cases on the merits. The Court of Appeals' decision fairly and justly gives each party their day in court: it gives Plaintiffs a second opportunity to prove and

substantiate their alleged damages, and Mr. Firl an opportunity to defend against the same, as he always wanted to do. This Court should therefore deny Plaintiffs' Petition for Review so this case can be resolved on the merits.

I certify that this Answer contains 4,389 words pursuant to RAP 18.17.

Respectfully submitted this 3rd day of April, 2023.

FOX ROTHSCHILD LLP

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CERTIFICATE OF SERVICE

I, Courtney R. Brooks, certify that:

1. I am an employee of Fox Rothschild LLP, attorneys for Petitioner in this matter. I am over 18 years of age, not a party hereto, and competent to testify if called upon.

2. On April 3, 2023, I served a true and correct copy of the foregoing document on the Respondents, via email and court of appeals (Supreme Court of Washington) e-filing portal and addressed as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED at Seattle, Washington, this 3rd day of April, 2023.

Courtney R. Brooks

FOX ROTHSCHILD LLP

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