

No. 46963-4

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ROLFE GODFREY and KIRSTINE GODFREY, husband and wife
and their marital community composed thereof,

Appellants,

v.

STE. MICHELLE WINE ESTATES LTD, dba CHATEAU STE.
MICHELLE, a Washington Corporation; and SAINT-GOBAIN
CONTAINERS, INC.,

Respondents.

and

ROBERT KORNFELD,

Additional Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR PIERCE COUNTY
THE HONORABLE KATHERINE M. STOLZ

REPLY BRIEF OF APPELLANTS

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TABLE OF CONTENTS

I. INTRODUCTION1

II. REPLY ARGUMENT 2

A. Mr. Godfrey timely filed his affidavit of prejudice. 2

 1. A trial court cannot exercise discretion over an order it does not consider..... 2

 2. Neither stipulated order involved discretion. 4

 a. Approving stipulations affecting only the convenience of the parties does not involve discretion..... 4

 b. A trial court does not exercise discretion in addressing ministerial matters. 7

 3. The trial court’s erroneous refusal to recuse mandates reversal and remand for a new trial. 8

B. The trial court erroneously excluded nearly all of Mr. Godfrey’s liability exhibits as a sanction without considering any of the *Burnet* factors, none of which support the sanction. 9

 1. *Burnet* applies to exclusion of exhibits.10

 2. Mr. Godfrey made plain the prejudice from the exclusion of nearly all his liability exhibits. 12

 3. Mr. Godfrey did not violate, let alone willfully violate a court rule or order.....16

 4. Ste. Michelle was not substantially prejudiced.19

5.	The trial court failed to consider lesser sanctions.	22
C.	The trial court erred in refusing to admit Mr. Godfrey's expert's opinions under ER 703.	24
D.	Mr. Godfrey is entitled to a new judge and to submit a jury demand at a new trial.....	24
III.	CONCLUSION	25

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Blair v. Ta-Seattle E. No. 176</i> , 171 Wn.2d 342, 254 P.3d 797 (2011)	10
<i>Bowcutt v. Delta North Star Corp.</i> , 95 Wn. App. 311, 976 P.2d 643 (1999)	23
<i>Burnet v. Spokane Ambulance</i> , 131 Wn.2d 484, 933 P.2d 1036 (1997)	1, 9-12, 18-19, 23
<i>Cornejo v. State</i> , 57 Wn. App. 314, 788 P.2d 554 (1990)	25
<i>Dependency of Hiebert</i> , 28 Wn. App. 905, 627 P.2d 551 (1981)	7
<i>Dependency of M.P.</i> , 185 Wn. App. 108, 340 P.3d 908 (2014)	22
<i>Hanno v. Neptune Orient Lines, Ltd.</i> , 67 Wn. App. 681, 838 P.2d 1144 (1992)	8
<i>Harbor Enterprises, Inc. v. Gunnar Gudjonsson</i> , 116 Wn.2d 283, 803 P.2d 798 (1991)	6, 8-9
<i>Hendrickson v. King Cnty.</i> , 101 Wn. App. 258, 2 P.3d 1006 (2000)	16
<i>Jones v. City of Seattle</i> , 179 Wn.2d 322, 314 P.3d 380 (2013)	17-19, 23
<i>Keck v. Collins</i> , ___ Wn.2d ___, 357 P.3d 1080 (2015)	11
<i>Magana v. Hyundai Motor Am.</i> , 167 Wn.2d 570, 220 P.3d 191 (2009)	18

<i>Marina Condo. Homeowner’s Ass’n v. Stratford at Marina, LLC,</i> 161 Wn. App. 249, 254 P.3d 827 (2011)	17, 21
<i>Marriage of Hennemann,</i> 69 Wn. App. 345, 848 P.2d 760 (1993)	7
<i>Martonik v. Durkan,</i> 23 Wn. App. 47, 596 P.2d 1054 (1979), <i>rev. denied</i> , 93 Wn.2d 1008 (1980)	8
<i>Mayer v. Sto Indus., Inc.,</i> 156 Wn.2d 677, 132 P.3d 115 (2006).....	12
<i>McDaniel v. McDaniel,</i> 64 Wn.2d 273, 391 P.2d 191 (1964).....	9
<i>N. State Const. Co. v. Banchemo,</i> 63 Wn.2d 245, 386 P.2d 625 (1963)	8
<i>Recall of Lindquist,</i> 172 Wn.2d 120, 258 P.3d 9 (2011)	3, 5, 8
<i>Peluso v. Barton Auto Dealerships, Inc.,</i> 138 Wn. App. 65, 155 P.3d 978 (2007)	10
<i>Rhinehart v. Seattle Times Co.,</i> 51 Wn. App. 561, 754 P.2d 1243, <i>rev. denied</i> , 111 Wn.2d 1025 (1988), <i>cert. denied</i> , 490 U.S. 1015 (1989)	3, 5
<i>Rivers v. Washington State Conference of Mason Contractors,</i> 145 Wn.2d 674, 41 P.3d 1175 (2002).....	22
<i>Robertson v. Robertson,</i> 113 Wn. App. 711, 54 P.3d 708 (2002).....	3
<i>Savage v. Ash,</i> 86 Wash. 43, 149 P. 325 (1915)	6
<i>Spring v. Dep’t of Labor & Indus. of State,</i> 39 Wn. App. 751, 695 P.2d 612 (1985)	24

<i>State ex rel. Floe v. Studebaker</i> , 17 Wn.2d 8, 134 P.2d 718 (1943).....	6-7
<i>State v. Parra</i> , 122 Wn.2d 590, 859 P.2d 1231 (1993)	4-6
<i>State v. Torres</i> , 85 Wn. App. 231, 932 P.2d 186, <i>rev. denied</i> , 132 Wn.2d 1012 (1997)	7
<i>State v. Wicker</i> , 105 Wn. App. 428, 20 P.3d 1007 (2001).....	3
<i>Tye v. Tye</i> , 121 Wn. App. 817, 90 P.3d 1145 (2004)	7-8
<i>Willapa Trading Co. v. Muscanto, Inc.</i> , 45 Wn. App. 779, 727 P.2d 687 (1986)	8

Statutes

Laws of 2009 ch. 332.....	6
RCW 2.24.050.....	3
RCW 4.12.050	1-4, 6-7
RCW 4.44.040	8

Rules and Regulations

CR 2.....	5
CR 35.....	1-3, 5
ER 904	16, 21
PCLR 3	17-18
PCLR 16.....	9, 16-17
RAP 10.3.....	15

Other Authorities

Black’s Law Dictionary (10th ed. 2014)..... 11

Tegland, 15A Wash. Prac., Handbook Civil Procedure
§ 57.9 (2014-2015 ed.)..... 11, 18

6 Wash. Prac., Wash. Pattern Jury Instr. Civ., WPI
1.01 (6th ed. 2012)..... 11

I. INTRODUCTION

A superior court judge does not exercise “discretion” under RCW 4.12.050 when *a commissioner* signs a stipulated order for a CR 35 exam or when the judge approves a routine scheduling stipulation extending witness disclosure deadlines. This Court should reverse and remand for a new trial before a new superior court judge because the trial court here erroneously refused to honor Mr. Godfrey’s timely affidavit of prejudice.

While the trial court’s refusal to recuse in the face of a timely affidavit of prejudice voids all of her subsequent decisions, this Court should reverse for another reason: the trial court erred in entering a crippling sanction against Mr. Godfrey, which excluded nearly all his liability evidence, as well as expert testimony, even though Mr. Godfrey repeatedly disclosed his evidence to Ste. Michelle in full compliance with the civil and local rules. This sanction was imposed without any of the findings required by *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997), and there is no evidence Mr. Godfrey’s counsel acted willfully or that Ste. Michelle suffered substantial prejudice (or any) from the failure to provide a “separate” joint statement of evidence while counsel recovered from unexpected surgical complications.

II. REPLY ARGUMENT

A. Mr. Godfrey timely filed his affidavit of prejudice.

Mr. Godfrey filed his affidavit of prejudice before Judge Stolz (“the trial court”) “made any order or ruling involving discretion.” RCW 4.12.050. The trial court approved a stipulation that did nothing more than extend the deadline for disclosing witnesses and a commissioner signed a second stipulation that confirmed the parties’ agreement over the terms of a CR 35 exam of Mr. Godfrey. (CP 158-64) Because a commissioner, not the trial court, approved the second stipulation, it was not an “order or ruling” of the “judge presiding,” let alone a discretionary ruling under RCW 4.12.050. Further, no discretion was involved in the entry of either stipulation because they addressed ministerial matters affecting only the parties themselves. The trial court’s denial of the timely affidavit of prejudice divested the court of authority to preside over Mr. Godfrey’s trial, renders its subsequent decisions void, and mandates a new trial before a new judge.

1. A trial court cannot exercise discretion over an order it does not consider.

An affidavit of prejudice under RCW 4.12.050 must be granted if filed before “*the judge* presiding has made any order or ruling involving discretion.” (emphasis added) Ste. Michelle

recognizes that Judge Stolz did not sign the CR 35 stipulation, (Resp. Br. 15), but argues that because a ruling of the *commissioner* that is not revised under RCW 2.24.050 “become[s] the order[] . . . of the superior court,” the commissioner’s order is imputed to Judge Stolz and became the trial court’s discretionary ruling. (Resp. Br. 23-24) Neither statutory language, precedent, nor policy support such a strained interpretation of RCW 4.12.050.

Under RCW 2.24.050, “once the judge makes a decision on revision, it is the judge’s decision.” *State v. Wicker*, 105 Wn. App. 428, 433, 20 P.3d 1007 (2001). But absent a timely motion for revision, a superior court judge cannot exercise discretion to revise a commissioner’s ruling. *See Robertson v. Robertson*, 113 Wn. App. 711, 714, 54 P.3d 708 (2002). Here, Judge Stolz could not make an order or ruling “involving discretion” because neither party moved for revision of the commissioner’s approval of their CR 35 stipulation and Judge Stolz never considered it.

None of the cases cited by Ste. Michelle support its novel “imputed discretion” rule, as each involves an order entered by a superior court judge, not a commissioner. *Recall of Lindquist*, 172 Wn.2d 120, 126, ¶ 7, 258 P.3d 9 (2011); *Rhinehart v. Seattle Times Co.*, 51 Wn. App. 561, 575-76, 754 P.2d 1243, *rev. denied*, 111 Wn.2d

1025 (1988), *cert. denied*, 490 U.S. 1015 (1989) (both cited at Resp. Br. 18). Moreover, Ste. Michelle’s argument defeats the policy of the discretionary ruling proviso in RCW 4.12.050 – to prevent parties from engaging in gamesmanship by “waiting to see the disposition of the judge before asserting the right.” *State v. Parra*, 122 Wn.2d 590, 599, 859 P.2d 1231 (1993). A party does not “game the system” by challenging the fairness of a judge who has never exercised discretion, or for that matter made a non-discretionary ruling. This Court should reject Ste. Michelle’s absurd interpretation of RCW 4.12.050.

2. Neither stipulated order involved discretion.

a. Approving stipulations affecting only the convenience of the parties does not involve discretion.

Approval of a stipulation extending the date for disclosure of witnesses is a scheduling decision that does not invoke the court’s discretion. Ste. Michelle concedes “the trial court does not exercise discretion . . . when entering agreed orders or stipulations on ‘matters . . . affecting only the rights or convenience of the parties, not involving any interference with the duties and functions of the court.’” (Resp. Br. 22 (quoting *Parra*, 122 Wn.2d at 603)) But it never explains why a stipulation concerning witness disclosure

deadlines, or should this Court consider it, a stipulation for a CR 35 exam,¹ “interferes” with the duties and functions of the trial court. The stipulations did not continue a hearing or the trial date, or affect “the court’s own calendar.” (Resp. Br. 22) They required no action of the court, and affected only the dates the parties would exchange information, and the terms and conditions of Mr. Godfrey’s medical examination outside of court.

The cases cited by Ste. Michelle confirm the distinction between ruling on a *motion* and accepting a *stipulation*. (App. Br. 21-22) In *Lindquist*, the court denied a motion to continue a hearing on the merits of a recall petition. 172 Wn.2d at 126, ¶ 7 (Resp. Br. 17). In *Parra*, the parties filed unopposed motions, which the Court distinguished from stipulations because they were not “an agreement which would potentially bind them to their positions” and thus “the parties chose instead to leave the decision to the court.” 122 Wn.2d at 602 (Resp. Br. 21); *see also Rhinehart*, 51 Wn. App. at 567, 578-79 (ruling on motion) (Resp. Br. 18).

¹ Ste. Michelle argues “[t]his was not an examination by agreement” (Resp. Br. 25), but an ordered exam under CR 35(a)(1) ignoring that orders under that section can be “made *only on motion* for good cause shown.” (emphasis added) No party filed a motion for an exam – they agreed to one under CR 35(c). (CP 160 (“[t]he parties . . . do hereby stipulate and agree”)) That the parties sought judicial approval demonstrates only their desire to bind each other to their agreement. *See* CR 2A.

Ste. Michelle wrongly asserts that *State ex rel. Floe v. Studebaker*, 17 Wn.2d 8, 134 P.2d 718 (1943) (App. Br. 19) is not “good law.” (Resp. Br. 20) Ste. Michelle cites no case overruling *Floe*, which applied the same language of RCW 4.12.050 at issue here.² Indeed, *Parra* confirmed *Floe* remains good law, stating “[t]he distinction drawn in *Floe* relating to stipulations makes sense.” 122 Wn.2d at 599. Ste. Michelle’s contention that *Floe*’s discussion of stipulations is dicta is likewise mistaken. *Floe* had two holdings, both of which are good law. *See Savage v. Ash*, 86 Wash. 43, 46, 149 P. 325 (1915) (“both questions were clearly in the case, and simply because the court decided both, does not necessarily mean that the one or the other is dictum”).

“Stipulations are favored by courts.” *Parra*, 122 Wn.2d at 601. Ste. Michelle ignores that maxim, asking this Court to punish parties who resolve matters amongst themselves without asking the court to exercise discretion by denying them the “substantial and valuable right” to file an affidavit of prejudice. *Harbor Enterprises, Inc. v. Gunnar Gudjonsson*, 116 Wn.2d 283, 291, 803 P.2d 798 (1991). Because stipulations affecting only the parties do not invoke a court’s

² RCW 4.12.050 has remained substantively unchanged since 1941. It was amended once in 2009 for gender neutrality and to except water right adjudications. *See* Laws of 2009 ch. 332 § 20.

discretion, the trial court erred in denying Mr. Godfrey's affidavit of prejudice.

b. A trial court does not exercise discretion in addressing ministerial matters.

Even where an order is not stipulated, RCW 4.12.050 permits a subsequent affidavit of prejudice if the order concerns only ministerial matters such as "arrangement of the calendar," case scheduling, and preliminary pre-trial matters.³ *Tye v. Tye*, 121 Wn. App. 817, 821, 90 P.3d 1145 (2004) ("ministerial acts of entering uncontested case scheduling orders" non-discretionary); *Marriage of Hennemann*, 69 Wn. App. 345, 347, 848 P.2d 760 (1993) ("form order on pretrial procedures" non-discretionary) (both cited at App. Br. 23). Ste. Michelle ignores this authority, citing cases where a

³ RCW 4.12.050 provides four *examples* of non-discretionary actions, including "arrangement of the calendar." The statute does not limit non-discretionary rulings to those four (Resp. Br. 19-20), as confirmed by multiple cases holding other actions were non-discretionary. *See, e.g., Floe*, 17 Wn.2d at 17 (stipulated consolidation and continuance non-discretionary); *State v. Torres*, 85 Wn. App. 231, 234, 932 P.2d 186 (order allowing material witness to leave the jurisdiction non-discretionary), *rev. denied*, 132 Wn.2d 1012 (1997); *Dependency of Hiebert*, 28 Wn. App. 905, 910, 627 P.2d 551 (1981) ("reappointment of the same guardian ad litem or an attorney for the father and mother" non-discretionary).

court denies a motion to continue trial (usually on the eve of trial). (Resp. Br. 17-18)⁴

The stipulated orders in this case, submitted far in advance of trial, had no effect on the trial date and are much more akin to the case scheduling and pretrial orders in *Tye* and *Henneman* than an eleventh hour motion to continue the entire action. Indeed, Ste. Michelle itself calls the stipulated order regarding witness deadlines a “Case Scheduling Order,” conceding it was non-discretionary “arrangement of the calendar.” (Resp. Br. 22)⁵

3. The trial court’s erroneous refusal to recuse mandates reversal and remand for a new trial.

Ste. Michelle concedes a new trial in front of a new judge is required if Mr. Godfrey’s affidavit of prejudice was timely. (Resp. Br. 49) That is settled law: A timely affidavit of prejudice *must* be granted; a trial court has no discretion to deny it. *Harbor*

⁴ *Willapa Trading Co. v. Muscanto, Inc.*, 45 Wn. App. 779, 784-85, 727 P.2d 687 (1986) (denying continuance on eve of trial); *Martonik v. Durkan*, 23 Wn. App. 47, 49, 596 P.2d 1054 (1979) (same), *rev. denied*, 93 Wn.2d 1008 (1980); *N. State Const. Co. v. Banchemo*, 63 Wn.2d 245, 247, 386 P.2d 625 (1963) (motion to continue trial under former RCW 4.44.040); *Lindquist*, 172 Wn.2d at 126, ¶ 7 (denying motion to continue hearing on the merits of recall petition beyond statutory time limit).

⁵ Ste. Michelle cites no cases holding that *amending* a case scheduling order entails discretion (Resp. Br. 22), an assertion that is directly refuted by *Hanno v. Neptune Orient Lines, Ltd.*, 67 Wn. App. 681, 682, 838 P.2d 1144 (1992) (orders amending pretrial order non-discretionary).

Enterprises, 116 Wn.2d at 291. “An application to transfer a cause to another judge upon an affidavit of prejudice, divests the first judge of jurisdiction to try the case on the merits if the application is timely made.” *McDaniel v. McDaniel*, 64 Wn.2d 273, 275, 391 P.2d 191 (1964).

Judge Stolz’s failure to recuse rendered all of her subsequent rulings void. *Harbor Enterprises*, 116 Wn.2d at 293. This Court should remand for a new trial, in which event the trial court’s sanction order will be void and its validity moot, as the parties will again proceed to trial, disclosing their evidence under PCLR 16.

B. The trial court erroneously excluded nearly all of Mr. Godfrey’s liability exhibits as a sanction without considering any of the *Burnet* factors, none of which support the sanction.

Mr. Godfrey must receive a new trial for the additional reason that the trial court erred in sanctioning him for not filing a “separate” Joint Statement of Evidence (JSE). Mr. Godfrey did not violate a court rule or order, nor did the delay caused by his counsel’s surgical complications “sandbag” Ste. Michelle. He disclosed on four separate occasions the evidence he would use at trial. Ste. Michelle simply ignored those disclosures (and does so again on appeal), insisting it was left “guessing” what evidence Mr. Godfrey would use at trial.

The trial court sanctioned Mr. Godfrey for “failure to timely file the Joint Statement of Evidence” but made no additional findings or explanation. (CP 587-88) The trial court must be reversed because it failed to explain on the record how Mr. Godfrey *willfully* violated a rule or court order, how the violation *substantially* prejudiced Ste. Michelle, and why its sanction was the *least severe* that would suffice. This Court should reject Ste. Michelle’s invitation to backfill the required findings for the trial court. *Blair v. Ta-Seattle E. No. 176*, 171 Wn.2d 342, 351, ¶ 21, 254 P.3d 797 (2011) (rejecting “view that an appellate court can consider the facts in the first instance as a substitute for the trial court findings that our precedent requires”); *Peluso v. Barton Auto Dealerships, Inc.*, 138 Wn. App. 65, 69-70, ¶¶ 10-11, 155 P.3d 978 (2007) (failure to make “essential” *Burnet* findings is necessarily an abuse of discretion).

1. *Burnet* applies to exclusion of exhibits.

Ste. Michelle essentially concedes that the trial court nowhere addressed the factors required by *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997) and its progeny, arguing instead that the almost total exclusion of Mr. Godfrey’s liability evidence and supporting expert testimony is not one of the “severe” sanctions to which *Burnet* applies. Ste. Michelle’s argument that *Burnet* applies

only to the exclusion of witnesses, and not exhibits, is without merit.
(Resp. Br. 40-44)

Burnet applies to any “severe sanction” “that would affect a party’s ability to present its case,” including “excluding untimely disclosed *evidence*.” *Keck v. Collins*, ___ Wn.2d ___, 357 P.3d 1080, 1085 (2015) (emphasis added) (citation omitted). “[E]vidence is the testimony *and* the exhibits.” 6 Wash. Prac., Wash. Pattern Jury Instr. Civ., WPI 1.01 (6th ed. 2012) (emphasis added); Tegland, 15A Wash. Prac., Handbook Civil Procedure § 57.9 at 524 (2014-2015 ed.) (“The Supreme Court has made it abundantly clear that, before excluding *testimony or evidence* as a sanction . . .”) (emphasis added); EVIDENCE, Black’s Law Dictionary (10th ed. 2014) (“Something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact.”). Aside from outright dismissal, it is difficult to imagine a more severe sanction than the near total exclusion of a plaintiff’s liability evidence.

Exhibits may be just as important or even more critical to a party’s case than testimony. By establishing a set of factors trial courts must consider before entering sanctions that affect a party’s ability to present its case, the Supreme Court did not intend to

sharply limit a trial court's ability to sanction a party by excluding testimony while at the same time allowing the court to cripple a party's case by excluding exhibits central to its theory of the case.⁶ Ste. Michelle's artificial distinction between sanctions excluding exhibits and those excluding testimony makes no sense.

Ste. Michelle also overlooks that the trial court *did* exclude expert testimony, repeatedly refusing to allow Mr. Godfrey's experts to testify to opinions that in any way relied on excluded exhibits, including those contained in the experts' own reports that Ste. Michelle does not argue were improperly disclosed. (*See, e.g.*, RP 201-04, 227, 331-40, 352, 464-76, 498-02, 1512)

2. Mr. Godfrey made plain the prejudice from the exclusion of nearly all his liability exhibits.

Mr. Godfrey's opening brief described at length and in detail how the trial court's sanction gutted his product liability case. Ste. Michelle's contrary contention that his opening brief failed to

⁶ The Supreme Court has plainly distinguished monetary sanctions from those that affect a party's ability to present its case, contrary to Ste. Michelle's assertion. (*Compare* Resp. Br. 43 *with* *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 690, ¶ 23, 132 P.3d 115 (2006) (*Burnet* "applies to such remedies as dismissal, default, and the exclusion of testimony—sanctions that affect a party's ability to present its case—but does not encompass monetary compensatory sanctions"))

connect specific documents to the key issues of Ste. Michelle's liability is without merit. (Resp. Br. 27)

For example, Ste. Michelle's maintenance records establish that its bottling line had "significant problems around the time it processed the bottle that injured Mr. Godfrey," including that bottles "were bouncing and some of them breaking" on the day Ste. Michelle processed the bottle and that the next day a "bad centering cone" was damaging bottles. (App. Br. 8 (quoting CP 884, 909)) Likewise, without Ste. Michelle's "Consumer Concern Log" listing other instances of bottles shattering at the neck when opened, Mr. Godfrey could not "refute Ste. Michelle's contention that had the bottle been damaged on its bottling line it would have broken immediately rather than in the hands of a consumer." (App. Br. 14; App. Br. 8 (citing CP 916-78, the Consumer Concern Log))

The trial court's sanction was "particularly prejudicial" because "Mr. Godfrey's experts could not support with factual evidence their opinion that the bottle that crippled Mr. Godfrey was defective at the time it left Ste. Michelle's control." (App. Br. 40) In addition to precluding Mr. Godfrey's experts from referring to the maintenance records and consumer complaints, the trial court prohibited Mr. Godfrey's engineer expert, Eric Heiberg, from

refuting Ste. Michelle's defense theory that the bottle shattered because Mr. Godfrey struck the inside of it with his corkscrew. (App. Br. 8) The court prevented Mr. Heiberg from testifying, based on his testing of exemplar bottles that one cannot "scratch the bottles with a soft steel corkscrew like the one Mr. Godfrey used," and "that the amount of force generated by removing a cork is an order of magnitude lower than that necessary to shatter a non-defective bottle." (App. Br. 8, 15) Ste. Michelle acknowledges that the excluded evidence was a critical foundation for Mr. Godfrey's expert testimony. (Resp. Br. 48 (experts needed to rely on maintenance records and exemplar bottles to explain their conclusions)) The trial court found Mr. Godfrey's experts "unpersuasive" only because its sanction prevented them from providing a "persuasive" factual foundation for their opinions. (Resp. Br. 14)

The record before this Court is more than adequate for this Court to evaluate the prejudice Mr. Godfrey suffered. Mr. Godfrey designated exhibits 22 and 23 (App. A & B), which are summaries identifying by bates number the maintenance records and consumer complaints on which he would have relied. (App. Br. 9 (citing Exs. 22-23)) Mr. Godfrey cited the specific documents identified in those summaries, explaining they had already been before the trial court

on summary judgment. (App. Br. 9-10, citing CP 884-85, 909-14, 916-78))⁷ Mr. Godfrey cited the offers of proof he made at trial specifying other erroneously excluded evidence. (App. Br. 15, citing RP 337, 352, 474-76, 498, 502, 515-16, 1005-17) Ste. Michelle (and this Court) need only look at the portions of the record cited by Mr. Godfrey to discern the “specific documents” he asserts were erroneously excluded. (*Compare* Resp. Br. 27 with Exs. 22 & 23)

Similarly flawed is Ste. Michelle’s contention that the trial court’s “unchallenged” findings and conclusions – all based on a trial irretrievably tainted by its erroneous sanction – are now the “law of the case.” (Resp. Br. 14) Mr. Godfrey is not asking this Court to review the sufficiency of evidence to support a specific finding. *See* RAP 10.3(g). His appeal challenges the trial court’s pretrial rulings that prevented him from having a fair trial. Mr. Godfrey properly assigned error to those specific rulings as well as to the trial court’s *entire* decision and judgment that was prejudicially affected by its sanctions. (App. Br. 3-4)

Mr. Godfrey identified in his opening brief the specific evidence he contends the trial court erroneously excluded and why

⁷ The bates numbers in the cited Clerk’s Papers match those listed in exhibits 22 and 23, confirming they are the same documents.

its exclusion gutted his case. Given the critical importance of this evidence to Mr. Godfrey's theory of liability, Ste. Michelle has not argued the exclusion of that evidence was harmless. Its silence speaks volumes.

3. Mr. Godfrey did not violate, let alone willfully violate a court rule or order.

No court rule or order required Mr. Godfrey to *file* a redundant JSE. (Resp. Br. 27-31) He provided Ste. Michelle a draft JSE including his witnesses and exhibits, which Ste. Michelle used to file the JSE (though it inexplicably omitted Mr. Godfrey's witnesses). (CP 483, 490, 508) That is all the local rule required. *See* PCLR 16(b)(4) ("*the parties* shall file a Joint Statement of Evidence") (emphasis added). The local rule did not require Mr. Godfrey to "file" a "separate" JSE listing the same information. *Cf. Hendrickson v. King Cnty.*, 101 Wn. App. 258, 268, 2 P.3d 1006 (2000) ("requir[ing] each party to file and serve a separate ER 904 designation regarding the same documents contravenes the very intent and purpose of the rule and invites waste of time and legal expense") (quotation omitted). Ste. Michelle's complaint that the JSE it filed lacked Mr. Godfrey's objections (Resp. Br. 29-30), ignores that Mr. Godfrey timely disclosed his objections under ER 904. The evidence rule – and not the local rule – governs the disclosure of objections. *See*

Jones v. City of Seattle, 179 Wn.2d 322, 344, ¶ 47, 314 P.3d 380 (2013) (“The local rules may not be applied in a manner inconsistent with the civil rules”).

A JSE is a tool of administrative convenience – not the holy grail of disclosure Ste. Michelle makes it out to be. Parties disclose evidence through discovery, then witness and exhibit lists, which are due a week *before* the JSE under PCLR 3(g). *See also Jones*, 179 Wn.2d at 341-42, ¶ 42 (witnesses are disclosed via witness lists under local rule). Ste. Michelle concedes Mr. Godfrey timely provided his exhibit and witness lists. (Resp. Br. 6) A JSE is simply an index *for the court* to aid in the management of evidence, not a disclosure mechanism *for the parties*.

Ste. Michelle chiefly complains about the size of three exhibits Mr. Godfrey disclosed in his portion of the JSE. (*E.g.*, Resp. Br. 28, 31) But disclosing large exhibits, while inconvenient, does not violate PCLR 16(b)(4). If the trial court believed Mr. Godfrey’s previous *disclosures* violated an unidentified rule or order, it needed to say as much, instead of sanctioning Mr. Godfrey for the “*failure to file*” a separate JSE. (CP 587-88 (emphasis added)) *Marina Condo. Homeowner’s Ass’n v. Stratford at Marina, LLC*, 161 Wn. App. 249, 259, ¶ 19, 254 P.3d 827 (2011) (“A trial court’s reasons for imposing

discovery sanctions should be clearly stated on the record so that meaningful review can be had on appeal.”).

Even assuming Mr. Godfrey’s failure to file a “separate” JSE was a violation (it was not), Ste. Michelle is flat wrong in asserting that a violation is automatically “deemed willful’ if it is ‘without reasonable excuse or justification.” (Resp. Br. 32, citing *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 584, ¶ 25, 220 P.3d 191 (2009)) The Supreme Court in *Jones* rejected that language from *Magana*, stating “*Burnet’s* willfulness prong would serve no purpose if willfulness follows necessarily from the violation of a discovery order” and thus “[s]omething more is needed.” 179 Wn.2d at 345, ¶ 50. “A trial court’s finding that there is ‘no excuse’ for a party’s failure to comply with a case schedule is not synonymous with a finding that the conduct was willful.” Tegland, 15A Wash. Prac., Handbook Civil Procedure § 57.9 at 524 (2014-2015 ed.) (citation omitted).

The trial court’s draconian view that Mr. Godfrey’s counsel’s post-surgical infection and illness was not a “reasonable excuse” (Resp. Br. 34, citing RP 84-85), is not a finding that he acted willfully. And even were “reasonableness” under PCLR 3(k) the governing standard for imposing sanctions for the failure to comply with an Order Setting Case Schedule (Resp. Br. 30), substantially more is

required to support an order striking the plaintiff's evidence. *Jones*, 179 Wn.2d at 344, ¶ 47 (local rule is "subordinate to th[e] court's holding in *Burnet*"). The trial court's failure to even address whether Mr. Godfrey or his counsel "willfully" violated a court order mandates reversal.

4. Ste. Michelle was not substantially prejudiced.

Mr. Godfrey's failure to file a separate JSE did not leave Ste. Michelle's "guessing" at the evidence Mr. Godfrey intended to use at trial. (Resp. Br. 30) Indeed, Ste. Michelle's primary allegation of prejudice stems not from the absence of a separate JSE – the basis for the sanction – but from its complaint that Mr. Godfrey disclosed *too much* by combining numerous documents into three exhibits. (Resp. Br. 35-39) Ste. Michelle does not and cannot – dispute that Mr. Godfrey on three occasions disclosed summaries (Exs. 22 & 23) that listed by bates number specific maintenance records and consumer complaints within those three exhibits he intended to use at trial. (See CP 339 (exhibit list); CP 318-19 (JSE); CP 345 (ER 904 disclosure)) Mr. Godfrey again highlighted the summaries in his trial brief. (CP 369, 373, 377, 385, 394-96)

Ste. Michelle had no need to cross-reference multiple pleadings, as any one of Mr. Godfrey's several disclosures told it

exactly what evidence Mr. Godfrey would use at trial. (Resp. Br. 37) Ste. Michelle's own trial brief and motions in limine discuss the excluded "work orders from the day the incident bottle was filled" and "consumer complaints received by" Ste. Michelle. (CP 428, 983) The colloquies cited by Ste. Michelle confirm the trial court simply ignored Mr. Godfrey's disclosures, accepting Ste. Michelle's bare assertion it had no idea the evidence Mr. Godfrey would present. (Resp. Br. 36-38, citing RP 84, 159-67, 473)

At trial, Mr. Godfrey consistently sought to establish Ste. Michelle's liability by introducing as evidence the previously disclosed maintenance records and consumer complaints, as well as his expert's testing of exemplar bottles, which Ste. Michelle concedes was properly disclosed. (*See, e.g.*, RP 227 (excluded reference to consumer complaints); RP 337-38 (offer of proof for "the work orders on August 4 when this bottle was made, August 5, and the ensuing week"); RP 464-66 (excluded reference to testing of exemplar bottles); RP 474-76 (offer of proof for testing of exemplar bottles); RP 500-02 (offer of proof for work orders listed in exhibit 23); RP 1512 (excluded reference to work order))

If anyone was "sandbagged" or left "scrambling" (Resp. Br. 27, 35) it was Mr. Godfrey who was forced to respond to a motion to

exclude nearly all his liability evidence filed at 4:04 p.m. on the last court day before trial. (CP 437) *Marina Condo.*, 161 Wn. App. at 259, ¶ 18 (criticizing trial court for sanctioning party “unable to file a response or an opposition brief”). Indeed, just six days earlier Ste. Michelle cooperated with Mr. Godfrey in narrowing down exhibits (CP 504), alleging only *after* trial started that it was prejudiced not by the lack of a separate JSE, but by the way Mr. Godfrey listed exhibits. (*Compare* CP 437-42 with RP 159)

Ste. Michelle’s only allegation of “prejudice” is that it lacked sufficient time to review Mr. Godfrey’s objections to its exhibits. (Resp. Br. 35) But the trial court nowhere found the minor delay (authorized by ER 904) in receiving Mr. Godfrey’s objections caused *any* prejudice, let alone substantial prejudice. Likewise, Ste. Michelle concedes it received Mr. Godfrey’s objections two-and-a-half weeks before trial (Resp. Br. 35) and does not explain why that was insufficient. Mr. Godfrey gained no advantage in the ten “extra” days he had Ste. Michelle’s objections while his counsel was hospitalized and then disabled for weeks while recovering from surgery. (CP 484)

5. The trial court failed to consider lesser sanctions.

Ste. Michelle glosses over in a single paragraph (Resp. Br. 39-40) the fact that the trial court did not consider lesser sanctions and did not explain how its draconian sanction was proportional to the “violation” of not filing a redundant JSE. *Rivers v. Washington State Conference of Mason Contractors*, 145 Wn.2d 674, 695, 41 P.3d 1175 (2002) (sanction must be proportional to violation). The trial court considered only the one sanction suggested by Ste. Michelle – the near total exclusion of Mr. Godfrey’s exhibits, limiting his expert’s testimony, automatic admission of Ste. Michelle’s exhibits, and a fee award against Mr. Godfrey’s counsel.

Any “prejudice” from receiving Mr. Godfrey’s objections two-and-a-half weeks before trial could have been addressed by the far lesser sanction of admitting Ste. Michelle’s exhibits without excluding Mr. Godfrey’s, as Mr. Godfrey suggested. But, the trial court rejected it out-of-hand with no explanation. (RP 164-65, 467) That was error. *Dependency of M.P.*, 185 Wn. App. 108, 117, ¶ 17, 340 P.3d 908 (2014) (trial court erred in not explaining why suggested alternative sanction was insufficient).

Likewise, the trial court could have addressed Ste. Michelle’s objections to the way Mr. Godfrey listed three exhibits by requiring

him to separately number them. Instead, it excluded **every** exhibit Ste. Michelle objected to for **any** reason, including the exemplar bottles tested by Mr. Godfrey’s expert, as well as his report based on that testing and his testimony, all of which showed Mr. Godfrey could not have broken a non-defective bottle with his corkscrew and had nothing to do with the three exhibits. (RP 464-66, 474-76; Ex. 26)

The trial court’s failure to exercise discretion not only demonstrates its fundamental misunderstanding of *Burnet*, but was itself an abuse of discretion. *Bowcutt v. Delta North Star Corp.*, 95 Wn. App. 311, 321, 976 P.2d 643 (1999). The trial court analogized to the non-discretionary dismissal of untimely appeals reasoning it had no choice but to impose the most draconian sanction. (RP 166: “they missed the 30-day appeal deadline . . . that’s it”) But the rules governing the timely filing of appeals are jurisdictional; the rules governing the organization of trial exhibits are not. Our courts require admission of relevant evidence “absent a willful violation, substantial prejudice to the nonviolating party, and the insufficiency of sanctions less drastic than exclusion.” *Jones*, 179 Wn.2d at 343, ¶ 46. The trial court’s failure to consider any lesser sanction requires reversal.

C. The trial court erred in refusing to admit Mr. Godfrey's expert's opinions under ER 703.

ER 703 unambiguously allows experts to base their opinions on inadmissible evidence: "the facts or data [relied on by the expert] need not be admissible in evidence." The rule does not distinguish between evidence inadmissible due to a sanctions ruling, as opposed to any other reason for excluding the evidence as Ste. Michelle suggests. (Resp. Br. 46-49) This is reason enough for rejecting Ste. Michelle's argument that evidence excluded as a sanction may not be relied on by experts whatsoever.

Moreover, Mr. Godfrey never sought to elicit expert testimony as an "end run" around the sanctions order. (Resp. Br. 49) Ste. Michelle conflates *evidence* with *opinions*. Mr. Godfrey's experts' opinions should have been admitted regardless of the sanction excluding some of the documents on which they relied. Even if this Court upholds the sanction, it should reverse based on the erroneous extension of the sanction to bar expert opinions.

D. Mr. Godfrey is entitled to a new judge and to submit a jury demand at a new trial.

Ste. Michelle concedes Mr. Godfrey may submit a jury demand if this Court reverses. *Spring v. Dep't of Labor & Indus. of State*, 39 Wn. App. 751, 756, 695 P.2d 612 (1985). But it argues that

this Court should not address his request for a new judge because is not “ripe.” (Resp. Br. 49) This Court can and does address issues that will arise on remand to provide guidance to trial courts and to prevent additional appeals. *Cornejo v. State*, 57 Wn. App. 314, 321, 788 P.2d 554 (1990) (“We address one other issue in this area as guidance for the court on retrial.”). It should do so here.

III. CONCLUSION

This Court should reverse and remand for a new trial before a new judge and jury.

Dated this 2nd day of December, 2015.

SMITH GOODFRIEND, P.S.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on December 2nd, 2015, I arranged for service of the foregoing Reply Brief of Appellants, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 2nd day of December, 2015.



Jenna L. Sanders

Summary of Consumer Other Similar Incident Reports to Ste Michelle Wine Estates

Date Complaint Rcvd	Varietal	Consumer Concern	Status/Resolution	Bates #
1/05/05	Cuvee Brut	Neck broke off and cust had small injury	Sent Cust \$13.99 on 2/23/05 #208743	SMWE 00002
1/12/05	BDB	Looks like there is glass in bottom of bottle	1 Bottle Replacement/Shpd 1/13/05	SMWE 00004
1/22/05	Chard	Neck of bottle cracked	Delivered btl to lab; 1 Bottle Replacement/shpd 02/08/05	SMWE 000013
1/31/05	Chard	Neck Cracked When Opening	Sent Refund for \$19.98 on 3/18/05	SMWE 000011
3/07/05	Chard	Corked	Emailed customer on 3/07/05 requesting more info and offering a replacement/refund – No response	SMWE 00007
4/09/05	Gew	Bottle Shattered	Bottle Replacement/shpd 5/05/05	SMWE 00002
5/20/05	Cab Sauv	Cracked-Btl	1 Bottle Replacement Shpd 6/03/05	SMWE 000012
7/07/05	Sem Chard	Neck of bottle cracked	1 Bottle Replacement/Shpd 8/15/05	SMWE 000014
7/11/05	Chard	Top of bottle snapped off	1 Bottle Replacement/Shpd 9/28/05	SMWE 000012
8/16/05		Purchased 2 bottles of wine not sure what kind said lips on bottle were cracked and wanted an over night check sent to her immediately	Keith Love responded to this situation 8/18/05	SMWE 000012
8/24/05	Chard	2 Bottles Shattered	Customer will bring 1 bottle in and we will replace 2 bottles for her; show will contact Penni Sent Repl on 11/07/05	SMWE 00005
10/18/05	Gewurzt	Neck of bottle cracked	Sending letter to QC and sending another bottle of wine on 10/21/05. Shipped on 10/24/05	SMWE 00006
10/21/05	Syrah	Top of bottle snapped	Josh Ste Aubin received	SMWE 000010

Date Complaint Rcvd	Varietal	Consumer Concern	Status/Resolution	Bates #
		off	this letter from a club member and responded with a phone call and sent him an Artist Series Gift Box	
10/25/05	Sauv Blanc	Top of bottle snapped off	Recvd letter from Eric Brinkworth with Pics that he took at COL. He forwarded this to Keith Love. He will send me their response to this customer.	SMWE 00007
11/02/05	Riesling	Bottle had crack in it	Spoke with Cust on 10/3. Told cust I will resend another bottle. Sent on 11/10/05	SMWE 00007
11/13/05	Eroica	Bottle broke	Sending cust repl bottle of wine	SMWE 000012
11/25/05	Gew	Top of bottle snapped off	Emailed Cust on 12/21/05 waiting for resp/sending replacement wine. Shipped on 1/03/05	SMWE 00003
11/28/05	Cab Suav	While opening part of the neck snapped off	Will be sending Wine Replacement on 1/12/05	SMWE 000012
1/06/06	CHARD	Sending box for return of bottle per Keith Love	Repl with 2 bottles per KL	SMWE 000027
1/09/06	GEW	Cust broke cork screw opener	I emailed Eric and Leslie S for suggestions on how to respond. Talked with Cust and suggested the Ahsop opener, will be sending a refund for \$8.99	SMWE 000024
1/09/06	RIESLING	Cust was using the 2 pronged cork puller and tops of bottles snapped off there was no injuries	Sending wine replacement	SMWE 000033
1/13/06	GEW	Cust concerned about formations seen in bottle, bottle sent to Eric B and he will respond to this	Material present was release agent that is used in the glass manufacturing process. Product is FDA compliant. Have informed supplier of complaint.	SMWE 000032
1/15/06	RIESLING	Neck snapped off cust	Sending wine replacement	SMWE 000027

Date Complaint Rcvd	Varietal	Consumer Concern	Status/Resolution	Bates #
		wondering if we were using cheaper bottles		
4/04/06	GEW	Bottle broke at neck while using a screw-pull remover (bunnyear style)	Sending wine replacement	SMWE 000023
6/08/06	Riesling	Cork was so tight and seemed like it was stuck to glass when trying to remove cork neck snapped	Sending Wine Replacement	SMWE 000024
8/15/2006	--	CUT HIMSELF OPENING BOTTLE	Waiting for cust info to send refund to	SMWE 000033
1/09/2007	Black Hinged CSM Wine Opener	BROKE WHEN OPENING A BOTTLE OF WINE	Sent request to Christine to send replacement	SMWE 000040
1/17/2007	CHARDONNAY BOTTLE	Cust complained lip of bottle is very sharp and thin and said that it fractures upon opening and leaves glass shard dust on mouth	I forwarded this email to Eric Brinkworth and he emailed cust back	SMWE 000042
3/14/2007	PINOT GRIS	BROKEN GLASS IN BOTTLE Poured OUT	Waited for Cust to call back and called her the 3 rd time and she finally answered. We are sending for bottle and sending her a replacement	SMWE 000041
12/10/2008	GRE	Bottle Broke	When opening a bottle, it shattered. No injury. Emailed response that we will send him a refund check.	SMWE 000074
1/15/2009	Merlot	Bottle Shattered	Received email – rim of bottle broke when opened – no injuries. Advised consumer will send check for \$15.00 to purchase replacement bottle	SMWE 000087
4/01/2009	Cabernet Sauvignon	Bottle Splintered	Consumer emailed that top of bottle started to splinter when opening. Suggested they return to retailer for	SMWE 000093

Date Complaint Rcvd	Varietal	Consumer Concern	Status/Resolution	Bates #
4/17/2009	Chardonnay	Neck of bottle broke – no injury	replacement. When trying to open bottle-neck of bottle broke – no injury – will send refund check	SMWE 000094
6/15/2009	Riesling	Bottle Broke of Neck	Bottle disintegrated at neck when opening, everyone including wine is OK. Customer does not want refund. Just wanted to let us know. Still drinking our wines.	SMWE 000096
7/06/2009	Chardonnay	Top of bottle broke off when opening	When opening bottle, cork stayed in but top of bottle broke off and wine was bad. Did not get cut on glass when opening but tried to take top of bottle back to Safeway and cut his wrist when taking it out of the bag. Safeway would not replace bottle.	SMWE 000097
7/22/2009	Merlot	Bottle cracked when opened. Wine leaked out from sides of bottle.	Email sent and refund check sent.	SMWE 0000104
8/12/2009	Syrah	Bottle neck broke	Email sent and refund check sent	SMWE 0000106
11/11/2009	Chardonnay	Bottle neck broke	Email sent and refund check sent	SMWE 0000105
12/28/2009	Chardonnay	Broken bottle	Email sent and refund check sent	SMWE 0000105
12/29/2009		Foreign object	Email sent and refund check sent	SWME 0000104
2/08/10	V-10	Broken Rim	Life of neck broke when cork came out	SWME 0000116
2/16/10	Cabernet Sauvignon	Bottle severed at neck, customer was not injured	Called customer, bottle severed when pulled out of wine fridge, customer was not injured. Melanie has put in request for replacement check of \$20.00	SWME 0000116
6/8/10	Cabernet	Used a pressurized	Sent out broken bottle for	SWME 0000124

Date Complaint Rcvd	Varietal	Consumer Concern	Status/Resolution	Bates #
	Sauvignon	corkscrew and the bottle exploded in half. Wife got a piece of glass in her foot (wife is ok) Glass is different thickness from one side to the other	analysis 6/15/2010. Ok'd telling him we sell millions of bottles of wine a year and this is the only instance of a bottle breaking in this way. Will send reimbursement check	
6/16/10	Chardonnay	Bottle neck shattered when pulling out the cork	Called and reported shattered bottle. Will send reimbursement check	SMWE 0000125
8/11/10	Chardonnay	Broken bottle No injury reported	Phone call reporting a broken bottle. Will send reimbursement check	SMWE 0000125
8/16/10	Riesling	Broken bottle. Customer not injured	Customer was not injured. Will send reimbursement check	SMWE 0000125
8/30/10	Merlot	Brokd wine bottle neck when uncorking and corkscrew stuck in neck of bottle	\$35/wine + \$5.70 for corkscrew. Will send reimbursement check	SMWE 0000123
10/10/10	Riesling	Top of bottle broke off. Nancy was purchaser of wine/Dave Jay was injurer	Recalled bottle for analysis/testing. Sent apology email, paid for Dave Jay's medical bills	SMWE 0000127
10/10/10	Riesling	Top of bottle broke off. Dave was injurer/Nancy Steinke was purchaser	Sent letter, paid for medical bills, sent case of wine	SMWE 0000127
12/15/10	Chardonnay	Lip of bottle shattered when opening	Email received from customer requestign [SIC] refund	SMWE 0000130
1/04/11	Riesling	Glass particles on outside of glass	Customer contacted regarding glass pieces on outside of bottle that cut hand	SMWE 0000135
3/12/11	Merlot	Top of bottle broke when opening wine	Please send replacement check	SMWE 0000139
5/23/11	Sauvignon Blanc	Bottle shattered when opening	Requesting replacement check	SMWE 0000143
6/20/11	Cabernet Sauvig	Lip of bottle broken when foil removed	Requesting replacement check	SMWE 0000146
9/16/11		Glass in bottle	Glass in bottle	SMWE 0000152

Date Complaint Rcvd	Varietal	Consumer Concern	Status/Resolution	Bates #
11/21/11	Sauvignon Blanc	Bottle chipped at neck. No glass found in foil	Will send refund. Vendor Req 11/22, Check Req 11/23	SMWE 0000155
12/02/11	Merlot-Cabernet	Bottle neck broke when opening		SMWE 0000156
12/28/11		Broken neck when opened	Recalled the broken bottle	SMWE 0000157
12/29/11	Extra Dry	Chipped lip on bottle	Contacting customer to recall bottle possible refund. Vendor Req 1/5/12. Check req 1/6/12	SMWE 0000157
2/6/12	Gewurz	Foreign object in bottle	Send replacement ck per M Baker. Vendor req 2/6/12. Check Req 2/17/12	SMWE 0000159
3/12/12	Cabernet Sauvignon	Chip broke and fell back in bottle when opened	Please send replacement ck for one bottle of CV Cabernet Sauvignon. Vendor Req 3/20/12. Check Req 3/22/2012	SMWE 0000161
5/04/12	Dry Riesling	Neck of bottle broke	Rec'd cut, will send replacement of 12 bottles through Bloyal. MB sent shipper to retrieve broken bottle	SMWE 0000163
6/11/12	Chardonnay	Neck of bottle broke	Vendor Req 6/11/12. Check Req 6/14/12	SMWE 0000164
6/24/23 [SIC]	Red Blend	Bottle neck broke	Requested refund check and emailed customer to confirm. Vendor Request 6/29/12. Check Req 7/3/12	SMWE 0000164
7/19/12	Pinot Gris	Broken rim on bottle	Recalling bottle, sent replacement bottle – LM	SMWE 0000166
8/23/12	Cabernet	"metal type shavings"	Sending replacement bottles	SMWE 0000157
8/26/12	Merlot	Upper lip chipped & bottle neck broke	Per Mbaker, am sending replacement bottles	SMWE 0000168
8/28/12	Red Blend	Bottle neck broke	Per Mbaker, am sending replacement bottles	SMWE 0000168
2/10/13	Riesling	Metal in cork/broken bottle	Contacted customer and left message to call back	SMWE 0000179
3/11/13	Gew	Bottle broke while removing cork	Sending shipper to retrieve bottle and cork. Sending replacement ck as we are out of stock of the 2011	SMWE 0000181

Date Complaint Rcvd	Varietal	Consumer Concern	Status/Resolution	Bates #
			vintage. Vendor Req 3/19/13. Check Req 3/22/13	
4/5/13	GRE	Possible shard of glass in wine	Possible shard of glass in wine, customer will send bottle to us for analysis, no action at this time	SMWE 0000183
4/8/13	Cab Sauv	Stem of bottle broke off when opening bottle	Bottle broke while removing cork. No injury. Offered replacement check. Vendor Req 4/18/13. Check Req 4/22/13.	SMWE 0000183
4/11/13	Riesling	Stem of bottle broke off when opening bottle	Customer rec'd small cut – sent e-mail to contact Mbaker	SMWE 0000183
5/3/13	Gewurztraminer	Top of bottle chipped when opened, did not save bottle nor injury	Will send replacement check – no injuries. Vendor Req 5/21/13, Check Req 5/22/13	SMWE 0000185
5/31/13	Red Blend	Bottle shattered when opening with Rabbit wine opener	Customer called, bottle shattered when opening. Purchased thru Napacab.com. will recall broken bottle and will send refund check for price paid - \$36.95 for customer service. Vendor Req \$36.95. Check Req 6/11/13	SMWE 0000678
7/26/13	Cabernet Sauvignon	Bottle exploded	Sent e-mail – had used the cork pop opener. Melanie has a call into customer, am waiting for response. Will send shipper for btle and am sending replacement wines	SMWE 0000684
8/02/13	Hot to Trot	Foreign object	Please send shipper	SMWE 0000685
8/24/13	Sauvignon Blanc	Bottle broke when uncorking	Customer e-mailed and sent pictures, sent e-mail to contact Mbaker	SMWE 0000686
9/03/13	HTT Red Bid	Bottle broke when uncorking	Emailed customer with Melanie Baker's contact info so they can reach out to her. Neck of bottle	SMWE 0000687

Date Complaint Rcvd	Varietal	Consumer Concern	Status/Resolution	Bates #
			broke when uncorking and last 3 btls the corks have [sic] broken (dry corks). Please send refund check for \$60 per Mbaker. Vender req 9/6/13. Check Req 10/17/13	
9/04/13	HTT White Bld	Bottle broke when uncorking	Emailed customer with Melanie Baker's contact info so they can reach out to her	SMWE 0000687
9/04/13	HTT White Blend	Bottle broke when opening	Bottle broke when opening w/corkscrew, sent e-mail to contact Mbaker, send \$15 check per Mbaker. Vendor Req 9/11/13. Check req 9/19/13	SMWE 0000688
9/16/13	Cabernet Sauvignon	Top of bottle chipped when opening	Sent e-mail requesting to retrieve bottle for analysis and to obtain contact information to send refund check	SMWE 0000689
9/30/13	Cabernet	Chip in bottle neck when uncorked	Will send shipper, when bottle has returned, then issue refund check	SMWE 0000689
10/23/13	Merlot	Neck of bottle broken when opened w/electric corkscrew	Sent e-mail requesting a call back to discuss and to retrieve the bottle. Customer sent e-mail back that she was able to return the bottle to retailer and exchange. I made follow-up phone call and confirmed no injury. Resolved - LM	SMWE 0000691
-	LUXE	Cust cut himself while opening bottle	Forwarded this on to Keith Love and we are sending the cust a refund. I received an address and am sending a refund	SMWE 000025
UNKNOWN	CHARDONNAY	LEAKING	WDV	SMWE 000062
UNKNOWN	CHARDONNAY	BROKEN BOTTLE	Wdv	SMWE 000062

Rolfe Godfrey v. Ste. Michelle Wine Estates LTD and Saint-Gobain Containers, Inc.

Summary of Work Orders at Ste Michelle Wine Estates

Date	Work Order	Comments	Bates #
3/24/2009	Crash on outfeed star of capsuler	"Cleaned up the mess and started back up. HOWEVER – the center ring is bent upwards slightly in one spot. It runs fine but needs to be looked at as soon as they have a break."	SMWE 0001613
8/04/2009	Capsuler has bolt sticking out on rail and breaking bottles	"The bottles on the infeed side of the capsuler were bouncing and some of them were breaking."	SMWE 0001693
8/05/2009	Bottles were getting stuck on the corker due to a bad centering cone	"The centering cone was not releasing [SIC] the bottle as it was transported to the exit star on the corker assembly and which [SIC] then caused it to fall out of the machine to the platform"	SMWE 0000766
8/05/2009	Installed new seals on the centering cones to the corker. MBF	"Installed seals in the centering cones (tulips) on the corker because they will go in on Thursday, the 6 th of 2009"	SMWE 0000767
8/08/2009	Replace corker centering cones	"all replaced per Kent"	SMWE 0000768
8/12/2009	Capsules were getting [SIC] torn and they were not getting spun smoothly	"The spinner heads are really worn out on the housing part of the component. The spinner turret was offset from the entrance star which [SIC] caused the capsules to get damaged at the top of the rim bottle..."	SMWE 0001702

SMITH GOODFRIEND PS

December 02, 2015 - 3:36 PM

Transmittal Letter

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