Supreme Court No.: 103939-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Kenneth Wren & Alice Wren, et al.

Petitioners,

vs.

David G. Whitehead, individually;

Respondent,

Stanford and Sons, LLC, a Washington limited liability company; Herbert L. Whitehead, III, Jennifer L. Whitehead, et al.

Appealed from Pierce County Superior Court Case No. 20-2-04347-3

RESPONDENT DAVID "GAGE" WHITEHEAD'S RESPONSE TO WRENS' PETITION FOR REVIEW

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I. STATEMENT OF THE CASE

A. Wren's Defamatory Statements.

Petitioner Wren ("Wren") contends that just six exhibits were presented at trial that demonstrate Wren defamed Respondent David "Gage" Whitehead. However, Wren defamed Gage through oral statements as well.

i. Wren's defamatory statements to Jim Kriens.

Wren testified that he spoke to his neighbor, Jim Kriens, and told him that Gage was committing theft. VRP 977-978. Wren acknowledged he sent Jim Kriens a text message stating that he had hired a "[c]rime related litigator," that Butch was "going to put himself and *his son* in jail," and that he was waiting on the "Puyallup police to make a decision on the fraud embezzlement and forgery issues." VRP 979-980 and Exhibit 523. Wren testified that when he sent the text, he believed Gage was involved in fraud, embezzlement, and forgery. VRP 980-981. Wren concludes the text thread to Mr. Kriens stating "[t]his has been really good for my mind. I have plenty of time

and money to get to the bottom of this. It's kind of fun, Jim! Like CSI," referencing the television crime drama Crime Scene Investigation. *Id.*

Mr. Kriens lives in Lake Tapps and was previously in the auto industry. VRP 977-978. Mr. Kriens brother-in-law owns the DAA auctions, which is one of the largest auto auctions in the state. VRP 982. Gage also lives in Lake Tapps and works in the auto industry. VRP 1126-1127. Following the closure of Stanford and Sons, Gage continued to work in the wholesale auto industry, where he would routinely purchase vehicles from auto auctions such as DAA. VRP 1156 and 1160-1161.

ii. Wren's defamatory statements to Steve Ford.

Steve Ford lives in Lake Tapps and was a mutual friend of both the Wrens and Whiteheads. VRP 1008. The Fords live right down the street from the Whiteheads. *Id.* Gage met Steve Ford in kindergarten when Mr. Ford coached him in baseball. VRP 1126-1127. One of Gage's closest childhood friends was Austin Ford, who is Steve Ford's son. *Id.* Gage grew up

playing sports with Austin Ford. *Id.* The Whitehead and Ford families often took trips together as well. *Id.*

Wren testified that he had both written and oral communications with Mr. Ford regarding the allegations contained in this lawsuit. VRP 1008-1013. In one text message, which was sent before the lawsuit was filed, Wren wrote "Friday is D day. We found payment of almost all cars Gage claims as coming from our checkbook." *Id.* Mr. Wren admitted that when he made that statement he was insinuating to Mr. Ford that Gage was stealing vehicles from the dealership. *Id.*

iii. Wren's defamatory statements to Flynn Schaeffer and Mike Iking.

Flynn Schaeffer is a vehicle wholesaler who previously worked at a dealership Wren owned. VRP 1013-1014. Mr. Schaeffer also has other family members who are or were in the auto industry. *Id.* In December 2019, before the lawsuit was filed, Wren sent an email to Mr. Schaeffer with a copy of a yet to be filed Complaint. VRP 1015-1016 and Exhibit 522. Wren

states in his email that "Have a look at this. We plan to file this week and would like your friend at the Puyallup PD to take a look if we can. It's a long read but take your time." *Id.* Wren then testified that his intent in sending the unfiled Complaint to Mr. Schaeffer was because he wanted to have Gage arrested. *Id.* Wren then testified that he had conversations with another auto dealer, Mike Iking, about the allegations contained in this lawsuit because Mr. Iking's wife "works with Puyallup City Counsel and PD Department." VRP 1017-1018.

iv. Wren's defamatory letter to Canadian sellers of vehicles.

Wren testified that following the closure of Stanford and Sons, and prior to the lawsuit being filed, he and Brautigan jointly crafted a letter that they sent to a number of Canadian citizens who had sold vehicles to Gage and Butch. VRP 1000 - 1007 and Exhibit 527. In fact, Wren directed Brautigan to prepare the letter. On December 10, 2019, he wrote a text message to Brautigan stating "I want you to write a letter. Call

me when your rolling." *Id.* After getting a draft of the letter, Wren made "red line" changes to it. *Id.* When Brautigan got the red line revisions back, he commented "definitely sounds way better." The letter states in pertinent part that "[i]n July of this year I was forced to close my dealership due to embezzlement and fraud committed by several people associated with my company." *Id.* Importantly, the only contact these Canadian citizens had with anyone from Stanford and Sons were Gage and Butch, as they were the only two people from Stanford and Sons purchasing vehicles in Canada. VRP 1157. Thus, the people receiving the letter would naturally know that the letter was referring to Gage and Butch as the people who perpetrated the alleged embezzlement and fraud. Wren claims that because the letter had Brautigan's signature on it, he cannot be held liable for it. However, Wren directed Brautigan to write the letter and made proposed changes to the letter. VRP 1000 - 1007 and Exhibit 527.

B. Gage's Vehicle Consignments.

In 2016, Gage began working at Stanford and Sons, LLC dba Puyallup Car and Truck as a vehicle detailer. VRP 398-403. In 2017, he became a salesperson. *Id.* In 2018, he began going to Canada with his father where the two would search for vehicles to import into the United States and sell at Stanford and Sons. *Id.* It was during this time that Gage decided to start buying vehicles himself and consigning them at Stanford and Sons. CP 1724-1783, 1784-1862, and 1863-1865. Gage consigned vehicles through Stanford and Sons from early 2018 through July 2019. *Id.* During this time, Stanford and Sons fell behind on paying Gage. *Id.* In July 2019, when Stanford and Sons abruptly ceased operating, Wren took possession of twelve of Gage's consigned vehicles. *Id.* Gage showed up at the dealership as this was going on and there was a confrontation between the parties. *Id.* To keep the peace, it was agreed that Wren would temporarily, until everything was sorted out, take

possession of six of the consignment vehicles, and Gage would take possession of the other six. *Id*.

II. ARGUMENT

Wren submits to this Court that the issues surrounding the defamation claim trigger RAP 13.4(b)(1)-(3) and the priority issues surrounding the consigned vehicles trigger RAP 13.4(b)(4). However, other than simply announcing them, Wren fails to establish that any of these provisions apply. The rulings in this case are not in conflict with any other decisions by the Court of Appeals or this Court. Nor are there constitutional issues at stake or a substantial public interest.

A. Defamation

Juries determine questions of fact, and the amount of damages that should be awarded to a party is a question of fact. *Bunch v. King County Dep't of Youth Servs.*, 155 Wn.2d 165, 179, 116 P.3d 381 (2005). An appellate court may not overturn a jury verdict unless the verdict is outside the range of substantial evidence in the record, shocks the conscience of the

court, or seems to result from passion or prejudice. *Washburn v. Beatt Equip. Co.*, 120 Wn.2d 246, 268-69, 840 P.2d 860 (1992). Substantial evidence is evidence sufficient to convince a fair-minded person of the truth of the matter. *Bunch v. King County Dep't of Youth Servs.*, 155 Wn.2d 165, 179-180, 116 P.3d 381 (2005). A trial court's evidentiary rulings are reviewed on appeal for abuse of discretion. *Mut. of Enumclaw Ins. Co. v. Gregg Roofing, Inc.*, 178 Wn. App. 702, 728, 315 P.3d 1143 (2013), *review denied*, 180 Wn.2d 1011 (2014).

In the present case, there was substantial evidence of Wren defaming Gage, and the trial court properly instructed the jury. Both the trial court and the Court of Appeals applied the law correctly.

i. The Court of Appeals decision does not conflict with appellate or Supreme Court precedent.

As a preliminary matter, only the majority opinion is of consequence to the determination of whether the case merits review. "The precedent which binds the court . . . is that spoken

by the majority," and "the meaning of a majority opinion is not found in a dissenting opinion." *Cole v. Harveyland, LLC*, 163 Wn. App. 199, 207, 258 P.3d 70 (2011) (internal quotation omitted). Further, concurrences are only relevant where there is no majority opinion or rationale. *Davidson v. Hensen*, 135 Wn.2d 112, 128, 954 P.2d 1327 (1998).

Wren has not cited to any case or authority for his position, relying heavily on a dissenting opinion by Judge Cruser. Judge Cruser's dissenting opinion—which has her evaluating evidence and taking the place of the jury—is not convincing either. Judge Cruser takes liberties on factual issues and makes assumptions. For instance, Judge Cruser suggests that when Wren contacted Mr. Schaeffer and Mr. Iking, his statements to them and circulation of a draft complaint are protected under RCW 4.24.510, intimating that Wren was "too traumatized to communicate with law enforcement directly." Judge Cruser would be wrong in this instance. Wren filed a police report with the Puyallup Police Department and an

Arizona police department well before his communications with Mr. Schaeffer and Mr. Iking. VRP 977. Judge Cruser also suggests that the letter Wren directed Brautigan to send out should not be attributable to Wren—glossing over the fact that Wren directed Brautigan to draft the letter and then made revisions to it. In any event, Wren's reliance on the dissenting opinion is of no relevance, as the majority opinion is the precedent which binds the court. As discussed below, the majority opinion is without error.

a. In evaluating the Trial Court's rulings on the CR 50 motion and the jury's award of damages, the Court of Appeals accurately stated and applied the law in a manner consistent with appellate and Supreme Court precedent.

The issues Wren presents for review largely rest on the contention that the appellate court must "verify that ***each*** allegedly defamatory statement met each of the elements of defamation." Petition for Review at 3. However, the standard for evaluating a CR 50 motion is whether, "viewing evidence in

a light most favorable to the nonmoving party, there is no substantial evidence or reasonable inference that arises to support a verdict for the nonmoving party." Appellate Decision at 19 (citing *Mancini v. City of Tacoma*, 196 Wn.2d 864, 877, 479 P.3d 656 (2021)). Therefore, the appellate court accurately concluded that, "the trial court should only have granted [Wren's] CR 50 motion to dismiss [Respondent's] defamation claim if nothing in the record could possibly support [Wren's] potential liability for defamatory statements based on the application of absolute or qualified privilege." Appellate Decision at 19.

Similarly, the appellate court accurately stated the standard for determining whether sufficient evidence supports the jury verdict: "A jury verdict will be overturned 'only when it is clearly unsupported by substantial evidence.'" Appellate Decision at 24 (quoting *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 107-08, 864 P.2d 937 (1994)).

Wren has failed to cite any authority which conflicts with the above statements of the law. Wren cites *Dunlap*, but that case surrounds whether ***a statement*** is unactionable as pure opinion and does not speak to whether ***all statements*** must be analyzed in order to meet the standards outlined by the appellate court in this case. *See Dunlap v. Wayne*, 105 Wn.2d 529, 538–39, 716 P.2d 842 (1986). *Schmalenberg* illustrates that Wren's misstatement of the law is derived from cases in which the appellate court reviewed rulings that the evidence was ***insufficient*** to support a claim for defamation. *See Schmalenberg v. Tacoma News, Inc.*, 87 Wn. App. 579, 587, 943 P.2d 350 (1997) (analyzing each statement in the light most favorable to plaintiff where trial court ruled evidence insufficient).

Wren advances the inaccurate standard that the appellate court must review every statement to make the argument that "[w]hen it is impossible to know, in view of the general verdict returned whether the jury imposed liability on a permissible or

an impermissible ground, the judgment must be reversed and the case remanded." Petition for Review at 22-23. (quoting *Miller v. Argus Publ'g Co.*,79 Wn.2d 816, 834, 490 P.2d 101 (1971) (internal quotations omitted)). Wren misapplies this rule. In *Miller*, the trial court gave two alternate instructions, one involving actual malice for if the jury found the plaintiff to be a public figure and one without actual malice if the jury did not so find. *Miller*, 79 Wn.2d at 824. The appellate court held that actual malice was necessary for every statement as a matter of law, and, because it was possible the jury found for the plaintiff without finding that higher level of culpability, that remand was necessary. *Miller*, 79 Wn.2d at 827, 834. The court in *Miller* based this conclusion on the decision in *Greenbelt*, in which actual malice was required as a matter of law for all statements and the trial court incorrectly defined actual malice to allow the jury "to find liability merely on the basis of a combination of falsehood and general hostility." *Greenbelt Co-op. Pub. Ass'n v. Bresler*, 398 U.S. 6, 10, 90 S. Ct. 1537, 1540, 26 L. Ed. 2d 6

(1970). These cases stand for the proposition that where actual malice is necessary for every statement, and the jury may have held for the plaintiff without finding actual malice, remand is necessary. They do not support the contention that an appellate court must analyze each statement (1) where there is sufficient evidence for the jury to find for the plaintiff on the basis of statements that do not require actual malice, or (2) where actual malice was properly defined.

Therefore, issues the majority did not address are irrelevant. Where the majority opinion did not address the subject of Wren's presented issues, it need not have done so. Thus, Wren has not demonstrated the decision conflicts with precedent or merits review. The most notable of the irrelevant issues raised by Wren are (1) whether Wren was protected by "republisher's privilege" when circulating the filed complaint, (2) whether republisher's privilege is conditional, and (3) whether Wren could be held liable for Brautigan's statements. *See* Petition for Review at 3-5. Indeed, the majority specifically

"emphasize[d] that [it] do[es] not address whether circulating a filed complaint, which at that point is in the public record, could support a defamation claim." Appellate Decision at 20 n.18.

In holding that the evidence could support Wren's potential liability for defamatory statements for the CR 50 motion, the majority focused on the numerous text messages sent by Wren months before filing the complaint. The majority concluded that the texts "implie[d] that [Respondent] was falsely claiming the cars belonged to him" and that "[Respondent] was involved in criminal activity including fraud, embezzlement, and forgery." Wren also admitted to making oral statements to Mr. Kriens and others stating or implying that Gage was a thief and engaged in criminal misconduct. While Wren contends the appellate court failed to properly differentiate between fact and nonactionable opinion, the majority correctly recited the established rule that statements which imply provable facts are not opinion. Appellate Decision at 18 (citing *Schmalenberg v. Tacoma News, Inc.*, 87 Wn. App. 579, 590–91, 943 P.2d 350

(1997). Wren cites several cases discussing nonactionable opinion but fails to cite authority conflicting with *Schmalenberg*. Wren at 23-25. In fact, Wren relies on *Schmalenberg* for multiple propositions. Petition for Review at 12, 14.

Continuing its CR 50 analysis, the majority held that absolute privilege did not apply to these statements because they "were made outside judicial proceedings" and noted that Wren "has not cited to any cases where absolute privilege has been extended to statements made prior to a complaint being filed." Appellate Decision at 20. The majority held that qualified privilege did not apply to these statements because Wren "fail[ed] to articulate how he shared a common interest, family interest, or protected the public interest through his communications with individuals who were not otherwise involved with [Respondent]," which was the basis for qualified privilege articulated by Wren on appeal. Appellate Decision at 20.

In holding that there was sufficient evidence to support the jury's verdict, the majority looked to the same texts "implying fraud, embezzlement, and forgery." Appellate Decision at 24-25. The appellate court was under no obligation to restate its analysis from the CR 50 motion of these same statements, and yet it again held there was sufficient evidence of unprivileged communication, as well as of fault, negligence, damages, and defamation per se. Appellate Decision at 24. The appellate court declined to disturb the jury award on the basis of well-established law:

> *The credibility of the witnesses and the weight to be given to the evidence are matters within the province of the jury and even if convinced that a wrong verdict has been rendered, the reviewing court will not substitute its judgment for that of the jury,* ***so long as there was evidence which, if believed, would support the verdict*** *rendered.*

Appellate Decision at 24 (emphasis added, italics in original) (quoting *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 107-08, 864 P.2d 937 (1994). The appellate court further outlined the proper standard, stating it "will not disturb a jury award of

damages 'unless it is outside the range of substantial evidence in the record, or shocks the conscience of the court, or appears to have been arrived at as the result of passion or prejudice.'" Appellate Decision at 25 (quoting *Bunch v. King Cnty. Dep't of Youth Servs.*, 155 Wn.2d 165, 179, 116 P.3d 381 (2005) (internal quotation omitted)).

Wren has failed to cite any authority which is, in fact, in conflict with any statement of the law present in the majority opinion. Further, Wren has failed to cite any authority requiring the majority to discuss any issue not present in the opinion. Accordingly, the majority did not conflict with established precedent of the Court of Appeals or Supreme Court in its decision on the CR 50 motion or the sufficiency of the evidence to support the jury verdict, and issues presented by Wren which do not address the content of the decision are of no bearing here.

b. In evaluating the Trial Court's rulings on the jury instructions, the Court of Appeals accurately stated and

applied the law in a manner consistent with appellate and Supreme Court precedent.

Wren presents two issues addressing the jury instructions: (1) whether the court erred by rejecting Wren's Proposed Instruction 55 and (2) whether the court erred by rejecting Wren's Proposed Special Verdict Questions 55 and 56. Wren fails to demonstrate error by the appellate court's conclusion that each of the proposed instructions did not comport with established law.

Proposed Instruction 55 sought to apply absolute privilege to ***every*** statement made to ***every*** party after the lawsuit was filed, and sought to apply qualified privilege to ***every*** statement made to ***every*** party made before the lawsuit was filed. Appellate Decision at 21. The appellate court did not err by holding that this blanket generalization was neither an accurate summation of the trial court's rulings or an accurate statement of the law. *See* Appellate Decision at 21-22. The appellate court's analysis of why qualified privilege did not apply to the pre-filing

text messages in its discussion of the CR 50 motion is already sufficient to discount Proposed Instruction 55. Appellate Decision at 20. At no point has Wren cited caselaw describing how qualified immunity may protect statements, particularly text messages, (a) made to parties not involved in the lawsuit, (b) made before the commencement of official proceedings, (c) made to parties not otherwise involved with Respondent with whom Wren did not share a common or family interest, and (d) which did not protect the public interest. Appellate Decision at 20. Neither the trial court nor the appellate court was bound to accept a proposed instruction "so generalized that it risks misapplication of the law" where "the application is a legal determination, to be applied in specific cases." Appellate Decision at 21 (citing *Twelker v. Shannon & Wilson, Inc.*, 88 Wn.2d 473, 476-79, 564 P.2d 1131 (1977)).

The appellate court held Proposed Special Verdict Questions 55 and 56 were misleading and incorrect statements of law because, *inter alia*, they were premised on the incorrect

assumption that statements of opinion cannot be defamatory. Appellate Decision at 22-23. The appellate court correctly stated the law in holding that statements in the form of an opinion may be defamatory. Appellate Decision at 22. Indeed, the appellate court identified that the text messages discussed in its analysis of the CR 50 motion implied provable facts, and thus were capable of defamatory meaning rather than statements of non-actionable opinion. Appellate Decision at 18. Wren has failed to outline why, a communication which the court determines is capable of defamatory meaning, should not be submitted to the jury to determine whether it "was so understood by its recipient." Appellate Decision at 22 (quoting *Schmalenberg v. Tacoma News*, 87 Wn.App. 579, 600 n.58, 943 P.2d 350 (1997) (internal quotation omitted). Not only has Wren failed to identify caselaw which conflicts with this assessment of the law, Wren cites on one of the same cases the appellate court relies on in support of the idea that the jury may rely on statements which are in the form of the opinion.

Compare Appellate Court at 18, 22 *with* Petition for Review at 12-14 (citing *Schmalenberg v. Tacoma News*, 87 Wn.App. 579, 943 P.2d 350 (1997)).

Further, the appellate court correctly held that Proposed Special Verdict Questions 55 and 56 were incorrect statements of law because they suggest that actual malice was required for each statement. Appellate Decision at 23. The appellate court concluded that Respondent is a private individual and that only negligence must be established in such case. Appellate Decision at 24 (citing *Maison de France, Ltd. v. Mais Oui!, Inc.*, 126 Wn. App. 34, 44, 108 P.3d 787 (2005)). Wren has not cited any caselaw contradicting the appellate court's analysis or contending that the authority relied on is no longer good law. Wren cites the same authority. Petition for Review at 11, 26 (citing *Maison de France*). The court had already concluded that qualified privilege does not apply to every statement and thus correctly held that a Special Verdict Question appearing to

require actual malice for each statement would be misleading to the jury. Appellate Decision at 23.

ii. Wren does not identify a significant constitutional question present in the majority opinion that has not already been addressed by the Supreme Court of Washington or the United States.

As discussed above, only the majority opinion has any bearing on whether the case merits review. "The precedent which binds the court . . . is that spoken by the majority," and "the meaning of a majority opinion is not found in a dissenting opinion." *Cole v. Harveyland, LLC*, 163 Wn. App. 199, 207, 258 P.3d 70 (2011) Therefore, to merit review, under RAP 13.4(3), the majority opinion must involve "a significant question of law under the Constitution of the State of Washington or of the United States." RAP 13.4(3).

The supposed constitutional conflict proposed by Wren does not appear in the decision, let alone affect its outcome. Wren claims the majority would impose liability on a litigant for

republishing a filed complaint, and that such a decision has implications for Article I, §10 of the Washington Constitution. Petition for Review at 16-17. However, Wren ignores the majority's explicit statement to the contrary. Appellate Decision at 20 n. 18 ("We emphasize that we do not address whether circulating a filed complaint, which at that point is in the public record, could support a defamation claim."). Wren's discussion of the Concurrence, the Dissent, and the Restatement on this matter thus do not raise a constitutional question present in the decision of the court.

The only issue put forth by Wren actually present in the majority opinion is that of the ***pre-filing publication*** of the ***draft*** complaint, which does not raise any significant constitutional question that has not been addressed by Washington courts. The republisher's privilege is "a conditional privilege protecting the ***republisher*** when the defamatory statement ***originally was made in the course of an official proceeding*** or contained in an official report. *Herron v. Tribune Pub. Co., Inc.*, 108 Wn.2d

162, 179, 736 P.2d 249 (1987) (citing *Mark v. Seattle Times*, 96 Wash.2d 473, 487–88, 635 P.2d 1081 (1981)). The privilege applies to "statements made in the course of the proceeding" and to "documents ***filed and available for public inspection.***" *Herron v. Tribune Pub. Co., Inc.*, 108 Wn.2d 162, 179, 736 P.2d 249 (1987) (citing *Mark v. Seattle Times*, 96 Wash.2d 473, 488, 635 P.2d 1081 (1981)). In *Herron*, the court held that the privilege applied to recall petitions because they are "of the strongest public interest," are "a filed public document expressly authorized by statute," are sworn to under oath, and by their very existence begin "a chain of statutorily mandated procedures." *Herron v. Tribune Pub. Co., Inc.*, 108 Wn.2d 162, 180–81, 736 P.2d 249 (1987).

Wren's publication of the draft complaint was not a "republishing," but rather the original publication. There was no official proceeding from which the draft complaint could originate, nor any public record of the complaint or its contents whatsoever. The lack of an official proceeding or public record

of any kind makes obvious the lack of any constitutional question involved in Article I, §10 of the Washington Constitution ("Justice in all cases shall be administered openly, and without unnecessary delay.") There was no case, nor any certainty a case would later commence, but merely an individual publishing for the first time defamatory statements to individuals unrelated to its allegations or public interest. Therefore, the majority made no misstatement of law nor raised any constitutional question, significant or otherwise, that is not already settled by the Washington Court of Appeals and Supreme Court.

B. The Appellate Court correctly ruled on the priority of the consigned vehicles and this issue is not of substantial public interest.

Wren contends RAP 13.4(b)(4) applies to the issue of priority in the consigned vehicles. Wren cites to 2019 commentary prepared by the Permanent Editorial Board for the UCC to suggest the issue is of substantial public interest.

However, commentary alone does not make a legal issue one of substantial public interest. There are law review articles and other legal commentary generated on a nearly daily basis on just about any facet of the law. If the production of an article or commentary was enough to pass muster under RAP 13.4(b)(4), then this Court would review just about every case presented to it. Notably, the issue in the present case only first arose in our appellate courts when this case went on appeal. Before that, there was no case law on it. Thus, the likelihood of future occurrences seem slim.

In any event, the appellate court ruled correctly on the law. Thus, there is no need for intervention by this Court. Despite Wren's citation to the UCC Editorial Board's commentary, nothing therein suggests that the holding in the present case is incorrect. In fact, the UCC Editorial Board confirms the holding in this case and in *Fariba v. Dealer Servs. Corp.*, 178 Cal. App. 4th 156, 167, 100 Cal. Rptr. 3d 219 (2009). The UCC Editorial Board writes that "If the consignee is

'generally known by its creditors to be substantially engaged in selling the goods of others,' the transaction is not an Article 9 'consignment.'" PEB No. 20. At pg. 5. The Editorial Board then writes that:

> The Article 9 definition of "consignment" determines which bailments for sale are governed by Article 9's perfection and priority rules and which are not. Consignments in which a consignee is "generally known by its creditors" to be substantially engaged in selling the goods of others are thus excluded from Article 9 and are governed by non-UCC law.

Id. Thus, as in the present case, if the creditor (Wren) knew Stanford and Sons was consigning vehicles, which the jury determined he was, then the perfection and priority rules contained in Article 9 do not apply.

Wren argues that RCW 46.12.520(2) applies. That statute states that a "security interest in a vehicle held as inventory by a manufacturer or dealer must be perfected as described in chapter 62A.9A RCW." However, as discussed above, Gage did not have a security interest (as that term is defined under Article 9) in the consigned vehicles and Article 9 does not apply. Instead,

we look outside the realm of Article 9. As cited to by the appellate court, courts in other jurisdictions have ruled the same way as in the present case. The ruling in this case and in those other cases make perfect sense. If a creditor with a blanket security interest knows that consigned goods are being sold by a vendor, then that creditor would not have any expectation that their security interest extends to those consigned goods.

III. CONCLUSION

This Court should decline to hear the Petition for Review. Wren has not shown that any of the provisions in RAP 13.4(b) apply.

I hereby certify that, pursuant to RAP 18.7, there are 4882 words contained in this document.

DATED this 7th day of April 2025.

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CERTIFICATE OF SERVICE

Under penalty of perjury under the laws of the State of Washington, I declare that on this 7th day of April, 2025, a true copy of this document was filed with the Supreme Court of Washington and served via e-mail on:

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