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No. 1044178

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

VALVE CORPORATION,

Petitioner,

v.

BUCHER LAW PLLC and AFN LAW, PLLC,

Respondents.

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

McNAUL EBEL NAWROT &
HELGREN PLLC
600 University St, Ste. 2700
Seattle, WA 98101-3143
(206) 467-1816

Daniel M. Weiskopf,
WSBA No. 44941
Theresa M. DeMonte,
WSBA No. 43994
Claire Martirosian,
WSBA No. 49528

Attorneys for Respondents

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I. INTRODUCTION

This case presents a straightforward application of the litigation privilege. Valve Corporation is the dominant online PC game distributor. When customers brought a class action against Valve alleging antitrust violations, Valve invoked its mandatory arbitration clause and class action waiver. A federal court agreed and compelled arbitration.

Many of Valve's customers then did precisely what Valve's contract required—they engaged counsel to pursue individual arbitrations. This upended Valve's calculation that no attorneys would prosecute its customers' antitrust claims individually due to the small sums at stake for any one customer.

Worse, Valve now had to pay significant arbitration fees (required under its own arbitration clause) and engage in costly individual litigations against many of its customers, one by one, instead of in a class action. So, instead of following through with its arbitration agreement, Valve turned around and sued the customers' lawyers—alleging that their acting on behalf of their

clients in the arbitrations that Valve *itself compelled* was somehow tortious.

The litigation privilege—a cornerstone of our legal system—has long protected attorneys from being sued by adverse parties for representing their clients. The Court of Appeals correctly concluded the abuse of process claim should be dismissed, reversing the trial court. Discretionary review should be denied.

First, the Court of Appeals' application of the litigation privilege to Valve's abuse of process claim follows settled law and creates no conflict with *Mason v. Mason*, 19 Wn. App. 2d 803, 497 P.3d 431 (2021). Unlike in *Mason*, Valve never alleged any intentional use of legal process for an inappropriate or extrinsic end. No conflict exists warranting review under RAP 13.4(b)(2). And protecting attorneys from lawsuits filed by their clients' litigation adversaries does not implicate substantial public interest under RAP 13.4(b)(4).

Second, the Court of Appeals' UPEPA ruling does not warrant review. Dismissal was proper under CR 12(b)(6) even without UPEPA. In any case, the Opinion correctly concluded UPEPA applies because this case concerns (i) an issue under consideration in a judicial proceeding and (ii) the exercise of free speech and association. Valve's arguments to the contrary misread both the case law and UPEPA. Finally, straightforwardly applying UPEPA's plain procedural text to these facts—unusual given that Valve sued opposing counsel—raises no significant constitutional or public-interest issue-under RAP 13.4(b)(3)-(4).

Valve insists its arbitration clause was "weaponized" against it. But Valve can hardly complain about this dispute resolution process, which Valve not only created but enforced. This Court should preserve its resources for cases meeting RAP 13.4(b)'s criteria and deny review.

II. RESTATEMENT OF ISSUES RAISED BY PETITIONER

1. Did the Court of Appeals correctly apply litigation privilege to Valve's abuse of process claim, which fails as a matter of law independent of the privilege?[1]

2. Did the Court of Appeals correctly determine that this case falls within UPEPA based on Valve's allegations?

III. RESTATEMENT OF CASE[2]

A. History of Mass Arbitration

One major tool in corporations' anti-class action arsenal was "to contract the class action out of existence" using class action waivers and arbitration provisions. J. Maria Glover, *Mass Arbitration*, 74 Stan. L. Rev. 1283, 1292 (2022). In *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), the Supreme Court approved this approach, concluding that class action

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[1] Valve does not seek review of the Court of Appeals' correct dismissal of its tortious interference claim.

[2] This statement includes Valve's allegations, which are not conceded.

waivers combined with mandatory arbitration clauses in consumer contracts are enforceable.

Concepcion and its progeny permitted corporations to eliminate small consumer antitrust claims by making them economically unviable. *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 240 (2013) (Kagan, J., dissenting) ("The monopolist gets to use its monopoly power to insist on a contract effectively depriving its victims of all legal recourse.").

1. The class action waiver strategy backfires.

The plaintiffs' bar overcame this obstacle. Using technology, lawyers dramatically reduced the cost of managing individual arbitrations for many similarly-situated claimants, and began to bring "mass arbitrations" pursuant to corporations' own adhesion arbitration clauses.

Mass arbitration refers to numerous individuals who "suffered a common harm by a common defendant" pursuing individual arbitrations en masse. *See* Glover, *supra*, at 1322. Mass arbitrations comply with class action waivers, as each

plaintiff maintains only an individual claim. *Id.* at 1350. Meanwhile, through economies of scale, individual consumers with small-value claims gain access to counsel who can profitably arbitrate these claims on a contingent basis.

Corporations have predictably sought to avoid mass arbitrations. But courts have been critical of their attempts. In rejecting one such attempt, a court emphasized that Uber had "made the business decision to preclude class, collective, or representative claims in its arbitration agreement with its consumers, and AAA's fees [to administer 31,000 nearly-identical arbitrations] are directly attributable to that decision." *Uber Techs., Inc. v. Am. Arb. Ass'n, Inc.*, 204 A.D.3d 506, 510, 167 N.Y.S.3d 66 (2022); *see also Abernathy v. Doordash, Inc.*, 438 F. Supp. 3d 1062, 1067-68 (N.D. Cal. 2020) (compelling arbitration and criticizing Doordash's attempt to avoid arbitration fees while having widely "forced arbitration clauses" upon its workers). During oral argument in *Arena v. Intuit, Inc.*, No. 19-cv-02456-CRB, 2021 WL 834253, at *1 (N.D. Cal.

Mar. 5, 2021), a federal district court admonished Intuit for first insisting on arbitration, and then trying to escape the resulting fees:

> [Y]ou elected to go to arbitration. … it's not that the plaintiffs forced you to the wall to say: We want to arbitrate. It was you who said: We want to arbitrate.
>
> And so now you come in, when you see how it is unfolding, and say: Not so fast. We're being held up by you. We're being extorted. Or whatever those words are. And so there, now we want to turn and do something else. …

App. Br. Appendix 64-65 (attaching transcript).

2. Corporations abandon class action waivers.

As mass arbitrations proliferated, corporations began abandoning class action waivers and arbitration clauses. Glover, *supra*, at 1292 ("[c]orporations that engineered the arbitration revolution are now 'scared to death' of arbitration" and are abandoning the approach that they had spent decades fighting for); Sara Randazzo, *Amazon Faced 75,000 Arbitration Demands. Now It Says: Fine, Sue Us*, Wall St. J., June 1, 2021.

Valve, however, initially chose to keep its arbitration agreement in place.[3]

B. Valve Obtains a Court Order Compelling Customers to Arbitrate Their Antitrust Claims Against Valve

In 2021, video game developer Wolfire Games, LLC, and seven individual Valve customers filed a class action complaint in federal court in Seattle. CP 223-322. The complaint alleged Valve controls 75 percent of the $30 billion online PC games market through its "Steam" platform and blocks competition to maintain artificially high prices. CP 226-31.

Valve moved to dismiss Wolfire's non-arbitrable claims and to compel individualized arbitration of the seven consumers claims. The federal court granted Valve's motion to compel arbitration based on Valve's Steam Subscriber Agreement

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[3] Valve removed its arbitration clause from its user agreement in September 2024—after the mass arbitrations at issue here were filed. *See* Nicole Carpenter, *Valve Removes Arbitration from Its Steam Agreements—Here's What That Means for You*, Polygon (Sept. 27, 2024, 1:27 PM), https://www.polygon.com/explained/457557/valve-arbitration-steam-subscriber-agreements/.

("SSA"). CP 344-47. It also denied the motion to dismiss Wolfire's claims. CP 355 ("These allegations are sufficient to plausibly allege unlawful conduct. … Plaintiffs plausibly allege price-based injury.").

C. The Law Firms Represent Valve Customers in Mass Arbitrations

1. Mr. Bucher develops a business model to pursue mass arbitration.

Attorney Will Bucher designed a mass arbitration business plan for claims against Valve, budgeting for advertising, ethics opinions, and costs incurred in arbitrating the claims. CP 32, 37-40, 119. He identified potential claims (CP 33-34) and the range of potential outcomes. CP 36, 41. To finance this effort, he sought and obtained litigation funding. In a slide deck for potential funders, he presented information any potential investor would request:

- Observations that mass arbitrations are expensive for corporations and provide consumers with leverage, CP 30;

- A description of the successful mass arbitration strategy pursued by other plaintiffs' firms against corporations, CP 30-31;

- The budget needed to pursue a mass arbitration strategy, CP 32, 37-40;

- How to identify defendants and advertise, CP 33-34, 38; *and*

- Projections on returns, CP 36, 40-41.

When he obtained funding, Mr. Bucher implemented the systems he designed. CP 121-22, 138-39.

2. Valve customers retain Bucher Law, in association with AFN Law, to pursue claims against Valve.

Bucher Law advertised to Valve customers and directed interested customers to its website, CP 541, which provided potential clients with information about the engagement:

- The claims: "Valve was sued in a class action lawsuit … for their anticompetitive restraints on pricing…"; the judge "ruled that those claims were credible," but "gamers…must file individual arbitrations…" *See* CP 541.

- The contingent fee: There is "no out of pocket cost" and "Bucher Law PLLC takes a portion of what we recover for you, and if you recover nothing, our services are free…" *Id.*

- Mass arbitration: "[F]iling individually doesn't mean filing alone. Bucher Law brings mass arbitrations—thousands of claims filed together—creating leverage over companies who violate the law to help get you the most compensation possible." CP 542.

- Time requirements: "Once you've signed, Bucher Law PLLC will handle the rest. Every case is different but many consumers get settlement offers without doing anything beyond completing the steps above." CP 544.

Potential clients could fill out a questionnaire, and eligible customers received an engagement letter from Bucher Law. CP 544-46 (clips from website). The engagement letter laid out obligations of the clients and the law firms:

> You will not owe the attorneys anything unless we are successful in collecting a recovery, payment to you, or settlement for your claim. If your claim is successful, then you agree to pay to the attorneys a fee equal to 40% of the gross amount recovered for you. Under no circumstances will the attorneys collect an unreasonably large fee. Under no circumstances will you ever owe attorneys' fees beyond a portion of your recovery.

CP 150.

Bucher Law informed potential clients that, for Bucher Law to represent them along with many other clients, they must

accept certain conditions. CP 150-51. For example, Bucher Law explained the challenges of representing a client on a contingent fee basis to seek a non-monetary recovery, such as in the form of coupons. The retainer agreement addressed these considerations, including provisions for handling non-cash settlements. CP 150-51. Thousands of Valve customers engaged Bucher Law, in association with AFN Law, to pursue claims against Valve. CP 139, 151.

D. The Law Firms Negotiate with Valve Pursuant to the SSA and Initiate Arbitration

Before commencing arbitration, the SSA required "a written notice that describes the nature and basis of the claim or dispute and sets forth the relief sought." CP 25. If the customer "and Valve do not reach an agreement to resolve that claim or dispute within thirty (30) calendar days after the notice is received," either the customer or Valve "may commence an arbitration." *Id.*

Following the SSA, the firms initiated the SSA's pre-dispute process by notifying Valve of their clients' intent to arbitrate antitrust claims.[4] CP 155-57. The July 12, 2023 notice detailed the antitrust theory, identified all claimants, proposed a comprehensive settlement framework, and expressed willingness "to engage in good faith discussions" for the mandatory 30-day negotiation period. CP 156.

Valve responded on July 25, 2023, asserting that by engaging the same firms to write one demand letter, the customers had violated the prohibition on collective actions in the SSA. Accordingly, Valve demanded individualized notices for each of its customers. CP 159-63.

In compliance, the firms sent Valve individual email notices by September 15, 2023, identifying each individual customer's name, Steam account, state and city of residence; a

[4] These claims were based on the same illegal activity raised in *Wolfire* and sent to arbitration. CP 344-48.

description of the claim; and a sum that the customer would accept to settle with Valve. CP 217; *see also* CP 170.

Valve's attorneys responded to these e-mails on September 20, 2023, stating that they "anticipate[d] … respond[ing] to each of the letters on or before October 31." CP 170. But October 31st was 15 days past the deadline to negotiate under the SSA's 30-day period. CP 25 ("If you and Valve do not reach ***an agreement*** to resolve that claim or dispute within (30) calendar days after the notice is received, you or Valve may commence an arbitration." (emphasis added)).

Approximately 1,021 customers were unwilling to wait and opted to demand arbitration after 30 days elapsed. CP 217. A week after these first arbitrations were filed, Valve acknowledged it had received all of the individual settlement offers made, but claimed the SSA contained a "mutual promise" to engage in only "individualized negotiations" as opposed to a global settlement discussion, CP 168, even though no such requirement exists in the SSA, *see* CP 24-25. Based on

this assertion, Valve claimed it "s[aw] little point" in making any substantive response and ended negotiations. CP 168.

E. Valve Sues the Firms for Pursuing Arbitrations as Valve Required

Two weeks later, Valve filed suit against Bucher Law, AFN Law, and their unnamed litigation funder, alleging the firms "attempt[ed] to weaponize the terms of Valve's dispute resolution agreement with Steam users to line their own pockets." CP 1.

Valve asserted claims for tortious interference and abuse of process, contending the firms failed to "meaningfully evaluate the legal merits or factual underpinnings of their clients' claims" and induced Valve's customers to breach the SSA. CP 9, 15-16. Valve's complaint referred to and attached numerous documents, including the firm's engagement letters, the slide deck Valve contends shows an improper purpose, and the settlement communications and correspondence between the firms and Valve. CP 17–179. These documents were thus

incorporated into the complaint's allegations. *Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App. 838, 844, 347 P.3d 487 (2015).

F. The Court of Appeals Concludes Valve's Complaint Should Be Dismissed

The firms moved to dismiss under CR 12(b)(6), and in the alternative moved for relief under UPEPA. The trial court denied dismissal. CP 566–69.

The Court of Appeals reversed, concluding that the trial court should have dismissed the case under UPEPA and that the litigation privilege applied. The firms were not awarded fees—they therefore obtained no relief under UPEPA that was not available under CR 12(b)(6). *See* Opinion 17. This petition followed.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Abuse of Process Claim Warranted Dismissal

1. Litigation privilege applies.

Valve sued the law firms for representing their clients against Valve. Valve contends that an attorney's settlement proposals and subsequent arbitration demands (when the proposals are declined) amount to tortious extortion. The Court of Appeals correctly rejected that argument and applied litigation privilege.

The litigation privilege exists to promote the "utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions." *Wynn v. Earin*, 163 Wn.2d 361, 376-77, 181 P.3d 806 (2008). To ensure the privilege adequately protects litigation process, courts examine the "realities of litigation" and reject "unrealistically narrow" applications of the privilege that would undermine its purpose.

Bruce v. Byrne-Stevens & Assocs. Eng'rs, 113 Wn.2d 123, 136, 776 P.2d 666 (1989) (lead opinion).

Litigators are quintessential beneficiaries of the privilege, enjoying immunity for their litigation-related work. *Twelker v. Shannon & Wilson, Inc.*, 88 Wn.2d 473, 476, 564 P.2d 1131 (1977) (immunity applies to "attorneys in preparation or trial of cases"); *McNeal v. Allen*, 95 Wn.2d 265, 267, 621 P.2d 1285 (1980) ("The privilege of attorneys is based upon a public policy of securing to them as officers of the court the utmost freedom in their efforts to secure justice for their clients.").[5]

In short, immunity preserves zealous advocacy by barring adversaries from using tort suits to drive wedges between attorneys and clients—exactly what Valve tried to do

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[5] Although it prototypically immunizes lawyers, the privilege extends to non-lawyers for work performed in relation to litigation, and also covers the entire litigation process whether in or out of court. Thus, in *Bruce*, the litigation privilege protected an expert's out-of-court acts and communications in preparation for testimony because "[a]n expert's courtroom testimony is the last act in a long, complex

here. The Court of Appeals correctly protected the firms from Valve's retaliatory action.

2. The Court of Appeals' decision is not in conflict with *Mason*.

Valve incorrectly claims this case implicates a conflict with *Mason*, 19 Wn. App. 2d 803. To the contrary, *Mason*'s conclusion that "litigation privilege does not inexorably apply to all abuse of process claims," *id.* at 834, is perfectly consistent with the Court of Appeals' opinion in this case.

In *Mason*, an attorney was sued for having pursued a parenting plan modification on behalf of a client in order to harm the other parent and jeopardize her immigration status—objectives unrelated to the litigation. Because this purpose was entirely extrinsic to the family law dispute, the court held that the litigation privilege did not immunize the attorney from an abuse of process claim. *Id.* at 834-40. Seeking to inflict financial and emotional harm and damage an ex-spouse's

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process of evaluation and consultation with the litigant." 113 Wn.2d at 135.

immigration status was "an end unrelated to the underlying judicial proceeding." *Id.* at 840.

By contrast, Valve's claim of an improper "end" consisted of the firms' pursuing a pre-litigation settlement for their clients through SSA-mandated negotiation. *See* Opinion 16-17. By Valve's own admissions, those negotiations sought to resolve the claims ultimately presented in arbitration—an end *inherently intrinsic* to the customer's claims. *See* Pet'n 6, 9-11.

What Valve claims "abused" the "SSA's dispute resolution process" was the firms' using it purportedly in an attempt "to extort a windfall settlement extrinsic to the underlying merits of their clients' individual arbitration claims." Pet'n 27. But the fact that Valve's litigation adversaries placed a higher value on their claims than Valve, which viewed the requested amounts as a "windfall" based on Valve's own valuation, does not make the settlement negotiation efforts "extrinsic" to the litigation. The "end" of

any plaintiff's antitrust claim is, of course, money damages. Seeking to resolve such claims for money, as the firms did here, is not extrinsic to litigating those antitrust claims—it is the contractual predicate to even being permitted to bring an arbitration under Valve's own SSA.

This conduct—attorneys proffering settlements for clients—is protected by the litigation privilege, and for good reason. Many litigations stem from a pre-filing failure to resolve the dispute. If every settlement overture regarded by a defendant as too high was an "extrinsic" end amounting to abuse of process, the litigation privilege would be swallowed whole.

A party that deems a settlement demand excessive may reject it and make good faith efforts to defeat it in litigation. But it may not retaliate against opposing counsel. By suing opposing counsel, seeking to cripple its customers' cases, Valve—not the law firms—is the one pursuing an extrinsic end.

The Court should also reject Valve's claim that the Court of Appeals "gave no consideration to whether the [firms] violated their professional obligations by engaging in the conduct alleged by Valve." Pet'n 26. The Court of Appeals directly addressed this allegation when holding that Valve failed to allege the firms "have an ultimate end that is unrelated to the legal relief they are pursuing for their clients by following the terms of Valve's SSA." Opinion 16. Nor can Valve morph the firms' duties to their clients into an "abuse of process" claim, without making the fox the guardian of the henhouse.

Thus, the Court of Appeals correctly held that *Mason*'s narrow exception for abuse of process—using legal proceedings for an improper, extrinsic purpose—does not apply to the circumstances presented here. Valve alleges only lawful advocacy consistent with its own contract. The litigation privilege fully protects that conduct.

3. Regardless of litigation privilege, the abuse of process claim merits dismissal.

Even setting aside the litigation privilege, Valve failed to state a claim for abuse of process because Valve has not alleged any "process" other than pre-filing negotiations and the filing of arbitrations. But those are not "process" within the meaning of the tort, which requires misuse of the court's coercive powers.

***Pre-filing negotiations*:** Valve conflates the *pre-arbitration* 30-day negotiation period required by Valve's SSA, with "process" under the tort, claiming that the firms "thwarted the SSA's dispute resolution process[.]" Pet'n 27. But *pre-filing* negotiations are definitionally not legal "process."

Nor is the pre-filing contractual dispute resolution "process" the sort of "process" envisioned by the tort. The purpose of "abuse of process" is to prevent a "misuse of the power of the court" by way of "an act done in the name of the court and under its authority by means of use of a legal process

not proper in the conduct of a proceeding[.]" *Hough v. Stockbridge*, 152 Wn. App. 328, 342–43, 216 P.3d 1077 (2009).

That purpose applies neither to contractual obligations, which by nature are not legal "process" susceptible to abuse, nor to pre-filing negotiations, which in any event were consistent with the contract Valve claims was breached. Valve fails to support its contrary position with any law or policy.

***Filing arbitrations*:** as this Court has confirmed, "the mere institution of a legal proceeding even with a malicious motive does not constitute an abuse of process." *Sea-Pac Co., Inc. v. United Food & Commercial Workers Local Union 44*, 103 Wn.2d 800, 806, 699 P.2d 217 (1985) (citation omitted). That is because "the tort goes to use of the process *once it has been issued* for an end for which it was not designed." *Batten v. Abrams*, 28 Wn. App. 737, 748, 626 P.2d 984 (1981) (emphasis added). Thus, "there must be an act *after filing suit* using legal process empowered by that suit to accomplish an end not within the purview of the suit." *Id.* (emphasis added). Here, Valve has

failed to allege any actions taken after the initiation of arbitration that abused *that* process.

Therefore, this Court should deny review. The Court of Appeals' ruling on litigation privilege was consistent with *Mason* and the abuse of process claim warrants dismissal independently under settled law.

B. The Court of Appeals' UPEPA Ruling Does Not Merit Review

Valve contends the Court of Appeals' decision erroneously concluded that UPEPA "barred" Valve's claims. Pet'n 4. This reflects a fundamental misunderstanding of how UPEPA works.

UPEPA is a *procedural* vehicle for expedited review of and fee-shifting in cases involving constitutionally protected rights. It does not substantively "bar" claims merely because they implicate such rights. Instead, UPEPA dismissal follows only when the claims fail under the standards of CR 12(b)(6) or CR 56. *See* RCW 4.105.060(1)(c).

In other words, a claim cannot be "barred" by UPEPA—only by the CR 12(b)(6) or CR 56 standards that apply equally to all claims. Thus, there has been no "expansion" of UPEPA that could "bar" any claims otherwise meritorious under CR 12 or CR 56. *See* Pet'n 18.

Here, the Court of Appeals, applying the litigation privilege, mandated dismissal under CR 12(b)(6)'s standards. Because the firms received no benefits from UPEPA that was not otherwise available—no expedited timelines or fees—any error in applying UPEPA would be harmless. Opinion 17 n.7 (no fees); *see* CP 180 (no expedited timeline for CR 12 motion). In short, with UPEPA being immaterial to the relief obtained, this case presents a particularly poor vehicle for discretionary review.

Nor does the Court of Appeals' decision to apply UPEPA involve a "significant" constitutional question or issue of substantial public interest under RAP 13.4. The Court of Appeals correctly determined that UPEPA applied for two

independent reasons, each of which is sufficient to support the statute's application.

First, Valve's claims in this action are based on the firms' communications about antitrust claims under consideration in *Wolfire*, as Valve itself alleged. UPEPA applies because this case involves "[c]ommunications on an issue under consideration … in a … judicial … proceeding." RCW 4.105.010(2)(b).

Second, UPEPA applies because Valve's claims were based on the firms' exercise of free speech and association rights on a matter of public concern, RCW 4.105.010(2)(c), and the commercial speech exception does not apply.

1. The Court of Appeals correctly determined UPEPA applies.

In addition to meeting the standards for dismissal established by CR 12, the firms established that UPEPA applied. RCW 4.105.060(1). Valve's own complaint alleged that the firms "targeted Valve" for consumer arbitrations

because "they could 'copycat' a legal theory developed by another law firm in another lawsuit that had already been sent to arbitration." CP 7 (¶ 40 (citing *Wolfire Games, LLC v. Valve Corp.*, 2021 WL 4952220, at *3 (W.D. Wash. Oct. 25, 2021)). The record below contains hundreds of pages of court filings from *Wolfire*, including the class action complaint and order compelling arbitration. CP 220-471.

Valve's allegations and these materials amply support the determination below that Valve's claims were based on the firm's communications "on an issue" (i.e., Valve's liability) "under consideration … in a … judicial … proceeding" under RCW 4.105.010(2)(b).

Valve complains that the Court of Appeals relied on a "distorted characterization" of the record. Pet'n 15. But this Court does not grant review to "undistort" a record characterization. Instead, a petition for review must satisfy RAP 13.4. *See Luv v. West Coast Servicing, Inc.*, __ P.3d __, 2025 WL 2858489, at *8 (Wash. Oct. 9, 2025) (Mungia, J.,

dissenting) ("our court is not an error-correction court"). Moreover, the Court of Appeals' reading of Valve's complaint was correct.

Whether UPEPA applies is a fact-intensive inquiry the Court of Appeals properly reviewed de novo. Opinion 6. Valve's assertion that the Court of Appeals' decision would somehow give license for courts to apply UPEPA "by referencing *any* communication relating to *any* issue in *any* case," Pet'n 16, is baseless. The Court of Appeals never adopted such a standard. Instead, it held that the legal theory on which the firms sought to sue Valve were based on the allegations at issue in *Wolfire*—precisely as Valve itself had alleged. Opinion 7. The communications about which Valve complains—the settlement letters—were based on this same issue. The Court of Appeals straightforwardly applied UPEPA to these undisputed facts.

Next, Valve claims that the firms' settlement communications do not involve the exercise of free speech. In

support, Valve cites a U.S. Supreme Court case noting that attorney speech in judicial proceedings can be regulated (*e.g.*, by court rule and professional codes). Pet'n 18 (citing *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1071 (1991)). But this does not mean that attorneys have *no* right to free speech when discharging their professional duties. The possibility of regulation, such as time, place or manner restrictions, does not negate the existence of First Amendment rights. Nor does *Gentile* undercut the firms' argument that they were exercising speech rights when they communicated with Valve *outside a judicial proceeding*.[6]

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[6] Valve faults the Court of Appeals for purportedly misreading the Texas court's decision in *Schimmel v. McGregor*, 438 S.W.3d 847 (Tex. Ct. App. 2014). According to Valve, the Court of Appeals' conclusion that *Schimmel* "appl[ied] First Amendment protections to attorneys representing clients" was wrong. Instead, Valve claims "the right of free speech" was defined in the relevant statute (the Texas Citizens Participation Act ("TCPA"), Texas's anti-SLAPP act), and not under the constitution. Pet'n 17. But while the TCPA broadly defines "exercise of the right of free speech" to mean "a communication made in connection with a matter of public concern," Tex. Civ. Prac. & Rem. Code § 27.001(3), it

Moreover, Valve does not even address the Court of Appeals' conclusion that the firms' representation of clients also involved associational rights and the right to petition under the state and federal constitutions. Opinion 8. And Valve's claim that the firms' actions were *unnecessary* to the representation, Pet'n 18, fails to engage with the fact that they *were exercising* constitutionally protected speech, petition, or associational rights.

Finally, Valve claims that the Court of Appeals held that "an attorney's speech on behalf of clients is entirely protected by the First Amendment." *Id.* As such a holding appears nowhere in the Opinion, this argument should be rejected.

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also provides that the purpose of the act "is to encourage and safeguard the constitutional rights of persons to petition, speak freely, [and] associate freely," *id.* at § 27.002. Valve's claim that the TCPA is somehow divorced from constitutional standards lacks merit.

2. The commercial-speech exception does not apply.

Finally, Valve claims that the Court of Appeals erred in concluding that the commercial speech exception does not apply to the firm's communications sent to Valve. Pet'n 19. Valve argues that commercial speech under UPEPA "does not require any specific audience." Pet'n 20. But Valve does not deny that commercial speech must "arise out of a communication related to the person's sale" of services, RCW 4.105.010(3)(a)(iii), and that the firms were not selling their legal services to Valve. By their very adversarial—as opposed to solicitous—nature, the pre-litigation settlement demand communications on which Valve bases its claims do not qualify as commercial speech.

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In sum, the Court of Appeals' UPEPA ruling was not only correct, it related to the unique circumstances of this case, which are extremely unlikely to be repeated. These

circumstances do not present an issue of public importance or a significant constitutional question, and review should be denied.

V. CONCLUSION

For the reasons explained above, this Court should deny review.

This document contains 4,925 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 27th day of October, 2025.

McNAUL EBEL NAWROT & HELGREN PLLC

By: s/ Theresa M. DeMonte
Daniel M. Weiskopf, WSBA No. 44941
Theresa M. DeMonte, WSBA No. 43994
Claire Martirosian, WSBA No. 49528

600 University Street, Suite 2700
Seattle, Washington 98101
(206) 467-1816
dweiskopf@mcnaul.com
tdemonte@mcnaul.com
cmartirosian@mcnaul.com

Attorneys for Respondents

DECLARATION OF SERVICE

On October 27, 2025, I caused to be served a true and correct copy of the foregoing document on counsel of record stated below, via the Washington Courts E-Portal:

Blake Marks-Dias, WSBA No. 28169
Jeff Bone, WSBA No. 43965
Corr Cronin LLP
1015 Second Avenue, Floor 10
Seattle, Washington 98104
(206) 625-8600
bmarksdias@corrcronin.com
jbone@corrcronin.com
lbrown@corrcronin.com
msullivan@corrcronin.com (asst.)
cnelson@corrcronin.com (asst.)
slarussa@corrcronin.com (para.)
Attorneys for Petitioner

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

DATED this 27th day of October, 2025, at Seattle, Washington.

By: s/ Thao Do
Thao Do, *Legal Assistant*
tdo@mcnaul.com

MCNAUL EBEL NAWROT AND HELGREN PLLC

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