

NO. 47438-7-II

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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HAELI HAMRICK, et al.,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

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STATE OF WASHINGTON  
BY  DEPUTY

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FILED  
COURT OF APPEALS  
DIVISION II

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APPELLANTS' REPLY BRIEF

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## **I. REPLY**

The Hamrick Appellants/Plaintiffs submit this memorandum in reply to DSHS's response to the opening brief. DSHS ignores that evidence of record when submitting a brief claiming that there is no evidence to support the conclusion that even if proper health and safety visits had been conducted, there was no indication of abuse to discover. To the contrary, the contemporaneous therapy records of Staci and Haeli Hamrick (ages 9) from the pertinent timeframe documented that both girls were speaking out sexually, mutually masturbating each other, and one particular record actually indicated that Staci wanted to have an opportunity to speak with an adult privately and alone – which never occurred. The assigned social worker, Mary Woolridge, was supposed to have been aware of these children's ongoing therapy efforts -- particularly the unusual sexualized acts that these nine year-old girls were outwardly exhibiting. Instead, Ms. Woolridge would draft reports for the juvenile court indicating that all was well with the children while contemporaneously failing to ever recognize these sorts of anomalous occurrences – because she was not really checking on the children in person and most certainly not conducting proper health and safety checks. DSHS takes factual liberties with the record because the law that is at issue is not supportive of the defense position: that the social workers that

operate the foster care system purportedly do not have any sort of special relationship with the foster children they are assigned to protect. Washington's appellate courts have already determined that DSHS social workers owe foster children a duty of care under federal law. However, prior to this case, the appellate courts have not had an opportunity to announce that which is most obvious: social workers have a special relationship to the foster children under their assigned care. Judge Stolz did not seem to understand this premise, and certainly never undertook the effort to analyze the issue, or to even read the appellate authority cited by the Hamricks' legal counsel such as *Caulfield v. Kitsap County*. Instead, Judge Stolz approached the legal questions during the trial as more optional suggestions instead of binding precedential decisions. In multiple respects, Judge Stolz erred and compromised the Hamrick Plaintiffs' fundamental theory of the case, and their counsel's credibility with the jury. For these reasons, the Hamrick Plaintiffs respectfully request that this Court grant a new trial before a newly assigned trial judge that actually reads and then attempts to follow the law.

**II. ARGUMENT: THE TRIAL COURT ERRED BY  
GRANTING (IN PART) DSHS' MOTION FOR A DIRECTED  
VERDICT**

DSHS attempts to dodge the main issue by arguing factual points without regard to the applicable legal standard in relation to the directed

verdict at issue. Specifically, in lieu of properly applying CR 50, DSHS argues that facts of the case instead. This is the same error that Judge Stolz committed and that led to this appeal. When reviewing a trial court's decision on a motion for judgment as a matter of law, this Court applies the same standard as the trial court, if appropriately applied in the first place. *Albertson v. State*, 361 P.3d 808 (2015) (applying CR 50 standard to DSHS claim). Judgment as a matter of law may only be granted at the close of a plaintiff's case if the plaintiff has been "fully heard" and "there is no legally sufficient evidentiary basis for a reasonable jury to find or have found for that party[.]" *Id.*; CR 50(a)(1). The trial court must view all conflicting evidence in the light most favorable to the nonmoving party and determine whether the proffered result is the only reasonable conclusion. *Id.* In this regard, Judge Stolz, and also DSHS, failed to follow the law.

The Hamricks presented a compelling case illustrating that the assigned social worker, Mary Woolridge, failed to adhere to the obligation to conduct proper health and safety visits for the children under her care, Staci and Haeli Hamrick. At the time, Ms. Woolridge was Staci and Haeli's only life line to the outside world beyond the confining walls of the Hamrick home. DSHS argues that other random people in Staci and Haeli's lives could have simply supplanted the duties owed by Ms.

Woolridge. In this regard, the Hamricks presented expert testimony as to the importance of establishing a bond with vulnerable foster children and conducting health and safety visits:

*...If you have a relationship with a child -- and the whole idea is that they want to feel safe with you -- that's when children disclose is when they feel that you are a safe place; you're going to listen to them; you're not going to question what they're going to tell you. And that's what you get by making this bond and having this relationship with these girls...<sup>1</sup>*

DSHS alleges that at times the children expressed forms of happiness and/or a desire to be adopted. It is not disputed that they were contemporaneously be subjected to horrific abuse. This dichotomy illustrates the need for an assigned social worker to build a rapport with foster children – to ensure that the health and safety check process is effective. Ms. Woolridge did conduct regular health and safety visits prior to placing Staci and Haeli in the Hamrick home. It is presumed that given the Hamrick family's ability to put on a good faced façade, Ms. Woolridge decided to just stop conducting health and safety visits. Moreover, Staci and Haeli were the eldest children in the home and the evidence of record suggests that the other foster children were not targeted until achieving an older age.

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<sup>1</sup> Verbatim Report of Proceedings of Feb 9, 2015: Pages 39-31 (testimony of expert Stone)

In this regard, all of the professionals referenced by DSHS, such as Laura Bentle (Kellog), Amy Page, and/or Shannon Nelson, conceded at trial that their interaction would not serve as a substitute to the health and safety checks that Ms. Woolridge had been obligated to perform. Ms. Nelson could not have testified clearer:

Q. Was it your responsibility to do what we've talked about, health and safety visits for Staci and Haeli?

A. No, it was not.

Q. Did you do any health and safety visits for Staci and Haeli?

A. No, I did not.<sup>2</sup>

Ms. Kellog, the assigned GAL, testified just as clearly in that regard:

Q. Are you aware that social workers like Mary Woolridge were supposed to do health and safety visits in accordance with the DSHS policy?

A. Correct.

Q. Was your work a substitute for the DSHS worker's health and safety visits?

A. I would not think they would be.<sup>3</sup>

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<sup>2</sup> Verbatim Report of Proceedings of April 19, 2015 (testimony of Shannon Nelson)

<sup>3</sup> Verbatim Report of Proceedings of Feb 25, 2015: Page 132-135 (testimony of Laura Kellog)

Q. In your role as a guardian ad litem, did you ever have an opportunity to have a dialogue with children in relation to having sexually acting out type behaviors?

A. That's not my place.

Q. Would you ask questions on those sorts of topics?

A. No, I would not.<sup>4</sup>

And according to expert testimony, the services that these collateral individuals/witnesses provided did not serve as any form of a substitute for the assigned social worker – particularly given the lack of rapport building.<sup>5</sup> Little children do not spontaneously inform strangers that they barely know or meet one time that they are being molested.<sup>6</sup> Ms. Woolridge was the point person obligated to protect Staci and Haeli from the dangers that could be encountered in a strange foster home, and utterly she failed in that regard. Beyond that, according to expert testimony, the failures in relation to the Hamrick home were systemic amongst multiple social workers:

*...They would write down health and safety visit in the service episode record, but it would be them talking to Drew Hamrick. One of them was: The girls weren't even in the home that day. Another one was: They were transporting one of the other girls somewhere. Those aren't health and safety visits. That's not sitting down with a child alone and saying, how are you today? Do you feel safe today? Is there something I can do to help you? Are you*

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

*getting enough to eat? How are you disciplined? None of that happened, so even though -- and I documented for each of those girls when the workers went out -- at least they made home visits. There were some visits. It wasn't health and safety visits, but I did document for each girl individually what the circumstances were for each of those.<sup>7</sup>*

Staci and Haeli testified to having been subject to physical, mental, and sexual abuse during the timeframe that Ms. Woolridge should have been conducting health and safety checks. The contemporaneous counseling records indicate that the nine year-old foster girls were acting out sexually during that same time frame:

Q. All right. All right. Let's go back and talk about some of these bubbles, and we'll move a little bit quicker; but can you tell us, was the January 4, 19 -- January 4, 2000, therapy visit, did that qualify as any sort of a substitute for a health and safety visit?

A. No.

Q. Did anything from that particular interaction with the counselor stand out to you?

A. What is starting to stand out in the therapy sessions is that the girls are acting out more, and there are starting to be some notes on the therapy records about them sexually acting out together and using language which you wouldn't expect a child to use.

Q. Okay. And did anything in the file to you indicate that January 4, 2000, was a substitute for a health and safety visit, or Mary Woolridge participated, or anything along those lines?

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<sup>7</sup> Verbatim Report of Proceedings of Feb 9, 2015: Pages 63-64 (testimony of expert Stone)

A. I saw no reference in any of the narratives or the service episode records that Mary Woolridge had any contact with this therapist --

\* \* \*

Q. (By Mr. Beauregard) Ms. Stone, I'll represent to you you're looking at a copy of Defense Exhibit 219. Does that help refresh your recollection about anything significant from that June visit that we're talking about?

A. The -- the June visit, the -- the therapist met with both the girls together; and she was trying to, again, get them to play together and have a better relationship; but then there's also notes of her meeting with her supervisor about this case, and it says she's concerned about the daughters' interactions.

Again, we're seeing more and more sexualized behaviors in that she believes the foster mother needs help to monitor what's going on with these two girls; so, again, nothing happens; but she has these notes saying that there's ongoing, increasing problems.

Q. Is there actually any reference to the girls acting out sexually by masturbating each other?

A. That's in a later one.

Q. Okay.

A. Yes. There is, in the notes with the girls, masturbating, talking sexual language; and actually in one of the later notes, the therapist says there needs to be a safety plan done with these girls, that there's nothing ever in the record that shows that was ever done.

Q. So does anything about any of the other therapy visits that you've reviewed constitute a substitute for a health and safety visit that Ms. Woolridge was supposed to do?

A. No.<sup>8</sup>

Ms. Woolridge never oversaw the implementation of any sort of safety plan and the children were permitted to continue to engage in sexualized behaviors.<sup>9</sup>

Another therapy record documented that Staci was anxious to speak alone with someone that she could trust:

Q. Okay. And so you're saying that the therapy document actually says that Staci wanted to be alone and have a therapist to talk to?

A. Yes. I actually have it with me.

Q. And on 12/21/99, did that occur?

A. Yes.

Q. The private conversation?

A. No.<sup>10</sup>

According to expert testimony, the sexually acting out should have prompted additional attention and safety precautions initiated by Ms. Woolridge:

Q. Okay. If Mary Woolridge had been aware of the sexualized behaviors on the part of these girls, would that

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<sup>8</sup> Verbatim Report of Proceedings of Feb 9, 2015: Pages 49-52 (testimony of expert Stone)

<sup>9</sup> *Id.*

<sup>10</sup> Verbatim Report of Proceedings of Feb 9, 2015: Pages 45-46 (testimony of expert Stone)

have been significant to actually conducting a health and safety visit?

A. Well, I think it would have been significant to conduct more visits with these girls, not just the every 90 days, and to understand what's happening. Why are we now having -- increased sexualized behaviors are happening. We have increased sexualized language, and you want to get the etiology of it and figure out what is happening. Is that from the prior abuse that occurred, or is it something new that is occurring? And you only do that when you interview these girls.

Q. In your experience with sexual assault victims and child victims, is sexual acting out any kind of an indication of a problem?

A. Yes. With -- with children this age, it is because you would not expect them to be masturbating openly at nine years of age; not that no nine-year-olds ever masturbate, because they certainly do, but not openly, not with one another, and not doing this sexualized language. You want to know, again, what the etiology is and what you need to do to help these children; and that means you do a complete evaluation and interview with these girls and find out what is happening in their life because, remember, at the beginning of the therapy, they weren't doing this. This is only later in the therapy that we start to see behaviors that are changing, and we need to figure out why.<sup>11</sup>

Ms. Woolridge admitted that this was the type of information (sexually acting out including mutual masturbation between nine year old twin sisters) about which the assigned social worker should have been aware. None of these indicators of abuse were ever cross-referenced in any of Ms. Woolridge's rubber stamped reports to the juvenile court or

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<sup>11</sup> Verbatim Report of Proceedings of Feb 9, 2015: Pages 52-53 (testimony of expert Stone)

documented in the Service Episode Records. On this evidentiary record, in accord with CR 50, there was ample evidence upon which to submit the pre-2008 claims for consideration by the jury. Even though Judge Stolz decimated the Hamrick Plaintiffs' primary theory of the case, the jury deliberated for a full week on the remaining claims.

The real issue before this Court is that of a legal question: does DSHS have a "special relationship" with the foster children that the organization was created to protect. Oddly enough, this legal question has never been directly answered in Washington.<sup>12</sup> However, case law such as *Caulfield v. Kitsap County*, 108 Wash. App. 242, 29 P.3d 738 (2001) and secondary sources such as Restatement (Second) of Torts Section 315 ("a special relation exists between the actor and the other which gives rise to the other a right of protection") make it clear that a duty must be owed. A duty is typically derived when "the courts have found that the relationship involved an element of 'entrustment', *i.e.* one party was, in some way, entrusted with the well-being of the other party." *Webstad v. Storini*, 83 Wash. App. 857, 924 P.2d 940 (1996). And a custodial relationship is not a specific requirement. *Id.* Subsection b of

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<sup>12</sup> In *Braam v. State*, 150 Wash. 2d 689, 81 P.3d 851 (2003), the Washington Supreme Court has already held that DSHS owed a duty of care under federal law but never addressed the issue under conventional tort law in the absence of a Section 1983 claim. It would be an absurd result for any Court to conclude that a duty was owed under federal law to protect foster children, but not under state common law theories as well.

Restatement 315 expressly excludes a custodial relationship as a requisite: “a special relationship exists between the actor and the other which gives to the other a right of protection.”

The Hamrick Plaintiffs agree that this is not a negligent investigation case pinned to the obligation set forth under RCW Chapter 26.44 and/or case law such as *Tyner v. DSHS*, 141 Wn.2d 68, 1 P.3d 1148 (2000) or *Albertson v. State*, 361 P.3d 808 (2015).<sup>13</sup> And to be clear, the Hamricks do not rely upon RCW Chapter 74.15 or 13.34 as a source of law to create a tort duty. This case involves an even more paramount and obvious common law duty: “Washington’s foster care system is charged with the sad duty of caring for children whose families are unable to do so.” *Braam v. State*, 150 Wash. 2d 689, 81 P.3d 851 (2003). “Many of the children entering into foster care have been severely abused. Many have been physically or emotionally neglected. Some children in foster care are moved frequently, which may create or exacerbate existing psychological conditions, notably reactive attachment disorder.” *Id.* Washington’s appellate courts have already found that, under federal law, DSHS owes foster children a duty of care: “foster children have a substantive due process right to be free from unreasonable risk of harm,

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<sup>13</sup> In cases such as *Tyner* and *Albertson*, the children at issue did not have an existing foster care relationship with DSHS.

including a risk flowing from the lack of basic services, and a right to reasonable safety.” *Id.*

“To be reasonably safe, the State, as custodian and caretaker of foster children must provide conditions free of unreasonable risk of danger, harm, or pain, and must include adequate services to meet the basic needs of the child.” *Id.* As noted in *Terrel C. v. DSHS*, 120 Wash. App. 20, 84 P.3d 899 (2004), “Any ongoing relationship between the social worker and the child is to prevent future harm to that child...” In most instances, including this case, the foster children that are in the system have already been removed from abusive homes as a result of the processes set forth under RCW 26.44. *Id.* These foster children are in the care of the government because the natural familial framework has disintegrated. *Id.* Other than the potentially abusive foster home that they might be placed in, these foster children, including the Hamricks, have no one else to rely upon for their safety other than their assigned social worker, in this case Ms. Woolridge. The argument that DSHS does not owe foster children a duty of care should not be well taken. There is no circumstance under which a duty of care is more appropriate.

DSHS seems to argue, without specific reference to authority, that a special relationship requires “custodial” type control and is not akin to

the other purported lesser duties such as those of “a school, mental hospital, common carrier, business owner, etc., has with respective students, patients, patrons and clients.”<sup>14</sup> It must be noted that in *Caulfield*, this Court found a special relationship to exist between the assigned social worker and vulnerable plaintiff in the absence of any sort of custodial relationship. Moreover, appropriately applying Restatement (Second) of Torts Section 315, the obligation of a DSHS social worker to protect the assigned foster children dwarfs that of a bus driver to a commuter or that of 7-11 store owner a Slurpee customer. DSHS’ own brief acknowledges the existence of facts supporting a duty as including those of the “vulnerable adult by virtue of the dependent and protective nature of the relationship.”<sup>15</sup>

Additionally, the duty owed *Caulfield* was not limited the obligation to act upon actual knowledge of abuse: “when a case manager knows **or should know** that serious neglect is occurring.” *Id.* at 256 (emphasis added). Judge Stolz struggled with the “should have known” concept evidently believing that a duty was triggered only upon actual knowledge of abuse. Ms. Woolridge should have known that Staci and Haeli were sexually acting out between 1999-2000, but did not, because

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<sup>14</sup> DSHS Brief, Page 29

<sup>15</sup> DSHS Brief, Page 30

she failed to conduct proper health and safety visits. This is the most justifiable circumstance under which a special relationship could ever be established. The jury should have been permitted to deliberate upon the Hamricks' pre-2008 claims.

#### **IV. ARGUMENT RE: SPECIAL VERDICT FORM & SEGREGATION OF DAMAGES**

The verdict form prevented the Hamrick Plaintiffs from arguing their theory of the case in relation to the pre-2008 claims and also as related to damages. According to the jury instructions and verdict form that were approved by Judge Stolz, the jury was obligated to first, segregate negligent versus intentionally caused damages under Instruction No. 21 and then again on the verdict form. The Hamrick Plaintiffs theory of the case is that DSHS could and should have prevented nearly a decade of ongoing and intentionally inflicted abuse that was perpetrated by Scott and Drew Anne Hamrick. In accord with *Rollins v. King County*, 148 Wash. App. 370, 199 P.3d (2009) and as embodied in Instruction No. 21, the jury was properly instructed to only award damages for intentionally inflicted injuries against the Hamrick children that DSHS could have prevented. By requiring the jury to segregate damages a second time, Judge Stolz committed error.

DSHS argues that segregating damages twice in this fashion is appropriate. However, DSHS offers very little argument justifying this approach. DSHS cites *Tegman v. Accident & Medical Investigations, Inc.*, 150 Wn.2d 102, 75 P.3d 497 (2003) as supportive but that case is readily distinguishable. In *Tegman*, the jury was instructed to segregate damages as between otherwise jointly liable defendants. The defendants at issue had committed both negligent and intentional torts: “This case presents the situation where both negligent and intentional acts caused the plaintiff’s harm, and requires us to determine the nature of a negligent defendant’s liability in these circumstances, and specifically, whether that defendant is jointly and severally liable for damages caused both by that negligence *and* the intentional acts of other defendants.” *Id.* at 110.

The Supreme Court in *Tegman* held that the segregation of damages was appropriate to ensure that the co-defendant that was not culpable, and could not have prevented, certain intentional monetary thefts at issue was not found to be joint and severally liable with the intentionally acting defendant that was also a party to the same lawsuit. *Id.* This is case unlike *Tegman* in that Scott and Drew Anne Hamrick are not parties to the same lawsuit. Moreover, the Hamrick children are only suing DSHS for the intentionally inflicted injuries of Scott and Drew Anne

Hamrick that DSHS could have been prevented. Instruction 21 served precisely that purpose and embodied the law as approved in *Rollins*.

The approach argued by DSHS and accepted by Judge Stolz is in conflict with Supreme Court precedent published as *Welch v. Southland Corp.*, 134 Wash.2d 629, 952 P.2d 162 (1998). In *Welch*, the Supreme Court held that intentional torts do not fall within the definition of “fault” and should not be comparatively apportioned under Washington’s joint and several liability scheme codified as RCW 4.22.070. *See also Schmidt v. Cornerstone Inv., Inc.*, 115 Wash.2d 148, 795 P.2d 1143 (1990); *Price v. Kitsap Transit*, 125 Wash.2d 456, 886 P.2d 556 (1994). “Under the current statutory definition of *fault*, a defendant is not entitled to apportion liability to an intentional tortfeasor.” *Id.* at 637. In this regard, on remand, the assigned trial court should be given proper direction in relation to the segregation of damages. The jury should be instructed to only award damages for intentionally inflicted harms by Scott and Drew Anne Hamrick that DSHS failed to prevent.

#### **IV. ARGUMENT RE: WRONFGUL EXCLUSION OF WITNESSES**

Judge Stolz excluded two witnesses, Lori Smith and Summer Smith, without even attempting to follow *Jones v. City of Seattle*, 179 Wash. 2d 322, 314 P.3d 380 (2013) or *Burnet v. Spokane Ambulance*, 131

Wn.2d 484, 933 P.2d 1036 (1997). DSHS would have incurred no prejudice in preparing for their testimony and Judge Stolz did not bother to analyze the witnesses import to the lawsuit. If permitted to testify, these witnesses would have provided valuable testimony that would have provided critical context in relation to subsequent CPS investigations, including that which occurred in 2010. The jury should have been permitted to hear the Smith witnesses testify in relation to what they each told CPS in the past about the Hamrick home. Judge Stolz failed to follow clear appellate precedent, and the thoughtlessly excluded the Smith witnesses. Even after Judge Stolz excluded these witnesses and arbitrarily carved up the Hamrick Plaintiffs' case, the jury engaged in a full week of heated and debated deliberations. In a case of this nature, each piece of evidence counts, as does the appellate precedent that guides the trial courts. The law was disregarded in this respect. On this alone, and cumulatively, a new trial should be granted.

#### **IV. CONCLUSION**

Judge Stolz repeatedly failed to follow the law. At no point did it appear to the Hamrick Plaintiffs that Judge Stolz ever reviewed and/or attempted to apply or distinguish case law such as *Caulfield v. Kitsap County*. The Hamrick Plaintiffs were permitted to present an opening

statement and an entire trial premised upon the leading theory related to DSHS's assorted failures to conduct proper health and safety visits. At the end of the case, Judge Stolz whimsically dismissed this main portion of the case – and the credibility of the undersigned counsel along with it. Cumulative legal errors justify granting a new trial. *See In re Morris*, 288 P.3d 1140 (2012). In this regard, Judge Stolz compounded the primary error at issue by accepting a verdict form that was not consistent with Washington law and by also excluding two important witnesses without bothering to conduct a *Burnet v. Spokane Ambulance* analysis. Judge Stolz left the Hamrick Plaintiffs, and their legal counsel, with the impression that the law is optional in some courtrooms. Based upon the cumulative errors of Judge Stolz, the Hamrick Plaintiffs respectfully request a new trial.

DATED this 7th day of January, 2016.

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NO. 47438-7-II

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CERTIFICATE OF SERVICE

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The undersigned certifies under penalty of perjury under the laws of the state of Washington, that she is now, and at all times materials hereto, a citizen of the United States, a resident of the state of Washington, over the age of 18 years, not a party to, nor interested in the above entitled action, and competent to be a witness herein.

I caused to be served this date the following:

- Appellants' Reply Brief

in the manner indicated to the parties listed below:

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DATED this 7th day of January, 2016.

s/Marla H. Folsom  
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