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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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NINA L. MARTIN individually and as Personal Representative of the
ESTATE OF DONALD R. MARTIN, et al.

Petitioners,

vs.

DEMATIC dba/fka RAPISTAN, INC., MANNESMANN DEMATIC, and
SIEMEN DEMATIC; GENERAL CONSTRUCTION COMPANY;
WRIGHT SCHUCHART HARBOR COMPANY; FLETCHER
GENERAL, INC. and FLETCHER CONSTRUCTION COMPANY
NORTH AMERICA,

Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENTS FLETCHER
GENERAL, INC. AND FLETCHER CONSTRUCTION COMPANY OF
NORTH AMERICA

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I. INTRODUCTION

This case asks the Court to consider whether Petitioner Martin exercised due diligence to investigate and identify the allegedly correct corporate entities as defendants within the three-year statute of limitations for personal injury/wrongful death. The corporate identities and successor relationships were readily available from numerous public records, including the Secretary of State's corporate records and the *Seattle Times*.

Respondents Fletcher General, Inc. and Fletcher Construction Company North America contend that under *de novo* review: (1) the Martin family's claims expired under the three-year statute of limitations; (2) their claims against other entities, including General Construction dba/fka Wright Schuchart Harbor Company, did not toll the statute of limitations; and (3) the merger statute did not apply because the Martin family's claims were not "pending" at the time of any merger between General Construction and the Fletcher entities, as required by RCW 23B.11.060(1)(d). Similarly, under a manifest abuse of discretion standard: (1) Martin's first and second amended complaints adding the Respondents did not relate back to the Martin's original claim against Wright Schuchart Harbor Company under CR 15(c); and (2) Martin's

negligence in failing to timely add Respondents was not excusable. The Court of Appeals' decision should be affirmed.

II. STATEMENT OF THE CASE

On August 13, 2004, Appellant Donald Martin was fatally injured while working for his employer, Kimberly-Clark, at its paper products plant in Everett, Washington. (CP 618-24) In this industrial accident, he was leaning over a guardrail while a co-worker lowered the dipping conveyor on Tissue Machine #5 ("TM #5"). He was killed his body was not fully behind the guardrail. (CP 618; CP 748; CP 2018; CP 2086)

On June 29, 2007—barely within the three-year statute of limitations—the Martin family filed a products liability lawsuit naming seven corporate entities,¹ including "General Construction Company dba/fka Wright Schuchart Company." (CP 3576-85) The complaint did not name a "John Doe" or "ABC Corporation." Martin alleged that Defendant "General Construction Company dba/fka Wright Schuchart Company" was a commercial product manufacturer that "designed, manufactured, supplied, marketed, installed and/or sold under its corporate brand name and/or logo the dipping conveyor, chute and/or component parts of these products which caused Donald Martin's fatal injuries." (CP 3583)

¹ Some of these entities settled with Martin.

On July 24, 2007, General Construction tendered defense of Martin's claim to FCCNA. (CP 62-63) The letter states that "[o]ur investigation of the claim to date indicates that the subject equipment may have been installed sometime around 1980, *perhaps* by Wright Schuchart Harbor Company." (CP 62; emphasis added)) FCCNA forwarded General Construction's tender of defense with a November 28, 2007 cover letter to "Wright Schuchart Harbor" insurers. (CP 401-02)

On October 16, 2007, "General Construction filed its Answer and asserted a Third-Party Complaint against FCCNA² as a potentially liable party for breach of contract and indemnity. (CP 3543-51) It alleged that GC Investment Co. entered into a stock agreement to purchase the stock of General Construction Company from Fletcher General. (CP 3548) It also alleged that "at the time of the Stock Purchase Agreement, Wright Schuchart Harbor *Company* was owned by, related to and/or a predecessor entity to Fletcher General." (CP 3459 (emphasis added)) General Construction alleged that under the Stock Purchase Agreement, Fletcher General had a duty to defend and indemnify General Construction Company. (CP 3550)

² Fletcher General, Inc., among other entities, merged into Respondent FCCNA.

FCCNA's corporate records custodian confirmed in answers to interrogatories that "it appears that the TM #5 project was likely completed by the Wright Schuchart Harbor *Joint Venture*"—not the *Company*. (CP 425 (emphasis added)) FCCNA was never connected with the Joint Venture. FCCNA's record custodian also confirmed that "the entities which previously comprised Wright Schuchart Harbor Joint Venture had changed their names as necessary and were transferred to *Sprague Resources Corporation* as dividends by June 30, 1987 prior to the sale of Wright Schuchart, *Inc.* to Fletcher. Thus, these entities were not included in the sale of Wright Schuchart, *Inc.* to Fletcher in October 1987." (CP 426 (emphasis added)) Stated differently, "Wright Schuchart Harbor *Joint Venture*" has always been a separate and distinct corporate legal entity from Wright Schuchart *Inc.* or Wright Schuchart *Company*, and the Joint Venture was never acquired by any Fletcher entity.³

On January 22, 2010—almost six years after the accident and three years after General Construction filed a third-party complaint against FCCNA—Martin filed an amended complaint adding FCCNA as a defendant, and alleging that General Construction Company, Wright

³ To the extent that the *Joint Venture* is liable and any assets or insurance exist to cover Martin's claims, then Sprague Resources Corporation—who acquired the Joint Venture (which installed TM #5)—is the correct entity.

Schuchart Harbor Company, and FCCNA collectively installed, maintained, designed and/or manufactured the component parts on Tissue Machine #5. (CP 2402-08) FCCNA's Answer raised an affirmative defense that the statute of limitations had expired with respect to Martin's claims.⁴ (CP 2246)

On December 11, 2009, the trial court granted summary judgment dismissal to General Construction on the grounds that it was not a successor entity to "Wright Schuchart Harbor Company," and was therefore an improper party in this action. (CP 2436-40) Martin appealed, and the Court of Appeals affirmed the dismissal. Martin did not seek discretionary review of this decision in the Supreme Court. FCCNA's alleged liability to General Construction is now extinguished.

On November 23, 2010, FCCNA moved to dismiss Martin's lawsuit because it was filed after the three-year statute of limitations expired. On January 13, 2011, the trial court granted dismissal, ruling that the discovery rule did not apply, and even if it did apply, the Martin family

⁴ The Fletcher entities have not waived the defense that they are the wrong parties in this litigation. Accordingly, if the Supreme Court reverses and remands this case to the trial court, then FCCNA will move for dismissal based on evidence that (1) none of Fletcher entities installed TM #5, or purchased assets or assumed liabilities *of any entity* that did install TM #5; (2) the statute of repose bars Martin's claims; and (3) FCCNA is not a product seller or manufacturer.

did not exercise due diligence in identifying the correct parties—even after General Construction Company *specifically identified* FCCNA in its Answer and Third-Party Complaint in October 2007. (VRP 73:23-25 to 75:2; CP 3543-51)

Even though FCCNA was never the correct party with respect to Martin's claim (but was a corporate successor to General Construction and any alleged claims against Wright Schuchart *Company* or Wright Schuchart, *Inc.*), *public records* were readily available and on file and/or archived with the Washington Secretary of State when Martin filed the initial complaint on June 29, 2007. These public records demonstrate that the third party identified in General Construction's third-party complaint was ascertainable:

1. Articles of Incorporation of Wright Schuchart Inc., May 27, 1976; (CP 722-27)

2. Articles of Amendment Changing name of Wright Schuchart Inc. to Fletcher General Inc., dated March 1, 1993; (CP 729) and

3. Articles of Merger of Fletcher General Inc. to Fletcher Construction Company North America, filed March 29, 2001. (CP 731)

(CP 719-20; CP 731)

Additional public records were available, including a 1993 *Seattle Times* newspaper article, which explained in detail the corporate history of the various Wright Schuchart Harbor entities and Fletcher entities. (CP

733-34) For many years (or at least through 2011, when FCCNA moved for summary judgment) the on-line home page of co-defendant "General Construction Company dba/fka Wright Schuchart Harbor Company," contained the corporate history of Wright Schuchart. (CP 736-37)

The trial court found that the record was completely void of any evidence that Martin attempted to timely investigate, identify, and sue the Fletcher entities. "As I pointed out during argument, there is in fact no information about what plaintiffs actually did in order to ascertain the appropriate entities to sue." (VRP 74:24 to 75:2) Rather, the only thing before the trial court "is information that the defense has provided about what would be available in an internet search and from records from the Secretary of State's office." (VRP 75:5-8)

The trial court acknowledged that Martin certainly had the ability to ascertain the correct parties since they had established that General Construction Company had a corporate history "because they alleged that Wright Schuchart Harbor was doing business and was formerly known as General Construction, which would tend to suggest both past and present." (VRP 75:8-14)

Martin moved for reconsideration, explaining that General Construction Company's *unauthenticated* July 24, 2007 tender of defense and indemnity letter was evidence that FCCNA had "notice" of their

wrongful death claim, and accordingly FCCNA “knew that but for a mistake concerning the identity of the proper party” the original complaint would have named FCCNA as a defendant. (CP 53-54)

On March 9, 2011, the trial court, in a written order, denied Martin’s motion for reconsideration. The trial court ruled that Martin did not meet the CR 15(c) requirements for relation back of amendments and “the record in no way supports such a finding” that FCCNA could have known “before the statute of limitations ran that but for a mistake concerning identity it would have been named in the Original Complaint.” (CP 47)

The trial court acknowledged that FCCNA “claims that *it believes the work in question was not performed by a company that merged into FCCNA, but by a wholly separate entity, Wright Schuchart Harbor Joint Venture, whose assets and liabilities were never merged into any Fletcher entity.*” (CP 48 (emphasis added)) Thus, FCCNA would have no reason to know or believe that it could have been named or could be liable for any damages to Martin.

Finally, the trial court ruled that even if all of the requirements of CR 15(c) were met, “the Plaintiffs must demonstrate they exercised due diligence in investigating and identifying the proper defendants to the action in order to have the Amended Complaints naming new defendants

relate back.” (CP 48) The trial court concluded that the plaintiffs “have presented some evidence of why they might have been confused despite information in the public record from which the correct parties could be determined as demonstrated by the Fletcher Defendants, but have not presented any evidence of what investigation they actually performed, what information was revealed by that investigation, or why they did not name the Fletcher Defendants.” (CP 49) The Court of Appeals affirmed the trial court’s dismissal of both parties. *See Martin v. Dematic*, 178 Wn. App. 646, 315 P.3d 1126 (2013).

III. ARGUMENT WHY THE COURT OF APPEALS’ DECISION SHOULD BE AFFIRMED

A. The Standard of Review Is De Novo.

The appellate court reviews summary judgment decisions *de novo*, engaging in the same inquiry as the trial court, to determine if the moving party is entitled to summary judgment as a matter of law, and if there is any genuine issue of material fact requiring a trial. *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 794-95, 64 P.3d 22 (2003); *Green v. A.P.C.*, 136 Wn.2d 87, 94, 960 P.2d 912 (1998). Unsupported conclusional statements alone are insufficient to prove the existence or nonexistence of issues of fact. *Hash v. Children’s Orthopedic Hosp. &*

Medical Ctr., 49 Wn. App. 130, 741 P.2d 584 (1987), *aff'd*, 110 Wn.2d 912, 757 P.2d 507 (1988).

Likewise, a nonmoving party (Martin) attempting to resist a summary judgment “may not rely on speculation, argumentative assertions that unresolved factual matters remain,” rather “the nonmoving party must set forth specific facts that sufficiently rebut the moving party’s contentions and disclose that a genuine issue as to a material fact exists.” *Halvorsen v. Ferguson*, 46 Wn. App. 708, 721, 735 P.2d 675 (1986), *review denied* 108 Wn.2d 1008 (1987). An appellate court may affirm a trial court’s disposition of a summary judgment motion on any basis supported by the record. *Redding v. Virginia Mason Med. Ctr.*, 75 Wn. App. 424, 426, 878 P.2d 483 (1994).

B. The Standard of Review for Applying the Relation Back Doctrine Under CR 15(c) Is Manifest Abuse of Discretion.

“A determination of relation back under CR 15(c) rests within the trial court’s discretion and will not be disturbed on appeal absent manifest abuse of discretion.” *Foothills Dev. Co. v. Clark Cnty.*, 46 Wn. App. 369, 374, 730 P.2d 1369 (1986), *review denied* 108 Wn.2d 1004 (1987). Accordingly, the “burden of proof is on the party seeking to have an amendment relate back to the original action.” *Foothills*, 46 Wn. App. at 375. The moving party also has the burden of proving that any mistake in

failing to amend in a timely fashion was excusable. *Foothills*, 46 Wn. App. at 375; *see also Teller v. APM Terminals Pac.*, 134 Wn. App. 696, 705-706, 142 P.3d 179 (2006).

C. The Standard of Review for Motions for Reconsideration Is Abuse of Discretion.

Denials of motions for reconsideration are reviewed for abuse of discretion. *Brinnon Group v. Jefferson Cty.*, 159 Wn. App. 446, 485, 245 P.3d 789 (2011). Martin submitted an unauthenticated document with its motion for reconsideration, which the trial court denied and the Court of Appeals affirmed. The document was available to Martin and could have been included and relied upon when he filed his response to FCCNA's motion for summary judgment.

D. The Three-Year Statute of Limitation Precludes Martin's Claim Against FCCNA.

Actions for personal injury in Washington are subject to a three-year statute of limitations. RCW 4.16.080(2). Here, Donald Martin died on August 13, 2004. Accordingly, his family's wrongful death claims expired on August 13, 2007. However, Martin did not obtain leave from the trial court to add FCCNA as a defendant until January 15, 2010, nor did the order contain language allowing the amended complaint to relate back to its original filing. (CP 2409-10) The Court of Appeals correctly held that "the statute of limitations bars the Martins' claims against

FCCNA.” *Martin v. Dematic*, 178 Wn. App. 646, 667, 315 P.3d 1126 (2013), *review granted* by Order on April 30, 2014.

E. The “Discovery Rule” Does Not Apply.

The Supreme Court held in *In re Estates of Hibbard*, 118 Wn.2d 737, 749-50, 826 P.2d 690 (1992) that the discovery rule applies only to claims “in which the plaintiffs could not have immediately known of their injuries due to professional malpractice, occupational diseases, self-reporting or concealment of the information by the defendant” and to “claims in which plaintiffs could not immediately know of the cause of their injuries.”

Martin’s allegations do not fall within these parameters. Here, Martin was killed in a work-related industrial injury when crushed by a machine he had worked around for several years. He did not die from an occupational disease and it has not been alleged that any information concerning the cause of his death has been concealed.

The product liability discovery rule only applies to manufacturers and sellers of products that will be introduced into the stream of commerce. RCW 7.72.010(3). Martin proffered no evidence that FCCNA manufactured or sold the conveyor or platform or any other equipment at issue here, therefore the discovery rule does not apply. *See* RCW 7.72.010(3); *Garza v. McCain Foods, Inc.*, 124 Wn. App. 908, 103 P.3d

848 (2004); *Graham v. Concord Const.*, 100 Wn. App. 851, 856, 999 P.2d 1264 (2000). Moreover, the unnamed entity that likely installed TM #5 (Wright Schuchart Harbor *Joint Venture*) was an equipment installer, not a product seller or manufacturer. Similarly, there is no evidence in the record that Wright Schuchart Harbor *Company* was a seller or manufacturer.

Even if the product liability discovery rule applied, Martin did not exercise diligence in determining the identity of FCCNA, even though it was and still is the wrong party. After General Construction asserted a third-party complaint against FCCNA on October 19, 2007, Martin waited until January 20, 2010, to add FCCNA as a party. A plaintiff must exercise reasonable diligence to learn the identity of the defendants in order to invoke the discovery rule. *Orear v. Int'l Paint Co.*, 59 Wn. App. 249, 257, 796 P.2d 759 (1990), *review denied* 116 Wn.2d 1024 (1991).

When a plaintiff invokes the discovery rule to counter the statute of limitations defense, it is the plaintiff's burden to show that facts constituting the cause of action were not discovered or could not have been discovered by due diligence within the limitations period. *Giraud v. Quincy Farm and Chem.*, 102 Wn. App. 443, 449-50, 6 P.3d 104 (2000), *review denied* 143 Wn.2d 1005 (2001) ("to invoke the discovery rule, the plaintiff must show that he or she could not have discovered the relevant

facts earlier.”). Here, public records were readily available with the Secretary of State’s office from 2004 to 2007—and were available as late as November 23, 2011, which FCCNA produced them from public records in its motion for summary judgment.⁵

Orear was premised on a products liability claim “where the connection between the plaintiff’s latent injury and the allegedly defective product was difficult to trace.” *Orear*, 59 Wn. App. at 256. Unlike *Orear*, Martin did not sustain a latent injury, and the connection between his fatal injury and the allegedly defective product was clear.

Orear diligently tried to identify the product manufacturer through interrogatories to the party that actually possessed the products in a parallel administrative law proceeding. However, that case and all discovery was essentially stayed for two years. *Orear*, 59 Wn. App. 250-51. Here, FCCNA’s identity as a successor to General Construction was a matter of public record when Martin filed the lawsuit on June 29, 2007.

⁵ Martin contends that the Court of Appeals “is simply wrong” and that FCCNA’s identify was not a matter of public record. However, General Construction’s website (as of November 23, 2011, when summary judgment was granted to Fletcher) explicitly states that Wright Schuchart Harbor, Co. (WSH) was the industrial division of WSI (Wright Schuchart, Inc.); in 1987 Fletcher Challenge acquired the Wright Schuchart companies; and General and WSH were combined into one company under the name Fletcher General. (CP 736-37) Website information and the algorithms of internet searches change, but FCCNA demonstrated what was available from 2004 to 2011.

This case does not conflict with *Orear*, and is factually closer to *In re Estates of Hibbard*.

F. Fletcher Was Not Identified With “Reasonable Particularity” to Toll the Statute of Limitations.

When Courts are asked to analyze whether an unnamed defendant can be added after the expiration of the statute of limitations, two arguments commonly arise: (1) whether the tolling statute, RCW 4.16.170, applies; and (2) whether the relation back doctrine under CR 15(c) applies. When approaching these issues, the Courts must analyze both arguments. In *Bresina v. Ace Paving Co.*, 89 Wn. App. 277, 948 P.2d 870 (1997), *review denied* 135 Wn.2d 1010 (1998), the plaintiff conceded the added unnamed party did not relate back to the original complaint.

Although the Supreme Court in *Sidis v. Brodie/Dohrmann, Inc.*, 117 Wn.2d 325, 815 P.2d 781 (1991) did not rule on the application of RCW 4.16.170 to unnamed defendants, the *Bresina* Court applied the Supreme Court’s comment regarding “reasonable particularity” as law to the fact pattern where an unnamed defendant was added and served after expiration of the statute of limitations. *Bresina*, 89 Wn. App. at 281-82. The *Bresina* Court acknowledged that many factors contribute to whether an unnamed party is identified with reasonable particularity. *Id.* at 282. However, the *only* factor considered by the Court was the opportunity to

discover the defendant "...[A] major factor is the nature of the plaintiff's opportunity to identify and accurately name the unnamed defendant[.]" *Id.* at 282. If the Court were to apply *Sidis*'s "reasonable particularity" rule as stated and relied upon in *Bresina*, then there is no question that Martin had ample opportunity to identify FCCNA during the three years that the statute of limitations applied to the claim.

In *Iwai v. State*, 76 Wn. App. 308, 884 P.2d 936 (1994), *aff'd on other grounds*, 129 Wn.2d 84 (1996), the Court of Appeals affirmed the trial court's ruling dismissing an unnamed lessee to State land added after the statute of limitations had run. The Court observed that if the plaintiff had performed a simple title search on the property at issue, she would have discovered that it was owned by the State, and thus plaintiff would have been able to identify the lessee that caused her damages before the statute had run. *Iwai*, 76 Wn. App. at 313-14.

Similarly, in *Powers v. W.B. Mobile Services*, 177 Wn. App. 208, 311 P.3d 58 (2013), the plaintiffs named a "John Doe Construction Company," as a "place holder" and alleged that the unidentified construction company built the ramp on which the injury occurred. The Court of Appeals held that this was sufficiently "particular" to toll the statute of limitations while plaintiffs discerned the real identify of "John Doe Construction Company." Here, Martin never identified, named, or

described FCCNA—with “reasonable particularity”—or otherwise in the initial complaint.

In sum, the Court of Appeals correctly interpreted and applied *Sidis* (including its dictum), holding that RCW 4.16.170 did not toll the statute of limitations against FCCNA since: (a) FCCNA was an *unnamed* defendant; and (b) FCCNA was never identified—much less with “reasonable particularity” until six years after the injury.

G. The Relation Back Doctrine Does Not Apply Because Martin Did Not Meet the Requirements of CR 15(c).

CR 15(c) states that “[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.” Notably, “[a] determination of relation back under CR 15(c) rests within the trial court’s discretion and will not be disturbed on appeal absent manifest abuse of discretion.” *Foothills Dev. Co.*, 46 Wn. App. at 374.

The burden of proof is on the party seeking to have an amendment relate back to the original action. *Teller*, 134 Wn. App. at 705. However, “when an amended complaint adds or substitutes a new party, the amended complaint relates back to the date of the original complaint *if the party seeking to amend proves that it has satisfied three*

conditions.” *Martin*, 178 Wn. App. at 664 (emphasis added) (citing *Segaline v. Dep’t of Labor & Indus.*, 169 Wn.2d 467, 476-77, 238 P.3d 1107 (2010)).

The three conditions are: (1) the new party received notice of the institution of the action so that he or she will not be prejudiced in making a defense on the merits; (2) the new party knew or should have known that but for a mistake concerning the proper party’s identity, the plaintiff would have brought the action against it; and (3) the plaintiff’s delay in adding the new party was not due to inexcusable neglect. *Segaline*, 169 Wn.2d at 477. The Supreme Court explained that “[a]dding a new party requires a showing that it was not due to ‘inexcusable neglect’ because amendment of a complaint is not intended to serve as a mechanism to circumvent or extend the statute of limitations.” *Id.* at 477 n.9. “Inexcusable neglect exists when no reason for the initial failure to name the party appears in the record.” *Id.* at 477. Inexcusable neglect also “includes delay due to a ‘conscious decision, strategic or tactic.’” *Id.*

First, on July 24, 2007, FCCNA had “notice” of Martin’s lawsuit because General Construction tendered defense to it. FCCNA had alleged duties to defend and indemnify General Construction under the Stock Purchase Agreement. However, notice to FCCNA was never notice to the *Joint Venture* because it never merged with FCCNA. The only notice to

FCCNA is that the letter contends that “perhaps” the “subject equipment was installed by Wright Schuchart Harbor Company.”

Second, Martin fails to present any evidence that FCCNA knew or should have known that but for a mistake, it would have been named in the initial complaint. Wright Schuchart Harbor Joint Venture, whose assets and liabilities never merged with any Fletcher entity, performed the work at issue. *Martin*, 178 Wn. App. at 666. By 2007, FCCNA was a dissolved entity (CP 2861-62; *Id.*), so it had no reason to know that it should have been named in the initial complaint or that it might be liable to Martin. FCCNA’s alleged liability was solely to General Construction.

Third, even if Martin met the first two conditions, Martin fails to demonstrate “excusable neglect.” Martin “provided no evidence of actions that they took to determine the correct parties before the statute of limitations expired or what information any investigation revealed.” *Martin*, 178 Wn. App. at 666-67. The Supreme Court has consistently found inexcusable neglect when the party seeking to amend did not know the additional party’s identity, but could have discovered it from public records. *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 174-75, 744 P.2d 1032, 750 P.2d 254 (1987) *appeal dismissed sub nom. Am. Express Travel Related Servs. Co. v. Wash. Pub. Power Supply Sys.*, 488 U.S. 805(1988) (holding it was no excuse where omitted parties’

identity was available from a variety of public sources); *Tellinghuisen v. King Cnty. Council*, 103 Wn.2d 221, 224, 691 P.2d 575 (1984) (holding it was no excuse where omitted parties' identity was a matter of public record); *S. Hollywood Hills Citizens Ass'n v. King Cnty.*, 101 Wn.2d 68, 77-78, 677 P.2d 114 (1984) (holding that "inexcusable neglect exists when no reason for initial failure to name the party appears in the record"); *Teller*, 134 Wn. App. at 706-07 ("If the parties are apparent, or are ascertainable upon reasonable investigation, the failure to name them will be inexcusable.")

IV. CONCLUSION

For the foregoing reasons, FCCNA respectfully requests that the Supreme Court affirm the Court of Appeals.

Dated this 6 day of June, 2014.

Respectfully submitted,

FLOYD, PFLUEGER & RINGER, P.S.

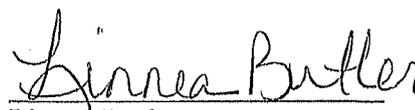
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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the 6th day of June, 2014, I caused to be served a true and correct copy of the foregoing via email and U.S. mail, postage prepaid and addressed to the following:

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Linnea Butler
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Legal Assistant

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Case Name – Nina L. Martin v. Dematic dba/fka Rapistan, Inc., et al.,
Case Number – 89924-0
Amber L. Pearce, (206) 441-4455, WSBA No. 31626, apearce@floyd-ringer.com

Thank you.

Linnea B. Butler
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