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NO. 73225-1-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

ANNA CHESTER,

Appellant,

vs.

DEEP ROOTS ALDERWOOD, LLC, a Washington company, and
BONNIE GILLSON,

Respondents.

**BRIEF OF RESPONDENT
DEEP ROOTS ALDERWOOD, LLC**

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I. INTRODUCTION

Respondent tattoo artist Bonnie Gillson (“Gillson”) tattooed Appellant Anna Chester (“Chester”) at this Respondent’s tattoo parlor, Deep Roots Alderwood, LLC (“Deep Roots”). For purposes of this appeal, Deep Roots concedes that a bottle of tattoo ink was contaminated with microscopic bacteria sometime during the manufacturing process before Gillson ever even opened it, and that the ink was used in Chester’s tattoo.

Chester asks this Court to conclude that Washington’s comprehensive tattooing regulations, and the statutes on which they are based, have a silent, implied requirement for “sterile”¹ tattoo ink. She claims that Gillson and Deep Roots violated this purported requirement and that negligence per se applies, a proposition that the trial court properly rejected.²

Chester’s position is untenable and unsupported. The Department of Health (the “Department”), which developed the regulations, is

¹ As discussed in more detail, “sterile” ink is devoid of microbial life and bacteria spores.

² Gillson is an independent contractor, but Deep Roots did not move for summary judgment dismissal based on the legal implications of that status, nor did the trial court decide that issue. CP 135, 420, 477. Thus, the Court should strike Section “G”, page 24, of Chester’s brief as to Deep Roots’ alleged duties.

intimately familiar with sterility and sterilization in the body art industry, frequently and specifically using the terms “presterilized”, “sterile”, and “sterilization” to refer to tattoo instruments, needles, and jewelry. Tattoo ink is glaringly absent from the sterilization and sterility requirements. The statutes and regulations are clear and unambiguous. If the State Legislature, or the Department, intended for a tattooist in Washington to use only sterile ink, it would have explicitly said so.

Chester further asks this Court to designate the tattoo artist as the guarantor of sterility. She asserts that if there is any contamination, even if the tattoo artist is not the source of the contamination and could not have guarded against it, liability under the statutes and regulations attaches. Such a conclusion is contradictory to basic negligence principles of ordinary and reasonable care.

Considering (1) the absence of any statutory or regulatory requirement that Gillson use sterile ink, (2) the lack of evidence that the standard of care for a tattoo artist is to use sterile ink, and (3) the lack of evidence that a reasonable tattooist would have known, or should have known, that the bottle of tattoo ink was contaminated with microscopic bacteria during its manufacture, the trial court properly granted Deep Roots’ Motion for Summary Judgment. Gillson owed no duty to Chester to use sterile ink and did not breach any legislative or common law

standard of conduct. The Court should affirm the trial court's evidentiary order regarding the inadmissible legal conclusions and unfounded opinions of Warren Dinges, M.D., Ph.D., and the order dismissing Gillson and Deep Roots from the case.

II. RESPONSE TO APPELLANT'S ASSIGNMENTS OF ERROR

A. Response

1.-2. Deep Roots assigns no error to the trial court's ruling granting summary judgment and dismissing Gillson and Deep Roots.

3. Deep Roots assigns no error to the trial court's ruling striking and rejecting portions of the Second Declaration of Dr. Dinges.

B. Issues Pertaining to Assignments of Error

1. The Washington Legislature and Department of Health have enacted thorough statutes and regulations regarding the practice and procedure of tattooing in Washington, including various requirements for sterility. The Legislature has provided for negligence per se for violations of these requirements. There is no duty for a tattooist to use "sterile" ink, only that the ink "not be banned or restricted by the FDA" or "mixed with improper ingredients." WAC 246-145-050(18). If the Legislature and Department had intended that a tattoo artist must use "sterile" ink in a

tattooing procedure, would they have so written? (Appellant's Assignment of Error 2.)

a. In one of its many definitions, the Legislature defined "tattooing" as ". . . the indelible mark, figure, or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin. . . ." RCW 70.54.330(4). If the Legislature had intended that this definition create a standard of conduct to use "sterile" ink, would it have specifically said so? (Appellant's Assignment of Error 2.b.)

b. Does a tattooist meet Washington's requirement that she use "sterile instruments and aseptic techniques at all times during a procedure" under WAC 246-145-050(1) when she complies with the comprehensive and specific regulatory scheme's requirements for the sterilization of instruments and aseptic technique during the procedure, but, unbeknownst to her, uses ink that was contaminated with microscopic bacteria during its manufacture? (Appellant's Assignment of Error 2.a.)

4. Are a witness's interpretation of tattooing regulations inadmissible legal conclusions, and are his opinions regarding sterile ink properly disregarded when they are lacking in foundation? (Appellant's Assignment of Error 4.)

5. Where there is no statutory or administrative requirement for sterile tattoo ink, and there is no evidence that sterile tattoo ink is the industry standard, does a tattoo artist exercise reasonable care when she uses tattoo ink that is not sterile. (Appellant's Assignment of Error 1.)

6. Deep Roots' denial of vicarious liability for Gillson's actions was not a basis for the underlying summary judgment. Where facts and argument regarding a tattoo shop's lack of a right to control an independent contractor tattoo artist were not presented to the trial court, and were not decided by the trial court, should the Court refuse to decide the issue for the first time on appeal? (Appellant's Assignment of Error 3.)

III. COUNTERSTATEMENT OF THE CASE

A. **Gillson Is an Experienced, Licensed Tattoo Artist Who Followed Aseptic Procedure and Sterilization Processes in Chester's Tattoo.**

Gillson first became a licensed tattoo artist in approximately 2008, after she completed an apprenticeship, including formal education, at a tattoo shop certified through the State of Oregon. CP 200-01. She became a licensed tattoo artist in Oregon, which required passing a state test. *Id.* When she moved to Washington in 2010, she became a licensed Washington tattoo artist and became "absolutely familiar" with its tattoo regulations. CP 151, 208.

On September 13, 2011, Gillson tattooed Chester at Deep Roots. CP 202, 455. Among other steps, Gillson prepared her workplace by disinfecting surfaces, disinfecting Chester's skin, and using barriers. CP 209-10, 212.

Gillson's tattooing process included the use of presterilized, individually packaged, dated, and single use tattoo needles. CP 206. Gillson used multiuse metal tattoo tubes (tattoo instruments) and put them through a four-part sterilization process involving a hand scrub, an enzymatic soak and ultra-sonic, another hand scrub, and an autoclave³ process. CP 206, 211. As opposed to presterilization, the autoclave process allows the body art artist to sterilize instruments and jewelry directly. CP 227. The sealed package of instruments changes color to signify a successful cycle in the autoclave. CP 212. Additional measures for sterility included weekly spore tests to ensure that the chamber was free of microorganisms. CP 228.

³ An "autoclave" is "an apparatus in which special conditions (such as high or low pressure or temperature) can be established for a variety of applications; *especially*: an airtight chamber that can be filled with steam under pressure or surrounded by another chamber for the steam that is used for sterilizing, cooking or other purposes requiring moist or dry temperatures above 212° F without boiling." MERRIAM-WEBSTER UNABRIDGED (2015).

Ink is sold in multiuse bottles with twist-off caps. CP 212, 234. Gillson poured the ink for Chester's tattoo out of the manufacturers' bottles and into single use ink cups. CP 205, 212. Liquids cannot be sterilized through an autoclave. CP 227.

To apply the tattoo, Gillson dipped clusters of three to fourteen solid needles (depending on the size of the line) into the ink in the ink cup. CP 205. The metal tubes held a small reservoir of ink. *Id.* The needles poked holes into the skin, and the ink fell under the skin. *Id.*

B. Gillson Purchased "One" Brand Tattoo Ink From a Reputable Seller and Had Been Using the Ink Successfully for Over a Year.

Gillson used "One" brand black tattoo ink for parts of Chester's tattoo. CP 449. It is undisputed that the One ink did not become contaminated, impure, or defective during the tattooing procedure. Rather, Chester asserts that a bottle of One ink was contaminated with microscopic bacteria during its manufacture before it was ever even opened by Gillson. App. Br. p. 1; CP 502-04. At issue is the fourth bottle of One ink in a five-pack.⁴ CP 233.

⁴ As it must on summary judgment and this appeal, Deep Roots concedes that the ink infected Chester. It vehemently denies Chester's claims regarding causation and damages, but they are irrelevant to the issues at hand.

It is also undisputed that Gillson had been tattooing customers with One brand tattoo ink for about a year and a half prior to Chester's tattoo with no trouble. CP 450-51. "One" brand tattoo ink had been highly recommended. CP 233. She had selected and purchased One tattoo ink from supplier and co-defendant Kingpin Tattoo Supply ("Kingpin").⁵ CP 452. Kingpin is a large distributor of tattoo ink and supplies from which Gillson purchased various tattoo supplies. CP 215, CP 260-351. Gillson knew the ink was tattoo ink, had obtained the Material Data Safety Sheet for the ink, and knew Kingpin to be a reputable seller. CP 214, 217, 233.

It is likewise undisputed that Gillson was unaware of any complaints, dangers, hazards, or bases for concern regarding One brand tattoo ink prior to performing Chester's tattoo. CP 460. Gillson believed the ink was safe for tattoos, as it was marketed and sold as tattoo ink, explaining, "I do believe that by selling it as tattoo ink, they are claiming that it is safe for use in tattoos. That is its – its intended purpose." CP 450.

Indeed, there is no evidence that Gillson (or Deep Roots) knew or should have known of any One brand tattoo ink reactions prior to

⁵ Chester's claims against co-defendants Kingpin and Papillon Studio Supply & Manufacturing, Inc., the manufacturer(s)/distributor(s) of the One ink and/or its pigment, are still pending in the trial court.

Chester's tattoo. Prior to Chester's tattoo, Gillson had never had a customer contaminated with bacteria from tattoo ink, nor had she heard of it happening to anyone else. CP 234. Kingpin did not inform Gillson or Deep Roots of a "small number of Kingpin customer communications regarding alleged reactions by some of these customers' clients that was supposedly related to 'One' ink." CP 463. Nor is there any evidence that such information was publicized by Kingpin in any way.

C. Dr. Dinges Provides an Inadmissible Legal Conclusion When He Interprets WAC 246-145-050(1), and Further Fails to Provide Adequate Foundation to Opine That Sterile Ink Is Required for a Tattoo.

Given the above lack of evidence that Gillson knew or should have known the One ink was contaminated, Chester instead relies on the Second Declaration of Dr. Dinges, her treating provider and an infectious disease medical doctor with no experience, education, or training for performing tattoos or developing or following tattoo standards, policies, and procedures, to interpret WAC 246-145-050(1) and opine as to tattoo sterility requirements. CP 366-70. WAC 246-145-050(1), which governs universal precautions for tattooing, reads, "Use sterile instruments and aseptic techniques at all times during a procedure."

The crux of Dr. Dinges's interpretation and opinion is that:

Regardless of the credentials of the person performing the injection, the requirement to "use sterile instruments . . . at

all times during a procedure” seems unambiguous to me. The only meaning that I can attach to that rule is that, if a tattoo artist inserts into a customer, by way of an instrument, understood to be a needle used to penetrate the surface of the skin, ink that is contaminated with bacteria, then clearly “sterile instruments” were not used at all times during the procedure because the instrument, meaning the instrument used to penetrate the customer’s skin, was contaminated with bacteria.

...

In my opinion the absolute minimum that is required for a tattoo artist to be able to claim the use of sterile instruments and aseptic technique at all times during the procedure is that the artist only use ink that is in fact sterile. In this case, the artist did not use ink that was in fact sterile because the black ink in Ms. Chester’s tattoo was contaminated with bacteria.

To ensure sterile instruments and aseptic technique throughout the procedure, the procedure has to start with sterile tattoo ink.

CP 370.

Dr. Dinges assigns meaning to the words in the regulation and attempts to discern the Department’s intent. As discussed below, Dr. Dinges cannot do so.

Additionally, Dr. Dinges did not demonstrate any specialized knowledge or understanding of tattooing procedures and application, tattooing instruments, or the manufacturing, marketing, and sale of tattoo

ink that would allow him to make his opinion.⁶ *See generally* CP 366-370. Instead, Dr. Dinges makes contradictory and unsupported comparisons to the medical field's sterility procedures. For example, he states that what:

[using] sterile instruments and aseptic techniques at all times during a procedures . . . means for me in part is that the substance that I intend to inject comes to my office in a sealed vial with a sterile stopper on it. The liquid is withdrawn by using a sterile syringe to pierce the stopper on the vial. Sometimes the vial contains a single-dose volume and sometimes a multi-dose volume. If multiple, each dose is withdrawn from the vial with a single use sterile syringe.

CP 369.

Dr. Dinges did not provide any evidence that (1) any tattoo inks are manufactured, marketed, or sold like sterile medication (i.e. in a sealed vial with a sterile stopper), (2) tattooists use this procedure, or (3) tattoo needles and instruments would effectively work with such a set-up.

As another example, Dr. Dinges discusses gamma irradiation treatment, asserting it would effectively sterilize tattoo ink before being shipped to artists and shops. CP 369. Although he states that he is "familiar with the use of gamma irradiation as a sterilizing treatment for

⁶ Dr. Dinges's lack of understanding of tattooing procedures and regulations is demonstrated by his reference to a needle coming out of an autoclave. CP 370. A needle must be presterilized. WAC 246-145-050(2).

medical devices”, he does not demonstrate that he is familiar with its use, prevalence, development, or effectiveness in the tattooing industry. CP 368. Instead, Dr. Dinges simply cites a single purported Certificate of Processing for “gamma treatment” for “Intenze” brand tattoo ink. CP 368, 85.

D. There Is No Evidence That Sterile Ink Was the Industry Standard for Tattoo Artists, That Tattoo Artists Can Verify Sterility, or That Tattoo Artists Can Sterilize Ink.

Unlike instruments that Gillson herself can sterilize via an autoclave, there is no evidence that Gillson could have done anything to sterilize or decontaminate the ink. To that end, Gillson could not know if ink is sterile, or if it is contaminated. CP 213.

Furthermore, Chester submits no evidence that a tattoo artist can verify that ink is “in fact” sterile, one of Dr. Dinges’s “requirements” for tattoos. *See* CP 370. She submits evidence that “Intenze” brand tattoo ink represented itself to be “sterile” ink on its website.⁷ CP 359. Ironically, in an article that Dr. Dinges relies upon from the European Academy of Dermatology and Venereology and published after Chester was tattooed,

⁷ Intenze only represented itself as “TESTED IN THE LAB · PROVEN IN THE SKIN” on Kingpin’s website. CP 308. In May 2011, Intenze represented on its own website, “In an unregulated industry, we are the world’s first and only ink company taking the necessary measures to guarantee our consumers a safe and positive outcome.” CP 359.

“3 of the 24 inks claiming sterility were, nevertheless, contaminated with bacteria”, including Intenze True Black.⁸ CP 378, 382.

Finally, utterly missing from Chester’s discussion of sterile tattoo ink⁹ is any evidence that the industry standard was to purchase ink that was presterilized or marketed as sterile, and that the failure to do so was below the standard of care. All Chester has established is that one brand of ink purporting to be sterile was available in the United States at the time of Chester’s tattoo.

⁸ The article makes it clear that Intenze True Black was claiming sterility yet still tested positive for bacteria. CP 379-80. Indeed, of all the inks (whether claiming sterility or not) tested in the subject article, Intenze True Black had more bacterial colonies than any other ink tested. CP 378-80. Even worse, Intenze may have unsafe chemical contaminants, at least by European standards. In June 2014, the European Union recalled nine tattoo ink products, three of which were Intenze brand inks, because they contained a “chemical compound (phenylenediamines) and/or higher than permitted levels of trace metal contaminants.” CP 166-67.

Chester argues that Intenze’s bacterial growth, as reported in the article, should be disregarded because the ink was purchased in February 2010, about 15 months before Chester was tattooed. App. Br. 6 n.3. However, Chester relies upon purported gamma treatment for Intenze ink in December 2009 – 17 months before Chester was tattooed. App. Br. p. 7; CP 385.

⁹ In March 2012, One brand ink improperly advertised on its website that it was “sterilized and laboratory tested”. CP 164. One ink underwent bio-burden reduction gamma treatment, not sterilization gamma treatment. *Id.* Dr. Dinges does not discuss the types of gamma treatment, and the certificate for Intenze simply states “gamma treatment”. CP 385.

E. Procedural History

Chester amended her initial complaint to add Deep Roots and Gillson on February 14, 2014. CP 534-42. Chester asserted product liability and negligence claims against Deep Roots and Gillson. *Id.*

On November 7, 2014, Deep Roots and Gillson moved for summary judgment for dismissal of the claims against them given the lack of evidence of their liability.¹⁰ CP 431-34, 473-85. Deep Roots did not move for summary judgment on its defense of an independent contractor relationship with Gillson.¹¹ CP 135, 420, 477. Chester conceded dismissal of her product liability claims, but, in reliance upon Dr. Dinges, asserted that Gillson and Deep Roots violated Washington's statutory and regulatory scheme for the tattoo industry. CP 398-425.

On January 9, 2015, the Superior Court of Snohomish County, the Honorable Linda C. Krese presiding, granted Deep Roots' Motion for Summary Judgment, holding that Chester could not show the essential elements of negligence because there is no legislative, administrative, or

¹⁰ By the time Deep Roots brought its Motion for Summary Judgment, additional defendants had been brought into the suit, and they were also the subject of the Motion. CP 484-85. Chester does not appeal the Court's dismissal of the claims against Deep Roots Tattoo & Body Modification, Inc., Katrina Wickersham, and Ryan Wickersham. CP 2.

¹¹ Chester's characterization of the Wickershams as being uninformed at page 9 of her brief is wildly inaccurate. *See generally* CP 221-30, 39.

common law duty to use sterile ink, Gillson complied with all statutory and regulatory requirements, and there is no evidence that Gillson knew or should have known that the ink was contaminated. CP 5-9. The trial court also struck one portion of Dr. Dinges's Declaration as an improper legal conclusion, and only considered another portion as being germane to the medical field, not tattooing field.¹² CP 15-21.

The trial court's January 9, 2015 and March 9, 2015 Orders are the subject of Chester's appeal.

IV. ARGUMENT

A. Summary of the Argument

Chester's appeal arises out of an obvious misinterpretation of Washington's statutory and regulatory scheme for tattoo artists. The Legislature tasked the Department to evaluate industry standards and adopt rules for tattooing procedures. Unlike the requirements to use presterilized needles and to sterilize instruments, there is clearly and unambiguously no requirement that a tattooist use sterile ink. Furthermore, there is an utter lack of evidence that it is the industry standard for a tattoo artist to only use sterile ink, and that a tattooist who does not act unreasonably.

¹² The oral ruling was not commemorated in writing until a March 9, 2015 Order.

Because neither the statutes and regulations, nor industry standards, call for the use of sterile ink, Chester, with Dr. Dinges's inadmissible assistance, attempts to rewrite the statutes and regulations to add this nonexistent requirement into RCW 70.54.330(4) (2001), which defines tattooing as the insertion of "nontoxic dyes or pigments", and WAC 246-145-050(1) (2010), which orders the use of "sterile instruments and aseptic techniques at all times during a procedure". However, statutory interpretation of both of these provisions still leads to only one reasonable conclusion: neither provision requires sterile ink.

Moreover, Chester strains negligence per se principles to argue that Gillson is the guarantor of Chester's safety. However, because sterile ink is not required, if Gillson's use of contaminated ink was a violation of any statute or regulation, she is still not liable. That is, she did not know, and could not have reasonably known, that the bottle of One ink was contaminated with microscopic bacteria during the manufacturing process before she ever even opened the container.

The adoption of Chester's position would be a significant departure from well-established negligence and product liability principles. It would make every tattooist an insurer of safety, and significantly alter the existing regulations. In effect, it would also weaken product liability laws that rightfully place responsibility for errors in

manufacturing on manufacturers. To avoid this result, and to carry out the Legislature's and Department's intent, the Court should affirm the trial court's order dismissing Chester's claims against Gillson and Deep Roots.¹³ The Court should decline to consider the effect of Gillson's independent contractor status, as it was neither argued to nor decided by the trial court.

B. The Purpose of Statutory Interpretation Is To Carry Out Legislative and Administrative Intent.

Chester asks the Court to interpret various statutes and regulations regarding tattooing. In so doing, the Court's "fundamental objective" is to carry out the Legislature's intent. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010).

Statutory interpretation begins with the statute's plain meaning. Plain meaning "is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *State v. Engel*, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009). While we look to the broader statutory context for guidance, we "must not add words where the legislature has chosen not to include them," and we "must construe statutes such that all of the language is given effect." *Rest. Dev., Inc. v. Canawill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). If the statute is unambiguous after a review of the plain meaning, the court's inquiry is at an end. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). But if the statute is ambiguous, "this court may look to the legislative history of the statute and the circumstances

¹³ Deep Roots agrees that the proper standard of review is *de novo*.

surrounding its enactment to determine legislative intent.”
Rest. Dev., 150 Wn.2d at 682.

Lake, 169 Wn.2d at 526-27.

Plain meaning may be determined by logical interpretations of grammar and dictionary definitions of non-technical statutory terms. *Jewels v. City of Bellingham*, 2015 Wash. LEXIS 691 at *10 (Wash. Supreme Court No. 90319-1, June 11, 2015); *State v. Kintz*, 169 Wn.2d 537, 548, 238 P.3d 470 (2010). Statutory interpretation is a question of law. *Jewels*, 2015 Wash. LEXIS at *6. Rules of statutory interpretation apply equally to administrative regulations and require “a rational, sensible construction.” *Children’s Hosp. v. Dep’t of Health*, 95 Wn. App. 858, 864, 975 P.2d 567 (1999) (citation omitted).

As discussed in more detail below, Washington’s statutory and regulatory tattooing scheme is susceptible to only one interpretation: sterile tattoo ink is not required. The Legislature tasked the Department with implementing sterilization requirements, and the Department imposed no sterilization requirement on ink.

C. **RCW 5.40.050 Requires Compliance With Washington’s Statutory and Regulatory Body Art Scheme.**

RCW 5.40.050 (2009) provides, in relevant part, that “any breach of duty as provided by statute, ordinance, or administrative rule relating to: . . . (3) sterilization of needles and instruments used by persons

engaged in the practice of body art, body piercing, tattooing, or electrology, or other precaution against the spread of disease, as required under RCW 70.54.350 . . . shall be considered negligence per se.”¹⁴ RCW 5.40.050 makes it plaintively clear that in order for negligence per se to apply, the statute, ordinance, or administrative rule must first set forth a duty, and there must be a breach of that duty.

The Legislature ordered, in a statute titled: “Electrology, body art, body piercing, and tattooing – Rules, sterilization requirements”:

The secretary of health shall adopt by rule requirements, in accordance with nationally recognized professional standards, for precautions against the spread of disease, including the sterilization of needles and other instruments, including sharps and jewelry, employed by electrologists, persons engaged in the practice of body art, body piercing, and tattoo artists. The secretary shall consider the standard precautions for infection control, as recommended by the United States centers for disease control [CDC], and guidelines for infection control, as recommended by national industry standards in the adoption of these sterilization requirements.

RCW 70.54.340 (2009).¹⁵ RCW 70.54.350 (2001) requires a tattooist to comply with Department regulations.

¹⁴ Sterilization of “needles and instruments” is specifically mentioned. Ink is not.

¹⁵ Sterilization of needles, instruments, sharps, and jewelry is specifically mentioned. Ink is not.

D. Clearly and Unambiguously, the Department Does Not Require Sterile Tattoo Ink.

RCW 70.54.340 provides that the Department is responsible for adopting sterilization requirements, which it has done in WAC Ch. 246-145. The Department defines “sterilization” as a “process that destroys all forms of microbial life, including highly resistant bacterial spores.” WAC 246-145-010(23) (2010). A “sterilizer” means an “apparatus that is registered and listed with the FDA for destroying all forms of microbial life, including highly resistant bacterial spores.” WAC 246-145-010(24). “Sterile” is not defined.¹⁶

The chapter is replete with various sterility and sterilization requirements, none of which are for tattoo ink.

1. There is No Mention of Ink in WAC 246-145-060, the Section Specifically Addressing Sterile Procedures.

The Department drafted a provision titled, “Sterile procedures in body art, body piercing and tattooing” that lists the steps a tattoo artist must take “[t]o prevent clients from being exposed to disease through needles or other instruments”. WAC 246-145-060(1) (2010). Proper sterile procedures in tattooing are twofold. A tattoo needle is to be

¹⁶ The Department’s definitions of “sterilization” and “sterilizer” are in accordance with the dictionary definition of “sterile”, which means “failing to produce or incapable of producing offspring”; “failing to bear or incapable of bearing fruit or spores”; “incapable of germinating”. MERRIAM-WEBSTER UNABRIDGED (2015).

presterilized, single-use, and disposable. WAC 246-145-060(1)(a)-(b).

Tattoo “instruments”,¹⁷ on the other hand, may be multi-use, and the artist must use a specific sterilization process, including the use of a sterilizer, to sterilize instruments. WAC 246-145-060(1)(c)-(j).

The Department did not include tattoo ink in its sterile procedures.

2. The Only Requirement For Tattoo Ink Is That It Not Be Banned or Restricted by the FDA or Mixed With Improper Ingredients.

In another section, titled “Standard universal precautions for preventing the spread of disease in body art, body piercing, and tattooing”, sterility is limited to instruments, needles, and jewelry:

- “Use sterile instruments and aseptic techniques at all times during a procedure.” WAC 246-145-050(1).
- “Use only presterilized single-use disposable needles for body piercing and tattooing on one client and then dispose of the needles immediately in a sharps container.” WAC 246-145-050(2).
- “All jewelry, as defined in WAC 246-145-010, must be obtained in presterilized packaging from the manufacturer or be sterilized on-site prior to the procedure.” WAC 246-145-050(20).

¹⁷ The Department did not define “instrument”. The dictionary’s primary definition of “instrument” is “a means whereby something is achieved, performed, or furthered”; “a person or group made use of by another as a means or aid”. The secondary, and relevant, meaning is a “utensil, implement”. MERRIAM-WEBSTER UNABRIDGED (2015).

There is no requirement that tattoo ink be sterile, presterilized, or go through a sterilization process.

The section also requires cleanliness that does not rise to the level of “sterilization”:

- “Clean and disinfect chairs, tables, work spaces, counters, and general use equipment in the procedure area between each client.” WAC 246-145-050(12). “Disinfectant’ means a substance or solution, registered with the United States Environmental Protection Agency (EPA) that kills or inactivates viruses and pathogenic microorganisms, but not necessarily their spores.” WAC 246-145-010(8). “Disinfect’ or ‘disinfection’ means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.” WAC 246-145-010(9).
- “Use single use marking instruments or instruments sanitized by design, such as alcohol based ink pens, on intact skin that has been treated with an antiseptic solution.” WAC 246-145-050(19). “Antiseptic’ means an agent that destroys disease causing microorganisms on human skin or mucosa.” WAC 246-145-010(1). “Sanitize’ means a procedure that reduces the level of microbial contamination so that the item or surface is considered safe.” WAC 246-145-010(18).

There is no requirement that tattoo ink be disinfected, treated with an antiseptic, or sanitized.

There are only two requirements regarding tattoo ink. First, “[i]nks or pigments must not be banned or restricted by the FDA and must not be mixed with improper ingredients. Information indicating the source

of all inks and pigments shall be available to the department upon request.” WAC 246-145-050(18). The FDA is defined as the “United States Food and Drug Administration” agency. WAC 246-145-010(12). Although the Department does not define “ingredient” in its code, the FDA does in its regulations: “any single chemical entity or mixture used as a component in the manufacture of a cosmetic product.” 21 C.F.R. § 700.3(e) (2015). The FDA’s list of banned or restricted ingredients, i.e. bithionol, vinyl chloride, halogenated salicylanilides, zirconium, etc., is found in 21 C.F.R. § 700.11 *et seq.* One brand tattoo ink was not banned or restricted by the FDA and was not mixed with improper ingredients.¹⁸

Second, a tattoo artist must use “only single-use pigment or ink containers for each client. Pigments and ink shall be dispensed from containers in a manner to prevent contamination to the unused portion. Individual containers of ink or pigment must be discarded after use.” WAC 246-145-050(16).¹⁹ The only evidence in this case is that Gillson

¹⁸ Any argument that One brand tattoo ink was “banned or restricted” under the federal Food, Drug, and Cosmetic Act is unpersuasive. 21 U.S.C. § 331 (2011) *et seq.* is concerned with “Prohibited **Acts** and Penalties” of adulterated products in interstate commerce. (Emphasis added). Furthermore, 21 U.S.C. § 333(c) (2011) relieves a person of punishment if the person receives and delivers the product in good faith.

¹⁹ *See also* WAC 246-145-010(22), defining “single-use” as “products, instruments or items that are intended for one-time use and are

complied with this requirement by using single-use ink cups. CP 205, 212.

There are no other administrative requirements regarding tattoo ink. If the Department required sterile tattoo ink – either presterilized, as with jewelry and needles, or sterilized through a sterilizer, as with jewelry and multi-use instruments – the Department would have said so. This is especially true because the plain language of the regulations demonstrate the Department has knowledge of sterility, disinfection, antiseptics, and sanitization in the tattoo industry. In statutory interpretation, a court “must not add words where the legislature has chosen not to include them.” *Lake*, 169 Wn.2d at 526. The absence of a requirement for sterile ink can only lead to one reasonable conclusion: sterile tattoo ink is not required under Washington law.

E. Clearly and Unambiguously, the Legislature Does Not Require Sterile Ink.

Chester also argues that RCW 70.54.330(4) requires sterile ink. RCW 70.54.330(4) defines “tattooing” as “the indelible mark, figure, or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live

disposed of after each use including, but not limited to, cotton swabs or balls, tissue or paper products, paper or plastic cups, gauze and sanitary coverings, razors, needles, scalpel blades, stencils, ink cups and protective gloves.”

human being for cosmetic or figurative purposes.” Notably, the Legislature does not use the word “sterile” to describe the ink, unlike when it uses the word “sterile” to describe needles and instruments in RCW 5.40.050 and 70.54.340. The use of the word “nontoxic” rather than “sterile” makes it patently clear that the Legislature does not require sterile ink.²⁰

Furthermore, Chester cites the incorrect definition of “tattooing” as used in RCW 5.40.050, the negligence per se statute. RCW 18.300.010 (2009) specifically applies to both RCW 5.40.050 and RCW 70.54.340, and defines tattooing as “to pierce or puncture the human skin with a needle or other instrument for the purpose of implanting an indelible mark, or pigment, into the skin.” RCW 18.300.010(8). “Tattooing” as defined in the Department’s regulations perfectly mirrors RCW 18.300.010(8), down to the placement of the comma. WAC 246-145-010(25).²¹ The word “nontoxic” does not appear.

²⁰ “Nontoxic” is defined as “not toxic; *often*: free from toxicity for an indicated organism or a warm-blooded vertebrate at concentrations normally employed.” MERRIAM-WEBSTER UNABRIDGED (2015).

²¹ RCW 26.28.085 (1995), which governs tattooing minors, defines “tattoo” as “any permanent marking or coloring of the skin with any pigment, ink, or dye, or any procedure that leaves a visible scar on the skin.”

None of the above definitions prescribe or create a duty or standard of conduct. They simply provide a definition. “Not every violation of an enactment or administrative rule relating to . . . improper sterilization of needles (and related activities) . . . will constitute negligence per se. As a matter of law, the statute, ordinance, or administrative rule violated must still meet the test set forth in Restatement (Second) of Torts § 286 (1965) before a jury may be instructed concerning negligence per se.” WPI 60.01.01, *cmt.* (2010).

Restatement (Second) of Torts § 286 confirms that for negligence per se to apply, the statute must provide for or prohibit a standard of conduct. Negligence per se is “concerned only with the effect of the legislative enactment or regulation in providing a standard of conduct.” Restatement (Second) of Torts § 286, *cmt. b.* (emphasis added).

Chester cannot meet the requirements of Restatement (Second) of Torts § 286 because RCW 70.54.330(4) merely provides a description for understanding “tattooing”. Its purpose is not to create a duty, standard, or code of conduct, nor does it. *See, e.g., State v. Laico*, 97 Wn. App. 759, 763-64, 987 P.2d 638 (1999) (“definition of ‘great bodily harm’ does not add elements to first degree assault statute, but rather is intended to provide understanding.”).

Because there is no duty to use “sterile” tattoo ink, Chester’s negligence per se argument fails.

F. WAC 246-145-050(1) Does Not Require the Use of Sterile Ink.

Despite the clear and plain language that Washington’s statutory and administrative tattooing scheme does not require the use of sterile ink, Chester asks this Court to interpret WAC 246-145-050(1), which states “[u]se sterile instruments and aseptic techniques at all times during a procedure”, as requiring sterile ink.²²

There is no evidence that Gillson did not properly sterilize her instruments, or that her technique was improper. Rather, Chester’s theory, based upon inadmissible testimony from Dr. Dinges, is that because the One ink was not sterile, Gillson did not comply with WAC 246-145-050(1). But adding a sterile ink requirement into WAC 246-145-050(1) ignores rules of statutory interpretation and the entire statutory scheme as discussed above. “As a rule of statutory interpretation, courts construe statutes to avoid ‘absurd or strained consequences.’” *Wright v. Engum*, 124 Wn.2d 343, 351-52, 878 P.2d 1198 (1994) (citation omitted). For the reasons stated below, Chester’s interpretation of WAC 246-145-050(1) cannot be correct.

²² “Aseptic technique” is defined as “a procedure that prevents contamination of any object or person.” WAC 246-145-010(2).

1. The Trial Court Properly Refused to Consider Dr. Dinges's Opinions About Sterile Tattoo Ink Given His Lack of Qualifications to Discuss Tattooing Standards.

Dr. Dinges opines that sterile tattoo ink is required in Washington:

In my opinion the absolute minimum that is required for a tattoo artist to be able to claim the use of sterile instruments and aseptic technique at all times during the procedure is that the artist only use ink that is in fact sterile. In this case, the artist did not use ink that was in fact sterile because the black ink in Ms. Chester's tattoo was contaminated with bacteria.

To ensure sterile instruments and aseptic technique throughout the procedure, the procedure has to start with sterile tattoo ink.

CP 370. The trial court refused to consider the above opinion as establishing a standard of care for tattooists to use sterile ink, instead only considering Dr. Dinges's testimony from a medical perspective.

Evidence submitted in support of and in opposition to a motion for summary judgment must comply with Washington's Civil and Evidence Rules. *King County Fire Prot. Dist. No. 16 v. Hous. Auth.*, 123 Wn.2d 819, 825, 872 P.2d 516 (1994). Under CR 56(e), affidavits and declarations must be based on personal knowledge. Furthermore, affidavits and declarations "shall set forth such facts as would be admissible in evidence." *Id.*; see also *Lilly v. Lynch*, 88 Wn. App. 306, 320, 945 P.2d 727 (1997) (citing *Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 787, 819 P.2d 370 (1991)) ("[t]he opinion of an expert that is

only a conclusion or that is based on assumptions does not satisfy the summary judgment standard.”).

Evidence Rule 702 states that “a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” However, “[a]n expert must stay within the area of his expertise.” *Queen City Farms, Inc. v. Central Nat. Ins. Co. of Omaha*, 126 Wn.2d 50, 102, 882 P.2d 703 (1994) (holding that trial court abused its discretion by admitting testimony of insurance underwriting practices expert where expert was not qualified to testify about insurance policies at issue); *see also State v. Farr-Lenzini*, 93 Wn. App. 453, 461, 970 P.2d 313 (1999) (superseded by statute on other grounds) (noting that “the expert testimony of an otherwise qualified witness is not admissible if the issue at hand lies outside the witness’ area of expertise”).

Chester claims that Dr. Dinges is qualified to testify as to the use of sterile ink because the Washington legislature instructed the Department to “consider” guidelines from the CDC, and, therefore, Dr. Dinges’s medical background is sufficient foundation for his opinions about tattooing. The Legislature actually ordered that the Department’s rules “shall” be “in accordance with nationally recognized professional standards . . . employed by electrologists, persons engaged in the practice

of body art, body piercing, and tattoo artists.” RCW 70.54.340. In effect, the Legislature ordered the rules to conform to nationally recognized professional **tattooing** standards, with only **consideration** for infection control precautions and guidelines from the CDC.²³ The plain language of RCW 70.54.340 unequivocally shows that the Legislature intended the Department to employ industry standards for body art and tattooing, not medicine.

Indeed, medical procedures and the practice of medicine are specifically excluded from body art: “[b]ody art does not include any health-related procedures performed by licensed health care practitioners under their scope of practice.” WAC 246-145-010(4); RCW 18.300.010(1); *see also* RCW 26.28.085 (tattooing does not include “[m]edical procedures performed by a licensed physician”).

The trial court properly limited its consideration of Dr. Dinges’s above opinion to the medical field. Dr. Dinges did not set forth a

²³ By the plain language of the regulations, the Department only adopted “universal precautions” from the CDC. ““Universal precautions” is an approach to infection control as defined by the Center for Disease Control (CDC). According to the concept of universal precaution, all human blood and certain body fluids are treated as if known to be infectious for human immunodeficiency virus (HIV), Hepatitis B virus (HBV) and other bloodborne pathogens.” WAC 246-145-010(26). CDC guidelines, as adopted by the Department for body art, are for the control of pathogens in human blood, not for the control of sterility in ink.

foundation that he has specialized knowledge, skill, experience, training, or education with respect to tattooing procedures and standards. That he has treated patients who developed infections after tattooing does not, without more, qualify him to opine as to the standard of care that pertain to tattoo artists and the use of sterile ink. *See also Germain v. Pullman Baptist Church*, 96 Wn. App. 826, 838, 980 P.2d 809 (1999) (expert psychologist qualified in secular counseling not qualified to evaluate pastoral counseling).

An expert's affidavit "must affirmatively show that the affiant is competent to testify to the matters stated therein." *See Lilly*, 88 Wn. App. at 320 (expert's affidavit properly stricken where expert failed to explain how he was qualified to reach his conclusions). This has not occurred here because Dr. Dinges has not shown how he is qualified to offer opinions about requirements or standards for aseptic and sterile practices in body art, particularly as they relate to the use of ink in tattooing.²⁴

²⁴ Within Dr. Dinges's declaration, there are examples of his lack of knowledge of tattoo procedures. Needles are presterilized, not sterilized by the artist in an autoclave. *See* CP 370; WAC 246-145-050(2). Dr. Dinges opines liquid should be withdrawn from a sterilized stopper. CP 369. He cannot explain how that practice could be compatible with tattoo instruments, or identify any tattooists who use such a procedure. Finally, while Dr. Dinges states that he is familiar with gamma irradiation for medical devices, there is no evidence that he is familiar with gamma irradiation for the tattoo industry. CP 368.

2. The Trial Court Properly Struck Dr. Dinges's Legal Conclusions Regarding His Interpretation of WAC 246-145-050(1).

In addition to the above, Dr. Dinges also attempted to interpret WAC 246-145-050(1). The trial court struck the following provision as a legal conclusion:

Regardless of the credentials of the person performing the injection, the requirement to “use sterile instruments . . . at all times during a procedure” seems unambiguous to me. The only meaning that I can attach to that rule is that, if a tattoo artist inserts into a customer, by way of an instrument, understood to be a needle used to penetrate the surface of the skin, ink that is contaminated with bacteria, then clearly “sterile instruments” were not used at all times during the procedure because the instrument, meaning the instrument used to penetrate the customer's skin, was contaminated with bacteria.

CP 370. Dr. Dinges is clearly interpreting WAC 246-145-050(1) – he specifically assigns meaning to the provision.

Chester misunderstands why the trial court struck Dr. Dinges's opinion as a legal conclusion. It was not because Dr. Dinges opined as to an “ultimate issue” to be decided by a factfinder. *Compare Davis v. Baughm Indus. Contractors, Inc.*, 159 Wn.2d 413, 150 P.3d 545 (2007); ER 704. Rather, it was because Dr. Dinges assigned meaning to the wording in the Department's regulation and offered his opinion as to the Department's intent. Statutory interpretation is not for a factfinder. It is for the Court, and is a question of law. *Berger v. Sonneland*, 144 Wn.2d

91, 104, 26 P.3d 257 (2001). The meaning of WAC 246-145-050(1) is for this Court, not Dr. Dinges, to interpret, and the trial court properly struck Dr. Dinges's testimony.

3. Chester's Interpretation of WAC 246-145-050(1) is Nonsensical and Absurd.

Chester's position that Gillson violated WAC 246-145-050(1) is also nonsensical. To conclude that Gillson did not use "sterile instruments" because the needle touched contaminated ink means that Gillson could never use sterile instruments: as soon as a needle pokes a customer's skin, the instrument is no longer sterile. Chester's position is an absurd interpretation of the "sterile instruments" requirement in WAC 246-145-050(1). The only reasonable meaning that can be attributed to the use of "sterile instruments" is the use of instruments in accordance with the sterilization requirements in WAC 246-145-060.

Furthermore, Chester provides no evidence that a tattoo artist can ensure sterility and that the ink is "in fact" sterile, so her position is untenable. The undisputed evidence is that a tattooist cannot sterilize ink through an autoclave, and that ink that is advertised as sterile is not always sterile. If Gillson had used Intenze ink that had been advertised as sterile, and the ink turned out not to be sterile, as has been demonstrated to occur,

she would still be liable under Chester's reasoning because the ink is not "in fact" sterile.

Thus, Chester's construction of WAC 246-145-050(1) results in a tattooist assuming the role of guarantor of sterility. "Washington courts will not construe a statute to impose strict liability absent a clear indication that the Legislature intended to do so." *Wright*, 124 Wn.2d at 349 (citation omitted) (it is not enough to adopt strict liability when the Legislature uses terms like failing to take "all necessary precautions" or "shall be liable"). For a Court to conclude a statute provides for strict liability, the Legislature must explicitly address and dispense of a knowledge requirement. *Id.*

Chester's tortured interpretation of WAC 246-145-050(1) is impractical, absurd, relies upon inadmissible testimony, and contravenes statutory construction rules. WAC 246-145-050(1) does not create a statutory duty to use sterile ink.

G. Because Gillson Neither Knew Nor Should have Known That the Ink Was Contaminated, She Cannot be Held Liable Under Negligence Per Se or Common Law Negligence Standards.

As stated above, there is no statutory duty to use sterile ink. If Gillson's use of the One ink is still determined to be a violation of some statute or rule because the bottle was contaminated with microscopic bacteria, then the only conclusion that can be reached is that Gillson is

excused from the purported violation because she exercised reasonable care.

By their plain language, the tattooing statutes and regulations are intended to address aspects of tattooing within the artist's control. "While it is true that violation of a statute is, generally speaking, negligence *per se*, it is also true that such violation is not negligence when due to some cause beyond the violator's control, and which reasonable prudence could not have guarded against." *Brotherton v. Day & Night Fuel Co.*, 192 Wash. 362, 369-70, 73 P.2d 788 (1937) (citations omitted); *see also* WPI 60.01.01. "While ignorance of the law is no excuse, ignorance of the fact, where ordinary care has been exercised, is a sufficient excuse" for negligence *per se*. *Brotherton*, 192 Wash. at 372. This is because the law cannot be intended to require absolute liability. *Id.*

The undisputed evidence in this case is:

- Gillson bought the One ink from a reputable seller. CP 233.
- The ink was specifically marketed as tattoo ink. CP 217.
- Gillson used One ink for about a year and a half with no problems before she tattooed Chester. CP 450-51.

Completely lacking is:

- Any evidence that the industry standard of care for tattooists was to use sterile ink.

- Any evidence that problems with bacteria contamination in tattoo ink was commonly known throughout the industry.
- Any evidence that Kingpin had warned Gillson or other tattooists of customer complaints regarding the ink.
- Any evidence that Gillson's receipt and use of the ink should have indicated it was contaminated.
- Any evidence that the source of the contamination was Gillson's procedures and techniques.

Chester is correct that the standard of care is not only what Gillson actually knew, but also what she should have known. *See*, App. Br. 21. But a reasonable person standard does not require "affirmative action", as Chester argues. That a party has the right to assume, without further investigation, that a product on the market is safe for its intended use is based on both public policy and practicality. From a public policy standpoint, the primary theory of strict liability is that "manufacturers who place their products in the stream of commerce impliedly represent their goods as safe for intended use." *Hall v. Armstrong Cork, Inc.*, 103 Wn.2d 258, 265, 692 P.2d 787 (1984) (citations omitted). From a practical standpoint, manufacturers are in the best position to investigate the design, manufacturing, and testing of their own product. Thus, for example, a retailer has no duty to investigate a product unless it knows or has reason

to know of a defect. *Ringstad v. I. Magnin & Co.*, 39 Wn.2d 923, 926, 23 P.2d 848 (1952) (retailer had no duty to determine whether the materials used in robe manufactured by third party were resistant to flame and heat, even though arguably easily ascertainable). The “burden on the vendor of requiring him to inspect chattels he reasonably believes to be free from hidden danger outweighs the magnitude of the risk that a particular chattel may be dangerously defective.” *Id.* (citations omitted).

This same rule applies equally to a service provider such as Gillson. In *Dipangrazio v. Salamonsen*, 64 Wn.2d 720, 723, 393 P.2d 936 (1964), the plaintiff was injured by a sliding glass door and brought negligence claims against the builders of a house for their selection of the door. The Washington Supreme Court affirmed that the Salamonsens had no duty to investigate the door: “there is no obligation on a retailer of a chattel to test a product in the absence of some circumstances suggesting the necessity therefor. There is no such circumstance in the instant case, and we know of no reason why the same rule should not apply” to a contractor. *Id.* at 724. This is true even if the product is in fact defective or dangerous. *Id.* at 725.

Here, One was marketed and sold as tattoo ink. The contamination was hidden in the form of microscopic bacteria. Gillson had no knowledge of any contamination. There were no circumstances about the

bottle of ink that should have alerted Gillson to the contamination. It was reasonable for Gillson to assume then, without further investigation, that the ink was safe for its intended purpose – tattoos.

Because Gillson did not know and had no reason to know the ink was contaminated, the effect is twofold: (1) any purported violation of a tattooing statute or regulation is excused because it was beyond Gillson's control, and reasonable prudence could not have guarded against it, and (2) there is no basis to impose liability under common law negligence because Chester cannot show the existence of a duty and breach of that duty. *Reynold v. Hicks*, 134 Wn.2d 491, 495, 951 P.2d 761 (1998) (citations omitted).

Although Chester has dismissed her product liability claims, she is still arguing the essence of strict liability. Washington law does not support this conclusion, and the trial court properly dismissed Chester's claims against Gillson and Deep Roots.²⁵

²⁵ Chester dedicates a small portion of her brief as to Deep Roots' responsibilities for Gillson's tattooing. App. Br. 24. Deep Roots did not move for summary judgment on the lack of its right to control Gillson's work, instead reserving its right to do so. CP 135, 420, 477. Accordingly, the trial court did not decide the issue. "Issues not raised in the hearing for summary judgment cannot be considered for the first time on appeal." *Ashcraft v. Wallingford*, 17 Wn. App. 853, 860, 565 P.2d 1224 (1977) (citations omitted). Thus, the Court should strike and not consider Section "G" of Chester's brief.

V. CONCLUSION

Rules of statutory interpretation unequivocally show that Gillson had no duty to use sterile tattoo ink, and Chester's negligence per se claims fail. Likewise, there is no evidence that Gillson's use of One brand tattoo ink was below the standard of care for a tattoo artist. This Court should affirm the trial court's orders dismissing Chester's lawsuit against Deep Roots and Gillson and striking and limiting portions of Dr. Dinges's Second Declaration.

DATED this 27th day of July, 2015.

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NO. 73225-1-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

ANNA CHESTER,

Appellant,

vs.

DEEP ROOTS ALDERWOOD, LLC AND BONNIE GILLSON,

Respondents.

Certificate of Service

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The undersigned certifies that on the 27th day of July 2015, she caused to be filed, via legal messenger, to the Court of Appeals, Division I, one original and one copy of the following documents:

- Brief of Respondent Deep Roots Alderwood, LLC
- Certificate of Service

and served, via email and legal messenger, one copy of the same on all parties of record, identified as follows:

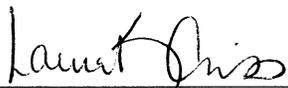
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct this 27th day of July 2015.



Laura K. Criss, Paralegal