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STATE OF WASHINGTON  
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No. 35507-8-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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JANE DOE II,

Appellant,

vs.

THE STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES; WESTERN STATE HOSPITAL; BARRETT  
GREEN; and WASHINGTON FEDERATION OF STATE  
EMPLOYEES, COUNCIL 28, LOCAL 793,

Respondents.

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BRIEF OF APPELLANT

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## ASSIGNMENTS OF ERROR

### Assignment of Error

1. The trial court erred in granting the motions for summary judgment of defendants/respondents State of Washington (State) and the Washington Federation of State Employees (Union) and dismissing appellant Jane Doe II's case in its entirety.

### Issues Pertaining to Assignment of Error

Whether, for summary judgment purposes and viewing the facts in the light most favorable to Jane Doe II as the non-moving party:

- 1) Respondent State and the Union are liable for the sexually hostile work environment suffered by Jane Doe II while an employee at Western State Hospital;
- 2) The State's actions constitute retaliation under WLAD and the whistleblower statute, RCW 42.40.020;
- 3) The State violated Jane Doe II's right to privacy by disclosing her name together with information of a highly offensive nature to both Jane Doe II and to a reasonable person, in violation of express assurances of confidentiality; and
- 4) The State and the Union negligently retained and/or supervised Green when it knew or should have known that he was unfit and otherwise dangerous to female employees including Jane Doe II.

## **I. STATEMENT OF THE CASE**

### **A. BACKGROUND SUMMARY OF THE LIZEE CASE**

In June of 2001, Western State Hospital employee, Kathleen Lizee, filed suit in Pierce County Superior Court against the State of Washington, Barrette Green, and others. She brought claims of sexual harassment, retaliation and negligent supervision. On April 4, 2003, DSHS and Western State Hospital placed Mr. Green on administrative leave. In November of 2003, DSHS finally terminated Mr. Green's employment and he never returned to work at Western State. CP 1267.

On the day of settlement, Kathleen Lizee also filed a motion for injunctive relief. In the motion, Lizee asked the Court to require DSHS to hire an independent investigator to investigate allegations that Barrette Green had sexually harassed and retaliated against others at Western State. The Court granted this relief.

### **B. U.S. DISTRICT COURT RULES AGAINST BARRETTE GREEN**

Immediately after his termination in November of 2003, Barrette Green filed suit in the U.S. District Court, Western District of Tacoma against the State of Washington and the three women named in the State's termination letter, Linda Salazar, Jackie Delgado and Cheryl Reis, for what he claimed was discrimination, defamation, and a host of other alleged violations. This was nothing new for Green. As he had done to

other victims of his sexual harassment, Green used the justice system to retaliate and intimidate all those who would dare speak out against him.

On June 25, 2005, U.S. District Court Judge Ronald Leighton dismissed Barrette Green's lawsuit in its entirety. Among his finding of facts and conclusions of law, Judge Leighton found that Barrette Green had a "Jekyll and Hyde" existence and engaged in a "shocking pattern of physical and verbal harassment." CP 1163-1182.

**C. THE SALISBURY INVESTIGATION SUBSTANTIATED SEXUAL HARASSMENT AND RETALIATION AT WESTERN STATE HOSPITAL**

DSHS hired the expert Kathleen Lizee proposed, Jan Salisbury of Salisbury Consulting. Salisbury Consulting was hired to conduct a thorough investigation into the workplace environment at WSH. At the end of the investigation, Salisbury Consulting spoke with 15 different female employees of Western State, including Jane Doe II, who claimed various degrees of sexual harassment by Barrette Green. CP 1108. The investigators concluded that, "Based upon the evidence gathered during this investigation, the allegations of sexual harassment and retaliation are substantiated." *Id.*

**D. THE SEXUAL HARASSMENT OF JANE DOE II IS REPEATEDLY ADMITTED AND ASSERTED BY THE STATE OF WASHINGTON**

During the course of the investigation and based upon reports of others, Salisbury investigators asked to interview three women who had never dared to speak previously about the sexual harassment they had endured at the hands of Barrette Green. One of those individuals was Ms. Cheryl Reis.

Based upon the findings of the Salisbury Report, Department of Social and Health Services Director of Mental Health, Karl Brimner, sent Barrette Green a letter of termination from Western State Hospital on November 6, 2003. CP 1258. The director of DSHS based Green's termination primarily on the harassment of the three newly reporting victims. CP 1258-1268. According to Director Brimner, Green was terminated due to "a pattern of engaging in sexually harassing and retaliatory behavior. Your behavior is so egregious and demeaning to the female staff of the hospital that it cannot be tolerated." *Id.* Director Brimner went further when he made special note of the duration of sexual harassment by Green. "I was particularly struck by the fact that these behaviors occurred over your complete career with the agency." *Id.* Addressing Barrette Green directly, Director Brimner detailed the sexual

harassment of victim Cheryl Reis as substantiated by the Salisbury investigation. CP 1261.

**E. RETALIATION AGAINST JANE DOE II BY THE STATE OF WASHINGTON FOLLOWS**

Following Green's termination from Western State, Cheryl Reis instantly became the target for retaliation as a result of her statements to Salisbury Consulting against Barrette Green. First, on November 6, 2003, the State – after making repeated promises of confidentiality to Ms. Reis – nevertheless disclosed her name in a termination letter it wrote to Barrette Green. CP 1258-1268.

Additionally, the State was aware of Green's retaliatory tactics against those who have complained of sexual harassment. CP 1118.

Among the victims who met with Salisbury investigators, retaliation by Green was a common theme including the following behaviors:

- Victim was criticized by Mr. Green for confronting him with his action;
- Threatening note sent to victim after she complained, which said: “stay away from me, this is about the lawyer, screw you.” [T]hreatened to sue for telling lies;
- Mr. Green threatened to file suit after a victim complained;

- Mr. Green did sue two victims in 1989 after they complained; and
- Mr. Green posted a letter after trial which implied that the victims were lying.

CP 1107-1121.

**F. “SUPERVISORS WHO KNEW AND DID NOTHING TO STOP IT.”**

As indicated by the Salisbury Report, DSHS management continued to promote Barrette Green several times even following the allegations made against him in the Lizee lawsuit. CP 1107-1121. Although many of Barrette Green’s victims did not immediately report the sexual harassment to a supervisor, most of them eventually complained of his unlawful behavior. “At least six victims eventually told a supervisor at WSH. Several other victims told a trusted friend at the time the behavior was occurring.” CP 1115.

**II. ARGUMENT**

**A. THE SUMMARY JUDGMENT STANDARD IN DISCRIMINATION CASES IS NECESSARILY HIGH.**

“A summary judgment motion can be granted only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must consider the facts in the light most favorable to the nonmoving party and the motion should be granted

only if, from all the evidence, reasonable persons could reach but one conclusion.” *Commodore v. Univ. Mech. Contractors, Inc.*, 120 Wn.2d 120, 123, 839 P.2d 314 (1992); *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995), *cert. denied*, 116 S. Ct. 1261 (1996).

Our Supreme Court has declared that Washington’s Law Against Discrimination “embodies a public-policy of the ‘highest priority.’” *Xieng v. Peoples Nat’l Bank*, 120 Wn.2d 512, 521, 844 P.2d 389 (1993) (quoting *Allison v. Housing Auth.*, 118 Wn.2d 79, 86, 821 P.2d 34 (1991)). With that public policy objective in mind, the Ninth Circuit has also set a high standard for the granting of summary judgment in employment discrimination cases. “We require very little evidence to survive summary judgment’ in a discrimination case, ‘because the ultimate question is one that can only be resolved through a “searching inquiry” - one that is most appropriately conducted by the factfinder, upon a full record.”” *Lam v. Univ. of Hawaii*, 40 F.3d 1551, 1563 (9th Cir. 1994) (internal citation omitted).

Because employment cases are by their very nature fact intensive, courts have consistently found “summary judgment in favor of employers is seldom appropriate in employment discrimination cases.” *deLisle v. FMC Corp.*, 57 Wn. App. 79, 84, *rev. denied*, 114 Wn.2d 1026 (1990) (citation omitted); *see also Sangster v. Albertson's, Inc.*, 99 Wn. App. 156,

160 (2000) (“Summary judgment should rarely be granted in employment discrimination cases.”).

**B. JANE DOE II’S EXPERIENCES AT WESTERN STATE HOSPITAL UNQUESTIONABLY SATISFY EVERY ELEMENT REQUIRED BY THE WLAD.**

**1. The State is collaterally estopped and judicially estopped from rearguing the sexually hostile work environment for Jane Doe II at Western State Hospital.**

The State of Washington is collaterally and judicially estopped from relitigating the fact issues that support Ms. Reis’s claims. Because the State has represented to other courts that Green did sexually harass Jane Doe II, it cannot now take the opposite factual position.

**a) The sexual harassment of Jane Doe II is repeatedly admitted and the Doctrine of Collateral Estoppel bars the State from relitigating the facts of Jane Doe II’s sexual harassment.**

“The doctrine of collateral estoppel differs from *res judicata* in that, instead of preventing a second assertion of the same claim or cause of action, it prevents a second litigation of issues between parties, even though a different claim or cause of action is asserted.” *Rains v. State of Washington*, 100 Wn.2d 660, 665, 674 P.2d 165 (1983) (quoting *Seattle-first Nat’l Bank v. Kawachi*, 91 Wn.2d 223, 225-26, 588 P.2d 725 (1978)).

The well-known doctrine of collateral estoppel is “a means of preventing the endless re-litigating of issues already actually litigated by the parties and decided by a competent tribunal.” *Reninger v. Dept. of Corrections*,

134 Wn.2d 437, 449, 951 P.2d 782 (1998). The four elements required to establish collateral estoppel include the following:

(1) identical issues; (2) final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.

*Id.* (quoting *Southcenter Joint Venture v. Nat'l Democratic Policy Comm.*, 113 Wn.2d 413, 418, 780 P.2d 1282 (1989) (quoting *Shoemaker v. City of Bremerton*, 109 Wn.2d 504, 507, 745 P.2d 858 (1987))).

All four elements of collateral estoppel are satisfied here.

Application of collateral estoppel would not work an injustice to the State because, as the record demonstrates, it fully and fairly litigated the merits of the exact same issues and facts presented in this case twice – once as a defendant in a federal lawsuit filed by Barrette Green and once as a respondent defending the termination of Barrette Green in a Personnel Appeals Board hearing. *See Neff v. Allstate Ins. Co.*, 70 Wn. App. 796, 801, 855 P.2d 1223 (1993) (providing that “Washington courts focus on whether the parties to the earlier proceeding had a full and fair hearing on the issue”); *see also Dunlap v. Wild*, 22 Wn. App. 583, 591, 591 P.2d 834 (1979).

Washington courts have also applied collateral estoppel to preclude re-litigation of discrimination claims raised in civil service disputes

decided by administrative tribunals. In *Shoemaker*, a deputy chief of police was demoted to the rank of captain. *Shoemaker*, 109 Wn.2d at 504. In that case, an employee appealed his demotion to the civil service commission, alleging that he was demoted in bad faith and without cause. The commission issued findings of fact and conclusions of law upholding Shoemaker's demotion and concluding it was not retaliatory. Shoemaker then filed a civil rights action in federal district court, alleging that his demotion was retaliatory. The federal district court granted summary judgment in favor of the city, on the ground that the commission's determination was binding on the federal court under the doctrine of collateral estoppel. This issue was later certified by the Ninth Circuit to the state Supreme Court, which held that Washington law gives preclusive effect to the factual finding of an administrative agency like the civil service commission. *Id.* at 513.

And, in *Reninger*, Washington's Supreme Court held that two Department of Corrections' employees who claimed they were wrongfully demoted and "constructively discharged" from employment were precluded from re-litigating their claims in superior court because those claims were previously litigated before the PAB. The court reasoned that:

Reninger and Cohen were entitled to one bite of the apple, and they took that bite. That should have been the end of it. The normal rules of collateral estoppel apply here to

prevent successive and vexatious litigation. “Any other result would render the administrative forum a place for meaningless dry runs of wrongful termination claims[.]” (citation omitted). Reninger and Cohen are collaterally estopped to relitigate the misconduct issues.

*Id.* at 454.

Both the *Shoemaker* and *Reninger* cases are parallel to this case. Similar to the employees in those cases, the State is seeking to relitigate the fact issues already determined in the PAB administrative hearing held to determine whether Green sexually harassed Ms. Reis and, thus, lawfully discharged him. CP 1308-1323. Without a doubt, the facts used by the State during the PAB hearing against Barrette Green are the same facts that Ms. Reis is asserting as the basis for her claims under WLAD.

Just as the State argued against Barrette Green in the PAB hearing, Ms. Reis asserts the same rationale and logic now, but against the State of Washington. The State cannot be allowed another bite at the apple by virtue of re-litigating the facts and the issues that it conceded were properly adjudicated in federal court and validated during the PAB hearing.

**b) The State is prohibited from contesting the issue of discrimination based on the Doctrine of Judicial Estoppel.**

Under the doctrine of judicial estoppel, the State is prohibited from denying that Jane Doe II was the victim of sexual harassment. “Judicial

estoppel is an equitable doctrine that precludes a party from gaining an advantage by asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position.”

*Cunningham v. Reliable Concrete*, 126 Wn. App. 222, 224-25, 108 P.3d 147 (2005). As explained by the Ninth Circuit in *Hamilton v. State Farm*, 270 F.3d 778, 782 (9th Cir. 2001), courts invoke “judicial estoppel not only to prevent a party from gaining an advantage by taking inconsistent positions, but also because of ‘general considerations of the orderly administration of justice and regard for the dignity of judicial proceedings,’ and to ‘protect against a litigant playing fast and loose with the courts.’” (quoting *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990)).

Here, the doctrine of judicial estoppel prevents the State from contending that Green’s conduct was non-discriminatory. By *now* claiming that Jane Doe II was not a victim of sexual harassment, the State is “playing fast and loose with the courts.” The State successfully argued that Green created a hostile working environment when it was defending itself in federal court. It cannot now take an inconsistent position.

**2. Barrette Green's conduct was unwelcome and based on Jane Doe II's sex.**

A hostile work environment sexual harassment claim under RCW 49.60.180(3) requires that Ms. Reis prove that the harassment is unwelcome, that it occurred because of sex, and that it affected the terms or conditions of employment that can be imputed to the State of Washington. *Francom v. Costco Wholesale Corp.*, 98 Wn. App. 845, 991 P.2d 1182 (2000), *rev. denied*, 141 Wn.2d 1017 (2000).

Both the Salisbury investigation and the Director of Mental Health with DSHS agreed that Ms. Reis was sexually harassed by Barrette Green. CP 1261.

**3. The State and the Union knew or should have known that Green was a pervasive sexual harasser who used his power to influence employees' terms and conditions of employment.**

For purposes of a claim of hostile work environment sexual harassment, an employer is not vicariously liable for the harassment that is committed by a non-management employee unless the employer authorized, knew, or should have known of the harassment and failed to take reasonably prompt and adequate corrective action. *Francom*, 98 Wn. App. at 845.

Evidence regarding the sexual harassment of other women, "if part of a pervasive or continuing pattern of conduct," is relevant to show a

hostile work environment and probative of the employer's notice. *Perry v. Ethan Allen*, 115 F.3d 143, 151 (2nd Cir. 1997); *see also Kimzey v. Wal-Mart Stores, Inc.*, 907 F. Supp. 1309, 1313 (Missouri 1995), *aff'd in part, rev'd in part on other grounds*, 107 F.3d 568 (8th Cir. 1997) ("In general, 'evidence of sexual harassment directed at employees other than the plaintiff is relevant to show hostile work environment.'"). Similarly, the employer's constructive knowledge can also be proven by evidence of complaints made to the employer through higher managers or supervisors, or by evidence that the sexual harassment was so pervasive that it gives rise to the inference of the employer's knowledge, and that the employer's remedial action was not reasonably calculated to end the harassment. *Francom*, 98 Wn. App. at 845.

If an employer, after learning of an employee's sexually harassing conduct, either fails to take corrective action or takes inadequate action, the employer can be found to have "adopt[ed] the offending conduct and its results, quite as if they had been authorized affirmatively as the employer's policy." *Swenson v. Potter*, 271 F.3d 1184, 1192 (9th Cir. 2000) (citing *Faragher v. City of Boca Raton*, 524 U.S. 775, 789, 118 S. Ct. 2275, 141 L. Ed. 662 (1998)).

First, Green was the Risk Manager at the time, and therefore, a supervisor. Moreover, it was clear that DSHS upper-level management

was aware of or should have been aware of Barrette Green's sexual harasser tendencies. Many unheeded allegations of sexual harassment were previously made against Barrette Green. Additionally, even after the *Lizee* lawsuit was filed, the State continued to promote Barrette Green to higher managerial positions without any concern for female employees at Western State Hospital.

Viewing the evidence in the light most favorable to Jane Doe II, a material question of fact exists and the superior court erred in granting summary judgment.

**C. WLAD APPLIES EQUALLY TO THE UNION'S ACTIONS AT WESTERN STATE, JUST AS IT DOES TO THE STATE.**

Ms. Reis's claims against the Union are supported by the WLAD because the Union, through its actions, omissions, and agency with respect to Barrette Green, violated Ms. Reis's right to be free from sex discrimination via sexual harassment in the workplace.

The Washington Federation of State Employees had a long history of representing Barrette Green regarding sexual harassment complaints. Beginning first in 1988, and continuing all the way through and beyond his termination, Barrette Green pervasively harassed female employees of Western State Hospital.

The Union had notice of Mr. Green's conduct because Mr. Green was the President of Local 793. The Ninth Circuit has held that "[a]n employer may be liable for the acts of a supervisor when it knew or should have known he was engaging in harassment." *Woods v. Graphic Communications*, 925 F.2d 1195, 1202 (9th Cir. 1991). *See also Francom*, 98 Wn. App. at 855-56 (noting that an agent may be an employer's alter ego if the agent occupies a high rank within the company). An employer ratifies an employee's conduct if it fails to take "prompt and adequate corrective action." *Id.*

Here, the Union had actual notice of Mr. Green's conduct.

Therefore, summary judgment was not appropriate.

**D. THE STATE AND THE UNION NEGLIGENTLY RETAINED AND FAILED TO SUPERVISE BARRETTE GREEN.**

An employer may be liable for harm caused by an incompetent or unfit employee if (1) the employer knew, or in the exercise of ordinary care, should have known of the employee's unfitness before the occurrence; and (2) retaining the employee was a proximate cause of the plaintiff's injuries. *Carlsen v. Wackenhut Corp.*, 73 Wn. App. 247, 252, 868 P.2d 882 (1994) (citing *Peck v. Siau*, 65 Wn. App. 285, 288, 827 P.2d 1108 (1992); *Guild v. Saint Martin's College*, 64 Wn. App. 491, 498-99, 827 P.2d 286 (1992)). But the employer's duty is limited to foreseeable

victims and then only “to prevent the tasks, premises, or instrumentalities entrusted to an employee from endangering others.” *Niece v. Elmview Group Home*, 131 Wn.2d 39, 48, 929 P.2d 420 (1997).

Even where an employee is acting outside the scope of employment, the relationship between employer and employee gives rise to a limited duty, owed by an employer to foreseeable victims, to prevent the tasks, premises, or instrumentalities entrusted to an employee from endangering others. This duty gives rise to causes of action for negligent hiring, retention and supervision. Liability under these theories is analytically distinct and separate from vicarious liability. These causes of action are based on the theory that “such negligence on the part of the employer is a wrong to the injured party, entirely independent of the liability of the employer under the doctrine of respondeat superior.” *Robel v. Roundup Corp.*, 148 Wn.2d 35, 53, n.8, 59 P.3d 611 (2002).

The Salisbury Report and the adoption of the Salisbury Report’s findings by the State, along with the decisions by U.S. District Court Judge Ronald Leighton and the Personnel Appeals Board, confirm that, throughout his career at Western State Hospital, Barrette Green was as prolific a sexual harasser of female employees as can be imagined. Given those indisputable facts, there is certainly a jury question as to whether the State and Union knew or should have known that continuing to promote

and protect Barrette Green through the ranks of Western State Hospital was endangering those female co-workers who regularly worked with and encountered Green, like Cheryl Reis.

**E. JANE DOE II SUFFERED MULTIPLE INCIDENTS OF RETALIATION AFTER COOPERATING WITH THE STATE'S INVESTIGATION AGAINST BARRETTE GREEN.**

These acts of retaliation experienced by Ms. Reis were no doubt a by-product of the sexually hostile work environment ratified by the State's omissions and actions, such as the several promotions granted to Barrette Green after his sexually harassing behaviors were exposed. As indicated by the Salisbury Report, it was a well-known fact that Barrette Green established a pattern of retaliation against women who he knew participated in the *Lizee* lawsuit. Barrette Green often intimidated his victims by threatening to file suit against that and sometimes actually following through with that threat.

In addition, while the State vehemently denies it, the publishing of Ms. Reis's name, despite express assurances of confidentiality, was retaliatory. RCW 42.40.050. She was a whistleblower who was used in every sense of the word by the State for its own purposes. RCW 42.40.020. Thus, the trial court erred in granting summary judgment.

**F. THE STATE OF WASHINGTON WRONGFULLY PUBLISHED AND PUBLICIZED JANE DOE II'S NAME WITHOUT PRIVILEGE AND AFTER EXPRESSLY PROMISING CONFIDENTIALITY AND ANONYMITY.**

Although the State does not dispute that it made a promise of confidentiality in its motion for summary judgment, it cited the RESTATEMENT (SECOND) OF TORTS § 652D and *Fisher v. State*, 125 Wn. App. 869, 879 (2005), and argued that there was no publication of Ms. Reis's private-life facts. *Id.* Contrary to the State's argument, in *Fisher*, the court clarified the meaning of "publicity" by explaining that publication to a small group or a single person may qualify as publicity, under the current law, if the nature of the material disclosed is a highly offensive communication that outweighed the limited scope of the publicity. *Id.* at 879.

The State also argued that it had no choice, and that the disclosure was necessary based upon the Union's collective bargaining agreement. This, however, was not what was communicated to Appellant. Instead, the State knew that the only way it could encourage other female Western State Hospital employees to come forward would be to provide a promise of confidentiality; a promise that the State expressly provided to Western State Hospital employees. The State cannot now argue that it had no

choice but to disclose the names. If the State knew the consequences of disclosure, it was obligated to explain this to Jane Doe II.

At the time that the State tricked Ms. Reis to give it information regarding Barrette Green, it was fully aware of restrictions placed upon it by certain personnel policies and the collective bargaining agreement. But, instead of disclosing any possibilities or scenarios in which the names of accusers could be disclosed to Barrette Green, the State affirmatively assured Ms. Reis that her name would under no circumstances be revealed – it promised her confidentiality. CP 1360, 1362.

Based on the above, there is a question of material fact as to whether or not the State's publication of Ms. Reis's name in its termination letter to Barrette Green was absolutely necessary to ultimately discharge Barrette Green. Accordingly, the trial court erred in granting summary judgment, and this matter should be remanded for trial.

### **III. CONCLUSION**

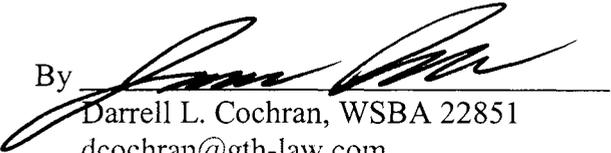
Summary judgment was not appropriate in this case. Appellant Jane Doe II respectfully requests that this Court reverse the trial court and

remand this case for trial.

Dated this 16<sup>th</sup> day of April, 2007.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, BECKY J. NIESEN, hereby declare and state:

1. I am over the age of 18 years, not a party to this action, and am competent to testify to the matters herein.
2. On April 16, 2007, I placed to all attorneys of record, copies of the attached document for delivery by Legal Messenger to:

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|--|--|
| <p>Jason M. Rosen<br/>         Christie Law Group<br/>         Julie's Landing on Lake Union<br/>         2100 Westlake Ave., Suite 206<br/>         Seattle, WA 98109</p> <p><input type="checkbox"/> Mail messenger<br/> <input checked="" type="checkbox"/> Fax<br/> <input checked="" type="checkbox"/> Hand Delivery via<br/> <input type="checkbox"/> Overnight Delivery</p> | <p>Edward Younglove, III<br/>         Par Younglove Lyman &amp; Coker<br/>         1800 Cooper Point Road SW, Bldg. 16<br/>         Olympia, WA 98507-7846</p> <p><input type="checkbox"/> Mail messenger<br/> <input checked="" type="checkbox"/> Fax<br/> <input checked="" type="checkbox"/> Hand Delivery via<br/> <input type="checkbox"/> Overnight Delivery</p> |
| <p>Curman M. Sebree<br/>         Law Office of Curman M Sebree<br/>         1191 Second Avenue, Suite 1800<br/>         Seattle, WA 98101-2996</p> <p><input type="checkbox"/> Mail messenger<br/> <input checked="" type="checkbox"/> Fax<br/> <input checked="" type="checkbox"/> Hand Delivery via<br/> <input type="checkbox"/> Overnight Delivery</p>                         |  |

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed this 16th day of April, 2007 at Tacoma.

  
 Becky J. Niesen