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Honorable Grant Blinn  
PIERCE COUNTY CLERK  
December 19, 2025 at 9:40:42 AM  
NO. 18-2-08055-5

SUPERIOR COURT OF WASHINGTON  
IN AND FOR PIERCE COUNTY

M.N., A.B., G.T., and W.N., individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

MULTICARE HEALTH SYSTEM, INC., a  
Washington corporation,

Defendant.

No. 18-2-08055-5

**DECLARATION OF BENJAMIN  
GOULD IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES, EXPENSES,  
AND SERVICE AWARDS**

I, Benjamin Gould, declare as follows:

1. I am a partner at Keller Rohrback L.L.P. and one of the attorneys of record for Plaintiffs in this action. I make this declaration based on my own personal knowledge and if called as a witness, I could and would competently testify to the facts stated herein.

2. I have been personally involved in the litigation of this case since 2022. In the course of that personal involvement, I have reviewed the publicly available papers filed in this action and have also familiarized myself with a large portion of our<sup>1</sup> internal records for this case. To the extent necessary for this declaration, I have made a further review of those internal records to support the averments made here.

<sup>1</sup> When using "we" and its grammatical variants, this declaration will be referring to Keller Rohrback.

1           3.       In this declaration, I first summarize, in chronological fashion, the work that  
2 Keller Rohrback performed on behalf of the Named Plaintiffs and the Settlement Classes. I then  
3 submit evidence regarding Keller Rohrback's lodestar fee, including the specific hours spent on  
4 this case, and rates charged, by the legal professionals who worked on this case. Finally, I testify  
5 to the expenses that we have incurred in this litigation.

6           **I.       WORK PERFORMED OVER THE COURSE OF THIS LITIGATION**

7           4.       This litigation arises from a hepatitis C outbreak that can be traced back to Nurse  
8 Cora Weberg, who worked in the Puyallup Good Samaritan Hospital's emergency department in  
9 2017 and 2018.

10          5.       We performed all the work in this case on a contingent basis.

11          **A.       Initial investigative work in the late spring and summer of 2018**

12          6.       Keller Rohrback's involvement in the litigation began over seven years ago, in  
13 May 2018, when partners Cari Campen Laufenberg and Mark D. Samson learned that patients  
14 who received care at the Puyallup Good Samaritan Hospital's emergency department were  
15 receiving letters advising them to be tested for hepatitis C, hepatitis B, and HIV.

16          7.       We immediately began to investigate the relevant facts and law, and publicized  
17 that investigation. We were contacted by many different persons interested in our investigation.  
18 We investigated to ensure that each person's factual assertions were well-founded.

19          8.       The complaint that initiated this litigation, filed May 11, 2018, featured a single  
20 named plaintiff. We continued to be contacted by other patients, and on July 11, 2018, moved  
21 to file an amended complaint that added additional persons—A.B., G.T., and W.N.—as named  
22 plaintiffs.

23          9.       Among the many persons that contacted us, we were careful to select as named  
24 plaintiffs those who we believed were best suited to faithfully represent a larger class of  
25 similarly situated plaintiffs. Speaking to all the persons who contacted us, investigating their  
26 claims, and evaluating their capacity to serve as class representatives took a significant amount

1 of time.

2 **B. Document discovery from the Defendant: July 2018 through May 2019**

3 10. Meanwhile, even before amending the complaint, we had spent a significant  
4 amount of time analyzing the facts and law to formulate a case strategy. And, in line with that  
5 strategy, we began to draft discovery requests. Our first set of interrogatories and requests for  
6 production were served on the Defendant on May 23, 2018. Our second set of requests for  
7 production were served about a month later.

8 11. Ultimately, over the course of the case, we would propound and serve Defendant  
9 with **50** requests for production, **22** interrogatories, and **114** requests for admission.

10 12. Discovery began in earnest not long after the filing of the original complaint. By  
11 July 2018, the Defendant had begun to respond to discovery requests, and in September, the  
12 Court granted Plaintiffs' motion to compel the production of records that the Defendant  
13 possessed concerning Nurse Weberg's hepatitis C status. Thereafter, a stipulated protective  
14 order was negotiated and entered.

15 13. In November 2018, we filed another motion to compel due to what we saw as  
16 undue delay in the production of electronically stored documents.

17 14. Also in November 2018, Plaintiffs took a deposition of Ben Smith, an employee  
18 that the Defendant designated pursuant to CR 30(b)(6) to testify about its documents and  
19 electronically stored discovery. Our concerns about the delay in electronic document production  
20 were in part what motivated this deposition, but because we were also concerned that  
21 Defendant's search for electronically stored information was arbitrarily limited in its scope, we  
22 wanted to ensure we understood the full universe of potentially responsive electronic  
23 information in Defendant's control. This deposition turned out to be a useful guide in  
24 determining whether Defendant's production of electronically stored documents was complete.

25 15. On December 7, 2018, our motion to compel was granted, although the Court  
26 modified Plaintiffs' preferred deadline for production.

1           16.     Throughout the summer and fall of 2018, we had frequent meet-and-confers with  
2 counsel for the Defendant regarding document production.

3           17.     The Defendant began to produce a significant number of electronic documents in  
4 November 2018. Record indicate that further significant productions were made in December  
5 2018, January 2019, February 2019, March 2019, and May 2019.

6           18.     John M. Evans, a member of Keller Rohrbach's IT team, processed these  
7 documents and troubleshooted any technical problems that arose during their review. He also  
8 assisted in certain aspects of the review of the documents that required special technical  
9 knowledge.

10          19.     It was principally Keller Rohrbach paralegal Alex Smith who performed the  
11 initial review of the documents that Defendant produced. While this work was time-consuming,  
12 it was essential to the identification of documents that were particularly probative to specific  
13 legal or factual issues, documents that would be most helpful to our experts, and documents that  
14 were most relevant to particular 30(b)(6) topics. The work also required frequent consultation  
15 with attorneys.

16 **C.     Documents from government agencies: September 2018 to November 2019**

17          20.     At the same time as we were working to request, receive, and review documents  
18 from the Defendant, we also requested, received, and reviewed documents from government  
19 agencies.

20          21.     The Washington Department of Health (DOH), Tacoma – Pierce County Health  
21 Department (TPCHD), and the federal Center for Disease Control and Prevention (CDC) were  
22 all involved in responding to the hepatitis C spread by Nurse Weberg's drug diversion. The  
23 latter two agencies were especially involved in the process, and their involvement had legal  
24 significance. The Washington Supreme Court eventually relied on the actions of the TPCHD  
25 and CDC when it determined that the General Treatment Class had an objectively reasonable  
26 fear of infection and therefore had established legal causation.

22. In September 2018, we submitted requests for documents to the DOH and TPCHD under the Public Records Act, chapter 42.56 RCW. That same month, we requested documents from the CDC under the federal Freedom of Information Act, 5 U.S.C. § 552. We asked each of these agencies for all documents they had relating to the hepatitis C outbreak or to the possible exposure of patients to hepatitis C at the Puyallup Good Samaritan Hospital.

23. Each agency eventually produced documents. CDC located 558 pages of responsive records, withholding only 9 pages under FOIA exemptions 5 and 6. It produced its documents on December 31, 2018. DOH produced thousands of pages of records in four installments, with its last installment produced in May or June 2019. TPCHD likewise produced thousands of pages of records, over multiple installments that began in 2018, were mostly complete by June 2019, but ended only in November 2019.

24. We also issued a FOIA request to the Drug Enforcement Administration on September 27, 2018.

25. As with Defendant's documents, John Evans at Keller Rohrbach was responsible for processing documents received from government agencies and troubleshooting any technical problems. Once again, Alex Smith was largely responsible for the initial review of the documents.

**D. Subpoenas to third parties: 2019 and 2020**

26. In July and August 2019, we issued four subpoenas to third parties. In November 2019, we issued two subpoenas to third parties. And in June 2020, we issued one. Nearly all of these seven subpoenas contained requests for documents related to the past employment of Nurse Cora Weberg and/or to whether Defendant had properly examined Nurse Weberg's background before hiring her.

27. The subjects of the subpoenas and the dates of issuance are listed below:

Subject of subpoena	Date of issuance
Skill Survey	July 19, 2019

HireRight	July 19, 2019
Swedish Health	July 19, 2019
Legacy Mount Hood	August 14, 2019
Clackamas County	November 7, 2019
Marysville Nursing Home	November 7, 2019
Advisory Networks, LLC	June 18, 2020

**E. Document discovery: a summary**

28. The document discovery performed in this case—whether through discovery requests to Defendant, PRA or FOIA requests to government agencies, or third-party subpoenas—was extensive.

29. The Named Plaintiffs themselves produced thousands of pages of documents.

30. In total, Defendant produced about 30,000 documents totaling about 217,000 pages, public and private third parties produced about 4,000 documents totaling over 15,000 pages, and the Named Plaintiffs produced 4,483 pages of documents. This page count, moreover, *excludes* electronic files produced in “native” format, like Excel spreadsheets.

**F. Depositions: July to September 2019**

31. Not counting Ben Smith, who testified largely about the Defendant’s IT systems, *see supra* ¶ 14, Plaintiffs took depositions of eight different persons that Defendant designated under CR 30(b)(6):

Designee	Deposition Date	Topic(s)
Christopher Bredeson	7/1/2019	Identity and means of contacting all known class members; method by which Defendant determined whom to send notification letters; mechanisms of exposure or possible exposure of class members to hepatitis C; investigations, determinations, and analyses of those mechanisms; Defendant’s public statements about hepatitis C outbreak; any other times Defendant notified patients of the risk of exposure to other infectious diseases.
Kim Giglio	7/1/2019	Policies and practices regarding RN hiring; hiring, supervision, and termination of employment of Cora Weberg.

David Bachman	7/2/2019	Appropriate testing for and treatment of hepatitis C; nature and extent of any testing of exposed individuals.
Christine Gibson	7/2/2019	Investigations regarding hepatitis C exposure or possible exposure; investigations regarding cause or source of any hepatitis C exposure or possible exposure.
Kelsey Petersen	7/3/2019	Investigations regarding hepatitis C exposure or possible exposure; mechanisms of exposure; investigations into mechanisms of exposure; policies and practices governing the review and evaluation of nursing staff; policies and practices governing the administration of narcotics; policies and practices governing needle use and the administration of needles in the emergency department; any concerns brought to Defendant's attention about Cora Weberg's conduct, and any investigations into that conduct.
Tracey Vercillo	7/3/2019	Cora Weberg's hepatitis C status and all investigations made to determine it; documents, including personnel files, referring to Cora Weberg.
Lauren Bristow	9/24/2019	Policies and practices regarding the tracking of medications; policies and practices regarding the reporting of narcotics use; policies and practices regarding the administration of narcotics.

32. Proper preparation for these comprehensive depositions, which covered a wide range of topics and implicated several technical subjects that would be the subject of expert testimony, consumed a great deal of attorney and paralegal time, beginning well in advance of the depositions.

33. In August and September 2019, Defendant took the depositions of Named Plaintiffs A.B., M.N., and G.T., all of which we defended.

#### **G. Working with experts: 2018 and 2019**

34. Because this was a medical negligence case under chapter 7.70 RCW, expert witnesses were required. Identification of potential experts began not long after the filing of this action, but lasted well into 2019.

35. Multiple paralegals and attorneys identified, retained and then consulted, with the experts about what information they would need to render the experts' opinions, identified the documents to bring to the experts' attention, consulted with experts about what further

1 discovery should be propounded and propounded that discovery, and had in-depth discussions  
2 with the experts in preparation for depositions. All of this consumed a great deal of time.

3 36. Experts were also involved in assisting us to oppose Defendant's eventual motion  
4 for partial summary judgment. That work is discussed below.

5 **H. Class certification and notice: September 2019 through May 2020**

6 37. On September 27, 2019—slightly more than six years ago—Plaintiffs moved for  
7 class certification.

8 38. In support of their motion, they submitted a detailed memorandum of law as well  
9 as supporting declarations by the Named Plaintiffs and then-attorney Ian Birk. Attached to the  
10 declaration of Ian Birk were 13 exhibits, including deposition excerpts, documents from the  
11 DOH, and documents that Defendant had produced in discovery.

12 39. Defendant vigorously opposed class certification in its October 14, 2019  
13 opposition, to which Plaintiffs filed a 12-page reply four days later.

14 40. The Court held a hearing on the motion for class certification on December 6,  
15 2019, and delivered an oral ruling that two separate classes—later to be called the General  
16 Treatment Class and the Weberg Treatment Class—should be certified.

17 41. After conferring, the parties agreed on the form of a 12-page order, which the  
18 Court issued in January 2020.

19 42. Immediately after class certification, Keller Rohrback began to solicit bids from  
20 class-action administration firms. In March 2020, we retained CPT Group to administer and  
21 transmit the notice of class certification. *See also* Stip. to Approve Class Notices at 1 (May 12,  
22 2020).

23 43. We drafted the notice to the class, and sent those drafts to counsel for the  
24 Defendant. After lengthy negotiations over the content of the notice, the parties submitted the  
25 proposed notice to the Court, which approved the notice plan in a May 13, 2020 order.

26 44. We oversaw CPT Group's transmission of notice and kept abreast of the number



1 of notices returned, traced, remailed, forwarded, and undelivered.

2 **I. Summary judgment proceedings: April to July 2020**

3 45. In April 2020, Defendant moved for partial summary judgment on the claims of  
4 the General Treatment Class. It argued that (1) the General Treatment Class could not  
5 demonstrate legal causation because it could not show that it was actually exposed to the  
6 hepatitis C virus; (2) the General Treatment Class had no cognizable medical-malpractice claim;  
7 and (3) the General Treatment's injuries were not foreseeable.

8 46. We opposed the motion for summary judgment, supporting it with a 24-page  
9 opposition. We also submitted a supporting declaration from Ian Birk, to which were attached  
10 15 exhibits that included documents from government agencies, documents produced by  
11 Defendant, and excerpts from depositions.

12 47. We also submitted three expert declarations. One was from Paula Bradshaw, a  
13 registered nurse and expert witness who opined about Defendant's negligent hiring and  
14 supervision of Nurse Weberg. Another was from Dr. Harry F. Hull, a physician and expert in  
15 epidemiology who opined about the General Treatment Class's risk of infection. The third was  
16 from Richard K. Ogden, a Doctor of Pharmacy and Assistant Director of Pharmacy at  
17 Children's Mercy Hospital in Kansas City, who opined about Defendant's negligent supervision  
18 of Nurse Weberg, its negligent failure to adopt and implement policies and procedures to guard  
19 against drug diversion, and the foreseeability of the General Treatment Class's harm.

20 48. A hearing on the summary judgment motion was held July 31, 2020. The Court  
21 ruled that Defendants' negligence was not the legal cause of the General Treatment Class's  
22 injuries. Plaintiffs moved for reconsideration, which was denied.

23 49. Plaintiffs asked this Court to enter final judgment under CR 54(b), while also  
24 filing a motion for discretionary review in the Court of Appeals under RAP 2.3(b)(4). Because  
25 the Court granted Plaintiffs' request to enter final judgment CR 54(b), the commissioner of the  
26 Court of Appeals converted the motion for discretionary review to a notice of appeal.

1   **J.     Proceedings before the Court of Appeals**

2           50.     After the appeal was initiated, we designated the Clerk’s Papers, RAP 9.6, and  
3   made arrangements for a verbatim report of proceedings, RAP 9.2.

4           51.     Our lawyers—principally Ian Birk and Jenna Comstock,<sup>2</sup> although others were  
5   involved—spent a significant amount of time on the opening brief and reply brief.

6           52.     Ian Birk, after due preparation involving the whole team, conducted oral  
7   argument in front of the Court of Appeals on December 14, 2021.

8   **K.     Proceedings before the Supreme Court**

9           53.     When, in August 2022, the Court of Appeals issued an unpublished opinion  
10   affirming the summary judgment, I drafted, and, after review by Cari Laufenberg and Mark  
11   Samson, filed, a successful motion to publish. *See* RAP 12.3(e).

12          54.     After the Court of Appeals published its opinion in November 2022, Chris  
13   Ryder, an associate, wrote, at my direction, the first draft of a petition for review. I revised it  
14   comprehensively with the advice and assistance of Cari Laufenberg and Mark Samson.

15          55.     The Supreme Court granted our petition for review in April 2023. I drafted our  
16   supplemental brief, and after detailed input from Cari Laufenberg, Mark Samson, Kylie Fisher,  
17   and Chris Ryder, revised and filed it on May 26, 2023. A true and correct copy of the  
18   supplemental brief is attached as **Exhibit 1**.

19          56.     In August and September 2023, I drafted our answers to two amicus briefs  
20   supporting Defendant, and after input from the other attorneys, revised and filed them. *See* RAP  
21   10.1(e).

22          57.     With assistance from my colleagues, I intensively prepared for, and then  
23   conducted, the oral argument before the Supreme Court, which was held September 26, 2023.

24          58.     In January 2024, the Supreme Court issued an opinion whose majority opinion

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25   <sup>2</sup> Jenna Comstock, when working for Keller Rohrbach, was known by a different name. *See*  
26   Exhibit 2 at 3; *see also* WSBA, *Legal Profile – Jenna Nicholas Comstock*,  
[https://www.mywsba.org/PersonifyEbusiness/LegalDirectory/LegalProfile.aspx?Usr\\_ID=000000041575](https://www.mywsba.org/PersonifyEbusiness/LegalDirectory/LegalProfile.aspx?Usr_ID=000000041575).

1 reversed the Court of Appeals and established a new standard for legal causation in cases  
2 involving the risk of infection. Its standard closely resembled the one for which we argued in  
3 our supplemental brief. *Compare M.N. v. MultiCare Health Sys., Inc.*, 2 Wn.3d 655, 541 P.3d  
4 346, 356 (2024), with Exhibit 1 at 15.

5 **L. Work performed after remand**

6 59. After remand, Chris Ryder and I were primarily responsible for reviewing the  
7 existing discovery to determine whether we possessed the evidence needed to prove our claim at  
8 trial. This took a significant amount of time. Along with Mark Samson, we also talked to a few  
9 additional possible experts.

10 60. We decided that previous ambiguous discovery responses from Defendant  
11 required us to confirm that Defendant lacked certain documents or that certain information was  
12 up-to-date after the appeal. Through an additional Public Records Act request to the TPCHD,  
13 we gathered more information on the blood testing that occurred in the aftermath of the hepatitis  
14 C outbreak. Earlier this year, we served defense counsel with notices of deposition for two  
15 former employees of Defendant. These depositions were ultimately never taken because the  
16 parties reached a settlement.

17 61. Meanwhile, the whole team was involved in mediating the case before Keith  
18 Kubik. This process began with a detailed mediation brief in the late winter of 2024 that went  
19 into considerable detail about both the strengths and the potential weaknesses of our case and  
20 attached extensive documentary exhibits. An all-day mediation session was held in June 2024.  
21 The parties' positions were too far apart for a settlement to result from that session.

22 62. In the fall and winter of 2024, we invested considerable time and effort in jury  
23 testing. That testing suggested that a jury trial could result in a considerably more varied range  
24 of outcomes than we had expected.

25 63. Both before and after that testing, we remained in touch with mediator Keith  
26 Kubik.

1           64.     We held a second lengthy mediation session overseen by Mr. Kubik on April 17,  
2 2025. Although the parties' positions were considerably closer than they had been in June 2024,  
3 that session did not end in an agreement to settle this lawsuit.

4           65.     Nevertheless, in the weeks that followed, Mr. Kubik facilitated and oversaw  
5 further extensive negotiations. He engaged in shuttle diplomacy between the parties. The parties  
6 finally reached a settlement in principle in May 2025, a few months before trial was scheduled  
7 to start on August 25, 2025.

8           66.     Seeking preliminary approval for this settlement required substantial additional  
9 work. Among other things, we had to solicit and review bids from prospective settlement  
10 administrators, draft and negotiate a settlement agreement, draft notices to the Class Members,  
11 work with Defendant and the Settlement Administrator to ensure that existing contact  
12 information for Class Members would be updated, and create and submit a lengthy motion for  
13 preliminary approval.

14           67.     After preliminary approval, moreover, we realized that the formal definition of  
15 the Settlement Classes needed to be changed to reflect the persons whom the Parties had always  
16 treated as belonging in the Settlement Classes. We also realized that the Notice Plan could be  
17 substantially improved to ensure that Class Members' contact information was accurately and  
18 completely updated.

19           68.     Accordingly, after considerable work related to improving the Notice Plan, we  
20 amended the settlement agreement and moved for preliminary approval of the amended  
21 settlement agreement, along with a modified schedule for notice and final approval. The Court  
22 granted preliminary approval to this amended settlement agreement in September.

## 23                               **II.     LODESTAR CROSS-CHECK**

24           69.     To enable a "lodestar cross-check," this section discusses Keller Rohrbach's  
25 lodestar fee in detail. (For an explanation of the how and why of the lodestar cross-check, see  
26 the accompanying motion at 4–5.)

1           70.     A lodestar fee is calculated “by multiplying a reasonable hourly rate by the  
2 number of hours reasonably expended.” *Wash. State Physicians Ins. Exch. & Ass’n v. Fisons*  
3 *Corp.*, 122 Wn.2d 299, 334, 858 P.2d 1054 (1993).

4           71.     To determine Keller Rohrback’s lodestar fee, I took a conservative approach.  
5 First, I considered only the billing records of the legal professionals who had billed  
6 approximately 50 or more hours to this case by September 19, 2025, the date on which the  
7 motion for preliminary approval of the amended settlement agreement was noted for decision.  
8 (These billing records were created contemporaneously with the work that they recorded.) Other  
9 legal professionals spent hours on this case, but those hours, and the fees attributable to those  
10 hours, have been excluded.

11           72.     This step left fourteen different professionals who had spent time on this case.  
12 Attached as **Exhibit 2** is a true and correct copy of the profiles of the attorneys who are among  
13 those fourteen different professionals. For those attorneys who are no longer at Keller Rohrback,  
14 Exhibit 2 provides the profile at the time of their departure.

15           73.     The relatively large number of persons who worked on this case can be explained  
16 by several factors. For one thing, the case spanned over seven years from the filing of the initial  
17 complaint to settlement. During that time, two of the associates who worked on this case (Jenna  
18 Comstock and Chanele Reyes) and two of the paralegals (DeAnna Culpepper and Alex W.  
19 Smith) left Keller Rohrback. Meanwhile, two associates (Kylie Fisher and Chris Ryder) joined  
20 it. In April 2022, our partner Ian Birk was appointed to a seat on Division I of the Court of  
21 Appeals. This case was complex both factually and legally; handling that complexity required  
22 the involvement of multiple professionals. Likewise, responding to the many inquiries from  
23 prospective clients in 2018, and managing the complex and time-consuming fact and expert  
24 discovery in 2018, 2019, and 2020, required the concurrent work of multiple paralegals and  
25 multiple attorneys.

26           74.     Once I had narrowed down the professionals whose time would be included in

the lodestar, I retrieved all entries billed by each professional on or before September 19, 2025, the date on which the motion for preliminary approval of the amended settlement agreement was noted for decision. Once I had retrieved these entries, I looked through them and exercised my professional discretion to eliminate or reduce certain of them.

75. Having done that, I then calculated the fees attributable to each professional according to “historical” rates—i.e., the hourly rate that Keller Rohrback charged for a given professional’s work at the time the work was done. Using these historical rates, the following chart lists the hours billed on this case by each legal professional and the total fees attributable to that professional. It also gives the effective rate charged by each professional, which is the number produced by dividing each professional’s total fees by that professional’s total hours:<sup>3</sup>

**Lodestar Fee Calculated Using Historical Rates**

Professional and position	Hours	Fee	Effective rate
Ian S. Birk (partner)	227	\$119,687.50	\$527.26
Jenna Comstock (associate)	647.4	\$238,261.00	\$368.03
DeAnna Culpepper (paralegal)	275.3	\$70,629.50	\$256.55
John M. Evans (IT specialist)	269.6	\$69,087.00	\$256.26
Eric Fierro (partner)	48.8	\$26,135.00	\$535.55
Kylie N. Fisher (associate)	50.8	\$26,680.00	\$525.20
Benjamin Gould (partner)	692.4	\$636,427.50	\$919.16
Cari Campen Laufenberg (partner)	407.1	\$384,687.00	\$944.94
Chanele N. Reyes (associate)	377.7	\$188,850.00	\$500.00
Chris N. Ryder (associate)	304.6	\$153,730.50	\$504.70
Mark D. Samson (partner)	593.9	\$619,722.00	\$1,043.48
Alex W. Smith (paralegal)	1,214.5	\$370,256.50	\$304.86
Jennifer Tuato'o (paralegal)	186.8	\$81,891.00	\$438.39
Katy Warner (paralegal)	273.9	\$79,312.50	\$289.57

<sup>3</sup> Because the hours that each professional spent on this case were typically spent over a period of several years—a period during which the hourly rate changed—the effective rate is typically a blend of different historical rates. That is why most of the effective rates are not round numbers.

Total	5,569.8	\$3,065,357.00	
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76. Courts, however, have stated that “[a]ttorneys in common fund cases must be compensated for any delay in payment.” *Fischel v. Equitable Life Assurance Soc’y*, 302 F.3d 997, 1010 (9th Cir. 2002). To reflect this delay, the Ninth Circuit has stated, lodestar fees “should be computed either using an hourly rate that reflects the prevailing rate as of the date of the fee request, or using historical rates and compensating for delays with a prime-rate enhancement.” *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016).

77. To apply a prime-rate enhancement to fees incurred over several years, one must first determine the fees incurred during each year before the present. That information is reflected in the following chart:

Pre-2025 Fees by Year							
	2018	2019	2020	2021	2022	2023	2024
Fees	\$325,062.50	\$726,344.50	\$588,712.50	\$104,900.50	\$132,971	\$384,068	\$530,810

78. For prime rates, I consulted the Federal Reserve Bank of St. Louis, *Bank Prime Rate Loan Changes: Historical Dates of Changes and Rates*, <https://fred.stlouisfed.org/series/prime>. For the sake of simplicity, when the prime rate changed over the course of a single year, I applied the lowest prime rate from that year: 4.75% for 2019, 3.25% for 2020, 3.25% for 2021, 3.25% for 2022, 7.5% for 2023, 8% for 2024, and 7.25% for the first three quarters of 2025. The enhanced fee amount is calculated as of the end of the third quarter of 2025 (i.e., September 30, 2025).

79. When applicable prime rates are applied to our historical lodestar fee, the lodestar fee becomes **\$3,496,529.91**.

80. The percentage-of-the-fund fee that Keller Rohrback seeks is **\$1,333,333**. Compared to that percentage fee, the historical lodestar fee results in a multiplier of **0.43**, whereas the enhanced lodestar fee results in a multiplier of **0.38**.

81. Keller Rohrback’s hourly rates are reviewed and adjusted annually. Based on our

1 regular monitoring of prevailing market rates charged by attorneys of comparable skill,  
2 experience, and qualifications in Seattle and other major metropolitan areas, we adjust our rates  
3 so that they are in line with those charged by counsel performing similar national class action  
4 work. Our rates are substantially lower than a number of firms, but consistent with many others.

5 82. Fee awards supported by Keller Rohrbach’s *then-current* (not historical) hourly  
6 rates and corresponding lodestar have been approved in numerous class action settlements.  
7 Examples include *In re Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 3:18-md-  
8 02843-vc, 2023 WL 8445812, at \*2 (N.D. Cal. Oct. 10, 2023), *aff’d*, 2025 WL 484621 (9th Cir.  
9 Feb. 13, 2025); *In re Volkswagen Clean Diesel Marketing, Sales Practices, & Product Liability*  
10 *Litigation*, No. 15-md-02672, Dkt. 8088 (N.D. Cal. Nov. 9, 2022); *Rollins v. Dignity Health*,  
11 No. 13-cv-01450-JST, Dkt. 115 (N.D. Cal. July 15, 2022); *In re EpiPen (Epinephrine Injection,*  
12 *USP) Marketing, Sales Practices & Antitrust Litigation*, MDL No. 2785, Dkt. 2622 (D. Kan.  
13 July 11, 2022); *Southern California Gas Leak Cases*, Coord. Proc. No. 4861 (Cal. Super. Ct.  
14 Apr. 29, 2022); *Fox v. Iowa Health System*, No. 3:18-cv-00327, Dkt. 115 (W.D. Wis. Mar. 4,  
15 2021); *In re Chrysler-Dodge-Jeep “EcoDiesel” Marketing, Sales, Practices, & Products*  
16 *Liability Litig.*, MDL No. 2777, Dkt. 561 (N.D. Cal. May 3, 2019); and *Pelletz v. Weyerhaeuser*  
17 *Co.*, 592 F. Supp. 2d 1322, 1326–27 (W.D. Wash. 2009).

18 83. Just to simplify the Court’s task here, I note that even if our unenhanced  
19 historical lodestar fee were drastically reduced, a lodestar cross-check would show that a  
20 percentage fee of one-third is eminently reasonable. Suppose, for example, that Keller  
21 Rohrbach’s unenhanced historical lodestar fee were *cut in half* from \$3,065,357 to  
22 \$1,532,678.50. In that event, the multiplier here would be **0.87**—i.e., still less than 1.

23 84. In other words, this Court need not scrutinize every single hour of time claimed  
24 and every single hourly rate before concluding that a lodestar cross-check supports the fee that  
25 we are requesting. The case law recognizes this: “The lodestar cross-check calculation need  
26 entail neither mathematical precision nor bean-counting.” *In re Rite Aid Corp. Sec. Litig.*, 396



F.3d 294, 306 (3d Cir. 2005). After all, the lodestar cross-check is simply meant to double-check the reasonableness of a percentage fee, not to calculate the fees actually awarded.

### III. EXPENSES

85. We respectfully request \$265,781.77 in litigation expenses incurred over the course of this case. We incurred these expenses knowing that they might never be reimbursed. These expenses are based on information maintained in the ordinary course, including invoices and other appropriate documentation. I believe these expenses to be reasonable and necessary for the effective prosecution of this action.

86. Below is a table of the expenses incurred, identified by category of expense and the amount incurred in each category.

#### Litigation Expenses

Category of Expense	Amount Incurred
Air Fare	\$4,794.78
Ground Transportation	\$635.66
Charges Under Freedom of Information Act and Public Records Act	\$928.00
Court Reporter Charges	\$829.00
Expert Fees	\$70,321.50
In-House Photocopying	\$16,906.50
Federal Express and Local Courier Charges	\$1,133.15
Filing Fee	\$479.00
Mock Jury Consultant Services	\$2,550.00
Hotel	\$3,775.03
Meals	\$2,878.07
Mediation Services	\$14,275.00
Parking	\$247.39
Postage	\$204.23
Process Service (for both summons and subpoenas)	\$1,657.36
Relativity Database Fees (fees related to the electronic hosting of the documents obtained and analyzed in this case)	\$99,601.00
Deposition Costs	\$17,125.28

Westlaw and Lexis Research	\$27,440.82
<b>Total</b>	<b>\$265,781.77</b>

87. Note that these expenses do not include the Settlement Administrator's fees for notice and settlement administration, which are estimated at about \$35,000 and will also come out of the Settlement Fund.

#### IV. OTHER EXHIBITS

88. Attached as **Exhibits 3, 4, and 5** respectively are true and correct copies of sworn declarations from Named Plaintiffs A.B., G.T., and M.N.

\* \* \*

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

Executed this 10th day of October, 2025, at Seattle, Washington.

s/ Benjamin Gould  
Benjamin Gould

# Exhibit 1

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
5/26/2023 3:07 PM  
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No. 101537-2

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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M.N. and G.T., individually and on behalf of all others  
similarly situated,

Petitioners,

A.B. and W.N., individually and on behalf of all others  
similarly situated,

Plaintiffs Below,

v.

MULTICARE HEALTH SYSTEM, INC., a Washington  
corporation,

Respondent.

---

**SUPPLEMENTAL BRIEF OF PETITIONERS**

---

Cari Campen Laufenberg, WSBA #34354

Benjamin Gould, WSBA #44093

Chris Ryder, WSBA #58732

**KELLER ROHRBACK L.L.P.**

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## **INTRODUCTION**

Defendant operates a hospital. Its negligent hiring and supervision, and its failure to establish an appropriate program to prevent drug diversion, enabled nurse Cora Weberg to spread hepatitis C to patients. Public health officials directed that about 2,800 patients be notified of the disease outbreak and advised to get blood testing. Plaintiffs are among these patients. They assert claims for medical negligence under chapter 7.70 RCW and seek damages for their anxiety, fear, and blood testing.

This case presents two questions.

A threshold question is whether Plaintiffs' claims fall within chapter 7.70 RCW. The statutory language confirms that it does indeed recognize claims that seek to hold a hospital responsible for breaching duties owed to all patients.

The principal question here, however, is whether Plaintiffs have established legal causation between Defendant's negligence and their own emotional distress, even if they ultimately tested negative for hepatitis C. The answer to that

question is “yes.”

The connection between Defendant’s negligence and Plaintiffs’ distress was close and definite. When Weberg’s drug diversion put Plaintiffs within the group of patients at risk of contracting hepatitis, it was inevitable that they would experience fear and anxiety about their health, even if they ultimately tested negative for hepatitis C. Defendant argues the distress flowed from its notification letter, not its negligence. But once Defendant’s negligence had led to the spread of disease and created a risk of infection for Plaintiffs, public health officials would have ensured that Plaintiffs were notified. Plaintiffs’ distress was not caused by anything peculiar about the notification letter. It stemmed unavoidably from negligence.

Plaintiffs’ distress was also foreseeable. While Defendant argues that in hindsight Plaintiffs were unlikely to contract hepatitis C, this Court has repeatedly held that liability for negligence is not determined in hindsight. What matters is that public health officials determined *at the outset* that Plaintiffs

were within the zone of risk and needed blood testing. Negligence like Defendant's will always create some degree of uncertainty about exactly who is infected.

Precedent, moreover, forecloses any argument that legal causation is not satisfied because Plaintiffs suffered no "actual exposure" to hepatitis—something that has become clear, if at all, only in hindsight. Instead, the Court should hold that legal causation is satisfied because Plaintiffs suffered an objectively reasonable fear of having contracted a disease through a medically recognized means of transmission.

### **ISSUES PRESENTED**

1. Does chapter 7.70 RCW govern Plaintiffs' claims?
2. Due to Defendant's negligence, its nurse was able to divert drugs and spread hepatitis C to patients. Defendant, on the advice of health officials, sent notification letters to patients who had received certain injections while the nurse was on duty, whether or not there was evidence that the nurse had directly treated them. The letter said that the nurse may have exposed

patients to hepatitis C and it advised recipients to get blood tests. Have the patients established legal causation under chapter 7.70 RCW for the emotional distress they suffered, regardless of whether they later tested positive for hepatitis C?

### **STATEMENT OF THE CASE**

#### **I. Defendant fails to follow the standard of care to prevent drug diversion.**

Defendant operates the Good Samaritan Hospital (“Good Samaritan”) in Puyallup. This case, and the hepatitis C outbreak that it concerns, arises from Defendant’s failure to prevent employee drug diversion. This occurs when employees divert medication from its intended use—often by injecting themselves with narcotics. CP 524-36.

Drug diversion is common, as are resulting outbreaks of disease. CP 538, 622. That is why healthcare facilities must select employees with reasonable care, properly supervise them while they work, and adopt and implement a systematic program to prevent diversion. *See* CP 575-77, 618, 620-22 (declarations of Plaintiffs’ expert witnesses). This standard of care is reflected



in the American Society of Health System Pharmacists Guidelines. CP 618, 622.

Defendant failed to follow this standard of care. Defendant, Plaintiffs' experts have testified, failed to perform a reasonable pre-hire employment check before hiring Cora Weberg, the nurse who spread hepatitis C. CP 575. It failed to properly supervise her. CP 576, 620-21. And it failed to implement a proper anti-diversion program. CP 575-76, 621. Absent these failures, Plaintiffs' experts have testified, nurse Weberg would not have been able to put patients at risk for hepatitis C. CP 577, 622.

**II. Nurse Weberg's drug diversion leads to a hepatitis C outbreak, which public health officials then trace back to Weberg.**

In 2017 and 2018, nurse Weberg worked in Good Samaritan's emergency department. CP 140. She diverted injectable narcotics from the hospital for personal use. CP 84:9-85:22, 114, 140.

In early 2018, the Tacoma-Pierce County Health

Department learned of two Good Samaritan patients who had tested positive for hepatitis C. CP 88. Neither had outside risk factors associated with contracting the disease, but both had received injectable narcotics from Weberg at Good Samaritan. *Id.*

After investigating, the Centers for Disease Control and Prevention (“CDC”) determined at least twelve patients who visited the Good Samaritan emergency department had contracted genetically linked hepatitis C. CP 88-90. These patients had all received injectable narcotics from Weberg. *Id.* Weberg’s drug diversion, concluded public health officials, was the probable cause of the hepatitis outbreak. *Id.*; *see also* CP 147-48, 365:4-367:12.

**III. Public health officials determine that approximately 2,800 patients are at risk of contracting hepatitis C and need notification and testing.**

In response to the outbreak, the CDC and the local health department determined that due to the risk of infection, certain patients should be notified to get hepatitis C testing. *See* CP 287

at 25:11-28:18. This notification, the health officials concluded, should be sent to approximately 2,800 patients: those who had received certain injectable drugs in the emergency department while nurse Weberg was on duty. CP 382:20-383:18. This group included patients Weberg had treated herself and patients she may not have directly treated. CP 384:24-385:5.

The public health officials had good reasons for thinking these patients were at risk and needed notification. Even now, the exact method by which Weberg transmitted hepatitis C is unknown. If Weberg had used saline syringes to divert or dilute narcotics, this could have infected other providers' patients, since saline syringes are not located in secure dispensing cabinets and are usually not tracked in a medical administration record. CP 621, ¶ 13; *see also* CP 526 (describing one such case). And as Plaintiffs' nursing expert testified, "Weberg's charting"—her record-keeping—"was so terrible that it is certainly possible that she gave medications to other nurses' patients." CP 576; *accord* CP 603. Thus, especially when the public health agencies were

deciding whom to notify, it was an open question exactly which and how many patients Weberg exposed to hepatitis C.

**IV. Defendant notifies the 2,800 patients that they are at risk and need testing.**

As directed,<sup>1</sup> Defendant sent out a letter to the patients identified by the public health officials. CP 289-90 at 36:13-37:1. All patients received the same form letter. CP 88-89, 466-67, 469-70.

The letter “share[d] some very concerning information”: an employee in the Good Samaritan emergency department may have exposed patients to hepatitis C. CP 466. “The only way to be certain you were not infected,” the letter stated, “is to have your blood tested.” *Id.* Recipients might also “need to be re-tested again in six months.” *Id.* At the CDC’s recommendation,

---

<sup>1</sup> Defendant has insisted that health officials did not “direct[]” it to notify the patients. Answer to Pet. 4. The record indicates otherwise. *See* CP 385:6-9 (“Q. . . . And the *requirement* that MultiCare notify that group of people was issued by the CDC and the Pierce County Health Department? A. *Yes.*”) (emphasis added). Ultimately, though, what matters is not this factual dispute, but a legal point: health officials have the power to require notification if it is not done voluntarily. *See infra* 29.

Defendant offered testing not only for hepatitis C, but also for hepatitis B and HIV. *Id.*

Meanwhile, Defendant reassured the rest of its patient community, stating in a press release that patients who did “not receive notification letters” were “not at risk.” CP 147-48 (emphasis omitted).

**V. Most recipients of the letter, including the Plaintiffs, undergo testing.**

Most of the letter’s recipients got their blood tested for hepatitis C. By November 1, 2018, 1,863 of the 2,762 patients who received the letter had been tested. CP 89.

Among these patients were Plaintiff A.B., whom Weberg treated directly, and Plaintiffs M.N. and G.T., whom she did not. All three patients were admitted to the Good Samaritan emergency department and received injections. CP 68-73. All three received letters and underwent blood testing for hepatitis. *Id.*

**VI. The trial court certifies two classes.**

Plaintiffs assert claims for medical negligence under

chapter 7.70 RCW, which governs injuries resulting from health care. Plaintiffs seek damages for the anxiety and fear they suffered, the time spent being tested, the emotional disruption to their lives, and the physical invasion of blood testing. CP 33-38, 47.

The trial court certified two classes under CR 23. CP 316-28. The “Weberg Treatment Class” consists of everyone who received letters from Defendant and whose charts showed that they had been treated directly by Weberg. CP 326. The “General Treatment Class” consists of all other letter recipients who were treated in the emergency department when Weberg was on duty. *Id.* Because this appeal concerns only the General Treatment Class, this brief will refer to it simply as the “class.”

**VII. The trial court grants summary judgment and the Court of Appeals affirms.**

Defendant moved for summary judgment on the class’s claims. CP 329-49. Plaintiffs opposed, providing documentary evidence and uncontroverted declarations addressing duty, breach of duty, and proximate cause. CP 418-47, 574-78, 599-

605, 617-22. The trial court granted the motion, ruling that Defendants' negligence was not the legal cause of the class's injuries. CP 739-40. It then entered judgment under CR 54(b). CP 757-60, 767.

Division II affirmed, holding that Defendant's negligence was not the legal cause of the class's injuries. *M.N. v. MultiCare Health Sys., Inc.*, 23 Wn. App. 2d 558, 567-68, 519 P.3d 932 (2022).

## **STANDARD OF REVIEW**

In this summary-judgment appeal, the Court considers all facts and reasonable inferences in the light most favorable to the nonmoving party—here, Plaintiffs. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989).

## **ARGUMENT**

### **I. Plaintiffs' claims fall within chapter 7.70 RCW.**

#### ***A. Plaintiffs' claims are governed by the plain language of chapter 7.70 RCW.***

In its answer to Plaintiffs' petition, Defendant argued that Plaintiffs' claims fall outside chapter 7.70 RCW. Answer to Pet.

24-25. But Plaintiffs’ claims fall easily within the statute’s plain language, which must be given effect. *Kellogg v. Nat’l R.R. Passenger Corp.*, 199 Wn.2d 205, 220, 504 P.3d 796 (2022). In the words of the statute, Defendant is a “health care provider” bound by an “accepted standard of care” that Plaintiffs assert it “fai[ed] . . . to follow,” which “resulted” in “injury” to Plaintiffs. RCW 7.70.030(1).

*First*, Defendant falls within the statute’s definition of “health care provider,” which includes “a hospital” and any entity that employs physicians, nurses, and other individual health-care workers. RCW 7.70.020(1), (3); *see Douglas v. Freeman*, 117 Wn.2d 242, 261, 814 P.2d 1160 (1991).

*Second*, Defendant owed a duty to patients “to select its employees with reasonable care” and “to supervise all persons who practice medicine within its walls.” *Douglas*, 117 Wn.2d at 248. It also owed patients a duty “to furnish the patient supplies and equipment free of defects,” *Douglas*, 117 Wn.2d at 248—a duty that includes furnishing supplies and equipment free of



communicable disease. *See* 1 Steven E. Pegalis, *American Law of Medical Malpractice 3d* § 6:15 (2022) (discussing duty to control hospital-acquired infections). Defendant has not contested it owes these duties to its patients, including Plaintiffs.

*Third*, Plaintiffs have adduced expert testimony that Defendant breached these duties. *See supra* 4-5. Defendant has not disputed or rebutted this testimony.

*Fourth*, Plaintiffs have adduced expert testimony that their injuries resulted from Defendant's breach of its duties. Experts aver that if Defendant had not breached its duties, nurse Weberg would not have been able to put Plaintiffs at risk of contracting hepatitis C. *See supra* 4-5. While Defendant argues this evidence fails to satisfy chapter 7.70 RCW's legal-causation element, that very argument presupposes that chapter 7.70 RCW governs the claims here.

***B. Defendant's arguments against the applicability of chapter 7.70 RCW should be rejected.***

Defendant maintains, however, that Plaintiffs lack a claim under chapter 7.70 RCW. It emphasizes that Weberg herself did

not treat Plaintiffs, but this is immaterial. Plaintiffs do not assert that Defendant is vicariously liable for what Weberg did. Rather, Defendant *itself* breached its nondelegable duties to its patients. This kind of corporate-liability claim has long been cognizable. *See Douglas*, 117 Wn.2d at 253.

If this kind of claim were not cognizable, the consequences would be alarming. If a hospital negligently supplied surgeons with unclean equipment but the surgeons themselves provided competent care, patients who contracted infections could not recover for their injuries. That cannot be what the Legislature intended.

**II. Plaintiffs have established legal causation for all class members.**

***A. Legal causation is satisfied because class members suffered an objectively reasonable fear of having contracted a disease through a medically recognized means of transmission.***

Washington “recognizes two elements to proximate cause: [c]ause in fact and legal causation.” *Hartley v. State*, 103 Wn.2d 768, 777, 698 P.2d 77 (1985) (citations omitted). At issue here is

legal causation, which presents a question of law when the relevant facts are undisputed. *Schooley v. Pinch's Deli Mkt., Inc.*, 134 Wn.2d 468, 478, 951 P.2d 749 (1998). To answer that question, the Court examines “mixed considerations of logic, common sense, justice, policy, and precedent.” *Id.* at 479 (citation omitted).

The Court should hold that legal causation in drug-diversion cases is established when, due to a healthcare provider's negligence, plaintiffs (1) suffer an objectively reasonable fear of having contracted a disease (2) through a medically recognized means of transmission. *Cf. Elliott v. Arrowsmith*, 149 Wash. 631, 633, 272 P. 32 (1928) (“[O]ne may recover for mental anguish caused by a reasonable dread of future illness or death as a result of an injury . . . .”) (citation omitted). This standard has been adopted by other jurisdictions in broadly analogous cases. *Faya v. Almaraz*, 620 A.2d 327, 336-37 (Md. 1993); *Hartwig v. Or. Trail Eye Clinic*, 580 N.W.2d 86, 94 (Neb. 1998); *Williamson v. Waldman*, 696 A.2d 14, 22 (N.J.

1997); *Madrid v. Lincoln Cnty. Med. Ctr.*, 923 P.2d 1154, 1163 (N.M. 1996).

That standard is met here. First, Plaintiffs' fear of contracting hepatitis C was objectively reasonable.<sup>2</sup> Public health officials determined, and Plaintiffs' experts agree, that Plaintiffs were at risk.

Second, the drug injections Plaintiffs received at Defendant's hospital were a medically recognized means of transmission. Hypodermic injections are capable of transmitting hepatitis C.

***B. Underlying principles and policies support legal causation here.***

Under the considerations that this Court's legal-causation case law has taken into account, Plaintiffs have shown legal causation.

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<sup>2</sup> How *long* a reasonable person should have experienced anxiety, fear, or lingering psychological trauma is for the jury. See *Marchica v. Long Island R.R. Co.*, 31 F.3d 1197, 1207-08 (2d Cir. 1994).

*1. In light of Defendant's preexisting duties to Plaintiffs, Defendant must show why relevant considerations do not favor legal causation.*

Defendant owed Plaintiffs the duties to select employees with reasonable care, to properly supervise them, and to implement a proper anti-diversion program. *See supra* 4-5. These duties create a presumption in favor of legal causation. Defendant must therefore show why relevant considerations require the Court to hold that legal causation is *not* satisfied. *See Lowman v. Wilbur*, 178 Wn.2d 165, 172, 309 P.3d 387 (2013) (legal causation was satisfied because “there is no rationale to *negate* the sound policy preference” behind legal duty) (emphasis added). For while duty and legal causation are distinct elements, they also have a close “interrelationship” because “both questions concern the policy issue of how far the legal consequences of the defendant’s negligence should extend.” *Id.* at 169 (citation omitted). Hence, “the policy considerations that support imposition of a duty will often compel the recognition of legal causation . . . .” *Id.* at 171 (citing *Harbeson v. Parke-Davis*,

*Inc.*, 98 Wn.2d 460, 476, 656 P.2d 483 (1983)).

*2. Defendant's negligence is tightly connected to Plaintiffs' injuries.*

In analyzing legal causation, the Court asks whether “the connection between the ultimate result and the act of the defendant is too remote or insubstantial to impose liability.” *Schooley*, 134 Wn.2d at 478-79. Here, the connection was neither remote nor insubstantial.

Without Defendant's negligence, Weberg would not have been able to divert drugs, thereby putting Plaintiffs within the group of patients at risk of contracting hepatitis. *See supra* 4-5. Because of that risk, Plaintiffs suffered anxiety and fear. Negligence and injury are closely connected here.

Defendant argues that Plaintiffs' injuries came from the notification letter, not its negligent hiring, supervising, and drug-diversion monitoring. But the letter flowed inevitably from the negligence. That negligence created a risk of outbreak that, as public health officials determined, included Plaintiffs. *See, e.g.*, CP 287-88 at 28:19-29:2; CP 689 at 6:11-12. Given that risk, the

letter was inevitable because it was needed to protect the public health. *See* CP 287 at 25:11-28:18; *see also* CDC, *Acute Hepatitis C Virus Infections Attributed to Unsafe Injection Practices at an Endoscopy Clinic*, 57 Morbidity & Mortality Wkly. Rep. 513, 516 (2008), <https://www.cdc.gov/mmwr/PDF/wk/mm5719.pdf> (in cases of “infection-control breaches” that may communicate bloodborne disease, “potentially exposed persons should be notified and tested, even if transmission has not been confirmed”).

Even if Defendant had not voluntarily sent the letter, the public health authorities would still have ensured that Plaintiffs were notified. As Plaintiffs’ petition noted, local health departments and other authorities in Washington have ample power to require notification if a healthcare facility does not notify patients voluntarily. Pet. 21-23; *see also infra* 29. In short, the letter Plaintiffs received did not arise independently of Defendant’s negligence.

Nor was Plaintiffs’ distress caused by anything peculiar to

the letter itself. It was the *fact* that Plaintiffs were notified of the risk, not how they were notified or by whom, that caused their distress.

*3. The policies of deterrence and compensation favor legal causation.*

The paramount considerations of deterrence and compensation also favor liability. *See, e.g., Mohr v. Grantham*, 172 Wn.2d 844, 856, 262 P.3d 490 (2011) (relying on “principles of deterring negligence and compensating for injury” to determine scope of liability); *Barr v. Interbay Citizens Bank of Tampa*, 96 Wn.2d 692, 699, 635 P.2d 441 (1981), *amended by* 96 Wn.2d 692, 649 P.2d 827 (1982) (“[E]very tort rule is designed both to deter other wrongdoers and to compensate the injured person.”).

First, society has a vital interest in deterring the negligent spreading of disease. Liability will deter negligence by requiring healthcare facilities to internalize the full social costs of unreasonable conduct, “making them more likely to take due care.” *Affiliated FM Ins. Co. v. LTK Consulting Servs., Inc.*, 170



Wn.2d 442, 453, 243 P.3d 521 (2010). After all, healthcare facilities, not patients, are best positioned to prevent the spread of disease through employee drug diversion. *See id.*; *cf. Pedroza v. Bryant*, 101 Wn.2d 226, 231, 677 P.2d 166 (1984) (“Hospitals are . . . in a superior position to monitor and control physician performance.”).

Next, the policy of full compensation requires that class members be made whole for what they have suffered. They suffered the initial shock of learning that they may have contracted hepatitis C. *See* CP 271 at 19:13 (testimony from one Plaintiff that he “almost threw up” on reading Defendant’s letter). They also worried about how the news would affect their children and other loved ones, CP 225, 271, how hepatitis C could affect preexisting conditions, CP 212, 249, and how accurate the blood tests were and whether they would need retesting, CP 246-47. Many class members doubtless had to cope with the embarrassment of informing sexual partners. All class members had to cope with a disturbing new uncertainty about

their health.

*4. The foreseeability of Plaintiffs' injuries favors legal causation.*

In determining legal causation, this Court has often asked whether a plaintiff's injury was a foreseeable consequence of the defendant's negligence. *See Meyers v. Ferndale Sch. Dist.*, 197 Wn.2d 281, 293, 481 P.3d 1084 (2021) (“[F]oreseeability” is one of “the starting points of the legal cause analysis.”). Foreseeability means that “the harm sustained must be reasonably perceived as being within the general field of danger covered by the specific duty.” *Christen v. Lee*, 113 Wn.2d 479, 492, 780 P.2d 1307 (1989) (citation omitted).

Here, Plaintiffs' emotional distress was well within the “general field of danger.” When negligence of the kind here leads to the spread of disease via drug diversion, at-risk patients will predictably experience distress, even if they ultimately test negative for the disease. In fact, one of the most predictable things about an outbreak of infection is some uncertainty about exactly who is infected. *See, e.g.,* Katriona Shea *et al.*, *Multiple*

*Models for Outbreak Decision Support in the Face of Uncertainty*, 120 Proc. Nat'l Acad. Sci. e2207537120 (2023), <https://www.pnas.org/doi/10.1073/pnas.2207537120>.

5. *Legal causation does not expand liability beyond a limited group.*

This Court has also considered whether a determination of legal causation would allow limitless liability. *Meyers*, 197 Wn.2d at 296; *Schooley*, 134 Wn.2d at 480-81. Here, liability will be tightly contained. Chapter 7.70 RCW already places stringent limits on liability, *Berger v. Sonneland*, 144 Wn.2d 91, 113, 26 P.3d 257 (2001), most notably the “exacting burden to prove that a health care provider breached the standard of care,” *Mohr*, 172 Wn.2d at 850 n.4. And legal causation would still require plaintiffs to show they had an objectively reasonable fear of contracting disease through a medically recognized channel of transmission. *See supra* 15.

6. *Legal causation imposes no new obligations.*

This Court has also asked whether recognizing legal causation would impose unduly onerous obligations. *See*

*Taggart v. State*, 118 Wn.2d 195, 227-28, 822 P.2d 243 (1992).

There would be no new obligations here. Hospitals *already* owe a duty to all patients to exercise due care in hiring and supervising employees and in instituting anti-diversion programs. *See supra* 12-13. Liability to the specific patients here could not add to that duty.

***C. Defendant's arguments against legal causation should be rejected.***

- 1. To establish legal causation, Plaintiffs need not show physical impact in the form of actual exposure to hepatitis C.*

In the last forty years, Washington courts have confirmed that standalone emotional-distress damages are available for many different claims. *See Schmidt v. Coogan*, 181 Wn.2d 661, 672, 335 P.3d 424 (2014) (collecting cases). Defendant, however, seeks to revive an especially restrictive form of the older rule that emotional-distress damages are available only when the plaintiff suffered a physical impact. *See Corcoran v. Postal Tel.-Cable Co.*, 80 Wash. 570, 573, 142 P. 29 (1914). Defendant says Plaintiffs cannot establish legal causation

because they cannot show a specific *kind* of physical impact: actual exposure to hepatitis C. *See* Br. of Resp't 10-30.

First, even if a physical impact *were* required, it would be satisfied by the injections that class members received at Defendant's hospital. These injections obviate the need for *another* physical impact like actual exposure. Following this line of reasoning, other jurisdictions have rejected an actual-exposure requirement in analogous circumstances. *See Marchica*, 31 F.3d at 1203-04; *Dollar Inn, Inc. v. Slone*, 695 N.E.2d 185, 189 (Ind. Ct. App. 1998); *Hartwig*, 580 N.W.2d at 94; *Madrid*, 923 P.2d at 1157; *Howard v. Alexandria Hosp.*, 429 S.E.2d 22, 24-25 (Va. 1993); *see also Faya*, 620 A.2d at 336-37 (reaching same holding on other grounds); *Williamson*, 696 A.2d at 22 (same).

Even if we ignore the injections, Washington case law already precludes an actual-exposure requirement. In *Berger*, a physician had disclosed a patient's confidential healthcare information without authorization. The Court held that the patient had a claim for emotional-distress damages under chapter

7.70 RCW. *Berger*, 144 Wn.2d at 106-10.

*Berger* recognized this claim even though the negligent action—the disclosure of patient information—involved no physical impact. By necessity, then, *Berger* held that one of the claim’s elements, legal causation, required no physical impact—such as actual exposure to disease. In so holding, *Berger* followed the path marked by *Harbeson*, where parents had recovered emotional-distress damages despite suffering no physical impact. *See Price v. State*, 114 Wn. App. 65, 72, 57 P.3d 639 (2002) (discussing *Harbeson*).

*Berger*’s no-impact holding rules out any requirement that Plaintiffs prove actual exposure to hepatitis. *Natale v. Gottlieb Mem’l Hosp.*, 733 N.E.2d 380, 383-84 (Ill. App. Ct. 2000) (imposing that requirement); *Pendergist v. Pendergrass*, 961 S.W.2d 919, 924-27 (Mo. Ct. App. 1998) (same).<sup>3</sup>

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<sup>3</sup> Certain other non-Washington precedents require actual exposure, but arguably they would fall outside chapter 7.70 RCW if filed in Washington. *See Russaw v. Martin*, 472 S.E.2d 508, 511-12 (Ga. Ct. App. 1996) (plaintiff was hospital visitor);

*Berger* also held that the framework governing negligent infliction of emotional distress (“NIED”), such as the need to prove objective symptoms, does not apply to chapter 7.70 RCW. *Berger*, 144 Wn.2d at 113; *see also Colbert v. Moomba Sports, Inc.*, 163 Wn.2d 43, 57, 176 P.3d 497 (2008) (NIED is “not subject to ordinary tort principles”). This makes it irrelevant that some out-of-state NIED cases have required actual exposure. *Majca v. Beekil*, 701 N.E.2d 1084, 1088-90 (Ill. 1998); *K.A.C. v. Benson*, 527 N.W.2d 553, 560 (Minn. 1995).

*2. Liability is not determined in hindsight.*

Defendant has argued that because class members’ blood tests have thus far all come back negative, class members were at no real risk of contracting hepatitis C. *See Answer to Pet.* 6-8, 13. For this reason, Defendant has contended, the real cause of Plaintiffs’ damages was the notification letter, not negligence.

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*Brown v. N.Y.C. Health & Hosps.*, 648 N.Y.S.2d 880, 886 (App. Div. 1996) (nurse); *Carroll v. Sisters of Saint Francis Health Servs., Inc.*, 868 S.W.2d 585, 594 (Tenn. 1993) (hospital visitor). If they fell *within* the statute, they would conflict with *Berger*.

*See M.N.*, 23 Wn. App. 2d at 567 (Plaintiffs’ “fear primarily arises from their receipt of the notification letter”).

This reasoning makes liability dependent on a fact known only in hindsight—namely, that no class member has thus far tested positive. But Washington courts have consistently held that liability for negligence should not depend on hindsight. “Reasonable foreseeability, rather than hindsight, is the criterion which must be applied.” *Evangelical United Brethren Church of Adna v. State*, 67 Wn.2d 246, 261, 407 P.2d 440 (1965). Thus, even if in hindsight class members were unlikely to contract hepatitis C, the emotional distress they suffered was still foreseeable. *See Ayers ex rel. Ayers v. Johnson & Johnson Baby Prods. Co.*, 117 Wn.2d 747, 764, 818 P.2d 1337 (1991) (foreseeability does not consider facts “available only in hindsight”). It was eminently foreseeable under the specific circumstances here, where health officials determined at the time of the outbreak that class members were at risk. *See Pet.* 23-26.

Viewing this case in hindsight also flouts common sense.



Plaintiffs experienced emotional distress precisely *because* they did not know how things would turn out. It would be perverse to hold that their distress is not compensable because of what we know only in hindsight.

3. *Liability would not discourage full disclosure of potential infection because local health departments can require hospitals to provide notification.*

The Court of Appeals concluded that recognizing liability here would discourage hospitals from providing “full transparent disclosure and notification” of potential infections. *M.N.*, 23 Wn. App. 2d at 567. As Plaintiffs’ petition explained, however, this conclusion ignores local health departments’ broad powers, which enable them to *order* hospitals to notify patients of potential infections should hospitals not do so voluntarily. *See* Pet. 21-23. Health departments may also notify patients on their own. Thus, however liability may affect voluntary notification, public health officials will still have ample power to see that notification is made.

*4. The inadmissibility of certain apologies, expressions of sympathy, and remedial measures is irrelevant to liability.*

According to Defendant, liability would conflict with RCW 5.64.010, RCW 5.66.010, and ER 407, which prohibit parties from introducing certain apologies, expression of sympathy, and subsequent remedial measures into evidence. Liability here, though, arises not from the apologies or expressions of sympathy within Defendant's notification letter, but from the underlying negligence that necessitated notification. *See also* Pet. 23-26. To the extent the letter is a remedial measure, Plaintiffs do not rely on it to prove fault. ER 407.

**III. In the alternative, Plaintiffs have established legal causation for all class members who have undergone blood tests.**

In the alternative, the Court should hold that class members who have undergone blood tests may recover for emotional distress. As the majority below acknowledged, blood

tests constitute a physical impact.<sup>4</sup> *M.N.*, 23 Wn. App. 2d at 567 n.8. That impact allows class members who underwent blood tests to recover for all emotional distress they suffered due to Defendant's negligence. *See Green v. Floe*, 28 Wn.2d 620, 636, 183 P.2d 771 (1947); *Redick v. Peterson*, 99 Wash. 368, 370, 169 P. 804 (1918); *see also* Pet. 13-16.

Defendant has argued the blood tests allow class members to recover only for the emotional distress associated with the tests. Answer to Pet. 17-20. The bodily harm of blood testing, however, renders Defendant liable for "emotional disturbance resulting from the bodily harm *or from the conduct which causes it.*" *Restatement (Second) of Torts* § 456(a) (1965) (emphasis added). Defendant is liable to the tested class members for *all* emotional distress caused by its negligence. *See Norfolk & W. Ry. Co. v. Ayers*, 538 U.S. 135, 154 (2003).

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<sup>4</sup> This assumes *arguendo* that the injections were not a physical impact. *See supra* 25.

## **CONCLUSION**

Plaintiffs have a valid claim under chapter 7.70 RCW and have shown legal causation. The Court should therefore reverse the Court of Appeals and remand for trial.

## **CERTIFICATE OF COMPLIANCE**

This document contains 4,991 words exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images.

RESPECTFULLY SUBMITTED this 26th day of May, 2023.

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The undersigned hereby certifies that on May 26, 2023, I caused a true and correct copy of the foregoing document to be served on the following attorneys of record via email:

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

Dated May 26, 2023 at Seattle, WA.

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May 26, 2023 - 3:07 PM

## Transmittal Information

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# Exhibit 2

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Ian Stephen Birk practices in Keller Rohrback L.L.P.'s section for plaintiff tort litigation. Mr. Birk's practice emphasizes representation of policyholders and other insureds in a broad range of disputes with insurance carriers. He has experience in both first- and third-party coverages as well as insurance claim handling practices and regularly consults with other lawyers on insurance issues. Mr. Birk has represented people who have lost their home; lost their business; been diagnosed with debilitating diseases; or been the victim of physical injury.

In addition, Mr. Birk has represented individual and organizational clients in litigation and at trial in cases ranging from commercial disputes to automobile accidents to securities fraud. He has represented clients with severe brain injuries and clients who were defrauded of millions.

Mr. Birk serves as a volunteer attorney with the King County Bar Association Neighborhood Legal Clinic. He has served as Newsletter Editor of the American Association for Justice Insurance Section, Associate Editor for insurance law for the Trial News, the monthly publication of the Washington Association for Justice. He has been recognized by The National Trial Lawyers as one of the Top 40 Under 40 in Washington and has received a 10.0/superb rating from Avvo.com. Before entering private practice, Mr. Birk clerked at the Washington Supreme Court.

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Ian S. Birk and Lorraine Lewis Phillips, "Should Juries Be Informed of the Consequences of Their Apportionment Decisions?" *Litigation News*, Litigation Section of the Washington State Bar Association, vol. 21, n. 2 (Fall 2009).

Ian S. Birk, Review: "The Trial of the Templars looks at the use of torture in legal proceedings." *Trial News*, Washington State Trial Lawyers Association, vol. 43, n. 1 (September 2007).

Ian S. Birk, Review: "All Deliberate Speed: Carrying the Mandate of Brown v. Board of Education into the Future." *Trial News*, Washington State Trial Lawyers Association, vol. 40, n. 11 (July/August 2005).

Paul Chemnick and Ian S. Birk, "Defeating Allegations of Contributory Fault in Medical Negligence Cases," *Trial News*, vol. 39, n. 11, Washington State Trial Lawyers Association (July/August 2004).

## PUBLICATIONS & PRESENTATIONS

WSAJ's 37th Annual Insurance Seminar, Class Actions in Insurance Cases and anti-SLAPP Update, Sea-Tac & Spokane, Washington, January 23 & 30, 2015.

The *Cedell* Presumption: Discovery of the Insurer's Claim File in Insurance Bad Faith Litigation in Washington, 49 *Gonz. L. Rev.* 503 (2014).

Washington Civil Procedure Deskbook, Chapter 19 (3d. ed. 2014).

Tacoma-Pierce County Bar Association, Tort Law Update, UIM Bad Faith Claims, Fircrest, Washington, October 17, 2014.

The Right of an Additional Insured to a Copy of the Insurance Policy, *Trial News*, vol. 48, n. 9, Washington State Association for Justice (May 2013), page 1.

WSAJ's 35th Annual Insurance Seminar, Co-Chair, Spokane & Tacoma, Washington, January 24 & 25, 2013.

WSAJ's 34th Annual Insurance Seminar, Reasonableness Hearings under RCW 4.22.060 and the Right to Jury Trial, Spokane & Tacoma, Washington, 2012.

Ian S. Birk, "Supreme Court accepts review in stipulated judgment case," *Trial News*, vol. 47, n. 3, Washington State Association for Justice (November 2011).

WSAJ's 1st Annual Winter Conference, Using Consumer Laws to Better Represent Your Injured Clients, Seattle, Washington, 2010.

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In 2008, Jeff received his J.D. from Lewis & Clark Law School, where he volunteered his time at the Lewis and Clark Legal Clinic, representing clients that could not otherwise afford counsel. This experience impressed upon him the difference a caring and skilled advocate can make in the lives of those who are unable to advocate for themselves—a lesson that made a lasting impression in his career. Following his J.D., Jeff received his LL.M. in Taxation from the University of Washington School of Law.

Before joining Keller Rohrback, Jeff worked out of the Seattle office of GLP Attorneys, a personal injury firm. There, he helped build the firm's insurance bad faith practice group, handling bad faith cases from intake to successful resolution.

Outside of work, Jeff and his wife stay busy chasing around their two daughters. Jeff enjoys spending time with the family on Whidbey Island, camping and hiking throughout the Pacific Northwest, and rooting for the Huskies.

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**Eric Fierro bridges the gap between technology and the law.** Eric practices in Keller Rohrback's nationally recognized Complex Litigation Group and oversees the firm's legal technology group, providing electronic discovery and litigation support to colleagues and clients on a wide array of cases. Whether he is helping to preserve significant amounts of data for institutional clients or walking an individual through the data collection process to increase accuracy and maximize privacy, Eric works closely with clients to understand their needs and provide solutions.

Eric has over 15 years of experience with legal technology. While attending law school in the evening, Eric worked full-time for the U.S. Attorney's Office for the District of Massachusetts where he provided technical support for all criminal and civil units, including the healthcare fraud, securities fraud, and other white collar crime units. Eric also worked as a summer law clerk for the computer crime and intellectual property unit at the U.S. Attorney's Office. Before joining Keller Rohrback, he was a managing consultant for Huron Consulting Group, providing consultative services for complex electronic discovery and document review matters.

When not at work, Eric enjoys spending time with his family, golfing, and rebuilding off-road vehicles in his garage.

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Presenter, *Plaintiff Offensive Review Workflows and Tips*, 2018 Complex Litigation E-Discovery Forum, (September 2018).

Presenter, *Best Practice for Plaintiff Document Collection*, 2017 Complex Litigation E-Discovery Forum (September 2017).

Presenter, *Negotiating a State of the Art ESI Protocol*, 2016 Complex Litigation E-Discovery Forum, (September 23, 2016).

Panelist, *The 2015 Federal Rule Amendments: Has Anything Really Changed?*, IPro Innovations for The Sedona Conference (April 2016).

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Initially discovering her interest in law as a high school student, Kylie developed a passion for finding workable solutions to complex problems within the legal realm. Viewing the practice of law as one big puzzle with moving parts and power imbalances, she has embraced the challenge of trying to bring more justice and equity to the world by doing her part to solve this puzzle.

In 2020, Kylie graduated from University of Washington School of Law with high honors and was awarded the Dean's Medal. Kylie also received the CLEA Outstanding Clinical Student Award for her asylum work with the Children and Youth Advocacy Clinic. During law school, Kylie served as an Articles Editor and published a Student Comment for the University of Washington Law Review.

Before joining Keller Rohrbach, Kylie clerked for Judge Rosanna M. Peterson at the United States District Court for the Eastern District of Washington and for Justice Debra L. Stephens at the Washington State Supreme Court, expanding her research and legal writing capabilities in a professional environment.

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**Benjamin Gould makes the law work for his clients.** Ben, a Seattle native, practices in Keller Rohrbach's nationally recognized Complex Litigation Group. His ability to clearly and efficiently communicate factual and legal issues to his clients and courts allows him to adeptly serve the interest of clients who have been harmed by others' misconduct.

Ben has extensive experience in appellate litigation and has active appeals pending in state and federal courts throughout the nation. He has secured successful results for his clients before the U.S. Courts of Appeals for the Second, Eighth, and Ninth Circuits and numerous state appellate courts. Ben also maintains an active practice outside the appellate arena. He has represented clients in cases involving pensions, securities, and consumer-protection law, among other subjects.

Before joining the firm, Ben worked as a Legal Fellow of the ACLU Drug Law Reform Project, litigating cases related to drug policy and civil rights. He also served as a clerk to two federal appellate judges: the Honorable Betty Binns Fletcher of the U.S. Court of Appeals for the Ninth Circuit and the Honorable Diana E. Murphy of the U.S. Court of Appeals for the Eighth Circuit.

Outside of work, Ben enjoys spending time with his wife, daughters, and extended family.

### **BAR & COURT ADMISSIONS**

2007, California  
2010, District of Columbia  
2010, U.S. Court of Appeals for the Ninth Circuit  
2011, Washington  
2011, U.S. District Court for the Western District of Washington  
2012, U.S. District Court for the Eastern District of Washington  
2012, U.S. Court of Appeals for the Third Circuit  
2013, U.S. Court of Appeals for the Second Circuit  
2013, U.S. Court of Appeals for the Sixth Circuit  
2013, U.S. Court of Appeals for the Eighth Circuit  
2013, U.S. Court of Appeals for the Eleventh Circuit  
2014, U.S. Court of Appeals for the First Circuit  
2015, U.S. Supreme Court  
2018, U.S. District Court for the Northern District of California

## PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*; Appellate Law Section

Washington State Bar Association, *Member*

Washington State Association for Justice, *Member*

## HONORS & AWARDS

The Best Lawyers in America®, Appellate Practice, Seattle, Washington, 2025 (Recognized since 2024)

Selected to Super Lawyers list in *Super Lawyers - Washington*, 2020-2024

Selected to Rising Stars lists in *Super Lawyers - Washington*, 2013-2019

## PUBLICATIONS & PRESENTATIONS

Author, *Alphabet Soup: Exploring Washington's Unique "ABC Rule" on Attorney Fees From Collateral Litigation*, Washington State Bar News (Feb. 9, 2023).

Author, *On the Lawfulness of Awards to Class Representatives*, Cardozo Law Review de novo (2023).

Author, *An Update on COVID-19 Coverage Litigation in Washington*, Washington State Association for Justice: Trial News (Nov. 2022)

Author, *Washington's Flawed ABC Rule*, 58 Willamette L. Rev. 251 (2022).

Author, *Inoculation Altercation: What Critics Misunderstand About the Washington Supreme Court Vaccination Order*, Washington State Bar News (Oct. 21, 2021).

Author, *Subject-Matter Jurisdiction in the Washington Supreme Court: Unsettling the Settled*, NWSidebar (November 2020).

Author, *Vaccine Law: An Overview of Current Law and a Look at the Future*, NWLawyer (November 2019).

Author, *Radical Jurisprudence*, 93 Wash. L. Rev. Online 49 (2018).

Speaker, *Rule 23(f) and Class Action Appeals*, American Bar Association 19th Annual National Institute on Class Actions, New Orleans, LA (2015).

Author, *A Review of Antonin Scalia and Bryan A. Garner*, Reading Law (2012), in Trial News (March 2014).

Co-author with Derek W. Loeser, Erin M. Riley, *2010 ERISA Employer Stock Cases: The Good, the Bad, and the In Between-Plaintiffs' Perspective*, Pensions & Benefits Daily, Bureau of National Affairs, Inc. (Jan. 28, 2011).

Co-author with Derek W. Loeser, *Point/Counterpoint: Is Rule 23(b)(1) Still Applicable to ERISA Class Actions?*, ERISA Compliance and Enforcement Library of the Bureau of National Affairs, Inc. (May 1, 2009).

Co-author with Derek W. Loeser, *The Continuing Applicability of Rule 23(b)(1) to ERISA Actions for Breach of Fiduciary Duty*, Pension & Benefits Reporter, Bureau of National Affairs, Inc. (Sept. 1, 2009).





**CARI CAMPEN  
LAUFENBERG**

**CONTACT INFO**

1201 Third Avenue, Suite 3400  
Seattle, WA 98101  
(206) 623-1900  
claufenberg@kellerrohrback.com

**PRACTICE EMPHASIS**

- Antitrust & Trade Regulation
- Appeals
- Class Actions
- Consumer Protection
- Data Privacy Litigation
- Employee Benefits & Retirement Security
- Fiduciary Breach
- Financial Products & Services

**EDUCATION**

**University of California, San Diego**

B.A., 1993, Art History

**University of Washington**

M.A., 1998, Public Administration

**University of Washington  
School of Law**

J.D., 2003

**As a partner in Keller Rohrback's nationally recognized Complex Litigation Group, Cari Laufenberg maintains a national practice representing consumers, employees, and institutions in complex class actions involving corporate fraud, data privacy, breach of fiduciary duty, and the Employee Retirement Income Security Act (ERISA).**

Since joining Keller Rohrback in 2003, she has played a key role in obtaining multi-million-dollar recoveries for consumers, employees, and shareholders in many of the firm's largest and most complex cases, including cases involving Meta Platforms, Inc., T-Mobile, Anthem Inc., Sony Pictures Entertainment Inc., Marsh McLennan Companies, Goodyear Tire & Rubber Co., HealthSouth Corporation and The Williams Cos.

While having excelled in the realms of corporate fraud, fiduciary duty, and ERISA, Cari has also developed an excellent reputation litigating data privacy cases by securing meaningful relief for her clients and class members. She has been instrumental in the foundation and growth of the firm's data privacy practice group. In that effort, she has served as Co-Lead Counsel in a number of high-profile data breach cases for which she and the KR team have achieved outstanding results: *In re T-Mobile Customer Data Security Breach Litigation*, MDL No. 3019 (W.D. Mo.) (obtaining the second largest data breach settlement to date); *In re 21st Century Oncology Customer Data Security Breach Litigation*, MDL No. 2737 (M.D. Fla.) (securing a meaningful settlement despite the company declaring bankruptcy), and as Class Counsel in *Fox v. Iowa Health System* (W.D. Wis.) (securing a favorable settlement for approximately 1.4 million victims of the UnityPoint Health data breach).

She also currently serves as Co-Lead Counsel in several other multidistrict data breach cases including *In re 23andMe, Inc. Customer Data Security Breach Litigation*, MDL No. 3098 in the Northern District of California—a case concerning the exposure of highly sensitive personal and genetic information for 6.9 million customers and *In re T-Mobile 2022 Customer Data Security Breach Litigation*, MDL 3037, in the Western District of Missouri—a case involving a November 2022 data breach impacting 37 million customers of U.S. wireless carrier T-Mobile.

Cari has served in leadership positions in other prominent consumer class-action cases as well, including as Interim Lead Class Counsel in *In re EpiPen ERISA Litigation* (D. Minn.) and her appointment to the Plaintiffs' Steering Committee in *In re Oral Phenylephrine Marketing and Sales Practice Litigation*, MDL No. 3089 (E.D.N.Y.).

She also played a fundamental role in the *In re Facebook, Inc. Consumer Privacy User Profile Litigation*, MDL No. 2843 (N.D. Cal.), in which, together with co-lead counsel, KR achieved a \$725 million settlement—the largest recovery ever achieved in a private data privacy class action and the most Meta has ever paid to resolve a private class action.

Over the past almost 20 years, Cari's background in nonprofit management and public administration has served her clients well. She is adept at organizing large complex cases, working collaboratively with other counsel, and developing a cogent strategy which achieves short-term goals and long-term successes. Before joining Keller Rohrbach in 2003, Cari served as a judicial extern for the Honorable Barbara Jacobs Rothstein of the U.S. District Court for the Western District of Washington. She is a frequent speaker at national conferences on class actions, identity theft and privacy, and other complex litigation topics.

## BAR & COURT ADMISSIONS

2003, Washington

2004, U.S. District Court for the Western District of Washington

2006, U.S. District Court for the Eastern District of Michigan

2006, U.S. Court of Appeals for the Eleventh Circuit

2011, U.S. Court of Appeals for the Seventh Circuit

2011, U.S. Court of Appeals for the Ninth Circuit

2013, U.S. Court of Appeals for the Eighth Circuit

## HONORS & AWARDS

Lawdragon 500 Leading Plaintiff Financial Lawyers, 2023-2025

The Best Lawyers in America®, Litigation – ERISA, Seattle, Washington, 2025 (Recognized since 2022)

The National Trial Lawyers: Top 100 Civil Plaintiff Trial Lawyers in Washington

Selected to Super Lawyers list in *Super Lawyers – Washington*, 2022-2024

Selected to Rising Stars list in *Super Lawyers – Washington*, 2008-2009, 2011

AV, Peer Review Top-Rated by Martindale-Hubbell

## PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

King County Washington Women Lawyers, *Member*;  
Member of the Board of Directors (2003-2005)

Washington Women Lawyers, *Member*

The William L. Dwyer American Inn of Court, *Founding Student Member* (2002-2003)

Federal Bar Association, *Member*

American Association for Justice, *Member*

Washington State Association for Justice, *Member*

Northwest Immigrant Rights Project, *Volunteer Attorney*

National Association for Public Pension Attorneys, *Member*

Public Justice, *Member*



## **PUBLICATIONS & PRESENTATIONS**

Panelist, *Sustaining Your Vitality and Law Practice with Mindfulness and Contemplative Practices*, Class Of Our Own Women's Summit, Nashville, TN (May 2025).

Panelist, *Improving Distribution Practices*, Angeion Group Mega Summit, Santa Monica, CA (May 2025).

Panelist, *Emerging Issues and Trends in the Cyber Threat Landscape*, The Sedona Conference Working Group 11 Annual Meeting, Redmond, WA (May 2025).

Panelist, *Healthcare Data Privacy – What Makes These Cases Different*, HarrisMartin Data Breach Litigation Conference, Charlotte, NC (March 2025).

Panelist, *Healthcare Data Privacy – What Makes These Cases Different*, Harris Martin Data Breach Litigation Conference, Charlotte, VA (March 2025).

Panelist, *Third Party Filers: Issues, Ethics & Practical Considerations*, Epiq's Mass & Class, Fort Lauderdale, FL (February 2025).

Presenter, *Recent Issues in Data Breach Litigation*, Trial Lawyers of Mass Torts Bench & Bar Conference, Los Cabos, Mexico (November 2024).

Panelist, *Third-Party Filers and Candor to the Court*, Complex Litigation Ethics Conference, San Francisco, CA (October 2024).

Presenter, *Navigating Court Scrutiny: Best Practices for Selecting and Working with Class Settlement Administrators*, CPT Group Webinar (June 2024).

Presenter, *eDiscovery Issues in Data Privacy Class Actions*, Epiq's Mass & Class, Fort Lauderdale, FL (March 2024).

Presenter, *Capital One Data Breach Litigation*, HarrisMartin's MDL Conference, Beverly Hills, CA (September 2019).

Presenter, *Consumer Recovery of Damages for Security Breaches or Misuse of Consumer Information*, Law Seminars International Artificial Intelligence & Privacy Conference, Seattle, WA (August 2019).

Presenter, *Data Breach & Privacy Class Action Litigation*, Law Seminars International Class Action Litigation Conference, Seattle, WA (May 2019).

Presenter, *Facebook Breach – Is Anyone's Data Safe*, HarrisMartin MDL Conference, Chicago, IL (May 2018).

Presenter, *Class Action Lawsuits and Settlements: Uncovering the Things You Need to Know*, The Knowledge Group Online CLE, (November 2018).

Presenter, *Intel: The OEM Cases*, HarrisMartin MDL Conference, Miami, FL (March 2018).

Presenter, *Legal Claims: Equifax and Other Data Breach Cases*, HarrisMartin's Equifax Data Breach Litigation Conference, Atlanta, GA, (November 2017).

Co-author with Tana Lin, and Lisa A. Nowlin, Brief for American College of Obstetricians and Gynecologists as Amicus Curiae in Support of Respondent, *Coffey v. Public Hosp. Dist. No. 1, Skagit Cnty. Wash. d/b/a Skagit Regional Health, et al.*, No. 75769-5) (Wash. Ct. App. Apr. 5, 2017).

Panelist, *Recent Settlements & Litigation Trends*, HB Litigation Conferences, Data Breach Litigation and Investigation Forum 2017, San Francisco, CA, (January 2017).

Presenter, *Don't Be Spokeo'd: What You Need to Know in Litigating Data Breach Cases*, American Bar Association, Business Law Section Annual Meeting, Boston, MA (September 2016).

Panelist, *The Client's Perspective: ADR Users Share Insights Regarding What Mediators Do To Make the Process Succeed or Fail*, American Bar Association, 18th Annual Section of Dispute Resolution Spring Conference, New York, NY (April 2016).



## CHANELE REYES

### CONTACT INFO

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Phoenix, Arizona 85012

(602) 248-0088

creyes@kellerrohrback.com

### PRACTICE EMPHASIS

- Class Action and Consumer Litigation

### EDUCATION

#### Stetson University

B.A., 2003, *cum laude*, Russian Studies

#### University of Texas at Austin

M.A., 2007, Russian, East European and Eurasian Studies

#### Seattle University School of Law

J.D., 2013, *magna cum laude*, Seattle Journal for Social Justice

**Chanele Reyes follows a simple life motto: Choose the path that's going to bring more good into the world.**

That drive to do good led Chanele to plaintiffs' side litigation. Chanele advocates for clients who've been wronged or harmed by corporations or other entities. As an attorney in Keller Rohrback L.L.P.'s nationally recognized Complex Litigation Group, Chanele is committed to breaking down barriers to justice.

Chanele—the first person in her family to attend college—used her education to broaden her worldview and actively pursue social change. After completing a master's degree focused on the discrimination of the Romani (Roma) people, she was inspired to pursue a legal education. Throughout her law school career, Chanele's commitment to justice was proven time again through work at the U.S. Department of Justice's Civil Rights Division, the Oregon Department of Justice's Financial Fraud & Consumer Protection Division, and the U.S. Attorney's Office in Seattle.

After graduation, Chanele continued to serve the public by clerking for the Honorable Robert H. Whaley in the U.S. District Court for the Eastern District of Washington. During her clerkship, Chanele worked on a wide variety of civil and criminal issues, including matters in the Central District of California and the Ninth Circuit Court of Appeals.

When not at work, Chanele enjoys plant-based cooking, geocaching, traveling, and destroying the competition at pub trivia.

### BAR & COURT ADMISSIONS

2013, Washington

2017, U.S. District Court for the Eastern District of Washington

2018, Arizona

2019, U.S. District Court for the District of Arizona

### HONORS AND AWARDS

Seattle University School of Law Scholar for Justice

American Bar Association's Janet D. Steiger Fellowship

U.S. Department of Education Foreign Language & Area Studies Fellowship

Phi Beta Kappa Honors Society



## CHRIS RYDER

### CONTACT INFO

1201 Third Avenue, Suite 3400  
Seattle, Washington 98101  
(206) 623-1900  
cryder@kellerrohrback.com

### PRACTICE EMPHASIS

- Class Actions
- Commercial Litigation
- Consumer & Data Privacy Protection

### EDUCATION

**Washington State University**  
B.A., Communication, 2017 *magna cum laude*

**Gonzaga University School of Law**

J.D., 2021, *magna cum laude*

**Chris Ryder knows that effective communication is key to building a persuasive and coherent legal argument.**

Long interested in politics and the idea of creating positive social change, Chris views the legal tools of class actions and mass torts as effective ways to proactively correct corporate wrongdoings and help a large number of people in ways that might otherwise be unfeasible. With a particular interest in the new frontier of digital and online issues, Chris is well suited to Keller Rohrback's consumer and data privacy protection practice and other complex litigation teams.

The seeds of a legal career were first planted for Chris in 2016 while working as an undergraduate communications intern for a non-profit in Washington D.C. and interacting with their robust legal department. From there, Chris attended and received his J.D. from Gonzaga University School of Law, graduating magna cum laude in 2021, where he acted as the Managing Editor of the Gonzaga Law Review. After graduating from law school, Chris clerked for the Honorable Justice Susan Owens of the Washington State Supreme Court.

In his personal life, Chris enjoys playing and watching chess, reading Kurt Vonnegut novels, exploring national parks with his wife, and playing saxophone.

## BAR & COURT ADMISSIONS

2021, Washington

2023, Western District of Washington

2023, Second Circuit Court of Appeals

## HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Washington*, 2024



## MARK D. SAMSON

### CONTACT INFO

3101 N Central Avenue, Ste. 1400  
Phoenix, AZ 85012  
(602) 248-2822  
msamson@kellerrohrback.com

### PRACTICE EMPHASIS

- Medical Malpractice Litigation
- Products Liability - Plaintiffs
- Personal Injury Litigation
- Commercial Litigation
- Complex Litigation

### EDUCATION

#### Arizona State University

B.S., *summa cum laude*, 1976, Bio-Ag Sciences

#### Washington State University College of Veterinary Medicine

D.V.M., *summa cum laude*, 1980

#### Washington State University College of Veterinary Medicine

M.S., 1983, Veterinary Anatomy

#### Arizona State University College of Law

J.D., *summa cum laude*, 1986,  
Order of the Coif

**As a licensed veterinarian, Mark has the medical knowledge that helps get his clients the results they deserve.** Given that strong medical science background, Mark's practice focuses on tort law, including medical negligence, product liability, and other significant personal injury cases. He has nearly 35 years of experience litigating medical malpractice cases with victories including the landmark Edwards verdict, a transfusion-associated AIDS case that remains one of the largest personal injury verdicts in Arizona history. Mark was born in New York, but he moved to the Phoenix area in 1959 and grew up there. He practiced from 1986 to 1995 at Meyer, Hendricks, Victor, Osborn & Maledon, becoming a member in 1992. In 1995, Mark helped form Dalton Gotto Samson & Kilgard, P.L.C. ("DGSK") and was one of the members of DGSK who formed Keller Rohrback P.L.C. in 2002, and then Keller Rohrback L.L.P. in 2015.

### BAR & COURT ADMISSIONS

1986, Arizona  
1986, U.S. District Court for the District of Arizona  
1986, U.S. Court of Appeals for the Ninth Circuit  
1986, U.S. Supreme Court  
2008, Washington, D.C.

### HONORS & AWARDS

The Best Lawyers in America®, Phoenix, Arizona, 2025 (Recognized since 2022):

- Medical Malpractice Law - Plaintiffs
- Personal Injury Litigation - Plaintiffs
- Product Liability Litigation - Plaintiffs

Named to Super Lawyers list in *Super Lawyers - Southwest*, 2008-2021

### PROFESSIONAL & CIVIC INVOLVEMENT

Maricopa County Bar Association, *Member*  
Arizona State Bar Association, *Member*  
American Association for Justice, *Member*  
Arizona Association for Justice, *Sustaining Member*

## **PUBLICATIONS & PRESENTATIONS**

*The Lawyer's Role in Meeting 21st Century Changes in Veterinary Medicine*, American Veterinary Medical Law Association (2018).

*Personal Injury Law in Arizona*, Maricopa County Association of Paralegals (2018).

*Health Law and Policy*, Arizona State University College of Law (2016).

*Health Law – Medical Malpractice in Today's World*, Arizona Paralegal Association (2016).

*From the Heart: Letting Go in Front of the Jury*, Arizona Trial Lawyers Association (2015).

*Medical Malpractice Seminar*, Arizona Trial Lawyers Association (2013).

*Trial Masters: A Look Inside the Value Options Case & Tools for Difficult Cases*, Arizona Trial Lawyers Association (2011).

*Comparing Veterinary and Legal Ethics*, Arizona State Bar (2009).

*Loss of a Chance in Med Mal Cases* Arizona Trial Lawyers Association (2008).

*Issues in FTCA Claims*, Arizona Trial Lawyers Association (2008).

Co-Chair, *Trial Practice - Damages*, Arizona Trial Lawyers Association (2007).

Chairman, *Rapid Fire on Litigation Issues*, Arizona Trial Lawyers Association (October 2006).

Co-Chair, *Liens*, Arizona Trial Lawyers Association, (January 2006).

Author, *Negotiating 101*, Blackwell's 5-Minute Veterinary Practice Management Consult (2006).

*Arizona Appellate Update*, Maricopa County Bar Association (2005).

*Liens Again*, Maricopa County Bar Association (2004).

Chairman, *New Ethical Rules in Arizona*, Arizona State Bar (October 2003).

Speaker, *Application of legal principles to veterinary medicine*, Arizona Veterinary Medical Association (1999-2003).

Speaker, *Settlement conferences versus trial in medical malpractice cases*, Arizona Paralegal Association (2002).

Speaker, *Changes and issues in Arizona's ethical rules for attorneys*, Arizona Paralegal Association (2003).

*Punitive Damages after Campbell v. State Farm*, Maricopa County Bar Association (May 2003).

Co-Chair, *Anatomy of Pain*, Arizona Trial Lawyers Association (2002).

Speaker, *Use of medical literature in the courtroom*, Arizona Trial Lawyers Association Medical Malpractice Seminar (1996).

Speaker, *New legal theories in medical malpractice*, Arizona Trial Lawyers Association Medical Malpractice Seminar (1999).

Chair, *Seminar on Medical Malpractice in the Ages of Disclosure*. Maricopa County Bar Association.

Speaker, *Tort and Regulatory Issues Affecting Veterinarians*, National Meeting of American Veterinary Medical Law Association (1995).

Chair, *Seminar on Anatomy*, Maricopa County Bar Association (1994).

# Exhibit 3

Honorable Grant Blinn  
December 19, 2025 at 9:00 a.m.

SUPERIOR COURT OF WASHINGTON  
IN AND FOR PIERCE COUNTY

M.N., A.B., G.T., and W.N., individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

MULTICARE HEALTH SYSTEM, INC., a  
Washington corporation,

Defendant.

No. 18-2-08055-5

**DECLARATION OF A.B. IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR AWARD OF ATTORNEYS'  
FEES, EXPENSES, AND SERVICE  
AWARDS**

I, A.B., declare as follows:

1. I submit this declaration in Support of Plaintiffs' Motion for Award of Attorneys' Fees, Expenses, and Service Awards. This declaration is based on my own personal knowledge and if called as a witness, I could and would competently testify to the facts stated herein.

2. I am a competent adult over the age of eighteen and a resident of Washington.

3. I am the Named Plaintiff representing the Weberg Treatment Settlement Class. From the beginning of this case, I have understood that my duty is to act in the best interest of the class as a whole, which I have done to the best of my ability.

4. I support the classwide settlement that was reached here and believe it to be in the best interest of the Settlement Classes.

5. As part of my duties in this case, I preserved relevant documents and data at the

1 direction of my attorneys and worked with them to collect documents and data within my  
2 possession.

3 6. Before it was filed, I carefully reviewed the First Amended Complaint in this  
4 case, which added me as a Plaintiff. I also carefully reviewed and, when necessary, corrected  
5 any discovery responses that were sent to the Defendant on my behalf. I also reviewed filings  
6 when asked to do so.

7 7. Being notified in 2018 that I might be infected with hepatitis C and that I needed  
8 to get tested for hepatitis C, B, and HIV was very stressful—it freaked me and my family out. I  
9 continued to feel anxiety through the date of my deposition. Being asked about the experience at  
10 my deposition was stressful and anxiety-inducing. In addition, my medical history was probed  
11 in detail and I was forced to talk about many things I like to keep private. I understand that the  
12 deposition was legally necessary, but it was really unpleasant.

13 8. Throughout this litigation, I have regularly communicated with my attorneys to  
14 stay well informed about what was going on in this case and what my obligations were.

15 9. When you add together (among other things) the time I spent speaking with my  
16 attorneys, reviewing documents and filings, and preparing for, traveling to and from, and sitting  
17 for a deposition, I would estimate I have spent a total of approximately 80 hours on this  
18 litigation in one way or another.

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

21 Executed this 7th day of October, 2025, at Puyallup, Washington.

22 A.B.

23 \_\_\_\_\_  
A.B.



# Exhibit 4

Honorable Grant Blinn  
December 19, 2025 at 9:00 a.m.

SUPERIOR COURT OF WASHINGTON  
IN AND FOR PIERCE COUNTY

M.N., A.B., G.T., and W.N., individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

MULTICARE HEALTH SYSTEM, INC., a  
Washington corporation,

Defendant.

No. 18-2-08055-5

**DECLARATION OF G.T. IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR AWARD OF ATTORNEYS'  
FEES, EXPENSES, AND SERVICE  
AWARDS**

I, G.T., declare as follows:

1. I submit this declaration in Support of Plaintiffs' Motion for Award of Attorneys' Fees, Expenses, and Service Awards. This declaration is based on my own personal knowledge and if called as a witness, I could and would competently testify to the facts stated herein.

2. I am a competent adult over the age of eighteen and a resident of Washington.

3. I am one of the two Named Plaintiffs representing the General Treatment Settlement Class. From the beginning of this case, I have understood that my duty is to act in the best interest of the class as a whole, which I have done to the best of my ability.

4. I support the classwide settlement that was reached here and believe it to be in the best interest of the Settlement Classes.

5. As part of my duties in this case, I preserved relevant documents and data at the

1 direction of my attorneys and worked with them to collect documents and data within my  
2 possession.

3 6. Before it was filed, I carefully reviewed the First Amended Complaint in this  
4 case, which added me as a Plaintiff. I also carefully reviewed and, when necessary, corrected  
5 any discovery responses that were sent to the Defendant on my behalf. I also reviewed filings  
6 when asked to do so.

7 7. I did not enjoy my deposition. Learning that I might be infected with hepatitis C  
8 and that I had to get blood tested multiple times made me feel physically ill, and it scared the  
9 stuffing out of my wife and me. Having to relive that experience in my deposition was  
10 distressing. I was also forced to talk about my medical history, a topic I consider highly private.

11 8. Throughout this litigation, I have communicated regularly with my attorneys  
12 about this action, staying up-to-date and informed about the status of the case and about what  
13 was required of me.

14 9. All told, I would estimate I've spent at least 40hours on this litigation throughout  
15 the eight or so years I've been involved in it.

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

18 Executed this 7th day of October, 2025, at Rochester, Washington.

19 G.T.

20 \_\_\_\_\_  
G.T.

# Exhibit 5

Honorable Grant Blinn  
December 19, 2025 at 9:00 a.m.

SUPERIOR COURT OF WASHINGTON  
IN AND FOR PIERCE COUNTY

M.N., A.B., G.T., and W.N., individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

MULTICARE HEALTH SYSTEM, INC., a  
Washington corporation,

Defendant.

No. 18-2-08055-5

**DECLARATION OF M.N. IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR AWARD OF ATTORNEYS'  
FEES, EXPENSES, AND SERVICE  
AWARDS**

I, M.N., declare as follows:

1. I submit this declaration in Support of Plaintiffs' Motion for Award of Attorneys' Fees, Expenses, and Service Awards. This declaration is based on my own personal knowledge and if called as a witness, I could and would competently testify to the facts stated herein.

2. I am a competent adult over the age of eighteen and a resident of Washington.

3. I am one of the two Named Plaintiffs representing the General Treatment Settlement Class. From the beginning of this case, I have understood that my duty is to act in the best interest of the class as a whole, which I have done to the best of my ability.

4. I support the classwide settlement that was reached here and believe it to be in the best interest of the Settlement Classes.

5. As part of my duties in this case, I preserved relevant documents and data at the

1 direction of my attorneys and worked with them to collect documents and data within my  
2 possession.

3 6. Before it was filed, I carefully reviewed the Complaint in this case. I also  
4 carefully reviewed and, when necessary, corrected any discovery responses that were sent to the  
5 Defendant on my behalf. I also reviewed filings when asked to do so.

6 7. When I got the letter from MultiCare suggesting that I might have been exposed  
7 to hepatitis C and telling me to get my blood tested, I was in shock and experienced a lot of  
8 stress, especially given a serious preexisting medical condition. At the time of my deposition in  
9 September 2019, I wasn't completely over my anxiety—I still had the lurking feeling that I  
10 needed to be re-tested for hepatitis C. Going over all of it again during my deposition was very  
11 stressful. I was also asked questions about my health and medical history that felt invasive of  
12 my privacy.

13 8. Throughout this litigation, I have communicated regularly with my attorneys  
14 about this action, staying informed about the status of the case and about what was required of  
15 me. I have taken my responsibilities as a class representative seriously and I have consciously  
16 tried to stay up to date on this case.

17 9. This litigation has lasted a long time. From the time I first contacted Class  
18 Counsel up until now, I would estimate I have spent approximately 80 hours on it in one way or  
19 another, if you count the time I spent driving to get my blood tested and the time I've spent  
20 thinking about this case over and over. This case has taken up a lot of mental energy and  
21 attention.

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

24 Executed this 9th day of October, 2025, at Tacoma, Washington.

25 M.N.

26 \_\_\_\_\_  
M.N.