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NO. 96464-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SANDRA EHRHART, individually and as personal representative of the  
Estate of Brian Ehrhart

Respondent,

v.

KING COUNTY, operating through its health department, Public Health –  
Seattle & King County

Petition,

JUSTIN WARREN REIF, an individual,

Defendant.

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**RESPONDENT SANDRA EHRHART'S  
OPENING BRIEF**

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## I. INTRODUCTION

Respondent, Sandra Ehrhart, on behalf of herself and the Estate of Brian Ehrhart (collectively “the Estate”), respectfully submits this opening brief. Summary judgment should be affirmed, and this family should get its day in court. The issue, plain and simple, is whether a public health agency may *ever* be held accountable when it is proven that the agency’s negligence actually hurts or kills someone. This question is answered on both narrow and broader grounds.

First, existing legal principles guide resolution, in the form of at least two exceptions to the public duty doctrine. As the trial court found, the failure to enforce exception applies. WAC 246-101-505 provides, in relevant part, that the County “*shall... review and determine appropriate action*”<sup>1</sup> when confronted with a notifiable condition, such as Hantavirus. And no less than two Divisions of the Court of Appeals confirm that when, as here, a regulation calls for an agency to exercise discretion, that discretion must be exercised *reasonably*. See *Livingston v. City of Everett*, 50 Wn. App. 655, 659, 751 P.2d 1199 (1988) (“... officers had a duty to exercise their discretion when confronted with a situation which posed a danger...”); *Gorman v. Pierce Cty.*, 176 Wn. App. 63, 307 P.3d 795 (2013) (public duty doctrine did not apply in light of statutory “duty to

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<sup>1</sup> Emphasis added.

classify” a potentially dangerous dog). In other words, contrary to the way the County frames it, the issue is not whether there is a “duty to issue a health advisory.” *See* Br. at 1, 4, 22, 31. The issue is, instead, given the statutory mandate, whether there is a duty to address known, lethal conditions *reasonably*. The answer is, and should be, yes.

The rescue exception to the public duty doctrine is also applicable. This exception is recognized in situations where a governmental entity undertakes to aid, and the offer is relied upon by, *inter alia*, *another who, as a result of the promise, refrains from acting on the victim’s behalf*. DeWolf and Allen 16 WASHINGTON PRACTICE, § 15:11 (4th ed. 2017) (emphasis added). The County’s conduct, in this regard, is undisputed in the record, as both healthcare providers and public health experts testified. *See* CP 686, ¶ 5 (explaining that if the County were not occupying this role, healthcare providers would seek this information elsewhere); CP 137, ¶ 3 (noting the “reliance-based relationship” and anticipation by the healthcare community that public health will disseminate actionable information). Indeed, it is difficult to understand the purpose of the mandatory reporting scheme if, as the County claims, it has no obligation to do anything, tell anyone, or otherwise be reasonable with the crucial information it receives.

But there is a more natural ground on which to affirm; namely, that the trend in Washington law has been to determine the scope of governmental liability based upon the traditional factors informing legal duty and sound public policy, *see Christensen v. Royal Sch. Dist. No. 160*, 156 Wn.2d 62, 67, 124 P.3d 283 (2005) (mixed considerations of “logic, common sense, justice, policy, and precedent”); not the outmoded exceptions to an often misunderstood doctrine.<sup>2</sup> As Judge Speir recognized when ruling, “[t]he public duty doctrine was essentially adopted without any analysis; it was almost a footnote, in fact, from another jurisdiction... and ever since then, there has been nothing but inconsistency in the case law.” VRP 19-20. With due respect to *stare decisis*, “the compulsion or exigency of the doctrine is, in the last analysis, moral and intellectual rather than arbitrary or inflexible.” Daniel H. Chamberlain, *THE DOCTRINE OF STARE DECISIS*, New York, Baker, Voorhies & Co. (1885).

It is submitted that, as this case illustrates, the public duty doctrine is no longer “morally and intellectually” defensible—and the standard to revisit precedent is met. This is a case where first-hand accounts and

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<sup>2</sup> *See H.B.H. v. State*, 192 Wn.2d 154, 169-170, 429 P.3d 484 (2018) (duty to foster children found without reference to public duty doctrine); *Beltran-Serrano v. City of Tacoma*, 442 P.3d 608, 615 (Wash. 2019) (recognizing that policy officers owed a duty of reasonable care, irrespective of any specific public duty doctrine exception).

documents confirm that the County played favorites among communities; violated state and national standards; ignored the Ph.D-level scientist who all but begged agency officials to issue a Hantavirus advisory; and only took an interest in doing the right thing hours before the media was going to report on the scandal. Then, in the end, County officials laughed at the neighborhood's grief:

From: [Linton, Beth](#)  
To: [Kay, Meagan](#)  
Subject: Re: Hantavirus follow-up information  
Date: Friday, March 10, 2017 9:37:36 AM

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Oh I love the limelight! Ha ha, from me too.

On Mar 10, 2017, at 9:04 AM, Kay, Meagan <[Meagan.Kay@kingcounty.gov](mailto:Meagan.Kay@kingcounty.gov)> wrote:

I'm just imagining a neighborhood in panic and the media showing up - the lights the cameras. hahaha. oh yeah - this is Issaquah.

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Supplemental Clerk's Papers ("SCP") 29. Dr. Duchin's appellate declaration, attached to the County's brief, explicitly conditioning competent work on a favorable ruling (Pet. App. at 5-6), only underscores how badly an esoteric doctrine can subvert justice.<sup>3</sup> If public duty stands as a barrier in a case like this, given its facts and issues, then the Court

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<sup>3</sup> Nowhere in Dr. Duchin's belated, appellate declaration does he explain how the agency would do better, or how the community will be safer, through a *lack* of accountability. *See generally* Duchin Decl. (Pet. App. at 1-7). His suggestion that the agency will issue advisories *en masse*, if it loses this case, only betrays a fundamental misunderstanding of the Estate's position (and a greater interest in "risk management" than public health).

should earnestly consider whether the doctrine itself remains morally and intellectually defensible.<sup>4</sup>

The trial court should be affirmed and this case should be remanded for a trial on the merits.

## II. CLARIFICATION OF THE ISSUES

The Estate would respectfully re-frame the relevant issues as follows:

1. Because the evidence, construed in favor of the Estate, supported a fact-based exception to the public duty doctrine, the trial court concluded that the issue presented a jury question. When numerous cases, and even a volume of Washington Practice, confirm that the issue of duty may involve “mixed questions of fact and law,” did the trial court err in so ruling?

2. WAC 246-101-505 provides, in relevant part, that the County “*shall... review and determine appropriate action*”<sup>5</sup> when confronted with a notifiable condition, like Hantavirus. On a record in which public health experts, scientists, lay witnesses, and even the

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<sup>4</sup> The County would have the Court decide whether Brian Ehrhart’s family gets a remedy based upon something as arbitrary as whether “a member of the public” violated a regulation (actionable), or the agency violated its own regulation (purportedly not actionable). See Br. at 24-25. The County’s analysis is wrong, to be sure (*see infra*, Sect. IV, D), but the argument itself illustrates how untethered basic notions of justice have become from the issues ultimately litigated in a public duty doctrine case.

<sup>5</sup> Emphasis added.

County's own Vice Chair of the Board of Health agree that this legislative duty was violated, did the trial court err in refusing to dismiss a negligence claim on summary judgment?

3. Where the evidence at summary judgment established, by undisputed testimony, that emergency rooms and healthcare providers heavily rely upon the County to report rare and dangerous diseases, such that they forego this crucial information elsewhere, does the rescue exception to the public duty doctrine apply?

4. To the extent that no exception applies, and this claim would therefore be barred by the public duty doctrine, the issue is whether the doctrine should enjoy continued vitality in Washington—when it is no longer yielding principled results, there is no evidence that its abolition would lead to “unlimited governmental exposure,” and limitations on liability are already subsumed within the common law elements of negligence, such as duty and causation.

### **III. STATEMENT OF THE CASE**

#### **A. King County Public Health's Role as the Repository of Information About Rare, Reportable Diseases**

Public Health – Seattle & King County is a department of King County with a nine figure budget and over 800 full time employees. CP 87. It has broad authority to enter premises, issue fines, and withhold

permits. CP 89-90. It is also the repository of information related to local outbreaks of rare and deadly diseases.

By operation of law, doctors and hospitals are required to advise the County of all “notifiable conditions” as defined by Washington law. *See* WAC 246.101.101 (listing “the conditions that Washington’s health care providers must notify public health authorities of on a statewide basis”).<sup>6</sup>

But contrary to the County’s claim, it is not just a “recipient” of information. Br. at 2, 6. The entire purpose of these reporting requirements is so that the County will do something with it. The intention is that the County “prevent and control the spread of diseases and other conditions,” which occurs through “[t]reatment persons already ill, providing preventive therapies for individuals who came into contact with infectious agents, investigating and halting outbreaks, and removing harmful health exposures...” WAC 246-101-005. According to Dr. Michael Freeman, who holds a Masters and Ph.D. in Public Health and Epidemiology, “[i]n order to function as designed, the medical community must provide information to the agency, and the agency must provide digested and augmented information back to the medical community.” CP

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<sup>6</sup> Indeed, laboratories, veterinarians, food service establishments, child day care facilities, and schools are also under reporting duties. *See* WAC 246-101-405; WAC 246-101-410; WAC 246-101-415; WAC 246-101-420.

137. From the standpoint of the medical community, “it is anticipated that the County will disseminate important and actionable public health information and announcements in a timely fashion, and one that is appropriate to the seriousness of the threat.” CP 137-138. If the County were not occupying this role, health care providers would seek this crucial information elsewhere. *See* CP 178.

This is, moreover, consistent with documents the County belatedly produced—which happen to controvert Dr. Duchin’s “appellate declaration.” The very staff-member who participated in the Hantavirus investigation confirmed that a “[s]trong focus on public and [Healthcare Provider] education and awareness is warranted when lab-confirmed cases are identified.” App. 8-10.<sup>7</sup> He also made clear that the County’s “role” in the context of “confirmed and suspected Hantavirus cases” is providing “education on awareness, prevention and control” – particularly for “Healthcare providers.” *Id.* Indeed, the suggestion that Public Health exists primarily to *receive* information is not even consistent with Public Health’s Code of Ethics, which provides that “[k]nowledge is not morally neutral... [It] is not to be gathered for idle interest. Public health should seek to translate available information into timely action.” Public Health

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<sup>7</sup> The affidavit subjoined to this brief was filed in response to Dr. Duchin’s appellate declaration, in the context of the County’s motion for discretionary review.

Code of Ethics, <https://www.apha.org/apha-communities/member-sections/ethics> (last visited July 19, 2019) (last visited November 28, 2018) (Principles 8; 10).

This “reliance-based relationship” anticipates that information will be a two-way street, CP 137-138, so much so that it is codified into the state regulatory framework. Notwithstanding the County’s suggestion to the contrary, the Washington Administrative Code does **not** afford a right to simply opt-out in the face of a lethal condition. By law, it must take action:

**Duties of the local health officer or the local health department**

(1) Local health officers or the local health department *shall*:

(a) Review and determine appropriate action for:

(i) Each reported case or suspected case of a notifiable condition;

(ii) Any disease or condition considered a threat to public health; and

(iii) Each reported outbreak or suspected outbreak of disease, requesting assistance from the department in carrying out investigations when necessary.

WAC 246-101-505 (emphasis added). This, by design, “give[s] [healthcare professionals] notice of unusual conditions [they] might not

otherwise anticipate, and an opportunity to act on them.” CP 177-178; *see also* CP 137-138.

**B. Hantavirus Pulmonary Syndrome**

Hantavirus Pulmonary Syndrome is undoubtedly a rare condition in King County. Br. at CP 386; CP 128; 135. In its early stages, it presents similarly to the flu—with symptoms that include fever, chills, body-aches, and cough. App. 101-103. But as the disease progresses, and the patient’s lungs begin to fill with fluid, it becomes more acute and difficult to treat. *Id.* There is a mortality rate of approximately 30%, largely because it is often missed by physicians who do not perform differential diagnoses with Hantavirus in mind. *Id.* With timely treatment, however, Hantavirus is often a treatable event. *Id.*; CP 375 (“If infected individuals are recognized early and receive medical care in an intensive care unit, they may do better... patients are intubated and given oxygen therapy to help them through the period of severe respiratory distress. The earlier the patient is brought in to intensive care, the better.”).<sup>8</sup>

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<sup>8</sup> The County misleadingly cites this clerk’s paper for the proposition that there is “no specific treatment, cure, or vaccine” for Hantavirus.” Br. at 13, n. 14 (citing CP 375). Suffice to say, the document says slightly more. Further, and with respect to this point, two out of the three individuals who contracted Hantavirus during the 2016-2017 cluster benefitted from early treatment and lived.

For these reasons, it is not surprising that Hantavirus is a mandatory reportable condition. Treaters must report confirmed cases to the County “within 24 hours.” *See* WAC 246-101-101.<sup>9</sup> That is, when a case is confirmed, the treating provider must advise the County within 24 hours (*id.*), so public health can take “appropriate action.” WAC 246-101-505; *see also* CP 137. Hantavirus is spread largely by deer mice droppings. CP 128, ¶ 7. Consequently, it is driven by predictable environmental and weather conditions impacting the deer mice population—often in clusters. *Id.*

**C. Maureen Waterbury Contracts Hantavirus And Nearly Dies**

Shortly before Thanksgiving in 2016, near rural Issaquah, Maureen Waterbury felt herself getting sick. CP 128, ¶ 5. As a longtime nurse, she was uniquely attuned to her physiology, and recognized that this was something unusual. *Id.* She was hospitalized and spent several days in a coma, but survived. *Id.*

Consistent with its obligations under state law, her hospital reported the case to the County. CP 105. One official found the case “interesting,” and the State Department of Health queried whether “others are suspected of being exposed.” CP 106. A CDC representative posited a “homesite environmental assessment.” CP 109.

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<sup>9</sup> For reference, Malaria must be reported within 3 business days, while Hepatitis and Autism are reported monthly. *Id.*

**D. The County Declines To Share What It Knows With Healthcare Community**

All of this ended up on the desk of Dr. Jeffery Duchin, who rejected all proposals in favor of doing nothing at all:

**From:** Duchin, Jeff  
**To:** Kawakami, Vance  
**Cc:** McKeirnan, Shelly; Rietberg, Krista; Lloyd, Jenni; Serafin, Lauri; Kay, Meagan  
**Subject:** RE: poss HPS case with exposure in King County  
**Date:** Friday, December 16, 2016 3:24:26 PM

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Thanks, Vance. I'd be happy to review the clinical info on Monday. I'm open to an environmental investigation if there is a good PH reason, but in sporadic cases with exposures in areas where Deer Mice are endemic, I'm not sure of the value. Rodents like to colonize autos, might have been interesting to have sampled from the air filter, but short of that, I don't see a reason based on the info in these emails. If, for example, this was a place of employment with other potential exposures and unknown source, might be more useful. The family should engage a rodent control agency that is familiar with hantavirus mitigation, and be informed of the appropriate risk reduction steps they can take.

Jeff

---

Jeffrey S. Duchin, MD  
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Public Health - Seattle and King County  
Professor in Medicine, Division of Infectious Diseases, University of Washington  
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E-mail: jeff.duchin@kingcounty.gov

*Id.* His directive—amounting to “get an exterminator”—was objectively wrong, as discussed in more detail below.

Still, the County got a second-chance. Dr. Mark Waterbury, Maureen’s husband, happened to be a scientist and Ph.D. He reached out to the County *repeatedly* to share his research that, on account of the recent weather patterns, additional Hantavirus cases were a “near certainty”:

The first time I called... I was dismissed by Public Health’s representatives. Their response amounted to “thank you, bye.”...

I reached out a second time, and was more assertive....  
Ultimately, I spoke to Dr. Duchin, the head of the agency,

but hit a brick wall... I impressed upon Public Health the importance of giving broad public notice to communities and health care providers. Dr. Duchin was unmoved... Public Health neither responded, nor put out a public health advisory.

CP 129-130. Dr. Duchin ignored him, and took no further action—“appropriate” or otherwise—in the face of this notification. As Dr. Duchin later acknowledged, he “lost track” of this discussion. CP 296.

On appeal, the County manufactures a new justification: the “Department of Health Guidelines.” *See* Br. at 6-8, 11, 21, 25. To be clear, these repeatedly-cited guidelines played no role below, are nowhere to be found in the record, and in fact, when the Estate requested “the data that led the County to furnish the [relevant] notifications or announcements,” the County responded that “there is **no formal protocol** for furnishing notifications.” App. at 6 (emphasis added). Even worse, the County is misrepresenting the Guidelines themselves. The DOH does not “recommend against outreach” because the condition is “rare.” Br. at 8. Rather, the DOH website indicates that what is “rare” is to have a multiple cases sharing a “common exposure,”<sup>10</sup> *i.e.*, one mouse infecting lots of people. This in no way counsels against broader public notice, especially given DOH’s explicit acknowledgment that “deer mice are

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<sup>10</sup> <https://www.doh.wa.gov/Portals/1/Documents/5100/420-056-Guideline-Hantavirus.pdf> (last visited May 15, 2019) at 4, 7 (last visited July 19, 2019).

found throughout Washington and are the known reservoir for the Sin Nombre virus...”<sup>11</sup>

Indeed, judging by its public statements, the County is fully aware of what its role following a confirmed case of Hantavirus *should* be. *See* App. at 9 (“education and awareness is warranted when lab-confirmed cases are identified”); App. at 10 (“education on awareness, prevention and control” – particularly for “Healthcare providers”).

Nor is the County alone in this regard. Virtually every jurisdiction in Washington, and elsewhere, gives public notice after a confirmed case of Hantavirus:

JURISDICTION	ACTION
<b>Kittitas County</b>	Issued a notice after first confirmed case in the county. CP 431-431.
<b>Benton-Franklin County</b>	Issued a notice after first confirmed case in the county. CP 436.
<b>Skagit County</b>	Issued a notice after first confirmed case in the county. CP 438-439.
<b>Adams/Spokane County</b>	Issued a notice after first confirmed case in the county. CP 441-443.
<b>Whatcom County</b>	Issued a notice after first

<sup>11</sup> *Id.*

	confirmed case in the county. CP 445.
<b>California (entire state)</b>	Consistently issues notice after first confirmed case in the state. CP 447-449.
<b>Montana (entire state)</b>	Consistently issues notice after first confirmed case in the state. CP 451-453.
<b>New Mexico (entire state)</b>	Consistently issues notice after first confirmed case in the state—even if it is the first <i>ever</i> case in a given county. CP 455-462.

This is, after all, a rare condition—which presents very similarly to the flu—which doctors do not typically look for—and will likely kill a person who is not timely diagnosed. The importance of a public health advisory is self-evident.

**E. Brian Ehrhart Contracts Hantavirus and the Local Hospital—Knowing Nothing of the Emerging Cluster—Sends Him Away Diagnosing the Flu**

Soon after Dr. Duchin’s decision to take no action on the crucial Hantavirus information—about ten miles from the Waterburys’ home—Brian Ehrhart, age 34, began to get sick. He reported to the Emergency Room at Swedish-Issaquah at around 9:15 p.m. CP 113. His symptoms included fever, vomiting and cough. *Id.* His oxygen levels were down, as were his platelets. *Id.* Had the ER been armed with the knowledge the County was refusing to share, it would have taken the same steps that

saved Ms. Waterbury's life. It, instead, sent Brian away with a misdiagnosis of "flu." *See id.* This lost opportunity was a death sentence. CP 138-139.

By the time Brian was ambulated to Overlake Hospital the following day, his organs were beginning to shut down. CP 115. He died on February 24, 2017—leaving behind a wife and two very young children.

**F. What Went Wrong and Why It Mattered**

The County received notice of Brian's death—and knew immediately that it had made a horrible mistake. So much so that, according to internal documents, that public health staffers attempted to convince Overlake Hospital that it "wasn't Hantavirus" after all. SCP 38. When Overlake produced autopsy results, the staffers then insisted that Brian must have contracted Hantavirus "outside the county." *Id.* This, too, was not true.

Even still, Dr. Duchin and the County remained resistant to giving public notice.<sup>12</sup> Part of this resistance was that Hantavirus was perceived as a "rural Issaquah" problem. According to the Chief of Staff of one of the Board of Health<sup>13</sup> members, "Public Health officials would commonly

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<sup>12</sup> When asked by citizens, personnel explicitly indicated that they would not be giving public notice, or taking any other steps, absent a *third* case of Hantavirus. CP 472-73.

<sup>13</sup> The Board of Health is the governing body of Seattle-King County Public Health.

express contempt or make fun of places like Issaquah,” which were viewed “less enlightened.” *Id.* CP 672. This testimony is punctuated by the internal emails between County staff, while Brian’s Issaquah neighborhood was grieving his death. *See* CP 302 (“I’m just imagining a neighborhood in panic... hahaha. oh yeah – this is Issaquah”).

Ultimately, on March 20, 2017, Dr. Duchin did issue a public health advisory. What changed his mind was not “medical rationale,” however. It was the Seattle Times. When a reporter reached out to discuss the County’s response to the Hantavirus cluster, it was at this moment—indeed, *in this email thread*—that Dr. Duchin changed his mind and decided to push a notice out “today.” SCP 52-54. Even the head of communications for the County was taken aback, asking whether Dr. Duchin was “trying to get this out before Bobs (sic) [Seattle Times Reporter] story.” *Id.* The answer was “Yes,” and the County did so—internally bragging that notice went out “an hour or so prior [to the Seattle Times piece].” SCP 69.<sup>14</sup>

This advisory was obviously too late to help Brian. But it did help a third Issaquah resident, Samantha King. She contracted Hantavirus after

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<sup>14</sup> The advisory was issued nearly a month after Brian’s death; and “an hour or so” before a Seattle Times story about the County’s conduct. *See* CP 472-473; CP 130. Thus, when Dr. Duchin claimed during the litigation that the advisory was “due to the unusual nature of having two confirmed cases” (CP 388-399), it rang particularly hollow.

Brian, but was promptly admitted—by treaters now mindful of the condition—and treated at Swedish Hospital. She lived. CP 131.

When some of this information made its way up to the Board of Health, its Vice Chair, Kathy Lambert, criticized staff. She also noted that even the local hospitals were wondering why there was no advisory:

So therein lies the problem. Because we've never had a case of this, and I think it's the 650th case in the United States total, so it's not a very common thing, but if at that point we had even just sent a notice to the other hospitals, "hey this is the first case of something we haven't seen forever," then they may have had that in their minds to even look at that, so that when Brian got to the hospital, rather than telling him to go home the first time, maybe they would have said, "you know what, there's something weird that's in this county, maybe we should check you for that." *We don't have to do a formal thing, but I've had two hospitals contact saying, "if we'd only known that that was here, a simple email to think about that would have been very helpful." So I think we need to have a policy ...*

SCP 30-34.

Over a year later, when it became relevant to this lawsuit, the County's public health staff *finally* took an interest in the standard of care. They reached out to the Department of Health, which confirmed that it was almost unheard of for an agency to confirm a case of Hantavirus and *not* issue a press release. App. at 12 ("Information about press releases was available for 14 [relevant counties in Washington]: 13 had press releases, 1 did not").

**G. Proceedings To Date**

1. Summary Judgment

The Estate filed a complaint, which the County answered without even alleging the public duty doctrine. CP 20.<sup>15</sup> After some discovery, the Estate moved for partial summary judgment on the affirmative defense.<sup>16</sup> The hearing was moved, at the insistence of the County, which successfully argued that the issue of public duty was a mixed question of fact and law. CP 182-84; *cf.* CR 56(f) (“facts essential to justify the party’s opposition”).

At the hearing, the trial court considered all of the legal and factual issues before it, and determined that the public duty doctrine’s applicability would be determined at trial (consistent with the County’s position below). CP 690-691. It is notable that the County selectively quotes the trial judge in her ruling. While she did indicate that that the County was not required to carry out a “specific task” (Br. at 14), the County cut off what she said next:

... [i]f there was not an appropriate action determined, then the County would have been on notice of a violation and there would have been a duty to take corrective action. It all hinges on what is appropriate.

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<sup>15</sup> The defense was added by amendment later.

<sup>16</sup> The County also alleged discretionary immunity (CP 20), which was the subject of the Estate’s motion. This defense was promptly withdrawn in the face of the motion. CP 394.

VRP 22:17-20.

The issue was reserved for further proceedings.

2. Subsequent Proceedings

Shortly after the ruling, the County began scheduling needless hearings and engaging in needless motions practice. This conduct led the trial court to sanction the County for bad faith and “gamesmanship.”<sup>17</sup> An Order compelling discovery was also issued, which unearthed additional documents the County was sitting on (while attempting to throw the Estate out of Court on its own cross-motion for summary judgment). For example, a timeline was created internally, by the County, laying out the sequence of events:

14	Fri, March 3	Autopsy results: Hantavirus
15	:	
16	:	Sarah calls public health to notify of death due to Hantavirus
17	:	Public Health disputes Hantavirus results (Sarah produces autopsy results)
18	:	Public Health says Brian had to contract virus outside of the King County area (Sarah confirms they have not been out of area)
19	:	Public Health tells Sarah no intention of any public notification or first responder/hospital notification
20	:	
21	:	Dr. Bonvallet calls several times asking Public Health to put out notification -- also has request denied
22	:	
23	:	8-10 phone calls between Sarah/Dr Bonvallet and Public Health. Overlake Hospital is NEVER notified by Public Health of the Maureen Waterbury Hantavirus case in Redmond. Overlake thinks this is a first case.
24	:	
25	:	
26	Mid March	Waterburys have been blogging for months trying to raise awarness, come across social media about Brian. They contact Brian's brother -- first time we learn Brian was a second Hantavirus case in area. Waterburys get SeattleTimes to do a story -- published on March 21st. FINALLY, on March 23 (4 weeks after Brian's death) Public Health sends notice to hospitals -- only after SeattleTimes forces issue.
27	:	
28	:	
29	:	

SCP 38.

The County sought direct review with this Court, which the Commissioner granted. In doing so, he observed:

<sup>17</sup> “I don’t think that our justice system has the resources to accommodate people who want to fight for the sake of fighting. I don’t think that this sort of gamesmanship is good for the reputation of lawyers or the justice system in general.” VRP 10:3-9.

... the public duty doctrine issue concerns interpretation of an administrative rule applicable to all counties in Washington; therefore, resolution of this case has statewide public policy implications. Even if the Court of Appeals were to decide this issue, it seems inevitable that the aggrieved party will file a petition for review, which this court is likely to grant as a matter of substantial public interest pursuant to RAP 13.4(b)(4). In light of these observations, and profoundly mindful of Mr. Ehrhart's tragic death, I conclude that this case involves a "fundamental and urgent issue of broad public import" that requires this court's prompt and ultimate determination. RAP 4.2(a)(4).

Decision at 13-14.<sup>18</sup>

#### IV. ARGUMENT

##### A. Standard of Review

The Court reviews summary judgment *de novo*, and engages in the same inquiry as the trial court. *Kruse v. Hemp*, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993). Summary judgment is proper if the pleadings, depositions, answers, and admissions, together with the declarations, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c).

##### B. The Scope Of A Party's Legal Duty Is Often A Mixed Question of Fact And Law – As *The County* Successfully Argued Below

Before turning to the substance of the public duty doctrine argument, the Estate must address the County's initial claim that the trial

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<sup>18</sup> The Commissioner's decision—which the Estate largely does not agree with—also found that the trial court "*debatably* erred" to a degree warranting discretionary review. Decision at 2 (emphasis added).

court erred by concluding that the issue of duty “hinges on a factual determination.” Br. at 19. The County suggests that legal duty is always a pure “question of law,” (*id.*), which is untrue.

As a threshold matter, this is precisely the opposite of what the County argued below. As noted above, the County sought a continuance of summary judgment *so it could develop facts*. CP 183 (“King County has not had the opportunity to conduct discovery... and retain experts in order to meaningfully respond...”). And the trial court agreed, granting additional time. CP 352-353. Now, having not received the ruling it hoped for, the County claims on appeal that it was “error” for the trial court to *engage with facts*. See *Cunningham v. Reliable Concrete Pumping, Inc.*, 126 Wn. App. 222, 230, 108 P.3d 147, 151 (2005) (judicial estoppel prevents litigants from benefitting from inconsistent positions in different forums).<sup>19</sup>

More importantly, the County is just wrong on the law. Washington courts routinely treat legal duty as a mixed question of fact and law when duty is subject to “preliminary questions of fact.” DeWolf and Allen, 16 WASHINGTON PRACTICE § 2:3 (4th ed. 2018) (collecting cases). In *Mita v. Guardsmark, LLC*, 182 Wn. App. 76, 83, 328 P.3d 962

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<sup>19</sup> Even on appeal, the County wants it both ways—arguing that *this* Court should rule, as a factual matter, that the County “acted appropriately.” Br. at 31.

(2014), for example, a juror left the courthouse at the end of the day, became disoriented, and died of hypothermia. When his family brought suit, Spokane County sought summary judgment arguing, as here, that it “owed [the juror] no duty of care.” *Id.* at 82. The family presented evidence that the county’s assurances to the decedent and initial steps created a special relationship. The Court of Appeals found that legal duty was subject to issues of fact:

Whether SCRC made the promise is, of course, a material fact left for further summary judgment proceedings or trial. ***Our focus is on whether the facts viewed most favorably to the Mitas raise a legal duty under the voluntary rescue doctrine and a special relationship, and we conclude under our standard of review that they do.*** Therefore, the trial court erred in summarily dismissing the Mitas’ negligence suit against the County.

*Id.* at 87 (emphasis added). Similarly, in *Washburn v. City of Fed. Way*, 169 Wn. App. 588, 283 P.3d 567 (2012),<sup>20</sup> the city argued that the public duty doctrine applied to bar a claim, and that it could only be an issue of law. This “overly simplistic characterization” (*id.* at 611) was rejected in favor of further fact-finding. *Id.* at 610-11. “[A]ppellate courts have frequently reviewed whether sufficient evidence supports a finding that the alleged duty was owed in the particular circumstances of the case... in such cases, the issue of duty does not present a pure question of law.” *See*

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<sup>20</sup> *Aff’d on other grounds*, 178 Wn.2d 732 (2013).

also *Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 625, 818 P.2d 1056 (1991) (duty turned on factual issue).

In our case, the trial court was breaking no new ground when it concluded that there was a predicate issue of fact as to whether the County took “appropriate action,” consistent with the relevant regulation. Those proceedings should run their course below. *See generally Rideout v. Rideout*, 110 Wn. App. 370, 352, 40 P.3d 1192 (2002) (“trial courts are better equipped than multi-judge appellate courts to resolve conflicts and draw inferences from the evidence”).

The trial court’s ruling was prudent, not error.

**C. The Public Duty Doctrine Does Not Apply**

Since 1967, municipal corporations have been liable for damages arising out of their tortious conduct to the same extent as if they were a private person or corporation. RCW 4.96.010(1); *Munich v. Emergency Comm’n Ctr.*, 175 Wn.2d 871, 878, 288 P.3d 328 (2012).

The limited issue now is whether a legal duty is owed to the injured plaintiff. The general rule is that professionals owe a duty to “exercise the degree of skill, care, and learning possessed by members of their profession in the community.” *Michaels v. CH2M Hill, Inc.*, 171 Wn.2d 587, 606, 257 P.3d 532 (2011) (citing 16 DeWolf and Allen, WASHINGTON PRACTICE § 15.51, at 504–05 (3d ed. 2006)). Thereafter,

concepts of foreseeability serve to define the scope of the duty owed. *Schooley v. Pinch's Deli Mkt., Inc.*, 134 Wn.2d 468, 475, 951 P.2d 749 (1998).

In negligence actions involving government, however, courts analyze legal duty under the “public duty doctrine” to ensure that a duty was actually owed to the plaintiff (or his class of individuals). This is less an immunity than a “focusing tool.” *Munich v. Skagit Emergency Comm'n Ctr.*, 175 Wn.2d 871, 878, 288 P.3d 328 (2012); *Cummins v. Lewis County*, 156 Wn.2d 844, 866, 133 P.3d 458 (2006). As a general matter, courts “have almost universally found it unnecessary to invoke the public duty doctrine to bar a plaintiff’s lawsuit,” largely because the exceptions “have virtually consumed the rule.” *See, e.g., Bailey v. Town of Forks*, 108 Wn.2d 262, 266-68, 737 P.2d 1257 (1987).

For at least two independent reasons, a legal duty was owed.

**D. The Failure To Enforce Exception Applies Based Upon the Plain Language of WAC 246-101-505**

Courts recognize that when, as here, there is a known hazard as well as a governmental obligation to address it, the public duty doctrine does not apply. At least twice, in evaluating comparable—albeit, less compelling—facts, courts had no trouble applying the “failure to enforce” exception. This exception provides that a government’s obligation to the general public becomes a legal duty owed to the plaintiff when (1)

government agents, who are responsible for enforcing statutory requirements, actually know of a violation, (2) the government agents have a statutory duty to take corrective action but fail to do so, and (3) the plaintiff is within the class the statute intended to protect. *Bailey v. Town of Forks*, 108 Wn.2d 262, 268, 737 P.2d 1257 (1987); *Gorman v. Pierce Cty.*, 176 Wn. App. 63, 77, 307 P.3d 795 (2013). The burden is on the plaintiff to prove applicability. *Id.*

*Livingston v. City of Everett*, 50 Wn. App. 655, 657, 751 P.2d 1199 (1988), provides a helpful illustration. There, the City of Everett became aware that two dogs in the jurisdiction were potentially dangerous. Under its City Code:

Any impounded animal shall be released to the owner or his authorized representative upon payment of impoundment, care and license fees if, in the judgment of the animal control officer in charge, such animal is not dangerous or unhealthy.

*Id.* at 659 (citing EMC § 6.04.140(E)(1)). The statute was couched in terms of “shall,” but it did not mandate any particular result—other than that the government would exercise discretion. When Everett took no action to address the dogs, and the dogs injured a young boy, the family brought suit.

The city raised the public duty doctrine as a defense. As in our case, there was no dispute about its actual knowledge of the potential

hazard. The city instead argued—like the County—that its code was discretionary, and thus, could not form the basis for a legal duty. The Court of Appeals rejected the argument, reasoning: that “the Animal Control officers *had a duty to exercise their discretion when confronted with a situation which posed a danger...*” *Id.* at 659 (emphasis added). Nor was there any dispute that the injured boy was within the class the ordinance was intended to protect. *See id.* at 659 (noting “duty of care to all persons and property who come within the ambit of the risk created by the officer's negligent conduct”) (citing *Campbell v. Bellevue*, 85 Wn.2d 1, 530 P.2d 234 (1975) (finding municipal liability); *Mason v. Bitton*, 85 Wn.2d 321, 534 P.2d 1360 (1975) (same)). The trial court’s dismissal on public duty grounds was therefore reversed.

*Livingston*, on its face, belies the County’s argument that a duty only arises when *somebody else* violates a statute; and by extension, the County can freely violate its own statutes and rules. The violation in *Livingston* was caused by the government itself. That is, when the animal was already “impounded,” there was no violation yet. It came about only when *the government* failed to properly exercise discretion by releasing the animal:

First, the Animal Control Department is a governmental agency of the City with a duty to enforce statutory requirements, ***including not releasing dangerous animals.***

Like the government employees in *Campbell v. Bellevue*, *supra*, and *Mason v. Bitton*, *supra*, ***the Animal Control officers had a duty to exercise their discretion when confronted with a situation which posed a danger to particular persons or a class of persons.***

*Id.* at 659 (emphasis added). This exception applies, regardless of who violates the statute.<sup>21 22</sup> Notably, the trial court made this very point when ruling. *See* VRP 22:17-20.

*Gorman v. Pierce County*, 176 Wn. App. 63, 307 P.3d 795 (2013), presents another example of the same analysis. There, the county developed knowledge of a dangerous local pit bull. An ordinance provided that the county *had discretion to classify* a dog as ‘potentially dangerous’ based upon its knowledge. *Id.* at 70. Again, as here, the

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<sup>21</sup> The County principally relies upon *Woods View II, LLC v. Kitsap Cty.*, 188 Wn. App. 1, 28, 352 P.3d 807 (2015), for this overly-broad proposition. *Woods* was, in actuality, about timely permit issuance to a developer, which did not pose a “danger” to anybody—as the case itself stated. *Id.* at 27 (purpose of building codes is “not to protect individuals from economic loss ...”); *see also Taylor v. Stevens County*, 111 Wn.2d 159, 171-72, 759 P.2d 447 (1988) (failure to enforce requires an “inherently dangerous condition”). Further, in the context of permits, there are other remedies in “the judiciary” when an agency does not act (*e.g.*, LUPA, mandamus), *ibid.*, whereas King County’s failure to act in the face of a disease outbreak is not reasonably subject to mandamus; people just die.

<sup>22</sup> The County also relies heavily on *Smith v. Kelso*, *Pierce v. Yakima County*, and *Hancoop v. State* with respect to this proposition. These cases, however, swung on “actual knowledge” of the violation, which is not the issue in our case. In *Smith v. City of Kelso*, 112 Wn. App. 277, 284, 48 P.3d 372 (2002), there was no knowledge—even if the city had performed the relevant soil investigation. The same is true in *Pierce v. Yakima County*, 161 Wn. App. 791, 799-801, 251 P.3d 270 (2011), where the homeowner only made argumentative assertions that that the county had actual knowledge of various permit violations. And in *Hancoop v. State*, 111 Wn. 2d 182, 190, 759 P.2d 1188 (1988), the state’s knowledge of the regulatory violation—which led to several cows becoming sick with brucellosis—was not developed until after the fact. This—unlike the County’s knowledge of the budding Hantavirus cluster—precluded both the failure to enforce exception and basic causation.

county admitted knowledge but denied a “statutory duty to take corrective action” because classifying the dog was left to its discretion. *Id.* at 77.

Division II also rejected this argument:

While some of the steps in the process are discretionary, ***the code did require Pierce County to take action if certain conditions existed.*** If the county was made aware of a likely potentially dangerous dog, it had a duty to evaluate the dog to determine if it was potentially dangerous.

*Id.* at 81 (emphasis added). So, too, then in Division II, a duty to exercise discretion bespoke a duty to do so reasonably.<sup>23</sup>

It is true enough that the County had “discretion” under WAC 246-101-505(1)(a). But the legislatively delegated rule-making authority saw fit to cabin that discretion, mandating that the County “shall” act and that its actions be “appropriate.” It is difficult to see what other purpose WAC 246-101-505 serves.<sup>24</sup> The County admitted to the mandatory duty below. *See* CP 364 (“...there was a mandatory duty for the health office or local

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<sup>23</sup> The Commissioner cited *Caldwell v. City of Hoquiam*, 194 Wn. App. 209, 373 P.3d 271 (2016), for the proposition that dangerous dog cases cannot fall under the failure to enforce exception. This was in error—perhaps explaining why *Caldwell* was never raised or argued by the County below. There, unlike here, the issue was that the predicate conditions triggering a legal duty under the City Code (e.g., signage, insurance), were simply not met. Hence, a duty never came into existence. *Id.* at 216-19. In contrast, the predicate condition in our case—*i.e.*, notice of a notifiable condition—undisputedly occurred, triggering a legal duty to act.

<sup>24</sup> Indeed, it would serve no purpose whatsoever with no enforcement mechanism—a result courts do not presume. *See, e.g., John H. Sellen Const. Co. v. State Dep't of Revenue*, 87 Wn.2d 878, 883, 558 P.2d 1342 (1976) (“the legislature does not engage in unnecessary or meaningless acts, and [courts] presume some significant purpose or objective in every legislative enactment.”).

health department to ‘review and determine appropriate action for the November 2016 Hantavirus case...’).<sup>25</sup> The fact of discretion, with respect to *how* to act, no more forecloses a legal duty here than it did in *Livingston* and *Gorman*, where government had substantial leeway to classify or release.

All of this is far less esoteric than the County suggests: when government is under a “formally promulgated” mandate<sup>26</sup> to act in the face of a physical danger, it has a duty to do so *reasonably*. *Livingston*, 50 Wn. App. at 659 (emphasis added). This has been the law since at least the mid-1970’s. *See Mason v. Bitton*, 85 Wn.2d 321, 325, 534 P.2d 1360 (1975) (“[w]henver a duty is imposed by statutory enactment, a question of law arises as to which class of persons is intended to come within the protection provided by the statute.”).<sup>27</sup>

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<sup>25</sup> This sets our case apart from *Fishburn v. Pierce Cty. Planning & Land Servs. Dep’t*, 161 Wn. App. 452, 469, 250 P.3d 146 (2011), where the statute “explicitly state[d] that implementing corrections is discretionary.”

<sup>26</sup> So long as the rule is promulgated “pursuant to legislative delegation,” it has force of law for purposes of the failure to enforce exception. *Mills v. W. Wash. Univ.*, 170 Wn.2d 903, 911, 246 P.3d 1254 (2011); *Oliver v. Cook*, 194 Wn. App. 532, 541, 377 P.3d 265, 270 (2016). The County has never argued otherwise.

<sup>27</sup> The County balks at the scope of the duty in this instance. Br. at 20. But this is no different than the duty it would owe to each of the persons in the County who may be bit by a dangerous dog (*Gorman*), hit by a drunk driver (*Bailey*), or blown up by hazardous construction (*Waite v. Whatcom County*, 54 Wn. App. 682, 775 P.2d 967 (1989)). When the County is under a statutory duty to take action in the face of actual knowledge of the danger, its actions must simply be performed with ordinary care. This case, if anything, shows us what happens when government believes it owes *no* duty to *any* class of people. *See* SCP 20 (“Hahaha... this is Issaquah...”).

To be clear, this does not mean issuing an advisory every time someone reports a diagnosis of flu or autism. Only that the County must exercise ordinary care when addressing this crucial, mandatory task. And in this case, a rational fact-finder could find that this did not occur by virtue of the County's decision to play favorites among populations; ignore its own standards and policies; violate the standard of care in Washington and elsewhere; all while maintaining no discernible methodology; was not "appropriate" or "reasonable."

The County is free to argue otherwise, or that its negligence was not a cause of Brian's death. But its theory, that it is entitled to negligently hurt any number of people, without accountability, was properly rejected below.

**E. The County Also Owed Brian Ehrhart A Duty of Care Pursuant To The Rescue Doctrine**

To the extent that the failure to enforce doctrine does not apply, the rescue exception necessarily does.<sup>28</sup> That is, a ruling in the County's favor on the failure to enforce exception would necessarily render health

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<sup>28</sup> By footnote, the County claims that the Estate "expressly disclaim[ed] the application of any other exception to the public duty doctrine" besides the failure to enforce. Br. at 13-14, n.13. This is not accurate. The Estate stipulated "that the legislative intent and special relationship exceptions to the public duty doctrine are moot... in light of the Court's Order dated September 28, 2018." CP 706-07. Being that the Commissioner granted review of that Order, it can hardly be said that the other exceptions remain "moot." And being that they were extensively litigated below, there is no creditable claim that they were waived. *See* RAP 2.5(a). On the contrary, it would be wholly unjust to dismiss the Estate's negligence claim without permitting it to present all of the applicable exceptions.

advisories a gratuitous exercise which the County is under no obligation to perform. It follows, then, that the County has voluntarily undertaken to fill this role, such that others (including the healthcare community itself) are voluntarily foregoing other avenues for securing infectious disease information.

Under the well-established “Rescue Doctrine,” once undertaken, a rescue requires reasonable care by the rescuer (regardless of whether a duty was owed in the first place). This exception has been recognized in situations where a governmental entity or its agent undertakes to warn or aid a person in danger, and the offer to render aid is relied upon by either the person to whom the aid is to be rendered *or by another who, as a result of the promise, refrains from acting on the victim's behalf*. DeWolf and Allen 16 WASHINGTON PRACTICE, § 15:11 (4th ed. 2017) (emphasis added). Even if gratuitous at the outset, by undertaking this role, the County was “required by Washington law to exercise reasonable care in [its] efforts.” *See Folsom v. Burger King*, 135 Wn.2d 658, 676, 958 P.2d 301 (1998). This is consistent with “ancient” principles:

It is ancient learning that one who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully, if he acts at all... The hand once set to a task may not always be withdrawn with impunity though liability would fail if it had never been applied at all....

If conduct has gone forward to such a stage that in action would commonly result, not negatively merely in withholding a benefit, but positively or actively in working an injury, there exists a relation out of which arises a duty to go forward.

*H.R. Moch Co. v. Rensselaer Water Co.*, 247 N.Y. 160, 167–68, 159 N.E. 896 (1928) (internal citations omitted) (relied upon by *Campbell v. City of Bellevue*, 85 Wn.2d 1, 10, 530 P.2d 234 (1975)).

This principle is reaffirmed in scores of cases, across all of the Divisions and this Court. *See, e.g., Mita v. Guardsmark, LLC*, 182 Wn. App. 76, 328 P.3d 962 (2014) (county owed a duty of care when personnel indicated they would send an officer and file a missing person report related to missing elderly person); *Munich v. Skagit Emergency Commc'n Ctr.*, 175 Wn.2d 871, 288 P.3d 328 (2012) (county owed a duty when it indicated an officer would be sent to shooting incident); *Chambers–Castanes v. King County*, 100 Wn.2d 275, 286 n. 3, 669 P.2d 451 (1983) (public entity has a duty under the rescue doctrine when an injured party reasonably relies on a third party who “refrains from acting” as a result of the public entity's conduct).

Ordinarily, liability will be based upon allegations that the defendant made the plaintiff's situation worse by: “(1) increasing the danger; (2) misleading the plaintiff into believing the danger had been removed; or (3) depriving the plaintiff of the possibility of help from other

sources.” DeWolf and Allen, 16 Washington Practice § 2:10 (4th ed. 2017). Our case is about the healthcare community’s reliance. “[A] duty to act” is “created by reliance not by the person to whom the aid is to be rendered, but by another who, as a result of the promise, refrains from acting on that person's behalf.” *Brown v. MacPherson's, Inc.*, 86 Wn.2d 293, 301, 545 P.2d 13 (1975); *see also Meneely v. S.R. Smith, Inc.*, 101 Wn. App. 845, 859–60, 5 P.3d 49 (2000) (trade association “voluntarily assumed the duty to warn” because “manufacturers relied upon” assurances).<sup>29</sup>

A would-be rescuer may rely on explicit or implicit assurances by the defendant. “Even where an offer to seek or render aid is implicit and unspoken, a duty to make good on the promise has been found by most courts if it is reasonably relied upon.” *Brown v. MacPherson's, Inc.*, 86 Wn.2d 293, 301, 545 P.2d 13 (1975); *Osborn v. Mason Cty.*, 157 Wn.2d 18, 26, 134 P.3d 197 (2006).

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<sup>29</sup> The trial court, in dicta, did not agree that this exception applied because “the County chose not to give notice [of Hantavirus],” and thus, there was no “undertaking.” VRP 24:5-13. Respectfully, this misapprehends the exception. It is true enough that the County did not give notice. But it “did do a number of things” that the trial court acknowledged. *See id.* Those things are precisely what engendered reliance by third parties in the medical community who would have otherwise been in a position to help Brian. Analytically, this is no different than an individual announcing to a crowd that he will save a man drowning in a lake. If the speaker does not follow through, he has made the man in the lake’s situation markedly worse. This is why the rescue exception exists.

Here, the **undisputed** facts in the record confirm the application of the rescue exception. *See* CP 137-138 (explaining the “reciprocal relationship of reliance” between the County and medical community; and how the medical community “anticipates that the County will disseminate important public health announcements”); CP 421 (“if the county did not provide this service, we would pursue this information from elsewhere”). Treators anticipate that the County—based upon its own representations and regulations—will notify them of rare and exotic diseases in the area.<sup>30</sup> The County made itself the repository of this information, and healthcare facilities reasonably expect that it will follow through. The County is thus not free to change its mind, mid-stream, leaving people like the Ehrharts worse off than had it done nothing in the first place.

Stated simply, the County cannot command all of the authority, while remaining subject to no responsibility for exercising it unreasonably.<sup>31</sup> To the extent no duty was owed under the promulgated regulations, one was owed under the rescue exception. Under settled principles, this furnishes a second basis for liability. *Cf. Borden v. City of*

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<sup>30</sup> *See, e.g.*, Pet. App. at 3-4 (Duchin Decl. ¶ 4) (“... [t]here are approximately 3,000 subscribers to the listserv. The subscribers are individual licensed healthcare providers (i.e., doctors and nurses)...”).

<sup>31</sup> “With great power comes great responsibility.” *Montpelier US Ins. Co. v. Collins*, CIV. 11-141-ART, 2012 WL 588799, at 1 (E.D. Ky. Feb. 22, 2012) (attributing to Voltaire and Spider-Man).

*Olympia*, 113 Wn. App. 359, 370, 53 P.3d 1020 (2002) (2002) (“If it is proven at trial that the County participated in creation of the problem, it may participate in the solution.”).

**F. As a Matter Of Basic Public Policy, A Duty Of Care *Should* Be Recognized; And To The Extent The Public Duty Doctrine Holds Otherwise, Its Continued Vitality In Washington Should Be Revisited**

There are ample legal and factual reasons that this case should be permitted to proceed—and the Court can rule narrowly on those grounds. But the nature of this case, and the legal analysis it engenders, necessarily invites a broader re-evaluation of the public duty doctrine itself. As the trial court observed below:

The public duty doctrine has frustrated me for years. I mean, the reason is because originally I think the statute was passed in 1967 where the State abolished sovereign immunity and said that public entities will be liable to the same extent as an individual person, a private citizen.

\* \* \*

The public duty doctrine was essentially adopted without any analysis; it was almost a footnote, in fact, from another jurisdiction. And ever since then, there has been nothing but inconsistency in the case law. The best that practitioners, both lawyers and courts, can do is to try and find a case that's factually similar and hope there's a reasoning that makes sense in that decision. There's never really been a good case where the Supreme Court or any other court of appeals has shown us how to meld the original discretionary immunity analysis with the public duty doctrine. And I know from my research that there are multiple decisions out there where judges have done it

differently. And so there's really no good answer in our case law.

VRP 19-20. Judge Speir was not wrong in her comments.

“Stare decisis is a doctrine developed by courts to accomplish the requisite element of stability in court-made law, but is not an absolute impediment to change.” *In re Stranger Creek & Tributaries in Stevens County.*, 77 Wn.2d 649, 653, 466 P.2d 508, 511 (1970). Though deference should be afforded, courts “also recognize that stability should not be confused with perpetuity. If the law is to have a current relevance, courts must have and exert the capacity to change a rule of law when reason so requires.” *Id.* When there is a clear showing that precedent is both “incorrect and harmful,” this Court has not been unwilling to reconsider precedent.

Though courts are often very careful in their analyses, the problem is with the framework itself. The results that flow from the public duty doctrine are often un-moored from any real justice or fairness principle. In *Caldwell v. City of Hoquiam*, 194 Wn. App. 209, 373 P.3d 271 (2016), the government’s negligence was established by jury verdict. But the verdict was taken away because the officer who served the dangerous dog notice “did not know” whether the recipient had “any liability insurance coverage.” *Id.* at 218. In *Oliver v. Cook*, 194 Wn. App. 532, 540, 377

P.3d 265 (2016), the injured party lost his day in court because the policy the government violated was not “formally enacted through legislative measures or promulgated through administrative procedures.” *Id.* In *Halleran v. Nu W., Inc.*, 123 Wn. App. 701, 712, 98 P.3d 52 (2004), the viability of the lawsuit came down to whether a given statute “limited rulemaking authority” or was intended to “protect investors.” In other cases the issue came down to plain semantics. *Compare Waite v. Whatcom Cty.*, 54 Wn. App. 682, 684, 775 P.2d 967 (1989) (permitting negligence claim to proceed based upon code language prohibiting the “installation of propane furnaces in basements”) *with Smith v. City of Kelso*, 112 Wn. App. 277, 282, 48 P.3d 372 (2002) (disallowing claim based upon code language providing that “city engineer shall prepare minimum installation, material, design and construction standards appropriate to the locality and the topography, soil conditions and geology of the area”). Cases are being resolved on form rather than substance.

But, as the courts have implicitly acknowledged, this is not justice; and the trend is in the other direction. Courts have, therefore, been more willing to determine the scope of government’s duty on the basis of *sound policy* instead of “public duty exceptions.” Last year, for example, a governmental duty to protect foster children from all reasonably anticipated dangers was found. *See H.B.H. v. State*, 192 Wn.2d 154, 169-

170, 429 P.3d 484 (2018). In doing so, the Court cited a common law special relationship, driven largely by compelling policy considerations. *See id.* The public duty doctrine was not discussed. And even more recently, the doctrine was found inapplicable to police officers, based upon their “affirmative conduct throughout their interaction” with an individual. *Beltran-Serrano v. City of Tacoma*, 442 P.3d 608, 614 (Wash. 2019). The Court emphasized that the doctrine was never intended to negate or limit common law duties. *Id.* To apply the doctrine so broadly “would inappropriately lead to a partial restoration of immunity [and] undermine the value of tort liability to protect victims, deter dangerous conduct and provide a fair distribution of risk of loss.” *Id.*<sup>32 33</sup>

This is even evident in the Court of Appeals. The County cites *Margitan v. Spokane Reg'l Health Dist.*, 34606-4-III, 2018 WL 3569972,

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<sup>32</sup> Another example of a governmental duty that exists without regard to the public duty doctrine—albeit a much older one—is its obligation to maintain streets and sidewalks. WPI 140.01; *Owen v. Burlington Northern and Santa Fe R.R. Co.*, 153 Wn.2d 780, 108 P.3d 1220 (2005). The scope of this duty has been revisited several times in the last few years, and generally resolved on the basis of policy considerations. *See Xiao Ping Chen v. City of Seattle*, 153 Wn. App. 890, 900–01, 223 P.3d 1230 (2009) (applying totality of the circumstances analysis); *Wuthrich v. King Cty.*, 185 Wn.2d 19, 26, 366 P.3d 926 (2016) (defects outside of the right-of-way).

<sup>33</sup> Indeed, the public duty doctrine is often defended as a mechanism to avoid imposing liability for “special government obligations.” *Beltran-Serrano*, 442 P.3d at 613-14. Maintaining public roads is a quintessential example, yet, a duty of care has been imposed for decades. *Supra* Note 32. The same is true of sewer systems, *Acosta v. City of Mabton*, 2 Wn. App. 131, 140, 408 P.3d 1095 (2018), and management of storm water, *Wood v. Mason County*, 2013 WL 1164437, 174 Wn. App. 1018 (Div. II 2013) (unpublished). Nobody can credibly suggest that such legal duties have made these government services *worse*.

at \*6 (2018), for the proposition that the failure to enforce exception was rejected when the “plaintiff could not point to any statute, regulation or decisional authority requiring immediate enforcement action.” Br. at 32.

But the language from the case was slightly different:

The Margitans fail to point to any statute, regulation, or decisional authority that required SRHD to take immediate enforcement action *absent a public health risk*.

*Ibid.* at 6 (emphasis added). Division III specifically left open the possibility that a genuine public health risk would, in and of itself, be sufficient to support a legal duty.

In short, this trend should continue to its logical conclusion: a reversion to the simple, and traditional, legal duty analysis – which is what any other private person or company would be subject to. *See* RCW 4.96.010(1) (abolition of sovereign immunity). And like any other party, the question should come down to “considerations of logic, common sense, justice, policy, and precedent.” *Affiliated FM Ins. Co. v. LTK Consulting Servs., Inc.*, 170 Wn.2d 442, 449, 243 P.3d 521 (2010). This does not open any floodgates, nor limit the government’s protections vis-à-vis claims it should not be held to account for. For one thing, there will—by definition—only be liability when (1) government was provably negligent; and (2) that negligence was a provable cause of harm. And for another thing, government will remain protected when it genuinely should

not owe a duty; as well as in circumstances where the harm is too legally or factually attenuated. *See Crowe v. Gaston*, 134 Wn.2d 509, 518, 951 P.2d 1118 (1998) (but for and legal causation principles). Granting more protections than this has not led to principled results, nor has it been consistent with the abolition of sovereign immunity.

This case presents a perfect example. There is no logic or policy-based reason to immunize the County from the consequences of its misconduct. It is, after all, difficult to see how public health will be made *better* by making it accountable to nobody—especially when it has no apparent interest in policing itself or otherwise improving. CP 475-487 (actual animus toward Issaquah; misrepresentation of events; destruction of relevant documents). The conduct by the County—which is a function of its belief that it is immune from liability—illustrates the “harm” prong required to revisit precedent.<sup>34</sup>

Nor is there any “common sense” reason to afford the County immunity. Courts rightly hold bad drivers, bad doctors, bad companies and bad contractors accountable. It would be anomalous to give the

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<sup>34</sup> And conversely, when it became apparent to those same County employees that the public duty doctrine might *not* bar this lawsuit, they finally took steps toward discerning the standard of care. *See App.* at 12-13.

County—particularly in the context of life-and-death health information—a free pass, in light of what is at stake.<sup>35</sup>

And finally, there is no justice in immunizing the County when it negligently hurts someone, like the Ehrhart family. “The cornerstone of tort law is the assurance of full compensation to the injured party.” *Pac. Nw. Life Ins. Co. v. Turnbull*, 51 Wn. App. 692, 700, 754 P.2d 1262 (1988) (*Seattle-First Nat. Bank v. Shoreline Concrete Co.*, 91 Wn.2d 230, 236, 588 P.2d 1308, 1312 (1978)). Justice dictates that the Ehrhart family gets its day in Court, at which point their allegations can rise and fall on their relative merit. If they prove their case, they should be compensated. If not, they will at least have been heard. Turning the family away at this stage would represent marked *injustice*.

The Court should find a duty owed under the public duty doctrine. However, if it does not, it is all the more reason to examine the continued vitality of this last vestige of sovereign immunity. *See Benjamin Cardozo, THE NATURE OF THE JUDICIAL PROCESS*, New Haven Yale Univ. Press (1921) (noting that “if the mores of their day are no longer those of ours,

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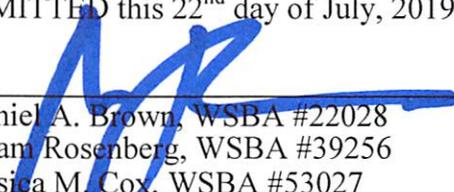
<sup>35</sup> If a free pass were intended, the legislature knows how to furnish it. *See, e.g.*, RCW 4.24.210 (recreational land use immunity); RCW 10.99.070 (immunity for good faith intervention in suspected domestic violence); RCW 48.180.065 (whistle-blower immunity); RCW 16.52.330 (veterinarian immunity). That did not occur here, and the presumption is to the contrary. *See Michaels v. CH2M Hill, Inc.*, 171 Wn.2d 587, 600, 257 P.3d 532 (2011) (immunity is in derogation of the common law).

[the decisions of former judges] ought not to tie, in helpless submission, the hands of their successors.”).

## V. CONCLUSION

For the foregoing reasons, the Estate respectfully requests that the Court affirm the trial court in all material respects and remand this case for trial.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of July, 2019.



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*Counsel for the Ehrhart family*

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 22<sup>nd</sup> day of July, 2019, I caused a true and correct copy of the foregoing document, to be delivered via the court e-filing system to:

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DATED this 22<sup>nd</sup> day of July, 2019.

  
\_\_\_\_\_  
Janis Hager  
Legal Assistant to Adam Rosenberg

No. 96464-5  
Respondent Sandra Ehrhart's  
Index to Appendix

<b>DATE</b>	<b>DOCUMENT</b>	<b>PAGE NO.</b>
<b>December 17, 2018</b>	Declaration of Adam Rosenberg in Support of the Estate's Response to Direct and Discretionary Review	APP. 1-15
<b>July 22, 2019</b>	Supplemental Clerk's Papers <sup>1</sup>	Supplemental Designation (SCP) 1-93

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<sup>1</sup> As of the time of this filing, the Estate has not yet received Clerk's Papers from Pierce County Superior Court. When it does, it will file an amended brief with citations to the official record.

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
12/17/2018 3:25 PM  
BY SUSAN L. CARLSON  
CLERK

NO. 96464-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SANDRA EHRHART, individually and as personal representative of the  
Estate of Brian Ehrhart,

Respondent.

v.

KING COUNTY, operating through its health department, Public Health –  
Seattle & King County,

Petitioner,

v.

SWEDISH HEALTH SERVICES, a non-profit entity; and  
JUSTIN WARREN REIF, an individual,

Defendants.

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**DECLARATION OF ADAM ROSENBERG IN SUPPORT OF THE  
ESTATE'S RESPONSE TO DIRECT AND DISCRETIONARY  
REVIEW**

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Adam Rosenberg, WSBA #39256  
Daniel A. Brown, WSBA #22028  
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*Counsel for the Ehrhart family*

I, Adam Rosenberg, declare as follows:

1. I am one of the attorneys representing the Respondent, the Ehrhart family, in this matter. This declaration is based upon my personal knowledge – and intended to respond to new evidence and arguments being made by the County on appeal.

2. The following exhibits are cited or relied upon in the Respondent’s answers to the County’s motion for discretionary review and statement of grounds for direct review:

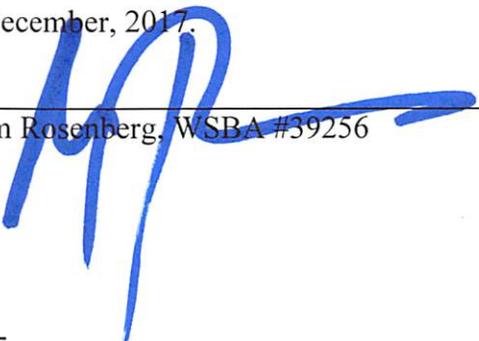
A. Attached as **Exhibit A** is a true and correct copy of King County’s response to my public records request.

B. Attached as **Exhibit B** is a true and correct copy of an excerpt from a presentation prepared by King County (with the Department of Health), which was produced in discovery.

C. Attached as **Exhibit C** is a true and correct copy of an emails exchange between County officials and the Department of Health around the time of the summary judgment hearing, which was produced in discovery.

I certify that, under penalty of perjury of the laws of Washington, the above written statements are true and accurate to the best of my knowledge.

DATED this 17th day of December, 2017.

  
\_\_\_\_\_  
Adam Rosenberg, WSBA #39256

**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, I caused a true and correct copy of the foregoing document to be served via email, per agreement of counsel, to the following:

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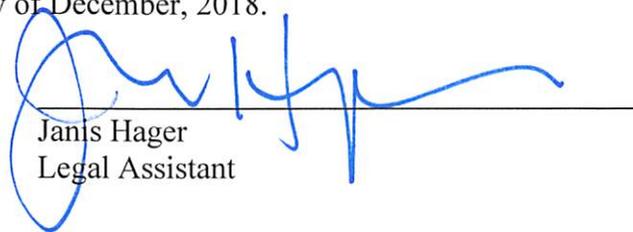
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- Via Electronic Mail  
(*per Stipulation for Electronic Service*)
- Via Legal Messenger
- Via U.S. Mail
- Via Overnight Courier

*Attorneys for Plaintiff*

DATED this 17th day of December, 2018.

  
\_\_\_\_\_  
Janis Hager  
Legal Assistant

# **Exhibit A**

**From:** Larsen, Penny [<mailto:Penny.Larsen@kingcounty.gov>] **On Behalf Of** Disclosure, Public  
**Sent:** Monday, December 04, 2017 8:41 AM  
**To:** Blair, Stephanie  
**Cc:** Hager, Janis  
**Subject:** RE: King County Public Records Request

Hello Stephanie,

I apologize for the delay, it was my intention to get back to you by Friday. Please see my responses to each item of your request below.

- 1 All public health notifications or announcements furnished to local hospitals or health care providers relating to unusual or rare diseases/conditions (in their original form--e.g. email, call log, letter) in the last 20 years;

Public Health Seattle-King County maintains a listserv to inform local health care providers (HCPs). Participation by HCPs is optional and these notifications are also posted on our website as advisories.

- a. Please view this link for health advisory notifications for HCPs from 2015-2017 <http://www.kingcounty.gov/depts/health/communicable-diseases/health-care-providers/advisories.aspx>.  
I am retrieving these materials.
- b. We are gathering the notifications sent to the listserv subscribers and checking on the retention of older notification records, prior to the listserv.  
Please send once available.

- 2 The data-including the number of confirmed cases-which led you to furnish each of the above notifications or announcements

- There is no formal protocol for furnishing notifications. If there are specific notifications/health advisories that you would like us to search for records, we can discuss what kind of data is available for specific notifications.  
We will discuss internally and get back to you regarding data for specific notifications.

3. Documents establishing or relating to the financial cost of each of the above notifications or announcements

- We have no responsive records.

4. Documents establishing or relating to the time it took to prepare and furnish each of the above notifications or announcements.

- We have no responsive records.

- 5 Any changes to your policies with regard to public health notifications or announcements in the last 20 years.

- a. We implemented a policy regarding notifications of food borne illnesses in 2015, please let me know if you are interested in receiving the policy records.  
Please send once available.
- b. We interpret this item to be for policy records about the listserv and notification policies prior to its implementation if available. If that is not correct, please clarify to help us identify records.  
Please send once available.

6. All records or studies establishing that any of the above notifications or announcements had led to a public panic or other adverse consequences

- We have no responsive records or data establishing public panic or adverse consequences.

I estimate that records responsive will be available in approximately one week, or sooner if possible.

# **Exhibit B**

---

# INSIGHTS INTO HANTAVIRUS IN WASHINGTON STATE: EPIDEMIOLOGY AND PREVENTION

HANNA OLTEAN, MPH  
WASHINGTON STATE DEPARTMENT OF HEALTH

VANCE KAWAKAMI, DVM, MPH  
PUBLIC HEALTH – SEATTLE & KING COUNTY

## PHSKC HPS CLUSTER SUMMARY

- No identifiable link between 3 cases in 2016–2017
- Lack of current data on deer mouse ecology in King County to explain HPS cluster
- Strong focus on public and HCP education and awareness is warranted when lab-confirmed cases are identified

## PHSKC ROLE: CONFIRMED AND SUSPECTED HANTAVIRUS CASES

- Interview patient (or proxy if patient unavailable)
  - Identify risk factors and potential exposures
  - Identify other individuals and assess their hantavirus exposure risk
  - Provide education on symptoms of HPS and when to seek care
- Facilitate submission of specimens to Washington State Public Laboratories for confirmatory testing
- Environmental evaluation
  - Evidence of rodent infestation, specifically deer mice
- Hantavirus education on awareness, prevention and control
  - Healthcare providers
  - Public
    - Focus on eastern King County communities
    - Workplace-related exposure (e.g., mechanics, pest control workers, parks employees)

# **Exhibit C**

---

**From:** Kay, Meagan  
**Sent:** Wednesday, August 29, 2018 6:54 AM PDT  
**To:** Chan, Mary (DOH)  
**CC:** Kawakami, Vance; Boysun, Mike (DOH); Oltean, Hanna (DOH)  
**Subject:** Re: hantavirus press releases [no phi]  
**Attachments:** image002.png, image003.png, image004.png, image005.png

Thanks Mary,

Really appreciate you pulling this together. So the majority of hanta cases in WA are acquired locally and not travel associated? And it is more common than not to have a press release issued.

Based on data on hanta online that would mean only a couple of hanta cases were acquired through travel and I'm pretty sure KC has had a few of those since I've been here. Just want to make sure I understand the results.

Thanks again!  
Meagan

On Aug 28, 2018, at 11:53 PM, Chan, Mary (DOH) <[mary.chan@doh.wa.gov](mailto:mary.chan@doh.wa.gov)> wrote:

Hi Vance, Hi Meagan,

Following both online searches and phone interviews with relevant counties, below is the information that we have collected:

# of hantavirus cases with in-county exposure: 23

- Information about press releases was available for 14: 13 had press releases, 1 did not
- Information about HANs/healthcare provider advisories was available for 13: 8 had advisories released, 5 did not

# of hantavirus deaths with in-county exposure: 10

- Information about press releases was available for 9: all had press releases
- Information about HANs/healthcare provider advisories was available for 7: 5 had advisories released, 2 did not

We may be able to resolve a few of the unknowns on Wed; I will follow-up with you then!

Best,  
Mary

**From:** Chan, Mary (DOH)  
**Sent:** Tuesday, August 28, 2018 2:42 PM  
**To:** [vance.kawakami@kingcounty.gov](mailto:vance.kawakami@kingcounty.gov); 'Meagan.Kay@kingcounty.gov'  
<[Meagan.Kay@kingcounty.gov](mailto:Meagan.Kay@kingcounty.gov)>

**Cc:** Boysun, Mike (DOH) <[Mike.Boysun@DOH.WA.GOV](mailto:Mike.Boysun@DOH.WA.GOV)>; Oltean, Hanna (DOH) <[Hanna.Oltean@DOH.WA.GOV](mailto:Hanna.Oltean@DOH.WA.GOV)>  
**Subject:** hantavirus press releases [no phi]

Hi Vance, Hi Meaghan,

We are working on finalizing our investigation into whether or not counties issued press releases and/or advisories to providers following confirmation of hantavirus cases with in-county exposure.

Some of the cases are from a long time ago and some of this information may no longer be available. However, we'll aim to send you a count of known releases and/or advisories for each case later today. Feel free to contact me if you have any questions.

Best,  
-Mary

**Mary Chan, MPH**

Epidemiologist, Zoonotic and Vectorborne Disease  
Office of Communicable Disease Epidemiology  
Division of Disease Control and Health Statistics  
Washington State Department of Health

[mary.chan@doh.wa.gov](mailto:mary.chan@doh.wa.gov)

206-418-5610 (ph) | 206-364-1060 (fax) | [www.doh.wa.gov](http://www.doh.wa.gov)



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**WILLIAMS KASTNER**

**December 17, 2018 - 3:25 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96464-5  
**Appellate Court Case Title:** Sandra Ehrhart v. King County, et al.  
**Superior Court Case Number:** 18-2-09196-4

**The following documents have been uploaded:**

- 964645\_Affidavit\_Declaration\_20181217152032SC744199\_4412.pdf  
This File Contains:  
Affidavit/Declaration - Other  
*The Original File Name was Declaration\_of\_Rosenberg\_iso\_Estate\_s\_Response\_to\_Direct\_and\_Discretionary\_Review.PDF*
- 964645\_Answer\_Reply\_20181217152032SC744199\_6389.pdf  
This File Contains:  
Answer/Reply - Answer to Motion for Discretionary Review  
*The Original File Name was Respondent\_Estate\_s\_Response\_in\_Opposition\_to\_Discretionary\_Review.PDF*

**A copy of the uploaded files will be sent to:**

- KGoodman@williamskastner.com
- athan.papailiou@pacificallawgroup.com
- bjenson@williamskastner.com
- chris@favros.com
- cphillips@bblaw.com
- dawn.taylor@pacificallawgroup.com
- dbrown@williamskastner.com
- ebariault@freybuck.com
- eleedom@bblaw.com
- ffusaro@bblaw.com
- joe@favros.com
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- matthew.segal@pacificallawgroup.com
- paul.lawrence@pacificallawgroup.com
- sydney.henderson@pacificallawgroup.com
- tbuck@freybuck.com
- todd@favros.com

**Comments:**

---

Sender Name: Janis Hager - Email: jhager@williamskastner.com

**Filing on Behalf of:** Adam Rosenberg - Email: arosenberg@williamskastner.com (Alternate Email: )

Address:  
601 UNION STREET  
SUITE 4100

**APP 14**

SEATTLE, WA, 98101  
Phone: (206) 233-2964

**Note: The Filing Id is 20181217152032SC744199**

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The Honorable Shelly K. Speir

SUPERIOR COURT OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

SANDRA EHRHART, individually and as  
personal representative of the Estate of Brian  
Ehrhart,

Plaintiff,

v.

KING COUNTY, operating though Seattle-  
King County Public Health, a government  
agency, SWEDISH HEALTH SERVICES, a  
non-profit entity, and JUSTIN WARRANT  
REIF, an individual

Defendants.

NO. 18-2-09196-4

**DECLARATION OF KATHLEEN X.  
GOODMAN IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO  
MOTION FOR PROTECTIVE ORDER**

**Noted for Hearing:  
November 2, 2018 at 9:00 a.m.**

I, Kathleen X. Goodman, declare as follows:

1. I am one of the attorneys representing Plaintiff, Sandra Ehrhart, individually and as personal representative of the Estate of Brian Ehrhart. I am over the age of 18, competent to testify, and make this declaration based upon my personal knowledge.

2. On Thursday, September 20, 2018, I had a CR 26(i) discovery conference with King County's prior attorney, Kimberly Frederick. One of the topics that we discussed was scheduling the depositions of Kathy Lambert and Rod Dembowski. I asked Ms. Frederick when the County intended to provide us with availability for the depositions of Ms. Lambert and Mr. Dembowski. She responded that the County was in the process of "collecting

DECLARATION OF KATHLEEN X. GOODMAN IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO MOTION FOR PROTECTIVE  
ORDER - 1

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**Williams, Kastner & Gibbs PLLC**  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

1 [documents],” and would not be scheduling their depositions until it had opportunity to  
2 “prepare them” with the documents, but that she believed the County would still be able to  
3 make these individuals available in October. At no time during the call did the County indicate  
4 that it would not be making Ms. Lambert or Mr. Dembowski available for depositions or raise  
5 any objections to the same.

6 THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY  
7 KNOWLEDGE UNDER PENALTY OF PERJURY UNDER THE LAWS OF  
8 WASHINGTON.

9 SIGNED this 30th day of October, 2018, at Seattle, Washington.

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Kathleen X. Goodman, WSBA #46653

DECLARATION OF KATHLEEN X. GOODMAN IN SUPPORT OF  
PLAINTIFF’S RESPONSE TO MOTION FOR PROTECTIVE  
ORDER - 2

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**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date we caused to be served upon certain counsel of record at the address and in the manner indicated below a copy of the foregoing:

Kymerly Evanson, WSBA #39973  
Paul J. Lawrence, WSBA #13557  
Athanasios P. Papailiou, WSBA #47591  
**PACIFICA LAW GROUP, LLP**  
1191 Second Avenue, Suite 2000  
Seattle, WA 98101  
Tel: (206) 245-1700  
Email: [kymerly.evanson@pacificallawgroup.com](mailto:kymerly.evanson@pacificallawgroup.com)  
[paul.lawrence@pacificallawgroup.com](mailto:paul.lawrence@pacificallawgroup.com)  
[athan.papailiou@pacificallawgroup.com](mailto:athan.papailiou@pacificallawgroup.com)  
[sydney.henderson@pacificallawgroup.com](mailto:sydney.henderson@pacificallawgroup.com)

- Via Electronic Mail  
*(per Stipulation for Electronic Service)*
- Via Legal Messenger
- Via U.S. Mail
- Via Overnight Courier

***Attorneys for Defendant  
King County***

Christopher H. Anderson, WSBA #19811  
Todd Reichert, WSBA #35557  
Joe Gardner, WSBA #53340  
**FAIN ANDERSON VANDERHOEF ROSENDAHL  
O'HALLORAN SPILLANE, PLLC**  
701 Fifth Avenue, Suite 4750  
Seattle, WA 98104  
Tel: (206) 749-0094  
Email: [chris@favros.com](mailto:chris@favros.com)  
[todd@favros.com](mailto:todd@favros.com)  
[joe@favros.com](mailto:joe@favros.com)  
[carrie@favros.com](mailto:carrie@favros.com)  
[kellie@favros.com](mailto:kellie@favros.com)  
[shannon@favros.com](mailto:shannon@favros.com)

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***Attorneys for Defendant  
Swedish Health Services***

DECLARATION OF KATHLEEN X. GOODMAN IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO MOTION FOR PROTECTIVE  
ORDER - 3

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Seattle, Washington 98101-2380  
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6645494.1

1 Elizabeth A. Leedom, WSBA #14335  
2 Lauren M. Martin, WSBA #49026  
3 **BENNETT BIGELOW LEEDOM PS**  
4 601 Union Street, Suite 1500  
5 Seattle, WA 98101  
6 Tel: (206) 622-5511  
7 Email: [eleedom@bblaw.com](mailto:eleedom@bblaw.com)  
8 [lmartin@bblaw.com](mailto:lmartin@bblaw.com)  
9 [cphillips@bblaw.com](mailto:cphillips@bblaw.com)  
10 [ffusaro@bblaw.com](mailto:ffusaro@bblaw.com)  
11 [fpolli@bblaw.com](mailto:fpolli@bblaw.com)

12 ***Attorneys for Defendant***  
13 ***Dr. Justin Warren Reif***

14 Theron A. Buck, WSBA # 22029  
15 **FREY BUCK, P.S.**  
16 1200 5th Ave., Suite 1900  
17 Seattle, WA 98101  
18 Tel: (206) 486-8000  
19 Email: [tbuck@freybuck.com](mailto:tbuck@freybuck.com)  
20 [ebariault@freybuck.com](mailto:ebariault@freybuck.com)  
21 [lfulgaro@freybuck.com](mailto:lfulgaro@freybuck.com)

22 ***Attorneys for Plaintiff***

23 DATED this 30th day of October, 2018.

24 *s/ Janis Hager*  
25 \_\_\_\_\_  
Janis Hager, Legal Assistant

- Via Electronic Mail  
(per Stipulation for Electronic Service)
- Via Legal Messenger
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- Via Overnight Courier

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DECLARATION OF KATHLEEN X. GOODMAN IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO MOTION FOR PROTECTIVE  
ORDER - 4

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The Honorable Shelly K. Speir

SUPERIOR COURT OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

SANDRA EHRHART, individually and as  
personal representative of the Estate of Brian  
Ehrhart,  
  
Plaintiff,  
  
v.  
  
KING COUNTY, operating through its health  
department, Public Health - Seattle & King  
County, SWEDISH HEALTH SERVICES, a  
non-profit entity, and JUSTIN WARREN REIF,  
an individual,  
  
Defendants.

NO. 18-2-09196-4

**DECLARATION OF ADAM  
ROSENBERG IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO KING  
COUNTY'S PROTECTIVE ORDER  
MOTION**

**Noted for Hearing:  
November 2, 2018 at 9:00 a.m.**

I, Adam Rosenberg, declare as follows:

1. I am counsel of record for the Plaintiff, Sandra Ehrhart, individually and as personal representative of the Estate of Brian Ehrhart. This declaration is based upon my personal knowledge.

2. The following exhibits are cited or relied upon in Plaintiff's Response to the County's Motion for a Protective Order, filed herewith:

A. Attached as **Exhibit A** is a true and correct copy of an email to Kimberly Frederick from Adam Rosenberg, requesting dates to take the depositions of Ms. Lambert and Mr. Dembowski, dated August 28,

DECLARATION OF ADAM ROSENBERG IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO KING COUNTY'S PROTECTIVE  
ORDER MOTION - 1

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Seattle, Washington 98101-2380  
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2018. This was in addition to one or more discussions in which Ms. Frederick committed to making these witnesses available.

- B. Attached as **Exhibit B** is a true and correct copy of an email to Adam Rosenberg from Kimberly Frederick in which she agreed to “let me know about deposition dates,” dated September 5, 2018
- C. Attached as **Exhibit C** is a true and correct copy of an email exchange between Kymberly Evanson and Adam Rosenberg, shortly after she replaced Kimberly Frederick in the case.
- D. Attached as **Exhibit D** is a true and correct copy of the Court’s Order Granting Plaintiff’s Motion to Compel, entered October 12, 2018.
- E. Attached as **Exhibit E** is a true and correct copy of an email exchange between Meagan Kay and Beth Lipton, dated March 10, 2017, secured through public records request.
- F. Attached as **Exhibit F** is a true and correct copy of a video excerpt from the Board of Health’s April 20, 2017 meeting.
- G. Attached as **Exhibit G** is a true and correct copy of a transcript of Exhibit F, which my legal assistant prepared.
- H. Attached as **Exhibit H** is a true and correct copy of an email to Adam Rosenberg from Kymberly Evanson, producing documents collected from Councilmembers Dembowski and Lambert’s offices and their staff.
- I. Attached as **Exhibit I** is a true and correct copy of a timeline produced by King County in discovery. It came with the councilmember production of documents. (KC-Ehrhart-0024518)
- J. Attached as **Exhibit J** is a true and correct copy of an email to Ms. Lambert from Mr. Dembowski produced by King County in discovery.

DECLARATION OF ADAM ROSENBERG IN SUPPORT OF  
PLAINTIFF’S RESPONSE TO KING COUNTY’S PROTECTIVE  
ORDER MOTION - 2

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It came with the councilmember production of documents. (KC-Ehrhart-0024214)

K. Attached as **Exhibit K** is a true and correct copy of an email to Mr. Dembowski from Ms. Lambert produced by King County in discovery. It came with the councilmember production of documents. (KC-Ehrhart-0024219)

L. Attached as **Exhibit L** is a true and correct copy of an email exchange between Public Health staff produced by King County in discovery. (KC-Ehrhart-0023243)

3. For the reasons identified in briefing, I believe that my client would be prejudiced by the County's requested protective order, absent the conditions we've identified and requested.

THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE UNDER PENALTY OF PERJURY UNDER THE LAWS OF WASHINGTON.

SIGNED this 30th day of October, 2018, at Seattle, Washington.

  
\_\_\_\_\_  
Adam Rosenberg, WSBA #39256

DECLARATION OF ADAM ROSENBERG IN SUPPORT OF PLAINTIFF'S RESPONSE TO KING COUNTY'S PROTECTIVE ORDER MOTION - 3

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**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date we caused to be served upon certain counsel of record at the address and in the manner indicated below a copy of the foregoing:

Kymerly Evanson, WSBA #39973  
Paul J. Lawrence, WSBA #13557  
Athanasios P. Papailiou, WSBA #47591  
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1191 Second Avenue, Suite 2000  
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Email: [kymerly.evanson@pacificalawgroup.com](mailto:kymerly.evanson@pacificalawgroup.com)  
[paul.lawrence@pacificalawgroup.com](mailto:paul.lawrence@pacificalawgroup.com)  
[athan.papailiou@pacificalawgroup.com](mailto:athan.papailiou@pacificalawgroup.com)  
[sydney.henderson@pacificalawgroup.com](mailto:sydney.henderson@pacificalawgroup.com)

- Via Electronic Mail  
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***Attorneys for Defendant  
King County***

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Todd Reichert, WSBA #35557  
Joe Gardner, WSBA #53340  
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[joe@favros.com](mailto:joe@favros.com)  
[carrie@favros.com](mailto:carrie@favros.com)  
[kellie@favros.com](mailto:kellie@favros.com)  
[shannon@favros.com](mailto:shannon@favros.com)

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***Attorneys for Defendant  
Swedish Health Services***

DECLARATION OF ADAM ROSENBERG IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO KING COUNTY'S PROTECTIVE  
ORDER MOTION - 4

**Williams, Kastner & Gibbs PLLC**  
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1 Elizabeth A. Leedom, WSBA #14335  
2 Lauren M. Martin, WSBA #49026  
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4 601 Union Street, Suite 1500  
5 Seattle, WA 98101  
6 Tel: (206) 622-5511  
7 Email: [eleedom@bblaw.com](mailto:eleedom@bblaw.com)  
8 [lmartin@bblaw.com](mailto:lmartin@bblaw.com)  
9 [cphillips@bblaw.com](mailto:cphillips@bblaw.com)  
10 [ffusaro@bblaw.com](mailto:ffusaro@bblaw.com)  
11 [fpolli@bblaw.com](mailto:fpolli@bblaw.com)

12 *Attorneys for Defendant*  
13 *Dr. Justin Warren Reif*

14 Theron A. Buck, WSBA # 22029  
15 **FREY BUCK, P.S.**  
16 1200 5th Ave., Suite 1900  
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18 Tel: (206) 486-8000  
19 Email: [tbuck@freybuck.com](mailto:tbuck@freybuck.com)  
20 [ebariault@freybuck.com](mailto:ebariault@freybuck.com)  
21 [lfulgaro@freybuck.com](mailto:lfulgaro@freybuck.com)

22 *Attorneys for Plaintiff*

23 DATED this 30th day of October, 2018.

24 *s/ Janis Hager*  
25 \_\_\_\_\_  
Janis Hager, Legal Assistant

- Via Electronic Mail  
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DECLARATION OF ADAM ROSENBERG IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO KING COUNTY'S PROTECTIVE  
ORDER MOTION - 5

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**Williams, Kastner & Gibbs PLLC**  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

# **Exhibit A**

## Blair, Stephanie

---

**From:** Rosenberg, Adam  
**Sent:** Tuesday, August 28, 2018 9:23 AM  
**To:** Frederick, Kimberly  
**Cc:** Bridgman, Kris; Goodman, Kathleen; Blair, Stephanie  
**Subject:** RE: Ehrhart v. King County, et al.: King County's Responses to Plaintiff's First Request for Documents

**Categories:** DM, #32513 : 0101

Hi Kim,

I understand that you're out of town now, so don't feel compelled to respond (if you're even checking email; hopefully not).

The ESI search terms you sent seem fine for the time being. We can keep the conversation going depending on how things evolve. The only thing I'd ask is that responsive documents be collected from the Chair and Vice Chair of Public Health (Dembowski and Lambert), as well as their offices.

Also, I'd like to put deposition dates on the calendar for Mr. Dembowski and Ms. Lambert – early October is fine. Let me know what timing would work.

Thank you,

Adam

### Adam Rosenberg

Williams Kastner | Attorney at Law  
601 Union Street, Suite 4100  
Seattle, WA 98101-2380  
P: 206-628-2762 | F: 206-628-6611  
[www.williamskastner.com](http://www.williamskastner.com) | [Bio](#) | [V-Card](#)

WASHINGTON OREGON ALASKA

---

**From:** Bridgman, Kris [<mailto:Kris.Bridgman@kingcounty.gov>]  
**Sent:** Thursday, August 23, 2018 1:40 PM  
**To:** Blair, Stephanie; Frederick, Kimberly; Josephson, Shanna; 'chris@favros.com'; 'todd@favros.com'; 'joe@favros.com'; 'carrie@favros.com'; 'kelly@favros.com'; 'shannon@favros.com'; 'eleedom@bllaw.com'; 'lmartin@bllaw.com'; 'cphillips@bllaw.com'; 'ffusaro@bllaw.com'; 'fpolli@bllaw.com'  
**Cc:** Rosenberg, Adam; Brown, Daniel; Goodman, Kathleen; Hager, Janis; 'tbuck@freybuck.com'; 'ebariault@freybuck.com'; 'lfulgaro@freybuck.com'  
**Subject:** Ehrhart v. King County, et al.: King County's Responses to Plaintiff's First Request for Documents

Counsel,

Attached please find the following:

1. August 22, 2018 Kimberly Frederick letter to Counsel.
2. King County's Responses to Plaintiff's First Request for Documents.

A CD with King County's first production of documents (bates 1-2861) will be delivered to your offices via ABC Legal Messenger no later than 4:30 p.m. tomorrow.

If you have any questions or concerns, please let me know.

Thank you,

Kris Bridgman  
Litigation Paralegal  
King County Prosecutor's Office  
900 King County Administration Building  
500 Fourth Avenue  
Seattle, Washington 98104  
Ph: (206) 477-1261 Fx: (206) 296-8819  
[Kris.Bridgman@KingCounty.gov](mailto:Kris.Bridgman@KingCounty.gov)  
Mailstop: ADM-PA-0900

# **Exhibit B**

## Blair, Stephanie

---

**From:** Frederick, Kimberly <Kimberly.Frederick@kingcounty.gov>  
**Sent:** Wednesday, September 05, 2018 11:33 AM  
**To:** Rosenberg, Adam  
**Cc:** Bridgman, Kris; Goodman, Kathleen; Blair, Stephanie  
**Subject:** RE: Ehrhart v. King County, et al.: King County's Responses to Plaintiff's First Request for Documents

**Categories:** DM, #32513 : 0101

Hi Adam,

We are still collecting from the Public Health witnesses but will set these up too. I'll let you know about deposition dates

**Kimberly Frederick** | Senior Deputy Prosecuting Attorney | King County Prosecuting Attorney's Office |  
Civil Division-Litigation Section | 500 Fourth Avenue, Suite 900, Seattle, Washington 98104 | (206) 477-9523

---

**From:** Rosenberg, Adam [<mailto:ARosenberg@williamskastner.com>]  
**Sent:** Tuesday, August 28, 2018 9:23 AM  
**To:** Frederick, Kimberly <[Kimberly.Frederick@kingcounty.gov](mailto:Kimberly.Frederick@kingcounty.gov)>  
**Cc:** Bridgman, Kris <[Kris.Bridgman@kingcounty.gov](mailto:Kris.Bridgman@kingcounty.gov)>; Goodman, Kathleen <[KGoodman@williamskastner.com](mailto:KGoodman@williamskastner.com)>; Blair, Stephanie <[SBlair@williamskastner.com](mailto:SBlair@williamskastner.com)>  
**Subject:** RE: Ehrhart v. King County, et al.: King County's Responses to Plaintiff's First Request for Documents

Hi Kim,

I understand that you're out of town now, so don't feel compelled to respond (if you're even checking email; hopefully not).

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Also, I'd like to put deposition dates on the calendar for Mr. Dembowski and Ms. Lambert – early October is fine. Let me know what timing would work.

Thank you,

Adam

### Adam Rosenberg

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Seattle, WA 98101-2380  
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[www.williamskastner.com](http://www.williamskastner.com) | [Bio](#) | [V-Card](#)

WASHINGTON OREGON ALASKA

**From:** Bridgman, Kris [<mailto:Kris.Bridgman@kingcounty.gov>]

**Sent:** Thursday, August 23, 2018 1:40 PM

**To:** Blair, Stephanie; Frederick, Kimberly; Josephson, Shanna; 'chris@favros.com'; 'todd@favros.com'; 'joe@favros.com'; 'carrie@favros.com'; 'kelly@favros.com'; 'shannon@favros.com'; 'eleedom@bblaw.com'; 'lmartin@bblaw.com'; 'cphillips@bblaw.com'; 'ffusaro@bblaw.com'; 'fpolli@bblaw.com'

**Cc:** Rosenberg, Adam; Brown, Daniel; Goodman, Kathleen; Hager, Janis; 'tbuck@freybuck.com'; 'ebariault@freybuck.com'; 'lfulgaro@freybuck.com'

**Subject:** Ehrhart v. King County, et al.: King County's Responses to Plaintiff's First Request for Documents

Counsel,

Attached please find the following:

1. August 22, 2018 Kimberly Frederick letter to Counsel.
2. King County's Responses to Plaintiff's First Request for Documents.

A CD with King County's first production of documents (bates 1-2861) will be delivered to your offices via ABC Legal Messenger no later than 4:30 p.m. tomorrow.

If you have any questions or concerns, please let me know.

Thank you,

Kris Bridgman

Litigation Paralegal

King County Prosecutor's Office

900 King County Administration Building

500 Fourth Avenue

Seattle, Washington 98104

Ph: (206) 477-1261 Fx: (206) 296-8819

[Kris.Bridgman@KingCounty.gov](mailto:Kris.Bridgman@KingCounty.gov)

Mailstop: ADM-PA-0900

# **Exhibit C**

## Blair, Stephanie

---

**From:** Rosenberg, Adam  
**Sent:** Thursday, October 11, 2018 5:31 PM  
**To:** Kymberly Evanson  
**Cc:** Brown, Daniel; Paul Lawrence  
**Subject:** RE: Request for call on Ehrhart matter

Hi Kymberly,

In follow up to our phone call, I'm sorry. This is nothing personal to you, and I hate discovery disputes as much as anyone. But we need to see tomorrow through. There is no earthly basis to preclude any part of what we're requesting, nor value in another inevitable round of briefing next month when the county comes up with new reasons to fight us on depositions. It's had our requests for months, and if it was going to work with us, that would have occurred by now. At this point, we've already been put through the paces of bringing motions which clearly should have been agreements. The issues are ripened, and asking us to effectively start over, because your client hasn't made up its mind yet, isn't fair.

I understand that based upon your one day of experience in this case, you're critical. But I hope you can also appreciate that there's a lengthy history of us bending over backwards to accommodate the county, with little to show for it but several months wasted.

Best regards,

Adam

### Adam Rosenberg

Williams Kastner | Attorney at Law  
601 Union Street, Suite 4100  
Seattle, WA 98101-2380  
P: 206-628-2762 | F: 206-628-6611  
[www.williamskastner.com](http://www.williamskastner.com) | [Bio](#) | [V-Card](#)

WASHINGTON OREGON ALASKA

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**From:** Rosenberg, Adam  
**Sent:** Thursday, October 11, 2018 4:08 PM  
**To:** 'Kymberly Evanson'  
**Cc:** Brown, Daniel; Paul Lawrence  
**Subject:** RE: Request for call on Ehrhart matter

Hi Kymberly,

I'm at my desk now, and will be for the next little bit. If you're able to connect, my direct is below. If not, I understand.

Best,

Adam

### Adam Rosenberg

Williams Kastner | Attorney at Law  
601 Union Street, Suite 4100  
Seattle, WA 98101-2380  
P: 206-628-2762 | F: 206-628-6611  
[www.williamskastner.com](http://www.williamskastner.com) | [Bio](#) | [V-Card](#)

---

**From:** Kymberly Evanson [mailto:Kymberly.Evanson@pacificalawgroup.com]  
**Sent:** Thursday, October 11, 2018 10:02 AM  
**To:** Rosenberg, Adam  
**Cc:** Brown, Daniel; Paul Lawrence  
**Subject:** RE: Request for call on Ehrhart matter

Hi Adam,  
I'm sorry I missed your call.

On the deposition issue, it's not my intention to throw stones or put up any unnecessary road blocks. To the contrary, I was hoping that the significant commitments on discovery and agreement on amendment made yesterday (within hours of my retention) would show that we are moving forward in good faith as quickly and transparently as possible. I raised the noting issue and asked for clarification because as I said, I wanted to know the scope of any prior action or agreement on this issue. The only thing I've seen in the file so far is a request for dates for councilmember depositions. Without more than that, I don't see how a motion to compel these particular depositions is appropriately before the Court.

All I'm asking for is a reasonable amount of time for both of us to evaluate the forthcoming production related to the councilmembers so we can make an informed decision on whether their depositions are appropriate. Given the circumstances including the change in counsel, our immediate agreement on all other aspects of your pending motions and the distant trial date, I don't see why arguing a motion to compel on this issue at this juncture is productive.

I understand you're in a deposition this morning and I'm in the retreat this afternoon. If you'd like to discuss further, I'm happy to step out on a break and give you a call if you let me know what time would work for your schedule.

Thanks,  
Kymberly

---

**From:** Rosenberg, Adam [mailto:ARosenberg@williamskastner.com]  
**Sent:** Thursday, October 11, 2018 8:50 AM  
**To:** Kymberly Evanson  
**Cc:** Brown, Daniel; Paul Lawrence  
**Subject:** RE: Request for call on Ehrhart matter

Hi Kymberly –

Called and left you a VM per your invitation. Now I'm unfortunately off to a deposition.

We'll send you a stipulated order on amendment. Let me know if your client is willing to revisit its position on the discovery issues. Assuming not, I'll look forward to meeting you tomorrow.

Adam

**Adam Rosenberg**

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Seattle, WA 98101-2380  
P: 206-628-2762 | F: 206-628-6611  
[www.williamskastner.com](http://www.williamskastner.com) | [Bio](#) | [V-Card](#)

---

**From:** Rosenberg, Adam  
**Sent:** Thursday, October 11, 2018 6:47 AM  
**To:** 'Kymberly Evanson'  
**Cc:** Brown, Daniel; paul.lawrence@pacificawgroup.com  
**Subject:** RE: Request for call on Ehrhart matter

Hi Kymberly,

I'll send a stipulated order over on the motion to amend, and once signed, we'll let the Court know that motion is stricken.

As far as the motion to compel, we either have complete agreement, or we don't. But I don't see why we'd extend your client additional courtesies, beyond what we proposed to the Court (to respond to requests served in *June*), while your client is simultaneously walking back its earlier representations and ripening up another needless roadblock. To be clear, the Chair and Vice Chair depositions were properly requested, properly conferred upon, and the subject of a motion. If you feel like throwing stones at us for not unilaterally noting your clients' deposition is the winning argument, feel free to present it to Judge Speir tomorrow. It has no legal basis and is completely contrary to the way people practice. Of course, if you win, please be aware that unilateral deposition noting will be how this case proceeds going forward. I'd hate to get burnt twice for not doing so.

I'll try to ping you this morning if you still think it productive.

Best,

Adam

---

**From:** Kymberly Evanson [mailto:Kymberly.Evanson@pacificlawgroup.com]  
**Sent:** Wednesday, October 10, 2018 9:43 PM  
**To:** Rosenberg, Adam  
**Cc:** Brown, Daniel; paul.lawrence@pacificawgroup.com  
**Subject:** RE: Request for call on Ehrhart matter

Hi Adam—

I'll get a date from the County for the records dep in the first week of November as you suggest. And it sounds like we agree on the other dates. As to the councilmember depositions—I don't know what representations have been made, as I'm just getting the file. Do correct me if I'm wrong, but I'm not aware of any definitive agreement that the two councilmembers would be deposed-- particularly since the scope of their potential knowledge is not yet known. This is why I'm suggesting that we move ahead with the remaining discovery and allow for the production of the councilmember documents (by 11/2) before we get too far into a dispute about whether the depositions are appropriate. It may be that we ultimately agree one way or another.

If you want to go ahead and note the depositions, which would be a prerequisite to a motion to compel them, then the County will proceed with a motion for protective order. But it strikes me that since we have a June trial date and are racing to get the other discovery moving, that giving both sides the opportunity to review the potentially relevant documents first and then coming back to this issue is a reasonable approach. If we need to go to Court on Friday for this one issue we can, but I'm hopeful you'll agree that isn't necessary.

As I mentioned, we're in an attorney retreat starting at noon tomorrow but I'll be at my desk in the morning if you have a few minutes to discuss. My direct line is 206-245-1725. After noon, I'll check email periodically on breaks, but may have a delayed response.

Your consideration is appreciated as we ramp up on this matter.

Thanks,  
Kymberly

**From:** Rosenberg, Adam [mailto:ARosenberg@williamskastner.com]  
**Sent:** Wednesday, October 10, 2018 5:30 PM  
**To:** Kymberly Evanson <Kymberly.Evanson@pacificalawgroup.com>  
**Cc:** Brown, Daniel <dbrown@williamskastner.com>; paul.lawrence@pacificawgroup.com  
**Subject:** Re: Request for call on Ehrhart matter

Hi Kymberly,

Thank you for the agreement on amendment.

I'm basically fine with the agreed discovery timeline, too, so long as we have no boilerplate objections and the last installment comes with a complete privilege log. The records deposition can take place the following week in early November. Send me a date in that timeframe and I'll send a notice.

That being said, I'm not comfortable tabling the depositions of the chair and vice chair of public health. The prosecutor promised to make them available some time ago, and we do intend to proceed in that regard. If your client now intends to renege, I think we'll just need to let the judge make decisions this Friday.

Please advise as soon as you're able. When we have a signed stipulation, I'll strike the hearing.

Dan will reply on the form of order issue.

Best,

Adam

**Adam Rosenberg**

**Williams Kastner** | Attorney at Law  
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Seattle, WA 98101-2380  
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**WASHINGTON OREGON ALASKA**

On Oct 10, 2018, at 4:54 PM, Kymberly Evanson <[Kymberly.Evanson@pacificalawgroup.com](mailto:Kymberly.Evanson@pacificalawgroup.com)>

Hi Adam,

Thanks for your response. Yes, the County will agree to amendment. On discovery, I am still learning where things are, but here's what I propose based on what I know to date. The County can get you a batch of approximately 700 documents by this Friday, 10/12. We'll serve updated discovery responses by 10/19. We can also get the records 30(b)(6) deposition you had noted scheduled to take place before 10/26.

The County is in the process of reviewing a final set of documents collected from councilmember offices. I expect that those can be produced by 11/2 and that should complete production. I understand from your motion that you are also seeking to depose two councilmembers. I propose we briefly table the issue of councilmember depositions until both sides have had the opportunity to review the last batch of documents and then revisit that with a fuller picture of the record.

If you have a stipulation drafted, and are amenable to this schedule, I'm happy to edit it to reflect the specifics above. Alternatively, we can draft something striking the hearing and setting this schedule.

Also, I understand the parties were working on preparing an order denying King County's cross motion, with the intent of filing it this Friday. We are in the process of getting the complete case file and will review the MSJ briefing as soon as possible so that we can evaluate the draft you sent over. My hope and intent is that we can agree on an order, but we may need an extra day to get up to speed. We have an all-day attorney retreat tomorrow, and so will be out of the office most of the day. Can we agree to respond to your draft on Friday? Assuming we can reach agreement on Monday, we could file an agreed order on 10/16. If we can't, we could submit competing orders that day?

Please let me know what you think of the above. Thanks, and looking forward to working with you as well.

Best,  
Kymberly

---

**From:** Rosenberg, Adam [<mailto:ARosenberg@williamskastner.com>]  
**Sent:** Wednesday, October 10, 2018 3:22 PM  
**To:** Kymberly Evanson <[Kymberly.Evanson@pacificallawgroup.com](mailto:Kymberly.Evanson@pacificallawgroup.com)>; Brown, Daniel <[dbrown@williamskastner.com](mailto:dbrown@williamskastner.com)>  
**Cc:** Paul Lawrence <[Paul.Lawrence@pacificallawgroup.com](mailto:Paul.Lawrence@pacificallawgroup.com)>  
**Subject:** RE: Request for call on Ehrhart matter

Hi Kymberly,

Welcome aboard. And thank you for reaching out.

Unfortunately, Dan and I are both completely tied up for the day and through most of tomorrow. But we would, of course, be delighted to strike the hearing—assuming we can get a stipulated order to amend and secure complete discovery (in the next two weeks) in place. We'd waive sanctions. If you have authority to agree to this, please advise. I'll have a stipulation sent over.

Looking forward to working with you.

Adam

**Adam Rosenberg**

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Seattle, WA 98101-2380  
P: 206-628-2762 | F: 206-628-6611  
[www.williamskastner.com](http://www.williamskastner.com) | [Bio](#) | [V-Card](#)

**WASHINGTON OREGON ALASKA**

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**From:** Kymberly Evanson [<mailto:Kymberly.Evanson@pacificallawgroup.com>]  
**Sent:** Wednesday, October 10, 2018 12:05 PM  
**To:** Brown, Daniel; Rosenberg, Adam  
**Cc:** Paul Lawrence  
**Subject:** Request for call on Ehrhart matter

Dan and Adam,

Paul Lawrence and I were retained today to represent King County in the Ehrhart matter. I'm reaching out in the hope that you have some time to briefly confer by phone this afternoon, so that we can introduce ourselves and discuss the case status and in particular the outstanding motions. We are still getting up to speed on the case, but are hopeful that we can agree on a collaborative plan for moving forward that will get you the documents and information you need in the near term, and hopefully save everyone a trip to Tacoma on Friday.

We are available to talk anytime today after 1:30, and I can circulate a call-in number. Please let me know if there's a time that would work for you.

Thanks,  
Kymberly

**Kymerly K. Evanson**  
Partner

<image001.jpg>

**T** 206.245.1700      **D** 206.245.1725  
1191 Second Avenue, Suite 2000 Seattle, WA 98101  
[Kymerly.Evanson@PacificaLawGroup.com](mailto:Kymerly.Evanson@PacificaLawGroup.com)  
[www.pacificallawgroup.com](http://www.pacificallawgroup.com)

# **Exhibit D**

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The Honorable Shelly K. Speir

**FILED**  
DEPT 5  
IN OPEN COURT  
  
OCT 12 2018

SUPERIOR COURT OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

PIERCE COUNTY, Clerk  
By [Signature]  
DEPUTY

SANDRA EHRHART, individually and as  
personal representative of the Estate of Brian  
Ehrhart,

NO. 18-2-09196-4

Plaintiff,

~~PROPOSED~~

**ORDER GRANTING PLAINTIFF'S  
MOTION TO COMPEL**

v.

**Noted for Hearing:  
October 12, 2018 at 9:00 a.m.**

KING COUNTY, operating through its health  
department, Public Health - Seattle & King  
County, SWEDISH HEALTH SERVICES, a  
non-profit entity, and JUSTIN WARREN REIF,  
an individual,

Defendants.

THIS MATTER came before the Court on Plaintiff's Motion to Compel. The Court  
having considered the record, including:

1. Plaintiff's Motion to Compel;
2. Declaration of Adam Rosenberg in Support of Plaintiff's Motion to Compel, with Exhibits;
3. Declaration of Kathleen X. Goodman in Support of Plaintiff's Motion to Compel, with Exhibits;

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL - 1

Williams, Kastner & Gibbs PLLC  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

6632458.1

- 1 4. Response to Plaintiff's Motion to Compel; King County Defendants' Motion to  
2 Continue Plaintiff's Motion to Compel;  
3 5. Declaration of Allyson Zebra in Support of Defendant King County's Motion for  
4 Continuance of Plaintiff's Motion to Compel; and  
5 6. Plaintiff's Reply in Support of Motion to Compel.

6 The Court finds itself fully informed.

7 Plaintiff's Motion to Compel is **GRANTED** as follows:

- 8 *within two weeks*  
• The County shall serve upon the parties complete, exhaustive and non-evasive  
9 responses to plaintiff's written discovery and document requests within two  
10 weeks of the date of this Order. ~~The County's stated objections are overruled.~~  
11 Any privileged documents must be identified in a privilege log accompanying the  
12 responses;  
13 • The County shall make a fully prepared CR 30(b)(6) representative available to  
14 answer questions, fully, accurately and without equivocation, at a mutually  
15 available time, but said deposition shall occur before November 1, 2018;  
16 • The County shall make Mr. Dembowski and Ms. Lambert available for  
17 depositions at a mutually available time, but said deposition shall occur before  
18 November 15, 2018; and  
19 • A determination on sanctions is hereby reserved.

20 IT IS FURTHER ORDERED *The County may return*

21 *and seek further protective orders with regard to Mr.*

22 ENTERED this *12<sup>th</sup>* day of October, 2018. *Dembowski and Ms. Lambert*

*it well-founded.*

23 **FILED**  
DEPT 5  
IN OPEN COURT

24 *Shelly K. Speir*  
The Honorable Shelly K. Speir

25 **OCT 12 2018**

PIERCE COUNTY Clerk  
By *[Signature]*  
DEPUTY

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL - 2

Williams, Kastner & Gibbs PLLC  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

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1 PREPARED AND PRESENTED BY:

2 s/ Adam Rosenberg

3 Adam Rosenberg, WSBA #39256  
4 Daniel A. Brown, WSBA #22028  
5 Kathleen X. Goodman, WSBA #46653  
6 **WILLIAMS KASTNER & GIBBS PLLC**  
7 601 Union Street, Suite 4100  
8 Seattle, WA 98101-2380  
9 Tel: (206) 628-6600  
10 Email: [arosenberg@williamskastner.com](mailto:arosenberg@williamskastner.com)  
11 [dbrown@williamskastner.com](mailto:dbrown@williamskastner.com)  
12 [kgoodman@williamskastner.com](mailto:kgoodman@williamskastner.com)

13 Theron A. Buck, WSBA # 22029  
14 **FREY BUCK, P.S.**  
15 1200 5th Ave., Suite 1900  
16 Seattle, WA 98101  
17 Tel: (206) 486-8000  
18 Email: [tbuck@freybuck.com](mailto:tbuck@freybuck.com)

19 *Attorneys for Plaintiff*

20 APPROVED AS TO FORM; NOTICE OF PRESENTATION WAIVED:

21 Christopher H. Anderson, WSBA #19811 48219 for

22 Todd Reichert, WSBA #35557  
23 Joe Gardner, WSBA #53340  
24 **FAIN ANDERSON VANDERHOEF**  
25 **ROSENDAHL**  
26 **O'HALLORAN SPILLANE, PLLC**  
27 701 Fifth Avenue, Suite 4750  
28 Seattle, WA 98104  
29 Tel: (206) 749-0094  
30 Email: [chris@favros.com](mailto:chris@favros.com)  
31 [todd@favros.com](mailto:todd@favros.com)  
32 [joe@favros.com](mailto:joe@favros.com)

33 *Attorneys for Defendant Swedish*

34 ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL - 3

Williams, Kastner & Gibbs PLLC  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

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~~Elizabeth A. Leedom, WSBA #14335  
Lauren M. Martin, WSBA #49026  
**BENNETT BIGELOW LEEDOM PS**  
701 Fifth Avenue, Suite 4750  
Seattle, WA 98104  
Tel: (206) 622-5511  
Email: [cleedom@bblaw.com](mailto:cleedom@bblaw.com)  
[lmartin@bblaw.com](mailto:lmartin@bblaw.com)~~

*Attorneys for Defendant Reif* *Approved as to form*  
*Kimberly Evanson* *WSBA 39973*  
~~Kimberly Frederick, WSBA #37857  
Senior Deputy Prosecuting Attorney  
**KING COUNTY PROSECUTOR**  
500 Fourth Avenue, Suite 900  
Seattle, WA 98104  
Tel: (206) 296-8820  
Email: [Kimberly.Frederick@kingcounty.gov](mailto:Kimberly.Frederick@kingcounty.gov)~~ *Pacific Law Group  
1191 2nd Ave # 2000  
Seattle WA 98101  
206-245-1700*

*Attorneys for Defendant  
King County*

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL - 4

**Williams, Kastner & Gibbs PLLC**  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

6632458.1

# **Exhibit E**

**From:** [Lipton, Beth](#)  
**To:** [Kay, Meagan](#)  
**Subject:** Re: Hantavirus follow-up information  
**Date:** Friday, March 10, 2017 9:37:36 AM

---

Oh I love the limelight! Ha ha, from me too.

On Mar 10, 2017, at 9:04 AM, Kay, Meagan <[Meagan.Kay@kingcounty.gov](mailto:Meagan.Kay@kingcounty.gov)> wrote:

I'm just imagining a neighborhood in panic and the media showing up - the lights the cameras. hahaha. oh yeah - this is Issaquah.

---

**From:** Lipton, Beth  
**Sent:** Friday, March 10, 2017 9:03 AM  
**To:** Kay, Meagan  
**Subject:** RE: Hantavirus follow-up information

Sure

---

**From:** Kay, Meagan  
**Sent:** Friday, March 10, 2017 9:03 AM  
**To:** Lipton, Beth  
**Subject:** FW: Hantavirus follow-up information

We would definitely go out together, right?

---

**From:** Apa, James  
**Sent:** Friday, March 10, 2017 8:20 AM  
**To:** Kay, Meagan; Lipton, Beth; Karasz, Hilary; Wood, Maria  
**Cc:** Gonzales, Elysia  
**Subject:** RE: Hantavirus follow-up information

Thanks, Meagan. Did you see my related e-mail last night from the city of Issaquah? They are looking for someone from our department to come out into the community.

Might be good for us to have a brief conversation about this this morning, so our team has the latest facts of the case and we can set a strategy.

Looping in Maria given the city council angle.

Hilary will be point for our team. Thx.

James

---

**From:** Kay, Meagan  
**Sent:** Friday, March 10, 2017 8:15 AM  
**To:** Lipton, Beth <[Beth.Lipton@kingcounty.gov](mailto:Beth.Lipton@kingcounty.gov)>  
**Cc:** Gonzales, Elysia <[Elysia.Gonzales@kingcounty.gov](mailto:Elysia.Gonzales@kingcounty.gov)>; Apa, James <[James.Apa@kingcounty.gov](mailto:James.Apa@kingcounty.gov)>  
**Subject:** Re: Hantavirus follow-up information

# **Exhibit F**

**Filed Physical Materials (CD  
with the Clerk)**

# **Exhibit G**

**King County Meeting Minutes**  
**BOARD OF HEALTH**  
**April 20, 2017, 1:30 p.m.**

**Excerpt from Meeting Minutes**

**Speakers**     **Kathy Lambert, Vice Chair**  
                     **Beth Lipton**

**Beth Lipton**

Good afternoon.

Just to give an update, public health has been activated in incident command for the last couple of weeks to manage out communications and communicable disease activities. We've been meeting each day at 9 a.m. We decided to deactivate today and will be continuing to provide outreach and communications activities, as well as responding to the public, health care provider inquiries, and any other media requests that come our way.

Just for an update, the disease was first discovered in the early 1990s, and since it became reportable nationally in 1993, we've had seven cases to King County residents. Four cases are suspected to be exposed locally, not on the eastside of the state, as most cases are in Washington, and of these four, locally-exposed cases, three have actually occurred now in the last five months. So this is what has gotten some attention, both within the department and, obviously, with the public and health care providers. One confirmed case from Redmond in December, recovered. A confirmed case has left the hospital, recently. And a fatal case occurred in February. And our second and third cases were both from the Issaquah area.

Humans can contract Hanta Virus by coming into contact with deer mouse droppings, saliva, bedding, or other contaminated surfaces, or handling the rodent, directly. The virus is only carried by the deer mouse in Washington, although in other parts of the country other rodents can carry it as well. The biggest concern is when the virus becomes aerosolized through activity such as sweeping, vacuuming droppings or nesting materials, or moving around items that are contaminated such as in a shed, garage, or other enclosed area. Also, people who go camping may be at higher risk if those areas are infested due to the more enclosed nature of those places. Humans cannot pass the disease to one another. And the disease typically results in hanta virus pulmonary syndrome, which is very serious and does kill about 38% of people who contract the infection.

So public health activities over the last weeks and months have included developing new web content, posting updates to the web and to our blog, responding to media requests and questions from the public health care providers and the veterinary community. We've also responded to questions on social media from the public. We've created fact sheets and news releases, and these have been translated into Spanish, Chinese, and the Vietnamese translation is currently underway. We attended a neighborhood meeting in the area of the second case, and also did a Facebook live interview. We've responded to phone inquiries. And we've had over 30 calls

from the public – this is just in the past two weeks since we activated and started tracking this. Over five to ten calls from providers and calls from employers, and handful of those, such as our pest control companies. We have engaged the pest control companies, healthcare providers in the veterinary community to provide the information, education, and enhance the situation awareness. We've also engage multiple partners in conduction our outreach, such as the CDC, Department of Health, Fish & Wildlife, our emergency management partners, elected officials, health care providers, community members, and some private sector such as hardware stores, animal feed stores, and we had some questions from funeral homes as well, but again, it is not transmissible from humans to other humans at any time. And we are also working on a fact sheet with key points for mechanics who may see rodent infestations in the cars that come in, as there has been some local interest in potential exposures occurring with car infestations of rodents. We will be posting this on our website, but it is the fact sheet that we are going to be sharing with mechanics. We will be working with the Department of Health and L & I in hopefully getting this out broadly very soon.

## **11:20 – 16:30**

### **Kathy Lambert**

First of all, I have a question then I have a couple comments.

From the time that the lady in Redmond went to the hospital, until after Brian died, what was the time elapsed between those two things? The Redmond lady going to the hospital and Brian's death.

### **Beth Lipton**

I don't know the exact number of days, but I would about two months, two and a half months.

### **Kathy Lambert**

So therein lies the problem. Because we've never had a case of this, and I think it's the 650<sup>th</sup> case in the United States total, so it's not a very common thing, but if at that point we had even just sent a notice to the other hospitals, "hey this is the first case of something we haven't seen forever," then they may have had that in their minds to even look at that, so that when Brian got to the hospital, rather than telling him to go home the first time, maybe they would have said, "you know what, there's something weird that's in this county, maybe we should check you for that." It is has been very interesting, all three of these cases are in my district, and one of my staff members was taken care of Brian's children when he died. So it's very close to our hearts. And I am very concerned that there was a \_\_\_\_\_ [two month?] lapse. We don't have to do a formal thing, but I've had two hospitals contact saying, "if we'd only known that that was here, a simple email to think about that would have been very helpful." So I think we need to have a policy that when something very rare happens, we just put out an fyi to all the hospitals, "hey this weird thing has shown up," just so that they go, "oh, okay we have to think about this," because obviously it was not in anybody's mind until...but, on to a compliment. Your materials were great. I posted it on my Facebook, and we have had 156 shares. That is an amazing number of shares off of a Facebook page, so people are interested and it was really well written, but I do think we do need to look at a new policy so that other hospitals in the future that see something rare, are not faced with a situation.

Thank you.

**Male**

Thank you Councilmember Lambert for your work on this issue.

To Beth Lipton: Anything you would want to add to those comments or in offering a response?

**Beth Lipton**

Sure, we see rare things, rarely, as you mention, and awareness on rare diseases is always very important.

I think what's been very unexpected for us in this situation is seeing multiple cases in such a short amount of time, so the last case was suspected to have been locally exposed, was in 2003, and then we saw no more cases after that. So, our familiarity with the disease and beginning to even think about a cluster or an outbreak or whatever you may call it, was certainly unexpected, and I think we are at a point now with these cases close in time that awareness is definitely heightened, hopefully the message have reached multiple places, particularly the public as spring is coming a people might be cleaning out garages, sheds, and those types of areas where there could be increased risk if this deer mouse is either carrying Hanta Virus at a higher than expected prevalence, or there are more of the deer mice around than we've seen in previous seasons for whatever reason. So we will continue to do outreach. We don't expect to stop doing outreach. And this might become something that we do like with other diseases if we see this more here that we just do this annually at certain times a year to remind people, including providers on a regular basis to look for it.

**Kathy Lambert**

So I do know that one hospital actually requested a alert be sent out, so that they weren't the only hospital because they didn't want other hospitals to experience the same thing that they experienced. And I know that you have an alert system which is a big deal, so maybe something below an alert, just an fyi, "hey we haven't seen this kind of case in 14 years or 20 years or 50 years, whatever, we wanted you to know we think we have this case." Just so doctors have that in their mind. If you've never seen it, you don't even run through that in your mental rolodex, but, old word, your mental contact list. In this case, I think if they had known that the Redmond case had happened when Brian presented, they may have handled it differently, and that would have been nice if that had.

# **Exhibit H**

## Blair, Stephanie

---

**From:** Kymberly Evanson <Kymberly.Evanson@pacificallawgroup.com>  
**Sent:** Friday, October 19, 2018 4:53 PM  
**To:** Rosenberg, Adam; Blair, Stephanie; Goodman, Kathleen  
**Cc:** Sydney Henderson; Athan Papailiou; Paul Lawrence  
**Subject:** King County's 4th Production of documents

Adam,

Available at the link below is King County's 4<sup>th</sup> Production of documents, Bates labeled KC Ehrhart 24204-24519. These documents were collected from Councilmembers Dembowski and Lambert's offices and their staff. They are being provided in folders labeled with the RFP numbers to which the documents are responsive. Please let me know if you have any issues accessing the documents.

<https://pacificallawgroup.sharefile.com/d-s1a6b27bb59b433eb>

We believe this production substantially completes King County's document production in this matter, however, as we prepare our privilege log, it is possible that a small number of responsive documents may be identified. If that happens, we will produce them promptly. Consistent with the Court's order, we expect to provide our privilege log with our updated RFP/ROG responses by no later than Nov 1<sup>st</sup>.

Finally, as you will see, this production of documents does not support deposition of Councilmembers Lambert or Dembowski under *Clarke v. State Attorney Gen.'s Office*, 133 Wn. App. 767, 781, 138 P.3d 144 (2006). While there are a handful of emails concerning the impact of Mr. Ehrhart's death on CM Lambert's staff member Jeff McMorris, there are no documents that suggest CM Lambert or Dembowski had (or have ever had) any involvement in the day to day operations of the agency, including the decision to issue health advisories at any given time. Nor do the documents suggest that either councilmember possesses information not available from other witnesses.

As such, we respectfully request that you withdraw the deposition notices issued for Councilmembers Dembowski and Lambert. To the extent you refuse to do so, the County intends to move for a protective order with respect to these depositions as we've discussed. After you've had the opportunity to review these documents, can we schedule a time to confer on this issue? I am available late afternoon on Monday and all day Tuesday.

Best,  
Kymberly

**Kymberly K. Evanson**  
Partner



T 206.245.1700 D 206.245.1725  
1191 Second Avenue, Suite 2000 Seattle, WA 98101  
[Kymberly.Evanson@PacificaLawGroup.com](mailto:Kymberly.Evanson@PacificaLawGroup.com)  
[www.pacificallawgroup.com](http://www.pacificallawgroup.com)

# **Exhibit I**

## 2016

November Maureen Waterbury of Redmond spends 10 days in ICU before recovering from Hantavirus  
Waterburys try to get public health to notify local area and hospitals, public health declines to do so

## 2017

Sun, Feb 19 Brian thinks he has the flu

Mon, Feb 20 Sandra (Brian's wife) calls Dr gets tamiflu prescription for Brian

Wed, Feb 22 In morning Brian feeling better, we leave for MX, he plans to follow on Thursday  
In afternoon, not feeling well, goes to Swedish Issaquah, they decide probably not flu, give IV and send home

Thurs, Feb 23 Goes to Overlake Urgent Care late morning (Issaquah) transferred to Bellevue Hospital, moved to ICU about 5pm -- passes away shortly after midnight (Friday morning, Feb 24). We can't figure out what just happened.

Fri, March 3 Autopsy results: Hantavirus

## Next two weeks

Sarah calls public health to notify of death due to Hantavirus

Public Health disputes Hantavirus results (Sarah produces autopsy results)

Public Health says Brian had to contract virus outside of the King County area (Sarah confirms they have not been out of area)

Public Health tells Sarah no intention of any public notification or first responder/hospital notification

Dr. Bonvallet calls several times asking Public Health to put out notification -- also has request denied

8-10 phone calls between Sarah/Dr Bonvallet and Public Health. Overlake Hospital is NEVER notified by Public Health of the Maureen Waterbury Hantavirus case in Redmond. Overlake thinks this is a first case.

Mid March Waterburys have been blogging for months trying to raise awareness, come across social media about Brian.

They contact Brian's brother -- first time we learn Brian was a second Hantavirus case in area.

Waterburys get SeattleTimes to do a story -- published on March 21st.

FINALLY, on March 23 (4 weeks after Brian's death) Public Health sends notice to hospitals -- only after SeattleTimes forces issue.

Later March Public Health holds meeting with Brian's Squak Mt neighborhood (after neighbors demand more information).

Public Health tells neighbors it is "only 2 cases" they don't plan to do anything more unless a 3rd case happens.

Public Health tells neighbors it is not statistically significant. Neighbors are livid.

Sunday, April 2 Third case reported, Public Health start acting more normally (per my way of thinking)

Public Health has time, and prioritizes every time power goes out, notification/reminders not to BBQ in the house. They don't prioritize or have time to even notify hospitals during flu season, that if patient not responding to "flu symptoms" check for Hantavirus.

# **Exhibit J**

---

**From:** Dembowski, Rod  
**Sent:** Tuesday, April 4, 2017 10:55 AM PDT  
**To:** Lambert, Kathy  
**Subject:** Fwd: Media Release: A new case of Hantavirus suspected in King County: Would be the third local case of a rare disease in 6 months, suggests increased risk for hantavirus exposure in some areas  
**Attachments:** image001.png

You were on this issue.

Rod Dembowski  
King County Councilmember  
206.477.1001

Begin forwarded message:

**From:** "Karasz, Hilary" <[Hilary.Karasz@kingcounty.gov](mailto:Hilary.Karasz@kingcounty.gov)>  
**Date:** April 4, 2017 at 10:41:15 AM PDT  
**Subject:** **Media Release: A new case of Hantavirus suspected in King County: Would be the third local case of a rare disease in 6 months, suggests increased risk for hantavirus exposure in some areas**



April 4, 2017

Contact: James Apa (206-263-8698)

## **A new case of Hantavirus suspected in King County**

Would be the third local case of a rare disease in 6 months, suggests increased risk for hantavirus exposure in some areas

### **Media availability:**

- Dr. Jeff Duchin, Health Officer for Public Health – Seattle & King County, will hold a press briefing today, **April 4, 2017**

- Time: **12:00 p.m.**
- Location: 13<sup>th</sup> Floor, 401 5<sup>th</sup> Avenue, Seattle, WA 98104

## **Summary**

Local public health officials are investigating a new suspected case of hantavirus pulmonary syndrome (HPS) in an Issaquah woman. Test results are expected in the next two days, and an investigation is already underway to determine how and where the person may have been exposed to the deer mice that carry hantavirus. Members of the public are reminded to avoid rodent droppings and nests and to take precautions when cleaning up after rodents.

## **Story**

Public Health – Seattle & King County has received a report of an Issaquah resident in her 50's with symptoms consistent with HPS. The woman is currently hospitalized.

In February, a man from Issaquah in his 30s contracted hantavirus and subsequently died. Both cases lived near Squak Mountain but in different neighborhoods. Last November, a woman was exposed to deer mice near her home in Redmond. She contracted HPS, but survived.

Public Health does not believe the two cases in Issaquah are related but there are reports of increased numbers of deer mice seen in the area. We are making this announcement in order to raise public awareness about steps that the public can take to reduce the risk for hantavirus wherever deer mice are common. Deer mice do not live in urban settings in Washington, but prefer woodland areas such as the suburban foothills.

"If this third case of HPS is confirmed it suggests that certain areas of the county are at increased risk compared to past years," said Dr. Jeff Duchin, Health Officer for Public Health – Seattle & King County. "People who live near wooded areas where deer mice are common should take steps to keep rodents out of the home and other structures, and take precautions when cleaning up rodent nests and potentially contaminated spaces. Anyone who has had exposure to rodent nests or areas where rodents are living and who develops symptoms should see a health care provider promptly."

## **How hantavirus is contracted and signs and symptoms of HPS**

A person gets HPS by breathing in hantavirus. This can happen when dust from dried rodent urine, saliva, and droppings that contain hantavirus are stirred up in

the air. People can also get infected by touching rodent urine, droppings, or nesting materials that contain the virus, and then touching their eyes, nose, or mouth. It's also possible to get HPS from a rodent bite. The disease does not spread person-to-person. Symptoms begin 1-8 weeks after inhaling the virus. It typically starts with 3-5 days of illness that is similar to the flu, including fever, sore muscles, headaches, nausea, vomiting, and fatigue. As the disease gets worse, it causes coughing and shortness of breath as fluid fills the lungs.

**Additional advice for people concerned about hantavirus:**

The chance of being exposed to hantavirus is greatest when people work, play, or live in closed spaces where rodents are actively living. Many people who have contracted HPS reported that they had not seen rodents or their droppings before becoming ill. Therefore, if you live in an area where the deer mice are known to live, take precautions to prevent rodent infestations even if you do not see rodents or their droppings.

Potential risk activities for HPS include:

- Opening or cleaning previously unused buildings, cabins, sheds, barns, garages and storage facilities (including those which have been closed during the winter) is a potential risk for hantavirus infections, especially in rural settings.
- Housecleaning activities in and around homes with rodent infestations. Cleaning guidelines may be found at <https://www.cdc.gov/rodents/cleaning/>
- Work-related exposure: Construction, utility and pest control workers can be exposed when they work in crawl spaces, under houses, or in vacant buildings that may have a rodent population.
- Campers and hikers: Campers and hikers can be exposed when they use infested trail shelters or camp in other rodent habitats.
- Exposure to cars, trailers, or mobile homes where rodents are living (see <http://www.kingcounty.gov/depts/health/communicable-diseases/disease-control/hantavirus/cleaning.aspx> for specific guidance in cleaning up vehicles.

Guidelines for cleaning up rodent nests and infected areas are available at: <https://www.cdc.gov/rodents/cleaning/>. Some people may prefer to consult with a pest control agency to help with rodents in the home or other structures. Public Health should be consulted and special precautions are indicated for cleaning homes or buildings with:

- heavy rodent infestations (piles of feces, numerous nests or dead rodents)
- vacant dwellings that have attracted rodents while unoccupied

- dwellings and other structures that have been occupied by persons with confirmed hantavirus infection.
- Public Health recommends hiring professional pest control services in these situations.

See your healthcare provider if you develop symptoms after being in contact with rodent nests or cleaning up areas where deer mice may have been living.

#### **Next steps in the investigation:**

If the current suspect case is confirmed as HPS, Public Health will continue investigating how and where this woman most likely became infected. We will be consulting with the Washington state Department of Fish and Wildlife to provide information on the ecology of deer mice locally, including whether there have been any changes either to the population of deer mice or to the prevalence of the hantavirus in the deer mice, and whether changes may be impacting the threat to humans. We are also consulting with the Centers for Disease Control and the Washington state Department of Health.

#### **More about hantavirus:**

In Washington, the only rodents that spread hantavirus are deer mice, which live in woodland areas and deserts. They have distinctive white underbellies and white sides. They are only distantly related to the common house mouse. Rats do not spread hantavirus in Washington

Hantavirus is a rare disease in Washington State. Before 2016, the last case of hantavirus infection acquired in King County was in 2003. There have also been 3 other cases reported to Public Health since 1997 where the people were thought to have been infected outside of the county.

#### **More information**

For additional information, visit the [Public Health Insider blog](#) and the [hantavirus information page](#).

*Providing effective and innovative health and disease prevention services for more than two million residents and visitors of King County, Public Health — Seattle & King County works for safer and healthier communities for everyone, every day. More at [www.kingcounty.gov/health](http://www.kingcounty.gov/health)*

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###

Hilary Karasz  
Public Health – Seattle & King County  
401 5<sup>th</sup> Avenue, Suite 1300  
Seattle, WA 98104  
206-263-8705  
[www.kingcounty.gov/health/texting](http://www.kingcounty.gov/health/texting)

Facebook: [KCPubhealth](#) | Twitter: [@KCPubhealth](#) | Blog: [PublicHealthInsider.com](#)

# **Exhibit K**

---

**From:** Lambert, Kathy  
**Sent:** Wednesday, April 5, 2017 1:25 AM PDT  
**To:** Dembowski, Rod  
**Subject:** Fwd: Media Release: A new case of Hantavirus suspected in King County: Would be the third local case of a rare disease in 6 months, suggests increased risk for hantavirus exposure in some areas  
**Attachments:** image001.png

Yes. Thank you. My concern is that it was not notified to the hospitals after the 1st case as doctors had not seen it since 2002 so they did not think about it when Brian arrived. They sent him home and by the time they realized he was dead at 34. Now we likely have a 3rd case. When anything rare breaks out, hospitals should be informed so they know to consider it in their diagnosis. What steps should be next?  
Thanks,  
Kathy.

Kathy

Begin forwarded message:

**From:** "Hayes, Patty" <[Patty.Hayes@kingcounty.gov](mailto:Patty.Hayes@kingcounty.gov)>  
**Date:** April 4, 2017 at 11:35:43 AM PDT  
**To:** "Lambert, Kathy" <[Kathy.Lambert@kingcounty.gov](mailto:Kathy.Lambert@kingcounty.gov)>  
**Subject:** **FW: Media Release: A new case of Hantavirus suspected in King County: Would be the third local case of a rare disease in 6 months, suggests increased risk for hantavirus exposure in some areas**

fyi

---

**From:** Karasz, Hilary  
**Sent:** Tuesday, April 04, 2017 10:41 AM  
**Subject:** Media Release: A new case of Hantavirus suspected in King County: Would be the third local case of a rare disease in 6 months, suggests increased risk for hantavirus exposure in some areas



April 4, 2017

Contact: James Apa (206-263-8698)

# **A new case of Hantavirus suspected in King County**

Would be the third local case of a rare disease in 6 months, suggests increased risk for hantavirus exposure in some areas

## **Media availability:**

- Dr. Jeff Duchin, Health Officer for Public Health – Seattle & King County, will hold a press briefing today, **April 4, 2017**
- Time: **12:00 p.m.**
- Location: 13<sup>th</sup> Floor, 401 5<sup>th</sup> Avenue, Seattle, WA 98104

## **Summary**

Local public health officials are investigating a new suspected case of hantavirus pulmonary syndrome (HPS) in an Issaquah woman. Test results are expected in the next two days, and an investigation is already underway to determine how and where the person may have been exposed to the deer mice that carry hantavirus. Members of the public are reminded to avoid rodent droppings and nests and to take precautions when cleaning up after rodents.

## **Story**

Public Health – Seattle & King County has received a report of an Issaquah resident in her 50's with symptoms consistent with HPS. The woman is currently hospitalized.

In February, a man from Issaquah in his 30s contracted hantavirus and subsequently died. Both cases lived near Squak Mountain but in different neighborhoods. Last November, a woman was exposed to deer mice near her home in Redmond. She contracted HPS, but survived.

Public Health does not believe the two cases in Issaquah are related but there are reports of increased numbers of deer mice seen in the area. We are making this announcement in order to raise public awareness about steps that the public can take to reduce the risk for hantavirus wherever deer mice are common. Deer mice do not live in urban settings in Washington, but prefer woodland areas such as the suburban foothills.

“If this third case of HPS is confirmed it suggests that certain areas of the county are at increased risk compared to past years,” said Dr. Jeff Duchin, Health Officer for Public Health – Seattle & King County. “People who live near wooded areas where deer mice are common should take steps to keep rodents out of the home and other structures, and take precautions when cleaning up rodent nests and potentially contaminated spaces. Anyone who has had exposure to rodent nests or areas where rodents are living and who develops symptoms should see a health care provider promptly.”

### **How hantavirus is contracted and signs and symptoms of HPS**

A person gets HPS by breathing in hantavirus. This can happen when dust from dried rodent urine, saliva, and droppings that contain hantavirus are stirred up in the air. People can also get infected by touching rodent urine, droppings, or nesting materials that contain the virus, and then touching their eyes, nose, or mouth. It’s also possible to get HPS from a rodent bite. The disease does not spread person-to-person. Symptoms begin 1-8 weeks after inhaling the virus. It typically starts with 3-5 days of illness that is similar to the flu, including fever, sore muscles, headaches, nausea, vomiting, and fatigue. As the disease gets worse, it causes coughing and shortness of breath as fluid fills the lungs.

### **Additional advice for people concerned about hantavirus:**

The chance of being exposed to hantavirus is greatest when people work, play, or live in closed spaces where rodents are actively living. Many people who have contracted HPS reported that they had not seen rodents or their droppings before becoming ill. Therefore, if you live in an area where the deer mice are known to live, take precautions to prevent rodent infestations even if you do not see rodents or their droppings.

Potential risk activities for HPS include:

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- Campers and hikers: Campers and hikers can be exposed when they use infested trail shelters or camp in other rodent habitats.

- Exposure to cars, trailers, or mobile homes where rodents are living (see <http://www.kingcounty.gov/depts/health/communicable-diseases/disease-control/hantavirus/cleaning.aspx> for specific guidance in cleaning up vehicles).

Guidelines for cleaning up rodent nests and infected areas are available at: <https://www.cdc.gov/rodents/cleaning/>. Some people may prefer to consult with a pest control agency to help with rodents in the home or other structures. Public Health should be consulted and special precautions are indicated for cleaning homes or buildings with:

- heavy rodent infestations (piles of feces, numerous nests or dead rodents)
- vacant dwellings that have attracted rodents while unoccupied
- dwellings and other structures that have been occupied by persons with confirmed hantavirus infection.
- Public Health recommends hiring professional pest control services in these situations.

See your healthcare provider if you develop symptoms after being in contact with rodent nests or cleaning up areas where deer mice may have been living.

#### **Next steps in the investigation:**

If the current suspect case is confirmed as HPS, Public Health will continue investigating how and where this woman most likely became infected. We will be consulting with the Washington state Department of Fish and Wildlife to provide information on the ecology of deer mice locally, including whether there have been any changes either to the population of deer mice or to the prevalence of the hantavirus in the deer mice, and whether changes may be impacting the threat to humans. We are also consulting with the Centers for Disease Control and the Washington state Department of Health.

#### **More about hantavirus:**

In Washington, the only rodents that spread hantavirus are deer mice, which live in woodland areas and deserts. They have distinctive white underbellies and white sides. They are only distantly related to the common house mouse. Rats do not spread hantavirus in Washington

Hantavirus is a rare disease in Washington State. Before 2016, the last case of hantavirus infection acquired in King County was in 2003. There have also been 3 other cases reported to Public Health since 1997 where the people were thought to have been infected outside of the county.

#### **More information**

For additional information, visit the [Public Health Insider blog](#) and the [hantavirus information page](#).

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###

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Facebook: [KCPubhealth](#) | Twitter: [@KCPubhealth](#) | Blog: [PublicHealthInsider.com](#)

# **Exhibit L**

---

**From:** Karasz, Hilary  
**Sent:** Tuesday, March 21, 2017 8:49 AM PDT  
**To:** Apa, James  
**Subject:** RE: Hanta call w/Jeff

Yes, we want to get the blog out this morning. I'll send it to Autumn and Julie before it goes out.

---

**From:** Apa, James  
**Sent:** Tuesday, March 21, 2017 7:32 AM  
**To:** Karasz, Hilary <Hilary.Karasz@kingcounty.gov>  
**Subject:** Fwd: Hanta call w/Jeff

Are we trying to get this out before Bobs story? I'm unclear on how he will react. Need context from Jeff.

We should also let Autumn at City of Issaquah know and DOH. I can help, but need to leave early today.

Sent from my iPhone

Begin forwarded message:

**From:** "Kay, Meagan" <[Meagan.Kay@kingcounty.gov](mailto:Meagan.Kay@kingcounty.gov)>  
**Date:** March 21, 2017 at 7:11:16 AM PDT  
**To:** "Duchin, Jeff" <[Jeff.Duchin@kingcounty.gov](mailto:Jeff.Duchin@kingcounty.gov)>  
**Cc:** "Karasz, Hilary" <[Hilary.Karasz@kingcounty.gov](mailto:Hilary.Karasz@kingcounty.gov)>, "Apa, James" <[James.Apa@kingcounty.gov](mailto:James.Apa@kingcounty.gov)>  
**Subject:** Re: Hanta call w/Jeff

I'm going to check the file when I'm in the office - I'm at Pike  
On Mar 21, 2017, at 7:05 AM, Duchin, Jeff <[Jeff.Duchin@kingcounty.gov](mailto:Jeff.Duchin@kingcounty.gov)> wrote:

Thanks. And when did we finish our interviews w/family?

---

Jeffrey S. Duchin, MD  
Health Officer and Chief, Communicable Disease Epidemiology & Immunization Section  
Public Health - Seattle and King County  
Professor in Medicine, Division of Infectious Diseases, University of Washington  
Adjunct Professor, School of Public Health  
401 5th Ave, Suite 1200, Seattle, WA 98104  
Tel: (206) 296-4774; Direct: (206) 263-8171; Fax: (206) 296-4803  
E-mail: [jeff.duchin@kingcounty.gov](mailto:jeff.duchin@kingcounty.gov)

---

**From:** Kay, Meagan  
**Sent:** Tuesday, March 21, 2017 7:04 AM

**To:** Duchin, Jeff  
**Cc:** Karasz, Hilary; Apa, James  
**Subject:** Re: Hanta call w/Jeff

Sorry. March 1 is when we got lab results. March 6 is when we started to reach out to the family (we usually wait a few days for them to get the diagnosis from the provider when there has been a death)

On Mar 21, 2017, at 7:00 AM, Duchin, Jeff <[Jeff.Duchin@kingcounty.gov](mailto:Jeff.Duchin@kingcounty.gov)> wrote:

That would be important to know re: timing of our response for Bob.

---

Jeffrey S. Duchin, MD  
Health Officer and Chief, Communicable Disease Epidemiology & Immunization Section  
Public Health - Seattle and King County  
Professor in Medicine, Division of Infectious Diseases, University of Washington  
Adjunct Professor, School of Public Health  
401 5th Ave, Suite 1200, Seattle, WA 98104  
Tel: (206) 296-4774; Direct: (206) 263-8171; Fax: (206) 296-4803  
E-mail: [jeff.duchin@kingcounty.gov](mailto:jeff.duchin@kingcounty.gov)

---

**From:** Kay, Meagan  
**Sent:** Tuesday, March 21, 2017 7:00 AM  
**To:** Duchin, Jeff  
**Cc:** Karasz, Hilary; Apa, James  
**Subject:** Re: Hanta call w/Jeff

Yes the report came is as an unexplained death and we didn't find out the cause until all testing came back. I think that was march 6 but I need to double check.

On Mar 21, 2017, at 6:57 AM, Duchin, Jeff <[Jeff.Duchin@kingcounty.gov](mailto:Jeff.Duchin@kingcounty.gov)> wrote:

Agree with you proposed reply, would add diagnosis made after death. Do you think we can get blog up today?

---

Jeffrey S. Duchin, MD  
Health Officer and Chief, Communicable Disease Epidemiology & Immunization Section  
Public Health - Seattle and King County  
Professor in Medicine, Division of Infectious Diseases, University of Washington  
Adjunct Professor, School of Public Health  
401 5th Ave, Suite 1200, Seattle, WA 98104  
Tel: (206) 296-4774; Direct: (206) 263-8171; Fax: (206) 296-4803  
E-mail: [jeff.duchin@kingcounty.gov](mailto:jeff.duchin@kingcounty.gov)

---

**From:** Karasz, Hilary  
**Sent:** Tuesday, March 21, 2017 6:57 AM  
**To:** Duchin, Jeff; Apa, James; Kay, Meagan  
**Subject:** RE: Hanta call w/Jeff

Don't agree that this is an increased level of detail over what we usually provide or that if we were to provide it we'd be in a difficult situation next time?

How about we say?

A man in his 30s residing in Issaquah went to the ER on 2/23 and died in the hospital on 2/24.

---

**From:** Duchin, Jeff  
**Sent:** Tuesday, March 21, 2017 6:53  
**To:** Karasz, Hilary; Apa, James; Kay, Meagan  
**Subject:** RE: Hanta call w/Jeff

Not sure I agree.

---

Jeffrey S. Duchin, MD  
Health Officer and Chief, Communicable Disease Epidemiology & Immunization Section  
Public Health - Seattle and King County  
Professor in Medicine, Division of Infectious Diseases, University of Washington  
Adjunct Professor, School of Public Health  
401 5th Ave, Suite 1200, Seattle, WA 98104  
Tel: (206) 296-4774; Direct: (206) 263-8171; Fax: (206) 296-4803  
E-mail: [jeff.duchin@kingcounty.gov](mailto:jeff.duchin@kingcounty.gov)

---

**From:** Karasz, Hilary  
**Sent:** Tuesday, March 21, 2017 6:53 AM  
**To:** Duchin, Jeff; Apa, James; Kay, Meagan  
**Subject:** RE: Hanta call w/Jeff

Okay. We typically do not provide specific ages or those sorts of details, so if we provide them to Bob this time we may be in a pickle next time he (or another reporter) asks. It's an issue of consistency.

However, I may not be thinking about this correctly - is there something unique about this situation?

James, any thoughts on this?  
Thanks  
Hilary

---

**From:** Duchin, Jeff  
**Sent:** Tuesday, March 21, 2017 6:48  
**To:** Karasz, Hilary; Apa, James; Kay, Meagan  
**Subject:** RE: Hanta call w/Jeff

We definitely have the age, probably the interval between diagnosis and death and suspected source. I do not think we should provide details re: home, but may be able to say something general. Meagan – who would have this info?

Thanks - Jeff

---

Jeffrey S. Duchin, MD  
Health Officer and Chief, Communicable Disease Epidemiology & Immunization Section  
Public Health - Seattle and King County  
Professor in Medicine, Division of Infectious Diseases, University of Washington  
Adjunct Professor, School of Public Health  
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Tel: (206) 296-4774; Direct: (206) 263-8171; Fax: (206) 296-4803  
E-mail: [jeff.duchin@kingcounty.gov](mailto:jeff.duchin@kingcounty.gov)

---

**From:** Karasz, Hilary  
**Sent:** Tuesday, March 21, 2017 6:46 AM  
**To:** Apa, James; Kay, Meagan; Duchin, Jeff  
**Subject:** FW: Hanta call w/Jeff

Do we have these details? This is far more information than we usually provide to a reporter. I do not see that we would provide a specific age, or where in Issaquah he resided, for example.

---

**From:** Bob Young [[byoung@seattletimes.com](mailto:byoung@seattletimes.com)]  
**Sent:** Monday, March 20, 2017 17:28  
**To:** Karasz, Hilary  
**Subject:** Hanta call w/Jeff

Hilary: Jeff said I should email you any follow up questions from our chat. Regarding the Issaquah man who died from hantavirus, Jeff said I should ask you for more details: his age, where in Issaquah he resided, where he died, how long after diagnosis, suspected source (Jeff said something about cleaning out his garage).

Thanks,

Bob

(writing tomorrow, as I just got off phone with Jeff)

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The Honorable Shelly K. Speir

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

SANDRA EHRHART, individually and as personal representative of the Estate of Brian Ehrhart,  
  
Plaintiff,  
  
v.  
  
KING COUNTY, operating through its health department, Public Health - Seattle & King County, SWEDISH HEALTH SERVICES, a non-profit entity, and JUSTIN WARREN REIF, an individual,  
  
Defendants.

NO. 18-2-09196-4  
  
**DECLARATION OF JEFFREY McMORRIS**

I, Jeffrey McMorris, declare as follows:

1. I am over the age of 18, of sound mind, and otherwise competent to testify. The following is based upon my personal knowledge.
2. For several years, including 2016 and 2017, I served as the Chief of Staff to King County councilmember, Kathy Lambert. She was a member of the Board of Directors of King County Public Health, and even served as its Vice Chair for many years. She was a very active member of Public Health as she oversaw and spoke into their operations.
3. Consequently, based upon my role, I had a good sense of how Public Health ran. Its officials, like Dr. Duchin, were primarily focused on Seattle-related issues. Indeed, the

DECLARATION OF JEFFREY McMORRIS - 1

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601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

6612653.1

1 organization called itself “Seattle-King County Public Health,” even though it was responsible  
2 for the entire county.

3 4. Things that would be of concern to Seattle were subject to outsized attention—  
4 and resultant expenditure of resources. The problem was that little if any attention was given  
5 to non-Seattle communities, especially if they tended to be viewed as rural in comparison to  
6 Seattle. Public Health officials would commonly express contempt or make fun of places like  
7 Issaquah. I remember seeing this internal email between two high-level officials at public  
8 health following Brian Ehrhart’s death:

9 **From:** [Lipton, Beth](#)  
10 **To:** [Kay, Meagan](#)  
11 **Subject:** Re: Hantavirus follow-up information  
12 **Date:** Friday, March 10, 2017 9:37:36 AM

---

13 Oh I love the limelight! Ha ha, from me too.

14 On Mar 10, 2017, at 9:04 AM, Kay, Meagan <[Meagan.Kay@kingcounty.gov](mailto:Meagan.Kay@kingcounty.gov)> wrote:

15 I'm just imagining a neighborhood in panic and the media showing up - the lights the cameras.  
16 hahaha. oh yeah - this is Issaquah.

---

17 5. I was not surprised. This was completely consistent with the prevailing attitude  
18 at Public Health, as well as comments I’d heard public health officials make about these “less  
19 enlightened” rural communities.

20 6. Brian’s death hit me very hard, because I knew him well. It struck me as  
21 avoidable had the County acted sooner. Accordingly, I pulled together relevant documents and  
22 created a timeline. My hope was to figure out what went wrong, so we could make  
23 improvements in the future—then maybe something good could come out of Brian’s death. I  
24 scheduled a meeting to discuss what went wrong and propose improvements. The meeting was  
25 abruptly canceled. In fact, nobody at public health did much of anything about Brian’s death in  
the aftermath—at least, not until the media became involved. This is evident in the objective  
timeline of events:

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- Following the infections of Ms. Waterbury and Brian, there was no effort to put out a warning or notification to the medical community;
- On March 20, 2017, the Seattle Times inquired about Hantavirus, which led to a flurry of back-and-forth between Public Health officials. A copy of one of the email threads is attached as **Exhibit A**.
- A blog about Hantavirus was rapidly created and pushed out within a day. A copy of the email publicizing the blog is attached as **Exhibit B**.
- A tweet about Hantavirus was also created and pushed out within a day. A copy of the tweet is attached as **Exhibit C**.
- Internal emails were exchanged the following evening, boasting that the blog came out before the Seattle Times piece. A copy of that email is attached as **Exhibit D**.
- Shortly thereafter, Dr. Duchin falsely advised Kathy Lambert that he could have, at most, *“saved a day or two in our process.”* Nowhere does he mention that the advisories were precipitated by public relations and media concerns. A copy of the email thread is attached as **Exhibit E**.

7. I have since left King County employment, and I don't know what documents which I prepared about Brian's death on my former work computer would still exist. I have not been able to locate any hard copies, unfortunately.

THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, SO STATED UNDER PENALTY OF PERJURY FOR THE STATE OF WASHINGTON.

DATED this 21st day of September, 2018, at Seattle, Washington.

  
 \_\_\_\_\_  
 JEFFREY McMORRIS

DECLARATION OF JEFFREY McMORRIS - 3

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**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date we caused to be served upon certain counsel of record at the address and in the manner indicated below a copy of the foregoing:

Kimberly Frederick, WSBA # 37857  
Senior Deputy Prosecuting Attorney  
**KING COUNTY PROSECUTING ATTORNEY'S OFFICE**  
**CIVIL DIVISION, LITIGATION SECTION**  
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Seattle, WA 98104  
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[shanna.josephson@kingcounty.gov](mailto:shanna.josephson@kingcounty.gov)  
[kris.bridgman@kingcounty.gov](mailto:kris.bridgman@kingcounty.gov)

- Via Electronic Mail  
*(per Stipulation for Electronic Service)*
- Via Legal Messenger
- Via U.S. Mail
- Via Overnight Courier

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King County***

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- Via Electronic Mail  
*(per Stipulation for Electronic Service)*
- Via Legal Messenger
- Via U.S. Mail
- Via Overnight Courier

***Attorneys for Defendant  
Swedish Health Services***

DECLARATION OF JEFFREY McMORRIS - 4

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13 *Dr. Justin Warren Reif*

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20 [ebariault@freybuck.com](mailto:ebariault@freybuck.com)  
21 [lfulgaro@freybuck.com](mailto:lfulgaro@freybuck.com)

22 *Attorneys for Plaintiff*

23 DATED this 30th day of October, 2018.

24 *s/Janis Hager*  
25 Janis Hager, Legal Assistant

- Via Electronic Mail  
(per Stipulation for Electronic Service)
- Via Legal Messenger
- Via U.S. Mail
- Via Overnight Courier

- Via Electronic Mail  
(per Stipulation for Electronic Service)
- Via Legal Messenger
- Via U.S. Mail
- Via Overnight Courier

# **Exhibit A**

**From:** [Duchin, Jeff](#)  
**To:** [Apa, James](#)  
**Cc:** [Kay, Meagan](#); [Karasz, Hilary](#); [Li-Vollmer, Meredith](#)  
**Subject:** Re: hantavirus and Seattle Times  
**Date:** Monday, March 20, 2017 1:19:01 PM

---

Ok

---

Jeffrey S. Duchin, MD  
Health Officer and Chief, Communicable Disease Epidemiology & Immunization Section  
Public Health - Seattle and King County  
Professor in Medicine, Division of Infectious Diseases, University of Washington  
Adjunct Professor, School of Public Health  
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E-mail: [jeff.duchin@kingcounty.gov](mailto:jeff.duchin@kingcounty.gov)

On Mar 20, 2017, at 1:12 PM, Apa, James <[James.Apa@kingcounty.gov](mailto:James.Apa@kingcounty.gov)> wrote:

Hilary and I can call you about 1:40 to talk about this and Today show on opiates.  
Would that work?

Sent from my iPhone

On Mar 20, 2017, at 1:10 PM, Duchin, Jeff <[Jeff.Duchin@kingcounty.gov](mailto:Jeff.Duchin@kingcounty.gov)> wrote:

Sure.

---

Jeffrey S. Duchin, MD  
Health Officer and Chief, Communicable Disease Epidemiology & Immunization Section  
Public Health - Seattle and King County  
Professor in Medicine, Division of Infectious Diseases, University of Washington  
Adjunct Professor, School of Public Health  
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Tel: [\(206\) 296-4774](#); Direct: [\(206\) 263-8171](#); Fax: [\(206\) 296-4803](#)  
E-mail: [jeff.duchin@kingcounty.gov](mailto:jeff.duchin@kingcounty.gov)

On Mar 20, 2017, at 12:48 PM, Apa, James <[James.Apa@kingcounty.gov](mailto:James.Apa@kingcounty.gov)> wrote:

Hi, Jeff and Meagan. Bob Young from the Seattle Times

called DOH this morning asking for hantavirus stats and about state and local roles and responsibilities in notifying the public about hanta risk.

It sounds like he's aware of a local case, which Meagan spotted on PROMED (attached). Here's a website that a husband of one of the victims created, suggesting that the Cascade foothills may present an increased risk for hanta: <http://www.hantasite.com>

I don't know if he's aware of the Issaquah case.

Jeff, I think it would be good for you to talk with him to educate on the history of the disease, risks and to provide context about our decisions on public notification for reportable diseases. We should also consider letting him know about the Issaquah case.

Thanks,

James

<mime-attachment>

# **Exhibit B**

**From:** [PUBLIC HEALTH INSIDER](#)  
**To:** [Li-Vollmer, Meredith](#)  
**Subject:** [New post] Two cases of hantavirus reported in King County since December, 2016: Be aware of health risks associated with deer mouse infestations  
**Date:** Tuesday, March 21, 2017 3:42:49 PM

Respond to this post by replying above this line

New post on **PUBLIC HEALTH INSIDER**



## Two cases of hantavirus reported in King County since December, 2016: Be aware of health risks associated with deer mouse infestations

by [Public Health Insider](#)

Hantavirus can cause a rare but deadly disease called Hantavirus Pulmonary Syndrome (HPS). In Washington State hantavirus is carried primarily by deer mice. Over the last several months, two people in King County have become ill with HPS, and one person died. A person gets HPS by breathing in hantavirus. This can happen when dust [...]

[Read more of this post](#)

[Public Health Insider](#) | March 21, 2017 at 3:41 pm | Categories: [Other](#) | URL:  
<http://wp.me/p4MiR8-1V1>

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<http://publichealthinsider.com/2017/03/21/two-cases-of-hantavirus-reported-in-king-county-since-december-2016-be-aware-of-health-risks-associated-with-deer-mouse-infestations/>

Thanks for flying with  WordPress.com

# **Exhibit C**



Public Health - SKC @KCPubHealth · Mar 21



2 cases of hantavirus in King County since Dec 2016



**Two cases of hantavirus reported in King County since December, 2...**

Hantavirus can cause a rare but deadly disease called Hantavirus Pulmonary Syndrome (HPS). In Washington State hantavirus is carried pr...  
[publichealthinsider.com](http://publichealthinsider.com)



# **Exhibit D**

**From:** [Apa, James](#)  
**To:** [Hayes, Patty](#); [Schaeffer, Cyndi](#); [Duchin, Jeff](#); [Wood, Maria](#); [Karasz, Hilary](#); [Li-Vollmer, Meredith](#); [Kay, Meagan](#); [Dennard, Stasha](#); [Warner, Melissa](#)  
**Subject:** Hanta story -- Seattle Times piece is up  
**Date:** Tuesday, March 21, 2017 5:08:33 PM

---

Thanks, Jeff. Good messages on the communicable disease demands we're facing:  
<http://www.seattletimes.com/seattle-news/health/rare-often-fatal-respiratory-disease-carried-by-mice-confirmed-in-king-county/>

Here's our blog, which went up an hour or so prior:  
<https://publichealthinsider.com/2017/03/21/two-cases-of-hantavirus-reported-in-king-county-since-december-2016-be-aware-of-health-risks-associated-with-deer-mouse-infestations/>

And in other news, we have a new foodborne illness investigation at the Crab Pot:  
<http://www.kingcounty.gov/depts/health/communicable-diseases/disease-control/outbreak.aspx>

James

# **Exhibit E**

**From:** [Hayes, Patty](#)  
**To:** [Duchin, Jeff](#)  
**Cc:** [Schaeffer, Cyndi](#); [Wood, Maria](#); [Worsham, Dennis](#)  
**Subject:** RE: Update part 2 on Lambert....  
**Date:** Wednesday, March 22, 2017 10:45:11 AM

---

Thanks Jeff. I appreciate this situation and tried to reflect that to CM Lambert. She replied back positively so I think we are OK. I do want to continue to emphasize that you are short staffed and the workload is overwhelming. Appreciate all the effort here!

---

**From:** Duchin, Jeff  
**Sent:** Wednesday, March 22, 2017 10:43 AM  
**To:** Hayes, Patty  
**Cc:** Schaeffer, Cyndi; Wood, Maria; Worsham, Dennis  
**Subject:** Re: Update part 2 on Lambert....

Thanks, Patty. We became aware of the diagnosis on Thursday March 2, and contacted the Overlake doc on Monday March 6th. Our PH nurse investigating the case spoke with the Overlake doc, let him know we were planning public communication via blog and as far as we know there was no dissatisfaction or lack of coordination.

We also sent a PH vet and medical epidemiologist to a community meeting on March 16th, and posted our blog that got good media coverage yesterday. We are severely short staffed in CD with multiple ongoing outbreaks and the COMMS team is also overloaded. Our first priority is to do outreach and prevention activities with the family and others who might have been exposed to the same risk source as the patient. Ideally I would have liked to have been able to do public messaging sooner but this disease is extraordinarily rare, has not caused outbreaks locally in the past and the community-level risk factors are long term issues that do not increase suddenly just because there is a case. We have reviewed the timeline in detail and I've identified areas where we could have saved a day or two in our process, and that improvement will be in place in the future.

Unfortunately, given our current staffing situation, we are not currently always able to meet our own expectations for excellence.

I'm happy to discuss with CM Lambert at your discretion.

Jeff

---

Jeffrey S. Duchin, MD  
Health Officer and Chief, Communicable Disease Epidemiology & Immunization Section  
Public Health - Seattle and King County  
Professor in Medicine, Division of Infectious Diseases, University of Washington  
Adjunct Professor, School of Public Health  
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E-mail: [jeff.duchin@kingcounty.gov](mailto:jeff.duchin@kingcounty.gov)

On Mar 22, 2017, at 8:38 AM, Hayes, Patty <[Patty.Hayes@kingcounty.gov](mailto:Patty.Hayes@kingcounty.gov)> wrote:

Reply from Kathy - FYI

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The Honorable Shelly K. Speir

SUPERIOR COURT OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

SANDRA EHRHART, individually and as  
personal representative of the Estate of Brian  
Ehrhart,

Plaintiff,

v.

KING COUNTY, operating though Seattle-  
King County Public Health, a government  
agency, SWEDISH HEALTH SERVICES, a  
non-profit entity, and JUSTIN WARREN REIF,  
an individual

Defendants.

NO. 18-2-09196-4

**PLAINTIFF'S MOTION TO COMPEL**

**Noted for Hearing:  
October 12, 2018 at 9:00 a.m.**

PLAINTIFF'S MOTION TO COMPEL - i

**Williams, Kastner & Gibbs PLLC**  
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Seattle, Washington 98101-2380  
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1 **1. INTRODUCTION AND RELIEF REQUESTED**

2 The County sought, and received, substantial extra time in responding to summary  
3 judgment based upon *repeated* representations that it was spending its time responding to  
4 discovery requests (which it received in June). Unfortunately, it is now October, and despite  
5 numerous promises, discovery remains deficient—with no end in sight. Plaintiff scheduled a  
6 document deposition to figure out what was, and was not, produced. It was scheduled for the  
7 exact day the County proposed. Then, the day before, the County indicated that it would not  
8 attend. And in the interim, the County refuses to so much as even provide dates for the  
9 depositions of crucial witnesses.

10 With no end to the obstruction in sight, plaintiff is requesting the following relief:

- 11 • An Order compelling complete and non-evasive responses—purged of all  
12 boilerplate objections—to discovery;
- 13 • An Order compelling a CR 30(b)(6) document deposition, which was originally  
14 served in August;
- 15 • An Order compelling the deposition of Kathy Lambert, which was requested in  
16 August; and
- 17 • An Order compelling the deposition of Rod Dembowski, which was requested in  
18 August.

19 Plaintiff also requests an award of fees and costs arising out of the County’s unilateral  
20 failure to appear at its properly noted deposition, as well as this motion.

21 **2. EVIDENCE RELIED UPON**

22 In support of this motion, plaintiff relies upon the Declaration of Adam Rosenberg,  
23 with exhibits thereto; the Declaration of Kathleen X. Goodman, with exhibits thereto; as well  
24 as the pleadings and documents in the Court file, and the authority cited herein.  
25

1 **3. FACTUAL BACKGROUND**

2 **3.1. The Current Lawsuit**

3 This case arises out of the County's negligent mishandling of crucial public health  
4 information during the 2016-2017 Hantavirus outbreak in Washington. Those facts are stated  
5 in detail in the parties' cross-motions for summary judgment, which the Court recently ruled  
6 upon. In its Answer and elsewhere, the County denied responsibility, which was not  
7 unexpected. But what *has* been surprising has been the County's ongoing problems complying  
8 with discovery.

9 **3.2. Plaintiff's Public Records Request to King County**

10 Prior to filing suit, Ms. Ehrhart propounded a relatively straightforward public records  
11 request on the County. It sought the following:

- 12 - All records regarding Hantavirus incidents in 2016 or 2017;
- 13 - All records in your possession regarding the hazards, dangers, and/or mortality rates of  
Hantavirus;
- 14 - All communications--internal or external--about Hantavirus in 2017;
- 15 - All documents reflecting any effort made by King County to make the public aware of  
Hantavirus in 2017;
- 16 - All documents reflecting any effort made by King County to make the public aware of  
17 Hantavirus in any year other than 2017;
- 18 - All policies, practices and/or procedures pertaining to public awareness and notification of  
a health hazard;
- 19 - All documents reflecting or referring to a duty or obligation on the part of the county to  
20 advise the public of health hazards;
- 21 - All communications with or about Maureen Waterbury and/or her contraction of  
Hantavirus;
- 22 - All studies, investigations you've performed, or conclusions rendered this year pertaining  
to Hantavirus or the county's response thereto;
- 23 - All statutory claims for damages filed against King County Public Health, pertaining in any  
24 way to its response to a public health hazard; and
- 25 - All settlements of any claims against King County Public Health, pertaining in any way to  
its response to a public health hazard.

PLAINTIFF'S MOTION TO COMPEL - 2

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1 Rosenberg Decl., Ex. A. Though the original estimate for the records was three weeks,  
2 installments trickled in for almost a year. See Rosenberg Decl., Ex. B-J.

3 Thereafter, the County represented that it had responded in full.

4 **3.3. Tort Claim Notice to King County**

5 On January 12, 2018, plaintiff served a claim for damages on King County, including  
6 with it a draft Complaint. Rosenberg Decl., Ex. K. It provided detailed information regarding  
7 the allegations against King County. In total, the County has known about the pending  
8 litigation since the records request, which was sent over a year ago—and the exact allegations,  
9 by virtue of the statutory claim notice, for nearly ten (10) months.

10 **3.4. The County's Ongoing Delay**

11 Plaintiff served her first discovery requests on the County on June 25, 2018, along with  
12 the summons and complaint. The due date came and went without responses. On August 22,  
13 2018, the undersigned and County counsel, Ms. Frederick, spoke via telephone. Rosenberg  
14 Decl., Ex. L. The conversation was confirmed in an e-mail sent by counsel later that day. See  
15 *id.* During the call, Ms. Frederick requested an extension for King County to provide its  
16 responses to the plaintiff's first discovery requests. *Id.* The parties agreed that King County  
17 would provide its responses by August 24, 2018. *Id.*

18 Plaintiff also sought the dates for the depositions of two key witnesses. The County  
19 represented that it would provide them. *Id.*

20 In the interim, plaintiff moved for summary judgment on the issue of public duty  
21 doctrine. On the County's request, it was postponed—both by plaintiff and Judge Cuthbertson.  
22 In both instances, the County insisted that it needed additional time because it was diligently  
23 responding to written discovery:

24 9 | 7. The complaint was served a month and a half ago and the bulk of King County's  
25 10 | time has been spent answering the complaint and gathering information and documents in order  
11 11 | to respond to Plaintiff's discovery requests. King County has not had an opportunity to conduct

1 Frederick Decl. in Support of Continuance ¶ 7.

2           Consequently, plaintiff was surprised to receive wholly non-substantive responses in  
3 late August. Goodman Decl., Ex. C. By correspondence, Ms. Frederick explained that she had  
4 only produced what was “easily gathered” or already produced:

5           Enclosed is the first production, consisting of the *easily gathered responsive*  
6 *documents* such as the personnel files of Jeffrey Duchin, Beth Lipton, and  
7 Megan Kay, *as well as the documents previously provided* in response to your  
clients’ Public Disclosure Requests.

8 Goodman Decl., Ex. D (emphasis supplied). The correspondence also indicated that King  
9 County was in the process of running searches for a select number of identified custodians, and  
10 that additional documents would be produced on a “rolling basis.” *Id.* The correspondence did  
11 not provide an estimate of when the production could be expected or how long the County  
12 would take to furnish a *complete* response.

13           In addition to the correspondence, King County also provided its written responses to  
14 plaintiff’s first discovery requests. In response to RFP 1, RFP 2, RFP 3, RFP 4, RFP 6, RFP 7,  
15 RFP 13, RFP 14, RFP 32, and RFP 33 King County interposed boilerplate objections, such as  
16 “overly broad” and “unduly burdensome”, while also vaguely directing the plaintiff to the  
17 County’s public records request response. The County added that it was “in the process of  
18 collecting any available additional responsive information...” Goodman Decl., Ex. D. The  
19 County forecast that it *might* supplement its responses with regard to RFP 8, RFP 9  
20 (“Production may be supplemented”), RFP 11 (“Production may be supplemented”), RFP 12  
21 (“Production may be supplemented”), RFP 16 (“Discovery is in the early stages and ongoing”);  
22 RFP 18 (“Production may be supplemented”); RFP 19 (“Production may be supplemented”);  
23 RFP 20 (“Production may be supplemented”), RFP 30 (“King County is in the process of  
24 collecting any responsive materials”), RFP 32 (“will supplement this response as appropriate”);  
25 and RFP 33 (“...will supplement this response as appropriate”). Goodman Decl., Ex. C.

PLAINTIFF’S MOTION TO COMPEL - 4

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1 On Friday, September 21, 2018, King County sent an e-mail to the parties stating that:  
2 “A disk containing King County’s Second Production of Documents, bates numbered  
3 0002862-0022409, will be delivered to each of your offices by 4:30 p.m. this afternoon...”  
4 Goodman Decl., Ex. J. No correspondence from counsel regarding or updated written  
5 responses indicating the scope of documents being produced or whether this represents a  
6 complete production of responsive documents has been received. *See id.*, Ex. K.

7 **3.5. The County’s Failure to Appear and Present a Representative at the CR**  
8 **30(b)(6) Document Deposition**

9 In August, after the due date for receiving King County’s responses to Plaintiff’s first  
10 discovery requests had passed, Plaintiff served a notice of CR 30(b)(6) deposition on King  
11 County. Goodman Decl., Ex. B. It was scheduled for September 7, 2018 at 9:30 a.m. and  
12 tailored to simply discern the availability and completeness of the County’s production of  
13 documents—in other words, confirm that the parties had equal access to the evidence.  
14 Goodman Decl., Exs. A-B.

15 The County indicated that September 7th would not work. So the undersigned and  
16 County counsel, Ms. Frederick, scheduled a conference call to discuss pending discovery,  
17 including the document deposition. Rosenberg Decl., Ex. L. Ms. Frederick stated that  
18 complete responses and production would be provided by September 25th, and the deposition  
19 could occur that day – a date selected by Ms. Frederick. *Id.* Shortly after, plaintiff confirmed,  
20 “[p]er your request, we’ll also reschedule document deposition to September 25th. It’s my  
21 understanding that, by then, we’ll have all the records. Let me know if that timing doesn’t  
22 work, or if I’ve misstated anything.” Rosenberg Decl., Ex. L. No correction or disagreement  
23 was registered. Plaintiff’s counsel then served an amended deposition notice reflecting the date  
24 chosen by the County on August 22, 2018. Goodman Decl., Ex. B-1.

25 With no additional responses forthcoming and the County continuing to stand on its  
boilerplate objections, yet another discovery conference was scheduled. Goodman Decl., Ex.

1 F. Surprisingly, Ms. Frederick indicated that the County now did *not* intend to participate in  
2 the properly noted deposition, simply stating that it was not going to happen. Goodman Decl.,  
3 ¶ 6.

4 Having already spent substantial time preparing and foregoing other tasks, plaintiff  
5 objected to the unilateral cancellation. The County merely responded, “[t]he deposition cannot  
6 proceed tomorrow.” And it did not. Goodman Decl., Exs. H-I.

7 To date, the County has:

- 8 • Failed to comply with written discovery, propounded in June, with no end in sight;
- 9 • Unilaterally cancelled a properly noted deposition, scheduled for a day the County  
10 selected, without seeking a protective order;
- 11 • Produced no privilege log; and
- 12 • Refused to make key witnesses available.

13 Having run out of options, plaintiff now seeks relief from the Court.

14 **4. STATEMENT OF THE ISSUE**

15 Whether the County is entitled to unilaterally withhold timely discovery, refuse to  
16 appear at depositions, stand on boilerplate objections, and decline to make critical witnesses  
17 available for depositions.

18 Whether the Court should grant a limited award of attorneys’ fees to both alleviate the  
19 cost burden of the County’s obstruction and deter such conduct going forward.

20 **5. AUTHORITY AND ARGUMENT**

21 **5.1. The Legal Standard**

22 A spirit of cooperation and forthrightness during the discovery process is mandatory for  
23 the efficient functioning of modern trials. *Washington State Physicians Ins. Exch. Ass’n v.*  
24 *Fisons Corp.*, 122 Wn.2d 299, 342, 858 P.2d 1054 (1993). Generally speaking, “all relevant  
25 information likely to lead to admissible evidence is discoverable.” *Neighborhood Alliance of*

1 *Spokane Cnty. v. Cnty. of Spokane*, 172 Wn.2d 702, 717, 261 P.3d 119 (2011); *see also* CR  
2 26(b). According to the Supreme Court, “the right of discovery authorized by the civil rules” is  
3 of constitutional dimension. *John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 780, 819  
4 P.2d 370 (1991). Stated another way:

5       The people have a right of access to courts; indeed, it is the bedrock foundation  
6       upon which rest all the people’s rights and obligations. This right of access to  
7       courts includes the right of discovery authorized by the civil rules. As we have  
8       said before, ‘it is common legal knowledge that extensive discovery is necessary  
9       to effectively pursue either a plaintiff’s claim or a defendant’s defense.

10 *Putman v. Wenatchee Valley Med. Ctr., P.S.*, 166 Wn.2d 974, 979, 216 P.3d 374 (2009); *see*  
11 *also Lowy v. PeaceHealth*, 174 Wn.2d 769, 776-77 (2012) (noting that the discovery rules  
12 effectuate the constitutional mandate through “a broad right of discovery” and “relatively  
13 narrow restrictions”).

14       In addition to making a trial less a game of “blindman’s bluff,” *Taylor v. Cessna*  
15 *Aircraft Co.*, 39 Wn. App. 828, 835, 696 P.2d 28 (1985), open discovery—with both sides  
16 enjoying **equal access to the evidence**—“has contributed enormously to a more fair, just, and  
17 efficient process.” *Lowy*, 174 Wn. 2d at 777.

18       **5.2. The County Should Be Compelled To Comply With Written Discovery**

19       CR 34(b) states in relevant part:

20       The party upon whom the request is served shall serve a written response within  
21       30 days after service of the request . . . The response shall state . . . that  
22       inspection and related activities will be permitted s requested, unless the request  
23       is objected to, in which event the reasons for objections shall be stated. . . The  
24       party submitting the request may move for an order under rule 37(a) with  
25       respect to any objection to or other failure to respond to the request or any part  
26       thereof.

27       Here, that did not occur. Not only is the County still withholding substantial documents  
28 (after several months and repeated promises), but it continues to stand on boilerplate  
29 objections—which are clearly improper, and sanctionable. *See Johnson v. Mermis*, 91 Wn.

1 App. 127, 132, (1998) (citing *Fisons*, 122 Wn.2d at 354) (“The rules are clear that a party must  
2 fully answer all interrogatories and all requests for production, unless a specific and clear  
3 objection is made.”); *Walker v. Lakewood Condo. Owners Ass’n*, 186 F.R.D. 584, 587 (C.D.  
4 Cal. 1999) (“Boilerplate, generalized objections are inadequate and tantamount to not making  
5 any objection at all.”); *Adelman v. Boy Scouts of Am.*, 276 F.R.D. 681, 688 (S.D. Fla. 2011)  
6 (“[J]udges in this district typically condemn boilerplate objections as legally inadequate or  
7 meaningless.”); Jarvey, BOILERPLATE DISCOVERY OBJECTIONS, 61 Drake L. Rev. 913, 916  
8 (2013) (“The problems with using boilerplate objections, however, run deeper than their form  
9 or phrasing. Their use obstructs the discovery process, violates numerous rules of civil  
10 procedure and ethics, and imposes costs on litigants that frustrate the timely and just resolution  
11 of cases.”).

12 As the County has not produced timely discovery, has not given any indication when it  
13 will (if ever), and has not produced a privilege log that would give some sense of what it is  
14 withholding, the Court should issue an Order compelling immediate and complete production  
15 to all pending written discovery.

### 16 **5.3. The County Is Not Entitled To Unilaterally Cancel Depositions**

17 With respect to deposition attendance, the Civil Rules provide:

18 If a party... fails to appear before the officer who is to take his or her  
19 deposition, after being served with a proper notice... the court in which the  
20 action is pending on motion may make such orders in regard to the failure as are  
21 just, and among others it may take any action authorized under sections (A),  
22 (B), and (C) of subsection (b)(2) of this rule. ***In lieu of any order or in addition  
thereto, the court shall require the party failing to act or the attorney advising  
the party or both to pay the reasonable expenses, including attorney fees,  
caused by the failure,*** unless the court finds that the failure was substantially  
23 justified or that other circumstances make an award of expenses unjust.

24 CR 37(d) (emphasis added); *see also Johnson v. Jones*, 91 Wn. App. 127, 132–33 (1998)  
25 (“Rule 37 is the enforcement section for the discovery process. It authorizes sanctions to be

1 imposed... for unjustified or unexplained resistance to discovery and serve the purposes of  
2 deterring, punishing, compensating, and educating a party or its attorney for engaging in  
3 discovery abuses.”).

4       Significantly, in analyzing the substantially similar federal rule, the courts have made it  
5 clear that a party fails to appear for his deposition, within the meaning of Rule 37, where the  
6 party unilaterally cancels the deposition immediately prior to the date on which it is noticed.  
7 *See, e.g., Henry v. Gill Industries, Inc.*, 983 F.2d 943, 947 (9th Cir. 1993); *Pioche Mines*  
8 *Consol., Inc.*, 333 F.2d 257, 269 (9th Cir. 1964) (in order to cancel or stay a properly-noticed  
9 deposition, the opposing party must obtain a protective order before the deposition date);  
10 *Rodriguez v. Vizio, Inc.*, 14-CV-368 JLS (NLS), 2015 WL 11439030, at 2 (S.D. Cal. Jan. 26,  
11 2015), *amended on reconsideration*, 2015 WL 11439031 (S.D. Cal. Mar. 16, 2015) (“The  
12 Ninth Circuit has held that a party fails to appear for his deposition, within the meaning of Fed.  
13 R. Civ. P. 37(d), where “the party unilaterally cancels the deposition immediately prior to the  
14 date on which it is noticed.”).

15       Again, there is no dispute about this. The County refused to attend the very deposition  
16 it rescheduled for September 25th, unilaterally mandating just a few days that it “cannot  
17 proceed.” This is not only unfair and obstructionist, but it also foists upon the plaintiff the cost  
18 of several hours of preparing—which will have to be re-done. *See infra*.

19       **5.4. The County Should Be Required To Pay A Modest Cost Award To**  
20       **Compensate, Educate and Deter**

21       “This system obviously cannot succeed without the full cooperation of the parties.  
22 Accordingly, the drafters wisely included a provision authorizing the trial court to impose  
23 sanctions for unjustified or unexplained resistance to discovery.” *Gammon v. Clark Equip.*  
24 *Co.*, 38 Wn. App. 274, 280 (1984), *aff’d*, 104 Wn.2d 613 (1985). The purpose is not just fee-  
25 shifting and making parties whole, but to “deter and educate” as well. *See ibid*.

1 This requires the Court to take into account the context. A financial slap on the wrist,  
2 especially in the context of a large case and well-funded defendant like King County, does not  
3 always “rectify a wrong; it just sets a price on it.” *Smith v. Behr Process Corp.*, 113 Wn. App.  
4 306, 329, 54 P.3d 665 (2002); *see also Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 592,  
5 220 P.3d 191 (2009) (noting difficulty of fashioning a financial sanction against a “a multi-  
6 billion dollar corporation,” when it would not address the prejudice to claims brought by  
7 paraplegic plaintiff).

8 As the Court of Appeals in *Gammon v. Clark Equip. Co.*, 38 Wn. App. 274, 282, 686  
9 P.2d 1102 (1984), rightly stated:

10 An award of \$2,500 is cheap at twice the price in the context of a \$4.5 million  
11 wrongful death case. Approval of such a *de minimis* sanction in a case such as  
12 this would plainly undermine the purpose of discovery. Far from insuring that a  
13 wrongdoer not profit from his wrong, minimal terms would simply encourage  
14 litigants to embrace tactics of evasion and delay. This we cannot do.

15 In other words, well-funded litigants like the County’s public health department—which enjoys  
16 a nine figure budget—must be more meaningfully “deterred and educated,” especially as the  
17 parties continue to proceed toward trial.

18 In this instance, plaintiff would submit the following. Counsel spent at least one full  
19 day preparing for the deposition that never took place. However, to be fair, much of that work  
20 will be of value when the deposition is ultimately rescheduled. Accordingly, plaintiff seeks  
21 only four hours of compensated time, which will likely have to be re-spent. Rosenberg Decl., ¶  
22 4, Goodman Decl., ¶ 12. In addition, this filing required an additional four hours of time. The  
23 attorneys’ market rates are \$325 and \$425 per hour. Rosenberg Decl., ¶ 3. In total, an  
24 appropriate sanction to make plaintiff whole, while serving the equally valid objectives of  
25 “deterrence, education and punishment” under *Fisons*, is \$3,000. *Id.*, ¶ 5.

The County should also be compelled to attend the next deposition, when it is  
scheduled with no less than 10 days’ notice at plaintiff’s time of choosing.

PLAINTIFF’S MOTION TO COMPEL - 10

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1 A form of order is enclosed.

2 **6. CONCLUSION**

3 For the foregoing reasons, plaintiff respectfully requests that the Court enter his  
4 proposed order compelling written discovery, including an appropriate privilege log, the  
5 County's CR 30(b)(6) representative's attendance at a deposition, Kathy Lambert's and Rod  
6 Dembowski's attendance at depositions, and reimbursing plaintiff for costs incurred.

7 RESPECTFULLY SUBMITTED this 3rd day of October, 2018.

8 *s/ Adam Rosenberg*  
9 Adam Rosenberg, WSBA #39256  
10 Daniel A. Brown, WSBA #22028  
11 Kathleen X. Goodman, WSBA #46653  
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**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date we caused to be served upon certain counsel of record at the address and in the manner indicated below a copy of the foregoing:

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***Attorneys for Defendant  
Swedish Health Services***

PLAINTIFF'S MOTION TO COMPEL - 12

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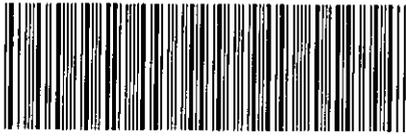
*Attorneys for Plaintiff*

DATED this 3rd day of October, 2018.

*s/ Janis Hager*  
\_\_\_\_\_  
Janis Hager, Legal Assistant

- Via Electronic Mail  
(per Stipulation for Electronic Service)
- Via Legal Messenger
- Via U.S. Mail
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(per Stipulation for Electronic Service)
- Via Legal Messenger
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18-2-09196-4 52190047 ORC 10-12-18

The Honorable Shelly K. Speir

FILED  
DEPT 5  
IN OPEN COURT

OCT 12 2018

PIERCE COUNTY Clerk  
By *[Signature]*  
DEPUTY

SUPERIOR COURT OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

SANDRA EHRHART, individually and as  
personal representative of the Estate of Brian  
Ehrhart,

Plaintiff,

v.

KING COUNTY, operating through its health  
department, Public Health - Seattle & King  
County, SWEDISH HEALTH SERVICES, a  
non-profit entity, and JUSTIN WARREN REIF,  
an individual,

Defendants.

NO. 18-2-09196-4

~~PROPOSED~~

ORDER GRANTING PLAINTIFF'S  
MOTION TO COMPEL

Noted for Hearing:  
October 12, 2018 at 9:00 a.m.

THIS MATTER came before the Court on Plaintiff's Motion to Compel. The Court  
having considered the record, including:

1. Plaintiff's Motion to Compel;
2. Declaration of Adam Rosenberg in Support of Plaintiff's Motion to Compel, with Exhibits;
3. Declaration of Kathleen X. Goodman in Support of Plaintiff's Motion to Compel, with Exhibits;

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL - 1

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- 4. Response to Plaintiff's Motion to Compel; King County Defendants' Motion to Continue Plaintiff's Motion to Compel;
- 5. Declaration of Allyson Zebra in Support of Defendant King County's Motion for Continuance of Plaintiff's Motion to Compel; and
- 6. Plaintiff's Reply in Support of Motion to Compel.

The Court finds itself fully informed.

Plaintiff's Motion to Compel is **GRANTED** as follows:

*within two weeks*

- The County shall serve upon the parties complete, exhaustive and non-evasive responses to plaintiff's written discovery and document requests within two weeks of the date of this Order. ~~The County's stated objections are overruled.~~ Any privileged documents must be identified in a privilege log accompanying the responses;

- The County shall make a fully prepared CR 30(b)(6) representative available to answer questions, fully, accurately and without equivocation, at a mutually available time, but said deposition shall occur before November 1, 2018;
- The County shall make Mr. Dembowski and Ms. Lambert available for depositions at a mutually available time, but said deposition shall occur before November 15, 2018; and
- A determination on sanctions is hereby reserved.

IT IS FURTHER ORDERED The County may return  
and seek further protective orders with regard to Mr.

ENTERED this 12<sup>th</sup> day of October, 2018. Dembowski and Ms. Lambert  
is well-founded.

**FILED**  
DEPT 5  
IN OPEN COURT

OCT 12 2018

Shelly K. Speir  
The Honorable Shelly K. Speir

PIERCE COUNTY Clerk  
By [Signature]  
DEPUTY

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL - 2

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1 PREPARED AND PRESENTED BY:

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3 Daniel A. Brown, WSBA #22028

Kathleen X. Goodman, WSBA #46653

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23  
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25  
ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL - 3

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18-2-09196-4 52190048 ORRE 10-12-18

The Honorable Shelly K. Speir

**FILED**  
DEPT 5  
IN OPEN COURT

OCT 12 2018

PIERCE COUNTY Clerk  
By [Signature]  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

SANDRA EHRHART, individually and as  
personal representative of the Estate of Brian  
Ehrhart,

Plaintiff,

v.

KING COUNTY, operating through its health  
department, Public Health - Seattle & King  
County, SWEDISH HEALTH SERVICES, a  
non-profit entity, and JUSTIN WARREN REIF,  
an individual,

Defendants.

NO. 18-2-09196-4

**ORDER ON DEFENDANT KING  
COUNTY'S SUMMARY JUDGMENT  
MOTION AND PLAINTIFF'S  
OBJECTION TO SAME**

~~Proposed~~ [Signature]

THIS MATTER came before the Court on October 5, 2018, on King County's Motion for Partial Summary Judgment. The Court having considered the record, including:

1. King County's Motion (and supporting declarations);
2. Plaintiff's Motion (and supporting declarations). King County's Response (and supporting declarations), and Plaintiff's reply (and supporting declarations) (said motion having been heard by the Court on September 28, 2018);
3. Plaintiff's Response to King County's Motion (and supporting declarations);
4. King County's reply (and supporting declarations); and
5. Plaintiff's Objection (dated and filed October 4, 2018);

ORDER ON DEFENDANT KING COUNTY'S SUMMARY  
JUDGMENT MOTION AND PLAINTIFF'S OBJECTION - 1

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Seattle, Washington 98101-2380  
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10/12/2018

1 And having heard oral argument, the Court finds itself fully informed.

2 The Court FINDS that the "legislative intent" and "special relationship" exceptions to the  
3 public duty doctrine do not apply in light of this Court's Order dated September 28, 2018  
4 coupled with the plaintiff's representations in writing to both King County prior to this hearing  
5 and on the record before this Court that plaintiff it is not pursuing either of these exceptions in  
6 light of the Court's Order dated September 28, 2018 entered previously. As such, and because  
7 of the plaintiff's representations referenced above and this Court's Order dated September 28,  
8 2018, King County's motion is denied as MOOT.

9 The Court ~~FURTHER~~ FINDS that that, despite plaintiff's multiple offers to stipulate to  
10 or otherwise confirm that the above-two exceptions were not at issue and this Court's Order  
11 dated September 28, 2018, the hearing on October 5, 2018 was unnecessary, a waste of both the  
12 parties' counsels' time and the Court's time, improper gamesmanship by King County, and was  
13 otherwise interposed in bad faith. Accordingly, based upon its inherent authority, *see, e.g., State*  
14 *v. S.H.*, 102 Wn. App. 468, 475-76 (2000), the Court hereby awards terms against King County  
15 in favor of the plaintiff in the following amount: \$2,475 (which is counsel's reasonable rate of  
16 \$495/hour for five hours of time in preparing plaintiff's objection and attending the hearing  
17 before the Court on October 5, 2018, which the Court also finds reasonable). King County shall  
18 pay said terms within 10 days of the date of this order directly to plaintiff's counsel, Williams  
19 Kastner & Gibbs PLLC c/o Daniel A. Brown. The Court finds that such an award of terms is  
20 appropriate both to compensate the plaintiff and deter such conduct in the future.

21 DATED this 12<sup>th</sup> day of October, 2018.

22  
23 **FILED**  
DEPT 5  
IN OPEN COURT

22   
23 Judge Shelly K. Speir

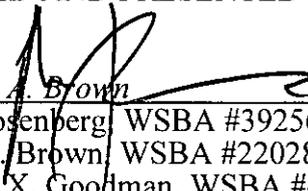
24 **OCT 12 2018**

25 **PIERCE COUNTY, Clerk**  
By   
**DEPUTY**

ORDER ON DEFENDANT KING COUNTY'S SUMMARY  
JUDGMENT MOTION AND PLAINTIFF'S OBJECTION - 2

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s/ Daniel A. Brown

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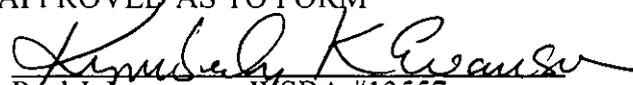
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*King County*

ORDER ON DEFENDANT KING COUNTY'S SUMMARY  
JUDGMENT MOTION AND PLAINTIFF'S OBJECTION - 3

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**WILLIAMS KASTNER**

**July 22, 2019 - 3:33 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96464-5  
**Appellate Court Case Title:** Sandra Ehrhart v. King County, et al.  
**Superior Court Case Number:** 18-2-09196-4

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