

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
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No. 98221-0
Snohomish County Superior Court No. 18-2-08290-31

SUPREME COURT
OF THE STATE OF WASHINGTON

MARIA JESUS SARALEGUI BLANCO,

Petitioner,

v.

ERNESTO HERNANDEZ, TERI HERNANDEZ and the marital
community comprised thereof,

Respondents,

and

DAVID GONZALEZ SANDOVAL, ALEXANDRA BARAJAS
GONZALEZ, and the marital community comprised thereof,

Defendants.

ANSWER TO PLAINTIFF'S MOTION FOR DISCRETIONARY
REVIEW

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A. INTRODUCTION

Defendants Ernesto Hernandez and Teri Hernandez (“Defendants Hernandez”) respectfully request the Court to deny Plaintiff’s Motion for Discretionary Review and uphold the Superior Court’s rulings. Plaintiff has failed to establish the Superior Court’s order dismissing Plaintiff’s claims against Defendants Hernandez satisfies the narrow standard for discretionary review pursuant to RAP 2.3(b).

Moreover, even if Plaintiff manages to establish some sort of “error” on the part of the Superior Court, Plaintiff fails to provide a sufficient explanation as to how the error substantially alters the status quo or limits Plaintiff’s ability to act. For this reason, Plaintiff’s motion should be denied. Defendants Hernandez further argue as follows.

B. DECISION BELOW

This lawsuit was filed in Snohomish County Superior Court. Defendants Hernandez moved for summary judgement before the Honorable Judge Janice E. Ellis.

On September 10, 2019, after oral arguments, Judge Ellis granted Defendants Hernandez’s Motion for Summary Judgement, dismissing Plaintiff’s claims against them as Defendants Hernandez were not liable to Plaintiff.

On February 10, 2020, Judge Ellis denied Plaintiff's Motion for Reconsideration and denied Plaintiff's Motion to Certify pursuant to RAP 2.2(d).

C. ISSUES PRESENTED FOR REVIEW

1. Should Plaintiff's request for discretionary review be denied where no probable error was made by the superior court by granting Defendants Hernandez's Motion for Summary Judgement?

2. Should Plaintiff's request for discretionary review be denied where no probable error and no obvious error was made by the superior court denying Plaintiff's Motion to Certify?

3. Should Plaintiff's request for discretionary review be denied where the superior court did not depart from the accepted and usual course of judicial proceedings?

D. STATEMENT OF THE CASE

This lawsuit arises from an incident that occurred on May 8, 2018, in Arlington, Washington.¹ Plaintiff alleges she was bitten by a dog as she was meeting with a resident, Elvia Sandoval.²

Defendants Hernandez, own a house located at 6507 204th Street NE in Arlington, Washington.³ This is a single family home used for

¹ Plaintiff's Complaint for Damages, paragraph 3.2.

² Plaintiff's Complaint for Damages, paragraph 3.6-3.8.

renting.⁴ Defendants Sandoval and Martinez (“Codefendants”), rent the home from Defendants Hernandez and have leased the property from Defendants Hernandez since 2014.⁵ Codefendants purchased the dog involved in the subject incident, Enzo, in August 2016.⁶ Upon purchasing Enzo, Codefendants constructed a wire fence to contain the dog.⁷

The dog was not owned, kept or harbored by Defendants Hernandez.⁸ Defendants Hernandez saw the dog once when Enzo was still a puppy.⁹ Codefendants purchased the dog without any involvement or influence from Defendants Hernandez and Defendants Hernandez never helped care for the dog after its purchase.¹⁰ To Defendants Hernandez’s knowledge, the dog never exhibited vicious or aggressive behavior, nor were any complaints received from any neighbors about the dog.¹¹

This lawsuit was filed on or about September 14, 2018.¹² Approximately 11 months later, Defendants Hernandez moved for summary judgement on the basis that Defendants Hernandez are not liable

³ Declaration of Ernesto Hernandez, attached to Defendants Hernandez’s Motion for Summary Judgement

⁴ Id.

⁵ Declaration of David Sandoval, attached to Defendants Gonzalez and Martinez’s Response to Defendants Hernandez’s Motion for Summary Judgement

⁶ Id.

⁷ Declaration of Ernesto Hernandez, attached to Defendants Hernandez’s Motion for Summary Judgement

⁸ Id. See also Declaration of Teri Hernandez, attached to Defendants Hernandez’s Motion for Summary Judgement

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Plaintiff’s Complaint for Damages.

under Washington statute, common law strict liability, and under premise liability.¹³ Plaintiff filed a response on August 23, 2019.¹⁴ Defendants Hernandez filed a reply on September 3, 2019.¹⁵ On September 10, 2019, Judge Ellis heard oral arguments from all parties and went on to grant Defendants Hernandez's Motion for Summary Judgement.¹⁶

On September 17, 2019, Plaintiff filed a Motion for Reconsideration.¹⁷ Defendants Hernandez responded on September 23, 2019¹⁸ and Plaintiff filed a response on October 4, 2019.¹⁹ On January 3, 2020, Plaintiff filed a Motion to Certify.²⁰ Defendants Hernandez responded on January 10, 2020²¹ and Plaintiff replied on January 13, 2020.²² On February 10, 2020, Judge Ellis issued orders denying Plaintiff's Motion for Reconsideration and Plaintiff's Motion to Certify along with a letter explaining the delay was caused by the hearings not being noted and Judge Ellis not receiving copies of the pleadings.²³ Plaintiff now seeks review of the trial court's ruling granting Defendants

¹³ Defendants Hernandez's Motion for Summary Judgement.

¹⁴ Plaintiff's Response to Defendants Hernandez's Motion for Summary Judgement.

¹⁵ Defendants Hernandez's Reply in Support of Summary Judgement.

¹⁶ Order Granting Defendants Hernandez's Motion for Summary Judgement.

¹⁷ Plaintiff's Motion for Reconsideration.

¹⁸ Defendants Hernandez's Response to Plaintiff's Motion for Reconsideration.

¹⁹ Plaintiff's Reply to Defendants Hernandez's Response to Plaintiff's Motion for Reconsideration.

²⁰ Plaintiff's Motion to Certify.

²¹ Defendants Hernandez's Response to Plaintiff's Motion to Certify.

²² Plaintiff's Reply to Defendants Hernandez's Response to Plaintiff's Motion to Certify

²³ Letter from Judge Ellis dated February 10, 2020, with orders

Hernandez's Motion for Summary Judgment and denying both the Motion for Reconsideration and the Motion to Certify.

E. ARGUMENT

1. Standard of Review

On appeal from a summary judgment, appellate courts engage in de novo review and make the same inquiry as the trial court, looking to the documents presented to determine if there are any genuine issues of material fact and if the moving party is entitled to judgment as a matter of law. *Berrocal v. Fernandez*, 155 Wn.2d 585, 590, 121 P.3d 82 (2005).

In this matter, this court's review of the materials presented in each of the two motions in question will establish conclusively that Defendants Hernandez were entitled to dismissal of the claims against them and no certification was warranted.

2. The Standards Outlined in RAP 2.3(b)(1) and (2) Have Not Been Met.

RAP 2.3(b)(1) and (2) provide that discretionary review of a superior court's pre-trial rulings may be accepted in the following circumstances:

- (1) The superior court has committed an obvious error which would render further proceedings useless; or
- (2) The superior court has committed probable error and the decision of the superior court substantially alters the

status quo or substantially limits the freedom of a party to act.

a. The Superior Court Did Not Commit Probable Error In Granting Defendants Hernandez’s Motion for Summary Judgement.

It is well established that mere land ownership does not make the landlord liable for tenants who own a dangerous dog. See *Clemmons v. Fidler*, 58 Wash.App. 32, 791 P.2d 257 (1990); *Shafer v. Beyers*, 26 Wn.App. 442, 613 P.2d 554 (1980). Washington law has also well established that landlords are not liable to a tenant’s invitee or guest. See *Frobig v. Gordon*, 124 Wn.2d 732, 881 P.2d 226 (1993); *Clemmons*, 58 Wash.App. 32. Furthermore, a landlord is under no duty to repair a defective condition caused by a tenant and it is in fact the tenant’s duty to prohibit a nuisance on the rental property. RCW 59.18.060; RCW 59.18.130(5).

The dangerous conditions Plaintiff alleges – the dog and the fence – were created long after Defendants Hernandez relinquished possession and control of the rental property to Codefendants. Codefendants were the ones who created these “dangerous conditions” and violated their duty to prohibit a nuisance on their property. Following the general rule in *Frobig*, as well as the Landlord Tenant Act, Defendants Hernandez are not

responsible to a tenant's invitee or guest. *Frobig*, 124 Wn.2d at 735-36. Therefore, Defendants Hernandez are not liable for any alleged injuries claimed by Plaintiff.

Judge Ellis correctly applied the aforementioned statutes and case law and properly granted Defendants Hernandez's Motion for Summary Judgement. Judge Ellis' decision is in line with the status quo, Washington's landlord tenant laws, and laws that promote the policy of placing responsibility where it belongs – with the tenants of a single family home.

b. The Superior Court Did Not Commit Obvious or Probable Error in Denying Plaintiff's Motion To Certify.

There was no obvious or probable error in denying Plaintiff's Motion to Certify and Plaintiff. Plaintiff improperly suggests Judge Ellis' delay warrants an obvious or probable error. There was no obligation for Judge Ellis to give this matter priority as the language in RCW 4.44.025 provides the court **may** give priority (emphasis added). Judge Ellis' letter clearly explained the reason for the delay and upon discovering the error, re-reviewed all pleadings, and issued orders denying Plaintiff's motions.

There was no delay in dismissing Defendants Hernandez from this matter. Judge Ellis reached a decision in open court on September 10, 2019. Plaintiff had every opportunity since September 10, 2019, to seek

discretionary review with the Court of Appeals or seek direct review the Supreme Court. Any delay was caused by Plaintiff's own actions.

Regardless, the slight delay in the Superior Court's denial of Plaintiff's motions was not prejudicial to Plaintiff. More importantly, Plaintiff provides no authority or case law that a delay in providing a ruling on a motion results in obvious or probable error. The criteria of both RAP 2.3(b)(1) and (2) are not satisfied. The Superior Court did not make obvious or probable error. Therefore, Plaintiff's motion should be denied.

3. The Standard Outlined in RAP 2.3(b)(3) Has Not Been Met.

Pursuant to RAP 2.3(b)(3), discretionary review is accepted only if the superior court has so far departed from the accepted and usual course of judicial proceedings as to call for review by the appellate court.

Plaintiff failed to sufficiently argue how a delay in ruling on Plaintiff's Motion to Certify is a departure from the accepted and usual course of judicial proceedings. Plaintiff also fails to cite to any law or authority to support the allegation that RAP 2.3(b)(3) is implicated. The superior court denied Plaintiff's Motion to Certify on the basis that there was no controlling question of law where there is substantial ground for a difference of opinion. The superior court did not depart from the

accepted and usual course of judicial proceedings as it was consistent with past decisions and relevant case law.

F. CONCLUSION

Judge Ellis followed Washington law and properly granted Defendants Hernandez's Motion for Summary Judgement. The superior court did not commit obvious or probable error when it granted Defendants Hernandez's Motion for Summary Judgement and denied Plaintiff's Motion for Reconsideration and Motion to Certify. Therefore, Plaintiff's Motion for Discretionary Review should be denied and the order granting summary judgement in favor of Defendants Hernandez should be upheld.

Respectfully submitted this 24th day of March, 2020.

s/Ofelia A. Granados
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EXHIBIT 1

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

Case No. 18-2-08290-31

PLAINTIFF'S COMPLAINT

Plaintiff, for her cause of action against Defendants, and each of them, alleges as follows:

PARTIES, JURISDICTION AND VENUE

- 1.1 At all times material hereto, plaintiff MARIA JESUS SARALEGUI BLANCO is a resident of Snohomish County, Washington.
- 1.2 At all times material hereto, defendant DAVID GONZALEZ SANDOVAL is a resident of Snohomish County, Washington.
- 1.3 At all times material hereto, defendant ALEJANDRA MARTINEZ is a resident of Snohomish County, Washington.

PLAINTIFF'S COMPLAINT

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 **bishop legal**

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- 1 1.4 At all times material hereto, defendant DAVID GONZALEZ SANDOVAL and
2 defendant ALEJANDRA MARTINEZ are and were married to each other.
- 3 1.5 All acts and omissions of defendant DAVID GONZALEZ SANDOVAL alleged herein
4 were made for the benefit of himself and his marital community.
- 5 1.6 All acts and omissions of defendant ALEJANDRA MARTINEZ alleged herein were
6 made for the benefit of herself and her marital community.
- 7 1.7 At all times material hereto, defendant ERNESTO HERNANDEZ is a resident of
8 Snohomish County, Washington.
- 9 1.8 At all times material hereto, defendant TERI HERNANDEZ is a resident of Snohomish
10 County, Washington.
- 11 1.9 At all times material hereto, defendant ERNESTO HERNANDEZ and defendant TERI
12 HERNANDEZ are and were married to each other.
- 13 1.10 All acts and omissions of defendant ERNESTO HERNANDEZ alleged herein were made
14 for the benefit of himself and his marital community.
- 15 1.11 All acts and omissions of defendant TERI HERNANDEZ alleged herein were made for
16 the benefit of herself and her marital community.
- 17 1.12 At all times material hereto, defendant ERNESTO HERNANDEZ, defendant TERI
18 HERNANDEZ, and each of them did business in Snohomish County, Washington.
- 19 1.13 At all times material hereto, defendant ERNESTO HERNANDEZ, defendant TERI
20 HERNANDEZ, and each of them, were agents of defendant DAVID GONZALEZ
21 SANDOVAL and defendant ALEJANDRA MARTINEZ, and each of them, acting
22 within the course and scope of their agency.

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24 PLAINTIFF'S COMPLAINT

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b **bishoplegal**
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- 1 1.14 At all times material hereto, defendant DAVID GONZALEZ SANDOVAL and
2 defendant ALEJANDRA MARTINEZ, and each of them, were agents of defendant
3 ERNESTO HERNANDEZ, defendant TERI HERNANDEZ, and each of them, acting
4 within the course and scope of their agency.
- 5 1.15 At all time materials hereto, Defendants, and each of them, were acting in concert in a
6 negligent and unlawful manner with each other.
- 7 1.16 As one or more Defendants reside in Snohomish County Washington, as one or more
8 Defendants do business in Snohomish County, Washington, as the subject premises is
9 located in Snohomish County, Washington, as the subject pit bull attack occurred in
10 Snohomish County, Washington, and as some or all acts and omissions alleged herein
11 occurred in Snohomish County, Washington, jurisdiction and venue are proper in
12 Snohomish County, Washington.

FACTS RELATED TO OWNERSHIP AND CONTROL
OF THE SUBJECT PREMISES AND THE SUBJECT PIT BULL

- 13 2.1 Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.
- 14 2.2 At all times material hereto, defendant ERNESTO HERNANDEZ, defendant TERI
15 HERNANDEZ, and each of them, owned a residential property located at or near 6507
16 204th Street Northeast, Arlington, Snohomish County, Washington, 98223 (hereinafter,
17 "the premises.")
18
- 19 2.3 At all times material hereto, defendant ERNESTO HERNANDEZ, defendant TERI
20 HERNANDEZ rented the premises to defendant DAVID GONZALEZ SANDOVAL,
21 defendant ALEJANDRA MARTINEZ, and each of them.
- 22 2.4 At all times material hereto, defendant DAVID GONZALEZ SANDOVAL and
23 defendant ALEJANDRA MARTINEZ resided at the premises.
24

- 1 2.5 At all times material hereto, Elvia Sandoval Gonzalez, mother of defendant DAVID
2 GONZALEZ SANDOVAL, resided at the premises.
- 3 2.6 At all times material hereto, defendant DAVID GONZALEZ SANDOVAL was the
4 owner, keeper, and / or harborer of a pit bull dog named "Enzo" (hereinafter, "the subject
5 pit bull.")
- 6 2.7 At all times material hereto, defendant ALEJANDRA MARTINEZ was the owner,
7 keeper, and / or harborer of the subject pit bull.
- 8 2.8 At all times material hereto, defendant ERNESTO HERNANDEZ was a keeper and / or
9 harborer of the subject pit bull.
- 10 2.9 At all times material hereto, defendant TERI HERNANDEZ was a keeper and / or
11 harborer of the subject pit bull.
- 12 2.10 At all times material hereto, defendant ERNESTO HERNANDEZ had control over or the
13 right to control the subject pit bull.
- 14 2.11 At all times material hereto, defendant TERI HERNANDEZ had control over or the right
15 to control the subject pit bull.
- 16 2.12 At all times material hereto, the subject pit bull was kept, or was attempted to have been
17 kept, in an area of the premises bounded by a fence (hereinafter, the "subject fence.")
- 18 2.13 The subject fence was constructed by or on behalf of defendant ERNESTO
19 HERNANDEZ, defendant TERI HERNANDEZ, and each of them.
- 20 2.14 The subject fence was constructed by or on behalf of defendant DAVID GONZALEZ
21 SANDOVAL, defendant ALEJANDRA MARTINEZ, and each of them.

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24 PLAINTIFF'S COMPLAINT

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FACTS RELATED TO THE INCIDENT

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- 3.1 Plaintiffs re-alleges each and every allegation contained in the preceding paragraphs.
- 3.2 On or about 12:00 PM noon on May 8, 2018, plaintiff MARIA JESUS SARALEGUI BLANCO, arrived on the subject premises for the purposes of a religious discussion with one or more of the residents of the subject premises.
- 3.3 At the aforesaid time and place, plaintiff MARIA JESUS SARALEGUI BLANCO was accompanied by three other members of her Jehovah's Witnesses church, Teresa Jimenez, Jaylene Lyman, and Katie Lyman.
- 3.4 Plaintiff MARIA JESUS SARALEGUI BLANCO had been to the subject premises on numerous times prior to the date of the subject incident.
- 3.5 Prior to and including the date of the subject incident, Plaintiff MARIA JESUS SARALEGUI BLANCO and other members of her Jehovah's Witnesses church would regularly meet with Elvia Sandoval Gonzalez, mother of defendant DAVID GONZALEZ SANDOVAL, for Bible study on the subject premises.
- 3.6 On or about May 8, 2018 from approximately noon to 12:26 PM, plaintiff MARIA JESUS SARALEGUI BLANCO, had been speaking with Elvia Sandoval Gonzalez, mother of defendant DAVID GONZALEZ SANDOVAL.
- 3.7 At the aforesaid time and place, plaintiff MARIA JESUS SARALEGUI BLANCO, was speaking with Elvia Sandoval Gonzalez approximately 50 feet or more away from the subject fence, a distance which plaintiff MARIA JESUS SARALEGUI BLANCO perceived to be safe.
- 3.8 At the aforesaid time and place, the subject pit bull escaped from the subject fence, and viciously attacked, mauled, and repeatedly bit plaintiff MARIA JESUS SARALEGUI

FACTS RELATED TO THE INCIDENT

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- 3.3 At the aforesaid time and place, plaintiff MARIA JESUS SARALEGUI BLANCO was accompanied by three other members of her Jehovah's Witnesses church, Teresa Jimenez, Jaylene Lyman, and Katie Lyman.
- 3.4 Plaintiff MARIA JESUS SARALEGUI BLANCO had been to the subject premises on numerous times prior to the date of the subject incident.
- 3.5 Prior to and including the date of the subject incident, Plaintiff MARIA JESUS SARALEGUI BLANCO and other members of her Jehovah's Witnesses church would regularly meet with Elvia Sandoval Gonzalez, mother of defendant DAVID GONZALEZ SANDOVAL, for Bible study on the subject premises.
- 3.6 On or about May 8, 2018 from approximately noon to 12:26 PM, plaintiff MARIA JESUS SARALEGUI BLANCO, had been speaking with Elvia Sandoval Gonzalez, mother of defendant DAVID GONZALEZ SANDOVAL.
- 3.7 At the aforesaid time and place, plaintiff MARIA JESUS SARALEGUI BLANCO, was speaking with Elvia Sandoval Gonzalez approximately 50 feet or more away from the subject fence, a distance which plaintiff MARIA JESUS SARALEGUI BLANCO perceived to be safe.
- 3.8 At the aforesaid time and place, the subject pit bull escaped from the subject fence, and viciously attacked, mauled, and repeatedly bit plaintiff MARIA JESUS SARALEGUI

1 BLANCO, biting off her right ear, biting much of her face, and causing other severe
2 injuries.
3 3.9 At the aforesaid time and place, the subject pit bull also attacked and bit Teresa Jimenez
4 and Elvia Sandoval Gonzalez. Orlando Kyle Sullivan, a neighbor to the premises and
5 brother-in-law to defendant DAVID GONZALEZ SANDOVAL responded to the scene,
6 and the subject pit bull bit him as well.
7 3.10 The aforesaid pit bull attack occurred without warning to plaintiff MARIA JESUS
8 SARALEGUI BLANCO.
9 3.11 The aforesaid pit bull attack occurred without provocation on the part of plaintiff MARIA
10 JESUS SARALEGUI BLANCO or of any member of her party of Jehovah's Witnesses.
11 3.12 Plaintiff MARIA JESUS SARALEGUI BLANCO was not at fault for the subject attack.
12 3.13 Plaintiff MARIA JESUS SARALEGUI BLANCO had no reason to know that the subject
13 pit bull was about to attack her, had no reason to know the subject fence was inadequate
14 to contain the subject pit bull, and had no reason to know that reasonable measures had
15 not been taken to protect her from the subject pit bull.

16 PLAINTIFF'S CLAIMS FOR STRICT LIABILITY AND FOR NEGLIGENCE

17 4.1 Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.
18 4.2 Defendant DAVID GONZALEZ SANDOVAL, as owner, keeper, and / or harbinger of the
19 subject pit bull, is strictly liable for Plaintiff's damages caused by the subject pit bull
20 attack.
21 4.3 Defendant ALEJANDRA MARTINEZ, as owner, keeper, and / or harbinger to the subject
22 pit bull, is strictly liable for Plaintiff's damages caused by the subject pit bull attack.
23

- 1 4.4 Defendant ERNESTO HERNANDEZ, as keeper and / or harbinger to the subject pit bull,
2 is strictly liable for Plaintiff's damages caused by the subject pit bull attack.
- 3 4.5 Defendant TERI HERNANDEZ, as keeper and / or harbinger to the subject pit bull, is
4 strictly liable for Plaintiff's damages caused by the subject pit bull attack.
- 5 4.6 Defendants, and each of them, failed to exercise ordinary care to control the subject pit
6 bull or ensure the subject pit bull was controlled.
- 7 4.7 Defendants, and each of them, failed to exercise ordinary care to ensure that the subject
8 fence was adequate to contain the subject pit bull.
- 9 4.8 Defendants, and each of them, knew or had reason to know that the subject pit bull was
10 dangerous or had dangerous tendencies making it likely to cause injury.
- 11 4.9 Defendants DAVID GONZALEZ SANDOVAL and defendant ALEJANDRA
12 MARTINEZ, and each of them, breached duties of care of a possessor of land owed to
13 plaintiff MARIA JESUS SARALEGUI BLANCO.
- 14 4.10 Defendants ERNESTO HERNANDEZ and defendant TERI HERNANDEZ, and each of
15 them, breached duties of care of an owner of land owed to plaintiff MARIA JESUS
16 SARALEGUI BLANCO.
- 17 4.11 Defendants, and each of them, knew or had reason to know that the subject pit bull was a
18 dangerous condition of the land, that the subject fence was dangerously inadequate to
19 contain the subject pit bull. Defendants, and each of them, failed to exercise reasonable
20 care to make these conditions safe or provide adequate warnings of the risks involved.
- 21 4.12 Plaintiff's injuries and damages were caused and proximately caused by each and all of
22 the aforesaid breaches of duties on the part of Defendants, and each of them.

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24 PLAINTIFF'S COMPLAINT

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1 PLAINTIFF'S INJURIES AND DAMAGES

2 5.1 Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.

3 5.2 As a direct and proximate result of the subject pit bull attack and the negligence and / or
4 statutory violations alleged herein, plaintiff MARIA JESUS SARALEGUI BLANCO
5 suffered severe, permanent and disabling personal injuries, including but not limited to
6 severe dog bite injuries to her face, her right ear, her head, her neck, and other parts of
7 her body, for which surgery was required. Although medical attention and supportive
8 remedies have been resorted to, said injuries, together with pain, discomfort and
9 limitation of movement, permanent scarring and disfiguration, and mental trauma
10 including post-traumatic stress disorder, prevails and will continue to prevail for an
11 indefinite time into the future; that it is impossible at this time to fix the full nature,
12 extent, severity and duration of said injuries, but they are alleged to be permanent,
13 progressive and disabling in nature; that plaintiff MARIA JESUS SARALEGUI
14 BLANCO has incurred and will likely continue to incur medical expenses and other
15 expenses to be proved at the time of trial, all to her special and general damage, in an
16 amount now unknown.

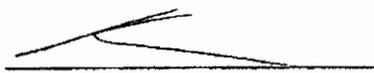
17 5.3 As a direct and proximate result of the negligence and / or statutory violations alleged
18 herein, plaintiff MARIA JESUS SARALEGUI BLANCO has suffered other expenses, all
19 to be proven at the time of trial.

20 5.4 Plaintiff MARIA JESUS SARALEGUI BLANCO is entitled to prejudgment interest on
21 all medical, wage loss, and out-of-pocket expenses directly and proximately caused by
22 the negligence and / or statutory violations alleged herein.

1 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, jointly and
2 severally, in amounts that will fairly compensate her for all damages sustained, costs and
3 reasonable attorneys' fees, interest calculated at the maximum amount allowable by law, and all
4 other relief the court deems fair and just.

5 DATED this 14th day of September, 2018.

6
7 BISHOP LEGAL

8 
9 _____
10 Derek K. Moore
11 WSBA No. 37921
12 Attorneys for Plaintiff
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24 PLAINIFF'S COMPLAINT

PAGE 9 of 9

 **bishoplegal**
19743 First Avenue South
Normandy Park, WA 98148-2401
Tel: (206) 592-9000
Fax: (206) 592-9001

EXHIBIT 2

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDREA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ, TERI
HERNANDEZ and the marital community
comprised thereof,

Defendants.

No. 18-2-08290-31

DECLARATION OF ERNESTO
HERNANDEZ

I, Ernesto Hernandez, declare and state as follows:

1. I am over the age of 18. I have personal knowledge of all facts contained in this Declaration. I am competent to testify as a witness to those facts.

2. I own the home located at 6507 204th Street NE, Arlington, WA 98223. This property has been used as a rental property since approximately 2011, and continues to be used as a rental property. When the property was purchased, there was a wood fence on the north and west side of the home and a chain link fence on the east side.

DECLARATION OF ERNESTO HERNANDEZ- 1

TODD A. BOWERS & ASSOCIATES
901 5th Avenue, Ste 830
Seattle, WA 98164
TEL: (206) 521-5000
FAX: (855) 830-3808
Employees of the Law Department
State Farm Mutual Automobile Insurance Company

1 3. Defendant David Sandoval is currently a tenant in the Arlington property and has
2 been a tenant since approximately 2015. At the time Defendant Sandoval moved into the home,
3 he did not have the dog involved in the subject incident.

4 4. I had no knowledge that Defendant Sandoval purchased the dog involved in the
5 subject incident. I did not assist Defendant Sandoval in purchasing the dog, nor did I have any
6 input in what breed of dog Defendant Sandoval purchased.

7 5. I only saw the dog involved in the subject incident once in the summer of 2017,
8 when the dog was still a small puppy. There was no indication the dog was dangerous or had
9 vicious propensities. I had no other knowledge of the dog and did not have any further contact
10 with the dog.

11 6. I did not own, keep, or harbor the dog in any way.

12 7. As a landlord, I did not receive any complaints from concerned neighbors regarding
13 the dog. I also did not receive notice of the dog biting anyone prior to the subject incident.

14 8. Defendant Sandoval installed a wire fence on the south side of the home. Defendant
15 Sandoval was responsible for any maintenance or repairs of the fence.

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

18 DATED this 11th day of July 2019, in Lake Stevens, Washington.

19
20 
21 Ernesto Hernandez

22
23
DECLARATION OF ERNESTO HERNANDEZ- 2

TODD A. BOWERS & ASSOCIATES
901 5th Avenue, Ste 830
Seattle, WA 98164
TEL (206) 521-5000
FAX (855) 830-3808
Employees of the Law Department
State Farm Mutual Automobile Insurance Company

EXHIBIT 3

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDREA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ, TERI
HERNANDEZ and the marital community
comprised thereof,

Defendants.

No. 18-2-08290-31

DECLARATION OF TERI
HERNANDEZ

I, Teri Hernandez, declare and state as follows:

1. I am over the age of 18. I have personal knowledge of all facts contained in this Declaration. I am competent to testify as a witness to those facts.

2. I own the home located at 6507 204th Street NE, Arlington, WA 98223. This property has been used as a rental property since approximately 2011, and continues to be used as a rental property. When the property was purchased, there was a wood fence on the north and west side of the home and a chain link fence on the east side. Ernesto Hernandez has sole control over anything pertaining to the renting and maintenance of this property.

DECLARATION OF TERI HERNANDEZ- 1

TODD A. BOWERS & ASSOCIATES
901 5th Avenue, Ste 830
Seattle, WA 98164
TEL: (206) 521-5000
FAX: (855) 830-3808
Employees of the Law Department
State Farm Mutual Automobile Insurance Company

EXHIBIT 4

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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

Case No. 18-2-08290-31

DECLARATION DAVID GONZALEZ
SANDOVAL

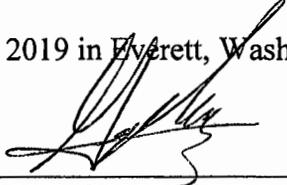
I, David Gonzalez Sandoval, declare and state as follows:

1. I am over the age of 18. I have personal knowledge of all the facts contained in this Declaration. I am competent to testify as a witness to those facts.
2. I rent the home located at 6507 204th Street NE, Arlington, WA 98223. I rent from Ernesto Hernandez. I have resided at that address since 2014.
3. Enzo, my dog, came to live in my home with my mom, my brother, and my wife in August 2016.
4. From the day he moved in, Enzo, has never attacked or bitten any person or animal prior to the incident in question.

- 1 5. I have never been cited or given any infraction for Enzo behaving in a matter that is
2 dangerous or disruptive.
- 3 6. I was not home the day of the incident, I was working in Kenmore at the time.
- 4 7. I never gave Ms. Saralegui Blanco permission to be at my home.
- 5 8. Mr. Hernandez was aware I had Enzo, and never raised any concerns about him.
- 6 9. On the day of the incident, I made the decision to put Enzo down. I assisted the
7 Animal Control by injecting Enzo myself.
- 8 10. I am a concrete finisher by trade.
- 9 11. I sought help from my former criminal defense lawyer, Cassandra Lopez de Arriaga.
10 She agreed to help me temporarily to respond to the complaint.
- 11 12. I cannot afford a civil lawyer to represent me in this matter.
- 12 13. Cassandra Lopez de Arriaga advised me a couple of weeks ago of the need for her
13 to withdrawal.
- 14 14. Union Bank recently closed my account for due of lack of funds. (SEE
15 ATTACHED).
- 16 15. I am currently providing all my extra resources to my sister who is diagnosed with
17 Endometriosis.
- 18 16. I have no idea how to help Ms. Saralegui Blanco with her medical bills, I simply do
19 not have the means.

20 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
21 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE
22 BEST OF MY KNOWLEDGE.

22 Signed this 27 day of August, 2019 in Everett, Washington.

23
24 

DAVID GONZALEZ SANDOVAL

EXHIBIT 5

**Superior Court of Washington
County of Snohomish**

BLANCO

Plaintiff/Petitioner(s)

vs.

GONZALEZ SANDOVAL, ET AL

Defendant/Respondent(s)

CASE NO. 18-2-08290-31

CALENDAR NOTE: (NTC)

CIVIL MOTIONS – JUDGE’S CALENDAR

Unless otherwise provided by applicable rule or statute, this form and the motion must be filed with the Clerk not less than five (5) court days preceding the date requested.

****SEE “WHERE TO NOTE VARIOUS MATTERS” ON PAGE 2, to determine where matters are to be set.**

A. PRESIDING JUDGE’S CALENDAR

Monday – Friday at 9:00 a.m.
Department as assigned

Date requested: _____
(mm/dd/yyyy)

Nature of hearing: _____

(Confirm hearing at 425-388-3587 or online at www.snohomishcountywa.gov/Confirmations)

B. JUDGE’S CIVIL MOTIONS CALENDAR

Tuesday – Friday at 9:30 a.m.
Department as assigned

Date requested: 09/10/2019
(mm/dd/yyyy)

Nature of hearing: Motion for Summary Judgment

(Confirm hearing at 425-388-3587 or online at www.snohomishcountywa.gov/Confirmations)

C. JUDGE’S PERSONAL CALENDAR

(Special set hearings to be heard by a specific Judge)

The hearing date and time must be scheduled through the Judge’s law clerk. See information on how to contact the law clerk on page 2.

Date requested: _____
(mm/dd/yyyy)

Nature of hearing: _____

(Confirm hearing by calling the Judge’s law clerk. See information on how to contact the law clerk on page 2)

NOTE: When picking a hearing date, DO NOT schedule your hearing on a court holiday. A list of court holidays can be found at <http://www.snohomishcountywa.gov/354/County-Holidays>

WARNING! CONFIRMATION REQUIRED: In order for the matter to be heard, the moving party **MUST CONFIRM** their motion by calling 425-388-3587 or online at www.snohomishcountywa.gov/Confirmations. For confirmation deadlines and additional information see confirmations notes below.

Failure to notify the Court of a continuance or strike of a confirmed matter may result in sanctions and/or terms. SCLCR 7.

This form cannot be used for trial settings. SCLMAR 2.1 AND SCLCR 40(b).

CERTIFICATE OF SERVICE BY MAIL:

I hereby certify that a copy of this document and all documents listed on page 3 were mailed to the parties listed on page 3 on:

Date (mm/dd/yyyy): July 12, 2019

Printed name: Jennifer Svane

Noted by:

Name: Ofelia Granados

WSBA # 53917

Attorney for: Plaintiff/Petitioner Defendant/Respondent

FOR SELF-REPRESENTED (PRO SE) PARTIES:

Noted by: Petitioner Respondent

If service is required, you must also file a RETURN OF SERVICE. Failure to do so may result in your hearing not being heard.

(Printed name)

Please check in the Law Library for more information regarding service.

(Address)

(Phone number)

(Email address)

WHERE TO NOTE VARIOUS MATTERS:

For the most current information on where to calendar various matters see Administrative Order 11-19 which can be found online at www.snohomishcountywa.gov/1354/Administrative-Orders

COMMISSIONER CIVIL MOTIONS: The following are heard on the Court Commissioner’s Civil Motion Calendar: Defaults, Discovery Motions and enforcement thereof; Supplemental Proceedings; Unlawful Detainer or Eviction & Receiver actions; Motions to Amend Pleadings and Petitions for Restoration of the Right to Possess Firearms. Probate and Guardianship matters are set on the Probate or Guardianship calendar.

PRESIDING JUDGE’S MOTION CALENDAR: The following motions are heard on Presiding Judge’s Motion Calendar: trial continuance; pre-assignment (heard without oral argument); expedited trial date; and motions regarding timeliness of demand for jury trial.

RALJ HEARINGS: RALJ hearings are noted on the Tuesday morning Post Conviction Motions calendar @ 10:30 a.m. in criminal hearings, room C304.

All other civil motions are heard on the Judge’s Civil Motions Calendar

CONFIRMATIONS NOTES: All matters set on the Judge’s Civil Motion Calendar, Presiding Judge’s Motion Calendar or Court Commissioner Calendars must be confirmed prior to the hearing. Motions for Summary Judgment set on the Judge’s Civil Motions calendar must be confirmed no later than 12:00 noon three (3) court days prior to the hearing; all other motions set on the above calendars must be confirmed no later than 12:00 noon two (2) court days prior to the hearing. During the confirmation window, confirmations are accepted for a 24 hour period beginning at 12:01 p.m. When determining your confirmation deadline, do not count weekends or court holidays. Confirmations can be made by calling 425-388-3587 or online at www.snohomishcountywa.gov/Confirmations.

All matters specially set on a Judge’s personal calendar must be set/confirmed/continued/stricken through the Judge’s law clerk. Adoptions, reasonableness hearings and minor settlements are specially set on the Judge’s Civil Motions calendar each Monday and are confirmed through the Civil Motions Judge’s law clerk. Judge’s calendar rotations and law clerk contact information is available online at <http://wa-snohomishcounty.civicplus.com/1338/Calendars-and-Schedules> or by calling Court Administration at 425-388-3421.

File Calendar Notes at:
Snohomish County
Superior Court Clerk’s Office
3000 Rockefeller Ave M/S 605
Everett, WA 98201

All Motions Heard At:
Snohomish County
Superior Court
3000 Rockefeller Ave
Everett, WA 98201

Please print the names, addresses etc. of all other attorneys in this case and/or all other parties requiring notice.

Name: Derek K. Moore WSBA#: 206-592-9000
Address: 19743 1st Avenue S Phone # _____ Ext. _____
Normandy Park, WA 98148

Attorney for: (CHECK ONE)
 Petitioner/Plaintiff Respondent/Defendant
 Pro Se

Name: Cassandra Lopez de Arriaga WSBA#: _____
Address: 1812 Hewitt Ave., Ste 204 Phone # 425-492-5343 Ext. _____
Everett, WA 98201

Attorney for: (CHECK ONE)
 Petitioner/Plaintiff Co-Defendant
 Pro Se

Name: _____ WSBA#: _____
Address: _____ Phone # _____ Ext. _____

Attorney for: (CHECK ONE)
 Petitioner/Plaintiff Respondent/Defendant
 Pro Se

Name: _____ WSBA#: _____
Address: _____ Phone # _____ Ext. _____

Attorney for: (CHECK ONE)
 Petitioner/Plaintiff Respondent/Defendant
 Pro Se

Name: _____ WSBA#: _____
Address: _____ Phone # _____ Ext. _____

Attorney for: (CHECK ONE)
 Petitioner/Plaintiff Respondent/Defendant
 Pro Se

List all documents mailed: Note for Calendar; Motion for Summary Judgment with
Appendixes/Exhibits; and Proposed Order

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The Honorable Janice Ellis
Hearing Date: September 10, 2019 at 9:30 a.m.
Oral Argument Requested

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDREA MARTINEZ, and the marital
community comprised thereof, and ERNESTO
HERNANDEZ, TERI HERNANDEZ and the
marital community comprised thereof,

Defendants.

No. 18-2-08290-31

DEFENDANTS HERNANDEZ'S
MOTION FOR SUMMARY JUDGMENT

I. RELIEF REQUESTED

Defendants Hernandez move this court for summary judgment dismissing Plaintiff's claim against them on the basis Defendants Hernandez are not liable under Washington law or any extension of the law.

///

DEFENDANTS HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT - 1

TODD A. BOWERS & ASSOCIATES
901 5th Avenue, Ste 830
Seattle, WA 98164
TEL: (206) 521-5000
FAX: (855) 830-3808
Employees of the Law Department
State Farm Mutual Automobile Insurance Company

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II. STATEMENT OF FACTS

This lawsuit arises from a dog bite incident that occurred on May 8, 2018, in Arlington, WA.¹ Defendants, Ernesto and Teri Hernandez, owned a property located at 6507 204th Street NE in Arlington, Washington. Defendants, David Gonzalez Sandoval and Alejandra Martinez (“Codefendants”), rent the property from Defendants Hernandez and have resided on the property for approximately four years.² Codefendants owned a dog and kept the dog in a fenced area on the property. Plaintiff, Maria Saralegui Blanco, went to Codefendants’ home, and was bitten by their dog after he escaped from the fenced area.

The dog was not owned, kept or harbored by Defendants Hernandez.³ Defendants Hernandez did not reside on or near the rental property. When Codefendants moved into the home, they did not own the dog involved in the subject incident. Codefendants’ purchased the dog without any involvement or influence from Defendants Hernandez and Defendants Hernandez never helped care for the dog after its purchase.⁴ The dog involved in the subject incident was owned and cared for by Codefendants only.⁵ The dog never exhibited vicious or aggressive behavior, nor were any complaints received from any neighbors about the dog.⁶ Codefendants

¹ Complaint for Damages, attached as Exhibit 1 to Declaration of Ofelia A. Granados, Appendix A hereto.

² Deposition of David Gonzales at 5:2-10, attached as Exhibit 2 to Declaration of Ofelia A. Granados, Appendix A hereto.

³ Declaration of Ernesto Hernandez attached as Appendix B hereto; See also Declaration of Teri Hernandez, attached as Appendix C hereto.

⁴ Id.; See also Deposition of David Gonzales at 8:8-14, attached as Exhibit 2 to Declaration of Ofelia A. Granados, Appendix A hereto.

⁵ Deposition of David Gonzales at 11:12-14, attached as Exhibit 2 to Declaration of Ofelia A. Granados, Appendix A hereto.

⁶ Id. at 11:18-25, 12: 11-13, attached as Exhibit 2 to Declaration of Ofelia A. Granados, Appendix A hereto.

1 installed a wire fence on their own approximately one year prior to the incident and the dog had
2 not escaped prior to the subject incident.⁷

3 III. ISSUE PRESENTED

4 Whether summary judgment should be granted to Defendants Hernandez where they were
5 only the landlord and did not own, harbor or keep the dog that bit Plaintiff.

6 IV. EVIDENCE RELIED UPON

7 Defendants Hernandez rely on the records and files herein and the declaration of counsel
8 with exhibits, attached hereto as Appendix A. Defendants Hernandez rely on the declaration of
9 Ernesto and Teri Hernandez, attached hereto as Appendix B and C, respectfully. Defendants
10 further rely on the pleadings and papers on file in this case.

11 V. AUTHORITY

12 A. Civil Rule 56 Allows For Summary Judgment When It Can Be Demonstrated 13 That There Is No Genuine Issue of Material Fact.

14 Summary judgment is properly granted under CR 56 when the pleadings, affidavits,
15 declarations, and documentary evidence on file demonstrate that there is no genuine issue of
16 material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c).
17 *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). A material fact is one that affects
18 the outcome of the litigation. *Ruff v. County of King*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995).
19 When reasonable minds could reach but one conclusion, questions of fact may be determined as a
20 matter of law. *Ruff* at 704, citing *Hartley v. State*, 103 Wn.2d 768, 774, 698 P.2d 77 (1985).

21 _____
22 ⁷ Deposition of David Gonzales at 8:21-9:3, 21:4-16, attached as Exhibit 2 to Declaration of Ofelia A. Granados,
Appendix A hereto.

1 The purpose of summary judgment is to avoid a useless trial. *Balise v. Underwood*, 62
2 Wn.2d 195, 199, 381 P.2d 966 (1963). Thus, the party moving for summary judgment bears the
3 initial burden of demonstrating an absence of a genuine issue of material fact and entitlement to
4 judgment as a matter of law. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d
5 182 (1989); *Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 624, 818 P.2d 1056
6 (1991); *see also Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 549, 909 P.2d 1303
7 (1996). Once that burden is met, the burden shifts to the party with the burden of proof at trial—in
8 this matter the plaintiff.

9 Once the burden is shifted, if Plaintiff does not make a showing sufficient to establish the
10 existence of an element essential to that party's case, and on which that party will bear the burden
11 of proof at trial, then the trial court should grant Summary Judgment. In such a situation, there can
12 be no genuine issue of material fact, since a complete failure of proof concerning an essential
13 element of the nonmoving party's case necessarily renders all other facts immaterial. *Hiatt v.*
14 *Walker Chevrolet Co.*, 120 Wn.2d 57, 66, 837 P.2d 618 (1992).

15 **B. Defendants Hernandez Are Not Liable Under Washington Statute As They**
16 **Did Not Own The Dog Involved In The Subject Incident.**

17 Pursuant to RCW 16.08.040, the owner of any dog which shall bite any person while such
18 person shall be liable for such damages as may be suffered by the person bitten, regardless of the
19 former viciousness of such dog or the owner's knowledge of such viciousness. Washington courts
20 have consistently held that only owners are strictly liable for injuries inflicted by their dog.

1 The goal when construing a statute is to “carry out the intent of the Legislature.” *Beeler v.*
2 *Hickman*, 50 Wash.App. 746, 750 (1988). The word “owner” clearly shows the legislative’s intent
3 to exclude keepers or possessors of a dog from liability. *Id.* at 752. RCW 16.08.040 must be
4 strictly construed and by its terms, only applies to a dog’s owner. *Shafer v. Beyers*, 26 Wash.App.
5 442, 446-47 (1980). Therefore, where the property owners are not the owners of the dog, liability
6 cannot be imposed. *Id.* Further, the landlord of the owner of the dog is not liable for any damages
7 sustained. *Frobig v. Gordon*, 124 Wn.2d 732, 736 (1993); *see also Clemmons v. Fidler*, 58
8 Wash.App. 32, 36 (1990).

9 In this case, it is undisputed that Defendants Hernandez were not the owners of the dog
10 involved in the subject incident. It is also undisputed that Defendants rented the property and
11 were landlords to Codefendants, who were the lawful and registered owners of the dog. As
12 liability flows from ownership of the dog and not simply ownership of the property, liability
13 cannot be imposed on Defendants Hernandez.

14 **C. Defendants Hernandez Are Not Liable Under Common Law Strict Liability**
15 **As They Did Not Own, Keep, Or Harbor The Dog Involved In The Subject Incident.**

16 Under common law, a person who does not own, keep, or harbor the dog is not liable for
17 any injuries caused by the dog. *Shafer*, 26 Wash.App at 447. Harboring means “protecting, and
18 one who treats a dog as living at his house and undertakes to control his actions is the owner and
19 harborer . . .” *Id.*; *see also Markwood v. McBroom*, 110 Wash. 208, 211 (1920).

20 Two theories of liability exist at common law; a dog owner who knows of vicious or
21 dangerous propensities may be strictly liable and an owner, without such knowledge may be

1 negligent if he fails to prevent harm. *Beeler*, 50 Wash.App. at 753. In short, liability flows from
2 ownership or direct control. *Frobig*, 124 Wn.2d at 735. Ownership of the property does not make
3 the property owner liable for tenants who own, keep, or harbor a dangerous dog. *Clemmons*, 58
4 Wash.App. at 35. The court in *Clemmons* expressly rejected previous holdings from other
5 jurisdictions, in which a property owner could be held liable for injuries if there was knowledge of
6 a dog's dangerous tendencies. *Clemmons*, 58 Wash.App. at 35. The law that a landlord cannot be
7 held liable for harm caused, even if the landlord knew the dog was dangerous. *Id.*

8 Here, Defendants Hernandez did not own or keep the dog. Defendants Hernandez had no
9 input or knowledge Codefendants were purchasing a dog and had no knowledge or reason to know
10 the dog had vicious tendencies. Defendants Hernandez never brought the dog to their home, nor
11 did they help care for the dog in any way. Additionally, under the definition of harboring as
12 established in *Shafer*, Defendants Hernandez did not protect or control the dog's actions.
13 Washington courts have repeatedly held that only the owner, keeper or harbinger of a dog that bites
14 a person is liable, regardless of the landlord's knowledge of the dog. As such, because Defendants
15 Hernandez were only the property owners and did not the own, keep, or harbor the dog involved in
16 the subject incident, they cannot be held liable for any damages caused by Codefendants' dog.

17 **D. Defendants Hernandez Are Not Liable Under Premise Liability As There Is**
18 **No Duty To Plaintiff.**

19 In the complaint, Plaintiff alleges the Defendants Hernandez "breached duties of care of a
20 possessor of land owed" to Plaintiff and that the dog "was a dangerous condition of the land". A
21 premise liability claim is inconsistent with Washington law. It has been long established that a
22

1 “landlord owes no greater duty to the invitees or guests of his tenants he owes to the tenant
2 himself.” *Clemmons*, 58 Wash.App at 37; *Frobig*, 124 Wn.2d at 735. Essentially, tenancy is
3 similar to a conveyance, in the sense that a lessor “surrenders both possession and control of the
4 land during the term of the tenancy.” *Id.*

5 In *Frobig*, the court recounted that, under Washington common law, a landlord is only
6 liable to a tenant for harm caused by latent defects in the lease that existed at the outset of the lease
7 of which the landlord had actual knowledge and of which the landlord failed to inform the tenant.
8 *Frobig*, 124 Wn.2d at 735. If any condition is developed or created after the property has been
9 leased, it is the general rule that “a landlord is not responsible, either to persons injured on or off
10 the land, for any conditions which develop or are created by the tenant after possession has been
11 transferred. *Id.* at 736. This also aligns with RCW 59.18.060, which provides in part, “[n]o duty
12 shall devolve upon the landlord to repair a defective condition under this section . . . where the
13 defective condition complained of was caused by the conduct of such tenant, his family”

14 Here, Defendants Hernandez began leasing this property approximately four years go to
15 Codefendants. At the time that Defendants Hernandez surrendered possession and control of the
16 property, there was no wire fence and Codefendants did not have the subject dog. Years later,
17 Codefendants installed a fence and purchased the subject dog. As such, it was Codefendants who
18 created the “dangerous condition of the land” that Plaintiff is alleging. Washington law has
19 established that a landlord would not be liable for to the tenant and therefore should not be liable
20 to a third party. Based on the above, Defendants Hernandez would not be liable to Plaintiff for
21 any injuries she sustained as they did not owe her a duty.

22
23 DEFENDANTS HERNANDEZ’S MOTION FOR
SUMMARY JUDGMENT - 7

TODD A. BOWERS & ASSOCIATES
901 5th Avenue, Ste 830
Seattle, WA 98164
TEL: (206) 521-5000
FAX: (855) 830-3808
Employees of the Law Department
State Farm Mutual Automobile Insurance Company

1 **VI. CONCLUSION**

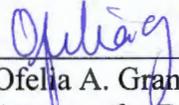
2 Plaintiff has alleged that Defendants Hernandez are liable for the subject incident. Plaintiff
3 has failed to produce sufficient evidence to support this claim. Furthermore, case law has
4 consistently established that landlords are not liable for damages caused by a dog who is owned by
5 a tenant. Therefore, Defendants Hernandez are entitled to dismissal and the Motion for Summary
6 Judgment should be granted.

7 **VII. PROPOSED ORDER**

8 A proposed form of Order is attached hereto as Appendix D.

9 DATED this 12 day of July, 2019.

10 **TODD A. BOWERS & ASSOCIATES**

11
12 By: 

13 _____
14 Ofelia A. Granados, WSBA #53917
15 Attorney for Defendants Hernandez
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1 **DECLARATION OF SERVICE**

2 I hereby declare under the penalty of perjury under the laws of the State of Washington
3 that I have served a true and correct copy of the foregoing, except where noted, upon the
4 individual(s) listed by the following means:

4 Snohomish County Superior Court Clerk
3000 Rockefeller Ave, M/S 605
5 Everett, WA 98201

6 U.S. Postal Service (First Class)

7 The Honorable Janice Ellis
ATTN: Judge's Mailroom
8 Snohomish County Superior Court
3000 Rockefeller Ave
9 Everett, WA 98201

10 U.S. Postal Service (First Class)

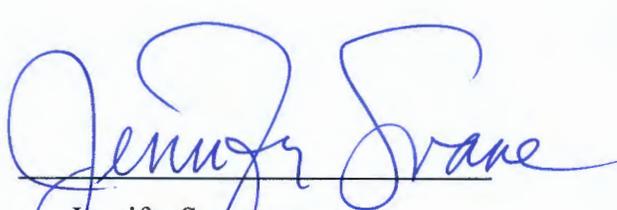
11 Derek K. Moore
Bishop Legal
12 19743 1st Avenue S
Normandy Park, WA 98148
13 derek@bishoplegal.com

14 U.S. Postal Service (First Class)

15 Cassandra Lopez de Arriaga
Cassandra Lopez de Arriaga Law Firm
16 1812 Hewitt Ave., Ste 204
Everett, WA 98201

17 U.S. Postal Service (First Class)

18
19 DATED: July 12, 2019

By: 

20 Name: Jennifer Svane

21 Title: Legal Secretary

22
23 DEFENDANTS HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT - 9

TODD A. BOWERS & ASSOCIATES
901 5th Avenue, Ste 830
Seattle, WA 98164
TEL: (206) 521-5000
FAX: (855) 830-3808
Employees of the Law Department
State Farm Mutual Automobile Insurance Company

APPENDIX A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDREA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ, TERI
HERNANDEZ and the marital community
comprised thereof,

Defendants.

No. 18-2-08290-31

DECLARATION OF OFELIA
GRANADOS IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT

I, Steven Takahashi, declare and state as follows:

1. I am over the age of 18, have personal knowledge of all facts contained in this Declaration, and am competent to testify as a witness to those facts.
2. I am an attorney with Todd A. Bowers & Associates, the attorneys of record for Defendants Ernesto and Teri Hernandez in the above-captioned matter.
3. Attached hereto as the following exhibits and incorporated herein by reference is a true and correct copy of the following documents:

DECLARATION OF OFELIA GRANADOS IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 1

TODD A. BOWERS & ASSOCIATES
901 5th Avenue, Ste 830
Seattle, WA 98164
TEL: (206) 521-5000
FAX: (855) 830-3808
Employees of the Law Department
State Farm Mutual Automobile Insurance Company

- 1 Exhibit 1: Plaintiff's Complaint; and
2 Exhibit 2: Deposition transcript excerpts of David Gonzales Sandoval
3 Exhibit 3: Deposition transcript excerpts of Ernesto Hernandez

4 I declare under penalty of perjury under the laws of the State of Washington that the
5 foregoing statements are true and correct.

6 DATED this 12 day of July 2019, in Seattle, Washington.

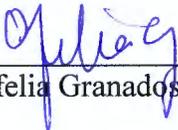
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10 Ofelia Granados

EXHIBIT 1

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

Case No. 18-2-08290-31

PLAINTIFF'S COMPLAINT

Plaintiff, for her cause of action against Defendants, and each of them, alleges as follows:

PARTIES, JURISDICTION AND VENUE

- 1.1 At all times material hereto, plaintiff MARIA JESUS SARALEGUI BLANCO is a resident of Snohomish County, Washington.
- 1.2 At all times material hereto, defendant DAVID GONZALEZ SANDOVAL is a resident of Snohomish County, Washington.
- 1.3 At all times material hereto, defendant ALEJANDRA MARTINEZ is a resident of Snohomish County, Washington.

PLAINTIFF'S COMPLAINT

PAGE 1 of 9

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- 1 1.4 At all times material hereto, defendant DAVID GONZALEZ SANDOVAL and
2 defendant ALEJANDRA MARTINEZ are and were married to each other.
- 3 1.5 All acts and omissions of defendant DAVID GONZALEZ SANDOVAL alleged herein
4 were made for the benefit of himself and his marital community.
- 5 1.6 All acts and omissions of defendant ALEJANDRA MARTINEZ alleged herein were
6 made for the benefit of herself and her marital community.
- 7 1.7 At all times material hereto, defendant ERNESTO HERNANDEZ is a resident of
8 Snohomish County, Washington.
- 9 1.8 At all times material hereto, defendant TERI HERNANDEZ is a resident of Snohomish
10 County, Washington.
- 11 1.9 At all times material hereto, defendant ERNESTO HERNANDEZ and defendant TERI
12 HERNANDEZ are and were married to each other.
- 13 1.10 All acts and omissions of defendant ERNESTO HERNANDEZ alleged herein were made
14 for the benefit of himself and his marital community.
- 15 1.11 All acts and omissions of defendant TERI HERNANDEZ alleged herein were made for
16 the benefit of herself and her marital community.
- 17 1.12 At all times material hereto, defendant ERNESTO HERNANDEZ, defendant TERI
18 HERNANDEZ, and each of them did business in Snohomish County, Washington.
- 19 1.13 At all times material hereto, defendant ERNESTO HERNANDEZ, defendant TERI
20 HERNANDEZ, and each of them, were agents of defendant DAVID GONZALEZ
21 SANDOVAL and defendant ALEJANDRA MARTINEZ, and each of them, acting
22 within the course and scope of their agency.

23
24 PLAINTIFF'S COMPLAINT

PAGE 2 of 9

b **bishoplegal**
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- 1 1.14 At all times material hereto, defendant DAVID GONZALEZ SANDOVAL and
2 defendant ALEJANDRA MARTINEZ, and each of them, were agents of defendant
3 ERNESTO HERNANDEZ, defendant TERI HERNANDEZ, and each of them, acting
4 within the course and scope of their agency.
- 5 1.15 At all time materials hereto, Defendants, and each of them, were acting in concert in a
6 negligent and unlawful manner with each other.
- 7 1.16 As one or more Defendants reside in Snohomish County Washington, as one or more
8 Defendants do business in Snohomish County, Washington, as the subject premises is
9 located in Snohomish County, Washington, as the subject pit bull attack occurred in
10 Snohomish County, Washington, and as some or all acts and omissions alleged herein
11 occurred in Snohomish County, Washington, jurisdiction and venue are proper in
12 Snohomish County, Washington.

FACTS RELATED TO OWNERSHIP AND CONTROL
OF THE SUBJECT PREMISES AND THE SUBJECT PIT BULL

- 13 2.1 Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.
- 14 2.2 At all times material hereto, defendant ERNESTO HERNANDEZ, defendant TERI
15 HERNANDEZ, and each of them, owned a residential property located at or near 6507
16 204th Street Northeast, Arlington, Snohomish County, Washington, 98223 (hereinafter,
17 "the premises.")
18
- 19 2.3 At all times material hereto, defendant ERNESTO HERNANDEZ, defendant TERI
20 HERNANDEZ rented the premises to defendant DAVID GONZALEZ SANDOVAL,
21 defendant ALEJANDRA MARTINEZ, and each of them.
- 22 2.4 At all times material hereto, defendant DAVID GONZALEZ SANDOVAL and
23 defendant ALEJANDRA MARTINEZ resided at the premises.
24

- 1 2.5 At all times material hereto, Elvia Sandoval Gonzalez, mother of defendant DAVID
2 GONZALEZ SANDOVAL, resided at the premises.
- 3 2.6 At all times material hereto, defendant DAVID GONZALEZ SANDOVAL was the
4 owner, keeper, and / or harborer of a pit bull dog named "Enzo" (hereinafter, "the subject
5 pit bull.")
- 6 2.7 At all times material hereto, defendant ALEJANDRA MARTINEZ was the owner,
7 keeper, and / or harborer of the subject pit bull.
- 8 2.8 At all times material hereto, defendant ERNESTO HERNANDEZ was a keeper and / or
9 harborer of the subject pit bull.
- 10 2.9 At all times material hereto, defendant TERI HERNANDEZ was a keeper and / or
11 harborer of the subject pit bull.
- 12 2.10 At all times material hereto, defendant ERNESTO HERNANDEZ had control over or the
13 right to control the subject pit bull.
- 14 2.11 At all times material hereto, defendant TERI HERNANDEZ had control over or the right
15 to control the subject pit bull.
- 16 2.12 At all times material hereto, the subject pit bull was kept, or was attempted to have been
17 kept, in an area of the premises bounded by a fence (hereinafter, the "subject fence.")
- 18 2.13 The subject fence was constructed by or on behalf of defendant ERNESTO
19 HERNANDEZ, defendant TERI HERNANDEZ, and each of them.
- 20 2.14 The subject fence was constructed by or on behalf of defendant DAVID GONZALEZ
21 SANDOVAL, defendant ALEJANDRA MARTINEZ, and each of them.

22 //

23 //

24 PLAINTIFF'S COMPLAINT

PAGE 4 of 9

b **bishoplegal**

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FACTS RELATED TO THE INCIDENT

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- 3.1 Plaintiffs re-alleges each and every allegation contained in the preceding paragraphs.
- 3.2 On or about 12:00 PM noon on May 8, 2018, plaintiff MARIA JESUS SARALEGUI BLANCO, arrived on the subject premises for the purposes of a religious discussion with one or more of the residents of the subject premises.
- 3.3 At the aforesaid time and place, plaintiff MARIA JESUS SARALEGUI BLANCO was accompanied by three other members of her Jehovah's Witnesses church, Teresa Jimenez, Jaylene Lyman, and Katie Lyman.
- 3.4 Plaintiff MARIA JESUS SARALEGUI BLANCO had been to the subject premises on numerous times prior to the date of the subject incident.
- 3.5 Prior to and including the date of the subject incident, Plaintiff MARIA JESUS SARALEGUI BLANCO and other members of her Jehovah's Witnesses church would regularly meet with Elvia Sandoval Gonzalez, mother of defendant DAVID GONZALEZ SANDOVAL, for Bible study on the subject premises.
- 3.6 On or about May 8, 2018 from approximately noon to 12:26 PM, plaintiff MARIA JESUS SARALEGUI BLANCO, had been speaking with Elvia Sandoval Gonzalez, mother of defendant DAVID GONZALEZ SANDOVAL.
- 3.7 At the aforesaid time and place, plaintiff MARIA JESUS SARALEGUI BLANCO, was speaking with Elvia Sandoval Gonzalez approximately 50 feet or more away from the subject fence, a distance which plaintiff MARIA JESUS SARALEGUI BLANCO perceived to be safe.
- 3.8 At the aforesaid time and place, the subject pit bull escaped from the subject fence, and viciously attacked, mauled, and repeatedly bit plaintiff MARIA JESUS SARALEGUI

1 BLANCO, biting off her right ear, biting much of her face, and causing other severe
2 injuries.
3 3.9 At the aforesaid time and place, the subject pit bull also attacked and bit Teresa Jimenez
4 and Elvia Sandoval Gonzalez. Orlando Kyle Sullivan, a neighbor to the premises and
5 brother-in-law to defendant DAVID GONZALEZ SANDOVAL responded to the scene,
6 and the subject pit bull bit him as well.
7 3.10 The aforesaid pit bull attack occurred without warning to plaintiff MARIA JESUS
8 SARALEGUI BLANCO.
9 3.11 The aforesaid pit bull attack occurred without provocation on the part of plaintiff MARIA
10 JESUS SARALEGUI BLANCO or of any member of her party of Jehovah's Witnesses.
11 3.12 Plaintiff MARIA JESUS SARALEGUI BLANCO was not at fault for the subject attack.
12 3.13 Plaintiff MARIA JESUS SARALEGUI BLANCO had no reason to know that the subject
13 pit bull was about to attack her, had no reason to know the subject fence was inadequate
14 to contain the subject pit bull, and had no reason to know that reasonable measures had
15 not been taken to protect her from the subject pit bull.

16 PLAINTIFF'S CLAIMS FOR STRICT LIABILITY AND FOR NEGLIGENCE

17 4.1 Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.
18 4.2 Defendant DAVID GONZALEZ SANDOVAL, as owner, keeper, and / or harbinger of the
19 subject pit bull, is strictly liable for Plaintiff's damages caused by the subject pit bull
20 attack.
21 4.3 Defendant ALEJANDRA MARTINEZ, as owner, keeper, and / or harbinger to the subject
22 pit bull, is strictly liable for Plaintiff's damages caused by the subject pit bull attack.
23

- 1 4.4 Defendant ERNESTO HERNANDEZ, as keeper and / or harbinger to the subject pit bull,
2 is strictly liable for Plaintiff's damages caused by the subject pit bull attack.
- 3 4.5 Defendant TERI HERNANDEZ, as keeper and / or harbinger to the subject pit bull, is
4 strictly liable for Plaintiff's damages caused by the subject pit bull attack.
- 5 4.6 Defendants, and each of them, failed to exercise ordinary care to control the subject pit
6 bull or ensure the subject pit bull was controlled.
- 7 4.7 Defendants, and each of them, failed to exercise ordinary care to ensure that the subject
8 fence was adequate to contain the subject pit bull.
- 9 4.8 Defendants, and each of them, knew or had reason to know that the subject pit bull was
10 dangerous or had dangerous tendencies making it likely to cause injury.
- 11 4.9 Defendants DAVID GONZALEZ SANDOVAL and defendant ALEJANDRA
12 MARTINEZ, and each of them, breached duties of care of a possessor of land owed to
13 plaintiff MARIA JESUS SARALEGUI BLANCO.
- 14 4.10 Defendants ERNESTO HERNANDEZ and defendant TERI HERNANDEZ, and each of
15 them, breached duties of care of an owner of land owed to plaintiff MARIA JESUS
16 SARALEGUI BLANCO.
- 17 4.11 Defendants, and each of them, knew or had reason to know that the subject pit bull was a
18 dangerous condition of the land, that the subject fence was dangerously inadequate to
19 contain the subject pit bull. Defendants, and each of them, failed to exercise reasonable
20 care to make these conditions safe or provide adequate warnings of the risks involved.
- 21 4.12 Plaintiff's injuries and damages were caused and proximately caused by each and all of
22 the aforesaid breaches of duties on the part of Defendants, and each of them.

23 //

24 PLAINTIFF'S COMPLAINT

PAGE 7 of 9

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PLAINTIFF'S INJURIES AND DAMAGES

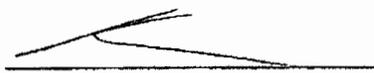
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- 5.1 Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.
- 5.2 As a direct and proximate result of the subject pit bull attack and the negligence and / or statutory violations alleged herein, plaintiff MARIA JESUS SARALEGUI BLANCO suffered severe, permanent and disabling personal injuries, including but not limited to severe dog bite injuries to her face, her right ear, her head, her neck, and other parts of her body, for which surgery was required. Although medical attention and supportive remedies have been resorted to, said injuries, together with pain, discomfort and limitation of movement, permanent scarring and disfiguration, and mental trauma including post-traumatic stress disorder, prevails and will continue to prevail for an indefinite time into the future; that it is impossible at this time to fix the full nature, extent, severity and duration of said injuries, but they are alleged to be permanent, progressive and disabling in nature; that plaintiff MARIA JESUS SARALEGUI BLANCO has incurred and will likely continue to incur medical expenses and other expenses to be proved at the time of trial, all to her special and general damage, in an amount now unknown.
- 5.3 As a direct and proximate result of the negligence and / or statutory violations alleged herein, plaintiff MARIA JESUS SARALEGUI BLANCO has suffered other expenses, all to be proven at the time of trial.
- 5.4 Plaintiff MARIA JESUS SARALEGUI BLANCO is entitled to prejudgment interest on all medical, wage loss, and out-of-pocket expenses directly and proximately caused by the negligence and / or statutory violations alleged herein.

1 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, jointly and
2 severally, in amounts that will fairly compensate her for all damages sustained, costs and
3 reasonable attorneys' fees, interest calculated at the maximum amount allowable by law, and all
4 other relief the court deems fair and just.

5 DATED this 14th day of September, 2018.

6
7 BISHOP LEGAL

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10 Derek K. Moore
11 WSBA No. 37921
12 Attorneys for Plaintiff
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24 PLAINIFF'S COMPLAINT

PAGE 9 of 9

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EXHIBIT 2

1 A. When I think I was 18 months old.

2 Q. And what is your current address?

3 A. 6507 204th Street, 98223, Arlington,
4 Washington.

5 Q. And how long have you resided there?

6 A. I think it's been four years now.

7 Q. And do you rent that home?

8 A. Yes, I do.

9 Q. Who do you rent it from?

10 A. Ernesto Hernandez.

11 Q. How did you come across this home to rent?

12 A. I know his dad for a long time.

13 Q. And when you moved in, did you sign a lease
14 with Ernesto?

15 A. I did.

16 Q. And how much is rent a month?

17 A. 1100.

18 Q. And how is that usually paid? Does Ernesto
19 come to pick it up? Do you mail it to him?

20 A. I usually just drive by his office and drop it
21 off in cash, or I give him a check.

22 Q. And when you moved into the home about four
23 years ago, did you have any pets with you?

24 A. Yes.

25 Q. What kind?

1 a while that I wanted a puppy, and I came across it.

2 And...

3 Q. And did you go to this guy's home or did he
4 bring the dog to you?

5 A. No. I went to pick him up.

6 Q. And do you know how old Enzo was at the time?

7 A. Seven weeks. Yeah, seven weeks.

8 Q. And did you discuss purchasing a dog with
9 anybody?

10 A. No.

11 Q. Do you recall if you ever called Ernesto and
12 said that you were going to buy a dog?

13 A. I let him know after I got the dog that I had
14 the dog.

15 Q. Did he say anything in particular that you can
16 remember?

17 A. No. He didn't say anything at all.

18 Q. And when you moved into the property four
19 years ago, were there any fences?

20 A. Just the fence that's around the property.

21 Q. Did you install an additional fence?

22 A. I did the -- yeah, I fenced out a section of
23 the backyard.

24 Q. Do you remember when you did that?

25 A. I think at the time, the dog had to have been

1 about four months old. It was around...

2 Q. And did you build that on your own?

3 A. I did.

4 Q. And did Enzo do any type of doggy training at
5 like -- well, I don't know if you guys have PetSmart up
6 here. Is there like a Petco? They usually have those.

7 A. No, I didn't.

8 Q. And how was Enzo as a dog?

9 A. He was really a good dog.

10 Q. When you had company over, how would he act?

11 A. He would act like a normal dog: Just wag his
12 tail. If it was like my friends or any of my
13 relatives, he wouldn't bark at all. I made sure my dog
14 was comfortable around my friends.

15 Q. How did he and the chihuahua get along?

16 A. Fine. There's pictures of them together.
17 There's also pictures of them with my sister's dog.

18 Q. And do you know or know of Maria Blanco?

19 A. I've only seen her once.

20 Q. Do you remember when that was?

21 A. I can't remember. I think the dog might have
22 been about a year old. Or it could have been a little
23 bit less, but it was around that time.

24 Q. And what was she doing when you saw her?

25 A. Just knocking the door and wanted to talk

1 Q. And were those other people there at the door
2 with you? Or with her, I should say?

3 A. Some of them would be, and some of them would
4 be in the car.

5 Q. Do you know if -- when you had told her not to
6 come, if one of the other people she was with overheard
7 that?

8 A. That wouldn't be -- when I told her that, I
9 think there was a younger gal with her, but I can't
10 remember who. I wouldn't even remember Ms. Saralegui's
11 face if I saw her in public.

12 Q. And you took Enzo to the vet regularly,
13 correct?

14 A. Yeah. He was on a puppy plan.

15 Q. And did you get him registered with like
16 animal control out here as well?

17 A. No.

18 Q. Do you recall ever getting any type of
19 complaints about Enzo prior to the 2018 accident?

20 A. No.

21 Q. Did you ever see him act aggressive in any
22 way?

23 A. No. I made sure that he wouldn't act
24 aggressive. I would walk him every afternoon. We took
25 him hiking. I honestly was surprised when it happened.

1 Q. And how did you find out that something had
2 happened?

3 A. I got a call from my mom when I was at work.

4 Q. And what did she say?

5 A. The dog got out and bit two people and then
6 the line was cut.

7 Q. And where were you at the time?

8 A. I was in Kenmore.

9 Q. Were you working?

10 A. Yes.

11 Q. Did Ernesto or his wife, Teri, ever come watch
12 the dog or help take care of it?

13 A. No.

14 Q. Do you know if Ernesto ever saw the dog?

15 A. You could see the dog maybe as you drove by
16 'cause -- but you could see that it was a pet in the
17 yard.

18 Q. Did he ever get to meet Enzo?

19 A. Not that I remember.

20 Q. And if there were any repairs on the home that
21 needed to be done, how did that work? Would you just
22 call Ernesto or Teri about something, and they would
23 come out? How did that kind of work?

24 A. Well, I'd call them. And if it was something
25 small, I would take care of it, and then we'd just

1 THE REPORTER: I will do my best with
2 that, in Spanish, on the record.

3 MS. GRANADOS: Oh, I can write it for you.

4 Q. (BY MR. MOORE.) So before the -- before the
5 attack, how often would be Ernesto -- sorry. Yeah, how
6 often would Ernesto Hernandez be on the property?

7 A. Never.

8 Q. Did he ever come to the property prior to the
9 dog attack?

10 A. Yeah, he would come, like I said. Like, if
11 there was -- if he was driving by, and I was outside
12 working on -- on whatever, he'd just stop by and see if
13 everything was fine.

14 Q. Have you ever seen him with the dog, Enzo?

15 A. No. I don't see why he would. He was my dog,
16 not his.

17 Q. Did he ever come to the property and get out
18 of his vehicle at a time when the dog, Enzo, was there?

19 A. No. He's not the type of people that stops by
20 all the time. He only stops by if he needs to.

21 Q. Well, I mean, is there any time when he needed
22 to stop by, say, to replace the water heater or do
23 repairs of any kind when the dog was there?

24 A. I -- I don't understand what you're trying to
25 say.

EXHIBIT 3

1 off rent, do you keep any invoices or anything like that?

2 A Who?

3 Q When Sandoval, David Sandoval, comes to drop off
4 rent --

5 A Yeah, we have kept some, you know. I got some -- yeah,
6 some receipts here and there. I don't think every time we
7 have.

8 Q And I know you mentioned that there was no pet deposit,
9 but did they give you a security deposit?

10 A Yes.

11 Q Do you recall how much?

12 A 500.

13 Q The dog that's shown in Exhibit 1, I believe it's
14 Photo 108, do you own that dog?

15 A No.

16 Q Have you ever helped care for the dog?

17 A No.

18 Q Have you ever taken it to the vet, anything like that?

19 A No.

20 Q And whenever rent was due, would David just come into
21 your insulation office, A&E?

22 A Most of the time. Sometimes he called me, you know,
23 Where are you at? The store, Lowe's or something, you know,
24 maybe somewhere.

25 Q And he would meet you somewhere?

EXHIBIT 6

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2019 AUG 23 PM 1:46
TODD A. BOWERS & ASSOC.

Hon. Janice Ellis, Civil Motions Calendar
Hearing: Tuesday, Sept. 10, 2019 at 9:30 AM
With Oral Argument
Non-moving Party

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Case No. 18-2-08290-31

Plaintiff,

PLAINTIFF'S RESPONSE TO
DEFENDANTS HERNANDEZ'S
MOTION FOR SUMMARY
JUDGMENT

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

I. RELIEF REQUESTED

Plaintiff Maria Saralegui Blanco was viciously attacked by a pit bull while providing Bible studies to one of Defendants Hernandez's tenants on the driveway of the premises. The pit bull bit off much of her face, and as she lay on the ground bleeding, she watched the dog eat her right ear. The attack was unprovoked, and the dog had escaped from a poorly built and rotten fence. Defendant Ernesto Hernandez knew that defendant David Gonzalez Sandoval owned and kept the pit bull on his property and did so with his permission. Defendant Ernesto Hernandez also knew and permitted defendant David Gonzalez Sandoval to build the fence on his property. Although defendant Ernesto Hernandez knew the pit bull was there, and had been to the property

PLAINTIFF'S RESPONSE TO DEFENDANTS
HERNANDEZ'S MOTION FOR SUMMARY
JUDGMENT

PAGE 1 of 17

b **bishoplegal**
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1 for yearly inspections, with testimony showing he went by the property on a daily basis,
2 Defendants Hernandez admittedly did nothing to ensure the fence was adequate to contain the
3 dog and protect the public. Defendants Hernandez may not be strictly liable for injuries caused
4 by the pit bull attack under Chapter 16.08 RCW or under the common law as addressed in the
5 cases of *Frobig, Shafer and Clemmons*, as relied on by the defense. There are still genuine issues
6 of material fact that owed and breached other duties to Plaintiff, including duties owed to an
7 invitee or to a licensee under Washington law including the 2016 case of *Oliver v. Cook*.
8 Accordingly, Plaintiff respectfully requests Defendants Hernandez's motion be DENIED with
9 prejudice.

10 II. STATEMENT OF FACTS

11 The pleadings and papers on file herein, including the Declaration of Derek K. Moore in
12 Support of Plaintiff's Response (Moore Decl.) and exhibits thereto support the following facts:

13 On Tuesday, May 8, 2018 around noon, a pit bull named Enzo escaped from a fence
14 through a rotten, chewed up board and viciously attacked plaintiff Maria Saralegui Blanco and
15 three other people in the driveway of Defendants' property at 6507 204th Street Northeast,
16 Arlington, Snohomish County, Washington, 98223 ("the premises" or "the property"). The
17 attack is described in vivid detail by Maria Blanco,¹ as well as by witnesses Teresa Jimenez,
18 Jaylene Lyman, and Katie Lyman who were with her.²

19 Maria is a Jehovah's Witness, who at the time of the attack, was visiting the premises for
20 Bible study with Elvia Gonzalez, who lives there with her son, defendant David Gonzalez
21 Sandoval and David's wife, defendant Alexandra Barajas Gonzalez (named as a defendant in this

22 ¹ Maria Blanco deposition, Pages 25-36;

23 ² Declaration of Teresa Jimenez, ¶ 7, 8, and attached police statement; (Ex. 3 to Moore Decl.), Declaration of
24 Jaylene Lyman ¶ 6,7, and attached police statement (Ex. 4 to Moore Decl.), and Declaration of Katie Lyman, ¶ 5, 6,
and attached police statement (c.);

1 action under “Alejandra Martinez”).³ David moved onto the premises with his mother, Elvia,
2 sometime between 2014 and 2016, along with two siblings.⁴ David married Alexandra in
3 October of 2017, and she moved into the premises in 2017.⁵ At the time of the dog attack,
4 Alexandra was pregnant with their son, who was born after the incident.⁶ At the time of the
5 attack, David lived on the premises with his mother, Elvia, and his wife, Alexandra.⁷

6 Maria testified that she had been to the property around five times prior to the day of the
7 attack for Bible study with Elvia, and that Elvia invited her and other Jehovah’s witnesses to visit
8 on Tuesdays.⁸ On the day of the attack, she was accompanied by Teresa Jimenez, Jaylene
9 Lyman, and Jaylene’s sister Katie Lyman, who were also Jehovah’s Witnesses providing Bible
10 studies.⁹ Teresa describes their study sessions with Elvia as follows:

11 For several months before the incident, we would meet with Elvia at her home on
12 a weekly basis for months prior to the incident. We would meet on Tuesdays,
13 because Elvia had Tuesdays off from work. The sessions would start around
10:30 AM to 11:30 AM, and usually last around 15 to 20 minutes, sometimes
more. The sessions were held in Spanish.

14 Declaration of Teresa Jimenez, ¶ 4. She also testified that Elvia invited her inside the house on a
15 couple of occasions. *Id.*, ¶ 5. They were nervous and concerned about the pit bull, who would
16 bark at them, but they felt safe because the dog appeared to be contained within the fence.¹⁰

18 ³ Maria Blanco deposition, Page 14, Jimenez Decl. ¶ 9, Jaylene Lyman Dec. ¶4, Katie Lyman Dec. ¶ 3 and 4; Elvia
19 Gonzalez deposition, Pages 6-7. First names are used herein for clarity, with no disrespect intended. Defendant
Alejandra Martinez reports her correct name is Alexandra Barajas Gonzalez. Alejandra Martinez deposition, Page
10.

20 ⁴ Ernesto Hernandez deposition, Page 23; David Sandoval deposition, Page 6. Ernesto and David testify that David
21 moved in around 2015 or 2016, but the Residential Rental Agreement provided by David and Alexandra in response
to Plaintiff’s written discovery requests is dated July 1, 2014. (Ex. 6 to Moore Dec.)

22 ⁵ David Sandoval deposition, Pages 6-7

23 ⁶ Elvia Sandoval deposition, Page 14:5-6 and Page 49

24 ⁷ Ernesto Hernandez deposition, Pages 28-30; Teri Hernandez deposition, Page 19.

⁸ Maria Blanco deposition, Page 14:10-14;

⁹ Declaration of Teresa Jimenez ¶ 6, Declaration of Jaylene Lyman ¶ 5, Declaration of Katie Lyman ¶ 5.

¹⁰ Declaration of Teresa Jimenez, Declaration of Jaylene Lyman, Declaration of Katie Lyman; Maria Blanco
deposition, Pages 16-18, 23-24

1 It is undisputed that there were no warning signs or “beware of dog” signs on the
2 property, and there were no signs prohibiting solicitation.¹¹ The Jehovah’s Witness church
3 policy is to have its members honor people’s requests to stay away from their homes.¹²
4 Defendant Teri Hernandez also happens to be a Jehovah’s Witness who provides Bible study.¹³
5 She testifies that it is the policy of the Jehovah’s Witnesses to keep a record of people who tell
6 them not to come back.¹⁴ If someone tells them not to come back, they will not return for at
7 least three years, and then only an elder can return to see if they are still not welcome.¹⁵ Maria
8 and her companions all testified that nobody told them to leave, to stay away, that they were
9 trespassing or that they were not welcome there.¹⁶ Elvia testified that Maria came to her house to
10 talk to her about the Bible.¹⁷ Although Elvia said she never asked Maria to come back,¹⁸ Elvia
11 testified that Maria came back several times.¹⁹ She states, “It was not forced conversation about
12 the Bible.”²⁰ Elvia testified that she did “invite her into the home” but “only once” when the
13 weather was bad.²¹ Elvia acknowledges that she never told Maria to leave. She testified, “I
14 don’t know if I’m guilty or not. Sometimes, I say if I communicate, **if I had told the woman to**
15 **leave, this may not have happened.**”²²

16 Elvia was alone at home at the time that Maria and came to see her.²³ She
17

18 ¹¹ David Sandoval deposition, Page 31:5-15; Ernesto Hernandez deposition, Page 47:13-15

19 ¹² Declaration of Teresa Jimenez ¶ 9, Declaration of Jaylene Lyman ¶ 8, Declaration of Katie Lyman ¶ 7.

20 ¹³ Teri Ernesto Hernandez deposition, Pages 37-38

21 ¹⁴ *Id.*, Pages 38-39

22 ¹⁵ *Id.*

23 ¹⁶ Declaration of Teresa Jimenez ¶ 9, Declaration of Jaylene Lyman ¶ 8, Declaration of Katie Lyman ¶ 7; Maria
24 Blanco deposition, Pages 48:20-22, 49:2-4

¹⁷ Elvia Sandoval deposition, Page 9:18-19

¹⁸ *Id.*, Page 9:21-22

¹⁹ *Id.*, Page 10

²⁰ *Id.*, Page 10:8-9

²¹ *Id.*, Page 10:14-18

²² *Id.*, Page 22:16-18 (emphasis added)

²³ *Id.*, Page 19

1 testified that when Maria came to her home, Elvia received her, and that they went to the middle
2 of the yard to talk.²⁴ Elvia thinks that she had been speaking with Maria for “maybe ten
3 minutes” before the dog attacked, and that they were standing next to the truck.²⁵ Elvia didn’t see
4 the dog escape, since her back was to the dog.²⁶ She thinks that the dog “just skipped through”
5 the wood shown on photo number 80 in Exhibit 1 to her deposition.²⁷ The fence had gates but
6 the gates were closed at the time.²⁸ Elvia also testified that to her knowledge Maria did nothing
7 to provoke the dog to attack, and that Maria did not have any interaction of any kind with the
8 dog.²⁹

9 Maria testifies that she arrived at around 11:30 AM, and usually studies half an hour with
10 Elvia.³⁰ The attack occurred sometime between 12:00 noon and 12:30 P.M.³¹ They had just
11 completed their studies, and she had just closed her Bible, when the dog was on her.³² Referring
12 to Exhibits 1-6 of her deposition (Ex. 1 to Moore Decl.) Maria describes the attack and the
13 location of the attack.³³ She described how the dog escaped from the fence and attacked her:

14 Q. And for the record, you’re indicating the middle of Exhibit 6, near where the
15 police officer is?

16 A. Yes. It was there that he jumped, yes. Because I saw here where he bit a piece
17 of wood, and he jumps here. I looked at him. It looked like he was flying, but he
18 wasn’t flying but he was so fast that he jumped. So he escaped here. And so the

17 ²⁴ *Id.*, Page 50

18 ²⁵ *Id.*, Page 28:6-13; Pages 28-30, 34

19 ²⁶ *Id.*, Page 20:1-3

20 ²⁷ *Id.*, Pages 42:19-43:5; The photos referred to as Exhibit 1 to her deposition are included here as Ex. 2 to Moore
21 Decl. Elvia described the attack and the scene in further detail on pages 20-21, 24-45, and 28-30 to her deposition,
22 with references to the photos. She identified the subject pit bull, Enzo, in photo 108 of the exhibit. Ernesto
23 Hernandez also describes the property in the photos of this exhibit in Pages 65-69 of his deposition.

24 ²⁸ Elvia Sandoval deposition, Page 42:11-14

²⁹ *Id.*, Page 40:23-41:9

³⁰ Maria Blanco deposition, Page 24:10-25

³¹ *Id.*, Page 14:6-7

³² *Id.*, Page 28

³³ *Id.*, Pages 50-53. Maria was not on the wooden structure by the door at the time, but in the driveway by the car.
While her testimony was interpreted from Spanish to English as “porch” or “patio,” she clarified that she was not on
the wooden structure at the time of the attack, but in the driveway by the truck, where the pool of her blood is shown
on Exhibit 2 to her deposition (Ex. 1 to Moore Decl.)

1 police officer realized that a piece of wood had fallen here, and he jumped -- he
2 could jump through here. The fence was very poor.

3 Maria Blanco deposition, Page 52:3-11. The dog attacked four people, including Maria, Teresa,
4 Elvia, and Elvia's son.³⁴ Maria describes how the dog savagely bit her face, but "not just the
5 face; he pulled out this, my ear, and he ate it right in front of me. He ate my ear."³⁵

6 David testified that the wood plank in the fence through which the dog escaped was made
7 of plywood,³⁶ and the ragged condition of the wood "had to have been probably there for a
8 year."³⁷ David thinks the wood could have gotten that way from the dog chewing on it as well as
9 from the weather.³⁸ He thinks the dog could have chewed through it in a couple of minutes
10 because it had been rotten from being exposed to the weather.³⁹ Alexandra testifies that the
11 wood got in that condition by the dog's chewing.⁴⁰

12 Defendants Ernesto and Teri Hernandez own the premises.⁴¹ Ernesto believes they
13 bought the property in 2011, but Teri thinks they bought it earlier, around 2005.⁴² Ernesto and
14 Teri own about 20 properties in Snohomish County.⁴³ David testifies that he signed a lease with
15 Ernesto when he first moved in, but the lease was for two years and was never renewed.⁴⁴

16 Although Ernesto and Teri testify there was no written lease in effect,⁴⁵ Ernesto testifies
17 he had a verbal agreement that included David keeping the yard clean.⁴⁶ He testifies there are no

18
19 ³⁴ Maria Blanco deposition, Page 28

³⁵ *Id.*, Page 28:2-5

³⁶ David Sandoval deposition, Page 25 (referring to photo 80)

³⁷ *Id.*, Page 26:20-25

³⁸ *Id.*, Page 27:18-20

³⁹ *Id.*, Pages 29:19-22 and 30:14-18. (David uses the word "weatherized" to describe exposure to "rain, air, water,
20 sun.", *Id.*, Page 30:12-13.

⁴⁰ Alejandra Martinez deposition, Page 12:14-15

⁴¹ Ernesto Hernandez deposition, Pages 18-19; Teri Hernandez deposition, Pages 17-18.

⁴² *Id.*

⁴³ Ernesto Hernandez deposition, Pages 24-28

⁴⁴ David Sandoval deposition, Page 15:10-11

⁴⁵ Ernesto Hernandez deposition, Page 35; Teri Hernandez deposition, Pages 20-21.

1 terms of the agreement regarding the upkeep, maintenance, or repairs on the property, and he has
2 no policies regarding any alterations.⁴⁷ Ernesto testifies he has no policies regarding animals or
3 pets on the property.⁴⁸ However, the 2014 “Residential Rental Agreement” provides that “No
4 pets shall be brought onto the premises for ANY purpose without the prior written consent of the
5 owner agent.” Residential Rental Agreement, Page 1 (Ex. 6 to Moore Dec.) (emphasis in
6 original). It also provides that “Tenants shall not make any changes or improvements to this
7 home, inside or out, without written permission of the Landlord.” *Id.*, Page 2. The Agreement
8 requires Tenant(s), their family and invitees shall comply with all rules and regulations at the
9 time of occupancy ... and any future rules and regulations the landlord deems necessary.” *Id.*
10 The Agreement also includes a provision for “INSPECTIONS” under which the landlord may
11 enter the “home at reasonable times” including with 24 hours’ notice to show the property to
12 prospective buyers or tenants, and with 48 hours’ notice “for inspections, to fill maintenance
13 requests or make improvements. *Id.* In the “case of suspected abandonment or emergency, the
14 Landlord or Landlord’s representatives, may enter at any time.” *Id.* (emphasis in original).
15 Ernesto testifies he drives by the property “maybe twice a year” and inspects the property once a
16 year.⁴⁹ On his inspection, he also looks at the condition of the yard.⁵⁰

17 When David and Elvia first moved in, they had a small dog which was a four-pound
18 chihuahua mix, which Ernesto knew about.⁵¹ David later got the subject pit bull, Enzo, when he
19 was a puppy.⁵² At some point the chihuahua did live with the pit bull,⁵³ though they gave the
20

21 ⁴⁶ Ernesto Hernandez deposition, Page 35

22 ⁴⁷ *Id.*

23 ⁴⁸ *Id.*, Page 36

24 ⁴⁹ Ernesto Hernandez deposition, Page 33

⁵⁰ *Id.*, Page 34

⁵¹ David Sandoval deposition, Page 6, Elvia Sandoval deposition, Pages 11-12

⁵² Elvia Sandoval deposition, Pages 11-12

1 chihuahua to Elvia's daughter, who moved out long before to the incident.⁵⁴ David testifies he
2 bought the dog in September of 2016 when the dog was seven weeks old, and told Ernesto that
3 he had bought the dog.⁵⁵

4 When Ernesto bought the property, there was a wood fence on the north and west side,
5 and a chain link fence on the east, but no fencing on the south side.⁵⁶ David Sandoval added the
6 wire fence portion, from which the pit bull ultimately escaped, to the south side when he got the
7 pit bull.⁵⁷ David built the additional fencing when the dog was about four months old.⁵⁸ If the pit
8 bull was seven weeks old in September of 2016, this would place the building of the fence
9 addition around November or December of 2016.

10 Ernesto testifies that he knew David had a pit bull, and saw the pit bull when he was a
11 puppy sometime in the summer of 2017.⁵⁹ Though he never expressed any concern about what
12 would happen when the pit bull puppy grew up.⁶⁰ He had no "discussions regarding whether or
13 not the fence would be improved or upgraded as the dog got bigger."⁶¹ However, if the dog was
14 seven weeks old in September of 2016, it would have been nearly full grown by the summer of
15 2017.⁶² There are also conflicting accounts about how often Ernesto came to the property
16 between the time that David got the dog and the day of the attack. Elvia testifies that "Ernesto is
17 someone who walks my house every -- every single day."⁶³ Elvia elaborated:

19 ⁵³ David Sandoval deposition, Page 9

20 ⁵⁴ Elvia Sandoval deposition, Page 44:15-17; See also Ernesto Hernandez deposition, Pages 37:22 – 38:8

21 ⁵⁵ David Sandoval deposition, Pages 7-8

22 ⁵⁶ Ernesto Hernandez deposition, Page 24

23 ⁵⁷ *Id.*, Pages 41-42 and 44-45; Elvia Sandoval deposition, Pages 11-12

24 ⁵⁸ David Sandoval deposition, Pages 8-9

⁵⁹ Ernesto Hernandez deposition, Pages 37, 39.

⁶⁰ *Id.*, Page 40

⁶¹ *Id.*, Pages 45:23-46:1

⁶² See <http://www.goodpitbulls.com/health-care/pit-bulls-stop-growing/> ("Typically, pit bulls reach full height
between 12 to 18 months old and full weight between two or three years old.") (last visited August 21, 2019)

⁶³ Elvia Sandoval deposition, Pages 17:24-25

1 When Mr. Ernesto was going there, he was always talking to me. He would say,
2 I'm going to swing by. And -- but he was walking by almost every day because it
was on the way to his house.

3 Elvia Sandoval deposition, Pages 17:24-25. She also specifically testified that Ernesto was there
4 when the pit bull was fully grown, and that the dog would bark at him when he was there.⁶⁴

5 Alexandra also testified that she saw Ernesto at the property when Enzo was fully grown, and
6 that "Ernesto saw that there was a pit bull at the property, and he knew that the pit bull was kept
7 there."⁶⁵ In any event, it is undisputed that Ernesto knew that David had a pit bull on the
8 property, and that it was there with Ernesto's permission.⁶⁶

9 Ernesto also knew about the fence and approved it. He testifies:

10 Q. Okay. So sometime before you went to the property in 2017 and saw the dog,
he called you and you had a conversation about the dog and the fence?

11 A. Yeah. He asked me if he could put in a fence; he was going to get a little dog.

12 Q. Okay. And what did you say?

13 A. Yeah, that's fine.

14 Q. Did you ask him what kind of dog he had?

15 A. No.

16 Q. Did you ask him what kind of fence he planned on putting in?

17 A. Yeah. He said wire.

18 Ernesto Hernandez deposition, Pages 42:7-18. However, he testifies that he saw the fence, but
19 never inspected it, and he admits he did nothing to ensure it was capable of containing a pit bull:

20 Q. So when you went there after this phone call in the summer of 2017, the fence
was already in place; is that correct?

21 A. Correct.

22 Q. Okay. Did you ever inspect the fence?

23 A. No.

24 Q. Did you ever do anything to ensure that the fence was capable of containing a
pit bull?

A. No.

⁶⁴ *Id.*, Page 47:13-23; *See also* David Sandoval deposition, Page 21:8-13 (Prior to the attack, when Ernesto drove by he would "just stop by and see if everything was fine.")

⁶⁵ Alejandra Martinez deposition, Page 11:6-17

⁶⁶ David Sandoval deposition, Page 22:10-17

1 *Id.*, Page 43:3-11. David agrees:

2 Q. And did Ernesto know that you built that fence?

A. Yeah. He saw it.

3 Q. Was there any discussion about the fence, prior to building it, with Ernesto?

4 A. I let him know that I was going to put up a fence 'cause I wanted a dog to be out in the yard, and he said it was fine.

5 Q. And did he ever come out to inspect the fence after it was built?

A. No, he didn't. Or at least not that I was aware of.

6 Q. And do you know if he ever did anything at any time between the time the fence was built and the day of the attack to make sure that the fence was adequate to hold the dog?

7 A. Not that I'm aware of.

8 David Sandoval deposition, Pages 23:24-24:15 and picture 53 (Ex. 2 to Moore Decl.). See also

9 Elvia Sandoval deposition, Page 48:13-16 (Elvia has no knowledge of Ernesto or Teri doing

10 anything to make sure the fence was able to hold a dog.)

11 Ernesto has not instituted any policies against having pit bulls on any of his properties, or
12 any policies regarding what kind of fence that they need to contain the dog.⁶⁷ Ernesto agrees
13 that as a property owner, it's important to be able to recognize potential safety risks and hazards
14 on his properties.⁶⁸ Prior to this incident, he was aware "through the news" that pit bulls are seen
15 by many as dangerous dogs that have done great harm and injury.⁶⁹ However, he has not ever
16 taken any steps to educate himself as to what fencing or containment would be adequate or
17 acceptable to keep the public safe from pit bulls.⁷⁰

18 III. STATEMENT OF ISSUES

- 19 • Whether there are genuine questions of material fact from which a reasonable inference can
20 be drawn that Defendants Hernandez owed and breached any duties to Plaintiff under
21 Washington law, including duties owed by a possessor of land under *Oliver v. Cook*, when
they knew that a pit bull was kept on their premises and when they knew or should have
known that the fence was inadequate to contain the dog.

22 ⁶⁷ Ernesto Hernandez deposition, Page 59:15-20

23 ⁶⁸ *Id.*, Page 70:3-6

⁶⁹ *Id.*, Page 70:7-10

24 ⁷⁰ *Id.*, Page 70:11-14

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IV. EVIDENCE RELIED ON

In support of his motion, Plaintiff relies on the pleadings on file herein, including the Declaration of Derek K. Moore in support of this Response, with the exhibits attached thereto.

V. AUTHORITY

On a motion for summary judgment, the moving party has the burden of showing the absence of a genuine issue of material fact and an entitlement to judgment as a matter of law. CR 56. Summary judgment is proper when reasonable minds could reach but one conclusion regarding the material facts. *Stokes v. Bally's Pacwest Inc.*, 113 Wn. App. 442, 444-445, 54 P.3d 161 (Div. 1, 2002). In an action for negligence a plaintiff must prove four basic elements: (1) the existence of a duty, (2) breach of that duty, (3) resulting injury, and (4) proximate cause. *Tincani v. Inland Empire Zoological Soc'y.*, 124 Wn.2d 121, 127-28, 875 P.2d 621 (1994). "A duty can arise either from common law principles or from a statute or regulation. A duty can also arise contractually." *Kennedy v. Sea-Land Service, Inc.*, 62 Wn. App. 839, 816 P.2d 75 (Div. 1, 1991) The existence of a legal duty is generally a question of law. *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 48, 914 P.2d 728 (1996). But where duty depends on proof of certain facts that may be disputed, summary judgment is inappropriate. *Sjogren v. Props. of Pacific NW, LLC.*, 118 Wn. App. 144, 148, 75 P.3d 592 (Div. 2, 2003). The facts and reasonable inferences from those facts are considered in a light most favorable to the nonmoving party. *Babcock v. Mason County Fire Dist. No. 6.*, 144 Wn.2d 774, 784, 30 P.3d 1261 (2001).

A. Defendants Hernandez's Liability under *Oliver v. Cook*

Defendants Hernandez argue that they are entitled to summary judgment because they did not own, keep or harbor the subject pit bull, and therefore are not liable under RCW 16.08.040 or common law strict liability. They rely heavily on *Frobige v. Gordon*, 124 Wn.2d 732, 881 P.2d

1 226 (1994) and *Shafer v. Beyers*, 26 Wn. App. 442, 613 P.2d 554 (Div. 1, 1980), but ignore and
2 fail to even cite the recent holding in *Oliver v. Cook*, 194 Wn. App. 532, 377 P.3d 265 (Div. 2,
3 2016). The *Oliver* court found that the landlord, defendant Eugene Mero, owed duties of a
4 possessor of land to the plaintiff, Steven Oliver, who was an invitee on premises, and that dog
5 owned by tenant and co-defendant Henry Cook was a condition of the land. *Oliver*, 194 Wn.
6 App. at 544. (“Here, [the dog] Scrappy is the relevant “condition” on the land.”) The *Oliver*
7 court discussed both *Frobig* and *Shafer* and found that they were dispositive only of strict
8 liability claims, and that a separate analysis was required for premises liability theories:

9 The scope of a landlord’s duties in a dog bite case under premises liability is a
10 question of first impression in Washington. Prior case law in Washington has
11 focused exclusively on the common law theory of strict liability for a dog bite.
12 Here, however, Oliver does not claim strict liability but, instead, he argues a
13 theory of premises liability. Although Washington courts have not yet applied
14 premises liability to a dog bite case, many other states have. These states have
15 made it clear that premises liability applies in dog bite cases—and involves a
16 separate analysis from the common law, strict liability theory.

17 *Oliver v. Cook*, 194 Wn. App. at 543 (citations to out-of-state case in footnote 9 omitted). The
18 Oliver court distinguished *Frobig* and *Shafer* as follows:

19 We note that all of the Washington cases addressing dog bite liability appear to
20 address only the common law rules for animal attacks. At common law, only the
21 owner, keeper, or harbinger of a dangerous animal is strictly liable for injuries the
22 animal causes. *See, e.g., Frobig v. Gordon*, 124 Wn.2d 732, 735, 881 P.2d 226
23 (1994); *Shafer v. Beyers*, 26 Wn. App. 442, 446–47, 613 P.2d 554 (1980). But this
24 common law theory is separate from premises liability. As discussed above, other
25 states recognize that strict liability for dog bites is a separate theory from premises
26 liability. **In other words, strict liability is not the only cause of action for a
27 dog bite.** Nor is there a dog bite exception to ordinary premises liability rules.

28 *Oliver v. Cook*, 194 Wn. App. at 545 (emphasis added).⁷¹

29 ⁷¹ While not discussed in *Oliver*, *Clemmons v. Fidler*, 58 Wn. App. 32, 791 P.2d 257 (1990) as cited by the defense
30 is among the *Frobig* and *Shafer* line of cases that the Oliver court distinguished.

1 In addition to premises duties under *Oliver*, Defendants Hernandez may also be liable for
2 their breaches of duties of ordinary care. "independent of the law of landlord and tenant, a
3 landlord is liable to his tenant or the tenant's guest for his affirmative acts of negligence."
4 *Rossiter v. Moore*, 59 Wn.2d 722, 370 P.2d 250 (1962). (reversing summary judgment in favor
5 of landlord who failed to replace railing.) In this case, a jury could find that Defendants
6 Hernandez' were liable for their admitted failure to ensure that the fence was adequate to contain
7 a pit bull. Similarly, defendant David Sandoval constructed said inadequate fence, which if the
8 terms of the expired Rental Agreement applied, would become part of the property of
9 Defendants Hernandez. A jury could find that defendant David Sandoval was an agent of
10 Defendants Hernandez, and that Defendants Hernandez retained the right to control his acts and
11 omissions in how he built the fence. *Parrigan v. Phillips Petroleum Co.*, 16 Wn. App. 34, 37,
12 552 P.2d 1065 (Div. 1, 1976) ("The negligence of the agent is imputed to the principal because
13 he has the right to control the acts of the agent. It is the existence of the right of control, not its
14 exercise, that is decisive.") Similarly, a jury may find that David Sandoval was acting as
15 Defendants Hernandez's contractor in building the fence, which would give rise to duties under
16 *Williamson v. The Allied Group, Inc.*, 117 Wn. App. 451, 72 P.3d 230 (Div. 1, 2003). Also,
17 from the terms of the Rental Agreement, if found to be in force, or the lack of any agreement
18 after its expiration, a jury could find that Defendants Hernandez retained control over the
19 property and failed to "surrender[s] both possession and control of the land during the term of the
20 tenancy" which is the basis of non-liability under *Clemmons*, 58 Wn. App at 37 and *Frobig*, 124
21 Wn.2d at 235.

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23 //

24 PLAINTIFF'S RESPONSE TO DEFENDANTS
HERNANDEZ'S MOTION FOR SUMMARY
JUDGMENT

PAGE 13 of 17

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1 **B. Plaintiff's Status as an Invitee or Licensee**

2 “The legal duty a landowner owes to a person entering the premises depends on whether
3 the entrant is a trespasser, licensee, or invitee.” *Oliver* at 544 citing *Younce v. Ferguson*, 106
4 Wn.2d 658, 662, 666, 724 P.2d 991 (1986). In *Oliver*, the court found it undisputed that the
5 plaintiff was an invitee on an automobile shop, and applied the following duties owed to an
6 invitee:

7 A landowner is liable for an invitee's physical harm caused by a “condition on
8 the land” only if the landowner:

9 (a) knows or by the exercise of reasonable care would discover the condition, and
10 should realize that it involves an unreasonable risk of harm to such invitees, and

11 (b) should expect that they will not discover or realize the danger, or will fail to
12 protect themselves against it, and

13 (c) fails to exercise reasonable care to protect them against the danger.

14 *Oliver* at 544 (citing *Iwai v. State*, 129 Wn.2d 84, 93–94, 915 P.2d 1089 (1996) (quoting
15 Restatement (Second) of Torts § 343 (1965))).

16 In this case, there are questions of fact as to whether Plaintiff was an invitee or a licensee.
17 In *Singleton v. Jackson*, the Washington Court of Appeals found that a Jehovah's Witness was a
18 licensee when she slipped on a porch when she first “approached a house owned by [defendant]
19 Jackson, intending to engage in religious solicitation.” *Singleton v. Jackson*, 85 Wn. App 835,
20 837, 935 P.2d 644 (Div. 2, 1997). Defendant Jackson did not live there, but allowed her son and
21 daughter-in-law Hugh and Patricia Colson to use one of the bedrooms as an office. *Id.* After
22 Patricia Colson explicitly told the plaintiff and her companion that she did not wish to speak with
23 them, the plaintiff slipped and fell on a slippery deck. *Id.* at 838. The court rejected the
24 defendant's argument that plaintiff was a trespasser, and under these circumstances found that
she was a licensee.

1 The court then found defendant Jackson, the landlord, owed the plaintiff duties of a
2 possessor of land to a licensee caused by a condition on the land, which attach when:

3 (a) the possessor knows or has reason to know of the condition and should realize
4 that it involves an unreasonable risk of harm to such licensees, and should expect
5 that they will not discover or realize the danger, and

6 (b) he [or she] fails to exercise reasonable care to make the condition safe, or to
7 warn the licensees of the condition and the risk involved, and

8 (c) the licensees do not know or have reason to know of the condition and the risk
9 involved.

10 *Singleton* at 843 (citing *Tincani v. Inland Empire Zoological Soc.*, 124 Wn.2d 121, 133, 128, 875
11 P.2d 621 (1994) (quoting Restatement (Second) of Torts § 342 (1965))).

12 Unlike the plaintiff in *Singleton*, who had been rejected on her first attempt for
13 solicitation, and who was determined to be a licensee based on authority governing door to door
14 solicitors, facts support a finding that Maria and her companions had an established relationship
15 with Elvia to provide Bible study on a regular basis. In *Thompson v. Katzer*, the Court of
16 Appeals described the basis for distinguishing between business visitor invitees and licensees:

17 The ultimate goal is to differentiate (1) an entry made for a business or economic
18 purpose that benefits both entrant and occupier, from (2) an entry made for a
19 purpose that either (a) benefits only the entrant or (b) is primarily familial or
20 social.

21 *Thompson v. Katzer*, 86 Wn. App. 280, 286, 936 P.2d 421 (Div. 2, 1997). While there may not
22 have been any economic benefit to Maria's visits, they were clearly for the business of the
23 church and not familial or social, and a jury could find they were for the purpose of conferring
24 religious and spiritual benefits for both Maria and Elvia. To wit, churches owe duties of invitees
to their members who are there for religious rather than economic purposes. *Huston v. First
Church of God, of Vancouver*, 46 Wn. App. 740, 732, P.2d 173 (Div. 2, 1987).

1 **C. Facts support Defendants Hernandez’s liability under either standard of duties**
2 **owed to Invitees or to Licensees.**

3 While duties owed to invitees would require Defendants Hernandez to exercise
4 reasonable care to discover the condition, if the duties owed are found to be those owed to a
5 licensee, Defendants Hernandez, they would still have a duty since a jury could find that they
6 knew or had reason to know of dangerous conditions on the land. These conditions include both
7 the pit bull and the rotten fence board that was inadequate to contain the dog. While there might
8 not have been any prior incidents regarding the pit bull, it was still a pit bull, which is widely
9 recognized to be a dangerous breed.⁷² As of July 28, 2017, at least 28 local Washington
10 jurisdictions have banned pit bulls, regulated them, and / or declared them to be “dangerous” or
11 “potentially dangerous.”⁷³ This includes Section 6.08.010 of the Everett Municipal Code, which
12 declares “[a]ny dog known by the owner to be a pit bull terrier” as a “Potentially dangerous
13 dog.” EMC 6.08.010.⁷⁴ The dangers of pit bulls have been known in Snohomish County since
14 at least 1987.⁷⁵ Here it is undisputed that the subject dog was a pit bull. A jury could find that
15 Defendants Hernandez knew or should have known about the dangers of the dog and the
16 inadequate fence and that they failed to exercise reasonable care to make the condition safe or to

17 _____
18 ⁷² See DogsBite.org Breed Specific Legislation FAQ from <https://www.dogsbite.org/legislating-dangerous-dogs-bsl-faq.php> (last visited August 20, 2019) (Ex. 13 to Moore Decl.) Pit Bull Ordinances in Washington compiled by
19 DogsBite.org, reportedly “verified as active on July 28, 2017” from <https://www.dogsbite.org/legislating-dangerous-dogs-washington.php> (last visited August 20, 2019)

20 ⁷³ Pit Bull Ordinances in Washington compiled by DogsBite.org, reportedly “verified as active on July 28, 2017”
21 from <https://www.dogsbite.org/legislating-dangerous-dogs-washington.php> (last visited August 20, 2019) (Ex. 14 to
22 Moore Decl.)

23 ⁷⁴ While the Washington legislature recently restricted local jurisdictions from prohibiting “possession of a dog
24 based upon its breed,” it still allows such breed-based bans, so long as the regulations provide for owners to obtain
25 exemptions for individual dogs that pass a “canine behavioral test.” HB 1026, signed into law on April 30, 2019,
26 effective Jan. 1, 2020.

27 ⁷⁵ See February 1987 article by Michael E. Weight, then Assistant City Attorney of Everett entitled City Bites Dog –
28 Regulating Vicious Dogs / Pit Bull Terriers, Legal Notes (MRSC Information Bulletin No. 444) as downloaded
29 from <https://www.dogsbite.org/pdf/wa-everett-pit-bull-1987.pdf> (last visited August 20, 2019) (Ex. 15 to Moore
30 Decl.)

1 warn the plaintiff. It is admitted that Defendants Hernandez did nothing to ensure the fence was
2 adequate to hold the dog, and it is undisputed that no warnings were posted. Maria and her
3 companions testified that they believed the fence would protect them from the dog; a jury could
4 find that they did not know or have reason to know otherwise.

5 **VI. CONCLUSION**

6 For the aforesaid reasons, Plaintiff respectfully requests that Defendants Hernandez's
7 Motion be DENIED with prejudice.

8
9 Dated this 22nd day of August, 2019.

10 BISHOP LEGAL

11 
12 _____
13 Derek K. Moore
14 WSBA No. 37921
15 Attorney for Plaintiff
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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

Case No. 18-2-08290-31

[PROPOSED]

ORDER DENYING DEFENDANTS
HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT

This matter having come on regularly before the undersigned Judge of the above-entitled Court,
and the Court having considered the argument of counsel and the pleadings and papers filed
herein, including:

1. Defendants Hernandez's Motion for Summary Judgment, with declaration in support and exhibits thereto;
2. Plaintiff's Response to Defendants Hernandez's Motion for Summary Judgment. with declarations in support and exhibits thereto;
3. Response(s), if any, of defendants David Gonzalez Sandoval and Alejandra Martinez, with declarations in support and exhibits thereto, if any;

ORDER DENYING DEFENDANTS
HERNANDEZ'S MOTION FOR SUMMARY
JUDGMENT



19743 First Avenue South
Normandy Park, WA 98148-2401
Tel: (206) 592-9000
Fax: (206) 592-9001

1 4. Defendants Hernandez's Reply to Responses, if any, with declarations in support and
2 exhibits thereto, if any;

3 5. _____;

4 6. _____; and

5 7. _____

6 Therefore, IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

7 Defendants Hernandez's Motion for Summary Judgment is DENIED with prejudice.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that

9
10
11
12 DATED this _____ day of _____, 2019.

13
14 _____
Hon. Janice Ellis

15 **Presented by:**

16 BISHOP LEGAL

17 
18 _____
Derek K. Moore, WSBA No. 37921
Attorney for Plaintiff

19 **Notice of presentation waived, and approved as to form by:**

20 TODD A. BOWERS & ASSOCIATES

CASSANDRA LOPEZ DE ARRIAGA LAW

21 _____
22 Ofelia S. Granados, WSBA #53917
Attorneys for Defendants Hernandez

Cassandra Lopez de Arriaga, WSBA #34318
Attorneys for Defendants Gonzalez &
Martinez

23
24 ORDER DENYING DEFENDANTS
HERNANDEZ'S MOTION FOR SUMMARY
JUDGMENT

PAGE 2 of 2

 **bishoplegal**
19743 First Avenue South
Normandy Park, WA 98148-2401
Tel: (206) 592-9000
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WASHINGTON STATE SUPERIOR COURT FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,
Plaintiff,
vs.
DAVID GONZALEZ SANDOVAL et al,
Defendants.

Case No. 18-2-08290-31

CERTIFICATE OF SERVICE

I certify that on today's date I served via U. S. Mail, postage prepaid to:

Ofelia A. Granados
Todd A. Bowers & Associates
901 5th Avenue, Ste 830
Seattle, WA 98164

Cassandra Lopez de Arriaga
1812 Hewitt Ave., Ste 204
Everett, WA 98201

the following document(s):

- PLAINTIFFS' RESPONSE TO DEFENDANTS HERNANDEZ'S MOTION FOR SUMMARY JUDGMENT;
- DECLARATION OF DEREK K. MOORE IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANTS HERNANDEZ'S MOTION FOR SUMMARY JUDGMENT, With Exhibits Thereto;
- [PROPOSED] ORDER DENYING DEFENDANTS HERNANDEZ'S MOTION FOR SUMMARY JUDGMENT.

Dated this 22nd day of August, 2019.

BISHOP LEGAL



Derek K. Moore, WSBA No. 37921
Attorney for the Plaintiff

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

Case No. 18-2-08290-31

DECLARATION OF DEREK K.
MOORE IN SUPPORT OF
PLAINTIFFS' RESPONSE TO
DEFENDANTS HERNANDEZ'S
MOTION FOR SUMMARY
JUDGMENT

I, Derek K. Moore, declare and state as follows:

1. I am giving this Declaration in accordance with RPC 3.7(a).
2. I am an attorney at Bishop Law Offices, P.S. d/b/a Bishop Legal who represents the Plaintiffs in the above captioned lawsuit.
3. Attached hereto as **Exhibit 1** are a true and correct copies of Exhibits 1-6 to the January 22, 2019 deposition of Maria Jesus Saralegui Blanco.
4. Attached hereto as **Exhibit 2** are a true and correct copies of the photographs marked as Exhibit 1 to the April 10, 2019 deposition of Elvia Sandoval, which were also used in the

1 April 10, 2019 depositions of David Gonzalez Sandoval and Alexandra Barajas Gonzalez
2 (Alejandra Martinez).

3 5. Attached hereto as **Exhibit 3** is a true and correct copy of the Declaration of Teresa R.
4 Jiminez.

5 6. Attached hereto as **Exhibit 4** is a true and correct copy of the Declaration of Jalene N.
6 Lyman.

7 7. Attached hereto as **Exhibit 5** is a true and correct copy of the Declaration of Katie K.
8 Lyman.

9 8. Attached hereto as **Exhibit 6** is a true and correct copy of the Residential Rental Agreement
10 dated July 1, 2014 provided by defendants David Gonzalez Sandoval and Alexandra
11 Barajas Gonzalez (Alejandra Martinez) in response to Plaintiff's Requests for Production
12 thereto.

13 9. Attached hereto as **Exhibit 7** is a true and correct copy of Pages 1-3, 14-36, and 48-53 of
14 the transcript of the January 22, 2019 deposition of Maria Jesus Saralegui Blanco.

15 10. Attached hereto as **Exhibit 8** is a true and correct copy of Pages 1-3, 6-7, 9-13, 15-22, 24-
16 25, 28-30, 34, and 40-50 of the transcript of the April 10, 2019 deposition of Elvia
17 Sandoval.

18 11. Attached hereto as **Exhibit 9** is a true and correct copy of Pages 1-3, 5-9, 15, 21-27, 29-31
19 of the transcript of the April 10, 2019 deposition of David Gonzalez Sandoval.

20 12. Attached hereto as **Exhibit 10** is a true and correct copy of Pages 1-3, 5-9, 15, 21-27, and
21 29-31 of the transcript of the April 10, 2019 deposition of Alexandra Barajas Gonzalez,
22 who was named as a defendant in this action as "Alejandra Martinez."

1 13. Attached hereto as **Exhibit 11** is a true and correct copy of Pages 1-3, 18-19, 23-30, 33-47,
2 59, and 65-70 of the transcript of the January 22, 2019 deposition of Ernesto Hernandez.

3 14. Attached hereto as **Exhibit 12** is a true and correct copy of Pages 1-3, 17-21, and 37-39 of
4 the transcript of the January 22, 2019 deposition of Teri Hernandez.

5 15. Attached hereto as **Exhibit 13** is a true and correct copy of the DogsBite.org Breed Specific
6 Legislation FAQ from <https://www.dogsbite.org/legislating-dangerous-dogs-bsl-faq.php>
7 (last visited August 20, 2019)

8 16. Attached hereto as **Exhibit 14** is a true and correct copy of the list of Pit Bull Ordinances in
9 Washington compiled by DogsBite.org, reportedly "verified as active on July 28, 2017"
10 from <https://www.dogsbite.org/legislating-dangerous-dogs-washington.php> (last visited
11 August 20, 2019)

12 17. Attached hereto as **Exhibit 15** is a true and correct copy of the February 1987 article by
13 Michael E. Weight, then Assistant City Attorney of Everett entitled City Bites Dog –
14 Regulating Vicious Dogs / Pit Bull Terriers, Legal Notes (MRSC Information Bulletin No.
15 444) as downloaded from <https://www.dogsbite.org/pdf/wa-everett-pit-bull-1987.pdf> (last
16 visited August 20, 2019)

17 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
18 is true and correct and to the best of my knowledge, recollection and belief.

19 Dated this 22nd day of August, 2019, at Normandy Park, Washington.

20 BISHOP LEGAL

21
22 
23 Derek K. Moore
24 WSBA No. 37921
Attorneys for Plaintiff

EXHIBIT 1

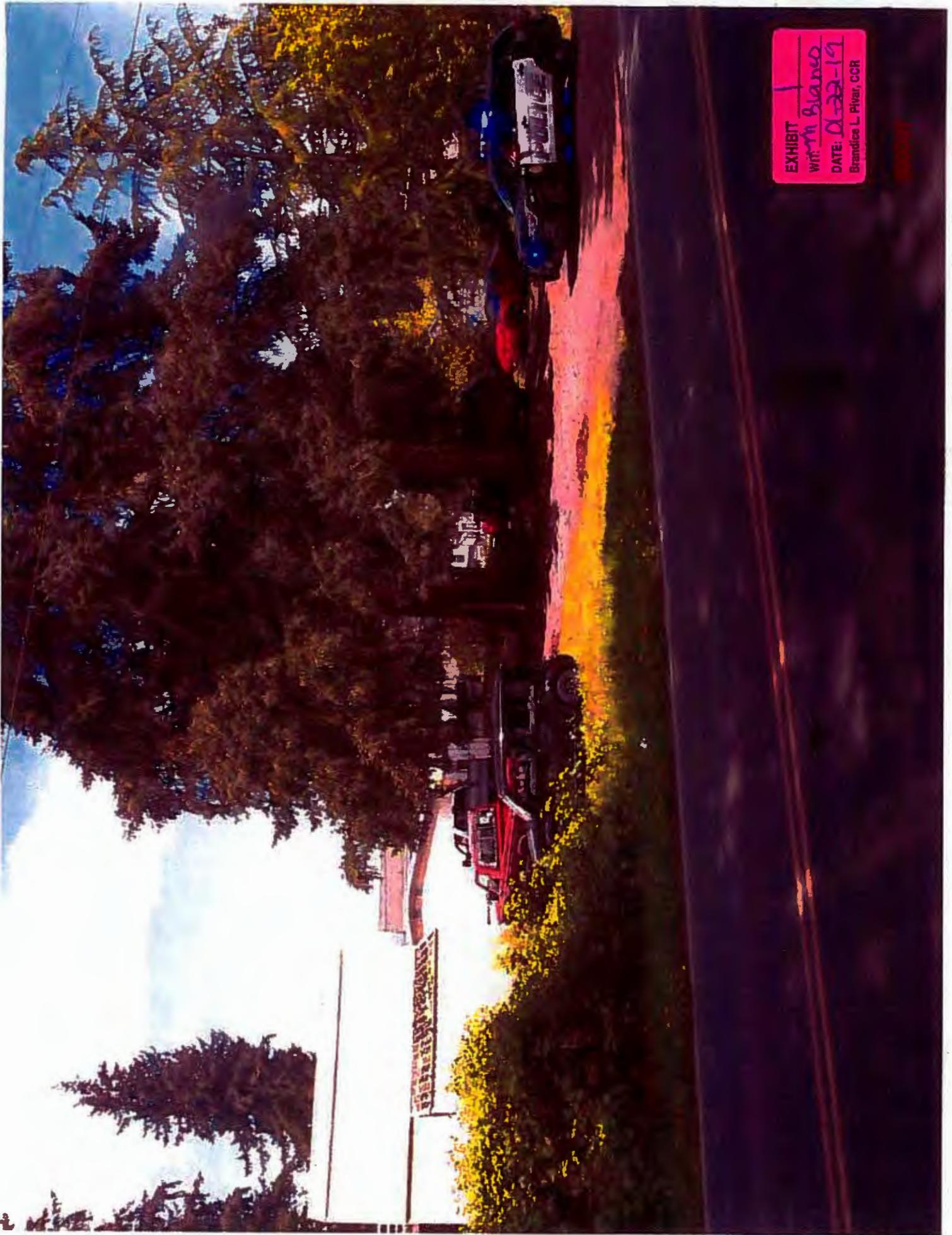


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W/ M Blaney
DATE: 02-22-19
Brandice L. Pivar, CCR

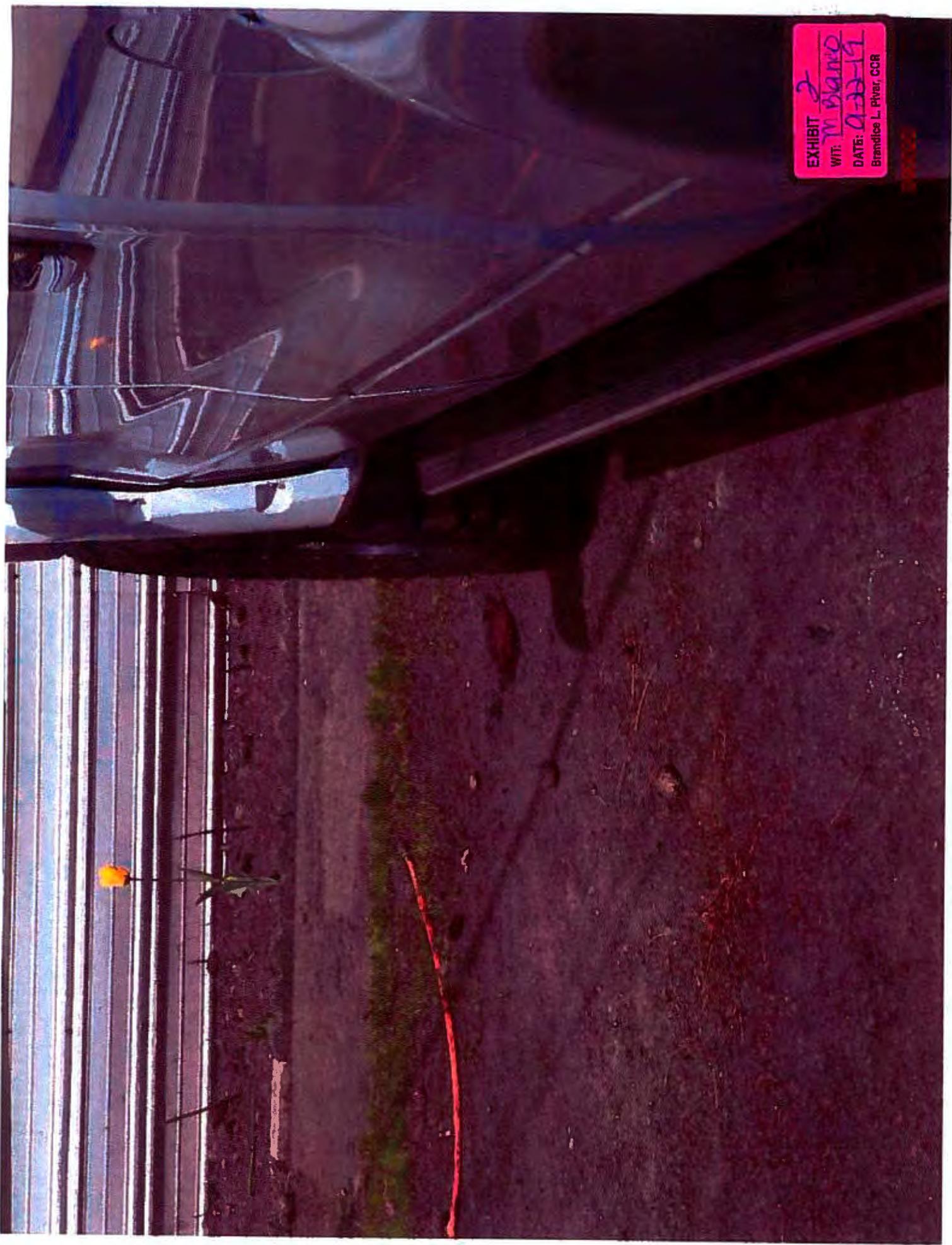


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WIT: M. BLAND
DATE: 9-22-19
Brandice L. Pflver, CCR

EXHIBIT 3
WIT: M. Blanco
DATE: 01-22-14
Brandice L. Piver, CCR



EXHIBIT 4
WIT: M. BRANCO
DATE: 08-19
Brandice L. Pitzer, CCR

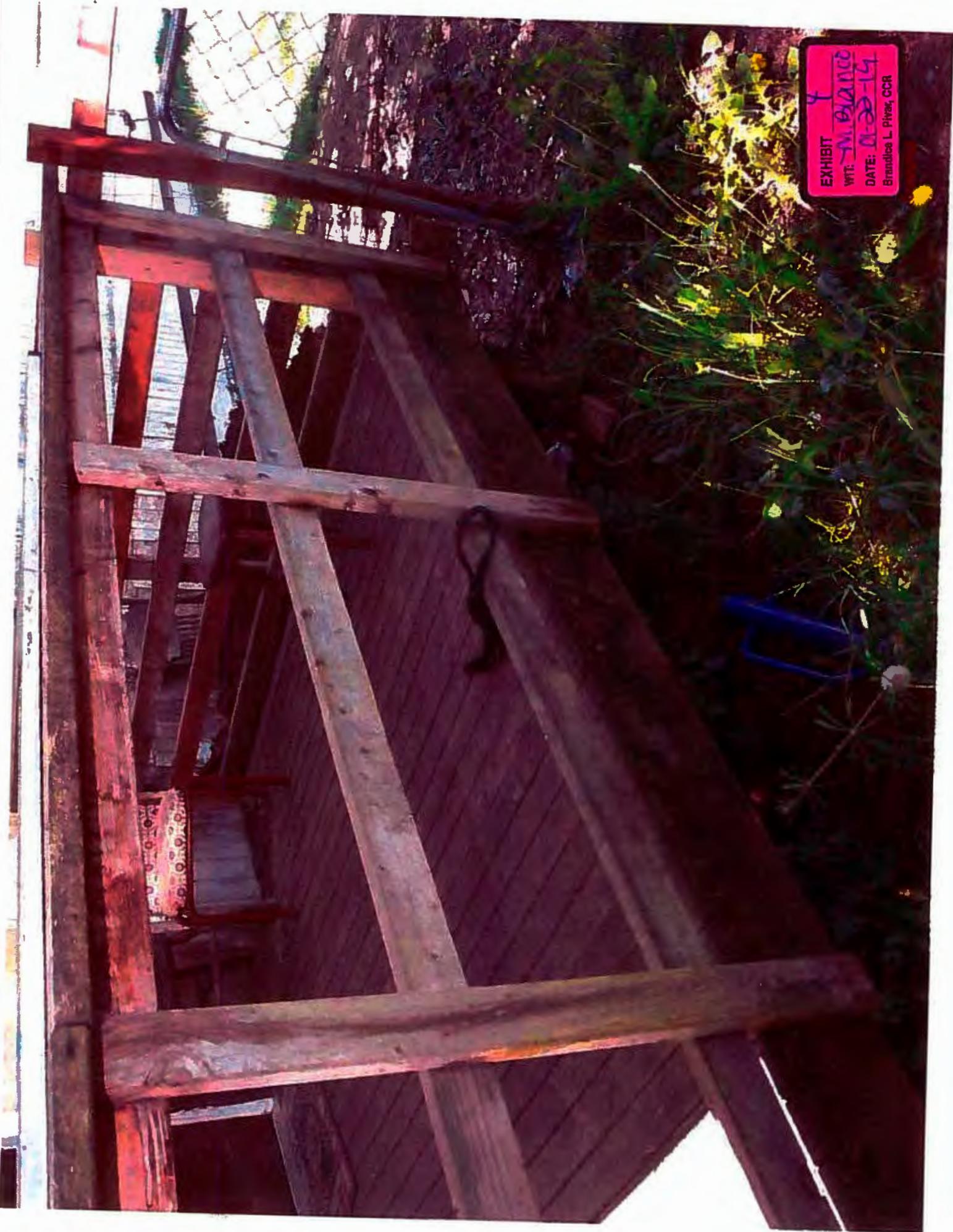


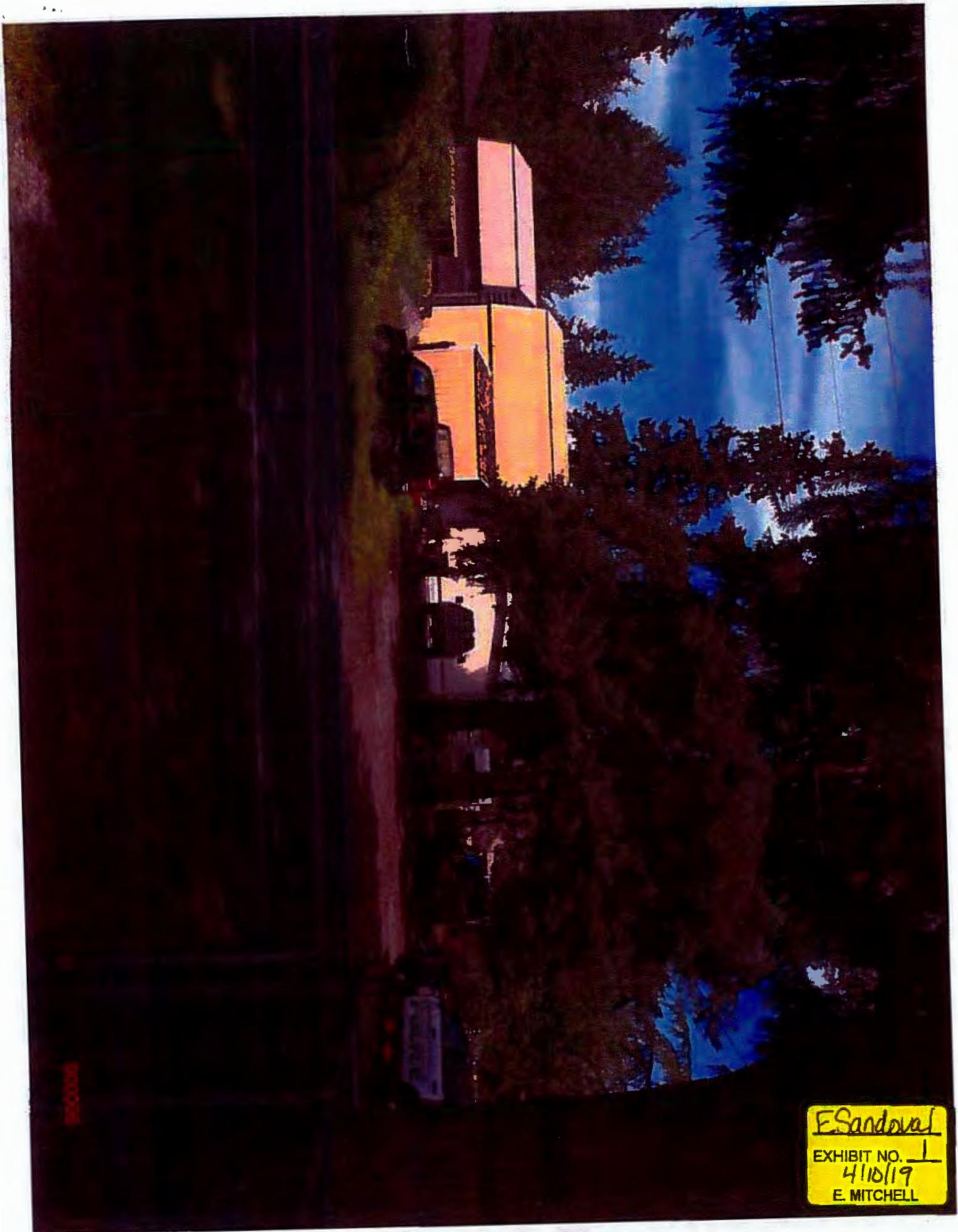


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WFE: M. Glano
DATE: 11-22-14
Brandes L, Pivat, CCR
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EXHIBIT 6
WIT: M. P. G. nso
DATE: 01-22-19
Brandice L. Pivier, CCR

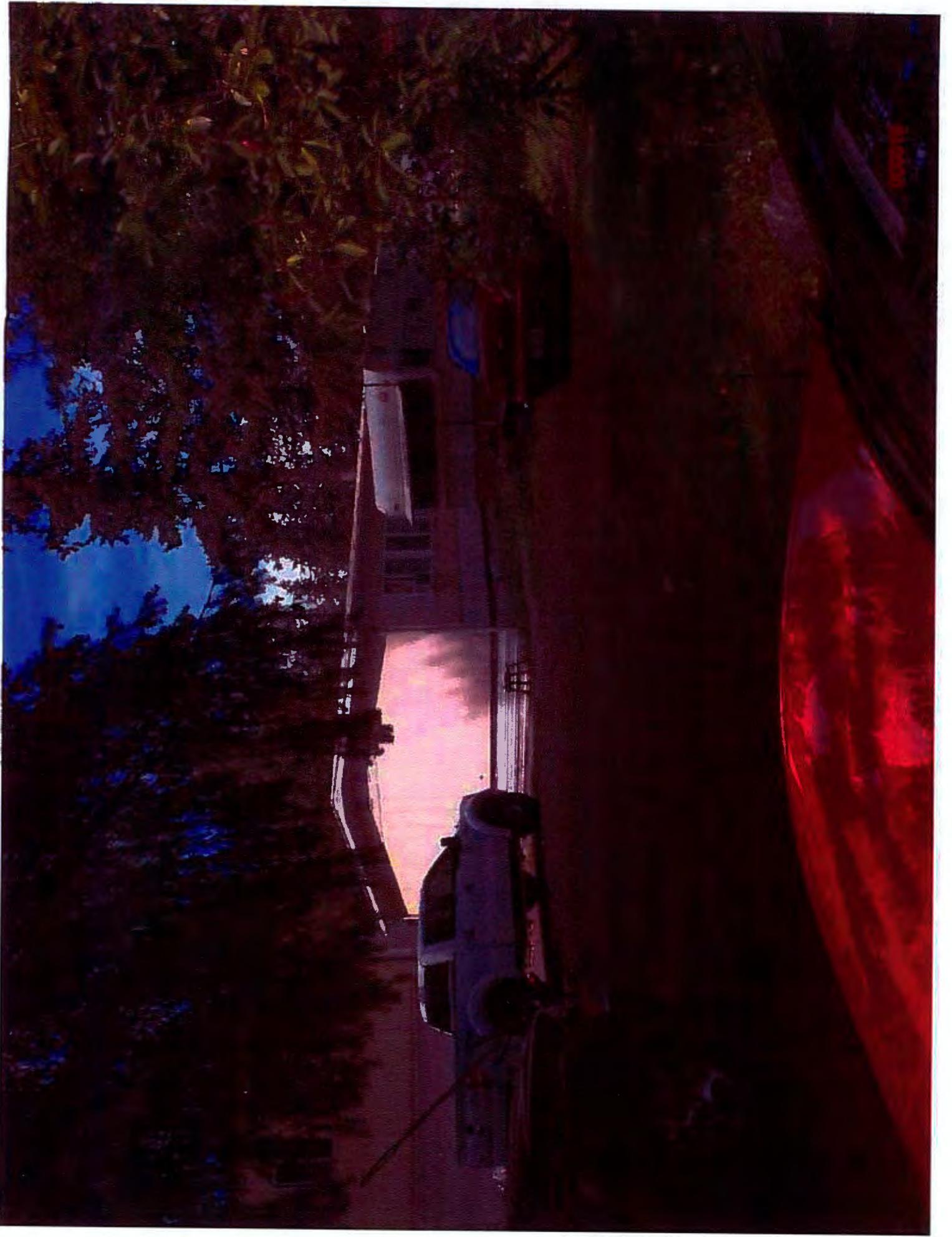


EXHIBIT 2



E. Sandoval
EXHIBIT NO. 1
4110/19
E. MITCHELL



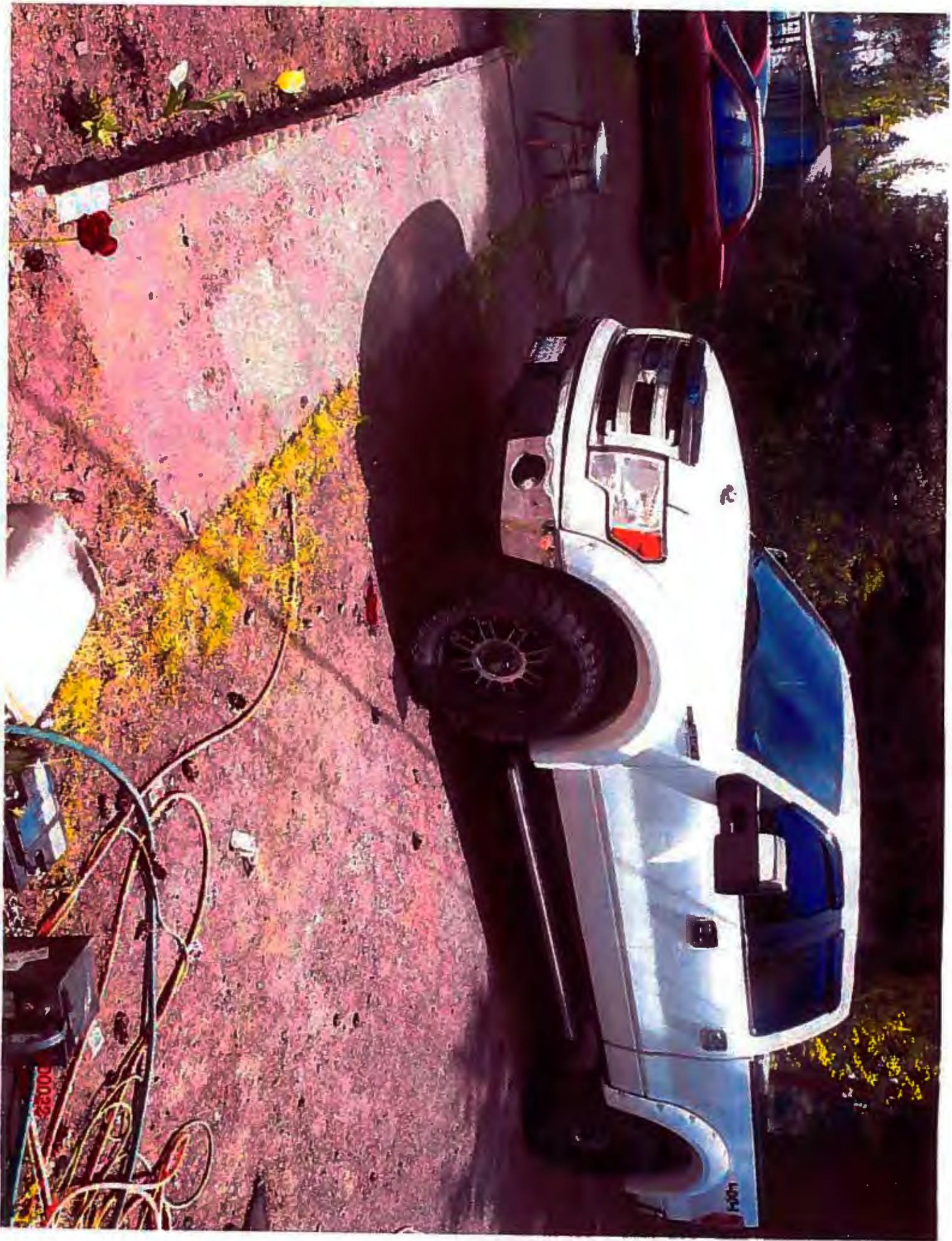


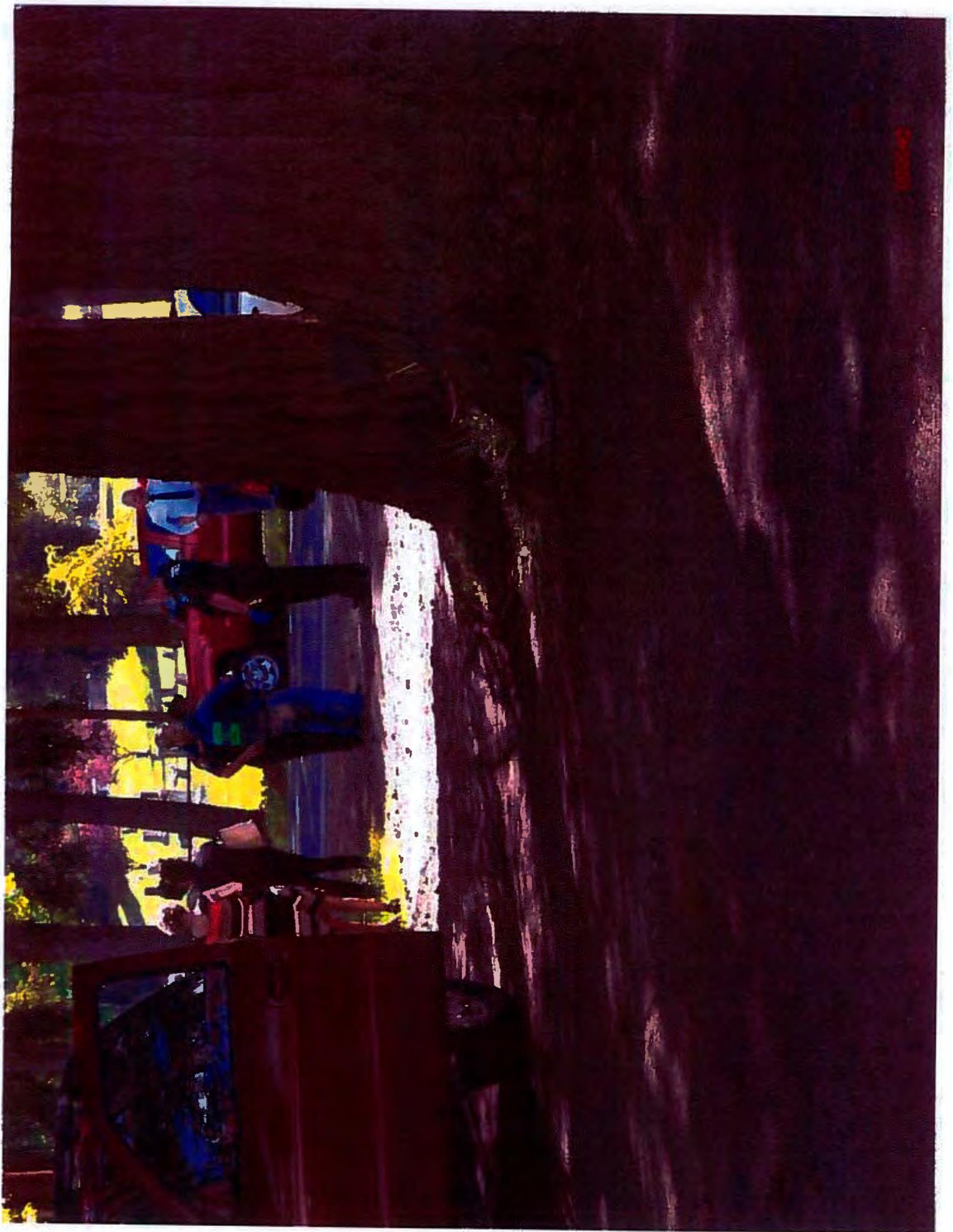


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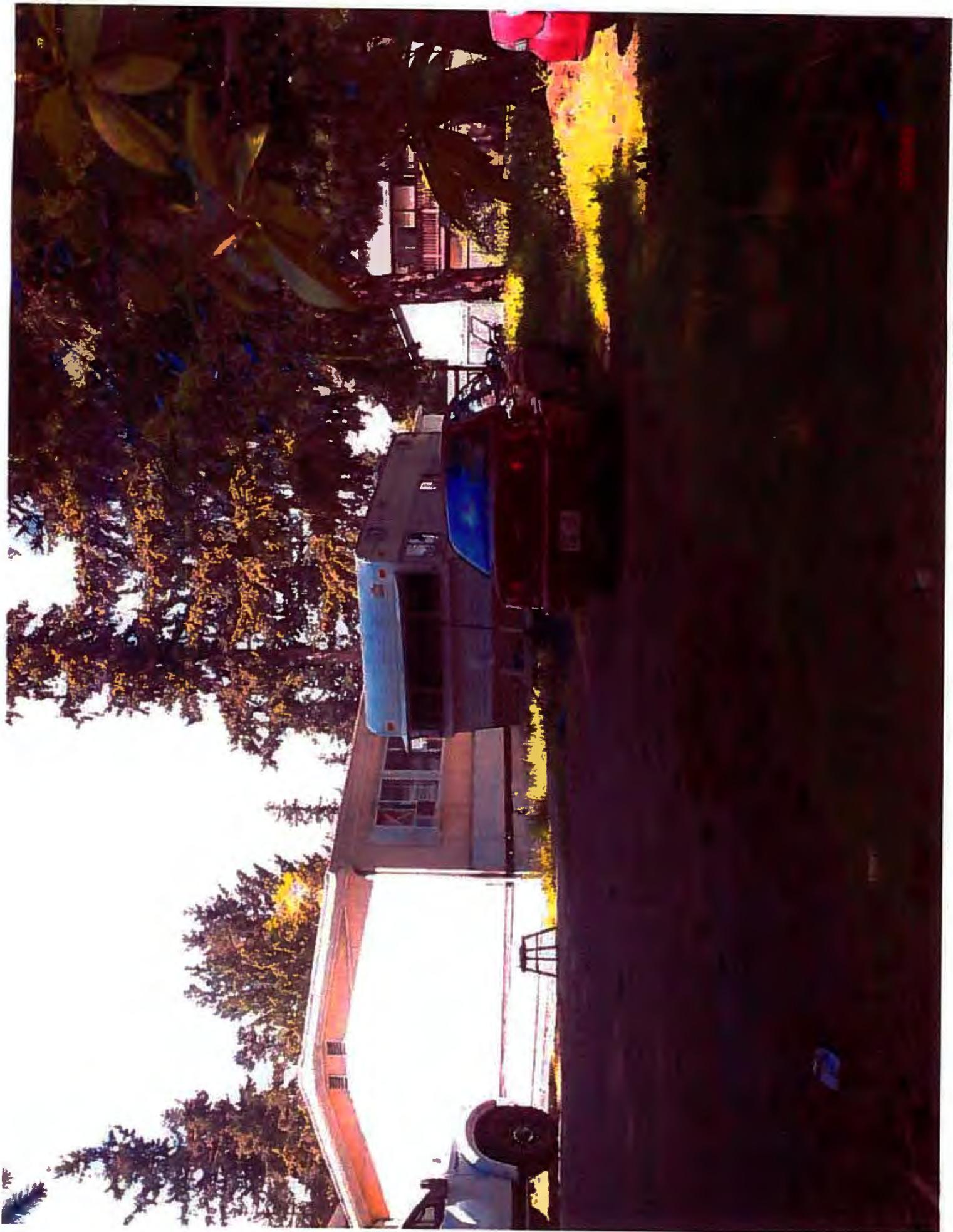








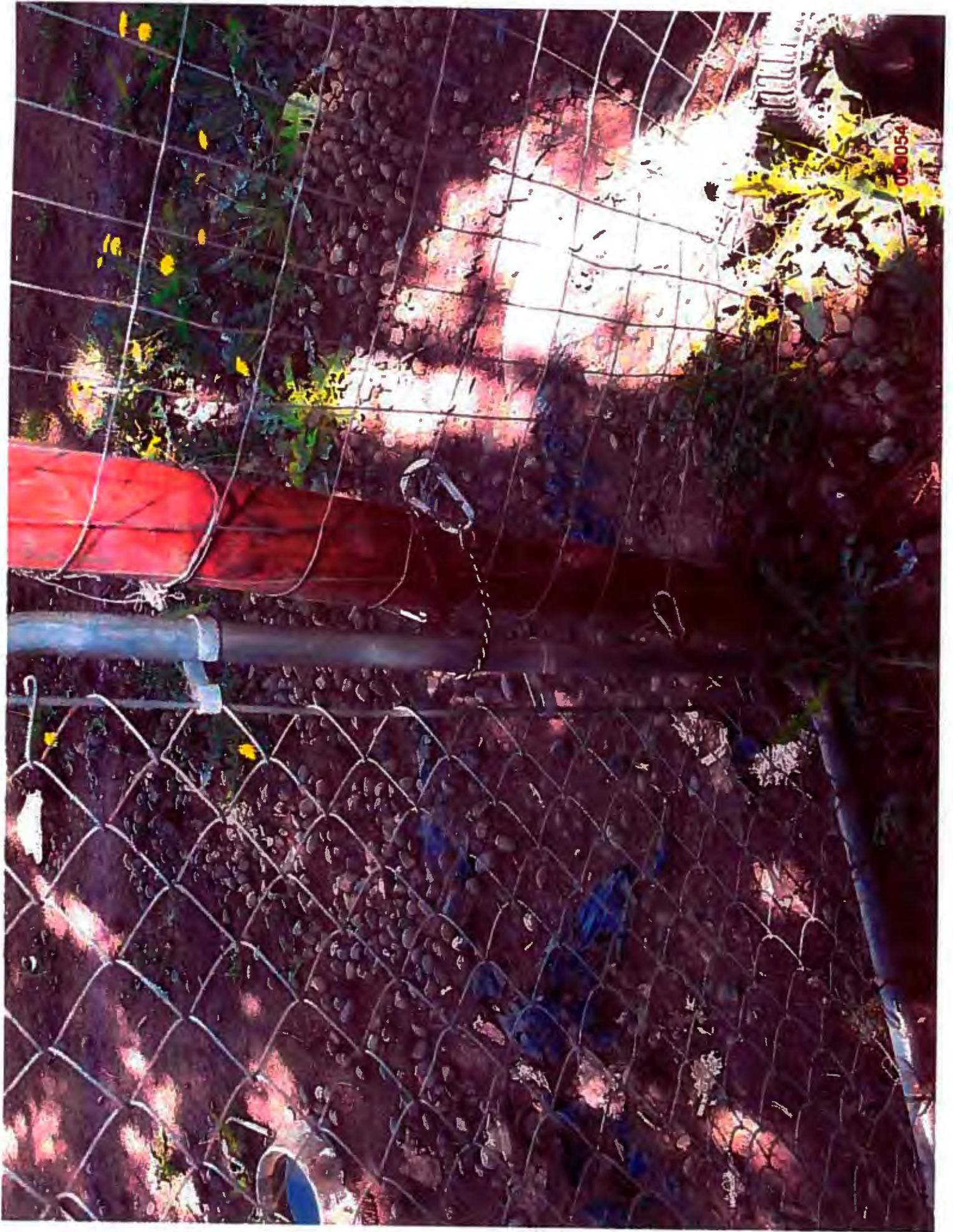












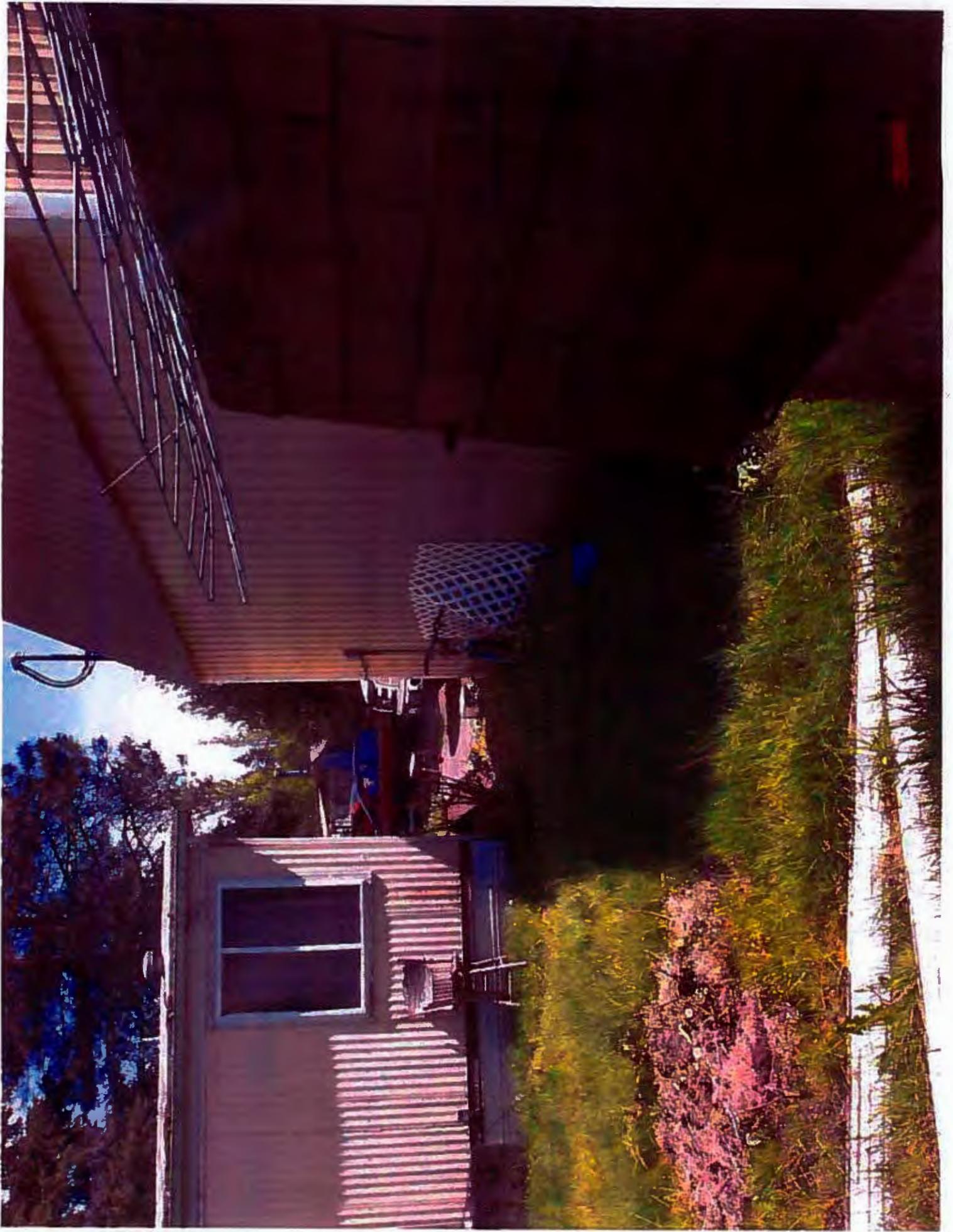




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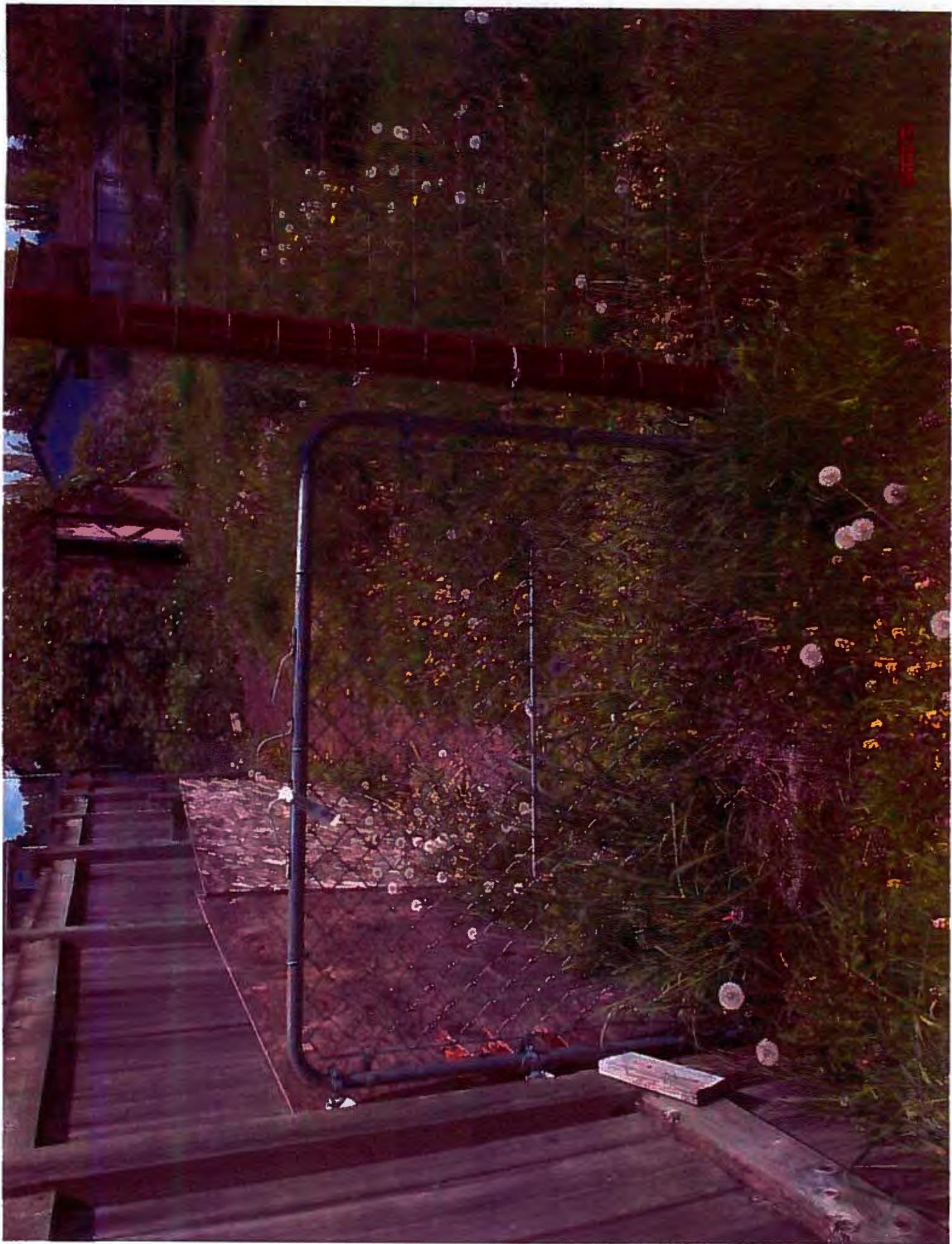
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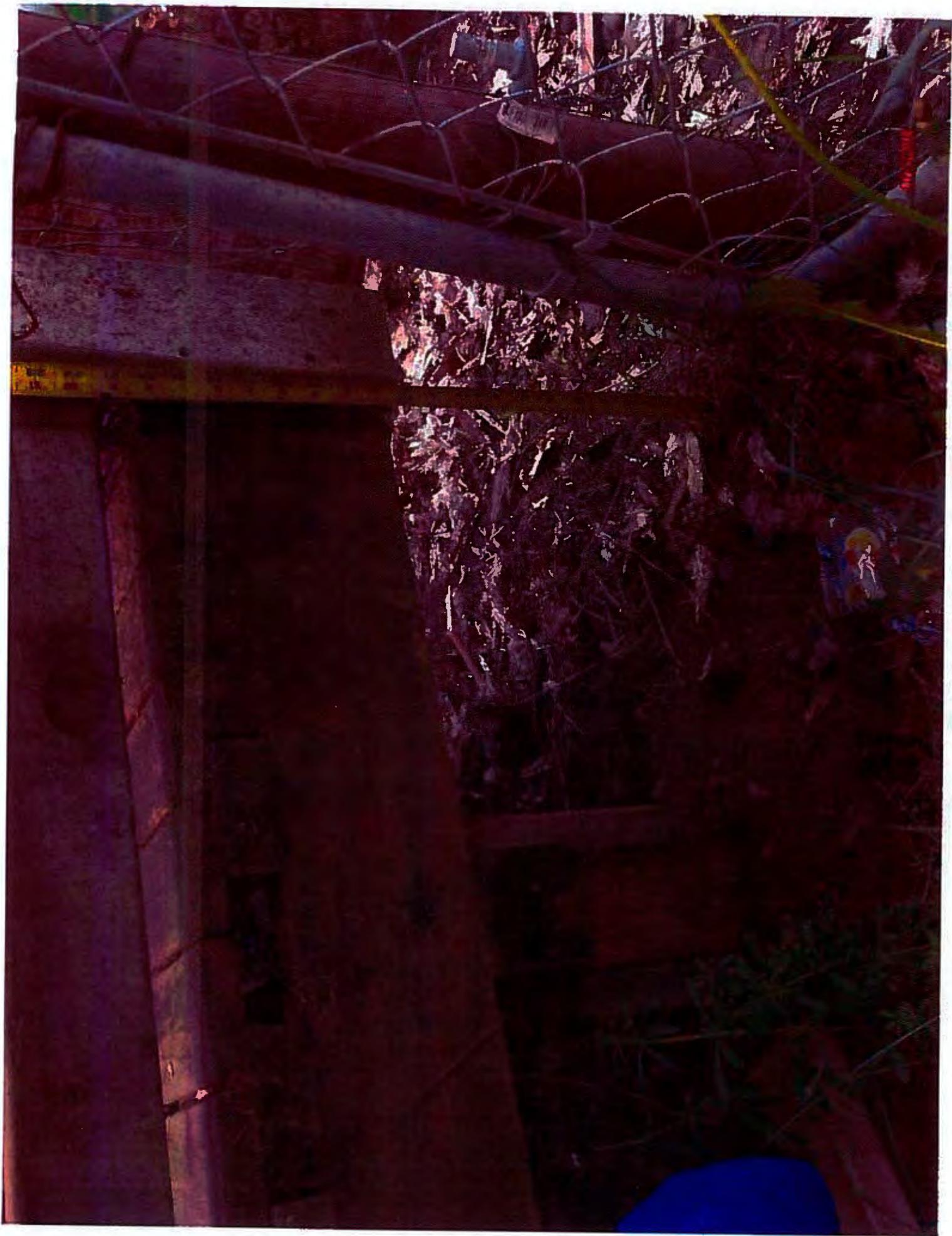
















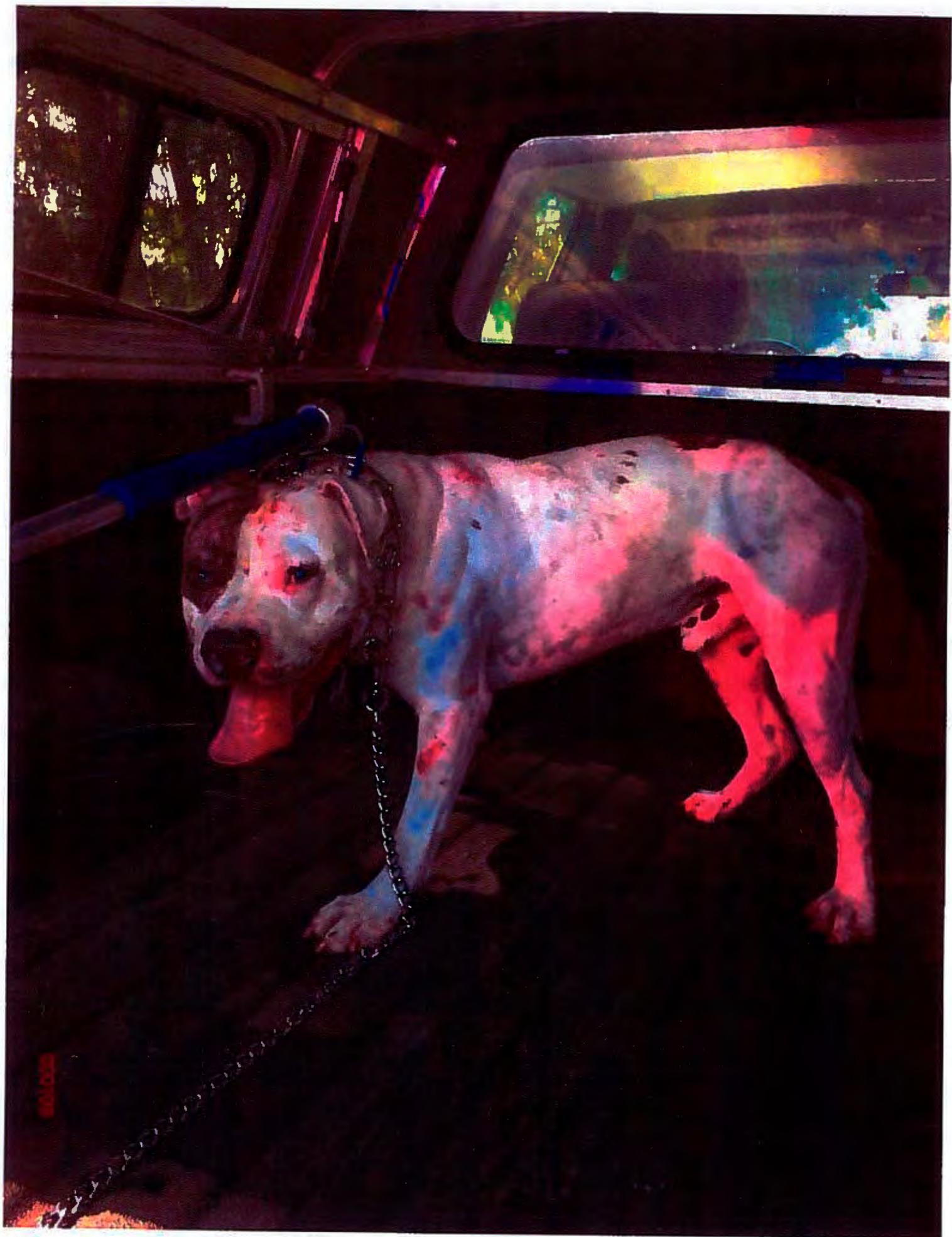






EXHIBIT 3

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

Case No.

DECLARATION OF TERESA R.
JIMENEZ

I, TERESA R. JIMENEZ declare as follows:

1. I am over the age of 18 years, a resident of the State of Washington, make this declaration based upon personal knowledge, and am competent to testify herein. My address is 17802 92nd Avenue Northwest, Stanwood WA, 98292, and my telephone number is 425-754-9594.
2. I was present at 6507 204th Street Northeast, Arlington, Snohomish County, Washington, 98223 on Tuesday, May 8, 2018, when a pit bull viciously attacked me, Maria Jesus Saralegui Blanco, and two other people.

DECLARATION OF TERESA R. JIMENEZ

1 3. On May 8, 2018, after the attack, I provided a witness statement to Officer Hamel the
2 Arlington Police Department. I was unable to write it myself or sign it due to my injuries
3 from the pit bull attack, so the officer wrote it for me. A true and correct copy of this
4 statement is attached. The information in this statement is true and correct with the
5 possible exception of my reference to the "dog owner." I was referring to Elvia Sandoval
6 Gonzalez as the "dog owner," but I'm not sure if she actually owns the dog or not. I later
7 learned that her son, David Gonzalez Sandoval, identified himself to the police as the
8 owner of the dog.

9 4. I am a Jehovah's Witness who provides Bible studies through the Jehovah's Witnesses
10 Bible study program, as is Maria Jesus Saralegui Blanco. We provide free Bible study
11 sessions, which includes visits to people's homes or other locations that are convenient to
12 them. Elvia Sandoval Gonzalez had invited the Jehovah's Witnesses to provide Bible
13 study sessions at her home at 6507 204th Street Northeast, Arlington, Snohomish County,
14 Washington, 98223. For several months before the incident, we would meet with Elvia at
15 her home on a weekly basis for months prior to the incident. We would meet on
16 Tuesdays, because Elvia had Tuesdays off from work. The sessions would start around
17 10:30 AM to 11:30 AM, and usually last around 15 to 20 minutes, sometimes more. The
18 sessions were held in Spanish.

19 5. For most Bible study sessions with Elvia at her location, Maria and I would meet with
20 Elvia, though sometimes other Jehovah's Witnesses would be there. Others would also
21 provide the sessions without us if we were not available. When I was there with Maria I
22 would usually drive, since Maria doesn't drive, though others may have driven on some
23 occasions. We would usually meet outside, in the front yard or driveway. Though on a
24

1 couple of occasions I did go inside the living room of the home, which is a double-wide
2 trailer, when Elvia invited me in.

3 6. When I was there with Elvia on these weekly Bible study sessions, the pit bull dog that
4 ultimately attacked us was always there. The dog would run and bark but was kept in the
5 fence. Elvia had described the dog as a “sweetheart” who they would let play with kids.
6 I was not afraid of the dog, but assumed it was best to stay away from the dog. I knew
7 there was a fence, and never worried that the dog would get out. When we met with
8 Elvia we would stay away from the dog and the fence.

9 7. On May 8, 2018, I drove Maria to meet with Elvia at her home sometime before noon. I
10 was driving my red Chevy Tahoe. Jehovah’s Witnesses Jaylene Lyman, and Katie
11 Lyman were also with us, but they stayed in the car. Maria and I got out of the car. Elvia
12 met us in the driveway, where she usually did. She would know when we were there by
13 the dog’s barking. When we first got there the dog was running inside the fence and
14 barking, as usual. We were there for some time, during which time the dog stopped
15 barking, and were just concluding the Bible study session when the pit bull attacked. I
16 remember we were closing our session with a review of Numbers 6:24-26.¹

17 8. At the time of the attack, we were near a white pickup truck on the driveway, well away
18 from the fence. My back was to the fence and the trailer, and I did not see the dog
19 approach. The dog attacked Maria without warning. I didn’t hear any barking or
20 growling. The attack was instantaneous. I didn’t see or hear the dog until it was on
21 Maria, knocking her down and savagely biting her face and head. I tried to pull the dog

23 ¹ “May Jehovah bless you and safeguard you. May Jehovah make his face shine upon you, and may he favor you.
24 May Jehovah lift up his face toward you and grant you peace.” New World Translation of the Holy Scriptures
(Study Edition), Numbers 6:24-26.

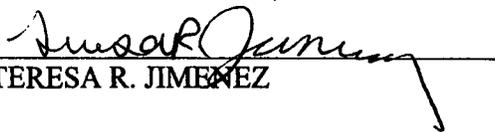
1 off of Maria, and was not able to. I ran for a branch that was on the ground to use it to
2 get the dog off of Maria. The dog then ran after me and attacked me at the same time I
3 reached the branch. I fought with the dog for a while, screaming for help, and using the
4 branch to block him from my face and throat. While I was fighting with the dog, it bit
5 my right hand, forearm, and left forearm. I was eventually able to get into my car. The
6 dog took off running to where Elvia and Maria had been, and at this time the male
7 neighbor came running to subdue the dog.

- 8 9. I understand that Elvia lived at the location of the attack with her son, David Gonzalez
9 Sandoval, and perhaps other members of her family as well, though I didn't meet with
10 them or speak to them much. I had seen David there a few times, and also saw a younger
11 woman there. At each time Maria and I were on the property, we were there with Elvia's
12 permission. At no time prior to the attack did Elvia, David, or anyone else ever tell us to
13 leave the property, tell us not to return, tell us that we were trespassing, or otherwise tell
14 us that we were not welcome there. It is the policy of the Jehovah's Witnesses to inform
15 its Bible study members when someone requests that Jehovah's Witnesses not go to their
16 homes, and that such requests are obeyed. Prior to the attack, no such request was made
17 by Elvia, David, or anyone else that Jehovah's Witnesses stay away from the property
18 where the attack occurred. Some time after the attack, and as a result of the attack, we
19 were informed that we were no longer invited.

20 I declare under penalty of perjury pursuant to the laws of the state of Washington that the
21 foregoing will be my testimony if called to trial, and that the foregoing is true and correct to the
22 best of my recollection and belief.

23
24 DECLARATION OF TERESA R. JIMENEZ

Signed at Stanwood, Washington this 13 day of September 2018.
(city where signed) (day) (month)


TERESA R. JIMENEZ

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DECLARATION OF TERESA R. JIMENEZ

JIMENEZ, TERESA STATEMENT



City of Arlington Police Department

Case # 18-9070

Pg 1 of 1

VICTIM / WITNESS STATEMENT

STATEMENT OF: TERESA R JIMENEZ 8/11/68
FIRST MIDDLE LAST DATE OF BIRTH

RESIDENCE: 17802 92nd AVE NE STANWOOD, WA 98292 425 754 9594
STREET ADDRESS CITY STATE ZIP PHONE

WORK: _____ () _____
STREET ADDRESS CITY STATE ZIP PHONE

E-mail _____

STATEMENT TAKEN AT: CUH DATE 5/8/18 TIME: _____ Am/Pm

TODAY MYSELF AND MARIA SARALEGUA WERE VISITING FOR OUR CHURCH AT AN ADDRESS ON 704th AVE NE IN ARLINGTON. WE WERE TALKING OUT BY THE TRUCK IN THE DRIVEWAY WHEN A WHITE PITBULL APPEARED AND IMMEDIATELY ATTACKED MARIA. THE DOG GRABBED HER FACE AND HEAD. I TRIED TO GET THE DOG OFF MARIA. A NEIGHBOR AND THE DOG OWNER'S OWNER ALSO TRIED TO PULL THE DOG OFF. THE DOG BIT MY ^{RIGHT} HAND, FOREARM AND LEFT HAND.

THIS STATEMENT WAS WRITTEN FOR ME BY OFFICER HAMEL. I HAVE READ IT AND FOUND IT TO BE TRUE & CORRECT.

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

Signature [Signature] Date 5/8/18

Witness (DUE TO INJURY, VICTIM UNABLE TO SIGN) Date 5/8/18

EXHIBIT 4

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

Case No.

DECLARATION OF JALENE N.
LYMAN

I, JALENE N. LYMAN declare as follows:

1. I am over the age of 18 years, a resident of the State of Washington, make this declaration based upon personal knowledge, and am competent to testify herein. My address is 14502 136th St. NE, Arlington, WA 98223, and my telephone number is 360-691-7973.
2. I was present at 6507 204th Street Northeast, Arlington, Snohomish County, Washington, 98223 on Tuesday, May 8, 2018, when I saw a pit bull viciously attack Maria Jesus Saralegui Blanco and Teresa Jimenez.

DECLARATION OF JALENE N. LYMAN

1 3. On May 8, 2018, after the attack, I provided a witness statement to the Arlington Police
2 Department. A true and correct copy of this statement is attached. The information in
3 this statement is true and correct with the possible exceptions of the time we spent there
4 and of my reference to Elvia Sandoval Gonzalez as the "home owner." We may have
5 been there longer than the 15-20 minutes reported on the statement. It was hard to say
6 since I'm not sure when we got there. I later learned that Ernesto and Teri Hernandez
7 reportedly own the property. I have no knowledge as to whether or to whom the property
8 is leased. But I believe Elvia Sandoval Gonzalez lives there with her adult son and other
9 family members. Though when I was there I usually only saw Elvia, but I do recall
10 seeing a young man there on at least one occasion.

11 4. I am a Jehovah's Witness who provides Bible studies through the Jehovah's Witnesses
12 Bible study program, as is Maria Jesus Saralegui Blanco and Teresa Jimenez. We
13 provide free Bible study sessions, which includes visits to people's homes or other
14 locations that are convenient to them. Elvia Sandoval Gonzalez had invited the
15 Jehovah's Witnesses to provide Bible study sessions at her home at 6507 204th Street
16 Northeast, Arlington, Snohomish County, Washington, 98223. Jehovah's Witnesses
17 would meet with Elvia at her home on a weekly basis for months prior to the incident,
18 usually on Tuesdays before noon. I personally only went there a few times, and I never
19 went into the home. The Bible study was usually held outside in the driveway, and away
20 from the fence where the dog was kept. The dog would bark too loudly for anyone to
21 hold any Bible study or conversation near the dog or the fence.

22 5. When I was there before the day of the attack, I saw the pit bull dog that ultimately
23 attacked Teresa and Maria. I would see the dog run back and forth along the fence and
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DECLARATION OF JALENE N. LYMAN

PAGE 2 of 4

1 jump on the tree in the yard. I wasn't afraid of the dog since it was kept in a fence, but I
2 generally don't trust the pit bull breed. The fence didn't look wimpy or flimsy, and I
3 thought it looked like it would be able to hold the dog.

4 6. On May 8, 2018, the day of the attack, I rode in Teresa's car with Teresa, Maria, and my
5 sister Katie Lyman to the meeting with Elvia at her home. We got there some time
6 before noon. Teresa and Maria got out of the car to meet with Elvia. Katie and I stayed
7 in the car. I remember it was sunny that day, and I saw the dog. The dog was barking
8 and running back and forth at first, but then the dog played with the neighbor's dog
9 through the fence and drank water. The last time I saw the dog in the fence it was
10 walking around the back of the house, with its tail hanging down, looking bored.

11 7. As I described in my attached witness statement to the police, I first became aware of the
12 attack when I heard screaming. I was in the car and didn't see where the dog came from
13 or how it got out of the fence. As described in my witness statement, the dog attacked
14 Maria and Teresa. The dog knocked Maria into a white F-150 truck and then down to the
15 ground. The dog attacked Teresa until she was able to get inside the car. I called 911.
16 Teresa, Katie, and I huddled inside the car until the police showed up. I heard screaming
17 outside, but was too scared to get out of the car.

18 8. I understand that Elvia had invited the Jehovah's Witnesses to her home for Bible study.
19 Before the attack, she never told us to leave, to stay away, or that we were not welcome
20 there, and neither did anyone else. The Jehovah's Witness church policy is to have its
21 members honor people's requests to stay away from their homes. To my knowledge, no
22 such requests were made by anyone for us to stay away from the property before the
23 attack occurred.

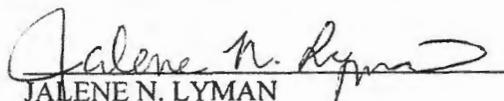
24 DECLARATION OF JALENE N. LYMAN

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9. The following Tuesday, a week after the attack, I returned to the property with another member of the church. We brought flowers and met with Elvia. She had been bitten on her cheek and still had stitches, which she said would be removed the next day. She said she was traumatized and unable to sleep because of the dog attack, and asked how Maria and Teresa were doing. We didn't talk about how the dog got out. She said her son in law was also traumatized by the attack. She also told me that the neighbors behind their home have two pit bulls, and that her family does not trust them, and to avoid planting anything in the garden near the fence where the neighbors keep their pit bulls. Some time after this meeting I was told that they didn't want Jehovah's Witnesses to visit anymore. I have not returned since.

I declare under penalty of perjury pursuant to the laws of the state of Washington that the foregoing will be my testimony if called to trial, and that the foregoing is true and correct to the best of my recollection and belief.

Signed at Arlington, Washington this 27 day of September, 2018.
(city where signed) (day) (month)


JALEENE N. LYMAN

DECLARATION OF JALEENE N. LYMAN

LYMAN, JALENE STATEMENT



City of Arlington Police Department

Case # 18-9270

Pg 1 of 1

VICTIM / WITNESS STATEMENT

STATEMENT OF: Jalene N. Lyman 12/27/1977
FIRST MIDDLE LAST DATE OF BIRTH

RESIDENCE: 14502 136th St. NE Arlington, WA 98223 (360) 691-7913
STREET ADDRESS CITY STATE ZIP PHONE

WORK: (425) 327-7730
STREET ADDRESS CITY STATE ZIP PHONE CL

E-mail jnljnk@gmail.com

STATEMENT TAKEN AT: _____ DATE ____/____/____ TIME: _____ Am/PM

I was sitting in the back of my friend's Red Tahoe. My friends Teresa + Saralegui were having a little discussion w/ Elvia the home owner. They had been standing outside for 15 or 20 minutes talking and the white pitbull had quiet barking. All of a sudden I heard screaming and saw Saralegui fall against the white truck that was parked nearby. I saw the dog there and I started barking the horn to try to distract the dog. I saw Saralegui fall on the ground. I opened the Tahoe door and Teresa made it to the Tahoe and told me to call 911. I saw Saralegui + Elvia go to ~~the~~ around truck. I couldn't see them, but I could hear some screaming. I was on the phone with 911. Dispatch called 1st Aid arrived.

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

Signature Jalene Lyman

Date 05/08/2018

Witness C. PERISHO #1170

Date 5/8/18

EXHIBIT 5

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

Case No.

DECLARATION OF KATIE K.
LYMAN

I, KATIE K. LYMAN declare as follows:

1. I am over the age of 18 years, a resident of the State of Washington, make this declaration based upon personal knowledge, and am competent to testify herein. My address is 14502 136th St. NE, Arlington WA, 98223, and my telephone number is 360-691-7973.
2. I was present at 6507 204th Street Northeast, Arlington, Snohomish County, Washington, 98223 on Tuesday, May 8, 2018, when I saw a pit bull viciously attack Maria Jesus Saralegui Blanco and Teresa Jimenez.

DECLARATION OF KATIE K. LYMAN

- 1 3. On May 8, 2018, after the attack, I provided a witness statement to the Arlington Police
2 Department. A true and correct copy of this statement is attached. The information in
3 this statement is true and correct with the possible exception of my reference to Elvia
4 Sandoval Gonzalez as the "home owner." I later learned that Ernesto and Teri Hernandez
5 reportedly own the property. I have no knowledge as to whether or to whom the property
6 is leased. But I believe Elvia Sandoval Gonzalez lives there. After the attack, on the day
7 of the attack, I saw a man there who I think is her son talking to the authorities, but
8 before the attack I saw only Elvia. Also, as not shown my statement, I actually did get
9 out of the car at one point during the attack, only to get back in, but I was not sitting in
10 the car the whole time.
- 11 4. I am a Jehovah's Witness who provides Bible studies through the Jehovah's Witnesses
12 Bible study program, as is Maria Jesus Saralegui Blanco and Teresa Jimenez, and my
13 sister, Jalene Lyman. I was there with all three of them on the day of the attack.
- 14 5. On May 8, 2018, the day of the attack, I rode in Teresa's Chevy Tahoe with Teresa,
15 Maria, and my sister Jalene Lyman to the meeting with Elvia at her home. We got there
16 some time before noon. Teresa and Maria got out of the car to meet with Elvia. I saw the
17 pit bull there before the attack. I was nervous about the pit bull, but saw that it was in the
18 fence.
- 19 6. As I described in my attached witness statement to the police, I first became aware of the
20 attack when I heard screaming. I was in the car and didn't see where the dog came from
21 or how it got out of the fence. As described in my witness statement, the dog attacked
22 Maria and Teresa. The dog knocked Maria into a white F-150 truck and then down to the
23 ground. The dog attacked Teresa until she was able to get inside the car. My sister
24

DECLARATION OF KATIE K. LYMAN

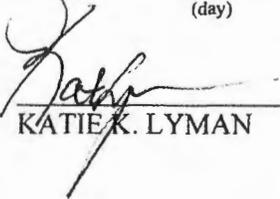
PAGE 2 of 3

1 honked the horn to try to make the dog stop, but the dog did not stop. She also called
2 911. When honking the horn didn't work, Jalene and I got out of the car. However, I
3 spilled my purse, so I got back in the car and so did Jalene. Then, Teresa was being
4 attacked outside the Tahoe, so after that, we realized the gravity of the situation and we
5 were too scared to get out of the car.

6 7. I understand that Elvia had invited the Jehovah's Witnesses to her home for Bible study.
7 Before the attack, she never told us to leave, to stay away, or that we were not welcome
8 there, and neither did anyone else. The Jehovah's Witness church policy is to have its
9 members honor people's requests to stay away from their homes. To my knowledge, no
10 such requests were made by anyone for us to stay away from the property before the
11 attack occurred.

12
13 I declare under penalty of perjury pursuant to the laws of the state of Washington that the
14 foregoing will be my testimony if called to trial, and that the foregoing is true and correct to the
15 best of my recollection and belief.

16
17 Signed at Arlington, Washington this 27th day of September, 2018.
(city where signed) (day) (month)

18
19 
KATIE K. LYMAN

LYMAN, KATIE STATEMENT



City of Arlington Police Department

Case # 18-9270

Pg 1 of 1

VICTIM / WITNESS STATEMENT

STATEMENT OF: Katie Kathleen Lyman 07/02/1979
FIRST MIDDLE LAST DATE OF BIRTH

RESIDENCE: 14502 136th St. NE Arlington, WA 98223 (360) 691-7973
STREET ADDRESS CITY STATE ZIP PHONE

WORK: 311 Maple Ave Snohomish WA 98290 ()
STREET ADDRESS CITY STATE ZIP PHONE

E-mail kklyman@gmail.com

STATEMENT TAKEN AT: _____ DATE / / TIME: _____ Am/Pm

I was sitting in the back of the Red Tahoe and my friend Teresa was outside with the home owner and my other friend Sarahggi. All of a sudden I heard screaming. I saw the older woman (Sarahggi) hit the ^{passenger} side of a ^{white Ford (F150)} taxi and fall down. The home owner and Teresa were screaming and trying to get the dog away. My sister started honking the horn of the Red Tahoe. We were too scared to get out. Teresa made it to the Red Tahoe and told us to call 911. The dog was biting Teresa outside the car and she made it inside. The dog tried to get in but Teresa managed to shut the door. After that, I could still hear screaming but couldn't see the dog or the people. Then the police showed up.

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

Signature [Signature]

Date 05/08/2018

Witness C. PERLISHO #1170

Date 5/8/18

EXHIBIT 6

RESIDENTIAL RENTAL AGREEMENT

TWA 100

This agreement made on the 1 day of July, 2014 between Ernesto Hernandez
Landlord

and _____
Tenant(s)
Landlord hereby rents 6507 204 St NE Arlington VA 22203
Address Unit # City State ZIP commencing _____

This month-to-month Rental Agreement may be terminated by either party by giving a **WRITTEN** notice not less than **20 days** prior to the end of rental period. All rents are due and payable on the 1 day of each month in advance regardless of the date of first occupancy. Days of occupancy prior to the first of the month may be charged for on a pro-rated daily basis.

FINANCIAL TERMS:

Rent: Tenant agrees to pay owner-manager, or a designated representative, as rent the sum of \$ 1100.00
One thousand one hundred dollars) per month in advance at _____

Payment Location _____

On this 1 day of July, 2014, the sum of \$ 1100.00 as payment for rent
from 1 July 2014 to July 2016

A **Non-Refundable Fee** of \$ _____ dollars) shall be paid for the express purpose of _____

Deposit: Management acknowledges receipt of a damage security/faithful performance deposit of \$ _____
(held in the _____ Trust Account in _____
Name of Account Name of Bank
located at _____
Street Address of Bank City State ZIP

Washington State Landlord Tenant Act allows the Owner to hold any interest accrued to defray administrative costs. This Deposit shall be held for the fulfillment of Tenant's obligations to this contract inclusive of, but not limited to, rent owed, late fees, cleaning, damage, etc. as provided by the state Landlord Tenant Act. If the tenant terminates the tenancy before _____ months of rent have been paid after commencement of the tenancy, the security deposit shall be forfeited without affecting the obligation for other monies possibly owed for rent due, cleaning, damage and other obligations.

An additional monthly occupancy charge of \$ 100.00 per each additional person, other than those listed on the Application and Rental Agreement shall be charged **after** that person has been approved by the Landlord.

A **Late Fee** of \$ 5 per day is charged if rent is not paid by the 5 day of the month with charges calculated from the 1st day of the month.

Bad Checks will carry a fee of \$ 30.00 and rent will not be considered paid until the check is replaced by guaranteed funds.

Additional Rent: All amounts to be paid by tenant of any nature shall be considered additional rent.

OCCUPANCY: This Rental SHALL NOT be occupied by more than _____ persons. These persons are limited to those people listed on the Rental Application(s) and this Rental Agreement. Any changes in the occupancy must be approved in writing by the Landlord PRIOR to the actual change being made.

USE OF PREMISES: Tenant(s) agrees to use said premises as a single unit residential dwelling and agrees not sell, assign or sublet this contract or said premises, or any portion thereof without the express written consent of the owner/agent. Said premises shall be used in compliance with all city, county, state and federal laws and other rules and regulations.

OCCUPANCY CHANGE: It is expressly understood that this agreement is between the owner and tenant(s) each jointly and severally. In the event of default or vacating by any one tenant, each and every remaining tenant shall be responsible for the timely payment of the full rent and all other provisions of this contract. This shall not relieve the vacating tenant(s) of monetary and physical obligations under this contract until the "Transfer of Deposit and Responsibility" form is signed, releasing their obligations under this agreement between the owner and all remaining tenants.

PETS: No pets shall be brought onto the premises for **ANY** purpose without the prior written consent of the owner/agent. If permission is given, Tenant(s) shall assume full liability for any and all injury and/or damage to others and to said premises.

WASTE: Tenant(s) shall keep the premises in a clean and sanitary condition, disposing of all waste and rubbish at reasonable and regular intervals.

Tenant(s) agree not to permit or allow any damage or depreciation to the premises or the contents of the premises. Tenant(s) must report any damage or depreciation to the owner agent immediately. Tenant(s) shall be responsible for all glass breakage. Tenant(s) shall report any maintenance or MOLD problem to landlord on Maintenance Request form as soon as the problem is detected. Tenant(s) shall not make any changes or improvements to this home, inside or out, without written permission of the landlord. All attachments, inside or outside shall be left upon vacating with no charges to Landlord. Should such changes or additions be determined to have created a damage to same, the tenant(s) shall be responsible for the restoration of property to the move-in condition.

The tenant(s) agree not to change locks without the prior written permission from the owner agent and upon doing so shall provide the owner agent with key(s). Tenant(s) shall not do anything nor keep anything on or about premises which may increase insurance rates or hazard. Absolutely no parking is allowed on grounds, except in designated areas.

INSPECTIONS: Management will give proper notice to enter your home at reasonable times, i.e. 24 hrs. to show to prospective tenant or buyer, 48 hr. for inspections, to fill maintenance requests or make improvements, in case of suspected abandonment or emergency, the Landlord, or the Landlord's representatives, may enter at any time.

UTILITIES: All utilities shall be the responsibility of the tenant(s), except for _____ and shall be transferred into the tenant's name effective as of the date of access to these premises. A \$_____ per day, per utility, penalty may be assessed by the owner agent if not transferred as agreed. _____ or are not back in the owner agent's name before lawful termination of this contract. Any charges incurred on the utilities which are the responsibility of the tenant(s) shall be paid by the tenant(s).

SMOKE ALARMS: Tenant(s) agree to maintain smoke alarm devices including adequate batteries. A fine of not more than \$200.00 may be imposed for failure to comply with these provisions as required by RCW 49.48.14.03.

WATER BEDS: Prior written permission must be obtained from owner agent for use of waterbeds.

GENERAL.

Abandonment is where the tenant defaults in the payment of rent and reasonably indicates by words or actions the intent to terminate tenancy. Tenant(s) shall be liable for such abandonment and, without the required 30 day notice, for the following month's rent or until re-rented, whichever comes first.

Rules: Tenant(s), their family and invitees shall comply with all rules and regulations in effect at the time of occupancy, all of which is a part of this agreement, and any future rules and regulations the Landlord deems necessary for the common good of all tenants and/or neighbors.

Survivorship: The provisions of this agreement shall apply to and bind the executors, administrators, successors, and assignees of the respective parties hereto.

Signing: It is agreed by all tenants that any tenant signing the move-in or move-out condition report does so on behalf of all tenants.

Litigation: In the event of monies owed to the owner, tenant(s) shall be responsible for all costs incurred, both legal and otherwise (including attorney fees), to collect said monies. In the event any lawsuit is brought to enforce any of the terms and/or conditions of this contract, the venue of such action shall lie in Yakima County, Washington.

Laws: All Sections of the Landlord Tenant Act of the state of Washington, RCW 59.18, shall apply to this contract.

Waiver: Landlord reserves all rights provided under the laws of the state of Washington. If the tenant(s) waives any rights, it shall NOT be construed as a permanent waiver.

Insurance: Owner shall not be liable in any manner for or on account of theft, any loss or damage sustained by the tenant(s) or their other natural causes, however caused, or for loss of any articles from any cause, from said premises.

or buildings. **WE STRONGLY RECOMMEND THE TENANT OBTAIN RENTER'S INSURANCE.**

Should said buildings be totally destroyed by fire, lightning, earthquake or any other casualty, this agreement shall be deemed terminated. Should fire, lightning, earthquake or any other casualty partially damage said buildings, whether or not the demised premises are affected thereby, Owner may elect to terminate this agreement or repair such damage. If Owner elects to repair, the rent shall be abated in the ratio that that portion of the demised premises that is rendered temporarily unfit for occupancy, and not used or reserved for use, bears to the whole demised premises. Alternative housing, if provided, shall be the responsibility of the tenant. Tenant's damage to their personal property is their responsibility.

IN CASE OF AN EMERGENCY, please notify the following Relative:

<u>Ana Kalberg</u>	<u>Friend</u>	<u>Marysville</u>	<u>WA 98270</u>	<u>360-659-7866</u>
Name	Relationship	Address	City	State/ZIP Phone

Signed and fully accepted in the City of _____, Washington.

RECEIPT

DATE 7/1/2014No. 772904RECEIVED FROM DAVID Gonzalez\$ 1100.00one thousand one hundred and no DOLLARS FOR RENT
 FOR

ACCOUNT	
PAYMENT	
BAL. DUE	<u>*</u>

- CASH
- CHECK
- MONEY ORDER
- CREDIT CARD

FROM 7/1/2014 TO 7/31/2014BY [Signature]

RESIDENTIAL RENTAL AGREEMENT

This agreement made on the 1 day of July, 2014 between Ernesto Hernandez
and _____
Landlord

Tenant(s)
Landlord hereby rents 6507 204 St NE Arlington WA 98223
Address Unit # City State/ZIP commencing _____

This month-to-month Rental Agreement may be terminated by either party by giving a **WRITTEN** notice not less than **20 days** prior to the end of rental period. All rents are due and payable on the 1 day of each month in advance regardless of the date of first occupancy. Days of occupancy prior to the first of the month may be charged for on a pro-rated daily basis.

FINANCIAL TERMS:

Rent: Tenant agrees to pay owner-manager, or a designated representative, as rent the sum of \$ 1100.00
one thousand one hundred 00/100 dollars) per month in advance as

Payment Location _____

On this 1 day of July, 2014, the sum of \$ 1100.00 as payment for rent
from July 2014 to July 2016

A **Non-Refundable Fee** of \$ _____ (dollars) shall be paid for the express purpose of _____

Deposit: Management acknowledges receipt of a damage security/faithful performance deposit of \$ _____ (held in the _____ Trust Account in _____ Name of Bank located at _____ Street Address of Bank _____ City _____ State/ZIP _____)

Washington State Landlord Tenant Act allows the Owner to hold any interest accrued to defray administrative costs. This Deposit shall be held for the fulfillment of Tenant's obligations to this contract inclusive of, but not limited to, rent owed, late fees, cleaning, damage, etc. as provided by the state Landlord Tenant Act. If the tenant terminates the tenancy before _____ months of rent have been paid after commencement of the tenancy, the security deposit shall be forfeited without affecting the obligation for other monies possibly owed for rent due, cleaning, damage and other obligations.

An **additional monthly occupancy charge** of \$ 100.00 per each additional person, other than those listed on the Application and Rental Agreement shall be charged **after** that person has been approved by the Landlord.

A **Late Fee** of \$ 5 per day is charged if rent is not paid by the 5 day of the month with charges calculated from the 1st day of the month.

Bad Checks will carry a fee of \$ 70.00 and rent will not be considered paid until the check is replaced by guaranteed funds.

Additional Rent All amounts to be paid by tenant of any nature shall be considered additional rent.

OCCUPANCY: This Rental SHALL NOT be occupied by more than _____ persons. These persons are limited to those people listed on the Rental Application(s) and this Rental Agreement. Any changes in the occupancy must be approved in writing by the Landlord PRIOR to the actual change being made.

USE OF PREMISES: Tenant(s) agrees to use said premises as a single unit residential dwelling and agrees not sell, assign or sublet this contract or said premises, or any portion thereof without the express written consent of the owner/agent. Said premises shall be used in compliance with all city, county, state and federal laws and other rules and regulations.

OCCUPANCY CHANGE: It is expressly understood that this agreement is between the owner and tenant(s) each jointly and severally. In the event of default or vacating by any one tenant, each and every remaining tenant shall be responsible for the timely payment of the full rent and all other provisions of this contract. This shall not relieve the vacating tenant(s) of monetary and physical obligations under this contract until the "Transfer of Deposit and Responsibility" form is signed, releasing their obligations under this agreement between the owner and all remaining tenants.

PETS: No pets shall be brought onto the premises for ANY purpose without the prior written consent of the owner/agent. If permission is given, Tenant(s) shall assume full liability for any and all injury and/or damage to others and to said premises.

WASTE: Tenant(s) shall vacate unit and premises in a clean and sanitary condition, disposing of all waste and rubbish in a reasonable and regular manner.

Tenant(s) agree not to permit or allow said premises to be damaged or depreciated by fire, lightning, earthquake or any other casualty, except for damage to smoke detector batteries excepted. The tenant(s) shall be responsible for all glass breakage. Tenant(s) shall report any maintenance or MOLD problem to landlord on Maintenance Request form as soon as the problem is identified. Tenant(s) shall not make any changes or improvements to this home, inside or out, without written permission of the Landlord. All attachments, inside or outside, shall be left upon vacating with no charges to Landlord. Should such changes or additions be determined to have created a damage to same, the tenant(s) shall be responsible for the restoration of property to the move-in condition.

The tenant(s) agree not to change locks without the prior written permission from the owner/agent and upon doing so shall provide the owner/agent with key(s). Tenant(s) shall not do anything nor keep anything on or about premises which may increase insurance rates or hazard. Absolutely no parking is allowed on grounds, except in designated areas.

INSPECTIONS: Management will give proper notice to enter your home at reasonable times, i.e. 24 hr. to show to prospective tenant or buyer, 48 hr. for inspections, to fill maintenance requests or make improvements. In case of suspected abandonment or emergency, the Landlord or the Landlord's representatives, may enter at any time.

UTILITIES: All utilities shall be the responsibility of the tenant(s), except for _____ and shall be transferred into the tenant's name effective as of the date of access to these premises. A \$_____ per day, per utility penalty shall be assessed by the owner agent if not transferred as agreed. _____ are put back into the owner agent's name before final move-in. Any charges incurred on the utilities which are the responsibility of the tenant(s) shall be paid by the tenant(s).

SMOKE ALARMS: Tenant(s) agree to maintain smoke alarm devices including adequate batteries. A fine of not more than \$200 may be imposed for failure to comply with these provisions as required by RCW 45.48.14.5.

WATER BEDS: Prior written permission must be obtained from owner/agent, for use of waterbeds.

GENERAL:

Abandonment: is where the tenant defaults in the payment of rent and reasonably indicates by words or action the intent to terminate tenancy. Tenant(s) shall be liable for such abandonment and, without the required 30-day notice, for the following month's rent or until re-rented, whichever comes first.

Rules: Tenant(s), their family and invitees shall comply with all rules and regulations in effect at the time of occupancy, all of which is a part of this agreement, and any future rules and regulations the Landlord deems necessary for the common good of the tenants and/or neighbors.

Survivorship: The provisions of this agreement shall apply to and bind the executors, administrators, successors, and assignees of the respective parties hereto.

Signing: It is agreed by all tenants that any tenant signing the move-in or move-out condition report does so on behalf of all tenants.

Litigation: In the event of monies owed to the owner, tenant(s) shall be responsible for all costs incurred, both legal and otherwise (including attorney fees), to collect said monies. In the event any lawsuit is brought to enforce any of the terms and conditions of this contract, the venue of such action shall lie in Yakima County, Washington.

Laws: All Sections of the Landlord-Tenant Act of the State of Washington apply to this agreement.

Waiver: Landlord reserves all rights provided under the laws of the State of Washington. If any provision of this agreement is held to be unenforceable, the remainder of this agreement shall remain in full force and effect. If any provision of this agreement is held to be unenforceable, it shall NOT be construed as a permanent waiver.

Insurance: Owner shall not be liable in any manner for or on account of their, or any loss or damage sustained by fire, water, flood, or other natural causes, however caused, or for loss of any articles from any cause, from said premises or buildings. **WE STRONGLY RECOMMEND THE TENANT OBTAIN RENTER'S INSURANCE.**

Should said buildings be totally destroyed by fire, lightning, earthquake or any other casualty, this agreement shall be deemed forthwith terminated. Should fire, lightning, earthquake or any other casualty partially damage said buildings, whether or not the demised premises is affected thereby, Owner may elect to terminate this agreement or repair such damage. If Owner elects to repair, the rent shall be abated in proportion to that portion of the demised premises that is rendered temporarily unfit for occupancy, and not used or occupied by tenant shall be the whole demised premises. Alternative housing, if any, during the time of the repair, shall be the responsibility of the tenant. For an understanding of the terms for their personal property is their responsibility.

IN CASE OF AN EMERGENCY, please notify the following Relative:

<u>Ana Halberg</u>	<u>Friend</u>	<u>Marysville</u>	<u>WA 98270</u>	<u>360-659-7066</u>
Name	Relationship	Address	City	State/ZIP Phone

Signed and fully accepted in the City of _____, Washington.

David Gonzalez 7-14-14
 Tenant Date

[Signature] 7/1/14
 Owner Manager Date

 Agent Phone Address

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 FOR

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- CASH
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BY [Signature]

EXHIBIT 7

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,)
)
 Plaintiff,)
)
 vs.) No. 18-2-08290-31
)
DAVID GONZALEZ SANDOVAL,)
ALEJANDREA MARTINEZ, and the)
marital community comprised)
thereof, and ERNESTO HERNANDEZ,)
TERI HERNANDEZ and the marital)
community comprised thereof,)
)
 Defendants.)

INTERPRETED DEPOSITION UPON ORAL EXAMINATION OF
MARIA JESUS SARALEGUI BLANCO

9:00 a.m.
Tuesday, January 22, 2019
19743 First Avenue South
Normandy Park, Washington

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APPEARANCES

On Behalf of Plaintiff:

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ALLISON OSTRER
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Also Present:

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1 A My house. I, I do work in my house.

2 Q What kind of work do you do in your home?

3 A Cleaning.

4 Q Any other hobbies that you enjoy?

5 A That's it.

6 Q Do you recall what time the incident occurred?

7 A This was between 12:00 and 12:30.

8 Q And was this a weekday or a weekend?

9 A Ask me the question again.

10 Q Do you know what day of the week it was?

11 A Tuesday.

12 Q Do you know the address that the incident happened at?

13 A I don't know it, but in the police report, the address

14 is there.

15 Q Do you know what city it was in?

16 A Arlington. Arlington.

17 Q And what kind of home was this?

18 A It's not a house; it's a trailer.

19 Q In the area that you were in, is this a trailer park?

20 A Yes. But it's very extensive where it happened. There

21 was just one trailer, but it was -- or it -- quite big.

22 Q So are there other trailers around the trailer that you

23 were at?

24 A Behind it. But where the dog attacked me, there was

25 just one trailer on that piece of land, but the piece of

1 land is quite big.

2 Q Were there any fences around the trailer?

3 A Yes. The land is fenced in.

4 Q Have you been to that home, or trailer, previously?

5 A What's that? What?

6 Q So the trailer where you were attacked by the dog, had
7 you been there before?

8 THE WITNESS: Yes.

9 Q How many times had you been there before?

10 A Around five times.

11 Q And those five times, why had you been there?

12 A We had received an invitation. We were invited there
13 by the owner who lives there, Elvia; she invited us. She
14 invited us to visit her on Tuesdays.

15 Q How did you meet Elvia?

16 A Preaching.

17 Q So you guys were going door to door?

18 A Yes.

19 Q And when you say that she was in -- she invited you to
20 come back, how did -- how did she do that?

21 A Well, she's a very friendly person. So she likes how
22 the prophecies were explained, so that's why she invited us.

23 Q Did Elvia live with anybody else?

24 A Well, that I don't know because I always saw her by
25 herself.

1 Q And when you would meet with Elvia, where would you
2 meet with her?

3 A They are on the piece of land, on the outside, on the
4 patio, the porch.

5 Q Was there a reason why you don't go inside?

6 A What's that?

7 Q Is there a reason why you did not meet inside the home?

8 A Well, she never asked us to come inside.

9 Q And the five times that you had been there, where was
10 the dog?

11 A The dog was inside the enclosure.

12 Q How far is the enclosure from the patio?

13 THE INTERPRETER: I'm sorry. Did you say how
14 far from the patio?

15 MS. GRANADOS: Yeah, how far from the patio is
16 it?

17 A It's, it's next to the -- or right with the trailer.
18 But the trailer's up to here, and the enclosure is here
19 below, where the dog is, here, beneath.

20 Q Do you think you'd be able to draw that for me?

21 A No, I could not.

22 Q So how many feet from the patio would the fence be?
23 You said it's below it. I'm just trying to get an idea of
24 where everything is.

25 A Well, the police have all those details -- the

1 distances, where was the dog, where was the trailer, where
2 was everything. All that's in the -- what do you call it?
3 -- the police report.

4 Q So where would the dog be in the enclosure?

5 A Well, it -- the dog was -- it was in the fenced-in part
6 within the fencing, that's where the dog was, but -- yeah.

7 Q I understand that. But where was the dog? Is he
8 towards the front? Is he in the back where you guys are
9 meeting? Where is he?

10 THE INTERPRETER: Interpreter's going to
11 clarify.

12 (Interpreter communicating with witness.)

13 A So the piece of land where the dog was is very, very
14 big.

15 Q Did you see the dog in the fence when you would come
16 over?

17 A Oh, yes. Yes.

18 Q So where was he inside the fence?

19 A Well, the dog would run in there within the enclosure
20 because he wasn't tied up, so he would run from one area to
21 the other. He wasn't tied up; he didn't have a chain; he
22 didn't have a -- anything.

23 Q In the five times that you had come prior, did the dog
24 ever bark?

25 THE WITNESS: Yes.

1 Q Out of the five times that you came, how many times
2 would he bark?

3 MR. MOORE: Counsel, I'm going to object to
4 form as to the "five times." I believe the prior testimony
5 was around five times.

6 THE INTERPRETER: Sorry. One second, please.
7 I'm sorry. Interpreter asks, could you repeat the question
8 you wanted to ask?

9 MS. GRANADOS: Yes. And I'll rephrase.

10 Q In the times that you were there before the incident,
11 how many times would the dog bark?

12 A Well, he didn't bark all the time, but you could see he
13 was violent.

14 Q How could you see he was violent?

15 A He would -- because he would jump. He would jump up
16 and bark.

17 Q What about him jumping and barking made him seem
18 violent?

19 A Well, because Ms. Elvia said her dog was the angry
20 type.

21 Q When did she say this?

22 A Well, because I didn't go by myself; there were four of
23 us. And two stayed in the car, and two got out of car. And
24 my friend, my female friend, said to her why did she have
25 this type of dogs? They tend to be aggressive.

1 And she had said, Well, yes. He is the aggressive
2 type. And that was it.

3 Q When did Elvia say that?

4 A I don't know if she had said that at the beginning. I
5 don't remember. Or if it was the last thing.

6 Q So when you went the first time, who else went with
7 you?

8 THE INTERPRETER: Interpreter's going to ask to
9 clarify.

10 (Interpreter communicating with witness.)

11 A So I was not the only one who visited her there. Some
12 others visited her of the same congregation. Yeah, so it
13 was about four or five times that we visited her.

14 Q You said that Elvia might've said or agreed that her
15 dog was angry the first time that you went. And you also
16 said that you were with four people. So who were those
17 people that you went with the first time?

18 MR. MOORE: Object to form.

19 MS. GRANADOS: What's wrong with the form?

20 MR. MOORE: I believe it misstates the prior
21 testimony.

22 MS. GRANADOS: How's that?

23 MR. MOORE: Vague as to time the four people
24 were there. She had talked about how the four people were
25 there with her the last time. It's kind of confusing as to

1 who was with her at which times.

2 MS. GRANADOS: Right. Which is why I'm trying
3 to clarify.

4 So her testimony was that she had gone with four
5 people; one of her female friends had said that, Why do you
6 have one of these dogs? They tend to be aggressive.

7 And Elvia had agreed, and I had followed up asking --

8 THE INTERPRETER: Sorry. Could you slow down?

9 MS. GRANADOS: Sorry. Elvia had agreed that
10 yes, he can be angry. And so I had then followed my
11 question with, When had Elvia said that?

12 She mentioned she wasn't sure if that was the first
13 time or the last time that she went. And so I had just
14 asked the first time that she went who was she with. I'm
15 trying to figure out if it was the first or the last time.

16 MR. MOORE: Okay. That's fine.

17 MS. GRANADOS: Okay.

18 Q So, Ms. Blanco, the first time that you went to visit
19 with Elvia, who else was with you?

20 A So Jaylene. The first time, Jaylene was with me.

21 Q Is that it?

22 A So that was the first time. The other times Teresa was
23 there. Teresa Jimenez, uh-huh.

24 Q So it was just Teresa and Jaylene that would go with
25 you?

1 A One time Jaylene came with me, and she stayed in the
2 car. And Jaylene and her sister stayed in the car and
3 Teresa and me, we got out of the car.

4 Q But the very first time you went, it was just Jaylene?

5 A No. The four of us went.

6 Q Okay. So the very first time you went, it was Jaylene,
7 it was Teresa, it was you, and Jaylene's sister?

8 THE WITNESS: Um-hmm.

9 Q And what is Jaylene's sister's name?

10 A I don't remember.

11 Q And the very first time you went to see Elvia, who got
12 out of car with you and went to the door?

13 A Just me and Jaylene.

14 Q So who was the one who had made the comment about that
15 type of dog being aggressive?

16 A Elvia.

17 Q So you had said that Elvia agreed to that comment, but
18 you said that one of -- one of the people that went to the
19 door had asked --

20 THE INTERPRETER: Sorry. One sec.

21 MS. GRANADOS: Yeah, of course.

22 THE INTERPRETER: Could you repeat the
23 question? You said that Elvia have agreed with the comment
24 but --

25 Q But that one of the people that you had gone to the

1 door with had asked Elvia why she had those types of dogs.
2 They can be aggressive.

3 A Yes. It was Terri. It was Teresa.

4 Q But Teresa didn't go to the door with you the first
5 time that you visited with Elvia, right?

6 A No. Teresa stayed in the car.

7 Q Okay. How many times did Teresa come with you to visit
8 with Elvia?

9 A At the most, it was four times. And the other time it
10 was Jaylene.

11 Q So Teresa went with you almost every single time that
12 you met with Elvia?

13 A Yes.

14 Q How many times did Teresa get out of the car?

15 A The most times -- because Jaylene only got out of the
16 car one time.

17 Q So it was always Jaylene, Teresa, and Jaylene's sister
18 that would go with you to visit with Elvia?

19 THE WITNESS: Yes.

20 Q How many times did Jaylene and her sister get out of
21 the car?

22 A It was just Jaylene who one time got out of the car.

23 Q And that was the very first time?

24 A Yes.

25 Q So was it mostly you and Teresa who would be at the

1 door with Elvia?

2 A Yes.

3 Q And on the date of the incident, where was the dog?

4 A In the enclosure.

5 THE INTERPRETER: And since we've been going an
6 hour, at some point the interpreter would ask for a brief
7 recess.

8 MS. GRANADOS: We can do that now.

9 THE INTERPRETER: Five minutes is fine.

10 MS. GRANADOS: Yeah, of course.

11 (Break was taken.)

12 Q (By Ms. Granados) So you mentioned there was a large
13 fence. Was there anything else inside the fence?

14 A Like cars? Please be more specific? Do you mean the
15 fence -- the enclosure for the dog or the enclosure to enter
16 into the piece of land?

17 Q So there were two fences? Are there two fences?

18 A Well, yes, the one for the dog. And also where the --
19 well, it's a large piece of land.

20 Q So is the whole land around the trailer fenced in, and
21 then that's a smaller enclosure for the dog?

22 A Yes. So it's a fence kind of like about this long,
23 like this, and bigger than here.

24 Q So you're saying about as wide as the conference room,
25 which --

1 A Like from here to here.

2 Q Okay. And the back of the fence, was that smaller than
3 the fence around the whole trailer?

4 THE INTERPRETER: Interpreter doesn't
5 understand when you say "back of the fence."

6 Q So there's a fence that goes around the whole trailer,
7 and then you said there was a smaller one that's about the
8 size of the conference room for the dog. How --

9 A Yes. And all of it's within a large piece of land.

10 Q So how far is the smaller fence from the larger fence
11 that surrounds the whole land?

12 A Well, exactly, I don't know.

13 Q Is it a large distance, a short distance?

14 A I don't know.

15 Q And inside the enclosure with the dog, is there
16 anything else inside that fence?

17 A Well, since I only went there to talk to Elvia, I
18 didn't really pay too much attention to what was there, so
19 to say it exactly, I don't know.

20 Q When you first arrived, do you know what time that was,
21 on the day of the incident?

22 A Yes. We got there at around 11:30.

23 Q How long do you usually study with Elvia?

24 A Half an hour.

25 Q So you guys arrived at 11:30. Who went to the door

1 with you?

2 A Which door?

3 Q To meet with Elvia.

4 A Terri. Terri, because she's the one who went with me.

5 Q On the date of the incident, where were Jaylene and her
6 sister?

7 A In the car.

8 Q And when you arrived, what happened when you first met
9 with Elvia?

10 A We started to study.

11 Q Are you guys still on the patio?

12 THE WITNESS: Yes.

13 Q Did you guys complete your study?

14 THE WITNESS: Yes.

15 Q At this time, where was the dog when you finished the
16 study?

17 A So the dog got to me because he jumped the fence, and
18 he got on top of me. He was on top of me or above me. He,
19 he got on top of me by here; he fell on me here. And my
20 bag -- I put it -- I put it here because he jumped on me
21 here.

22 THE INTERPRETER: Sorry. Interpreter needs to
23 clarify.

24 (Interpreter communicating with witness.)

25 A Yes. I had my bag and I put it here. Okay. So I put

1 my bag on me here so that he would not bite me here. He was
2 trying to bite me here, and when he saw that he couldn't do
3 it, he went on this side over here. I had my bag here, and
4 he grabbed me here and here. I've got these things.
5 Grabbed me from here. And I couldn't take my hand from
6 here, or he couldn't take my hand from here, so he grabbed
7 me here and jumped on me here and here. He, he grabbed me
8 here, opened me up here and from here. And this was left --
9 this part went up, and my eye was left like this and here.
10 He pulled all this down here. And this -- he pulled this
11 part down here; it was hanging off of me to here, like this.

12 And Elvia knew this dog was vicious, and she didn't do
13 anything. She didn't do a thing.

14 Q So I'm going to get some clarification because we said
15 a lot of "heres," and we need to get some clarification for
16 that.

17 So you said that he jumped on you here, and you were
18 pointing to your left shoulder; is that right?

19 A So he wasn't getting me here because I had my bag like
20 this, so he ran over and jumped me for -- from this side.

21 Q I can understand that. But "this side," we can't -- we
22 don't have a visual, so I'm trying to get "left," "right,"
23 things like that.

24 So first -- so you said he jumped on you here, and you
25 were grabbing your left shoulder; is that right?

1 A Here.

2 Q Is that a "yes"? Your left shoulder?

3 A First he jumped me here and then over here.

4 Q I understand that, but I need to know left and right.

5 So first he jumped --

6 THE INTERPRETER: One second, please.

7 Q -- he jumped on your left side; is that right?

8 A On this side.

9 Q So is that a "yes" that he jumped on your left side?

10 THE WITNESS: Yes.

11 Q Thank you.

12 And then you put your bag up over the left side of your
13 neck; is that right?

14 THE WITNESS: (Nodding head up and down.)

15 Q Is that a "yes"?

16 A Yes.

17 Q Thank you.

18 So you said he could not get to you on this side, on
19 your left side, so then he went over to your right side; is
20 that right?

21 A Over here.

22 THE WITNESS: Yes.

23 Q Thank you.

24 And you said that he bit you here, and you were
25 pointing to your right forearm; is that right?

1 THE WITNESS: Yes.

2 Q And then you said that he bit you here, and you were
3 pointing to the right side of your face; is that right?

4 A He -- not just the face; he pulled out this, my ear,
5 and he ate it right in front of me. He ate my ear.

6 Q And that's your right ear?

7 THE WITNESS: (Nodding head up and down.)

8 MR. MOORE: For the record, she's pointing at
9 her right ear.

10 Q And then you said that he pulled here, and you were
11 pointing to your mouth; is that right?

12 THE WITNESS: Yes.

13 Q Thank you.

14 So let me go back to the beginning. So you had
15 finished your study, and you were on the patio. Were you
16 leaving at this time?

17 A No. Because we had just completed the studies. I had
18 just closed my Bible, and as soon as I closed my Bible, I
19 saw him right up -- he was on me.

20 Q And you said he jumped the fence. Did you see what
21 side of the fence he jumped from?

22 A Because I was in front of the fence -- because Terri
23 and Elvia had their backs to the fence, but I was facing the
24 fence.

25 Q So since you were facing the fence, did you see where

1 the dog jumped the fence?

2 A Right in front, where I was.

3 Q Did he jump from the left side of the house or the
4 right side of the house?

5 A The right.

6 Q And once he jumped the fence, did you see him run at
7 you?

8 A Yes. I was his prey.

9 Q Can you describe the dog for me?

10 A It's the most horrible dog you could imagine. They're
11 the kinds -- they have their ears like, like this. They
12 can -- they cut their ears.

13 Well, you, the interpreter, can explain it. The face,
14 they have a face like this, like a -- it's like a calf's
15 face, as big as that, and the pointed ears like this and
16 they stick up. And a thing -- what do you call this? -- the
17 back, it's like this; it's this wide. It was very large.

18 Q What color was the dog?

19 A I don't remember even remember its color.

20 Q Do you know what kind of breed it was?

21 A Pit bull.

22 Q Do you know who owned the dog?

23 A I don't know.

24 Q When the dog was attacking you, did anyone help?

25 A Yes.

1 Q Who?

2 A Terri.

3 Q What did she do?

4 A It grabbed her here. Oh, it bit all -- it pulled all
5 this off.

6 Q So he bit her left hand?

7 A Yes.

8 Q At what point did he bite her?

9 A Because she was trying to get him off of me.

10 Q Did he bite her before the dog went to your right side?

11 A So it was after he had bit me -- well, he was wanting
12 to continue biting me, and then -- yes.

13 THE INTERPRETER: Interpreter thinks there's
14 more to say, but, "Yes."

15 Q So he jumped on your left side, and then he went over
16 to your right side to bite you. Where is Teresa? Is she
17 helping you at this point?

18 A Yes.

19 Q After he bit Teresa, where -- what happened next?

20 A Then he bit Elvia. And also on the hands.

21 Q So where was Elvia during, during the attack?

22 A There.

23 Q Where's "there"?

24 A She wanted to -- she was trying to get him off of me
25 because the dog was right there on me.

1 Q So are both Elvia and Teresa helping you at the same
2 time?

3 A Yes. And also Elvia's son showed up. The dog bit him
4 too.

5 Q What's her son's name?

6 A I don't know him. I don't know his name.

7 Q Who had called him?

8 A I don't know. At that moment, I didn't know what was
9 going on.

10 Q So after the dog bit Teresa and he bit Elvia, what
11 happened next?

12 A So Teresa, Elvia. And then after that, I didn't know
13 what was happening; I was on my back, on the ground, faceup,
14 and I was getting -- I turned -- I was putting my face into
15 the ground so that he would not keep biting me.

16 Q When had you fallen on the ground?

17 A So when the dog got on top of me or that is -- well,
18 there was a little -- when the dog knocked me down, so there
19 was a little bit -- he left me this much space. He dragged
20 me or I put -- no. I put myself like this, in this way. So
21 I put my face into the -- into the ground, and so I didn't
22 know what much -- well, I heard a lot of voices. And the --
23 it was police. We were surrounded by the police. And they
24 told me it was the police. And one of them said to me, Lift
25 up your face.

1 And they took photos. And there was my blood, like
2 a -- it was in a -- in a circle like this. And that's in
3 the police reports regarding my blood.

4 Q So when you said you put yourself like this, you put
5 yourself on the floor? I'm not understanding that.

6 A Yes.

7 Q When he jumped on you, on your left and your right
8 side, you were still standing at this time?

9 A Yes.

10 Q And so you said he gave you this much space. Had he
11 stopped attacking you at this time? Is this when he was
12 going after Elvia and Teresa?

13 A Yes.

14 Q And so that's when you got on the floor and put your
15 face in the ground?

16 A Yes.

17 Q So at that time, the dog hadn't caused you to fall; you
18 were laying to avoid getting attacked some more?

19 A The first time the dog knocked me down; he knocked me
20 over. And the second time I fell, but he didn't knock me
21 over when he attacked me here, nor here. No. When he came
22 back onto me like this, that's when I -- he knocked me over.

23 Q So just to clarify, because initially you said that
24 after he jumped on your left side and on your right side, he
25 had stopped attacking for a little to go after Elvia and

1 Teresa, and that's when you said that you got on the floor
2 and put your face in the ground so he would not attack your
3 face; is that right?

4 A Yes.

5 Q So at what point does the dog knock you over, if you
6 just said that he didn't knock you over when he attacked you
7 on your left and your right side?

8 A Explain that to me again.

9 Q Sure. Initially you said that he attacked you on your
10 left side and on your right side, but you were still on your
11 feet.

12 A I was still standing up.

13 Q Okay. And --

14 A But the second time, he attacked me here. But then he
15 again got to me on the front, straight on the front end,
16 like this. And I went -- I went to one side, and I -- and I
17 put my face in the ground because I didn't want him to keep
18 attacking my face.

19 Q No, I understand that. I just -- I want to make
20 sure -- because initially you said that when he attacked you
21 on both sides you're still on your feet, and then he took a
22 brief break to go after Elvia and Teresa. Is that right so
23 far?

24 THE WITNESS: Yes.

25 Q Okay. And then he turned. He was going to attack you

1 again, and you went to the floor and put your face in the
2 ground?

3 A Yes.

4 Q Okay. And then I had asked you, Did the dog knock you
5 over? And you had said yes.

6 A Yes, he knocked me over.

7 Q So when did that happen?

8 A When he's coming at me again over here, on my front.
9 I, I wasn't standing up very stable, and I fell over towards
10 the side and he knocked me over, or he -- yeah.

11 Q So did he headbutt you? Did he bite you when he was
12 coming from the front? What happened?

13 A He wanted to bite my face again. If I hadn't gone to
14 the side like this -- because I wasn't standing up very
15 well, if I hadn't done this, he would've attacked my face
16 more.

17 Q So once you fell on the floor, where did the dog go?

18 A Where do you think the dog would've been?

19 Q I don't know. I wasn't there.

20 A He was here, on top of me. He was on me, on top of me.
21 And there was already people around, so Elvia got on top of
22 the dog so that he would not keep attacking me. And on top
23 of Elvia was her son. And the police were already there.

24 So -- and the police, they could not shoot the dog.
25 They could not shoot the dog because there was Terri, Elvia,

1 and her son on top of the dog. I couldn't see; I had my
2 face buried in the ground. But afterwards they told me
3 everything that happened. And I was there surrounded by all
4 the police officers.

5 Q So it was Elvia and her son on top of the dog. Where
6 was Teresa at this point?

7 A Teresa was also there on one side. She never left me.

8 Q But she wasn't helping in getting the dog off?

9 A No. Because everyone was on top of me. I couldn't see
10 what was happening. All this was told to me after the fact.

11 Q Were they able to get the dog off you once the police
12 arrived?

13 A So not until they showed up the -- well, no. The
14 police didn't want to get the -- didn't want to shoot the
15 dog because everyone was on top of me here. And so it
16 wasn't until the dogcatcher, the dog person showed up. What
17 would you call that?

18 Q Animal control?

19 A It wasn't until then that they were able to get him
20 from there.

21 Q So it was actually animal control that had pulled the
22 dog off of you?

23 A Yes. It said that that's what happened.

24 Q Was there any fire department or ambulance that
25 arrived?

1 A Four ambulances. Because there were four people with
2 bites; it was Terri, me, Elvia, and her son.

3 Q Where was her son bit?

4 A They say on his hands. So Terri, Elvia, and her son
5 had bites on their hands.

6 And I'm tired.

7 Q Does that mean you want to take another break?

8 MR. MOORE: Let's take a break.

9 A Yes. Since I suffer from diabetes, it gets a bit out
10 of control when I talk a lot.

11 MS. GRANADOS: We can go off the record.

12 (Break was taken.)

13 Q (By Ms. Granados) So I think we're at where the
14 ambulance had arrived. Did any of the EMTs treat you on the
15 scene?

16 A Yes. Or there, you mean, when they picked me up?

17 Q Yes. So the ambulance arrived on the scene. And can
18 you tell me what happened to you then?

19 A So when the police officer told me to lift up my face,
20 I lifted up my face. He asked if he could take photos; I
21 said yes. He took photos. They were taking the photos, and
22 there were people all around. And when I lifted up my face
23 and the flesh was hanging off of my face and also my eye and
24 then --

25 THE INTERPRETER: Interpreter needs to clarify.

1 Q When did you start feeling knee pain?

2 A Immediately. As soon as I got home I felt the knee
3 pain. And I have -- this knee is now bigger than the other
4 knee; it's not inflammation.

5 Q Have you sought treatment for your knee?

6 A No. No, I've not gone.

7 Q Why not?

8 A That's how I am. I, I leave things for the future.

9 Q Do you know David Sandoval? Do you know David
10 Sandoval?

11 A Where's he from?

12 Q He's -- I believe he's Elvia's son, and he's the one
13 renting the home. Have you ever met him?

14 A I've seen the young man, but I haven't talked a lot to
15 him.

16 Q When you did talk to him, what did you talk about?

17 A Well, regarding what I had come to talk about, because
18 as Jehovah's Witnesses, we carry the message of God.

19 Q Did he ever tell you not to come back to the home?

20 A Well, we came at the invitation of his mom. So we
21 received this invitation through his mom, who invited us to
22 come about the prophecies of God.

23 Q I understand that. But when you spoke with David, did
24 he ever tell you not to come back to the home?

25 A He was always very attentive to us. So we would always

1 see him when we're leaving the trailer. I didn't know if he
2 lived there. I didn't know much about him, but he never
3 said things to us, like, Don't talk to me about God, or
4 anything like that.

5 So one or two times when I ran into him, yes, we talked
6 to him about Jehovah, yeah, about God. But we never talked
7 about any other things. He never talked about anything
8 else. He accepted it the two times that we talked to him
9 about God, and that was it.

10 Q Okay. Do you know Teri and Ernesto Hernandez?

11 A Yes.

12 Q How do you know them?

13 THE INTERPRETER: Sorry. Interpreter needs to
14 clarify: Did you say Teri Ernesto or Teri and Ernesto?

15 MS. GRANADOS: Teri and Ernesto.

16 A Yes.

17 Q How?

18 A Well, she is with us in the congregation. I don't know
19 her husband too well, but he also comes to the congregation.

20 Q How long have you known Teri and Ernesto?

21 A Not too long. Maybe a year.

22 Q Did you know that they rent out the home where you were
23 meeting with Elvia?

24 A I did not know. I did not know.

25 Q Do you have any reason to believe that the dog belongs

1 to Teri and Ernesto Hernandez?

2 A No, I don't know anything about that.

3 MS. GRANADOS: No further questions.

4 MR. MOORE: All right. I do have a few
5 follow-up questions.

6 THE INTERPRETER: Interpreter will just add
7 that she needs to leave in six minutes.

8 MR. MOORE: I'll make it quick.

9 EXAMINATION

10 BY MR. MOORE:

11 Q You talked about a prior hospitalization in Mount
12 Vernon, I believe, for blood pressure. In your
13 interrogatory responses, you described something as a heart
14 attack.

15 THE INTERPRETER: Interpreter needs to clarify.
16 (Interpreter communicating with witness.)

17 A So I -- it wanted to get me.

18 THE INTERPRETER: The interpreter clarified, As
19 in almost had a heart attack?

20 A Yes. So almost -- and they attended to me immediately.
21 And I recovered and it did not get me.

22 Q Okay. And at time of the attack, were you inside of
23 any fenced area when you were attacked by the dog?

24 A No. There was no protection there.

25 Q Okay. And how far away from the fenced area where the

1 dog got out were you at the time of the attack?

2 A Well, honestly, I can't tell you. I can't describe for
3 you the length of the -- or the distance of where it was
4 from.

5 MR. MOORE: Okay. Could you mark this as
6 Exhibit 1?

7 (Exhibit No. 1 marked for identification.)

8 Q Does Exhibit 1 show the property where you were at when
9 you were attacked?

10 A This is the street, right? And this is entry. Behind
11 this car, that's where -- that's where I was. So this
12 pickup, which had been parked there for a very long time.

13 Q So you're indicating the red truck, the furthest
14 vehicle to the left of Exhibit 1, for the record.

15 (Exhibit No. 2 marked for identification.)

16 Q You've been handed what's been marked as Exhibit 2 to
17 your deposition. Does this show where your face ended up at
18 the time of the attack?

19 A Here was my blood.

20 Q In the middle of the photo?

21 THE WITNESS: (Nodding head up and down.)

22 MR. MOORE: And if you could mark these.

23 (Exhibit Nos. 3 - 6 marked for identification.)

24 Q You've been handed what have been marked as Exhibits 3,
25 4, 5, and 6. Does this show -- do these photographs show

1 the area where the dog escaped?

2 A Yes. The dog escaped by here.

3 Q And for the record, you're indicating the middle of
4 Exhibit 6, near where the police officer is?

5 A Yes. It was there that he jumped, yes. Because I saw
6 here where he bit a piece of wood, and he jumps here. I
7 looked at him. It looked like he was flying, but he wasn't
8 flying but he was so fast that he jumped. So he escaped
9 here. And so the police officer realized that a piece of
10 wood had fallen here, and he jumped -- he could jump through
11 here. The fence was very poor.

12 Q And is that also -- that area of the fence you're
13 talking about, shown in Exhibit 3?

14 A This is from behind, no? Right?

15 Q I'm asking you, is the fence shown in Exhibit 3 the
16 same one shown in Exhibit 5 behind the porch?

17 A Explain that to me, because I don't understand.

18 Q Okay. We were talking about the picture shown in
19 Exhibit 6. And is that porch that you indicated the dog
20 had -- or that fence and the porch area, is that the same
21 porch area that's shown in Exhibits 3, 4, and 5?

22 A Well, it seems that this one. Or no.

23 THE INTERPRETER: And sorry. Interpreter needs
24 to be going in one more minute.

25 A Here it is. It looks like this is it. It seems that

1 way.

2 Q Okay. So is it --

3 A I'm confused. So I'm a little confused, but I can
4 state here, I can say yes, that's where he jumped.

5 Q Okay. On Exhibit 6.

6 And one word about the interpretation that -- you
7 mentioned, well, the word "patio." And I've been using the
8 English word "porch." Were you actually on the -- this wood
9 structure shown in Exhibit 5 when you were attacked?

10 A No, I was not there. We were further away from there.
11 But in the attack, I was never here. Nearby close here?
12 No, I never was there. We were -- we were on the same piece
13 of land, but very close by here, the door.

14 THE INTERPRETER: "The porch," in English.

15 A We were a little more distant from there.

16 THE INTERPRETER: And sorry. It's 12:06.

17 Interpreter needs to leave to get to her next job.

18 A Where was the blood left?

19 Q And you're pointing to Exhibit 2?

20 (Interpreter exits.)

21 MR. MOORE: And for the record, she's pointing
22 to Exhibit 2. And that's all the questions that I have.

23 (Deposition concluded at 12:07 p.m.)

24 (Signature reserved.)

25 (Exhibit Nos. 1 - 6 attached.)

EXHIBIT 8

SUPERIOR COURT OF WASHINGTON, SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,)
Plaintiff,)
vs.)
DAVID GONZALEZ SANDOVAL,)
ALEJANDRA MARTINEZ, and the) 18-2-08290-31
marital community comprised)
thereof; and ERNESTO)
HERNANDEZ, TERI HERNANDEZ,)
and the marital community)
comprised thereof,)
Defendants.)

DEPOSITION UPON ORAL EXAMINATION OF

ELVIA SANDOVAL

(Through an Interpreter)

10:07 a.m.

APRIL 10, 2019

1812 HEWITT AVENUE, SUITE 204

EVERETT, WASHINGTON

REPORTED BY: ELEANOR J. MITCHELL, RPR, CCR 3006

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A P P E A R A N C E S

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I N D E X

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MR. MOORE	25

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1 A. Yes.

2 Q. And are you on any medications that would
3 affect your ability to testify here today?

4 A. No.

5 Q. What is your date of birth?

6 A. January 1, 1952.

7 Q. And where were you born?

8 A. Mexico.

9 Q. When did you first come to the U.S.?

10 A. I don't recall exactly, but I think it was
11 around 1993.

12 Q. And did you move straight to Washington?

13 A. Yes.

14 Q. Have you lived anywhere else besides
15 Washington?

16 A. No.

17 Q. What is your current address?

18 A. 6507 204th Street Northeast, Arlington,
19 Washington 98223.

20 Q. And who do you live with?

21 A. With my son and my daughter-in-law and my
22 grandson.

23 Q. And would your son be David Sandoval?

24 A. Yes.

25 Q. And your daughter-in-law would be Alejandra?

1 A. Yes.

2 Q. And how long have you resided with your son?

3 THE INTERPRETER: Can you repeat the
4 question?

5 Q. (BY MS. GRANADOS.) How long have you resided
6 with your son?

7 A. All my life.

8 Q. And the address that you're residing at, is
9 that the address of the incident that occurred back on
10 May 8, 2018?

11 A. Yes.

12 Q. Are you married?

13 A. I'm married, but we are separated. My husband
14 went to Mexico with someone else, and we didn't do --
15 we're not divorced yet.

16 Q. Any other children besides David?

17 A. Yes.

18 Q. How many?

19 A. Four.

20 Q. How many sons and how many daughters?

21 A. Two boys and three girls.

22 Q. And are they all older, like over the age of
23 20?

24 A. No. I have one that is 20 years old.

25 Q. And who is the youngest, the 20-year-old?

1 asking me for -- apologizing to me because they could
2 not understand. Because I didn't do anything. And
3 that's what I was arrested for.

4 Q. So the incident that occurred on May 8, 2018,
5 do you recall about what time that happened?

6 A. No. It was during the morning, but I can't
7 recall the time.

8 Q. And do you know the plaintiff, Maria Blanco?

9 A. If I know her face-to-face?

10 Q. Yes.

11 A. I didn't know her name. I knew her because I
12 saw her, but I didn't know her name.

13 Q. Okay. When did you first meet her?

14 A. I don't recall the date because I didn't pay
15 attention to it.

16 Q. How did you first meet her?

17 A. She went home.

18 Q. And why did she come to your house?

19 A. To talk to me about the Bible.

20 Q. And after that first visit, did you ask her to
21 come back?

22 A. Never.

23 Q. Do you know how many times she came to your
24 home prior to May 8, 2018?

25 A. No, because it was not a set appointment or

1 visit. Nothing. But if she went, and I wasn't there,
2 I don't know. Only if I was working at the time.

3 And when she was coming, sometimes I was busy
4 greeting her. It's a woman; she's older than I am.

5 Q. On the times that you were home and you spoke
6 to Maria, how long would you guys speak about the
7 Bible?

8 A. How can I say? It was not forced conversation
9 about the Bible. And she was coming; she was asking me
10 how I was doing. And if I was busy, she was asking
11 just for five or ten minutes of my time. And she was
12 just talking, chatting something, and then she was
13 leaving.

14 Q. Did you ever invite her into the home?

15 A. Only once.

16 Q. Do you recall when that was?

17 A. No. Because it was bad weather out there, and
18 I asked her to walk into the house. But that was it.

19 Q. So on May 8, 2018, were you working that day?

20 A. No.

21 Q. And at that time, where were you working?

22 A. I was working in a hotel as housekeeping.

23 Q. And whenever Maria would stop by, where was
24 the dog?

25 A. Locked.

1 Q. Where?

2 A. Sometimes inside of my house. Sometimes in
3 the backyard because it is fenced.

4 Q. Do you recall what year you moved into that
5 home?

6 A. I'm trying to remember. Maybe more than four
7 years.

8 Q. And when you moved in four years ago, was
9 Alejandra there as well?

10 A. No.

11 Q. When did Alejandra move in, if you know?

12 A. They got married, and I can't recall the
13 dates.

14 Q. When you and David moved in, did he have any
15 pets?

16 A. Yes. We had a chihuahua.

17 Q. And that was it?

18 THE INTERPRETER: Can you repeat?

19 MS. GRANADOS: That was it? That was the
20 only pet?

21 A. Yes.

22 Q. (BY MS. GRANADOS.) Do you recall when he got
23 the white dog?

24 A. No. We got it just as a puppy.

25 Q. And what was the dog's name?

1 A. Enzo.

2 Q. And were you with David when he got Enzo?

3 A. Yes.

4 Q. Where did -- where was the dog purchased from?
5 Or who?

6 A. I don't know where they bought it from, but
7 this person was selling these type of dogs.

8 Q. Did you go to this man's home?

9 A. No. I was there when the dog arrived. I was
10 there in the house.

11 Q. I see. But you didn't actually go with David
12 to pick out the dog?

13 A. No. I think it was his wife.

14 Q. And when you first moved into the home about
15 four years ago, do you recall if there were any fences
16 that were already installed?

17 A. The fence is on the sides. And when we
18 purchased the dog, we completed the fence.

19 Q. I'm going to show you what's been marked as
20 Exhibit 1, and it's going to be picture 53. Is that
21 the fence that you guys installed?

22 A. Yes.

23 Q. And do you know whether it was David or
24 Alejandra that installed that fence?

25 A. Yes.

1 Q. So was it both of them or just one of them?

2 A. Him with the help of someone else.

3 Q. Do you know who that other person was?

4 A. No. Because they weren't -- they didn't
5 install it in a single day.

6 Q. And while the fence was being installed, where
7 was Enzo?

8 A. Inside the house. Yeah, we kept it inside the
9 house when he was little. It was a puppy.

10 Q. When did Enzo start going outside, if you can
11 remember?

12 A. Yeah. He was a puppy when we weren't taking
13 him out to the yard.

14 Q. And would you ever go with David to take Enzo
15 to the vet or anything like that?

16 A. Yes.

17 Q. And do you know if Enzo would get regular
18 shots or regular checkups?

19 A. Of course, because they paid in advance for a
20 plan. You know, they were taking the dog for all the
21 checkups and the vaccinations and so forth.

22 Q. Do you recall which vet you guys would go to?

23 A. No. I know that it's Mount Vernon. That's
24 where the place is.

25 Q. And do you know what kind of dog Enzo was?

1 sleeping. And sometimes I heard the snorting -- he was
2 snoring. And I thought it was my husband. I could
3 turn around, and the dog was sleeping next to her. It
4 was very, very charming and very loving.

5 Q. And whenever Maria would stop by, where would
6 Enzo be?

7 A. The last time?

8 Q. Yes.

9 A. Out. Outside.

10 Q. At any point when Maria visited, would Enzo
11 bark at her or any other people she was with?

12 A. She was barking at her, yes. That's why I
13 never wanted her to be in my house. I was keeping her
14 outside. And I don't understand why it was like that.

15 Q. Did you ever see Maria having any type of
16 interaction with Enzo?

17 A. I knew that she didn't like the dog. I don't
18 know. I don't know.

19 Q. Did Maria ever stop by with other people?

20 A. Yes, with another -- another person. One
21 time, another person -- the other person told her that
22 that type of dogs are very protective, and they don't
23 accept strange people. And that was all.

24 Q. Did you ever make a comment to Maria, or the
25 other person that she was with, that Enzo was

1 aggressive in any way?

2 A. No. One time -- once, I told her that we --
3 we didn't want to receive visitors because -- because
4 my daughter-in-law was pregnant. And the dog -- the
5 dog was sleeping next to my daughter-in-law and my
6 son's bedroom.

7 And they changed bedrooms, and the dog was
8 crying. And they moved the dog to another place.
9 Everybody thought that he was trying to protect my
10 daughter-in-law. Because when it was grown up and the
11 dog was walking in, it was just going through the
12 kitchen. And it was not aggressive at all.

13 I got the dog used to take -- to get a couple
14 of tortillas when he would come into the house, and he
15 would go straight to the kitchen. And I was showing
16 the tortillas to the dog, so he needed to see it in
17 order to get the tortilla. And he was fluffing up very
18 happy.

19 MS. LOPEZ de ARRIAGA: Do you mind if we
20 leave that open just for a second? It seems to be
21 getting very warm.

22 Q. (BY MS. GRANADOS.) Do you know if -- if David
23 did any type of like training class with Enzo?

24 A. No. Yes, he was talking him to the park. He
25 was going to walk him. And he even went to the

1 mountains with the dog. I saw that the dog was
2 basically moving aside or sitting when there was people
3 nearby, and he was busily sitting down while people was
4 walking by.

5 Q. And do you own the home that you reside in?

6 A. No. We're renting.

7 Q. Who do you rent from?

8 A. The name is Ernesto Hernandez.

9 Q. And do you know if David spoke to
10 Mr. Hernandez after purchasing the dog?

11 A. Ernesto saw the dog.

12 Q. Do you remember when that was?

13 A. He was a little puppy.

14 Q. Did David ask Ernesto for permission to buy
15 the dog?

16 A. I don't know.

17 Q. And were you there when Ernesto saw the puppy?

18 A. Yes.

19 Q. Do you recall if Ernesto said anything to
20 David once he saw the dog?

21 A. No.

22 Q. Was the fence installed by the time that
23 Ernesto stopped by?

24 A. Ernesto is someone who walks my house every --
25 every single day. And he drives because he's just over

1 the avenue.

2 Q. And the date of the incident, on May 8th, do
3 you recall how many people were with Maria?

4 A. There were two people in the car, and she was
5 with another person outside of my house.

6 Q. Do you remember how long after this incident
7 occurred -- sorry. Let me start over.

8 How long after you telling Maria that you
9 didn't want visits did this incident happen on May 8th?

10 MR. MOORE: Object to form. Misstates
11 testimony.

12 MS. GRANADOS: How so? She mentioned that
13 she didn't want visits because her --

14 Q. (BY MS. GRANADOS.) Alejandra was pregnant; is
15 that correct?

16 MR. MOORE: Well, the record speaks for
17 itself. She can testify.

18 MS. GRANADOS: So I'm asking her.

19 Q. (BY MS. GRANADOS.) Prior, you mentioned that
20 you did not want to receive visits from Maria because
21 Alejandra was pregnant; is that correct?

22 A. Yeah. Before that, yes.

23 Q. So how long before the May 8th incident did
24 you say that?

25 A. Maybe a month. I wasn't seeing her regularly,

1 every eight days. I didn't have any commitment with
2 her. And if she was walking by, and I was there, we
3 were talking about it. It was...

4 Sometimes I don't understand at all this woman
5 that I never received a magazine from her, never
6 received -- accepted her Bible. I didn't commit to
7 anything with her. I was using her because I didn't
8 want to be rude, and I was respecting her age. Because
9 she's not hurting me. I shouldn't be kicking her out.
10 I mean, it's okay. I receive her. Maybe I did wrong.

11 Q. So in your own words, can you describe what
12 happened on May 8, 2018?

13 A. She arrived. And she arrived and she needed
14 to go all the way to the center because the trailer is
15 in the middle. And she knocked the door, and I told
16 her that I was busy, and she asked me for a few
17 minutes. Then I went out with my slippers. And I went
18 out walking with her to the -- about halfway in the
19 yard.

20 Q. And then what happened?

21 A. And then we started talking: that God
22 forgives, and God is love. She told me something that
23 I very stick to my mind, and she told me that heaven
24 was nearby, and that she was seeing herself living
25 amongst the liars.

1 I don't know when the dog came out because he
2 didn't jump the fence. And I was giving my back to the
3 dog, and she was facing the other direction.

4 When I realized the dog wasn't running, when I
5 saw the dog, I saw he was just walking and jumped. And
6 that's when -- that's when the dog scratched me here
7 because he jumped. He kicked me, too. He hit -- he
8 didn't attack me. I think that this woman got -- I
9 mean, the dog was uneasy because the woman started
10 pulling out magazines and on the phone.

11 And the dog -- I don't know what he thought,
12 that they're going to do something to her, but he
13 jumped. He pushed me, and I grabbed this woman. The
14 other thing I did: I tried to pull the dog from her.
15 The dog was trying to snatch the -- the bag from her,
16 but she was holding firm to it, and I think that the
17 dog, therefore, became more aggressive. I don't know
18 if he reached it or not.

19 I tried to grab the ears of the dog, and I --
20 I was able to get him out. And she's to there,
21 standing. And when I saw that she was standing, I -- I
22 just let the dog go by and just let loose.

23 The dog ran to the other woman. I screamed to
24 the dog to turn back. I couldn't get the dog inside
25 the house because we were not close to it, and I asked.

1 the woman to go to the other side of the car. I -- and
2 when the dog reached them, I grabbed her from her
3 skirt. And that's what I remember. I grabbed the dog
4 from the ears again.

5 It happened so fast. When you're going
6 through something like that, it's very difficult. I
7 remember grabbing the dog from the ears. I didn't know
8 what to do. And I grabbed a hose, and I put it around
9 the neck of the dog, but the dog stopped making --
10 attacking.

11 My husband -- the husband of my daughter that
12 lives on the other side came, where he grabbed the dog.
13 And at the time, I think this woman already called the
14 police. The other thing I would said to the paramedic
15 and the ambulance, Just take care of this woman. Take
16 care of the woman.

17 I don't know. I went to pick her up, and I
18 gave her a hug, and I took her to the ambulance. And
19 that's when I called my son, and said, You know what?
20 The dog went out. We have an accident.

21 Don't worry. I'm on my way.

22 After that, my son came. They took this woman
23 in the ambulance, and they also told me that I need to
24 go because there was -- I had blood in my face. And
25 then I went to the hospital. And that's all what

1 happened.

2 Mr. Ernesto came to see what happened, and we
3 explained to him what happened. And that's when
4 Ernesto, he told me the name of this woman because I
5 didn't know that -- her name.

6 And I asked Ernesto how she was doing. She's
7 in the hospital. And then they took the dog -- because
8 they grabbed the dog and -- but the dog responded to my
9 son's voice. And they took Enzo with them, and my son
10 told me that they killed him.

11 I know that all this is very difficult. But
12 we also suffered because I -- we consider a pet part --
13 a member of the family. All this has been very
14 difficult for me. I was arriving home, and I was
15 thinking that the dog was there.

16 I don't know if I'm guilty or not. Sometimes,
17 I say if I communicate, if I had told the woman to
18 leave, this may not have happened. And things were
19 very sad because I knew a lot of people from that
20 faith.

21 And before this happened, I was going to the
22 store, and I was coming across them. And I feel like
23 when Jesus Christ was crucified, everybody's kind of --
24 everybody hid. I feel that I am a bad -- like a bad
25 person, that they crucified me without giving me the

1 screaming to the dog, and he went out running to see
2 what was happening.

3 Q. Do you know his name?

4 A. Yes.

5 Q. What is it?

6 A. Orlando Sullivan.

7 THE INTERPRETER: S-u-l-l-i-v-a-n.

8 Q. (BY MS. GRANADOS.) Do you know if Orlando was
9 hurt at all?

10 A. No.

11 Q. Was -- where was Enzo when you called David?

12 A. The police already had him.

13 Q. Did anyone else ever come to watch Enzo while
14 either you or David were away?

15 A. Who?

16 Q. Anybody. Did you have like friends or family
17 come watch Enzo?

18 A. No. I don't know.

19 Q. I'm showing you Exhibit 1. Is that a picture
20 of Enzo?

21 A. Yes.

22 MR. MOORE: Just for the record, could you
23 identify the Bates number?

24 MS. GRANADOS: I think it's 108.

25 And, I'm sorry, did she give her response?

1 THE INTERPRETER: I was just saying what
2 you were saying.

3 MS. GRANADOS: Yeah. Sorry. Then I
4 got...

5 Q. (BY MS. GRANADOS.) Is that a picture of Enzo?

6 A. Yes.

7 MR. MOORE: Can I see that?

8 Q. (BY MS. GRANADOS.) I have no other questions.

9

10 EXAMINATION

11 BY MR. MOORE:

12 Q. Do you want to go forward or would you like to
13 take a break?

14 A. As you wish.

15 Q. I'm asking you.

16 A. It's okay.

17 Q. Okay. We'll continue. My name is Derek
18 Moore, and I'm with Bishop Legal, and we represent
19 Maria Saralegui Blanco for her injuries arising from
20 dog attack of May 8, 2018.

21 And since we have the pictures in front of
22 you, let's look at Picture No. 114 in Exhibit 1. And
23 is that you?

24 A. Yes.

25 Q. And for the record, you were pointing to the

1 Q. Before the attack, you were talking to Maria.
2 Were you talking to anybody else?

3 A. Myself?

4 Q. You. Yes, you.

5 A. No.

6 Q. Do you remember how long you were speaking
7 with Maria before the dog attack happened?

8 A. Maybe ten minutes.

9 Q. And do you know where you were when you were
10 talking to Maria?

11 A. Yes. Where the trailer -- from the end of the
12 trailer -- we have the trailer, about a truck length,
13 and we were standing next to the truck.

14 Q. I'll try to rearrange these pictures.

15 MR. MOORE: Can we go off the record for a
16 minute?

17 (Discussion held off the record.)

18 Q. (BY MR. MOORE.) So looking at Exhibit 1, in
19 any of those pictures -- and I do ask you to identify
20 by the number so that we can make sure it's on the
21 record -- you were mentioning a truck. Is the truck
22 that you were talking about in this --

23 A. Yeah. This one.

24 Q. Okay. So you're in the middle on page -- on
25 Photo No. 6; is that right?

1 A. Yes.

2 Q. And is that also the white truck shown by the
3 double-wide trailer on page 16?

4 A. Yes. We were standing here, yes.

5 Q. Okay.

6 A. We were standing here.

7 Q. Can you circle where Maria was standing, I
8 guess, when the dog attacked her?

9 A. (Witness complies.)

10 Q. And could you point some big arrows to it to
11 make sure it shows up when it's copied.

12 A. Yep.

13 Q. And let me -- I will draw a bigger one.

14 All right. Is the arrow that I drew pointing
15 to the circle that you drew, that's where Maria was
16 standing --

17 A. Yes.

18 Q. -- when the dog attacked?

19 A. Yes.

20 Q. On the day that she went there, did she ever
21 get any closer to you than that point?

22 A. What do you mean?

23 Q. Well, strike that.

24 Does Picture No. 16 show where the dog was
25 kept?

1 A. The perro was in the back.

2 Q. And so you're pointing to off the picture?

3 A. Yes.

4 Q. Do you know where the dog well -- strike that.
5 When Maria came to the property, was the dog
6 kept inside or outside?

7 A. He was outside.

8 Q. Do you know what part of the yard the dog was
9 when Maria came?

10 A. He was just basically in the front, running.
11 I don't know where exactly the dog was.

12 Q. Was the dog barking or acting aggressive or
13 agitated in any way when Maria came on that day?

14 A. When I opened, the dog was barking. He was
15 just running. You know, there's a tree, and the dog
16 was jumping and running from the tree to the other
17 side.

18 Q. Was the dog growling or barking?

19 A. He started barking.

20 Q. Let me turn your attention to Photo No. 51 in
21 Exhibit 1. And is that the tree that you're talking
22 about by the fence?

23 A. No. It's not this tree. It's another --
24 another tree that is inside.

25 Q. Looking at 52, so there's a tree inside the

1 guess, into the driveway?

2 A. Yes.

3 Q. But not close to the house or not into the
4 house?

5 A. It was the same. I was taking out -- taking
6 them out.

7 Q. So was the reason that you talked to Maria by
8 the truck -- did that have anything to do with the dog?

9 A. No.

10 Q. So you walked with Maria to the area by the
11 truck?

12 A. Yes.

13 Q. And what did you talk about with Maria at that
14 point?

15 A. It was May. That's what I was saying. We
16 didn't really have a conversation regarding a Bible
17 theme. We were just talking about the weather, the
18 news.

19 She is the one that made the comments. When
20 God is going to change the world, she has seen herself
21 among liars. I don't -- I didn't forget that. It was
22 not a theme. Since we didn't have any commitment of
23 any sort, and she was coming, we're talking about that,
24 the weather, and that's it.

25 Q. And did you ever tell her to leave?

1 were -- my children were little, the Witness -- the
2 Jehovah's Witnesses wanted to get me books and so
3 forth. And that's when I told him, You are here about
4 your religions.

5 But I didn't need anything from her. And I
6 couldn't go to hers if I wasn't even going to my
7 church. And -- but if someone wants to sell a product,
8 they keep on insisting. And I apologize if somebody's
9 been -- if someone doesn't like what I say.

10 Q. (BY MR. MOORE.) Now, let's go back --

11 MS. LOPEZ de ARRIAGA: I'm concerned about
12 the time. I have to leave by 2:00, and both of my
13 clients haven't even started. So I'm really concerned.
14 But I do have to leave this building at 2:00.

15 MR. MOORE: I think this will probably be
16 the longest one because --

17 MS. LOPEZ de ARRIAGA: I'm sure. I'm
18 sure.

19 MR. MOORE: -- because she was there.

20 MS. LOPEZ de ARRIAGA: Right.

21 MR. MOORE: Let's take a break.

22 (Recess taken.)

23 Q. (BY MR. MOORE.) Now, did Maria do anything to
24 provoke the attack?

25 A. Not me. Not to me.

1 Q. She didn't taunt the dog or try to poke at the
2 dog or throw things at the dog? Anything like that?

3 A. As far as I know, I don't. But unless she
4 went when I was not there.

5 Q. So in the time that you saw her, between when
6 she knocked on the door at the porch and you went to
7 the truck, did you see Maria have any interaction of
8 any kind with the dog?

9 A. No. I didn't see anything.

10 Q. So when was the first time that you saw the
11 dog outside of the fence when you were talking to
12 Maria?

13 A. I don't know. I think I turned around. The
14 only thing I remember of the dog was walking. The
15 other one is when he jumped. I don't know.

16 Q. Did the dog growl or bark before jumping?

17 A. No.

18 Q. And when the dog jumped, did it jump right at
19 Maria first?

20 A. I think there were three people there. There
21 was the other woman, Maria, and myself. Everything
22 happened so fast. The dog jumped. I remember that the
23 dog was basically -- he was attacking the bag.

24 Q. Whose bag was the dog attacking?

25 A. This woman's. And she pulled back. And I

1 don't know if she was bitten there or not. I don't
2 know. I grabbed the dog from the -- from his ears, and
3 that's how I was able to get him from her.

4 Q. And did the dog go after her again after that?

5 A. After I pull him out? No. He went to bark to
6 the other person.

7 Q. Do you know where the dog got out of the fence
8 from?

9 A. No. I was back to him -- with my back to the
10 fence.

11 Q. Does the fence have any gates?

12 A. Yes.

13 Q. Were any of the gates opened at the time?

14 A. No. They were closed all the time.

15 Q. Had you ever known of the dog getting out of
16 the closed fence at any time before the day of the
17 attack?

18 A. No.

19 Q. If you look at the picture in Exhibit 1 marked
20 80. No. 80. If I turn your attention to this piece of
21 material that looks like it's particleboard or
22 something, do you know what that's made of?

23 A. I don't know. I think it's wood, but maybe he
24 just skipped through there. Because I know that he
25 needed to go from somewhere because he didn't jump over

1 the fence.

2 Q. Have you ever seen the dog chew on that piece
3 of material?

4 A. He enjoyed it; you know, the tree. And he was
5 busy chewing pieces of wood.

6 Q. And how long before this attack happened were
7 you aware that the dog had been chewing on this piece
8 of wood?

9 A. I saw him chew the tree.

10 Q. He would chew the tree, but I'm asking about
11 this piece of wood here.

12 A. I didn't notice that.

13 Q. How long had that piece of wood been there?

14 A. I wasn't checking anything outside.

15 Q. Was that piece of wood part of the fencing
16 from the day that it was -- that the fencing was put
17 up?

18 A. I don't know.

19 Q. Do you have any knowledge as to when that
20 piece of wood was put there?

21 A. No. Because the only thing we needed to do to
22 the dog was when he entered the house. We just open
23 the window, and he would go in on his own.

24 Q. And "the window," is that the window shown, I
25 guess, above that piece of wood behind the fence?

1 A. Yes.

2 Q. Do you have any recollection of when that
3 piece of wood was put there?

4 A. No. No because I don't take care of this
5 stuff that's outside the house. I just took care of
6 the house inside.

7 Q. Do you have any knowledge of David or anybody
8 else doing anything after the fence was originally
9 built to keep the dog in?

10 A. I don't know.

11 Q. I believe you had mentioned previously that
12 the dog would be protective of family; is that right?

13 A. Yes.

14 Q. What did you mean by that?

15 A. My chihuahua little dog, she was a puppy we
16 were giving to my daughter when -- when my daughter was
17 sick. The dog didn't allow anybody to get closer to
18 her. I know, I think, that dogs are protective, and if
19 they feel that they may be in danger, they will try to
20 protect them.

21 Q. Would the dog ever be protective toward
22 strangers? Or let me rephrase.

23 Would the dog be protective in the sense that
24 the dog would try to keep strangers away?

25 A. I understand that dogs protect their houses.

1 Q. No, but I'm asking you about this dog. In
2 your personal knowledge and observation, do you recall
3 this dog being protective of the house or of the people
4 who live there?

5 A. Yes. Because when the guy of the water
6 utility was going to check, the dog was barking. And
7 when he was going to check the light -- electric bill,
8 yeah, he was barking.

9 Sometimes when I was coming back from work, he
10 was barking, and I was petting him. And then he was --
11 he stopped barking.

12 Q. Now, would the dog behave differently between
13 strangers, such as the utility people, than the dog
14 would behave towards friends and family?

15 A. I think so.

16 Q. How did the dog behave when Ernesto Hernandez
17 would go to the property?

18 A. When Mr. Ernesto was going there, he was
19 always talking to me. He would say, I'm going to swing
20 by. And -- but he was walking by almost every day
21 because it was on the way to his house.

22 Q. And how far did Ernesto live from this house?

23 A. I don't know exactly. He lives next to us.
24 Lake Stevens. Arlington, Lake Stevens.

25 Q. And when Ernesto would come by, would he

1 actually go in the house or in the driveway? Where
2 would he go on the property?

3 A. No. Sometimes -- he wasn't going to the house
4 very often, but he would just go there when he needed
5 to repair something.

6 Q. And how often would that be before May 8th of
7 2018?

8 A. Unpredictable because we don't know -- you
9 don't know when something's going to break down.

10 Q. What kind of repairs do you remember Ernesto
11 going on the property to make?

12 A. He repaired the bathroom. He changed the
13 washing machine and the shower.

14 Q. Do you remember when he did those things?
15 What month and what year?

16 A. He was going any time that we thought that he
17 was -- it was necessary for him to come.

18 Q. And in, say, the last six months before this
19 attack, how many times would you say he was there?

20 A. I don't know exactly.

21 Q. Would he be there at least once a month?

22 A. No.

23 Q. At least once every two months?

24 A. I don't know. Because he was talking
25 everything with David. I don't know if he was stopping

1 by when I wasn't there. I cannot say something that is
2 not true. If sometimes he was going when I was not
3 there, I don't know.

4 Q. So I'm just asking about the times when you
5 personally saw him there.

6 A. I don't remember the date. He went there to
7 replace the water heater, but I don't recall the dates.
8 I don't pay attention.

9 Q. Do you know what time of year was it? Was it
10 the spring before the dog attack? Was it the winter?
11 Before or after Christmas? Anything like that?

12 A. No.

13 Q. Was he there when the dog was fully grown?

14 A. Yes.

15 Q. How did the dog react to him when he was
16 there?

17 A. He was just barking, and that was it. But
18 Ernesto never got close to the dog. He would do
19 whatever he needed to do, and then he was getting out.
20 And I don't think he likes dogs. He was not getting
21 close to the dog. Maybe he thinks, I don't have to get
22 close to anything. I don't go to a house where there's
23 a dog that doesn't know me.

24 Q. Do you know Teri Hernandez? Teri with a T.

25 A. Ernesto's wife?

1 Q. Yes, Ernesto's wife.

2 A. I think I saw her once.

3 Q. When did you see her?

4 A. I think after this incident. Because after
5 the incident, Ernesto went there to see what happened,
6 to find out what happened, and how was I doing. And
7 not long after that, Ernesto's wife went there to see
8 how I was doing.

9 Q. Did you ever see Teri Hernandez on the
10 property before the attack at the same time that the
11 dog was there?

12 A. No.

13 Q. At any time, did either Ernesto or Teri do
14 anything to make sure that the fence was able to hold a
15 dog?

16 A. I don't know about those things. You can ask
17 me about food.

18 Q. Did you ever see Teri and the dog together?

19 A. No. No, she never saw the dog.

20 Q. Now, have you spoken with Maria after the
21 attack?

22 A. No.

23 Q. Have you spoken with any of the other
24 Jehovah's Witnesses who were with Maria after the
25 attack?

1 A. Yes.

2 Q. Who did you speak to?

3 A. I don't know the names.

4 Q. What do you remember about any conversations
5 that you had with the people who were there afterwards?

6 A. They took me some flowers.

7 Q. Do you remember any conversations about how
8 the attack happened?

9 A. No.

10 Q. Or how the dog got out?

11 A. No. I asked them how the woman -- this woman
12 was doing.

13 Q. And what were you told?

14 A. That she was doing okay but that -- that her
15 attorney just told her that -- to avoid any type of
16 contact.

17 Q. Did the dog's behavior change after your
18 daughter-in-law was pregnant?

19 A. He wanted to be closer to them. But no, he
20 was no problem with me.

21 Q. And when was the baby born?

22 A. May. May 31st.

23 Q. In 2018?

24 A. Yeah. He is going to be one year old.

25 Q. So he was not yet born when this happened?

1 A. No. But she was -- yeah, she was expecting.

2 Q. And was anybody else at home with you on the
3 day of the incident before the attack?

4 A. I was alone.

5 Q. Well, thank you. I believe that's all the
6 questions I have.

7 (Deposition concluded at 12:03 p.m.)

8 (Signature waived.)

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EXHIBIT 9

SUPERIOR COURT OF WASHINGTON, SNOHOMISH COUNTY

MARIA JESUS SARALEGUI)
BLANCO,)
 Plaintiff,)
 vs.)
DAVID GONZALEZ SANDOVAL,) 18-2-08290-31
ALEJANDRA MARTINEZ, and the)
marital community comprised)
thereof; and ERNESTO)
HERNANDEZ, TERI HERNANDEZ,)
and the marital community)
comprised thereof,)
 Defendants.)

DEPOSITION UPON ORAL EXAMINATION OF
DAVID GONZALEZ SANDOVAL

12:17 p.m.

APRIL 10, 2019

1812 HEWITT AVENUE, SUITE 204

EVERETT, WASHINGTON

REPORTED BY: ELEANOR J. MITCHELL, RPR, CCR 3006

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A P P E A R A N C E S

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ALSO PRESENT: NONE

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I N D E X

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MR. MOORE	17

EXHIBITS FOR IDENTIFICATION	PAGE
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(NO EXHIBITS MARKED)

1 A. When I think I was 18 months old.

2 Q. And what is your current address?

3 A. 6507 204th Street, 98223, Arlington,
4 Washington.

5 Q. And how long have you resided there?

6 A. I think it's been four years now.

7 Q. And do you rent that home?

8 A. Yes, I do.

9 Q. Who do you rent it from?

10 A. Ernesto Hernandez.

11 Q. How did you come across this home to rent?

12 A. I know his dad for a long time.

13 Q. And when you moved in, did you sign a lease
14 with Ernesto?

15 A. I did.

16 Q. And how much is rent a month?

17 A. 1100.

18 Q. And how is that usually paid? Does Ernesto
19 come to pick it up? Do you mail it to him?

20 A. I usually just drive by his office and drop it
21 off in cash, or I give him a check.

22 Q. And when you moved into the home about four
23 years ago, did you have any pets with you?

24 A. Yes.

25 Q. What kind?

1 A. A little four-pound chihuahua mix.

2 Q. And did Ernesto know about this dog when you
3 guys moved in?

4 A. Yes, he did.

5 Q. Who moved into the home with you at that time?

6 A. At the time, my mother, I, and my two other
7 siblings.

8 Q. And what are your other two siblings' names?

9 A. Selina and Heriberto.

10 Q. And so your wife, Alejandra, wasn't living
11 with you at that time?

12 A. No.

13 Q. Do you recall when she moved in?

14 A. Two years ago.

15 Q. And so would that have been 2017?

16 A. Yeah, I think so.

17 Q. And were your two siblings still living there
18 when your wife had moved in?

19 A. Just one.

20 Q. Just one. Okay. Which one would that have
21 been?

22 A. That would have been Heriberto.

23 MS. LOPEZ de ARRIAGA: Can you spell that
24 for the record?

25 THE WITNESS: H-e-r-i-b-e-r-t-o.

1 Q. (BY MS. GRANADOS.) And does he still reside
2 with you?

3 A. Yes, he does.

4 Q. And your mom resides with you as well,
5 correct, still?

6 A. Correct.

7 Q. Is there anyone else that resides in the home
8 besides you, Alejandra, your mom, and Heriberto?

9 A. My son.

10 Q. And he was born last year?

11 A. He was born on May 31st.

12 Q. And when did you and Alejandra get married?

13 A. October 17th, I think, of 2017. I'm really
14 bad with...

15 Q. That's okay. And do you recall when you
16 purchased the dog, Enzo?

17 A. I think it was end of September of 2016. I
18 can't remember. I'm really bad with dates.

19 Q. That's all right. When -- excuse me, where
20 did you purchase him from?

21 A. A guy I met in Sedro Woolley.

22 Q. And did you go to this guy because you were
23 looking for a dog? How did you kind of come up with
24 the idea of getting a puppy?

25 A. So kind of had -- thought I had in my head for

1 a while that I wanted a puppy, and I came across it.

2 And...

3 Q. And did you go to this guy's home or did he
4 bring the dog to you?

5 A. No. I went to pick him up.

6 Q. And do you know how old Enzo was at the time?

7 A. Seven weeks. Yeah, seven weeks.

8 Q. And did you discuss purchasing a dog with
9 anybody?

10 A. No.

11 Q. Do you recall if you ever called Ernesto and
12 said that you were going to buy a dog?

13 A. I let him know after I got the dog that I had
14 the dog.

15 Q. Did he say anything in particular that you can
16 remember?

17 A. No. He didn't say anything at all.

18 Q. And when you moved into the property four
19 years ago, were there any fences?

20 A. Just the fence that's around the property.

21 Q. Did you install an additional fence?

22 A. I did the -- yeah, I fenced out a section of
23 the backyard.

24 Q. Do you remember when you did that?

25 A. I think at the time, the dog had to have been

1 about four months old. It was around...

2 Q. And did you build that on your own?

3 A. I did.

4 Q. And did Enzo do any type of doggy training at
5 like -- well, I don't know if you guys have PetSmart up
6 here. Is there like a Petco? They usually have those.

7 A. No, I didn't.

8 Q. And how was Enzo as a dog?

9 A. He was really a good dog.

10 Q. When you had company over, how would he act?

11 A. He would act like a normal dog: Just wag his
12 tail. If it was like my friends or any of my
13 relatives, he wouldn't bark at all. I made sure my dog
14 was comfortable around my friends.

15 Q. How did he and the chihuahua get along?

16 A. Fine. There's pictures of them together.
17 There's also pictures of them with my sister's dog.

18 Q. And do you know or know of Maria Blanco?

19 A. I've only seen her once.

20 Q. Do you remember when that was?

21 A. I can't remember. I think the dog might have
22 been about a year old. Or it could have been a little
23 bit less, but it was around that time.

24 Q. And what was she doing when you saw her?

25 A. Just knocking the door and wanted to talk

1 so fast that she -- it's kind of hard for her to like
2 explain it because she gets upset.

3 Q. After the incident, did Teri or Ernesto ever
4 stop by the home to talk to you about what happened?

5 A. Ernesto stopped by that afternoon and -- just
6 to check up on how we were and kind of try to get like
7 what happened. But that's about it.

8 Q. Your lease, does that renew every year? How
9 does the renewal work on your lease?

10 A. I signed a lease for two years, and it hasn't
11 been renewed.

12 Q. Are you still making the 1100 monthly
13 payments?

14 A. Yes.

15 Q. So the lease that you're on now, is it a
16 month-to-month or do you guys have like a set date of
17 when you need to let him know you want to continue
18 staying in that home?

19 A. I'm not on a lease. I just pay him at the
20 first of every month, and that's it.

21 Q. Is there any type of -- or was there any type
22 of discussion about, if you wanted to leave the home,
23 how much notice you would have to give Ernesto?

24 A. When I first signed the contract, I think I
25 had to give him a month's time ahead.

1 THE REPORTER: I will do my best with
2 that, in Spanish, on the record.

3 MS. GRANADOS: Oh, I can write it for you.

4 Q. (BY MR. MOORE.) So before the -- before the
5 attack, how often would be Ernesto -- sorry. Yeah, how
6 often would Ernesto Hernandez be on the property?

7 A. Never.

8 Q. Did he ever come to the property prior to the
9 dog attack?

10 A. Yeah, he would come, like I said. Like, if
11 there was -- if he was driving by, and I was outside
12 working on -- on whatever, he'd just stop by and see if
13 everything was fine.

14 Q. Have you ever seen him with the dog, Enzo?

15 A. No. I don't see why he would. He was my dog,
16 not his.

17 Q. Did he ever come to the property and get out
18 of his vehicle at a time when the dog, Enzo, was there?

19 A. No. He's not the type of people that stops by
20 all the time. He only stops by if he needs to.

21 Q. Well, I mean, is there any time when he needed
22 to stop by, say, to replace the water heater or do
23 repairs of any kind when the dog was there?

24 A. I -- I don't understand what you're trying to
25 say.

1 Q. Well, I'm just asking the question: When was
2 he there? I'm not asking about -- you know, at this
3 point, at least, you know, Why was he there or what
4 occasion? And you said that he --

5 A. Well, when he replaced the water heater, the
6 dog was fenced out -- let's say this part of the
7 backyard is here. He had no need to be near the dog.

8 Q. Was he ever near the dog?

9 A. Not that I'm aware of.

10 Q. To your knowledge, did he know the dog was
11 there?

12 A. Yeah.

13 Q. And was the dog there with his permission?

14 A. Yeah. I told him that -- but he didn't like
15 tell me to get rid of it.

16 Q. And did he know the dog was a pit bull?

17 A. Yes, he did.

18 Q. And let me turn your attention to the
19 pictures. These are Exhibit 1 marked with -- I think
20 they were actually used with Elvia Sandoval's
21 deposition. Let's look at the picture marked 52. Or
22 maybe 53's better. Let's look at 53.

23 Was that gate and that part of the fence shown
24 in 53 -- was that the part that you built?

25 A. I built the whole fence.

1 Q. Including that part of it?

2 A. I believe that's part of the whole fence.

3 Q. Did anybody help you?

4 A. No.

5 Q. And when was this part of the fence built?

6 A. When the other part of the fence was built.

7 When the rest of the fence was built.

8 Q. Okay. I understand from prior testimony
9 that -- that when you moved in there, there was some
10 fencing around the property but not all. Is that your
11 understanding or something different?

12 A. Well, yeah, the fence with the neighbors, you
13 could see right here. The fence that was on the
14 property line with the neighbors, that's the fence that
15 was there. I put in this mesh in the fence.

16 Q. Okay. So looking at picture 53, if you look
17 sort of in the background, the fence between your yard
18 and the neighbor's house with the balcony, that was
19 there before; is that correct?

20 A. Right.

21 Q. But this part of the fence shown in the
22 foreground of picture 53, that's what you built?

23 A. Yeah.

24 Q. And did Ernesto know that you built that
25 fence?

1 A. Yeah. He saw it.

2 Q. Was there any discussion about the fence,
3 prior to building it, with Ernesto?

4 A. I let him know that I was going to put up a
5 fence 'cause I wanted a dog to be out in the yard, and
6 he said it was fine.

7 Q. And did he ever come out to inspect the fence
8 after it was built?

9 A. No, he didn't. Or at least not that I was
10 aware of.

11 Q. And do you know if he ever did anything at any
12 time between the time the fence was built and the day
13 of the attack to make sure that the fence was adequate
14 to hold the dog?

15 A. Not that I'm aware of.

16 Q. To your knowledge, did the dog ever get out of
17 the fence prior to the day of the attack?

18 A. When I let him out to go on his walks and
19 stuff. But before that, no.

20 Q. Yeah, and that's my question: Not when you
21 take the dog out for a walk, but was there any time
22 when the dog got out of the fence when he wasn't
23 supposed to?

24 A. When he escaped?

25 Q. Exactly.

1 A. No.

2 Q. Did you have any issues with the dog digging
3 under the fence or chewing or otherwise trying to get
4 out of the fence?

5 A. No.

6 Q. Turn your attention to Picture No. 80. And do
7 you see that piece of wood or other material underneath
8 the window behind the fence --

9 A. I do.

10 Q. -- in picture 80? Do you know what material
11 that's made out of?

12 A. Wood.

13 Q. What kind of wood?

14 A. From a tree.

15 Q. I mean is it plywood? particle board?

16 A. It's plywood.

17 Q. Oh, let me ask you: What do you do for a
18 living?

19 A. I do concrete.

20 Q. What kind of concrete?

21 A. Flat work.

22 Q. What is flat work?

23 A. Sidewalks, garages, curb and gutters.

24 Q. Does your work involve carpentry or building
25 concrete forms?

1 A. Very little.

2 Q. Now, do you have any training in carpentry?

3 A. From the stuff that I've done at work, I guess
4 I would say yeah.

5 Q. Can you describe the extent of your training
6 in carpentry?

7 A. Well, if you want me to build a cabinet, I'm
8 not going to build it. If you want me to build a desk,
9 I -- it's probably rough carpentry you can say.

10 Q. Was that wood shown in 80 part of the fence or
11 part of the methods that was used to contain the dog?

12 A. I would say yeah.

13 Q. And did you put that there?

14 A. I did.

15 Q. When did you put that there?

16 A. When I put up the rest of the fence.

17 Q. Okay. And had the dog been known to chew on
18 that material?

19 A. Not that I was aware of.

20 Q. Just looking at the picture, it shows it's a
21 little bit or maybe a lot ragged around the edges. You
22 see that? Was that the condition of the wood when you
23 put it there?

24 A. No. But that had to have been probably there
25 for a year.

1 Q. Was it -- do you know how -- well, what was
2 the condition of that piece of wood when you put it
3 there?

4 A. Brand new.

5 Q. What were the dimensions of it when you put it
6 there?

7 A. I believe it was 3-by-8.

8 Q. 3-foot-by-8-foot?

9 A. Yeah.

10 Q. And, again, was the plywood or particle board?

11 A. I think I just answered that question that it
12 was plywood.

13 Q. Okay. It was plywood. Do you know where you
14 got the plywood from?

15 A. At the lumber store.

16 Q. Do you know what store?

17 A. I think it was Lowe's.

18 Q. And do you know if it got to be that ragged
19 because of the dog chewing on it?

20 A. It could have been weather, too.

21 Q. And would you agree that it took quite a lot
22 of time to get in that condition from the --

23 MS. LOPEZ de ARRIAGA: Objection. No
24 personal knowledge.

25 THE REPORTER: Excuse me. I didn't hear

1 A. Apparently, until the day the dog got out.

2 Q. Do you know if there was a single event that
3 got -- that got this plywood in that condition?

4 A. It might have been the day that he got out.

5 Q. Are you saying that all of that was done in
6 one day?

7 A. We don't know. Like I said, I wasn't there to
8 see anything that happened or why -- what tempted the
9 dog to do what he did. I don't even know how desperate
10 he was to get out or if he thought that anybody in the
11 house was in danger. He was a 60-pound dog.
12 Apparently, he does a lot of damage in a matter of
13 seconds.

14 Q. Are you saying that you believe that the
15 damage to this wood was done in a matter of seconds?

16 A. No. To go through a piece of
17 three-quarter-inch plywood, it's going to take him a
18 couple minutes to bite -- or yeah.

19 Q. So the dog could do this to the plywood in a
20 couple of minutes?

21 A. If it was weatherized, yeah. You've never
22 stepped through a piece of rotten wood?

23 Q. And do you know how the -- well, strike that.
24 When you put in the piece of plywood, how did
25 you install it?

1 A. With a hammer and a nail -- nails.

2 Q. If you look on page -- or the Photo No. 83,
3 had you nailed this wood to the deck that you see in
4 page 83?

5 A. Yeah.

6 Q. And do you know how long that plywood had been
7 separated from the deck?

8 A. That's a walk that I did -- I still do, to
9 this day, every day. It -- I made sure the dog
10 wouldn't get out every morning. But like I said, if it
11 was weatherized, he could have poked it out in minutes.

12 Q. And what do you mean by "weatherized"?

13 A. Rain, air, water, sun.

14 Q. So you agree that, if a piece of plywood is
15 subjected to the weather for a period of months or
16 years, then it can be easy to pull off, like that, by
17 the dog?

18 A. Yeah.

19 Q. Do you know if Teri Hernandez was ever on the
20 property prior to the attack?

21 A. No.

22 Q. Is that no, you don't know, or not to your
23 knowledge?

24 A. She might have been there before I moved in.
25 I don't know.

1 Q. But when you were there, did you ever see her
2 on the property?

3 A. No. She doesn't get involved in their
4 property stuff.

5 Q. Were there any warning signs on the property
6 prior to the attack?

7 A. No.

8 Q. Nothing that said Beware of Dog or anything
9 like that?

10 A. I'm pretty sure that falls in the "no"
11 category.

12 Q. Okay. Were there any No Trespassing or no
13 solicitation signs of any kind at or before the time of
14 the attack?

15 A. No.

16 Q. That's all the questions I have. Thank you
17 very much.

18 MS. LOPEZ de ARRIAGA: Okay. So you can
19 review the record. That means that she is typing
20 everything down. You can review it and take a look at
21 it to see if it's accurate, or you can just waive it,
22 or I can do that. Your call.

23 THE WITNESS: You can do it.

24 (Deposition concluded at 12:59 p.m.)

25 (Signature was waived.)

EXHIBIT 10

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A P P E A R A N C E S

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ALSO PRESENT: NONE

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(NO EXHIBITS MARKED)

1 Jehovah's Witnesses coming to the house?

2 A. No. Not...

3 Q. And I just got your discovery responses here.

4 A. Oh, okay.

5 Q. And so it looks like we have your name wrong.

6 A. Yeah. Well, it's with an X, not a J.

7 Q. Okay. So on No. 28, you spelled it

8 A-l-e-j-a-n-d-r-a[sic].

9 A. It's --

10 Q. And then Barajas Gonzalez?

11 A. Yes.

12 Q. And that's your full legal name?

13 A. Yes, sir.

14 Q. And that's been your legal name since --

15 A. Since I got married, yeah.

16 Q. Which was before May of 2018?

17 A. Yes.

18 Q. Great. And do you remember any repairs being
19 done to the home that Ernesto was involved in?

20 A. About the fence? Or -- oh, repairs like --

21 Q. Yeah. Any time that he'd been to the property
22 for repairs or any other reason prior to the attack?

23 A. Yeah, I think -- let me remember. The
24 bathroom. I think it was like the toilet or something.

25 Q. And do you know when Ernesto was there for

1 that?

2 A. It was a long time ago.

3 Q. How long before the attack?

4 A. Maybe like a year or so. Well, no, maybe like
5 two years before. It was long time ago.

6 Q. Do you remember ever seeing Ernesto at the
7 property when Enzo was grown?

8 A. Yes. I saw him, yeah.

9 Q. And how often would Ernesto come to the
10 property, say, in the six months to a year before this
11 attack?

12 A. A year, maybe like twice. Or when he's called
13 that it needs something. Maybe twice. Or...

14 Q. So Ernesto saw that there was a pit bull at
15 the property, and he knew that the pit bull was kept
16 there; is that correct?

17 A. Yeah. He -- he knew, yeah.

18 Q. I'm going to look at -- you have some photos
19 here that are marked. They were first used at Elvia
20 Gonzalez's deposition.

21 A. Okay.

22 Q. And do you see the red numbers kind of on the
23 bottom of the pictures?

24 A. Yeah.

25 Q. I'd like to turn your attention to No. 83.

1 I'm sorry. Let's go with 80.

2 On page 80, you see there's a piece of wood
3 there?

4 A. Yes.

5 Q. Do you know how long that piece of wood had
6 been there prior to the attack?

7 A. I don't -- I don't really know. Yeah, I don't
8 know how long it's been there.

9 Q. Do you remember if, prior to the attack, Enzo
10 had ever done anything to escape from the fence such as
11 digging or chewing or anything like that?

12 A. No. He never escaped.

13 Q. Do you know how that piece of wood got in that
14 condition?

15 A. By chewing.

16 Q. That's all the questions I have. Thank you
17 very much.

18 A. Okay.

19 MS. LOPEZ de ARRIAGA: So you have the
20 right to review the record, meaning what she types.

21 THE WITNESS: Oh, I can? Oh.

22 MS. LOPEZ de ARRIAGA: You have the right
23 to do that or I can do it for you to make sure it's
24 accurate.

25 THE WITNESS: Okay.

EXHIBIT 11

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,)
)
 Plaintiff,)
)
 vs.) No. 18-2-08290-31
)
DAVID GONZALEZ SANDOVAL,)
ALEJANDREA MARTINEZ, and the)
marital community comprised)
thereof, and ERNESTO HERNANDEZ,)
TERI HERNANDEZ and the marital)
community comprised thereof,)
)
 Defendants.)

DEPOSITION UPON ORAL EXAMINATION OF
ERNESTO HERNANDEZ

12:28 p.m.
Tuesday, January 22, 2019
19743 First Avenue South
Normandy Park, Washington

BRANDICE L. PIVAR, CCR
NORTHWEST COURT REPORTERS
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Also Present:

TERI HERNANDEZ

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* * *

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1 A No.

2 Q Do you have any training or experience working with
3 animals?

4 A Yes. I -- I'm going to say yes.

5 Q What training have you had working with animals?

6 A Since we grew up we've had animals.

7 Q What kind?

8 A Just everything -- cattle, horses, donkeys, mules,
9 cats, dogs, chickens, pigs. I grew up on a farm in Mexico.

10 MS. GRANADOS: Do you mind if we take a quick
11 break?

12 MR. MOORE: Sure.

13 (Break was taken.)

14 Q (By Mr. Moore) All right. So before the break, you
15 were telling me you grew up on a farm; is that right?

16 A Yes.

17 Q Okay. Have you ever had any sort of training or
18 experience in, I guess, dog training of any kind?

19 A No.

20 Q Did you use working dogs of any kind on the farm?

21 A No.

22 Q And do you own the property located at 6509-204th
23 Street Northeast, Arlington, Washington?

24 A Yes, we do.

25 Q And you own it with your wife; is that correct?

1 A Right.

2 Q Is that also known as Cemetery Road?

3 A Yes. Yes.

4 Q And that's across the street from the Arlington
5 cemetery?

6 A Correct.

7 Q And the county lists it -- Snohomish County lists it as
8 being owned by Ernesto and Teri Hernandez; is that right?

9 A Yes.

10 Q Does anybody else have any ownership interest in the
11 property?

12 A No.

13 Q Is A&E Insulation involved in the ownership or
14 maintenance of that property in any way?

15 A No.

16 Q Are your kids involved in the ownership or upkeep of
17 that property in any way?

18 A No. I would say no.

19 Q How long have you owned the property?

20 A Eight, ten years. I don't know the date.

21 Q I believe the public records show that you bought it in
22 late 2011. Does that sound right to you?

23 A Yeah, somewhere -- that would make it eight years, ten
24 years.

25 Q Why did you buy the property?

1 rent when they were there?

2 A I believe it was 1,100.

3 Q Per month?

4 A Yes, per month.

5 Q And when did they move out?

6 A Either it was 2015 or '16.

7 Q And what happened to the property after they moved out?

8 A We rent it to David Sandoval.

9 Q And did you have to do any renovation work before
10 renting it to David Sandoval?

11 A Yeah, we took the carpet out of the living room and put
12 in new laminate flooring.

13 Q And how much were they paying in rent?

14 A 1,100.

15 Q A month?

16 A Yes, a month.

17 Q Now, when you purchased the property -- well, strike
18 that.

19 How large is the property in terms of acres?

20 A Must be almost half an acre.

21 Q And when you bought the property, what buildings or
22 structures were on it?

23 A It's the mobile home and a two-car detached car --
24 garage and a small building in the back, like a little small
25 storage building.

1 Q And was there a fence on the property when you bought
2 it?

3 A Yes.

4 Q And what fencing was on the property when you bought
5 it?

6 A On the east side, it's a chain link.

7 Q I'm sorry. The east side there's a chain link?

8 A Yes, east, chain link fence. And the north and the
9 west side is a wood fence.

10 Q And any other fencing on the property when you bought
11 it?

12 A No.

13 Q Anything on the south side?

14 A On the south side, no.

15 Q So when you bought it, the yard was not completely
16 fenced in?

17 A No.

18 Q That's no, it was not --

19 A No.

20 Q -- for the record?

21 A No. It was not fenced.

22 Q Okay. And does David Sandoval currently still live on
23 the property?

24 A Yes.

25 Q At any time did you ever live on the property?

1 A No.

2 Q Did your wife ever live on the property?

3 A No.

4 Q Any of your kids live on the property?

5 A No.

6 Q Do you own any other properties?

7 A Yes.

8 Q What other properties do you own?

9 A I think we -- altogether, we got about 20 properties.

10 Q Who is "we"?

11 A Me and my wife.

12 Q Where are the properties located?

13 A Marysville, Arlington, Lake Stevens, and Granite Falls.

14 Q And Granite Falls?

15 A Um-hmm.

16 Q What kind of properties are they?

17 A Oh, some rental homes, still.

18 Q All residential rental homes?

19 A Residential, yeah.

20 Q Are they all mobile homes --

21 A No.

22 Q -- as opposed --

23 A Some.

24 Q How many are mobile homes?

25 A Seven, I believe. Eight with the subject property.

1 Q Eight --

2 A Eight with the subject --

3 Q Eight including this?

4 A Eight including that.

5 Q And the other 12 or so properties -- well, is it
6 exactly 20 properties you own?

7 A I believe so.

8 Q Okay. So the other 12 properties --

9 A Well, nine. Our office is a mobile home too.

10 Q And does that count in the 20?

11 A Yes. That's property that we own.

12 Q And do you own your own home?

13 A Yes, we do. Well, no, we're still paying mortgage, but
14 yes, we do.

15 Q Do any of your other properties still have mortgages?

16 A Yes.

17 Q How many of them?

18 A Two more.

19 Q Hmm?

20 A Two.

21 Q Two? Does this subject property -- the 6509-204th
22 Street Northeast property, is there a mortgage on that?

23 A No.

24 Q Was there ever a mortgage on it?

25 A Yes.

1 Q When was the mortgage paid off?

2 A Three years ago, four years ago. Don't recall.

3 Q Do you know what bank or lender the mortgage was with?

4 A No.

5 Q So the 20 properties you own, including those two that
6 still have mortgages on it, one is your home, one is the
7 subject 6509 property, the other is your office; is that
8 correct?

9 A Correct.

10 Q And 12 of them are houses?

11 A Yeah, I think most of them -- yeah, including ours,
12 including my own.

13 Q Okay. Do you own any other types of property, any
14 multifamily --

15 A No.

16 Q -- houses?

17 A No.

18 Q Any vacant properties?

19 A No.

20 Q Now, when did you first get into, I guess, property
21 ownership other than your -- than your own home?

22 A Can you repeat that question again?

23 Q Other than your own home, what -- well, the home that
24 you live in, when did you start getting involved in buying
25 properties to rent?

1 A Oh, we bought our first property when -- our first
2 house when I was 18, 19 in 1988, 1988.

3 Q And how often would you buy a new property, I guess,
4 from then through now?

5 A It's been recent more. When the economy went down, you
6 know, it took a long time to save money. The last ten
7 years, I would say.

8 Q And do you manage all your properties?

9 A Yes.

10 Q Have you ever hired a property manager?

11 A No.

12 Q Who helps you manage all those properties?

13 A The companies. You know, depends -- you know, somebody
14 finish the furnace, I hire a furnace company. You know,
15 different trades -- a roofer, you know, roofer -- licensed
16 roofer. Don't have anybody in particular. Just always --
17 if we build a new house, we hire a framer. And I don't
18 remember. A few years ago we built a new house.

19 Q How many houses have you built or had built?

20 A Two. No, sorry, three. Yeah.

21 Q So back to the property at 6509-204th Street Northeast
22 in Arlington, Washington. You'd already testified that
23 David Gonzalez Sandoval lives there; is that correct?

24 A Correct.

25 Q Okay. Who else lives there?

1 A Right now I believe his wife and his mom, and I'm not
2 sure if his brother lives in there still or not. And a
3 newborn. I believe they have a newborn.

4 Q And does -- Alejandrea Martinez, is that David's wife?

5 A Don't know her name, but yeah, I believe it is.

6 Q And is Elvia Gonzalez David's mother?

7 A Correct.

8 Q And do you know David's brother's name?

9 A No.

10 Q And do you know who -- and you said there was a newborn
11 that lived there too?

12 A Yeah, they have -- David and his wife have a newborn, a
13 baby.

14 Q Do you know when the baby was born?

15 A It was last year. Don't know what -- you know, late
16 last year.

17 Q So it's January 2019. Would that be November or
18 December of 2018?

19 A November, yeah. I'm not sure exactly when, but I know
20 he told me he had a new baby, first baby.

21 Q And the new baby was born well after the May 2018
22 incident?

23 A Don't know. Don't remember.

24 Q Who was living there at the time of the May 2018
25 incident?

1 A To my knowledge, him, his wife, and his mother -- mom
2 and his brother.

3 Q Do you own any other properties in that neighborhood?

4 A Yes.

5 Q Do you own the property next door to the --

6 A That's correct.

7 Q -- property?

8 A We do, yes.

9 Q And who lives there?

10 A His sisters.

11 Q David's sisters?

12 A David's sisters, and her -- their boyfriend or husband,
13 one of them.

14 Q Orlando Sullivan, do you know him?

15 A No.

16 Q So at the time of this incident in May 2018, everybody
17 except the newborn lived there, because the newborn hadn't
18 been born yet; is that accurate?

19 A I don't remember if the newborn was born or not.

20 Q And when did they move in, again?

21 A It either was -- around May 2015, somewhere in there.

22 Q So they had been there for approximately three years?

23 A I believe so.

24 Q Are you related to any of them?

25 A No.

1 Q Okay. How about Elvia, his mom?

2 A Spanish.

3 Q Since they moved in, in around 2015, how much contact
4 do you personally have with them?

5 A Oh, once a month they come to the office. They come to
6 the office to pay the rent. They come in the office, or,
7 you know, see them somewhere, like, store, Lowe's, or
8 something. I'll see him, you know.

9 Q How often do you actually go out to the property?

10 A Maybe twice a year drive by, you know.

11 Q And what do you do when you go there?

12 A One time I went to pick up rent.

13 Q Do you ever meet them at their home socially?

14 A No.

15 Q Do you ever socialize with them in any way?

16 A No.

17 Q Do you ever make inspections of the property?

18 A Once a year, you know.

19 Q And what do you look for when you inspect the property?

20 A Make sure there's no leakage or some, you know, roof
21 damage or something.

22 Q So other than the possible leaking roofs, do you look
23 for anything else when you -- when you inspect the property?

24 A No, not -- no.

25 Q Do you ever look for any issues that might -- that may

1 be a problem with the safety codes?

2 A Yeah, other -- yes. I make sure the smoke detectors
3 work, you know.

4 Q Do you ever look at the condition of the yard?

5 A Yeah. Yes.

6 Q What do you look for when you're looking at the yard
7 condition?

8 A Make sure there's not a lot of trash, you know, around.

9 Q Now, I understand that there is not a written lease
10 or -- there's not a written lease or any other sort of
11 agreement?

12 A No.

13 Q Why not?

14 A We didn't need one, I...

15 Q In any of the other 17 rental properties that you own,
16 do you ever keep leases in writing?

17 A I believe one or two.

18 Q What properties do you have written leases on?

19 A There's one on Highway 9. Don't recall the address
20 right now, the number, but it's on Highway 9.

21 Q So one on Highway 9?

22 A Arlington.

23 Q In Arlington?

24 A Yeah.

25 Q And another where there might be a written lease?

1 A There's on 84th in Lake Stevens.

2 Q And why do you have written leases on those properties
3 and not the others?

4 A The one is Section 8, they require -- they need it for
5 the... And the one on 84th, they request it.

6 Q The tenant --

7 A The tenant request it.

8 Q The tenant requested it? Okay.

9 A Yeah.

10 Q So back to the subject property, 6509-204th Street
11 Northeast, Arlington, there is no written lease, right?

12 A No.

13 Q Is there a verbal rental agreement of any kind?

14 A Yeah, month-to -- you know. Yes, month-to-month and
15 keep it clean.

16 Q And what do you mean by "keep it clean"?

17 A You know, keep the yard clean, you know. Mow the yard,
18 all those kind of things.

19 Q Are there any terms regarding the upkeep of the
20 property as far as maintenance or repairs, anything like
21 that?

22 A No.

23 Q Do you have any policies regarding any alterations that
24 they might do to the property?

25 A No.

1 Q Do you have any policy regarding animals or pets on the
2 property?

3 A No.

4 Q On this property, did you ever require a pet deposit or
5 anything like that?

6 A No.

7 Q Why not?

8 A We don't need it, no.

9 Q Now, what animals do you know of that David kept or
10 keeps on the property since he moved in?

11 A I believe a dog and -- they had a small dog too. I
12 mean, a -- I believe they had a small dog in the beginning,
13 and then he got a dog later.

14 Q Do you remember what kind of dog the small dog was?

15 A No. One of those little yappy dogs. No, I don't.

16 Q Was it a Pomeranian?

17 A No. No. They belong to the daughter, I believe. But
18 I don't think it's there anymore, because she's not living
19 there. She --

20 Q All right. So she had a small dog --

21 A Yeah.

22 Q -- and took it with her?

23 A Yeah.

24 Q And do you remember when she left?

25 A I don't think she was really living there. It was her

1 and her sister. All her sisters moved in the house next
2 door two years, about two years ago.

3 Q And when did they get the big dog?

4 A I don't know, a year and a half or something, and it
5 was a puppy.

6 Q And that one was the pit bull that was involved in
7 this?

8 A Yes.

9 Q Now, when did you first see the dog?

10 A The only time I saw him, when he was a small puppy, you
11 know, small dog, one of the times I stopped by. Sometime in
12 the summertime.

13 Q Summer of what year?

14 A Don't recall the year. Last year, I believe, because
15 the dog was not that old.

16 Q So the incident happened in May of last year, 2018.

17 A Yes.

18 Q So it would've been summer of 2017?

19 A Late summer or somewhere in there, yeah. It was in
20 the -- you know, sunny outside, warm, but it was probably
21 late summer.

22 Q So other than the small dog that moved out with the
23 daughter and the -- and the pit bull that you saw as a
24 puppy, do you know of any other pets or animals that were
25 kept there?

1 A Yeah, no.

2 Q Did they have livestock of any kind --

3 A No.

4 Q -- goats, chickens?

5 A No.

6 Q Do you know if the pit bull ever lived there at the
7 same time as the small dog?

8 A Don't know.

9 Q Have you had any problems since David and his family
10 moved in regarding maintenance?

11 A No.

12 Q Did they ever have to call you to fix anything?

13 A Well, yeah, they called me one time. One of the
14 showers was leaking. We had, you know, the plumber over.
15 It was two bathrooms, and one of the bathrooms was leaking
16 water.

17 Q And did you personally go over in response to the
18 leaking bathroom complaints?

19 A We -- I went and looked at it, yes.

20 Q Okay. As opposed to just calling a plumber to go out
21 there, you actually went there?

22 A Yeah, I went out there.

23 Q When was that?

24 A I would say about two years ago.

25 Q Two years --

1 A About two years ago.

2 Q Two years ago? Okay. And did you go inside the house
3 at that time?

4 A Yes.

5 Q Was the dog there at that time, the big dog?

6 A No. Big dog? No.

7 Q Was the big dog on the property at the time?

8 A They didn't have a big dog. They didn't even have the
9 puppy.

10 Q The pit bull?

11 A I don't even think they had the puppy yet.

12 Q When did you first know that they had a pit bull?

13 A That time when I went and picked up the rent. You
14 know, he asked me to come and pick up the rent and he had --
15 you know, I saw the little dog in the yard.

16 Q And that was the summer of 2017?

17 A I believe so, yeah.

18 Q And you saw the dog in the yard?

19 A Yes.

20 Q Did you know what kind of dog it was?

21 A Yeah, it was a pit bull, you know, a small dog. You
22 know, it was a little puppy.

23 Q Do you know where they got the dog from?

24 A No.

25 Q Did you ever have any conversations with David or any

1 family member about the pit bull?

2 A No.

3 Q Did you ever express any concern about, you know, what
4 would happen when the puppy grew up?

5 A No.

6 Q How are they as tenants?

7 A What was that?

8 Q How are David and his family as tenants? Do they give
9 you any problems, any issues?

10 A No.

11 Q Have you had other tenants that gave you problems or
12 issues?

13 A About 20 years ago, we had -- in Everett, we had a
14 duplex in Everett, young couple.

15 Q And what problems or issues did they have?

16 A Parties too loud, too many -- yeah, that was it. You
17 know, we asked them to leave and they left. Neighbors
18 called the police, you know.

19 Q And do you still own the duplex?

20 A No. Sold it a long time ago.

21 Q And have you ever had any complaints from David
22 Sandoval's neighbors for anything?

23 A No.

24 Q Are you aware of any police calls?

25 A Other than the incident, no.

1 Q Okay. Are you aware of any complaints about the dog?

2 A No.

3 Q How are they on their rent payments?

4 A Always current.

5 Q Have you had any issues with any government entity or
6 law enforcement entity regarding the property in any way?

7 A No.

8 Q And let's talk about the fence.

9 Now, you had previously testified that when you bought
10 the property, it was fenced on three sides, with the south
11 side not fenced; is that correct?

12 A Correct.

13 Q Was any fencing added after that?

14 A Yes.

15 Q What fencing was added after that?

16 A Oh, like a wire fence that was put in between the -- on
17 the middle of the property.

18 Q And when was that put in?

19 A Don't recall. I didn't install it.

20 Q And I believe in your interrogatory responses you
21 indicated that David Sandoval put it in there; is that
22 right?

23 A Yeah. He asked me if he could put a fence to -- I
24 believe that's when he got the dog, the puppy.

25 Q And do you remember when he asked you to -- when he

1 could put in a fence?

2 A It was the summer -- you know, it was 2017, somewhere
3 in there. That's when I saw the fence and the puppy.

4 Q Now, had he already put in the fence before he asked
5 you if it was okay?

6 A No. No. He called me and asked, you know.

7 Q Okay. So sometime before you went to the property in
8 2017 and saw the dog, he called you and you had a
9 conversation about the dog and the fence?

10 A Yeah. He asked me if he could put in a fence; he was
11 going to get a little dog.

12 Q Okay. And what did you say?

13 A Yeah, that's fine.

14 Q Did you ask him what kind of dog he had?

15 A No.

16 Q Did you ask him what kind of fence he planned on
17 putting in?

18 A Yeah. He said wire.

19 Q And did he tell you what kind of dog he was going -- he
20 had?

21 A No.

22 Q And did you ask what breed?

23 A No.

24 Q And when do you recall this conversation being? Do you
25 remember a month?

1 A No, I don't. No.

2 Q And this fence was -- well, strike that.

3 So when you went there after this phone call in the
4 summer of 2017, the fence was already in place; is that
5 correct?

6 A Correct.

7 Q Okay. Did you ever inspect the fence?

8 A No.

9 Q Did you ever do anything to ensure that the fence was
10 capable of containing a pit bull?

11 A No.

12 Q Why not?

13 A Because it was a little dog when I saw the fence, tiny
14 little puppy.

15 Q And had you ever been to the -- to the property between
16 the time that you saw the dog and the fence and the time of
17 this incident?

18 A Don't recall.

19 Q How many times did you actually see the dog?

20 A I would say only one.

21 Q Did you ever have any talk about -- talk with David
22 about whether or not he carried insurance for the dog?

23 A No.

24 Q Why not?

25 A Don't know if he was required. No.

1 Q Did you ever have concerns that the dog would do damage
2 to the property?

3 A No.

4 Q In any of your other properties, do the owners -- or
5 sorry. In any of your other properties, do the tenants own
6 dogs?

7 A I believe some do.

8 Q How many properties have dog owners as tenants?

9 A I would say four, for sure.

10 Q Have you ever had a property where a dog had done any
11 damage to it?

12 A No.

13 Q Have you ever had a property where a dog had dug up a
14 yard or anything like that?

15 A Not that I -- not to my knowledge, no.

16 Q Now, have you ever had a property that had problems
17 with dogs, you know, chewing through fences or anything like
18 that?

19 A No.

20 Q Do any of your other properties have pit bulls on them?

21 A No.

22 Q Have you ever had any other pit bull owner on a
23 property of yours?

24 A No.

25 Q Do you know who built the fence on the subject

1 property?

2 A Which fence?

3 Q The fence on the 6509-204th Street Northeast, Arlington
4 property.

5 A The piece in the middle, David Sandoval did. Three
6 sides were already fenced in when I bought it.

7 Q Yeah, I'm talking about the fence that David put up, do
8 you know if he did that personally, or do you know if he
9 hired anybody?

10 A No, don't know.

11 Q And do you know who paid for the fence?

12 A Don't know.

13 Q Did you pay for the fence?

14 A No.

15 Q Do you know if the fence was intended to be a permanent
16 improvement on the property?

17 A No.

18 Q Did you have any understanding of whether the fence had
19 been planned to be removed at some time?

20 A No.

21 Q Did you have any discussions about that?

22 A No.

23 Q Did you have any discussions regarding whether or not
24 the fence would be improved or upgraded as the dog got
25 bigger?

1 A No.

2 Q Do you know if he had any doghouses on the property?

3 A No.

4 Q Is that no, he didn't, or no, you don't know?

5 A No, I do not know.

6 Q Are you aware of any complaints regarding the dog?

7 A No. No, I do not know.

8 Q Are you aware of anybody reporting the dog to be

9 aggressive in any way?

10 A No, I do not know.

11 Q And had you been to the property at all since --

12 between the summer of 2017 and the date of the incident

13 of -- in May of 2018?

14 A Just stopped by, you know, sometime last year, right in

15 the driveway. He had some blocks for another house, you

16 know. They do -- he does landscaping, cement work, and he

17 had some blocks, concrete blocks right in the entry.

18 Q Okay. And when was that?

19 A Sometime last summer, you know.

20 Q Was that after the incident?

21 A Yeah, it was after the incident.

22 Q Oh, afterwards. Okay.

23 A After. Sorry. You asked --

24 Q So I'm asking before the incident --

25 A Before the incident, no.

1 Q -- but after the first time you saw the dog.

2 A No. I have -- the first time I might have driven by,
3 you know, because it's a main road. But no, I didn't -- I
4 didn't -- I don't recall stopping by.

5 Q Okay. Not even to collect rent?

6 A No. They normally call me on the phone or they drop it
7 in the office, you know, right there at the office. Most of
8 the time I'm in the office.

9 Q Okay. Do you know if they -- in addition to the fence,
10 do you know if they had ever posted any signs regarding the
11 dog, any "Beware of Dog" signs, anything like that?

12 A Don't know.

13 Q Do you know if they had any signs such as -- regarding
14 trespassing or soliciting?

15 A Not aware, no.

16 Q Do you have any opinions of pit bulls as a breed?

17 A No. I -- no.

18 Q Are you aware that there's a -- you know, that pit
19 bulls are a controversial breed?

20 A I heard on the news. I've heard the news.

21 Q Before the news of this accident?

22 A No. Probably paid more attention, you know, when
23 the -- after this incident. We found out that Chihuahuas
24 are more -- record bites and -- you know, because my kids or
25 something was looking and said that Chihuahuas that --

1 it's not illegal to have a pit bull. Some cities might have
2 a restriction, but not -- you know, the county didn't have
3 any restrictions. Just on the website, you know.

4 Q On any of your property -- well, do any of your other
5 properties, I guess at time of the incident through the
6 present, do they have dogs of any kind?

7 A Yeah. Four or five of them.

8 Q Okay. What kind of dogs do they have?

9 A Two, I believe, they're small, little hairy dogs, you
10 know, and one is a -- one is a mutt, a mixed dog. I think
11 three are the small dogs. I think one is a little bigger.
12 I don't know the brand.

13 Q You don't know the breeds?

14 A No, don't know the breeds.

15 Q Have you instituted any policies against having pit
16 bulls on any of your properties?

17 A No.

18 Q Have you instituted any policies as to if somebody has
19 a dog, what kind of fence that they need to contain the dog?

20 A No.

21 Q Why not?

22 A Because it hasn't been needed to, you know. No.

23 Q Have you done anything on any of your other properties
24 in response to the incident?

25 A No.

1 THE REPORTER: All as one or --

2 MR. MOORE: Let's mark them all as one.

3 They all do have their individual numbers. I did put
4 some numbers on there, so I can give you the full file some
5 other time.

6 MS. GRANADOS: That's fine.

7 (Exhibit No. 1 marked for identification.)

8 Q Here's the color copies.

9 MR. MOORE: Here's the black-and-white copies
10 for your reference.

11 MS. GRANADOS: Thank you.

12 MR. MOORE: And, of course, you have been
13 provided with the color copies.

14 MS. GRANADOS: Yes.

15 Q And if you would, just flip through each of these
16 photographs. I'm going to ask you some questions about
17 them.

18 MS. GRANADOS: And if I may, just for
19 clarification: No. 7 you had initially marked, I think, as
20 Exhibit 2?

21 MR. MOORE: Yes. It's all going to be
22 Exhibit 1 to his deposition with the different numbers.

23 MS. GRANADOS: No, that's fine. I just wanted
24 to make sure. Thanks.

25 Q And have you had a chance to look at each and every one

1 of these pictures?

2 A Yeah.

3 Q Now, with the exception of the last three pictures --
4 the last three pictures starting with the dog and then the
5 two people in the hospital. All right. So you separated
6 out the last three pictures and the pictures you have in
7 your hand.

8 For reference, do you see on each picture, I put a red
9 number on the bottom?

10 A Yes.

11 Q Okay. So if I ask you to identify a certain picture,
12 if you could refer to it as -- you know, the first page, for
13 example, is Picture No. 6 in Exhibit 1. Is that okay?

14 A Yes.

15 Q Okay. And they're not all in consecutive order; the
16 numbers kind of jump around, since there are more to the
17 series. But except for the last three pictures, are all the
18 pictures in Exhibit 1 -- are those pictures of the subject
19 property that you own at 6509-204th Street Northeast,
20 Arlington, Washington?

21 A Yes.

22 Q Okay. And I would like you to identify for the record
23 by reading out the number of any and all pictures that show
24 the fence that David built or had built on the property.

25 A Do you want me to mention the --

1 Q Yes. So every picture that has the fence that David
2 built or had built on the property, could you read it for
3 the record?

4 A Exhibit 00051.

5 Q Okay. It's Exhibit 1, but Photo 51?

6 A Exhibit 1 -- okay. And Exhibit 2, Photo -- or still
7 Exhibit 1?

8 MS. GRANADOS: Still Exhibit 1.

9 Q Just refer to the photos.

10 A Okay. So the photo -- Photo 52.

11 Q Photo 52. That's good.

12 A Photo 53, Photo 54, and Photo 55, Photo 56, Photo 57.

13 Q Photo 57?

14 A Yes.

15 Q 57 or 67?

16 A Oh, sorry 67.

17 Q And, oh, back to 67, now, it shows -- it shows the wood
18 house with the newer houses in the back -- I'm sorry, the
19 wood fence with the newer houses in the back. Is that the
20 fence that David built, or is that the fence that was there
21 when you bought the property?

22 A That was existing.

23 Q Okay. So the wooden fence is existing, and the wire
24 fence between the post and the wood fence and the trailer?

25 A Yes. That's what David installed.

1 Q Is that all or part of what David installed?
2 A Part.
3 Q Okay. And 68, that shows, I guess, a little bit to the
4 left on the trailer, that's another part of the --
5 A Yeah, Exhibit 68. And 69, 70, 80, and --
6 Q And 80 -- sorry, go -- so back to 80 for the moment.
7 A Uh-huh.
8 Q So 80, the wire fence shown with the post, is that what
9 David installed?
10 A Yes.
11 Q Okay. I'm sorry. Please continue.
12 A 83, 84.
13 Q And let's look at Photo 85 for a second.
14 A Uh-huh.
15 Q Have you ever seen that -- I guess that wood part
16 that's been torn out?
17 A No.
18 Q Was that part of the -- was that part of the property?
19 Do you know where that was?
20 A No.
21 Q Okay.
22 A 86.
23 Q And again, we're identifying parts of the -- or photos
24 that show the fence that David built.
25 A 98 and 99.

1 Q And now, the next picture, the dog shown in picture
2 108, is that the dog that you saw as a puppy?

3 A Yes.

4 Q And the fence that David built, do you believe that
5 that was adequate to contain the dog shown in picture 108?

6 A I got them all mixed up here.

7 MS. GRANADOS: Which one are you looking for?

8 THE WITNESS: 108.

9 MS. GRANADOS: 108 is the one with the dog.

10 Q So what I'm asking is, the fence that David built and
11 having seen the -- or gone through the pictures of the fence
12 that David built, do you believe that that fence was
13 adequate to hold that dog?

14 A Don't know.

15 Q Hmm?

16 A Don't know.

17 Q You don't know? If you saw a property of yours that
18 had a dog like this shown on Picture No. 108 inside a fence
19 shown in the pictures of the fence that David built, would
20 you have any concerns that that fence is not adequate to
21 contain this dog?

22 A Not from the pictures, no. Not from Exhibit 51.

23 Q Or Picture 51 in Exhibit 1?

24 A Yeah. Picture 51, yeah.

25 Q So is it your testimony that you believe that that

1 fence there is okay to be able to hold that dog?

2 A Don't know. Don't have any knowledge about pit bulls.

3 Q Okay. As a property owner, do you think it's important
4 for you to be able to recognize potential safety risks and
5 hazards on your properties?

6 A Yes.

7 Q And prior to this incident, are you aware that pit
8 bulls are seen by many as dangerous dogs that have done
9 great harm and injury?

10 A Heard through the news, yes, you know.

11 Q And have you ever taken any steps to educate yourself
12 as to what fencing or containment would be adequate or
13 acceptable to keep the public safe from pit bulls?

14 A No.

15 Q And let's look at the -- after the picture of the dog,
16 the next picture. I'm sorry, of the next person. And
17 that's No. 114. Do you recognize the person shown in
18 Exhibit 114?

19 A Yes. That's David's mom.

20 Q Okay. And you had testified that you believe she had a
21 few scratches from the incident?

22 A Yeah, she mentioned.

23 Q Okay. And the last picture, that's No. 119, do you
24 recognize the lady in the hospital bed there?

25 A From the picture, no. But I know that they said it was

EXHIBIT 12

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,)

Plaintiff,)

vs.)

No. 18-2-08290-31

DAVID GONZALEZ SANDOVAL,)

ALEJANDREA MARTINEZ, and the)

marital community comprised)

thereof, and ERNESTO HERNANDEZ,)

TERI HERNANDEZ and the marital)

community comprised thereof,)

Defendants.)

DEPOSITION UPON ORAL EXAMINATION OF

TERI HERNANDEZ

2:41 p.m.

Tuesday, January 22, 2019

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Normandy Park, Washington

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* * *

EXHIBIT INDEX

(No exhibits marked for identification.)

1 they don't have fur. I like -- I like -- I personally find
2 them the ugliest dogs, them and those little ugly face ones.
3 I can't -- with the smashed face.

4 Q Pugs?

5 A Yeah. Well, there's another one. I just think they're
6 ugly, so it's not my type of dog. I like German Shepherds
7 and Labs and Pomeranians, especially Pomeranians.

8 Q Do you have any opinions of pit bulls as a breed when
9 it comes to safety?

10 A I believe that it depends on the owner, how they're
11 raised.

12 Q Do you think that there are any dangers inherent to the
13 breed?

14 A To the breed? No. No. I believe it's all about
15 environment.

16 Q And let's talk about the property at 6509-204th Street
17 Northeast in Arlington, Washington. Are you an owner of
18 that property?

19 A Yes, I am.

20 Q And you own it with your husband?

21 A Yes.

22 Q And there's no other owners?

23 A No.

24 Q And have you owned it since 2011?

25 A Yes. Whatever it shows. I thought it was before that,

1 but...

2 Q Now, you've heard your husband testified as to the
3 ownership of the property and so forth?

4 A Yes.

5 Q Is there anything that he testified to that you would
6 disagree with or would want to change?

7 A I believe that we got it around 2005, after his grandma
8 died and -- is when I believe is when we --

9 MR. HERNANDEZ: But the County's --

10 A You know, I -- as far as from my recollection, that's
11 about the time, sometime around there. But other than that,
12 no.

13 Q So you think you may have had it earlier than 2005?

14 A Yeah, for his -- yes, his aunt and her family.

15 Q And when do you recall his aunt having left the
16 property?

17 A It was a couple years ago, you know, a few years ago.
18 I don't -- I don't recall. I was sick during the time, so a
19 lot of -- because I had my chemo treatment and just a lot of
20 surgeries and stuff afterwards; it was several years of
21 recovery.

22 Q Have you been involved with any of the properties that
23 you and your husband own?

24 A When people move out, I will -- I will go and clean the
25 inside, help clean the inside. Not always, but when, when

1 I'm feeling good, I will go and clean.

2 Q And your husband testified that you both own 20
3 properties together; is that accurate?

4 A Approximately, yeah. I couldn't tell you exactly,
5 because I'm -- I don't have it in front of me.

6 Q And do you agree that David Gonzalez Sandoval and his
7 wife and mother are tenants of the property at 6509?

8 A As far as I know, yes. I -- yes, they're tenants,
9 because I met them -- I hadn't met them until recently.

10 Q When did you first meet them?

11 A I think it was about a month ago, maybe less.

12 Q And do you know when they moved in?

13 A Couldn't tell you.

14 Q And did you have any part in the upkeep or maintenance
15 of that property?

16 A No.

17 Q Have you ever been to the property?

18 A Yes. When his aunt lived there.

19 Q When was the last time you'd been there?

20 A I think maybe just before I got sick in 2012.

21 Q And his aunt was living there at the time?

22 A Yes, she was.

23 Q Have you ever been there since the Sandovals moved
24 there?

25 A Just last month.

1 Q Had you ever been there between the time they moved in
2 and the time of this May 18th --

3 A No.

4 Q -- this May 2018 dog attack?

5 A No, I had not. Well, it's possible. I'm -- no, no I
6 have not. It's not...

7 Q Nothing that you can remember?

8 A No.

9 Q Do you know anything about the fence that --

10 A No.

11 Q -- your husband testified that David built on the
12 property?

13 A No, I don't. I saw it when I went over there a month
14 ago.

15 Q Okay. And had you ever seen the dog that was involved
16 in the incident?

17 A No, I never saw it.

18 Q And to your knowledge, did David Sandoval or any of his
19 family members have any written lease agreements for the
20 property?

21 A Not to my knowledge.

22 Q Do you know why not?

23 A My husband's the kind of person that his word is -- he
24 takes people at face value when he talks to them, and, you
25 know, he does things on a handshake. He's very honest, and

1 he expects people to be the same with him. That's just how
2 he is.

3 Q Do you know of any problems that you or your husband
4 have had arising from not having a lease -- any disputes
5 over the terms of the rental, that sort of thing?

6 A The only problem we ever had is in the duplex in
7 Everett many years ago. I think it was like in '94,
8 somewhere in the -- the first time we rented out our -- the
9 first tenant we had. Because we lived in the duplex, and
10 then when we -- we bought another house, and we rented it
11 out. The first time that we rented it out to someone was --
12 the neighbors were calling us constantly because of the
13 parties. Other than that, no.

14 Q Have you ever had to evict somebody?

15 A That time.

16 Q And did you just tell them to move and they moved, or
17 did you have to go through any sort of legal process?

18 A No. We just told them to move and they moved. We
19 asked them to move.

20 Q So you were never involved in any inspections of the
21 property; is that correct?

22 A No.

23 Q And are you aware of any issues involving the property
24 as far as complaints or maintenance problems or anything
25 like that?

1 publisher, it can count as a Jehovah's Witness, but then
2 baptism is different. You're counted but you're -- yeah.
3 Now you're getting me where I'm confused, and I remember it.
4 I have been a Jehovah's Witness for 23 years.

5 Q You have been?

6 A I have been. And my children all are as well.

7 Q And you provide Bible study; is that correct?

8 A I do.

9 Q How often?

10 A Whenever -- I have one Bible study right now that's
11 regular, once a week. I study with my grandkids. Other
12 than that, I mean, just out in service, but I don't have any
13 regular Bible studies.

14 Q Do you still go out and service?

15 A Yes.

16 Q How often?

17 A Right now I'm averaging probably 20 hours a month.

18 Q And are you in the same congregation as Saralegui?

19 A Yes. I am. Saralegui.

20 Q Now, I understand that there's a Spanish-language and
21 an English-language congregation in Marysville.

22 A Yes, there is.

23 Q And do you both go to the --

24 A Spanish Marysville.

25 Q -- Spanish?

1 Okay. And do you have, well, any knowledge of
2 Jehovah's Witness's policies for -- for these inservice --
3 or out-of-service -- out-of-service Bible studies?

4 A Out-of-service?

5 Q Or what did you call it?

6 A You mean doorstep studies?

7 Q Yeah, the doorstep studies.

8 A No. No. Just if we're -- just once it's -- you've
9 been there, I think, three times, you can count it as a
10 Bible study on your time, monthly time that you -- that
11 you -- your service report.

12 Q Does Jehovah's Witnesses have any policies regarding
13 what to do if somebody says that they're not interested?

14 A If they say that they're not interested, you just --
15 you know, you generally let it be until it's -- you know,
16 when you get a new territory, and then you'll go to that --
17 you know, the next time, you cross it off that you went and
18 that's it. Circumstances change; people sometimes are not
19 interested, or next time they may be interested in something
20 you say. But generally we'll let it go a couple months
21 before -- or sometimes -- it depends on the territory.
22 Sometimes it's once every six months where you -- when I was
23 at Lake Stevens, you'd be -- they finished the entire
24 territory in the year, about, is what they -- is what like
25 us to do. But sometimes the territory's too big and it

1 doesn't get done that quick; sometimes it's a smaller
2 territory and it gets done faster.

3 Q Now, does Jehovah's Witnesses have any policies as to
4 what to do if somebody tells you to go away or that you're
5 not welcome there?

6 A If somebody tells you to not come -- to not come back
7 to the house, you are supposed to write it down on the card,
8 on the paper, and say that this person told you not to come
9 back, and you write -- mark the date. And then you are not
10 to go back. Only the elders can go back and ask if they --
11 they can go back like once every three years, I believe it
12 is. Every so often, they'll go back and say, You know,
13 we're just doing -- cleaning up, making sure the same person
14 lived there. You know, do you still not want us to come?

15 Q Do you have any knowledge that that was ever done with
16 respect to this property?

17 A I have no knowledge other than what David said he said,
18 which I believe you would call hearsay, so...

19 Q Well, we're just trying -- we'll get into the discovery
20 rules.

21 A Yeah, I get it.

22 Q There's lots of law, lots of exceptions and --

23 A Yeah.

24 Q Yeah. Are you aware of the news coverage of the
25 incident?

EXHIBIT 13

Breed-specific legislation FAQ

DogsBite.org | <https://www.dogsbite.org/legislating-dangerous-dogs-bsl-faq.php>

What is breed-specific legislation (BSL)?

Breed-specific legislation is a type of dangerous dog law. It is defined as any ordinance or policy that pertains to a specific dog breed or several breeds, but does not affect any others. Proponents of breed-specific laws seek to limit public exposure to well-documented dangerous dog breeds by regulating the ownership of them. The objective of breed-specific legislation, which primarily targets pit bulls and their derivatives, is to prevent severe and fatal attacks before they occur.

Dangerous dog laws that are non breed-specific usually react after a damaging or deadly attack; they do not prevent the first attack. The trend in the U.S. and across the world is to regulate a small group of breeds that have a genetic propensity to attack and inflict severe and disfiguring injuries so that first attacks by these breeds can be avoided. First attacks by pit bulls, for instance, almost always result in severe injury. In some cases, the first bite by a pit bull or rottweiler is fatal.

Q: What kinds of dogs are included in breed-specific laws?

Breed-specific legislation always targets pit bulls, the premier fighting breed. This class of dogs is comprised of several breeds: American pit bull terrier, American Staffordshire terrier and Staffordshire bull terrier. The American bulldog can also be classified within this group, as they share a common gene pool and are close cousins. The breed standard for the American bulldog, Scott-type, was developed by crossing early Johnson lines with the American pit bull terrier.¹

Much less commonly, breed-specific ordinances target rottweilers, the second most lethal dog breed in the United States. Some cities also incorporate additional fighting and bull-baiting breeds, such as the presa canario, cane corso, dogo argentino and other pit bull-mastiff derivatives. Yet, these instances are rare. The focal point of breed-specific legislation has always been pit bulls because this class of dogs is the most common and negatively impacts communities the most.

¹ American Bulldog, molosserdogs.com (Accessed: January 31, 2010). Also there is a 2005 Johnson-Scott declaration that talks about the former name of the American bulldog, the American pit bulldog. Johnson states in no uncertain terms that the pit bull terrier and his "preserved" American bulldog Johnson-type variance is nothing more than the latter being a larger dog -- both dogs share the "exact" same heritage of bull-baiting and dogfighting. Johnson is simply one of many who want to take credit for "preserving" the "original" bull-baiting and fighting bulldog. Johnson even goes as far as saying in an online-posted interview (1997) that the American pit bull terrier gained all of its "gameness" from the "original" bulldog that he later "preserved." American dogfighters would highly disagree, but also rarely make any distinction and simply call their dogs "100% bulldogs." (Accessed: January 31, 2010: <http://www.dogsbite.org/pdf/american-bulldog-molosserdogscom-jan-2010.pdf>) (Accessed: November 25, 2012: http://www.arfusa.com/declaration_scott_and_johnson.htm) (Accessed: January 1, 2015: <http://www.alapahabluebloodbulldogs.org/johnjohnsoninterview.php>) (Captured March 18, 2014: <https://www.scribd.com/doc/213026137/100-Bulldog-American-Pit-Bull-Terrier>)

Wolf hybrids fall into a special class due to their mixture of being part undomesticated. The regulation of wolf hybrids often occurs on a state-level for this reason. States like Alaska, Michigan, Massachusetts and Maryland ban their ownership.² When state law is silent on this issue, some cities do incorporate wolf hybrids into their breed-specific ordinances. Notably, all three major military divisions prohibit pit bulls, rottweilers and wolf hybrids in privatized housing.

Visual breakdown

To show how these ordinances are applied across several hundred different dog breeds,³ we analyzed our estimated U.S. jurisdictions with breed-specific laws.⁴ Of the 860 cities that regulate specific dog breeds, 100% target pit bulls. The second most regulated breed, rottweilers, were named in only 7% of these ordinances. Followed by wolf hybrids and presa canarios, each named in 3% and mastiff variations, American bulldogs and doberman pinschers, each named in 2%.

Analysis of 860 Cities with Breed-Specific Laws

Dog Breed	Named in Ordinances	% of All Ordinances
Pit bulls	860	100%
Rottweilers	59	7%
Wolf hybrids	30	3%
Presa canarios	30	3%
Mastiff variations	15	2%
American bulldogs	14	2%
Doberman pinschers	14	2%

*Breeds named in 1% or fewer ordinances were excluded from our analysis.

The majority are depicted here: [2014 Fatal Dog Attack Breed Identification Photographs](#)

Q: Do breed-specific laws work?

Well enforced breed-specific pit bull laws absolutely reduce damaging attacks by pit bulls. In our ongoing report, [Cities with Successful Pit Bull Laws: Data Shows Breed-Specific Laws Work](#), we document these results in the U.S. and Canada. The most dramatic results are often seen in jurisdictions that ban pit bulls because a ban reduces the breeding and the importation of new pit bulls into a community. There have been excellent results with other types of ordinances as well.

² Hybridlaw.com (Accessed: October 13, 2018: <http://hybridlaw.com/>).

³ How Many Breeds of Dogs Are There in the World?, by Stanley Coren, *Psychology Today*, May 23, 2013 (Accessed: August 14, 2015: <https://www.psychologytoday.com/blog/canine-corner/201305/how-many-breeds-dogs-are-there-in-the-world>).

⁴ This document is updated once each year and the numbers do change. At the time of our analyses, the count was 860 (Accessed: August 15, 2015. Version December 3, 2014: <https://www.scribd.com/doc/56495216/Estimated-U-S-Cities-Counties-States-and-Military-Facilities-with-Breed-Specific-Pit-Bull-Laws>).

After Aurora, Colorado adopted its pit bull ban ordinance in 2005, attacks by pit bulls decreased 73% (as of March 2014). After Pawtucket, Rhode Island adopted their pit bull ban in 2004, the city released 13-years of bite data showing that in the 4-years leading up to the ban, there were 52 pit bull attacks on people. In the 10-years after the ban, there were only 13 (as of September 2013). In Toronto, after a decade long pit bull ban, pit bull attacks dropped from 168 to 13 annually.⁵

The dramatic reduction in pit bull attacks on people and animals are not the only benefits. Over the same period in Aurora, pit bull euthanasia dropped 93%. In Pawtucket, the Rhode Island Society for the Prevention of Cruelty to Animals (RISPCA) had "regularly" convened vicious dog hearings for pit bulls before the ban ordinance. After the ban passed, the RISPCA never saw another one from Pawtucket.⁶ Other cities report a substantial reduction in vicious dog designations as well.

After Springfield, Missouri adopted a pit bull ordinance in 2006, impoundments of pit bulls were quickly cut in half, freeing up shelter space. In the year before the ordinance, 502 pit bulls were impounded, by 2007 only 252 and by 2017 only 140.⁷ When breed-specific laws are combined with an anti-chaining element, as was done in Little Rock's pit bull ordinance, excellent outcomes also resulted: The commonality of seeing a pit bull chained in its owner's yard disappeared.⁸

Peer-reviewed abstracts and studies

In 2017, the first report evaluating breed specific legislation in the United States showed that from 2001 to 2016, 5.7% of bites in Denver -- the largest jurisdiction in the United States that bans pit bulls -- were attributed to pit bull-type dogs compared to 54.4% in the remainder of the United States.⁹ Peer-reviewed studies from two different countries, Canada and Spain, show that breed-specific regulations resulted in a significant decrease of dog bite injury hospitalizations.

- [A Review of Dog Bites in the United States from 1958 to 2016: Systematic Review of the Peer-Reviewed Literature](#), by Chad Bailey, MD, Katharine Hinchcliff, MD, and Lee Pu, MD, PhD, FACS, *Plastic and Reconstructive Surgery - Global Open*, 2017 Abstract Supplement, Presentations at the American Society of Plastic Surgeons' Annual Meeting: Plastic Surgery The Meeting 2017, 2017 Sep; 5(9 Suppl): 172-173.
- [Effectiveness of Breed-Specific Legislation in Decreasing the Incidence of Dog-Bite Injury Hospitalisations in People in the Canadian Province of Manitoba](#), by Malathi

⁵ Pit bulls were Toronto's biggest biters before the ban, by Eric Andrew-Gee and Joel Eastwood, *Toronto Star*, October 3, 2014 (Accessed: August 2, 2015: http://www.thestar.com/news/gta/2014/10/03/pit_bulls_were_torontos_biggest_biters_before_the_ban.html).

⁶ Local ACOs oppose removal of ban on pit bulls, by Russ Olivo, *The Call*, June 27, 2013 (Accessed: August 22, 2015: <http://www.woonsocketcall.com/node/8782>) (Archived by WebCite® at <http://www.webcitation.org/6ayl7Pr0o>).

⁷ Pit Bull Statistics, Springfield-Greene County Health Department, July 2018 (Accessed October 13, 2018: <https://insight.livestories.com/s/v2/pit-bull-statistics/547b3b9e-d019-464c-a634-4c8ee8cc7f6ef>) (Archived by DogsBite.org)

⁸ Indianapolis ordinance puts restrictions on pit bull breeds, by Mary Milz, *WTHR 13*, April 7, 2009 (Accessed: August 31, 2010: <http://www.wthr.com/Global/story.asp?S=10145348>) (Archived by WebCite® at <http://www.webcitation.org/5sPLpDjxR>)

⁹ A Review of Dog Bites in the United States from 1958 to 2016: Systematic Review of the Peer-Reviewed Literature, by Chad Bailey, MD, Katharine Hinchcliff, MD, and Lee Pu, MD, PhD, FACS, *Plastic and Reconstructive Surgery - Global Open*, 2017 Abstract Supplement, Presentations at the American Society of Plastic Surgeons' Annual Meeting: Plastic Surgery The Meeting 2017, 2017 Sep; 5(9 Suppl): 172-173.

Raghavan, Patricia J Martens, Dan Chateau, and Charles Burchill, *Injury Prevention*, Published Online First, June 30, 2012.

- [Decline in Hospitalisations Due to Dog Bite Injuries in Catalonia, 1997–2008. An Effect of Government Regulation?](#), by Villalbí JR, Cleries M, Bouis S, Peracho V, Duran J and Casas C, *Injury Prevention*, 2010 Dec;16(6):408-10.

Q: Is breed-specific legislation constitutional?

Well-written breed-specific laws have a 100% success rate in appellate courts when faced with constitutional challenges. This is true with "private property" issues too. In 2014, when Utah-based fighting dog advocates, Best Friends Animal Society, fiercely lobbied Missouri legislators to pass a state preemption bill barring municipalities from enacting pit bull ordinances, the group used false constitutional arguments. DogsBite.org clarified these fallacy arguments in a letter to legislators.

Example fallacy: Local ordinances cannot trample constitutional rights!

To believe or to promote such an invalid argument would be to ignore American Jurisprudence. If the analysis of the supporters of SB 865 were correct, there would have been no legal basis for any of the breed-specific law victories in appellate courts; not one would have survived constitutional scrutiny. The fact is, the exact opposite is true. Why has every well-written breed-specific law been upheld after judicial scrutiny? [Please see a full listing of these decisions.](#)

Private property issues have been re-litigated in breed-specific cases and each time have failed because this legal issue has been settled for over a hundred years when the United States Supreme Court ruled in [Sentell v. New Orleans & Carrollton R. Co. - 166 U.S. 698 \(1897\)](#) and determined that government officials could shoot and kill loose dogs that pose a danger to the community. See Google Scholar search results for: "Sentell" and "property" and "pit bull" —*DogsBite.org*

In 2015, a Washington state legislator who sponsored a state preemption bill, falsely stated that a U.S. Supreme Court decision in 1920, *Nicchia v. New York*, found that it was "unconstitutional to have breed-specific ordinances." In a follow up letter to the House Judiciary Chair, we explained why Rep. Sherry Appleton's analysis of *Nicchia* is 100% flawed. A good rule of thumb in this legal area is that entities opposing breed-specific legislation [will throw anything](#) to see if it sticks.

Subject Line: HB 1018 - Cited Supreme Court ruling 100% false

Dear House Judiciary Chair Rep. Laurie Jenkins,

I watched the public hearing for HB 1018 that would terminate the right of local governments from regulating dangerous dog breeds in the state of Washington. I also transcribed Rep. Appleton's oral testimony, which is filled with "personal" and anecdotal statements and lacks even the most modest citations.

However, she did cite one case by the U.S. Supreme Court in 1920, [Nicchia v. New York](#), and alleged that the decision found that it was "unconstitutional to have breed-specific ordinances" (her exact words). I will briefly explain why Rep.

Appleton's reasoning is like saying *Brown v. Board of Education* supports separate schools for black and white students.

Part of the primary basis of the *Nicchia v. New York* decision relies upon the U.S. Supreme Court decision in *Sentell v. New Orleans & Carrollton R. Co.* - 166 U.S. 698 (1897), which determined that the "property in dogs is of an imperfect or qualified nature" and that government officials could shoot and kill loose dogs that pose a danger to the community.

The combination of citing *Nicchia* and *Sentell* by appellate courts pertaining to upholding well-written breed-specific ordinances was done as recently as 2007 (*American Canine Foundation v. Sun, Dist. Court, ND California 2007*). These two SCOTUS decisions are used to support breed-specific laws, which is in direct opposition to Rep. Appleton's analysis. —*DogsBite.org*

United States Supreme Court agrees

At least eight U.S. State Supreme Courts have upheld the constitutionality of breed-specific legislation including: Arkansas, Colorado, Iowa, Kansas, Ohio, Utah, Washington and West Virginia. At least seven State Appeals Courts have as well, among them, courts located in Florida, Kansas, Kentucky, Missouri, New Mexico, Ohio and Wisconsin. Nearly a dozen federal U.S. district courts have also weighed in favorably on the constitutionality of breed-specific laws.

In February of 2008, the United States Supreme Court refused to hear an appeal of the Supreme Court of Ohio's decision in *Toledo v. Tellings* (Ohio, April 14, 2008). Pit bull advocates had argued that the ordinance was unconstitutional on multiple grounds, all of which the Supreme Court of Ohio rejected. By refusing the appeal, the United States Supreme Court declared Toledo's breed-specific ordinance constitutional and the case cannot be appealed further.

Also see: [High Courts Rule a Dog Owner of 'Ordinary Intelligence' Can Identify a Pit Bull](#)

Q: What are the most common types of breed-specific laws?

Breed ban

Breed-specific legislation falls into several categories. The most publicized is a "breed ban," which prohibits the future ownership and reproduction (breeding) of a specific dog breed, chiefly pit bulls. All well-written bans allow existing pit bulls to remain with their owners. The goal of a ban is to eliminate "future" breeding and dramatically reduce the number of pit bulls within a community. This is why existing pit bulls must be altered once the ban is enacted. (See: [Model pit bull ban](#))

Cities of all sizes across the U.S. have enacted pit bull bans from large-sized to small. A handful of these cities include: Aurora and Denver, Colorado; Minot, North Dakota; Council Bluffs, Iowa and Independence, Missouri. Entire counties have as well, including: Miami-Dade County, Florida, Prince George's County, Maryland and Wyandotte County, Kansas. To find out if cities or counties within your state have passed a pit bull ban ordinance, [please see our state-by-state guide](#).

In 2012, Miami-Dade County became the first municipality to place their longstanding pit bull ban on a countywide ballot during a primary election. [By a wide margin, 63% to 37%](#), voters favored

keeping their pit bull ban. In 2014, Aurora, Colorado became the first city to place their pit bull ban on a ballot during a general election. Again, by a wide margin, 64% to 36%, voters chose to keep their ban, indicating that the majority of these voters do not want to live next door to a pit bull.

It is also important to point out the dramatic human and humane success of Aurora's pit bull ban. Statistics provided by Aurora's animal care division 8 months before the November vote showed enormous success in both areas. Since the ban's enactment in 2005, pit bull bites fell by 73% and complaints related to pit bulls fell by 50%. Shelter space occupied by unwanted or dangerous pit bulls fell from 70% (pre-ban era) to 15% by 2014 and pit bull euthanasia fell by a striking 93%.¹⁰

"Since the ban has been in place, bites are down 73 percent from pit bulls," said Cheryl Conway, a spokeswoman for the city's animal care division ...

"There hasn't been a human mauling in many years. Complaints and requests related to pit bulls are down 50 percent"...

According to city documents, before the ordinance was enacted in 2005, up to 70 percent of kennels in the Aurora Animal Shelter were occupied by pit bulls with pending court disposition dates or with no known owner. That number is now only 10 to 20 percent of kennels...

"Euthanasia of pit bull dogs is down 93 percent. Of those few that are put down, they are primarily those that come in as strays and their owners don't come to claim them." –*Cheryl Conway, Aurora Sentinel, March 2014*

Automatic labeling

Another type of breed-specific law is to automatically declare a breed prima facie "potentially dangerous" or "dangerous," which triggers various regulations for the dog's owner to prevent a first attack from occurring. Both definitions vary by state, but the former has fewer requirements. Shared requirements can include: higher registration fees, microchipping for identification purposes, mandatory sterilization, muzzling when off-property and fencing requirements.

When a dog breed is declared "dangerous" or "vicious," which is a higher designation than "potentially dangerous," additional requirements apply. These often include: liability insurance ranging from \$100,000 to the recommended \$300,000, secure confinement in a locking pen that prevents the animal from escaping and from a child entering, requiring a secure top, sides and flooring, and displaying visible "Beware of Dangerous Dog" warning signs on the premises.

Cities from coast-to-coast have passed automatic labeling laws. In 2008, Little Rock, Arkansas passed a pit bull ordinance declaring the breed "potentially dangerous" requiring pit bull owners to register, microchip and sterilize their dogs. Owners had to adhere to special fencing requirements too and place a sticker on their home indicating that a pit bull is inside.¹¹ The ordinance also prohibited the chaining of all dogs, though it was primarily to stop this activity by pit bull owners.¹²

¹⁰ City lawmakers uphold Aurora's ban on pit bulls, by Rachel Sapin, *Aurora Sentinel*, March 4, 2014 (Accessed: March 4, 2014: <http://www.aurorasentinel.com/news/city-lawmakers-uphold-auroras-ban-pit-bulls/>) (Archived by WebCite® at <http://www.webcitation.org/6NpRs4GAp>)

¹¹ Little Rock, Arkansas Municipal Code, Section 6-19 - Potentially dangerous breeds. Municode.com.

¹² Indianapolis ordinance puts restrictions on pit bull breeds. by Mary Milz, WTHR 13, April 7, 2009 (Accessed: August 31, 2010: <http://www.wthr.com/Global/story.asp?S=10145348>) (Archived by WebCite® at <http://www.webcitation.org/5sPLpDjxR>)

"There was a day when you could walk down any street in center city Little Rock, you could see several pit bulls chained up. You don't see that anymore," said Tracy Roark with Little Rock Animal Services.

Roark told Eyewitness News over the phone that pit bull attacks have been cut in half and credits their new law with getting them there.

"This is the most abused dog in the city," said Roark.

The Little Rock law passed last year and requires pit bulls to be sterilized, registered and microchipped. Also dogs - regardless of the breed - are also not allowed to be chained up outside. -*Tracy Roark, WTHR 13, April 7, 2009*

Mandatory spay and neuter

The most modern type of breed-specific legislation, and growing in California, is a mandatory pit bull sterilization ordinance. Nearly all open-admission shelters across the U.S. are plagued with a similar reality: pit bulls occupy 30% or more of animal shelter space, high pit bull euthanasia rates¹³ and a high number of pit bull bites. San Francisco enacted the first mandatory pit bull sterilization law in 2005. Results in 2013 continue to show a strong reduction in all three areas.¹⁴

Many California cities and counties have followed in the footsteps of San Francisco. Jurisdictions in California are limited to only being able to enact breed-specific "spay and neutering" laws. Prior to San Francisco's ordinance, a statewide preemption law prohibiting local governments from enacting any form of breed-specific law governed California. A state bill was passed in 2005 that partially repealed the state preemption law, allowing San Francisco to adopt its ordinance.¹⁵

In San Francisco, the killing of a boy by pit bulls in 2005 led to big change.

After 12-year-old Nicholas Faibish was fatally mauled by his family's pit bulls, the city adopted a mandatory spay-neuter law for the breed ...

Since then, San Francisco has impounded 14 percent fewer pit bulls and euthanized 29 percent fewer - which is a "significant decrease," said Rebecca Katz, director of the city's Animal Care and Control department.

Another significant indicator, she said, is that there have been 28 pit bull bites reported in the past three years - and 1,229 bites by other breeds during the same period. In the three-year period before that, there were 45 pit bull bites and 907 incidents involving other breeds. -*Rebecca Katz, San Francisco Chronicle, June 19, 2013*

More examples: [Cities with Successful Pit Bull Laws: Data Shows Breed-Specific Laws Work](#)

¹³ Pit bulls were 32% of U.S. shelter inventory in June 2014, by Merritt Clifton, Animals24.org, July 4, 2014 (Accessed: August 19, 2015: <http://www.animals24-7.org/2014/07/05/pit-bulls-were-32-of-u-s-shelter-inventory-in-june-2014/>)

¹⁴ Often no warning signs in pit bull attacks, by Henry K. Lee. *San Francisco Chronicle*, June 19, 2013 (Accessed: June 30, 2013: <http://www.sfgate.com/default/article/Often-no-warning-signs-in-pit-bull-attacks-4611027.php>) (Archived by WebCite® at <http://www.webcitation.org/6Hm1oNyhj>)

¹⁵ Senate Bill 861, sponsored by then Senator Jackie Speier, was signed by the governor on October 7, 2005 (Accessed: June 14, 2015: ftp://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_0851-0900/sb_861_bill_20051007_chaptered.html)

Q: How does a city enforce a breed-specific law?

The model for most cities is "enforce as you go." Authorities take action as they become aware of infractions or as complaints are received. For example, San Francisco issues a "Fix It" ticket when a person is caught having an unaltered pit bull. The owner then has two-weeks to sterilize the dog. If the owner fails to provide proof of surgery after this time, he or she is fined \$500.¹⁶ This method also allows officers to check for ordinance violations in the course of their everyday duties.

Routine duties for animal control officers include patrolling assigned areas to enforce local animal control ordinances. Duties include, but are not limited to, responding to at large and dangerous dogs complaints and carrying out animal bite investigations and animal cruelty investigations. Throughout these everyday duties, officers issue warnings and citations to owners found in violation of the local animal control regulations whether the ordinance is breed-specific or not.

Q: Is enforcement of a breed-specific law expensive?

This depends upon the chosen method of enforcement and size of the jurisdiction. Most mid and large-sized cities operate on the basis of "enforce as you go." For instance, when Council Bluffs, Iowa (population 62,000) enacted a pit bull ban in 2004, the animal control department embraced this method. As a result, the department did not see a negative affect on its budget. The duties of enforcing the pit bull ban ordinance were woven into the course of everyday officer duties.

Specifically, after the Council Bluffs pit bull ban went into effect, based on current registered dogs, animal control established a list of dogs in compliance with the ordinance. These owners were required to sterilize, license and microchip their pit bulls and obtain liability insurance. Afterward, if a complaint was filed, officers could check the list and determine right away if the owner was in compliance. If the owner was not, various actions were triggered, including impounding the dog.¹⁷

Larger cities that hire additional personnel for enforcement can also use increased registration fees for the grandfathered-in pit bulls to offset costs. In 2005, Aurora, Colorado (population 346,000) passed an ordinance banning pit bulls and derivative fighting breeds. In a report issued over two years after the ban began, animal services said the higher registration fees for the restricted breeds covered most of the day-to-day costs of enforcement, including additional personnel.¹⁸

Sham BSL calculator

In 2012, when Miami-Dade County officials voted to place the pit bull ban on the primary ballot, pit bull advocate Dalia Caines testified to committee members that "taxpayers paid \$3 million annually to enforce the ban on pit bulls." Caines' spurious figures came from the bogus "BSL

¹⁶ S.F. Sterilization Law Successful in Reducing Pit Bull Population, by Marisa Lagos, *San Francisco Chronicle*, August 28, 2007 (Accessed: August 22, 2015: <http://www.sfgate.com/news/article/S-F-sterilization-law-successful-in-reducing-pit-2507585.php>) (Archived by WebCite® at <http://www.webcitation.org/6aylqzunN>)

¹⁷ Information supplied by Council Bluffs Animal Control Services (March 2008).

¹⁸ City Reports Fewer Bites. Licenses for Restricted Dogs Since Breed Ban, by Adam Goldstein. *Aurora Sentinel*, July 2, 2008 (Accessed: July 5, 2008 www.aurorasentinel.com) (Archived by DogsBite.org)

Fiscal Impact Calculator,"¹⁹ peddled by Utah-based fighting dog advocates, Best Friends Animal Society and designed by John Dunham, who formerly produced "research" for Big Tobacco.²⁰

When commissioners asked the Animal Services director to verify if the fiscal impact to the county of the pit bull ban was \$3 million, director Alex Munoz said that \$3 million was more than the department's entire budget for enforcement and that pit bulls accounted for 2% of the enforcement expenses.²¹ The sham BSL calculator was funded by the National Canine Research Council, a subsidiary of Animal Farm Foundation. Jane Berkey owns and operates both. (See graphic).

[Ms. Caines] noted taxpayers paid \$3 million annually to enforce the ban on pit bulls ... Commissioner Bovo asked the Animal Services Department Director to verify whether the fiscal impact to the County of the pit bull ban was \$3 million. Mr. Alex Munoz, Director, Animal Services, pointed out that \$3 million was more than the department's entire budget for enforcement, and that pit bulls accounted for two percent of the enforcement expenses. —*Miami-Dade Legislative Item (120173), Straw Ballot Pit Bull Dogs, Introduced January 27, 2012*

To break this down more concretely, we examined the 2011-2012 Miami-Dade County Animal Services budget on the county's website.²² The total budget for the department was \$9.36 million. The total budget for Code Enforcement was \$2.3 million. Director Munoz stated that pit bulls accounted for 2% of total enforcement costs, which equates to \$46,140. The BSL calculator, which claimed the ban cost taxpayers \$3 million, is an exaggeration by almost two orders of magnitude.

Other exaggerations by John Dunham & Associates (JDA) are cited by the *Texas Tribune* in 2011, which describes his firm as working "almost exclusively for lobbyists, industry trade associations and private companies looking for studies that bolster their case for legislation and policy changes

¹⁹ Best Friends Breed-Discriminatory Legislation (Bdl/Bsl) Fiscal Impact (Accessed: September 1, 2015 <http://bestfriends.guerrillaeconomics.net/>).

²⁰ John Dunham served as the manager of Fiscal Issues and Chief Domestic Economist at Philip Morris from 1995 to 2000, according to SourceWatch.org. The JDA website explains Dunham's role as, "producing research and information on key issues facing all of the company's divisions." There are over a thousand documents referencing Dunham in the publicly available archive of tobacco industry materials. Dunham continued creating studies funded by Philip Morris after starting JDA in 2002, including, *The Economic Incidence of Smoking Restrictions* (2003) and *The Private Market for Accommodation: Determinants of Smoking Policies in Restaurants and Bars* (2004). (Accessed: October 14, 2010: http://www.sourcewatch.org/index.php/Michael_Marlow) (Accessed: August 19, 2015: <https://industrydocuments.library.ucsf.edu/tobacco/>)

²¹ Miami-Dade Legislative Item, File Number 120173. Straw Ballot Pit Bull Dogs, Introduced 1/27/2012 (Accessed: August 4, 2015: <http://www.miamidade.gov/govaction/matter.asp?matter=120173&file=true&yearFolder=Y2012>) (Archived by WebCite® at <http://www.webcitation.org/6aymZjGBD>)

²² FY 2011-12 Adopted Budget and Multi-Year Capital Plan, Miami-Dade County Animal Services Department (Accessed: September 1, 2015 <http://www.miamidade.gov/budget/FY2011-12/adopted/volume2/animal-services.pdf>) (Archived by DogsBite.org)

they are trying to advance."²³ More recently in 2013, on behalf of oil and gas industry groups, JDA overestimated the cost of a revised federal proposed fracking rule by 90%, or over \$310 million.²⁴

"We're an economic consulting firm that supports lobbyists," the company said in its very first Tweet, in late 2009. "Want a legislator to listen? Tell them how much its gonna cost..." —*John Dunham & Associates Tweet, November 10, 2009*

Learn more about the [Five Levels of the Pit Bull Lobby](#) and the overlapping relationships.

Q: When did breed-specific legislation first begin?

In modern times, breed-specific legislation was unveiled in the early 1980s in direct response to the savagery of pit bull attacks. Communities were horrified by the catastrophic and fatal injuries inflicted by these dogs. As stated in *Pit Bull Myths*, the population of pit bulls first erupted in the mid 1970s, when pit bulls (fighting dogs) began leaking into the general population from the illegal world of dogfighting. By 1987, regulating or banning pit bulls had become a national conversation.

At the turn of the 20th century, when dogfighting was still legal but largely frowned upon, cities across the country began calling for and enacting breed-specific "bulldog" ordinances. Up until the mid 1900s, pit bulls were called bulldogs or bull terriers. Some of these cities included Sacramento, CA (1896), Richmond, VA (1904), Ogden, UT (1911), Washington DC (1911) and Maysville, KY (1912). Attacks by pit bulls at that time were just as violent as they are today.

One of the earliest fatal pit bull attacks that DogsBite.org has on record, through researching the Library of Congress and historical newspaper archives, occurred in Baltimore in 1844. John Dubernard, a respected aging citizen, was so badly mauled by a pit bull while visiting the dog owner's home that he died. An article published by the *Baltimore Sun* in November 1844 describes how Baltimore society felt about this dog breed at that time. The article is simply titled, "Dead."²⁵

His death is a melancholy comment upon the impolicy, we might also say the criminality of keeping dogs, so ferocious in the character as this one was, in the yards of private dwellings. The bull terrier, and this dog was one of that species, is perhaps the very worst description of dog with which we are beset in our community. They are always fierce, and it is a rare circumstance that even their

²³ Independent Analysis of Flat Tax Questionable, by Jay Root. *The Texas Tribune*, October 28, 2011 (Accessed: August 22, 2015: <http://www.texastribune.org/2011/10/28/independent-analysis-flat-tax-questionable/>) (Archived by WebCite® at <http://www.webcitation.org/6aymePig0>)

²⁴ Flawed Industry Analysis Drastically Overstates Cost of Proposed Federal Hydraulic Fracturing Rule, by Center for Western Priorities, July 29, 2013 (Accessed: August 18, 2015: <http://westernpriorities.org/2013/07/29/flawed-industry-analysis-dramatically-overstates-cost-of-proposed-federal-hydraulic-fracturing-rule/>) (Archived by WebCite® at <http://www.webcitation.org/6aymk6cli>), and, Industry. BLM far apart on frack rule cost, by Dennis Webb, *The Daily Sentinel*, July 29, 2013 (Accessed: August 17, 2015: <http://www.gjsentinel.com/news/articles/industry-blm-far-apart-on-frack-rule-cost/>) (Archived by WebCite® at <http://www.webcitation.org/6aymodcsA>)

²⁵ "Dead," *The Globe and Commercial Advertiser*, November 18, 1844 (genealogybank.com) (Archived by DogsBite.org) and "Local Matters—Dead," *The Baltimore Sun*, November 15, 1844 (genealogybank.com) (Archived by DogsBite.org: <http://www.fatalpitbullattacks.com/pdf/1844-john-dubernard.pdf>)

masters have control over them -- when they once take hold, death has been frequently found necessary to make them loosen their grasp. --*Baltimore Sun*, 1844

Learn more about early breed-specific ordinances, social attitudes and vicious attacks by pit bulls in written testimony by DogsBite.org for the [Maryland Senate Judicial Proceedings Committee](#) (February 6, 2014). Provided in the document is an [1897 woodcut illustration](#) published in *The San Francisco Call* of a policeman "strangling a savage bulldog into releasing his hold" of a child. The illustration shows the 8-year old girl lifted entirely off the ground by the jaws of the pit bull.²⁶

Q: What is a state preemption anti-BSL law?

DogsBite.org recently posted a detailed explanation of these state laws, along with their history (See: [A Primer on State Preemption Laws](#)). State preemption anti-BSL laws bar local governments from regulating specific dog breeds. Wave I of these laws arose in the late 1980s, just after cities began adopting pit bull laws and ended in 1992. Wave II began in 2012, chiefly driven by Best Friends and dog breeder interests, and is ongoing today. Currently 21 states have adopted one.²⁷

Jurisdictions in Colorado can supersede the preemption law under home rule authority. Yet home rule authority varies amongst states, as do the preemption laws. Primarily they center upon the prohibition of declaring a specific breed "dangerous" or "vicious" (prima facie legal designation). California is a mixed preemption state. It allows for the regulation of specific breeds via spay, neuter status, but prohibits specific breeds to be declared "potentially dangerous" or "vicious."

Big industry interests are typically the force behind state preemption laws. Such laws were historically pursued by the tobacco industry, and continue to be today, to impede local tobacco laws.²⁸ This strategy by Big Tobacco was so successful that a range of other big industries began pursuing state preemption laws as well. Grassroots public health movements often suffer the most, as these laws essentially extinguish the motivation to organize and take action locally.

Please see: [State Preemption Map](#) | [Deaths After Preemption](#) | [Fighting Preemption Laws](#)

Q: Why not just enforce the laws we already have?

Most cities have laws that take effect after a person has been bitten or attacked, in some instances, only after a second person has been bitten or attacked. In these jurisdictions, a pit bull

²⁶ "Bitten and Torn by a Bulldog -- The Painful Experience of an Eight-Year Old Girl," *The San Francisco Call*, April 15, 1897 (Library of Congress. Accessed January 5, 2014: <http://chroniclingamerica.loc.gov/lccn/sn85066387/1897-04-15/ed-1/seq-7/>)

²⁷ This is correct as of October 13, 2018.

²⁸ The Tobacco Industry on Why it Needs Preemption, by Americans for Nonsmoker's Rights, 2005. The group collected a series of statements from Big Tobacco during the 80s and 90s about this issue, one of the most famous is from Philip Morris, "While we're not married to any particular form of preemption language, we're dead serious about achieving preemption in all 50 states." - *Tina Walls, Philip Morris internal document, Bates No.: 2041183751/3790, 1994* (Accessed: April 10, 2015: <http://www.no-smoke.org/pdf/tiwhypreemption.pdf>)

can maul two separate victims, leaving each with severe injury before any substantial penalties are triggered. Such antiquated state and local laws were designed to address "common" dog bites that result in minor injuries, not a pit bull mauling that often results in life-altering damage.

Most current state and local dog attack laws also fail to sufficiently criminally penalize a dog owner after a severe attack. Cases abound where the owner of a dog is given a minor "infraction" for failure to leash his pet or failure to vaccinate his dog after a victim is airlifted to a Level I or Level II trauma center. The phrase, "just enforce the laws we have" is deceitful given how paltry many existing laws are, not to mention how few states have a meaningful felony dog attack statute.

The grandfather of a 5-year-old boy killed by a dog Monday night said the dog's owner got off too light, after being cited for two ordinance violations.

"That's all you get? My grandson's gone forever, and all you get is two tickets? Yeah, I have a problem with that," James Nevils said of the mauling death of his grandson, James Nevils III.²⁹—James Nevils Sr., *CBS Chicago*, May 27, 2015

The solution is not to enforce the inadequate laws we already have, often further hindered by existing legal systems that offer insufficient routes to civil and criminal recourse. The solution is to create preventative laws that greatly reduce the risk of dangerous dog breeds, primarily pit bulls, from ever inflicting a first attack. This radically reduces grave injuries and the need for victims to endure both deficient legal processes. These are the two primary goals of breed-specific laws.

Breed-specific legislation recognizes the cost and severity of victims' injuries and the difficulties of receiving compensation after a serious attack. Many owners of dangerous breeds do not have sufficient insurance policies or any coverage at all. Proactive breed-specific laws require owners of these breeds to carry liability insurance in the baseline amount of \$100,000 or the recommended amount of \$300,000. So if an attack does occur, the victim at least has a clear path to recourse.

Q: I own a German shepherd; will my dog be regulated next?

Pit bull owners, kennel clubs, humane and veterinarian groups often use scare tactics in their fight against breed-specific laws, of which 100% are targeted at pit bulls, distantly followed by the second top killer in the U.S., rottweilers, at 7%. They claim if pit bulls are banned, "your breed will be next." Former Lucas County, Ohio Dog Warden Tom Skeldon was the leading authority of pit bull regulations during his tenure (1987-2009). In a 2005 article, he highlights this scare tactic:³⁰

"Some humane groups have been manipulated by these pit bull factions to where they fight breed-specific legislation using scare tactics like 'your breed will be next.' And for 13 years, their breed hasn't been next."—Tom Skeldon, *The Blade*, February 21, 2005

²⁹ Dog Owner Cited After Boy Mauling To Death: Victim's Grandfather 'Not Happy At All', by CBS Chicago, May 27, 2015 (Accessed: August 22, 2015: <http://chicago.cbslocal.com/2015/05/27/dog-owner-cited-after-attack-killed-5-year-old-boy/>) (Archived by WebCite® at <http://www.webcitation.org/6aynGa3ri>)

³⁰ Bulldog Approach to Warden's Job Makes Skeldon a Favorite Target, by Dale Emch, *The Blade*, February 21, 2005 (Accessed: August 22, 2015: <http://www.toledoblade.com/frontpage/2005/02/21/Bulldog-approach-to-warden-s-job-makes-Skeldon-a-favorite-target.html>) (Archived by WebCite® at <http://www.webcitation.org/6aynLoiup>).

Communities that enact breed-specific legislation usually do because a single class of dogs -- pit bulls -- constitutes a small percent of the registered dog population but inflicts a disproportionate number of bites. This is further compounded by the fact that many pit bull bites result in severe injury. The rational basis for regulating pit bulls, as opposed to virtually all other breeds, is that selective breeding produced a dog with a bite style and attack traits unlike any other dog breed.

About Us

DogsBite.org is a national dog bite victims' group dedicated to reducing serious dog attacks. Through our work, we hope to protect both people and pets from future attacks. Our website, www.dogsbite.org, was launched in October 2007 and contains a wide collection of data to help policymakers and citizens learn about dangerous dogs. Our research focuses on pit bull type dogs. Due to selective breeding practices that emphasize aggression and tenacity, this class of dogs negatively impacts communities the most. Our website hosts important dog bite studies, U.S. dog bite fatalities and other key bibliographies. In the Legislating Dogs portion of our site, we offer examples of breed-specific laws (state-by-state) and documentation of the constitutionality of these laws. The Victim Realities section provides a glance into the unforgettable stories victims leave behind and much more. DogsBite.org operates out of Austin, Texas.



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EXHIBIT 14

In the 14-year period of 2005 through 2018, canines killed 471 Americans. Pit bulls contributed to 66% (311) of these deaths. Combined, pit bulls and rottweilers contributed to 76% of the total recorded deaths. | [More »](#)

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Washington breed-specific laws ::

Washington cities and counties with breed-specific laws. Learn more about [breed-specific legislation](#) in our BSL FAQ. Please report updates to this page here: ordinance@dogsbite.org.

Dangerous dog breed ordinances

Pit Bull Ordinances in Washington

City Website	View Ordinance	Type of Ordinance
Auburn	Section: 6.01.010	Fighting breeds declared "potentially dangerous" including: Japanese akita, American pit bull terrier, American Staffordshire terrier, bull terrier, cane corso, Dogo argentino, Dogue de bordeaux, kuvasz, pit bull terrier, presa canario, Staffordshire bull terrier, Tosa Inu
Brewster	Section: 6.10.040	Mandatory pit bull sterilization
Bridgeport	Section: 6.10.020	Bans: pit bulls
Buckely	Section: 9.10.020, 9.10.260	Bans: pit bulls
Cathlamet	Section: 6.10.020	Bans: pit bulls
Coulee Dam	Section: 6.10.010	Pit bulls declared "potentially dangerous"
Enumclaw	Section: 7.08	Bans: pit bulls
Everett	Section: 6.08.010	Pit bulls declared "potentially dangerous" Historic 1987 legal notes
Everson	Section: 6.08.020	Restricts: pit bulls
Grandview	Section: 6.06.010	Pit bulls declared "dangerous"
Harrah	News article	Restricts: pit bulls
Kennewick	Section: 6.02.320	Pit bulls declared "potentially dangerous"
Othello	Section: 6.06.020	Bans: pit bulls
Pasco	Section: 6.05.010, 6.05.330	Pit bulls declared "potentially dangerous"
Prosser	Section: 6.40.010	Pit bulls declared "potentially dangerous"
Quincy	Section: 8.06.010	Pit bulls declared "potentially dangerous"

Rainier	Section: 6.04.020	Pit bulls declared "potentially dangerous"
Rensselaer	Section: 90.20	Pit bulls declared "dangerous"
Rosalia	Animal control 	Bans: pit bulls Learn more
Royal City	Section: 6.04.020, 6.04.060	Pit bulls, American bulldogs and rottweilers declared "dangerous"
Selah	Section: 5.07.080	Bans: pit bulls
Soap Lake	Section: 6.05.020	Pit bulls, rottweilers and presa canarios declared "potentially dangerous"
Sumas	Section: 6.02.045	Bans: pit bulls
Tekoa	Section: 8.08.056	Bans: pit bulls
Tieton	Section: 6.08.130	Bans: pit bulls
Toppenish	Section: 6.06	Pit bulls declared "dangerous"
Town of Colton	Meeting minutes 	Bans: pit bulls
Wapato	Section: 6.06	Bans: pit bulls, American bulldogs, rottweilers and all mastiff types, including, but not limited to: English mastiff, Old English mastiff, American mastiff, Neapolitan mastiff, Doque de Bordeaux (aka French mastiff), bull mastiff, Tibetan mastiff, Spanish mastiff, Pyrenean mastiff and Fila Brasileiro (aka Brazilian mastiff)

Ordinances last verified as active on July 28, 2017

Related materials:

- [American Dog Owners v. Yakima \(Supreme Court of Washington, 1989\)](#)
- [Indian Reservation Breed-Specific Laws](#)

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EXHIBIT 15

**CITY BITES DOG --
REGULATING VICIOUS DOGS/PIT BULL TERRIERS**

by

Michael E. Weight
Assistant City Attorney of Everett

INTRODUCTION

At first, the newspaper accounts were infrequent and in other parts of the county: An eleven-year-old Cincinnati boy is killed by pit bull dogs; in North Carolina, a mail carrier is mauled by an American Pit Bull Terrier; Riverside, California pit bull kills an infant; Florida has a rash of pit bull attacks.

Then, in the last year, the horror stories came in rapid succession and they hit close to home: Kelso woman mauled by pit bull terriers; three-year-old Crystal Bernard attacked by pit bull in Sultan, causing extensive facial injuries; five-year-old Gresham, Oregon boy dies after being mauled by pit bull dog; in Mountlake Terrace, two toddlers attacked by female pit bull, both boys requiring stitches for facial injuries; fourteen-year-old boy requires surgery for arm and leg injuries after two pit bull dogs attack him in Kitsap County; pit bull terrier shot by Sweet Home, Oregon police officer after the dog menaced two people; three pit bulls attack two shetland ponies in Marysville, killing one and injuring the other; Tacoma pit bull bites eight-year-old boy, requiring minor surgery on leg wounds; two Everett pit bulls bite nine-year-old girl and two men, prowl neighborhood and attack Animal Control truck.

The public outcry was loud and clear for some sort of governmental response. The 1986 Washington legislature, with Senate Bill 4611, considered a liability insurance requirement for pit bull terrier owners. The Senate passed the bill, taking out any mention of a specific breed, leaving it applicable to all "vicious dogs." The bill was defeated in the House.

The pressure has subsequently come on municipalities to pass local laws dealing with these animals. This paper will provide a brief overview of the pit bull issue and the options available to municipalities.

WHAT IS A PIT BULL TERRIER?

The animal that is the subject of so much controversy assumes many different names: pit bulls, pit bull dogs, bull dogs, pit bulldogs, pit bull terrier. The two major dog clubs in this country have narrowed it down to three names. The American Kennel Club (AKC) registers American Staffordshire Terriers and Staffordshire Bull Terriers. The United Kennel Club (UKC) recognizes the American Pit Bull Terrier (APBT).

The history of this dog is somewhat unclear. Hundreds of years ago in England, very large dogs were bred for bull baiting and bear baiting. As the sport progressed, smaller dogs were bred for more agility. When dog fighting became popular in the early nineteenth century, these "Bulldogs" were crossed with terriers and possibly other breeds. The decades of breeding, both in England and here in the United States, has

resulted in two basic breeds: (1) the dog which is recognized by the United Kennel Club as the American Pit Bull Terrier and by the American Kennel Club as the American Staffordshire Terrier; and (2) the dog recognized by the AKC as the Staffordshire Bull Terrier.¹

The two dogs have the same features, are smooth-haired and large-headed. The basic difference is in their size, with the Staffordshire Bull Terrier being smaller (14-16", 24-38 lbs.) than the APBT (17-19", 40-70 lbs.).²

The common thread that runs through these animals is they have been bred over the centuries for one purpose: fighting. Any trait or characteristic that would be a weakness in the "pit" has been bred out. This will be discussed in more detail in the next section.

You may remember the dog known as "Pete" in the "Our Gang" comedy series. This "Little Rascal" was a pit bull terrier. R.C.A. Victor's dog listening to "His Master's Voice" was also a pit bull terrier, as well as Buster Brown's pal "Tige."

One should be careful to distinguish the pit bull terrier from its cousins, the bulldog and the all-white English Bull Terrier. (The English Bull Terrier may be remembered in Walt Disney's "The Incredible Journey" or as General Patton's dog in the movie with George C. Scott as "Patton.") Although these two breeds share a common heritage of being used as fighting dogs, their use as such occurred so long ago that the fighting instincts have been effectively bred out.

WHY PICK ON PIT BULLS?

Owners of pit bull terriers claim that the hysteria which has grown in this country about their dogs is mainly the result of media hype. They argue that their animals are being wrongly singled out as vicious killing machines. These dogs, so they say, are gentle with their children, affectionate and obedient - the perfect family pet. So why are we picking on them?

A study published in 1982 analyzed 74 fatal dog attacks in the United States (March 1966 through June 1983).³ Their analysis compared the number of deaths caused by a particular breed in relation to the number of that breed registered with the AKC. The study reported: "In relation to its small registration the bull terrier (pit bull) was responsible for the highest number of deaths, but the popularity of this breed may be increasing and, therefore, its population might not be reflected by its registrations."⁴

¹The Complete Dog Book (16th Ed. 1980), p. 514. New York: Howell Book House, Inc.

²Deena B. Case, "The Pit Bull Adoption Quandary," Community Animal Control, March/April, 1984, p. 11.

³Pinckney, Lee E., and Leslie A. Kennedy, 1982, "Traumatic Deaths from Dog Attacks in the United States," Pediatrics, Vol. 69, No. 2, pp. 193-196.

⁴Id., p. 195.

A 1985 report from the Humane Society of the United States on dog bites⁵ discounts this study because of its use of AKC registrations to judge breed populations, and the lumping together of many breeds with similar names. The Humane Society report does mention that "a new (1985) and better controlled report on 16 severe attacks attributes 31% of the attacks to American Staffordshires."⁶

One might conclude that a pit bull is more likely to attack human beings than other breeds. Such is not the case, however. The studies that have been reviewed, and the animal control officers and animal behaviorists that have been consulted all indicate that the pit bull terrier is no more likely to attack persons than any other breed. In fact, because of the intensive breeding for aggression towards other dogs, this breed may be less likely than other dogs to attack humans.

In terms of danger to humans, what sets pit bull terriers apart is that when they do attack humans, the injuries are much more likely to be serious or fatal.

In an article for Community Animal Control magazine, Deena Case, a California animal behavior consultant, outlined the characteristics that have made pit bulls such feared animals:

"The breed has been developed for the purpose of attacking other dogs (or occasionally other animals, such as bulls or hogs). To be an effective fighter, certain traits have been selected and maximized by controlled breeding. These include powerful jaws that grip and do not let go. Pit bulls can easily hang in midair suspended by their teeth. The bite is so firmly held that pit bull fanciers routinely use special wedges of wood called breaking sticks to release the dog's grip.

"In addition to bite power, the dogs are remarkably insensitive to pain.

"Aggressiveness towards other dogs is another characteristic that is selected for in fighting dogs. It almost certainly will try to attack other dogs.

"The pit bull was also bred to be very businesslike and direct about its attacks. The warnings that are commonly seen in other breeds are absent for the most part in the pit bull. They rarely bark or raise their back hair, the attack comes without preliminary displays. While this is desirable in the pit, it can be extremely dangerous if the dog decides to attack a human being.

"Most pit bulls are fairly good with people. As in any breed, however, some are aggressive with people, and have seriously injured their victims. It is easy to see that the combination of traits, bite power, pain

⁵Hodge, Guy R. and Randall Lockwood, Ph.D., "Facts About Dog Bites," The Humane Society of the United States, Washington, D.C. (May 1985).

⁶Id., p. 3.

insensitivity, aggression, lack of normal warning signals, makes the pit bull that is aggressive towards people an absolute menace. Since the pit bull is bred to never quit a fight, they are extremely difficult to dislodge if an attack starts. Pit bulls who have no history of biting people have become highly vicious when running together with at least one other dog. It is possible that the pack situation tends to release aggression towards humans."⁷

Dog fighting continues to exist and thrive in many parts of the country, and so the breeding for these fighting characteristics continue. A study of 32 fighting dogs that were seized in Ohio in 1981 confirmed the above-noted fighting characteristics, and pointed out precautions veterinarians should take when treating pit bull terriers:

"If a pit bull needs to be hospitalized, it should be confined to a cage or run that cannot be opened by the dog, and it should not be allowed to come in contact with other animals in any situation. A pit bull can seriously injure or kill a dog of similar size in a few minutes and it is not easy to detach a pit bull in preferred 'hold.' Pitbulls can bite with greater force than most dogs and once in a hold they do not simply maintain the 'bite,' but continue to grind their premolars and molars into the tissue while the canine teeth stabilize the hold."⁸

Most breeds will fight another dog until one of the dogs has demonstrated his dominance. At that point, the losing dog will admit defeat by laying down and showing their belly to the victor, and the violence ceases. Pit bulls have been bred to kill or be killed. Randall Lockwood, director of higher education for the Humane Society of the United States points out: "They often can't be kept with other dogs. When other dogs submit by showing their bellies, pit bulls have been known to disembowel them."⁹

LEGISLATIVE OPTIONS

If your municipality is considering a vicious dog/pit bull ordinance, there are at least five options available. They are discussed below without comment regarding potential legal challenges, which is left for the next section.

A. Generic Vicious/Dangerous Dog Ordinance

Appendix A is a sample Dangerous Dog Ordinance,¹⁰ which is proposed by the American Dog Owners Association (ADOA) and does not single out any breed. The

⁷Supra, note 2.

⁸Clifford, Donald H., DVA, MPH, Ph.D., et al., "Observations on Fighting Dogs," J Am Vet Med Assoc, Vol. 183, No. 6, pp. 654-657 (Sept. 1983).

⁹Quoted in "The Macho Dog to Have," Newsweek, July 14, 1986, p. 40.

¹⁰Taken from Bloodlines, Vol. 67, No. 3, p. 80 (May-June 1985).

ADOA has been the driving force behind the legal challenges to the various breed specific ordinances around the country.

There are several advantages to this type of ordinance. Since the ADOA endorses it, an organized legal challenge is unlikely. Further, it provides strict regulations for those dogs that have shown signs of being vicious or have already attacked a human or other domestic animal.

The main disadvantage is that it follows the common law "one bite" rule. It is reactive, not preventive. With most breeds, this law might be adequate to prevent serious injuries after the first attack. If the dog that is allowed his "one bite" happens to be pit bull terrier, this single incident could result in serious injury or death.

B. Dangerous Dog/Pit Bull Ordinance

Appendix B is the ordinance that is currently in effect in the city of Everett. This ordinance was copied, almost in its entirety, from an ordinance adopted by Cincinnati in 1983. A copy of that Cincinnati ordinance is attached as Appendix C. These laws classify pit bull terriers as per se dangerous dogs. Pit bulls are not given "one free bite," and are subject to all the enumerated restrictions as if they had already been involved in an attack.

The Everett ordinance is different from the Cincinnati law in that the owner of the dog must have knowledge that his dog is a pit bull terrier, as that term is defined. This knowledge requirement was added to avoid possible constitutional challenges to the ordinance on due process notice grounds. Without specific admissions from the owner, proof of such knowledge could be difficult. To prove such knowledge, Everett Animal Control utilizes a Dangerous Dog Declaration (Appendix D) which is a formal notice to the owner that the city considers their dog to be subject to the ordinance's restrictions.

So far, this method seems to be effective. The handful of persons that have been issued criminal citations for violations of Everett's dangerous dog ordinance have pleaded guilty at arraignment.

C. Liability Insurance Requirement

This option would require owners of known vicious dogs and/or pit bull terriers to acquire liability insurance that would compensate persons injured by their dog. This was part of the bill that was before the 1986 Washington Legislature. Various legislatures around the country have considered requiring coverage from \$25,000 to \$1,000,000.

The obvious advantage to requiring liability insurance is there are reasonable assurances that a person who is injured by a dog that falls under the ordinance will not have to bear the full burden of medical expenses. Such a provision may also serve as a deterrent to persons who are considering purchasing pit bulls and an impetus to those already owning one to remove it from the area.

There are several drawbacks. First, there will have to be a city employee assigned to the task of monitoring the insurance policies to see if they meet the law's requirements, and make sure the dog owner keeps the policy in effect.

Second, this requirement may be interpreted as effectively a total ban on ownership of the affected animal. Insurance agents will be extremely reluctant to insure an animal that has already attacked a human or whose breed has been declared vicious by a municipality. If the dog could be insured, the cost of such coverage would likely be exorbitant and beyond the financial capabilities of the average dog owner.

D. Total Ban of Pit Bulls

This option is the most drastic and the most effective. It is also the option most likely to receive a legal challenge and to be closely scrutinized by the courts. It should be considered as a viable option, however. A New Mexico trial judge has ruled that one village's pit bull ban is constitutional.¹¹

E. Do Nothing

For many municipalities, aggressive enforcement of the laws that presently exist may be sufficient to appease public concern and prevent any tragedies.

Most cities and towns have a leash law. Strict enforcement and stiff penalties could reduce the number of dog owners that allow their animals to run free.

Dog fighting is a gross misdemeanor in Washington. RCW 16.52.117. This offense applies to all persons involved in dog fights, owners, trainers, organizers and spectators alike.

Civil remedies are also available to any victim of damage done by dogs. State law has created strict liability for injuries done to livestock, RCW 16.08.010, and for injuries to persons from dog bites. RCW 16.08.040. The dog owner is liable "regardless of the former viciousness of such dog or the owner's knowledge of such viciousness." *Id.* If the person is bitten on private property, strict liability is imposed only if they were "lawfully" on the property. RCW 16.08.050. Proof of provocation is a complete defense. RCW 16.08.060.

POTENTIAL CHALLENGES TO BREED SPECIFIC ORDINANCES

Any challenge to an ordinance that singles out pit bull terriers for special treatment will argue that the regulation violates both due process and equal protection. In Florida, the dog owners have been successful in striking down breed specific laws in both federal and state courts. As noted earlier, a New Mexico judge has ruled the pit bull ban by the village of Tijeras to be constitutional. At this time, I am not aware of any legal challenge to any such law in this state.

¹¹Bloodlines, Vol. 68, No. 3, p. 52 (May-June 1986).

A. Authority to Regulate Dogs

That dogs are subject to a municipality's police power is well established, as set forth by the Washington Supreme Court in McQueen v. Kittitas County, 115 Wash. 672, 198 Pac. 394 (1921):

"It is almost universal current of authority that dogs are a subject of the police power of the state, and their keeping subject to any form of license and regulation, even to absolute prohibition."

Id., at 677.

The court went on further to say that:

". . . since dogs are a subject of the police power, we see no reason why the legislature may not make distinctions between breeds, sizes and the localities in which they are kept. The object of the statute is protection. The purpose is to prevent injuries to persons and property by dogs. Any distinction founded upon reasons at least, is therefore valid. . . ."

Id., at 678.

McQuillin comments as follows:

"The primary purpose of dog ordinances and statutes is protection of the public from injury or damage, and, it may be remarked, their purpose is not to deprive one of property or benefits relative to his dog or to give one rights or immunities with reference to the dog of another. But property rights in dogs have been regarded as qualified. That is to say, dogs because of their propensities are, and from time immemorial have been, peculiarly subject to rigorous police regulation."

McQuillin, Municipal Corporations, Sec. 24.284, Vol. 7, p. 135 (3rd Ed., 1971).

B. Procedural Due Process - Vagueness

Any challenge to a pit bull ordinance will include an argument that the law is unconstitutionally vague. "Vagueness" is a question of procedural due process. Statutes need only provide fair notice, measured by common practice and understanding, of the conduct which is prohibited and proper standards for adjudication. "Impossible standards of specificity are not required." Blondheim v. State, 84 Wn.2d 874, 878, 529 P.2d 1096, 1100 (1975). Statutes and ordinances are presumed constitutional, and the party challenging the regulation has the burden of demonstrating impermissible vagueness beyond a reasonable doubt. Seattle v. Shepard, 93 Wn.2d 861, 613 P.2d 1158 (1980).

The U.S. District Court in Florida held that a Broward County, Florida ordinance was unconstitutionally vague in several respects.¹² That ordinance defined pit bulls as

¹²Decision reported in Bloodlines, Vol. 67, No. 6, pp. 55-56 (Nov.-Dec. 1985).

those "Pit Bulls," "American Staffordshire Terriers," and/or "Staffordshire Bull Terriers that substantially conform to the standards set down by the AKC and the UKC. Since these standards are not uniform as to color, height, weight, etc., the court reasoned, they are not specific enough to pass constitutional muster.

Further, the Florida District Court found unconstitutionally vague the ordinance's exceptions to the leash and muzzle requirements for dogs attending "lawful" dog shows or in "authorized areas" with "competent" persons.¹³

A definition of pit bulls should take a common sense approach. The average person can identify a collie or a German shepherd. For those persons who have had contact with pit bulls, their identification is equally as simple. A definition of the breed that anticipates visual identification of those dogs we know as the American Pit Bull Terrier, the American Staffordshire Terrier and the Staffordshire Bull Terrier gives sufficient notice to the average person. The judge in the New Mexico case found that "the breed known as the American Pit Bull Terrier is a recognized breed and readily identifiable by a lay person."¹⁴

The Everett ordinance went one step further, and places the burden of proof as to notice on the prosecution. This was done by defining a dangerous dog as "any dog known by the owner to be a pit bull terrier..." Appendix C, Sec. 2(B)(3). It is difficult for a dog owner to argue he did not have fair notice his dog is a pit bull when he has personally received formal notice of that fact from an animal control officer. (Dangerous Dog Declaration, Appendix D).

Terms open to broad interpretation, such as "lawful," "authorized areas" and "competent persons" should be avoided if at all possible.

C. Equal Protection

Because pit bull owners are being singled out, there will be a challenge to any breed specific ordinance on the basis that their right to equal protection has been violated.

"There are three levels of equal protection analysis: the rational relationship test, intermediate scrutiny, and the strict scrutiny applied when a law creates a suspect classification or implicates a fundamental right." In re Mayner, 41 Wn. App. 598, 602, 705 P.2d 284 (1985).

Since pit bull ownership is not a suspect classification and does not involve a fundamental or basic human right, the appropriate method of equal protection analysis for breed specific ordinances is the rational relationship test, also called the minimum scrutiny test.

"Under the minimum scrutiny test, the reviewing court must determine whether: (1) the legislation applies equally to all members within the designated class; (2) there are reasonable grounds to distinguish between

¹³Id., p. 56.

¹⁴Supra, note 11.

those within and those without the class; and (3) the classification has a rational relationship to the purpose of the statute."

Abbot v. General Accident Group, 39 Wn. App. 263, 269, 693 P.2d 130 (1984).

1. The ordinances that single out pit bulls apply equally to all pit bull owners.
2. There exist reasonable grounds to distinguish between pit bull terrier owners and other dog owners. Pit bulls have unique traits and characteristics that pose a greater threat of serious injury or death to humans than other dogs.
3. Restricting the movements of the dog or banning pit bulls outright is rationally related to the purpose of such a law, which is protection of the public.

It is important that a good record is made of the basis for passage of the ordinance. Documentation and expert witnesses are essential for any public hearings if the law is to be sustained on appeal.

CONCLUSION

If your city or town council considers adopting any breed specific ordinance, be prepared for an onslaught of letters and telephone calls protesting this dog discrimination. The main focus of the pit bull terrier clubs will be to nip these laws in the bud. The American Dog Owners Association has little money left to challenge all the pit bull laws being enacted around the nation.¹⁵

It is a certainty that the number of pit bull terriers will be increasing greatly in the next few years. Most municipalities will need to study the issues involved, even if no action is taken. The issue will not be going away soon since, as Randall Lockwood of the Humane Society of the U.S. points out, "the pit bull has replaced the German shepherd and the Doberman as the macho dog to have."¹⁶

¹⁵Peggy Allen, "Two Wins Too," Bloodlines, Vol. 68, No. 3, p. 52 (May-June 1986).

¹⁶Supra, note 9.

APPENDIX A

SAMPLE DANGEROUS DOG ORDINANCE

Proposed by American Dog Owners Association

- A. As used in this Section, "Dangerous dogs" shall mean and include:
1. Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or
 2. Any dog which attacks a human being or domestic animal without provocation; or
 3. Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.
- B. No person owning or harboring or having the care or custody of a dangerous dog shall suffer or permit such dog to go unconfined on the premises of such person. A dangerous dog is "unconfined" as the term is used in this section if such dog is not securely confined indoors or confined in a securely enclosed and locked pen or a dog run area upon the premises of said person. Such pen or dog run area must also have either sides six feet high or a secure top. If the pen or structure has no bottom secured to the sides, the sides must be imbedded into the ground no less than one foot.
- C. No person owning or harboring, or having the care of a dangerous dog shall suffer or permit such dog to go beyond the premises of such person unless such dog is securely muzzled and restrained with a chain having a minimum tensile strength of three hundred (300) pounds and not exceeding three (3) feet in length.
- D. No person shall own or harbor any dog for the purpose of dog fighting, or train, torment, badger, bait or use any dog for the purposes of causing or encouraging said dog to unprovoked attacks upon human beings or domestic animals.
- E. No person shall possess with intent to sell, or offer for sale, breed, or buy or attempt to buy within the city any dangerous dog.
- F. In the event that a law enforcement agent has probable cause to believe that a dangerous dog is being harbored or cared for in violation of Sections (b), (c), (d), and (e), the law enforcement agent may petition a court of competent jurisdiction to order the seizure and impoundment of the dangerous dog pending trial. In the event that a law enforcement agent has probable cause to believe that a dangerous dog is being harbored or housed in violation of Section (c), the law enforcement agent may seize and impound the dangerous dog pending trial.

G. Penalty.

1. Whoever violates this section shall be guilty of a misdemeanor of the first degree. Whoever is found guilty of a second offense of violating this section shall be guilty of a misdemeanor of the first degree and shall be fined \$1,000.00 which fine shall be mandatory, and shall not be suspended or remitted.
2. Any dangerous dog which attacks a human being or another domestic animal may be ordered destroyed when in the court's judgment, such dangerous dog represents a continuing threat of serious harm to human beings or other domestic animals.
3. Any person found guilty of violating this section shall pay all expenses, including shelter, food, veterinary expenses for identification or certification of the breed of the animal or boarding and veterinary expenses necessitated by the seizure of any dog for the protection of the public, and such other expenses as may be required for the destruction of any such dog.

APPENDIX B

ORDINANCE NO. _____

IT IS HEREBY ORDAINED:

Section 1: There shall be added a new chapter to the _____ Municipal code, to be entitled "Dangerous Dogs."

Section 2: Definitions. As used in this chapter:

- A. "Owner" means any person or legal entity having a possessory property right in a dog or who harbors, cares for, exercises control over, or knowingly permits any animal to remain on premises occupied by them.
- B. "Dangerous dog" means:
 - 1. Any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury to, or to otherwise endanger the safety of humans or other domestic animals; or
 - 2. Any dog which attacks a human being or other domestic animal without provocation; or
 - 3. Any dog known by the owner to be a pit bull terrier, which shall herein be defined as any American Pit Bull Terrier or Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog or any mixed breed of dog which contains as an element of its breeding the breed of American Pit Bull Terrier, Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of American Pit Bull Terrier, Staffordshire Bull Terrier or American Staffordshire Terrier.
- C. A dangerous dog is "unconfined" if such dog is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of such dog. Such pen or structure must have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot.

Section 3: Unconfined Dangerous Dog On Premises Of Owner. The owner of a dangerous dog shall not suffer or permit such dog to go unconfined.

Section 4: Dangerous Dog Off Premises. The owner of a dangerous dog shall not suffer or permit such dog to go beyond the premises of such person unless such dog is securely leashed and muzzled or otherwise securely restrained and muzzled.

Section 5: Applicability To Adult Dogs Only. The provisions of this chapter shall apply to adult dogs only, which shall mean any dog over the age of six (6) months.

Section 6: Penalties. Any person, firm or corporation violating the provisions of Section 3 or Section 4 of this ordinance shall be guilty of a gross misdemeanor and may be punished by a fine of not more than five thousand dollars (\$5,000) or imprisonment of not more than one year in jail, or by both such fine and imprisonment.

Section 7: Severability. If any one or more of the sections or provisions provided in this ordinance shall be declared by any court of competent jurisdiction to be contrary to law, then such sections or provisions shall be null and void and shall be deemed separable from the remaining sections or provisions in this ordinance and shall in no way affect the validity of the remaining sections or provisions in this ordinance.

Section 8: General Duty. Nothing in this ordinance is intended to create a cause of action or claim against the city or its officials or employees running to specific individuals. Any duty created herein is intended to be a general duty running in favor of the public citizenry.

APPENDIX C

CINCINNATI ORDINANCE

- A. No person owning or harboring or having the care of a vicious dog shall suffer or permit such animal to go unconfined on premises of such person.
- B. No person owning or harboring or having the care of a vicious dog shall suffer or permit such dog to go beyond the premises of such person unless such dog is securely leashed and muzzled or otherwise securely restrained and muzzled.
- C. Definitions.
 - 1. A vicious dog is "unconfined" as the term is used in this section if such dog is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the person described in subsection (a) hereof. Such pen or structure must have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot.
 - 2. A "vicious dog" as the term is used in this section means:
 - a. Any dog with a propensity, tendency, or disposition to attack, to cause injury to, or to otherwise endanger the safety of humans or other domestic animals; or
 - b. Any dog which attacks a human being or other domestic animal one or more times without provocation; or
 - c. Any pit bull terrier which shall herein be defined as any Staffordshire Bull Terrier breed of dog or any mixed breed of dog which contains as an element of its breeding the breed of Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of Staffordshire Bull Terrier or American Staffordshire Terrier by a qualified veterinarian duly licensed as such by the State of Ohio.
- D. Subsections (a) and (b) above are necessary controls on the unrestrained activities of vicious animals which threaten the safety and pleasantness of streets, parks, sidewalks, yards, and all areas of the city; and the lack of knowledge of intent is not a defense in violation thereof.

APPENDIX D

(Date)

DANGEROUS DOG DECLARATION

City of Everett Ordinance No. 1228-86 declares that a dangerous dog means:

1. Any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury to, or to otherwise endanger the safety of humans or other domestic animals; or
2. Any dog which attacks a human being or other domestic animal without provocation.
3. Any dog known by the owner to be a pit bull terrier.

YOUR DOG, ONE _____, NAMED _____, IS
HEREBY DECLARED TO BE A DANGEROUS DOG, FOR THE FOLLOWING REASON:

It is unlawful for the owner of a dangerous dog to allow that dog to go unconfined. A dangerous dog is "unconfined" if such dog is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of such dog. Such pen or structure must have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot.

It is unlawful for the owner of a dangerous dog to allow that dog to go beyond the premises of such person unless that dog is securely leashed and muzzled or otherwise securely restrained and muzzled.

Violation of any of the above provisions is a gross misdemeanor, punishable by one year in jail and/or a \$5,000 fine.

ANIMAL CONTROL OFFICER

Copy received this ____ day
of _____, 19 ____

EXHIBIT 7

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDREA MARTINEZ, and the marital
community comprised thereof, and ERNESTO
HERNANDEZ, TERI HERNANDEZ and the
marital community comprised thereof,

Defendants.

No. 18-2-08290-31

DEFENDANTS HERNANDEZ'S REPLY
IN SUPPORT OF DEFENDANTS
HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT

Defendants Hernandez respectfully submit this Reply Memorandum in rebuttal to Plaintiff's Response to Motion for Summary Judgement. Defendants Hernandez rely on the legal arguments set forth in the original motion and the Declarations in support of this reply. In reply to Plaintiff's arguments, Defendants Hernandez further respond as set forth below.

I. ARGUMENT

Plaintiff has not, and cannot dispute the following: (1) Defendants Hernandez are landlords, renting the property located at 6507 204th Street NE, Arlington, Washington to Defendants Sandoval and Martinez; (2) Defendants Hernandez did not live on the property; (3)

DEFENDANTS HERNANDEZ'S REPLY IN
SUPPORT OF DEFENDANTS HERNANDEZ'S
MOTION FOR SUMMARY JUDGMENT - 1

TODD A. BOWERS & ASSOCIATES
901 5th Avenue, Ste 830
Seattle, WA 98164
TEL: (206) 521-5000
FAX: (855) 830-3808
Employees of the Law Department
State Farm Mutual Automobile Insurance Company

1 Defendants Hernandez did not own, keep, or harbor the dog; and (4) Defendants Hernandez did
2 not construct the wire fence. As such, Defendants Hernandez cannot be held liable under
3 Washington law, common law strict liability, or premise liability.

4 **A. Defendants Hernandez Are Not Liable Under Washington Law Or Strict**
5 **Liability As They Are Not The Owners Of The Dog.**

6 Whether a defendant owes a duty to a plaintiff is a question of law. *Tincani v. Inland*
7 *Empire Zoological Society*, 124 Wn.2d 121, 128, 875 P.2d 621 (1994). In Washington, the duty
8 to prevent harm by a dog lies solely with the owner of the dog, not with the property owner or
9 landlord. It is a “well-settled rule” that landlords have no duty to protect tenants or third parties
10 from vicious dogs, even if the landlord knows that the dog may be vicious. *Clemmons*, 58 Wn.
11 App. at 35-36 (the law in Washington provides that only the dog owner is liable for a dog’s harm,
12 not a landlord). “Mere ownership of property... does not in and of itself make a landlord ‘liable
13 for persons thereon who own or possess, harbor or keep a dangerous dog.” *Shafer v. Beyers*, 26
14 Wn.App. 442, 447, 613 P.2d 554 (1980); *see also Frobige v. Gordon*, 124 Wn.2d 732, 881 P.2d
15 226 (1994).

16 In *Clemmons*, the Washington Court of Appeals held the landlord’s knowledge of the dog’s
17 vicious tendencies was immaterial and that the landlord could not be held liable for injuries caused
18 when the tenant’s dog attacked a guest. *Clemmons*, 58 Wn. App. at 33. In *Frobige*, the landlord
19 knew his tenant possessed a tiger, which injured the plaintiff. *Frobige*, 124 Wn.2d at 741. The
20 Washington Supreme Court held that liability results from the ownership and management of the
21 animal and that “landlords have no duty to protect third parties from a tenant’s lawfully owned but
22 dangerous animals.” *Id.* at 737-41. These holdings make it clear that liability hinges on ownership
23 and promotes the policy of placing responsibility where it belongs rather than fostering a search

1 for a more affluent defendant. *See Clemmons*, 58 Wn. App. at 38.

2 In this case, Defendants Hernandez are the landlords and had no duty to protect Plaintiff
3 from the dog, as this duty lies solely with the owner of the dog. Since Defendants Hernandez
4 neither owned nor controlled the dog, Plaintiff's claims against them fail as a matter of law and
5 summary judgment should be granted in their favor.

6 **B. Defendants Hernandez Are Not Liable Under Premises Liability As They Are**
7 **Landlords Who Did Not Own, Keep, Or Harbor The Dog.**

8 Plaintiff's premise liability theory is inconsistent with Washington law governing liability
9 for dog bites. In addition to restricting liability to the owner, keeper, or harbinger of the dog, the
10 court in *Briscoe* expressly considered and rejected the "alternative theories of liability" —
11 including premises liability — for dog bite injuries:

12 The rationale for rejecting landlord liability for a tenant's dog expressed in
13 *Clemmons* and *Frobig* applies equally to Randall's liability for Levi's dog,
14 regardless of whether Levi was Randall's agent (respondeat superior) or business
15 invitee (**premises liability theory**). (Emphasis added). *Briscoe v. McWilliams*,
16 176 Wn. App. 1010 (2013).

17 Further, the court held that the plaintiff must seek recovery from the owner and that the
18 common law precludes alternative theories of liability such as premises liability. *Id.* The court in
19 *Lichenstein* found the landlord could not be held liable for the plaintiff's injuries that resulted from
20 tenant's wolf-dog hybrid that escaped from the rental property's alleged defective fenced
21 backyard. *Lichenstein v. Wagner*, 128 Wash App. 1047 (2005).

22 Plaintiff has made perfunctory arguments regarding duties of ordinary care, affirmative
23 actions of negligence, agency theory, retention of control of the property, and invitee or licensee
status of Plaintiff. Plaintiff also cites numerous cases that have nothing to do with the facts or
issue at hand. In *Oliver*, for example, the plaintiff used the defendant's property for car repair

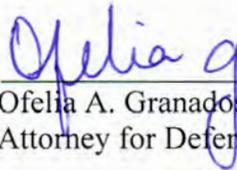
1 work. *Oliver v. Cook*, 194 Wash.App. 532, 535, 377 P.3d 265, 267 (2016). In *Rossiter*, the landlord
2 removed a porch railing prior to leasing the property and a guest of the tenant's was injured after
3 falling off the porch. *Rossiter v. Moore*, 370 P.2d 250, 251 (1962). The court found that a landlord
4 is liable for his affirmative actions of negligence and further went on to state that "mere inaction
5 cannot create liability" *Id.* at 252. Plaintiff is simply attempting to muddy the waters and
6 offers no legal support that Defendants Hernandez bear any liability where it is undisputed that
7 they are not the owners, harborers, or keepers of the dog. *See Deane-Gordly v. Willett*, 162 Wn.
8 App. 1029 (2011) (In the absence of evidence supporting any inference that a landlord is a harborer
9 of the dog, a landlord cannot be held liable for injuries caused by the dog).

10 Based on the foregoing, Defendants Hernandez are not liable for any injuries that may have
11 been caused by the dog, and therefore, the Court should grant Defendants Hernandez's motion for
12 summary judgment.

13 DATED this 30th day of August, 2019

14 TODD A. BOWERS & ASSOCIATES

15 By:



16 Ofelia A. Granados, WSBA #53917
17 Attorney for Defendants Hernandez

1 **DECLARATION OF SERVICE**

2 I hereby declare under the penalty of perjury under the laws of the State of Washington that I have
3 served a true and correct copy of the foregoing, except where noted, upon the individual(s) listed by the
4 following means:

5 Snohomish County Superior Court Clerk
3000 Rockefeller Ave, M/S 605 & M/S 502
Everett, WA 98201

- 6 U.S. Postal Service (First Class)
7 Facsimile to _____
8 U.S. Postal Service Express Mail
9 Hand Delivery _____
10 Via Legal Messenger for Service by Seattle Legal Messenger
11 E-Filed

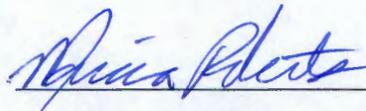
12 Derek K. Moore
13 Bishop Legal
14 19743 1st Avenue S
15 Normandy Park, WA 98148
16 derek@bishoplegal.com

- 17 U.S. Postal Service (First Class)
18 Facsimile to _____
19 U.S. Postal Service Express Mail
20 Hand Delivery _____
21 Via Legal Messenger for Service by Seattle Legal Messenger
22 E-Service

23 Cassandra Lopez de Arriaga
Cassandra Lopez de Arriaga Law Firm
1812 Hewitt Ave, Ste 204
Everett, WA 98201
cassandralopezlaw@gmail.com

- U.S. Postal Service (First Class)
 Facsimile to _____
 U.S. Postal Service Express Mail
 Hand Delivery _____
 Via Legal Messenger for Service by Seattle Legal Messenger
 E-Service

DATED: September 3, 2019

By: 
Name: Monica Roberts
Title: Legal Secretary

DEFENDANTS HERNANDEZ'S REPLY IN
SUPPORT OF DEFENDANTS HERNANDEZ'S
MOTION FOR SUMMARY JUDGMENT - 5

TODD A. BOWERS & ASSOCIATES
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FAX: (855) 830-3808
Employees of the Law Department
State Farm Mutual Automobile Insurance Company

EXHIBIT 8

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDREA MARTINEZ, and the marital
community comprised thereof, and ERNESTO
HERNANDEZ, TERI HERNANDEZ and the
marital community comprised thereof,

Defendants.

No. 18-2-08290-31

~~PROPOSED~~ ^{GRANTING} ORDER ON DEFENDANTS
HERNANDEZ' MOTION FOR
SUMMARY JUDGMENT, ~~AND~~

DENYING DEFENDANTS GONZALEZ
SANDOVAL AND MARTINEZ'S MOTION
FOR SUMMARY JUDGMENT
WITHOUT PREJUDICE

THIS MATTER, having come on regularly before the undersigned judge in the above-
entitled court upon Defendants Hernandez's Motion for Summary Judgment, the parties appearing
by and through their respective attorneys of record, and the Court having considered the following:

1. All pleadings on file with the Court;
2. Defendants Hernandez's Motion for Summary Judgment, with all declarations and
(GONZALEZ 7.12.19 DECLARATION, w/ exhibits)
exhibit attachments thereto;
3. Plaintiff's Response to Defendants Hernandez's Motion for Summary Judgment;
4. DEC. OF DEREK MORE DATED 8.22.19, with exhibits

~~PROPOSED~~ ORDER ON DEFENDANTS
HERNANDEZ'S MOTION FOR SUMMARY
JUDGMENT - 1

TODD A. BOWERS & ASSOCIATES
901 5th Avenue, Ste 830
Seattle, WA 98164
TEL: (206) 521-5000
FAX: (855) 830-3808

Employees of the Law Department
State Farm Mutual Automobile Insurance Company

ORIGINAL

1 5. Codefendants' Response to Defendants Hernandez's Motion for Summary
2 Judgment; ^{AND MOTION TO JOIN}

3 6. DEC. OF CASSANDRA LOPEZ DE ARRIAGA-STAN (dated 8.28.19)
7. Defendants Hernandez's Replies to Plaintiff's Response and Codefendants'
4 Response; and

5 8. DEC. OF ALEJANDRA MARTINEZ (dated 8.27.19)
9. Any and all documents on file with the Court.
6 10. DEC. OF DAVID GONZALEZ SANDOVAL (dated 8.27.19) + attachments

7 The Court finding that there are no questions of material fact and that judgment should be
8 entered as a matter of law, and the Court otherwise deeming itself fully advised, it is

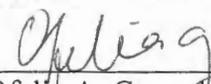
9 ORDERED, ADJUDGED, AND DECREED that Defendants Hernandez's Motion for
10 Summary Judgment is hereby GRANTED, and Plaintiff's Complaint is hereby DISMISSED
11 WITH PREJUDICE as to against Defendants Ernesto and Teri Hernandez.*

12 DATED this 10th day of Sept., 2019

13 
14 JUDGE

15 Presented by:

16 TODD A. BOWERS & ASSOCIATES

17 By: 
18 Ofelia A. Granados, WSBA #53917
19 Attorney for Defendants Hernandez

*DEFENDANTS GONZALEZ SANDOVAL +
MARTINEZ'S MOTION FOR SUMMARY
JUDGMENT WAS NOT TIMELY FILED +
IS DENIED WITHOUT PREJUDICE

20 Approved as to Form,
21 Notice of Presentation Waived:

22 BISHOP LEGAL

23 By: 
24 Derek K. Moore, WSBA # 37921
25 Attorney for Plaintiff Saralegui Blanco

CASSANDRA LOPEZ DE ARRIAGA LAW

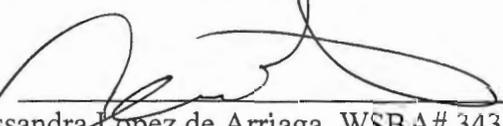
By: 
Cassandra Lopez de Arriaga, WSBA# 34318
Attorney for Codefendants Gonzalez and
Martinez

EXHIBIT 9

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

Case No. 18-2-08290-31

PLAINTIFF'S MOTION FOR
RECONSIDERATION OF ORDER
GRANTING DEFENDANTS
HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT

I. RELIEF REQUESTED

Plaintiff respectfully requests the Court reconsider and vacate its Order of September 10, 2019 granting Defendants Hernandez's Motion for Summary Judgment and that Defendants Hernandez's Motion be Denied.

II. STATEMENT OF FACTS

The facts of the subject pit bull attack are set forth in Plaintiff's Response to Defendants Hernandez's Motion for Summary Judgment, and are hereby incorporated by reference herein.

1 premises liability” and that there is no “dog bite exception to ordinary premises liability rules.”
2 *Oliver v. Cook*, 194 Wn. App. at 545 (emphasis added).

3 At the September 10, 2019 hearing of Defendants Hernandez’s summary judgment
4 motion in this matter, this court found *Oliver v. Cook* to be “unpersuasive.” The *Oliver* court
5 found that the dog itself was “the relevant ‘condition’ of the land.” *Oliver* at 544. While this
6 Court may not have been persuaded by this holding in *Oliver*, further consideration should be
7 given to the fence in this case, which was more relevant condition of the land than the dog was.
8 Had the fence been adequate to contain the dog, as it appeared to Plaintiff and her companions to
9 be, than the dog could have done no harm. At the hearing, the Court explained that it did not
10 consider the landowner to have a duty with respect to the defective fence because the defective
11 fence would have not caused the harm but for the dog. This is comparable to the “natural bodies
12 of water doctrine” advanced by the landowner but rejected by the Supreme Court in *Degel v.*
13 *Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 51, 914 P.2d 728 (1996) In *Degel*, the Supreme
14 Court found the mobile home park owner could be liable for failing to put a fence between a play
15 area and the creek in which the plaintiff child suffered catastrophic injuries from a near-
16 drowning. The Supreme Court found “We have never recognized a “natural bodies of water
17 doctrine” applicable to all premises liabilities actions.” *Id.* at 51. Just as without the dog, the
18 defective fence would have been harmless here, without the creek, the lack of the fence in *Degel*
19 would have been harmless. The *Degel* Court found the landowner owed a duty to provide a
20 fence or otherwise sufficient barrier. This Court should find the same result in this case.

21 VI. CONCLUSION

22 For the aforesaid reasons, Plaintiff respectfully requests that the order granting
23 Defendants Hernandez’s summary judgment motion be reconsidered and DENIED.

1
2 Dated this 17th day of September, 2019.

3 BISHOP LEGAL

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5 _____
6 Derek K. Moore
7 WSBA No. 37921
8 Attorney for Plaintiff
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EXHIBIT 10

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5 The Honorable Judge Janice Ellis
6 Date of Motion: October 10, 2019 at 9:00 a.m.
7 Without Oral Argument
8

9 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
10 IN AND FOR THE COUNTY OF SNOHOMISH

11 MARIA JESUS SARALEGUI BLANCO,

12 Plaintiff,

13 vs.

14 DAVID GONZALEZ SANDOVAL,
15 ALEJANDREA MARTINEZ, and the marital
16 community comprised thereof, and ERNESTO
17 HERNANDEZ, TERI HERNANDEZ and the
18 marital community comprised thereof,

19 Defendants.

No. 18-2-08290-31

DEFENDANTS HERNANDEZ'S
RESPONSE TO PLAINTIFF'S MOTION
FOR RECONSIDERATION

20 Defendants Hernandez, through undersigned counsel, respectfully requests this Court
21 deny Plaintiff's Motion for Reconsideration ("Plaintiff's Motion").

22 **I. STATEMENT OF FACTS**

23 This lawsuit arises from a dog bite incident that occurred on May 8, 2018, in Arlington,
WA. Defendants, Ernesto and Teri Hernandez, owned a property located at 6507 204th Street
NE in Arlington, Washington. Defendants, David Gonzalez Sandoval and Alejandra Martinez

DEFENDANTS HERNANDEZ'S RESPONSE TO
PLAINTIFF'S MOTION FOR RECONSIDERATION

- 1

TODD A. BOWERS & ASSOCIATES

901 5th Avenue, Ste 830

Seattle, WA 98164

TEL: (206) 521-5000

FAX: (855) 830-3808

Employees of the Corporate Law Department
State Farm Mutual Automobile Insurance Company

1 (“Codefendants”), rent the property from Defendants Hernandez and have resided on the
2 property for approximately four years. Codefendants owned a dog and kept the dog in a fenced
3 area on the property. Plaintiff, Maria Saralegui Blanco, went to Codefendants’ home, and was
4 bitten by their dog after he escaped from the fenced area.

5 The dog was not owned, kept or harbored by Defendants Hernandez. Defendants
6 Hernandez did not reside on or near the rental property. When Codefendants moved into the
7 home, they did not own the dog involved in the subject incident. Codefendants purchased the
8 dog without any involvement or influence from Defendants Hernandez and Defendants
9 Hernandez never helped care for the dog after its purchase. The dog involved in the subject
10 incident was owned and cared for by Codefendants only. The dog never exhibited vicious or
11 aggressive behavior, nor were any complaints received from any neighbors about the dog.
12 Codefendants installed a wire fence on their own approximately one year prior to the incident
13 and the dog had not escaped prior to the subject incident.

14 **II. ISSUE PRESENTED**

15 Whether Plaintiff’s Motion should be denied where Plaintiff has failed to provide
16 sufficient legal authority that the decision is contrary to law and that substantial justice was not
17 done.

18 **III. EVIDENCE RELIED UPON**

19 Defendants Hernandez rely on the records and files herein and the declaration of
20 counsel, attached hereto as Appendix A. Defendants Hernandez also rely on the declaration of
21 counsel in support of Defendants Hernandez’s Motion for Summary Judgement, with exhibits
22 attached thereto, and the declarations of Ernesto and Teri Hernandez, attached as Appendix B
23 and C, to Defendants Hernandez’s Motion for Summary Judgement.

1 **IV. ARGUMENT**

2 **A. Plaintiff’s Motion Is Devoid Of Sufficient Legal Or Factual Grounds To**
3 **Prove Granting Summary Judgment Was Contrary To Law.**

4 Washington law is well settled that only the owner of a dog can be held liable for any
5 injuries caused. *Shafer v. Beyers*, 26 Wash.App. 442, 446-47 (1980). Where property owners
6 are not the owners of the dog, liability cannot be imposed. *Id.* The courts have also held that
7 the landlord of the owner of the dog is not liable for any damages sustained, even if the
8 landlord knew the dog was dangerous. *Clemmons v. Fidler*, 58 Wash.App. 32, 35 (1990); *see*
9 *also Frobig v. Gordon*, 124 Wn.2d 732, 736 (1993). Landlords have no duty to protect third
10 parties from vicious dogs and mere ownership of the property does not in and of itself make a
11 landlord liable. *Id.* at 35-36; *see also Shafer v. Beyers*, 26 Wash.App. at 447.

12 The courts have made it clear that a premise liability claim is inconsistent with
13 Washington law. In fact, the court in *Briscoe* expressly considered and rejected “alternative
14 theories of liability” — including premises liability — for dog bite injuries. *Briscoe v.*
15 *McWilliams*, 176 Wn. App. 1010 (2013). A “landlord owes no greater duty to the invitees or
16 guests of his tenants he owes to the tenant himself.” *Clemmons*, 58 Wash.App. at 37; *Frobig*, 124
17 Wn.2d at 735. If any condition is developed or created after the property has been leased, it is
18 the general rule that “a landlord is not responsible, either to persons injured on or off the land, for
19 any conditions which develop or are created by the tenant after possession has been transferred.”
20 *Frobig*, 124 Wn.2d at 736. This reasoning is also consistent with the language in RCW
21 59.18.060.

22 Plaintiff relies heavily on *Oliver v. Cook* and *Degel v. Majestic Mobile Manor, Inc.* in
23 arguing that Defendants Hernandez should be liable under a premise liability theory. In *Oliver*,

1 the plaintiff operated a repair shop on Mero's property. Cook was Mero's friend and owned a
2 dog which Mero knew could be aggressive and in fact two dangerous dog notifications were
3 issued to Cook. *Oliver v. Cook*, 194 Wash.App. 532, 535-36, 377 P.3d 265, 267 (2016). Cook,
4 who was invited to the property by Mero, brought his dog to the property and left the dog in
5 Mero's truck as he and Mero left in a different vehicle. It was at that time the dog bit the
6 plaintiff. *Id.* The court held that Oliver was Mero's invitee and therefore breached his duty to
7 exercise reasonable care to protect against the danger. *Id.* at 543-45. In *Degel*, the defendant
8 leased a mobile home to the plaintiff. The plaintiff had a son who was injured when he fell into
9 a creek that was not fenced. *Degel v. Majestic Mobile Manor, Inc.*, 129 Wash.2d 43, 46-47, 914
10 P.2d 728 (1996). While the Court was not addressing the issue of the defendant's duty towards
11 the plaintiff, it was noted that landlords have a duty to exercise reasonable care to protect
12 tenants of the home. *Id.* at 50.

13 Plaintiff's reliance on these cases, however, is misplaced. There is a clear distinction
14 of facts between *Oiver*, *Degel*, and the present case. The defendant in *Oliver* retained control
15 over his property and invited Cook onto his property. *Degel* involved a plaintiff who was also
16 a tenant. Further, the Restatement (Second) of Torts § 332 (1965) attaches liability to the
17 **possessor of the land** (emphasis added) for harm to an invitee if the possessor knows or would
18 have discovered the dangerous condition, should expect the invitee would not discovery the
19 danger, and fails to exercise reasonable care to protect invitees from danger. The court in
20 *Clemmons* held that tenancy is similar to a conveyance, in the sense that a lessor "surrenders
21 both possession and control of the land during the term of the tenancy." *Clemmons*, 58
22 Wash.App. at 37. Defendants Hernandez relinquished possession and control of the premises
23 to Codefendants four years ago and the premises remains in the possession and control of

1 Codefendants to this day. As such Defendants Hernandez had no control over the premises or
2 who Codefendants invited to their home. Since Defendants Hernandez are no longer in
3 possession of the land, liability cannot attach. Additionally, Plaintiff is not a tenant of
4 Defendants Hernandez.

5 There is overwhelming case law that landlords are not liable under Washington law.
6 Due to the undisputed facts that Defendants Hernandez did not live on the premises, did not
7 own the dog, the “dangerous condition” of the fence and dog were created after the residence
8 was leased to Codefendants, and did not control or possess the land, Defendants Hernandez
9 would have no duty to Plaintiff, if she was in fact a business invitee of Codefendants, and the
10 decision granting summary judgment in favor of Defendants Hernandez was aligned with
11 Washington law.

12 **B. Plaintiff’s Motion Is Devoid Of Sufficient Legal Or Factual Grounds To**
13 **Prove Granting Summary Judgment Resulted In A Lack Of Substantial Justice.**

14 Plaintiff fails to specify or provide proof that there was a lack of substantial justice. The
15 holdings in the aforementioned cases plainly establish that liability rests with the owner of the
16 dog and that premise liability fails as a theory of recovery against landlords when Plaintiff is an
17 invitee or a guest of the tenant.

18 Plaintiff is simply seeking to keep Defendants Hernandez in the suit as they are the party
19 with deeper pockets, which is also contrary to law. Washington law has made it evident that it
20 promotes the policy of placing responsibility where it belongs rather than fostering a search for a
21 more affluent defendant. *Clemmons*, 58 Wn. App. at 38. Responsibility in this matter rests solely
22 with the owners of the dog and the tenants, neither of which are Defendants Hernandez.
23 Therefore, the decision granting summary judgment in favor of Defendants Hernandez law was a

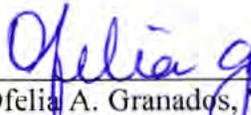
1 proper and fair ruling as it followed established law and upheld the policy recognized by
2 Washington to place responsibility where it belongs.

3 **V. PROPOSED ORDER**

4 A proposed Order is attached hereto as Appendix B.

5
6 DATED this 20 day of September, 2019.

7 TODD A. BOWERS & ASSOCIATES

8
9 By: 

10 Ofelia A. Granados, WSBA #53917
11 Attorney for Defendants Hernandez
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1 **DECLARATION OF SERVICE**

2 I hereby declare under the penalty of perjury under the laws of the State of Washington
3 that I have served a true and correct copy of the foregoing, except where noted, upon the
4 individual(s) listed by the following means:

5 Snohomish County Superior Court Clerk
3000 Rockefeller Ave, M/S 605
Everett, WA 98201

- 6 U.S. Postal Service (First Class)
7 Facsimile to _____
8 U.S. Postal Service Express Mail
9 Hand Delivery _____
10 Via Legal Messenger for Service by 9/23/19
11 E-Filed

12 Derek K. Moore
13 Bishop Legal
14 19743 1st Avenue S
15 Normandy Park, WA 98148
16 derek@bishoplegal.com

- 17 U.S. Postal Service (First Class)
18 Facsimile to _____
19 U.S. Postal Service Express Mail
20 Hand Delivery _____
21 Via Legal Messenger for Service by 9/23/19
22 E-Service

23 DATED: September 20, 2019

By: 
Name: Monica Roberts
Title: Legal Secretary

APPENDIX A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDREA MARTINEZ, and the marital
community comprised thereof, and ERNESTO
HERNANDEZ, TERI HERNANDEZ and the
marital community comprised thereof,

Defendants.

No. 18-2-08290-31

DECLARATION OF OFELIA A.
GRANADOS IN SUPPORT OF
DEFENDANTS HERNANDEZ'S
RESPONSE AND OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION

Ofelia A. Granados declares as follows:

1. I am over the age of 18, have personal knowledge of all facts contained in this
declaration, and am competent to testify as a witness to those facts.

2. I am an attorney with Todd A. Bowers & Associates, the attorneys of record for
Defendants Teri Hernandez and Ernesto Hernandez in the above-captioned matter.

APPENDIX B

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDREA MARTINEZ, and the marital
community comprised thereof, and ERNESTO
HERNANDEZ, TERI HERNANDEZ and the
marital community comprised thereof,

Defendants.

No. 18-2-08290-31

[PROPOSED] ORDER DENYING
PLAINTIFF'S MOTION FOR
RECONSIDERATION

THIS MATTER, having come on duly for hearing of Plaintiff's Motion for Reconsideration, Defendants Hernandez's response thereto, with its documents therein, if any, as well as any and all documents on file with the Court, it is hereby

ORDERED, ADJUDGED and DECREED that that Plaintiff's Motion for Reconsideration be DENIED.

1 DATED this ____ day of _____, 2019

2
3 _____
4 JUDGE ELLIS

5 Presented by:

6 TODD A. BOWERS & ASSOCIATES

7
8 By: _____

9 Ofelia A. Granados, WSBA #53917
10 Attorney for Defendants Hernandez

11 Approved as to form and
12 Notice of Presentation Waived:

13 BISHOP LEGAL

14 By: _____

15 Derek K. Moore, WSBA #37921
16 Attorney for Plaintiff Maria J. Saralegui-Blanco

EXHIBIT 11

Hon. Janice Ellis
Hearing: Thursday, Oct. 10, 2019 at 9:00 AM
Without Oral Argument
Moving Party

RECEIVED
2019 OCT -7 AM 11:34
TODD A. DOWERS & ASSOC.

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

Case No. 18-2-08290-31

PLAINTIFF'S REPLY TO
DEFENDANTS HERNANDEZ'S
RESPONSE TO PLAINTIFF'S
MOTION FOR RECONSIDERATION

Comes now Plaintiff in strict reply to Defendants Hernandez's Response to Plaintiff's Motion for Reconsideration as follows:

As set forth in Plaintiff's opening brief in her motion for reconsideration, the question in this case is whether there is "a dog bite exception to ordinary premises liability rules" under Washington law including *Frobige v. Gordon*, 124 Wn.2d 732, 881 P.2d 226 (1994), despite the holding and the reasoning in *Oliver v. Cook*, 194 Wn. App. 532, 377 P.3d 265 (Div. 2, 2016). Defendants Hernandez rely on the *Frobige* line of cases, which follows the policy set forth in *Clemmons v. Fidler*, 58 Wn. App. 32, 791 P.2d 257 (1990) favoring affluent (and insured) landlords over innocent victims of dog attacks, even where the landlord has knowledge of the

PLAINTIFF'S REPLY TO DEFENDANTS
HERNANDEZ'S RESPONSE TO PLAINTIFF'S
MOTION FOR RECONSIDERATION

1 dog and the right to control. The Court of Appeals in *Clemmons* court rejected the common law
2 – and common sense – rule adopted by California in *Uccello v. Laudenslayer*, 44 Cal.App.3d
3 504, 118 Cal.Rptr. 741, 81 A.L.R.3d 628 (1975), as follows:

4 In California, for example, a landlord is liable for dog bite injuries if the landlord
5 has actual knowledge of the dog and its dangerous propensities coupled with the
6 right to remove the dog by retaking possession of the premises. *Clemmons* urges
7 us to follow *Uccello*. We decline, for we see no reason to depart from our settled
8 rule. That rule recognizes the notion that a tenancy is equivalent to a conveyance:
a lessor surrenders both possession *and* control of the land to the lessee during the
term of the tenancy. Our rule also promotes the salutary policy of placing
responsibility where it belongs, rather than fostering a search for a defendant
whose affluence is more apparent than his culpability.

9 *Clemmons v. Fidler*, 58 Wn. App. 32, 38, 791 P.2d 257 (1990) (citations omitted) (italics in
10 original).

11 The *Clemmons* court ignored the policies of safety and deterrence underlying tort law. In
12 the context of workplace safety, Washington courts have long recognized that safety duties are
13 best placed in the entity in the best position to ensure safety. *Afoa v. Port of Seattle (I)*, 176
14 Wn.2d 460, 296 P.3d 800, 810 (2013); *Stute v. P.B.M.C. Inc.*, 114 Wn.2d 454, 463-464, 788 P.2d
15 545 (1990); *Kelley v. Howard S. Wright Const. Co.*, 90 Wn.2d 323, 582 P.2d 500 (1978). The
16 facts of this case demonstrate just how and why the policy adopted in *Clemmons* and affirmed in
17 *Frobig* endanger the public and should be reconsidered. Through no fault of her own, Ms.
18 Blanco was viciously mauled by a pit bull. The dog's owners are insolvent and uninsured and
19 may be headed for bankruptcy regardless of any judgment against them in this case.¹ They will
20 bear no consequence and will provide no compensation to Ms. Blanco regardless of the amount
21 of the judgment against them.

22
23 ¹ See Declaration of David Gonzalez Sandoval and exhibits thereto submitted in support of Defendants Gonzalez
24 and Martinez Response to Motion for Summary Judgment and Motion to Join.

1 In contrast, defendants Hernandez are professional landlords. While it is true they are
2 affluent, having the insurance and resources to provide compensation, they are also in the best
3 position to ensure the safety of the properties they own and to protect the public from dangerous
4 conditions – and dangerous animals – on their properties. Defendants Hernandez knew their
5 tenants owned a pit bull – which is widely recognized as a dangerous breed – and knew or should
6 have known that the fence was inadequate to contain such an animal. If a dog bite exception to
7 ordinary premises liability rules is applied, landlords like defendants Hernandez would have no
8 incentive to protect people from pit bulls escaping from their properties. Tenants who are the
9 most likely to be irresponsible owners of dangerous dogs will also be the most likely to not have
10 renters' insurance or other assets. They will be effectively immune from suit, as few victims will
11 pursue claims against defendants from whom no recovery can be made despite strict liability of
12 dog owners. Placing duties on landlords to ensure that their properties are free of dangerous
13 dogs and that fences on their property are adequate to contain any dangerous dogs or dangerous
14 breeds would prevent people from suffering Ms. Blanco's fate.

15 Plaintiff recognizes that the trial court is bound by precedent, and that it cannot decide to
16 overturn *Clemmons* and *Frobig* outright and adopt *Uccello*. That would ultimately be the
17 providence of the Washington Supreme Court. However, the Court of Appeals in *Oliver v.*
18 *Cook*, 194 Wn. App. 532, 377 P.3d 265 (Div. 2, 2016) demonstrated that justice can be done
19 without violating precedent. The *Oliver* court demonstrated that premises liability rules apply
20 even if there is a dog involved. While the facts in this case may differ from those in *Oliver*, the
21 principles and the reasoning do not. If premises liability rules apply, then defendants Hernandez
22 would have duties under *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 51, 914 P.2d 728
23 (1996) as described in Plaintiff's opening brief. If landlords can be liable for failing to ensure a

1 safe fence is placed between a play area and a creek, they should also be held liable for failing to
2 put a safe fence between the public and a pit bull.

3 At the hearing on defendants Hernandez's summary judgment in this matter, the Court
4 expressed concern that *Oliver v. Cook* had not yet been cited in any appellate opinion. This can
5 be largely explained by the recency of the 2016 opinion and the time it takes for a case to be
6 litigated at the trial court level, followed by the time it takes for the appellate process to produce
7 an opinion. It may also be explained by cases being settled, such as *Hambrick v. Clark*, Pierce
8 County Superior Court No. 17-2-12986-9, in which a tenant's pit bull attacked a social guest.² A
9 settlement was reached in that case after the trial court followed *Oliver v. Cook* and denied the
10 landlords motion for summary judgment.

11 For the aforesaid reasons, Plaintiff respectfully reiterate her request that the order
12 granting Defendants Hernandez's summary judgment motion be reconsidered and DENIED.

13
14 Dated this 4th day of October, 2019.

15 BISHOP LEGAL

16 
17 _____
18 Derek K. Moore
19 WSBA No. 37921
20 Attorney for Plaintiff

21
22
23
24 ² See the Moore Declaration in support of the Reply, and the exhibits thereto.

RECEIVED
2019 OCT -7 AM 11:34
TODD A. BOWERS & ASSOC.

Hon. Janice Ellis
Hearing: Thursday, Oct. 10, 2019 at 9:00 AM
Without Oral Argument
Moving Party

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Case No. 18-2-08290-31

Plaintiff,

DECLARATION OF DEREK K. MOORE IN SUPPORT OF PLAINTIFF'S REPLY TO DEFENDANTS HERNANDEZ'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION

vs.

DAVID GONZALEZ SANDOVAL, ALEJANDRA MARTINEZ, and the marital community comprised thereof, and ERNESTO HERNANDEZ, TERI HERNANDEZ and the marital community comprised thereof,

Defendants.

I, Derek K. Moore, declare and state as follows:

1. I am giving this Declaration in accordance with RPC 3.7(a).
2. I am an attorney at Bishop Law Offices, P.S. d/b/a Bishop Legal who represents the Plaintiffs in the above captioned lawsuit.
3. Attached hereto as **Exhibit 1** is a true and correct copy of Defendants Nelsons' Motion for Summary Judgment in *Hambrick v. Clark*, Pierce Co. Superior Court No. 17-2-12986-9, as filed and as provided to me by David A. Bufalini, the plaintiff's attorney in that case.
4. Attached hereto as **Exhibit 2** is a true and correct copies of Plaintiff's Opposition Memorandum in Response to Defendant Nelsons' Motion for Summary Judgment in

1 *Hambrick v. Clark*, Pierce Co. Superior Court No. 17-2-12986-9, as provided to me by
2 David A. Bufalini, the plaintiff's attorney in that case (unsigned and provided to me in
3 Word format.)

4 5. Attached hereto as **Exhibit 3** is a true and correct copy of the Order Denying Defendant
5 Nelson's Motion for Summary Judgment in *Hambrick v. Clark*, Pierce Co. Superior Court
6 No. 17-2-12986-9, which I obtained directly from LINX, the court's electronic court
7 records system.

8 6. I was informed by David A. Bufalini, the plaintiff's attorney in *Hambrick v. Clark*, Pierce
9 Co. Superior Court No. 17-2-12986-9, that the case settled after Defendant Nelson's
10 Motion for Summary Judgment was denied. I reviewed the document list for that case on
11 the court's LINX system, which confirmed that the case had been dismissed by stipulation.

12
13 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
14 is true and correct and to the best of my knowledge, recollection and belief.

15
16 Dated this 4th day of October, 2019, at Normandy Park, Washington.

17 BISHOP LEGAL

18 
19 _____
20 Derek K. Moore
21 WSBA No. 37921
22 Attorneys for Plaintiff

EXHIBIT 1

August 01 2018 11:40 AM

THE HONORABLE G. HELEN WHITENER
HEARING: August 31, 2018 at 9:00 a.m.

KEVIN STOCK
COUNTY CLERK
NO: 17-2-12086-9

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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 IN AND FOR THE COUNTY OF PIERCE

8 FELICIA HAMBRICK, a single woman,

9 Plaintiff,

10 vs.

11 RONALD CLARK and MARTHA CLARK,
12 husband and wife; TIMOTHY BOCK and
13 JANE DOE BOCK, husband and wife;
14 DONETTE J. NELSON and JOHN DOE
15 NELSON, wife and husband,

16 Defendants.

No. 17-2-12086-9

DEFENDANTS NELSONS' MOTION
FOR SUMMARY JUDGMENT

17 I. RELIEF REQUESTED

18 Pursuant to CR 56, Defendants Timothy Bock (now Timothy Nelson) and Donette
19 Nelson (collectively referred to as "Nelson Defendants"), by and through their attorney
20 of record, Jonathan R. Missen of the Law Offices of Mark Dietzler, move this Court for
21 an order summarily dismissing all of the claims asserted against them by Plaintiff Felicia
22 Hambrick ("Plaintiff").

23 The Nelson Defendants are entitled to summary judgment because, as a matter
24 of law, Plaintiff cannot establish that the Nelson Defendants owed Plaintiff a duty,
25 breached a duty owed to Plaintiff, or were the proximate cause of Plaintiff's alleged

DEFENDANTS TIMOTHY BOCK AND DONETTE NELSONS'
MOTION FOR SUMMARY JUDGMENT- 1

LAW OFFICES OF MARK DIETZLER
ATTORNEYS AT LAW
1001 FOURTH AVENUE, SUITE 3300
SEATTLE, WA 98154-1101
(206) 633-1310 FAX (866) 546-5102

1 injuries. No reasonable jury could conclude that the Nelson Defendants: (1) had
2 knowledge that the Clarks' pit bull Roscoe was dangerous; (2) exercised control over
3 the Clarks' regulation of Roscoe; and (3) could have prevented Plaintiff's injury through
4 the exercise of reasonable care. Accordingly, this Court should grant summary
5 judgment dismissing the Nelson Defendants.
6

7 II. FACTS

8 Plaintiff's claim arises out of a dog bite injury. Plaintiff was a social guest at the
9 home of Defendants Martha and Ronald Clark when she was injured by Roscoe, a pit
10 bull owned by Ronald Clark. Declaration of Jonathan R. Missen in Support of
11 Defendants' Timothy Bock and Donette Nelson Motion for Summary Judgment ("Missen
12 Decl.") ¶¶3-4, Exhibits 1 and 2. The Clarks leased the premises located at 6408 S.
13 Warner St., Tacoma, WA, from the Nelson Defendants. Missen Decl. ¶¶5, Exhibit 3.
14 Plaintiff's Complaint alleges that the Nelson Defendants are liable for the attack by way
15 of premises liability because the Nelson Defendants are the Clarks' landlord. *Id.*
16

17 Mr. Clark housed, fed, groomed, disciplined, and cared for Roscoe. Missen Decl.
18 ¶4, Exhibit 2. At all relevant times, the Clarks owned and exercised control over Roscoe
19 in the subject premises. *Id.* Cassandra Farias is the Clarks' daughter. Missen Decl. *Id.*
20 Cassandra Farias resided at the leased premises with her husband Angel and her three
21 minor children. *Id.* Mrs. Farias testified that she initially acquired Roscoe as a Father's
22 Day gift for her husband. Plaintiff confirmed this:
23

24 30

25 19 Q Was Rosco supposed to be a gift for Angel?

20 A Correct.

21 Q Did Cassy express to you that Angel wanted a

1 22 dog?
2 23 A I believe so.

3 Missen Decl. ¶6, Ex. 4 at p. 30, l. 19-23.

4 On October 29, 2016, Plaintiff was at the premises babysitting Mrs. Farias'
5 children. Missen Decl. ¶6, Ex 4 at p. 29, l.-12-21. At that time, Roscoe was kept in the
6 Clarks' bedroom. *Id* at p. 33, l.-11-22. Shortly before the attack, Plaintiff was tending to
7 Mrs. Farias' youngest child Sophia in the kitchen. *Id* at p. 56, l. 23-25, p. 57, l. 1-6.
8 Plaintiff heard the door to the Clarks' bedroom open and Roscoe assaulted her
9 moments later. *Id* at p. 57, l. 12-16.

10
11 The Nelson Defendants were never on notice that a dangerous dog was present
12 at the premises they leased to the Clarks. Donette Nelson testified as follows:

13 10 Q (By Mr. Bufalini) Okay. Did you ever see that dog,
14 11 Roscoe?

15 12 A **No. I -- the only time I've seen is when I was showed**
16 13 **pictures from my lawyer.**

17 Missen Decl. ¶7, Ex. 5, p. 46, l. 10-13.

18 11 Q (By Mr. Bufalini) Okay. And so I'll just ask the
19 12 question this way.

20 13 When is the very first time you found out they had a
21 14 Pit Bull at that house?

22 15 A **That I recall is when I seen on Facebook that our cousin**
23 16 **Christy was trying to get ahold of Cassy because the**
24 17 **neighbor was saying the dog attacked Felicia.**

25 *Id* at p. 28, l. 11-17.

Of note, Mrs. Nelson testified that shortly before the attack, the Nelson Defendants went to the Humane Society and adopted a pit bull of their own. *Id* at p.15, l.-24-25, p. 16, l.-1-7. Mrs. Nelson had no perception that pit bulls were an inherently

1 dangerous or aggressive breed of dog. *Id at p. 21, l.-8-19.*

2 Mr. Nelson testified that he saw Roscoe once. At that time, he was in the front
3 yard of the Warner St. property and Roscoe was in the fenced back yard. Mr. Nelson
4 threw a partially uneaten sandwich over the fence to Roscoe. Missen Decl. ¶8, Ex. 6, p.
5 23, l.-1-25, p. 24, l.-1-25. Importantly, Mr. Nelson testified that he asked Mr. Farias how
6 the dog was with the kids in the leased premises the next day:
7

8 **14 A I asked Angel how that dog was with the kids.**

9 **15 Q Okay.**

10 **16 A And he said it was great.**

11 *Id at p. 32, l. 14-16.*

12 In a letter dated December 11, 2017 from Martha and Ronald Clark, they state,

13 We did not have any knowledge that the dog was vicious, we had just gotten him.
14 The dog never got vicious with anyone in the house with any member of our
15 family... When we took the dog in the front yard or walks he never showed any
16 signs of viciousness, people would come in the front yard and pet him... my
17 husband got attached to the dog and that is why he took ownership of the dog.

18 Missen Decl. at ¶4. Exhibit 2.

19 The Nelson Defendants had no reason to know that Roscoe was dangerous or
20 aggressive. Accordingly, Plaintiff's claims against the Nelson Defendants should be
21 dismissed.

22 III. ISSUE

23 1. Whether summary dismissal of Defendant landlords is appropriate where
24 Plaintiff cannot establish that the Nelson Defendants owed a duty of care to Plaintiff,
25 breached that duty, or that the Nelson Defendants proximately caused Plaintiff's injury
because they were not aware that a dangerous dog resided in the leased premises?

1 Yes.

2 2. Should the court apply RCW 16.08.404 and dismiss the Nelson
3 Defendants when they were not the owners or keepers of pit bull Roscoe? Yes.

4 **IV. EVIDENCE RELIED UPON**

5 This motion is based upon the Declaration of Jonathan R. Missen in Support of
6 the Nelson Defendants' Motion for Summary Judgment, attached exhibits, and the files
7 and records of the Court herein.

8 **V. ARGUMENT**

9 **A. Summary Judgment Standard**

10 The purpose of summary judgment is to avoid a useless trial where there is no
11 genuine issue of material fact. *LaPlante v. State*, 85 Wn.2d 154, 531 P.2d 299 (1975).
12 Summary judgment is appropriate according to CR 56, if the pleadings, depositions,
13 answers to interrogatories and admissions on file, together with affidavits, if any, show
14 that there is no genuine issue as to any material fact and that the moving party is
15 entitled to a judgment as a matter of law. *Preston v. Duncan*, 55 Wn.2d 678, 681-82,
16 649 P.2d 605,607 (1960). A "material fact is one upon which the outcome of the
17 litigation depends." *Ohler v. Tacoma General Hospital*, 92 Wn.2d 507, 598 P.2d 1358
18 (1979); *Morris v. McNichol*, 83 Wn.2d 491, 494, 591 P.2d 7 (1974). In evaluating
19 whether material facts exist, the court is to consider all facts and reasonable inferences
20 in the light most favorable to the non-moving party. *Wojcik v. Chrysler Corp.*, 50 Wn.
21 App. 849, 854, 751 P.2d 854 (1988), (citing *Wilson v. Steinbach*, 98 Wn.2d 434, 437,
22 656 P.2d 1030 (1982)). Civil Rule 56 reads in relevant part:
23
24
25

1 [t]he judgment sought shall be rendered forthwith if the pleadings,
2 depositions, answers to interrogatories, and admissions on file, together
3 with affidavits, if any, show that there is no genuine issue of material fact
4 and that the moving party is entitled to judgment as a matter of law. CR
5 56(c).

6 CR 56.

7 A question of fact may be determined as a matter of law when reasonable minds
8 could not disagree and could reach but one conclusion based on the evidence
9 presented. *Graff v. Allstate Ins. Co.*, 113 Wn. App. 799, 802, 54 P.3d 1266 (2002).
10 When the moving party has met its burden of showing the absence of an issue of
11 material fact, the burden shifts to the non-moving party to establish the existence of a
12 question of fact as to an element essential to its case. *Id.* (citing *Young v. Key*
13 *Pharmaceutical, Inc.*, 112 Wn.2d 216, 225-26, 770 P.2d 182 (1989)). The non-moving
14 party must proffer specific facts establishing a material issue of fact for the trial court.
15 The non-moving party may not rely upon allegations or conclusory statements. CR 56
16 (e); See: *Baldwin v. Sisters of Providence, Inc.*, 112 Wn.2d 127, 132, 769 P.2d 289
17 (1989). It is well settled that, when the burden shifts to the non-moving party, the non-
18 moving party must supply specific facts in support of its claims:

19 [t]he party opposing a motion for summary judgment "may not rely on
20 speculation, argumentative assertions that unresolved factual issues
21 remain, or in having affidavits accepted at face value. . . [T]he non-moving
22 party must set forth specific facts that sufficiently rebut the moving party's
23 contentions and disclose that a genuine issue as to material facts exists.

24 *Herman v. Safeco Ins. Co. of America*, 104 Wn. App. 783, 787-788, 17 P.3d 631 (2001)
25 (quoting *Seven Gables Corp. v. MGM/UAEntm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1
(1986)).

1 **B. Premises Liability Remedies Are Not Available to Plaintiff**

2 The Nelson Defendants are entitled to summary judgment because Plaintiff
3 cannot establish that the Nelson Defendants owed a duty of care to Plaintiff.
4 Furthermore, even if the Nelson Defendants owed a duty of care, Plaintiff cannot
5 establish that the Nelson Defendants breached that duty, thereby causing Plaintiff's
6 injuries. "...Mere ownership of property... does not in and of itself make a landlord
7 liable for persons thereon who possess, harbor or keep a dangerous dog." *Clemmons v.*
8 *Fidler*, 58 Wn. App. 32, 35, 791 P.2d 257, 259 (1990)¹ (where plaintiff's claims against
9 a landlord defendant were dismissed on summary judgment and the court refused to
10 abrogate the common law rule regarding liability when the landlord had no control over
11 a dog that was inadvertently released from confinement by a party-goer). Where there
12 is lack of ownership, knowledge, and control over the dangerous condition which
13 caused Plaintiff's injury, a reasonable trier-of-fact could not find that Defendants owed a
14 duty to Plaintiff and that Defendants are to be dismissed as a matter of law. CR 56(c);
15 *Restatement (Second) of Torts* §342 (1965).
16
17

18 The legal duty a landowner owes to a person entering the premises depends on
19 their status as a trespasser, licensee, or invitee. *Younce v. Ferguson*, 106 Wn. 2d 658,
20 662, 724 P.2d 991, 993 (1986). A licensee is defined as "a person who is privileged to
21 enter or remain on land only by virtue of the possessor's consent." *Restatement*, §330.
22 As explained in comment h(3) to *Restatement*, § 330:
23
24

25 _____
¹ Citing *Shefer*, 26 Wash.App. at 447, 613 P.2d 554 (quoting *Harris v. Turner*, 1 Wash.App. 1023, 1028, 466 P.2d 202, review denied, 78 Wash.2d 993 (1970)).

1 The explanation usually given by the courts for the classification of social guests
2 as licensees is that there is a common understanding that the guest is expected
3 to take the premises as the possessor himself uses them, and does not expect
4 and is not entitled to expect that they will be prepared for his reception, or that
precautions will be taken for his safety, in any manner in which the possessor
does not prepare or take precautions for his own safety, or that of the members
of his family.

5 *Younce*, 106 Wn. 2d 658, 668–69, 724 P.2d 991, 996 (1986).

6 As a social guest of tenant Cassandra Farias, Plaintiff Hambrick is a presumptive
7 licensee. Decl. of Missen at ¶¶3-4, Exhibits 1, 2. The “dangerous condition” would be
8 the dog itself. See *Klimek v. Drzewiecki*, 135 Mich.App. 115, 119, 352 N.W.2d 361, 363
9 (1984). Here, the dangerous condition was pit bull Roscoe.

10 A possessor of land is subject to liability for physical harm caused to licensees by
11 a condition on the land if, but only if,

- 12
- 13 (a) the possessor knows or has reason to know of the condition and should
14 realize that it involves an unreasonable risk of harm to such licensees,
and should expect that they will not discover or realize the danger, **and**
 - 15 (b) he (or she) fails to exercise reasonable care to make the condition safe,
16 or to warn the licensees of the condition and the risk involved, **and**
 - 17 (c) the licensees do not know or have reason to know of the condition and
18 the risk involved.

19 *Restatement (Second) of Torts* §342 (1965) (emphasis added). If any one of these
20 requirements is not proven, Plaintiff Hambrick’s claim must fail. *Pearce v. Motel 6, Inc.*,
21 28 Wn. App. 474, 480, 624 P.2d 215 (1981).

22 In the present case, Plaintiff has no evidence sufficient to create a material issue
23 of fact as to elements (a), (b), or (c). The lone contact that the Nelson Defendants had
24 with Roscoe occurred when Mr. Nelson threw his leftover sandwich to the dog because
25 “it wanted attention.” Nothing about this incident informed the Nelson Defendants that

1 Roscoe was dangerous. To the contrary, Mr. Nelson explicitly asked Mr. Farias about
2 Roscoe the next day and was told that the dog was "great" with their children.

3 Moreover, a landlord defendant does not owe a greater duty to the tenants' social
4 guest than to the tenant. *Frobigo*, 124 Wn. 2d 732, 881 P.2d 226, at 736.² The *Frobigo*
5 Court stated, "the duty and liability of the invitor-lessor do not, as a rule, extend to
6 matters having to do merely with the lessee's management or operation...at least where
7 the lessee is in sole actual control." *Frobigo v. Gordon*, 124 Wn. 2d 732, 736, 881 P.2d
8 226, 228 (1994). Here, the Nelson Defendants are the lessors. Their duties as
9 landlords do not extend to Roscoe because the Clarks, specifically Mr. Clark, had sole
10 actual control of Roscoe. Under these circumstances, Plaintiff's claims against the
11 Nelson Defendants fail as a matter of law.
12

13
14 **C. Awareness of Roscoe's Presence at Leased Premises is Irrelevant**

15 Although the landlord in *Briscoe* prohibited dog ownership on the lease, and the
16 landlord knew a dog was at times present on the premises in the past, the court
17 voluntarily dismissed the landlord. *Briscoe*, 176 Wn. App. at 1. Likewise, in *Frobigo*,
18 although the landlords knew that a dangerous animal was being kept on the premises,
19 the tenant had greater opportunity to protect their invitee from harm. Accordingly,
20 summary judgment dismissal in favor of the landlord defendant was affirmed. *Frobigo*,
21 124 Wn.2d 732, 881 P.2d 226 at 230.
22

23 Regardless of whether the Nelson Defendants knew the Clarks kept a dog on the
24

25 ² Citing *Peterick v. State*, 22 Wash.App. 163, 170-71, 589 P.2d 250 (1977) (citing 49 Am.Jur.2d Landlord and Tenant § 763 (1970)), review denied, 90 Wash.2d 1024 (1978), overruled on other grounds by, *Stenberg v. Pacific Power & Light Co.*, 104 Wash.2d 710, 709 P.2d 793 (1985).

1 premises, there is no evidence that can prove the Nelson Defendants knew that the dog
2 was vicious or that a tenant's guest would be in danger of Roscoe. Like the defendant
3 landlords in *Briscoe* and *Frobig*, the Nelson Defendants could not have protected
4 Plaintiff from being injured by Roscoe when the Clarks themselves did not think Roscoe
5 was dangerous and they kept Roscoe in their home according to that belief. Missen
6 Decl. at ¶4. Exhibit 2.

7
8 *Oliver v. Cook* provides dog bite victims an alternate avenue for recovery, but is
9 limited to its facts and does not prevent summary judgment in favor of the Nelson
10 Defendants here. *Oliver v. Cook*, 194 Wn. App. 532, 377 P.3d 265 (2016) (where the
11 defendants' actions affirmatively created a circumstance which could reasonably lead to
12 the Plaintiff's injuries; and additionally, the defendants' failure to warn his own business
13 invitee of the dangerous situation culminated into a duty towards the victim). In *Oliver*,
14 the dog (Scrappy) that injured the Plaintiff was closely associated with the Defendant
15 because the Defendant had significant control over Scrappy although Scrappy was
16 owned by a third party. *Id.* The *Oliver* Court held that a genuine dispute of material fact
17 existed regarding the landlord's breach of duty towards the victim invitee when: (1)
18 Defendant Landlord Mero testified that he warned others not to go near the dog; (2) it
19 was unusual for the dog's owner to be on the premise; (3) Scrappy's owner was on the
20 premises exclusively to visit Mero; and (4) Mero was aware that the dog was left in a
21 truck with the window down where it could lunge out of the truck and harm the Plaintiff.
22 *Id* at 545.

23
24
25 *Oliver* is inapposite. Here, the Nelson Defendants were not closely associated

1 with Roscoe like Mero was with Scrappy. The Nelsons exercised no control or
2 regulation over Roscoe. The Nelson Defendants did not warn others about Roscoe, nor
3 were they aware that Roscoe was kept in a manner which could result harm to Plaintiff.
4 The lone, friendly interaction between Mr. Nelson and Roscoe is insufficient to create
5 the close relationship contemplated by the *Oliver* Court to impute liability to the landlord.
6

7 In order to survive the Nelson Defendants' motion for summary judgment
8 dismissal, Plaintiff is required to set forth specific facts that show there is a genuine
9 issue of fact. Here, there is no dispute of material fact that the Nelson Defendants were
10 on notice that the Clarks were harboring a dangerous dog. The Clarks themselves did
11 not have this knowledge. The Nelson Defendants did not, and could not, have
12 knowledge that Roscoe was kept in the Clarks' unlocked bedroom. Further, the Nelson
13 Defendants could not have prevented harm to Plaintiff by exercising reasonable care.
14 Accordingly, the Plaintiff's claims against the Nelson Defendants should be dismissed.
15

16 **D. The Nelson Defendants Do Not Owe Plaintiff a Duty Under the**
17 **Implied Warranty of Habitability.**

18 Plaintiff may argue that she was owed a duty of care under the implied warranty
19 of habitability pursuant to Restatement (Second) of Property §17.6 (1977) which
20 provides:

21 A landlord is subject to liability for physical harm caused to the tenant
22 and others upon the leased property with the consent of the tenant or
23 his subtenant by a dangerous condition existing before or arising after
24 the tenant has taken possession, if he has failed to exercise
reasonable care to repair the condition and the existence of the
condition is in violation of:

- 25 (1) an implied warranty of habitability; or
(2) a duty created by statute or administrative regulation.

1
2 This theory of liability does not save Plaintiffs' claim. For the implied warranty of
3 habitability to apply, plaintiff must show that: (1) the condition was dangerous; (2) the
4 landlord was aware of the condition or had a reasonable opportunity to discover the
5 condition and failed to exercise ordinary care to repair the condition; and (3) the
6 existence of the condition was a violation of an implied warranty of habitability or a duty
7 created by statute or regulation." *Lian v. Stalick*, 115 Wn. App. 590, 595, 62 P.3d 933
8 (2003) (*Lian II*). "A finding that the condition was dangerous is foundational to a claim
9 under § 17.6." *Lian II* at 595. In *Lian II*, the Court emphasized that the second element
10 above is a "notice requirement" and quoted comment (d) to the Restatement that "the
11 landlord will not be liable under the rules of this section until he has had a reasonable
12 opportunity to remedy the condition after the tenant notifies him of it." *Id.* at 596
13 (emphasis added).
14

15 Here, Plaintiff may try to argue that Mr. Nelson's lone contact with Roscoe was
16 sufficient to put the Nelson Defendants on notice that there was a dog at the leased
17 premises, but there is no evidence that this put the Nelson Defendants on notice that
18 Roscoe was dangerous. Plaintiff may also try to argue that pit bulls are "inherently"
19 dangerous or that "their reputation precedes them." However, this Court should reject
20 these arguments because the Nelson Defendants never had actual notice that Roscoe
21 was dangerous. In fact, the Nelson Defendants had no preconceived notions about pit
22 bulls being dangerous dogs. The Nelson Defendants adopted a pit bull from the
23 Humane Society less than a month before the subject attack. Accordingly, any claim
24 under the implied warranty of habitability similarly fails.
25

1 **E. RCW 16.08.040(1) Excludes the Nelson Defendants From Liability**

2 RCW 16.08.040(1) states:

3 The owner of any dog which shall bite any person while such
4 person is in or on a public place or lawfully in or on a private place
5 including the property of the owner of such dog, shall be liable for
6 such damages as may be suffered by the person bitten,
 regardless of the former viciousness of such dog or the owner's
 knowledge of such viciousness.

7 The statute providing for strict liability of dog owners for damages caused by dog
8 bites is in derogation of the common law and must be strictly construed. *Sligar v. Odell*,
9 156 Wash. App. 720, 233 P.3d 914 (2010). RCW 16.08.040 imposes liability only on the
10 “owner” of a dog, does not require knowledge of any vicious or dangerous propensities.
11 *Beeler v. Hickman*, 50 Wash. App. 746, 751–52, 750 P.2d 1282, 1285 (1988). The use
12 of the term “owner” evidences a legislative intent to exclude from liability persons who
13 are mere keepers or possessors of a dog. *Id* citing *Mascola v. Mascola*, 168 N.J.Super.
14 122, 401 A.2d 1114 (1979); *Guerrero v. Capron*, 121 Wash. App. 1063 (2004) (where
15 summary judgment dismissal was granted in favor of co-defendant Baney who did not
16 care for the dog although there was evidence that the dog was present at Baney’s home
17 at least once a week). To be a ‘keeper’ or ‘harborer,’ a person must do more than allow
18 the dog to reside on the premises. *Id*.

19 In the present case, there is no evidence that the Nelson Defendants provided
20 any care for Roscoe. When viewed in a light most favorable to Plaintiff, there is no
21 dispute that the Clarks were the sole owners of Roscoe. Missen Decl. at ¶4. Exhibit 2.
22 Arguably the Nelson Defendants permitted Roscoe to reside at the leased premises, but
23 there is no evidence that they did anything more. Accordingly, under *Guerrero*, supra,
24 there is no evidence that they did anything more. Accordingly, under *Guerrero*, supra,
25

1 and RCW 16.08.040(1), the Nelson Defendants are not the owners, keepers, or
2 harborers of Roscoe and should be dismissed as a matter of law.

3 **CONCLUSION**

4 The Nelson Defendants had no notice that the Clarks had a dangerous dog at
5 the leased premises. While it is unfortunate that this accident occurred and Plaintiff
6 sustained injury, the Nelson Defendants did not owe a duty of care to Plaintiff, did not
7 breach any duty of care, and could not have prevented Plaintiff's injuries through the
8 exercise of reasonable care. Because there are no issues of material fact, and
9 reasonable minds could reach but one conclusion, Plaintiff's claims against the Nelson
10 Defendants should be dismissed as a matter of law.
11

12 DATED this 17th day of July 2018.

13 LAW OFFICES OF MARK DIETZLER

14 

15
16
17 Jonathan R. Missen, WSBA#42689
18 Attorney for Defendants Timothy Bock and
19 Donnette Nelson
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CERTIFICATE OF SERVICE

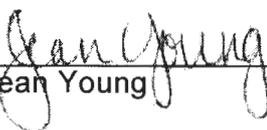
I HEREBY CERTIFY under penalty of perjury that on the 1st day of August 2018, I sent for delivery a true and correct copy of NOTE FOR HEARING (SERVED 6/19/18); DEFENDANTS TIMOTHY BOCK AND DONETTE NELSONS' MOTION FOR SUMMARY JUDGMENT; DECLARATION OF JONATHN MISSEN, with exhibits; and [PROPOSED] ORDER by the method indicated below, and addressed to the following:

David A. Bufalini
Law Offices of David A. Bufalini, P.S.
2107 North 30th Street
Tacoma, WA 98403

<input type="checkbox"/>	U.S. MAIL-Postage Pre-Paid
<input checked="" type="checkbox"/>	LEGAL MESSENGER
<input type="checkbox"/>	EMAIL
<input type="checkbox"/>	HAND DELIVERED
<input type="checkbox"/>	EXPRESS DELIVERY
<input type="checkbox"/>	FACSIMILE

Ronald Clark
Martha Clark
6408 S Warner Street
Tacoma, WA 98409-4007

<input checked="" type="checkbox"/>	U.S. MAIL-Postage Pre-Paid
<input type="checkbox"/>	LEGAL MESSENGER
<input type="checkbox"/>	EMAIL
<input type="checkbox"/>	HAND DELIVERED
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Jean Young

June 19 2018 9:10 AM

KEVIN STOCK
COUNTY CLERK
NO: 17-2-12086-9

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY**

FELICIA HAMBRICK

Plaintiff(s),

vs.

RONALD CLARK

Defendant(s)

No. 17-2-12086-9

NOTE FOR MOTION DOCKET

TO THE CLERK OF THE SUPERIOR COURT AND TO OPPOSING PARTY:

Name: David Anthony Bufalini
Address: 2107 N 30th St Tacoma, WA 98403-3318

Phone: (253) 272-2100
Attorney for Plaintiff/Petitioner

Name: RONALD CLARK
Address: 6408 S WARNER STREET TACOMA, WA 98409-4007,
WA 98409-4007

Phone: (253) 222-0103
Defendant

Please take notice that the undersigned will bring on for hearing a motion for:

Pierce County Superior Court, County-City Building - 930 Tacoma Ave S - Tacoma, WA 98402

Motion - Summary Judgment

Calendar: G. HELEN WHITENER

CALENDAR DATE: Friday, August 31, 2018 9:00 AM

WORKING COPIES SHALL BE DELIVERED TO THE COURT PURSUANT TO PCLR 7 (a) (7)

PARTY SETTING HEARING SHALL CONFIRM BY NOON TWO COURT DAYS PRIOR TO HEARING

Submitted by:

DATED: June 19, 2018.

NAME: Jonathan R Missen

ADDRESS: 1001 Fourth Ave Ste 3300
SEATTLE, WA 98154

Signed: /s/ Jonathan R Missen

Phone: (206) 473-4005

WSBA#: 42689

For:

Note for Motion Docket
Additional Parties Notified

17-2-12086-9

Name: MARTHA CLARK	Phone: (253) 222-0103
Address: 6408 S WARNER STREET TACOMA, WA 98409-4007	Defendant
Name: DONETTE J NELSON	Phone: (206) 473-4007
Address: C/O JONATHAN R. MISSEN 1001 4TH AVENUE, SUITE 3300 SEATTLE, WA 98154	Defendant
Name: TIMOTHY NELSON	Phone: (2) 473-4007
Address: C/O JONATHAN R. MISSEN 1001 4TH AVENUE, SUITE 3300 SEATTLE, WA 98154	Defendant

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

FELICIA HAMBRICK, a single woman,

Plaintiff,

vs.

RONALD CLARK and MARTHA CLARK,
husband and wife; TIMOTHY BOCK and
JANE DOE BOCK, husband and wife;
DONETTE J. NELSON and JOHN DOE
NELSON, wife and husband,

Defendants.

No. 17-2-12086-9

**ORDER GRANTING DEFENDANTS
TIMOTHY BOCK AND DONETTE
NELSONS' MOTION FOR SUMMARY
JUDGMENT**

I. HEARING

1.1 Date and Time. August 31, 2018 at 9:00 a.m.

1.2 Notice of Hearing. Notice of hearing was served on Plaintiff and the parties within the time period required by CR 56 and CR 7.

1.3 Appearances. With Oral Argument

1.4 Purpose. To consider Defendants Timothy Bock and Donette Nelsons' Motion for Summary Judgment;

1.5. Evidence. The evidence relied upon is as follows:

- 1 a. Defendants Timothy Bock and Donette Nelsons' Motion for Summary
2 Judgment;
3 b. Declaration of Jonathan R. Missen in support of Defendants Timothy
4 Bock and Donette Nelsons' Motion for Summary Judgment with
5 exhibits;
6
7 c. Plaintiff's Response in Opposition;
8
9 d. Defendants' Reply; and
10
11 e. Records and files herein.

12 **II. ORDER**

13 Based upon the findings, it is ORDERED, ADJUDGED, AND DECREED that:

- 14 1. Defendants Timothy Bock and Donette Nelsons' Motion for Summary
15 Judgment is GRANTED.
16
17 2. Plaintiff's claims against defendants Timothy Bock and Donette Nelson
18 are hereby dismissed, with prejudice;

19 DONE IN OPEN COURT THIS _____ day of _____, 2018.

20 _____
21 Judge/Court Commissioner

22 Presented by:

23 LAW OFFICES OF MARK DIETZLER

24 

25 _____
Jonathan R. Missen, WSBA#42689
Attorney for Defendants Timothy Nelson
and Donnette Nelson

ORDER GRANTING DFTS TIMOTHY BOCK AND DONETTE
NELSONS' MOTION FOR SUMMARY JUDGMENT- 2

LAW OFFICES OF MARK DIETZLER
ATTORNEYS AT LAW
1001 FOURTH AVENUE, SUITE 3300
SEATTLE, WA 98154-1101
(206) 633-1310 FAX (866-546-5102

EXHIBIT 2

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

FELICIA HAMBRICK, a single woman,
Plaintiff,
vs.
RONALD CLARK and MARTHA
CLARK, husband and wife; DONETTE J.
NELSON and TIMOTHY NELSON, wife
and husband,
Defendants.

Case No.: 17-2-12086-9

PLAINTIFF'S OPPOSITION
MEMORANDUM IN
RESPONSE TO
DEFENDANT NELSON'S
MOTION FOR SUMMARY
JUDGMENT

I. FACTS

Felicia Hambrick was viciously attacked by a pit bull named Roscoe while babysitting for her close friend Cassandra Farias. Roscoe was owned at the time by defendants Ron and Martha Clark. At the time of the attack the Clarks were renting a home owned by defendants Nelson. Tim Nelson and Ron Clark are first cousins. Cassandra Farias is Martha Clark's biological daughter. Cassandra, her husband Angel, and their three children shared the Nelson's rental house with the Clarks.

Cassandra Farias gave her husband Angel Farias a large fully-grown adult male pit bull named Roscoe for Father's Day in June 2016. At the time, Angel Farias worked for a company owned and operated by defendants Nelsons called Rain or Shine. The

1 company offered commercial and residential window cleaning services, as well as on-
2 site residential gutter fabrication and in installation services. Within days of getting the
3 dog Mr. Farias showed Mr. Nelson a picture of Roscoe. Mr. Nelson told Angel that he
4 had to be careful with Roscoe because "those dogs tend to be aggressive." (Farias
5 deposition, page 39, lines 1-6) The Nelsons own a pit bull, a rescue dog, so Tim Nelson
6 was familiar with the breed and its' reputation for aggressive and dangerous behavior.

7 It became obvious to Angel Farias that he could not devote enough time to
8 Roscoe and suggested the dog be given up. Ron Clark said he would take control of
9 Roscoe and be responsible for it.

10 Between the time that Roscoe first arrived at the Nelsons' house where the
11 Clarks and Angel and Cassandra and their children lived in June 2016 and the savage
12 attack on Felicia Hambrick on October 30, 2016 Tim Nelson was present at the Warner
13 Street home related to the Nelson's gutter business. The company owned a vehicle that
14 was called the "gutter van." The van was equipped to manufacture gutters on-site. It
15 was kept in the back yard of the Nelson's rental property where Roscoe lived.

16 Tim Nelson admits to only one encounter with Roscoe when he was in the front
17 yard at the Warner Street home talking with Ron Clark. Angel Farias was present.
18 Roscoe was in the fenced back yard. He jumped up and placed his front paws on the top
19 of the four-foot cyclone fence separating the front and back yards (Timothy Nelson
20 deposition, pages 30:10 to 31:14). As he was known to do in the presence of strangers,
21 Roscoe barked aggressively at Mr. Nelson. Mr. Nelson threw what was left of a fast-
22 foot sandwich he was eating over the fence into the back yard. Roscoe ignored the food
23 and kept barking. Mr. Nelson commented on Roscoe's aggressive nature and remarked
24
25
26

1 at the guard-dog qualities of Roscoe. Nelson “said the dog is really a watchdog, you
2 know, nobody can get back there without getting bit.” (Farias deposition, page 47, line
3 21 – page 48, line 3)

4 The deposition testimony of Angel Farias stands in stark contrast to that of Mr.
5 Nelson on several important issues, bringing into question Mr. Nelson’s credibility. Mr.
6 Faris testified that during the summer of 2016 Rain or Shine did, on average, four gutter
7 jobs per month. (Farias deposition, page 15, lines 13-22; page 16, lines 8-10; page 28,
8 lines 18-23; page 29, lines 14-25) Of the estimate 20 or so gutter jobs done during the
9 relevant period Mr. Nelson would come to the Warner house to pick up the gutter van
10 probably less than one-third of those jobs, and by inference, therefore, certainly more
11 than once as testified to by Mr. Nelson. (Id) On those days Mr. Nelson would typically
12 arrive to pick up the gutter van around 8:00 am. (Farias deposition, page 30, lines 1-4)
13 According to Mr. Farias, Mr. Nelson would call ahead to make certain that he could
14 enter the backyard safely, that Roscoe would not be in the yard. Upon arrival, Mr.
15 Nelson would knock on the front door “to make sure the dog was inside somewhere.”
16 (Farias deposition, page 63, line 25 – page 64, line 13) No doubt Mr. Nelson did that
17 because he had been told by Mr. Farias that the dog was good with his kids, but angry
18 with strangers. (Farias deposition, page 58, lines 12-23)

19 To celebrate their wedding anniversary, Angel and Cassandra made reservations
20 to spend the last weekend of October 2016 at Ocean Shores. Mr. Nelson was aware of
21 their plans. (Farias deposition, page 41, lines 12-23) He knew that Roscoe would be at
22 the home in their absence. He also knew that the dog acted aggressively around
23 strangers, having witnessed Roscoe’s aggressive behavior first-hand.
24
25
26

1 The attack itself defies description in terms of its' incredibly violent nature and
2 its' duration. Felicia suffered deep open wounds on both arms, both legs, her torso, and
3 a large abrasion on her neck. It took almost 100 metal staples to close all her wounds.
4 She is left with severe residual scarring and significant left upper extremity functional
5 residuals.

6 II. ISSUE

7 Are Defendants Nelson Liable To Plaintiff Felicia Hambrick Under Landowner
8 Owner Liability Rules?

9 III. MATERIALS RELIED UPON

10 Plaintiff relies up the following materials in opposition to Defendants Nelson's
11 Motion for Summary Judgment:

- 12 • Declaration of David A. Bufalini with excerpts from the depositions of
13 Tim Nelson, and Angel Farias
- 14 • This Memorandum of Authorities

15 IV. LEGAL ARGUMENTS

16 A. Summary Judgment Rules

17 This court is well-aware of the basic rules applicable to motions for summary
18 judgment. The moving party must demonstrate that the evidence presented and all
19 reasonable inferences from that evidence, even when viewed in the light most favorable
20 to the non-moving party, present no issues of material fact and that they are entitled to
21 judgment as a matter of law. This court must draw all reasonable inferences from the
22 facts in the light most favorable to Felicia Hambrick. See *Hisle v. Todd Pac. Shipyards*
23 *Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004). Summary judgment is only appropriate if
24 this court can say that no genuine issues of material fact exist and the Nelsons entitled to
25
26

1 judgment as a matter of law. *CR 56(c)*.

2 **B. Landowner Liability To Social Invitees/Licensees**

3 **(1) Control of the premises**

4 It is undisputed that the Nelsons owned and controlled the home where Roscoe
5 was kept and where Felicia Hambrick was mauled. As the property owners the Nelsons
6 had the legal right to control the use of the property, including whether or not tenants of
7 the property would be allowed to keep a known dangerous aggressive pit bull on the
8 premises. Their right to exercise control is illustrated by the Rental Agreement under
9 which the Clarks were occupying the property. Their Rental Agreement speaks
10 specifically to maintaining pets on the property.¹ The one in effect on the date of the
11 attack permitted pets. The one executed after the attack precluded keeping pets on the
12 property. There is no question that the Nelsons retained the right to exercise that control
13 throughout the relevant period.
14

15 **(2) Felicia Hambrick's Status**

16 Felicia Hambrick was a "social guest" at the Nelson's rental property when she
17 was attacked. *WPI 120.08.01*.

18 **(3) Duty Owed**

19 The duty owed to Felicia Hambrick by the Nelsons is defined by the Restatement
20 (Second) of Torts, Sec. 342, adopted in Washington in *Memel v. Reimer*, 85 Wn.2d 685,
21 538 P.2d 517 (1975):
22

23 A possessor of land is subject to liability for physical harm caused to
24 Licensees by a condition on the land on the land if, but only if,

25 (a) The possessor knows or has reason to know of the condition and

26 ¹ See Rental Agreements attached to Bufalini Declaration

1 should realize that it involves an unreasonable risk of harm to such
2 licensees, and should expect that they will not discover or realize the
3 danger, and

4 (b) he fails to exercise reasonable care to make the condition safe, or to
5 warn the licensees of the condition and the risk involved, and

6 (c) the licensees do not know or have reason to know of the condition
7 and the risk involved.

8 The Restatement rule is expressed in *WPI 120.02.01*:

9 An owner of premises owes to a social guest a duty of ordinary care in
10 connection with dangerous conditions of the premises which the owner
11 has knowledge or should have knowledge and of which the social guest
12 cannot be expected to have knowledge.

13 **(4) Breach of Duty**

14 The plaintiff agrees that the Nelsons are not liable to her under landlord/tenant
15 law. Rather, she argues that the Nelsons are liable to her under landowner liability law.
16 This theory of liability was recognized and accepted in *Oliver v. Mero*, 194 Wash.App.
17 532, 377 P.3d 265 (2016) and applied to a claim arising from a dog attack. While the
18 plaintiff in that case occupied the status of a business invitee the Court's discussion
19 included a review of the facts that go to the issues present in the instant case.

20 In *Oliver*, plaintiff was attacked by a dog that was owned by a friend of the
21 landowner, and present inside a vehicle on the property. The Court's discussion of the
22 requisite "notice" issue is applicable here because there is the same "notice" element
23 when the claimant is a social guest. The court stated at page 271,

24 Regarding whether Mero knew of the danger Scrapy posed, Mero testified in
25 his deposition that he knew Scrapy to bark at passing strangers and let them
26 know they "shouldn't go near that vehicle." CP at 207. Mero also testified that he
27 avoided approaching vehicles when Scrapy was in them. This evidence raises a
28 question of material fact about whether Mero knew Scrapy posed an
29 unreasonable risk of harm.

1 Almost identical facts exist in the present case, referenced in the facts outlined
2 above. Tim Nelson knew that Roscoe barked aggressively at strangers. Roscoe barked at
3 him during the one encounter he has admitted to. He acknowledged the aggressive
4 behavior of pit bulls generally, and Roscoe specifically.

5 Farias testified that Nelson avoided entering the back yard until he knocked on
6 the front door and confirmed that Roscoe was in the house and not in the yard during
7 those times that he was at the Warner street property to pick up the gutter van. He did so
8 because he had been told by Angel Farias that Roscoe was "angry" when he would see
9 strangers.
10

11 As it did in *Oliver*, supra, this evidence raises a genuine issue of material fact
12 about whether Tim Nelson knew that Roscoe presented an unreasonable risk of harm to
13 social guests who entered the Nelson's property.

14 The *Oliver* court next addressed the issue of whether or not defendant knew or
15 should have known that plaintiff would not realize the danger presented by the dog. The
16 court stated,
17

18 Regarding whether Mero should expect that Oliver would not realize or protect
19 himself against Scrappy's danger, Mero testified that it was unusual for Cook to
20 be present at the shop. Oliver had never seen Scrappy at the shop. This evidence
21 raises a question of material fact about whether Mero should have expected
22 that Oliver would not discover or realize Scrappy's danger.

23 Here, while Felicia Hambrick knew of Roscoe's aggressive behavior, she was
24 assured that the dog would be kept away from her while babysitting for Angel and
25 Cassandra. The danger existed for any stranger at the home and in the face of a promise
26 that the dog would be kept confined there is a question of material fact whether Nelson
should expect that a social guest would realize the danger in the face of a promise to

1 confine the dog. Was it foreseeable that the dog might escape confinement, or be
2 released from confinement while a stranger was in the house? Reasonable minds could
3 certainly conclude that it was.

4 The *Oliver* court next addressed the issue of whether the property owner
5 defendant exercised reasonable care to protect the plaintiff/invitee from the danger
6 presented by the subject dog. Reviewing the applicable facts, the Court stated

7
8 Regarding whether Mero failed to exercise reasonable care to protect Oliver from
9 Scrapy, Mero was aware that he and Cook had left Scrapy in the truck at the shop with the
10 window down, where Scrapy could lunge out to attack Oliver. This evidence raises a
11 question of material fact about whether Mero failed to protect Oliver from the danger he
12 knew Scrapy posed.

13
14 Viewing these facts in the light most favorable to Oliver, there is a genuine issue of
15 material fact regarding whether Mero breached a duty of care to Oliver as an invitee.
16 Therefore, summary judgment was inappropriate on this claim.

17
18 As in *Oliver*, this court must weigh the facts “in the light most favorable” to
19 Felicia Hambrick. Mr. Nelson was aware that Roscoe was a dangerous breed that acted
20 aggressively toward strangers. It had acted aggressively towards him. He knew that he
21 had to avoid the dog and took steps to make sure that at those times when he had to enter
22 the property the dog was confined and kept away from him. He knew that Angel and
23 Cassandra were going to leave town for the weekend. A reasonable inference from the
24 totality of the circumstances is that Tim Nelson knew that the dog posed a risk of
25 extreme injury, or worse, to strangers legally entering the property.

26
**C. When There Are Witness Credibility Issues Summary Judgment Should
Not Be Granted**

When there is an issue of credibility relating to a material witness summary
judgment is inappropriate.

Summary judgment should not be granted when the credibility of a
material witness is at issue. *Balise v. Underwood*, 62 Wash.2d 195, 200, 381
P.2d 966 (1963); *Powell v. Viking Ins. Co.*, 44 Wash.App. 495, 503, 722 P.2d

1 134 (1986). Summary judgment also may not be appropriate when material facts
2 are particularly within the knowledge
3 of the moving party. *Felsman v. Kessler*, 2 Wash.App. 493, 496–97, 468 P.2d
4 691, review denied, 78 Wash.2d 994 (1970).

5 *Gingrich v. Unigard Sec. Ins. Co.*, 57 Wash.App. 424, 428–29, 788 P.2d 1096, 1099
6 (1990).

7 Here, defendant Tim Nelson’s credibility is at issue. His testimony on key issues
8 stands in direct contrast to the testimony of Angel Farias. For example, Nelson testified
9 he only was at the Warner property once or twice per year.² He testified that he was only
10 there once after Roscoe was taken into the home. Mr. Nelson attempts to cast himself as
11 really having no information about Roscoe, or about any thoughts or concerns he might
12 have had about allowing his tenants to keep the dog on his property.

13 Contrast the testimony of Angel Farias.³ He has testified that Mr. Nelson was at
14 the home at times to pick up the gutter van. on more than one occasion. Mr. Farias
15 testified that Tim Nelson did express concerns about pit bulls generally and offered
16 comments after his encounter with the dog about its’ aggressive “guard dog” nature. Mr.
17 Farias also testified that Mr. Nelson’s concerns about Roscoe prompted him to call
18 ahead to make sure Roscoe was confined in the house on days he was there to retrieve
19 the gutter van.

20 The obvious disconnect between Mr. Farias’ testimony based on his personal
21 knowledge of his conversations with Tim Nelson and his personal observations of Tim
22 Nelson’s concerns about his own safety when he had to enter the back yard bring
23 Nelson’s credibility into question on one of the, if not, the central issue in the case. The
24

25
26 ² See Bufalini Declaration with Nelson deposition excerpts.

³ See Bufalini Declaration with Nelson deposition excerpts.

1 jury should be allowed to hear the testimony of Nelson and Farias and determine
2 whether or not Tim Nelson had information that would lead a reasonable property owner
3 to have the dog removed from his property. That issue should not be resolved by this
4 motion. Similar facts led the Court of Appeals to reverse the trial court's summary
5 judgment order in *Oliver*, supra. This court should deny this motion.

6 **V. CONCLUSION**

7 For the foregoing reasons Defendants Nelson's Motion for Summary Judgment
8 should be denied.

9 DATED this 17th day of August, 2018.

10
11 LAW OFFICES OF DAVID A. BUFALINI PS, INC.

12
13 By: David A. Bufalini
14 Attorney for Plaintiff

WSBA#08262

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY under penalty of perjury that on the 20th day of August 2018,

I sent for delivery a true and correct copy of:

1. PLAINTIFF'S OPPOSITION MEMORANDUM IN RESPONSE TO DEFENDANT NELSON'S MOTION FOR SUMMARY JUDGMENT;
2. DECLARATION OF DAVID BUFALINI and ATTACHMENTS;
3. ORDER DENYING DEFENDANT NELSON'S MOTION FOR SUMMARY JUDGMENT [PROPOSED].

by the method indicated below, and addressed to the following:

Johnathan R. Missen, WSBA #42689
Law Offices of Sweeney Heit & Dietzler
1001 4th Avenue, Ste. 3300
Seattle, WA 98154

<input type="checkbox"/>	U.S. MAIL-Postage Pre-Paid
<input type="checkbox"/>	LEGAL MESSENGER
<input checked="" type="checkbox"/>	EMAIL
<input type="checkbox"/>	HAND DELIVERED
<input type="checkbox"/>	FACSIMILE

Ronald and Martha Clark
6408 S Warner Street
Tacoma, WA 98409-4007

<input checked="" type="checkbox"/>	U.S. MAIL-Postage Pre-Paid
<input type="checkbox"/>	LEGAL MESSENGER
<input type="checkbox"/>	EMAIL
<input type="checkbox"/>	HAND DELIVERED
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/s/ Anjuli Messmer

Anjuli Messmer

EXHIBIT 3

0117



17-2-12086-9 51966280 ORDYMT 09-05-18



The Honorable Helen Whitener
Trial Date: Oct. 8, 2018
Hearing Date: Aug. 31, 2018

9/6/2018 7277

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

FELICIA HAMBRICK, a single woman,

Plaintiff,

vs.
RONALD CLARK and MARTHA
CLARK, husband and wife; DONETTE J.
NELSON and TIMOTHY NELSON, wife
and husband,

Defendants.

Case No.: 17-2-12086-9

ORDER DENYING
DEFENDANT NELSON'S
MOTION FOR SUMMARY
JUDGMENT

[PROPOSED]

THIS MATTER having come on regularly before this Court on Defendant
NELSON's Motion for Summary Judgment the Court having considered the records and
files herein, including:

1. Defendant Nelson's Motion for Summary Judgment;
2. Declaration of Johnathan Missen and exhibits thereto;
3. Proposed Order Granting Defendant Nelson's Motion for Summary Judgment;
4. Plaintiff's Response to Defendant Nelson's Motion for Summary Judgment;
5. Declaration of David A. Bufalini in Opposition to Defendant Nelson's
Motion for Summary Judgment;

ORDER DENYING DEFENDANT NELSON'S
MOTION FOR SUMMARY JUDGMENT [PROPOSED] - 1

LAW OFFICES OF
DAVID A. BUFALINI
A PROFESSIONAL SERVICE CORPORATION
2107 N. 30th Street
Tacoma, WA 98403-3318
Telephone (253) 272-2100

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6. Proposed Order Denying Defendant Nelson's Motion for Summary

Judgment;

7. Defendant Nelson's Reply to Plaintiff's Response;

8. ~~Supplemental Declaration~~ ~~DECLARATION~~ ~~Supplied~~

9. _____;

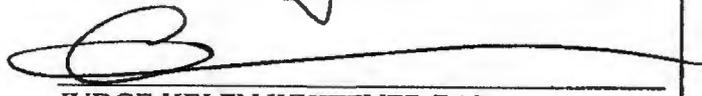
10. _____;

and having heard the argument of counsel, and being in all things duly advised, it is now, therefore,

ORDERED, ADJUDGED AND DECREED as follows:

THE COURT HEREBY DENIES Defendant Nelson's Motion for Summary Judgment for dismissal of plaintiff's claims against defendants Nelson.

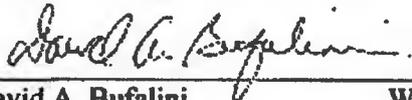
Done in open court this 3rd day of August, 2018.



JUDGE HELEN WHITENER D11

Presented by:

LAW OFFICES OF DAVID A. BUFALINI PS, INC.



By: David A. Bufalini
Attorney for Plaintiff

WSBA#08262



Jonathan Misen, WSBA #42689
Attorney for the Nelson Defendants

RECEIVED
2019 OCT -7 AM 11:45
TODD A. BOWERS & ASSOC

WASHINGTON STATE SUPERIOR COURT FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,
Plaintiff,
vs.
DAVID GONZALEZ SANDOVAL et al,
Defendants.

Case No. 18-2-08290-31

CERTIFICATE OF SERVICE

I certify that on today's date I served via U. S. Mail, postage prepaid to:

Ofelia A. Granados
Todd A. Bowers & Associates
901 5th Avenue, Ste 830
Seattle, WA 98164

Cassandra Lopez de Arriaga
1812 Hewitt Ave., Ste 204
Everett, WA 98201

the following document(s):

- PLAINTIFF'S REPLY TO DEFENDANTS HERNANDEZ'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION;
- DECLARATION OF DEREK K. MOORE IN SUPPORT OF PLAINTIFF'S REPLY TO DEFENDANTS HERNANDEZ'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION, With Exhibits Thereto;

Dated this 4th day of October, 2019.

BISHOP LEGAL


Derek K. Moore, WSBA No. 37921
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

PAGE 1 of 1

 **bishoplegal**
19743 First Avenue South
Normandy Park, WA 98148-2401
Tel: (206) 592-9000
Fax: (206) 592-9001

EXHIBIT 12

Hon. Joseph P. Wilson
Hearing: Wednesday, January 15, 2020 at 9:30 AM
With Oral Argument
Moving Party

RECEIVED
JAN 06 2020
TODD A. BOWERS & ASSOC

Superior Court of Washington
County of Snohomish

MARIA JESUS SARALEGUI BLANCO

Plaintiff/Petitioner(s)

vs.

DAVID GONZALEZ SANDOVAL et al.

Defendant/Respondent(s)

CASE NO. 18-2-08290-31

CALENDAR NOTE: (NTC)

CIVIL MOTIONS – JUDGE’S CALENDAR

Unless otherwise provided by applicable rule or statute, this form and the motion must be filed with the Clerk not less than five (5) court days preceding the date requested.

**SEE “WHERE TO NOTE VARIOUS MATTERS” ON PAGE 2, to determine where matters are to be set.

A. PRESIDING JUDGE’S CALENDAR

Monday – Friday at 9:00 a.m.
Department as assigned

Date requested: _____

(mm/dd/yyyy)

Nature of hearing: _____

(Confirm hearing at 425-388-3587 or online at
www.snohomishcountywa.gov/Confirmations)

B. JUDGE’S CIVIL MOTIONS CALENDAR

Tuesday – Friday at 9:30 a.m.
Department as assigned

Date requested: 01/15/2020

(mm/dd/yyyy)

Nature of hearing: Motion to Certify for Appeal

(Confirm hearing at 425-388-3587 or online at
www.snohomishcountywa.gov/Confirmations)

C. JUDGE’S PERSONAL CALENDAR

(Special set hearings to be heard by a specific Judge)

The hearing date and time must be scheduled through the Judge’s law clerk. See information on how to contact the law clerk on page 2.

Date requested: _____

(mm/dd/yyyy)

Nature of hearing: _____

(Confirm hearing by calling the Judge’s law clerk. See information on how to contact the law clerk on page 2)

NOTE: When picking a hearing date, DO NOT schedule your hearing on a court holiday. A list of court holidays can be found at <http://www.snohomishcountywa.gov/354/County-Holidays>

WARNING! CONFIRMATION REQUIRED: In order for the matter to be heard, the moving party **MUST CONFIRM** their motion by calling 425-388-3587 or online at www.snohomishcountywa.gov/Confirmations. For confirmation deadlines and additional information see confirmations notes below.

Failure to notify the Court of a continuance or strike of a confirmed matter may result in sanctions and/or terms. SCLCR 7.

This form cannot be used for trial settings. SCLMAR 2.1 AND SCLCR 40(b).

CERTIFICATE OF SERVICE BY MAIL:

I hereby certify that a copy of this document and all documents listed on page 3 were mailed to the parties listed on page 3 on:

Date (mm/dd/yyyy): 01/03/2020

Printed name: Derek K. Moore

Noted by:

Name: Derek K. Moore 

WSBA # 37921

Attorney for: Plaintiff/Petitioner Defendant/Respondent

FOR SELF-REPRESENTED (PRO SE) PARTIES:

Noted by: Petitioner Respondent

If service is required, you must also file a RETURN OF SERVICE. Failure to do so may result in your hearing not being heard.

(Printed name)

Please check in the Law Library for more information regarding service.

(Address)

(Phone number)

(Email address)

WHERE TO NOTE VARIOUS MATTERS:

For the most current information on where to calendar various matters see Administrative Order 11-19 which can be found online at www.snohomishcountywa.gov/1354/Administrative-Orders

COMMISSIONER CIVIL MOTIONS: The following are heard on the Court Commissioner’s Civil Motion Calendar: Defaults, Discovery Motions and enforcement thereof; Supplemental Proceedings; Unlawful Detainer or Eviction & Receiver actions; Motions to Amend Pleadings and Petitions for Restoration of the Right to Possess Firearms. Probate and Guardianship matters are set on the Probate or Guardianship calendar.

PRESIDING JUDGE’S MOTION CALENDAR: The following motions are heard on Presiding Judge’s Motion Calendar: trial continuance; pre-assignment (heard without oral argument); expedited trial date; and motions regarding timeliness of demand for jury trial.

RALJ HEARINGS: RALJ hearings are noted on the Tuesday morning Post Conviction Motions calendar @ 10:30 a.m. in criminal hearings, room C304.

****All other civil motions are heard on the Judge’s Civil Motions Calendar****

CONFIRMATIONS NOTES: All matters set on the Judge’s Civil Motion Calendar, Presiding Judge’s Motion Calendar or Court Commissioner Calendars must be confirmed prior to the hearing. Motions for Summary Judgment set on the Judge’s Civil Motions calendar must be confirmed no later than 12:00 noon three (3) court days prior to the hearing; all other motions set on the above calendars must be confirmed no later than 12:00 noon two (2) court days prior to the hearing. During the confirmation window, confirmations are accepted for a 24 hour period beginning at 12:01 p.m. When determining your confirmation deadline, do not count weekends or court holidays. Confirmations can be made by calling 425-388-3587 or online at www.snohomishcountywa.gov/Confirmations.

All matters specially set on a Judge’s personal calendar must be set/confirmed/continued/stricken through the Judge’s law clerk. Adoptions, reasonableness hearings and minor settlements are specially set on the Judge’s Civil Motions calendar each Monday and are confirmed through the Civil Motions Judge’s law clerk. Judge’s calendar rotations and law clerk contact information is available online at <http://wa-snohomishcounty.civicplus.com/1338/Calendars-and-Schedules> or by calling Court Administration at 425-388-3421.

File Calendar Notes at:
Snohomish County
Superior Court Clerk’s Office
3000 Rockefeller Ave M/S 605
Everett, WA 98201

All Motions Heard At:
Snohomish County
Superior Court
3000 Rockefeller Ave
Everett, WA 98201

Please print the names, addresses etc. of all other attorneys in this case and/or all other parties requiring notice.

Name: Ofelia A. Granados WSBA#: 53917
Address: Todd A. Bowers & Associates Phone # 206-521-5000 Ext. _____
901 5th Avenue, Ste 830
Seattle, WA 98164
Attorney for: (CHECK ONE)
 Petitioner/Plaintiff Respondent/Defendant
 Pro Se

Name: Cassandra Lopez de Arriaga WSBA#: 34318
Address: 1812 Hewitt Ave., Ste 204 Phone # 425-492-5343 Ext. _____
Everett, WA 98201
Attorney for: (CHECK ONE)
 Petitioner/Plaintiff Respondent/Defendant
 Pro Se

Name: _____ WSBA#: _____
Address: _____ Phone # _____ Ext. _____
Attorney for: (CHECK ONE)
 Petitioner/Plaintiff Respondent/Defendant
 Pro Se

Name: _____ WSBA#: _____
Address: _____ Phone # _____ Ext. _____
Attorney for: (CHECK ONE)
 Petitioner/Plaintiff Respondent/Defendant
 Pro Se

Name: _____ WSBA#: _____
Address: _____ Phone # _____ Ext. _____
Attorney for: (CHECK ONE)
 Petitioner/Plaintiff Respondent/Defendant
 Pro Se

List all documents mailed: _____

- Note for Motion;
- PLAINTIFF'S MOTION TO CERTIFY ORDER GRANTING DEFENDANTS HERNANDEZ'S MOTION FOR SUMMARY JUDGMENT, with Declaration in Support and Exhibits Thereto;
- [PROPOSED] GRANTING PLAINTIFF'S MOTION TO CERTIFY

Hon. Joseph P. Wilson
Hearing: Wednesday, January 15, 2020 at 9:30 AM
With Oral Argument
Moving Party

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Case No. 18-2-08290-31

Plaintiff,

PLAINTIFF'S MOTION TO CERTIFY
ORDER GRANTING DEFENDANTS
HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

I. RELIEF REQUESTED

Plaintiff Maria Saralegui Blanco respectfully requests this Court certify the summary judgment dismissal of her claims against Defendants Hernandez for discretionary review under RAP 2.3 (b) (4) and for a finding under RAP 2.2 (d) that there is no just reason to delay appeal.

II. STATEMENT OF FACTS

The pleadings on file and the record of proceedings herein support the following facts:

A. Facts of the subject pit bull attack and Defendants' liability

On May 8, 2018, Plaintiff Maria Saralegui Blanco was viciously attacked by a pit bull while providing Bible studies to Elvia Gonzalez, mother of defendant David Gonzalez Sandoval.

1 on the driveway of their home. Ms. Blanco was born in February of 1942, was 76 years old at
2 the time of the attack and will turn 78 years old in February of 2020.¹ The pit bull bit off much
3 of her face, and as she lay on the ground bleeding, she watched the dog eat her right ear.

4 The subject pit bull was owned by defendant David Gonzalez Sandoval, who lives on the
5 subject premises with his wife, defendant Alejandra Barajas Gonzalez.² They rent their home
6 from defendants Ernesto and Teri Hernandez. The pit bull had escaped from a poorly built and
7 rotten fence. Defendant Ernesto Hernandez knew that defendant David Gonzalez Sandoval
8 owned and kept the pit bull on his property and did so with his permission. Defendant Ernesto
9 Hernandez also knew and permitted defendant David Gonzalez Sandoval to build the fence on
10 his property. Although defendant Ernesto Hernandez knew the pit bull was there, and had been
11 to the property for yearly inspections, with testimony showing he went by the property on a daily
12 basis, Defendants Hernandez admittedly did nothing to ensure the fence was adequate to contain
13 the dog and protect the public. Facts regarding the subject pit bull attack and Defendants'
14 liability are set forth in detail in Plaintiff's Response to Defendants Hernandez's Motion for
15 Summary Judgment, with the declaration in support and exhibits thereto, which are hereby
16 incorporated by reference herein.

17 **B. Procedural history**

18 Defendants Hernandez moved for summary judgment dismissal, arguing that they owed
19 no duty under *Frobig v. Gordon*, 124 Wn.2d 732, 881 P.2d 226 (1994). Plaintiff does not
20 contend that Defendants Hernandez are subject to strict liability for the dog bite attack, but that
21 they owed Plaintiff duties to an invitee on premises under Washington law including *Degel v.*

22 _____
23 ¹ Maria Blanco deposition, Page 6:25 – 7:1 (Ex. 2 to Moore Decl. in Support of Motion to Certify)

24 ² Defendant Alejandra Barajas Gonzalez was named in the complaint as Alejandra Martinez. Plaintiff is filing a motion to amend the pleadings and case caption, noted to be heard along with this motion.

1 *Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 51, 914 P.2d 728 (1996) and *Oliver v. Cook*, 194
2 Wn. App. 532, 377 P.3d 265 (Div. 2, 2016). The *Oliver* court distinguished *Frobig* and found
3 “that strict liability for dog bites is a separate theory from premises liability” and that there is no
4 “dog bite exception to ordinary premises liability rules.” *Oliver v. Cook*, 194 Wn. App. at 545
5 (emphasis added). Plaintiff argued that not only was the subject pit bull a “condition of the land”
6 as established in *Oliver*, but that the inadequate fence that failed to contain the pit bull was also a
7 dangerous condition of the land that proximately caused Plaintiff’s injuries, for which
8 Defendants Hernandez owed Plaintiff a duty to prevent.

9 Defendants Hernandez’s summary judgment motion was heard by Judge Janice Ellis,
10 who was then the Civil Motions Judge of this Court, on September 10, 2019. Judge Ellis
11 disregarded the holding in *Oliver* and found that Defendants Hernandez were entitled to
12 summary judgment under *Frobig*. On September 17, 2019, Plaintiff filed her Motion for
13 Reconsideration, and noted it to be heard without oral argument on October 10, 2019. This was
14 done after e-mail consultation with the Court and Defendants’ counsel.³ Defendants Hernandez
15 filed a response to Plaintiff’s Motion for Reconsideration, to which Plaintiff filed a Reply.
16 Despite several email inquiries to the Court requesting a ruling, to which Plaintiff’s counsel has
17 not received a response, no ruling has been made to date.⁴

18 While Defendants Gonzalez remain in this case and are subject to strict liability for
19 Plaintiff’s damages from the multiple savage bites of their pit bull, they are insolvent and
20

21
22 ³ This email chain, as well as Plaintiff’s subsequent email requests for a ruling on her motion to continue, are
submitted herewith as Ex. 1 to Moore Decl. in Support of Motion to Certify.

23 ⁴ Id.; Moore Decl. in Support of Motion to Certify ¶ 3; For the current Civil Motions Judge’s reference, the briefing
24 on Plaintiff’s Response to Defendants Hernandez’s Motion, Plaintiff’s Motion for Reconsideration, and Plaintiff’s
Reply to Defendants Hernandez’s Response thereto are submitted herewith as Ex. 3-5 to Moore Decl. in Support of
Motion to Certify.

1 uninsured and may be headed for bankruptcy regardless of any judgment against them in this
2 case,⁵ and their attorney is attempting to withdraw as their counsel of record.⁶

3 **III. STATEMENT OF ISSUES**

4 Whether Plaintiff's request for discretionary review under RAP 2.3 (b) (4) and for a
5 finding under RAP 2.2 (d) that there is no just reason to delay appeal of the summary judgment
6 dismissal of Plaintiff's claims against Defendants Hernandez should be granted where there are
7 conflicting appellate court decisions of controlling Washington law including *Frobig v. Gordon*,
8 124 Wn.2d 732, 881 P.2d 226 (1994) and *Oliver v. Cook*, 194 Wn. App. 532, 377 P.3d 265 (Div.
9 2, 2016), and where forcing Plaintiff to proceed to judgment against the remaining Defendants
10 Gonzalez, who are insolvent and uninsured, speak limited English, and are likely to proceed *pro*
11 *se*, would be a vast and futile waste of resources of both the Court and the 78-year-old Plaintiff.

12 **IV. EVIDENCE RELIED ON**

13 In support of his motion, Plaintiff relies on the report of proceedings herein and the
14 pleadings and papers on file herein, including:

- 15 • Plaintiff's Response to Defendants Hernandez's Motion for Summary Judgment, with the
16 declaration in support and exhibits thereto;
- 17 • Plaintiff's Motion for Reconsideration;
- 18 • Plaintiff's Reply to Defendants Hernandez's Response to Plaintiff's Motion for
19 Reconsideration with the declaration in support and exhibits thereto; and
- 20 • The Declaration of Derek K. Moore in support of this motion, with exhibits thereto.

21
22 ⁵ See Declaration of David Gonzalez Sandoval and exhibits thereto submitted in support of Defendants Gonzalez
and Martinez Response to Motion for Summary Judgment and Motion to Join.

23 ⁶ See "Notice of Withdraw" [sic] of Cassandra Lopez de Arriaga filed December 2, 2019. Plaintiff submits that the
24 requirements for her withdrawal under CR 71 have not yet been met. However, if she successfully withdraws,
unless Plaintiff's requested relief is granted, Plaintiff will be forced to try a case to judgment against insolvent, *pro*
se, defendants with limited English ability.

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V. AUTHORITY

Plaintiff seeks certification to the Supreme Court of Washington or the Washington Court of Appeals under Rule of Appellate Procedure 2.3 (b)(4), which provides for discretionary review where:

The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

RAP 2.3 (b)(4). In this case, there is a controlling question of law as to whether landlords such as Defendants Hernandez owe duties to invitees on premises such as Plaintiff as described in the 2016 case of *Oliver v. Cook*, 194 Wn. App. 532, 545, 377 P.3d 265 (Div. 2, 2016) and under longstanding premises liability law including *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 51, 914 P.2d 728 (1996), or whether there is a “dog bite exception to ordinary premises liability rules” under *Frobig v. Gordon*, 124 Wn.2d 732, 881 P.2d 226 (1994) that would apply not only to the pit bull, but to the flimsy weather-beaten fence that was inadequate to contain the animal. This split in authority demonstrates there is a substantial ground for difference of opinion on this issue.

Immediate review of the order dismissing Plaintiff’s claims against Defendants Hernandez will materially advance the ultimate termination of this litigation. It would be a vast and futile waste of resources of both this Court and the 78-year-old Plaintiff to force her to proceed to trial and final judgment against the remaining Defendants Gonzalez, who are insolvent and uninsured, speak limited English, and are likely to proceed *pro se*, in order to appeal the dismissal of her claims against Defendants Hernandez, who have insurance and assets available for Plaintiff to recover. A successful appeal would also likely result in a settlement without the need for any trial in this matter.

1 Plaintiff also seeks a written finding that there is no just reason to delay appeal under
2 RAP 2.2 (d), which provides:

3 Multiple Parties or Multiple Claims or Counts. In any case with multiple parties
4 or multiple claims for relief, or in a criminal case with multiple counts, **an appeal**
5 **may be taken** from a final judgment that does not dispose of all the claims or
6 counts as to all the parties, but only **after an express direction by the trial court**
7 **for entry of judgment and an express determination in the judgment,**
8 **supported by written findings, that there is no just reason for delay. The**
9 **findings may be made at the time of entry of judgment or thereafter** on the
10 court's own motion or on motion of any party. The time for filing notice of appeal
11 begins to run from the entry of the required findings. In the absence of the
12 required findings, determination and direction, a judgment that adjudicates less
13 than all the claims or counts, or adjudicates the rights and liabilities of less than
14 all the parties, is subject only to discretionary review until the entry of a final
15 judgment adjudicating all the claims, counts, rights, and liabilities of all the
16 parties.

17 RAP 2.2 (d) (emphasis added). For the reasons described above, as well as Plaintiff's advanced
18 age, such written findings are appropriate. This Court has already entered final judgment with
19 respect to Plaintiff's claims against Defendants Hernandez. Since the Court has not ruled on
20 Plaintiff's Motion for Reconsideration, which was noted for October 10, 2019, entry of an order
21 with these written findings is necessary to avoid any argument about timeliness of the notice of
22 appeal.

23 VI. CONCLUSION

24 For the aforesaid reasons, Plaintiff respectfully requests that this Court certify the
summary judgment dismissal of her claims against Defendants Hernandez for discretionary
review under RAP 2.3 (b) (4) and for a finding under RAP 2.2 (d) that there is no just reason to
delay appeal.

//

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Dated this 3rd day of January, 2020.

BISHOP LEGAL



Derek K. Moore
WSBA No. 37921
Attorney for Plaintiff

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

Case No. 18-2-08290-31

DECLARATION OF DEREK K.
MOORE IN SUPPORT OF
PLAINTIFF'S MOTION TO CERTIFY
ORDER GRANTING DEFENDANTS
HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT

I, Derek K. Moore, declare and state as follows:

1. I am giving this Declaration in accordance with RPC 3.7(a).
2. I am an attorney at Bishop Law Offices, P.S. d/b/a Bishop Legal who represents the Plaintiffs in the above captioned lawsuit.
3. Attached hereto as **Exhibit 1** is a true and correct copy of the email correspondence between me, the Court, and counsel for defendants regarding Plaintiff's Motion for Reconsideration of the September 10, 2019 Order granting Defendants Hernandez's Motion for Summary Judgment. As indicated and as requested by the Court, I filed the motion and noted it to be heard without oral argument on October 10, 2019. To date, no ruling has

1 been issued, and I have not received any responses to my requests for the status of the
2 ruling.

- 3 4. Attached hereto as **Exhibit 2** are true and correct copies of Pages 1-7 to the January 22,
4 2019 deposition of plaintiff Maria Jesus Saralegui Blanco, with the day of her birth and
5 exact street address redacted.
- 6 5. Attached hereto as **Exhibit 3** is a true and correct copy of Plaintiff's Response to
7 Defendants Hernandez's Motion for Summary Judgment, as previously filed, but not
8 including the declaration in support or the exhibits thereto, which are on file in this matter.
- 9 6. Attached hereto as **Exhibit 4** is a true and correct copy of Plaintiff's Motion for
10 Reconsideration of Order Granting Defendants Hernandez's Motion for Summary
11 Judgment, as previously filed.
- 12 7. Attached hereto as **Exhibit 5** is a true and correct copy of Plaintiff's Reply to Defendants
13 Hernandez's Response to Plaintiff's Motion for Reconsideration, as previously filed, but
14 not including the declaration in support or the exhibits thereto, which are on file in this
15 matter.

16 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
17 is true and correct and to the best of my knowledge, recollection and belief.

18
19 Dated this 3rd day of January, 2020, at Normandy Park, Washington.

20
21 BISHOP LEGAL


22 Derek K. Moore
23 WSBA No. 37921
Attorneys for Plaintiff

24
DECLARATION OF DEREK K. MOORE IN
SUPPORT OF PLAINTIFF'S MOTION TO
CERTIFY ORDER GRANTING DEFENDANTS
HERNANDEZ'S MOTION FOR SUMMARY
JUDGMENT - PAGE 2 of 2

 **bishoplegal**
19743 First Avenue South
Normandy Park, WA 98148-2401
Tel: (206) 592-9000
Fax: (206) 592-9001

EXHIBIT 13

Civil Motions Calendar
Date of Motion: January 15, 2020 at 9:30 a.m.
With Oral Argument
Nonmoving Party

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDREA MARTINEZ, and the marital
community comprised thereof, and ERNESTO
HERNANDEZ, TERI HERNANDEZ and the
marital community comprised thereof,

Defendants.

No. 18-2-08290-31

DEFENDANTS HERNANDEZ'S
RESPONSE TO PLAINTIFF'S MOTION
TO CERTIFY ORDER GRANTING
DEFENDANTS HERNANDEZ'S
MOTION FOR SUMMARY JUDGMENT

I. RELIEF REQUESTED

Defendants Hernandez, through undersigned counsel, respectfully requests this Court deny Plaintiff's Motion to Certify Order Granting Defendants Hernandez's Motion for Summary Judgment ("Plaintiff's Motion").

II. STATEMENT OF FACTS

This lawsuit arises from a dog bite incident that occurred on May 8, 2018, in Arlington, Washington. Defendants, Ernesto and Teri Hernandez, owned a property located at 6507 204th

DEFENDANTS HERNANDEZ'S RESPONSE TO
PLAINTIFF'S MOTION TO CERTIFY ORDER
GRANTING DEFENDANTS HERNANDEZ'S
MOTION FOR SUMMARY JUDGMENT - 1

TODD A. BOWERS & ASSOCIATES
901 5th Avenue, Ste 830
Seattle, WA 98164
TEL: (206) 521-5000
FAX: (855) 830-3808
**Employees of the Corporate Law Department
State Farm Mutual Automobile Insurance Company**

1 Street NE in Arlington, Washington. Defendants, David Gonzalez Sandoval and Alejandra
2 Martinez (“Codefendants”), rent the property from Defendants Hernandez and have resided on
3 the property for approximately four years. Codefendants owned a dog and kept the dog in a
4 fenced area on the property. Plaintiff, Maria Saralegui Blanco, went to Codefendants’ home, and
5 was bitten by their dog after he escaped from the fenced area.

6 The dog was not owned, kept or harbored by Defendants Hernandez. Defendants
7 Hernandez did not reside on or near the rental property. When Codefendants moved into the
8 home, they did not own the dog involved in the subject incident. Codefendants purchased the
9 dog without any involvement or influence from Defendants Hernandez and Defendants
10 Hernandez never helped care for the dog after its purchase. The dog involved in the subject
11 incident was owned and cared for by Codefendants only. The dog never exhibited vicious or
12 aggressive behavior, nor were any complaints received from any neighbors about the dog.
13 Codefendants installed a wire fence on their own approximately one year prior to the incident
14 and the dog had not escaped prior to the subject incident.

15 Defendant Hernandez moved for summary judgment on the basis that Defendants
16 Hernandez are not liable under Washington statutes, common law strict liability, and under
17 premise liability, citing multiple case law. On September 10, 2019, Judge Ellis considered all
18 the pleadings and heard oral arguments from all parties. After all parties rested, Judge Ellis
19 granted Defendants Hernandez’s Motion for Summary Judgment and provided a detailed
20 explanation for her finding, including her analysis of *Oliver v. Cook* and Plaintiff’s premise
21 liability theory. Subsequently, Plaintiff filed a Motion for Reconsideration and the present
22 motion.

1 **III. ISSUE PRESENTED**

2 Whether Plaintiff’s Motion should be denied where there is no substantial ground for a
3 difference of opinion on whether a landlord is liable to a tenant’s guest.

4 **IV. EVIDENCE RELIED UPON**

5 Defendants Hernandez rely on the pleadings and filings and the declaration of counsel,
6 attached for the court’s convenience hereto as Appendix A.

7 **V. ARGUMENT**

8 **A. There Is No Controlling Question Of Law Where There Is Substantial**
9 **Ground For A Difference Of Opinion.**

10 RAP 2.3(b)(4) requires the order involve a “controlling question of law as which there is
11 a substantial ground for a difference of opinion. . . .” In this case, there is no difference of
12 opinion as the law is well settled regarding a landlord’s liability for a dog bite and a landlord’s
13 duty to the guests of his tenants. Further, the cases that Plaintiff cites to do not create a question
14 of law that could lead to a difference of opinion. The *Degel v. Majestic Mobile Manor Inc.* case
15 involved a landlord’s duty to the tenants. *Degel v. Majestic Mobile Manor, Inc.*, 129 Wash.2d
16 43, 50, 914 P.2d 728 (1996). In *Oliver v. Cook*, there was no landlord liability analysis. It was
17 strictly whether a land owner owed his invitee a duty. *Oliver v. Cook*, 194 Wash.App. 532, 543-
18 45, 377 P.3d 265, 267 (2016). The courts are clear that only the owner of a dog can be held
19 liable for any injuries caused and have in fact rejected “alternative theories of liability” —
20 including premises liability — for dog bite injuries. *Briscoe v. McWilliams*, 176 Wn. App. 1010
21 (2013).

22 Judge Ellis considered these cases in making her decision and provided her analysis to
23 the parties prior to ruling, albeit Judge Ellis would be in a better position to recall the full details

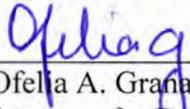
1 of her decision. There is no difference in opinion as to a landlord's liability, especially involving
2 a dog bite case. Therefore, Plaintiff's motion should be denied.

3 **VI. PROPOSED ORDER**

4 A proposed form of Order is attached hereto as Appendix B.

5
6 DATED this 8 day of January, 2020.

7 TODD A. BOWERS & ASSOCIATES

8
9 By: 

10 Ofelia A. Granados, WSBA #53917
11 Attorney for Defendants Hernandez
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DECLARATION OF SERVICE

I hereby declare under the penalty of perjury under the laws of the State of Washington that I have served a true and correct copy of the foregoing, except where noted, upon the individual(s) listed by the following means:

Snohomish County Superior Court Clerk
3000 Rockefeller Ave, M/S 605
Everett, WA 98201

UPS Overnight

Civil Motions Judge
Snohomish County Superior Court
3000 Rockefeller Ave, M/S 502
Everett, WA 98201

FedEx Overnight

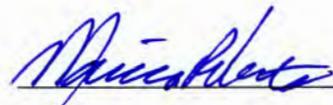
Derek K. Moore
Bishop Legal
19743 1st Avenue S
Normandy Park, WA 98148
derek@bishoplegal.com

U.S. Postal Service (First Class)

Cassandra Lopez de Arriaga
Cassandra Lopez de Arriaga Law Firm
1812 Hewitt Ave, Ste 204
Everett, WA 98201
cassandralopezlaw@gmail.com

U.S. Postal Service (First Class)

DATED: January 8, 2020

By:  _____

Name: Monica Roberts

Title: Legal Secretary

APPENDIX A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDREA MARTINEZ, and the marital
community comprised thereof, and ERNESTO
HERNANDEZ, TERI HERNANDEZ and the
marital community comprised thereof,

Defendants.

No. 18-2-08290-31

DECLARATION OF OFELIA
GRANADOS IN SUPPORT OF
DEFENDANT HERNANDEZ'S
RESPONSE TO PLAINTIFF'S MOTION
TO CERTIFY ORDER GRANTING
DEFENDANT HERNANDEZ'S MOTION
FOR SUMMARY JUDGMENT

Ofelia A. Granados declares as follows:

1. I am over the age of 18, have personal knowledge of all facts contained in this Declaration, and am competent to testify as a witness to those facts.

2. I am an attorney with Todd A. Bowers & Associates, the attorneys of record for Defendants Ernesto and Teri Hernandez in the above-captioned matter.

APPENDIX B

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDREA MARTINEZ, and the marital
community comprised thereof, and ERNESTO
HERNANDEZ, TERI HERNANDEZ and the
marital community comprised thereof,

Defendants.

No. 18-2-08290-31

[PROPOSED] ORDER DENYING
PLAINTIFF'S MOTION TO CERTIFY
ORDER GRANTING DEFENDANT
HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT

THIS MATTER, having come on duly for hearing of Plaintiff's Motion to Certify Order Granting Defendants Hernandez's Motion for Summary Judgment, Defendants Hernandez's response thereto, with its documents therein, if any, as well as any and all documents on file with the Court, it is hereby

ORDERED, ADJUDGED and DECREED that that Plaintiff's Motion to Certify Order Granting Defendants Hernandez's Motion for Summary Judgment be DENIED.

1 DATED this ____ day of _____, 2020

3 _____
JUDGE

4 Presented by:

5 TODD A. BOWERS & ASSOCIATES

7 By: _____

8 Ofelia A. Granados, WSBA #53917
9 Attorney for Defendants Hernandez

10 Approved as to form and
Notice of Presentation Waived:

11 BISHOP LEGAL

13 By: _____

14 Derek K. Moore, WSBA #37921
15 Attorney for Plaintiff Maria J. Saralegui-Blanco

16 CASSANDRA LOPEZ DE ARRIAGA LAW

17 By: _____

18 Cassandra Lopez de Arriaga, WSBA# 34318
19 Attorney for Codefendants Gonzalez and Martinez

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23
[PROPOSED] ORDER DENYING PLAINTIFF'S
MOTION TO CERTIFY ORDER GRANTING
DEFENDANT HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT - 2

TODD A. BOWERS & ASSOCIATES
901 5th Avenue, Ste 830
Seattle, WA 98164
TEL: (206) 521-5000
FAX: (855) 830-3808
Employees of the Corporate Law Department
State Farm Mutual Automobile Insurance Company

EXHIBIT 14

RECEIVED
2020 JAN 16 PM 1:27
TODD A. BOWERS & ASSOC.

Hon. Janice Ellis
Hearing: To Be Determined
With Oral Argument
Moving Party

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Case No. 18-2-08290-31

Plaintiff,

PLAINTIFF'S REPLY TO
DEFENDANTS HERNANDEZ'S
RESPONSE TO PLAINTIFF'S
MOTION TO CERTIFY ORDER
GRANTING DEFENDANTS
HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDRA MARTINEZ, and the marital
community comprised thereof, and
ERNESTO HERNANDEZ,
TERI HERNANDEZ and the marital
community comprised thereof,

Defendants.

Comes now Plaintiff Maria Saralegui Blanco in strict Reply to Defendants Hernandez's Response to Plaintiff's Motion to Certify Order Granting Defendants Hernandez's Motion for Summary Judgment as follows:

As described in Plaintiff's opening brief in her Motion to Certify, Certification is to the appellate Courts is appropriate under RAP 2.3 (b) (4) and RAP 2.2 (d). Defendants Hernandez fail to show, or even argue, that justice would be served by further delay in this matter by forcing 78 year-old plaintiff Maria Blanco to take this case to a trial against the uninsured, insolvent, and likely *pro se* dog-owner defendants Gonzalez before she can have the dismissal of her claims against Defendants Hernandez heard on appeal.

PLAINTIFF'S REPLY TO DEFENDANTS
HERNANDEZ'S RESPONSE TO PLAINTIFF'S
MOTION TO CERTIFY ORDER GRANTING
DEFENDANTS HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT -- PAGE 1 of 5

 **bishoplegal**
19743 First Avenue South
Normandy Park, WA 98148-2401
Tel: (206) 592-9000
Fax: (206) 592-9001

1 As previously briefed, Ms. Blanco was viciously attacked and bitten by a pit bull on
2 Defendants Hernandez's property. Facts support Plaintiff's claims that Defendants Hernandez
3 knew that their tenants kept a pit bull on the premises, and that they knew or should have known
4 that the chewed-up, weathered, short fence was insufficient to contain the animal. Pit bulls are a
5 known dangerous breed with a propensity to attack without warning and without prior incident.
6 Moreover, evidence and inferences therefrom in Plaintiff's favor as required on summary
7 judgment, show that the dog was known to exhibit aggressive behavior. This includes the
8 testimony of Elvia Sandoval as well as other Jehovah's witnesses who met with her for Bible
9 study. Plaintiff's claims against Defendants Hernandez include claims brought under premises
10 liability theories that were recognized by Division 2 in *Oliver v. Cook*, 194 Wn. App. 532, 377
11 P.3d 265 (Div. 2, 2016).

12 As discussed in Plaintiff's Response to Defendants Hernandez's Motion for Summary
13 Judgement, the *Oliver* court found that the landlord, defendant Eugene Mero, owed duties of a
14 possessor of land to the plaintiff, Steven Oliver, who was an invitee on premises, and that dog
15 owned by tenant and co-defendant Henry Cook was a condition of the land. *Oliver*, 194 Wn.
16 App. at 544. ("Here, [the dog] Scrappy is the relevant "condition" on the land.") The *Oliver*
17 court discussed both *Frobig* and *Shafer* and found that they were dispositive only of strict
18 liability claims, and that a separate analysis was required for premises liability theories:

19 The scope of a landlord's duties in a dog bite case under premises liability is a
20 question of first impression in Washington. Prior case law in Washington has
21 focused exclusively on the common law theory of strict liability for a dog bite.
22 Here, however, Oliver does not claim strict liability but, instead, he argues a
23 theory of premises liability. Although Washington courts have not yet applied
24 premises liability to a dog bite case, many other states have. These states have
made it clear that premises liability applies in dog bite cases—and involves a
separate analysis from the common law, strict liability theory.

1 *Oliver v. Cook*, 194 Wn. App. at 543 (citations to out-of-state case in footnote 9 omitted). The
2 Oliver court distinguished *Frobig* and *Shafer* as follows:

3 We note that all of the Washington cases addressing dog bite liability appear to
4 address only the common law rules for animal attacks. At common law, only the
5 owner, keeper, or harbinger of a dangerous animal is strictly liable for injuries the
6 animal causes. *See, e.g., Frobig v. Gordon*, 124 Wn.2d 732, 735, 881 P.2d 226
7 (1994); *Shafer v. Beyers*, 26 Wn. App. 442, 446–47, 613 P.2d 554 (1980). But this
8 common law theory is separate from premises liability. As discussed above, other
9 states recognize that strict liability for dog bites is a separate theory from premises
10 liability. **In other words, strict liability is not the only cause of action for a
11 dog bite. Nor is there a dog bite exception to ordinary premises liability rules.**

12 *Oliver v. Cook*, 194 Wn. App. at 545 (emphasis added). While not discussed in *Oliver*,
13 *Clemmons v. Fidler*, 58 Wn. App. 32, 791 P.2d 257 (Div. 2, 1990) is among the *Frobig* and
14 *Shafer* line of cases that the *Oliver* court distinguished.

15 In Defendants Hernandez’s Response to Plaintiff’s Motion to Certify, they cite – for the
16 first time – the **Unpublished** Division 1 opinion of *Briscoe v. McWilliams*, 196 Wn. App. 100
17 (Div. 1, 2013). Defendants Hernandez failed to identify this case as unpublished as required by
18 GR 14.1. They also failed to point out that the unpublished *Briscoe* “decision has no
19 precedential value, is not binding on any court, and is cited only for such persuasive value as the
20 court deems appropriate” as Division 3 requires when citing unpublished opinions. *Crosswhite v.*
21 *Dep’t of Soc. & Health Servs.*, 197 Wn. App. 539, 544, 389 P.3d 731 (Div. 3, 2017).¹

22 To the extent the merits of *Briscoe* is considered, it is not persuasive in its reasoning
23 under either its facts or under the law. In *Briscoe*, the lease prohibited pets, and the landlord
24 defendant Victor Greer had no knowledge that his tenant Randall McWilliams had a pit bull on

¹ Division 2 disagrees and has found it sufficient to simply identify a case as unpublished. *Karanjah v. Dep’t of Soc. & Health Servs.*, 199 Wn. App. 903, 912–13, 401 P.3d 381 (Div. 2, 2017) (“based on the plain language of GR 14.1(a), a party may cite an unpublished case from this court and merely identify it as unpublished. Nothing more is required.” By not identifying it as unpublished, Defendants Hernandez failed to comply with GR 14 under either standard.

1 the premises. *Id.* The pit bull in *Briscoe* was not even the tenant's dog, but the belonged to the
2 tenant's brother. Further, defendant tenant McWilliams had mis-informed defendant landlord
3 Greer that the subject apartment would be vacated the day before the subject attack. Unlike
4 Defendants Hernandez in this case, who knew the pit bull lived on their property and knew or
5 should have known of the poor condition of the fence, there was no evidence in *Briscoe* that the
6 defendant landlord Greer knew or had reason to know that there was a pit bull on premises,
7 especially after having been told the premises had been vacated. Regarding the law, *Briscoe*
8 relied heavily on the opinion of Division 2 in *Clemmons*, as well as on *Frobig*, which were both
9 distinguished by the *Oliver* court as discussed above. Under the jurisprudence of Division 2 set
10 forth in *Oliver*, *Clemmons* would not be considered good law and *Frobig* would not preclude Ms.
11 Blanco's premises liability claims in this case. This obviously constitutes a controlling question
12 of law in this case for which there are substantial grounds for differences of opinion as to
13 whether Ms. Blanco's claims should proceed under *Oliver*, or whether there is "a dog bite
14 exception to ordinary premises liability rules"² in this case that would preclude not only
15 Defendants Hernandez's responsibilities for the dog but their responsibility for the defective,
16 weather-beaten and chewed up fence, which they knew or should have known about, and which
17 resulted in Ms. Blanco's horrific injuries.

18 Plaintiff respectfully reiterates her requests that this Court certify the summary judgment
19 dismissal of her claims against Defendants Hernandez for discretionary review under RAP 2.3
20 (b) (4) and for a finding under RAP 2.2 (d) that there is no just reason to delay appeal.

21 //
22 //

23
24 ² *Oliver v. Cook*, 194 Wn. App. at 545
PLAINTIFF'S REPLY TO DEFENDANTS
HERNANDEZ'S RESPONSE TO PLAINTIFF'S
MOTION TO CERTIFY ORDER GRANTING
DEFENDANTS HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT -- PAGE 4 of 5

1 Dated this 13th day of January, 2020.

2 BISHOP LEGAL

3 

4 _____
5 Derek K. Moore
6 WSBA No. 37921
7 Attorney for Plaintiff

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WASHINGTON STATE SUPERIOR COURT FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,
Plaintiff,
vs.
DAVID GONZALEZ SANDOVAL et al,
Defendants.

Case No. 18-2-08290-31

CERTIFICATE OF SERVICE

I certify that on today's date I served via U. S. Mail, postage prepaid to:

Ofelia A. Granados
Todd A. Bowers & Associates
901 5th Avenue, Ste 830
Seattle, WA 98164

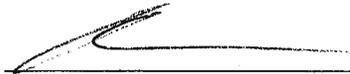
Cassandra Lopez de Arriaga
1812 Hewitt Ave., Ste 204
Everett, WA 98201

the following document(s):

- PLAINTIFF'S REPLY TO DEFENDANTS HERNANDEZ'S RESPONSE TO PLAINTIFF'S MOTION TO CERTIFY ORDER GRANTING DEFENDANTS HERNANDEZ'S MOTION FOR SUMMARY JUDGMENT;
- Certificate of Service.

Dated this 13th day of January, 2020.

BISHOP LEGAL


Derek K. Moore, WSBA No. 37921
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

PAGE 1 of 1

 **bishoplegal**

19743 First Avenue South
Normandy Park, WA 98148-2401
Tel: (206) 592-9000
Fax: (206) 592-9001

EXHIBIT 15

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2020 FEB 17 AM 11:02
TODD A. BOWERS & ASSOC.

FILED
FEB 11 2020
HEIDI PERCY
COUNTY CLERK
SNOHOMISH CO. WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO v.

No. 18-2-08290-31

Plaintiff

DAVID GONZALES SANDOVAL, ET AL.

COVER SHEET

ATTACHED HERETO
IS:

LETTER ACCOMPANYING COURT ORDERS DENYING
PLAINTIFF'S MOTION FOR RECONSIDERATION AND MOTION
FOR CERTIFICATION TO THE COURT OF APPEALS

Superior Court of the State of Washington
for Snohomish County

JUDGE
JANICE E. ELLIS

SNOHOMISH COUNTY COURTHOUSE
Department 12
3000 Rockefeller Avenue
Everett, WA 98201-4060
(425) 388-3039

LAW CLERK
VICTORIA BANKS

February 10, 2020

Mr. Derek Moore
bishoplegal
19743 First Ave. South
Normandy Park, WA 98148

Ms. Ofelia Granados
Todd A. Bowers & Assoc.
901 5th Ave., Suite 830
Seattle, WA 98164

Ms. Lopez de Arriaga-Shaw
1812 Hewitt Ave., Suite 204
Everett, WA 98201

Re: *Maria Jesus Saralegui Blanco v. David Gonzales Sandoval, et al.*
Snohomish County Cause No. 18-2-08290-31

Dear Counsel:

This letter accompanies the Court's Orders denying Plaintiff's Motion for Reconsideration and Motion for Certification to the Court of Appeals.

The matter came to me in January with Plaintiff's Motion to Certify the Court's Partial Summary Judgment Order dated September 10, 2019. The materials reflect that Plaintiff timely moved for Reconsideration of the underlying Summary Judgment Order by filing a Motion for Reconsideration on September 18, 2019. The certification materials also include email correspondence with my former law clerk in which October 10, 2019 was set as the date for the court to consider the Motion for Reconsideration without oral argument.

Unfortunately, that motion was neither noted on the court's case control system (Odyssey), nor on my personal calendar. I also did not receive working copies of the materials from the parties. Thus, although I authorized October 10, 2020 as a date for the Motion for Reconsideration, I neither had paperwork, nor a calendar date to trigger my review. The emails Mr. Moore attached to his Declaration reflect a regular effort to receive updates regarding the court's progress with the motion, but they did not result in action because a brand new staff member did not understand the nature of the inquiry. I am sure this is extremely frustrating for the parties. I am not sure why the redundancies in our systems did not prevent this from happening. I sincerely apologize to the parties for the inconvenience and delay they have experienced.

I first learned about the problems in mid-January, after the Certification Motion was stricken from the Civil Motions Judge's January 15, 2020 calendar. To date, the only document I have received from parties is Plaintiff's Reply to Defendants' Hernandez's Response to Plaintiff's Motion to Certify Order Granting Defendant's Hernandez's Motion for Summary Judgment. I obtained the other documents from Odyssey and have reviewed them.

Although Plaintiff's counsel seeks oral argument on their Certification Motion, that is neither customary, nor necessary. I have therefore ruled on the motion without oral argument. As the enclosed Order indicates, I decline to certify this case for appeal under RAP 2.2(d).

I believe these actions complete the matters pending before the court.

Very truly yours,

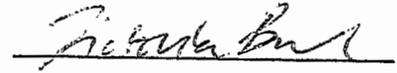
A handwritten signature in black ink, appearing to read "Janice E. Ellis". The signature is fluid and cursive, with a long horizontal stroke at the end.

Janice E. Ellis

cc: Court File

I, Victoria Banks, certify that I mailed a copy of the foregoing letter via U.S. Mail to the below indicated people on February 11, 2020.

Signed on 11 day of February, 2020, at Everett WA



Victoria Banks

Mr. Derek Moore
Bishoplegal
19743 First Ave South
Seattle, WA 98164

Ms. Ofelia Granados
Todd A. Bowers & Assoc.
901 5th Ave., Suite 830
Seattle, WA 98164

Ms. Lopez de Arriaga-Shaw
1812 Hewitt Ave., Suite 204
Everett, WA 98201

FILED

FEB 11 2020

HEIDI PERCY
COUNTY CLERK
SNOHOMISH CO. WASH.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH**

MARIA JESUS SARALEGUI BLANCO v.

Plaintiff

DAVID GONZALES SANDOVAL, ET AL.

No. 18-2-08290-31

COVER SHEET

ATTACHED HERETO
IS:

ORDER DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION

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5 SUPERIOR COURT OF WASHINGTON
6 FOR SNOHOMISH COUNTY

7 MARIA JESUS SARALEGUI BLANCO,

8 Plaintiff,

Cause No. 18-2-08290-31

9 v.

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

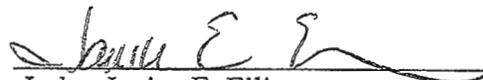
10 DAVID GONZALES SANDOVAL,
11 ALEJANDRA MARTINEZ, and the marital
12 community comprised thereof, and
13 ERNESTO HERNANDEZ, TERI
HERNANDEZ, and the marital community
comprised thereof,

Defendants.

14 This matter came before the Court on Plaintiff's Motion for Reconsideration. The
15 Motion for Reconsideration was timely filed, but not calendared. The Court became aware of
16 the motion in January, 2020. The court has, since that time, reviewed the Motion for
17 Reconsideration, the Response, Reply, and the October 4, 2019 Declaration of Derek Moore
18 (Dkt No. 27). Having the considered the position of the parties and being fully apprised,
19

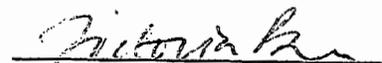
20 NOW, THEREFORE, the Court DENIES the Motion for Reconsideration.

21 Dated this 10th day of February, 2020.

22
23 
24 Judge Janice E. Ellis

I, Victoria Banks, certify that I mailed a copy of the foregoing order via U.S. Mail to the below indicated people on February 11, 2020.

Signed on 11 day of February, 2020, at Everett WA



Victoria Banks

Mr. Derek Moore
Bishoplegal
19743 First Ave South
Seattle, WA 98164

Ms. Ofelia Granados
Todd A. Bowers & Assoc.
901 5th Ave., Suite 830
Seattle, WA 98164

Ms. Lopez de Arriaga-Shaw
1812 Hewitt Ave., Suite 204
Everett, WA 98201

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TODD A. BOWERS & ASSOC.

FILED

FEB 11 2020

HEIDI PE
COUNTY CLERK
SNOHOMISH CO.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO v.

No. 18-2-08290-31

Plaintiff

DAVID GONZALES SANDOVAL, ET AL.

COVER SHEET

ATTACHED HERETO
IS:

ORDER DENYING PLAINTIFF'S MOTION TO CERTIFY ORDER
GRANTING DEFENDANT HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARIA JESUS SARALEGUI BLANCO,

Plaintiff,

vs.

DAVID GONZALEZ SANDOVAL,
ALEJANDREA MARTINEZ, and the marital
community comprised thereof, and ERNESTO
HERNANDEZ, TERI HERNANDEZ and the
marital community comprised thereof,

Defendants.

No. 18-2-08290-31

~~PROPOSED~~ ORDER DENYING
PLAINTIFF'S MOTION TO CERTIFY
ORDER GRANTING DEFENDANT
HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT

THIS MATTER, having come on duly for hearing of Plaintiff's Motion to Certify Order
Granting Defendants Hernandez's Motion for Summary Judgment, Defendants Hernandez's
response thereto, ^{Plaintiff's Reply, and all accompanying} with its documents therein, if any, as well as any and all documents on file
with the Court, it is hereby

ORDERED, ADJUDGED and DECREED that that Plaintiff's Motion to Certify Order
Granting Defendants Hernandez's Motion for Summary Judgment be DENIED,

~~PROPOSED~~ ORDER DENYING PLAINTIFF'S
MOTION TO CERTIFY ORDER GRANTING
DEFENDANT HERNANDEZ'S MOTION FOR
SUMMARY JUDGMENT - 1

TODD A. BOWERS & ASSOCIATES
901 5th Avenue, Ste 830
Seattle, WA 98164
TEL: (206) 521-5000
FAX: (855) 830-3808
Employees of the Corporate Law Department
State Farm Mutual Automobile Insurance Company

I, Victoria Banks, certify that I mailed a copy of the foregoing order via U.S. Mail to the below indicated people on February 11, 2020.

Signed on 11 day of February, 2020, at Everett WA



Victoria Banks

Mr. Derek Moore
Bishoplegal
19743 First Ave South
Seattle, WA 98164

Ms. Ofelia Granados
Todd A. Bowers & Assoc.
901 5th Ave., Suite 830
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Ms. Lopez de Arriaga-Shaw
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Everett, WA 98201

TODD A. BOWERS & ASSOCIATES

March 24, 2020 - 2:58 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98221-0
Appellate Court Case Title: Maria Jesus Saralegui Blanco v. David Gonzalez Sandoval et al.
Superior Court Case Number: 18-2-08290-9

The following documents have been uploaded:

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Answer/Reply - Answer to Motion for Discretionary Review
The Original File Name was MOT - DEF ans PLT motion for review.pdf
- 982210_Answer_SOG_for_Direct_Review_20200324145231SC442373_1710.pdf
This File Contains:
Answer to Statement of Grounds for Direct Review
The Original File Name was MOT - DEF ans to PLT Statement.pdf

A copy of the uploaded files will be sent to:

- cassandra.lopezlaw@gmail.com
- derek@bishoplegal.com
- margarita@bishoplegal.com
- monica.roberts.xic0@statefarm.com
- owen@laurashaverlaw.com

Comments:

Sender Name: Monica Roberts - Email: monica.roberts.xic0@statefarm.com

Filing on Behalf of: Ofelia Ashanti Granados - Email: ofelia.granados.f9ko@statefarm.com (Alternate Email: ofelia.granados@statefarm.com)

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