

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
3/4/2020 8:32 AM  
BY SUSAN L. CARLSON  
CLERK

No. 98221-0

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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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.

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MOTION FOR DISCRETIONARY REVIEW

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Attorney for Petitioners

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**A. Identity of Petitioner**

MARIA JESUS SARALEGUI BLANCO asks this court to accept review of the decision designated in Part B of this motion.

**B. Decisions**

Petitioner Maria Jesus Saralegui Blanco, who is now 78 years old, was viciously mauled by a pit bull owned by defendant David Gonzalez Sandoval while she was providing Bible study to his mother on the property they rented from respondents Ernesto and Teri Hernandez. The dog had escaped from a chewed and weathered fence that was insufficient to contain the pit bull. Respondent Ernesto Hernandez knew about the pit bull and approved of Mr. Sandoval keeping it on the property. He also regularly inspected the property and knew or should have known about the poor condition of the fence, which had been erected, with his permission, specifically to contain the pit bull. The trial court dismissed Ms. Blanco's claims against respondents Hernandez. Ms. Blanco timely filed a motion for reconsideration, which the court denied after an excessive delay of four months. While Ms. Blanco's strict liability claims against defendants Gonzalez remain, said defendants are uninsured, insolvent, and would have to defend themselves *pro se* at trial for lack of funds to pay for their defense. In contrast, respondents Hernandez are professional landlords who are insured by State Farm. Ms. Blanco moved for the Superior

Court to certify this case for appeal based on conflicts of authority including *Oliver v. Cook*, 194 Wn. App. 532, 377 P.3d 265 (Div. 2, 2016) and *Frobig v. Gordon*, 124 Wn.2d 732, 881 P.2d 226 (1994), and based on the fact that forcing this case to trial in order to obtain review would be burdensome and futile. The Court denied this motion as well. These decisions for which review is sought are identified as follows:

- Order Granting Defendants Hernandez’ Motion for Summary Judgment,<sup>1</sup> filed September 10, 2019;
- Order Denying Plaintiff’s Motion for Reconsideration, filed February 10, 2020;
- Order Denying Plaintiffs’ Motion to Certify Order Granting Defendant Hernandez’ Motion for Summary Judgment, filed February 10, 2020.

Copies of these Orders are attached hereto as Appendix Exhibits 2, 3, and 4, respectively. The Notice of Discretionary Review, without exhibits, is attached hereto as Exhibit 7.

### **C. Issues Presented for Review**

1. Whether the Supreme Court should accept direct review under RAP 4.2 (a) (3) when this case involves conflicting decisions between *Oliver v. Cook*, 194 Wn. App. 532, 377 P.3d 265 (Div. 2, 2016), *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 51, 914 P.2d 728 (1996), and *Frobig v. Gordon*, 124 Wn.2d 732, 881 P.2d 226 (1994) as to whether there is “a dog bite exception to ordinary premises liability rules.”

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<sup>1</sup> Petitioner only seeks review of the summary judgment dismissal of Defendants Hernandez and does not seek review of the part of the Order denying defendants Gonzalez Sandoval and Martinez’s motion for summary judgment without prejudice.

2. Whether the Superior Court committed probable error under RAP 2.3 (b) (3) by disregarding the holding in *Oliver v. Cook* regarding the pit bull and by disregarding *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 51, 914 P.2d 728 (1996) with respect to the landlords' responsibility for the defective fence.
3. Whether the Superior Court committed obvious or probable error under RAP 2.3 (b) (1) or (2) by denying Ms. Blanco's Motion to Certify.

#### **D. Statement of the Case**

Ms. Blanco was viciously mauled by a pit bull when providing Bible study to Elvia Sandoval at the mobile home where Ms. Sandoval lived with her son and daughter-in-law defendants David Gonzalez Sandoval and Alexandra Barajas Gonzalez,<sup>2</sup> who owned the pit bull. Defendants / respondents Ernesto and Teri Hernandez own the subject premises and about 20 properties in Snohomish County, and have liability insurance through State Farm. In contrast, defendants Gonzalez are uninsured, insolvent, and would represent themselves *pro se* at trial since they cannot afford to hire an attorney.<sup>3</sup>

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<sup>2</sup> David Gonzalez's wife was incorrectly named as "Alejandra Martinez" in Plaintiff's Complaint and other pleadings. The pleadings were amended to correctly name her as "Alexandra Barajas Gonzalez" in the Order Granting Plaintiff's Motion to Amend Pleadings and Change Caption, filed January 15, 2020, a copy of which is attached hereto as Appendix Exhibit 14.

<sup>3</sup> See Declaration of David Gonzalez Sandoval attached hereto as Appendix Exhibit 13. Defendants Sandoval's counsel, Cassandra Lopez de Arriaga has graciously agreed to represent them though pre-trial, likely on a pro-bono basis, but intends to withdraw if and when this case is brought to trial.

Ms. Blanco was discussing scripture with Ms. Sandoval in the driveway of the premises when the pit bull escaped from the fence and attacked her.<sup>4</sup> The pit bull knocked her to the ground, bit off much of her face, and ate her ear. The fence from which the pit bull had escaped was weathered, chewed up, and was in poor condition, and had been that way for at least a year. Ernesto Hernandez knew that David Gonzalez Sandoval kept a pit bull there, permitted the keeping of the dog and approved David Gonzalez Sandoval's building of the subject fence. Ernesto Hernandez also regularly inspected the premises, at least once a year and possibly on a daily basis, and thus knew or should have known of the poor condition of the fence and that it was inadequate to contain the pit bull.

Defendants Hernandez moved for summary judgment, arguing that they had no duties to prevent the attack under *Frobig v. Gordon*, 124 Wn.2d 732, 881 P.2d 226 (1994) and *Shafer v. Beyers*, 26 Wn. App. 442, 613 P.2d 554 (Div. 1, 1980). Ms. Blanco argued that defendants Hernandez owed premises liability duties under *Oliver v. Cook*, 194 Wn. App. 532, 377 P.3d 265 (Div. 2, 2016) for the condition of the fence as well as under the *Oliver* court's holding that the dog was a "condition of the land" and that there is no "dog bite exception to ordinary premises

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<sup>4</sup> Photos of the subject fence, of Ms. Blanco in the hospital after the attack, and of the subject dog are attached hereto as Appendix Exhibit 1.

liability rules.” *Id.*, 194 Wn. App. at 454. The trial court, Hon. Janice Ellis presiding, disregarded Ms. Blanco’s arguments and granted defendants Hernandez’s motion for summary judgment dismissal.<sup>5</sup>

Plaintiff timely moved for reconsideration of the order dismissing defendants Hernandez, noting it to be heard on October 10, 2019. Plaintiff also attempted to schedule a hearing for certification under RAP 2.3 (b) (4) and for a finding under RAP 2.2 (d) that there is no just reason to delay in the event her Motion for Reconsideration was denied. Despite the requirement of CR 59 (b) for motions for reconsideration to be decided within 30 days, and despite numerous emails to the Court,<sup>6</sup> the motion for reconsideration was not decided until February 10, 2020 – four months after the noted date. Frustrated by the delay and unresponsiveness, Plaintiff filed her Motion to Certify and noted it for hearing on January 15, 2020 before the Snohomish County Civil Motions Judge, who transferred it back to Judge Ellis.

In Plaintiff’s Motion to Certify, she argued that there is a controlling question of law as to whether defendants Hernandez

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<sup>5</sup> The facts and Plaintiff’s arguments are set forth in detail in Plaintiff’s Response to Defendants Hernandez’s Motion for Summary Judgment, attached hereto as Appendix Exhibit 8, in Plaintiff’s Motion for Reconsideration, attached hereto as Appendix Exhibit 9, and in Plaintiff’s Reply Re: Plaintiff’s Motion for Reconsideration, attached hereto as Appendix Exhibit 10.

<sup>6</sup> Copies of this email correspondence is attached hereto as Appendix Exhibit 6.

owe duties to invitees on premises under *Oliver v. Cook*, 194 Wn. App. 532, 545, 377 P.3d 265 (Div. 2, 2016) and 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.<sup>7</sup> She argued that while defendants Gonzalez remain in this case and are subject to strict liability for Plaintiff’s damages, it would be a vast and futile waste of resources of both the 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 Ms. Blanco to recover. Judge Ellis issued a letter explaining the delays on staff changes and system issues.<sup>8</sup> According to Judge Ellis in her letter to counsel, the pending motions were not called to her attention until after Ms. Blanco filed and noted her Motion to Certify before the Snohomish County Civil Motions Judge. Judge Ellis denied

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<sup>7</sup> Plaintiff’s Motion to Certify is attached hereto as Appendix Exhibit 11. Plaintiff’s Reply Re Plaintiff’s Motion to Certify is attached hereto as Appendix Exhibit 12.

<sup>8</sup> A copy of this letter is attached hereto as Appendix Exhibit 5.

Plaintiff's Motion for Reconsideration and denied Plaintiff's Motion to Certify without oral argument.

**E. Argument Why Review Should Be Accepted**

Ms. Blanco respectfully requests direct review based on the facts described above and in the attached briefs, and on the following grounds:

1. **Review is appropriate under RAP 4.2 (a) (3) to resolve the conflicts between *Oliver v. Cook, Degel v. Majestic Mobile Manor, Inc., and Frobis v. Gordon* as to whether there is “a dog bite exception to ordinary premises liability rules.”**

RAP 4.2 (a)(3) provides for direct review by the Supreme Court on the grounds of “Conflicting Decisions” in a “case involving an issue in which there is a conflict among decisions of the Court of Appeals or an inconsistency in decisions of the Supreme Court.” RAP 4.2 (a)(3). In this case, there is a clear conflict between this Court's holding in *Frobis v. Gordon*, 124 Wn.2d 732, 881 P.2d 226 (1994) and in the holding of Division 2 of the Court of Appeals in *Oliver v. Cook*, 194 Wn. App. 532, 377 P.3d 265 (Div. 2, 2016). The *Frobis* decision, at least as applied by the Superior Court in this case, conflicts with this Court's holding in *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 51, 914 P.2d 728 (1996). Review is appropriate in this case to determine if *Frobis* is still good law after *Degel* and *Oliver* or otherwise resolve the conflicts in these decisions.

In *Frobigo*, this Court found the landlord defendants were not responsible for injuries resulting from a tiger attack that occurred on their premises while their tenants were using the tiger in filming a commercial. Similar results were found by Division 1 in *Shafer v. Beyers*, 26 Wn. App. 442, 446–47, 613 P.2d 554 (1980) (no liability for landlord who briefly saw dog on premises two or three days prior to the plaintiff’s injury) and by Division 2 in *Clemmons v. Fidler*, 58 Wn. App. 32, 791 P.2d 257 (Div. 2, 1990) (no liability for landlord despite evidence supporting claims that landlord had prior knowledge the dog was vicious.)

These cases are in conflict with the 2016 holding of Division 2 in *Oliver v. Cook*, 194 Wn. App. 532, 377 P.3d 265 (Div. 2, 2016), at least in the result. The *Oliver* court found that the landlord, defendant Eugene Mero, owed duties of a possessor of land to the plaintiff, Steven Oliver, who was an invitee on premises, and that dog owned by tenant and co-defendant Henry Cook was a condition of the land. *Oliver*, 194 Wn. App. at 544. (“Here, [the dog] Scrappy is the relevant ‘condition’ on the land.”) The *Oliver* court discussed both *Frobigo* and *Shafer* and found they were dispositive only of strict liability claims, and that a separate analysis was required for premises liability theories:

The scope of a landlord’s duties in a dog bite case under premises liability is a question of first impression in Washington. Prior case law in Washington has focused exclusively on the common law theory of strict liability for

a dog bite. Here, however, Oliver does not claim strict liability but, instead, he argues a theory of premises liability. Although Washington courts have not yet applied 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.

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

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

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

On the facts of this case, at least as applied by the Superior Court, the *Frobig* line of cases are also in conflict with this Court’s holding in *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 51, 914 P.2d 728 (1996). In *Degel*, this Court found the mobile home park owner could be liable for failing to put a fence between a play area and the creek in which the plaintiff child suffered catastrophic injuries from a near-drowning. This Court found “We have never recognized a ‘natural bodies of water doctrine’

applicable to all premises liabilities actions.” *Id.* at 51. Just as without the dog, the defective fence would have been harmless here, without the creek, the lack of the fence in *Degel* would have been harmless. The *Degel* Court found the landowner owed a duty to provide a fence or otherwise sufficient barrier. Just as this Court rejected a “natural bodies of water” exception to premises liability rules, the Oliver court rejected a “dog bite exception.” Ms. Blanco respectfully requests this Court accept review, in the hopes that this Court will resolve this conflict in her favor by affirming *Oliver* and *Degel*.

2. **The Superior Court committed probable error under RAP 2.3 (b) (3) by disregarding the holding in *Oliver* regarding the pit bull and by disregarding *Degel* with respect to the landlords’ responsibility for the defective fence**

RAP 2.3 (b) provides for discretionary review where “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.” RAP 2.3 (b). In this case, while the Superior Court disregarded the holding in *Oliver*, it also disregarded the holding in *Degel*. A major fact that sets this case apart from *Frobig*, *Shafer*, and *Clemmons* is the defective fence. In *Frobig* the tenants were filming a commercial when the attack occurred, which did not implicate any condition of the land other than the tiger.

In *Shafer*, the tenants had kept the subject dog on a chain that was too long, allowing the dog to attack a pedestrian on the adjacent sidewalk. There was no discussion in *Shafer* of whether the chain was considered a condition of the land, and the facts show no notice of the landlords of the chain. Defendant landlord Sigrid Ackmann visited the subject duplex two or three days before the injury and saw the dog inside the duplex “just standing there.” *Shafer v. Beyers*, 26 Wn. App. at 449.

In *Clemmons*, the subject dog was chained to a truck axle in the yard, and the attack occurred when an adult took a two year old within reach of the chain. There were no facts showing anything wrong with the chain or its placement. *Clemmons v. Fidler*, 58 Wn. App. 33-34.

In this case, regardless of whether the dog is found to be a condition of the land as in *Oliver*, the fence was certainly a condition of the land. A jury could find that the fence was unreasonably dangerous and that defendants Hernandez knew or should have known about the danger and taken reasonable care to protect Ms. Blanco or others from the danger.<sup>9</sup> If all fact questions were resolved in favor of Ms. Blanco as is required on summary

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<sup>9</sup> There may also be fact questions as to the status of Ms. Blanco on premises. Defendants argue that she was a trespasser, but testimony supports a finding that Ms. Blanco was either an invitee or a licensee on premises for the purpose of providing Bible study to Elvia Gonzalez. These questions are discussed in Pages 14-17 or Plaintiff’s Response to Defendants Hernandez’s Motion for Summary Judgment, attached hereto as Appendix Exhibit 8.

judgment under CR 56, defendants Hernandez would clearly owe Ms. Blanco duties of reasonable care to either fix the fence or warn her of the condition and the risk under *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 48, 914 P.2d 728 (1996). This aspect of the case was completely disregarded by the Superior Court, which constitutes probable error, at minimum. This error also obviously altered the status quo by dismissing from the case the only defendants from whom Ms. Blanco has a chance of recovery.

3. **The Superior Court committed obvious or probable error under RAP 2.3 (b) (1) or (2) by denying Ms. Blanco's Motion to Certify**

RAP 2.3(b) provides for discretionary review where:

(1) The superior court has committed an obvious error which would render further proceedings useless;

(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; [and]

...

(4) 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). It was obvious or at least probable error under RAP 2.3(b) (1) and (2) for the Superior Court to have denied Ms. Blanco's Motion to Certify under RAP 2.3(b)(4).<sup>10</sup>

The four months of delay in the Superior Court's hearing Plaintiff's Motion for Reconsideration may also be indicative of error.<sup>11</sup> The Court violated CR 59 (b) provides for motions for reconsideration to be filed "not later than 10 days after the entry of the judgment" and provides for it to be "heard or otherwise considered" within 30 days. Priority should also be given to Ms. Blanco due to her age of 78 years and her frailty resulting from having barely survived the pit bull attack. The "court may give priority to cases in which a party is frail and over seventy years of age..." RCW 4.44.025. This may also implicate RAP 2.3(b)(3), which provides for appellate review where "the superior court has so far departed from the accepted and usual course of judicial proceedings."

#### **F. Conclusion**

For the reasons set forth above, Ms. Blanco respectfully requests this Court accept discretionary review. The orders dismissing Ms. Blanco's claims against defendants Hernandez and denying reconsideration involved controlling questions of law as to

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<sup>10</sup> As shown by defendants Hernandez's opposition to Plaintiff's Motion to Certify, they were unwilling to stipulate.

<sup>11</sup> See email correspondence attached hereto as Appendix Exhibit 6, and the Court's letter of explanation to the parties attached hereto as Appendix Exhibit 7.

whether defendants Hernandez owed any duties with respect to either the pit bull or the fence. As shown by the different reasoning and results between *Oliver, Degel*, and the *Frobig* line of cases at the appellate level, there is clearly substantial ground for a difference of opinion.

Immediate review of these orders will materially advance the ultimate termination of litigation. If discretionary appellate review is not granted, Ms. Blanco will be forced to proceed to trial or otherwise obtain a final judgment with respect to her claims against the remaining defendants Gonzalez. This would not terminate the litigation because defendants Gonzalez are insolvent and uninsured. A trial against these insolvent defendants would be symbolic at best, with unduly burdensome delays, effort and expense on Ms. Blanco's part as well as that of the witnesses and the court. After this trial or final judgment, an appeal would be certain. Discretionary appellate review is needed to avoid this wasteful and futile trial.

Respectfully submitted this 4<sup>th</sup> day of March, 2020.



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## APPENDIX

1. **Photographs of the subject fence, of Maria Saralegui Blanco, and of the subject pit bull. These photos were included with Exhibit 2 of the Declaration of Derek K. Moore in Support of Plaintiff's Response to Defendants Hernandez's Motion for Summary Judgment.**
2. **Order Granting Defendants Hernandez' Motion for Summary Judgment, filed September 10, 2019**
3. **Order Denying Plaintiff's Motion for Reconsideration, filed February 10, 2020**
4. **Order Denying Plaintiffs' Motion to Certify Order Granting Defendant Hernandez' Motion for Summary Judgment, filed February 10, 2020**
5. **Letter from Court Accompanying Court Orders Denying Plaintiff's Motion for Reconsideration and Motion for Certification, dated February 10, 2020**
6. **Email Correspondence Between the Court and Parties' Counsel from September 11, 2019 through February 5, 2020 regarding Plaintiff's Motion for Reconsideration and Plaintiff's Motion to Certify**
7. **Conformed copies of the Notice of Discretionary Review to the Supreme Court of Washington and Certificate of Service (not including attachments, which are attached hereto as Appendix Exhibits 2-6), as filed in Superior Court on February 25, 2020.**
8. **Plaintiff's Response to Defendants Hernandez's Motion for Summary Judgment.**
9. **Plaintiff's Motion for Reconsideration of Order Granting Defendants Hernandez's Motion for Summary Judgment**
10. **Plaintiff's Reply to Defendants Hernandez's Response to Plaintiff's Motion for Reconsideration.**

- 11. Plaintiff's Motion to Certify Order Granting Defendants Hernandez's Motion for Summary Judgment.**
- 12. Plaintiff's Reply to Defendants Hernandez's Response to Plaintiff's Motion to Certify Order Granting Defendants Hernandez's Motion for Summary Judgment.**
- 13. Declaration of David Gonzalez Sandoval (not including bank statement attachment), which was submitted by said defendant in response to Defendants Hernandez' Motion for Summary Judgment**
- 14. Order Granting Plaintiff's Motion to Amend Pleadings and Change Caption, filed January 15, 2020.**

# **APPENDIX 1**





**CAUTION**

WHEN OPERATING X-RAY TUBE ASSEMBLY IN LOW POSITION, TAKE CARE THAT ARM DOES NOT HIT MAIN BODY.

RETRACT ARM AND PLACE IN LOCKED POSITION ANY TIME CART IS DRIVEN. DO NOT RELEASE ARM FROM LOCKED POSITION ON A SURFACE SLOPING GREATER THAN 2 DEGREES.

LOCK ARM SURELY ACCORDING TO FOLLOWING PROCEDURE ORS MIGHT BE PINCHED AND INJURED WITH COLLIMATOR POSITION WHEN ARM IS NOT SURELY LOCKED.

DO NOT HANDLE ARM IN FULLY RETRACTED POSITION UNLESS YOU ARE TRAINED AND EQUIPPED FOR PROPER USE.

7-1は、X線管組立を低位置に操作する際は、主胴体と衝突しないように注意してください。

走行時に、X線管組立をロックした状態で移動させます。傾斜が2度を超える表面では、X線管組立をロックした状態で移動させないでください。

ロック解除後、X線管組立を完全にロックするまで、必ず確実にロックしてください。

完全に引き戻した状態で、X線管組立を扱わないでください。



## **APPENDIX 2**

18-2-08290-31  
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Order Granting Summary Judgment  
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SONYA KRASKI  
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,

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~~ <sup>GRANTING</sup> 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 exhibit attachments thereto; <sup>(GRANTED 7-12-19 DECLARATION w/ exhibits)</sup>
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; <sup>AND MOTION TO JOIN</sup>

3 6. DEC. OF CASSANDRA LOPEZ DE ARRIAGA-SHAW (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  
The Court finding that there are no questions of material fact and that judgment should be

7 entered as a matter of law, and the Court otherwise deeming itself fully advised, it is

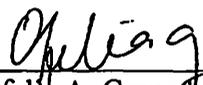
8 ORDERED, ADJUDGED, AND DECREED that Defendants Hernandez's Motion for  
9 Summary Judgment is hereby GRANTED, and Plaintiff's Complaint is hereby DISMISSED  
10 WITH PREJUDICE as to against Defendants Ernesto and Teri Hernandez.\*

11 DATED this 10<sup>th</sup> day of Sept., 2019

12   
13 JUDGE

14 Presented by:

15 TODD A. BOWERS & ASSOCIATES

16 By:   
17 Ofelia A. Granados, WSBA #53917  
Attorney for Defendants Hernandez

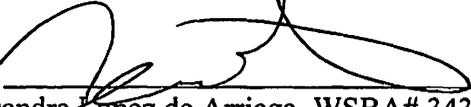
\*DEFENDANTS GONZALEZ SANDOVAL +  
MARTINEZ'S MOTION FOR SUMMARY  
JUDGMENT WAS NOT TIMELY FILED +  
IS DENIED WITHOUT PREJUDICE.

18 Approved as to Form,  
19 Notice of Presentation Waived:

20 BISHOP LEGAL

CASSANDRA LOPEZ DE ARRIAGA LAW

21 By:   
22 Derek K. Moore, WSBA # 37921  
Attorney for Plaintiff Saralegui Blanco

21 By:   
22 Cassandra Lopez de Arriaga, WSBA# 34318  
Attorney for Codefendants Gonzalez and  
23 Martinez

~~PROPOSED~~ ORDER ON DEFENDANTS  
HERNANDEZ'S MOTION FOR SUMMARY  
JUDGMENT - 2

TODD A. BOWERS & ASSOCIATES  
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Seattle, WA 98164  
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Employees of the Law Department  
State Farm Mutual Automobile Insurance Company

## **APPENDIX 3**



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SUPERIOR COURT OF WASHINGTON  
FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,  
  
Plaintiff,  
  
v.  
  
DAVID GONZALES SANDOVAL,  
ALEJANDRA MARTINEZ, and the marital  
community comprised thereof, and  
ERNESTO HERNANDEZ, TERI  
HERNANDEZ, and the marital community  
comprised thereof,  
  
Defendants.

Cause No. 18-2-08290-31  
  
ORDER DENYING PLAINTIFF'S  
MOTION FOR RECONSIDERATION

This matter came before the Court on Plaintiff's Motion for Reconsideration. The Motion for Reconsideration was timely filed, but not calendared. The Court became aware of the motion in January, 2020. The court has, since that time, reviewed the Motion for Reconsideration, the Response, Reply, and the October 4, 2019 Declaration of Derek Moore (Dkt No. 27). Having the considered the position of the parties and being fully apprised,

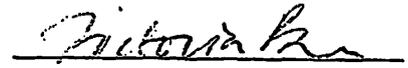
NOW, THEREFORE, the Court DENIES the Motion for Reconsideration.

Dated this 10<sup>th</sup> day of February, 2020.

  
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 5<sup>th</sup> Ave., Suite 830  
Seattle, WA 98164

Ms. Lopez de Arriaga-Shaw  
1812 Hewitt Ave., Suite 204  
Everett, WA 98201

## **APPENDIX 4**

**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, <sup>Plaintiff's Reply, and all accompanying</sup> with its documents therein, if any, as well as any and all documents on file

<sup>A</sup>  
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

1 DATED this 10<sup>th</sup> day of February, 2020

2  
3   
4 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  
11 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

20  
21  
22  
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

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 5<sup>th</sup> Ave., Suite 830  
Seattle, WA 98164

Ms. Lopez de Arriaga-Shaw  
1812 Hewitt Ave., Suite 204  
Everett, WA 98201

## **APPENDIX 5**

**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**

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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 5<sup>th</sup> 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 5<sup>th</sup> Ave., Suite 830  
Seattle, WA 98164

Ms. Lopez de Arriaga-Shaw  
1812 Hewitt Ave., Suite 204  
Everett, WA 98201

## **APPENDIX 6**

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WASHINGTON STATE SUPERIOR COURT FOR SNOHOMISH COUNTY

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

Case No. 18-2-08290-31  
COVER SHEET

ATTACHED HERETO IS:

Copy of email correspondence between the Court and the parties' counsel from September 11, 2019 through February 5, 2020 regarding Plaintiff's Motion for Reconsideration and Plaintiff's Motion to Certify.

Dated this 21<sup>st</sup> day of February, 2020.

BISHOP LEGAL



Derek K. Moore, WSBA No. 37921  
Attorneys for the Plaintiffs

## Derek Moore

---

**From:** Banks, Victoria <Victoria.Banks@snoco.org>  
**Sent:** Wednesday, February 5, 2020 9:35 AM  
**To:** Derek Moore; Ofelia Granados; Monica Roberts  
**Cc:** Anaya, Carissa; Norris, Nancy; cassandralopezlaw@gmail.com; James Gallegos  
**Subject:** RE: [EXTERNAL] RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

Mr. Moore and Ms. Granados,

The Court has the Motion under consideration. I will reach out with relevant calendaring inquiries when the Court has made a decision.

Thank you,

### Victoria Banks

Law Clerk to the Honorable **Janice E. Ellis**  
Department 12  
 Snohomish County Superior Court  
3000 Rockefeller Ave.  
Everett, WA 98201  
[victoria.banks@snoco.org](mailto:victoria.banks@snoco.org)

---

**From:** Derek Moore [mailto:derek@bishoplegal.com]  
**Sent:** Tuesday, February 4, 2020 4:25 PM  
**To:** Ofelia Granados <ofelia.granados.f9ko@statefarm.com>; Banks, Victoria <Victoria.Banks@snoco.org>; Monica Roberts <monica.roberts.xic0@statefarm.com>  
**Cc:** Anaya, Carissa <Carissa.Anaya@snoco.org>; Norris, Nancy <nancy.norris@snoco.org>; cassandralopezlaw@gmail.com; James Gallegos <james@bishoplegal.com>  
**Subject:** RE: [EXTERNAL] RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

**CAUTION :** This email originated from outside of this organization. Please exercise caution with links and attachments.

Greetings,

I respectfully disagree. CR 59 (b) provides for motions for reconsideration to be filed “not later than 10 days after the entry of the judgment” and provides for it to be “heard or otherwise considered” within 30 days. As shown below, the motion was timely filed and noted to be heard on October 10, 2019. Now nearly four months later we still have not had a decision. It is entirely appropriate to remind the Court of Plaintiff’s age and to refer to RCW 4.44.025 for scheduling purposes. I understand that it is in State Farm’s interest for this case to remain in limbo indefinitely and until such time as Maria is no longer with us or otherwise unable to testify. But I must continue to advocate for my client so that she has a chance of obtaining justice in her lifetime for this vicious pit bull attack. This includes presenting arguments in scheduling to show why the motion should be heard without further delay.

Thank you,

**Derek K. Moore**  
Attorney at Law

## bishoplegal

19743 First Avenue South  
Normandy Park, WA 98148  
Phone: (206) 592-9000  
Fax: (206) 592-9001  
Email: [derek@bishoplegal.com](mailto:derek@bishoplegal.com)  
Website: [www.bishoplegal.com](http://www.bishoplegal.com)

-----  
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---

**From:** Ofelia Granados <[ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)>  
**Sent:** Tuesday, February 4, 2020 3:52 PM  
**To:** Derek Moore <[derek@bishoplegal.com](mailto:derek@bishoplegal.com)>; Banks, Victoria <[Victoria.Banks@snoco.org](mailto:Victoria.Banks@snoco.org)>; Monica Roberts <[monica.roberts.xic0@statefarm.com](mailto:monica.roberts.xic0@statefarm.com)>  
**Cc:** Anaya, Carissa <[Carissa.Anaya@snoco.org](mailto:Carissa.Anaya@snoco.org)>; Norris, Nancy <[nancy.norris@snoco.org](mailto:nancy.norris@snoco.org)>; [cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com); James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>  
**Subject:** RE: [EXTERNAL] RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

Good afternoon,

I have not chimed in in the past but for the record, I would like to state that this email chain is being used for scheduling purposes and it is inappropriate for Plaintiff to present any arguments as to what's best or how the case should proceed. The pending motion for reconsideration and motion to certify were filed to address these specific issues of whether the case should proceed.

I would ask Plaintiff to refrain from making any further arguments in this case and either simply wait for Ms. Banks to provide us with dates or keep the questions related to scheduling purposes. Thank you.

### **Ofelia A. Granados**

Attorney

Todd A. Bowers & Associates

Employees of the Law Department

State Farm Mutual Automobile Insurance Company

901 5<sup>th</sup> Avenue, Ste 830

Seattle, WA 98164

Tel: 206-521-5034

Email: [ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)

If you are a State Farm Employee or Agent, [Visit the Seattle CLC website](#)

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---

**From:** Derek Moore [<mailto:derek@bishoplegal.com>]  
**Sent:** Tuesday, February 4, 2020 3:04 PM  
**To:** Banks, Victoria <[Victoria.Banks@snoco.org](mailto:Victoria.Banks@snoco.org)>

**Cc:** Anaya, Carissa <[Carissa.Anaya@snoco.org](mailto:Carissa.Anaya@snoco.org)>; Norris, Nancy <[nancy.norris@snoco.org](mailto:nancy.norris@snoco.org)>; Ofelia Granados <[ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)>; [cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com); James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>  
**Subject:** [EXTERNAL] RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31  
**Importance:** High

Dear Ms. Banks,

Is there any decision on Plaintiff's Motion for Reconsideration? **Maria will soon be 78 years old**, and her case should be given *priority* under RCW 4.44.025. It would be best if summary judgment were reversed and a trial could be held with all defendants, with the legal question of whether there is a "dog bite exception to premises liability rules" under *Frobig* that precludes duties under *Oliver* and *Degel* to be addressed the appellate courts after the trial, if necessary. But if the Court declines to reconsider and reverse its decision, we respectfully request a ruling and that the case be certified that we start the appellate process without further delay.

Thank you,

**Derek K. Moore**  
**Attorney at Law**

**bishoplegal**

19743 First Avenue South  
Normandy Park, WA 98148  
Phone: (206) 592-9000  
Fax: (206) 592-9001  
Email: [derek@bishoplegal.com](mailto:derek@bishoplegal.com)  
Website: [www.bishoplegal.com](http://www.bishoplegal.com)

---

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---

**From:** Banks, Victoria <[Victoria.Banks@snoco.org](mailto:Victoria.Banks@snoco.org)>  
**Sent:** Thursday, January 16, 2020 10:54 AM  
**To:** Derek Moore <[derek@bishoplegal.com](mailto:derek@bishoplegal.com)>  
**Cc:** Anaya, Carissa <[Carissa.Anaya@snoco.org](mailto:Carissa.Anaya@snoco.org)>; Norris, Nancy <[nancy.norris@snoco.org](mailto:nancy.norris@snoco.org)>; Ofelia Granados <[ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)>; [cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com); James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>  
**Subject:** RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

Mr. Moore,

I appreciate the update and all of the information you've filled in for me. The Court is still considering the Motion. I will be out of the office from this afternoon until Monday, but I will make sure to update you as soon as possible regarding scheduling and what the Court is going to hear.

Best,

**Victoria Banks**  
Law Clerk to the Honorable **Janice E. Ellis**  
Department 12  
 Snohomish County Superior Court  
3000 Rockefeller Ave.  
Everett, WA 98201

[victoria.banks@snoco.org](mailto:victoria.banks@snoco.org)

---

**From:** Derek Moore [<mailto:derek@bishoplegal.com>]  
**Sent:** Wednesday, January 15, 2020 6:02 PM  
**To:** Banks, Victoria <[Victoria.Banks@snoco.org](mailto:Victoria.Banks@snoco.org)>  
**Cc:** Anaya, Carissa <[Carissa.Anaya@snoco.org](mailto:Carissa.Anaya@snoco.org)>; Norris, Nancy <[nancy.norris@snoco.org](mailto:nancy.norris@snoco.org)>; Ofelia Granados <[ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)>; [cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com); James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>  
**Subject:** RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

**CAUTION :** This email originated from outside of this organization. Please exercise caution with links and attachments.

Dear Ms. Banks,

Attached please find the conformed copy of the Order to Amend Pleadings and Change Caption in this matter, which was signed by the Commissioner and entered today. This corrects the pleadings and caption in this matter to correctly name defendant Alexandra Barajas Gonzalez.

I have also attached, in Word and .pdf formats, our Revised Proposed Order Granting Plaintiff's Motion for Consideration and our Revised Proposed Order Granting Plaintiff's Motion for Certification. They have both been revised to include the correct caption pursuant to today's Order. The Proposed Order for Reconsideration has also been updated to show 2020 as the year on the signature block. The Proposed Order for Certification has also been revised to replace Judge Wilson's name with Judge Ellis's name on the signature block. No other changes have been made to the orders from those previously proposed.

Hard copies will not follow unless requested. Opposing counsel is copied in on this email. Please let me know if you need anything from our office at this time.

Please let us know what dates the Court has available for a hearing on these motions.

Thank you,

**Derek K. Moore**  
**Attorney at Law**

**bishoplegal**

19743 First Avenue South  
Normandy Park, WA 98148  
Phone: (206) 592-9000  
Fax: (206) 592-9001  
Email: [derek@bishoplegal.com](mailto:derek@bishoplegal.com)  
Website: [www.bishoplegal.com](http://www.bishoplegal.com)

-----  
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---

**From:** Banks, Victoria <[Victoria.Banks@snoco.org](mailto:Victoria.Banks@snoco.org)>  
**Sent:** Tuesday, January 14, 2020 3:10 PM  
**To:** Derek Moore <[derek@bishoplegal.com](mailto:derek@bishoplegal.com)>  
**Cc:** Anaya, Carissa <[Carissa.Anaya@snoco.org](mailto:Carissa.Anaya@snoco.org)>; Norris, Nancy <[nancy.norris@snoco.org](mailto:nancy.norris@snoco.org)>; Ofelia Granados <[ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)>; [cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com); James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>  
**Subject:** RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

Mr. Moore,

The Court is taking your request under consideration as to the Motion for Reconsideration. While scheduling has been challenging this week due to the inclement weather, I will respond with dates that will work for the Court as soon as I am able.

Best,

**Victoria Banks**

Law Clerk to the Honorable **Janice E. Ellis**

Department 12

 Snohomish County Superior Court

3000 Rockefeller Ave.

Everett, WA 98201

[victoria.banks@snoco.org](mailto:victoria.banks@snoco.org)

---

**From:** Derek Moore [<mailto:derek@bishoplegal.com>]

**Sent:** Monday, January 13, 2020 5:13 PM

**To:** Banks, Victoria <[Victoria.Banks@snoco.org](mailto:Victoria.Banks@snoco.org)>

**Cc:** Anaya, Carissa <[Carissa.Anaya@snoco.org](mailto:Carissa.Anaya@snoco.org)>; Norris, Nancy <[nancy.norris@snoco.org](mailto:nancy.norris@snoco.org)>; Ofelia Granados <[ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)>; [cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com); James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>

**Subject:** RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

**Importance:** High

**CAUTION :** This email originated from outside of this organization. Please exercise caution with links and attachments.

Re: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

Attn: Victoria Banks, law clerk to Hon. Janice Ellis

Dear Ms. Banks,

As previously reported, I represent Plaintiff Maria Saralegui Blanco in the above captioned matter. Opposing counsel has been copied in. We still have not received any ruling on Plaintiff's Motion for Reconsideration as requested below. We recently filed a Motion to Certify, noted for hearing by Judge Wilson, the current Civil Motions Judge, to be heard on Wed., Feb. 15, 2020. I have been informed that this Motion to Certify has been transferred to Judge Ellis, and that the motion needs to be re-noted to be heard at a time she has available.

Please let us know what times and dates the Court has available to hear Plaintiff's Motion to Certify. If no ruling has still yet been made on Plaintiff's Motion for Reconsideration, we would also request oral argument on that motion be heard on the same date, immediately before the Motion to Certify.

Thank you,

**Derek K. Moore**  
Attorney at Law

**bishoplegal**

19743 First Avenue South  
Normandy Park, WA 98148  
Phone: (206) 592-9000

Fax: (206) 592-9001  
Email: [derek@bishoplegal.com](mailto:derek@bishoplegal.com)  
Website: [www.bishoplegal.com](http://www.bishoplegal.com)

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---

**From:** Derek Moore  
**Sent:** Wednesday, December 18, 2019 3:40 PM  
**To:** [victoria.banks@snoco.org](mailto:victoria.banks@snoco.org); [catalina.saldivia@snoco.org](mailto:catalina.saldivia@snoco.org)  
**Cc:** Ofelia Granados <[ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)>; [cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com); James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>; [judge@snoco.org](mailto:judge@snoco.org)  
**Subject:** RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

Greetings,

We still have not received any ruling on Plaintiff's Motion for Reconsideration, which was noted for October 10th at 9:00 without oral argument. Of course we still maintain that there are at least fact questions to show that Defendants Hernandez owed Ms. Saralegui Blanco duties under Washington Law including *Oliver v. Cook* and *Degel v. Majestic Mobile Manor, Inc.*, to prevent this vicious pit-bull attack, and that their summary judgment dismissal should be reconsidered and reversed.

However, in the event the Court still finds otherwise, we respectfully request a decision so that we may seek certification under RAP 2.3 (b) (4) and RAP 2.2 (d) for interlocutory appeal so that the appellate courts can resolve the apparent conflict between *Oliver v. Cook*, *Degel v. Majestic Mobile Manor, Inc.* and *Frobig v. Gordon*. We would also request the availability of the Court and defense counsel for a hearing on Plaintiff's Motion to Certify.

For your convenience, I have attached Plaintiff's Motion for Reconsideration and Proposed Order, which were previously provided, filed, and served when previously noted.

Thank you,

**Derek K. Moore**  
**Attorney at Law**

**bishoplegal**

19743 First Avenue South  
Normandy Park, WA 98148  
Phone: (206) 592-9000  
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Email: [derek@bishoplegal.com](mailto:derek@bishoplegal.com)  
Website: [www.bishoplegal.com](http://www.bishoplegal.com)

---

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---

**From:** Derek Moore  
**Sent:** Tuesday, November 12, 2019 11:43 AM  
**To:** 'victoria.banks@snoco.org' <[victoria.banks@snoco.org](mailto:victoria.banks@snoco.org)>; 'catalina.saldivia@snoco.org' <[catalina.saldivia@snoco.org](mailto:catalina.saldivia@snoco.org)>

Cc: 'Ofelia Granados' <[ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)>; 'cassandralopezlaw@gmail.com' <[cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com)>; James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>; 'judge@snoco.org' <[judge@snoco.org](mailto:judge@snoco.org)>  
**Subject:** RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

Greetings,

Is there any word on Plaintiff's Motion for Reconsideration?

Thank you,

**Derek K. Moore**  
**Attorney at Law**

**bishoplegal**

19743 First Avenue South  
Normandy Park, WA 98148  
Phone: (206) 592-9000  
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Website: [www.bishoplegal.com](http://www.bishoplegal.com)

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---

**From:** Derek Moore  
**Sent:** Thursday, October 24, 2019 9:09 AM  
**To:** 'victoria.banks@snoco.org' <[victoria.banks@snoco.org](mailto:victoria.banks@snoco.org)>; 'Ofelia Granados' <[ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)>; 'cassandralopezlaw@gmail.com' <[cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com)>; James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>  
**Subject:** RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

Greetings,

Has the Court issued a ruling on Plaintiff's Motion for Reconsideration in this matter? I have not received any.

Thank you,

**Derek K. Moore**  
**Attorney at Law**

**bishoplegal**

19743 First Avenue South  
Normandy Park, WA 98148  
Phone: (206) 592-9000  
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Website: [www.bishoplegal.com](http://www.bishoplegal.com)

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---

**From:** Derek Moore

**Sent:** Tuesday, September 17, 2019 9:52 AM

**To:** Saldivia, Catalina <[Catalina.Saldivia@co.snohomish.wa.us](mailto:Catalina.Saldivia@co.snohomish.wa.us)>; Ofelia Granados <[ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)>; [cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com); James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>

**Subject:** RE: [EXTERNAL] RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

Attached please find Plaintiff's Motion for Reconsideration, with the Note for Motion and Proposed Order. Hard copies will be filed with hard copies of working papers provided to the Judge by legal messenger. Hard copies will be provided to Defendants' attorneys by mail, as indicated.

Thank you,

**Derek K. Moore**  
Attorney at Law

**bishoplegal**

19743 First Avenue South  
Normandy Park, WA 98148  
Phone: (206) 592-9000  
Fax: (206) 592-9001  
Email: [derek@bishoplegal.com](mailto:derek@bishoplegal.com)  
Website: [www.bishoplegal.com](http://www.bishoplegal.com)

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**From:** Saldivia, Catalina <[Catalina.Saldivia@co.snohomish.wa.us](mailto:Catalina.Saldivia@co.snohomish.wa.us)>

**Sent:** Friday, September 13, 2019 4:23 PM

**To:** Ofelia Granados <[ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)>; Derek Moore <[derek@bishoplegal.com](mailto:derek@bishoplegal.com)>; [cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com); James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>

**Subject:** RE: [EXTERNAL] RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

Good Afternoon,

Judge Ellis will take the motion under advisement on October 10<sup>th</sup> at 9:00 without oral argument as pursuant to SCLCR 59(e)(3)(b) and issue a ruling at a later date. Please do not come in to department 12 as Judge Ellis is assigned to criminal hearings.

Regards,

**Catalina Saldivia**

Law Clerk to the Honorable **Janice E. Ellis**  
Department 12  
 Snohomish County Superior Court  
3000 Rockefeller Ave.  
Everett, WA 98201  
[catalina.saldivia@snoco.org](mailto:catalina.saldivia@snoco.org)

---

**From:** Ofelia Granados [<mailto:ofelia.granados.f9ko@statefarm.com>]

**Sent:** Friday, September 13, 2019 2:51 PM

**To:** Derek Moore <[derek@bishoplegal.com](mailto:derek@bishoplegal.com)>; Saldivia, Catalina <[Catalina.Saldivia@co.snohomish.wa.us](mailto:Catalina.Saldivia@co.snohomish.wa.us)>; [cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com); James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>

**Subject:** RE: [EXTERNAL] RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

**CAUTION :** This email originated from outside of this organization. Please exercise caution with links and attachments.

Good afternoon,

I will be unavailable until October 21, as I am out of the office for vacation and mandatory training.

Ofelia A. Granados  
Claims Litigation Counsel  
Todd A. Bowers & Associates  
Employees of the Law Department  
State Farm Mutual Automobile Insurance Company

---

**From:** Derek Moore <[derek@bishoplegal.com](mailto:derek@bishoplegal.com)>

**Date:** Friday, Sep 13, 2019, 2:46 PM

**To:** Saldivia, Catalina <[Catalina.Saldivia@co.snohomish.wa.us](mailto:Catalina.Saldivia@co.snohomish.wa.us)>, [cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com) <[cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com)>, Ofelia Granados <[ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)>, James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>

**Subject:** [EXTERNAL] RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

I can be available on October 4 or October 7, with October 7 preferred.

Thank you,

**Derek K. Moore**  
Attorney at Law

**bishoplegal**

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

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Website: [www.bishoplegal.com](http://www.bishoplegal.com)

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**From:** Saldivia, Catalina <[Catalina.Saldivia@co.snohomish.wa.us](mailto:Catalina.Saldivia@co.snohomish.wa.us)>

**Sent:** Friday, September 13, 2019 2:22 PM

**To:** Derek Moore <[derek@bishoplegal.com](mailto:derek@bishoplegal.com)>; [cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com); [ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com); James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>

**Subject:** RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

Mr. Moore,

Would either October 4<sup>th</sup>, October 7<sup>th</sup>, October 8<sup>th</sup>, or October 9<sup>th</sup> work for the parties to schedule the motion for re-consideration?

Regards,

## Catalina Saldivia

Law Clerk to the Honorable **Janice E. Ellis**

Department 12

 Snohomish County Superior Court

3000 Rockefeller Ave.

Everett, WA 98201

[catalina.saldivia@snoco.org](mailto:catalina.saldivia@snoco.org)

---

**From:** Saldivia, Catalina

**Sent:** Thursday, September 12, 2019 2:36 PM

**To:** [derek@bishoplegal.com](mailto:derek@bishoplegal.com); [cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com); [ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com); [james@bishoplegal.com](mailto:james@bishoplegal.com)

**Subject:** RE: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

Mr. Moore,

Thank you for your email. I will bring this to the attention of Judge Ellis and get back to you on this matter.

Regards,

## Catalina Saldivia

Law Clerk to the Honorable **Janice E. Ellis**

Department 12

 Snohomish County Superior Court

3000 Rockefeller Ave.

Everett, WA 98201

[catalina.saldivia@snoco.org](mailto:catalina.saldivia@snoco.org)

---

**From:** Bedle, Jan

**Sent:** Wednesday, September 11, 2019 4:13 PM

**To:** Saldivia, Catalina <[Catalina.Saldivia@co.snohomish.wa.us](mailto:Catalina.Saldivia@co.snohomish.wa.us)>

**Subject:** FW: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

**Importance:** High

---

**From:** Derek Moore [<mailto:derek@bishoplegal.com>]

**Sent:** Wednesday, September 11, 2019 3:55 PM

**To:** SSC-Contact SupCrt Judge <[judge@co.snohomish.wa.us](mailto:judge@co.snohomish.wa.us)>

**Cc:** Cassandra Lopez de Arriaga <[cassandralopezlaw@gmail.com](mailto:cassandralopezlaw@gmail.com)>; Ofelia Granados <[ofelia.granados.f9ko@statefarm.com](mailto:ofelia.granados.f9ko@statefarm.com)>; James Gallegos <[james@bishoplegal.com](mailto:james@bishoplegal.com)>

**Subject:** Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

To: Law Clerk to Hon. Janice E. Ellis

Re: Maria Saralegui Blanco v. David Sandoval, et al., No. 18-2-08290-31

Dear Law Clerk to Hon. Janice E. Ellis,

I represent the plaintiff in the above captioned matter, and wish to file a motion for consideration of dismissal of Plaintiff's claims against defendants Hernandez on yesterday's summary judgment hearing with Judge Ellis presiding as Civil Motions Judge. Local Rule 59 provides that such motions set "before the court which heard the motion," which I understand would require me to note the motion on Judge Ellis's personal calendar rather than the Judge's Civil Motions Calendar. Please let me know if I am incorrect and should note it before the Judge's Civil Motions Calendar.

I also plan to file a motion for certification to the appellate courts 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 of the dismissal of Plaintiff's claims against defendants Hernandez despite the fact that insolvent and uninsured defendants Gonzalez remain defendants in this case, in the event that Plaintiff's motion for reconsideration is denied. I understand that oral argument would be heard on this motion, whereas oral argument on the motion for consideration would be heard only if requested by the court.

Plaintiff respectfully requests the Court provide available dates within the next 30 days for a hearing in this matter, with the motion for reconsideration to be heard and / or decided on the same date before the motion to certify is heard. (The motion to certify would be struck as moot if the motion for reconsideration were granted.)

Please also let me know if these motions should be noted on the Judge's Civil Motion Calendar instead.

Opposing counsel is copied in on this email.

Thank you,

**Derek K. Moore**  
**Attorney at Law**

**bishoplegal**

19743 First Avenue South  
Normandy Park, WA 98148  
Phone: (206) 592-9000  
Fax: (206) 592-9001  
Email: [derek@bishoplegal.com](mailto:derek@bishoplegal.com)  
Website: [www.bishoplegal.com](http://www.bishoplegal.com)

---

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## **APPENDIX 7**

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**FILED**

FEB 25 2020

HEIDI PERCY  
COUNTY CLERK  
SNOHOMISH CO. WASH.

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Case No. 18-2-08290-31

Plaintiff,

NOTICE OF DISCRETIONARY  
REVIEW TO THE SUPREME COURT  
OF WASHINGTON

vs.

**[CLERK'S ACTION REQUIRED]**

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

Defendants.

COMES NOW plaintiff MARIA JESUS SARALEGUI BLANCO, and hereby seeks  
review by the Supreme Court of Washington of the following decisions and orders:

- Order Granting Defendants Hernandez' Motion for Summary Judgment, and Denying Defendants Gonzales Sandoval and Martinez's Motion for Summary Judgment Without Prejudice,<sup>1</sup> filed September 10, 2019;
- Order Denying Plaintiff's Motion for Reconsideration, filed February 11, 2020;
- Order Denying Plaintiffs' Motion to Certify Order Granting Defendant Hernandez' Motion for Summary Judgment, filed February 11, 2020.

<sup>1</sup> Plaintiff seeks review of only the decision granting Defendants Hernandez' motion and does not seek review of the decision denying defendants Gonzales Sandoval and Martinez's motion.

NOTICE OF DISCRETIONARY REVIEW TO THE  
SUPREME COURT OF WASHINGTON

1 Copies of the Orders are attached to this Notice, along with a copy the February 10, 2020 letter  
2 to counsel from the Court, and along with a copy of the email correspondence from September  
3 11, 2019 through February 5, 2020 regarding these decisions.  
4

5 Dated this 21<sup>st</sup> day of February, 2020.

6 BISHOP LEGAL

7 

8 \_\_\_\_\_  
9 Derek K. Moore  
10 WSBA No. 37921  
11 Attorneys for Plaintiff / Petitioner  
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**FILED**

FEB 25 2020

HEIDI PERCY  
COUNTY CLERK  
SNOHOMISH CO. WASH.

WASHINGTON STATE SUPERIOR COURT FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,  
Plaintiff,

v.

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:

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

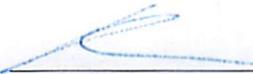
Cassandra Lopez de Arriaga  
1812 Hewitt Ave., Ste 204  
Everett, WA 98201

the following document(s):

- NOTICE OF DISCRETIONARY REVIEW TO THE SUPREME COURT OF WASHINGTON, with attachments

Dated this 21<sup>st</sup> day of February, 2020.

BISHOP LEGAL

  
Derek K. Moore, WSBA No. 37921  
Attorneys for the Plaintiffs

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

## **APPENDIX 8**

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 RESPONSE TO  
DEFENDANTS HERNANDEZ'S  
MOTION FOR SUMMARY  
JUDGMENT

**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

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

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 204<sup>th</sup> Street Northeast,  
16 Arlington, Snohomish County, Washington, 98223 ("the premises" or "the property"). The  
17 attack is described in vivid detail by Maria Blanco,<sup>1</sup> as well as by witnesses Teresa Jimenez,  
18 Jaylene Lyman, and Katie Lyman who were with her.<sup>2</sup>

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 <sup>1</sup> Maria Blanco deposition, Pages 25-36;

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

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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

---

18 <sup>3</sup> 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 <sup>4</sup> Ernesto Hernandez deposition, Page 23; David Sandoval deposition, Page 6. Ernesto and David testify that David  
moved in around 2015 or 2016, but the Residential Rental Agreement provided by David and Alexandra in response  
21 to Plaintiff’s written discovery requests is dated July 1, 2014. (Ex. 6 to Moore Dec.)

22 <sup>5</sup> David Sandoval deposition, Pages 6-7

23 <sup>6</sup> Elvia Sandoval deposition, Page 14:5-6 and Page 49

24 <sup>7</sup> Ernesto Hernandez deposition, Pages 28-30; Teri Hernandez deposition, Page 19.

<sup>8</sup> Maria Blanco deposition, Page 14:10-14;

<sup>9</sup> Declaration of Teresa Jimenez ¶ 6, Declaration of Jaylene Lyman ¶ 5, Declaration of Katie Lyman ¶ 5.

<sup>10</sup> 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.<sup>11</sup> The Jehovah’s Witness church  
3 policy is to have its members honor people’s requests to stay away from their homes.<sup>12</sup>  
4 Defendant Teri Hernandez also happens to be a Jehovah’s Witness who provides Bible study.<sup>13</sup>  
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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> Elvia testified that Maria came to her house to  
10 talk to her about the Bible.<sup>17</sup> Although Elvia said she never asked Maria to come back,<sup>18</sup> Elvia  
11 testified that Maria came back several times.<sup>19</sup> She states, “It was not forced conversation about  
12 the Bible.”<sup>20</sup> Elvia testified that she did “invite her into the home” but “only once” when the  
13 weather was bad.<sup>21</sup> 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.**”<sup>22</sup>

16 Elvia was alone at home at the time that Maria and came to see her.<sup>23</sup> She

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

19 <sup>12</sup> Declaration of Teresa Jimenez ¶ 9, Declaration of Jaylene Lyman ¶ 8, Declaration of Katie Lyman ¶ 7.

20 <sup>13</sup> Teri Ernesto Hernandez deposition, Pages 37-38

21 <sup>14</sup> *Id.*, Pages 38-39

22 <sup>15</sup> *Id.*

23 <sup>16</sup> 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

<sup>17</sup> Elvia Sandoval deposition, Page 9:18-19

<sup>18</sup> *Id.*, Page 9:21-22

<sup>19</sup> *Id.*, Page 10

<sup>20</sup> *Id.*, Page 10:8-9

<sup>21</sup> *Id.*, Page 10:14-18

<sup>22</sup> *Id.*, Page 22:16-18 (emphasis added)

<sup>23</sup> *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.<sup>24</sup> 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.<sup>25</sup> Elvia didn’t see  
4 the dog escape, since her back was to the dog.<sup>26</sup> She thinks that the dog “just skipped through”  
5 the wood shown on photo number 80 in Exhibit 1 to her deposition.<sup>27</sup> The fence had gates but  
6 the gates were closed at the time.<sup>28</sup> 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.<sup>29</sup>

9 Maria testifies that she arrived at around 11:30 AM, and usually studies half an hour with  
10 Elvia.<sup>30</sup> The attack occurred sometime between 12:00 noon and 12:30 P.M.<sup>31</sup> They had just  
11 completed their studies, and she had just closed her Bible, when the dog was on her.<sup>32</sup> 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.<sup>33</sup> 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  
of wood, and he jumps here. I looked at him. It looked like he was flying, but he  
wasn’t flying but he was so fast that he jumped. So he escaped here. And so the

17 <sup>24</sup> *Id.*, Page 50

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

19 <sup>26</sup> *Id.*, Page 20:1-3

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

21 <sup>28</sup> Elvia Sandoval deposition, Page 42:11-14

22 <sup>29</sup> *Id.*, Page 40:23-41:9

23 <sup>30</sup> Maria Blanco deposition, Page 24:10-25

24 <sup>31</sup> *Id.*, Page 14:6-7

<sup>32</sup> *Id.*, Page 28

<sup>33</sup> *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.<sup>34</sup> 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."<sup>35</sup>

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

12 Defendants Ernesto and Teri Hernandez own the premises.<sup>41</sup> Ernesto believes they  
13 bought the property in 2011, but Teri thinks they bought it earlier, around 2005.<sup>42</sup> Ernesto and  
14 Teri own about 20 properties in Snohomish County.<sup>43</sup> 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.<sup>44</sup>

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

18  
19 <sup>34</sup> Maria Blanco deposition, Page 28

20 <sup>35</sup> *Id.*, Page 28:2-5

21 <sup>36</sup> David Sandoval deposition, Page 25 (referring to photo 80)

22 <sup>37</sup> *Id.*, Page 26:20-25

23 <sup>38</sup> *Id.*, Page 27:18-20

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

<sup>40</sup> Alejandra Martinez deposition, Page 12:14-15

<sup>41</sup> Ernesto Hernandez deposition, Pages 18-19; Teri Hernandez deposition, Pages 17-18.

<sup>42</sup> *Id.*

<sup>43</sup> Ernesto Hernandez deposition, Pages 24-28

<sup>44</sup> David Sandoval deposition, Page 15:10-11

<sup>45</sup> 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.<sup>47</sup> Ernesto testifies he has no policies regarding animals or  
3 pets on the property.<sup>48</sup> 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.<sup>49</sup> On his inspection, he also looks at the condition of the yard.<sup>50</sup>

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.<sup>51</sup> David later got the subject pit bull, Enzo, when he  
19 was a puppy.<sup>52</sup> At some point the chihuahua did live with the pit bull,<sup>53</sup> though they gave the

21 <sup>46</sup> Ernesto Hernandez deposition, Page 35

22 <sup>47</sup> *Id.*

23 <sup>48</sup> *Id.*, Page 36

24 <sup>49</sup> Ernesto Hernandez deposition, Page 33

<sup>50</sup> *Id.*, Page 34

<sup>51</sup> David Sandoval deposition, Page 6, Elvia Sandoval deposition, Pages 11-12

<sup>52</sup> Elvia Sandoval deposition, Pages 11-12

1 chihuahua to Elvia’s daughter, who moved out long before to the incident.<sup>54</sup> 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.<sup>55</sup>

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.<sup>56</sup> 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.<sup>57</sup> David built the additional fencing when the dog was about four months old.<sup>58</sup> 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.<sup>59</sup> Though he never expressed any concern about what  
12 would happen when the pit bull puppy grew up.<sup>60</sup> He had no “discussions regarding whether or  
13 not the fence would be improved or upgraded as the dog got bigger.”<sup>61</sup> 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.<sup>62</sup> 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.”<sup>63</sup> Elvia elaborated:

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18  
19 <sup>53</sup> David Sandoval deposition, Page 9

<sup>54</sup> Elvia Sandoval deposition, Page 44:15-17; *See also* Ernesto Hernandez deposition, Pages 37:22 – 38:8

<sup>55</sup> David Sandoval deposition, Pages 7-8

<sup>56</sup> Ernesto Hernandez deposition, Page 24

<sup>57</sup> *Id.*, Pages 41-42 and 44-45; Elvia Sandoval deposition, Pages 11-12

<sup>58</sup> David Sandoval deposition, Pages 8-9

<sup>59</sup> Ernesto Hernandez deposition, Pages 37, 39.

<sup>60</sup> *Id.*, Page 40

<sup>61</sup> *Id.*, Pages 45:23-46:1

<sup>62</sup> *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)

<sup>63</sup> 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.<sup>64</sup>

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."<sup>65</sup> 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.<sup>66</sup>

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.

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<sup>64</sup> *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.")

<sup>65</sup> Alejandra Martinez deposition, Page 11:6-17

<sup>66</sup> 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.<sup>67</sup> 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.<sup>68</sup> 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.<sup>69</sup> 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.<sup>70</sup>

### 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 <sup>67</sup> Ernesto Hernandez deposition, Page 59:15-20

23 <sup>68</sup> *Id.*, Page 70:3-6

<sup>69</sup> *Id.*, Page 70:7-10

24 <sup>70</sup> *Id.*, Page 70:11-14

1 IV. EVIDENCE RELIED ON

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

4 V. AUTHORITY

5 On a motion for summary judgment, the moving party has the burden of showing the  
6 absence of a genuine issue of material fact and an entitlement to judgment as a matter of law.

7 CR 56. Summary judgment is proper when reasonable minds could reach but one conclusion  
8 regarding the material facts. *Stokes v. Bally’s Pacwest Inc.*, 113 Wn. App. 442, 444-445, 54 P.3d  
9 161 (Div. 1, 2002). In an action for negligence a plaintiff must prove four basic elements: (1) the  
10 existence of a duty, (2) breach of that duty, (3) resulting injury, and (4) proximate cause. *Tincani*  
11 *v. Inland Empire Zoological Soc’y.*, 124 Wn.2d 121, 127-28, 875 P.2d 621 (1994). “A duty can  
12 arise either from common law principles or from a statute or regulation. A duty can also arise  
13 contractually.” *Kennedy v. Sea-Land Service, Inc.*, 62 Wn. App. 839, 816 P.2d 75 (Div. 1, 1991)  
14 The existence of a legal duty is generally a question of law. *Degel v. Majestic Mobile Manor,*  
15 *Inc.*, 129 Wn.2d 43, 48, 914 P.2d 728 (1996). But where duty depends on proof of certain facts  
16 that may be disputed, summary judgment is inappropriate. *Sjogren v. Props. of Pacific NW,*  
17 *LLC.*, 118 Wn. App. 144, 148, 75 P.3d 592 (Div. 2, 2003). The facts and reasonable inferences  
18 from those facts are considered in a light most favorable to the nonmoving party. *Babcock v.*  
19 *Mason County Fire Dist. No. 6.*, 144 Wn.2d 774, 784, 30 P.3d 1261 (2001).

20 A. Defendants Hernandez’s Liability under *Oliver v. Cook*

21 Defendants Hernandez argue that they are entitled to summary judgment because they did  
22 not own, keep or harbor the subject pit bull, and therefore are not liable under RCW 16.08.040 or  
23 common law strict liability. They rely heavily on *Frobig 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] Scrapy 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).<sup>71</sup>

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29 <sup>71</sup> 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.

22 //

23 //

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.<sup>72</sup> 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.”<sup>73</sup> 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.<sup>74</sup> The dangers of pit bulls have been known in Snohomish County since  
14 at least 1987.<sup>75</sup> 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 <sup>72</sup> 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 <sup>73</sup> 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 <sup>74</sup> 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 <sup>75</sup> 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 22<sup>nd</sup> day of August, 2019.

10 BISHOP LEGAL

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13 Derek K. Moore  
14 WSBA No. 37921  
15 Attorney for Plaintiff  
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## **APPENDIX 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.

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Dated this 17<sup>th</sup> day of September, 2019.

BISHOP LEGAL



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Derek K. Moore  
WSBA No. 37921  
Attorney for Plaintiff

## **APPENDIX 10**

Hon. Janice Ellis  
Hearing: Thursday, Oct. 10, 2019 at 9:00 AM  
Without Oral Argument  
Moving Party

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 *Frobig 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 *Frobig* 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.<sup>1</sup> They will  
20 bear no consequence and will provide no compensation to Ms. Blanco regardless of the amount  
21 of the judgment against them.

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22  
23 <sup>1</sup> 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.

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.<sup>2</sup> 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 4<sup>th</sup> day of October, 2019.

15 BISHOP LEGAL

16 

17 Derek K. Moore  
18 WSBA No. 37921  
19 Attorney for Plaintiff  
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24 <sup>2</sup> See the Moore Declaration in support of the Reply, and the exhibits thereto.  
PLAINTIFF'S REPLY TO DEFENDANTS  
HERNANDEZ'S RESPONSE TO PLAINTIFF'S  
MOTION FOR RECONSIDERATION

## **APPENDIX 11**

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 TO CERTIFY  
ORDER GRANTING DEFENDANTS  
HERNANDEZ'S MOTION FOR  
SUMMARY JUDGMENT

**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.<sup>1</sup> 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.<sup>2</sup> 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 <sup>1</sup> Maria Blanco deposition, Page 6:25 – 7:1 (Ex. 2 to Moore Decl. in Support of Motion to Certify)

24 <sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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  
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21  
22 <sup>3</sup> 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 <sup>4</sup> Id.; Moore Decl. in Support of Motion to Certify ¶ 3; For the current Civil Motions Judge’s reference, the briefing  
on Plaintiff’s Response to Defendants Hernandez’s Motion, Plaintiff’s Motion for Reconsideration, and Plaintiff’s  
24 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,<sup>5</sup> and their attorney is attempting to withdraw as their counsel of record.<sup>6</sup>

### 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 *Frobigo 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.

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21 <sup>5</sup> See Declaration of David Gonzalez Sandoval and exhibits thereto submitted in support of Defendants Gonzalez  
22 and Martinez Response to Motion for Summary Judgment and Motion to Join.

23 <sup>6</sup> 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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1 Dated this 3<sup>rd</sup> day of January, 2020.

2 BISHOP LEGAL

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4 \_\_\_\_\_  
5 Derek K. Moore  
6 WSBA No. 37921  
7 Attorney for Plaintiff  
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## **APPENDIX 12**

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.

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] Scrapy 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).<sup>1</sup>

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

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<sup>1</sup> 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”<sup>2</sup> 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 //

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23  
24 <sup>2</sup> *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 13<sup>th</sup> day of January, 2020.

2 BISHOP LEGAL

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4 \_\_\_\_\_  
5 Derek K. Moore  
6 WSBA No. 37921  
7 Attorney for Plaintiff

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## **APPENDIX 13**

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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 204<sup>th</sup> 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.

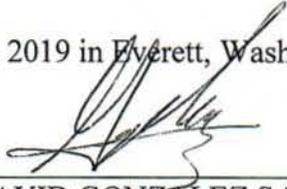
14 14. Union Bank recently closed my account for due of lack of funds. (SEE  
15 ATTACHED).

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.

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DAVID GONZALEZ SANDOVAL

## **APPENDIX 14**

FILED

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

MARIA JESUS SARALEGUI BLANCO,

Case No. 18-2-08290-31

Plaintiff,

vs.

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

Defendants.

ORDER GRANTING PLAINTIFF'S  
MOTION TO AMEND PLEADINGS  
AND CHANGE CAPTION

(Clerk's Action Required)

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 Plaintiff's Motion to Amend Pleadings and Change Caption, with the  
Declaration of Derek K. Moore in Support, with exhibits thereto, and Responses and Replies, if  
any, with declarations in support and exhibits thereto, if any.

ORDER GRANTING PLAINTIFF'S MOTION TO  
AMEND PLEADINGS AND CHANGE CAPTION

1 Therefore, it is HEREBY ORDERED, ADJUDGED and DECREED, that Plaintiff's  
2 Motion to Motion to Amend Pleadings and Change Caption is hereby GRANTED. The  
3 Summons, Complaint, and pleadings of all parties in this matter are hereby retroactively  
4 amended to change the incorrect name of defendant ALEJANDRA MARTINEZ to the correct  
5 name of ALEXANDRA BARAJAS GONZALEZ, with this change to relate back to the initial  
6 service and filing of the Summons and Complaint in this matter, with no new filings of amended  
7 pleadings required.

8 It is HEREBY FURTHER ORDERED, ADJUDGED and DECREED that the caption in  
9 this matter is amended to read as follows:

10 MARIA JESUS SARALEGUI BLANCO,

11 Plaintiff,

12 vs.

13 DAVID GONZALEZ SANDOVAL,  
14 ALEXANDRA BARAJAS GONZALEZ, and  
15 the marital community comprised thereof, and  
16 ERNESTO HERNANDEZ,  
17 TERI HERNANDEZ and the marital  
18 community comprised thereof,

19 Defendants.

20 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED:  
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ORDER GRANTING PLAINTIFF'S MOTION TO  
AMEND PLEADINGS AND CHANGE CAPTION

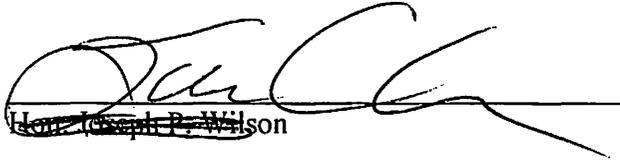
PAGE 2 of 3

 **bishoplegal**

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Normandy Park, WA 98148-2401  
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Fax: (206) 592-9001

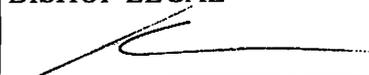
JAN 15 2020

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

  
~~Hon. Joseph P. Wilson~~

Presented by:  
BISHOP LEGAL

Court Commissioner

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

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

TODD A. BOWERS & ASSOCIATES

CASSANDRA LOPEZ DE ARRIAGA LAW

---

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

---

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

ORDER GRANTING PLAINTIFF'S MOTION TO  
AMEND PLEADINGS AND CHANGE CAPTION

PAGE 3 of 3

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**BISHOP LAW OFFICES, P.S.**

**March 04, 2020 - 8:32 AM**

**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

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