



## **JURISDICTION AND VENUE**

- 4) This action arises under the U.S. Constitution and laws of the United States including 42
- 5) U.S.C. 1983 and 1988. Jurisdiction is conferred on this court pursuant to 28 U.S.C. 1331 and 1343.
- 6) This court has the authority to grant the declaratory and injunctive relief herein requested pursuant to 28 U.S.C. 2202 and rules 57 and 65 of the Federal Rules of Civil Procedure.

## **PARTIES**

### **PLAINTIFF**

- 7) Kim Paddock is the pro-se plaintiff in this action. She was born in Mountain Home, Idaho and is a life long resident of the State of Idaho. Kim Paddock has an Associate of Science Degree from ITT Institute and graduated summa cumlaude.

### **DEFENDANTS**

- 8) Defendant C.L. "Butch" Otter is the governor of the State of Idaho and as such, is the Chief Executive for the state, responsible for ensuring the enforcement of the states criminal statutes. The governor is sued in his official capacity.
- 9) Defendant Lawrence Wasden is the Attorney General and as such, oversees the enforcement of the states criminal statutes. The Attorney General is sued in his official capacity.
- 10) Defendant Gem County Sheriff are responsible for enforcement of the states criminal laws and statutes and provisions within these statutes.
- 11) Gem County Board of Commissioners is the governing body of Gem County, Idaho. The Board enacts laws and ensures the compliance of laws. The Commissioners are constitutional officers as described in chapters 7 and 8 of Title 31 Idaho Code. They may govern matters not already covered by state or federal law or may supplement but cannot supersede existing state or federal law.
- 12) Defendant Parke-Gordon Law are a personal injury law firm whose duty it is to provide

effective assistance of counsel in such a manner as to not violate the Plaintiff's due process of law and a fair trial.

#### **FACTUAL BACKGROUND**

13) On May 31st 2014 at around 1:30 PM Kim Paddock was riding her motorcycle with friends down Labor Camp Road in Gem County Idaho. They were riding to Ellie Whaley's house to visit. There were four motorcycles in the group and two vehicles with other friends and family in them behind the motorcycles. The motorcycles were riding in staggered formation in this order from the front: Bob Boren, Kim Paddock, Michael VanAntwerp, and Tyler Reeve. Next were the two vehicles. In the first vehicle were Martin Alonzo and Brian Fry. In the second vehicle were Levi Paddock and Louis Boren. According to Michael VanAntwerp, the dog crouched in the grass next to the mailbox after hearing the first motorcycle go by and then bolted into the road so fast that Paddock had no chance to respond. Tyler Reeve stated that all he saw was a black blur (the dog) and that Paddock had no time to respond. Paddock sustained numerous injuries. The dog died at the scene.

14) Mr. Boren and Mr. Alonzo tended to Paddock who was bleeding profusely from facial injuries and had a shattered forearm. Shortly after the accident occurred a young man in his mid 20's came out of the Palacio home and stated that the accident was Paddock's fault because she was going "too fast" and that these dogs had "range rights". He stated that not only did they allow the dogs to chase vehicles but encouraged them to do so because it amused them. The young man did nothing to assist and didn't seem to care about the dire condition of either Paddock or the dog. His statements were heard by several witnesses on the scene.

15) The young man removed the dog from the road despite being told by Mr. VanAntwerp not to do so thus destroying evidence.

16) Shortly after the young man came from the Palacio home another older man came out as well. He was later identified as Gilbert Palacio. He also stated that his dogs had "range rights" and that he was not responsible for the accident and did nothing to help. He readily admitted that the dogs were his as he was under the impression that he had committed no crime.

17) An off duty officer showed up on his motorcycle to assist after he heard the call go out to the sheriff's department on his radio. The Gem County sheriffs showed up after the officer on the motorcycle did. An ambulance arrived to take Paddock to the emergency room.

18) After the accident and during the time that Gem County sheriffs were at the scene the remaining dogs that were on the Palacio property were still running on the Palacio property and into the road. These dogs also had no collar or tags. The Gem County sheriffs did not write a warning to Palacio concerning these remaining dogs. It was obvious that these dogs lived on the Palacio property as there are no other homes close by and the dogs were on his property.

19) Levi Paddock and Louis Boren returned the afternoon of May 31st 2014 with a truck and trailer to transport Paddock's motorcycle home. When they drove by the Palacio property two of the remaining dogs ran from the Palacio driveway and chased the truck and trailer driven by Levi Paddock.

20) Michael VanAntwerp left his motorcycle at the Whaley residence after the accident. He nearly hit the dog after Paddock did and he was shaken. The day after the accident, June 1st 2014, Mr. VanAntwerp was driven by Bob Boren past the Palacio residence to retrieve his motorcycle. Labor Camp Road is the only connecting road that went to the Whaley residence so they had no choice but to go down this road. Two of the remaining dogs ran from the Palacio property i.e. the driveway and chased the vehicle. Mr. Boren dropped Mr. VanAntwerp off and drove past the Palacio residence again. Once again the

dogs came from the Palacio property and chased his vehicle. Mr. VanAntwerp then had to ride his motorcycle past the Palacio residence to get home. He was afraid that the dogs would once again chase a motorcycle so he was very cautious. He was relieved that this time the dogs didn't give chase.

21) Plaintiff Paddock called the Gem County Sheriff after her accident to file complaint against Palacio for his remaining dogs running into the road and being without collar or tags. Paddock was told by a woman who answered the phone at the Gem County Sheriff Office that these sheriffs didn't write or issue complaints to citizens who lived in the county concerning their dogs violating Idaho law.

### **INJURIES INCURRED BY PADDOCK**

22) Plaintiff Paddock was in an induced coma for eleven days. She had reconstructive surgery to her face including eye socket reconstruction to her right eye and reconstruction of her nose bridge both with titanium. Paddock's right forearm required a titanium rod and bracelet that was bolted on around her wrist. Paddock's face has massive nerve damage and scarring. She has paralysis in her face and upper jaw. Her speech has been affected and at times she is hard to understand. She has serious pain and itching from the nerve damage at times. Paddock's sinuses were destroyed and that affects her breathing and she has a constant runny nose. She has loss of peripheral vision in her right eye. Paddock has scarring on her arms, neck and chest. She has a scar on her neck from the tracheotomy that was performed so that she could breath during her surgery and when she was in a coma. Paddock has a limp from landing hard on her right side in the accident. She must be careful when lifting with her right arm or it causes pain. She suffers pain in all of the general areas where damage has occurred on days when air pressure drops. She suffers depression and erratic sleep patterns. She lost one front tooth and it was never repaired due to the cost. Paddock will never recover from this accident.

### **PROCEDURAL HISTORY**

22) Later in 2014 Paddock filed a lawsuit for damages incurred by the dog owned by Palacio. Palacio, however, had no property insurance and no satisfactory resolution occurred so the case went to trial.

23) On 1/8/2016 the case went to trial before Judge Susan Weibe. It was only on the day of trial that Paddock found out from her attorney Jane Gordon that the young man who made the incriminating statements in the driveway about the dogs was not going to be in court. Jane Gordon stated that this young man was Gilbert Palacio's nephew but was uncertain of his exact name. Jane Gordon knew the facts of this case and knew what she needed to prove in court in order to win this \$1,000,000.00 lawsuit. Jane Gordon assured Plaintiff Paddock on several occasions when Paddock inquired about the case that she had this case under control and was confident that she would win.

24) Paddock lost her case due to the following; Violation of Plaintiff's 6<sup>th</sup> Amendment right- Ineffective assistance of counsel, 14<sup>th</sup> Amendment due process of law, a fair trial and equality of law.

a) \* Paddock's counsel Jane Gordon failed to call vital witnesses to the stand including the young man later identified as Gilbert Palacio's nephew whose statements at the scene of the accident were incriminating and proved that the owner(s) not only knew of the dogs' bad behavior but encouraged it because it amused them to watch the dogs chase vehicles down a public road and also stated that these dogs had "range rights". Counsel failed to investigate who exactly this person was and if they could be available for trial.

b) \*Other witnesses that may have been included are the defendant's neighbors who may have issued either verbal or written warnings to the defendants concerning their dog's illegal and dangerous behavior or attempted to file a report with the local sheriff. Counsel failed in their due diligence to investigate whether warnings from other persons may be admissible in this case.

c. Counsel failed to investigate whether any reports were filed with Gem County Sheriff's Office prior to trial. If Gordon had done her due diligence she would have discovered that a report was filed on 7/9/2014 (which was only a matter of weeks after Paddock's accident) concerning five small dogs that were chasing a garbage truck. The address on the report is 7540 Labor Camp Rd. which is Palacio's address. \*If Gordon

would have had this evidence prior to trial she could have proven that Palacio was perjuring himself on the stand when he stated that he had no other dogs and that he always had a collar and chain on the dog that caused the accident. Jane Gordon thus violated Paddock's 6<sup>th</sup> Amendment and her 14<sup>th</sup> Amendment due process and fair trial.

25) Violations of Paddock's 14th Amendment right to due process, a fair trial and equality of law by Gem County Sheriffs. Idaho State statute 25-2805-DOGS RUNNING AT LARGE, states that a written notice by a sheriff is necessary to prove that Palacio(s) were warned about their dogs being in violation. The Gem County Sheriffs refused to issue these mandatory warnings to dog owners however. Since the sheriffs are the only legal avenue that Paddock had according to Idaho Statute 25-2805 to prove her case and they failed to do their duty Paddock's civil rights were violated.

a) According to witnesses on the scene of the accident the sheriffs that arrived at the scene of the accident once again failed to do their duty and issue a written warning to Palacio(s) as per Idaho Statute 25-2805 concerning the remaining dogs that were still running loose on Palacio's property and in the road. See attached exhibit "A"- public records request by Paddock and exhibit "B"-response from Gem County Sheriff concerning the number of written warnings to dog owners in Gem County. No written warnings were issued between May 31<sup>st</sup> 2012 and December 31, 2014 according to this report. This report, however, seems to conflict with exhibit "C" public records request by Paddock and "D"-response from Gem County Sheriff which states that a report was indeed made on 7/9/2014 against Palacio(s).

b) None of the dogs on the Palacio(s) property were wearing a collar or tags as per Idaho Statute 25-2803, Title 25 chapter 28 either so Gem County sheriffs violated that statute by not writing a citation or warning for the remaining dogs. The sheriffs allowed an obviously dangerous situation to continue thus putting more people at risk of death or serious bodily injury.

**Note: \* indicates an allegation that is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.**

26) Gem County Commissioners violate Idaho State law and statutes thus violating Plaintiff's 14<sup>th</sup> Amendment rights to due process, a fair trial and equality of law. Gem County commissioners have been allowed to pick and choose which Idaho laws and statutes that it will enforce thus violating Paddock's rights. Gem County commissioners decided that they would have no collar and tag law for the dogs in their county thus ignoring Idaho State laws and statutes. It is Idaho State laws and statutes that are used in courts of law in cases such as Paddocks, not Gem County laws and therefore Idaho State laws and statutes should not be overwritten or ignored by individual counties. These are counties, not countries.

27) Liability for debt not incurred by Paddock. Even though Paddock is not at fault for this accident the finding of the court has made her responsible for a debt of over \$255,000.00. The defendant Palacio(s) property, I.E. the dog, is the cause of this accident. Paddock was found to have broken no Idaho laws in this case but when Judge Wieby ruled that the dog owner (Palacio) was "innocent" of breaking any Idaho laws that placed the liability for the debt on Paddock. This has ruined Paddock's credit and can force her into bankruptcy. If this is not unconstitutional it is certainly should not be legal nor is it fair for Paddock to pay the price both physically, emotionally, and monetarily.

28) Judge Wieby violated Idaho Statute 25-2803, Title 25 Chapter 28. By not following state law and finding Palacio guilty of his dog(s) being without collar and tags. By finding Palacio not guilty of breaking any Idaho statute or laws Judge Wieby placed the monetary responsibility of this accident on Paddock who is not guilty of breaking any Idaho statutes or laws. Judge Wieby thus violated Paddock's 14<sup>th</sup> Amendment right to a due process, fair trial and equality of law.

29) Idaho State Dog laws violate the right to due process, fair trial and equality of the law. Idaho dog laws and statutes place all victims of any type of injuries caused by dogs into one group and cases cannot be looked at on an individual basis. It doesn't matter, for

example, whether a dog simply bites someone on the hand or whether a dog mauls a child to death these cases will be treated the same. Idaho has no strict liability law concerning dogs and thus prevents victims such as Paddock to have their individual cases heard in a fair manner.

Idaho Statute 25-2807, Title 25, Chapter 28 does, however, acknowledge that dogs are PROPERTY and that they have monetary value as personal property. This law once again protects the dog owners and not the victims. An example would be that if a dog attacks someone and that person defends themselves by killing the dog that person can now be sued for destroying someone's "property" I.E. the dog. Paddock could have been sued by Palacio for destroying his "property" that caused the accident.

30 ) Idaho statute 25-2801 Title 25 Chapter 28 conflicts as the language and intent is unclear and seems to be at odds with the clearly written 25-2803-DOGS AT LARGE-COLLAR AND TAG REQUIRED. It appears to give the county commissioners the ability to ignore the clearly written Idaho statute 25-2803 and to pick and choose where, when and if Idaho state dog laws apply in their county. 25-2801 also states that the county commissioners "may make an order requiring all owners of dogs over an age which is to be set at the discretion of the board...to pay an annual license tax." Is this the age of the owner or the age of the dog? If it's the age of the dog then this statute is once again at odds with the clearly written Idaho statute 25-2803 which says "NO DOG shall be permitted to go at large within said county without having a collar about its neck with a license tag..." These unclear Idaho dog laws and statutes along with the ignorance of Idaho State law shown by Gem County Commissioners created the perfect storm which resulted in 14<sup>th</sup> Amendment due process, a fair trial and equal protection civil rights violations against Plaintiff Paddock.

#### **CLAIMS FOR RELIEF**

#### **DECLARATORY RELIEF**

31) An actual controversy exists between the Plaintiff and the Defendants. Plaintiff contends that the challenged laws and statutes are unconstitutional.

32) Plaintiff is therefore entitled to a declaration of rights with respect to this controversy. Without such a declaration Plaintiff will be uncertain of her rights and responsibilities under the law.

#### **INJUNCTIVE RELIEF**

33) Plaintiff is entitled to an injunction. Defendants are acting under color of state law to deprive Plaintiff of her constitutional rights. Plaintiff has suffered irreparable injury physically, emotionally and monetarily as a result of the existence of the challenged laws and statutes. Plaintiff has no plain, adequate, or speedy remedy at law.

#### **PUNITIVE DAMAGES**

34) Plaintiff asks the court to consider punitive damages that bear a reasonable relation to the injuries and harm caused to her. Paddock leaves this amount to the discretion of the court.

#### **PAIN AND SUFFERING**

35) Plaintiff asks for compensation for the physical, emotional, and mental duress caused by the Defendants. Plaintiff requests that medical bills and loss of income be included and requests \$1,500,000.00.

#### **FIRST CAUSE OF ACTION**

##### **14<sup>th</sup> Amendment Due Process of Law**

36) Plaintiff incorporates by reference all allegations contained in the above paragraphs.

37) Due Process of Law requires that the procedures by which laws are applied must be evenhanded so that individuals are not subjected to the arbitrary exercise of government power. Due process was violated in the Plaintiffs case due to the confusing nature of Idaho dog laws and statutes, the refusal of Gem County Sheriff to follow Idaho law and statutes and issue warnings to dog owners, by Gem County Commissioners who ignored Idaho laws, by Judge Wieby who ignored Idaho law and found Palacio guilty of no crime, and by Plaintiff's attorney, Jane Gordon who \*so egregiously destroyed Plaintiff's case in court as to violate Plaintiff's due process.

**SECOND CAUSE OF ACTION**  
14<sup>th</sup> Amendment Equal Protection Clause

38) Plaintiff incorporates by reference all allegations contained in the above paragraphs.

39) It is the responsibility of Gem County Sheriff to issue written warnings to dog owners as per Idaho dog law Title 25 Chapter 28 Statute 25-2805. To ignore Idaho law and refuse to issue these written warnings is leaving Gem County residents and visitors without equal protection of the law. It is Idaho dog laws that are used in cases such as the Plaintiff's and these warnings are required to prove that the defendant knew of his dog's illegal behavior.

40) It is the responsibility of Judge Weiby to administer the law in a fair manner and obey all Idaho State laws. By ignoring Idaho state laws and statutes Judge Weiby violated Paddock's 14<sup>th</sup> Amendment equal protection.

41) It is the responsibility of the Gem County Commissioners to obey Idaho laws. Their ignorance of Idaho laws and statutes violated Paddock's 14<sup>th</sup> Amendment equal protection.

**THIRD CAUSE OF ACTION**  
14<sup>th</sup> Amendment Right to a Fair trial

42) Plaintiff incorporates by reference all allegations contained in the above paragraphs.

43) The stated violations by Defendants of the Plaintiff's due process and violations of equal protection created the inability to have a fair trial. No fair trial was possible considering the enumerated civil rights violations Paddock has suffered because of the actions of the Defendants.

**FOURTH CAUSE OF ACTION**  
6<sup>th</sup> Amendment Ineffective Assistance of Counsel

44) Plaintiff incorporates by reference all allegations contained in the above paragraphs.

45) \*Plaintiff's counsel erred so egregiously that she deprived Plaintiff of her 6<sup>th</sup> Amendment. Attorney Jane Gordon was ineffective if she "so undermined the functioning of the adversary process that the trial cannot be relied upon as having produced a just result." (Strickland v. Washington 1984). Plaintiff's case was prejudiced as a result.

## PRAYER FOR RELIEF

- 46) Plaintiff respectfully request an order and judgment:
- 47) Declaring that the challenged laws and statutes violate the U.S. Constitution on its face as applied to the Plaintiff.
- 48) Permanently enjoining Defendants, as well as their officers, agents, employees, attorneys, and all persons in active concert or participation with them, from enforcing the challenged laws and statutes.
- 49) Striking down the challenged laws and statutes entirely;
- 50) To ensure that the public has accurate notice of the requirements of the law and Idaho statutes, and to prevent violations of their 14<sup>th</sup> Amendment Due Process of Law, Equal Protection of the Law and a Fair Trial. The Defendants are to provide public notice, including in the official and online editions of the Idaho Code, that Idaho dog laws and statutes are unconstitutional.
- 51) Awarding the Plaintiff reasonable fees and costs, and
- 52) Awarding any such relief as the court may deem just and proper.

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Kim Paddock A.S.D.  
1008 East Ball Ave.  
Parma, ID. 83660  
(208) 250-6418

Gem County Sheriff  
415 E. Main St.  
Emmett, Idaho 83617

Kim Paddock  
1008 E. Ball Ave.  
Parma, ID 83660

C/O: Public Records Request

This is a public records request to the Sheriffs Office in Gem County Idaho. I request the number of written warnings that were issued in Gem County, Idaho for violations of Idaho State Law and/or Gem County law to dog owners concerning their dogs between the dates of May 31st 2012 to May 31st 2014 and from May31st 2014 to the present. This request excludes the city of Emmett, Idaho.

Thank you,



5/9/2016

# Gem County Sheriff

410 E 1<sup>st</sup> Street

Emmett, ID 83617

208-365-3521 Fax 208-365-7166

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**Donnie Wunder**  
**Chief Deputy**

**Charles D Rolland**  
**Sheriff**

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May 11, 2016

Kim Paddock  
1008 E Ball Ave.  
Parma, ID 83660

Dear Kim,

In regards to your public records request for the number of written warnings issued to dog owners between the dates of May 31, 2012 to May 31, 2014, we hold no records for that time frame. We also have no records for the time period of May 31, 2014 to December 31, 2014.

However, for the entire year of 2015, we have on record 26 issued written warnings and from January 1, 2016 to present we have 11 issued.

As for your other request regarding the telephone number of (208)250-6418, we have no records that involve that number.

If I can be of further assistance, please feel free to contact me at (208)477-2028.

Sincerely,



Mary Ann Hanson  
Records Clerk

Gem County Sheriff  
415 E. Main St.  
Emmett, Idaho 83617

Kim Paddock  
1008 E. Ball Ave.  
Parma, ID 83660  
(208) 250-6418

C/O: Public Records Request

This is a public records request to the Sheriffs Office in Gem County Idaho. I request the records of any written warnings given to Gilbert Palacio or anyone residing at 7540 Labor Camp Rd. in Gem County Idaho for dogs that are in violation of Idaho Statutes.

Thank you,



Kim Paddock A.S.D.

5/16/2016



Called 365-3521  
May 23<sup>rd</sup> 2016 @  
3:15 PM. left message  
For Mary Hanson for  
records request. She  
called back, got my email  
and sent the incident  
detail.

Exhibit "D"

05/18/2016 14:54:22 LE004  
HANSON, MARY ANN  
PAGE 1

GEM COUNTY SHERIFF'S OFFICE

Incident #: 01-2014-02339  
CAD: 164633  
Status/Dispo: ASSIGNED

# INCIDENT DETAIL

Misdemeanor:  Felony:  Non Criminal:

Initial NOC: ANIMAL COMPLAINT  
Ver NOC: ANIMAL COMPLAINT  
Location: 7540 LABOR CAMP RD & REDMOND EMMETT  
Cross St: REDMOND  
District:  
Rpted to: WELCH, STEVE  
Dispatch: WELCH, STEVE

Reported Date/Time: 07/09/2014 8:48  
Occurred Date: 7/9/2014 TO 7/9/2014  
Occurred Time: 8:48:58AM TO 8:48:58AM  
Reported By: SKINNER, DOUG- EMMETT SANITATIC

Phone 1:  
Phone 2: [REDACTED]

## Incident Officers

## Incident Names

255 CAPT. JIM BARNHART

## Description

TRAILER HOUSE ON THE CORNER- 5 SMALL DOGS- CHASE GARBAGE TRUCK.

## Activity Log

Date	Time	Officer	Activity	Comments
07/09/2014	8:48	255 CAPT. JIM BARNHART	DISPATCHED	LOCATION- 7540 LABOR CAMP RD & REDMOND EMMETT
07/09/2014	8:49	255 CAPT. JIM BARNHART	ENROUTE	LOCATION- 7540 LABOR CAMP RD & REDMOND EMMETT
07/09/2014	9:19	255 CAPT. JIM BARNHART	ON SCENE	LOCATION- 7540 LABOR CAMP RD & REDMOND EMMETT
07/09/2014	9:22	255 CAPT. JIM BARNHART	CLEAR	LOCATION- 7540 LABOR CAMP RD & REDMOND EMMETT

## Accident Report

## Incident Citations

## Incident Arrests

## Incident Property

## Incident Vehicles

\*\*\*\*\*END OF REPORT\*\*\*\*\*