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*Honorable Judge LeRoy McCullough*

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KARY L. CALDWELL,  
  
Plaintiff,  
  
vs.  
  
GRAYS HARBOR COUNTY, a  
governmental entity; CITY OF HOQUIAM, a  
governmental entity; JENNIFER M. SMITH  
and JOHN DOE SMITH, individually and the  
marital community composed thereof;  
SHAWN M. SMITH and JOHN DOE  
SMITH, individually and the marital  
community composed thereof; JAMES  
THOMPSON and JANE DOE THOMPSON,  
individually and the marital community  
composed thereof,  
  
Defendants.

NO. 12-2-23481-7 KNT  
  
FIRST AMENDED  
COMPLAINT FOR DAMAGES

COMES NOW Plaintiff, by and through her attorneys of record, and submits her  
First Amended Complaint for Damages and states and alleges as follows:

**I. PARTIES & JURISDICTION**

1.1 Plaintiff Kary L. Caldwell is a resident of King County, Washington.

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1.2 Defendant Grays Harbor County is a county corporation organized under the laws of the State of Washington. This entity is responsible for animal control within its boundaries. It is also responsible for protecting public safety by enforcing the conditions imposed by the Courts of Washington State.

1.3 Defendant City of Hoquiam is a municipal corporation organized under the laws of the State of Washington located in Grays Harbor County, Washington. Defendant City of Hoquiam is responsible for animal control within its boundaries. It is also responsible for protecting public safety by enforcing the conditions imposed by the Courts of Washington State.

1.4 Defendants Jennifer M. Smith and John Doe Smith are believed to be residents of King County, Washington. If these Defendants are husband and wife, or hold themselves out as such, then each of the Defendant's acts and/or omissions as described herein were for and on behalf of their marital and/or combined community.

1.5 Defendants Shawn Marie Smith and John Doe Smith are believed to be residents of King County, Washington. If these Defendants are husband and wife, or hold themselves out as such, then each of the Defendant's acts and/or omissions as described herein were for and on behalf of their marital and/or combined community.

1.6 Defendants James Thompson and Jane Doe Thompson are believed to be residents of King County, Washington. If these Defendants are husband and wife, or hold

1 themselves out as such, then each of the Defendant's acts and/or omissions as described  
2 herein were for and on behalf of their marital and/or combined community.

3 1.7 All actions and/or omissions described herein took place in King County,  
4 Washington. Therefore, King County is a proper venue for this action.  
5

## 6 **II. NOTICE OF CLAIMS AGAINST GOVERNMENTAL ENTITIES**

7  
8 2.1 Plaintiff Kary Caldwell has complied with RCW 4.96.020 by properly serving  
9 a Claim for Damages upon Defendant Grays Harbor County on or about July 13, 2012.  
10 More than sixty (60) days have elapsed since the date of service of the plaintiff's Claim for  
11 Damages on Defendant Grays Harbor County, and therefore the plaintiff's claims against this  
12 defendant are properly before the above-entitled court.  
13

14 2.2 Plaintiff Kary Caldwell has complied with RCW 4.96.020 by properly serving  
15 a Claim for Damages upon the Defendant City of Hoquiam on or about July 13, 2012. More  
16 than sixty (60) days have elapsed since the date of service of the plaintiff's Claim for  
17 Damages on Defendant City of Hoquiam, and therefore the plaintiff's claims against this  
18 defendant are properly before the above-entitled court.  
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## 20 **III. FACTS**

21  
22 3.1 At all times material hereto, Defendants Jennifer M. Smith, Shawn Marie  
23 Smith and James Thompson owned, kept, controlled and/or otherwise harbored a Pit Bull  
24 breed canine animal (dog) known as "Temper" a/k/a "Tempur".  
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1           3.2     The canine animal known as “Temper” which was owned, kept, controlled  
2 and/or otherwise harbored by Defendants Jennifer M. Smith, Shawn M. Smith and James  
3 Thompson had a history of aggression and violence towards other animals and humans which  
4 resulted in documented complaints to animal control authorities. Defendants Jennifer M.  
5 Smith, Shawn M. Smith and James Thompson failed to properly control and supervise  
6 “Temper” and said failure was known, or reasonably should have been known, by Defendant  
7 Grays Harbor County and/or Defendant City of Hoquiam.  
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9           3.3     Defendant Grays Harbor County and/or Defendant City of Hoquiam knew or  
10 reasonably should have known about Defendants Jennifer M Smith, Shawn M. Smith and  
11 James Thompson’s prior history of failing to control and confine their dangerous or  
12 potentially dangerous dog known as “Temper.”  
13

14           3.4     Defendants Jennifer M. Smith and Shawn Marie Smith contacted local law  
15 enforcement authorities along with Animal Control, about their Pit Bull named “Temper” on  
16 February 26, 2009, complaining that “Temper” was attacking another dog. Jennifer Smith or  
17 Shawn Smith screamed into the phone asking for help from local police. Authorities  
18 responded to 2323 Aberdeen in the City of Hoquiam where they found Shawn Smith trying  
19 unsuccessfully to separate two Pit Bull dogs that were actively fighting in the front yard.  
20 Smith’s Pit Bull dog, “Temper” had attacked and severely wounded its litter mate, “Yayo,”  
21 another Pit Bull. Local law enforcement authorities, including Animal Control Officer Hill,  
22 informed Defendants Jennifer M. Smith and Shawn Marie Smith that their dog “Temper”  
23 would be declared “Potentially Dangerous” because it caused injury to another domestic  
24 animal.  
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1           3.5     On February 27, 2009, Animal Control Officer Hill spoke with William R.  
2 Degarmo who was an acquaintance of Defendants Jennifer Smith and Shawn Smith. Mr.  
3 Degarmo informed Officer Hill that the Pit Bull named “Temper” should be considered  
4 dangerous because the animal was extremely aggressive.  
5

6           3.6     Animal Control Officer Hill prepared a “Potentially Dangerous Dog”  
7 declaration for issuance on February 27, 2009 to Defendants Jennifer Smith and Shawn  
8 Smith on their dog, “Temper”. When Animal Control Officer Hill attempted to serve the  
9 “Potentially Dangerous Dog” declaration on Defendants Jennifer Smith and Shawn Smith, he  
10 discovered the two had vacated and fled the premises at 2323 Aberdeen. Officer Hill failed  
11 to take reasonable steps to locate Defendants Jennifer Smith and Shawn Smith, or to warn or  
12 contact other authorities in other jurisdictions about the dangerous propensities of the Smith’s  
13 dog.  
14

15           3.7     On August 11, 2009, Animal Control Officer Hill arrived at the scene of 909  
16 Wood in Hoquiam in response to two pit bulls fighting with each other. Defendants Jennifer  
17 M. Smith and Shawn Marie Smith had again contacted local law enforcement authorities,  
18 including Animal Control, complaining that their dog “Temper” was attacking its litter mate,  
19 “Yayo”. When Officer Hill arrived at 909 Wood, Police Officers Luce and Mitchell were  
20 already on the scene.  
21

22           3.8     The three law enforcement officers observed the two pit bulls, “Temper” and  
23 “Yayo” in the living room of Defendant Jennifer Smith and Defendant Shawn Smith’s  
24 residence. “Temper” had his mouth locked around the throat of “Yayo”. Because of the  
25 dog’s strength, neither Defendant Jennifer Smith nor Defendant Shawn Smith was able to  
26

1 separate the Pit Bulls. The law enforcement officers used a Taser weapon and catch pole to  
2 subdue “Temper” and separate him from the dog’s litter mate.

3           3.9     Officers Hill, Luce and Mitchell spoke with Defendants Jennifer Smith and  
4 Shawn Smith about both attacks, including the previous incident on February 26, 2009, at  
5 2323 Aberdeen Avenue. The officers noted that in both instances there were several severe  
6 puncture wounds and bleeding, specifically on the Pit Bull known as “Yayo”. The officers  
7 noted that the “Potentially Dangerous Dog” declaration was not served because Defendants  
8 Jennifer Smith and Shawn Smith had immediately vacated the premises to avoid service.  
9 Animal Control Officer Hill informed Defendants Smith that their dog would be declared a  
10 “Dangerous Dog”.  
11

12           3.10    On September 1, 2009, Hoquiam Municipal Court declared “Temper” a  
13 “Dangerous Dog” and imposed conditions under HMC 3.40.080 (5) relating to posting signs,  
14 obtaining insurance or bonds, restraint of animal and obtaining a dangerous dog license on  
15 Defendant Shawn Marie Smith giving her until September 10, 2009, to comply. At the time  
16 of the hearing on September 1, 2009, Defendant City of Hoquiam failed to inform Hoquiam  
17 Municipal Court of Defendant Jennifer Smith and Defendant Shawn Smith’s previous  
18 conduct to elude service of the “Potentially Dangerous Dog” declaration.  
19

20           3.11    On September 16, 2009, Animal Control Officer Hill returned to the residence  
21 of Defendants Jennifer M. Smith and Shawn Marie Smith at 909 Wood to find that the  
22 Defendants and their dog “Temper” no longer resided at that location. Officer Hill left a card  
23 with a male who answered the door at 909 Wood and asked that he inform the Defendants  
24 Jennifer Smith and/or Shawn Smith to call him. Officer Hill notified Aberdeen Animal  
25  
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1 Control and Grays Harbor County Animal Control of the “Dangerous Dog” declaration for  
2 “Temper”. However, no further action was taken by law enforcement authorities, including  
3 Animal Control, to locate the dangerous and vicious dog known as “Temper” or Defendants  
4 Jennifer Smith and Shawn Smith. Defendants City of Hoquiam and Grays Harbor County  
5 failed to take any action to ensure that Defendants Jennifer Smith and Shawn Smith complied  
6 with the conditions imposed upon them by the court with respect to their dangerous dog  
7 “Temper”.

9 3.12 On or about September 27, 2009, the Plaintiff Kary Caldwell visited the home  
10 of Defendants Jennifer Smith and James Thompson in King County. The Defendants were  
11 harboring their dog “Temper” in this home.  
12

13 3.13 Defendants Jennifer Smith and James Thompson allowed their dangerous and  
14 vicious dog “Temper” to come in contact with the Plaintiff Kary Caldwell.  
15

16 3.14 Without warning or provocation, “Temper” lunged at Kary Caldwell and  
17 viciously attacked her.  
18

19 3.15 As a result of the vicious attack, “Temper” inflicted serious, permanent and  
20 debilitating injuries upon Kary Caldwell.  
21

22 3.16 Defendants Grays Harbor County, City of Hoquiam, Shawn Smith, Jennifer  
23 Smith and James Thompson had prior actual and/or constructive knowledge that their Pit  
24 Bull dog “Temper” had aggressive and vicious tendencies which posed an unreasonably  
25 dangerous risk of serious bodily injury or death to other domestic animals and humans,  
26 including Plaintiff Kary Caldwell.

1 **IV. FIRST CAUSE OF ACTION**

2 **LIABILITY UNDER DOG BITE STATUTE - RCW 16.08.040**

3 4.1 Plaintiff re-alleges the allegations set forth in paragraphs 1.1 through 3.16,  
4 and incorporates them as fully set forth herein.

5 4.2 As the owners, keepers and/or harborers of the dog, Defendants Jennifer  
6 Smith, Shawn Smith and James Thompson are strictly liable for the injuries and damages  
7 caused to Plaintiff as mandated by the dog liability statute at RCW 16.08 *et seq.*  
8

9 **V. SECOND CAUSE OF ACTION**

10 **COMMON LAW STRICT LIABILITY**

11 5.1 Plaintiff re-alleges the allegations set forth in paragraphs 1.1 through 4.2, and  
12 incorporates them as fully set forth herein.  
13

14 5.2 Defendants Jennifer M. Smith, Shawn Marie Smith and James Thompson had  
15 prior actual or constructive knowledge that their Pit Bull dog had vicious and/or dangerous  
16 propensities that were likely to lead to the injuries inflicted upon another human being,  
17 including those injuries inflicted by “Temper” upon Kary Caldwell.  
18

19 5.3 Defendants Jennifer M. Smith, Shawn Marie Smith and James Thompson had  
20 prior actual or constructive knowledge that their dog had previously bitten, injured or acted  
21 aggressively toward other human beings and/or other canine animals (dogs).  
22

23 5.4 Defendants Jennifer M. Smith, Shawn Marie Smith and James Thompson had  
24 prior actual or constructive knowledge that their dog had certain aggressive tendencies or  
25  
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1 propensities that were likely to lead to the dog biting, injuring or acting aggressively toward  
2 other human beings.

3 5.5 Defendants Jennifer M. Smith, Shawn Marie Smith and James Thompson  
4 failed to adequately quarantine, confine and/or muzzle their dog before it could bite and/or  
5 attack another human being.  
6

7 5.6 Defendants Grays Harbor County and City of Hoquiam Thompson had prior  
8 actual or constructive knowledge that the Pit Bull dog known as Temper” had vicious and/or  
9 dangerous propensities that were likely to lead to the injuries inflicted upon another human  
10 being and failed to exercise reasonable care to protect the public from this “Dangerous Dog,”  
11 including failing to properly and fully notify Hoquiam Municipal Court of the dog’s violent  
12 propensities and the history of Defendants Jennifer Smith and Shawn Smith avoiding law  
13 enforcement, as well as failing to enforce ordinances which applied and conditions that were  
14 imposed upon controlling and confining this “Dangerous Dog” to protect the public’s safety.  
15

16 5.7 Defendants Jennifer M. Smith, Shawn Marie Smith, James Thompson, Grays  
17 Harbor County and City of Hoquiam are therefore strictly liable for the injuries and damages  
18 caused to the Plaintiff.  
19

## 20 **VI. THIRD CAUSE OF ACTION**

### 21 **NEGLIGENCE**

22 6.1 Plaintiff re-alleges the allegations set forth in paragraphs 1.1 through 5.7, and  
23 incorporates them as fully set forth herein.  
24

25 6.2 The Defendants owed Plaintiff a duty of care and a duty to act reasonably.  
26

1           6.3     Defendants Jennifer M. Smith, Shawn Marie Smith and James Thompson  
2 breached their duty of care and their duty to act reasonably by, among other things, failing to  
3 control, confine, muzzle or destroy their dog so it could not injure or bite another human  
4 being.

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6           6.4     Defendants Jennifer M. Smith, Shawn Marie Smith and James Thompson  
7 breached their duty of care and their duty to act reasonably by, among other things, failing to  
8 inform, warn and disclose to Plaintiff all known vicious or dangerous tendencies that its dog  
9 had against other people.

10           6.5     Defendants Jennifer M. Smith, Shawn Marie Smith and James Thompson  
11 breached their duty of care and their duty to act reasonably by, among other things, allowing  
12 their dog to come in contact with another human being and allowing their dog to bite, attack  
13 or otherwise injure Kary Caldwell.

14  
15           6.6     Defendants Grays Harbor County and City of Hoquiam were negligent in  
16 their supervision and control of a dangerous animal and failed to establish and operate an  
17 efficient and effective animal control system.

18  
19           6.7     Defendants Grays Harbor County and City of Hoquiam knew or should have  
20 known of Defendants Jennifer Smith and Shawn Smith's prior history of harboring and/or  
21 owning dangerous animals and failing to control them.

22           6.7     Defendants Grays Harbor County and City of Hoquiam were negligent in  
23 enforcing the conditions imposed on Defendant Shawn Marie Smith by the Municipal Court  
24 of Hoquiam and negligence by failing to enforce ordinances regarding control of dangerous  
25 or potentially dangerous animals.  
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