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IN THE SUPREME COURT OF THE STATE OF IDAHO

Jacqueline Marie Raymond
vs.
Idaho State Police Patrol Region 3,
Payette County, Scott Jacob Sloan

Supreme Court Case No. 46272-2018

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Third Judicial District,
in and for the County of Payette

HONORABLE CHRISTOPHER S. NYE

Nathan Olsen
Attorney for Plaintiff
Attorney for Appellant
Boise, Idaho

Michael Elia
Attorney for Defendant,
Idaho State Police
Attorney for Respondent
Boise, Idaho

PAYETTE COUNTY DISTRICT COURT

CASE SUMMARY

CASE NO. CV-2015-954

Jacqueline Marie Raymond
vs.
Idaho State Police Patrol Region 3, Payette County, Scott
Jacob Sloan

§
§
§
§
§

Location: **Payette County District Court**
 Judicial Officer: **Nye, Christopher S.**
 Filed on: **10/20/2015**
 Case Number History:
 Appellate Case Number: **46272-2018**

CASE INFORMATION

Bonds

Transcript Bond #Clerk's Record on Appeal \$100.00
 8/23/2018 Posted
 Counts: 1

Case Type: **AA- All Initial District Court Filings (Not E, F, and H1)**

Case Status: **08/17/2018 Appealed Case - Supreme Court Appeal**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number CV-2015-954
 Court Payette County District Court
 Date Assigned 10/28/2015
 Judicial Officer Nye, Christopher S.


PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Raymond, Jacqueline Marie	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
Defendant	Idaho State Police Patrol Region 3	Elia, Michael Joseph <i>Retained</i> 208-336-6900(W)
	Payette County	Kane, Michael John <i>Retained</i> 208-342-4545(W)
	Sloan, Scott Jacob	Kane, Michael John <i>Retained</i> 208-342-4545(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

02/27/2015	 Complaint Filed	
10/20/2015	New Case Filed Other Claims <i>New Case Filed - Other Claims</i>	
10/20/2015	ROA - Converted Event <i>Filing: K1 - Order granting change of venue (pay to new county). Paid by: Raymond, Jacqueline Marie (plaintiff) Receipt number: 0007804 Dated: 10/20/2015 Amount: \$.00 (Cash) For: Raymond, Jacqueline Marie (plaintiff)</i>	
10/20/2015	Notice of Appearance <i>Plaintiff: Raymond, Jacqueline Marie Appearance Nathan M Olsen</i>	
10/20/2015	Notice of Appearance <i>Defendant: Payette County Appearance Michael John Kane</i>	
10/20/2015	Notice of Appearance	

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Defendant: Sloan, Scott Jacob Appearance Michael John Kane

10/20/2015	Notice of Appearance <i>Defendant: Idaho State Police Patrol Region 3 Appearance Michael Joseph Elia</i>
10/20/2015	Order <i>Order of Voluntary Disqualification</i>
10/20/2015	Request <i>for Reassignment</i>
10/28/2015	Order <i>Order of Assignment</i>
10/28/2015	Change Assigned Judge <i>Change Assigned Judge</i>
11/13/2015	Notice <i>Notice of Change of Address</i>
11/13/2015	Notice of Hearing <i>Notice Of Hearing</i>
11/13/2015	Hearing Scheduled <i>Hearing Scheduled (Hearing Scheduled 12/03/2015 01:30 PM)</i>
11/18/2015	Notice of Hearing <i>Amended Notice Of Hearing</i>
11/18/2015	Hearing Vacated <i>Hearing result for Motion to Dismiss scheduled on 12/03/2015 01:30 PM: Hearing Vacated Motion for Partial Summary Judgment</i>
11/18/2015	Hearing Scheduled <i>Hearing Scheduled (Hearing Scheduled 01/07/2016 01:30 PM) Motion for Partial Summary Judgment</i>
11/18/2015	Notice <i>Notice of Hearing on Motion to Dismiss Defendant Idaho State Police</i>
12/03/2015	CANCELED Motion to Dismiss (1:30 PM) (Judicial Officer: Nye, Christopher S.) <i>Vacated Motion for Partial Summary Judgment Hearing result for Motion to Dismiss scheduled on 12/03/2015 01:30 PM: Hearing Vacated</i>
12/24/2015	Motion <i>Motion to Compel Discovery to Idaho State Police</i>
12/24/2015	Notice <i>Notice of Hearing</i>
12/29/2015	Objection <i>Objection to Defendant Idaho State Police's Rule 12(b)(5) Motion or Alternatively Motion to Extend Time For Service</i>
12/29/2015	Memorandum <i>Memorandum in Support of Objection to Defendant Idaho State Police's Rule 12(b)(5) Motion or Alternatively Motion to Extend Time For Service</i>
12/29/2015	Affidavit <i>Affidavit of Nathan M. Olsen</i>

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12/31/2015	Notice <i>Notice of Withdrawal of Motion to Compel</i>
12/31/2015	Notice <i>Def Idaho State Police's Notice of Withdrawal of Motion to Dismiss</i>
01/04/2016	Affidavit <i>Affidavit of Nathan Olsen</i>
01/04/2016	Reply <i>to Plaintiff's Response to Defendants' Motion to Dismiss Regarding Failure to File a Tort Claim</i>
01/04/2016	Reply <i>to Plaintiff's Response to Defendants' Motion to Dismiss Regarding Failure to Post a Bond</i>
01/04/2016	Response <i>in Opposition to Defendants Scott Sloan and Payette County's Motion to Dismiss</i>
01/07/2016	Hearing Held <i>Hearing result for Hearing Scheduled scheduled on 01/07/2016 01:30 PM: Hearing Held Motion for Partial Summary Judgment and Motion to Dismiss</i>
01/07/2016	Court Minutes <i>Court Minutes</i>
01/07/2016	DC Hearing Held: Court Reporter: # of Pages: <i>District Court Hearing Held Court Reporter: Leda Waddle Number of Transcript Pages for this hearing estimated:</i>
01/07/2016	Hearing Scheduled (1:30 PM) (Judicial Officer: Nye, Christopher S.) <i>Motion for Partial Summary Judgment and Motion to Dismiss Hearing result for Hearing Scheduled scheduled on 01/07/2016 01:30 PM: Hearing Held</i>
01/19/2016	Affidavit <i>Affidavit of Theodore Wood in Response to Payette County Reply in Support of Motion for Partial Summary Judgment</i>
01/19/2016	Response <i>Payette County's Def Response to the Affidavit of Jason Wood</i>
02/04/2016	 Answer <i>Defendant Idaho State Police's Answer to Complaint</i>
02/18/2016	Notice of Service <i>Notice Of Service of Discovery</i>
03/11/2016	Stipulation <i>Stipulation for entry of Protective Order</i>
03/11/2016	Order <i>Protective Order</i>
03/22/2016	Notice of Service <i>Notice Of Service</i>
04/04/2016	Notice <i>Of Compliance</i>

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CASE No. CV-2015-954

04/11/2016	Notice of Service <i>Notice Of Service of Discovery</i>
04/12/2016	Request <i>for Status Conference</i>
04/13/2016	Notice <i>Notice of Hearing</i>
04/13/2016	Hearing Scheduled <i>Hearing Scheduled (Status 05/04/2016 09:00 AM) Telephonic Status Conference</i>
05/04/2016	Hearing Held <i>Hearing result for Status scheduled on 05/04/2016 09:00 AM: Hearing Held Telephonic Status Conference</i>
05/04/2016	Court Minutes <i>Court Minutes</i>
05/04/2016	DC Hearing Held: Court Reporter: # of Pages: <i>District Court Hearing Held Court Reporter: Tammy Weber Number of Transcript Pages for this hearing estimated:</i>
05/04/2016	Status Conference (9:00 AM) (Judicial Officer: Nye, Christopher S.) <i>Telephonic Status Conference Hearing result for Status scheduled on 05/04/2016 09:00 AM: Hearing Held</i>
05/18/2016	Notice of Service <i>Notice Of Service</i>
05/18/2016	Notice of Service <i>Notice Of Service of Discovery</i>
05/18/2016	Motion <i>Def's Motion Pursuant to Rule 26 for a Protective Order</i>
05/18/2016	Memorandum <i>Memorandum in Support</i>
05/18/2016	Affidavit <i>Affidavit of Michael Kane</i>
05/18/2016	Notice <i>Notice of Hearing</i>
05/18/2016	Hearing Scheduled <i>Hearing Scheduled (Motion 07/13/2016 09:30 AM) Motion for Protective Order</i>
06/08/2016	Stipulation <i>Stipulated Litigation Plan</i>
06/10/2016	Notice <i>Of Compliance</i>
06/14/2016	Order <i>Setting Pretrial and Jury Trial</i>
06/23/2016	Hearing Scheduled <i>Hearing Scheduled (Pretrial Conference 05/18/2017 11:00 AM) JT 7/24/17</i>

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06/23/2016	Hearing Scheduled <i>Hearing Scheduled (Jury Trial 07/24/2017 09:00 AM) 10 days</i>
07/06/2016	Miscellaneous <i>Objection to Def Payette County's Motion for Protective Order</i>
07/07/2016	Motion <i>to Appear by Telephone</i>
07/08/2016	Motion <i>ISP Motion to Appear by Telephone</i>
07/08/2016	Motion <i>Motion to Appear Telephonically for Hearing</i>
07/08/2016	Reply <i>to Pl's Objection to Def's Motion for Protective Order</i>
07/12/2016	Hearing Vacated <i>Hearing result for Motion scheduled on 07/13/2016 09:30 AM: Hearing Vacated Motion for Protective Order</i>
07/12/2016	Hearing Scheduled <i>Hearing Scheduled (Motion For Protective Order 08/29/2016 01:30 PM)</i>
07/12/2016	Stipulation <i>Stipulated Motion to Vacate Hearing</i>
07/12/2016	Order <i>Adopting Stipulated Litigation Plan</i>
07/13/2016	CANCELED Motion Hearing (9:30 AM) (Judicial Officer: Nye, Christopher S.) <i>Vacated Motion for Protective Order Hearing result for Motion scheduled on 07/13/2016 09:30 AM: Hearing Vacated</i>
07/20/2016	Notice <i>Of Compliance</i>
07/21/2016	Notice <i>Of Compliance</i>
08/02/2016	Notice of Hearing
08/26/2016	Hearing Vacated <i>Hearing result for Motion For Protective Order scheduled on 08/29/2016 01:30 PM: Hearing Vacated</i>
08/29/2016	CANCELED Motion for Protective Order (1:30 PM) (Judicial Officer: Nye, Christopher S.) <i>Vacated Hearing result for Motion For Protective Order scheduled on 08/29/2016 01:30 PM: Hearing Vacated</i>
08/31/2016	Stipulation <i>for Protective Order Regarding Confidential Information</i>
09/21/2016	Notice <i>Of Compliance</i>
09/21/2016	Notice <i>of Taking Deposition Duces Tecum of T. Jason Wood</i>

PAYETTE COUNTY DISTRICT COURT

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09/23/2016	Notice of Service
09/30/2016	Motion <i>Pl's Motion to Amend Complaint</i>
10/06/2016	Memorandum <i>Defendant Payette County Memorandum in Opposition to Pl's Motion to Amend</i>
10/06/2016	Affidavit <i>of Payette County Clerk Julie Anderson</i>
10/07/2016	Notice <i>Notice of Hearing</i>
10/07/2016	Hearing Scheduled <i>Hearing Scheduled (Motion 11/28/2016 01:30 PM) Pl's Motion to Amend Complaint</i>
10/11/2016	 Notice of Hearing
10/12/2016	 Motion <i>Def's Payette County Motion for Partial Dismissal</i>
10/12/2016	 Memorandum <i>in Support of Def Payette County's Rule 12 Motion for Partial Dismissal</i>
10/18/2016	Notice <i>Notice of Taking Deposition of Pl Jacie Raymond</i>
11/03/2016	Notice <i>Amended Notice of Taking Deposition of Pl Jackie Raymond</i>
11/14/2016	 Motion <i>Def ISP's Joinder in Payette County's Motion for Partial Dismissal Pursuant to IRCP 12 (b)(6)</i>
11/14/2016	Memorandum <i>Def ISP's Joinder in Payette County's Memorandum in Opposition to Pl's Motion to Amend</i>
11/17/2016	Memorandum <i>Defendant Idaho State Police's Joinder in Payette County's Memorandum in Opposition to Plaintiff's Motion to Amend</i>
11/22/2016	Reply <i>in Support of Pl's Motion to Amend Complaint</i>
11/23/2016	 Brief Filed <i>Payette County Reply Brief in Support of Motion for Partial Dismissal</i>
11/23/2016	 Reply <i>Def ISP's Reply to Pl's Response in Opposition to Rule 12 Motion for Partial Dismissal</i>
11/25/2016	Motion <i>Def Payette County's Motion for Partial Summary Judgment</i>
11/25/2016	Affidavit <i>Affidavit of Gary Raney in Support of Def Payette County's Motion for Partial Summary Judgment</i>


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11/25/2016 Affidavit
Affidavit of Michael Kane in Support of Def Payette County's Motion for Partial Summary Judgment

11/25/2016 Memorandum
in Support of Def Payette County's Motion for Partial Summary Judgment

11/25/2016  Response
in Opposition to Def Payette County's Rule 12 Motion for Partial Dismiss

11/28/2016 Hearing Held
*Hearing result for Motion scheduled on 11/28/2016 01:30 PM: Hearing Held Pl's Motion to Amend Complaint
Def's Motion for Partial Dismissal*

11/28/2016 Court Minutes
Court Minutes

11/28/2016 DC Hearing Held: Court Reporter: # of Pages:
*District Court Hearing Held
Court Reporter: Tammy Weber
Number of Transcript Pages for this hearing estimated:*

11/28/2016 **Motion Hearing (1:30 PM)** (Judicial Officer: Nye, Christopher S.)
*Pl's Motion to Amend Complaint
Def's Motion for Partial Dismissal Hearing result for Motion scheduled on 11/28/2016 01:30 PM: Hearing Held*

12/01/2016 Hearing Scheduled
Hearing Scheduled (Motion for Partial Summary Judgment 02/15/2017 01:30 PM)


12/01/2016 Notice of Hearing


12/12/2016 Order
Approving Stipulation for protective Order Regarding Confidential Information

12/14/2016 Notice
Amended Notice of Hearing

12/14/2016 Continued
*Hearing result for Motion for Partial Summary Judgment scheduled on 02/15/2017 01:30 PM:
Continued*

12/14/2016 Hearing Scheduled
Hearing Scheduled (Motion for Partial Summary Judgment 03/29/2017 01:30 PM)

12/30/2016  Memorandum
Decision and Order on Pl's Motion to Amend Complaint and Def's Motion to Dismiss Counts II and III

01/18/2017  Partial Judgment Or Opinion Filed
Of Dismissal of Idaho State Police Only

01/24/2017 Memorandum
Defendant Idaho State Police's Memorandum of Costs

01/24/2017 Affidavit
Affidavit of Michael J. Elia in Support of Defendant Idaho State Police's Memorandum of Costs

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02/15/2017	Motion for Partial Summary Judgment (1:30 PM) (Judicial Officer: Nye, Christopher S.) <i>Hearing result for Motion for Partial Summary Judgment scheduled on 02/15/2017 01:30 PM: Continued</i>
02/21/2017	Amended Complaint Filed <i>Amended Complaint Filed</i>
02/23/2017	Answer <i>Def Payette County and Scott Sloan's Answer to Pl's Amended Complaint and Demand for Jury Trial</i>
02/27/2017	Notice of Service
03/13/2017	Stipulation <i>Stipulation to Extend Expert Disclosure and Discovery Cutoff Dates</i>
03/15/2017	Order <i>Order Allowing Extension of Time for Expert Witness Disclosure and Discovery Cutoff</i>
03/21/2017	Response <i>Response in Opposition to Defend Payette County's Motion for Partial Summary Judgment</i>
03/21/2017	Affidavit <i>Affidavit of Nathan Olsen</i>
03/21/2017	Motion <i>Motion to Strike the Affidavit of Gary L. Raney and for Other Relief</i>
03/21/2017	Affidavit <i>Affidavit of Nathan Olsen in Support of Plaintiff's Motion to Strike the Affidavit of Gary L. Raney</i>
03/21/2017	Notice of Hearing <i>Notice Of Hearing (Motion to Strike Affidavit of Gary L. Raney 3/29/2017 1:30 p.m.)</i>
03/29/2017	Hearing Held <i>Hearing result for Motion for Partial Summary Judgment scheduled on 03/29/2017 01:30 PM: Hearing Held Motion to Strike Affidavit of Gary L. Raney</i>
03/29/2017	Motion for Partial Summary Judgment (1:30 PM) (Judicial Officer: Nye, Christopher S.) <i>Motion to Strike Affidavit of Gary L. Raney Hearing result for Motion for Partial Summary Judgment scheduled on 03/29/2017 01:30 PM: Hearing Held</i>
04/03/2017	Notice of Completion <i>Notice Of Compliance</i>
04/06/2017	Notice of Completion <i>Notice Of Compliance</i>
04/13/2017	Notice of Service <i>Notice Of Service</i>
04/18/2017	Notice of Service <i>Notice Of Service</i>
04/19/2017	Motion <i>Def Payette County Motion for Partial Summary Judgment Regarding Intrusion Upon Seclusion Claim</i>
04/19/2017	Memorandum

PAYETTE COUNTY DISTRICT COURT

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Memorandum in Support of Def Payette County Motion for Partial Summary Judgment Regarding Intrusion Upon Seclusion Tort Claim

04/19/2017	Affidavit <i>Second Affidavit of Betty Dressen in Support of Def Payette County Motion for Partial Summary Judgment</i>
04/19/2017	Affidavit <i>Affidavit of Michael Kane in Support of Def Payette County Motion for Partial Summary Judgment Regarding Intrusion Upon Seclusion Tort Claim</i>
04/19/2017	Affidavit <i>Affidavit of Charles Huff in Support of Def Payette County Motion for Partial Summary Judgment Regarding Intrusion Upon Seclusion Tort Claim</i>
04/19/2017	Notice <i>Notice of Hearing</i>
04/19/2017	Hearing Scheduled <i>Hearing Scheduled (Motion for Partial Summary Judgment 05/22/2017 01:30 PM)</i>
04/21/2017	Memorandum <i>Memorandum in Support of Def's Payette County Motion to Strike/Motion in Limine Concerning Pl's Expert Witness Carolyn Barnhart</i>
04/21/2017	Motion <i>Motion to Strike/Motion in Limine Concerning Pl's Expert Witness Carolyn Barnhart</i>
04/21/2017	Notice <i>Notice of Hearing</i>
04/21/2017	Notice of Completion <i>Notice Of Compliance</i>
04/24/2017	Motion <i>Defendant Payette County's Motion for Summary Judgment</i>
04/24/2017	Affidavit <i>Affidavit of Scott Sloan in Support of Defendant Payette County's Motion for Summary Judgment</i>
04/24/2017	Memorandum <i>Memorandum in Support of Defendant Payette County's Motion for Summary Judgment</i>
04/24/2017	Affidavit <i>Affidavit of Gary Raney in Support of Defendant Payette County's Motion for Summary Judgment</i>
04/24/2017	Notice of Hearing <i>Notice Of Hearing-5/22/2017 1:30 p.m.</i>
04/28/2017	Motion <i>Def Payette County Motion in Limine Concerning Pl's Claimed Damages</i>
04/28/2017	Memorandum <i>Memorandum in Support of Def Payette County's Motion in Limine Concerning Pl's Claimed Damages</i>
04/28/2017	Notice <i>Notice of Hearing</i>

PAYETTE COUNTY DISTRICT COURT

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04/28/2017	Notice <i>Notice of Hearing</i>
04/28/2017	Affidavit <i>Affidavit of Kenn Meneely</i>
04/28/2017	Motion <i>Motion In Limine Re Alcohol Consumption of Decedent Barry Johnson</i>
05/02/2017	Notice <i>Notice of Deposition Duces Tecum of Lt Andy Creech</i>
05/02/2017	Notice <i>Notice of Taking Deposition of Payette County Sheriff Charles Huff</i>
05/03/2017	Memorandum <i>Memorandum Decision and Order Denying Payette County's Motion for Partial Summary Judgment and Denying Pl's Motion to Strike Gary Raney's Affidavit</i>
05/04/2017	Motion <i>Plaintiff's 56(d) Motion for Continuance to Allow Discovery in Advance of Summary Judgment Hearing</i>
05/04/2017	Affidavit <i>Affidavit of Nathan Olsen in Support of Plaintiff's 56(d) Motion for Continuance to Allow Discovery in Advance of Summary Judgment Hearing</i>
05/04/2017	Hearing Scheduled <i>Hearing Scheduled (Motion 05/18/2017 11:00 AM) for Continuance to Allow Discovery in Advance of Summary Judgment Hearing</i>
05/08/2017	Memorandum <i>Defendant Payette County's Memorandum in Opposition to Plaintiff's Motion in Limine: RE Alcohol Consumption of Decedent</i>
05/10/2017	Affidavit <i>Affidavit of Nathan Olsen in Support of Response in Opposition to Def Payette County's Motion for Summary Judgment</i>
05/10/2017	Response <i>Response in Opposition to Def Payette County's Motion for Summary Judgment</i>
05/12/2017	Notice <i>Notice of Non-opposition to Pl's 56(d) Motion for Continuance to Allow Discovery</i>
05/15/2017	Miscellaneous <i>Defendant Payette County's Compliance with Pretrial Order</i>
05/15/2017	Affidavit <i>Affidavit of Jackie Raymond</i>
05/15/2017	Response <i>Response in Opposition to Def Payette County Motion in Limine Re Barnhart and Claimed Damages</i>
05/16/2017	Notice of Service <i>Notice Of Service</i>
05/16/2017	Stipulation <i>Stipulation to Continue Pretrial Conference</i>

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05/16/2017	Continued <i>Continued (Pretrial Conference 05/22/2017 01:30 PM) JT 7/24/17</i>
05/16/2017	Miscellaneous <i>Defendant Payette County's Compliance with Pretrial Order</i>
05/16/2017	Miscellaneous <i>Reply Brief in Support of Defendant Payette County's Motion for Summary Judgment</i>
05/16/2017	Stipulation <i>Stipulation Pursuant to the Court's Order Setting Pretrial Conference</i>
05/17/2017	Continued <i>Hearing result for Motion scheduled on 05/18/2017 11:00 AM: Continued for Continuance to Allow Discovery in Advance of Summary Judgment Hearing</i>
05/17/2017	Notice of Completion <i>Notice Of Compliance</i>
05/18/2017	Miscellaneous <i>Payette County's Reply in Support of Motions in Limine Re: Carolyn Barnhart and Claimed Damages</i>
05/18/2017	Miscellaneous <i>Reply in Support of Motion in Limine Re: Alcohol Consumption of Decedent Barry Johnson</i>
05/18/2017	Motion Hearing (11:00 AM) (Judicial Officer: Nye, Christopher S.) <i>for Continuance to Allow Discovery in Advance of Summary Judgment Hearing Hearing result for Motion scheduled on 05/18/2017 11:00 AM: Continued</i>
05/22/2017	Hearing Held <i>Hearing result for Motion for Partial Summary Judgment scheduled on 05/22/2017 01:30 PM: Hearing Held Def's Motion to Strike/Motn In Limine Re: Pl's Expert Witness/Def's Motn in Limine/Pl's Motion in Limine/Motion for Continuance to Allow Discovery in Advance of Summary Judgment Hearing</i>
05/22/2017	Hearing Held <i>Hearing result for Pretrial Conference scheduled on 05/22/2017 01:30 PM: Hearing Held JT 7/24/17</i>
05/22/2017	Court Minutes <i>Court Minutes</i>
05/22/2017	DC Hearing Held: Court Reporter: # of Pages: <i>District Court Hearing Held Court Reporter: Tammy Weber Number of Transcript Pages for this hearing estimated:</i>
05/22/2017	Hearing Scheduled <i>Hearing Scheduled (Motion for Partial Summary Judgment 06/20/2017 10:30 AM) Hearing to be held in Canyon County</i>
05/22/2017	Pre-trial Conference (1:30 PM) (Judicial Officer: Nye, Christopher S.) <i>JT 7/24/17 Hearing result for Pretrial Conference scheduled on 05/22/2017 01:30 PM: Hearing Held</i>
05/22/2017	Motion for Partial Summary Judgment (1:30 PM) (Judicial Officer: Nye, Christopher S.) <i>Def's Motion to Strike/Motn In Limine Re: Pl's Expert Witness/Def's Motn in Limine/Pl's Motion in Limine/Motion for Continuance to Allow Discovery in Advance of Summary Judgment Hearing Hearing result for Motion for Partial Summary Judgment scheduled on 05/22/2017 01:30 PM: Hearing Held</i>

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05/25/2017	Notice of Service <i>Notice Of Service</i>
05/26/2017	Notice of Service <i>Notice Of Service</i>
05/31/2017	Notice <i>Notice of Hearing</i>
05/31/2017	Memorandum <i>Memorandum Decision and Order on Motions Heard May 22, 2107</i>
06/05/2017	Affidavit <i>Affidavit of Michael Kane in Support of Supplemental Evidence for Def's Motion in Limine Regarding Damages</i>
06/05/2017	Affidavit <i>Affidavit of Michael Kane in Support of Def's Motion In Limine Regarding Evidentiary Matters and Motion for Court Order Governing Trial Proceedings</i>
06/05/2017	Memorandum <i>Memorandum in Support of Def Payette County Motion for Entry of Court Order Governing Trial Proceedings</i>
06/05/2017	Memorandum <i>Memorandum in Support of Def Payette County Motion In Limine Concerning Pretrial Evidentiary Matters</i>
06/05/2017	Motion <i>Def Payette County Motion for Entry of Court Order Governing Trial Proceedings</i>
06/05/2017	Motion <i>Def Payette County Motion in Limine Concerning Pretrial Evidentiary Matters and Standard to Declare Mistrial</i>
06/05/2017	Notice <i>Notice of Hearing</i>
06/05/2017	Notice <i>Notice of Hearing</i>
06/07/2017	Response <i>Response in Opposition to Defendant Payette County's Motion for Partial Summary Judgment Regarding Intrusion Upon Seclusion Claim</i>
06/07/2017	Affidavit <i>Affidavit of Nathan Olsen in Support of Response in Opposition to Defendant Payette County's Motion for Partial Summary Judgment Regarding Intrusion Upon Seclusion Claim</i>
06/07/2017	Motion <i>Motion to Vacate Trial and Extend Expert Disclosure Deadlines</i>
06/07/2017	Affidavit <i>Affidavit of Nathan olsen in support of Motion to Vacate Trial Setting</i>
06/07/2017	Notice of Hearing <i>Notice Of Hearing-6/20/2017 10:30 Motion to Vacate Trial and Extend Expert Disclosure Deadlines</i>
06/12/2017	Memorandum <i>Defendant Payette County's Memorandum in Opposition to Plaintiff's Motion to Vacate Trial</i>

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and Extend Disclosure Deadlines

06/12/2017 Affidavit
Affidavit of Michael Kane in Opposition to Plaintiff's Motion to Vacate Trial and Extend Disclosure/ Deadlines

06/12/2017 Motion
Motion to Intervene Pursuant to I.R.C.P. 24(A)(1) for Purpose of Asserting Rights and Privileges on Behalf of Scott Sloan Assertion of Privilege and Request for Award of Attorney Fees Against Plaintiff's Counsel

06/12/2017 Memorandum
Memorandum in Support of Motion to Intervene Pursuant to I.R.C.P. 24(A)(1) for Purpose of Asserting Rights and Privileges on Behalf of Scott Sloan, Assertion of Privilege, and Request for Award of Attorney Fees Against Plaintiff's Counsel

06/12/2017 Notice of Hearing
Notice Of Hearing- Motion to Intervene-June 20, 2017 at 10:30 a.m.

06/12/2017 Motion
Motion for Exparte Order Shortening Time for Notice of Hearing

06/12/2017 Motion
Motion for Exparte Order Shortening Time for Notice of Hearing

06/12/2017 Motion
Def Payette County Motion for Award of Attny Fees

06/12/2017 Memorandum
Memorandum in Support of Def Payette County Motion for Award of Attorney Fees

06/12/2017 Affidavit
Affidavit of Michael Kane in Support of Motion for Protective Order

06/12/2017 Motion
Def Payette County Motion for Protective Order

06/12/2017 Memorandum
Memorandum in Support of Def Payette County Motion for for Protective Order

06/12/2017 Miscellaneous
Reply Brief in Support of Payette County Motion for Partial Summary Judgment Re: Intrusion

06/12/2017 Notice
of Hearing

06/14/2017 Response to Request for Discovery
Plaintiff's Supplemental Response to Defendant's Motion for Protective Order

06/15/2017 Reply
to Pl's Response to Payette County's Various Motion Set for Hearing

06/16/2017 Motion
Def Payette County Motion in Limine Re: Pl's Disclosed Experts

06/16/2017 Memorandum
Memorandum in Support of Motion in Limine Re: Pl's Disclosed Experts

06/16/2017 Affidavit
Affidavit of Michael Kane in Support of Def Payette County Motion In Limine Re Pl's Disclosed Experts

PAYETTE COUNTY DISTRICT COURT

CASE SUMMARY

CASE NO. CV-2015-954

06/16/2017	Affidavit <i>Second Affidavit of Michael Kane in Support of Def's Motion in Limine Re Evidentiary Matters</i>
06/16/2017	Miscellaneous <i>Written Response to Payette County's Various Motions</i>
06/16/2017	Affidavit <i>Affidavit of Jackie Raymond</i>
06/16/2017	Affidavit <i>Affidavit of Nathan Olsen in Support of the Written Response to Payette County/s Various Motions</i>
06/20/2017	Continued <i>Hearing result for Jury Trial scheduled on 07/24/2017 09:00 AM: Continued 10 days</i>
06/20/2017	Court Minutes <i>Court Minutes</i>
06/20/2017	DC Hearing Held: Court Reporter: # of Pages: <i>District Court Hearing Held Court Reporter: Tammy Weber Number of Transcript Pages for this hearing estimated:</i>
06/20/2017	Motion for Partial Summary Judgment (10:30 AM) (Judicial Officer: Nye, Christopher S.) <i>Hearing to be held in Canyon County Motion to Vacate Trial and Extend Expert Disclosure and Discovery Deadlines Hearing result for Motion for Partial Summary Judgment scheduled on 06/20/2017 10:30 AM: Hearing Held</i>
06/21/2017	Hearing Held <i>Hearing result for Motion for Partial Summary Judgment scheduled on 06/20/2017 10:30 AM: Hearing Held Hearing to be held in Canyon County Motion to Vacate Trial and Extend Expert Disclosure and Discovery Deadlines</i>
06/21/2017	Hearing Scheduled <i>Hearing Scheduled (Motion in Limine 07/24/2017 01:30 PM) Re: Pl's Disclosed Experts</i>
06/21/2017	Notice of Service
06/21/2017	Notice of Service
06/21/2017	Notice of Hearing
06/30/2017	Request <i>for Clarification and Motion to Bifurcate Trial</i>
06/30/2017	Request <i>for Scheduling Conference</i>
06/30/2017	Notice of Hearing
07/17/2017	Affidavit <i>of Nathan Olsen In Support of Memo in Opposition to Payette County's Motion in Limine Re Pl's Disclosed Experts</i>
07/17/2017	Memorandum <i>in Opposition to Payette County's Motion in Limine Re Pl's Disclosed Experts</i>
07/19/2017	Reply <i>to Pl's Response to Def Payette County Motion in Limine Re Pl's Disclosed Experts</i>

PAYETTE COUNTY DISTRICT COURT

CASE SUMMARY

CASE No. CV-2015-954

07/21/2017	Notice <i>Of Compliance</i>
07/24/2017	Hearing Held <i>Hearing result for Motion in Limine scheduled on 07/24/2017 01:30 PM: Hearing Held Re: Pl's Disclosed Experts and Scheduling Hearing</i>
07/24/2017	Hearing Scheduled <i>Hearing Scheduled (Jury Trial 04/23/2018 09:00 AM)</i>
07/24/2017	Hearing Scheduled <i>Hearing Scheduled (Pretrial Conference 03/15/2018 09:00 AM) to be held Canyon County</i>
07/24/2017	DC Hearing Held: Court Reporter: # of Pages: <i>District Court Hearing Held Court Reporter: Tammy Weber Number of Transcript Pages for this hearing estimated:</i>
07/24/2017	Jury Trial (9:00 AM) (Judicial Officer: Nye, Christopher S.) 07/24/2017-08/04/2017 <i>10 days Hearing result for Jury Trial scheduled on 07/24/2017 09:00 AM: Continued</i>
07/24/2017	Motion in Limine (1:30 PM) (Judicial Officer: Nye, Christopher S.) <i>Re: Pl's Disclosed Experts and Scheduling Hearing Hearing result for Motion in Limine scheduled on 07/24/2017 01:30 PM: Hearing Held</i>
07/24/2017	Court Minutes
07/25/2017	Motion <i>Motion for Partial Dismissal Pursuant IRCP 12(b)(6)</i>
07/25/2017	Memorandum <i>Memorandum in Support of Def Payette County's Motion to Dismiss Pursuant to IRCP 12(b)(6)</i>
07/25/2017	Notice <i>Notice of Hearing</i>
07/25/2017	Notice of Service <i>Notice Of Service</i>
07/25/2017	Hearing Scheduled <i>Hearing Scheduled (Motion 08/28/2017 08:30 AM) to be held in Canyon County</i>
07/25/2017	Memorandum <i>in Support of Def Payette County's Motion In Limine Re Post Occurrence Remedial Measures</i>
07/25/2017	Motion <i>of Def Payette County's Motion In Limine Re Post Occurrence Remedial Measures</i>
07/25/2017	Notice of Hearing
07/26/2017	Notice <i>Notice of Hearing</i>
08/10/2017	Order <i>Protective Order Concerning Scott Sloan's Personal Medical Records and Information</i>
08/15/2017	Notice of Completion <i>Notice Of Compliance</i>

PAYETTE COUNTY DISTRICT COURT










CASE SUMMARY

CASE NO. CV-2015-954

08/25/2017	Continued <i>Continued (Motion 09/11/2017 03:00 PM) to be held in Payette County</i>
08/25/2017	Order <i>Order to Vacate and Reschedule Hearing</i>
08/25/2017	Stipulation <i>Stipulation to Vacate and Reschedule Hearing</i>
08/25/2017	Memorandum <i>Memorandum Decision and Order on Payette County's Motion in Limine</i>
08/30/2017	Notice <i>Amended Notice of Hearing</i>
08/30/2017	Notice <i>Amended Notice of Hearing</i>
08/30/2017	Notice <i>Amended Notice of Hearing</i>
08/31/2017	Response <i>Response in Opposition to Defendant Payette County's "Motion in Limine Regarding Post Occurrence Remedial Measures"</i>
08/31/2017	Response <i>Response in Opposition to Defendant Payette County's "Response for Clarification and Motion to Bifurcate Trial"</i>
08/31/2017	Objection <i>Objection to Defendant's "Motion for Partial Dismissal Pursuant to I.R.C.P. 12(b)(6)"</i>
09/05/2017	Miscellaneous <i>Reply Brief in Support of Def Payette County Motion in Limine Re: Post Occurrence Remedial Measures</i>
09/05/2017	Miscellaneous <i>Reply Brief in Support of Motion for Partial Dismissal Pursuant to IRCP 12(b)(6)</i>
09/05/2017	Miscellaneous <i>Reply Brief in Support of Request for Clarification and Motion to Bifurcate Trial</i>
09/11/2017	Hearing Held <i>Hearing result for Motion scheduled on 09/11/2017 03:00 PM: Hearing Held to be held in Payette County</i>
09/11/2017	Court Minutes <i>Court Minutes</i>
09/11/2017	DC Hearing Held: Court Reporter: # of Pages: <i>District Court Hearing Held Court Reporter: Tammy Webber Number of Transcript Pages for this hearing estimated:</i>
09/11/2017	Motion Hearing (3:00 PM) (Judicial Officer: Nye, Christopher S.) <i>to be held in Payette County Hearing result for Motion scheduled on 09/11/2017 03:00 PM: Hearing Held</i>
09/18/2017	Miscellaneous <i>Objection to Def's Proposed Orders</i>

CASE SUMMARY

CASE NO. CV-2015-954

09/29/2017	Order <i>Order Setting Pretrial and Jury Trial</i>
09/29/2017	ROA - Converted Event <i>Request for Trial Setting</i>
09/29/2017	 Order <i>on Def's IRCP 12(b)(6) Motion for Partial Dismissal and Motion in Limine Re: Subsequent Remedial Measures</i>
10/02/2017	Notice of Service <i>Notice Of Service</i>
10/13/2017	Notice <i>Notice of Taking Deposition of Brandon Eller</i>
10/17/2017	Notice <i>Notice of Taking Deposition of Jacqueline Lisle</i>
10/17/2017	Notice <i>Notice of Taking Deposition of Dale Lisle</i>
10/17/2017	Notice <i>Notice of Taking Deposition of Rosemary Melcher</i>
10/18/2017	Notice <i>Notice of Taking Deposition of Fred Rice</i>
10/18/2017	Notice <i>Notice of Taking Deposition of Terry Murdock</i>
10/20/2017	Affidavit of Service <i>Affidavit Of Service</i>
10/24/2017	 Notice <i>of Taking Deposition of Carolyn Barnhart</i>
10/24/2017	 Acknowledgment <i>of Service of Subpoena and Notice of Deposition</i>
10/25/2017	 Notice <i>Amended Notice of Taking Deposition of Fred Rice</i>
10/26/2017	 Memorandum <i>Decision on Def's Request for Clarification</i>
10/26/2017	 Affidavit of Service
10/26/2017	 Notice of Service
10/30/2017	 Affidavit of Service
11/01/2017	 Notice <i>Of Compliance</i>

CASE SUMMARY


CASE NO. CV-2015-954


11/08/2017	 Notice <i>Amended Notice of Taking Deposition of Carolyn Barnhart</i>
11/13/2017	 Notice of Service
11/13/2017	 Notice <i>Second Amended Notice of Taking Deposition of Fred Rice</i>
11/20/2017	 Petition <i>Justin Klitch's Petition to Quash Subpoena for Records and Motion for Protective Order</i>
11/20/2017	 Memorandum <i>in Support of Justin Klitch's Petition to Quash Subpoena for Production of Records and Motion for Protective Order</i>
11/20/2017	 Affidavit <i>of Counsel in Support of Justin Klitch's Petition to Quash Subpoena and Motion for Protective Order</i>
11/28/2017	Hearing Scheduled <i>Hearing Scheduled (Motion 01/03/2018 09:00 AM) to be held in Canyon County</i>
11/28/2017	 Notice of Hearing <i>of Hearing on Justin Klitch's Petition to Quash Subpoena for Records and Motion for Protective Order.</i>
11/29/2017	 Notice of Hearing
11/29/2017	 Motion <i>Payette County's Motion to Quash Subpoena for Records; Motion for Protective Order as it Relates to Attorney Work Product Privilege; and Request for Attorney Fees</i>
11/29/2017	 Memorandum <i>in Support of Payette County's Motion to Quash Subpoena for Records; Motion for Protective Order as it Relates to Attorney Work Product Privilege; and Request for Attorney Fees</i>
11/29/2017	 Affidavit <i>of Michael Kane in Support of Payette County's Motion to Quash Subpoena for Records; Motion for Protective Order as it Relates to Attorney Work Product Privilege; and Request for Attorney Fees</i>
11/30/2017	 Notice <i>Of Service</i>
12/12/2017	 Notice <i>Of Compliance</i>
12/18/2017	 Notice <i>Of Compliance</i>
12/21/2017	 Motion <i>for Change of Venue</i>


PAYETTE COUNTY DISTRICT COURT


CASE SUMMARY

CASE NO. CV-2015-954


12/21/2017  Affidavit
of Jackie Raymond in Support of Motion for Change of Venue


12/21/2017  Notice of Hearing


12/27/2017  Memorandum
Payette County's Memorandum in Opposition to Plaintiff's Motion for Change of Venue

12/27/2017  Affidavit
of Michael Kane in Opposition to Plaintiff's Motion for Change of Venue

12/28/2017 Hearing Scheduled
Hearing Scheduled (Motion 01/18/2018 11:00 AM) to be held in Canyon County

12/28/2017  Notice of Hearing
Amended Notice Of Hearing on Just Klitch's Petition to Quash Subpoena for Records and Motion for Protective Order


12/28/2017  Notice of Hearing
Amended


12/28/2017  Notice of Hearing
Amended


01/03/2018 Hearing Held
Hearing result for Motion scheduled on 01/03/2018 09:00 AM: Hearing Held to be held in Canyon County


01/03/2018 **Motion Hearing (9:00 AM) (Judicial Officer: Nye, Christopher S.)**
to be held in Canyon County Hearing result for Motion scheduled on 01/03/2018 09:00 AM: Hearing Held


01/16/2018 Hearing Scheduled
Hearing Scheduled (Motion 01/31/2018 01:30 PM) to be held in Canyon County


01/16/2018  Affidavit
of Michael Kane Support of Payette County's Motion for Discovery Sanctions for Failure to Disclose

01/16/2018  Motion
Payette County's Motion for Discovery Sanctions for Failure to Disclose

01/16/2018  Memorandum
in Support of Payette County's Motion for Discovery Sanctions for Failure to Disclose

01/16/2018  Notice of Hearing


















01/16/2018  Affidavit
of Michael Kane Support of Payette County's Motion to Allow Use of Video Deposition

01/16/2018  Memorandum
in Support of Payette County's Motion to Allow Use of Video Deposition

01/16/2018

CASE SUMMARY


CASE NO. CV-2015-954


- 01/16/2018  Motion
Payette County's Motion to Allow Use of Video Deposition Motion
- 01/16/2018  Notice of Hearing
- 01/16/2018  Memorandum
in Support of Payette County's Motion to Strike/Motion in Limine Re: Non-retained Expert
- 01/16/2018  Motion
Payette County's Motion Motion to Strike/Motion in Limine Re: Non-retained Expert
- 01/16/2018  Notice of Hearing
- 01/16/2018  Affidavit
of Michael Kane in Support of Payette County Motion in Limine Re: 911 Calls
- 01/16/2018  Affidavit
of Linda Hoxie in Support of Payette County Motion in Limine Re: 911 Calls
- 01/16/2018  Memorandum
in Support of Payette County Motion in Limine Re: 911 Calls
- 01/16/2018  Notice of Hearing
- 01/16/2018  Affidavit
of Michael Kane in Support of Payette County Motion in Limine/Motion to Strike Re: Excerpts of Carmack Report
- 01/16/2018  Memorandum
in Support of Payette County Motion in Limine/Motion to Strike Re: Excerpts of Carmack Report
- 01/16/2018  Motion
Payette County Motion in Limine/Motion to Strike Re: Excerpts of Carmack Report
- 01/16/2018  Notice of Hearing
- 01/16/2018  Affidavit
of Michael Kane in Support of Payette County Motion in Limine/Motion to Strike Re: Non-Retained ISP Expert Witnesses
- 01/16/2018  Memorandum
in Support of Payette County Motion in Limine/Motion to Strike Re: Non-Retained ISP Expert Witnesses
- 01/16/2018  Motion
Payette County Motion in Limine/Motion to Strike Re: Non-Retained ISP Expert Witnesses
- 01/16/2018  Notice
of Hearing
- 01/16/2018


PAYETTE COUNTY DISTRICT COURT


CASE SUMMARY


CASE NO. CV-2015-954


 **Objection**
to Payette County's Motion to Quash Subpoena for Records; Motion for Protective Order; and Request for Attorney Fees


01/16/2018  **Objection**
to Justin Klitch's Petition to Quash Subpoena for Records


01/16/2018  **Affidavit**
of Nathan Olsen

01/16/2018  **Reply**
In Support of Motion for Change of Venue

01/16/2018  **Reply**
to Plaintiff's Response to Payette County's Motion to Quash Subpoena for Records; Motion for Protective Order as it Relates to Attorney Work Product Privilege; and Request for Attorney Fees

01/16/2018  **Brief Filed**
Reply Brief in Support of Justin Klitch's Petition to Quash Subpoena for Records and Motion for Protective Order


01/16/2018  **Affidavit**
of Melissa Stroh in Support of Def's Motion in Limine Regarding 911 Dispatchers Calls after Notification


01/16/2018  **Motion**
Def's Motion in Limine Regarding 911 Dispatchers Calls after Notification

01/18/2018 **Hearing Held**
Hearing result for Motion scheduled on 01/18/2018 11:00 AM: Hearing Held to be held in Canyon County

01/18/2018 **DC Hearing Held: Court Reporter: # of Pages:**
*District Court Hearing Held
Court Reporter: Tamara Weber
Number of Transcript Pages for this hearing estimated:*

01/18/2018 **Motion Hearing (11:00 AM) (Judicial Officer: Nye, Christopher S.)**
to be held in Canyon County Hearing result for Motion scheduled on 01/18/2018 11:00 AM: Hearing Held

01/18/2018  **Court Minutes**

01/26/2018  **Notice**
Amended Notice of Hearing

01/29/2018 **Hearing Scheduled**
Hearing Scheduled (Motion 02/09/2018 01:30 PM) to be held in Canyon County

01/31/2018 **Hearing Held**
Hearing result for Motion scheduled on 01/31/2018 01:30 PM: Hearing Held to be held in Canyon County














01/31/2018 **Motion Hearing (1:30 PM) (Judicial Officer: Nye, Christopher S.)**
to be held in Canyon County Hearing result for Motion scheduled on 01/31/2018 01:30 PM:

PAYETTE COUNTY DISTRICT COURT

CASE SUMMARY















CASE NO. CV-2015-954

Hearing Held

- 02/05/2018  Declaration
of Jackie Raymond
- 02/05/2018  Affidavit
of Nathan Olsen In Support Motions heard on 2/9/18
- 02/05/2018  Response
*in Opposition to Payette County Motion to Strike/Motion In Limine Re: Pl Expert Witness
Carlie Corbin*
- 02/05/2018  Response
*in Opposition to Payette County Motion in Limine/Motion to Strike Excerpts of Carmack's
Accident Report*
- 02/05/2018  Response
*in Opposition to Payette County Motion to Strike/Motion in Limine Re: Pl's Non-Retained ISP
Expert Witnesses*
- 02/05/2018  Response
*in Opposition to Payette County's Motion in Limine Re: 911 Dispatchers Calls After
Notification*
- 02/05/2018  Objection
to Payette County Motion for Discovery Sanctions for Failure to Disclose
- 02/07/2018  Reply
to Pl's Opposition to Def Payette County Motion in Limine Re: 911 calls
- 02/07/2018  Reply
*to Pl's Opposition to Def Payette County Motion in Limine/Motion to Strike Carmack's
Accident*
- 02/07/2018  Reply
to Pl's Opposition to Def Payette County Motion to Strike/Motion in Limine ISP Expert
- 02/07/2018  Reply
to Pl's Opposition to Payette County Motion for Discovery Sanctions
- 02/07/2018  Reply
to Pl's Opposition to Def Payette County Motion to Strike/Motion in Limine
- 02/07/2018  Notice
of No Opposition to Payette County Motion to Allw Use of Video Deposition
- 02/09/2018 Hearing Held
*Hearing result for Motion scheduled on 02/09/2018 01:30 PM: Hearing Held to be held in
Canyon County*
- 02/09/2018 **Motion Hearing (1:30 PM)** (Judicial Officer: Nye, Christopher S.)
*to be held in Canyon County Hearing result for Motion scheduled on 02/09/2018 01:30 PM:
Hearing Held*

CASE SUMMARY

CASE NO. CV-2015-954














02/09/2018	 Court Minutes
02/12/2018	 Order <i>Granting Def's Motion to Quash Subpoena and Denying Pl's Motion for Change of Venue</i>
02/22/2018	 Notice <i>of Association of Counsel</i>
02/28/2018	 Notice <i>Of Compliance</i>
02/28/2018	 Notice <i>Of Compliance</i>
02/28/2018	 Notice <i>Of Compliance</i>
03/05/2018	 Order <i>Re Defendant Payette County's Motions Heard February 9, 2018</i>
03/06/2018	 Notice of Taking Deposition <i>of Julie Bonsall</i>
03/06/2018	 Notice of Taking Deposition <i>of DP Van Blaricom</i>
03/06/2018	 Notice of Taking Deposition <i>of Billy Brummett</i>
03/06/2018	 Notice of Taking Deposition <i>of Rob Raynor</i>
03/06/2018	 Notice of Taking Deposition <i>of Colleen Rheault</i>
03/06/2018	 Notice of Taking Deposition <i>of Gary Clark</i>
03/06/2018	 Notice of Taking Deposition <i>of Anthony Johnson</i>
03/06/2018	 Notice of Taking Deposition Duces Tecum <i>of Carol Jacques</i>
03/06/2018	 Notice of Taking Deposition Duces Tecum <i>of Brian Pearce</i>
03/06/2018	 Order <i>Denying Defendant's Motion to Exclude the 911 Dispatch Tapes</i>
03/07/2018	 Affidavit of Service

PAYETTE COUNTY DISTRICT COURT

CASE SUMMARY

CASE NO. CV-2015-954

















Affidavit Of Service (6)

- 03/07/2018  Notice
of Taking Deposition of Paul Duplissie
- 03/07/2018  Notice
Amended Notice of Taking Deposition Duces Tecum of DP Van Blaricom
- 03/07/2018  Notice
Def Payette County's Compliance with Pretrial Order
- 03/07/2018  Notice
Amended Notice of Taking Deposition of Gary Clark
- 03/07/2018  Notice
Amended Notice of Taking Deposition of Colleen Rheault
- 03/07/2018  Notice
Amended Notice of Taking Deposition Duces Tecum of Rob Raynor
- 03/07/2018  Notice
Amended Notice of Taking Deposition of Paul Duplissie
- 03/09/2018  Notice
Amended Notice of Taking Deposition of Carol Jacques
- 03/14/2018  Notice
Second Amended Notice of Taking Deposition Duces Tecum of DP Van Blaricom
- 03/15/2018 DC Hearing Held: Court Reporter: # of Pages:
District Court Hearing Held
Court Reporter: Leda Waddle
Number of Transcript Pages for this hearing estimated:
- 03/15/2018 Hearing Held
Hearing result for Pretrial Conference scheduled on 03/15/2018 09:00 AM: Hearing Held to be held Canyon County
- 03/15/2018 **Pre-trial Conference (9:00 AM)** (Judicial Officer: Nye, Christopher S.)
to be held Canyon County Hearing result for Pretrial Conference scheduled on 03/15/2018 09:00 AM: Hearing Held
- 03/15/2018  Stipulation
Pursuant to the Court's Order Setting Pretrial Conference
- 03/15/2018  Court Minutes
- 03/26/2018  Notice
of Taking Deposition of Scott Sloan
- 04/07/2018  Notice of Hearing
Entry of Court Order Governing Trial Proceedings
- 04/07/2018

PAYETTE COUNTY DISTRICT COURT

CASE SUMMARY


















CASE NO. CV-2015-954

-  Response
Defendant's Response to Plaintiff's Motion In Limine
- 04/07/2018  Memorandum
in Support of Defendant's Second Motion for Entry of Court Order Governing Trial Proceedings
- 04/07/2018  Motion
Defendant's Second Motion for Entry of Court Order Governing Trial Proceedings
- 04/07/2018  Notice of Hearing
Motion in Limine
- 04/07/2018  Motion
in Limine
- 04/07/2018  Notice of Service
- 04/10/2018  Affidavit
Defendant's Addendum to Second Motion for Entry of Court Order
- 04/10/2018  Affidavit
of Britainy Kingsmore
- 04/12/2018  Motion
to Allow Use of Sloan's Depo and Rebut Witns by Phone
- 04/12/2018  Affidavit
of Nathan Olsen in Supp. of Motion to Allow Use
- 04/12/2018  Reply
in Support of Motion in Limine
- 04/13/2018  Motion
Renewed Motion for Change of Venue
- 04/13/2018  Memorandum
Plaintiff's Pretrial Memorandum
- 04/13/2018  Memorandum
Memorandum in Opposition Re Use of Deposition of Scott Sloan
- 04/13/2018  Brief Filed
Defendant Payette County's Trial Brief
- 04/13/2018  Notice of Service
Notice of Service
- 04/16/2018 **Motion Hearing (10:30 AM)** (Judicial Officer: Nye, Christopher S.)
Defendant's Motion for Entry of Court Order Governing Trial Proceedings and Motion in Limine

PAYETTE COUNTY DISTRICT COURT

CASE SUMMARY

CASE NO. CV-2015-954

04/16/2018	 Court Minutes <i>Motion Hearing 4/16/18 held in Canyon County</i>
04/17/2018	 Memorandum <i>in Opposition to Plaintiff's Jury Instructions</i>
04/19/2018	 Notice <i>Defendant Payette County's Opening Presentation Exhibits</i>
04/20/2018	 Motion <i>to Strike Certain Jurors for Cause</i>
04/20/2018	 Affidavit <i>of Nathan Olsen (MT Strike Jurors) Parts 1 - 2</i>
04/20/2018	 Motion <i>to Exclude Cert. Trial Exhibits of Def.</i>
04/20/2018	 Affidavit <i>of Nathan Olsen (Excl. Exhs. of Def.) Parts 1 - 4</i>
04/23/2018	Jury Trial (9:00 AM) (Judicial Officer: Nye, Christopher S.) 04/23/2018-04/25/2018 <i>10 days</i>
04/23/2018	 Transcript Filed <i>Motion Hearing 4/16/18</i>
04/23/2018	 Court Minutes
04/23/2018	 Preliminary Jury Instructions
04/24/2018	 Court Minutes
04/30/2018	CANCELED Scheduling Conference (9:00 AM) (Judicial Officer: Nye, Christopher S.) <i>Vacated</i> <i>Telephonic</i>
04/30/2018	 Telephone Conference (3:00 PM) (Judicial Officer: Nye, Christopher S.)
05/02/2018	 Notice of Trial Setting, Pre-Trial Conf, Order
05/03/2018	 Court Minutes
06/11/2018	 Notice of Service of Discovery Requests <i>Notice of Service (14th Suppl. Response)</i>
07/05/2018	 Stipulation to Dismiss <i>with Prejudice</i>
07/10/2018	 Order

PAYETTE COUNTY DISTRICT COURT

CASE SUMMARY

CASE NO. CV-2015-954

of Dismissal with Prejudice

07/10/2018

 Judgment
Final


07/10/2018

Dismissed With Prejudice (Judicial Officer: Nye, Christopher S.)
Comment ()
Party (Sloan, Scott Jacob; Idaho State Police Patrol Region 3; Raymond, Jacqueline Marie; Payette County)
Monetary/Property Award
In Favor Of: Sloan, Scott Jacob; Idaho State Police Patrol Region 3; Raymond, Jacqueline Marie; Payette County; Kane, Michael John; Elia, Michael Joseph; Olsen, Nathan Miles
Against: Sloan, Scott Jacob; Idaho State Police Patrol Region 3; Raymond, Jacqueline Marie; Payette County; Kane, Michael John; Elia, Michael Joseph; Olsen, Nathan Miles
Entered Date: 07/11/2018
Current Judgment Status:
Status: Dismissal of Judgment By Court Order
Status Date: 07/11/2018

07/10/2018

Civil Disposition Entered

08/17/2018

 Notice of Appeal

08/17/2018

Appeal Filed in Supreme Court

08/20/2018

 Clerk's Certificate of Appeal


08/30/2018

 Request
Respondent's Request for Additional Transcript and Clerk's Record

09/19/2018

Case Summary

09/20/2018

 Exhibit List/Log
Certificate of Exhibit

09/20/2018

 Clerk's Certificate of Service

09/20/2018

 Appeal Cover/Title Page

10/01/2018

CANCELED Pre-trial Conference (1:30 PM) (Judicial Officer: Nye, Christopher S.)
Vacated
Telephonic

10/15/2018

CANCELED Jury Trial (9:00 AM) (Judicial Officer: Nye, Christopher S.)
Vacated

DATE

FINANCIAL INFORMATION

Plaintiff Raymond, Jacqueline Marie	
Total Charges	129.00
Total Payments and Credits	129.00
Balance Due as of 9/20/2018	0.00
Attorney of Record Olsen, Nathan Miles	
Civil Cash Bond Account Type Balance as of 9/20/2018	100.00

COPY

Nathan M. Olsen, Esq., ISB # 7373
PETERSEN MOSS HALL & OLSEN
485 "E" Street
Idaho Falls, Idaho 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391
E-mail: nolsen@pmholaw.com

Attorneys for Plaintiff

NO. _____ FILED _____
A.M. _____ P.M. _____

FEB 27 2015

CHRISTOPHER D. RICH, Clerk
By HALEY MYERS
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JACKIE RAYMOND, individually as an
heir, and as Personal Representative of the
Estate of BARRY JOHNSON,

Plaintiff,

v.

IDAHO STATE POLICE, an Idaho State
agency, PAYETTE COUNTY, a political
subdivision of the State of Idaho, and
SCOTT SLOAN,

Defendants.

Case No. CV-2015- **CV 0C 1503239**

COMPLAINT AND
DEMAND FOR JURY TRIAL

Fee Category: A.A.
Fee: \$221.00

As and for cause of action against the above-named defendants, Plaintiff Jackie
Raymond alleges and prays as follows:

PARTIES AND JURISDICTION

1. Plaintiff Jackie Raymond is an individual residing in the City of Nampa, Canyon
County, Idaho, and is the sole surviving offspring of Barry Johnson, deceased.

2. Plaintiff is an "heir" of Mr. Johnson within the meaning of Idaho Code § 5-311 and is the personal representative of the Estate of Barry Johnson.

3. Defendant Payette County is a political subdivision of the State of Idaho within the meaning of the Idaho Tort Claims Act, Idaho Code §6-901, *et seq.*

4. Defendant Scott Sloan was, at all times material hereto, acting in his individual capacity and within the course and scope of his duties as an employee and Deputy Sheriff for Payette County. Sloan's negligence, gross negligence, recklessness, and wantonness as alleged herein are therefore imputed to Payette County pursuant to the doctrine of respondeat superior and Idaho Code § 6-903.

5. Defendant Idaho State Police ("ISP") is a department and/or agency of the State of Idaho within the meaning of the Idaho Tort Claims Act, Idaho Code §6-901, *et seq.*

6. At all times material hereto, ISP acted through its employees and agents, who were acting at all times material hereto within the course and scope of their employment and agency with ISP, thereby subjecting ISP to liability for their tortious conduct pursuant to Idaho agency law and the doctrine of *respondeat superior* and Idaho Code § 6-903.

7. The defendants have been properly and timely served with a tort claim notice in accordance with Title 6, Chapter 9, Idaho Code, which claim has been denied.

8. This Court has jurisdiction over this action pursuant to Idaho Code § 1-705.

9. The amount in controversy exceeds this Court's jurisdictional threshold.

10. Venue is proper in Ada County, Idaho pursuant to Idaho Code §§ 6-915, 5-402 and/or § 5-404.

GENERAL ALLEGATIONS

11. On or about October 18, 2011, Barry Johnson was operating his 1983 Jeep CJ7 on Idaho State Highway 30 in an easterly direction, when he made a lawful turn into the driveway of his residence just outside New Plymouth, Idaho.

12. As Mr. Johnson was making his lawful left turn into his driveway, Defendant Scott Sloan was attempting to pass Mr. Johnson on the left, at speeds as high as 115 mph according to initial ISP investigation, a speed Sloan knew to be far too great for any evasive maneuvers in the likely event he would need to avoid lawful action by other motorists like Mr. Johnson.

13. Sloan was personally aware that driveways from private residences and farms lined Highway 30, and that pedestrians, bicyclists, and motorists often entered and exited Highway 30 from their residences or farms.

14. By driving at such a speed grossly in excess of the posted speed limit and in such a populated area with visible traffic, Sloan endangered life and property, drove without due regard for the safety of all persons using the highway, and recklessly disregarded the safety of others using highway, in violation of Idaho law and certain Idaho State statutes, including but not limited to Idaho Code §§ 49-654, 49-623, and 49-625, thereby rendering Sloan negligent *per se*.

15. As a direct and proximate result of Sloan's misconduct, his patrol car collided with Mr. Johnson's Jeep in an extremely violent manner and at an extreme rate of speed, ejecting Mr. Johnson as well as the engine and drive train from the Jeep, killing Mr. Johnson.

16. Based upon information and belief, Payette County was aware of Sloan's propensity to speed, drive recklessly, and flout the very laws he enforced, yet failed to take reasonable measures to reign him in, and failed to develop rules and to properly train, supervise, and control its Deputies, including Sloan, in the safe operation of patrol cars when responding to a code call or pursuing a suspect, which was a substantial factor causing damages to Plaintiff.

17 During ISP's investigation of the misconduct of defendant Sloan as alleged, and prosecution of Sloan therefor, the defendants conspired and attempted to, and did, cover up Sloan's misconduct and/or unduly influence the investigation, evidence, and witnesses accordingly, in order to shield defendants Sloan and Payette County from liability and responsibility for Sloan's aforesaid misconduct.

18. The defendants engaged in an enterprise or conspiracy with Sloan to, and did in fact, willfully and with full knowledge of Sloan's unlawful conduct, conceal evidence, harbor and protect Sloan from criminal and civil liability, and intimidate, influence, impede, deter, threaten, harass and obstruct witnesses and/or potential witnesses, all in violation of state and federal law but in favor of a corrupt policy and effort to protect fellow Idaho law enforcement officers from the consequences of their unlawful conduct.

19. The defendants also thereby reduced the value of Plaintiff's claim and increased the cost in pursuing the claim. Specifically, felony criminal charges were initially filed against Sloan for the vehicular manslaughter of Barry Johnson, in Idaho District Court in Payette County, Criminal Case No. 2012-566. After a preliminary hearing on April 13, 2012, before the Magistrate Judge, the Court found probable cause to bind Sloan over to District Court to

answer the felony vehicular manslaughter charges. The matter was ultimately set for April 22, 2013. However, the defendants conspired to, and did, conceal and manipulate evidence, intimidate witnesses, and otherwise interfered with the prosecution, thereby causing the prosecutor to dismiss the charges. But for the defendants' cover-up and interference as alleged herein, the matter would have proceeded to trial and Sloan would have been convicted. Such conviction would have rendered liability in this matter *res judicata*. The absence of such a conviction exponentially increased the cost of proving liability in Plaintiff's civil case, and because of the defendants' evidence tampering has made it more difficult to prove liability, making Plaintiff's civil claim significantly less valuable than it otherwise would have been.

COUNT I - WRONGFUL DEATH

20. Plaintiff hereby incorporates paragraphs 1 through 19 above as if fully restated herein.

21. Sloan's misconduct as alleged constitutes negligence, gross negligence, recklessness, and wanton misconduct, and exhibits an extreme deviation from reasonable standards of conduct.

22. As a direct and proximate result of Sloan's misconduct as alleged above, both individually and in his capacity as agent for Payette County, Jackie Raymond has lost the support, care, love, comfort, society, and companionship of her beloved father, and caused the Estate of Barry Johnson to incur special damages including, but not limited to, post-mortem medical and transportation expenses, and funeral costs and expenses.

COUNT II - TORTIOUS INTERFERENCE WITH PROSPECTIVE ACTION

23. Plaintiff hereby incorporates paragraphs 1 through 22 above as if fully restated herein.

24. The defendants were negligent *per se*, pursuant to 18 U.S.C. § 1512 and Idaho Code §§ 18-2604 & 2605, in directly or indirectly intimidating, harassing, corruptly persuading or engaging in misleading conduct toward, witnesses or potential witnesses in order to influence or cause to the withholding of their testimony or potential testimony.

25. The defendants' wrongful interference was wrongful beyond the fact of the interference itself, *inter alia*, because violated the aforesaid Idaho statutes.

26. The defendants knew litigation was likely to occur as a result of Sloan's misconduct as alleged above, and willfully destroyed or concealed evidence in an effort to disrupt Plaintiff's case, thereby disrupting Plaintiff's case as alleged above.

27. Such conduct resulted in disruption of Plaintiff's case, and damages to Plaintiff, including but not limited to a massive increase in the costs of pursuing liability of the wrongful death claims, a potential loss in the value of the claim, accruing interest from the significant delay in resolution of the claim, and general damages including severe emotional distress and humiliation suffered by Plaintiff.

COUNT III - (IN THE ALTERNATIVE)

TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

28. Plaintiff hereby incorporates paragraphs 1 through 27 above as if fully restated herein.

29 Plaintiff had a valid economic expectancy known to the defendants in the form of Plaintiff's claims and causes of action against Sloan and Payette County arising from the death of Mr. Johnson.

30. The defendants intentionally interfered with Plaintiff's valid economic expectancy, resulting in the reduction, destruction, or disruption thereof.

31. As a direct and proximate result of the defendants' misconduct alleged above, Plaintiff's ability to obtain legal redress for their injuries has been significantly impaired.

INTEREST AND ATTORNEY FEES

32. Portions of plaintiff's damages are liquidated as to the amount, and Plaintiff is entitled to pre and post judgment interest on such damages at the maximum rate allowed by law and applicable statute.

33. Plaintiff is entitled to an award of her reasonable attorney fees sand pursuant to applicable Idaho statutes and court rules, including Idaho Code § 12-117.

PUNITIVE DAMAGES

34. Plaintiff reserves all right of and hereby provides notice of her intent to amend her Complaint for a claim of punitive damages against all named defendants.

WHEREFORE, Plaintiff prays Judgment of the Court as follows:

1. For a declaration that defendants' misconduct was in violation of plaintiff's legal rights;
2. For an award of general and special damages suffered by Plaintiff as alleged above and according to proof at trial;
4. For prejudgment interest on plaintiff's damages as provided by law;

5. For attorney fees as provided by statute and court Rule;
6. For the cost of suit incurred herein; and
7. For such further relief as the Court deems just and equitable under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury, comprised of the maximum number of jurors allowed by applicable law, as to all issues triable to a jury in this action.

DATED 26th day of February, 2015.

PETERSEN MOSS HALL & OLSEN



Nathan M. Olsen

Michael J. Elia (ISBN 5044)
Brady J. Hall (ISBN 7873)
MOORE & ELIA, LLP
Post Office Box 6756
Boise, Idaho 83707
Telephone: (208) 336-6900
Facsimile: (208) 336-7031

FILED
THIRD JUDICIAL DISTRICT COURT
PAYETTE COUNTY, IDAHO

FEB 04 2016

BETTY J. DRESSEN, CLERK
BY Julia DEPUTY

Attorneys for Defendant Idaho State Police

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE**

JACKIE RAYMOND, individually as an heir,
and as Personal Representative of the Estate of
Barry Johnson,

Plaintiff,

vs.

IDAHO STATE POLICE, an Idaho State
agency, PAYETTE COUNTY, a political
subdivision of the State of Idaho, and SCOTT
SLOAN,

Defendants.

Case No. CV-2015-00954-C

**DEFENDANT IDAHO STATE
POLICE'S ANSWER TO
COMPLAINT**

COMES NOW the Defendant Idaho State Police, by and through its attorneys of record,
Moore & Elia, LLP, and in response to Plaintiff's *Complaint and Demand for Jury Trial*
(hereinafter "Plaintiff's Complaint"), hereby admits, denies, and alleges as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim or claims against this Defendant upon which
relief can be granted.

DEFENDANT IDAHO STATE POLICE'S ANSWER TO COMPLAINT - p. 1

SECOND DEFENSE

Defendant denies all allegations in Plaintiff's Complaint that are not specifically admitted herein.

THIRD DEFENSE

1. This Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1 and 2 of Plaintiff's Complaint, and therefore denies them at this time pursuant to Rule 8(b) of the Idaho Rules of Civil Procedure.

2. The allegations contained in paragraphs 3 and 4 of Plaintiff's Complaint are directed to parties other than this Defendant, and therefore no response is required. To the extent a response is required of this Defendant those allegations are denied for lack of knowledge or information sufficient to form a belief as to the truth of the matter contained therein.

3. This Defendant admits the allegations contained in paragraph 5 of Plaintiff's Complaint.

4. This Defendant denies the allegations contained in paragraphs 6 and 7 of Plaintiff's Complaint.

5. This Defendant admits the allegations contained in paragraph 8 of Plaintiff's Complaint.

6. This Defendant denies the allegations contained in paragraphs 9, 10, 11 and 12 of Plaintiff's Complaint. This Defendant admits only that the accident that is the subject of the complaint occurred on October 18, 2011 on Highway 30 near New Plymouth, Idaho.

7. The allegations contained in paragraphs 13 and 14 of Plaintiff's Complaint are directed to parties other than this Defendant, and therefore no response is required. To the extent

DEFENDANT IDAHO STATE POLICE'S ANSWER TO COMPLAINT - p. 2

a response is required of this Defendant those allegations are denied for lack of knowledge or information sufficient to form a belief as to the truth of the matter contained therein.

8. This Defendant admits that only Mr. Johnson was killed in the accident. Defendant denies the remaining allegations contained in paragraph 15 of Plaintiff's Complaint.

9. The allegations contained in paragraph 16 of Plaintiff's Complaint are directed to parties other than this Defendant, and therefore no response is required. To the extent a response is required of this Defendant those allegations are denied for lack of knowledge or information sufficient to form a belief as to the truth of the matter contained therein.

10. This Defendant denies the allegations contained in paragraphs 17, 18 and 19 of Plaintiff's Complaint.

11. As to the allegations contained in paragraph 20 of Plaintiff's Complaint, this Defendant realleges its responses to paragraphs 1-19 and incorporates the same by reference as applicable.

12. The allegations contained in paragraph 21 and 22 of Plaintiff's Complaint are directed to parties other than this Defendant, and therefore no response is required. To the extent a response is required of this Defendant those allegations are denied for lack of knowledge or information sufficient to form a belief as to the truth of the matter contained therein.

13. As to the allegations contained in paragraph 23 of Plaintiff's Complaint, this Defendant realleges its responses to Paragraphs 1-22 and incorporates the same by reference as applicable.

14. This Defendant denies the allegations contained in paragraphs 24, 25, 26 and 27 of Plaintiff's Complaint.

DEFENDANT IDAHO STATE POLICE'S ANSWER TO COMPLAINT - p. 3

15. As to the allegations contained in paragraph 28 of Plaintiff's Complaint, this Defendant realleges its responses to paragraphs 1-27 and incorporates the same by reference as applicable.

16. This Defendant denies the allegations contained in paragraphs 29, 30 and 31 of Plaintiff's Complaint.

17. This Defendant denies the allegations contained in paragraphs 32, 33 and 34 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

At the time of the filing of this Answer, this Defendant has not been able to engage in discovery and lacks information sufficient to form a belief as to all affirmative defenses that might apply in this matter. At this time, pursuant to Rule 12 of the Idaho Rules of Civil Procedure, this Defendant is asserting the following affirmative defenses so that the same are not waived. If factual information is not developed sufficient to support any specific affirmative defense, the affirmative defense in question will be withdrawn.

The foregoing defenses are applicable, where appropriate, to any and all of Plaintiff's claims for relief. In asserting these defenses, this Defendant does not admit that it has a burden of proving the allegations or denials contained in the defenses, but, to the contrary, asserts that by reason of the denials and/or by reasons of relevant statutory and judicial authority, the burden of proving the facts relevant to many of the defenses, and/or burden of proving the inverse to the allegations contained in many of the defenses, is upon the Plaintiff. In asserting any defense, this Defendant does not admit any responsibility or liability, but, to the contrary, specifically denies any and all allegations, responsibility and liability contained in Plaintiff's Complaint.

DEFENDANT IDAHO STATE POLICE'S ANSWER TO COMPLAINT - p. 4

FIRST AFFIRMATIVE DEFENSE

This Defendant breached no duty to Plaintiff's Decedent or Plaintiff.

SECOND AFFIRMATIVE DEFENSE

Without admitting any of Plaintiff's allegations of responsibility, which obligations this Defendant specifically denies, this Defendant asserts that any conduct on the part of this Defendant or its employees was not a legal, actual or proximate cause of the subject accident or injuries alleged.

THIRD AFFIRMATIVE DEFENSE

Without admitting any responsibility on the part of this Defendant, which this Defendant specifically denies, this Defendant asserts the comparative negligence doctrine found in Idaho Code §6-801, *et seq.*, as a complete or partial bar to Plaintiff's case.

FOURTH AFFIRMATIVE DEFENSE

Without admitting any responsibility on the part of this Defendant, which this Defendant specifically denies, this Defendant asserts that the accident described in Plaintiff's Complaint was caused by the acts or omissions of other persons or entities for whom this Defendant is not responsible.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is not the real party in interest for all or a portion of their damages.

SIXTH AFFIRMATIVE DEFENSE

This Defendant asserts the collateral source doctrine found in Idaho Code §6-1606.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate her damages, if any.

DEFENDANT IDAHO STATE POLICE'S ANSWER TO COMPLAINT - p. 5

EIGHTH AFFIRMATIVE DEFENSE

The accident described in Plaintiff's Complaint was caused by or was the proximate result of intervening, superseding causes, over which this Defendant had no control, thus barring Plaintiff's claims against this Defendant.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims against the Defendant Idaho State Police are barred by the public duty doctrine.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred by the failure to file, untimely filing, or insufficient service of their tort claim, Idaho Code §6-906, *et seq.*

ELEVENTH AFFIRMATIVE DEFENSE

The damages sustained by Plaintiff, if any there were, were directly and proximately caused by the acts and omissions of Plaintiff, the Decedent, or third parties not under the Idaho State Police's control.

TWELFTH AFFIRMATIVE DEFENSE

The Idaho State Police Defendant is immune from liability under state law for claims based upon negligent investigation.

THIRTEENTH AFFIRMATIVE DEFENSE

The damages sustained by Plaintiff, if any there were, were directly and proximately caused by the acts and/or omissions of Plaintiff and/or the Decedent.

FOURTEENTH AFFIRMATIVE DEFENSE

In regard to Plaintiff's state law claim, punitive damages are not available under the Idaho Tort Claims Act.

DEFENDANT IDAHO STATE POLICE'S ANSWER TO COMPLAINT - p. 6

FIFTEENTH AFFIRMATIVE DEFENSE

The Idaho State Police Defendant did not have knowledge of any economic expectancy with respect to Plaintiff, nor did Defendant wrongfully or intentionally interference with any such economic expectancy.

SIXTEENTH AFFIRMATIVE DEFENSE

There is no state law claim for tortious interference with prospective action.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the two year statute of limitations of Idaho Code §5-219.

EIGHTEENTH AFFIRMATIVE DEFENSE

This Defendant has considered and believes that it may have additional further defenses to Plaintiff's Complaint, but cannot state with specificity those defenses at this time, consistent with Rule 11 of the Idaho Rules of Civil Procedure. Accordingly, this Defendant reserves the right to supplement its Answer and to add additional affirmative defenses, or to file and serve other responsive pleadings, allegations, or claims.

REQUEST FOR ATTORNEYS' FEES AND COSTS

Defendant has been required to obtain the services of the law firm of Moore & Elia, LLP, to defend it against this action and the allegations contained in Plaintiff's Complaint, and are entitled by law to recover its reasonable attorneys' fees and costs incurred in the defense of this matter. This Defendant alleges and hereby makes claim against Plaintiff for full recovery of its reasonable attorneys' fees and costs incurred in defending this action, pursuant to Idaho Code §12-121, 6-918A, and Rule 54 of the Idaho Rules of Civil Procedure, and all other applicable laws allowing for recovery of costs or attorneys' fees by this Defendant in defending this action.

DEFENDANT IDAHO STATE POLICE'S ANSWER TO COMPLAINT - p. 7

PRAYER FOR RELIEF


WHEREFORE, this Defendant prays for judgment against Plaintiff dismissing Plaintiff's Complaint against this Defendant with prejudice and granting Plaintiff none of the relief prayed for therein; granting this Defendant its attorney's fees and costs; and granting this Defendant such other and further relief as this Court deems just.

DEMAND FOR JURY TRIAL

This Defendant requests that this matter be tried to a jury pursuant to Rule 38 of the Idaho Rules of Civil Procedure.

DATED this 4th day of February, 2016.

MOORE & ELIA, LLP

By 
Michael J. Elia, Attorney for Defendant,
Idaho State Police

CERTIFICATE OF SERVICE

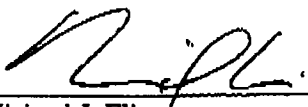
I HEREBY CERTIFY that on this 4th day of February, 2016, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

Nathan M. Olsen
Petersen, Moss, Hall & Olsen
485 "E" Street
Idaho Falls, Idaho 83402
Attorneys for Plaintiff

U.S. Mail, postage prepaid
 Hand Delivered
 Facsimile Transmission 208-524-3391
 E-Mail: nolsen@pmholaw.com

Michael J. Kane
Michael Kane Associates
4355 West Emerald Street, Suite 190
P.O. Box 2865
Boise, ID 83701-2865
Attorneys for Defendants Payette County and Scott Sloan

U.S. Mail, postage prepaid
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 Facsimile Transmission 208-342-2323
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Michael J. Elia

DEFENDANT IDAHO STATE POLICE'S ANSWER TO COMPLAINT - p. 9

MICHAEL J. KANE
MICHAEL KANE & ASSOCIATES, PLLC
 4355 West Emerald Street, Suite 190
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 Idaho State Bar No. 2652

FILED
 THIRD JUDICIAL DISTRICT COURT
 PAYETTE COUNTY, IDAHO

OCT 11 2016

BETTY ADRESSEN, CLERK
 BY  DEPUTY

ATTORNEYS FOR DEFENDANTS PAYETTE COUNTY AND SCOTT SLOAN

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

JACKIE RAYMOND, individually as an heir,)
 and as Personal Representative of the ESTATE)
 OF BARRY JOHNSON,)
)
 Plaintiff,)
)
 v.)
)
 IDAHO STATE POLICE, an Idaho State)
 Agency, PAYETTE COUNTY, a political)
 subdivision of the State of Idaho, and)
 SCOTT SLOAN,)
 Defendants.)
)

Case No. CV-2015-00954-C
 NOTICE OF HEARING

TO THE ABOVE NAMED PARTIES, BY AND THROUGH THEIR ATTORNEYS OF
 RECORD, AND TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant PAYETTE COUNTY will call up its *Motion for
 Partial Dismissal Pursuant to I.R.C.P. 12(b)(6)* for hearing and argument before the above-
 entitled Court, in the Courtroom thereof, located at 1130 3rd Avenue North, in the City of Payette,

County of Payette, State of Idaho, on the 28th day of November, 2016, at the hour of 1:30 p.m.
before the Honorable Christopher S. Nye, or as soon thereafter as counsel may be heard.

DATED this 10th day of October, 2016.

MICHAEL KANE & ASSOCIATES, PLLC

BY: 
MICHAEL J. KANE
Attorneys for Payette County Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of October, 2015, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Counsel for Plaintiff

Nathan M. Olsen
Peterson Moss Hall & Olsen
485 "E" Street
Idaho Falls, ID 83401
[Facsimile: #(208) 524-3391]
[Email: nolsen@pmholaw.com]

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Counsel for ISP

Michael J. Elia
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[Email: mje@melawfirm.net]

U.S. Mail
 Facsimile
 Email

Courtesy Copy To:

Sheri McCain
Clerk to Judge Christopher S. Nye
Canyon County Court
[Email: secsm@canyonco.org]

Email


MICHAEL J. KANE

OCT 12 2016

BETTY J. DRESSEN, CLERK
BY _____ DEPUTY

MICHAEL J. KANE
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Idaho State Bar No. 2652

ATTORNEYS FOR DEFENDANTS PAYETTE COUNTY AND SCOTT SLOAN

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

JACKIE RAYMOND, individually as an heir,)
and as Personal Representative of the ESTATE)
OF BARRY JOHNSON,)
)
Plaintiff,)
)
v.)
)
IDAHO STATE POLICE, an Idaho State)
Agency, PAYETTE COUNTY, a political)
subdivision of the State of Idaho, and)
SCOTT SLOAN,)
Defendants.)
)

Case No. CV-2015-00954-C

MEMORANDUM IN SUPPORT
OF DEFENDANT PAYETTE
COUNTY'S RULE 12 MOTION
FOR PARTIAL DISMISS

COMES NOW the Defendant, PAYETTE COUNTY, by and through its attorney of record, Michael J. Kane of the firm Michael Kane & Associates, PLLC, and hereby provides this Court the following Memorandum in Support of its Motion to Dismiss.

I.

INTRODUCTION

In addition to a wrongful death claim, Plaintiff seeks to hold Payette County liable for tortious interference with a prospective cause of action and intentional interference with a

prospective economic advantage, by claiming Payette County violated certain criminal statutes and that Plaintiff lost the opportunity to exploit a negligence *per se* theory as part of her wrongful death claim. Plaintiff's tortious interference claims rest on proving that "but for" supposed but unstated actions undertaken by Payette County, Sheriff's Deputy Scott Sloan ("Deputy Sloan") would have been convicted of a criminal charge, which would have benefited Plaintiff in a civil action. Boiled down to their essence, Plaintiff's claims amount to demanding money because she has to prove her wrongful death claim as every other tort claimant must – by presenting evidence and proving damages. "If only" Deputy Sloan was convicted of vehicular manslaughter, she would not have to prove liability. Because she has to prove liability, we are told, she has been damaged.

Plaintiff's Counts II and III are stated in the alternative, and are something of a mash up, blending negligence and intentional tort theories, and setting forth torts not adopted in Idaho. Plaintiff's theories are based on several faulty underpinnings, and as a matter of law, fail to state proper claims and therefore must be dismissed.

II.

LEGAL STANDARD

A court may grant a motion to dismiss for failure to state a claim only when it appears beyond doubt that a plaintiff can prove no set of facts in support of the claim which would entitle the plaintiff to relief. *Harper v. Harper*, 122 Idaho 535, 835 P.2d 1346 (Ct. App. 1992). Findings of fact are not required for dismissal of a complaint under the rule. *Bissett v. State*, 111 Idaho 865, 727 P.2d 1293 (Ct. App. 1986). A party may not amend his pleading after the party is served with a responsive pleading under Idaho Rule of Civil Procedure 12(b). I.R.C.P. 15(a)(1)(B).

In the context of interference with an economic expectancy, “it is an issue of law for the court to determine whether the nature of the act complained of could be considered wrongful or not. In other words, the definition of what could be considered wrongful is a question of law. Once the act is so defined by the judge, it then becomes a jury question to determine whether the act was or was not committed as defined.” *Carter v. Carter*, 143 Idaho 373, 382, 146 P.3d 639 (2006).

III.

THE COMPLAINT

The time for amendment of the Plaintiff’s *Complaint and Demand for Jury Trial* (“Complaint”), filed February 27, 2015, has expired by court order.

Paragraph 17 of the Complaint alleges that Payette County entered into a conspiracy to cover up Sloan’s alleged misconduct on the day of the accident. Paragraph 18 alleges that Payette County acted in furtherance of this alleged conspiracy. Paragraph 19 starkly sets forth the alleged facts that support Plaintiff’s theory and is reproduced in its entirety.

The defendants also thereby reduced the value of Plaintiff’s claim and increased the cost in pursuing the claim. Specifically, felony criminal charges were initially filed against Sloan for the vehicular manslaughter of Barry Johnson, in Idaho District Court in Payette County, Criminal Case No. 2012-566. After a preliminary hearing on April 13, 2012, before the Magistrate Judge, the Court found probable cause to bind Sloan over to District Court to answer the felony vehicular manslaughter charges. The matter was ultimately set for April 22, 2013. However, the defendants conspired to, and did, conceal and manipulate evidence, intimidate witnesses, and otherwise interfered with the prosecution, thereby causing the prosecutor to dismiss the charges. But for the defendants’ cover-up and interference as alleged herein, the matter would have proceeded to trial and Sloan would have been convicted. Such conviction would have rendered liability in this matter *res judicata*. The absence of such a conviction exponentially increased the cost of proving liability in Plaintiff’s civil case, and because of the defendants’ evidence tampering has made it more difficult to prove liability, making Plaintiff’s civil claim significantly less valuable than it otherwise would have been.

Complaint, ¶ 19, pp.4-5.

Ergo, states Paragraph 24, Payette County was negligent *per se* by engaging in intentional, criminal behavior – bribery, tampering and intimidation of witnesses. Hence, states Paragraph 27, she is damaged due to a “massive increase in the costs of pursuing liability.” In addition, the lack of successful prosecution of Sloan caused “severe emotional distress and humiliation.” In addition, states Paragraph 29, Plaintiff had a valid economic expectancy (her wrongful death claim) that was interfered with by the alleged conspiracy.¹

There are numerous issues that demonstrate that these counts must fail as a matter of law. These are described individually below.

IV.

ARGUMENT

A. The counts are based upon speculation.

The central claim raised by Plaintiff is that Deputy Sloan would have been convicted of felony vehicular manslaughter and the conviction would have been available to establish negligence *per se*, if only the prosecution had not been interfered with. It is transparent that the interference claims are entirely based upon this speculation and conjecture, and as such are incapable of proof. Speculative claims are universally subject to dismissal as improper.

To be clear, the County’s argument is not based on the relatively common disagreement among advocates as to speculative or provable damages. Rather, Plaintiff’s claim, in and of itself, is premised upon a hypothetical – that Deputy Sloan would have been convicted. Setting aside the practical absurdity of the Plaintiff making such a conjecture, courts simply do not countenance claims based upon such wishful thinking.

¹ To demonstrate the porous logic of the claim, it is noted that only a conviction of vehicular manslaughter while DUI is admissible in a civil case. Idaho Code § 18-4006. Plaintiff does not allege Deputy Sloan was DUI.

Although usually discussed in the context of standard of review, it is a clear tenet of law that “the plaintiff’s case must be anchored in more than speculation” *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 410, 179 P. 3d 1064 (2008). This is in keeping with the common law. “The jurisprudence of this state is to the effect that where the fact of loss is itself speculative and based wholly on conjecture, an exception of no cause of action will properly lie.” *Central Louisiana Electric Co. v., Pointe Coupee Electric Membership Corp.*, 182 So.2d 752, 757 (La.Ct.App. 1966). “The burden of proving a cause of action is not sustained by evidence from which a jury can arrive at its conclusion only by guess, speculation, conjecture, or choice of possibilities; there must be something more which would lead a reasoning mind to one conclusion rather than to another.” *McVaney v. Baird, Holm et al.* 466 Nw. 2d 499 (Neb. 1991).

The Idaho Supreme Court has previously defined the term “speculation”, stating:

The word “speculation” in relationship to testimony has been defined as “the art of theorizing about a matter as to which evidence is not sufficient for certain knowledge.” Black’s Law Dictionary 1255 (5th ed.1979). “An expert opinion that is speculative or unsubstantiated by facts in the record is inadmissible because it would not assist the trier of fact to understand the evidence or determine a fact that is at issue.” *Id.* (citing *Bromley v. Garey*, 132 Idaho 807, 979 P.2d 1165 (1999)). Expert opinion that merely suggests possibilities would only invite conjecture and may be properly excluded. *Elce v. State*, 110 Idaho 361, 716 P.2d 505 (1986).

Karlson v. Harris, 140 Idaho 561, 565, 97 P.3d 428, 432 (2004).

Although *Karlson* addressed expert opinion testimony, conjectural and speculative allegations have been universally dismissed by courts.

“More is needed to state a claim ... than factual allegations which are conclusory, vague or inherently incredible” (*Matter of Niagara Mohawk Power Corp. v. State of New York*, 300 A.D.2d 949, 952, 753 N.Y.S.2d 541 [2002] [citations omitted]; accord *Matter of Abele v. Dimitriadis*, 53 A.D.3d 969, 970, 862 N.Y.S.2d 182 [2008], *lv. denied* 12 N.Y.3d 706, 879 N.Y.S.2d 52, 906 N.E.2d 1086 [2009]). Plaintiff appears to assert a claim of tortious interference with prospective inheritance based upon her observations that defendants have made home improvements and settled debts since decedent’s death. Such speculative and

conclusory allegations are insufficient to state a cause of action and, in any event, New York does not recognize a cause of action for tortious interference with prospective inheritance (*see Vogt v. Witmeyer*, 87 N.Y.2d 998, 999, 642 N.Y.S.2d 619, 665 N.E.2d 189 [1996]). Similarly, plaintiff's factual allegations regarding her belief that decedent left a will, that the will named either Stephen Bracci or Hallock as executor of the estate, and that neither has fulfilled the duties required of an executor are, in our view, too speculative and conclusory to state a cause of action.

O'Sullivan v. Hallock, 101 A.D.3d 1313 (N.Y.App. 2012).

Where a jury would be compelled to speculate upon various possible causes of an accident "which may be as reasonably attributed to a condition for which no liability attaches as to one for which it does, then the plaintiff is not entitled to recover, and the evidence should not be submitted to the jury" (citations omitted).

Smith v. Wisch, 77 A.D.2d 619 (N.Y.App. 1980).

To establish proximate cause, a plaintiff must show a legally attributable causal connection between the defendant's conduct and the alleged injury. The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to grant summary judgment for the defendant.

Grinold v. Farist, 643 S.E.2d 253 (Ga. App. 2007).

Here, the Plaintiff's claims are based upon an unsupportable premise, which would force a jury to speculate as to whether or not Deputy Sloan would have been convicted of anything, let alone felony vehicular manslaughter. In effect, pinning hopes on a conviction is akin to betting on the outcome of a contest. The California Supreme Court had a case before it in which a party alleged a conspiracy to affect the outcome of a horse race, and asserted that a valid economic expectancy had been interfered with. The court rendered a thoughtful analysis on speculation as applied to valid economic expectancies.

The torts of negligent or intentional interference with prospective economic advantage require proof of various elements as a prerequisite to recovery. However, as a matter of law, a threshold causation requirement exists for

maintaining a cause of action for either tort, namely, proof that it is reasonably *probable* that the lost economic advantage would have been realized but for the defendant's interference

....

Scholarly authority and cases from other jurisdictions agree that an application of the threshold requirement of probable expectancy to the area of contests in general will usually result in a denial of recovery. Prosser has generally remarked that "since a large part of what is most valuable in modern life depends on 'probable expectancies,' as social and industrial life becomes more complex the courts must do more to discover, define and protect them from undue interference." (See Prosser & Keeton, Torts (5th ed. 1984) § 130, p. 1006, fn. omitted.) Prosser, however, has specifically addressed the area of interference with contests: "When the attempt has been made to carry liability for interference ... into such areas as ... *deprivation of the chance of winning a contest*, the courts have been disturbed by a feeling that they were embarking upon uncharted seas, and recovery has been denied; and *it is significant that the reason usually given is that there is no sufficient degree of certainty that the plaintiff ever would have received the anticipated benefits.*"

Youst v. Longo, 729 P.2d 728, 732-735 (1987) (italics in original).

Payette County admits that the analogy is somewhat forced, but asserts that if one substitutes the outcome of a criminal prosecution for the outcome of a sporting contest the result is the same. There can be no sufficient degree of certainty of receipt of anticipated benefits.²

B. Plaintiff has no standing to complain about the investigation or result of a criminal case.

While Plaintiff, as the daughter of the deceased, certainly had an interest in the outcome of the criminal case against Deputy Sloan, she was not a party. Prosecuting attorneys, as a matter of law, are responsible to seek criminal charges and when appropriate seek dismissal. No court anywhere has suggested that a third party can claim damages because someone else was not prosecuted, or convicted. Yet, that is precisely what Plaintiff is doing in this case.

² It should also be pointed out that Payette County has found no case where the issue has been discussed in the context of the outcome of a criminal trial. This would seem to be because no one has heretofore attempted to persuade a court that one should be given money because a prosecutor did not pursue a case to the satisfaction of that person.

In Paragraph 18 of the Complaint, Plaintiff lumps the Idaho State Police (“ISP”) and Payette County together and asserts a conspiracy to protect Deputy Sloan from criminal and civil liability. Obviously, Payette County cannot speak for ISP, but it poses the following legal question: when and where has a court found that it is inappropriate to protect oneself from civil or criminal liability in the context of a criminal investigation? More to the point, what right is violated or what duty is owed to third parties during the investigation and prosecution of a criminal case? The answer of course is that no court has suggested that criminal investigators must urge prosecution against all reason, prosecutors try every case, or defendants not defend themselves, so that a third party may further an economic interest.

Without a duty to Plaintiff, there can be no tort. *Harrigfeld v. Hancock*, 140 Idaho 134, 90 P.3d 884 (2004). The allegation of conspiracy does not change the analysis. In Idaho “[i]t is quite well settled that a conspiracy to commit an actionable wrong is not in itself a cause of action.” *Dahlquist v. Mattson*, 40 Idaho 378, 387, 233 P. 883, 886 (1925). Instead, “[w]rongful acts committed by conspirators resulting in injury alone give rise to a cause of action.” *Id.* See *Hopper v. Swinnerton*, 155 Idaho 801, 317 P.3d 698 (2013).

Simply put, while it is apparent that Plaintiff feels that Payette County should have done more to assure a conviction, her displeasure does not transmute into a valid tort. She has no standing to challenge the outcome as she has no right to control that outcome and no duty was owed her.

C. Count II does not properly state a claim.

In order to properly discuss Plaintiff’s Count II – interference with prospective action – it is necessary to analyze the genesis of the tort.

The tort of intentional spoliation was first recognized in *Smith v. Superior Court*, 198 Cal. Rpt. 829 (1984). A California appellate court declared that “the primary function of the tort of intentional spoliation is to compensate for the destruction of evidence even though the probative value of the evidence is not known, because the accuracy of the facts related to the evidence will never be restored.” *Smith*, 198 Cal. Rpt. at 832. The *Smith* court analogized that spoliation of evidence was like the tort of interference with prospective business advantage. “[A] prospective civil action in a product liability case is a valuable ‘probable expectancy’ that the court must protect from the kind of interference alleged herein.” *Id.* at 837.

Most jurisdictions have not been persuaded by the *Smith* rationale and do not recognize intentional spoliation as a tort. There are numerous reasons that courts refuse to do so. Primarily, “[s]peculation is a prime concern in the context of a spoliation claim because ... it is impossible to know what the destroyed evidence would have shown.” *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 438 (Minn.1990). For a list of jurisdictions declining to recognize the tort, and the reasons therefore, see *O’Neal v. Remington Arms Company, LLC*, 2012 WL 3834842 (D. S. D. 2012).

Six jurisdictions have recognized the tort of interference in a prospective action, but all in the context of first party spoliation only. These jurisdictions are: Alaska, *Nichols v. State Farm Fire & Cas. Co.*, 6 P.3d 300, 304 (Alaska 2000) (acknowledging that while first-party and third-party intentional spoliation are tort claims, negligent spoliations are not); Connecticut, *Rizzuto v. Davidson Ladders, Inc.*, 905 A.2d 1165 (2006) (“[R]ecognition of an independent cause of action for intentional spoliation of evidence is necessary to fulfill public policy goals of the tort compensation system.”); Louisiana, *Desselle v. Jefferson Parish Hosp. Dist. No. 2 d/b/a East Jefferson Gen. Hosp.*, 887 So.2d 524, 534 (La.Ct.App. 2004) (recognizing a state law tort claim

for intentional spoliation of evidence, which refers to “an intentional destruction of evidence for purpose of depriving opposing parties of its use); New Mexico, *Coleman v. Eddy Potash, Inc.*, 905 P.2d 185, 189 (N.M. 1995) (“[W]e will recognize intentional spoliation of evidence as a distinct category of tort liability.”); Ohio, *Davis v. Wal-Mart Stores, Inc.*, 756 N.E.2d 657, 660 (Ohio 2001) (“[S]poliation of evidence may be brought after the primary action has been concluded only when evidence of spoliation is not discovered until after the conclusion of the primary action.”); West Virginia, *Hannah v. Heeter*, 584 S.E.2d 560 (W.Va.2003) (granting stand-alone tort status for intentional spoliation and third-party negligent spoliation, but requiring that the spoliator “overcome the rebuttable presumption” that “but for the fact of the spoliation of evidence, the party injured by the spoliation would have prevailed in the pending or potential litigation”).

In Idaho, the line of cases on the tort begins with *Murray v. Farmers Insurance Co.*, 118 Idaho 224, 796 P.2d 101, (1990). The court discussed:

... a recent innovation in tort law which has been adopted in California and Alaska. *Smith v. Superior*, 151 Cal.App.3d 491, 198 Cal.Rptr. 829 (1984); *Hazen v. Anchorage*, 718 P.2d 456 (Alaska 1986). These first cases contemplated the tort of intentional spoliation of evidence, and the concept was expanded in another case to include the negligent spoliation of evidence. *Velasco v. Commercial Bldg. Maintenance Co.*, 169 Cal.App.3d 874, 215 Cal.Rptr. 504 (1985).

118 Idaho at 229. The court declined to adopt the “recent innovation.” As can be seen, the court noted *Smith* as the genesis of the supposed tort.

In *Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 178, 923 P.2d 416, 423 (1996), the Idaho Supreme Court, in dicta, stated “for guidance in future litigation we take this opportunity to opine on a possible cause of action” The tort was described as intentional interference with a prospective civil action by spoliation of evidence. *Id.* It was not actually adopted in the case before the court. Again, *Smith* was noted as the first example of the tort.

No other Idaho case has been reported since 1996 concerning this tort other than in the context of spoliation of evidence, and only in the context of a jury instruction. As noted in *Ricketts v. E. Idaho Equip., Co.*, 137 Idaho 578, 51 P.3d 392 (2002):

The tort of intentional spoliation of evidence has been alternatively identified by courts as the ‘intentional interference with prospective civil action by spoliation of evidence.’ “ *Id.* at 178, 923 P.2d at 423 (citing *Hazen v. Anchorage*, 718 P.2d 456, 463 (Alaska 1986)). The Court also stated that it is closely aligned with the tort of intentional interference with a prospective business advantage. *Idaho First Nat’l Bank v. Bliss Valley Foods*, 121 Idaho 266, 284-87, 824 P.2d 841, 859-62 (1991).

Ricketts v. E. Idaho Equip., Co., 137 Idaho at 582, 51 P.3d at 396.

The *Ricketts* court goes on and notes that “[t]he concept of spoliation requires a state of mind that shows a plan or premeditation.” *Ibid.*

A year later the Idaho Supreme Court expanded upon its concept of spoliation of evidence, stating “the circumstances must indicate that the evidence was lost or destroyed because the party responsible for such loss or destruction did not want the evidence available for use by an adverse party in pending or reasonably foreseeable litigation.” *Courtney v. Big O Tires, Inc.*, 139 Idaho 821, 824, 87 P.3d 930, 933 (2003).

To complicate matters, *Smith v. Superior Court*, 198 Cal. Rpt. 829 (1984), the seminal case that has been spoken about in all of the above jurisdictions, and followed in some, has now been repudiated in California. This is best explained in *Gribben v. Wal-Mart Stores, Inc.*, 824 N.E.2d 349 (Ind. 2005). The Indiana Supreme Court set forth the jurisdictions that began to adopt some form or another of the tort following *Smith* (broken down into first party, third party, negligent and intentional forms), noted the disarray among the courts, and then declined to adopt any form of the tort. In large part, the court relied upon *Cedars-Sinai Med. Ctr. v. Superior Court*, 74 Cal.Rptr.2d 248, 954 P.2d 511 (1998), repudiating *Smith*.

It is thus not surprising that an independent tort remedy for spoliation of evidence began to be recognized. *Smith v. Superior Court*, 151 Cal.App.3d 491, 198 Cal.Rptr. 829 (1984); *Velasco v. Commercial Bldg. Maint. Co.*, 169 Cal.App.3d 874, 215 Cal.Rptr. 504 (1985). In the subsequent intervening years, however, California came to question and ultimately reject this approach. In *Cedars-Sinai*, the California Supreme Court comprehensively addressed the issue, finding that the acknowledged harms resulting from the intentional destruction of evidence are “not enough to justify creating tort liability for such conduct,” and declaring that “[w]e must also determine whether a tort remedy for the intentional first party spoliation of evidence would ultimately create social benefits exceeding those created by existing remedies for such conduct, and outweighing any costs and burdens it would impose.” 74 Cal.Rptr.2d 248, 954 P.2d at 515.

The opinion then more fully discussed the dangers of “creating new torts to remedy litigation-related misconduct” and of adopting “a remedy that itself encourages a spiral of lawsuits.” *Id.* It also compared spoliation to other forms of litigation-related misconduct, such as perjury, for which there is no tort remedy, and expressed its preference for policies of evidentiary inference, discovery sanctions, criminal penalties, civil monetary, contempt, and issue sanctions over derivative actions. The *Cedars-Sinai* court also focused on the “uncertainty of the fact of harm in spoliation cases.” *Id.* at 518.

[E]ven if the jury infers from the act of spoliation that the spoliated evidence was somehow unfavorable to the spoliator, there will typically be no way of telling what precisely the evidence would have shown and how much it would have weighed in the spoliation victim’s favor. Without knowing the content and weight of the spoliated evidence, it would be impossible for the jury to meaningfully assess what role the missing evidence would have played in the determination of the underlying action. The jury could only speculate as to what the nature of the spoliated evidence was and what effect it might have had on the outcome of the underlying litigation.

Id.

The California Supreme Court also noted and discussed other factors that it believed weighed against the creation of a spoliation tort remedy: the “risk of erroneous determinations of spoliation liability,” “the indirect costs by causing persons or entities to take extraordinary measures to preserve for an indefinite period documents and things of no apparent value solely to avoid the possibility of spoliation liability if years later those items turn out to have some potential relevance to future litigation,” the costs and burdens of “litigating meritless spoliation actions,” and the “significant potential for jury confusion and inconsistency.” *Id.* at 519–20.

Concluding that the “incremental additional benefits a tort remedy might create” are outweighed by other policy considerations and costs, the *Cedars-Sinai* court denied a tort remedy for first-party intentional spoliation of evidence. *Id.* at 521.

One year later, the same court similarly disapproved a tort remedy for intentional spoliation by a third party. [*Temple Cmty. Hosp. v. Superior Court*, 84 Cal.Rptr.2d 852, 976 P.2d 223, 233 (1999)].

824 N.E.2d at 354-355.

So, it appears that the tort has never been actually adopted in Idaho, but it has been discussed in dicta, and now the underlying case for the dicta is disapproved of.

In *Yoakum*, the court added more dicta, in a single sentence guaranteed to create conflict in future litigation: “[a]lthough not confined solely to the spoliation of evidence, a claim for intentional interference with a prospective civil action must nonetheless allege and prove conduct that amounts to an ‘unreasonable interference’ by the Defendant, taking into account any recognized privileges that party might hold.” 129 Idaho at 179. Surprisingly, the Court cited *Hazen v. Anchorage*, 718 P.2d 456, 463 (Alaska 1986), following this remarkable sentence. The *Hazen* case did not speak to any cause of action beyond intentional interference with a prospective civil action by spoliation. If an intentional interference claim is viable in contexts beyond spoliation, the *Yoakum* court offered nothing by way of explanation as to the source of its dicta, nothing by way of example, no elements of the supposed tort, no limitations, no defenses beyond privilege, and no way to know how to try – or judge – the tort.

Twenty years after *Yoakum*, the legal chickens have come to roost in Payette County. Plaintiff, apparently seizing upon the clause “not confined solely to the spoliation of evidence,” has alleged in Count II that: (1) Defendants were negligent by (2) “directly or indirectly” (3) “intimidating, harassing, corruptly persuading or engaging in misleading conduct toward” (4) “witnesses or potential witnesses” (5) to withhold testimony or potential testimony (6) thereby disrupting Plaintiff’s case, (7) increasing costs to Plaintiff, and (8) causing emotional distress and humiliation.

In other words, Plaintiff asks this court to preside over a litigation in which Defendants will be expected to defend against an accusation that somehow witnesses were kept from testifying truthfully (presumably in the criminal case) and that Plaintiff will have to spend more money than she otherwise might have had to spend in this case, and that she is entitled to general damages because of it. Needless to say, this is not a claim of spoliation.³

Defendants assert that there is no basis in the law to require a trial of such a facially absurd claim.

1. The Law Regarding *Dicta*.

The definition of *obiter dictum* (Latin for something said in passing) is a “judicial comment made during the course of delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential.” *Black’s Law Dictionary, 7th Ed.*

In modern parlance, the concept is usually described as *dicta*. Where a question is not before a court for decision, expressions of opinion are *dicta*, *Long v. State Ins. Fund*, 60 Idaho 257, 90 P. 2d 973 (1939), and are binding on no one, *Bashore v. Adolf*, 41 Idaho 84, 238 P. 596 (1925).

Obviously, the *Yoakum* court’s loose reference to “other forms” of interference beyond spoliation (while discussing a “possible” tort) was *dicta* as the sentence did not remotely control the outcome of the case, and in fact the appellants were found to have no valid claim in any event. There is simply no way for Plaintiff to responsibly argue that a new form of interference tort was created in *Yoakum*.

³ More discussion on the Court’s spoliation claim will be found below.

2. Plaintiff can neither use negligence per se to establish intentional tortious acts nor the cited the criminal statutes to give rise to a private cause of action.

If in Idaho the tort exists, it has only been discussed as intentional interference by spoliation. Plaintiff cites several criminal statutes in her Complaint and then claims that these statutes establish the Defendants were negligent *per se* as to her causes of action. The initial problem, assuming for the moment that Plaintiff can meet the requirements of establishing a violation of the criminal statutes, is that negligence *per se* simply establishes the reasonable person standard for conduct in a negligence lawsuit. The crimes alleged by the Plaintiff are intentional, not negligent, actions.

“Negligence *per se* is simply one manner of proving a common law negligence claim.” *Steed v. Grand Teton Council of the Boy Scouts of Am., Inc.*, 144 Idaho 848, 853, 172 P.3d 1123, 1128 (2007). “[I]n Idaho, it is well established that statutes and administrative regulations may define the applicable standard of care owed, and that violations of such statutes and regulations may constitute negligence *per se*.” *Sanchez v. Galey*, 112 Idaho 609, 617, 733 P.2d 1234, 1242 (1986). “In such cases, the court adopts as the standard of conduct of a reasonable person the requirements of the statute or regulation.” *Steed*, 144 Idaho at 853, 172 P.3d at 1128.

Plaintiff cites 18 USC § 1512 (tampering with a witness), Idaho Code §18-2604 (intimidating a witness) and Idaho Code §18-2605 (bribing a witness) within the section setting forth the basis to establish her tortious interference with prospective action and tortious interference with prospective economic advantage. As discussed below, these torts require intentional acts involving unreasonable interference (with prospective action) and wrongful

interference (with valid economic expectancy). It is impossible to establish an intentional tort by proving negligence.

If instead the Plaintiff is claiming a private cause of action based upon violation of the criminal statutes, federal and Idaho case law have already determined that a private right of action under these criminal statutes does not exist. *See, Ford v. Rawlinson*, 2012 WL 3782455 (D.Idaho, 2012) (no private right of action in 18 USC § 1512); *Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho at 176, 923 P.2d at 421 (“[a]s criminal offenses under Title 18, the Idaho legislature has specifically provided punishment ... there is no indication that providing an additional civil remedy is necessary to assure the effectiveness of these statutes.”). *See also Barnett v. Sequim Valley Ranch, LLC*, 302 P.3d 500 (Wa. App. 2013) (instructions to jury on criminal perjury, witness tampering and witness intimidation unnecessary and confusing in a civil wrongful termination case); *Fullerton v. Florida Medical Association*, 938 So.2d 587 (Fl. App. 2006) (Under the absolute civil privilege extending to a witness’s testimony, torts such as perjury, libel, slander, and other actions based on statements made in connection with a judicial proceeding are not actionable).

In short, while it is exceedingly unclear what Plaintiff is attempting to state on this issue, to the extent she is trying to assert a cause of action for violation of these statutes, such must be dismissed. To the extent she is trying to assert that a negligent act can establish the commission of an intentional tort, such assertion must be rejected as a matter of law.

3. There is no valid claim of emotional damage as a result of interference with an expectancy.

In paragraph 27 of the Complaint, Plaintiff alleges she suffered severe emotional distress and humiliation as a result of the alleged interference. If, as stated in *Smith*, the purpose of creating the interference tort was to compensate for the destruction of evidence, the question is:

how is that compensation calculated, and for what exactly? All of the above mentioned authorities seem to be in agreement that the calculation is an economic one (albeit very much speculative). No court has suggested that the damage is calculated by the alleged stress on a plaintiff.

Plaintiff has not brought a claim of negligent or intentional infliction of emotional distress. Instead, she seemingly is asking for double recovery of general damages, first because she claims she has to work harder than she otherwise would have to prove her case, and second because she is upset about that.

There is no common law right of recovery for purely emotional trauma. *Summers v. Western Idaho Potato Processing Co.*, 94 Idaho 1, 479 P. 2d 292 (1970). Recovery for emotional trauma cannot be had in fraud cases, *Walston v. Monumental Life Ins. Co.*, 129 Idaho 211, 923 P.2d 456 (1996), or for breach of contract, *Brown v. Fritz*, 108 Idaho 357, 699 P.2d 1371 (1985). On the other hand, emotional injury is compensable in an insurance bad faith case due to the “non-commercial” aspect of the insurance contract and the special relationship between insurer and insured. *Walston, supra*. From this line of cases, it appears that in economic damage cases, unless a special relationship between the parties exists, emotional damage is not a source of recovery.

Moreover, in cases of negligent infliction of emotional distress, there must be an assertion of physical injury. *Walston, supra; Neal v. Neal*, 125 Idaho 627, 873 P.2d 881 (Ct. App. 1993). Here, no physical injury is alleged. As to intentional infliction, there must be distress so severe that no reasonable person would be expected to endure it. *Davis v. Gage*, 106 Idaho 735, 682 P.2d 1282, 1288 (Id. App. 1984). Again, no such assertion is made.

4. An interference by spoliation claim is premature.

Much of the Plaintiff's Complaint reads in the context of expectancy based upon a criminal conviction. There is enough in the Complaint, though not well stated, to imply a spoliation claim in the context of the current civil action. Plaintiff does not say what physical evidence she claims was destroyed, and does not say who destroyed it. The question then is whether Plaintiff can bring a spoliation claim in the same litigation as the underlying wrongful death claim. Put another way, Plaintiff has not tried her case to a jury. How can she state her case has been affected until a jury renders a verdict?

To explain the point further, either the County is liable or it is not. In proving liability, assuming there really was destruction of evidence, Plaintiff will be entitled to a spoliation instruction. If Plaintiff prevails on the issue of liability, what possible economic gain does she derive from a separate claim of spoliation? What is a jury supposed to do with the claim? Give her more money because she had to work harder to prove liability?

If, on the other hand, the jury was to find no liability, then, and only then, could Plaintiff assert that she lost because of the spoliation. Until such time, her spoliation claim is inchoate. A tort cause of action cannot accrue until an injury is sustained or actual damage occurs. *Idaho Gold Dredging Corp. v. Boise Payette Lumber Co.*, 54 Idaho 765, 37 P.2d 407 (1934); *City of McCall v. Buxton*, 146 Idaho 696, 201 P.3d 629 (2008); *Minnick v. Hawley Troxell Ennis and Hawley, LLP*, 157 Idaho 863, 341 P.3d 580 (2014) (a tort accrues when a tort is completed, an event that corresponds with the first objectively ascertainable occurrence of some damage).

With this in mind, it is appropriate to examine the litigations found in the states that speak to the tort of interference in a prospective action by spoliation.⁴

(a) Idaho.

In *Yoakum, supra*, the parents of the deceased brought an interference claim *after* accepting an offer of judgement on the underlying wrongful death claim.

In *Ricketts, supra*, and *Courtney, supra*, the discussion about the existence of the interference claim was in the context of a jury instruction. No separate interference claims were made in the negligence and products liability actions.

(b) Alaska.

In *Nichols, supra*, the court found no claim of negligent spoliation existed in the context of a claim against an insurer, separate from a claim of negligence against a third party tortfeasor.

In *Hazen, supra*, the court created the new tort on appeal after the plaintiff's case had been dismissed, and did not suggest the spoliation tort should be tried at the same time that the false arrest claim was to be retried.

(c) Connecticut

In *Rizzuto, supra*, plaintiff, in response to an argument that his spoliation claim was untimely, withdrew his product liability claim and substituted an interference by spoliation claim.

(d) Louisiana.

In *Desselle, supra*, the court upheld a district judge, who in a bench trial ruled that a plaintiff could not recover for spoliation, where the plaintiff recovered for negligence arising from a use of a defective gurney.

⁴ It bears repeating that all the below cases discuss the tort in the context of physical destruction of physical objects, usually ladders or similar devices. Not a single case stands for the proposition that conversations with witnesses imply interference.

(e) New Mexico.

In *Coleman, supra*, a plaintiff sued her employer for spoliation in a case separate from a suit for products liability against several manufacturers.

(f) West Virginia.

In *Hannah, supra*, the court discussed the spoliation tort in the context of a stand-alone counterclaim.

(g) Ohio.

As ever in the law, one can always find something of an outlier. Ohio may be it. In *Davis v. Wal-Mart Stores, Inc.*, 756 N.E.2d 657 (Ohio 2001), the court stated that spoliation of evidence may be brought after the primary action has been concluded only when evidence of spoliation is not discovered until after the conclusion of the primary action. The court followed its own law, set forth in *Smith v. Howard Johnson, Inc.*, 615 N.E.2d 1037 (1993), in which the court, devoting only a single dependent clause to the issue, stated “such a claim may be brought at the same time as the primary action.” The Ohio rule has been the subject of some debate. As the partially concurring justice pointed out in *Davis*, “I agree with the majority’s finding that our use of the word ‘may’ certainly does not imply that such a claim must be brought at the same time as the primary action. To the contrary, a claim for damages under *Smith* may—and in the majority of cases most likely will—be brought after entry of the judgment in the primary action.” 765 N.E. 2d at 660. The dissent pointed out that the majority’s conclusion was “bereft of substantive analysis.” 765 N.E. 2d at 662. The dissent also pointed out the “precarious status nationwide” of the tort, given the repudiation of *Smith* by the *Cedars-Sinai* court. *Id.*, note 2.

Given that it is unclear that the tort exists in Idaho at all, and given that the seminal case for the tort is disavowed, and given that the vast majority of states do not recognize that the tort

should not be tried along with the underlying action, the spoliation portion of the claim should be dismissed as premature.

D. There can be no valid economic expectancy in one's own civil lawsuit.

Count III sets out an alternative theory. Presumably because of the failure to prosecute Deputy Sloan, Plaintiff claims her economic advantage was disrupted.

To establish a claim for intentional interference with a prospective economic advantage, the Plaintiff must show: (1) the existence of a valid economic expectancy; (2) knowledge of the expectancy on the part of the interferer; (3) intentional interference inducing termination of the expectancy; (4) the interference was wrongful by some measure beyond the fact of the interference itself; and (5) resulting damage to the Plaintiff whose expectancy has been disrupted. *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 893, 243 P.3d 1069, 1081 (2010). For purposes of this motion, the first issue is whether Plaintiff can assert a valid economic expectancy in her own lawsuit against the County.

No Idaho case supports such an assertion, but one state has dealt explicitly with it and was dispositive of the issue. In *Fox v. Country Mutual Insurance Company*, 7 P.3d 677 (Or. App. 2000), the plaintiffs asserted interference with prospective economic advantage in their own wrongful death lawsuit.

[T]he question before us is limited to whether the economic relationship alleged in plaintiff's Complaint, *viz.*, "the economic advantages and relations contained in the lawsuit of *Fox v. Vincent*," is a business relationship or expectancy for purposes of the tort of intentional interference with economic relations. We conclude that it is not.

Fox v. Country Mutual Insurance Company, 7 P.3d at 688. After quoting at length from *Allen v. Hall*, 974 P.2d 199 (Or. 1999), which created the tort of interference with an inheritance, the court discussed at length the reasons why no such tort existed with regard to one's own lawsuit.

We recognize at the outset that a civil lawsuit represents a prospective economic advantage. In any civil action for damages, the plaintiff's claim represents an expectancy in a monetary recovery that is the object of the litigation. And, as the Supreme Court noted in *Allen*, many of the commercial interests that have been associated with, and are protected by, the tort of intentional interference with economic relations are purely prospective in nature. ... Indeed, at least with respect to the nature of the economic advantage at issue, an expectancy in a settlement or judgment in a civil lawsuit is no different from an expectancy in an inheritance or a prospective commercial arrangement.

Notwithstanding that similarity, there are material distinctions between a civil lawsuit and other relationships and interests to which the Supreme Court has extended the protections of the tort of intentional interference with prospective economic advantage. Because of those dissimilarities, we decline to extend the tort into this context:

First, the essential purpose of the tort is to protect the integrity of, and expectancies in, voluntarily-created economic relationships. Conversely, a civil lawsuit is an involuntary relationship that is adversarial in nature. In its earliest and most basic form, the purpose of the tort was to protect "the interest of the individual in the security and integrity of the contractual relations in which he has entered." ... As courts expanded the tort to protect prospective relations, it encompassed "any prospective contractual relations * * * which would be of pecuniary value to the plaintiff," see *Restatement (Second) of Torts* § 766B comment c (1974), and which were uniformly voluntary in nature. See *id.* ("Included are interferences with the prospect of obtaining employment or employees, the opportunity of selling or buying land or chattels or services, and any other relations leading to potentially profitable contracts [including] a continuing business or other customary relationship not amounting to a formal contract."). Thereafter, courts began to recognize "intentional interference with inheritance or gift," considering it as an "extension of the principle found in liability for intentional interference with prospective contracts." *Restatement (Second) of Torts* § 774B comment a (1974).

Thus, while courts have expanded the tort to protect additional types of relationships, its purpose has been constant: To protect the integrity of voluntary economic relationships, both commercial and noncommercial, that would have very likely resulted in a pecuniary benefit to the plaintiff but for the defendant's interference. We further observe that the relationships protected by the tort are, by virtue of their "voluntariness," the products of the parties' free and voluntary actions as autonomous individuals. Thus, in the abstract, the tort serves the essential purpose of protecting the basic right of the individual to conduct his or her economic affairs autonomously, *viz.*, without interference.

Protection of a prospective interest in the outcome of civil litigation does not comport with that essential purpose. A lawsuit is, by its nature, an involuntary relationship. In fact, the only basis for the relationship between opposing parties in a lawsuit is a dispute. The integrity of an actual or putative mutually voluntary relationship is not implicated.

Second, courts have not historically afforded prospective interests in the outcome of civil litigation the same level of common-law protection extended to prospective contracts or prospective inheritances. ... Although interests in litigation are certainly afforded some common-law protection, *e.g.*, legal malpractice, we have found no reported decision from any jurisdiction in which a court has extended the tort of intentional interference with a prospective economic advantage to protect civil litigation....

Allen represents our Supreme Court's furthest extension of the tort of intentional interference with prospective economic advantage. Unlike in *Allen*, the relationship and resulting prospective interest here was not voluntary and, thus, the alleged interference did not implicate the tort's essential purpose. Unlike in *Allen*, where other courts had traditionally and consistently protected expectancies in inheritance, no reported decision has extended the tort to apply in this context. Given those distinctions, we decline to go further.

In so concluding, we emphasize the precise and limited nature of our holding. We decide only that plaintiff failed to state a claim for intentional interference with prospective economic advantage. That holding is based on the peculiar character and requisites of that tort. We do not address, much less purport to preclude, the availability of other tort causes of action, including fraud, in analogous circumstances.

Fox v. Country Mutual Insurance Company, 7 P.3d at 688-689. (emphasis added, internal case citations omitted).

It is submitted that the logic and holding of *Fox* are applicable here. Obviously, if a claim could be made for a valid economic interest in one's own lawsuit, then any defense action could be subject to an interference claim. As demonstrated in *Fox*, that was not the intent when the courts created the tort.

Even if the tort exists, Plaintiff cannot claim that her expectancy was terminated. The word termination is defined as "the end of something in time or existence, conclusion or discontinuance." *Black's Law Dictionary*, 7th Ed. As demonstrated above, the elements of the tort require interference inducing termination of the expectancy. *Wesco Autobody*, *supra*. All Idaho cases on the subject are in accord. See *Bank of Commerce v. Jefferson Enterprises, LLC*, 154 Idaho 824, 303 P.3d 183 (2013) (appellant did not "lose" an economic expectancy).

So what expectancy has Plaintiff lost? It cannot be her wrongful death claim as she is going forward with that claim in Count I. The only thing she can point to is the inability to capitalize on a conviction. Again, this is based on nothing more than speculation, and wishful thinking.

V.

CONCLUSION

So the question is – what should the court do here? The following rulings are requested. First, the court should reject the notion that Plaintiff should be able to argue to the jury that she was damaged because Deputy Sloan was not convicted of a felony, and any claim based on that notion should be dismissed. Assuming any part of Counts II or III survive, the court should rule that one does not have a valid economic expectancy in one's own case, thereby dismissing Count III. Next, the court should reject that portion of Count II regarding interference based upon allegations of influencing witnesses as opposed to actual destruction or concealment of physical evidence. That portion of the Complaint should be dismissed with prejudice. Similarly, the claim that the alleged interference caused emotional damage should similarly be dismissed with prejudice. Finally, the Court should dismiss with prejudice the portion of Count II based on negligence.

The only remaining part of Count II is the spoliation of evidence claim as to the current civil suit. The court must determine whether the tort even exists in Idaho, given that it has never been officially adopted, and given that its fundamental underpinning (*Smith*) has been repudiated. Despite the *Yoakum* dicta, this is an issue of first impression. The County asserts that it is not a viable tort, as it is based primarily upon speculation. This has been the finding of the vast majority of courts throughout the nation.

If the court determines that the tort exists, it should dismiss it without prejudice until a jury verdict on the underlying case is reached.

DATED this 7th day of October, 2016.

MICHAEL KANE & ASSOCIATES, PLLC

BY: Michael Kane
MICHAEL J. KANE
Attorneys for Payette County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 2016, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

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FILED
 THIRD JUDICIAL DISTRICT COURT
 PAYETTE COUNTY, IDAHO
 OCT 12 2016
 BETTY J. DRESSEN, CLERK
 BY  DEPUTY

ATTORNEYS FOR DEFENDANTS PAYETTE COUNTY AND SCOTT SLOAN

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE**

JACKIE RAYMOND, individually as an heir,)
 and as Personal Representative of the ESTATE)
 OF BARRY JOHNSON,)
)
 Plaintiff,)
)
 v.)
)
 IDAHO STATE POLICE, an Idaho State)
 Agency, PAYETTE COUNTY, a political)
 subdivision of the State of Idaho, and)
 SCOTT SLOAN,)
 Defendants.)
)
)
)

Case No. CV-2015-00954-C
 DEFENDANT PAYETTE
 COUNTY'S MOTION FOR
 PARTIAL DISMISSAL
 PURSUANT TO I.R.C.P. 12(b)(6)

COMES NOW the Defendant, PAYETTE COUNTY, by and through its attorney of record, Michael J. Kane of the firm Michael Kane & Associates, PLLC, and hereby moves this Court for partial dismissal based upon Idaho Rule of Civil Procedure 12(b)(6).

This Motion is based on the files and records maintained herein, along with a Memorandum in Support filed contemporaneously herewith.

DATED this 7th day of October, 2016.

MICHAEL KANE & ASSOCIATES, PLLC

BY: Michael Kane
MICHAEL J. KANE
Attorneys for Payette County Defendants

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FILED
THIRD JUDICIAL DISTRICT COURT
PAYETTE COUNTY, IDAHO

NOV 14 2016

BETTY L. DRESSEN, CLERK
BY  DEPUTY

Attorneys for Defendant Idaho State Police

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE**

JACKIE RAYMOND, individually as an heir,
and as Personal Representative of the Estate of
Barry Johnson,

Plaintiff,

vs.

IDAHO STATE POLICE, an Idaho State
agency, PAYETTE COUNTY, a political
subdivision of the State of Idaho, and SCOTT
SLOAN,

Defendants.

Case No. CV-2015-00954-C

**DEFENDANT IDAHO STATE
POLICE'S JOINDER IN
PAYETTE COUNTY'S MOTION
FOR PARTIAL DISMISSAL
PURSUANT TO I.R.C.P. 12(b)(6)**

COMES NOW Defendant Idaho State Police (ISP), by and through its attorneys of record, Moore & Elia, LLP, and hereby submits its Joinder to Defendant Payette County's Motion for Partial Dismissal Pursuant to I.R.C.P. 12(b)(6). ISP hereby adopts and joins in Payette County's Motion and Memorandum in Support of its Motion for Partial Dismissal Pursuant to I.R.C.P. 12(b)(6), filed October 7, 2016.

Plaintiff's have named ISP as a Defendant in Counts II (Tortious Interference with Prospective Action) and Count III (Tortious Interference with a Prospective Economic Advantage). ISP is not named as a Defendant in Count I of Plaintiff's Complaint. Therefore, by

**DEFENDANT IDAHO STATE POLICE'S JOINDER IN PAYETTE COUNTY'S
MOTION FOR PARTIAL DISMISSAL PURSUANT TO I.R.C.P. 12(b)(6) – p. 1**

way of this Joinder, ISP is seeking full dismissal of Plaintiff's lawsuit. In addition to the briefing set forth by Payette County, ISP submits the following:

A. Plaintiff's Claims of Tortious Interference with Prospective Action and Tortious Interference with Prospective Economic Advantage are attempts to artfully plead around the Negligent Investigation, which is not recognized under Idaho law.

Plaintiffs' Complaint alleges that during the ISP peer review process of the investigation of the October 18, 2011 accident between Deputy Sloan and decedent Barry Johnson, ISP employees "conspired and attempted to, and did, cover up Sloan's misconduct/and or unduly influence the investigation" and "conceal[ed] evidence, harbor and protect Sloan from criminal and civil liability." Complaint, at ¶ 17. Plaintiff alleges that the Defendants thereby reduced the value of Plaintiff's claim and increased the cost of pursuing the claim. Plaintiff goes on to claim:

[b]ut for the defendants' cover-up and interference . . . the matter would have proceeded to trial and Sloan would have been convicted. Such conviction would have rendered liability in this matter *res judicata*. The absence of such a conviction exponentially increased the cost of providing liability in Plaintiff's civil case, and because the defendants' evidence tampering has made it more difficult to prove liability, making Plaintiff's civil claim significantly less valuable than it otherwise would have been.

Id. at ¶ 19.

Under Idaho law, no tort exists for negligent investigation. *Wimer v. State*, 122 Idaho 923, 925, 841 P.2d 453, 455 (Ct. App. 1992); *Hagy v. State*, 137 Idaho 618, 622, 51 P.3d 432, 436 (Ct. App. 2002). Plaintiff's Complaint is an example of artful pleading, in which the Plaintiff attempts to phrase her claims against Defendant ISP in terms that confuse and obfuscate the true gravamen of the action upon which relief can be granted.

In *Wimer*, the plaintiffs, two hunters, brought general negligence claims against Idaho Fish and Game employees for negligently investigating the illegal killing of an elk. 122 Idaho at 454. The alleged negligent conduct of the Fish and Game officers was their failure to examine and compare the tire tread on the plaintiffs' vehicle with those at the kill site, and for failing to

**DEFENDANT IDAHO STATE POLICE'S JOINDER IN PAYETTE COUNTY'S
MOTION FOR PARTIAL DISMISSAL PURSUANT TO I.R.C.P. 12(b)(6) – p. 2**

disclose to the magistrate that the witness providing information was a suspected poacher. *Id.* The two argued that the acts of the officers “constitute[d] a wrongful act or omission” that violated the officers’ general duty of care, but did not fall under the Idaho Tort Claims Act malicious prosecution, abuse of process, or discretionary function exemptions contained in I.C. § 6-904. *Id.*

The *Wimer* Court began its analysis by recognizing that the claims against the State can succeed only if a “private person or entity would be liable for money damages under the laws under the state of Idaho.” *Id.* The TICA does not create any new torts that do not exist at common law or pursuant to statute. *Id.* Dismissing the plaintiffs’ claims, the Court noted that Idaho does not recognize the tort of negligent investigation. *Id.*; *See also Hagy v. State*, 137 Idaho 618, 621, 51 P.3d 432, 435 (Ct. App. 2002) (holding that brother’s claim against city and county for negligent investigation of his mentally ill sister’s death was not a cause of action recognized under Idaho law). Nor does Idaho allow recovery for general negligence in investigating or prosecuting a crime, as “the policy that to hold investigators liable for their negligent acts would impair vigorous prosecution and have a chilling effect on law enforcement.” *Id.* at 455. The Court acknowledged that the plaintiffs’ theories of negligence and negligent investigation fall short on their own merit. *Id.* at 466.

In dicta, the *Wimer* Court also addressed the plaintiffs’ attempt to disguise their claims for negligent investigation as ones of general negligence. The Court begins by stating that plaintiffs failed to cite any case law from Idaho or other jurisdictions recognizing the tort of negligent investigation, and “on the other hand, recovery for negligence in investigating or prosecuting a crime has been specifically denied in a number of jurisdictions.” *Wimer*, 122 Idaho at 925. Summarizing the State’s argument the Court wrote:

**DEFENDANT IDAHO STATE POLICE’S JOINDER IN PAYETTE COUNTY’S
MOTION FOR PARTIAL DISMISSAL PURSUANT TO I.R.C.P. 12(b)(6) -- p. 3**

[t]he state contends that notwithstanding the plaintiffs' efforts to phrase their claim against the defendants in terms of "negligence," the true nature of the action is one for malicious prosecution and abuse of process, falling squarely within the exception to governmental liability afforded by I.C. § 6 904 . . . While the argument of the state is persuasive and is consistent with the views we express here, we do not need to discuss it further. For the reasons stated, we have determined that the state is entitled to judgment as a matter of law on the theories urged by plaintiffs.

Wimer v. State, 122 Idaho 923, 926, 841 P.2d 453, 456 (Ct. App. 1992).

In this case, the Plaintiff alleges that Defendant ISP engaged in tortious interference with the Plaintiff's prospective action and economic advantage. Like the plaintiffs in *Wimer*, Ms. Raymond's actual claim is grounded in an allegation of negligent investigation into her father's car accident. Plaintiff's claims in this case are an attempt to plead around a claim of negligent investigation, which is not recognized under Idaho law. As the Court recognized in *Wimer*, if the facts taken together amount to a claim that is not recognized, such as negligent investigation, misrepresenting the real claim does not create a cognizable cause of action. *Wimer*, 122 Idaho at 925-6.

CONCLUSION

ISP respectfully requests that the Court dismiss Plaintiff's remaining claims of tortious interference with prospective action and tortious interference with prospective economic advantage against Defendant ISP based upon the failure to state a claim.

DATED this 14th day of November, 2016.

MOORE & ELIA, LLP

By 

Michael J. Elia, Attorney for Defendant,
Idaho State Police

**DEFENDANT IDAHO STATE POLICE'S JOINDER IN PAYETTE COUNTY'S
MOTION FOR PARTIAL DISMISSAL PURSUANT TO I.R.C.P. 12(b)(6) – p. 4**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 2016, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

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**DEFENDANT IDAHO STATE POLICE'S JOINDER IN PAYETTE COUNTY'S
MOTION FOR PARTIAL DISMISSAL PURSUANT TO I.R.C.P. 12(b)(6) – p. 5**

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ATTORNEYS FOR DEFENDANTS PAYETTE COUNTY AND SCOTT SLOAN

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

JACKIE RAYMOND, individually as an heir,)
and as Personal Representative of the ESTATE)
OF BARRY JOHNSON,)
)
Plaintiff,)
)
v.)
)
IDAHO STATE POLICE, an Idaho State)
Agency, PAYETTE COUNTY, a political)
subdivision of the State of Idaho, and)
SCOTT SLOAN,)
Defendants.)
)
_____)

Case No. CV-2015-00954-C

PAYETTE COUNTY'S REPLY
BRIEF IN SUPPORT OF MOTION
FOR PARTIAL DISMISSAL

COMES NOW the Defendant, PAYETTE COUNTY, by and through their attorney of record, Michael J. Kane of the firm Michael Kane & Associates, PLLC, and hereby provides the following Reply Brief in support of its Motion for Partial Dismissal.

Plaintiff affects to find it "astonishing" that Payette County asserts that it is outside the law of Idaho to premise a claim on the notion that because an employee of the County was not convicted of a crime, Plaintiff is owed money. Yet Plaintiff provides the court with virtually

nothing that demonstrates the numerous cases cited to the court by the County are either erroneous or distinguishable. In fact, Plaintiff does not even attempt to address some of the legal points made by the County at all. It is ironic that Plaintiff claims the County is “cherry picking” cases when she fails to demonstrate how any of them are inapplicable.

To be clear, there is no question that an auto accident occurred and that Mr. Johnson was killed in the accident. That is the crux of the wrongful death case. The question is whether the Plaintiff can bring separate claims in the same action by stating as a given that the deputy involved in the accident would have been convicted, and base her claims entirely upon this unknowable and unprovable assertion. Facially absurd assertions (that the case was “open and shut” and that criminal liability was “indisputable”) are not substitutes for substantive law.

Plaintiff devotes four pages of briefing on the law of speculative damages. The County expressly pointed out that the problem with Plaintiff’s claim is that it is not about damage calculations, but rather that it is based upon a hypothetical. The County pointed out that any claim, no matter how denoted, that would force a jury to guess or speculate is improper. Plaintiff has failed to even address these cases, let alone show that they are wrong or irrelevant. Simply put, litigation cannot be brought upon speculative, conclusory or inherently incredible allegations. In the context of valid economic expectancies, this was the message of *Youst v. Longo*, 729 P.2d 728, (Cal. 1987). There has to be a sufficient degree of certainty in obtaining the supposed benefits of the expectancy. No reasonably responsible person would argue there is certainty in any criminal trial. Moreover, there is a significant question as to whether a conviction for vehicular homicide outside of a case involving a DUI is even admissible in a civil case. See Idaho Code § 18-4006. Even if it was admissible for non-law enforcement individuals, it very well might not be here, given the different standards of fault required in law

enforcement cases. This is so because gross negligence might be enough for a conviction, but a higher standard of fault is required in civil actions. See *Athay v. Stacey*, 146 Idaho 407, 196 P.3d 325 (2008) (reckless disregard for the safety of others, not gross negligence, is required).

Plaintiff has not rebutted the point that the fact that the deputy was not prosecuted cannot be a tort because no duty was owed to the Plaintiff. Prosecutors can, and do, move to dismiss cases for any number of reasons. If there was truly any substance to Plaintiff's claims of intentional misconduct by unnamed investigators, there are criminal laws that speak to the matter that can be utilized by proper authorities. As pointed out by the County, the law is clear that a breach of those criminal laws does not transmute into tort liability, especially as to someone who has no legal authority to interfere in the process of decision-making or has a personal stake in that decision-making. Hence, the County acknowledges the language cited by Plaintiff from the Restatement 2d of Torts, but points out that the sections referred to speak to intentional causation of injury. A person is not injured when another person is not prosecuted.

Plaintiff does not rebut the County's point that one cannot have a valid economic expectancy in one's own lawsuit. The logic of *Fox v. Country Mutual Insurance Company*, 7 P.3d 677 (Or. App. 2000), the only case found that speaks to the issue, is unassailable. Plaintiff seemingly concedes the points made in *Fox*.

Assuming plaintiff can somehow get past the aforementioned issues, the central question remaining is whether there is a valid tort in the state of Idaho called interference with prospective action, and if so whether the actions described by Plaintiff fall within the tort. If the answer to both questions is yes, is the tort ripe for litigation?

The County took pains to demonstrate the gestation of the potential tort in Idaho, pointed out that it was last discussed in any substantive way some twenty years ago in *Yoakum v.*

Hartford Fire Ins. Co., 129 Idaho 171, 178, 923 P.2d 416, 423 (1996), and pointed out that it was discussed in the context of a possible cause of action but not expressly adopted or used in the case. The County pointed that the tort has been rejected in most jurisdictions, and that the seminal case that started the gestation of the tort in California, *Smith v. Superior Court*, 198 Cal. Rpt. 829 (1984), has now been repudiated. Finally, the County pointed out that in the few jurisdictions that have adopted the tort, all were in the context of destruction of evidence, whereas the plaintiff's claim was primarily based upon allegations of witness tampering in an unconnected criminal matter. The County pointed out that in the context of the allegations in this case, the issue is one of first impression.

The County went to these lengths because such an analysis was necessary for the court to make an informed decision. It hoped that by shedding more light than heat on a highly complex issue, the court could more easily pick through the legal minefield, and determine if the tort even exists in Idaho, and if it does then give guidance as to its limits.

In response, Plaintiff has ignored most of the law cited, most especially that *Smith, supra*, has been repudiated, and acts as if *Yoakum, supra*, is the be-all and end-all as to his witness tampering claim, despite the fact that no other jurisdiction has adopted the tort in that context. This approach is not at all helpful to the analysis.

Plaintiff cites the Ohio case of *Smith v. Howard Johnson Co., Inc.* (1993), 67 Ohio St.3d 28, 29, 615 N.E.2d 1037, as recognizing and adopting a cause of action for interference or destruction of evidence. However, as noted in the later Ohio cases, the courts have limited this recognition to only destruction of physical evidence. *Pratt v. Payne*, 153 Ohio App. 3d 450, 454, 794 N.E.2d 723, 726–28(2003) (“After *Smith*, no court in Ohio (at least that our research has disclosed) has extended spoliation to anything other than the destruction of physical evidence.”)

Plaintiff also relies upon a New Jersey case which has since been modified by its appellate court. *Rosenblit v. Zimmerman*, 166 N.J. 391, 766 A.2d 749 (2001), when reviewing *Viviano v. CBS, Inc.*, 251 N.J.Super. 113, 119–120, 597 A.2d 543 (App.Div.1991), noted that:

Although some commentators have interpreted *Viviano* and its progeny as having created a new tort of intentional spoliation, Adamski, *supra*, 32 *J. Marshall L.Rev.* at 332; Maria A. Losavio, *Synthesis of Louisiana Law on Spoliation of Evidence—Compared to the Rest of the Country, Did We Handle It Correctly?*, 58 *La. L.Rev.* 837 (1998), we do not read our case law that way. To be sure, *Viviano* identified intentional spoliation of litigation evidence as wrongful conduct and also identified a tort remedy for that wrong. However, that tort remedy was not novel, but merely an invocation of the previously recognized tort of fraudulent concealment, adapted to address concealment or destruction during or in anticipation of litigation.

Rosenblit v. Zimmerman, 166 N.J. 391, 405–06, 766 A.2d 749, 756–57 (2001). The elements of the tort of fraudulent concealment are: (1) that defendants had a legal obligation to disclose the evidence to plaintiff; (2) that the evidence was material to plaintiff's case; (3) that plaintiff could not have readily learned of the concealed information without defendant disclosing it; (4) that defendant *intentionally* failed to disclose the evidence to plaintiff; and (5) that plaintiff was harmed by relying on the nondisclosure. *Hirsch v. General Motors Corp.*, 266 N.J.Super. 222, 258, 628 A.2d 1108 (Law Div.1993). Clearly then, *Viviano* has no application to this case for the reason that the investigators in the criminal case had no legal obligation to disclose any evidence to plaintiff. Neither *Smith* nor *Viviano* can be used as support for a new tort for witness tampering in an unconnected criminal matter.

Plaintiff further fails to respond to the legal points made regarding the Plaintiff's claim of negligent conduct leading to interference. The point of the discussion was that one cannot use negligence as an element in the performance of an intentional tort. Plaintiff admits that she is not attempting to assert independent torts under the criminal statutes. However, she accuses ISP of gross negligence in the investigation. If *Yoakum* stands for anything, which is very much in

doubt, it certainly cannot be used as support for a tort of negligent investigation or similar conduct. It only discussed the “possible” tort in the context of intentional destruction of evidence.

Plaintiff also fails to respond to the points made by the County that one cannot collect money for emotional injury in the context of an interference claim.

So, as asked in the original brief in support of the County’s motion, what is the court to do with this steaming mess of a potential tort? Given the state of the law as of today, instead of twenty years ago, it is fairly clear that the existence of the tort of interference with prospective action is in doubt. Most of the courts throughout the country, including the state where the tort began, have found that the tort is too speculative. It certainly would be here, where the allegations begin with a hypothetical to the effect that it was a given that the deputy would have been convicted. But that aside, there never was a trial, so how can it be proven that (a) because some unknown witnesses were talked to by some unnamed party, (b) a conviction was prevented, so (c) Plaintiff is entitled to money? Viewed in this way, it is clear that Plaintiff’s case is speculation piled upon speculation, which is why most jurisdictions have declined to go down the road the *Yoakum* court spoke about but did not go down. For this reason, the court should reject Count II.

But assuming the court finds that the tort exists in Idaho, the court should not expand it beyond intentional destruction of evidence. No court, anywhere, has gone in that direction. Hence, all of the claims based upon anything other than intentional spoliation should be rejected.

If the tort exists in the context of intentional spoliation, is it appropriate to litigate it at the same time as the wrongful death action? The County pointed out that if Plaintiff prevails on the wrongful death action, there is nothing to litigate. Only if Plaintiff does not prevail, (and she

would be entitled to a spoliation instruction if she can demonstrate real destruction) only then might she have a real claim as opposed to an inchoate one. Once again, Plaintiff failed to respond to the County's points on this issue.

Putting it bluntly, why should the court clutter up a relatively straightforward wrongful death trial with allegations that some unknown parties tried to help the deputy in his criminal case? As far as liability is concerned, either the deputy was driving with reckless disregard or he wasn't. Either Mr. Johnson was comparatively negligent or he wasn't. What does a second trial on the issue of witness tampering in the unconnected criminal matter add to or take away from the question of liability for the accident? If Plaintiff can identify some physical evidence destroyed by the County (not some third party) that goes to the issue of liability, she will be entitled to a spoliation instruction. The thumb will be on the scale against the County. What more could the Plaintiff want?

The painful truth is transparent in the Complaint and the briefing. Plaintiff does not want to let the fact that the deputy was not prosecuted go. That may or may not be understandable, but it has nothing to do with a comparative negligence calculation. There is simply no law that will allow Plaintiff to keep pushing the issue in the context of trying an auto accident. It simply makes no sense to try this very questionable tort at the same time as the trial of the accident.

DATED this 23rd day of November, 2016.

MICHAEL KANE & ASSOCIATES, PLLC

BY: Michael Kane
MICHAEL J. KANE
Attorneys for Payette County Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November, 2016, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

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FILED
THIRD JUDICIAL DISTRICT COURT
PAYETTE COUNTY, IDAHO

NOV 23 2016

BETTY DRESSEN, CLERK
BY _____ DEPUTY

Attorneys for Defendant Idaho State Police

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE**

JACKIE RAYMOND, individually as an heir,
and as Personal Representative of the Estate of
Barry Johnson,

Plaintiff,

vs.

IDAHO STATE POLICE, an Idaho State
agency, PAYETTE COUNTY, a political
subdivision of the State of Idaho, and SCOTT
SLOAN,

Defendants.

Case No. CV-2015-00954-C

**DEFENDANT IDAHO STATE
POLICE'S JOINDER IN
PAYETTE COUNTY'S REPLY TO
PLAINTIFF'S RESPONSE IN
OPPOSITION TO RULE 12
MOTION FOR PARTIAL
DISMISSAL**

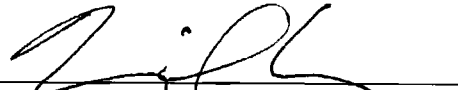
COMES NOW Defendant Idaho State Police (ISP), by and through its attorneys of record, Moore & Elia, LLP, and hereby submits its Joinder to Payette County's Reply to Plaintiff's Response in Opposition to Defendant Payette County's Rule 12 Motion for Partial Dismissal. ISP hereby adopts and joins in Payette County's Reply to Plaintiff's Response in Opposition to Defendant's Rule 12 Motion for Partial Dismissal, filed November 21, 2016.

ISP therefore requests the Court dismiss Counts II and III of Plaintiff's Complaint.

**DEFENDANT IDAHO STATE POLICE'S JOINDER IN PAYETTE COUNTY'S
REPLY TO PLAINTIFF'S RESPONSE IN OPPOSITION TO RULE 12 MOTION
FOR PARTIAL DISMISSAL – p. 1**

DATED this 23rd day of November, 2016.

MOORE & ELIA, LLP

By 
Michael J. Elia, Attorney for Defendant,
Idaho State Police

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of November, 2016, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

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FILED
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PAYETTE COUNTY, IDAHO

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

JACKIE RAYMOND, individually as an heir,
and as Personal Representative of the Estate
of BARRY JOHNSON,

Plaintiff,

v.

IDAHO STATE POLICE, an Idaho State
agency, PAYETTE COUNTY, a political
subdivision of the State of Idaho, and SCOTT
SLOAN,

Defendants.

Case No. CV-2015-954

**RESPONSE IN OPPOSITION TO
DEFENDANTS PAYETTE COUNTY'S
RULE 12 MOTION FOR PARTIAL
DISMISS**

Plaintiff, Jackie Raymond (Raymond), by and through counsel of record provides the following response in opposition to "Defendant Payette County's (Payette) Rule 12 Motion for Partial Dismiss" as joined by the Idaho State Police (ISP) This response is supported by the pleadings in this case.

RESPONSE IN OPPOSITION TO DEFENDANT PAYETTE COUNTY'S MOTION FOR PARTIAL DISMISS - 1

SUMMARY

Under this motion, Payette and ISP urge the Court to dismiss Raymond's tortious interference claims – even accepting all of her deeply troubling allegations as true. Simply put, nothing prevents this Court from allowing Raymond to pursue her causes of action against the defendants for their direct role and conspiracy (as the case may be) to commit the willful and extraordinarily harmful acts that damaged Raymond after the death of her father, Barry Johnson. In many respects, the Court is faced with previously untried claims in the State of Idaho. However, Raymond has based her claims on fundamental principles of tort as well as recognized causes of action in Idaho, as well as other jurisdictions.

MATERIAL FACTS

The defendants' motion attempts to downplay or disregard the deeply troubling allegations set forth in Raymond's February 27, 2015, Complaint. makes the following allegations, which for the purposes of ISP's Rule 12(b)(6) Motion must be considered as if true:

11. On or about October 18, 2011, Barry Johnson was operating his 1983 Jeep CJ7 on Idaho State Highway 30 in an easterly direction, when he made a lawful turn into the driveway of his residence just outside New Plymouth, Idaho.
12. As Mr. Johnson was making his lawful left turn into his driveway, Defendant Scott Sloan was attempting to pass Mr. Johnson on the left, at speeds as high as 115 mph according to initial ISP investigation, a speed Sloan knew to be far too great for any evasive maneuvers in the likely event he would need to avoid lawful action by other motorists like Mr. Johnson.
13. Sloan was personally aware that driveways from private residences and farms lined Highway 30, and that pedestrians, bicyclists, and motorists often entered and exited Highway 30 from their residences or farms.
14. By driving at such a speed grossly in excess of the posted speed limit and in such a populated area with visible traffic, Sloan endangered life and property, drove without due regard for the safety of all persons using the highway, and recklessly disregarded the safety of others using highway, in violation of Idaho law and

certain Idaho State statutes, including but not limited to Idaho Code §§ 49-654, 49-623, and 49-625, thereby rendering Sloan negligent *per se*.

15. As a direct and proximate result of Sloan's misconduct, his patrol car collided with Mr. Johnson's Jeep in an extremely violent manner and at an extreme rate of speed, ejecting Mr. Johnson as well as the engine and drive train from the Jeep, killing Mr. Johnson.
16. Based upon information and belief, Payette County was aware of Sloan's propensity to speed, drive recklessly, and flout the very laws he enforced, yet failed to take reasonable measures to reign him in, and failed to develop rules and to properly train, supervise, and control its Deputies, including Sloan, in the safe operation of patrol cars when responding to a code call or pursuing a suspect, which was a substantial factor causing damages to Plaintiff.
17. During ISP's investigation of the misconduct of defendant Sloan as alleged, and prosecution of Sloan therefor, the defendants conspired and attempted to, and did, cover up Sloan's misconduct and/or unduly influence the investigation, evidence, and witnesses accordingly, in order to shield defendants Sloan and Payette County from liability and responsibility for Sloan's aforesaid misconduct.
18. The defendants engaged in an enterprise or conspiracy with Sloan to, and did in fact, willfully and with full knowledge of Sloan's unlawful conduct, conceal evidence, harbor and protect Sloan from criminal and civil liability, and intimidate, influence, impede, deter, threaten, harass and obstruct witnesses and/or potential witnesses, all in violation of state and federal law but in favor of a corrupt policy and effort to protect fellow Idaho law enforcement officers from the consequences of their unlawful conduct.
19. The defendants also thereby reduced the value of Plaintiff's claim and increased the cost in pursuing the claim. Specifically, felony criminal charges were initially filed against Sloan for the vehicular manslaughter of Barry Johnson, in Idaho District Court in Payette County, Criminal Case No. 2012-566. After a preliminary hearing on April 13, 2012, before the Magistrate Judge, the Court found probable cause to bind Sloan over to District Court to answer the felony vehicular manslaughter charges. The matter was ultimately set for April 22, 2013. However, the defendants conspired to, and did, conceal and manipulate evidence, intimidate witnesses, and otherwise interfered with the prosecution, thereby causing the prosecutor to dismiss the charges. But for the defendants' cover-up and interference as alleged herein, the matter would have proceeded to trial and Sloan would have been convicted. Such conviction would have rendered liability in this matter *res judicata*. The absence of such a conviction exponentially increased the cost of proving liability in Plaintiff's civil case, and because of the defendants' evidence tampering has made it more difficult to prove liability,

making Plaintiff's civil claim significantly less valuable than it otherwise would have been.

COUNT II – TORTIOUS INTERFERENCE WITH PROSPECTIVE ACTION

24. The defendants were negligent *per se*, pursuant to 18 U.S.C. § 1512 and Idaho Code §§ 18-2604 & 2605, in directly or indirectly intimidating, harassing, corruptly persuading or engaging in misleading conduct toward, witnesses or potential witnesses in order to influence or cause to the withholding of their testimony or potential testimony.
25. The defendants' wrongful interference was wrongful beyond the fact of the interference itself, *inter alia*, because violated the aforesaid Idaho statutes.
26. The defendants knew litigation was likely to occur as a result of Sloan's misconduct as alleged above, and willfully destroyed or concealed evidence in an effort to disrupt Plaintiff's case, thereby disrupting Plaintiff's case as alleged above.
27. Such conduct resulted in disruption of Plaintiff's case, and damages to Plaintiff, including but not limited to a massive increase in the costs of pursuing liability of the wrongful death claims, a potential loss in the value of the claim, accruing interest from the significant delay in resolution of the claim, and general damages including severe emotional distress and humiliation suffered by Plaintiff.

COUNT III – (IN THE ALTERNATIVE) TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

28. Plaintiff hereby incorporates paragraphs 1 through 27 above as if fully restated herein.
29. Plaintiff had a valid economic expectancy known to the defendants in the form of Plaintiff's claims and causes of action against Sloan and Payette County arising from the death of Mr. Johnson.
30. The defendants intentionally interfered with Plaintiff's valid economic expectancy, resulting in the reduction, destruction, or disruption thereof.
31. As a direct and proximate result of the defendants' misconduct alleged above, Plaintiff's ability to obtain legal redress for their injuries has been significantly impaired.

ARGUMENT

A. **The Totality of Raymond’s Allegations of Intentional Misconduct and/or Gross Negligence by the Defendants Easily Justify a Tort Claim.**

When ruling on Rule 12(b)(6) motion, the Court must “accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” *Mosvesian v. Victoria Versicherung AG*, 629 F.3d 901, 905 (9th Cir. 2010)(citations omitted.) Every reasonable intendment will be made to sustain a complaint against a Rule 12(b)(6) motion to dismiss. *Harper v. Harper*, 122 Idaho 535, 835 P.2d 1346 (Ct. App. 1992).

In their Rule 12 Motion, the defendants (in particular Payette) attempt to parse out, diminish and even disregard the allegations and claims made by Raymond in her complaint. For instance, Payette attempts to “boil down” Raymond’s claim to: “because she has to prove liability (in a wrongful death suit) she has been damaged.” (Mem. Supp. MTD p. 2) Similarly, the ISP characterizes Raymond’s allegations against it as merely “negligent investigation.” (ISP Joinder pp. 2-3.) They then scour jurisdictions throughout the country to cherry pick various appellate decisions with entirely different facts and claims, in an attempt to deprive Raymond her day in court.

Raymond’s complaint in its *entirety*, if taken as true, describes a deeply troubling pattern of conduct that clearly warrants a triable claim. In essence, the complaint alleges that the defendants – who were charged with the fiduciary duty to investigate the death of Raymond’s father Mr. Johnson and help make anyone who was wrongfully responsible for his death accountable – instead engaged in a concerted effort and conspiracy to *protect* the person wrongfully responsible for Mr. Johnson’s death (Scott Sloan). Such conduct included far more than a sub-par investigation and even spoliation of evidence, but alleged that the defendants did:

conceal evidence, harbor and protect Sloan from criminal and civil liability, and intimidate, influence, impede, deter, threaten, harass and obstruct witnesses and/or potential witnesses, all in violation of state and federal law but in favor of a corrupt policy and effort to protect fellow Idaho law enforcement officers from the consequences of their unlawful conduct...(and that such conduct constituted a violation of) 18 U.S.C. § 1512 and Idaho Code §§ 18-2604 & 2605, in directly or indirectly intimidating, harassing, corruptly persuading or engaging in misleading conduct toward, witnesses or potential witnesses in order to influence or cause to the withholding of their testimony or potential testimony... (Complain par’s 18 and 24.)

The complaint also alleges that such egregious conduct not only “would have rendered liability in this matter *res judicata*,” but also resulted in “a massive increase in the costs of pursuing liability of the wrongful death claims, a potential loss in the value of the claim, accruing interest from the significant delay in resolution of the claim, and general damages including severe emotional distress and humiliation suffered by Plaintiff.” (Complaint par’s 19 and 27)

Given the extremely high bar that must be met under a Rule 12(b) motion, i.e. that all of the allegations are to be taken as true and construed in most favorable light against the moving party – it is nothing short of astonishing that defendants seek the dismissal of Raymond’s claims. In other words, the defendants are suggesting to the Court that Raymond has no claim *even if* the defendants engaged in the illegal conduct alleged therein and the resulting harms to Raymond. They audaciously suggest that Raymond has no recourse for the devastating consequences of the defendants’ egregious actions in this case.

Indeed, the *Second Restatement of Torts* which is oft relied upon by the Idaho Supreme Court as authority does contain a “catch all” provision that allows for liability when there has been an “intentional act” causing harm that does not necessarily fall within a “traditional category of tort liability:”

§ 870 Liability for Intended Consequences – General Principle

One who intentionally causes injury to another is subject to liability to the other for that injury, if his conduct is generally culpable and not justifiable under the circumstances. This liability may be imposed although the actor's conduct does not come within a traditional category of tort liability.

Rest. Torts, 2nd § 870. (See *Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 178, 923 P.2d 416, 423 (1996)(discussed at length *supra* in Section B.)

The “comment” after the rule explains its well-founded purpose:

Nature of Section. This Section is intended to supply a generalization for tortious conduct involving harm intentionally inflicted. Generalizations have long existed for negligence liability, involving conduct producing unreasonable risk of harm to others (See §§ 282, 291-294), and for strict liability, involving the carrying on of an activity that is abnormally dangerous (See §§ 519-520). As for conduct intentionally causing harm, however, it has traditionally been assumed that the several established intentional torts developed separately and independently and not in accordance with any unifying principle. This Section purports to supply that unifying principle and to explain the basis for the development of the more recently created intentional torts. More than that, it is intended to serve as a guide for determining when liability should be imposed for harm that was intentionally inflicted, even though the conduct does not come within the requirements of one of the well established an named intentional torts.

Id. Comment “a.”

Additionally, the *Restatement of Torts* further suggests that such a tort could extend as well to “intentional harm to a property interest:”

§ 871. Intentional Harm to a Property Interest.

One who intentionally deprives another of his legally protected property interest or causes injury to the interest is subject to liability to the other if his conduct is generally culpable and not justifiable under the circumstances.

Rest. Torts, 2nd § 871.

Additionally, Raymond's claims clearly fit within the definitions of “gross negligence” and “reckless, willful and wanton conduct” actionable under the Idaho Tort Claims Act.

These terms are defined as:

1. "Gross negligence" is the doing or failing to do an act which a reasonable person in a similar situation and of similar responsibility would, with a minimum of contemplation, be inescapably drawn to recognize his or her duty to do or not do such act and that failing that duty shows deliberate indifference to the harmful consequences to others.
2. "Reckless, willful and wanton conduct" is present only when a person intentionally and knowingly does or fails to do an act creating unreasonable risk of harm to another, and which involves a high degree of probability that such harm will result.

IC § 6-904C.

Certainly, Raymond's allegations suggest a "deliberate indifference" and/or an intentional act or failure to act creating an "unreasonable risk" to Raymond's interests – yet adding additional basis for her claims.

Of further note, as an element to these claims, Raymond alleges that defendants violated a number of criminal statutes with regard to witness tampering and intimidation, destruction of evidence, harassment under 18 U.S.C. § 1512 and Idaho Code §§ 18-2604 & 2605. These allegations, if true, add an additional layer of egregious conduct that warrant a claim of wrongdoing. Again, Raymond is not necessarily relying upon the statutes themselves as a separate "cause of action," but rather to expand upon the already deeply serious allegations that she has made to support a tort claim against the defendants, (and perhaps a claim for punitive damages or other non-economic damages.)

Because Raymond has quite clearly alleged unjustifiable conduct that was intentionally injurious or harmful to her as well as her "property" interests (i.e the wrongful death claims) the Court need not follow some pre-established "tort" to fit the allegations in order for Raymond to be able to try her claims. Rather, the Court simply can rely upon the "unifying principle" set

forth in § 870 of the *Restatement of Torts*, and thus allow Raymond to proceed with her claims. Again, given the gravity and extensiveness of the allegations, the Court should allow the creation or recognition of a tort to allow relief for the wrongs that have been committed, rather than find ways to deny such justice.

B. Defendants are Potentially Liability under a Tortious Interference of a Prospective Cause of Action/Economic Advantage.

Nevertheless, pursuant to the arguments set forth *supra*, there are established and recognized torts in the State of Idaho that could easily fit within many of the allegations set forth by Raymond. This is certainly the case under *Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 178, 923 P.2d 416, 423 (1996). Payette attempts to pass the holdings in *Yoakum* off as “dicta” that the Court should pay no heed. However, the Supreme Court’s guidance in the case clearly goes well beyond “dicta” to establishing a recognized tort. In *Yoakum*, the Supreme Court acknowledges § 870 and 871 of the *Restatement of Torts* as a basis for the possibility of torts “not previously recognized in this state, i.e. liability for intended consequences and intentional harm to a property interest, based upon the Restatement (Second) of Torts §§ 870, 871 (1979).” *Id.*

Although the *Yoakum* Court did not craft a tort under the Restatement in that particular case, it did indicate that:

however, **for guidance in future litigation we take this opportunity to opine on a possible cause of action for conduct more egregious than that presented here.** The guidelines offered by the authors of the Restatement and the cases which have **defined the intentional spoliation of evidence cause of action provide a framework for another cause of action based upon intentional conduct that unreasonably interferes with a party's prospective cause of action.** The tort of intentional spoliation of evidence has been alternatively identified by courts as the "intentional interference with prospective civil action by spoliation of evidence." The court in *Smith* described this tort

as "closely analogous" to the intentional interference with a prospective business advantage, a tort which has been recognized in this state. *Idaho First National Bank v. Bliss Valley Foods*, 121 Idaho 266, 284-87, 824 P.2d 841, 859-62 (1991).

(Id. emphasis added)

The Court then provides the element for such a cause of action as being similar to a "prospective economic advantage", i.e. that

a plaintiff must establish that the intentional interference by the defendant resulting in injury was wrongful. This may be shown by proof that either: (1) the defendant had an improper motive to harm the plaintiff; or (2) the defendant used a wrongful means to cause injury to the prospective advantage.

Id.

Again, this direction by the Idaho Supreme Court is not dicta, but rather "opines" on a "possible conduct of action" for "future litigation" and additionally – even provides potential elements for such a claim. It simply would be an error by this Court to disregard the direction provided by the Idaho Supreme Court.

Idaho is certainly not alone in recognizing such a claim. The Supreme Court of Ohio recognized a "a cause of action exists in tort for interference with or destruction of evidence" with the following elements:

- (1) pending or probable litigation involving the plaintiff,
- (2) knowledge on the part of defendant that litigation exists or is probable,
- (3) willful destruction of evidence by defendant designed to disrupt the plaintiff's case,
- (4) disruption of the plaintiff's case, and
- (5) damages proximately caused by the defendant's acts;

such a claim should be recognized between the parties to the primary action and against third parties; and such a claim may be brought at the same time as the primary action."

Smith v. Howard Johnson Co., Inc., 67 Ohio St.3d 28, 29m 615 N.E.2d 1037, 1038,

1993-Ohio-229, 230 (1993)

The State of New Jersey also recognizes this type of claim, again, along the lines of “interference with prospective economic advantage for the “willful destruction or concealment of evidence.” *Viviano v. CBS, Inc.*, 251 N.J.Super. 113, 125-26, 597 A.2d 543, 549-50 (1991). In *Viviano*, which involved the defendants’ fraudulent concealment of documents that contained “key information” with regard to the liability of the defendants, the court opined as to the sound and apparent policy reasons justifying such a claim:

Immunizing the willful destruction or concealment of evidence would not further the policy of encouraging testimonial candor. As the court explained in *Petrik v. Monarch Printing Corp.*, This state's system of civil litigation is founded in large part on a litigant's ability under the authority of the Supreme Court rules, to investigate and uncover evidence after filing suit. Destruction of evidence known to be relevant to pending litigation violates the spirit of liberal discovery. Intentional destruction of evidence manifests a shocking disregard for orderly judicial procedures and offends traditional notions of fair play.

Id. 251 N.J. Super. at 121, 126, 127,(1991) (citations omitted)

Again, a substantial (but not complete) part of Raymond’s claims include the defendants’ concealing and tampering of evidence that ultimately affected, or “interfered” with her wrongful death claim and caused other damages. Again, this is a recognized claim in the State of Idaho, and should be allowed in this case.

C. ISP’s Conduct is Not “Negligent Investigation” but Rather Gross Negligence or Reckless, Willful and Wanton Conduct Actionable under the Idaho Tort Claims Act.

All of the arguments set forth in Sections A-B herein apply to the ISP’s recent “joinder” to Payette’s motion. However, ISP makes a separate argument that is wholly without merit, i.e. that Raymond’s claims are merely a “disguised” caused of action for “negligent investigation” which is not a recognized tort in Idaho.

ISP's memorandum cites two Idaho Court of Appeals decisions in support of this notion, *Wimer v. State*, 122 Idaho 923 (Ct. App. 1992) and *Hagy v. State*, 137 Idaho 618 (Ct App. 2002). However the facts and holdings in these respective decisions bear no resemblance to the deeply serious claims being made by Raymond against the Idaho State Police. In *Wimer* the Idaho Court of Appeals rejected a claim by the plaintiffs that the Idaho Fish and Game had "negligently" investigated game hunting violations after the plaintiffs had been acquitted of such charges. *Wimer v. State*, 122 Idaho at 923-24, 841 P.2d at 453-54. The *Wimer* Court held that the plaintiffs' claims could not succeed because "a private person or entity" would "not be liable" for the "negligent investigation of a crime" and therefore not a proper tort claim. *Id.*

In this case, Raymond is not claiming that ISP "negligently investigated a crime," but rather, among other disturbing allegations, is claiming that the ISP "engaged in an enterprise or conspiracy with Sloan to, and did in fact willfully and with full knowledge of Sloan's unlawful conduct, conceal evidence, harbor and protect Sloan from criminal and civil liability, and intimidate, influence, impede, deter, threaten, harass and obstruct witnesses and/or potential witnesses, all in violation of state and federal law but in favor of a corrupt policy and effort to protect fellow Idaho law enforcement officers from the consequences of their unlawful conduct." (Complaint ¶ 18). These are claims that most certainly would be actionable if conducted by a private person or entity, and thus an appropriate tort claim against ISP. Additionally, such claims clearly fit within the definitions of "gross negligence" and "reckless, willful and wanton conduct" actionable under the Idaho Tort Claims Act. IC § 6-904C. Simply put, the "gravamen" of Raymond's case is not "negligent investigation," but rather intentional misconduct and a violation of a number of laws, which are actionable as a tort.

D. Raymond's Damages are not Speculative but are Provable and Presumed because of the Defendants' Wrongful Conduct.

Again, without addressing any of the damages specifically alleged by Raymond, defendant Payette suggests that Raymond's damages are "speculative" because in effect they were not "anticipated." In considering basic principles of tort law and the types of damages allowed, again, Payette is misguided. Indeed:

The general rule of damages in tort is that the injured party may recover for all detriment caused whether it could have been anticipated or not ... one who commits a wrongful act is liable for all the direct injury resulting from such act, although such resulting injury could not have been contemplated as a probable result of the act done.

Id. (citations omitted) See, also *Restat 2d of Torts*, § 910 (One injured by the tort of another is entitled to recover damages from the other for all harm, past, present and prospective, legally caused by the tort.)

Idaho's jury instruction manual identifies various types of "proximate" damages that could be applicable in this case, including "economic" damages such as past and future earnings lost as a result of the injury, or opportunity costs, as well as non-economic damages such as the suffering of physical and mental pain. IDJI2d § 9.01. See also, *Weinstein v. Prudential Prop. & Cas. Ins. Co.*, 149 Idaho 299, 314 (Idaho 2010)(holding that the jury properly awarded damages for damage to family finances and substantial emotional and mental stress.)

The long established standard with regard to the proving of damages, is that:

Damages need be proved only with a "reasonable certainty," and this means that the existence of damages must be taken out of the realm of speculation. The mere fact that it is difficult to arrive at an exact amount of damages, where it is shown that damages resulted, does not mean that damages may not be awarded; it is for the trier-of-fact to fix the amount.

Trilogy Network Sys. v. Johnson, 144 Idaho 844, 172 P.2d 1119, 1121 (Idaho 2007) (citations omitted)

Moreover, courts have emphasized that an inability to prove exact damages should not absolve wrongful acts:

The law requires only that some reasonable basis of computation of damages be used, and the damages may be computed even if the result reached is an approximation. This is especially true where . . . it is the wrongful acts of the defendant that have created the difficulty in proving the amount of loss of profits. The fact that the amount of damage may not be susceptible of exact proof or may be uncertain, contingent or difficult of ascertainment does not bar recovery.

Marsu, B.V. v. Walt Disney Co., 185 F.3d 932, 938-939 (9th Cir. Cal. 1999) (citations omitted)

Finally, the Idaho Supreme Court has noted that particularly in cases where there has been “breach of a duty of law” resulting in “unliquidated damages” that the “best evidence” to prove such damages is “often nothing better than the opinions of persons well informed upon the subject under investigation.” *Conley v. Amalgamated Sugar Co.*, 74 Idaho 416, 423-424, 263 P.2d 705, 709 (Idaho 1953).

Finally, as it relates to a spoliation claim, the *Viviano* acknowledges this well founded principle, i.e, that “mere uncertainty as to the amount of damages will not preclude a recovery even though proof of the amount of damages is inexact.” *Viviano v. CBS, Inc.*, 251 N.J.Super. at 129. The court upheld the decision of the jury to award lost interest, expenses and punitive damages for the delayed judgment resulting from the spoliation claim, finding that: “On the basis of the testimony presented to it, the jury in this case could reasonably have concluded that (the concealed evidence) been provided to plaintiff in 1982 or 1983, (the plaintiff) would then have obtained a settlement amount at least as large as that which she received in 1987.” *Viviano v. CBS, Inc.*, 251 N.J.Super. at 120, 129.

Given these basic tort principles, including the presumption of damages when there has been an intentional tort, Raymond’s alleged damages are not speculative. Raymond alleges that

such damages include “a potential loss in the value of the claim, accruing interest from the significant delay in resolution of the claim, and general damages including severe emotional distress and humiliation.” (Complaint par. 27.) She further alleges that: “the absence of (a conviction against Sloan) exponentially increased the cost of proving liability in Plaintiff’s civil case, and because of the defendants’ evidence tampering has made it more difficult to prove liability, making Plaintiff’s civil claim significantly less valuable than it otherwise would have been.” (Complaint par. 19.)

To truly understand the harm caused by the defendants tortious interference claims, the jury will only need to step into the shoes of Raymond and what she has witnessed and experienced from her perspective as a result of defendants’ wrongful conduct. From the very outset, the initial ISP investigators reported that Sloan had operated his vehicle unsafely, traveling at an high rate of speed which resulted in her father’s death. They further found that alcohol was not a factor. Sloan was then charged with felony manslaughter. This was an open and shut case on liability for Raymond’s wrongful death claim.

Instead, the ISP and Payette conspired to conceal and tamper with evidence, intimidate and wrongfully influence testimony, and take other measures to improperly thwart these basic and undisputable findings of liability. They in effect improperly muddied the waters for Ramond’s wrongful death claim, delaying its resolution for many years, as well as massively increasing the costs of pursuing such claims. A jury could also find that defendants’ conduct affected the value of her claim as well. Again, there is no requirement of “certainty” in determining damages, particularly when there has been wrongful conduct, particularly when such conduct *created* the difficulty of calculating such damages.

The jury can also consider the emotional and mental toll the defendants' conduct has taken on Raymond. Not only has the delay in resolving the case been emotionally and mentally taxing upon Raymond, but she has also experienced anguish and distrust caused when rather than promote and seek justice for wrongful and even criminal acts, law enforcement instead *protected* its own from experiencing the consequences of such acts, possibly breaking the law as well in the process. In further aggravation to Raymond, the defendants impugned the good name and reputation of Raymond's father. Simply put, because of defendants' conduct, Raymond has lost most all faith and trust in law enforcement, and that has resulted in massive anxiety, stress and fear. These are all very real and consequential damages that are well beyond the realm of speculation.

CONCLUSION

Pursuant to the foregoing, defendants' Rule 12(b) motion to dismiss should be denied.

DATED this 21st day of November, 2016.

PETERSEN MOSS HALL & OLSEN



Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 21st day of November, 2016, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

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Courtesy Chambers Copy



Nathan M. Olsen

FILED
THIRD JUDICIAL DISTRICT COURT
PAYETTE COUNTY, IDAHO

DEC 30 2016

BETTY J. DRESEN, CLERK
DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

JACKIE RAYMOND, individually as an heir,
and as Personal Representative of the Estate of
Barry Johnson,

Plaintiff,

vs.

IDAHO STATE POLICE, an Idaho State agency,
PAYETTE COUNTY, a political subdivision of
the State of Idaho, and SCOTT SLOAN

Defendants.

Case No. CV-2015-954

**MEMORANDUM DECISION AND
ORDER ON PLAINTIFF'S MOTION
TO AMEND THE COMPLAINT AND
DEFENDANTS' I.R.C.P. 12(b)(6)
MOTION TO DISMISS COUNTS II
AND III**

Plaintiff's motion to amend and Payette County's I.R.C.P. 12(b)(6) motion came on for hearing on November 28, 2016. Idaho State Police ("ISP") joined in Payette County's motion.

I. BACKGROUND

This lawsuit stems from a traffic accident that occurred in Payette County on October 13, 2011. Deputy Scott Sloan ("Sloan") was on duty and driving his patrol vehicle on Highway 30 when he hit Barry Johnson. Mr. Johnson died as a result of the crash.

ISP investigated the crash. Sloan was charged with vehicular manslaughter in Payette County case CR-2012-566. The special prosecutor dismissed the case on March 8, 2013.

Raymond filed her complaint on February 27, 2015. In the complaint, she alleges three causes of action: Count I—Wrongful Death (Payette County); Count II—Tortious Interference with Prospective Action (all Defendants); and, Count III—Tortious Interference with Prospective Economic Advantage (all Defendants; in the alternative to Count II).

MEMORANDUM DECISION AND ORDER ON MOTION
TO AMEND AND I.R.C.P. 12(b)(6) MOTION TO DISMISS—1

II. STANDARD

The decision to grant leave to amend is discretionary and shall be freely given when justice so requires. I.R.C.P. 15. Leave to amend is properly denied when the amendment would be futile or fails to state a valid claim. *PHH Mortg. v. Nickerson*, 160 Idaho 388 (2016). The burden to show why a court should not grant leave to amend is on the parties opposed to the amendment. *Clark v. Olsen*, 110 Idaho 323, 326 (1986).

A request to dismiss a claim pursuant to I.R.C.P. 12(b)(6) will be granted if the pleading fails to state a claim upon which review can be granted. The standard is whether the non-moving party "has alleged sufficient facts in support of his claim, which if true, would entitle him to relief." *Orrock v. Appelton*, 147 Idaho 613, 618 (2009). Factual allegations will be considered true, unless they are purely conclusory. *Id.* "After viewing all facts and inferences from the record in favor of the non-moving party, the Court will ask whether a claim for relief has been stated. The issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims." *Coal. for Agric.'s Future v. Canyon Cty.*, 160 Idaho 142, 145 (2016).

"[E]very reasonable intendment will be made to sustain a complaint against a Rule 12(b)(6) motion to dismiss." *Harper v. Harper*, 122 Idaho 535, 536 (Ct. App. 1992). "A motion to dismiss under I.R.C.P. 12(b)(6) will not be granted...unless the non-moving party would be unable to prove any conceivable set of facts in support of its claim." *Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 175 (1996); *Orthman v. Idaho Power Co.*, 126 Idaho 960, 962 (1995); *Wackerli v. Martindale*, 82 Idaho 400 (1960). "[A] dismissal under Rule 12(b)(6) is likely to be granted only in the unusual case in which the plaintiff includes allegations showing on the face of the complaint that there is some insurmountable bar to relief." *Harper*, 122 Idaho at 536.

MEMORANDUM DECISION AND ORDER ON MOTION
TO AMEND AND I.R.C.P. 12(b)(6) MOTION TO DISMISS—2

III. DISCUSSION

A. Motion to Amend

To recover in tort, Plaintiff must file a timely tort claim notice detailing the conduct and circumstances giving rise to the claim. I.C. §§ 6-907—910. The parties dispute whether Plaintiff complied with the ITCA notice requirements with respect to Counts II, III, and the breach of privacy and dignity claim. Whether Plaintiff complied with the notice requirements is a question of fact. *Cox v. City of Sandpoint*, 140 Idaho 127 (Ct. App. 2003). Courts take “a liberal approach to interpreting the notice requirement of the ITCA.” *CNW, LLC v. New Sweden Irrigation Dist.*, 161 Idaho 89 (2016); I.C. § 6-907. Thus, the Court will not deny the motion to amend based on failure to file a tort claim notice. The claim will fail if the jury finds that Plaintiff did not satisfy the ITCA notice requirements.

Plaintiff wants to add a claim for breach of privacy and dignity against Payette County and Does I-X for conduct of dispatchers and officers in relaying information about the wreck and Mr. Johnson's death. Plaintiff alleges that the dispatchers and officers were unprofessional, failed to notify Plaintiff about the death before notifying the public, made inappropriate comments about Mr. Johnson and his family members, and did not treat Plaintiff with respect. Plaintiff alleges that the conduct caused her to suffer severe emotional and mental anguish and humiliation, to lose faith in law enforcement, and to fear for her well-being.

Breach of privacy and dignity is not an established tort in Idaho. Conduct is not actionable merely because it is inconsiderate and unkind. *Johnson v. McPhee*, 147 Idaho 455 (Ct.App.2009); *Brown v. Fritz*, 108 Idaho 357 (1985). Plaintiff alleges that Defendants breached a duty owed to decedent's family members and next of kin to properly handle highly sensitive information in times of tragedy. Plaintiff does not point to a statute or rule that expressly states

MEMORANDUM DECISION AND ORDER ON MOTION
TO AMEND AND I.R.C.P. 12(b)(6) MOTION TO DISMISS—3

that 911 dispatchers and/or law enforcement officers owe such a duty, and it does not appear that there is one.¹ Thus, Plaintiff is asking the Court to find that a new duty exists.

“Generally, the question whether a duty exists is a question of law.” *Udy v. Custer Cty.*, 136 Idaho 386, 389 (2001). “[I]t is possible to create a duty where one previously did not exist.” *Id.* Determining whether a duty will arise in a particular context “involves a consideration of policy and the weighing of several factors[,]” including:

[T]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

Rife v. Long, 127 Idaho 841, 846 (1995); *Turpen v. Granieri*, 133 Idaho 244, 247–48 (1999). In weighing these considerations, the burden on dispatchers and law enforcement would be enormous. The Court will not find that such a duty arises in this context. There can be no liability on this particular theory, *Summers v. Cambridge Joint Sch. Dist. No. 432*, 139 Idaho 953, 955 (2004) (“Only when a defendant owes a duty to the plaintiff does tort liability exist.”).

While Plaintiff's breach of privacy and dignity theory is not a viable claim, she alleged facts which may support a claim for intrusion upon seclusion. See *Alderson v. Bonner*, 142 Idaho 733, 739 (Ct. App. 2006); *Uranga v. Federated Publications, Inc.*, 138 Idaho 550, 553 (2003); *Hoskins v. Howard*, 132 Idaho 311 (1998). Plaintiff may amend the complaint to include a claim for intrusion upon seclusion. See I.R.C.P. 8; *Navo v. Bingham Mem'l Hosp.*, 373 P.3d 681, 693 (Idaho 2016) (“Under notice pleading, a party is no longer slavishly bound to stating particular

¹ Even if first notifying next of kin is a common practice, it does not translate into a legal duty to do so in the future. See *Udy v. Custer Cty.*, 136 Idaho 386, 389–90 (2001).

MEMORANDUM DECISION AND ORDER ON MOTION
TO AMEND AND I.R.C.P. 12(b)(6) MOTION TO DISMISS—4

theories in its pleadings. Rather, a party is required to state an underlying cause of action and the facts from which that cause of action arises.”).

B. I.R.C.P. 12(b)(6) motion

The Defendants seek dismissal of Counts II and III. The gist of these claims is that the Defendants conspired to cover-up, conceal, and falsify evidence, and/or unlawfully influenced or interfered with the investigation surrounding Sloan, resulting in dismissal of Sloan’s criminal case. Plaintiff alleges that, but for the Defendants’ cover-up and interference, Sloan would have been convicted and such conviction would have rendered liability *res judicata*. The absence of the conviction exponentially increased the cost of proving liability in Plaintiff’s civil case. As a result, the Defendants reduced the value of Plaintiff’s wrongful death claim.

1. *Count II—Tortious Interference with Prospective Action*

There is no private cause of action for violation of 18 U.S.C. § 1512, I.C. §§ 18-2604, and -2605. The basis for this claim comes from *Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho 171 (1996), in which the Idaho Supreme Court “opine[d] on a possible cause of action” known as spoliation of evidence.

In *Yoakum*, the Court noted that spoliation is its own intentional tort. The Court said that “[t]he guidelines offered by the authors of the Restatement and the cases which have defined the intentional spoliation of evidence cause of action provide a framework for another cause of action based upon intentional conduct that unreasonably interferes with a party’s prospective cause of action. The tort of intentional spoliation of evidence has been alternatively identified by courts as the ‘intentional interference with prospective civil action by spoliation of evidence.’ ” [*Yoakum*, 129 Idaho] at 178 (citing *Hazen v. Anchorage*, 718 P.2d 456, 463 (Alaska 1986)). The Court also stated that it is closely aligned with the tort of intentional interference with a prospective business advantage. *Idaho First Nat’l Bank v. Bliss Valley Foods*, 121 Idaho 266, 284-87 (1991).

**MEMORANDUM DECISION AND ORDER ON MOTION
TO AMEND AND I.R.C.P. 12(b)(6) MOTION TO DISMISS—5**

Ricketts v. E. Idaho Equip. Co., 137 Idaho 578, 582 (2002). Idaho courts have not adopted it as an independent cause of action. *Id.*; *Cook v. State Dept. of Trans.*, 133 Idaho 288 (1999). Plaintiff asks this Court to adopt it as an independent cause of action.

The decision to fashion and create a new intentional tort is discretionary. *Yoakum*, 129 Idaho at 177-178. (Restatement (Second) of Torts provides "mere guidelines for a court to use in fashioning the contours of new intentional torts a court may wish to create."). Although *Yoakum* recognized in dicta that spoliation is an independent tort, the spoliation doctrine has not been adopted as an independent cause of action. Rather, it has been applied as a rule of evidence and permits an inference and a jury instruction on spoliation. *Courtney v. Big O Tires, Inc.*, 139 Idaho 821 (2003); *Ricketts, supra*; *Cook, supra*; *Bromley v. Garey*, 132 Idaho 807 (1999); *Stuart v. State*, 127 Idaho 806 (1995). The Court declines to adopt it as an independent cause of action.

2. *Count III—Tortious Interference with Prospective Economic Advantage*

Tortious interference with a prospective economic advantage is recognized in Idaho. In order to establish the claim, Plaintiff must show:

- (1) the existence of a valid economic expectancy, (2) knowledge of the expectancy on the part of the interferer, (3) intentional interference inducing termination of the expectancy, (4) the interference was wrongful by some measure beyond the fact of the interference itself, and (5) resulting damage to the plaintiff whose expectancy has been disrupted.

Syringa Networks, LLC v. Idaho Dep't of Admin., 155 Idaho 55, 64 (2013). Plaintiff alleges that she "had a valid economic expectancy known to the defendants in the form of Plaintiff's claims and causes of action against Sloan and Payette County arising from the death of Mr. Johnson" and that the Defendants "intentionally interfered with Plaintiff's valid economic expectancy, resulting in the reduction, destruction, or disruption thereof." (Complaint, ¶¶ 36-37).

This tort addresses interference with an "economic relationship" between a plaintiff and another party. *Highland Enterprises, Inc. v. Barker*, 133 Idaho 330, 339 n. 3 (1999). The purpose

MEMORANDUM DECISION AND ORDER ON MOTION
TO AMEND AND I.R.C.P. 12(b)(6) MOTION TO DISMISS—6

of this tort is to protect the integrity of, and expectancies in, voluntarily created economic relationships, both commercial and noncommercial, that would have very likely resulted in a pecuniary benefit to the plaintiff but for the defendant's interference. *See id.*; *Fox v. Country Mut. Ins. Co.*, 7 P.3d 677 (Or. 2000); *Cron v. Zimmer*, 296 P.3d 567 (Or. 2013). A civil lawsuit does not represent the kind of noncommercial relationship and prospective economic advantage protected by the tort of intentional interference with an economic advantage. *Id.* Plaintiff does not have a valid economic expectancy in this lawsuit.

Additionally, Counts II and III are premised on a fact that Plaintiff cannot prove: That but for the Defendants' alleged misconduct, Sloan would have been convicted of manslaughter. If these counts proceed to trial, the jury would be asked to consider the merits of Sloan's criminal case and decide whether, by a preponderance of evidence, Sloan would have been convicted beyond a reasonable doubt. There are many possible outcomes in a criminal case, and speculating about one possible outcome in Sloan's criminal case is not a basis for relief in this civil case. Plaintiff cannot prove this conclusory fact and it is an insurmountable bar to relief.

Finally, even if these are viable claims, they are premature, as the outcome in this case needs to be known before Plaintiff can show that the value of her wrongful death claims was reduced. *City of McCall v. Buxton*, 146 Idaho 656 (2008) (A tort claim cannot accrue until an injury is sustained or actual damage occurs).

MEMORANDUM DECISION AND ORDER ON MOTION
TO AMEND AND I.R.C.P. 12(b)(6) MOTION TO DISMISS---7

ORDER

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion to amend is **GRANTED, in part, and DENIED, in part;**
2. Defendants' I.R.C.P. 12(b)(6) motion to dismiss Counts II and III is **GRANTED.**

DATED: December 30th, 2016



Hon. Chris Nye
District Judge

**MEMORANDUM DECISION AND ORDER ON MOTION
TO AMEND AND I.R.C.P. 12(b)(6) MOTION TO DISMISS—8**


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30 day of Dec., 2016, a true and correct copy of the above and foregoing document was addressed and delivered as indicated below:

Nathan Olsen	<input type="checkbox"/>	U.S. Mail, postage prepaid
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Michael Kane	<input type="checkbox"/>	U.S. Mail, postage prepaid
Michael Kane & Associates, PLLC	<input type="checkbox"/>	Hand-delivered
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Michael J. Elia	<input type="checkbox"/>	U.S. Mail, postage prepaid
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Boise, Idaho 83707		



MEMORANDUM DECISION AND ORDER ON MOTION TO AMEND AND I.R.C.P. 12(b)(6) MOTION TO DISMISS—9

JAN 18 2017

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE

BETTY J. DRESSEN, CLERK
BY LAU DEPUTY

STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

JACKIE RAYMOND, individually as an heir,
and as Personal Representative of the Estate of
Barry Johnson,

Plaintiff,

vs.

IDAHO STATE POLICE, an Idaho State
agency, PAYETTE COUNTY, a political
subdivision of the State of Idaho, and SCOTT
SLOAN,

Defendants.

Case No. CV-2015-00954-C

**PARTIAL JUDGMENT OF
DISMISSAL OF IDAHO STATE
POLICE**

JUDGMENT IS HEREBY ENTERED AS FOLLOWS:

That Plaintiffs' claims against Defendant Idaho State Police are dismissed with prejudice,
that Plaintiffs take nothing from said Defendant, and that this action is dismissed as to Idaho
State Police only.

DATED this 18th day of January 2017.

Christopher S. Nye
District Judge

PARTIAL JUDGMENT OF DISMISSAL OF IDAHO STATE POLICE - p. 1

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18 day of Jan., 2017, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

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Clerk of the Court

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Idaho State Bar No. 2652

ATTORNEYS FOR DEFENDANT PAYETTE COUNTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

JACKIE RAYMOND, individually as an heir,)
and as Personal Representative of the Estate of)
BARRY JOHNSON,)

Plaintiff,)

v.)

IDAHO STATE POLICE, an Idaho State)
Agency, PAYETTE COUNTY, a political)
subdivision of the State of Idaho, SCOTT)
SLOAN, and JOHN and JANE DOES I-X,)

Defendants.)

Case No. CV-2015-00954-C

STIPULATION TO DISMISS
WITH PREJUDICE

COMES NOW the Plaintiff, JACKIE RAYMOND, by and through her attorney of record, Nathan Olsen, of the firm Petersen, Moss, Hall & Olsen, and the Defendant, PAYETTE COUNTY, by and through its attorneys of record Michael J. Kane of the firm Michael Kane & Associates, PLLC, and do hereby stipulate and agree to the dismissal of this lawsuit with

prejudice. Each side shall bear their own fees and costs associated with the dismissal of this lawsuit.

DATED this 29 day of June, 2018.

PETERSEN, MOSS, HALL & OLSEN

BY: 

Nathan Olsen
Attorneys for Plaintiff

DATED this _____ day of _____, 2018.

MICHAEL KANE & ASSOCIATES, PLLC

BY: _____

MICHAEL J. KANE
Attorneys for Defendant

prejudice. Each side shall bear their own fees and costs associated with the dismissal of this lawsuit.

DATED this _____ day of _____, 2018.

PETERSEN, MOSS, HALL & OLSEN

BY: _____
Nathan Olsen
Attorneys for Plaintiff

DATED this 5th day of July, 2018.

MICHAEL KANE & ASSOCIATES, PLLC

BY: /s/ Michael J. Kane
Attorneys for Payette County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of July, 2018, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Counsel for Plaintiff:

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Counsel for ISP:

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/s/ Michael J. Kane

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FILED
 THIRD JUDICIAL DISTRICT COURT
 PAYETTE COUNTY, IDAHO

JUL 10 2018

BETTY J. DRESSEN, CLERK
 BY  DEPUTY

ATTORNEYS FOR DEFENDANT PAYETTE COUNTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

JACKIE RAYMOND, individually as an heir,)	
and as Personal Representative of the Estate of)	
BARRY JOHNSON,)	
)	Case No. CV-2015-00954-C
Plaintiff,)	
)	FINAL JUDGMENT
v.)	
)	
IDAHO STATE POLICE, an Idaho State)	
Agency, PAYETTE COUNTY, a political)	
subdivision of the State of Idaho, SCOTT)	
SLOAN, and JOHN and JANE DOES I-X,)	
)	
Defendants.)	
)	

JUDGMENT IS ENTERED AS FOLLOWS:

All claims against all parties are hereby dismissed with prejudice. No attorney fees or costs are awarded.

FINAL JUDGMENT – P. 1

DATED:

July 10, 2018

[Signature]
JUDGE CHRISTOPHER NYE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 7/11, 2018, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

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[Signature]
CLERK

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Attorneys for Plaintiff/Appellant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

JACKIE RAYMOND, individually as an
heir, and as Personal Representative of the
Estate of BARRY JOHNSON,

Plaintiff,

v.

IDAHO STATE POLICE, an Idaho State
agency, PAYETTE COUNTY, a political
subdivision of the State of Idaho, SCOTT
SLOAN, and JOHN and JANE DOES I-X,

Defendants.

Case No. CV-2015-954

NOTICE OF APPEAL

Filing fee: \$129.00
Fee Category: L.4.

**TO: THE ABOVE NAMED DEFENDANT, IDAHO STATE POLICE; THE PARTY'S
ATTORNEY, Michael J. Elia, P.O. Box 6756, Boise, Idaho 83707; and THE
CLERK OF THE ABOVE- ENTITLED COURT**

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Jackie Raymond, individually as an heir, and as
Personal Representative of the Estate of Barry Johnson, appeals against the above named

Defendant, Idaho State Police, an Idaho State agency, to the Idaho Supreme Court from the Final Judgment entered in the above entitled action on July 10, 2018, Honorable Christopher S. Nye, presiding.

2. Appellant has a right to appeal to the Idaho Supreme Court, and the judgment described in paragraph 1 above is appealable under and pursuant to Rule 11(a)(1), I.A.R.

3. The preliminary statement of the issues on appeal that the appellant intends to assert in the appeal are as follows:

A. Did the district court err in dismissing the plaintiff's tortious interference claims against the defendant Idaho State Police under Rule 12(b)(6) of the Idaho Rules of Civil Procedure?

4. Has an order been entered sealing all or any portion of the record? No

5. Is a reporter's transcript requested? No

6. The appellant requests the following documents to be included in the clerk's record as it pertains to the appeal and defendant Idaho State Police:

A. Complaint and Demand for Jury Trial, filed February 27, 2015, (initially in Ada County, subsequently transferred to Payette County).

B. Defendant Idaho State Police's (ISP) Answer to Complaint, filed February 4, 2016.

C. Defendant ISP's Joinder in Payette County's Motion for Partial Dismissal Pursuant to IRCP § 12(b)(6), filed November 14, 2016.

D. Plaintiff's Response in Opposition to Rule 12 Motion for Partial Dismissal, filed November 25, 2016.

- E. Memorandum Decision and Order on Motion to Amend and IRCP 12(b)(6) Motion to Dismiss, filed December 30, 2016.
- F. Final Judgment entered July 10, 2018.
- G. Plaintiff's Notice of Appeal filed August 17, 2018.

7. The appellant requests the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court: NOT APPLICABLE

8. I certify:

- A. That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

No additional transcripts have been ordered.

- B. That if transcripts have been requested, the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.
- C. That the estimated fee for preparation of the clerk's record has been paid.
- D. That the appellate filing fee has been paid.
- E. That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 17th day of August, 2018.

PETERSEN MOSS HALL & OLSEN

/s/ Nathan M. Olsen
Nathan M. Olsen
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2018, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Persons Served:

Method of Service:

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and Scott Sloan*

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Canyon County Courthouse
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/s/ Nathan M. Olsen

Nathan M. Olsen

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

Jacqueline Marie Raymond
vs.
Idaho State Police Patrol Region 3,
Payette County, Scott Jacob Sloan

Supreme Court No. 46272-2018
CERTIFICATE OF EXHIBITS

I, Julie Anderson, Deputy Clerk of the District Court of the Third Judicial District of the State of Idaho in and for the County of Payette, do hereby certify that the following documents will be submitted as exhibits to the Record:

Court Exhibits

NONE

Plaintiff's Trial Exhibits

NONE

Defendant's Trial Exhibits

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court on this the 20th day of September, 2018.

BETTY DRESSEN
Clerk of the Court

By:  Seal

Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

Jacqueline Marie Raymond
vs.
Idaho State Police Patrol Region 3,
Payette County, Scott Jacob Sloan

Supreme Court No.
CLERK'S CERTIFICATE OF APPEAL

Appeal from: Third Judicial District, Payette County, Honorable Christopher S. Nye presiding.
Case number from court: CV-2015-954
Order or judgment appealed from: Final Judgment filed July 10, 2018
Attorney for Appellant: Nathan Olsen
Attorney for Respondent: Michael Elia and Michael Kane
Appealed by: Plaintiff
Appealed against: Defendants
Notice of Appeal filed: August 17, 2018
Amended Notice of Appeal filed: n/a
Notice of Cross-Appeal filed: n/a
Amended Notice of Cross-Appeal filed: n/a
Appellate fee paid: yes on August 17, 2018 None:
Respondent or Cross-Respondent's Request for additional record filed: n/a
Respondent or Cross-Respondent's Request for additional transcript filed: n/a
Transcript filed: no
Was District Court Reporter's Transcript requested? no

If requested, name of each reporter of whom a transcript has been requested as named below
at the address below: n/a

BETTY DRESSEN
Clerk of the Court

Dated: 08/20/2018

By: *Julie Anderson*
Deputy Clerk



CERTIFICATE OF SERVICE

I certify that on this date, I served a copy of the attached to:

Michael John Kane
Michael Joseph Elia
Nathan Miles Olsen

mkane@ktlaw.net
mje@melawfirm.net
nolsen@pmholaw.com

By E-mail
 By E-mail
 By E-mail

Idaho Supreme Court

By Odyssey Task Manager

Betty Dressen
Clerk of the Court

Dated: 08/20/2018

By: Julie Anderson
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

Jacqueline Marie Raymond
vs.
Idaho State Police Patrol Region 3,
Payette County, Scott Jacob Sloan

Supreme Court No. 46272-2018
CERTIFICATE OF SERVICE

I, Julie Anderson, Deputy Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Payette, do hereby certify that I have personally served or mailed, by United States mail, postage prepaid, one copy of the Clerk's Record and any Reporter's Transcript to each of the parties or their Attorney of Record as follows:

Michael Joseph Elia
PO Box 6756
Boise ID 83707

[X] By email

Nathan Miles Olsen
485 E Street
Idaho Falls ID 83402

[X] By email

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court on this the ~~1st day of October, 2018.~~

2nd day of November, 2018

BETTY DRESSEN
Clerk of the District Court

By: Julie Anderson
Deputy Clerk

