

MCDONALD AT LAW
BY: Michael P. McDonald, Esquire
I.D. No. 43647
2150 Noll Drive
LANCASTER, PA 17603
(717) 431-3093

ATTORNEY FOR PLAINTIFFS

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

CHARLES J. WARFEL, a minor, by his parents :
and natural guardians, JEFFREY S. WARFEL :
and MARGARET M. WARFEL, RUBY P. :
WARFEL, a minor, by her parents :
and natural guardians, JEFFREY S. WARFEL :
and MARGARET M. WARFEL, MARGARET :
M. WARFEL, in her own right, and JEFFREY :
S. WARFEL, in his own right :
Plaintiffs :

DOCKET NO.: CI-17-06211
LANCASTER COUNTY, PA
CIVIL ACTION LAW

vs. :

LUIS O. COLON :
Defendant :

MOTION FOR EMERGENCY AND/OR INJUNCTIVE RELIEF

Plaintiffs, by and through their attorneys, McDonald At Law, hereby respectfully move this Honorable Court for an Order granting Emergency and/or Injunctive Relief, and in support thereof state the following:

1. This matter arises out of a vicious dog attack upon two minor children, Charles J. Warfel, age 5, and Ruby P. Warfel, age 2, and their mother, Margaret M. Warfel, on June 19, 2017 in the 700 block of Lafayette Street, in Lancaster, Pennsylvania.

2. As a result of the attack, the children, Charles J. Warfel and Ruby P. Warfel, suffered very serious injuries requiring them to be transported by emergency to Penn State Hershey Medical Center for extensive surgery throughout the entirety of each of their faces. Plaintiff, Margaret Warfel suffered extensive injuries in the attack throughout the entirety of her body, in her defense to safe her children.

3. As of the time of this vicious attack, the dog, a Pit Bull Terrier, was owned by Defendant, Luis O. Colon, and kept on property owned by Luis O. Colon at 727 ½ High Street, Lancaster, Pennsylvania.

4. Immediately prior to the attack, the Pit Bull reportedly escaped from a cage/kennel on the Defendant, Luis O. Colon's property, and then subsequently broke through a fence on the Defendant's property to arrive at the scene of the attack.

5. On July 12, 2014, a prior attack on a child was committed by what is believed to be the same Pit Bull owned by the same owner herein, Defendant, Luis O. Colon, as evidenced by the Civil Action Complaint attached hereto as Exhibit "A". The dockets for this action are also attached within Exhibit "A" documenting that this prior matter was settled for \$80,000.00.

6. The Defendant, Luis O. Colon, has been previously served with a spoliation notice from Plaintiffs' attorneys specifically identifying the dog cage/kennel and the fencing on Defendant's property as evidence in this matter and directing the Defendant to maintain the cage/kennel and fencing in the conditions they were as of the time of the incident without adulteration, damage or change.

7. It has now been learned that the Defendant violated Plaintiffs' spoliation notice by altering the fencing on the Defendant's property in the area where the Pit Bull Terrier broke through the fence.

8. A Writ of Summons has been filed on behalf of the Plaintiffs, Charles J. Warfel, a minor, Ruby P. Warfel, a minor, Margaret M. Warfel, and Jeffery S. Warfel (husband and father), and has been served upon the Defendant, Luis O. Colon (Sheriff Service is attached as Exhibit "B"). Pennsylvania Rule of Civil Procedure 4003.8 permits pre-complaint discovery for the purposes of preparing a complaint.

9. It has now also been learned that the Defendant, Luis O. Colon is in the process of moving from his property at 727 ½ High Street to property he also owns at 510 Fairview Street, Pottsville, PA. Moving vans are now reported at 727 ½ High Street, Lancaster, PA.

10. The Defendant, Luis O. Colon, has not responded to the aforesaid service of Writ of Summons and service of Spoliation Notice.

11. It is reasonably believed therefore, that the dog cage/kennel, reportedly used to secure the Pit Bull Terrier at the time of this incident, may, by virtue of the Defendant's wholesale vacation from its location, be threatened with loss, adulteration or damage.

12. The dog cage/kennel is an important piece of evidence in this matter on issues, *inter alia*, of the adequacy of the security of the Pit Bull at the time in question.

13. The fence surrounding the property through which the Pit Bull purportedly broke through, now altered by the Defendant, is important evidence in this matter on issues, *inter alia*, of the adequacy of the security of the Pit Bull at the time in question.

14. Pennsylvania Rule of Civil Procedure 4009.31 permits entry upon the Defendant's property for the purpose of inspecting evidence related to the incident. Pa.R.C.P. 248 permits the modification of time of this Rule.

15. Given the Defendant's vacation from the property in question, it is requested that this Honorable Court permit present access to the Defendant's property to inspect the dog cage/kennel and the fencing, before any loss, adulteration or damage to the same. Unless this relief is granted, Plaintiffs will suffer immediate and irreparable harm if this evidence is compromised or lost.

16. Plaintiffs have no adequate remedy at law.

17. The Defendant will suffer no injury or loss if this Motion is granted, but rather the status quo will be maintained and evidence preserved.

18. The relief requested in this Motion is specifically tailored to abate the pending harm.

19. The Plaintiffs' right to relief is immediate and clear.

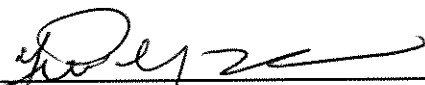
20. Defendant, Luis O. Colon, is being served with this Motion contemporaneously with its filing, at his address of 727 ½ High Street, Lancaster, PA 17603 and the address he is reportedly moving to at 510 Fairview Street, Pottsville, PA 17901.

WHEREFORE, it is respectfully requested that this Honorable Court enter the proposed Order attached hereto.

Respectfully submitted:

MCDONALD AT LAW

Date: July 13, 2017

BY: 

Michael P. McDonald, Esquire
Attorney I.D. #43647
2150 Noll Drive, Suite 300
Lancaster, PA 17603
(717) 431-3093
Attorneys for Plaintiffs

Exhibit “A”

Hagelgans & Veronis
Laura Keepers, Esquire
Identification No.: 61132
223 N. Duke Street
Lancaster, PA 17602
Telephone: (717) 295-7009

Attorney for Plaintiff

**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW**

Marielly Colon, as parent and natural guardian :
of Darrion Wilson :
244 Walnut Street :
Columbia, PA 17512 : Plaintiff :

No.: 15-08283

ENTERED AND FILED
15 SEP 25 PM 11:31
COURT ADMINISTRATOR'S OFFICE
LANCASTER, PA

v. :

Luis Colon :
727 1/2 High Street :
Lancaster, PA 17603 : Defendant :

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action with twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff(s). You may lose money or property or other rights that are important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH THE INFORMATION ABOUT HIRING A LAWYER.


IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Court Administrator's Office
LANCASTER COUNTY COURTHOUSE
50 North Duke Street
Lancaster, Pennsylvania 17602
Telephone No.: (717) 299-8041

9/25/15
(1) to Attorney
(1) to Sheriff
\$164.25 FID
check # 39544
receipt # 31936

HAGELGANS & VERONIS

BY:



Laura Keepers
Attorney for Plaintiff

DATED: 9/25/15

Hagelgans & Veronis
Laura Keepers, Esquire
Identification No.: 61132
223 N. Duke Street
Lancaster, PA 17602
Telephone: (717) 295-7009

Attorney for Plaintiff

**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW**

Marielly Colon, as parent and natural guardian :
of Darrion Wilson :
244 Walnut Street :
Columbia, PA 17512 : Plaintiff :

15-08283
No.:

ENTERED AND FILED
15 SEP 25 PM 11:31
PROthonotary's OFFICE
LANCASTER, PA

v.

Luis Colon :
727½ High Street :
Lancaster, PA 17603 : Defendant :

COMPLAINT

1. Marielly Colon is an adult individual residing at 244 Walnut Street, Columbia, Pennsylvania 17512. Ms. Colon is the parent and natural guardian of Darrion Wilson, a minor, age 4, with a date of birth of March 14, 2011.

2. Luis Colon is an adult individual residing at 727½ High Street, Lancaster, Pennsylvania, 17603. At all times relevant to this cause of action, Luis Colon owned and possessed a pit-bull which resided at 727 ½ High Street, Lancaster, Pennsylvania, 17603.

3. On July 12, 2014, Marielly Colon with Darrion Wilson and his six year old sister entered the rear of 727½ High Street and walked through the yard containing the pit-bull to attend a family party and spend the night at 727½ High Street.

4. On July 13, 2014, Marielly Colon left the property owned by Luis Colon with Darrion Wilson. As Ms. Colon and Darrion walked through the backyard of the property at 727½ High Street, the pit-bull approached Darrion and attacked him biting him on numerous areas of his body. Ms. Colon grabbed Darrion and ran back inside the home with the pit-bull still biting Darrion while she was carrying him.

5. After the July 13, 2014 pit-bull attack on Darrion, friends and family informed Ms. Colon that the pit-bull had attempted to bite people in the past and was becoming more vicious and that family members had been advising Luis Colon to get the dog off the property for some time prior to this attack.

COUNT I

15-08283

Marielly Colon, as parent and natural guardian of Darrion Wilson v. Luis Colon

NEGLIGENCE

6. The allegations above are incorporated by reference.
7. Luis Colon was negligent, careless, and reckless in his ownership and control of the pit-bull in the following particulars.
 - a. Keeping a dangerous and vicious dog on his property;
 - b. Allowing a dangerous and vicious pit-bull access to children;
 - c. Failing to advise friends and relatives of the pit-bull's vicious propensity;
 - d. Failing to advise Marielly Colon not to go into the yard containing the dog;
 - e. Failing to control or confine a dangerous and aggressive dog;
 - f. Failing to warn Marielly Colon that the pit-bull was dangerous and aggressive;
8. As a direct and proximate result of the negligence of Luis Colon, Darrion Wilson sustained numerous dog bites over his body that have left permanent scars.

9. As a direct and proximate result of the negligent, careless, and reckless conduct of Luis Colon, Darrion Wilson has suffered and will continue to suffer pain and suffering, anxiety and emotional distress, scarring and disfigurement, embarrassment and humiliation, inconvenience, and loss of enjoyment of life for all of which damages are claimed.

15-08283

10. As a direct and proximate result of the negligent, careless and reckless conduct of Luis Colon, Darrion Wilson has incurred medical expenses and may in the future incur medical expenses for all of which damages are claimed.


11. As Defendant was aware that his dog was vicious and dangerous and permitted the dog to have contact with small children, his conduct was reckless, outrageous, and in conscious disregard of a known risk of serious bodily harm subjecting him to punitive damages.

WHEREFORE, Marielly Colon demands judgment against Luis Colon in an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00), together with interest and costs as allowed by law, which exceeds the jurisdictional requirements for arbitration.

Respectfully submitted,

HAGELGANS & VERONIS

By:



Laura Keepers, Esquire
Attorney for Plaintiffs
Attorney I.D. 61132
223 North Duke Street
Lancaster, PA 17602
Telephone: (717) 295-7009
Facsimile: (717) 396-9746


Date: 9/25/15

15-08283

VERIFICATION

I, Marielly Colon, as parent and natural guardian of Darrion Wilson, a minor,, verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

DATED: 9/24/15



Marielly Colon, as parent and natural guardian of Darrion Wilson, a minor

PROTHONOTARY OF LANCASTER COUNTY

Katherine Wood-Jacobs
Prothonotary

George Alspach
Solicitor



MARIELLY COLON
vs.
LUIS COLON

Case Number
CI-15-08283

PROTHONOTARY DOCKET ENTRIES

- 09/25/2015 COMPLAINT FILED BY LOURA SELFE KEEPERS ESQ
COMPLAINT (1) WITH RECEIPT TO ATTORNEY. COMPLAINT (1) SHERIFF FORM (1) WITH A CHECK FOR \$150.00 SENT TO LANCASTER CO SHERIFF ON 09/25/2015
- 09/25/2015 CAPTION ENTRY IS: MARIELLY COLON, PARENT/GUARDIAN OF DARRION WILSON VS LUIS COLON
- 10/08/2015 10/07/2015 5:55PM SERVED THE COMPLAINT & NOTICE BY PERSONAL SERVICE UPON LUIS COLON AT 727-1/2 HIGH STREET, LANCASTER, PA 17603. SO ANSWERS: DEPUTY ANDREW BURKHOLDER, DEPUTY SHERIFF OF LANCASTER COUNTY, PA. SHERIFF COSTS: \$49.38 SO ANSWERS, MARK S. REESE
- 10/22/2015 PRAECIPE-ENTER APPEARANCE, ON BEHALF OF DEFENDANT, LUIS COLON, FILED BY LISA M. DIBERNARDO, ESQ, CERTIFICATE OF SERVICE OF THE SAME.
- 11/02/2015 DEFENDANT, LUIS COLON'S, ANSWER WITH NEW MATTER TO PLAINTIFF'S COMPLAINT, FILED BY LISA M. DIBERNARDO, ESQ, CERTIFICATE OF SERVICE OF THE SAME.
- 11/04/2015 PLAINTIFF'S REPLY TO DEFENDANT'S NEW MATTER, FILED BY LOURA SELFE KEEPERS, ESQ, CERTIFICATE OF SERVICE OF THE SAME.
- 11/04/2015 STIPULATION, FILED BY LOURA KEEPERS, ESQ, CERTIFICATE OF SERVICE OF THE SAME.
- 10/11/2016 PETITION FOR SETTLEMENT OF MINOR'S CLAIM PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 2039. FILED BY LOURA SELFE KEEPERS ESQ. SENT TO JUDGE HOBERG 10/12/16

10/14/2016

ORDER AND NOW, THIS 14TH DAY OF OCTOBER, 2016, UPON CONSIDERATION OF PLAINTIFF'S PETITION FOR SETTLEMENT OF A MINOR'S CLAIM, IT IS HEREBY ORDERED AND DECREED THAT THIS HONORABLE COURT APPROVES THIS SETTLEMENT FOR DARRION WILSON, IN THE GROSS AMOUNT OF \$80,000.00. IT IS FURTHER ORDERED AND DECREED THAT THE MONEY WILL BE PAID AS FOLLOWS:

(A) \$50,000.00 WILL BE UTILIZED TO FUND A STRUCTURED SETTLEMENT ANNUITY UNDERWRITTEN BY USAA LIFE INSURANCE COMPANY (RATED A++ SUPERIOR BY A.M.BEST COMPANY) FOR THE BENEFIT OF THE MINOR, DARRION WILSON. SAID ANNUITY WILL PROVIDE THE FOLLOWING PERIODIC PAYMENTS:

\$10,000.00 GUARANTEED LUMP SUM PAYABLE MARCH 14, 2029

\$10,000.00 GUARANTEED LUMP SUM PAYABLE SEPTEMBER 14, 2029

\$25,000.00 GUARANTEED LUMP SUM PAYABLE MARCH 14, 2032

\$31,950.00 GUARANTEED LUMP SUM PAYABLE MARCH 14, 2036

ERIE INSURANCE EXCHANGE SHALL ISSUE PAYMENT IN THE AMOUNT OF \$50,000.00 MADE PAYABLE TO USAA ANNUITY SERVICES CORPORATION. USAA ANNUITY SERVICES CORPORATION SHALL FUND THE "PERIODIC PAYMENTS" BY PURCHASING A "QUALIFIED FUNDING ASSET" WITHIN THE MEANING OF SECTION 130(D) OF THE INTERNAL REVENUE CODE OF 1986 IN THE FORM OF AN ANNUITY CONTRACT ISSUED BY USAA LIFE INSURANCE COMPANY. THE PARTIES TO THIS SETTLEMENT SHALL COOPERATE FULLY AND EXECUTE ANY AND ALL SUPPLEMENTARY DOCUMENTS, INCLUDING THE QUALIFIED ASSIGNMENT DOCUMENT, AND TO TAKE ALL ADDITIONAL ACTIONS WHICH MAY BE NECESSARY OR APPROPRIATE TO GIVE FULL FORCE AND EFFECT TO THE BASIC TERMS AND INTENT OF THIS SETTLEMENT.

(B) PAYMENT IN THE AMOUNT OF \$20,000.00 MADE PAYABLE TO THE LAW FIRM OF HAGELGANS & VERONIS FOR ATTORNEY'S FEES;

(C) \$629.61 TO BE HELD IN ESCROW TO REIMBURSE DHS FOR PAYMENT OF THE MINOR'S MEDICAL BILLS RELATED TO THIS INCIDENT. AFTER REIMBURSEMENT OF INCIDENT RELATED MEDICAL EXPENSES, ANY REMAINING ESCROW FUNDS WILL BE DISTRIBUTED TO MARIELLY COLON TO BE USED FOR THE CARE AND MAINTENANCE OF DARRION WILSON PURSUANT TO PA.R.C.P. 2039(B)(1).

(D) PAYMENT OF \$669.49 MADE PAYABLE TO THE LAW FIRM OF HAGELGANS & VERONIS FOR REIMBURSEMENT OF LITIGATION FEES.

(E) \$8,700.90 TO BE PLACED IN A SEQUESTERED INTEREST-BEARING ACCOUNT ON BEHALF OF THE MINOR. PROOF OF DEPOSIT IS TO BE FILED WITH THE COURT WITHIN 30 DAYS FROM THE DATE OF THE ORDER. THE ACCOUNT IS TO BE ESTABLISHED AND MAINTAINED PURSUANT TO THE PROVISIONS OF SECTION 5103 OF THE PA. PROBATE, ESTATE AND FIDUCIARY CODE (23 PA.C.S. SECTION 5103).

BY THE COURT: JAY J. HOBERG, JUDGE

CC: LORERA SELFE KEEPERS, ESQ. (1)

236 NOTICE SENT 10/17/2016

12/07/2016

PRAECIPE TO MARK CASE SETTLED - PLEASE MARK THE ABOVE MATTER SETTLED. CERTIFICATE OF SERVICE. FILED BY LOURA KEEPERS, ESQ.

DISCONTINUANCE CERTIFICATE - AND NOW, THIS 7TH DAY OF DECEMBER, 2016, THIS SUIT HAS BEEN MARKED AS ABOVE DIRECTED. KATHERINE WOOD-JACOBS, PROTHONOTARY.

01/03/2017

PRAECIPE

BY THIS PRAECIPE, I AM CERTIFYING THAT THE AMOUNT OF \$8,700.90 WAS DEPOSITED IN A BLOCKED ACCOUNT IN A BANK INSURED BY THE F.D.I.C., FROM WHICH NO WITHDRAWAL CAN BE MADE UNTIL THE MINOR, DARRION WILSON, ATTAINS THE AGE OF MAJORITY, EXCEPT AS AUTHORIZED BY A PRIOR ORDER OF THE COURT. A COPY OF THE DOCUMENTS FOR THAT ACCOUNT ARE ATTACHED HERETO AS EXHIBIT "A".

FILED BY LOURA SELFE KEEPERS, ESQ

June 23, 2017

Exhibit “B”

SHERIFF'S OFFICE OF LANCASTER COUNTY

Mark S. Reese
Sheriff

Brad Harris
Solicitor

Charles Hamilton
Chief Deputy

James Montanez
Lieutenant



CHARLES J. WARFEL, ET AL
vs.
LUIS O. COLON

Case Number
CI-17-06211

SHERIFF'S RETURN OF SERVICE

07/10/2017 06:50 PM - SERVED THE WRIT OF SUMMONS (WOSM) BY PERSONAL SERVICE UPON LUIS O. COLON AT 727-1/2 HIGH STREET, LANCASTER, PA 17603. SO ANSWERS: DEPUTY RANDY RODRIGUEZ, DEPUTY SHERIFF OF LANCASTER COUNTY, PA.

SUBJECT SAID HE IS MOVING. HE PROVIDED ME WITH UPDATED INFO: 510 FAIRVIEW ST POTTSDALE PA 17901 PHONE NUMBER (717) 330-8072

Randy Rodriguez
RANDY RODRIGUEZ, DEPUTY

SHERIFF COST: \$43.18

SO ANSWERS,

July 11, 2017

Mark S. Reese
MARK S. REESE, SHERIFF

DATE	CATEGORY	MEMO	CHK #	DEBIT	CREDIT
07/06/2017	Advance Fee	Advanca Fee	10034	\$0.00	\$150.00
07/06/2017	Receiving, Docketing & Return			\$9.00	\$0.00
07/06/2017	Service			\$9.00	\$0.00
07/06/2017	Sheriff Training Act			\$10.00	\$0.00
07/06/2017	Affidavit			\$2.50	\$0.00
07/06/2017	Deputy Time			\$10.00	\$0.00
07/10/2017	Service Mileage			\$2.68	\$0.00
07/11/2017	Refund			\$106.82	\$0.00
				\$180.00	\$150.00
BALANCE:				\$0.00	

CERTIFICATE OF SERVICE

I, Michael P. McDonald, Esquire, do hereby certify that a true and correct copy of the foregoing Motion for Emergency and/or Injunctive Relief, has been served this 13th day of July, 2017, via Hand Delivery upon the following:

Luis O. Colon
727 ½ High Street
Lancaster, PA 17603

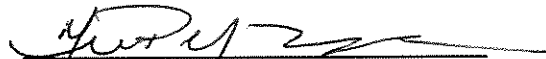
and

Luis O. Colon
510 Fairview Street
Pottsville, PA 17901

MCDONALD AT LAW

DATE: July 13, 2017

BY:



Michael P. McDonald, Esquire
Attorney I.D. #43647
2150 Noll Drive
Lancaster, PA 17603
(717) 431-3093
Attorney for Plaintiffs