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RUBEN BARRIENTOS, JR.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

RUBEN BARRIENTOS, JR.,

Plaintiff,

v.

DALE ALLAN WALKER, and DOES 1 to 20,
inclusive,

Defendants.

Case No. 1:23-cv-01432-SAB

**PLAINTIFF RUBEN BARRIENTOS, JR.'S
OPPOSITION TO DEFENDANT DALE
ALLEN WALKER'S MOTION TO
CERTIFY EMPLOYMENT UNDER THE
FTCA; DECLARATION OF MEGAN E.
KLEIN IN SUPPORT THEREOF**

Date: December 13, 2023

Time: 10:00 a.m.

Judge: Hon. Jennifer L. Thurston

Magistrate Judge: Hon. Stanley A. Boone

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiff Ruben Barrientos, Jr. hereby respectfully opposes Defendant Dale Allen Walker's Motion to Certify Employment under the Federal Tort Claims Act ("Motion") which is set for hearing on December 13, 2023 at 10:00 a.m. before the Honorable Stanley A. Boone.

Defendant Dale Allen Walker alleges that he was a Federal employee at the time of the subject crash that gave rise to Plaintiff Ruben Barrientos, Jr.'s lawsuit because he allegedly was in the course and scope of his employment with the Tule River Tribal Council in the execution of a Federal contract that Defendant Walker claims was a self-determination contract under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. section 5301, et al.

1 Plaintiff's opposition is based upon the Memorandum of Points and Authorities; Declaration
2 of Megan E. Klein, Esq. and exhibits attached thereto; all pleadings, records, and papers on file in
3 this action; and upon such evidence that may be introduced at the hearing on this matter.
4

5 November 15, 2023

BD&J, PC

6
7 By: /s/ Megan Klein
8 MEGAN KLEIN
9 Attorney for Plaintiff
10 **RUBEN BARRIENTOS, JR.**
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Dale Allen Walker (hereinafter “Defendant Walker”) moves to certify employment under the FTCA to substitute the United States as the part defendant in this action and dismiss Defendant Walker.

Defendant Walker already attempted to substitute the United States as the party Defendant under the FTCA and was denied. (*See* Motion pp. 1: 22-23). Defendant Walker thereafter attempted to appeal this determination without success. (*See* Declaration of Charmaine A. McDarment, Exhibits H and I). Defendant Walker now attempts for a third time to substitute the United States as a Defendant.

Defendant Walker’s attempts to substitute the United States as a defendant has rightfully been denied as the during the his employment with the Tule River Tribal Council, Defendant Walker was employed to execute services that were not pursuant to a self-determination contract. In fact, the contract under which Defendant Walker was employed specified that the United States was not responsible for any torts occurring during the execution of the contract.

Moreover, there is a question of whether Defendant Walker was actually in course and scope at the time of the crash. Besides self serving testimony, Defendant Walker has not provided any evidence that he was performing an errand at the time of the crash.

II. RELEVANT FACTS

On September 2, 2020, at approximately 4:40 p.m., Defendant Walker drove southbound on Road 264, in Tulare County, California. At the intersection with Avenue 96, there are stop signs controlling southbound and northbound traffic on Road 264, but no traffic controls for Avenue 96. Defendant Walker was operating a 2017 Chevrolet Silverado owned by the Tule River Tribal Council. Defendant Walker failed to observe Plaintiff’s 1997 Honda Civic traveling westbound on Avenue 96 and Plaintiff struck the driver’s side of Defendant Walker’s truck. The responding officer placed Defendant Walker at fault for the crash. As a result of the impact, Plaintiff suffered severe injuries.

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1 **III. ARGUMENT**

2 **A. The Memorandum of Agreement Dictates the Tule River Tribal Council has**
 3 **Tort Liability.**

4 Defendant Walker claims that the Memorandum of Agreement (“MOA”) is a self
 5 determination contract under the Indian Self-Determination and Education Assistance Act 25 U.S.C.
 6 section 5301, et al. that rendering Defendant Walker a Federal employee. However, the provisions
 7 contained in the MOA apportion responsibility for all tort claims to the Tule River Tribal Council.
 8 (*See* Declaration of Gary Whitten, Exhibit J, pp 6, subsection 10). The contract clearly states that
 9 “(t)he Tribe is responsible for all tort claims, contractual disputes, protests and claims resulting from
 10 its activities on this project.” The MOA on its face clearly states that the Tule River Tribal Council,
 11 whose insurer is providing a representation for Defendant Walker in this action, is responsible for all
 12 tort claims arising from this action. Accordingly, if Defendant Walker was in course and scope at
 13 the time of the subject crash, the Tule River Tribal Council is responsible.

14 **B. Defendant Walker Fails to Provide Independent Evidence that he was in Course**
 15 **and Scope at the time of the Subject Crash.**

16 Defendant Walker claims that at the time of the subject collision he was on his way to pick
 17 up supplies for the project and therefore was in the course and scope of his employment with the
 18 Tule River Tribal Council and therefore the Federal government. Defendant Walker has failed to
 19 provide any verifiable evidence that he was running an errand in the course and scope of his
 20 employment.

21 Defendant Walker has provided a generic declaration of Gary Whitten, the Public Works
 22 Director, to support this contention. Mr. Whitten’s declaration is void of verifiable details that could
 23 be corroborated, like the location of where supplies were supposed to be picked up from, what
 24 supplies were to be picked up, or who was providing these supplies. (*See* Declaration of Gary
 25 Whitten, Exhibit J, pp 2, subsection 8).

26 On August 8, 2023, Defendant Walker had his deposition taken in this matter. Plaintiff
 27 inquired as to where he intended to purchase parts after the collision, and Defendant Walker was
 28 unable to provide the name of the parts house he intended to go to the day of the crash, or any of the

parts house he would allegedly pick up supplies from. (*See* Declaration of Megan E. Klein, ¶ 7, Exhibit 1, Deposition of Dale Allen Walker, pp 22:2 to 24:5). Defendant Walker did not know the parts he intended to purchase the day of the crash. *Id.* Defendant Walker did not know the location of the parts house besides the city of Bakersfield. *Id.* Defendant Walk also testified that typically suppliers would bring parts to the project. *Id.* Defendant Walker, like Mr. Whitten, failed to provide any verifiable information about his intended activities after the crash to demonstrate he was actually in course and scope when the crash occurred.

Lastly, the circumstances of the crash do not support Defendant Walker’s characterization of that he was picking up supplies on his way home from work. Defendant Walker was over 20 miles from the reservation, driving southbound towards his residence at 4:40 p.m. in the afternoon. (*See* Klein Decl. ¶ 7, **Exhibit 2.**) Between the location of the crash and his home, there are no commercial businesses that would offer for sale supplies to be used in the completion of a sewer project. The subject crash is the result of Defendant Walker’s negligence while operating a truck provided by the Tule River Tribal Council while driving home after work.

C. Plaintiff Ruben Barrientos Jr. Join in the Opposition of the United States.

Plaintiff Ruben Barrientos, Jr. joins in the arguments of the United States in opposition of this motion.

V. CONCLUSION

Plaintiff respectfully request that Defendant’s Motion to Certify Employment under the FTCA be denied.

November 15, 2023

Respectfully Submitted,

BD&J, PC

By: /s/ Megan Klein
MEGAN KLEIN
Attorney for Plaintiff
RUBEN BARRIENTOS, JR.

DECLARATION OF MEGAN E. KLEIN

I, Megan E. Klein, declare as follows:

1. I am an attorney licensed to practice law in the State of California and I am the attorney of record for Plaintiff. I declare that the following is based upon my own personal knowledge and that if called to testify that I can competently do so.

2. On August 8, 2023, I took the deposition of Dale Allen Walker. Attached as Exhibit 1 is a true and correct copy of the portions of the transcripts wherein I inquired as to where Defendant Walker intended to pick up supplies before he was involved in the September 2, 2020 crash with Plaintiff.

3. Attached as Exhibit 2 is a true and correct copy of the Traffic Collision Report, No. 9481-2020-00533, dated September 2, 2022, by Officer J. Johnson, ID No. 018029 of the California Highway Patrol.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 15th day of November, 2023, at Beverly Hills, California.

/s/ Megan Klein
MEGAN KLEIN

EXHIBIT 1

DALE ALLAN WALKER
AUGUST 08, 2023

JOB NO. 662894

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF TULARE

RUBEN BARRIENTOS, JR.,)

Plaintiff(s),)

vs.)

CASE NO. VCU291172

TULE RIVER TRIBAL COUNCIL,)

DALE ALLAN WALKER, AND DOES)

ONE through TWENTY, inclusive,)

Defendant(s).)

VIDEOTAPED DEPOSITION OF : DALE ALLAN WALKER

Taken by : MEGAN E. KLEIN, ESQUIRE

Commencing : 10:01 a.m.

Location : Via Zoom

Day, Date : Tuesday, August 8, 2023

Reported by : Shelly Juarez, CSR No. 10307

Pursuant to : Notice

Original to : FOLLOW CODE

Pages 1 - 65

JOB NO. 662894

DALE ALLAN WALKER
AUGUST 08, 2023

JOB NO. 662894

APPEARANCE OF COUNSEL

FOR THE PLAINTIFFS:

BD&J, PC

9701 Wilshire Boulevard

12th Floor

Beverly Hills, California 90212

310.887.1818

BY: MEGAN E. KLEIN, ESQUIRE

mek@bhattorneys.com

FOR THE DEFENDANTS:

PETTIT KOHN INGRASSIA LUTZ & DOLIN

11622 El Camino Real

Suite 300

San Diego, California 92130

858.755.8500

BY: MATTHEW C. SMITH, ESQUIRE

msmith@PettitKohn.com

VIDEOGRAPHER:

DIOGO ROSENBLATT-SILVA

10:31 1 Q Yes.

10:31 2 A Yeah, I was en route to a parts house to pick
10:31 3 up some parts for my boss Gary Whitten.

10:31 4 Q And do you recall the name of this parts
10:31 5 house?

10:31 6 A I do not.

10:31 7 Q Do you recall where this parts house is
10:31 8 located?

10:31 9 A I don't know which one it was, I don't
10:31 10 recall.

10:31 11 Q You've been to this particular parts house
10:31 12 prior to September 2nd, 2020?

10:31 13 A Several -- several parts house including
10:31 14 whichever one I was going to.

10:31 15 Q How often would you be -- would you be picking
10:32 16 up parts? And you can give me an estimate, you know,
10:32 17 once a week, twice a week, once a month.

10:32 18 MR. SMITH: Objection. Vague. Go ahead, Allan.
10:32 19 If you have an estimate, go ahead.

10:32 20 THE WITNESS: I don't have an estimate.

10:32 21 Q BY MS. KLEIN: Do you recall the names of any
10:32 22 of the parts houses that you would go pick up parts
10:32 23 from?

10:32 24 A No.

10:32 25 Q Do you know what type of parts you were

10:32 1 supposed to pick up that day?

10:32 2 A I don't recall.

10:32 3 Q Do you recall the locations of any of the

10:32 4 parts houses that you would pick up parts from?

10:32 5 A I'm sorry, say again.

10:33 6 Q Do you recall the location of any of the parts

10:33 7 houses that you would pick up parts from?

10:33 8 A They were in Bakersfield. I don't have an

10:33 9 address.

10:33 10 Q Do you know if you would ever change your

10:33 11 route on your drive home to stop by one of these parts

10:33 12 houses?

10:33 13 A No.

10:33 14 Q Did you ever go to these parts houses on a

10:33 15 Friday or a Saturday?

10:33 16 A No.

10:33 17 Q Do they specialize parts houses? And by that

10:33 18 I mean like a specialty realtor, not a Home Depot or an

10:33 19 Ace Hardware?

10:33 20 A Correct.

10:34 21 Q Were you the employee solely responsible for

10:34 22 bringing parts to the project?

10:34 23 A No.

10:34 24 Q How would the project typically obtain parts?

10:34 25 MR. SMITH: Objection. Vague, overbroad, lacks

10:34 1 foundation.

10:34 2 Q BY MS. KLEIN: You can answer.

10:34 3 A Suppliers would bring parts, material.

10:34 4 Q They would drop it off at the reservation?

10:34 5 A Correct.

10:35 6 Q Do you recall the site of the -- of where the
10:35 7 crash occurred?

10:35 8 A One more time, please.

10:35 9 Q Do you recall the -- I'm going to rephrase it.
10:35 10 Do you recall the intersection where the crash
10:35 11 occurred?

10:35 12 A Yes.

10:35 13 Q What was the intersection?

10:35 14 A It was a two-way stop.

10:35 15 Q Do you recall the -- what roads intersected
10:35 16 there?

10:35 17 A I do not.

10:35 18 Q Was it your typical route home that would you
10:35 19 go through this intersection?

10:35 20 A Yes.

10:35 21 Q Do you recall at the time of the collision how
10:35 22 long you had been employed by the Tule River Tribal
10:35 23 Council?

10:35 24 A No.

10:36 25 Q Do you have an estimate on how many times you

EXHIBIT 2

STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
TRAFFIC COLLISION REPORT
CHP 555 PAGE 1 (REV. 04-11) OPI 080

PAGE 1 OF 10


SPECIAL CONDITIONS		NUMBER INJURED 2	HT & RUN PELONY <input type="checkbox"/>	CITY UNINCORPORATED	JUDICIAL DISTRICT PORTERVILLE SUPERIOR	LOCAL REPORT NUMBER 9481-2020-00533	
		NUMBER KILLED 0	HT & RUN SUSPICIOUS <input type="checkbox"/>	COUNTY TULARE	REPORTING DISTRICT 050	DAY OF WEEK WEDNESDAY	TOW AWAY <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
LOCATION	COLLISION OCCURRED ON: ROAD 264				MO 09/02/2020	DAY 1640	TIME (2400)
	MILEPOST INFORMATION:				GPS COORDINATES LATITUDE 35.964205°		LONGITUDE - 118.982424°
	AT INTERSECTION WITH: <input checked="" type="checkbox"/> OR: AVENUE 96				STATE HWY REL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
PARTY 1	DRIVER'S LICENSE NUMBER N2039952	VALID	STATE CA	CLASS C	AIR BAG L	SAFETY EQUIP. G	VEH. YEAR 2017
DRIVER	NAME (FIRST, MIDDLE, LAST) DALE ALLAN WALKER				MAKE / MODEL / COLOR CHEV SILVERADO WHT		LICENSE NUMBER 04031G2
PEDESTRIAN	STREET ADDRESS 356 FAMOSO HILLS DRIVE				OWNER'S NAME <input type="checkbox"/> SAME AS DRIVER		STATE CA
PARKED VEHICLE	CITY / STATE / ZIP BAKERSFIELD CA 93308				OWNER'S ADDRESS <input type="checkbox"/> SAME AS DRIVER		PO BOX 589 PORTERVILLE CA 93258
BICYCLIST	SEX M	HAIR BLN	EYES BLU	HEIGHT 5-10	WEIGHT 200	BIRTHDATE MO 02/06/1956 DAY YEAR W	DISPOSITION OF VEHICLE ON ORDERS OF: <input type="checkbox"/> OFFICER <input checked="" type="checkbox"/> DRIVER <input type="checkbox"/> OTHER
OTHER	HOME PHONE (661)343-1924				BUSINESS PHONE UNKNOWN		DRIVEN AWAY PRIOR MECH. DEFECTS <input checked="" type="checkbox"/> NONE APP. <input type="checkbox"/> REFER TO NARRATIVE
INSURANCE CARRIER HUDSON INSURANCE CO				POLICY NUMBER NACL01065-03			
DIR OF TRAVEL ON STREET OR HIGHWAY S ROAD 264				SPEED LIMIT 55			
PARTY 2	DRIVER'S LICENSE NUMBER N7726357	VALID	STATE CA	CLASS C	AIR BAG L	SAFETY EQUIP. G	VEH. YEAR 1997
DRIVER	NAME (FIRST, MIDDLE, LAST) RUBEN BARRIENTOS, JR				MAKE / MODEL / COLOR HOND CIVIC SIL		LICENSE NUMBER 6VQY845
PEDESTRIAN	STREET ADDRESS 22 CONIFER COURT				OWNER'S NAME <input checked="" type="checkbox"/> SAME AS DRIVER		STATE CA
PARKED VEHICLE	CITY / STATE / ZIP BODFISH CA 93205				OWNER'S ADDRESS <input type="checkbox"/> SAME AS DRIVER		PO BOX 485 BODFISH CA 93205
BICYCLIST	SEX M	HAIR WHI	EYES BRN	HEIGHT 5-07	WEIGHT 181	BIRTHDATE MO 07/24/1958 DAY YEAR H	DISPOSITION OF VEHICLE ON ORDERS OF: <input type="checkbox"/> OFFICER <input checked="" type="checkbox"/> DRIVER <input type="checkbox"/> OTHER
OTHER	HOME PHONE (559)361-4310				BUSINESS PHONE UNKNOWN		GOLDEN STATE TOWING - (559)781-3604
INSURANCE CARRIER ALLSTATE				POLICY NUMBER 934 818 660			
DIR OF TRAVEL ON STREET OR HIGHWAY W AVENUE 96				SPEED LIMIT 55			
PARTY 3	DRIVER'S LICENSE NUMBER	STATE	CLASS	AIR BAG	SAFETY EQUIP.	VEH. YEAR	MAKE / MODEL / COLOR
DRIVER	NAME (FIRST, MIDDLE, LAST)				OWNER'S NAME		LICENSE NUMBER
PEDESTRIAN	STREET ADDRESS				OWNER'S ADDRESS		STATE
PARKED VEHICLE	CITY / STATE / ZIP				DISPOSITION OF VEHICLE ON ORDERS OF:		OFFICER <input type="checkbox"/> DRIVER <input type="checkbox"/> OTHER <input type="checkbox"/>
BICYCLIST	SEX	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE	PRIOR MECHANICAL DEFECTS
OTHER	HOME PHONE				BUSINESS PHONE		REFER TO NARRATIVE
INSURANCE CARRIER				POLICY NUMBER			
DIR OF TRAVEL ON STREET OR HIGHWAY				SPEED LIMIT			
PREPARER'S NAME J JOHNSON 018029				DISPATCH NOTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A		REVIEWER'S NAME J HOWELL 018830	
						DATE REVIEWED 09/09/2020	

AN INTERNATIONALLY ACCREDITED AGENCY

STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
TRAFFIC COLLISION CODING
CHP 556 CARS PAGE2 (REV. 04-11) OPI 060

PAGE 2 OF 10


DATE OF COLLISION (MO. DAY YEAR) 09/02/2020		TIME(2400) 1640	NCIC # 9481	OFFICER I.D. 018029	NUMBER 9481-2020-00533
OWNER'S NAME		OWNER ADDRESS			NOTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO
PROPERTY DAMAGE		DESCRIPTION OF DAMAGE			

SEATING POSITION  <p>1 - DRIVER 2 TO 6 - PASSENGERS 7 - STATION WAGON REAR 8 - REAR OCC TRK. OR VAN 9 - POSITION UNKNOWN 0 - OTHER</p>	SAFETY EQUIPMENT OCCUPANTS A - NONE IN VEHICLE B - UNKNOWN C - LAP BELT USED D - LAP BELT NOT USED E - SHOULDER HARNESS USED F - SHOULDER HARNESS NOT USED G - LAP/SHOULDER HARNESS USED H - LAP/SHOULDER HARNESS NOT USED J - PASSIVE RESTRAINT USED K - PASSIVE RESTRAINT NOT USED P - NOT REQUIRED CHILD RESTRAINT Q - IN VEHICLE USED R - IN VEHICLE NOT USED S - IN VEHICLE USE UNKNOWN T - IN VEHICLE IMPROPER USE U - NONE IN VEHICLE M / C BICYCLE HELMET DRIVER PASSENGER V - NO X - NO W - YES Y - YES	AIR BAG B - UNKNOWN L - AIR BAG DEPLOYED M - AIR BAG NOT DEPLOYED N - OTHER P - NOT REQUIRED EJECTED FROM VEHICLE 0 - NOT EJECTED 1 - FULLY EJECTED 2 - PARTIALLY EJECTED 3 - UNKNOWN	INATTENTION CODES A - CELL PHONE HANDHELD B - CELL PHONE HANDSFREE C - ELECTRONIC EQUIPMENT D - RADIO / CD E - SMOKING F - EATING G - CHILDREN H - ANIMALS I - PERSONAL HYGIENE J - READING K - OTHER
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ITEMS MARKED BELOW FOLLOWED BY AN ASTERISK (*) SHOULD BE EXPLAINED IN THE NARRATIVE.

PRIMARY COLLISION FACTOR LIST NUMBER (#) OF PARTY AT FAULT	TRAFFIC CONTROL DEVICES	1	2	3	SPECIAL INFORMATION	1	2	3	MOVEMENT PRECEDING COLLISION
1 VC SECTION VIOLATED CITED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO A 21802(A) B OTHER IMPROPER DRIVING* C OTHER THAN DRIVER* D UNKNOWN*	X A CONTROLS FUNCTIONING B CONTROLS NOT FUNCTIONING* C CONTROLS OBSCURED D NO CONTROLS PRESENT / FACTOR*				A HAZARDOUS MATERIAL B CELL PHONE HANDHELD IN USE C CELL PHONE HANDSFREE IN USE D CELL PHONE NOT IN USE E SCHOOL BUS RELATED F 76 FT MOTORTRUCK COMBO G 32 FT TRAILER COMBO H FATAL I PRELIMINARY J PRIVATE PROPERTY K COURTESY L M N O				A STOPPED B PROCEEDING STRAIGHT C RAN OFF ROAD D MAKING RIGHT TURN E MAKING LEFT TURN F MAKING U TURN G BACKING H SLOWING / STOPPING I PASSING OTHER VEHICLE J CHANGING LANES K PARKING MANEUVER L ENTERING TRAFFIC M OTHER UNSAFE TURNING N XING INTO OPPOSING LANE O PARKED P MERGING Q TRAVELING WRONG WAY R OTHER*
WEATHER (MARK 1 TO 2 ITEMS) X A CLEAR B CLOUDY C RAINING D SNOWING E FOG / VISIBILITY FT. F OTHER* G WIND	X D BROADSIDE E HIT OBJECT F OVERTURNED G VEHICLE / PEDESTRIAN H OTHER*								
LIGHTING X A DAYLIGHT B DUSK - DAWN C DARK - STREET LIGHTS D DARK - NO STREET LIGHTS E DARK - STREET LIGHTS NOT FUNCTIONING*	X C OTHER MOTOR VEHICLE D MOTOR VEHICLE ON OTHER ROADWAY E PARKED MOTOR VEHICLE F TRAIN G BICYCLE H ANIMAL I FIXED OBJECT J OTHER OBJECT								
ROADWAY SURFACE X A DRY B WET C SNOWY - ICY D SLIPPERY (MUDDY, OILY, ETC.)									
ROADWAY CONDITION(S) (MARK 1 TO 2 ITEMS) A HOLES, DEEP RUT* B LOOSE MATERIAL ON ROADWAY* C OBSTRUCTION ON ROADWAY* D CONSTRUCTION - REPAIR ZONE E REDUCED ROADWAY WIDTH F FLOODED* G OTHER* X H NO UNUSUAL CONDITIONS									
	PEDESTRIAN'S ACTIONS X A NO PEDESTRIANS INVOLVED B CROSSING IN CROSSWALK - AT INTERSECTION C CROSSING IN CROSSWALK - NOT AT INTERSECTION D CROSSING - NOT IN CROSSWALK E IN ROAD - INCLUDES SHOULDER F NOT IN ROAD G APPROACHING / LEAVING SCHOOL BUS								
					OTHER ASSOCIATED FACTORS (MARK 1 TO 2 ITEMS) A VC SECTION VIOLATED CITED <input type="checkbox"/> YES <input type="checkbox"/> NO B VC SECTION VIOLATED CITED <input type="checkbox"/> YES <input type="checkbox"/> NO C VC SECTION VIOLATED CITED <input type="checkbox"/> YES <input type="checkbox"/> NO D [REDACTED] E VISION OBSCUREMENT TREE F INATTENTION* G STOP & GO TRAFFIC H ENTERING / LEAVING RAMP I PREVIOUS COLLISION J UNFAMILIAR WITH ROAD K DEFECTIVE VEH. EQUIP. CITED <input type="checkbox"/> YES <input type="checkbox"/> NO L UNINVOLVED VEHICLE M OTHER* N NONE APPARENT O RUNAWAY VEHICLE				
									SOBRIETY - DRUG PHYSICAL (MARK 1 TO 2 ITEMS) A HAD NOT BEEN DRINKING B HBD - UNDER INFLUENCE C HBD - NOT UNDER INFLUENCE* D HBD - IMPAIRMENT UNKNOWN* E UNDER DRUG INFLUENCE* F IMPAIRMENT - PHYSICAL* G IMPAIRMENT NOT KNOWN H NOT APPLICABLE I SLEEPY / FATIGUED*

SKETCH FOR SKETCH DIAGRAM, SEE PAGE 4



INDICATE NORTH

MISCELLANEOUS

STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
INJURED / WITNESSES / PASSENGERS**
CHP 555 CARS PAGE 3 (REV 11-16) OPI 060

PAGE 3 OF 10

DATE OF COLLISION (MO. DAY YEAR) 09/02/2020				TIME(2400) 1640		NCIC # 9481		OFFICER I.D. 018029				NUMBER 9481-2020-00533					
WITNESS ONLY	PASSENGER ONLY	AGE	SEX	EXTENT OF INJURY('X' ONE)				INJURED WAS ('X' ONE)					PARTY NUMBER	SEAT POS.	AIR BAG	SAFETY EQUIP.	EJECTED
				FATAL INJURY	SUSPECTED SERIOUS INJURY	SUSPECTED MINOR INJURY	POSSIBLE INJURY	DRIVER	PASS.	PED.	BICYCLIST	OTHER					
<input type="checkbox"/> #	<input type="checkbox"/>	62	M	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2	1	L	G	0
NAME / D.O.B. / ADDRESS RUBEN BARRIENTOS, JR (07/24/1958) 22 CONIFER COURT BODFISH CA 93205												TELEPHONE (559)361-4310					
(INJURED ONLY) TRANSPORTED BY: IMPERIAL AMBULANCE						EMS RUN NUMBER 42991				TAKEN TO: SIERRA VIEW DISTRICT HOSPITAL							
DESCRIBE INJURIES: COMPLAINT OF PAIN TO CHEST AND BACK																	
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																	
<input type="checkbox"/> #	<input type="checkbox"/>	64	M	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1	1	L	G	0
NAME / D.O.B. / ADDRESS DALE ALLAN WALKER (02/06/1956) 356 FAMOSO HILLS DRIVE BAKERSFIELD CA 93308												TELEPHONE (661)343-1924					
(INJURED ONLY) TRANSPORTED BY: NOT TRANSPORTED						EMS RUN NUMBER				TAKEN TO: WILL SEEK OWN AIDE							
DESCRIBE INJURIES: LACERATION TO NOSE																	
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																	
<input checked="" type="checkbox"/> # 1	<input type="checkbox"/>	29	M	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
NAME / D.O.B. / ADDRESS FELIPE MORENO (02/19/1991) 80 HEATHERWOOD COURT PORTERVILLE CA 93257												TELEPHONE (559)361-6432					
(INJURED ONLY) TRANSPORTED BY:						EMS RUN NUMBER				TAKEN TO:							
DESCRIBE INJURIES:																	
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																	
<input type="checkbox"/> #	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
NAME / D.O.B. / ADDRESS												TELEPHONE					
(INJURED ONLY) TRANSPORTED BY:						EMS RUN NUMBER				TAKEN TO:							
DESCRIBE INJURIES:																	
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																	
<input type="checkbox"/> #	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
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PREPARER'S NAME J JOHNSON						I.D. NUMBER 018029		MO. DAY YEAR 09/02/2020		REVIEWER'S NAME J HOWELL 018830				MO. DAY YEAR 09/09/2020			

AN INTERNATIONALLY ACCREDITED AGENCY

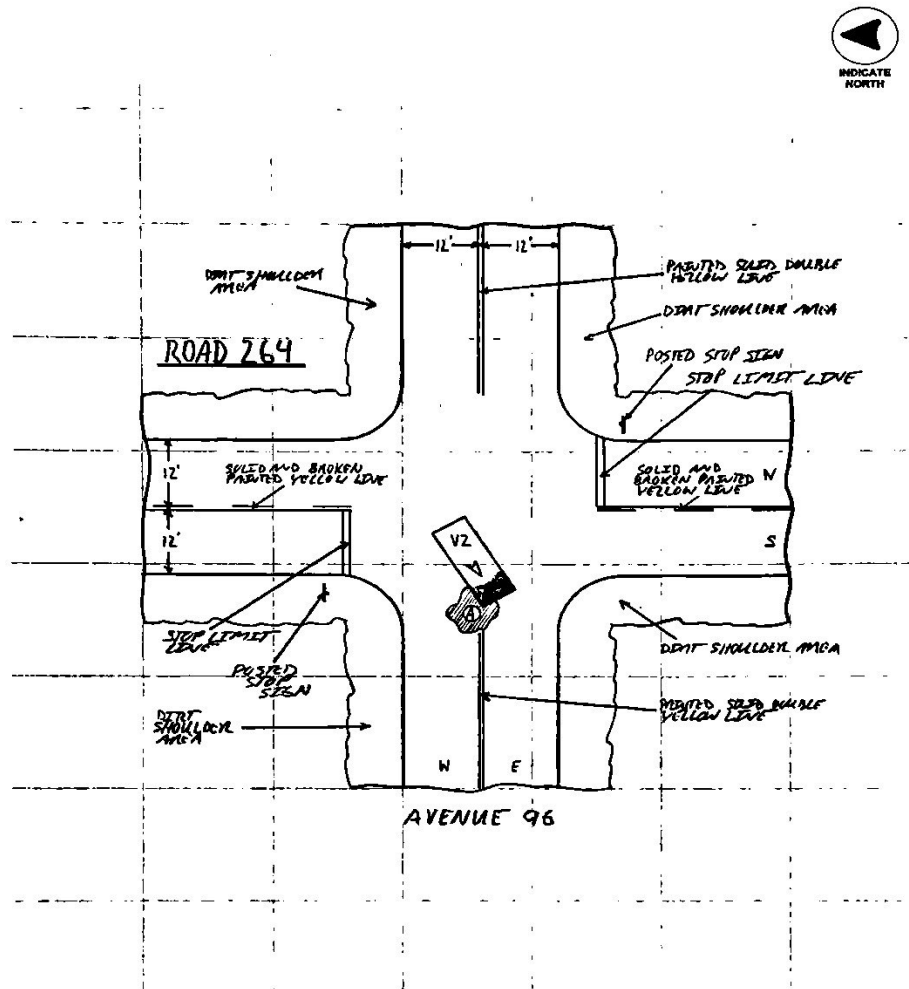
STATE OF CALIFORNIA
FACTUAL DIAGRAM

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09/02/2020	1640	9481	018029	9481-2020-00533

ALL MEASUREMENTS ARE APPROXIMATE AND NOT TO SCALE UNLESS STATED (SCALE=)



PREPARED BY	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
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1 FACTUAL DIAGRAM LEGEND:

2

3 Vehicle Points of Rest

4

5 Vehicle #2 (V2, Honda):

6

7 Right Rear Wheel: 6' south of the north roadway edge prolongation of Avenue 96, and 7' west of the

8 centerline prolongation of Road 264

9

10 Right Front Wheel: 11' south of the north roadway edge prolongation of Avenue 96, and 15' west of the

11 centerline prolongation of Road 264

12

13 Vehicle #1 (V1, Chevrolet)

14

15 Moved from original points of rest prior to CHP arrival

16

17 Physical Evidence Description:

18

19 Item A: 6' Diameter area of vehicle fluids

20

21 Physical Evidence Location:

22

23 Item A (center): 10' south of the north roadway edge prolongation of Avenue 96, and 19' west of the

24 centerline prolongation of Road 264

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1 FACTS:**3 Notification:**

5 On September 2, 2020, at approximately 1644 hours, I received a call of a traffic collision with an
6 ambulance responding. I responded from N. Main Street, south of E. Henderson Avenue, and arrived on
7 scene at approximately 1701 hours.

9 All times, speeds, and measurements are approximations. Measurements were made by roll meter, foot
10 pace, and visual estimation.

12 Scene:

14 At the scene of this collision, Road 264 was a north/south aligned, two-way road, which was comprised
15 primarily of asphalt. The northbound and southbound traffic lanes were separated by a solid and broken
16 painted yellow line on each side of Road 264's intersection with Avenue 96. The east and west roadway
17 edges terminated at dirt shoulder areas. Road 264 was relatively straight and level and its speed limit was
18 55 miles per hour. Road 264 was controlled by posted stop signs on each side of its intersection with
19 Avenue 96. Avenue 96 was an east/west aligned, two-way road, which was comprised primarily of asphalt.
20 The eastbound and westbound traffic lanes were separated by a painted solid double yellow line on each
21 side of Avenue 96's intersection with Road 64. The north and south roadway edges terminated at dirt
22 shoulder areas. Avenue 96 was relatively straight at this location but undulated due to hills located east and
23 west of its intersection with Road 264. Avenue 96 was uncontrolled at this location and its speed limit was
24 55 miles per hour. This intersection was located within an unincorporated area of Tulare County. For
25 further information refer to the factual diagram and legend.

27 Parties:

29 Party #1 (P1, Walker) was contacted at the scene of this collision as he stood near the southwest corner of
30 the intersection of Road 264 and Avenue 96. P1 was identified by his valid State of California Driver
31 License and was placed as the driver of Vehicle #1 (V1, Chevrolet) by his statement.

33 Vehicle #1 (V1, Chevrolet) was located on its wheels, facing in a southerly direction on the west shoulder of
34 Road 264, just south of Avenue 96, where it had been driven to and parked by Party #1 (P1, Walker) after
35 the collision. V1 had sustained moderate collision damage consisting of, but not limited to, the following:
36 the bottom rear portion of the left side of the cab had been crushed, and the bottom front portion of the left
37 quarter panel had been caved in. V1's safety equipment was determined to have been in proper working
38 order at the time of this collision.

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Parties (continued):

Party #2 (P2, Barrientos) was contacted at the scene of this collision by CHP Officer A. Morales, ID 17991, as he (P2) stood in the intersection of Road 264 and Avenue 96. P2 was identified by his valid State of California Driver License and was placed as the driver of Vehicle #2 (V2, Honda) by his statement.

Vehicle #2 (V2, Honda) was located on its wheels, facing in a southwesterly direction, blocking the intersection of Road 264 and Avenue 96. V2 had sustained major collision damage consisting of, but not limited to, the following: the front bumper had been crushed and partially detached, the grille had been broken, the hood had been buckled, both fenders had been crumpled, both headlamp assemblies had been broken, and the windshield had been shattered. V2's safety equipment was determined to have been in proper working order at the time of this collision.

Other Factual Information:

While speaking with Party #1 (P1, Walker) in an effort to find out about the events which led to this collision, P1 made reference to a small palm tree which was growing on the northeast corner of the intersection of Road 264 and Avenue 96. P1 felt the palm tree might have been a contributing factor to this collision as it had obscured his view toward the east of the intersection. I walked to the stop limit line of the southbound traffic lane of Road 264 at Road 264's intersection with Avenue 96. I observed the palm tree P1 had referenced and noted it did partially obstruct the view of Avenue 96 just east of the intersection, depending on the distance I stood from the limit line. Although the palm tree did partially obstruct my view from behind the limit line, there were several points I was able to see Avenue 96 well east of the intersection from just past the limit line, before entering the intersection.

STATEMENTS:

Party #1 (P1, Barrientos) related, in essence, he had brought Vehicle #1 (V1, Chevrolet) to a stop for the posted stop sign which controlled southbound traffic on Road 264 at Road 264's intersection with Avenue 96. Unable to see Avenue 96 toward the east of his location due to a palm tree obstructing his view, P1 began to slowly drive V1 forward into the intersection. Not until V1 was well into the intersection did he observe Vehicle #2 (V2, Honda) approaching his location in the westbound traffic lane of Avenue 96. P1 initially brought V1 to a stop but then realized V2 did not appear to be slowing so he began to accelerate in an effort to clear the path of V2. P1's attempt to accelerate out of the path of V2 was unsuccessful and the front of V2 collided with the left side of V1. After the collision, P1 drove V1 out of the intersection and parked it on the west shoulder of Road 264, south of Avenue 96.

Party #2 (P2, Barrientos) related, in essence, he was driving Vehicle #2 (V2, Honda) in the westbound traffic lane of Avenue 96, east of Road 264, at approximately 55 miles per hour. As P2 neared Road 264, he observed Vehicle #1 (V1, Chevrolet) stopped for the posted stop sign which controlled southbound traffic on Road 264 at Road 264's intersection with Avenue 96.

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1 STATEMENTS (continued):

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3 When P2 was approximately one hundred feet east of the intersection, Party #1 (P1, Walker) drove V1 into
4 the intersection. P2 applied V2's brakes but was unable to bring V2 to a stop. The front V2 collided with
5 the left side of V1 and V2 became disabled in the intersection. After the collision P2 exited V2 and
6 remained at the scene while awaiting contact by emergency personnel.

7
8 Witness #1 (W1, Moreno) was contacted at the scene of this collision. W1 related, I essence, he was driving
9 eastbound on Avenue 96, west of Road 264, when he observed Vehicle #1 (V1, Chevrolet) stopped for the
10 posted stop sign which controlled southbound traffic on Road 264 at Road 264's intersection with Avenue
11 96. V1 began to idle forward as Vehicle #2 (V2, Honda) was approaching the intersection from the east in
12 the westbound traffic lane and then rapidly accelerated. V2 collided with V1 and both vehicles came to rest
13 in the intersection. W1 stopped at the collision scene and checked the welfare of the involved parties.

15 OPINIONS AND CONCLUSIONS:**17 Summary:**

18
19 Party #2 (P2, Barrientos) was driving Vehicle #2 (V2, Honda) in the westbound traffic lane of Avenue 96,
20 approaching Road 264, at approximately 55 miles per hour. Party #1 (P1, Walker) had brought Vehicle #1
21 (V1, Chevrolet) to a stop for the posted stop sign which controlled southbound traffic on Road 264 at Road
22 264's intersection with Avenue 96. As P2 neared the intersection, P1 drove V1 into the intersection and
23 entered the path of V2. Due to the close proximity of the two vehicles, P2 was unable to take any effective
24 evasive action and the front of V2 collided with the left side of V1, rendering V2 immobile in the
25 intersection. After the collision P1 drove V1 out of the intersection and parked it on the west shoulder of
26 Road 264, south of Avenue 96. P2 exited V2 where he was contacted by P1 and Witness #1 (W1, Moreno).
27 Both parties remained at the scene and awaited contact by emergency personnel.

28
29 The Summary was based on the statements provided by the involved parties and W1, in addition to the
30 physical evidence located at the scene.

32 Area of Impact (AOI):

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34 AOI #1 (Vehicle #1 [V1, Chevrolet] vs. Vehicle #2 [V2, Honda]) was located 14 feet west of the east
35 roadway edge prolongation of Road 264, and 10 feet south of the north roadway edge prolongation of
36 Avenue 96.

37
38 The Area of Impact was determined by the physical evidence located at the scene.

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1

2 **Cause:**

3

4 Party #1 (P1, Walker) caused this collision by driving Vehicle #1 (V1, Chevrolet) in violation of California
 5 Vehicle Code section 21802 (a), which states, "The driver of any vehicle approaching a stop sign at the
 6 entrance to, or within, an intersection shall stop as required by Section 22450. The driver shall then yield
 7 the right-of-way to any vehicles which have approached from another highway, or which are approaching so
 8 closely as to constitute an immediate hazard, and shall continue to yield the right-of-way to those vehicles
 9 until he or she can proceed with reasonable safety."

10

11 The Cause of this collision was determined by the statements provided by the involved parties and Witness
 12 #1 (W1, Moreno).

13

14 **Recommendations:**

15

16 None

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 9701 Wilshire Blvd., 12TH Floor, Beverly Hills, California 90212.

The fax number or electronic service address from which I served the document(s) is: (424) 421-2857 or *di@bhattorneys.com*.

On November 15, 2023, I served true copies of the following document(s) described as **PLAINTIFF RUBEN BARRIENTOS, JR.'S OPPOSITION TO DEFENDANT DALE ALLEN WALKER'S MOTION TO CERTIFY EMPLOYMENT UNDER THE FTCA; DECLARATION OF MEGAN E. KLEIN IN SUPPORT THEREOF** on the interested parties in this action as:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed on the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with BD&J, PC's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ **BY OVERNIGHT DELIVERY:** I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed on the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY MESSENGER SERVICE:** I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed on the Service List and providing them to a professional messenger service for service.

☐ **BY FACSIMILE:** Based on an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the persons at the fax numbers listed on the Service List. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed, is attached.

☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties and due to the Covid-19 crisis, the California statewide stay-at-home orders, and our Firm's email dated November 15, 2023, to accept electronic service, I caused the document(s) to be sent to the persons at the electronic service addresses listed on the Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 15, 2023, at Beverly Hills, California.

/s/ Dorlee Ibarra
Dorlee Ibarra

PROOF OF SERVICE MAILING LIST

RUBEN BARRIENTOS, JR. V. TULE RIVER TRIBAL COUNCIL, ET AL.

CASE NO.: VCU291172

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