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Date: <u>July 7, 2016</u>
Time: <u>9:00 am</u>
Judge/Calendar _____

IN THE SUPERIOR COURT  
IN AND FOR

CHRISTIAN DOSCHER, an individual  
Plaintiff,  
vs.  
TRANSIT, a political  
subdivision of the State of  
Defendant.

No. 16-2-01487-34  
**DEFENDANT  
TRANSIT'S RESPONSE  
MEMORANDUM TO PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

I. INTRODUCTION

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Transit hereby submits its response to the plaintiff's motion for summary judgement. Plaintiff's motion is based on nothing other than supposition and conjecture. Quite simply, plaintiff fails to carry his burden of proof. Plaintiff fails to demonstrate that Transit owed and breached any duty to him pertaining to the incident at issue. Furthermore, plaintiff has failed to demonstrate Transit breached any duty which was the proximate cause of his alleged injuries. In fact the undisputed evidence clearly establishes the bus was operating under the speed limit as it proceeded towards the intersection of \_\_\_\_\_ when the traffic signal for the intersection changed from green to amber. The operator, Linda Gossett, determined she needed to brake to a stop before entering the intersection because otherwise the bus would enter the intersection on a red light in violation of \_\_\_\_\_ 5 (2) (a). Finally, the undisputed evidence establishes plaintiff

1 voluntarily moved out of his seat in an apparent attempt to fabricate a claim. His  
2 movements were inconsistent with the law of physics and the movements of all other  
3 passengers. Plaintiff admits he made voluntary movements during the incident. For  
4 the afore noted reasons as well as the others set forth in this response, plaintiff fails to  
5 offer any proof of a duty owed and breach of said duty. Therefore, plaintiff's motion for  
6 summary judgement on the issue of negligence should be denied.

## 7 **II. STATEMENT OF FACTS**

8 The incident at issue occurred on February 8, 2016 at about 11:19.22 a.m.,  
9 Christian Doscher was a passenger on ar Transit bus proceeding northbound  
10 on Plaintiff has submitted the video taken by multiple  
11 cameras located on the bus which capture the incident. The cameras provide  
12 coverage from a variety of angles. See, Declaration of Eric Hunter, Exhibit 2. When  
13 you review the video, Mr. Doscher is the passenger with a mustache, wearing  
14 sunglasses and a baseball cap. He is sitting about mid bus just in front of the rear  
15 door. Besides Mr. Doscher there are three other passengers on the coach. All three  
16 are sitting at the rear of the coach. The event occurs on the video at about  
17 11.19.22.45.

18 Linda Gossett was operating the Transit bus. As the bus approached  
19 the intersection with Avenue, the traffic light turned amber. At the time, the  
20 bus was traveling under the 35 mph speed limit. See, Declaration of Eric Hunter,  
21 Exhibit 2, and Declaration of Linda Gossett. Based on the distance of the bus from the  
22 intersection and her familiarity with traffic signal sequences in the City of Tumwater,  
23 Ms. Gossett reasonably concluded she did not have sufficient time to enter and clear  
24 the intersection before the signal turned red. Declaration of Linda Gossett. Therefore,  
25 she decided to brake to a stop before entering the intersection and engaged in a quick  
26 controlled stop. Declaration of Linda Gossett. Ms. Gossett believed this was the  
appropriate and safe decision in response to the circumstances. Declaration of Linda

1 Gossett. The bus video discloses that another vehicle is stopped at the west leg of the  
2 intersection which is to the operator's left. Plaintiff, Exhibit 1. (*Front left camera*).

3 As the bus comes to a stop, Mr. Doscher appears to come out of his seat, move  
4 laterally around the seat and arm rest in front of him, enters the aisle, twists his body  
5 and proceeds to somersault backwards down the aisle coming to rest at the foot of the  
6 operator. Declaration of Brad Probst, Exhibit 2; Plaintiff, Exhibit 1. When one  
7 compares Mr. Doscher's physical movements and reaction to those of the other  
8 passengers on the bus they are inconsistent both in movement and the laws of  
9 physics. Declaration of Brad Probst, Exhibit 2; Plaintiff, Exhibit 1. During Mr.  
10 Doscher's acrobatics the other passengers remain in their seats, experience minor  
11 movements forward, then move backwards and come to rest in their seats. Mr.  
12 Doscher's feet are in the air and he continues moving and somersaulting down the  
13 aisle of the bus after the other passengers have stopped moving. (Video 11.19.23.95).  
14 Declaration of Brad Probst, Exhibit 2; Plaintiff, Exhibit 1.

15 Mr. Doscher saw the signal change from green to amber and had the opportunity  
16 to brace himself before the braking but did not. Declaration of Brad Probst, Exhibit 2;  
17 Plaintiff, Exhibit 1.

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1 On page 1 of his memorandum plaintiff states his theory of liability is the bus  
2 stopped past the stop line and entered the crosswalk due to speeding. Nothing is cited  
3 in support of this claim other than supposition and conjecture. Plaintiff fails to offer any  
4 facts supporting this conclusion either through personal knowledge or expert  
5 reconstruction. To the contrary, the undisputed evidence establishes the bus was not  
6 speeding as it approached the intersection. The declarations of bus operator Linda  
7 Gossett and accident reconstruction expert Eric Hunter establish the bus was operating  
8 under the speed limit at the time of this incident. See, Declarations of Eric Hunter and  
9 Linda Gossett. In fact Mr. Hunter's reconstruction establishes the bus was traveling at  
10 a speed of 32 to 33 mph when the light changed. As will be discussed below this fact  
11 is undisputed.

12 **D. THE OPERATOR BROUGHT THE BUS TO A STOP IN ORDER TO MEET  
13 HER DUTIES UNDER THE LAW RATHER THAN IN BREACH OF ANY DUTY**

14 The undisputed evidence establishes the bus came to a stop at this location in  
15 order to avoid violating and in compliance with the law. 61.055(2)(a) provides  
16 that a vehicle operator facing a yellow signal is warned that the green light movement  
17 is being terminated or that a red light will be exhibited immediately thereafter where  
18 upon vehicular traffic shall not enter the intersection. A yellow light is not an invitation  
19 to try to beat a red light. A driver  
20 approaching a yellow light may proceed through intersection when he can do so before  
21 the light turns red, but he nevertheless has an absolute right to stop and need never  
22 gamble on his ability to clear the intersection in time.  
23 907 (1960).

24 When a traffic signal light will change from green to amber or from amber to red  
25 is not within the control of any motor vehicle operator including a bus driver. A bus  
26 driver like any other driver must react and make decisions regarding how to respond to  
a signal change with regard to the current circumstances of the bus location in relation  
to the intersection and whether it can be cleared before the light turns to red. Certainly

1 the circumstances of determining if a vehicle can safely clear an intersection before a  
2 traffic signal turns from yellow to red requires a quick decision and action on the part of  
3 the operator. Mr. Hunter's reconstruction found that the bus was located  
4 approximately 140 feet from its' final stop position when the signal turned from green to  
5 amber. Declaration of Eric Hunter, Exhibit 2, page 6. He further found that the bus  
6 would not have been able to enter and clear the intersection before the signal turned  
7 red. Declaration of Eric Hunter. The bus operator's perception reaction time was quick  
8 according to the reconstruction performed by Mr. Hunter. This quick reaction time  
9 clearly establishes the operator was paying attention, observed and reacted promptly.  
10 Declaration of Eric Hunter, Exhibit 2. Clearly Ms. Gossett was not distracted or  
11 inattentive and there is no evidence to suggest otherwise. Furthermore, the evidence  
12 before the Court establishes her actions were consistent with the **practical operation**  
13 of the bus in light of the conditions present at the time of the incident.

14 **E. PLAINTIFF FAILS TO PROVIDE ANY COMPETENT EVIDENCE**  
15 **SUPPORTING HIS CLAIM OF SPEEDING**

16 Plaintiff's theory that the bus was speeding at the time of the incident is based  
17 solely on a informational reference to a website set forth in a letter from Tumwater  
18 Chief of Police . . . . . On page 11 of his memorandum / declaration, plaintiff cites  
19 the letter he solicited from Chief . . . . . pursuant to a public records request, in an  
20 effort to claim the bus was speeding at the time of the incident based on a generic  
21 calculation of braking distances.

22 Plaintiff's assumptions regarding the meaning and significance of the  
23 information conveyed in the letter is misplaced and unsupportive of his claim. Plaintiff  
24 cites the website mentioned in the letter for the proposition that the 115 feet of  
25 stopping distance for the bus as calculated by defendant's expert, Eric Hunter, is  
26 incorrect. Plaintiff asserts that the bus must have been traveling faster than 35 mph  
because when he input 35 mph into the website, <http://forensiddynamics.com/stopping-braking-distance-calculator>," he received an answer that stated the "braking distance"

1 for a vehicle traveling at 35 mph is 58.54 feet. From this plaintiff jumps to the false  
2 conclusion that therefore the bus must have been traveling at 49 mph. However, the  
3 website clearly states "the result is a rough approximation." The stopping distance of  
4 the bus at the time of this incident cannot be accurately calculated from the calculator  
5 at the website relied upon by Mr. Doscher. The website brake distance calculator  
6 cited by Mr. Doscher is not useful for the brake application by the bus driver on  
7 the date of the incident. The website calculations are assuming a hard brake  
8 application or scenario where tire marks are being left on the roadway from a hard  
9 brake application by a vehicle. The incident at issue was not a hard brake  
10 application by the bus driver, it was a moderate brake application. The website  
11 assumes that a tire - road coefficient friction of 0.70, in other words a hard brake  
12 maneuver resulting in 0.70g's deceleration value. The tested and calculated  
13 moderate deceleration from the bus braking/slowing on the date of the incident  
14 was half this value at approximately 0.35g's. See, Declaration of Eric Hunter. For  
15 plaintiff to suggest that this website applies to the specific facts of this case is nothing  
16 but sheer speculation and conjecture. The Declaration of Eric Hunter identifies and  
17 details why using this website results in an incorrect analysis when applied to the facts  
18 of this case. Plaintiff fails to offer any analysis or calculations related to the actual  
19 facts and details pertaining to this event including the type of vehicle and the details  
20 pertaining to the specific braking of the transit bus. In contrast, defendant's expert,  
21 Eric Hunter has performed a detailed and fact specific analysis as described in his  
22 declaration and report.

23 Furthermore, the website cited by plaintiff does not identify the type of vehicle  
24 used for the "rough approximation" calculation or that the results are applicable to  
25 transit buses equipped with air brakes. Specifically, the overall length of the bus is  
26 36.4 feet from bumper to bumper, with a Gross Volume Weight Ratio (GVRW) of  
39,600 lbs. The bus is also equipped with an air brake system. The size, weight and

1 air braking system of the bus affects it's braking distance causing it to have a longer  
2 braking distance than a small passenger vehicle. Declaration of Eric Hunter. Mr.  
3 Doscher's website calculation does not take into effect any of these factors or the  
4 nature of the braking employed during this incident. Declaration of Eric Hunter.  
5 Plaintiff has compared an apple to an orange in his analysis. This results in plaintiff  
6 proving nothing but he has used faulty assumptions that develop into a speculative and  
7 unsupported conclusion and hyperbole about the speed of the bus. Plaintiff's analysis  
8 lacks any merit or substance with respect to supporting his summary judgment motion.

9       There is a second false conclusion relied on by plaintiff with respect to speed  
10 based on Chief Weiks letter. Plaintiff claims "the amount of time the City of  
11 allots for drivers to bring their moving vehicles to a stop is 3.5 seconds." Plaintiff  
12 Memorandum, pg 16. Mr. Doscher takes this false interpretation of what 3.5 seconds  
13 means and then leaps to a faulty conclusion based on this misapplication when he  
14 states that since it took the bus 4.27 seconds to stop, the bus must have been  
15 speeding. Plaintiff Memorandum, pg 16. Not only does this conclusion lack any  
16 support, it is also a clear misrepresentation of Chief       letter. Chief '       letter  
17 clearly states " the cycle of the amber light is based on a time distance calculation ((i.e.  
18 how long does it take a vehicle from the time the light turns amber, given the posted  
19 speed limit, to clear the intersection if the vehicle was at the stop bar when the light  
20 turned amber [])." In other words the Chief is saying the timing of the light sequence to  
21 turn from amber to red is based on **how long it takes a vehicle traveling at the**  
22 **speed limit to clear the intersection before the light turns red if the vehicle is**  
23 **located at the intersection stop bar.** This statement has nothing to do with vehicle  
24 braking or stopping in response to the amber light. Nor does it mean that if a vehicle is  
25 140 feet from the intersection when the light turns amber that the vehicle will have  
26 sufficient time and distance to clear the intersection before the signal turns to red or

1 that there is sufficient time and distance to brake to a stop behind the stop bar before  
2 the light turns red.

3 All Plaintiff has done is misrepresent the meaning of concepts and information  
4 in order to reach false and unsupported conclusions. Quite simply, plaintiff has failed  
5 to offer any credible evidence or argument to support his claim that the bus was  
6 speeding at the time the operator applied the brakes in response to the traffic signal  
7 turning amber from green.

8 **F. MR. DOSCHER'S SPECULATION ABOUT SPEED, BRAKING, TIMING OF**  
9 **THE TRAFFIC SIGNAL AND THE APPLICABLE LAW FAIL TO SUPPORT HIS**  
10 **SUMMARY JUDGMENT MOTION**

11 As discussed above plaintiff fails to establish the bus was speeding at the time it  
12 began to brake in response to the traffic signal changing from green to amber as it  
13 approached the intersection.

14 Plaintiff cites 30 on page 7 line 5 of his memorandum for the  
15 proposition that the bus is required to stop behind a stop bar. This statute applies to  
16 stop signs. There is nothing in the statute indicating that it applies to intersections  
17 controlled by traffic signals such as the one at issue. However, just because the bus  
18 came to a stop beyond the stop line and partially in the crosswalk does not establish  
19 negligence. In fact it shows the operator was meeting her statutory duty of not entering  
20 an intersection on a red light pursuant to 5(2)(a).

21 The undisputed evidence establishes Linda Gossett was not speeding but rather  
22 traveling under the speed limit at the time of this incident. Like the bus driver in *Walker*

23 Ms. Gossett was confronted with a situation wherein she believed  
24 she would be unable to clear the intersection before the traffic signal turned red in  
25 violation of 46.61.055(2). As a result she brought the bus to a stop before  
26 encroaching into the intersection. This action on her part was legal, appropriate and  
conducive to the practical operation of the bus at the time of the incident. Furthermore,  
a common carrier is not liable for injuries received from ordinary jolts and jerks



1 necessarily incident to the mode of transportation, unless there is evidence of physical  
2 facts from which operator negligence might reasonably be inferred. *Walker v. King*  
3 (\_\_\_\_\_) 15). No such inference has been established  
4 by plaintiff. Therefore, there is no showing of a duty owed or violated. Rather the  
5 undisputed evidence establishes Ms. Gossett did not violate any duty owed, but rather  
6 complied with her legal duty. Plaintiff has failed to offer any credible evidence which  
7 disputes this. Therefore plaintiff's motion should be denied.

8 **G. PREVENTABILITY IS NOT THE APPLICABLE STANDARD FOR  
9 DETERMINING FAULT**

10 David Dudek was the Transit supervisor who responded to the incident  
11 scene after Ms. Gossett contacted dispatch and requested medical response based on  
12 Mr. Doscher's claim that he had been injured. Plaintiff asserts that the initial  
13 "Supervisor's Accident Investigation" report prepared by Mr. Dudek establishes fault.  
14 Plaintiff Memorandum, pg. 5. No authority is cited in support of this claim.

15 This report is not determinative of fault and plaintiff fails to establish otherwise.  
16 Rather, Mr. Dudek's conclusion is a preliminary assessment which is neither intended  
17 or used for assigning legal responsibility. Declaration of David Dudek. Mr. Dudek's  
18 initial impression regarding preventability was made on the scene per Transit  
19 protocol. It was made without the opportunity to review the video of the incident and  
20 obtaining all the facts. After further consideration of all the facts and the video, the  
21 Fixed Route Manager (Mr. Sandberg) determined the incident was nonpreventable.

22 The "Supervisor's Accident Investigation" form relied on by plaintiff clearly states  
23 at the bottom that the supervisor reaches an initial conclusion " based on the  
24 information you currently have on the scene..." This determination is made without the  
25 benefit of reviewing and analyzing the video of the incident or in this instance  
26 interviewing any witnesses. Plaintiff Dec, Exhibit 3; Declaration of David Dudek.  
Furthermore, the form specifically says "this is not a final determination, this & any  
other information is reviewed by Fixed Route Mgr for final determination." Plaintiff Dec,

1 Exhibit 3; Declaration of David Dudek. The "Supervisor's Accident Investigation"  
2 report is a preliminary and tentative conclusion. Yet plaintiff chooses to disregard this.

3 Plaintiff conflates the standard of negligence with the concept of preventability.  
4 Mr. Doscher fails to cite any authority which holds "preventability" is the duty of care in  
5 a negligence action involving transit. Preventability is defined by the National Safety  
6 Council as "a preventable collision is one in which the driver failed to do everything that  
7 reasonably could have been done to avoid it," in the Guide to Determine Motor Vehicle  
8 Collision Preventability. This guideline is used internally by Transit pursuant to  
9 a National Safety Council recommendation for purposes of assessing defensive driving  
10 and accident review. It is not used to determine legal liability. Declaration of David  
11 Dudek.

12 Plaintiff offers no authority that the concept of preventability is a duty owed or  
13 the appropriate standard upon which to determine the existence of a duty and a breach  
14 thereof which would equate to negligence. In fact plaintiff has failed to provide this  
15 court with any authority to show that preventability is a recognized standard of care for  
16 bus drivers, or that it is intended to form the basis for legal action and therefore should  
17 not be considered by the Court.

18 (2005). (er Guide and the Model Commercial Driver  
19 License Manual does not establish a recognized standard of care for city bus drivers  
20 forming the basis for legal action). As a result, the court should disregard plaintiff's  
21 argument in this regard.

22 **H. STATEMENTS BY THE BUS OPERATOR AT THE TIME OF THE INCIDENT  
DO NOT ESTABLISH SHE WAS SPEEDING**

23 Plaintiff claims the bus driver was speeding because she said "sorry" and  
24 uttered a "cuss word." Plaintiff's Memorandum, pg. 9. No authority is provided by  
25 plaintiff in support of this claim.

26 The video documents that following the application of the brakes the operator  
states she is "sorry." (video 11.19.27). When asked by Mr. Doscher, Ms. Gossett tells

1 him she applied the brakes because the yellow lights are "really short".  
2 (Video 11.22.56). Mr. Doscher tells the operator that he saw the light change but  
3 thought she was going to go through it. (Video 11.22.53). Ms. Gossett also stated  
4 "that the light changed and I didn't want to run the red light, so I stopped." (Video  
5 11:27:07). Ms. Gossett further states that while she braked quickly she did not "slam"  
6 on the brakes. (Video 11:33:18).

7 Ms. Gossett initially uttered the word "sorry" because she had to brake in  
8 response to the traffic light changing from green to amber. According to Ms. Gossett  
9 she said this as a warning to the passengers that she was going to engage in a quick  
10 stop. Thereafter she uttered "sorry" because of the surprise of seeing someone rolling  
11 down the aisle and ending up at the operator's compartment. Ms. Gossett said this out  
12 of compassion for this person who said they were hurt. She was not apologizing  
13 because she did anything wrong. Declaration of Linda Gossett. In light of the  
14 circumstances her reaction is not unusual or an admission of any fault.

15 Plaintiff has offered no authority supporting his claim that these statements by  
16 the operator establish she was speeding. Nothing about the content of the statements  
17 made by Ms. Gossett suggest she was speeding. Obviously responding to an amber  
18 traffic signal and determining if there is sufficient time and distance to enter and clear  
19 the intersection before the light turns red is a stressful situation which could elicit a  
20 vocal reaction from a driver. As stated by Ms. Gossett in her declaration, the

21 traffic signals have a reputation for quickly turning from amber to red.

22 Certainly such a circumstance could cause such a reaction.

23 **I. PLAINTIFF'S DEPARTURE FROM HIS SEAT WAS A VOLUNTARY ACT**  
24 **WHICH WAS INCONSISTENT WITH THE MOVEMENTS AND REACTIONS**  
25 **OF THE OTHER PASSENGERS AND THE LAWS OF PHYSICS**

26 Besides Mr. Doscher there are three other passengers on the bus. All three  
are sitting at the rear of the coach. As the bus is braking to a stop Mr. Doscher  
appears to come out of his seat, moves around the seat and arm rest in front of him,

1 twists his body into the aisle and proceeds to somersault backwards down the aisle  
2 coming to rest at the foot of the operator. When you compare Mr. Doscher's actions to  
3 those of the other passengers on the bus they are out of proportion both in movement  
4 and dynamics. None of the other passengers appear to be affected or react to the  
5 same degree or in the same manner as Mr. Doscher. Instead, the other passengers  
6 remain in their seats and experience minor movements forward, then move backwards  
7 and come to rest in their seats, unlike Doscher. (Video 11.19.23.95). While Mr.  
8 Doscher has his feet in the air and is somersaulting towards the front of the bus, the  
9 passengers in the rear of the bus are sitting quietly and watching. (Video 11.19.25.36).  
10 This is inconsistent with the movements of the other passengers and the forces at play.  
11 This is particularly apparent and note worthy when one reviews the side by side video  
12 depicting a comparison of the passenger movements by advancing it one frame at a  
13 time. See, Exhibit 1. Particularly since all of the  
14 passengers were subjected to the same forces during this incident. Declaration of  
15 Brad Probst.

16 In order to confirm the forces at play would not have caused Mr. Doscher to be  
17 ejected from his seat and roll down the aisle of the bus, defendant had this matter  
18 reviewed by a biomechanical engineer, Brad Probst. Mr. Probst reviewed the video  
19 and also conducted field tests to determine if the forces at play during the braking  
20 would cause Mr. Doscher to be ejected from his seat. Based on his analysis and  
21 testing Mr. Probst reached the following conclusions and opinions based upon a  
22 reasonable degree of biomedical engineering:

- 23 1. Mr. Doscher's motions (kinematics) are not consistent with inertial loading  
(forces) due to deceleration (braking) of the bus.
- 24 2. The motions of the other passengers on the bus is consistent with the  
25 laws of physics and the forces generated from the incident.
- 26 3. Mr. Doscher's movements are consistent with voluntary movement  
induced by Mr. Doscher.

- 1           4.     Expected kinematics due to inertial loading due to bus deceleration is  
2           clearly demonstrated by the three rear seat passengers of the subject  
3           bus.
- 4           5.     Mr. Doscher tends to roll, or somersault forward. There is not a force in  
5           the subject incident that would induce a roll, or somersault motion of Mr.  
6           Doscher.
- 7           6.     The amount of longitudinal acceleration at Mr. Doscher's seating location  
8           was 0.35g. In comparison, a panic braking in a passenger vehicle, which  
9           produces skidding, is on the order of 0.7g. The level of force due to  
10          braking of the bus is less than that of panic braking in a passenger  
11          vehicle.
- 12          7.     Mr. Doscher stated in the video that he observed the yellow traffic signal.  
13          The statement indicates Mr. Doscher was aware that the bus could begin  
14          to brake and he could have braced. The level of force due to braking  
15          could have been managed by "simple muscular bracing."

16 Declaration of Brad Probst, Exhibit 2, pgs. 12-16.

17           In fact the video illustrates that contrary to the movement of the other  
18 passengers, Mr. Doscher keeps gathering momentum and increasing the severity of  
19 his physical reaction while the other passengers come to rest. This can only occur if  
20 another interfering force is introduced to account for Mr. Doscher's movements.

21 Declaration of Brad Probst, Exhibit 2, pg. 12. According to defendant's biomechanical  
22 engineering expert, Brad Probst, this other force that was introduced is the voluntary  
23 movement input from Mr. Doscher. Declaration of Brad Probst, Exhibit 2, pg. 12. In  
24 fact on page 18 at line 6 of his memorandum/declaration plaintiff admits to making  
25 voluntary movements. The inconsistencies in movements and reactions between the  
26 other passengers and Mr. Doscher raise a material dispute of fact as to whether his  
movements are contrived, exaggerated and staged.

          In addition, pursuant to the video evidence Mr. Doscher is looking forward out  
the windshield of the bus as it approaches the intersection and the traffic signal turns  
from green to amber. In fact Mr. Doscher acknowledges he saw the light change to  
Amber. See, Plaintiff's Exhibit 1 (Video 11.22.53.00). Thus Mr. Doscher saw the light  
was changing and therefore had an opportunity to brace in response to the braking.

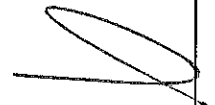
1 Declaration of Brad Probst, Exhibit 2, pg. 13. This further creates a material dispute of  
2 fact as to plaintiff's contributory fault.

3 **IV. CONCLUSION**

4 For the reasons cited hereir 'ransit respectfully requests that plaintiff's  
5 summary judgment motion be denied.

6 Dated this 21<sup>ST</sup> day of JUNE, 2017.

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