COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FOURTH DIVISION
CIVIL ACTION NO. 22-CI-02169

SARAH BOGUSEWSKI, PLAINTIFF

v.

JAMES M. PELFREY, *et al.*, DEFENDANTS

EASYKNOCK, INC.'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT, FOR A NEW TRIAL, OR FOR REMITTITUR

Please take notice that on Friday, January 9, 2026, at 10:00 a.m., or as soon thereafter as counsel may be heard, Defendant EasyKnock, Inc. will make the following motions.

* * * * *

EasyKnock moves the Court to vacate the judgment entered December 8, 2025, and to grant it judgment notwithstanding the verdict under CR 50.02 or, in the alternative, to grant a new trial under CR 59.01 or, in the alternative, to grant a remittitur and reduction of the damages. EasyKnock is entitled to relief because the verdict rendered by the jury is contrary to law and unsupported by the evidence.

While plaintiff Sarah Bogusewski presented multiple witnesses to testify about problems caused by the dogs owned by co-defendant James Pelfrey (and his roommate, Elijah Stubblefield), not a single one of those witnesses notified EasyKnock that Pelfrey was harboring dogs with vicious propensities at the property located at 309 Glendover Road in Lexington. Although the lease agreement Pelfrey entered into with EasyKnock expressly prohibited him from housing any pets on the property, Pelfrey nevertheless harbored dogs, two of which, on March 5, 2022, escaped the home, and, undisputedly, crossed the street, and attacked

Bogusewski on the opposite side of the street. Though the truly responsible party is Pelfrey, the jury awarded Bogusewski $320,776.68 in compensatory damages and assigned 99% responsibility to EasyKnock.[1] The jury then assessed $5,000,000 in punitive damages against EasyKnock alone.

The judgment cannot stand for three reasons:

1. EasyKnock is entitled to judgment notwithstanding the verdict because there was insufficient evidence for the jury to find that EasyKnock was negligent under Kentucky law.

2. EasyKnock is entitled to judgment notwithstanding the verdict because there was insufficient evidence of gross negligence by EasyKnock to warrant punitive damages.

3. EasyKnock is entitled to a new trial or to a remittitur because the jury's punitive damages award is excessive under Kentucky common law and the Due Process protections of the United States Constitution.

A. EasyKnock is entitled to judgment notwithstanding the verdict.

A motion for judgment notwithstanding the verdict is analyzed under the same standard as a motion for directed verdict. *Lovins v. Napier*, 814 S.W.2d 921, 922 (Ky. 1991). Analyzing the evidence in the light most favorable to the non-movant, a judgment notwithstanding the verdict is required when the evidence is "not sufficient to sustain the verdict." *Crest Coal Co. v. Bailey*, 602 S.W.2d 425, 427 (Ky. 1980). "[I]t is the duty of the trial court, as the gatekeeper, to follow the requirements of the law and to enter a directed verdict when required," and the same holds true for a judgment notwithstanding the verdict. *Thompson v. Hardy*, 43 S.W.3d 281, 287

[1] The jury assigned only 1% responsibility to James Pelfrey, and found in favor of co-defendant Elijah Stubblefield—who was apparently living with Pelfrey at the time and who Pelfrey claimed was the true owner of the dogs—on the issue of liability and assigned no blame to him.

(Ky. App. 2000); *Crest Coal Co*., 602 S.W.2d at 427. EasyKnock was entitled to a directed verdict on Bogusewski's negligence and gross negligence claims and the Court should, notwithstanding the jury's verdict, enter judgment in favor of EasyKnock for the reasons set forth below.

1. EasyKnock is entitled to judgment notwithstanding the verdict because there was insufficient evidence for the jury to find that EasyKnock was negligent under Kentucky law.

At the close of plaintiff's proof, and again at the close of all the proof, EasyKnock moved for a directed verdict on all claims due to Bogusewski's failure to present sufficient evidence for the jury to find that EasyKnock was negligent as a matter of law. (VR 11/18/25 at 1:41:40–1:43:10; 3:09:58–3:10:11.) The Court denied EasyKnock's motions. The jury ultimately found for Bogusewski and assigned 99% responsibility to EasyKnock for Bogusewski's damages. Because the evidence does not support the jury's verdict, EasyKnock is now entitled to judgment notwithstanding the verdict on Bogusewski's negligence claim under CR 50.02.

Under Kentucky law, "a landlord may be liable" for the harm caused by a tenant's dog "if the plaintiff establishes that the landlord (1) knew of the dog's vicious or mischievous propensities *and* (2) had control over the area when the attack occurred." *Cruz v. Henderson*, No. 2021-CA-0983-MR, 2022 WL 2898498, at *3 (Ky. App. July 22, 2022) (citing *McDonald v. Talbott*, 447 S.W.2d 84, 85–86 (Ky. 1969); *Ireland v. Raymond*, 796 S.W.2d 870, 871–72 (Ky. App. 1990)) (emphasis added). The evidence at trial was conclusive: EasyKnock had no such knowledge or control.

The evidence, rather, revealed that EasyKnock had been told by a code enforcement officer that Pelfrey previously had dogs, Haskill (a black and white pitbull) and Brownie, that caused some issues with neighbors, but that Haskill and Brownie had since been removed and were no longer on the premises. (VR 11/17/25 at 12:57:55–12:58:22) (testimony from

Lexington-Fayette Animal Care and Control ("Animal Control") Lieutenant Jonathan Moore that on August 5, 2021, Haskill was removed from the residence after "a bite on a dog and a human being"); (*id.* at 1:12:03–1:12:14) (testimony from former Animal Control officer Tiana Asberry that "we did have to go and remove dogs from the property" and identifying those dogs as Haskill and Brownie); (VR 11/18/25 at 10:21:51–10:21:56) (deposition testimony from EasyKnock's corporate representative that "back in August [2021] I was made aware there were dogs on the property, but those dogs had been removed"); (*id.* at 1:56:07–1:56:11, 2:13:00–2:13:05) (deposition testimony from another EasyKnock witness that she "was not aware of any previous incidences" involving dogs on the property and that "the March -- March 5th incident is the only one that I'm aware of"); (*id.* at 2:17:42–2:18:07) (EasyKnock witness testifying by deposition that Code Enforcement Officer Rhonda Brown "said yes, that the dogs have been taken and were going to be destroyed," which "was pretty much the extent of the conversation, that the city had taken action").

Not only did EasyKnock lack knowledge that Pelfrey continued to house other vicious dogs on the property, testimony from EasyKnock's representative indicated that EasyKnock had it on good authority that any problematic animals had been removed and the issue had been resolved. Even so, because it was a violation of Pelfrey's lease to house *any* animals on the property—vicious or not—EasyKnock began taking steps to remove Pelfrey from the property. In other words, though EasyKnock was told by code enforcement that it did not need to take any action to remove any dangerous dogs, EasyKnock *did* still take action to remove Pelfrey for violating the terms of his lease.

While Bogusewski called Animal Control Lieutenant Jonathan Moore and former Animal Control officers Tiana Asberry and Shane Adcock to testify regarding a variety of issues with

Pelfrey's dogs (as to which Pelfrey had numerous criminal charges), none of them testified that they had notified EasyKnock of any issues. And although Animal Control had previously removed Haskill and Brownie from Pelfrey's residence after Haskill bit a person and both dogs attacked other dogs—despite the fact that Winston (one of the two dogs that bit Bogusewski) had previously bit a human and attacked other dogs—Animal Control did not remove Winston from Pelfrey's control until after the attack on Bogusewski.[2] Nor did any representative from Animal Control ever contact EasyKnock about issues concerning Pelfrey's dogs. (VR 11/17/25 at 1:02:37–1:03:26, 1:14:49–1:15:29, 1:24:23–1:25:19.) In the face of multiple criminal charges against Pelfrey relating to his dog ownership, neither Animal Control, the court system, or anyone else managed to prevent him from acquiring dogs.

The evidence was clear: EasyKnock was not made aware of any dog issue on the property until after the August 5, 2021 attack by Haskill, and was affirmatively told by Officer Rhonda Brown that both Haskill and Brownie had been removed and destroyed. And indeed, the evidence presented at trial confirmed that Haskill and Brownie had in fact been removed. (VR 11/17/25 at 12:57:55–12:58:22) (testimony concerning Haskill's removal); (*id.* at 1:12:03–1:12:14) (testimony concerning Haskill and Brownie's removal). EasyKnock cannot be liable for the harm caused by Winston and Sadie because it did not know that those dogs even existed, much less that they were a danger.

Moreover, the evidence demonstrated that the attack occurred off the leased premises, across the street. (VR 11/17/25 at 1:19:12–1:19:29) (former Animal Control officer Shane

[2] While Lieutenant Moore also had listed that Winston and Sadie were involved in some sort of incident on July 22, 2021 (VR 11/17/21 at 12:57:30–12:57:52), he had no details regarding that incident, and no Animal Control officer testified regarding any tendencies, vicious or otherwise, of Sadie's.

Adcock testifying that Bogusewski "was still there across the street from the residence" when he responded to the scene); (VR 11/18/25 at 11:02:53–11:02:59) (Bogusewski testifying, "I was on the far side of the road from where these dogs came from"); (*id.* at 11:51:01–11:51:18) ("And you'd agree with me that that occurred across the street? It occurred across the street. . . . The attack occurred off the property, correct? Correct."). As a matter of law in Kentucky, EasyKnock thus lacked the requisite "control" over the dogs necessary to impose liability on a landlord.

On re-direct examination and again in his closing argument, Bogusewski attempted to downplay the fact that the attack took place off the property by suggesting to the jury that the attack was "instantaneous." (VR 11/18/25 at 11:52:55–11:53:04); (VR 11/19/25 at 11:23:08–11:23:50.) But that is not the law in Kentucky. The Kentucky Court of Appeals' decision in *Ireland* is instructive here. In *Ireland*, the victim of a dog attack attempted to hold the dog owner's landlords liable for common law negligence. 796 S.W.2d at 871–72. There, as here, the evidence established that the tenant's dogs did not attack the plaintiff on the leased premises but, rather, somewhere between the plaintiff's property and the public roadway. *Id.* at 871. Beyond just that, in *Ireland*, the plaintiff established that the landlords had actual knowledge that dogs were being housed at the tenant's home—unlike here—and the Court of Appeals still found that the landlords could not be liable for the plaintiff's injuries because the landlords had no knowledge of the dogs' viciousness and had no control over the circumstances of the attack. In doing so, the Kentucky Court of Appeals aptly noted, "It would be unthinkable to extend liability to a landlord to include any area to which a tenant's dog might roam." *Id.* Indeed it would.

The evidence here compels the same conclusion as the court reached in *Ireland*. EasyKnock had no knowledge that Pelfrey was harboring any dogs, much less vicious ones, at

the time of the attack on plaintiff. The only evidence that—before the attack on Bogusewski—EasyKnock knew of any previous instances involving dogs owned by Pelfrey is when EasyKnock learned that there was an August 2021 incident with dogs on the property, but a code enforcement officer told EasyKnock that those dogs, Haskill and Brownie, had been removed. (Plaintiff's Trial Exhibit 14); (VR 11/18/25 at 10:21:51–10:22:16, 2:17:42–2:18:07.) Bogusewski presented no evidence from Animal Control or anyone else that EasyKnock knew or should have known that, after the August incident and dog removal, Pelfrey obtained and was harboring additional dogs, let alone that any new dogs were vicious. EasyKnock, moreover, had no control over the area Pelfrey's dogs escaped to and attacked Bogusewski. Whether the attack was almost "instantaneous" does nothing to change that fact.

Bogusewski went to great lengths to paint EasyKnock as an absentee landlord that neglected property and allowed the dogs to escape through a broken screen in the side door of the home. *See, e.g.*, VR 11/17/25 at 11:06:10–11:06:28, 3:03:20–3:04:00; VR 11/18/25 at 11:52:37–11:42:43, 11:55:54–12:06:41. But the evidence presented at trial showed that EasyKnock never received a repair request from Pelfrey, as required by the lease if there was a maintenance issue. (VR 11/18/25 at 10:15:04–10:15:36.) Nor did EasyKnock receive a third-party complaint concerning the broken screen door before the attack on Bogusewski. (*Id.* at 10:34:06–10:34:57) ("So we were initially made aware that there was some code violations, but based on the condition of the property -- and I think there was some utility issues, those type of things, so we engaged counsel and filed, had them start on an eviction. And then we basically -- we found out about issues with dogs. We added -- well we added, had them add that to an additional violation of the lease. . . . There was never any kind of complaint or anything filed. Again, it was kind of, you know, hey, there was an issue with some dogs. And I'm like, great,

we'll add that onto the list."). In fact, every single witness to testify at trial stated that, before the March 5, 2022 attack on Bogusewski, they did not attempt to contact EasyKnock about any concerns with Pelfrey, his dogs, or the property. (VR 11/17/25 at 1:02:37–1:03:26, 1:14:49–1:15:29, 1:24:23–1:25:19, 1:56:03–1:56:24); (VR 11/18/25 at 11:51:22–11:51:48.)

The evidence on this point was again conclusive: EasyKnock was never notified that the screen door was broken before the incident on March 5, 2022. And even if it had fixed the screen door (which could have been broken as the dogs jumped through it, the day before, or the previous month or could have been purposefully altered by the tenants), the people living at the house could have propped open the screen door, apparently like they had left open the main side door. A landlord does not control what a tenant does with its doors.

Importantly, EasyKnock had no duty to Bogusewski. Kentucky has no "universal duty" of care by all to all; rather, to "create a duty," the parties must have a legally cognizable relationship." *New Albany Main St. Props., LLC v. Stratton*, 677 S.W.3d 345, 351 (Ky. 2023), quoting *Jenkins v. Best*, 250 S.W.3d 680, 691–92 (Ky. App. 2007). EasyKnock had no "legally recognized relationship" with Bogusewski. *Id.* If Bogusewski had been on EasyKnock's property—which she was not—then the duty owed to her would be based on her status as an invitee, licensee, or trespasser. *Smith v. Smith*, 563 S.W.3d 14, 17 (Ky. 2018). Where, as here, Bogusewski was not on EasyKnock property when injured, EasyKnock owed her no duty of care under case law relating to dog bites, premises liability, or anything else.

To allow the jury's finding that EasyKnock is liable for Bogusewski's harm to stand would be contrary to law. The evidence presented at trial conclusively established that the attack on Bogusewski occurred off the Glendover Road property owned by EasyKnock, and that EasyKnock had no knowledge that dogs with vicious propensities were being kept at the

property *at the time of the attack.* Bogusewski relied on previous incidents involving different dogs, which she suggest EasyKnock was aware of or should have been aware of, but Bogusewski failed to acknowledge (and the jury apparently ignored) testimony that code enforcement officer Rhonda Brown told EasyKnock that those dogs had been removed from the premises and were no longer an issue. Because the evidence does not support the jury's verdict, EasyKnock is entitled to judgment notwithstanding the verdict under CR 50.02.

2. EasyKnock is entitled to judgment notwithstanding the verdict because there was insufficient evidence of gross negligence that would warrant punitive damages.

The evidence presented at trial similarly does not support the jury's finding of gross negligence by EasyKnock. EasyKnock's motions for directed verdict on those claims (VR 11/18/25 at 1:41:40–1:43:10; 3:09:58–3:10:11) likewise should have been granted for the same reasons its directed verdict as to negligence should have been granted: lack of knowledge and lack of control over the area across the street where Bogusewski was attacked.

In addition, unlike the conduct of the dogs' owners, who repeatedly allowed the dogs they owned and were responsible for to escape and attack other dogs and people, EasyKnock's conduct was not outrageous. "'Gross negligence' is a wanton or reckless disregard for the lives, safety or property of others." *Peoples Bank of N. Kentucky, Inc. v. Crowe Chizek & Co. LLC*, 277 S.W.3d 255, 267–68 (Ky. App. 2008) (citing *Phelps v. Louisville Water Co.*, 103 S.W.3d 46, 51–52 (Ky. 2003)). "The threshold for the award of punitive damages is whether the misconduct was 'outrageous' in character, not whether the injury was intentionally or negligently inflicted." *Id.* (quoting *Horton v. Union Light, Heat & Power Co.*, 690 S.W.2d 382, 389 (Ky. 1985)). "[A] finding of gross negligence clearly requires more than a failure to exercise ordinary care" and, rather, "requires a finding of a failure to exercise even slight care such as to demonstrate a wanton or reckless disregard for the rights of others." *Id.* at 268. Because, for the reasons

discussed above, there was insufficient evidence to find that EasyKnock was negligent as a matter of law, there was certainly not sufficient evidence to find that it was grossly negligent.

To be sure, no evidence at trial demonstrated EasyKnock's wanton or reckless disregard for the lives, safety, or property of others. As discussed above, Bogusewski presented no evidence establishing that, between the August 2021 attack when Pelfrey's dogs were removed and the March 5, 2022 attack on Bogusewski, EasyKnock was made aware that Pelfrey was still harboring vicious dogs on the property. Rather, the evidence showed that, when EasyKnock learned Pelfrey had committed various lease violations, it took steps to remove him from the property. (VR 11/18/25 at 9:57:19–9:57:29, 10:23:31–10:17:53.)

Bogusewski suggested to the jury that EasyKnock "waited" and "did nothing" in the face of known issues with Pelfrey and the property (VR 1/19/25 at 11:18:38–11:18:58, 11:23:00–11:23:01), even insinuating that EasyKnock delayed removing Pelfrey in order to keep collecting rent (*id.* at 11:18:58–11:19:02). That insinuation ignores the fact that evicting a tenant is not an instantaneous process, and that EasyKnock had to take steps to lawfully remove Pelfrey from the property, and misled the jury regarding the same. The reality is that EasyKnock took reasonable steps—*prior to* the attack on Bogusewski—to remove Pelfrey from the property and did in fact reach an agreement with Pelfrey to vacate the property on or before March 22, 2022. (VR 11/18/25 at 9:57:19–9:57:29); (*id.* at 10:18:56–10:19:05) ("Again, they were not allowed to have pets on the property. It was not on their lease. I t was a direct violation of the lease, and we were made aware so we took action to evict them for that action."); (*id.* at 10:23:31–10:17:53) (testimony that "almost immediately" after EasyKnock learned of code enforcement issues it "engaged outside counsel and began the eviction process"); (VR 11/19/25 at 10:43:18–10:43:34) ("The parties have stipulated to the following: Defendant EasyKnock and Defendant Pelfrey

entered into an agreement on February 22nd, 2022, whereby Pelfrey was to vacate the property on or before March 22nd of 2022."). Though Bogusewski convinced the jury that EasyKnock could and should have done more, the fact remains that EasyKnock took steps to remove Pelfrey.

B. In the alternative, EasyKnock is entitled to a new trial or to remittitur.

In the alternative, EasyKnock moves for a new trial. The Civil Rules call for the Court to order a new trial for any of these reasons:

> (a) Irregularity in the proceedings of the court, the jury or prevailing party, or an order of the court, or abuse of discretion, by which the party was prevented from having a fair trial.
>
> (b) Misconduct of the jury, of the prevailing party, or of his attorney.
>
> (c) Accident or surprise which ordinary prudence could not have guarded against.
>
> (d) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice or in disregard of the evidence or the instructions of the court.
>
> (e) Error in the assessment of the amount of recovery whether too large or too small.
>
> (f) That the verdict is not sustained by sufficient evidence, or is contrary to law.
>
> (g) Newly discovered evidence, material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial.
>
> (h) Errors of law occurring at the trial and objected to by the party under the provisions of these rules.

CR 59.01. The question whether a new trial is the proper remedy "must be determined on a case-by-case basis." *Savage,* 390 S.W.3d at 112.

1. EasyKnock is entitled to a new trial or to remittitur because the punitive damages awarded by the jury are impermissibly excessive under Kentucky law.

For the reasons discussed above, since EasyKnock is entitled to judgment notwithstanding the verdict under CR 50.02, the Court should set aside the entirety of the jury's verdict and render judgment in favor of EasyKnock. Should the Court not grant EasyKnock's

motion for judgment notwithstanding the verdict on the grounds discussed above, the Court should either order a new trial or grant remittitur because the $5,000,000 punitive damages awarded was the result of passion and prejudice and is impermissibly excessive under Kentucky law.

An award of damages is excessive if it is for such an amount "as to cause the mind at first blush to conclude that it was returned under the influence of passion or prejudice on the part of the jury." *Louisville & Nashville R. Co. v. Mattingly*, 339 S.W. 2d 155, 161 (Ky. 1960) (quoting *Cumberland R. Co. v. Girdner*, 212 S.W. 105, 108 (Ky. 1919)). The jury awarded to Bogusewski damages in the total amount of $5,320,776.68, broken down as follows:

- Compensatory damages $320,776.68
- Punitive damages $5,000,000

The jury's $5,000,000 punitive damages award is excessive because Bogusewski introduced no evidence—much less clear and convincing evidence—establishing the fraud, oppression, malice, or gross negligence required to support an award of punitive damages. Even if there had been any such evidence, a punitive damages award of $5,000,000 that bears no rational relationship to the compensatory damages award, and which represents a roughly 16:1 ratio, cannot stand.

The Court may not simply accept such awards but instead has an obligation to decide whether the damages awarded were the result of passion and prejudice on the jury's part. That is clearly what occurred here. The jury heard evidence that Bogusewski suffered severe injuries as a result of a dog attack, and at no point during the trial did EasyKnock attempt to downplay that. The jury did not, however, hear evidence that EasyKnock knew Bogusewski and others in the neighborhood were at immediate risk of such an attack. To be sure, the jury heard no evidence whatsoever of conduct by EasyKnock that would warrant punitive damages, much less punitive damages of $5,000,000.

In the absence of evidence of conduct that would warrant punitive damages, Bogusewski appealed to the jury's sympathies. Bogusewski used Pelfrey's mental incompetence—which was on display throughout the trial[3]—to place the entirety of the blame for Bogusewski's injuries on EasyKnock. In fact, though Bogusewski pursued negligence claims against Pelfrey and took those claims to trial, Bogusewski's closing argument changed course: "I submit to you -- and my argument is EasyKnock -- again, the only -- the only party who had the ability to stop this, the only party who had the ability to stop this. I submit to you they are 100 percent at fails in this situation. . . . Again, I submit to you EasyKnock is creating a smoke screen and wants you to be distracted by Mr. Pelfrey, but they had the ability to stop this." (VR 1/19/25 at 11:34:10–11:35:09.) If Bogusewski believed Pelfrey was blameless in this incident, it makes little sense that she would name him as a defendant at all. The reality is that Pelfrey is to blame for the attack on Bogusewski, but Bogusewski knew—and improperly signaled to the jury during closing argument—that only EasyKnock would have any ability to satisfy a judgment.

The reality, moreover, is that multiple systemic failures completely outside of EasyKnock's knowledge or control allowed the attack on plaintiff to occur. Pelfrey and Stubblefield intentionally housed dogs, in direct violation of Pelfrey's lease agreement with

[3] (VR 11/18/25 at 10:48:53–10:49:16) (Court summarizing Pelfrey's improper trial conduct: "You have disregarded my instructions now every time you have approached the podium. You have made inappropriate comments regarding cocaine, you've accused a woman of being your fiancé. You have done everything -- you've played the harmonica. . . . You have done everything to disrupt this court proceeding."); *see also id.* at 9:25:50–9:25:56 (asking therapist witness for a business card and stating, "I need a therapist"); *id.* at 12:16:15–12:16:20 (Pelfrey using expletives); *id.* at 264–65 (Pelfrey asking to talk to his "uncle," Donald Trump); (VR 11/19/25 at 10:54:55–10:55:13) (asking the Court, "Why do you hate me because I'm bisexual?"); *id.* at 10:56:05–10:56:16 (telling the jury in his closing statement, "I buy sex off hookers in Cincinnati and Louisville. I've been buying sex off hookers forever. This morning I was downtown. I buy sex off a little hooker named Theresa."); *id.* at 10:56:18–10:59:55 (Pelfrey stating he needs his "inhaler" and that he is "about to have a heart attack right now," briefly playing the harmonica, then falling to the ground and stating, "call 911").

EasyKnock, that were apparently prone to attack humans and other dogs. Despite the multiple criminal charges against Pelfrey relating to his dog ownership and a prior attack by Winston, *see generally* Plaintiff's Trial Exhibit 1, Animal Control did not seize Winston until after he attacked Bogusewski. And as Pelfrey's criminal record indicates and Pelfrey himself testified at trial, it was not until he was charged criminally for the attack on Bogusewski that a judge prohibited him from owning dogs. *Id.* at 18; VR 11/18/25 at 3:03:28–3:03:30 ("They made me give up [my] dogs.") The jury's assignment of 99% responsibility to EasyKnock was not rooted in the evidence presented, but clearly the result of passion and prejudice.

To ensure the jury remained impassioned heading into its deliberations, Bogusewski employed improper tactics during closing argument. For example, though "it is a principle of black-letter law that deposition testimony is to be given the same weight as that offered by a live witness at trial," *Foley v. Commonwealth*, No. 2014-SC-0743-MR, 2017 WL 635573, at *5 (Ky. Feb. 16, 2017) (unpublished and non-binding, but persuasive), Bogusewski improperly criticized EasyKnock for not "showing up" to trial. (VR 11/19/25 at 11:13:38–11:14:06) ("So who is EasyKnock? What we've learned from Scott Young and Avery waters in their deposition testimony-- and we've had to listen to their deposition testimony because they're not here. The blatant, callous disregard, not only to the members of the community, but also to the members of the vulnerable community. A callous disregard for even showing up, so we had to listen to their deposition that we took."). This attempt to paint EasyKnock as an "absentee landlord" by criticizing its trial strategy was wholly improper, misleading on the law, and was obviously intended to incite an emotional response from the jury. And unfortunately, it worked.

The jury's punitive damages award is clearly the result of passion and prejudice, not an objective review of the evidence presented. At first blush, a punitive damages award of

$5,000,000 shocks the conscience. That award is more than 16 times greater than Bogusewski's compensatory damages award, which itself was not supported by the evidence presented. Thus, the punitive damages award is excessive under Kentucky law, entitling EasyKnock to a new trial or a remittitur. If the Court believes that some award of punitive damages should be allowed to stand, they should be no more than the amount of compensatory damages, if any, left standing after the Court rules on the motions set forth herein.

2. The punitive damages award also violates the Due Process protections of the United States Constitution and should either be set aside or reduced substantially.

Not only was the jury's punitive damages award clearly the result of passion or prejudice, it is grossly excessive and violative of EasyKnock's Due Process protections. As such, the punitive damages should be set aside in their entirety. In the alternative, the punitive damages should be reduced to a 1:1 ratio to the compensatory damages award.

In *Yung v. Grant Thornton, LLP*, 563 S.W.3d 22 (Ky. 2018), the Kentucky Supreme Court explained that "[t]he Due Process Clause prohibits imposing 'grossly excessive' punishment on a defendant," and that "[e]xcessive punitive damage awards offend the Constitution because elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." 563 S.W.3d at 65 (citing *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 416 (2003)) (cleaned up) (add'l citation omitted). "'To the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property.'" *Id.* (quoting *State Farm*, 538 U.S. at 416). Thus, the Court explained, "[w]hen exemplary damages are warranted, they should reflect — but not be grossly out of proportion with — the enormity of the offense." *Id.* (citing *BMW of N. America, Inc. v. Gore*, 517 U.S. 559, 575–76 (1996)).

"The touchstone for determining whether a punitive damage award is constitutional is whether the award is reasonable based upon the facts of the case." *Id.* (citing *TXO Production Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 458 (1993)). To determine whether an award is grossly excessive or unreasonable, the court should consider: "(1) the degree of reprehensibility of the defendant's conduct, (2) the disparity or the ratio between the harm or potential harm suffered by the plaintiffs and the punitive damage award, and (3) the difference between the punitive damage award and the penalties imposed for similar misconduct." *Id.* (citing *BMW*, 517 U.S. at 559). "Application of these guideposts ensures that an award of punitive damages is based upon an application of law, rather than a decisionmaker's caprice." *Id.* (cleaned up) (citations omitted).

1. Consideration of the relevant factors establishes that the punitive damages award is unconstitutionally excessive.

Consideration of each of the three relevant factors establishes that the jury's award of $5,000,000 in punitive damages is unconstitutionally excessive.

a. Reprehensibility

"The most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *Id.* at 66 (cleaned up) (citing *BMW*, 517 U.S. at 575). To assess reprehensibility, the Court considers whether:

1) the harm caused was physical as opposed to economic;
2) the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others;
3) the target of the conduct had financial vulnerability;
4) the conduct involved repeated actions or was an isolated incident; and
5) the harm was the result of intentional malice, trickery, or deceit, or mere accident.

Id. (citations omitted). Because it is "presumed a plaintiff has been made whole for his injuries by compensatory damages, [] punitive damages should only be awarded if the defendant's

culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence." *Id.* (citation omitted).

Here, EasyKnock's conduct was not sufficiently reprehensible to warrant punitive damages. The evidence showed that EasyKnock took the steps reasonably necessary to lawfully remove Pelfrey from the property when it learned he violated the terms of his lease. Moreover, considering each of the reprehensibility factors, the excessiveness of the jury's punitive damages award is clear.

i. Was the harm caused physical as opposed to economic?

Though the plaintiff here suffered physical harm, as discussed above, James Pelfrey is responsible for that harm. EasyKnock had no knowledge that dogs with vicious propensities were being harbored on the property in violation of Pelfrey's lease agreement at the time of the attack on Bogusewski, and EasyKnock was never notified that the screen on the door the dogs escaped from was broken and required repair. Absent any notice that (1) vicious dogs were living at the home, in violation of the lease agreement, or (2) a door was broken that could allow such dogs to escape and harm a neighbor, there was simply no way EasyKnock could have foreseen, or in any way prevented, the harm suffered by Bogusewski. And in any case, as discussed above, even if EasyKnock had fixed the screen door, the people living at the house could have propped open the screen door, apparently like they had left open the main side door. Pelfrey and those he allowed in the home had control over the doors, not EasyKnock. Conduct that does not evince reckless disregard for someone's health or safety is typically "insufficiently reprehensible to justify a punitive damages award in significant excess of [the] compensatory damages award." *Thomas v. iStar Fin., Inc.*, 652 S.W.3d 141, 148-49 (2d Cir. 2011).

ii. Did the defendant's conduct evince an indifference to or a reckless disregard of the health or safety of others?

As thoroughly discussed above, Bogusewski presented no evidence of conduct by EasyKnock that evinced an indifference to or a reckless disregard for the health or safety of others. To the contrary, the evidence showed that EasyKnock was not aware that Pelfrey was harboring dogs with vicious propensities on the property, but that EasyKnock was taking steps to remove Pelfrey from the property due to various lease violations. In other words, though EasyKnock was unaware that Pelfrey harbored dogs that posed to the public, EasyKnock was working on removing Pelfrey for other reasons. Accordingly, this factor weighs in EasyKnock's favor.

iii. Was the target of the conduct financially vulnerable?

There was no evidence presented at trial that Bogusewski was financially vulnerable. Thus, this factor likewise weighs in EasyKnock's favor.

iv. Did the conduct involve repeated actions or was it an isolated incident?

The evidence conclusively established that before the attack on Bogusewski, EasyKnock had no knowledge that dangerous dogs were being housed on the Glendover Road property. There is certainly evidence that James Pelfrey had prior knowledge of the dogs' vicious propensities, as at least one of those dogs, Winston, had apparently attacked at least one other neighbor in the past, and Pelfrey was cited for that attack. It is thus fair to say that, with respect to Pelfrey, what happened to Bogusewski resulted from his repeated failure to restrain his dogs. But the attack on Bogusewski was the first time EasyKnock was aware that Pelfrey was again keeping dangerous dogs on the property, in violation of the lease agreement. Because Pelfrey ignored his obligation under the lease to notify EasyKnock of the necessary repair, and because he actively concealed that he housed dogs on the property, EasyKnock had no way of knowing

the dogs even existed and were a danger, much less that they could escape the property due to the broken door. Thus, with respect to EasyKnock, the attack on Bogusewski was an isolated incident. The Kentucky Supreme Court has instructed that only conduct that is "so strikingly similar . . . as to constitute a signature crime" may be considered in the reprehensibility analysis. *Kentucky Farm Bureau Mut. Ins. Co. v. Rodgers*, 179 S.W.3d 815, 819-20 (Ky. 2005). The total lack of any evidence of such conduct by EasyKnock here supports the argument that the jury's punitive damages award was unconstitutionally excessive.

v. Was the harm the result of intentional malice, trickery, or deceit, or mere accident?

The overwhelming evidence at trial showed that any harm to Bogusewski was not the result of intentional malice, trickery, or deceit by EasyKnock, but was completely attributable to the negligence and/or gross negligence of Pelfrey. Indeed, there was a total absence of "intentional malice, trickery, or deceit" on EasyKnock's part. This factor, too, indicates that the jury's punitive damages award was unconstitutionally excessive.

b. Ratio

"'The second and perhaps most commonly cited indicium of an unreasonable or excessive punitive damages award is its ratio to the actual harm inflicted on the plaintiff.'" *Yung*, 563 S.W.3d at 69 (quoting *BMW*, 517 U.S. at 580). Though "a mathematical bright line cannot be drawn between the constitutionally acceptable and the constitutionally unacceptable award," the U.S. Supreme Court has provided that "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process" and that "an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety." *Id.* (cleaned up) (citing *State Farm*, 538 U.S. at 425). In addition, "when compensatory damages are substantial, then a lesser ratio, perhaps only equal

to compensatory damages, can reach the outermost limit of the due process guarantee." *Id.* (cleaned up) (citation omitted).

In this case, the evidence showed that Bogusewski incurred approximately $55,781 in medical bills as a result of the attack by Pelfrey's dogs. The rest of the damages she sought were for past, present, and future paint and suffering and future therapy bills. Even assuming Bogusewski's medical bills and pain and suffering were sufficient to warrant a $320,776.68 award, the ratio between that award and the jury's punitive damages is a staggering 16:1. This grossly violates EasyKnock's right to due process. Because the jury's compensatory damages award was itself substantial, even if the punitive damages are not set aside in their entirety, only a punitive damages award of no more than $320,776.68 (representing a 1:1 ratio) would satisfy due process.

c. Comparable penalties for similar misconduct

The third factor to consider in evaluating the constitutionality of a punitive damage award is the difference between the punitive damage award and the penalties imposed for similar misconduct. Though not entirely applicable here because EasyKnock did not own or control the dogs that attacked Bogusewski, KRS 258.990 provides that any person who violates or refuses to comply with KRS 258.235(4), which provides that "Any owner whose dog is found to have caused damage to a person, livestock, or other property shall be responsible for that damage," shall be fined "no more than one hundred dollars ($100)." KRS 258.990(3)(a).

The most appropriate comparable penalty to consider for purposes of this constitutionality analysis is the $100 penalty provided for in KRS 258.990. The $5,000,000 punitive damages award is 50,000 times the most comparable penalty for similar misconduct, another indicia of the excessiveness of the punitive damages award.

2. The unconstitutional punitive damage award should be set aside in its entirety.

Importantly, "[t]he existence of any one of [the reprehensibility] factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award; and the absence of all of them renders any award suspect." *Yung*, 563 S.W.3d at 66 (citation omitted). In this case, nearly every single factor was absent, highlighting once again the jury's reliance on sympathy toward Bogusewski and prejudice toward EasyKnock in reaching its verdict. In such circumstances, the punitive damages should be vacated in their entirety. *See Chicago Title Ins. Corp. v. Magnuson*, 487 F.3d 985, 999–1001 (6th Cir. 2007) (even though defendant acted with malice, consideration of the other reprehensibility factors weighed so heavily against reprehensibility that no punitive damage award could stand).

3. In the alternative, the unconstitutional punitive damage award should be reduced to no more than a 1:1 ratio to the compensatory damage award.

While at one time remittitur was generally prohibited in Kentucky, remittitur "has now been accepted in Kentucky." *Yung*, 563 S.W.3d at 62 (Ky. 2018) (noting that while at one time remittitur was generally prohibited in Kentucky, remittitur "has now been accepted in Kentucky"). If the award of punitive damages is allowed to stand at all, consideration of the relevant factors calls for the punitive damages to be reduced to no more than a 1:1 ratio to the compensatory damages award.[4]

First, as discussed above, the reprehensibility of EasyKnock's conduct is exceedingly low. Second, Bogusewski received a substantial award of compensatory damages, invoking the

[4] The Supreme Court's analysis of the relevant factors in *Yung* led the Court to conclude that, in that case involving overwhelming evidence of intentional fraudulent conduct directed not only to the Yungs but also to other clients of Grant Thornton which the trial court set forth in a 120-page judgment, a ratio of 4:1 was constitutionally permissible. As discussed herein, consideration of the relevant factors calls for the punitive damages, if not set aside entirely, to be reduced to a 1:1 ratio to the compensatory damages award.

pronouncement from both the United States Supreme Court and the Kentucky Supreme Court that a ratio below 4:1, "perhaps only equal to compensatory damages," can reach the outermost limit of the due process guarantee. Third, the most comparable penalty EasyKnock could face for its conduct was $100 per KRS 258.990, which seriously calls into question whether the award of punitive damages should stand at all.

In fact, as discussed above, the punitive damage award should not stand at tall. If the Court disagrees, the Constitutional restrictions on punitive damages awards call for the Court to reduce the award to no more than the amount of the compensatory damage award. *See Smith v. Olsen*, 551 P.3d 610, 624-25 (Ariz. App. 2024) (reducing punitive damages to a 1:1 ratio to the substantial compensatory damages award even though defendant's conduct was intentional and repetitive); *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 799 (8th Cir. 2004) (deeming defendant's conduct reprehensible but reducing punitive damages to reflect 1:1 ratio: "Mr. Williams received $600,000 to compensate him for his harassment. Six hundred thousand dollars is a lot of money. Accordingly, we find that due process requires that the punitive damages award on Mr. Williams's harassment claim be remitted to $600,000."); *Morgan v. New York Life Ins. Co.*, 559 F.3d 425, 443 (6th Cir. 2009) (remanding case to trial court to reduce punitive damages to no more than 1:1 ratio to compensatory damages award even though evidence established defendant had consciously disregarded plaintiff's rights); *Lompe v. Sunridge Partners, LLC*, 818 F.3d 1041, 1074 (10th Cir. 2007) (reducing punitive damage award to 1:1 ratio even though defendant engaged in pattern of misconduct that resulted in physical injury to the plaintiff, recognizing that "[w]hen courts have deviated upwards from a 1:1 ratio, the defendant has either intended to cause the substantial compensatory damages or engaged in particularly egregious behavior").

CONCLUSION

EasyKnock is entitled to judgment notwithstanding the verdict because the evidence presented to the jury was insufficient to support a finding that EasyKnock was negligent or grossly negligent as a matter of law. In the alternative, the Court should order a new trial, set aside the punitive damages award, or reduce the punitive damages award to an amount no more than the amount of compensatory damages.

Respectfully submitted,

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Certificate of Service

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