

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

Judy Palmeri,
Appellant,
v.
Clark County, a Political Subdivision of the State of
Nevada; and Dawn Stockman, CE096, individually and in
her official capacity as an officer employed by the County
of Clark,
Respondents.

No. 65143

Electronically Filed
Apr 04 2014 10:39 a.m.

DOCKETING STATEMENT
CIVIL APPEALS
Stacie M. Lindeman
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach requested documents, fill out the statement completely, or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 26
County Clark County, Nevada Judge Sturman
District Ct. Case No. A640631

2. Attorney filing this docketing statement:

Attorney Cal J. Potter, III, Esq. Telephone (702) 385-1954
Firm Potter Law Offices

Address
1125 Shadow Lane
Las Vegas, NV 89102

Client(s) Appellant, Judy Palmieri

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondent(s):

Attorney Matthew J. Christian Telephone (702) 455-4761
Firm Clark County District Attorney's Office - Civil Division

Address
500 South Grand Central Parkway, P.O. Box 552215
Las Vegas, NV 89155-2215

Client(s) Respondents

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☒ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination

- ☐ Dismissal:
 - ☐ Lack of jurisdiction
 - ☐ Failure to state a claim
 - ☐ Failure to prosecute
 - ☐ Other (specify): _____
- ☐ Divorce decree:
 - ☐ Original ☐ Modification
- ☐ Other disposition (specify): _____

5. Does this appeal raise issues concerning any of the following?

- | | |
|--|--|
| <input type="checkbox"/> Child custody | <input type="checkbox"/> Termination of parental rights |
| <input type="checkbox"/> Venue | <input type="checkbox"/> Grant/Denial of injunction or TRO |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile matters |

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

U.S. District Court of Nevada 2:10-cv-00729-RLH-PAL

8. Nature of the action. Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

This case arises out of the execution of a fraudulent search warrant and subsequent malicious prosecution which was launched against Judy Palmieri ("Mrs. Palmieri"), a proprietor of pet stores in Clark County and the City of Las Vegas at the Meadows Mall. The search warrant was based upon a false affidavit, filed by Dawn Stockman, which contained material misrepresentations about the identity and information provided to the City of Las Vegas and then sent to Clark County Animal Control. Mrs. Palmieri filed suit for violations of her civil rights, malicious prosecution, and several other torts. Summary judgment was granted in favor of the Defendants/ Respondents.

Causes of Action:

CIVIL RIGHTS VIOLATION AGAINST INDIVIDUAL OFFICERS MALICIOUS PROSECUTION, NEGLIGENCE, INTENTIONAL INFLICTION OF SEVERE MENTAL DISTRESS, FALSE ARREST, UNLAWFUL WARRANT, CONSPIRACY AND MALICIOUS PROSECUTION, ILLEGAL SEARCH AND ILLEGAL WARRANT

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the District Court erred in granting summary judgment.

Whether the District Court erred in granting immunity on all actions.

Whether the District Court erred in not looking at *Franks v. Delaware* regarding untruthful statements in the search warrant.

Whether the District Court erred by misapplying the law regarding immunity on state law claims.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain:

13. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appeal from** 02/05/2014.

Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which this appeal is taken.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

16. **Date written notice of entry of judgment or order served** 02/05/2014.

Attach a copy, including proof of service, for each order or judgment appealed from.

Was service by:

- ☐ Delivery
- ☒ Mail

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- ☐ NRCP 50(b) Date served _____ By delivery ☐ or by mail ☐ Date of filing _____
- ☐ NRCP 52(b) Date served _____ By delivery ☐ or by mail ☐ Date of filing _____
- ☐ NRCP 59 Date served _____ By delivery ☐ or by mail ☐ Date of filing _____

Attach copies of all post-trial tolling motions.

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion N/A.

Attach a copy.

(c) Date written notice of entry of order resolving tolling motion served N/A.

Attach a copy, including proof of service.

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed 02/27/2014.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other NRAP 4(a).

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

- ☒ NRAP 3A(b)(1) ☐ NRS 155.190 (specify subsection) _____
☐ NRAP 3A(b)(2) ☐ NRS 38.205 (specify subsection) _____
☐ NRAP 3A(b)(3) ☐ NRS 703.376
☐ Other (specify) _____

Explain how each authority provides a basis for appeal from the judgment or order:

This Court has authority as this matter stems from granting summary judgment against the Plaintiff whereby final judgment was entered against the Plaintiff in favor of Defendants.

COMPLETE THE FOLLOWING SECTION ONLY IF MORE THAN ONE CLAIM FOR RELIEF WAS PRESENTED IN THE ACTION (WHETHER AS A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM) OR IF MULTIPLE PARTIES WERE INVOLVED IN THE ACTION.

Attach separate sheets as necessary.

21. List all parties involved in the action in the district court:

Plaintiff/Appellant Judy Palmieri
Defendant/Respondent Clark County
Defendant/Respondent Dawn Stockman

If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (i.e., order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.

Causes of Action: CIVIL RIGHTS VIOLATION AGAINST INDIVIDUAL OFFICERS MALICIOUS PROSECUTION, NEGLIGENCE, INTENTIONAL INFLICTION OF SEVERE MENTAL DISTRESS, FALSE ARREST, UNLAWFUL WARRANT, CONSPIRACY AND MALICIOUS PROSECUTION, ILLEGAL SEARCH AND ILLEGAL WARRANT

Summary Judgment granted in favor of Defendants.

23. Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below?

- ☒ Yes
☐ No

25. If you answered “No” to question 24, complete the following:

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:

N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

If “Yes”, attach a copy of the certification or order, including any notice of entry and proof of service.

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Judy Palmieri

Name of appellant

04/04/2014

Date

Clark County, Nevada

State and county where signed

Cal J. Potter, III, Esq.

Name of counsel of record

/s/ Cal J. Potter, III, Esq.

Signature of counsel record

CERTIFICATE OF SERVICE

I certify that on the 4th day of April, 2014, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Matthew J. Christian, Deputy District Attorney
500 South Grand Central Parkway
P. O. Box 552215
Las Vegas, NV 89155-2215
Ph: (702) 455-4761
Fax: (702) 382-5178

Ara Shiranian, Settlement Judge
10651 Capesthorne Way
Las Vegas, NV 89135
Ph: (702) 496-4985
Fax: (702) 434-3650

Dated this 4th day of April, 2014.

/s/ Jenna Enrico

Signature

MEMC
STEVEN B. WOLFSON
District Attorney
CIVIL DIVISION
State Bar No. 1565
By: MATTHEW J. CHRISTIAN
Deputy District Attorney
State Bar No. 8024
500 South Grand Central Pkwy.
P. O. Box 552215
Las Vegas, Nevada 89155-2215
(702) 455-4761
E-Mail: Matthew.Christian@ClarkCountyDA.com
Attorneys for Defendant
Clark County


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JUDY PALMIERI,
Plaintiff,

vs.

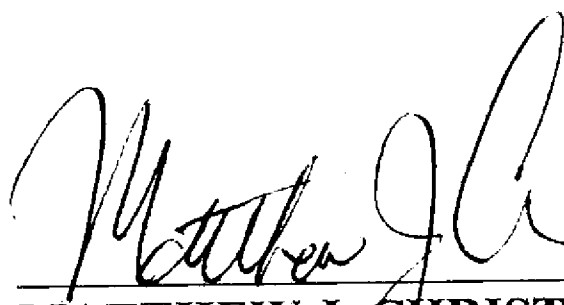
CLARK COUNTY, a political subdivision
of the STATE OF NEVADA; DAWN
STOCKMAN, CEO96, individually and in
her official capacity as an officer
employed by the County of Clark; JOHN
DOES I through X, inclusive and ROE
CORPORATIONS I through X, inclusive,
Defendants.

Case No: A-11-640631-C
Dept No: XXVI

**NOTICE OF ENTRY OF DECISION
AND ORDER RE: DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

NOTICE IS HEREBY GIVEN that the attached Order Regarding Motion for
Summary Judgment was filed on the 28th of January, 2014, a copy of which is attached
hereto.

DATED this 5th day of February, 2014.

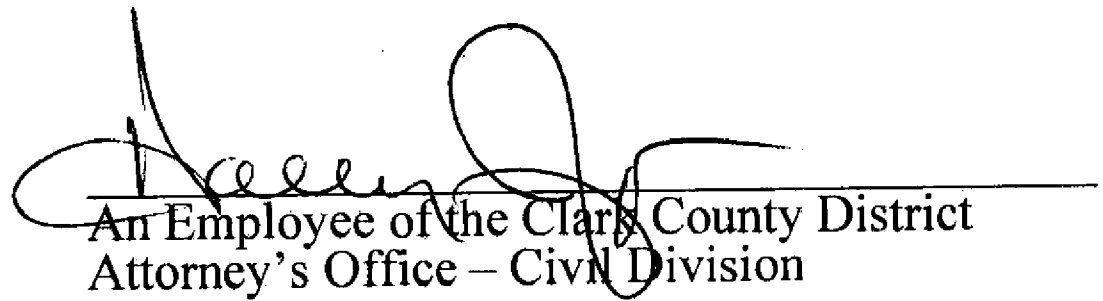

MATTHEW J. CHRISTIAN, ESQ.
Deputy District Attorney
State Bar No. 8024
500 South Grand Central Pkwy. 5th Flr.
P. O. Box 552215
Las Vegas, Nevada 89155-2215
Attorney for Defendant Clark County

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that on the 5th day of February, 2014, I deposited in the United States Mail, postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, a copy of the above and foregoing **Notice of Entry of Decision and Order Re: Defendant's Motion for Summary Judgment** addressed as follows:

Cal J. Potter, III, Esq.
1125 Shadow Lane
Las Vegas, Nevada 89102
Attorneys for Plaintiff


An Employee of the Clark County District
Attorney's Office – Civil Division

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

Judy Palmieri, Plaintiff(s)
vs.
Clark County, Defendant(s)

CASE NO.: A-11-640631-C
Department 26
Decision and Order Re:
Defendant's Motion for
Summary Judgment

FILE WITH
MASTER CALENDAR

Defendants Clark County and Dawn Stockman filed a Motion for Summary Judgment in the above captioned matter; plaintiff Judy Palmieri filed an Opposition and Defendants filed a Reply. The matter was originally set for hearing December 21, 2012, and continued pursuant to NRCP 56(f) to allow the party's time to depose witness Kaitlyn Nichols who is in the military and serving outside the jurisdiction. The matter came back on for hearing on November 1, 2013, and although Ms. Nichols had not been deposed, a more detailed affidavit was provided in an Addendum to the Opposition filed by Plaintiff. After oral argument the matter was taken under advisement.

Based on the arguments of counsel and pleadings and papers on file the Court finds as follows:

///

///

///

Facts

1
2
3 Plaintiff brings the instant lawsuit claiming illegal search and
4 seizure based on insufficient probable cause to obtain a valid search
5 warrant. Defendants received information that possible violations of
6 the animal welfare statutes were occurring at Plaintiff's residence.
7 The information was received via telephonic tip from a woman who
8 identified herself as an employee of Plaintiff named Kaitlyn Nichols.
9 Defendant Stockman obtained a search warrant, and upon arriving at
10 Plaintiff's home, heard a number of dogs barking. A search of the
11 home revealed over 20 dogs; a couple of which appeared sickly. The
12 dogs were taken away, but later returned. Plaintiff was also cited for
13 having too many dogs in her home.
14
15
16

17 The warrant obtained was based upon an informant's
18 statements combined with Plaintiff's alleged history of violating
19 animal codes, and the verified information of the informant when
20 Defendants knocked and entered Plaintiff's home. The informant
21 claimed to have worked for Plaintiff, had been in her house, and
22 stated that she had 20 plus dogs in her house and that some of them
23 were sickly. The informant's statement regarding the number of dogs
24 was confirmed when the officers knocked on the door and heard
25 multiple dogs. Stockman followed the standard procedures used by
26
27
28

1 animal control officers when seeking a warrant. There were 29 dogs
2 on the premises, none of which had proof of vaccinations, and two of
3 which looked physically sick.

4 Summary Judgment is appropriate when the pleadings and
5 other evidence on file demonstrate no 'genuine issue as to any
6 material fact' and that the moving party is entitled to a judgment as a
7 matter of law. Wood, et al. v. Safeway, Inc., et al., 121 P.3d 1026 (Nev.
8 2005). While the pleadings and other proof must be construed in the
9 light most favorable to the nonmoving party, that party bears the
10 burden to "do more than simply show that there is some metaphysical
11 doubt" as to the operative facts. Id. A genuine issue of material fact
12 is one where the evidence is such that a reasonable jury could return a
13 verdict for the non-moving party. Valley Bank v. Marble, 105 Nev.
14 366, 367 (Nev. 1989).

15
16
17
18
19 I.

20 **Plaintiff's Claim for Civil Rights Violation Against**
21 **Individual Officers**

22 Plaintiff alleges that the search warrant was invalid as Kaitlyn
23 Nichols' uncontroverted affidavit states that she was not the
24 informant. Regardless of whom the informant was, the details
25 provided and other corroborating information supported a finding of
26 probable cause. The finding of probable cause was further bolstered
27 by previous allegations about Plaintiff's dogs. The fact that the
28

1 informant apparently used someone else's name when calling in the
2 tip does not in and of itself void the finding of probable cause for
3 issuance of the warrant. Plaintiff has cited to no authority that places
4 a requirement to confirm the identity of an informant before
5 obtaining a warrant when there is independent information
6 corroborating the probable cause.¹ The party challenging a warrant
7 must prove that a search warrant is invalid by a preponderance of the
8 evidence. Pritchett v. State, 57291, 2012 WL 1662108 (Nev. May 10,
9 2012).²

12 Plaintiff alleged several causes of action including malicious
13 prosecution in this case. There is no evidence to establish the element
14 of malice by the officer against the Plaintiff. Further, under 1983
15 negligence against an individual officer cannot be maintained. There
16 must be a showing of intentional wrong doing by the officer or some
17 act amounting to clear disregard for civil and human rights. There is
18 no evidence that Stockman did anything intentionally wrong, but
19 acted in good faith.
20
21
22

23
24
25 ¹ When the issuance of a search warrant is based upon information obtained from a confidential informant,
26 the proper standard for determining probable cause for the issuance of the warrant is whether, under the
27 *totality of the circumstances*, there is probable cause to believe that contraband or evidence is located in a
28 particular place. Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994).

² Pritchett is an unpublished decision, and thus may not be relied upon as authority, but the decision is
instructive as it cites to U.S. Supreme Court and Nevada Supreme Court decisions that are controlling on
the same issue presented by Plaintiff: probable cause for a search warrant.

1 There is no record or proof that the past incidents involving
2 Plaintiff or her business were unfounded, frivolous, or based on bad
3 faith. Further, the officers involved in this incident were not involved
4 in the prior cases. Plaintiff has not met her evidentiary burden of
5 proof to substantiate this claim.
6

7 Further, Defendant Stockman is entitled to qualified immunity
8 unless her conduct violates some clearly established constitutional
9 right which any reasonable officer would have known was a violation.
10 When minimal force is exerted to carry out a search warrant, the
11 claim of lack of probable cause does not take away the good faith
12 qualified immunity that police officers get in such situations.³
13 Plaintiff was allowed to return home to retrieve glasses; she was
14 allowed to stay in her house during the search, the entire process
15 taking just over an hour. There was no personal injury or hand cuffing
16 of Plaintiff. Officers did not engage in conduct that an average
17 reasonable officer would consider as a clearly established violation of
18 the Plaintiff's civil rights.
19
20
21
22

23 ///

24 ///

25
26
27 ³ An allegation of malice is not sufficient to defeat immunity if the officer acted in an objectively
28 reasonable manner. Ortega v. Reyna, 114 Nev. 55, 59, 953 P.2d 18, 21 (1998) abrogated by Martinez v.
Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007)

1 II.
2 **Plaintiff's Civil Rights Claim Under 42 U.S.C. 1983**⁴

3 To establish a claim under §1983, the plaintiff must prove that
4 the conduct complained of: (1) was committed by a person acting
5 under color of state law, and (2) deprived the plaintiff of rights,
6 privileges, or immunities secured by the Constitution or laws of the
7 United States. The United States Supreme Court has held that
8 officials acting in their official capacities are not persons under 42
9 U.S.C. §1983, and therefore, may not be sued in state courts under the
10 federal civil rights statutes. State v. Eighth Judicial Dist. Court ex rel.
11 County of Clark, 118 Nev. 140, 153, 42 P.3d 233, 241-42 (2002).
12
13
14

15 III.
16 **Monell Claim against Clark County**

17 Plaintiff's Monell claim also fails as Plaintiff has not shown that
18 a policy, practice, or custom of the entity was the moving force behind
19 the alleged violation of Plaintiff's constitutional rights.⁵ There has
20 been no showing of official county policy that could be interpreted as
21
22

23 ⁴ Section 1983 does not itself create substantive rights, but merely provides 'a method for vindicating
24 federal rights elsewhere conferred. State v. Eighth Judicial Dist. Court ex rel. County of Clark, 118 Nev.
140, 153, 42 P.3d 233, 242 (2002).

25 ⁵ *[A]ny person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State,*
26 *shall subject, or cause to be subjected, any person . . . to the deprivation of any rights, privileges, or*
27 *immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance,*
28 *regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in*
any action at law, suit in equity, or other proper proceeding for redress" Monell v. Dep't of Soc.
Services of City of New York, 436 U.S. 658, 691-92, 98 S. Ct. 2018, 2036, 56 L. Ed. 2d 611 (1978).

1 authorizing a violation of Plaintiff's rights, and no showing that there
2 was intentional misconduct or reckless disregard of Plaintiff's rights.
3 County policy clearly states that warrants are carefully reviewed.
4 Here, all three officers testified that this procedure was followed as
5 the warrant was reviewed by two levels of supervisors, then by the
6 deputy district attorney, and again by supervisors before going before
7 a Judge. There was probable cause for the warrant regarding the
8 number of dogs and the greater chance of finding dogs of ill health
9 that may be in need of medical attention. The warrant was valid;
10 therefore, the officer is entitled to qualified immunity.
11
12

13
14 [A] local government may not be sued under §1983 for an injury
15 inflicted solely by its employees or agents. Instead, it is when
16 execution of a government's policy or custom, whether made by its
17 lawmakers or by those whose edicts or acts may fairly be said to
18 represent official policy, inflicts the injury that the government as an
19 entity is responsible under §1983. Monell v. Dep't of Soc. Services of
20 City of New York, 436 U.S. 658, 694, 98 S. Ct. 2018, 2037-38, 56 L.
21 Ed. 2d 611 (1978).
22
23

24 Under Monell, the facts must show that a policy of the entity is
25 the moving force behind the violation of a plaintiff's constitutional
26 rights. The evidence in this case, however, shows that a valid verified
27 warrant was issued, that the actors involved performed their duties
28

1 appropriately and that the officers acted appropriately during the
2 search and seizure. The policy as outlined above has not deprived
3 Plaintiff of her constitutional rights; Defendants procured a warrant
4 through specified channels before being signed by the judge. The
5 Nevada Supreme Court has held that where a judge reviews the
6 search warrant it will be sustained so long as there was a "substantial
7 basis" to conclude a violation of the law was "probably present." Kelly
8 v. State, 84 Nev. 332, 336, 440 P.2d 889, 891 (1968).
9

10
11 This type of exhaustion of procedure limits the intrusiveness
12 into the citizen's privacy rights. There is no evidence that any of the
13 Defendants acted in reckless or malicious disregard.⁶
14

15 IV.
16 **Plaintiff's State Law Tort Claims also Fail**

17 Plaintiff's complaint also alleged claims for negligence, IIED,
18 false arrest, unlawful warrant, conspiracy, and malicious prosecution,
19 but these claims are barred by the doctrine of sovereign immunity.
20 Further, Court finds there is no evidence to support any of these
21 claims. Discretionary immunity bars Plaintiff's negligence claims,
22 intentional torts of trespass, conversion and nuisance against the
23 County in this case.
24
25
26
27

28

⁶ NRS 41035 provides that no punitive damages are allowed against a government agency or its employees.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A. Qualified Immunity Defendant Stockman:

The Nevada Supreme Court has defined qualified immunity as follows:

Under the qualified immunity doctrine, government officials performing discretionary functions are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The pertinent inquiry in determining whether an officer is entitled to qualified immunity for a Fourth Amendment violation is whether a reasonable officer could have believed his conduct lawful under the clearly established principles of law governing that conduct. The right which the official is alleged to have violated must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. The issue is the objective (albeit fact-specific) question whether a reasonable officer could have believed [appellant's] warrantless [arrest] to be lawful, in light of clearly established law and the information the officer possessed. Stated another way, we look not at whether there was an arrest without probable cause, but rather whether the trooper reasonably could have believed that his conduct was lawful in light of clearly established law and the totality of the circumstances.

Ortega v. Reyna, 114 Nev. 55, 60, 953 P.2d 18, 21 (1998) abrogated by
Martinez v. Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007). The Court abrogated Ortega in Maruszczak in order clarify the test for discretionary act immunity.

B. Discretionary Act Immunity Defendant Stockman

The Nevada Supreme Court adopted the two part test for discretionary-act immunity defined by the U. Supreme Court in

1 Berkovitz-Gaubert: a decision must (1) involve an element of
2 individual judgment or choice and (2) be based on considerations of
3 social, economic, or political policy. The Court noted that
4 "...decisions that fail to meet the second criterion of this test remain
5 unprotected by NRS 41.032(2)'s discretionary-act immunity⁷."
6 Martinez v. Maruszczak, 123 Nev. 433, 446-47, 168 P.3d 720, 729
7 (2007).
8

9
10 In the instant case, Defendants are entitled to immunity
11 because the issue involved judgment or choice on the part of the
12 person involved and that the choice is the type that involves some
13 social, economic or political policy. The county has a policy for
14 preventing animal abuse, and the time and effort of having to go
15 through such exhaustive measures the Plaintiff insists on is
16 unreasonably wasteful and does not compliment public policy. Since
17 criminal informants do not even need to meet such a high bar, then
18 animal control does not need to meet such an unreasonable bar. The
19 policy and custom by the county is reasonable under the
20
21
22
23

24 ⁷ NRS 41.032. Acts or omissions of officers, employees and immune contractors

25 Except as provided in NRS 278.0233 no action may be brought under NRS 41.031 or against an
26 immune contractor or an officer or employee of the State or any of its agencies or political subdivisions
27 which is:

28 1. Based upon an act or omission of an officer, employee or immune contractor, exercising due
care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, if the
statute or regulation has not been declared invalid by a court of competent jurisdiction; or

2. Based upon the exercise or performance or the failure to exercise or perform a *discretionary
function or duty* on the part of the State or any of its agencies or political subdivisions or of any officer,
employee or immune contractor of any of these, whether or not the discretion involved is abused.

1 circumstances, and this case only furthers the current policy as the
2 informant's information was substantially accurate. Therefore, the
3 immunity provided the government here withstands Plaintiff's
4 assertion under 1983.
5

6 [B]ecause the County's actions were grounded on public policy
7 concerns, as expressed in the County Code and Nevada's abatement
8 statute, they fit within the second criterion of the *Berkovitz-Gaubert*
9 test.
10

11 V.
12 **Malicious Prosecution**

13 Plaintiff has failed to establish the elements of a malicious
14 prosecution claim: (1) want of probable cause to initiate the prior
15 criminal proceeding; (2) malice; (3) termination of the prior criminal
16 proceedings; and (4) damage. The Court has found that there was
17 probable cause for the warrant, there is further no evidence of malice.
18 A malicious prosecution claim requires that the defendant initiated,
19 procured the institution of, or actively participated in the
20 continuation of a criminal proceeding against the plaintiff. *LaMantia*
21 *v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879-80 (2002).
22
23
24
25
26
27
28

///

///

///

VI.
Negligent and Intentional Infliction of Emotional Distress

Foreseeable is the cornerstone of this court's test for negligent infliction of emotional distress. Crippens v. Sav on Drug Stores, 114 Nev. 760, 763, 961 P.2d 761, 763 (1998). The Nevada Supreme Court has held that the negligent infliction of emotional distress can be an element of the damage sustained by the negligent acts committed directly against the victim-plaintiff. Shoen v. Amerco, Inc., 111 Nev. 735, 748, 896 P.2d 469, 477 (1995). In the instant case, Defendants are immune from suit for negligence.

There is no evidence of negligence, IIED, false arrest, unlawful warrant, or conspiracy. Plaintiff has no basis to argue negligence; as has already been pointed out, the warrant was valid and lawful, and the actions taken when the house was entered were reasonable and appropriate. The search and the incidents surrounding the search were minimal, lasting around an hour. Plaintiff was able to return home to obtain glasses, but claims she was clad in nothing but her pajamas and robe; however it is not clear how this caused Plaintiff distress.

The elements of intentional infliction of emotional distress are: (1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress; (2) the plaintiff

1 having suffered severe or extreme emotional distress and (3) actual
2 and proximate causation. Star v. Rabello, 97 Nev. 124, 125 (1991).

3 [E]xtreme and outrageous conduct is that which is outside all
4 possible bounds of decency and is regarded as utterly intolerable in a
5 civilized community. That persons must necessarily be expected and
6 required to be hardened to occasional acts that are definitely
7 inconsiderate and unkind. Maduike v. Agency Rent-A-Car, 114 Nev.
8 1, 4, 953 P.2d 24, 26 (1998). Plaintiff simply states that the intrusion
9 and the prior history of complaints justify her IIED claim.
10
11

12 VII. 13 Conspiracy

14 Nevada law defines a conspiracy as an agreement between two
15 or more persons for an unlawful purpose. Evidence of a coordinated
16 series of acts furthering the underlying offense is sufficient to infer
17 the existence of an agreement and support a conspiracy conviction.
18 However, absent an agreement to cooperate in achieving the purpose
19 of a conspiracy, mere knowledge of, acquiescence in, or approval of
20 that purpose does not make one a party to conspiracy. Bolden v.
21 State, 121 Nev. 908, 912-13, 124 P.3d 191, 194 (2005).
22
23
24

25 There is absolutely no issue as to conspiracy here; the County
26 cannot conspire with itself, and there is no evidence that any other
27 person was involved to support the alleged conspiracy.
28

CONCLUSION

Based on the foregoing, the Court concludes that as Plaintiff has not met her burden to overcome the immunity afforded to the government, her claims are barred. Summary judgment is appropriate herein as there is no genuine issue of material fact, and Defendant is entitled to judgment as a matter of law.

Therefore, Defendant's Motion is hereby GRANTED in its entirety and the Jury Trial scheduled for April 28, 2014, is VACATED.

Counsel for Respondent is directed to provide Notice of Entry within ten (10) days of the filing of this Decision and Order.

IT IS SO ORDERED.

Dated this 28 day of January, 2014.


The Honorable Gloria Sturman

I hereby certify that on the date signed, a copy of the foregoing was placed in the attorney folder(s) in the Clerk's Office or mailed or faxed to the following:

Cal Johnson Potter
1125 Shadow Lane
Las Vegas, NV 89102
F: 385-9081

Steven B Wolfson
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155
F: 382-5178


Rosalyn Navara, Judicial Executive Assistant

BROADCAST REPORT

TIME : 01/28/2014 11:11
 NAME : DC 4
 FAX : 7026714305
 TEL :
 SER.# : 000B2N285625

PAGE(S)

14

DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
01/28	10:58	3859081	04:02	14	OK	ECM
01/28	11:07	3825178	04:07	14	OK	ECM

BUSY: BUSY/NO RESPONSE
 NG : POOR LINE CONDITION
 CV : COVERPAGE
 PC : PC-FAX

CIVIL COVER SHEET

XXVI

___ County, Nevada

Case No. ___

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone):

JUDY PALMIERI,

Attorney (name/address/phone):

Cal J. Potter, III, Esq. and John C. Funk, Esq. of POTTER
LAW OFFICES, 1125 Shadow Lane, Las Vegas, NV 89102
(702) 385-1954

Defendant(s) (name/address/phone):

**CLARK COUNTY, a political subdivision of the State of
Nevada, et al.**

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases****Real Property**

- ☐ **Landlord/Tenant**
- ☐ Unlawful Detainer
- ☐ **Title to Property**
- ☐ Foreclosure
- ☐ Liens
- ☐ Quiet Title
- ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
- ☐ Partition
- ☐ Planning/Zoning

Torts

- Negligence**
- ☐ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability**
(Slip/Fall)
- ☒ **Negligence – Other**
- ☐ **Product Liability**
- ☐ Product Liability/Motor Vehicle
- ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
- ☐ Torts/Defamation (Libel/Slander)
- ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
- ☐ Anti-trust
- ☐ Fraud/Misrepresentation
- ☐ Insurance
- ☐ Legal Tort
- ☐ Unfair Competition

Probate

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
- ☐ Individual Trustee
- ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

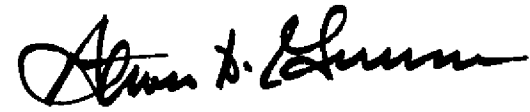
- ☐ **Construction Defect**
- ☐ Chapter 40
- ☐ General
- ☐ **Breach of Contract**
- ☐ Building & Construction
- ☐ Insurance Carrier
- ☐ Commercial Instrument
- ☐ Other Contracts/Acct/Judgment
- ☐ Collection of Actions
- ☐ Employment Contract
- ☐ Guarantee
- ☐ Sale Contract
- ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
- ☐ Other Administrative Law
- ☐ Department of Motor Vehicles
- ☐ Worker's Compensation Appeal
- ☐ **Appeal from Lower Court** (also check applicable civil case box)
- ☐ Transfer from Justice Court
- ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
- ☐ Other Special Proceeding
- ☐ **Other Civil Filing**
- ☐ Compromise of Minor's Claim
- ☐ Conversion of Property
- ☐ Damage to Property
- ☐ Employment Security
- ☐ Enforcement of Judgment
- ☐ Foreign Judgment – Civil
- ☐ Other Personal Property
- ☐ Recovery of Property
- ☐ Stockholder Suit
- ☐ Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- ☐ NRS Chapters 78-88
- ☐ Investments (NRS 104 Art. 8)
- ☐ Enhanced Case Mgmt/Business
- ☐ Commodities (NRS 90)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Other Business Court Matters
- ☐ Securities (NRS 90)
- ☐ Trademarks (NRS 600A)

Date

Signature of initiating party or representative



CLERK OF THE COURT

CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
JOHN C. FUNK, ESQ.
Nevada Bar No. 9255
POTTER LAW OFFICES
1125 Shadow Lane
Las Vegas, Nevada 89102
Ph: (702) 385-1954
Fax: (702) 385-9081
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * *

JUDY PALMIERI,

Plaintiff,

v.

CLARK COUNTY, a political subdivision
of the STATE OF NEVADA; DAWN
STOCKMAN, CE096, individually and in
her official capacity as an officer employed
by the County of Clark; JOHN DOES I
through X, inclusive and ROE
CORPORATIONS I through X, inclusive.

Defendants.

CASE NO.:

DEPT. NO.:

A- 11- 640631- C
XXVI

COMPLAINT

(JURY DEMANDED)

COMES NOW, the Plaintiff, JUDY PALMIERI, by and through her attorneys, CAL J.
POTTER, III, ESQ., and JOHN C. FUNK, ESQ., of POTTER LAW OFFICES and hereby
complains of the Defendants, and each of them, jointly and severally, upon information and
belief and allege as follows:

///

///

///

///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

The County Defendants has a known history of actively seeking to find violations against Plaintiff to harass and interfere with her business and have been doing such activity as early as 2006 and 2007 causing Plaintiff to defend against the frivolous allegations and charges all of which have been dismissed. Based upon false and inaccurate information Defendants fabricated a complaint without verifying the information contained in the complaint and submitted an affidavit which they knew or reasonably should have known, had they done a proper investigation, that they lacked sufficient information to lawfully obtain a valid warrant without making their misrepresentations. Defendants would have learned the true identity of the person who had made the complaint was allegedly a former disgruntled employee who was terminated for theft. Defendants submitted affidavits with material misrepresentations at various times set forth herein below, in the course of such action and that Defendant, COUNTY OF CLARK is liable for its custom and practice and in failing to train and supervise its officers and supervisors in the laws of charging and investigation and failing to investigate through internal investigations and of permitting and encouraging malicious prosecutions in this action and of individuals who are not favored members of the sale of pets. Plaintiff invokes the pendent jurisdiction of this Court to entertain claims arising under state law for the same violations and tort actions.

///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2. This action is brought to seek redress against the Defendant DAWN STOCKMAN, for acts committed while acting under the color of law of the state of Nevada, pursuant to Nevada Revised Statute.

4. Defendant, COUNTY OF CLARK, is a political entity pursuant to the Nevada Revised Statutes and at all times relevant hereto employed Defendants. Defendant CLARK COUNTY is a person under Monnell v. Department of Social Services, 436 U. S. 658 (1978).

6. At all times relevant hereto, and in all actions described herein, the Defendant DAWN STOCKMAN, CC Number CE096, was acting under the color of law in her authority as an officer of Clark County.

3

1 amend this Complaint to insert the true names and capacities when same have been ascertained and
2 will further ask leave to join said Defendants in these proceedings.

3 **FIRST CAUSE OF ACTION**
4 **(CIVIL RIGHTS VIOLATION AGAINST INDIVIDUAL OFFICERS MALICIOUS**
5 **PROSECUTION)**

6 8. This Complaint involves the investigation into an alleged complaint and the violation
7 of Plaintiff's civil rights on May 19, 2010 by Defendants above who were acting individually and
8 officially in their capacities as officers, employees and agents of Defendant CLARK COUNTY and
9 ROE CORPORATIONS which owed a duty to conduct a proper investigation prior to and after
10 obtaining a search and seizure warrant which resulted in an illegal and unlawful search of Plaintiff's
11 residence in violation of her constitutional rights pursuant to 42 U. S. C. §§ 1983 and 1988, and the
12 Fourth and Fourteenth Amendments to the Constitution of the United States without probable cause
13 and based upon a failure to verify information as part of the investigation when obtaining a warrant.

14 9. That Defendant DAWN STOCKMAN submitted a Declaration in Support of
15 Warrant/Summons for alleged Nevada Revised Statute violations and Clark County Ordinances and
16 unlawfully seized property at Plaintiff's residence located at 4302 Callahan Ave in Las Vegas,
17 Nevada, which property belonged to the Plaintiff on May 19, 2010.

18 10. There were no exigent circumstances in existence at the time the warrant was sought
19 or executed as it was obtained without validating the identity of the person reporting the alleged
20 violations at Plaintiff's residence.

21 11. That Defendant DAWN STOCKMAN told Plaintiff she was trying to find violations
22 against her as she had avoided previous violations until May 19, 2010, where her animals were
23 seized and Defendant withheld and/or misrepresented material facts regarding the identity of the
24 witness and the failure to confirm her identity and failure to obtain a written statement prior to
25 obtaining the warrant in order to misrepresent to the judicial body to obtain a warrant without
26 sufficient verifiable probable cause.

27 12. That Defendants knew or reasonably should have known that said statement by the
28 alleged witness was untrue and Defendants knew or reasonably should have known at the time that
the warrant was sought that the statements were untrue but Defendants had the intent of going to

1 Plaintiff's residence in order to commence criminal proceedings based upon prior failed attempts
2 to find violations and the subsequent statements made to the Plaintiff which indeed resulted in
3 criminal charges being brought against Plaintiff based upon the alleged violations asserted by
4 Defendants, that there was no probable cause to obtain a warrant or that Plaintiff had engaged in
5 any kind of criminal activity as Kaitlyn Nichols had never even been to Plaintiff's home and did not
6 have contact with Defendants who asserted that Kaitlyn had filed a complaint, when Defendants
7 knew no complaint had been filed and that the charges were brought with malice towards Plaintiff
8 based upon Defendants researching the prior charges and obtaining a warrant in order to bring
9 criminal charges against Plaintiff because of the business that she runs and the history of
10 Defendant's employees targeting owners/managers of pet stores.

11 13. The Plaintiff confronted the Defendant about the veracity of the warrant pointing out
12 that the alleged person reporting the incident, who had allegedly been to Plaintiff's home to move
13 boxes had in fact never even been to her home and that no date was listed when the alleged person
14 had come to Plaintiff's home. Defendant advised Plaintiff that Kaitlyn Nichols had signed a
15 statement but when confronted further by Plaintiff, Defendant stated the information was taken
16 telephonically. That each Defendant had a duty to investigate the incident and intentionally failed
17 to investigate even after being told the information was untrue.

18 14. Defendant made false misrepresentations to Plaintiff regarding the warrant asserting
19 they had obtained a witness statement and when Plaintiff confronted Defendant regarding the
20 alleged statement and asked to see a copy of it, Defendant never verified the identity and would not
21 provide the contact information of the alleged witness so it could be verified making
22 misrepresentations when obtaining the warrant without sufficient probable cause in relying upon
23 information that was too remote in time as to have any relevance.

24 15. Defendant further advised Plaintiff that the City and County had not been able to find
25 anything against Plaintiff up until May 19, 2010 in their prior investigations from 2006 and 2007.
26 After Plaintiff confronted the Defendant in her home regarding the alleged statements not being
27 from the individual as alleged, Defendant responded with it did not matter as the allegations were
28 also based upon an alleged prior incident in 2006, nearly 4 years earlier, where an Officer Elff had

1 smelled something at Plaintiff's residence which the officer was unable to identify as well as reports
2 for alleged violations at a store referred to as Bark Avenue in 2007, nearly 3 years prior which are
3 too far removed and remote to allow for or justify a warrant being issued.

4 16. That despite Defendant being confronted by Plaintiff at the time the warrant was
5 executed that the warrant was facially invalid and contained inaccurate information which was not
6 only untrue but was unverified and unreliable to which Defendant advised Plaintiff that a signed
7 complaint was made although Defendant knew the information was hearsay which was unverified,
8 and which information was withheld from the judge. Plaintiff requested to see a copy of the Kaitlyn
9 Nichols' complaint but was told the information was taken telephonically and could not be verified.
10 When Plaintiff offered to verify the inaccurate information the Defendant refused and proceeded
11 against Plaintiff's will to take her property without sufficient probable cause or basis in violation
12 of Plaintiff's Constitutional rights. The information was later verified by Plaintiff demonstrating
13 the witness had never been to Plaintiff's home further supporting retaliation against Plaintiff in
14 violating her civil rights.

15 17. That Defendant STOCKMAN's affidavit provides no explanation as to how the two
16 prior encounters, one at the Plaintiff's pet store and one at her house, both of which were several
17 years old and did not result in any findings of improper conduct gives rise to a fair probability that
18 Plaintiff was engaged in any criminal activity. Likewise, the affidavit contains no information
19 explaining the relevance of Officer F. Elam's prior visit four years earlier based upon an alleged
20 smell outside the Plaintiff's home when there was no allegation of alleged smells in the application
21 for search and seizure warrant.

22 18. The said actions caused pain and suffering and emotional distress all to their
23 damages in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00) and were in
24 violation of the Fourth and Fourteenth Amendments of the U.S. Constitution made applicable by
25 42 U.S.C. 1983 and caused the Plaintiff to be illegally charged as part of a malicious prosecution
26 against Plaintiff.

27 19. That Plaintiff had a legitimate expectation of privacy in her own home which was
28 illegally and unlawfully searched as the result of a warrant that was improperly obtained without

1 probable cause and without failing to conduct an investigation which was meant to harass and teach
2 Plaintiff a lesson based upon the prior attempts to file criminal charges against Plaintiff which were
3 ultimately dismissed.

4 20. The acts constitute an unlawful and illegal arrest and detention of Plaintiff, all in
5 violation of her rights under the Fourth and Fourteenth Amendments of the Constitution, and 42
6 U.S.C. § 1983 and, all to her damage in excess of TEN THOUSAND DOLLARS (\$10,000.00).

7 21. The acts, conduct and behavior of the Defendants, were performed knowingly,
8 intentionally, oppressively and maliciously, by reason of which the Plaintiffs are entitled to punitive
9 damages in a sum of excess of TEN THOUSAND DOLLARS (\$10,000.00) against said officer in
10 their individual capacity.

11 **SECOND CAUSE OF ACTION**
12 **STATE CLAIMS FOR: NEGLIGENCE, INTENTIONAL INFLICTION OF SEVERE**
13 **MENTAL DISTRESS, FALSE ARREST, UNLAWFUL WARRANT, CONSPIRACY**
14 **AND MALICIOUS PROSECUTION**

15 22. Paragraphs 1 through 21 are incorporated herein by reference as though set forth
16 fully herein.

17 23. That as a result of the actions of the Defendants who owed a duty to Plaintiff to
18 conduct an investigation in the allegations not only prior to obtaining a warrant but following
19 obtaining a warrant to verify the statements contained therein. Defendants therefore were unlawful
20 in acquiring of a facially invalid warrant to search and seize property on Plaintiff's resident, were
21 unlawful in their investigation and entry onto Plaintiff's residence, detention, seizure of property
22 and prosecution which was done recklessly in an intentional manner by intentionally not conducting
23 a proper investigation not only prior to obtaining the warrant but at the time the search and seizure
24 warrant was done at Plaintiff's residence. That said actions by Defendants were done with the
25 intent to inflict emotional distress, in that it caused Plaintiff to suffer great shame, and to incur
26 severe financial hardship in hiring attorneys to seek redress and the loss of her reputation based
27 upon the statements of the Defendants that although the prior charges filed against Plaintiff were
28 dismissed that Plaintiff would not be able to achieve the same result for the search on May 19,
2010.

24. That Plaintiff specifically told Defendants at the time they entered her residence

1 upon reviewing the documentation that the witness who allegedly made the complaint, Kaitlyn
2 Nichols, had never even been to her home at any time prior and had been terminated for theft and
3 that said information contained in the report was false and inaccurate but Defendants intentionally
4 declined to verify the identify of Kaitlyn Nichols at any time while at Plaintiff's residence.

5 25. That Defendants have engaged in a conspiracy based upon the statements made to
6 Plaintiff on May 18, 2010, wherein the Defendant officer stated, "That the city and county have
7 never been able to get anything on you, until now."

8 26. That the conspiracy is supported by the prior attempts to assert criminal charges
9 against Plaintiff in 2006 and 2007 by Defendants which were referenced as a basis for application
10 of a search and seizure warrant. The conspiracy was made known to Plaintiff at the time of serving
11 the warrant on her home on May 19, 2010 when the specific statements were made even though the
12 prior charges were ultimately dismissed and/or dropped.

13 27. Plaintiff properly placed Defendants on notice pursuant to Nevada Revised Statutes
14 of her intent to file a claim within the statutory time frames placing Defendants on notice of the
15 intent to move forward with a claim for state tort causes of action and the subsequent malicious
16 prosecution of the Plaintiff.

17 28. As a result of the ongoing conspiracy which resulted in securing a facially invalid
18 warrant, which was intentionally not verified and was remote in time based upon the prior unrelated
19 incidents of 2006 and 2007, Defendants engaged in the unlawful detention, taking of property and
20 the seizure of Plaintiff's pets in her home as well as subjecting her to malicious prosecution,
21 Plaintiff was also injured tortiously as well as for the negligence of Defendants. By reasons as set
22 forth above, Plaintiff suffered physical and mental pain and suffering, emotional distress, and was
23 deprived of her common law rights of privacy in her home and losses to her business, all to her
24 damage in a sum in excess of TEN THOUSAND DOLLARS (\$10,000.00).

25 29. The act, conduct and behavior of Defendants, all individually, were performed
26 knowingly and intentionally, oppressively and maliciously, by reason of which Plaintiff is entitled
27 to punitive damages in a sum in excess of TEN THOUSAND DOLLARS (\$10,000.00).

28 ///

THIRD CAUSE OF ACTION
(MONELL CLAIM)
AGAINST COUNTY OF CLARK

30. Paragraphs 1 through 29, inclusive are incorporated by reference as though set forth fully herein.

31. CLARK COUNTY has failed to train its agents in the fundamental law of enforcement and prosecution, probable cause, investigation and verification techniques and otherwise acted negligently, wantonly and/or deliberately indifferent in training and supervising its officers.

32. The actions of Defendants in acquiring the search and seizure warrant and serving the warrant all without probable cause resulted from, and was taken pursuant to a de facto policy of the COUNTY OF CLARK, which is implemented by agents of the said county to summarily punish persons who they believe to be disfavored in sale of pets, whether lawful or not, by means of unlawful process, and the use of searches for their own vindictive reasons at private residences.

33. The existence of the de facto policy described above has been known to supervisory and policy making officers and officials of the County, and the said County for a substantial period of time and who condoned such activity allowing their employees and agents to violate the rights of Plaintiff based upon an ongoing conduct of pattern stemming back to as early as 2006.

34. Despite their knowledge of the said illegal policy and practices, the supervisory and policy making officers and officials of the said Defendant CLARK COUNTY as a matter of policy have not adequately conducted internal affairs investigations, have not taken steps to terminate said practices, have not disciplined or otherwise properly supervised the individual officers who engaged in the said practices, have not effectively trained officers with regard to proper constitutional and statutory limits in the exercise of authority, and their conduct with individuals who are disabled, and have, instead, sanctioned the policy and practices through their deliberate indifference to the effect of the said policy and practices upon the constitutional rights of the residents and the visitors of Clark County.

35. The foregoing acts, omissions and systematic failures are customs and policies of the Defendant, COUNTY OF CLARK, caused the Defendants to believe that the determination if

1 the use of legal process, and types of searches and the manner of searches, was within the officers'
2 discretion and that complaints of illegal and unlawful legal process would not be honestly or
3 properly investigated, with the foreseeable result that officers would be likely to use improper legal
4 process.

5 36. As a direct result and proximate cause of the aforesaid act, omission, policies and
6 customs of the Defendant, COUNTY OF CLARK, the Plaintiff was improperly detained, arrested,
7 suffered, was inflicted with emotional distress, was required to retain an attorney, has lost time from
8 her business to defend against the allegations stemming from the incident and had her said
9 constitutional rights violated, all to her damage in a sum in excess of TEN THOUSAND
10 DOLLARS (\$10,000.00).

11 **FOURTH CAUSE OF ACTION**
12 **(ILLEGAL SEARCH AND ILLEGAL WARRANT)**
13 **AGAINST ALL DEFENDANTS**

14 37. Paragraphs 1 through 36, inclusive are incorporated by reference as though set forth
15 fully herein.

16 38. Defendants violated Plaintiff's Fourth Amendment rights on May 19, 2010 as set
17 forth above when they conducted an illegal search of Plaintiff's home in 2010 without probable
18 cause as set forth herein.

19 39. When the Defendants conducted their search with the specific purpose of looking
20 to find violations and by seizing property. That said actions and conduct was intentional, reckless
21 and unreasonable as there has been an ongoing conspiracy to attempt to find violations against
22 Plaintiff.

23 40. Defendants intentionally refused to validate the identity of the witness after being
24 confronted, failed to investigate and acted with reckless disregard of Plaintiff's rights after being
25 confronted as to the validity of the warrant which was facially invalid as the alleged person
26 identified as the complainant had never been to Plaintiff's home at any time, which is supported by
27 declaration, and said witness had never contacted Defendants or reported the alleged violations.

28 41. The Defendants improperly, intentionally and recklessly secured a warrant based

1 upon unverified information and after being confronted by Plaintiff as to the lack of validity with
2 the warrant and the information contained therein and the Defendants modified their basis and
3 reasoning for the warrant based upon old prior unrelated incidents approximately three and four
4 years prior which lacked probable cause as a basis for conducting a search as said incidents were
5 three and four years old and Defendants were on notice that Plaintiff's home was well kept as well
6 as the animals found therein did not have any problems but Defendants sought to find violations
7 against Plaintiff.

8 42. That Defendants stated to Plaintiff their intention of bringing charges against her
9 based upon her escaping violations in the past as a basis for securing the warrant and seizing her
10 property when obtaining the facially invalid warrant and executing said warrant was based upon
11 unlawful conduct which was not only unreasonable as to the remoteness of the incidents, but should
12 have been verified and was conducted in an illegal fashion with the requisite intent to violate
13 Plaintiff's Constitutional rights as well as her state rights under the Nevada Revised Statutes in the
14 unreasonable and reckless seizure of Plaintiff's property, and in the unreasonable and reckless
15 execution of the said search warrant, in violation of the Plaintiff's Fourth Amendment Rights all
16 to the Plaintiff's damage in an amount in excess of \$TEN THOUSAND DOLLARS (\$10,000.00);

17 WHEREFORE, Plaintiff JUDY PALMIERI, demands judgment in her favor against the
18 Defendants and each of them as to all causes of action as follows:

- 19 1. For compensatory, general and special damages, as set-forth above, in an amount in excess
20 of TEN THOUSAND DOLLARS (\$10,000.00);
- 21 2. Punitive damages, where appropriate, against the Defendants individually in an amount in
22 excess of TEN THOUSAND DOLLARS (\$10,000.00);
- 23 3. For cost of suit incurred herein;
- 24 4. For reasonable attorneys fees pursuant to 42 U.S.C. § 1988 and any other code provisions
25 allowing for the awarding of attorneys fees; and

26 ///

27 ///

28 ///

1 5. For such other and further relief as the Court may deem just and equitable.

2 Dated this May 4, 2011.

3 POTTER LAW OFFICES

4 By: /s: Cal J. Potter, III, Esq.
5 CAL J. POTTER, III, ESQ.
6 Nevada Bar No. 1988
7 JOHN C. FUNK, ESQ.
8 Nevada Bar No. 9255
9 1125 Shadow Lane
10 Las Vegas, Nevada 89102
11 Tel: (702) 385-1954
12 Fax: (702) 385-9081
13 *Attorneys for Plaintiff*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28