

CLERK OF THE COURT

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Tracie K. Lindeman  
Clerk of Supreme Court

1 **NOAS**  
2 CAL J. POTTER, III, ESQ.  
3 Nevada Bar No. 1988  
4 C. J. POTTER, IV, ESQ.  
5 Nevada Bar No. 13225  
6 POTTER LAW OFFICES  
1125 Shadow Lane  
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*Attorneys for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

....

9 JUDY PALMIERI,  
10 Plaintiff,

CASE NO.: A-11-640631-C  
DEPT. NO.: XXVI

11 v.

12 CLARK COUNTY, a political subdivision  
13 of the STATE OF NEVADA; DAWN  
14 STOCKMAN, CE096, individually and in  
15 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.

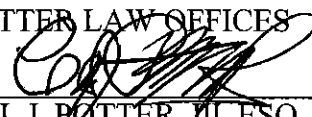
16 Defendants.

**NOTICE OF APPEAL**

18 NOTICE IS HEREBY GIVEN that Plaintiff, JUDY PALMIERI, does hereby appeal to  
19 the Supreme Court of Nevada from the Order Granting Motion for Summary Judgment filed on  
20 January 28, 2014 and the Notice of Entry of Order filed on February 5, 2014, copies of which are  
21 attached hereto.

22 DATED this 27<sup>th</sup> day of February, 2014.

POTTER LAW OFFICES

24 By   
25 CAL J. POTTER, III, ESQ.  
26 Nevada Bar No. 1988  
27 C. J. POTTER, IV, ESQ.  
28 Nevada Bar No. 13225  
1125 Shadow Lane  
Las Vegas, Nevada 89102  
*Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that pursuant to the Amended EDCR 7.26 and to NRCP5(b) on the  
3 27<sup>th</sup> day of February, 2014, I did serve at Las Vegas, Nevada a true and correct copy of **NOTICE**  
4 **OF APPEAL**, on all parties to this action by:

- 5 ☐ Facsimile  
6 ☒ U.S. Mail  
7 ☐ Hand Delivery  
8 ☐ Electronic Filing Courtesy Copy

9 Addressed as follows:

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

14 /s/ Jenna Enrico  
15 An Employee of POTTER LAW OFFICES  
16  
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CLERK OF THE COURT

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](mailto:Matthew.Christian@ClarkCountyDA.com)  
Attorneys for Defendant  
Clark County

DISTRICT COURT  
CLARK COUNTY, NEVADA

JUDY PALMIERI,

Plaintiff,

vs.

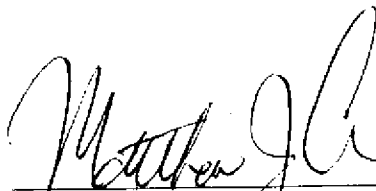
CLARK COUNTY, a political subdivision  
of the STATE OF NEVADA; DAWN  
STOCKMAN, CEO96, individually and in  
her official capacity as an officer  
employed by the County of Clark; JOHN  
DOES I through X, inclusive and ROE  
CORPORATIONS I through X, inclusive,  
Defendants.

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 28<sup>th</sup> of January, 2014, a copy of which is attached  
hereto.

DATED this 5<sup>th</sup> day of February, 2014.



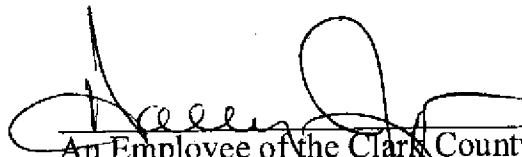
MATTHEW J. CHRISTIAN, ESQ.  
Deputy District Attorney  
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P. O. Box 552215  
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Attorney for Defendant Clark County

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**CERTIFICATE OF MAILING**

I hereby certify that on the 5<sup>th</sup> 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:

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## Facts

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

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

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).

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16  
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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.<sup>1</sup> 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).<sup>2</sup>

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.

25 <sup>1</sup> 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  
particular place. Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994).

28 <sup>2</sup> 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.<sup>3</sup>  
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 ///

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27 <sup>3</sup> 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**<sup>4</sup>

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.<sup>5</sup> There has  
20 been no showing of official county policy that could be interpreted as  
21  
22

23 <sup>4</sup> 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 <sup>5</sup> *[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

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.<sup>6</sup>  
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  
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28 <sup>6</sup> NRS 41035 provides that no punitive damages are allowed against a government agency or its employees.

1                   **A. Qualified Immunity Defendant Stockman:**

2                   The Nevada Supreme Court has defined qualified immunity as  
3 follows:  
4

5                   Under the qualified immunity doctrine, government  
6 officials performing discretionary functions are shielded  
7 from liability for civil damages insofar as their conduct  
8 does not violate clearly established statutory or  
9 constitutional rights of which a reasonable person would  
10 have known. The pertinent inquiry in determining  
11 whether an officer is entitled to qualified immunity for a  
12 Fourth Amendment violation is whether a reasonable  
13 officer could have believed his conduct lawful under the  
14 clearly established principles of law governing that  
15 conduct. The right which the official is alleged to have  
16 violated must be sufficiently clear that a reasonable  
17 official would understand that what he is doing violates  
18 that right. The issue is the objective (albeit fact-specific)  
19 question whether a reasonable officer could have believed

20 Ortega v. Reyna, 114 Nev. 55, 60, 953 P.2d 18, 21 (1998) abrogated by  
21 Martinez v. Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007). The  
22 Court abrogated Ortega in Maruszczak in order clarify the test for  
23 discretionary act immunity.  
24

25                   **B. Discretionary Act Immunity Defendant Stockman**

26                   The Nevada Supreme Court adopted the two part test for  
27 discretionary-act immunity defined by the U. Supreme Court in  
28

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 immunity<sup>7</sup>."  
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 <sup>7</sup> 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  
12 **V.**  
**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

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27 ///

**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. Maduikie 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

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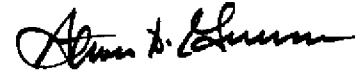
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01/28	11:07	3825178	04:07	14	OK	ECM

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1 ASTA  
2 CAL J. POTTER, III, ESQ.  
3 Nevada Bar No. 1988  
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9 Ph: (702) 385-1954  
10 Fax: (702) 385-9081  
11 *Attorneys for Plaintiff*



CLERK OF THE COURT

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**  
9 .....

9 JUDY PALMIERI,  
10 Plaintiff,

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11 v.

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13 of the STATE OF NEVADA; DAWN  
14 STOCKMAN, CE096, individually and in  
15 her official capacity as an officer employed  
16 by the County of Clark; JOHN DOES I  
17 through X, inclusive and ROE  
18 CORPORATIONS I through X, inclusive.

16 Defendants.

17 **CASE APPEAL STATEMENT**

- 18 1. Name of appellant filing this case appeal statement:  
19 Judy Palmieri  
20  
21 2. Identify the judge issuing the decision, judgment, or order appealed from:  
22 Judge Gloria Sturman  
23  
24 3. Identify each appellant and the name and address of counsel for each appellant:  
25 Appellant: Judy Palmieri  
26 Counsel for Appellants: Cal J. Potter, III, Esq.  
27 C. J. Potter, IV, Esq.  
28 Potter Law Offices  
1125 Shadow Lane  
Las Vegas, Nevada 89102  
Tel: (702) 385-1954  
Fax: (702) 385-9081

- 1           4.     Identify each respondent and the name and address of appellate counsel, if known,  
2                     for each respondent (if the name of a respondent's appellate counsel is unknown,  
3                     indicate as much and provide the name and address of that respondent's trial  
4                     counsel):

5                     Respondent:   Clark County

6                     Counsel for Respondent:   Steven B. Wolfson, District Attorney  
7   Matthew J. Christian, Deputy District Attorney  
8   500 South Grand Central Parkway  
9   P. O. Box 552215  
   Las Vegas, NV 89155-2215  
   Ph: (702) 455-4761  
   Fax: (702) 382-5178

10                    Respondent:   Dawn Stockman, CE96

11                    Counsel for Respondent:   Steven B. Wolfson, District Attorney  
12   Matthew J. Christian, Deputy District Attorney  
13   500 South Grand Central Parkway  
14   P. O. Box 552215  
   Las Vegas, NV 89155-2215  
   Ph: (702) 455-4761  
   Fax: (702) 382-5178

- 15           5.     Indicate whether any attorney identified above in response to question 3 or 4 is not  
16                     licensed to practice law in Nevada and, if so, whether the district court granted that  
17                     attorney permission to appear under SCR 42 (attach a copy of any district court order  
18                     granting such permission):

19                     Not Applicable

- 20           6.     Indicate whether appellant was represented by appointed or retained counsel in the  
21                     district court:

22                     Appellant was represented by her retained counsel, listed above, in district  
23                     court.

- 24           7.     Indicate whether appellant is represented by appointed or retained counsel on appeal:

25                     Appellant is represented by her retained counsel, listed above, on appeal.

- 26           8.     Indicate whether appellant was granted leave to proceed in forma pauperis, and the  
27                     date of entry of the district court order granting such leave:

28                     Appellant has not been granted leave to proceed in forma pauperis.

- 1           9.     Indicate the date the proceedings commenced in the district court (e.g., date  
2                 complaint, indictment, information, or petition was filed):

3                     The Complaint was filed in the Eighth Judicial District on May 4, 2011.

- 4           10.    Provide a brief description of the nature of the action and result in the district court,  
5                 including the type of judgment or order being appealed and the relief granted by the  
6                 district court:

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

- 16          11.    Indicate whether the case has previously been the subject of an appeal to or original  
17                 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court  
18                 docket number of the prior proceeding:

19                     Not Applicable.

- 20          12.    Indicate whether this appeal involves child custody or visitation:

21                     This appeal does not involve child custody or visitation.

22    ...

23    ...

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26    ...

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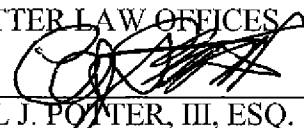
28    ...

1        13.    If this is a civil case, indicate whether this appeal involves the possibility of  
2                    settlement:

3                    Appellant believes there is a possibility of settlement.

4        DATED this 27<sup>th</sup> day of February, 2014.

5                    POTTER LAW OFFICES

6                    By   
7                    CAL J. POTTER, III, ESQ.  
8                    Nevada Bar No. 1988  
9                    C. J. POTTER, IV, ESQ.  
10                    Nevada Bar No. 13225  
11                    1125 Shadow Lane  
12                    Las Vegas, Nevada 89102  
13                    Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that pursuant to the Amended EDCR 7.26 and to NRCP5(b) on the  
3 27<sup>th</sup> day of February, 2014, I did serve at Las Vegas, Nevada a true and correct copy of **CASE**  
4 **APPEAL STATEMENT**, on all parties to this action by:

- 5 ☐ Facsimile  
6 ☒ U.S. Mail  
7 ☐ Hand Delivery  
8 ☐ Electronic Filing Courtesy Copy

9 Addressed as follows:

10 Steven B. Wolfson, District Attorney  
11 Matthew J. Christian, Deputy District Attorney  
12 500 South Grand Central Parkway  
13 P. O. Box 552215  
Las Vegas, NV 89155-2215  
Ph: (702) 455-4761  
Fax: (702) 382-5178

14 /s/ Jenna Enrico  
15 An Employee of POTTER LAW OFFICES  
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DEPARTMENT 26  
**CASE SUMMARY**  
**CASE NO. A-11-640631-C**

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

Location: **Department 26**  
Judicial Officer: **Sturman, Gloria**  
Filed on: **05/04/2011**  
Cross-Reference Case Number: **A640631**

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**CASE INFORMATION**

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Case Type: **Negligence - Other**  
Case Flags: **Appealed to Supreme Court**  
**Jury Demand Filed**  
**Arbitration Exemption Granted**

---

**DATE**

**CASE ASSIGNMENT**

---

**Current Case Assignment**

Case Number	A-11-640631-C
Court	Department 26
Date Assigned	05/04/2011
Judicial Officer	Sturman, Gloria

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**PARTY INFORMATION**

---

**Plaintiff**      **Palmieri, Judy**

*Lead Attorneys*  
**Potter, Cal Johnson**  
*Retained*  
7023851954(W)

**Defendant**      **Clark County**

**Wolfson, Steven B**  
*Retained*  
702-671-2700(W)

**Nevada State of**  
**Stockman, Dawn**

**Wolfson, Steven B**  
*Retained*  
702-671-2700(W)





---

**DATE**















**EVENTS & ORDERS OF THE COURT**

**INDEX**







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05/04/2011	 <b>Complaint</b> Filed By: Plaintiff Palmieri, Judy <i>Complaint</i>
05/04/2011	Case Opened
05/18/2011	 <b>Initial Appearance Fee Disclosure</b> Filed By: Plaintiff Palmieri, Judy <i>Initial Appearance Fee Disclosure</i>
05/25/2011	 <b>Summons</b> Filed by: Plaintiff Palmieri, Judy <i>Summons for Clark County</i>
05/25/2011	 <b>Summons</b> Filed by: Plaintiff Palmieri, Judy <i>Summons from Dawn Stockman, CE096</i>

DEPARTMENT 26  
**CASE SUMMARY**  
**CASE NO. A-11-640631-C**

07/06/2011	 Answer to Complaint Filed by: Defendant Clark County <i>Answer of Clark County and Dawn Stockman</i>
08/09/2011	 Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request for Exemption</i>
08/24/2011	 Notice of Early Case Conference Filed By: Plaintiff Palmieri, Judy <i>Notice of Early Case Conference</i>
09/06/2011	 Demand for Jury Trial Filed By: Plaintiff Palmieri, Judy <i>Demand for Jury Trial</i>
09/20/2011	 Joint Case Conference Report Filed By: Plaintiff Palmieri, Judy <i>Joint Case Conference Report</i>
09/27/2011	 Scheduling Order <i>Scheduling Order</i>
10/21/2011	 Order Setting Civil Jury Trial <i>Order Setting Civil Jury Trial</i>
01/31/2012	 Stipulation and Order to Extend Discovery Deadlines Filed By: Plaintiff Palmieri, Judy <i>Stipulation and Order to Extend Discovery Deadlines Pursuant to EDCR 2.35</i>
02/07/2012	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Palmieri, Judy <i>Notice of Entry of Stipulation and Order</i>
03/21/2012	 Notice of Taking Deposition Filed By: Plaintiff Palmieri, Judy <i>Notice of Taking Depositions</i>
03/24/2012	 Amended Notice of Taking Deposition Filed By: Plaintiff Palmieri, Judy <i>Amended Notice of Taking Depositions</i>
05/14/2012	 Stipulation to Extend Discovery Party: Plaintiff Palmieri, Judy <i>Stipulation and Order to Extend Discovery Deadlines Pursuant to EDCR 2.35 (Second Request)</i>
05/16/2012	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Palmieri, Judy <i>Notice of Entry of Stipulation and Order</i>
08/03/2012	 Motion for Summary Judgment <i>Defendants' Motion for Summary Judgment</i>








DEPARTMENT 26  
**CASE SUMMARY**  
**CASE NO. A-11-640631-C**

08/27/2012	 Order Setting Jury Trial <i>Order Re-Setting Civil Jury Trial</i>
08/28/2012	 Stipulation and Order Filed by: Plaintiff Palmieri, Judy <i>Stipulation and Order to Extend Opposition to and Reply to Defendant's Motion for Summary Judgment, Move the Hearing, and Continue the Trial Date</i>
08/29/2012	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Palmieri, Judy <i>Notice of Entry of Stipulation and Order</i>
09/12/2012	 Notice of Rescheduling <i>of Hearing</i>
10/08/2012	 Stipulation and Order Filed by: Plaintiff Palmieri, Judy <i>Stipulation and Order to Extend Opposition and Reply to Defendant's Motion for Summary Judgment and Move the Hearing (Second Request)</i>
10/11/2012	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Palmieri, Judy <i>Notice of Entry of Stipulation and Order</i>
11/01/2012	<b>CANCELED Pre Trial Conference (10:00 AM) (Judicial Officer: Sturman, Gloria)</b> <i>Vacated - Superseding Order</i>
11/13/2012	 Opposition to Motion For Summary Judgment Filed By: Plaintiff Palmieri, Judy <i>Plaintiff's Opposition to Defendants' Motion For Summary Judgment</i>
11/15/2012	<b>CANCELED Calendar Call (10:00 AM) (Judicial Officer: Sturman, Gloria)</b> <i>Vacated - Superseding Order</i>
11/19/2012	<b>CANCELED Jury Trial (1:00 PM) (Judicial Officer: Sturman, Gloria)</b> <i>Vacated - Superseding Order</i>
11/29/2012	 Notice of Rescheduling <i>Notice of Rescheduling of Hearing</i>
12/14/2012	 Reply to Opposition Filed by: Defendant Clark County <i>Defendants' Reply to Plaintiff's Opposition</i>
12/17/2012	 Supplement to Motion for Summary Judgment Filed by: Defendant Clark County <i>Supplemental Record for Motion for Summary Judgment</i>
12/19/2012	 Receipt of Copy Filed by: Defendant Clark County <i>Receipt of Copy</i>
12/21/2012	 <b>Motion for Summary Judgment (9:00 AM) (Judicial Officer: Sturman, Gloria)</b> <i>Defendants' Motion for Summary Judgment</i>

DEPARTMENT 26  
**CASE SUMMARY**  
**CASE NO. A-11-640631-C**

01/10/2013	 Order Filed By: Defendant Clark County <i>Order Regarding Motion for Summary Judgment</i>
01/17/2013	 Order Filed By: Defendant Clark County <i>Order Regarding Motion for Summary Judgment</i>
01/18/2013	 Notice of Entry of Order Filed By: Plaintiff Palmieri, Judy <i>Notice of Entry of Order Regarding Motion for Summary Judgment</i>
06/20/2013	 Status Report Filed By: Plaintiff Palmieri, Judy <i>Plaintiff's Status Report</i>
06/21/2013	 <b>Status Check</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Status Check: Witness Deposition</i>
09/26/2013	 Re-Notice Filed by: Defendant Clark County <i>Re-Notice of Motion for Summary Judgment</i>
09/27/2013	 Certificate of Mailing Filed By: Defendant Clark County <i>Certificate of Mailing</i>
10/23/2013	 Notice of Withdrawal of Motion Filed By: Plaintiff Palmieri, Judy <i>Plaintiff's Notice of Vacating Motion to Move the Hearing for Defendant's Re-Notice of Motion for Summary Judgment</i>
10/23/2013	 Motion Filed By: Plaintiff Palmieri, Judy <i>Motion to Move the Hearing for Defendant's Re-Notice of Motion for Summary Judgment</i>
10/24/2013	 Addendum Filed By: Plaintiff Palmieri, Judy <i>Addendum to the Opposition to Motion for Summary Judgment</i>
11/01/2013	 <b>Motion for Summary Judgment</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Defendants' Re-Notice of Motion for Summary Judgment</i>
11/15/2013	<b>CANCELED Motion</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - Moot</i> <i>Motion to Move the Hearing for Defendant's Re-Notice of Motion for Summary Judgment</i>
12/09/2013	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>Order ReSetting Civil Jury Trial</i>
01/28/2014	 <b>Minute Order</b> (3:00 AM) (Judicial Officer: Sturman, Gloria) <i>Minute Order: Decision and Order Re: Defendant's Motion for Summary Judgment</i>
01/28/2014	

DEPARTMENT 26  
**CASE SUMMARY**  
**CASE NO. A-11-640631-C**

	 Decision and Order <i>Decision and Order Re: Defendant's Motion for Summary Judgment</i>
01/28/2014	<b>Summary Judgment</b> (Judicial Officer: Sturman, Gloria) Debtors: Judy Palmieri (Plaintiff) Creditors: Clark County (Defendant), Nevada State of (Defendant), Dawn Stockman (Defendant) Judgment: 01/28/2014, Docketed: 02/04/2014
02/04/2014	 Memorandum of Costs and Disbursements Filed By: Defendant Clark County <i>Clark County's Memorandum of Costs</i>
02/05/2014	 Notice of Entry of Decision and Order Filed By: Defendant Clark County <i>Notice of Entry of Decision and Order Re: Defendant's Motion for Summary Judgment</i>
02/10/2014	 Motion to Retax Filed By: Plaintiff Palmieri, Judy <i>Plaintiff's Motion to Retax Defendants' Memorandum of Costs</i>
02/14/2014	 Opposition to Motion Filed By: Defendant Clark County <i>Clark County's Opposition to Plaintiff's Motion to Retax Memorandum of Costs</i>
02/27/2014	 Notice of Appeal Filed By: Plaintiff Palmieri, Judy <i>Notice of Appeal</i>
02/27/2014	 Case Appeal Statement Filed By: Plaintiff Palmieri, Judy <i>Case Appeal Statement</i>
03/14/2014	<b>Motion to Retax</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Plaintiff's Motion to Retax Defendants' Memorandum of Costs</i>
04/03/2014	<b>CANCELED Pre Trial Conference</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - Moot</i>
04/04/2014	<b>CANCELED Calendar Call</b> (11:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Order</i>
04/28/2014	<b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Order</i>

DATE	FINANCIAL INFORMATION
	<b>Plaintiff</b> Palmieri, Judy
	Total Charges 294.00
	Total Payments and Credits 294.00
	<b>Balance Due as of 3/3/2014 0.00</b>

## CIVIL COVER SHEET

A- 11- 640631- C  
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.)

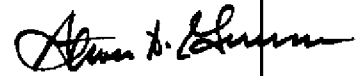
- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 90)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademarks (NRS 600A)
- ☐ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

Date

Signature of initiating party or representative

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:

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## Facts

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

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



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).

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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.<sup>1</sup> 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).<sup>2</sup>

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.

---

25 <sup>1</sup> 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  
particular place. Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994).

28 <sup>2</sup> 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.<sup>3</sup>  
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.  
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27 <sup>3</sup> 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)

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**II.**  
**Plaintiff's Civil Rights Claim Under 42 U.S.C. 1983<sup>4</sup>**

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

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

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

---

<sup>4</sup> Section 1983 does not itself create substantive rights, but merely provides "a method for vindicating 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).

<sup>5</sup> *[A]ny person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, 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  
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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.<sup>6</sup>  
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.  
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<sup>6</sup> NRS 41035 provides that no punitive damages are allowed against a government agency or its employees.

1                   **A. Qualified Immunity Defendant Stockman:**

2                   The Nevada Supreme Court has defined qualified immunity as  
3 follows:  
4

5                   Under the qualified immunity doctrine, government  
6 officials performing discretionary functions are shielded  
7 from liability for civil damages insofar as their conduct  
8 does not violate clearly established statutory or  
9 constitutional rights of which a reasonable person would  
10 have known. The pertinent inquiry in determining  
11 whether an officer is entitled to qualified immunity for a  
12 Fourth Amendment violation is whether a reasonable  
13 officer could have believed his conduct lawful under the  
14 clearly established principles of law governing that  
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18 that right. The issue is the objective (albeit fact-specific)  
19 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  
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there was an arrest without probable cause, but rather  
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21 Martinez v. Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007). The  
22 Court abrogated Ortega in Maruszczak in order clarify the test for  
23 discretionary act immunity.  
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25                   **B. Discretionary Act Immunity Defendant Stockman**

26                   The Nevada Supreme Court adopted the two part test for  
27 discretionary-act immunity defined by the U. Supreme Court in  
28

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 immunity<sup>7</sup>.”  
6 Martinez v. Maruszczak, 123 Nev. 433, 446-47, 168 P.3d 720, 729  
7 (2007).  
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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 <sup>7</sup> 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  
12 **V.**  
**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  
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**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. Maduiké 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  
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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**

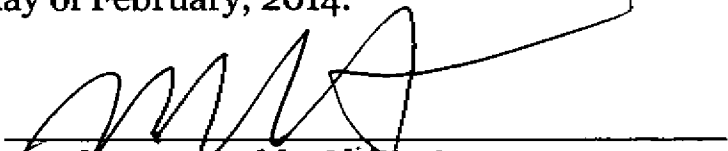
Based on the foregoing, the Court concludes that as Plaintiff has not met her burden to overcome the immunity afforded to the government, her claims are barred. Summary judgment is appropriate herein as there is no genuine issue of material fact, and Defendant is entitled to judgment as a matter of law.

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)

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

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

  
CLERK OF THE COURT

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](mailto:Matthew.Christian@ClarkCountyDA.com)  
Attorneys for Defendant  
Clark County

DISTRICT COURT  
CLARK COUNTY, NEVADA

JUDY PALMIERI,

Plaintiff,

vs.

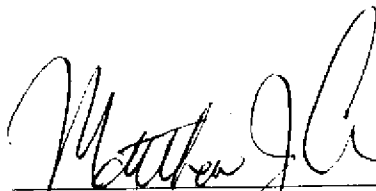
CLARK COUNTY, a political subdivision  
of the STATE OF NEVADA; DAWN  
STOCKMAN, CEO96, individually and in  
her official capacity as an officer  
employed by the County of Clark; JOHN  
DOES I through X, inclusive and ROE  
CORPORATIONS I through X, inclusive,  
Defendants.

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 28<sup>th</sup> of January, 2014, a copy of which is attached  
hereto.

DATED this 5<sup>th</sup> day of February, 2014.



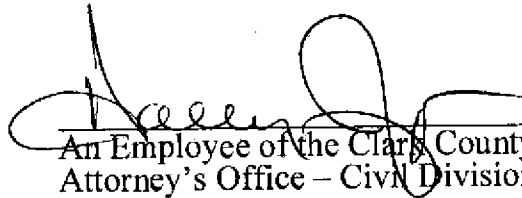
MATTHEW J. CHRISTIAN, ESQ.  
Deputy District Attorney  
State Bar No. 8024  
500 South Grand Central Pkwy. 5<sup>th</sup> Flr.  
P. O. Box 552215  
Las Vegas, Nevada 89155-2215  
Attorney for Defendant Clark County

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**CERTIFICATE OF MAILING**

I hereby certify that on the 5<sup>th</sup> 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:

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### Facts

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

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

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).

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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.<sup>1</sup> 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).<sup>2</sup>

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.

25 <sup>1</sup> 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  
particular place. Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994).

28 <sup>2</sup> 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.<sup>3</sup>  
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.  
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27 <sup>3</sup> 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**<sup>4</sup>

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.<sup>5</sup> There has  
20 been no showing of official county policy that could be interpreted as  
21  
22

23 <sup>4</sup> 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 <sup>5</sup> *[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  
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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  
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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,  
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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.  
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28 <sup>6</sup> NRS 41035 provides that no punitive damages are allowed against a government agency or its employees.

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5                   Under the qualified immunity doctrine, government  
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9 constitutional rights of which a reasonable person would  
10 have known. The pertinent inquiry in determining  
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13 officer could have believed his conduct lawful under the  
14 clearly established principles of law governing that  
15 conduct. The right which the official is alleged to have  
16 violated must be sufficiently clear that a reasonable  
17 official would understand that what he is doing violates  
18 that right. The issue is the objective (albeit fact-specific)  
19 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  
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26                   The Nevada Supreme Court adopted the two part test for  
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2 individual judgment or choice and (2) be based on considerations of  
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14 preventing animal abuse, and the time and effort of having to go  
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18 animal control does not need to meet such an unreasonable bar. The  
19 policy and custom by the county is reasonable under the  
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21  
22  
23

24 <sup>7</sup> 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  
12 **V.**  
**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 ///

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. Maduikie 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

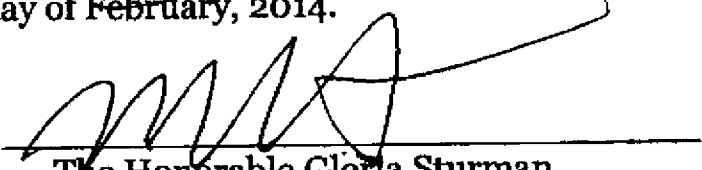
Based on the foregoing, the Court concludes that as Plaintiff has not met her burden to overcome the immunity afforded to the government, her claims are barred. Summary judgment is appropriate herein as there is no genuine issue of material fact, and Defendant is entitled to judgment as a matter of law.

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Other**

**COURT MINUTES**

**December 21, 2012**

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A-11-640631-C	Judy Palmieri, Plaintiff(s) vs. Clark County, Defendant(s)
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<b>December 21, 2012</b>	<b>9:00 AM</b>	<b>Motion for Summary Judgment</b>
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**HEARD BY:** Sturman, Gloria

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Lorna Shell

**RECORDER:** Rosalyn Navara

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Foley, Michael L.	Attorney
	Potter, Cal Johnson	Attorney

**JOURNAL ENTRIES**

- Court disclosed that she represented Clark County but nothing regarding Animal Control. Counsel stated no need for recusal. Mr. Foley argued the warrant was to be reviewed as to the totality of the circumstances; there was probable cause, and no negligence or reckless disregard. Mr. Potter argued the facts were in dispute, there was a false affidavit, and a civil rights violation. Colloquy regarding Ms. Nichols, who joined the Navy, which prevented Mr. Foley from deposing her. COURT ORDERED, motion for relief under 56(f) GRANTED; and matter SET for Status Check in six months.

06/21/13 9:00 AM STATUS CHECK

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Other**

**COURT MINUTES**

**June 21, 2013**

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A-11-640631-C      Judy Palmieri, Plaintiff(s)  
vs.  
Clark County, Defendant(s)

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**June 21, 2013      9:00 AM      Status Check**

**HEARD BY:** Sturman, Gloria

**COURTROOM:** RJC Courtroom 03H

**COURT CLERK:** Linda Denman

**RECORDER:** Kerry Esparza

**REPORTER:**

**PARTIES**

**PRESENT:**      Foley, Michael L.      Attorney  
                 Potter, Cal Johnson      Attorney

**JOURNAL ENTRIES**

- As to STATUS CHECK: WITNESS DEPOSITION, Counsel advised the witness remains in Virginia after enlisting in the service and they would continue to try and get her deposition. Court stated the trial date stands and will see counsel at the pre trial conference on April 3, 2014.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Other**

**COURT MINUTES**

**November 01, 2013**

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A-11-640631-C      Judy Palmieri, Plaintiff(s)  
                                 vs.  
                                 Clark County, Defendant(s)

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**November 01, 2013      9:00 AM      Motion for Summary  
Judgment**

**HEARD BY:**    Sturman, Gloria

**COURTROOM:**    RJC Courtroom 03H

**COURT CLERK:**    Linda Denman

**RECORDER:**    Kerry Esparza

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Foley, Michael L.	Attorney
	Potter, Cal Johnson	Attorney

**JOURNAL ENTRIES**

- Argument by counsel of DEFENDANT'S RE-NOTICE OF MOTION FOR SUMMARY JUDGMENT and the continuance that was granted so the deposition of a witness could be taken. Mr. Foley stressed the Enforcement Officer for the County who received a tip concerning conditions on the plaintiff's property, acted appropriately with a valid warrant and investigated the matter without using excessive force and issued two tickets. Mr. Potter argued the investigational tactics used and the personal grudges between the parties that led to an over-reaction and the filing of this complaint; the number of times the city has unsuccessfully sought to prosecute the plaintiff and have never been able to convict; and there were no exigent circumstances that called for anything more than a meet and confer.

Following argument, COURT ORDERED Motion CONTINUED FOR CHAMBERS DECISION.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Other**

**COURT MINUTES**

**January 28, 2014**

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A-11-640631-C

Judy Palmieri, Plaintiff(s)

vs.

Clark County, Defendant(s)

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**January 28, 2014**

**3:00 AM**

**Minute Order**

**HEARD BY:** Sturman, Gloria

**COURTROOM:**

**COURT CLERK:** Linda Denman

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- DEFENDANTS CLARK COUNTY AND DAWN STOCKMAN'S MOTION FOR SUMMARY JUDGMENT came before the Court November 1, 2013. Counsel presented their case and Court took the matter under advisement.

After carefully considering the papers submitted and hearing arguments, Court issued its Decision and Order this 28th day of January, 2014. COURT ORDERED Motion for Summary Judgment GRANTED. See Court's Decision and Order for full context.

Defendant Clark County is directed to provide prompt written Notice of Entry hereof.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE  
**NOTICE OF DEFICIENCY**  
ON APPEAL TO NEVADA SUPREME COURT

CAL J. POTTER, III, ESQ.  
1125 SHADOW LN.  
LAS VEGAS, NV 89102

DATE: March 3, 2014  
CASE: A640631

RE CASE: JUDY PALMIERI vs. 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

NOTICE OF APPEAL FILED: February 27, 2014

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

---

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

*Please refer to Rule 3 for an explanation of any possible deficiencies.*

---

**\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DECISION AND ORDER RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF DECISION AND ORDER RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

JUDY PALMIERI,

Plaintiff(s),

vs.

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,

Defendant(s),

Case No: A640631

Dept No: XXVI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 3 day of March 2014.

Steven D. Grierson, Clerk of the Court



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Heather Ungermann, Deputy Clerk