

evidence is located in a particular place' before issuing a warrant

The Supreme Court also used Gates as a vehicle to elaborate on our role as a reviewing court. We are not in a position to flyspeck the affidavit through de novo review. . . . After the fact scrutiny by courts of the sufficiency of the affidavit should not take the form of de novo review. Rather, the Magistrate Judge's determination 'should be paid great difference'. . . . This deferential approach is the antithesis of a 'grudging or negative attitude' toward search warrants and 'a hypertechnical rather than common sense' analysis. . . . Holding that our limited scope to review simply means determining whether the Magistrate had a substantial basis for concluding there was a fair probability that evidence would be found. 440 F.3d 1065, 1069.

The Plaintiff does not claim all of that the information in the Affidavit is false. In fact, she admitted in her deposition that she routinely kept numerous dogs at her residence in violation of the Zoning codes. The Plaintiff is instead taking a hypertechnical approach to claim that a warrant is invalid unless Animal Control Officers go out and thoroughly investigate the identity of informants before they try to save animals. That really is what they claim. In a town where at least 10% of the population cannot document who they are or where they came from, they want this Court to impose a standard upon Animal Control officers that they require proof of a complainant's identity before they would even consider trying to control or save animals.

#### **Previous Case**

At page 3 of the Opposition, the Plaintiff brings up a previous Federal case that she filed against another Animal Control officer. In that case, the Plaintiff claimed pretty much the same issues that she is claiming in this case, that Animal Control and the County were engaging in a grand conspiracy against her and that by violating her Civil Rights the County and the individuals should all be subject to punitive damages. The case was obviously slapp suit. Judge Roger Hunt dismissed the action on a Motion to Dismiss. A copy of the Order granting the Motion to Dismiss is attached for the Court's reference. This writer has never seen Judge Hunt show as much emotion as he did in this particular Order. However, it was clear that the Plaintiff's claims, as they are in this case, were totally groundless and brought with ulterior motives.

1 Judge Hunt ruled that the Plaintiff's allegations failed to even state a plausible claim  
2 as required by Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009). In summing up the Plaintiff's  
3 claims against the Animal Control officers and the County, the Court stated: "Accordingly,  
4 Plaintiff's complaint has not managed to cross the line from conceivable to plausible."

### 5 Standard of Review

6 In her Opposition, the Plaintiff states what she believe to be the standard of review on  
7 a summary judgment. However, most of the cases cited are under the old standard whereby  
8 any whimsical issue of fact could deny a motion for summary judgment. They cite the case  
9 of Wood v. Safeway Inc., 121 P.3d 1026 (2005). However, they completely ignore the  
10 ruling in that case. Under the holding in Wood v. Safeway, Inc., Nevada now follows the  
11 federal standard in granting or denying motions for summary judgment. The Defendants  
12 cannot rely on just their allegations but must submit admissible evidence to oppose the  
13 motion. In the end, this case just boils down to a review of the Affidavit and application for  
14 search warrant to make the determination whether or not Judge Williams was correct in  
15 issuing a search warrant under the circumstances. When looking at the admissible evidence,  
16 it is clear that using a common sense rather than a hypertechnical review of what happened,  
17 the officer involved was not only allowed but probably compelled to act as she did. The lack  
18 of evidence produced by the Plaintiff is underscored in the Opposition by their claim that  
19 there is an issue of fact as to malice, conspiracy, etc. because Officer Stockman stated while  
20 executing the warrant that this is the first time we found evidence on you, or something to  
21 that effect. From that, the Plaintiff claims that she took it to mean that they were out to "get  
22 her." This is pretty hard to accept from a witness who stated at her deposition that she did  
23 not think Officer Stockman acted with malice.

24 The Merriam-Webster dictionary defines paranoia as 1) a psychosis characterized by  
25 systematized delusions of persecution, usually without hallucinations or 2) a tendency on the  
26 part of an individual or group toward excessive or irrational suspiciousness and  
27 distrustfulness of others. The Plaintiff works in a regulated field. When the Regulators  
28 inspect, as they are supposed to do, she feels that means they are out to get her. Simply

1 making a statement that this is the first time we have gotten some evidence on you does not  
2 prove that County employees are engaged in a grand conspiracy against her and intentionally  
3 harming her. Under Wood v. Safeway, Inc., such a subjective view is not enough to  
4 overcome the documentary and testimony evidence provided in the motion for summary  
5 judgment.

### 6 **Immunity**

7 On the issue of qualified immunity and discretionary immunity, the Plaintiff engages  
8 in an elaborate argument but provides no evidence to the contrary of what is presented by the  
9 Defendants. All of the evidence presented is that the officer involved acted in good faith. At  
10 the scene of the search, the Plaintiff believed that the informant was Kaitlyn Nichols and  
11 testified that it looked like Kaitlyn Nichols' handwriting on a written statement. The test for  
12 qualified immunity is always that of objective reasonableness. When officers get calls  
13 regarding puppy mills or dog fights or any other kind of potential abuse or neglect of  
14 animals, they have to act quickly. When a witness demonstrates knowledge of the pet  
15 store's operations and the familiarity with the owner's home and practices, it is reasonable  
16 for an officer to rely upon that witness. This is not a case where the officer fabricated or  
17 even embellished the facts. The officer reported in the Affidavit exactly what the informant  
18 said and the Judge found there was probable cause and signed the warrant. To deny  
19 qualified immunity, the Court has to find that no reasonable officer would have acted that  
20 way.

21 In the case of Fabrikant v. French, 691 F.3d 193 (2012), the Second Circuit was  
22 dealing with a case out of New York. The case involved the search of a home where pets  
23 were suspected of being neglected or abused. The Humane Society, which the Court ruled  
24 was acting for the City and State, got a warrant to search the premises. No one answered  
25 when they knocked so they used a ladder to enter from the upper floor. They found the  
26 owner of the pets inside. They cuffed her and held her in a police car. They confiscated  
27 numerous dogs and while the Plaintiff was awaiting trial, had the pets neutered. they  
28 arrested and prosecuted the owner. Months later, a jury acquitted the Plaintiff and she sued.

1 As in our case, the owner claimed that the informants lied when they talked to the officers  
2 and claimed that the officer knew or should have known they were lying. As in our case,  
3 there were previous inspections by the Animal Control officers. The Court upheld the  
4 District Court's granting summary judgment to the Defendants and ruled that they were  
5 protected by qualified immunity. The Court cited the U.S. Supreme Court and stated that  
6 immunity applies regardless of whether the government officers error is a mistake of law,  
7 fact or mixed questions of law and fact. 691 F.3d 193, 212.

8 In the Fabrikant case, the Court went on to state that a plaintiff claiming a warrant  
9 was invalid has to make a substantial showing that the officer intentionally or recklessly  
10 made false statements. 691 F.3d 193, 214. It is not enough to show later that an informant  
11 lied. What matters is what the officer believed at the time. The Court stated:

12 We agree with the district court that Fabrikant's claims of  
13 malicious prosecution, unreasonable search and seizure, and First  
14 Amendment retaliation fail because defendants had probable  
15 cause to believe Fabrikant committed animal cruelty. Crucially,  
16 Fabrikant does not contest that multiple witnesses reported to the  
17 SPCA that Fabrikant was abusing her animals, she merely argues  
18 that the witnesses were lying. . . . 691 F.3d 193, 215-216.

16 On the issue of discretionary immunity, the Plaintiff admits that the seeking and  
17 executing of a warrant is a discretionary function. However, on the second prong of the test,  
18 the Plaintiff takes the position that saving animals from abuse or neglect and trying to  
19 control the animal population so they do not have to be put to death at the dog pound is  
20 somehow not a legitimate government policy or interest. This Court should declare that this  
21 activity is an important public policy.

22 The Opposition makes it very clear that there is just no evidence to contradict the  
23 evidence presented by the Defendants in this case on the intentional torts. On infliction of  
24 emotional distress and conspiracy and malicious prosecution, the Plaintiff shows no evidence  
25 whatsoever to prove the elements of those torts. Again, there is strenuous argument by the  
26 attorney but no factual evidence. The Opposition states that there is a pattern of conspiracy  
27 to harass the Plaintiff. However, this contradicts the actual testimony in the case. The  
28 Plaintiff took the depositions of three Animal Control officers. Officer Stockman testified as

1 to how she obtained the warrant and followed the normal procedures. She did so based upon  
2 her personal interaction with the informant and on the written records. Officer Harney  
3 testified that she did not know about the obtaining of the warrant or the search until well  
4 after the incident. Officer Tori Olson testified that she knew nothing of the investigation or  
5 the obtaining of the warrant until the morning of the execution when she was asked to  
6 accompany the Metro Officer and the Animal Control Officer on the search which was their  
7 standard procedure. She never saw the paperwork until she examined the warrant at the  
8 scene of the search. The Metro Officer also was uninvolved until the day of the search and  
9 examined the paperwork prior to entering. The allegations that there was a conspiracy to  
10 "get her" is not only contrary to the evidence, it apparently only exists in the Plaintiff's head.  
11 At page 53 and 54 of Defendant Stockman's deposition, she states several times that she  
12 believed the informant to be Kaitlyn Nichols and to this day still believes she was speaking  
13 with Kaitlyn Nichols. The officers followed standard procedure and acted in good faith.  
14 The evidence collected clearly was enough to establish probable cause under modern  
15 standards. In fact, there is probably enough probable cause even under the Plaintiff's  
16 hypertechnical analysis. They simply ignore the evidence produced.

### 17 CONCLUSION

18 In the final analysis, the Plaintiff needs this Court to rule that the warrant was issued  
19 without probable cause as a matter of law and that immunity does not apply because the  
20 warrant was obtained in bad faith and that the policy of protecting animals from neglect or  
21 abuse is not an important governmental function. Otherwise, the Plaintiff's claims have to  
22 fail. When looking at the list of facts presented by the Officer to Judge Williams, it is clear  
23 that the Affidavit passes muster under the Constitution and was a legitimate, valid warrant.

24  
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27 ///

28 ///

1 As a result, judgment should be entered for the Defendants and against the Plaintiff in this  
2 action.

3 Respectfully submitted this 14<sup>TH</sup> day of December, 2012.

4 STEVEN B. WOLFSON  
5 DISTRICT ATTORNEY

6 By: 

7 MICHAEL L. FOLEY

8 Deputy District Attorney

9 State Bar No. 3669

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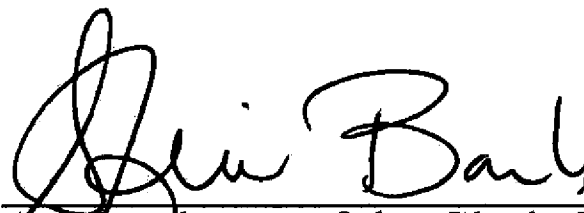
Attorney for Defendant

Clark County

11 **CERTIFICATE OF MAILING**

12 I hereby certify that on the 17<sup>th</sup> day of December, 2012, I deposited in the United  
13 States Mail, postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, a copy of  
14 the above and foregoing **Defendants' Reply to Plaintiff's Opposition** addressed as follows:

15 Cal J. Potter, III, Esq.  
16 John C. Funk, Esq.  
1125 Shadow Lane  
Las Vegas, Nevada 89102  
17 *Attorneys for Plaintiff*

18   
19 An Employee of the Clark County District  
Attorney's Office – Civil Division

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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 JUDY PALMIERI,

11 Plaintiff,

12 vs.

13 CLARK COUNTY, a political subdivision of  
14 the STATE OF NEVADA; DANIELLE  
15 HARNEY, individually and in her capacity as  
16 an officer employed by Clark County; Doe  
Officers IV through X, inclusive and JOHN  
DOES I through X, inclusive.

17 Defendants.  
18

Case No.: 2:10-cv-00729-RLH-PAL

**ORDER**

(Motion to Dismiss-#11; Motion to  
Amend/Correct Complaint-#17)

19 Before the Court is Defendants Clark County and Danielle Harney's **Motion to**  
20 **Dismiss** (#11), filed October 6, 2010. The Court has also considered Plaintiff Judy Palmieri's  
21 Opposition (#16), filed November 12, 2010, and Defendants' Reply (#18), filed November 23,  
22 2010.

23 Also before the Court is Palmieri's **Motion to Amend/Correct Complaint**, (#17),  
24 filed November 12, 2010. The Court has also considered Defendants' Opposition (#19), filed  
25 November 30, 2010, and Palmieri's Reply (#20), filed December 10, 2010.

26 /

## DISCUSSION

### I. Motion to Dismiss

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Iqbal*, 129 S. Ct. at 1949 (internal citation omitted).

In *Iqbal*, the Supreme Court recently clarified the two-step approach district courts are to apply when considering motions to dismiss. First, a district court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 1949. Second, a district court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A claim is facially plausible when the plaintiff's complaint alleges facts that allows the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949. Where the complaint does not permit the court to infer more than the mere possibility of misconduct, the complaint has "alleged—but not shown—that the pleader is entitled to relief." *Id.* (internal quotation marks omitted). When the claims in a complaint have not crossed the line from conceivable to plausible, plaintiff's complaint must be dismissed. *Twombly*, 550 U.S. at 570.

The Amended Complaint (#9) is so confusing and poorly drafted that it leaves the Court with little to no understanding of what Plaintiff alleges. Although the Amended Complaint



1 does contain sufficient legal conclusions to make the Court aware of the general legal theories  
 2 Plaintiff asserts, the factual statement upon which Plaintiff relies for those conclusions are not  
 3 remotely sufficient. This is the type of complaint—one containing merely labels and  
 4 conclusions—which the Supreme Court sought to address in *Twombly* and *Iqbal*. Further, entire  
 5 paragraphs are incomprehensible leaving the Court flummoxed as to what Plaintiff intended to say.  
 6 Accordingly, Plaintiff's complaint has not managed to cross the line from conceivable to plausible.  
 7 Therefore, the Court grants Defendants' motion to dismiss.

## 8 **II. Motion to Amend**

9 A party may amend a pleading once “as a matter of course” within the time  
 10 constraints set forth in Rule 15(a)(1) of the Federal Rules of Civil Procedure. After the time for  
 11 amendment as a matter of course has expired, a party may amend its complaint only by leave of  
 12 the court or by the adverse party's written consent. *Fed. R. Civ. P. Rule 15(a)(2)*. The court  
 13 should grant leave “when justice so requires.” *Id.* The court has discretion to grant leave and  
 14 should freely do so “when justice so requires.” *Allen v. City of Beverly Hills*, 911 F.2d 367, 373  
 15 (9th Cir. 1990) (quoting Fed. R. Civ. P. 15(a)). When seeking leave to amend a pleading, Rule 15-  
 16 1 of the Local Rules of Practice requires the moving party to “attach the proposed amended  
 17 pleading to any motion to amend so that it will be complete in itself without reference to the  
 18 superseding pleading.”

19 Here, Plaintiff failed to abide LR 15-1's mandate and therefore the Court denies the  
 20 motion. Plaintiff did not attach a proposed amended complaint to her motion, but claimed that she  
 21 would file one as an errata. However, Plaintiff failed to even do this. Plaintiff did not submit a  
 22 proposed amended complaint until attaching one to her reply, eliminating Defendants' opportunity  
 23 to challenge it in their opposition. Further, the proposed amended complaint contains numerous  
 24 citation, gender reference (men referred to as she), and grammatical errors making the proposed  
 25 amended complaint difficult to understand. Also, many paragraphs remain nearly as  
 26 incomprehensible as in the current Amended Complaint.

1 The Court also pleads with Plaintiff's counsel to accurately determine the spelling  
2 of Plaintiff's name and to spell her name correctly in all future pleadings. To illustrate the  
3 problem, the Court quotes from Plaintiffs Motion to Amend (#17): "The Plaintiff, JUDY  
4 PALMEIRI, (hereinafter "Ms. Palmieri" and/or "Plaintiff") . . . ." This is not the only instance of  
5 Plaintiff's counsel interchanging the "ie" and "ei" spelling of Plaintiff's name in the pleadings.

6 Finally, the Court wishes to address one last matter. Doe pleading is improper in  
7 federal court as the Federal Rules of Civil Procedure do not provide for it. *Graziose v. Am. Home*  
8 *Prod. Corp.*, 202 F.R.D. 638, 643 (D. Nev. 2001). Therefore, the Court directs Plaintiff not to  
9 include any Doe defendants in any further amended complaint. If Plaintiff later discovers other  
10 parties whom she wishes to join, she may seek leave to amend to include them at that time.

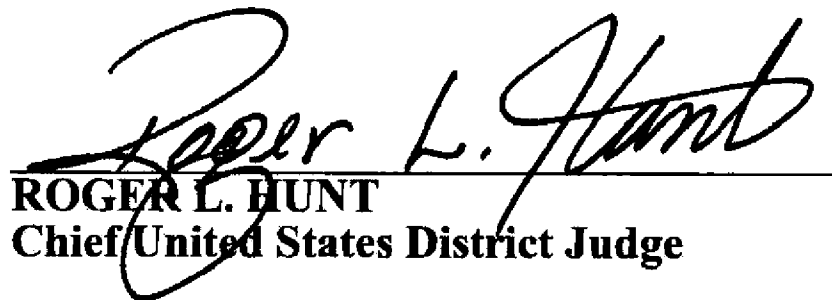
11 **CONCLUSION**

12 Accordingly, and for good cause appearing,

13 IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (#11) is  
14 GRANTED.

15 IT IS FURTHER ORDERED that Plaintiff's Motion to Amend (#17) is DENIED.  
16 The Clerk of the Court is directed to close this case.

17 Dated: March 18, 2011.

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20 **ROGER L. HUNT**  
21 Chief United States District Judge  
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1 I meant to ask you that. On this occasion, this  
2 incident in May of 2010, did the Animal Control people or  
3 the police officer, when they took you outside, did they  
4 handcuff you?

5 A No.

6 Q You mentioned -- I forget your words, so I don't  
7 want to put words in your mouth, but he led you out of the  
8 laundry room somehow. Did he grab you or just lead you?  
9 Did say come here? What happened?

10 A I think he grabbed my arm.

11 Q Like on the wrist or...

12 A Maybe towards the shoulder.

13 Q Okay. Did he just guide you out, or did he  
14 really pull you out hard or what?

15 A Guided me --

16 Q Okay.

17 A -- strongly.

18 Q Sounds like police.

19 Okay. Other than that, was there any other  
20 touching of you by anybody?

21 A No.

22 Q They issued you some tickets, some citations.

23 Do you know if Officer Stockman or Officer Olson  
24 had any involvement in the criminal case against you  
25 following those tickets?

1       A     Oh, I have no idea, unless -- you mean did they  
2 actually pursue it individually afterwards?

3       Q     Right.

4             As I understand the system, they write a  
5 citation, and it goes somewhere. Eventually the  
6 prosecutors get it. They file something in court, and  
7 they have you down there on a court date and you go  
8 through a court proceeding.

9             Other than issuing citations and sending them in,  
10 do you know of any other involvement they had in your  
11 case?

12       A     I don't remember.

13       Q     And I should have told you that before, we're not  
14 asking you to guess. If you don't remember, that's the  
15 correct answer.

16             And you've been doing a good job. When you're  
17 estimating, you say I approximate or estimate, so thank  
18 you for that.

19             Other than these May 2010 citations, have you had  
20 any other citations dealing with animals from the cities  
21 or the county before this?

22       A     Yes, I have.

23       Q     Okay. Tell me about any of those you remember.

24       A     I remember in 1997 I believe was my first  
25 citation from the county, and it came from the same

1       A     I believe I also got one for deprivation of  
2 medical care. And you have to excuse me, it's been a long  
3 time.

4             I think there were three citations that were  
5 written. I can't remember what the last one was written  
6 for.

7       Q     That was county or city or...

8       A     That was county.

9       Q     All right. Do you remember about when that was?

10      A     In 1997.

11      Q     Is that Officer Elf also, or do you...

12      A     Gosh, I don't remember. I think Officer Elf was  
13 that one on the water. I think there was a different  
14 officer.

15      Q     All right. That was around '97?

16      A     Yes.

17      Q     Any other citations that you remember?

18      A     I received another citation at the Meadows Pet  
19 Store for deprivation of medical care, had to do with a  
20 Burmese cat purchased by Mr. Michael Galardi at the  
21 Boulevard store and causing an issue with it, saying that  
22 it tested positive for a disease.

23             And he was refunded his purchase price, and the  
24 cat was then transferred over to the Meadows Pet Center,  
25 and that -- the citation was actually issued through the

1 Meadows Pet Center.

2 Q And was that City of Las Vegas that gave it to  
3 you?

4 A Yes.

5 Q Is that the same Galardi that was in the big  
6 scandal with the county commissioners' office?

7 A Yes.

8 Q Let's see. Oh, do you remember about when that  
9 was, the Galardi one?

10 A I believe it was -- oh, maybe a year later, that  
11 one.

12 Q So late -- late '90s sometime?

13 A Yes. Maybe '98, '99.

14 Q Okay.

15 A And then I was --

16 Q Sorry.

17 A Oh, sorry.

18 Then I was also indicted in the year 2000 on  
19 18 counts by Susan Krisko, the district attorney.

20 Q The district attorney's office indicted you?

21 A Yes.

22 Q From a grand jury?

23 A Yes.

24 Q What charge was that?

25 A There were 18 different charges, like we sold a

1 A It was out of the Meadows store.

2 Q Do you know if the city Animal Control had any  
3 involvement in those charges?

4 A No. They were very nice to me.

5 Q As far as you know did county Animal Control have  
6 any say --

7 A They don't have any jurisdiction in the city.

8 Q As far as you know they weren't involved in that.

9 A No.

10 Q All right. Any other citations from City of  
11 Las Vegas or Henderson or county that you remember?

12 A Oh, I was cited in the City of Henderson for odor  
13 when we were there.

14 Q You had a store there?

15 A Yeah, in the Galleria Mall.

16 Q Oh, that's right.

17 A But all the citations that we've ever been cited  
18 on -- I've been cited personally, even though we were a  
19 corporation, they were all dismissed.

20 Q I meant to ask, on the address on Callahan  
21 Avenue, who were the owners of the property, you  
22 personally or the corporation?

23 A Me personally.

24 Q Okay.

25 A And my husband.

1 Q Okay. Any other expenses?

2 A Well, I took everyone's dogs and had them spayed  
3 and neutered.

4 Q Everyone -- the dogs that were in the garage that  
5 day?

6 A Yeah.

7 Q Why did you do that?

8 A Well, I was very, very, you know, upset and  
9 nervous that I didn't know what would happen with these  
10 charges, so I took everyone to the vet. They all had  
11 their rabies shots updated, and they were spayed and  
12 neutered, and my veterinarian gave me a discount, but I  
13 spent about \$2,500.

14 Q Any other expenses that you can think of?

15 A Well, we've always maintained another address in  
16 California, an apartment there, for more than 10 years.  
17 But it left me with a feeling -- it was the second time  
18 that someone's used a warrant to get into my house. In  
19 2002, when I was indicted, that -- we had the SWAT team at  
20 our house and took my kids out on the lawn in 120-degree  
21 temperature and handcuffed them.

22 Q This is the Callahan residence?

23 A Yes.

24 Photographed my entire house, had my computer  
25 confiscated and all my personal pet store records taken.



1 for them when they have to go somewhere that's different  
2 when they're used to their home.

3 Q Any other out-of-pocket expenses you remember  
4 that came from this incident?

5 A Yes.

6 We put a new gate in the -- in the yard, one that  
7 doesn't have a screen on the wrought iron one that is just  
8 a solid gate with a lock on it.

9 Q Because of this entry?

10 A Yes.

11 Q Do you remember how much that was?

12 A About \$500.

13 Q All right. Anything else?

14 A I don't recall.

15 Q Okay. Now you mentioned in the complaint I  
16 believe something to the effect of suffering emotional  
17 distress.

18 I was going to ask you did you ever seek  
19 treatment from a doctor or psychiatrist, psychologist,  
20 anything like that?

21 A No, I did not.

22 Q Prior to this have you ever seen a therapist or  
23 psychiatrist?

24 A No, I haven't.

25 Q Okay.

1 Q RE maybe?

2 A RE. Excuse me. Thank you.

3 Q That's all right.

4 A People have horses, and they have goats and  
5 chickens and pigs and whatnot. And I don't believe  
6 there's anything different for dogs.

7 Q All right. You don't think there's any  
8 restriction on how many dogs you can have there?

9 A No. I don't think there's anything different  
10 than the rest of the county. Sorry.

11 Q Well, most of the county it's restricted to you  
12 can have three dogs, as I understand it, and any more than  
13 that you need a permit.

14 A Yes.

15 Q Is that what you understand?

16 A Yes.

17 Q That's what I was asking.

18 Did you have any special permit or any zoning  
19 variance that would allow you more than three dogs?

20 A No.

21 Q Not sure how to ask this question. Let's see.

22 I read in the complaint several places about  
23 conspiracy. Do you think that the government employees  
24 are conspiring against you?

25 A Yes.

1 Q Okay. What employees do you know that are  
2 conspiring against you? If you know.

3 A Well, I think the -- the head of Animal Control  
4 has had me on his particular list for many years. I can  
5 tell you from when the citations started when I bought the  
6 two Frisky stores.

7 Q The two what? I'm sorry.

8 A The two Frisky stores.

9 Q Okay.

10 A That Joe Boteilho, who was head of Animal  
11 Control, then came in and said the dogs didn't have any  
12 water in their water bottles. And they were hanging in  
13 the Boulevard Mall on little springs, and they were white  
14 plastic, and if you just look at them, you can't tell if  
15 there's water in them or not.

16 And I -- when he said there was no water in any  
17 of the bottles, I said well, shake them, there's water in  
18 there. And he shook them and said oh, no, there's no  
19 water in there. But there was. It kind of started that  
20 way.

21 And I've had Animal Control in the county at my  
22 Meadows store, someone in uniform come -- come to me at  
23 the front counter in his uniform while he was on duty to  
24 ask me about a customer that was in the county. And I  
25 told him he had no business being there in his uniform, if

1 he wanted to speak to me, he could have spoken to me while  
2 I was on the other property.

3 But there have been several instances, a lot of  
4 charges, that I've been charged with that I've had to pay  
5 for over the years, and in the end the citations were all  
6 dismissed.

7 The last time Officer Harney was in there, she  
8 was in there for five and a half hours three days before  
9 Christmas. And, you know, when somebody takes a scanner  
10 and gets all of your paperwork in piles all over an area  
11 and starts scanning, they're obviously looking for  
12 something. I didn't think that that was what Animal  
13 Control was about. They're not really supposed to scan  
14 every word in your contracts to find one little thing that  
15 may be off.

16 But as a result of her last visit, six months  
17 later she filed charges. When she left that day, I asked  
18 her did you find anything out of order, any problems? And  
19 she wouldn't answer.

20 Six months later she filed charges and said that  
21 I had almost 50 percent of my medical sheets missing. It  
22 seems to me that if -- if you're doing something wrong,  
23 you need to be notified right then and there so that you  
24 can correct it, not go about your merry way and then have  
25 somebody tell you all these things are missing and all

1 these things are wrong.

2 And then when you go to court, you have -- should  
3 have a duty to show up, not have a case postponed seven  
4 times, because that just tells me that that's just  
5 harassment. If you have, you know, the evidence to go  
6 forth and -- and say that someone was doing something  
7 wrong, then give them an opportunity to correct it or --  
8 or go ahead with it. But to not -- to not show up and do  
9 it six months later, I think that's harassment.

10 Q Do you know who it was that wasn't showing up?

11 A Officer Harney.

12 Q Harney? Okay.

13 Which citation was that?

14 A It was the one for Bark Avenue that -- when she  
15 came out on December 22nd of 2009, took five and a half  
16 hours to go through all the paperwork and then say six  
17 months later that 50 percent of the medical sheets were  
18 missing, and because of that each one is a -- is a  
19 violation and a count, when there wasn't anything that was  
20 missing.

21 Q Is that one of the ones we talked about earlier  
22 here, the citations?

23 MR. POTTER: Yes.

24 Q (BY MR. FOLEY) Is that, you think --

25 A The last citation at the Bark Avenue store.

1 Q I just -- for the record, I was trying to see if  
2 that was one of those we included in what we already  
3 talked about, or is that a different occasion?

4 A Different.

5 Q Do you have any idea why they're conspiring  
6 against you like this?

7 A I think that they would like to see me out of  
8 business. And I think that the county doesn't appreciate  
9 pet stores or business -- viable businesses in the county.  
10 And that's kind of their quest.

11 Q Do you think they do this to all the pet stores?

12 A I don't think they do it to all the pet stores.  
13 In fact she spoke very highly about three pet stores --

14 Q "She" who?

15 A -- during her deposition.

16 Officer Harney.

17 But I think she's gone out of her way for other  
18 pet stores that I know of to give them a hard time.

19 Q Can you tell me the names of those pet stores.

20 A They're now out of business. Off the top of my  
21 head, I can't think of the names, but I have heard  
22 stories.

23 But I know that, you know, an officer's duties, I  
24 think, unless they have nothing to do, would be to do  
25 something different except be -- be in a store for five

1 and a half hours scanning documents.

2 Q I just need your honest statement on this.

3 Do you think that's what Dawn Stockman is doing,  
4 she's in on this conspiracy against you?

5 A No. I think Dawn came in as an officer  
6 instructed to go ahead and serve this warrant and see what  
7 she could come up with.

8 Q You don't think she has anything against you  
9 personally?

10 A No.

11 Q You mentioned Mr. Boteilho, I think it was, who  
12 used to be the head of Animal Control, I guess.

13 Do you have any reason why he has something in  
14 for you personally or against pet stores generally or...

15 A I think Mr. Boteilho doesn't like women, and I  
16 don't think he likes women involved in pet stores.

17 Q Really? Why do you say that?

18 A Just for his actions over the years.

19 Q You don't think he cites men?

20 A He may.

21 Q I'm trying to find it in the complaint here. I  
22 don't know. Somewhere in here they were saying there  
23 were either misrepresentations or misstatements made by  
24 Dawn Stockman.

25 Do you know of any occasion where you think she

1 was telling a deliberate lie or knowingly misrepresented  
2 something?

3 A From the papers you have in front of you?

4 Q The complaint that your lawyer filed, I was -- it  
5 mentions misrepresentations and things.

6 Do you -- I guess I should ask you first, you  
7 know the difference between negligence and intentional  
8 lying or cheating, right?

9 A Yes.

10 Q Do you think Dawn Stockman was doing -- if there  
11 were misrepresentations or problems with the warrant, do  
12 you have any idea whether it was intentional or negligent  
13 or what?

14 MR. POTTER: Objection, calls for speculation.

15 MR. FOLEY: Right.

16 Q Go ahead. Do you have any information on that,  
17 or any idea?

18 A When she was getting ready to leave, I was very  
19 interested in knowing, because it bothered me for the time  
20 that she was there, whether this was something that came  
21 from Kaitlyn Nichols, and -- and I was talking to her, and  
22 I -- I knew that she could not tell me everything that she  
23 had.

24 But she said that she talked to this person on  
25 the phone, and then she -- as we were talking, I -- I said



1 to her something like I -- I just don't know how this  
2 person would have called you or written -- or written a  
3 complaint, because even though Kaitlyn had been fired a  
4 couple of times, she was just not the type of person  
5 that -- that would do this. And I asked her are you sure  
6 this was Kaitlyn? And she said yes.

7 And -- and then she had a form on a clipboard.  
8 And I said well, what -- what do you have, or something  
9 like, you know, what can you show me that this was really  
10 Kaitlyn? And she put her hand over the top part of the  
11 clipboard and said well, is this her signature? And I  
12 looked at that, and it looked to me like it was Kaitlyn's  
13 signature. And so I said you talked to her. And then she  
14 said yes, but I met with her, or something like that.

15 And I asked her what did she -- what did she look  
16 like? And I said what -- what color hair did she have?  
17 And then she told me what color hair she had. And I said  
18 and -- and, you know, how long was it? And she said it --  
19 it was short.

20 And so then I -- I was kind of deflated because  
21 that did look like Kaitlyn's signature, and Kaitlyn had  
22 colored her hair and cut her hair. So I thought to myself  
23 well, I just still don't think that it's Kaitlyn, but she  
24 had all that information.

25 And so that to me was just -- you know, it just

1 deflated what I thought, because I was still trying to  
2 figure out where this -- where this came from.

3 And then I said well, what if this wasn't  
4 Kaitlyn? And she said well, it -- it wouldn't matter  
5 because the outcome was the same. And I said well, how  
6 can you go in and get a warrant based on, you know, fraud?  
7 And she said it didn't matter.

8 And then the other part that did bother me was  
9 that, you know, my puppies were taken away and I didn't  
10 get any kind of receipt. And I didn't have a receipt on  
11 my other two dogs until the Animal Control officer came  
12 back and gave me a receipt. But I still didn't get a  
13 receipt for the puppies.

14 But according to the warrant, it said that the  
15 court will hold the puppies until disposition is made, and  
16 yet that opportunity was -- was never made. So that --  
17 that still bothers me today.

18 Q Okay. I understand why that upset you.

19 What I'm wondering is with all -- I know about  
20 this Cindy Orneales calling in, or we think it was her,  
21 calling in, making a false report. Why -- do you think it  
22 was just her negligence in not, I don't know, chasing that  
23 further, or why do you think she intentionally hurt you?

24 A Well, I don't know that it's the officer's job to  
25 thoroughly investigate or if it's the department's job or

1 what -- you know, what they do to investigate. But  
2 obviously that was not the person.

3 And it seems now like this person who made this  
4 complaint that has cost me a lot of money and just  
5 initiated all of this is just getting off scot free. It's  
6 a good laugh for them. Hasn't been a laugh for anyone  
7 else.

8 But if -- if -- the department itself, they're in  
9 charge of their officers, if they don't have protocols set  
10 out when -- when they get warrants or when they charge  
11 people or they do things, then it's not an equal system.

12 Q You mentioned that other person, I guess you  
13 meant Cindy Orneales, laughing or getting away with it.

14 Why didn't you sue her?

15 MR. POTTER: Objection --

16 THE WITNESS: I don't know --

17 MR. POTTER: -- calls for speculation.

18 Q (BY MR. FOLEY) Well, I don't want you to  
19 speculate.

20 I'm wondering -- you must have at one time  
21 wondered whether you should sue her or not.

22 A I tried to file charges. This isn't a person who  
23 has a lot of money or subsistence that I could hope to get  
24 anything out of. We -- the detective that was working  
25 this case couldn't even find her for a year.

1 the charges against you I guess in the citations were  
2 brought with malice. That's the word they use in your  
3 complaint.

4 Do you have anyone in particular in mind you  
5 think had malice against you?

6 Let's start with Dawn Stockman. Do you think she  
7 personally had malice for you?

8 A No.

9 Q Anyone else that you can think of who had malice  
10 for you?

11 A Well, Officer Harney.

12 Q Okay. And that's based on her previous attempts  
13 to enforce something on you?

14 A Well, she lied in one of her statements when  
15 she -- she filed two separate charges on the citations,  
16 and she filed one -- one against a pit bull I had in the  
17 store that had hair loss. And in her statement she says  
18 that that dog was visible to customers on the sales floor.

19 The store was set up with -- with kennels that  
20 have solid backs on them along the whole row of the store,  
21 and you can't -- you can't see through the cage to the  
22 back room. And the dog was housed in the back room.  
23 There was no way you -- a customer on the floor could see  
24 the dog, and yet she says that in her statement.

25 This was a dog that yes, did have a hair loss

1 problem that was being treated at my expense for probably  
2 six months. Instead of putting the dog down -- this dog  
3 had a wonderful personality. It was just a pit bull, it  
4 was a pit bull somebody gave to us, but we treated it  
5 at -- at the store's cost. And at the end we sold it for  
6 \$99 to an Asian fellow who just loved the dog and was  
7 willing to testify to that end.

8 Q Okay. And that was your -- you're speaking of  
9 the 2009 inspection?

10 A Yes.

11 Q Okay. Is there anyone else at the county that  
12 you can think of that you think has malice for you  
13 personally?

14 A No. I -- I can't think of anyone's name.

15 Q Okay. Well, you mentioned Joe Boteilho before.  
16 You think someone in his position now has that kind of  
17 malice for you or...

18 A To me it seems that if you're harassing somebody  
19 continually and you don't have any protocols set up and  
20 you let your officers go out, and instead of the officers  
21 saying, you know, I think you might have a problem, you  
22 know, maybe you need to -- to correct this, and if you  
23 don't by such-and-such a date, I'm going to cite you on  
24 it, for them to just go away and then when they feel like  
25 it several months later file charges and then lie in a

1 A No.

2 MR. POTTER: That's it.

3 MR. FOLEY: I just have two questions from that.

4 FURTHER EXAMINATION

5 BY MR. FOLEY:

6 Q On Officer Elf's comment that he said he smelled  
7 a foul odor, the rest of his statement was something to  
8 the effect but he didn't know if it came from a dead  
9 animal or not. Didn't he say something like that?

10 A Could have been something like that.

11 Q The one I'm really curious about, you mentioned  
12 that Officer Stockman said something to the effect of  
13 she'd never been able or they've never been able to get  
14 anything on you.

15 A Yes.

16 Q All right. Can you give us the context of that  
17 statement? It wasn't just out of the blue, was it? I  
18 mean what was said just before that?

19 A We were in the family room. This was after she  
20 came in from the laundry room, and we were talking in the  
21 family room. And she said we all sat around the office  
22 talking about this and felt I was the best one to serve  
23 this because I had worked for you and there wasn't a  
24 problem, and, you know, so this is why I'm here, and not  
25 word-for-word, but said that the county has never been

1 able to get anything on you, you know, until now.

2 So I'm not sure it was in the context of saying  
3 this was what we sat around and talked about or whether  
4 this was just a comment on her part. But yeah, those  
5 words did stick with me.

6 Q All right. But you're not trying to say that's  
7 the reason they concocted a call from somebody just to get  
8 you. They really did get a call from somebody, you  
9 believe, don't you?

10 A They got a call from someone, yes, I know that.

11 Q Okay.

12 A It wasn't concocted. But it just wasn't  
13 investigated.

14 MR. FOLEY: Right. Okay.

15 Thank you.

16 THE WITNESS: Thank you.

17 MR. POTTER: We need a copy.

18 (Transcript review by the witness pursuant to  
19 NRCP 30(e) or FRCP 30(e), as applicable, was  
20 requested.)

21 (The taking of the deposition was  
22 adjourned at 2:48 p.m.)

23 \* \* \* \* \*

24

25

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA )

SS:

3 COUNTY OF CLARK )

4 I, Lori M. Unruh, a Certified Court Reporter  
5 licensed by the State of Nevada, do hereby certify:6 That I reported the taking of the deposition  
7 of the witness, JUDY PALMIERI, commencing on Tuesday,  
8 April 17, 2012, at 1:00 p.m. That prior to being examined  
9 the witness was by me duly sworn to testify to the truth.  
10 That I thereafter transcribed my said shorthand notes into  
11 typewriting and that the typewritten transcript of said  
12 deposition is a complete, true and accurate transcription  
13 of said shorthand notes.14 I further certify (1) that I am not a relative  
15 or employee of an attorney or counsel of any of the  
16 parties, nor a relative or employee of any attorney or  
17 counsel involved in said action, nor a person financially  
18 interested in the action, and (2) that transcript review  
19 by the witness pursuant to NRCP 30(e) or FRCP 30(e), as  
20 applicable, was requested.21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 in my office in the County of Clark, State of Nevada, this  
23 25<sup>th</sup> day of April, 2012.24 Lori M. Unruh  
25 Lori M. Unruh, RDR, CCR No. 389



# **Exhibit E**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JUDY PALMIERI,

Plaintiff,

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; JOHN DOES  
I-X, inclusive, and ROE  
CORPORATIONS I-X, inclusive,

Defendants.

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

DEPOSITION OF DAWN STOCKMAN  
LAS VEGAS, NEVADA  
FRIDAY, APRIL 13, 2012

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809

LST JOB NO. 158793-A

**Exhibit E**

1 A. Cruelty investigation class.

2 Q. Do you have any training in constitutional  
3 law?

4 A. I'm sorry?

5 Q. Do you have any training in constitutional  
6 law?

7 A. Yes. With that course, they gave us  
8 training for that.

9 Q. And what kind of training, in  
10 constitutional law, or law of search and seizure?

11 A. They went over search and seizure, juvenile  
12 type law, how to prepare affidavits.

13 Q. Prior to the affidavit for search warrant  
14 in this case, can you tell me how many times you had  
15 made application for a search warrant?

16 A. Probably 15 to 20.

17 Q. And were they always for residences?

18 A. Yes.

19 Q. Is there a written policy that deals with  
20 what you have to do in terms of a obtaining a search  
21 warrant?

22 A. We're supposed to type them first. We send  
23 them to our supervisor for review. They give us the  
24 okay. Then we send them to the DA for review.

25 We go and we meet with the DA. He goes

1 over, reviews them, signs them, and then we proceed  
2 to the judge.

3 Q. And do you have a recollection in this  
4 particular case of submitting this to a supervisor,  
5 your application for search warrant?

6 A. Yes.

7 Q. Who was your supervisor?

8 A. I sent them both to Greg Wallen and to Dave  
9 March.

10 Q. And who is Greg Wallen?

11 A. He's my senior.

12 Q. What do you mean by your senior?

13 A. He's a senior officer.

14 Q. And March was the second gentleman?

15 A. Yes. He was the sergeant.

16 Q. Do they sign off on the warrants?

17 A. No. They read them and e-mail back to us  
18 with the 'yes do it,' "no, don't do it".

19 Q. All right. In this particular instance,  
20 did you physically type out the warrant or the  
21 application for the warrant?

22 A. Yes.

23 Q. As you sit here, do you recall how you  
24 obtained the information contained within your  
25 application?

1           A.    I received a call from the City of Las  
2 Vegas from Rich Molinari stating that a Kaitlyn  
3 Nichols had called them. It wasn't in their  
4 jurisdiction so he forwarded it to the County.

5                   I proceeded to call Kaitlyn Nichols. I  
6 spoke to her on the phone. I asked her if she could  
7 write down what she was stating, fax it to Animal  
8 Control on the fax line. She did so.

9                   I spoke to her on the phone again letting  
10 her know that I received everything.

11                  And then by her statement, I proceeded to  
12 start to write the search warrant after researching  
13 the address and stating that we had went there  
14 before.

15                  I think we had only been there one other  
16 time and Judy had stated we weren't allowed on the  
17 property without a warrant.

18                  So I proceeded to get a warrant because,  
19 knowing if I went there, she wouldn't let me look.

20           Q.    All right. The statement that you're  
21 talking about from Kaitlyn Nichols, do you still  
22 have a copy of that?

23           A.    I'm not sure if, where it's at at this  
24 time.

25           Q.    What do you mean by that?

1 A. When I have two or more, I'll put them  
2 in -- I usually put them in a cage that's suitable  
3 to them that they can stand up, turn around in and  
4 lay down.

5 Q. The dogs here, are you able to estimate the  
6 age first of all of the Chihuahua?

7 A. Honey Bunny. She was 13 at the time.

8 Q. And from your experience and training as a  
9 vet tech, is that advanced years for a Chihuahua?

10 A. Yes.

11 Q. Do you know what the life expectancy is?

12 A. The smaller the dog, usually the longer  
13 they live with good care. I've seen them 18, 19  
14 years old.

15 Q. All right. But this was a dog that would  
16 be a senior?

17 A. Yes, he was a senior -- no she.

18 Peggy Sue is the male, right?

19 Q. And the other dog, the Pomeranian, do you  
20 recall the size of that dog?

21 A. They were both smaller dogs.

22 Q. Okay. And do you recall the age?

23 A. Sixteen.

24 Q. Okay. So they were both older dogs or  
25 seniors?

1 A. Yes.

2 Q. All right. Is it unusual to see dental  
3 problems in dogs of that age?

4 A. Not if you keep up with the dental care,  
5 but a lot of people let it start to slide, and as  
6 they get older, it's not as likely that they get put  
7 under anesthesia.

8 Q. All right. In terms of -- anesthesia  
9 meaning to clean their teeth is a known  
10 complication --

11 A. They put them anesthesia usually to clean  
12 their teeth.

13 Q. And there can be complications from  
14 anesthesia on a senior?

15 A. Right. There can be complications on any  
16 animal at any age from anesthesia.

17 Q. Right. But the risks become incrementally  
18 greater as they get older?

19 A. Yes.

20 Q. Pursuant to your policies, practices and  
21 procedures, do you take dogs into custody on calls  
22 within you find out that someone has dental  
23 problems?

24 A. It wasn't just the dental problems.

25 Q. All right. What else was it?

1 A. They were skinny. Honey Bunny -- Honey  
2 Bunny is the Chihuahua -- was in a bed. She wasn't  
3 very mobile.

4 And I believe, if I recall, the Pomeranian  
5 had some kind of a skin issue, which could have been  
6 related to older age or it could have been other  
7 issues. A lot of times heart problems can cause  
8 things.

9 So I wasn't comfortable, and due to the way  
10 that the procedures are for cruelty, health and  
11 welfare to get a veterinary opinion since I can't do  
12 that myself.

13 Q. All right. So you did it, for lack of a  
14 better term, on a prophylactic basis to make sure  
15 they were okay?

16 A. Yes.

17 Q. And ones you made that determination, you  
18 contacted Mrs. Palmieri and they were returned to  
19 her, is that fair?

20 A. Yes.

21 MR. POTTER: Okay. We'll mark this as the  
22 next exhibit.

23 (Exhibit No. 4, Citation/Complaint, marked.)

24 BY MR. POTTER:

25 Q. During the course of the criminal



## 1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA )  
3 ) SS:  
4 COUNTY OF CLARK )

5 I, Jackie Jennelle, a duly commissioned  
6 Notary Public, Clark County, State of Nevada, do  
7 hereby certify: That I reported the deposition of  
8 DAWN STOCKMAN, commencing on FRIDAY, APRIL 13, 2012,  
9 at 12:00 p.m.

10 That prior to being deposed, the witness was  
11 Duly sworn by me to testify to the truth. That I  
12 thereafter transcribed my said shorthand notes into  
13 typewriting and that the typewritten transcript is a  
14 complete, true and accurate transcription of my said  
15 shorthand notes.

16 I further certify that I am not a relative  
17 or employee of counsel, of any of the parties, nor a  
18 relative or employee of the parties involved in said  
19 action, nor a person financially interested in the  
20 action.

21 IN WITNESS WHEREOF, I have set my hand in my  
22 office in the County of Clark, State of Nevada, this  
23 26th day of April, 2012.

24   
25

JACKIE JENNELLE, RPR, CCR #809

# **Exhibit F**

CERTIFIED  
COPY

Las Vegas  
Reno  
Carson City

DISTRICT COURT  
CLARK COUNTY, NEVADA

JUDY PALMIERI,

Plaintiff,

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; JOHN DOES  
I-X, inclusive, and ROE  
CORPORATIONS I-X, inclusive,

Defendants.

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

DEPOSITION OF DANIELLE HARNEY  
LAS VEGAS, NEVADA  
FRIDAY, APRIL 13, 2012

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809

LST JOB NO. 158793-B

**Exhibit F**



1 handling a particular matter, is there a written  
2 policy that you can go to to determine that?

3 A. For some things.

4 Q. All right. And without belaboring this,  
5 what kind of things are covered by written policies?

6 A. I mean, when we have, any time we have to  
7 use a weapon on an animal or strike an animal, we  
8 have a policy thereafter of the steps that we need  
9 to take following any kind of weapon or use of force  
10 on an animal, yes.

11 Q. Anything besides use of force?

12 A. Accidents, vehicle accidents, personal  
13 accidents.

14 I'm sure there's some other things I'm not  
15 thinking of off the top of my head.

16 Q. How about in terms of governing your  
17 seeking search warrants?

18 A. Yes.

19 Q. There is a policy manual on that?

20 A. Yes.

21 Q. What's your recollection of what that  
22 manual is or --

23 A. What the policy is on seeking search  
24 warrants?

25 Q. Yes, ma'am.

1 handling a particular matter, is there a written  
2 policy that you can go to to determine that?

3 A. For some things.

4 Q. All right. And without belaboring this,  
5 what kind of things are covered by written policies?

6 A. I mean, when we have, any time we have to  
7 use a weapon on an animal or strike an animal, we  
8 have a policy thereafter of the steps that we need  
9 to take following any kind of weapon or use of force  
10 on an animal, yes.

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12 A. Accidents, vehicle accidents, personal  
13 accidents.

14 I'm sure there's some other things I'm not  
15 thinking of off the top of my head.

16 Q. How about in terms of governing your  
17 seeking search warrants?

18 A. Yes.

19 Q. There is a policy manual on that?

20 A. Yes.

21 Q. What's your recollection of what that  
22 manual is or --

23 A. What the policy is on seeking search  
24 warrants?

25 Q. Yes, ma'am.

CERTIFICATE OF REPORTER

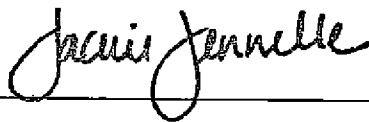
STATE OF NEVADA )  
 ) SS:  
COUNTY OF CLARK )

I, Jackie Jennelle, a duly commissioned  
Notary Public, Clark County, State of Nevada, do  
hereby certify: That I reported the deposition of  
DANIELLE HARNEY, commencing on FRIDAY, APRIL 13,  
2012, at 1:00 p.m.

That prior to being deposed, the witness was  
Duly sworn by me to testify to the truth. That I  
thereafter transcribed my said shorthand notes into  
typewriting and that the typewritten transcript is a  
complete, true and accurate transcription of my said  
shorthand notes.

I further certify that I am not a relative  
or employee of counsel, of any of the parties, nor a  
relative or employee of the parties involved in said  
action, nor a person financially interested in the  
action.

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
26th day of April, 2012.



JACKIE JENNELLE, RPR, CCR #809

# **Exhibit G**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JUDY PALMIERI,

Plaintiff,

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; JOHN DOES  
I-X, inclusive, and ROE  
CORPORATIONS I-X, inclusive,

Defendants.

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

DEPOSITION OF TORI OLSON  
LAS VEGAS, NEVADA  
FRIDAY, APRIL 13, 2012

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809

LST JOB NO. 158793-C

**Exhibit G**



1 Q. As you sit here today, you still have never  
2 read it?

3 A. Yeah, I never really got to read it. I saw  
4 it there, the paperwork there, but it was basically  
5 I saw it, but I didn't have the time at the time to  
6 sit down and read word for word what was in it  
7 because it went from the other officer, she showed  
8 it to me, and then it went to the police officer.

9 Q. But you have a recollection that it was for  
10 a health and sanitation?

11 A. Yes.

12 Q. And you just testified that there wasn't a  
13 health or sanitation problem?

14 A. I do know we did see, I can't remember how  
15 many but not many, I think there were approximately  
16 20 to 22 dogs on the premises, and I think two or  
17 three may have had a health problem, but there  
18 weren't a lot that were sick or sickly or untaken  
19 care of that I can remember.

20 But I didn't see any kind of sanitation  
21 problem when I was there, no.

22 Q. All right. And the dogs that were sickly,  
23 what do you mean by that?

24 A. They just appeared to have medical  
25 conditions that needed to be checked out by a vet

1 and we didn't have any records that they had been  
2 checked out by a vet. So that was the concern  
3 there. We just wanted to make sure they didn't have  
4 any kind of disease or they weren't suffering  
5 without care.

6 Q. Do you have any recollection of what dogs  
7 you're talking about?

8 A. I believe there were Chihuahuas. There  
9 were a lot of Chihuahuas. So I don't remember what  
10 colors or what they were, but I know one of them was  
11 a very, very old Chihuahua. And the other ones I  
12 believe were also Chihuahuas as well.

13 But I just I really remember the really  
14 old, old Chihuahua because it was so elderly.

15 Q. Okay. And the fact that this was an  
16 elderly doing or a senior dog, was that a concern?

17 A. Only the only reason it was a concern was  
18 because she had obvious issues and we weren't sure  
19 if they were an age -- because, you know, I'm not a  
20 veterinarian. So I don't know if it was an  
21 age-related issue because, as dogs age, they can get  
22 diseases just like humans can.

23 We wanted to make sure if she had anything  
24 going on, that it was being cared for and treatment  
25 was being provided to care for whatever issues were

1 present with the dog, whatever medical issues.

2 Q. And not to belabor it, but you said you're  
3 not a veterinarian.

4 Are you trained as a vet tech or any of  
5 that?

6 A. I worked as a vet assistant prior to being  
7 an Animal Control officer, yes, but I'm not a  
8 licensed vet tech. I know Officer Stockman is a  
9 licensed vet tech. I'm not a licensed vet tech so.

10 Q. All right. I want to just go over this  
11 as -- we'll mark your diagram as the next exhibit,  
12 and then I'm just going to ask you some questions on  
13 your report.

14 (Exhibit No. 5, Witness's Diagram, marked.)

15 (Exhibit No. 6, Citation Report, marked.)

16 BY MR. POTTER:

17 Q. I've actually got other things put on  
18 there, too. Focus on 20.

19 Go ahead and read that to yourself and let  
20 me know when you've finished.

21 A. Okay.

22 Q. I'm going to focus on the first page. In  
23 that, you state that there were 24 small breed adult  
24 dogs on the premises and seven small breed puppies.  
25 They all appeared to be in good conditions and no

1     unsanitary conditions were present.

2             Does that refresh your recollection as to  
3     all of the animals being in good condition?

4             A.     Yeah, that's what I wrote. But did I see  
5     that we had the two with the medical issue.

6             Q.     Right.

7             And you talk about a dog fanciers permit.  
8     What is that?

9             A.     That's a permit issued by the County to  
10    allow an owner to have an amount of dogs over the  
11    County limit of three.

12            Q.     Okay. And special use permit, what is  
13    that?

14            A.     That is provided by a different department.  
15    They provide a special use permit and at that time  
16    whoever gets this permit is told how many dogs  
17    they're allowed to have or cats or chickens or  
18    whatever they're getting the permit for they're  
19    allowed to have on their property.

20            Q.     Okay. And the next page, 21, deals with  
21    some type of notice.

22            If you can tell me, to the best of your  
23    recollection, is that your handwriting?

24            A.     Yes.

25            Q.     And what is this particular notice for?

1 house and that's been generally a call generated by  
2 Metro, but the people are inside the house. So  
3 they're not always taken out.

4 I guess it's left up to whatever officer  
5 out there, that's I guess Officer Elam, I guess it  
6 was at his discretion or whether he wanted to keep  
7 her outside or allow her inside because she was  
8 cooperative. I don't know.

9 Q. Do you have any policies, practices or  
10 procedures, anything that you could point to that  
11 says that it's up to Metro to make the determination  
12 of whether a person stays in or goes out of the  
13 house?

14 A. In Animal Control, not that I'm aware of.  
15 We don't have any policies on that.

16 Q. You don't have any written policies on  
17 searches?

18 A. Not that I'm aware of, no.

19 Q. How about search warrant applications, do  
20 you have any policies or practices?

21 A. Basically, when we do a warrant, we have to  
22 collect whatever evidence we can. The warrant is,  
23 the application is typed up and then sent over to  
24 the district attorney's office for approval and to  
25 our supervisor, the field supervisor, for approval.

1 And if we get approval from them, we take  
2 it down to a judge and the judge reviews it and  
3 approves it.

4 And then at that time, we go in and serve  
5 the warrant generally with another Animal Control  
6 officer and a police officer.

7 Q. Okay. Are there any requirements in  
8 obtaining information from a complainant where you  
9 verify the identity of the complainant?

10 A. No. We don't -- there used to be witness  
11 statements that were sent in that had the  
12 complainant's date of birth on them and their name  
13 and phone number and their information.

14 But I don't know if the privacy issue came  
15 in and people, they blocked that out. I don't know  
16 if they still have to put their date of birth. And  
17 a lot of times people didn't put their date of birth  
18 anyway.

19 Generally, when we get a witness statement,  
20 the person is contacted to confirm that they still  
21 want -- because we'll get witness statements,  
22 because they have a year to file those. So we may  
23 get statements from eight months ago and they sent  
24 them in, but then they decided they don't want to go  
25 forward with it.

1           So generally we do contact the person that  
2           sends in any kind of statements and confirm they  
3           want to go forward and confirm what's going on.

4           But as far as identifying them through  
5           identification or require any kind of ID, we  
6           generally don't do that.

7           Q.    Okay. And social security number is the  
8           same way, they don't get socials?

9           A.    Yeah. I know that they blocked that off  
10          the witness statement for the social security  
11          number.

12          Q.    As an Animal Control officer, what access  
13          if any do you have to NCIC or --

14          A.    We don't.

15          Q.    -- or III?

16          A.    We log into the Metro system if we need to  
17          identify somebody like via a license plate number or  
18          something.

19                Say we're out and it's 120 degrees and  
20          there's a dog in a car, we can call Metro, log into  
21          them and get the information on the license plate to  
22          try and find an owner that way.

23                But as far as NCIC or any of those things,  
24          we don't have access to that.

25          Q.    Okay. And there are no requirements for

CERTIFICATE OF REPORTER

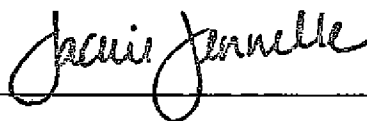
STATE OF NEVADA )  
 ) SS:  
COUNTY OF CLARK )

I, Jackie Jennelle, a duly commissioned  
Notary Public, Clark County, State of Nevada, do  
hereby certify: That I reported the deposition of  
TORI OLSON, commencing on FRIDAY, APRIL 13, 2012, at  
2:00 p.m.

That prior to being deposed, the witness was  
Duly sworn by me to testify to the truth. That I  
thereafter transcribed my said shorthand notes into  
typewriting and that the typewritten transcript is a  
complete, true and accurate transcription of my said  
shorthand notes.

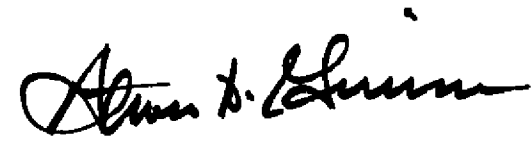
I further certify that I am not a relative  
or employee of counsel, of any of the parties, nor a  
relative or employee of the parties involved in said  
action, nor a person financially interested in the  
action.

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
26th day of April, 2012.



JACKIE JENNELLE, RPR, CCR #809



  
CLERK OF THE COURT

1 **OPP**  
2 CAL J. POTTER, III, ESQ.  
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6 Las Vegas, Nevada 89102  
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6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**  
8 \*\*

9 JUDY PALMIERI,  
10 Plaintiff,  
11

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

12 v.

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

20 Defendants.  
21 \_\_\_\_\_ /

22 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S**

23 **MOTION FOR SUMMARY JUDGMENT**

24 COMES NOW, Plaintiff, JUDY PALMIERI, by and through her attorney CAL J.  
25 POTTER, III, ESQ., of the law firm of POTTER LAW OFFICES, and submits the following  
26 Opposition to Defendant's Motion for Summary Judgment.  
27 ...  
28 ...

1 This Opposition is made and based on the pleadings and papers on file herein, the following  
2 Points and Authorities, and upon any oral arguments the Court may entertain at the hearing of this  
3 matter.

4 DATED this 13<sup>th</sup> day of November, 2012.

5 POTTER LAW OFFICES

6 By /s/ Cal J. Potter, III, Esq.  
7 CAL J. POTTER, III, ESQ.  
8 Nevada Bar No. 1988  
9 1125 Shadow Lane  
Las Vegas, Nevada 89102  
*Attorney for Plaintiff*

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I.**

12 **FACTS**

13 **A. INTRODUCTION**

14 This case arises out of the execution of a fraudulent search warrant and subsequent  
15 malicious prosecution which was launched against Plaintiff Judy Palmieri (“Mrs. Palmieri”), a  
16 proprietor of pet stores in Clark County and the City of Las Vegas at the Meadows Mall. The  
17 search warrant was based upon a false affidavit, filed by Dawn Stockman, which contained  
18 material misrepresentations about the identity and information provided to the City of Las Vegas  
19 and then sent to Clark County Animal Control.

20 On May 19, 2010, Clark County Animal Control served a search warrant upon Mrs.  
21 Palmieri’s residence. There were no exigent circumstances in existence at the time the warrant  
22 was sought or executed. Most significantly, the warrant was obtained without validating the  
23 identity of the person reporting the alleged violations at Plaintiff’s residence. Additionally, the  
24 search warrant was executed on the day that a new Animal Control ordinance went into effect.

25 Defendants based their warrant on a purported complaint made by Kaitlyn Nichols, who  
26 had never even been to Plaintiff’s home. Defendants knew, or reasonably should have known,  
27 that the statement by the alleged witness was untrue and Defendants knew, or reasonably should  
28 have known, at the time that the warrant was sought that the statements were untrue. Defendants

1 had the intent of going to Plaintiff's residence in order to commence criminal proceedings based  
2 upon prior failed attempts to find violations.

3 The warrant was facially invalid and contained inaccurate information which was not  
4 only untrue but was unverified and unreliable. When Plaintiff offered to verify the inaccurate  
5 information the Defendant refused and proceeded against Plaintiff's will to take her property  
6 without sufficient probable cause or basis in violation of Plaintiff's Constitutional rights. The  
7 information was later verified by Plaintiff demonstrating the witness had never been to Plaintiff's  
8 home further supporting retaliation against Plaintiff in violating her civil rights.

9 Mrs Palmieri filed suit for violations of her civil rights, malicious prosecution, and  
10 several other torts. This Court has jurisdiction over civil rights violation and state tort claims.

11 **B. CLARK COUNTY ANIMAL CONTROL'S HISTORY OF HARASSMENT OF JUDY**  
12 **PALMIERI**

13 Both Clark County and the City of Las Vegas have long standing grudges against Mrs.  
14 Palmieri. Each entity has subjected Mrs. Palmieri to a pattern of continued harassment and  
15 excessive scrutiny. On April 29, 2007, Clark County Animal Control Officer, Danielle Harney,  
16 filed a declaration in support of a warrant and summons for alleged violations which were  
17 attributed against Mrs. Palmieri, individually, but should have only been brought against her  
18 corporation. Harney's 2007 declaration was based upon alleged lack of care and treatment of the  
19 animals under the care of the corporation.

20 Ultimately, Clark County Animal Control caused two criminal charges to be filed against  
21 Mrs. Palmieri, prior to the prosecution which is the basis of this litigation. The first criminal  
22 charges were brought on March 28, 2008 before the Honorable J. Bonaventure. When Mrs.  
23 Palmieri refused to plead guilty in that case, Clark County Animal Control sought out the Mrs.  
24 Palmieri with the specific purpose of finding criminal activity, without a warrant, and brought  
25 second charges against her for twenty one alleged violations. The second prosecution was  
26 initially brought before the Honorable W. Jansen on July 21, 2008. Subsequently, the two  
27 matters were consolidated before the Honorable J. Bonaventure. The March 28, 2008 and July  
28 21, 2008 charges against Plaintiff were ultimately dismissed on May 20, 2009.

1           **C.       ANIMAL CONTROL’S FAILURE TO INVESTIGATE A FICTITIOUS COMPLAINT**

2       \_\_\_\_\_ In the case at hand, Clark County argues the search warrant was based upon a purported  
3 complaint made by Kaitlyn Nichols (“Ms. Nichols”). (See, Defendant’s Motion for Summary  
4 Judgment). Yet, Kaitlyn Nichols had never even been to Plaintiff’s home and Ms. Nichols has  
5 testified that she never made a Complaint against Mrs. Palmieri to Animal Control. (See Exhibit  
6 1 - Affidavit of Kaitlyn Nichols).

7       \_\_\_\_\_ **During her deposition in this matter, Defendant Dawn Stockman conceded that**  
8 **Clark Country Animal Control has a policy of failing to adequately investigate complaints**  
9 **and to personally confirm the identity of persons making complaints.** Stockman testified as  
10 follows:

11                   “Q. Did you make any efforts to identify the individual that you had talked  
12 to as being Kaitlyn Nichols?

13                   A. No.

14                   Q. And why is that?

15                   A. That’s not our normal procedure. We get thousands of calls. We don’t  
16 go out and investigate if the person reporting is that person.

17                   Q. Okay. So your actions were pursuant to policy and practice?

18                   A. Correct

19                   Q. Of your department?

20                   A. Correct. ( Exhibit 2 - Deposition of Dawn Stockman. Page 16 Lines 13-  
21 25)

22           **Although Stockman swore to a judge that her affidavit was truthful, during**  
23 **her deposition, Stockman also conceded that her affidavit included several fallacies,**  
24 **inaccuracies, and misrepresentations.** Stockman conceded that if the individual filing  
25 the complaint was not Kaitlyn Nichols then her report “would all be fictitious” (Depo. of  
26 Stockman, page 32 Lines 5-6). Likewise, Stockman conceded that she made no effort to  
27 determine whether Ms. Nichols was a former employee of Mrs. Palmieri. (Depo. of  
28 Stockman, page 32, line 7 through Page 33 line 18). Additionally, Stockman made no

1 effort to investigate Kaitlyn Nichols' background. (Depo. of Stockman, page 33 line 25  
2 through Page 34 line 2).

3 **Stockman made no effort whatsoever to corroborate the purported report.**

4 Stockman did not seek preliminary information, such as a description of the residence.  
5 (Depo. of Stockman, page 34 Lines 13-15). Incredibly, Stockman did not even ask the date  
6 of the alleged infractions which were the basis of the purported complaint. (Depo. of  
7 Stockman, page 36 line 1 through Page 37 line 13) Stockman likewise did not ever  
8 attempt to ascertain the number of animals alleged to be at Mrs. Palmieri's house. (Depo.  
9 of Stockman, page 38, lines 1-6)

10 Stockman also conceded that the prior contacts which she detailed in her affidavit  
11 concerned incidents which were not recent, but on the contrary, which had occurred  
12 approximately **two and half to four and years prior**. (Depo. of Stockman, page 46,  
13 Lines 6-11; Page 49, Lines 18-21) Lastly, Stockman never contacted Officer Jason Elff,  
14 whose prior report Stockman claimed necessitated obtaining a search warrant (Depo. of  
15 Stockman, page 49 lines 12-17)

16 **D. SERVICE OF WARRANT BASED ON FRAUDULENT AFFIDAVIT**

17 On May 19, 2010, Animal Control officers Dawn Stockman and Tory Olson  
18 served a search warrant at Mrs. Palmieri's residence. (See Exhibit D of Clark County's  
19 Motion for Summary Judgment - Deposition of Judy Palmieri, page 32 lines 13-16).  
20 Stockman and Olson were accompanied by a Las Vegas Metropolitan Police Department  
21 officer. Mrs. Palmieri's residence is in a neighborhood which is zoned "rural estates  
22 residential." Mrs. Palmieri's neighbors have horses, goats, chickens, and pigs. (Depo of  
23 Palmieri, page 62 line 24 through page 63 line 6).

24 At the time of the execution of the warrant, Mrs. Palmieri was in the shower when  
25 she heard her alarm chime. (Depo. of Palmieri, page 32 lines 20-24). Mrs. Palmieri  
26 quickly dressed and headed down stairs. When she encountered the individuals executing  
27 the search warrant, Mrs. Palmieri was in pajamas and was not wearing underwear nor  
28 shoes. (Depo. of Palmieri, page 36 line 20-22).

Thereafter, Mrs. Palmieri told the agents that there were inaccuracies in the affidavit. (Depo. of Palmieri, page 36 lines 12-13). While executing the warrant, Dawn Stockman told Mrs. Palmieri that “Animal Control has never been able to get anything on you until now” (Depo. of Palmieri, page 76 lines 18-22). Mrs. Palmieri understood Stockman’s statement to mean that the very day that a new ordinance went into effect animal control served a warrant on Mrs. Palmieri’s residence to conduct an exploratory search to try and find anything. (Depo. of Palmieri, page 76 lines 18-22).

Following the execution of the search warrant, Stockman took Mrs. Palmieri's two elderly dogs without justification and caused one of them to be burned when the elderly dog was forced to ride in an excessively hot area of the Animal Control truck. (See Exhibit 3 - Color Photograph of Dog's Burn).

## E. MALICIOUS PROSECUTION AND DISMISSAL OF CRIMINAL CHARGES

Following the execution of the search warrant, Clark County and Dawn Stockman brought five new charges against Mrs. Palmieri before the Honorable M. Andress-Tobiasson. The charges were ultimately dismissed on October 4, 2010 pursuant to a Motion to Suppress.

## II.

## CONTESTED MATTERS OF FACT

1. The Plaintiff submits that there is a question of fact whether a caller identified herself as Kaitlyn Nichols who was a former employee of Judy Palmieri.
2. Kaitlyn Nichols' affidavit states that she never filed a complaint about Judy Palmieri and that she was a victim of Cyndi Ornelas stealing her identity.
3. In the absence of the statements attributed to Kaitlyn Nichols, the Officer Stockman affidavit for a search warrant does not support probable cause.
4. The Plaintiff denies that her house was unlocked.

5. A motion to suppress was filed in the criminal case and the District Attorney conceded the motion to suppress. Mrs. Palmieri was arraigned on the charge and the motion to suppress was filed in the case and at the time set for the suppression hearing, the State had not responded and the case was dismissed. Contrary to the County's motion this is what transpired as a result of their wrongful conduct in the violation of constitutional rights.

### III. ARGUMENT

### A. STANDARD OF REVIEW

Nevada Rule of Civil Procedure 56 provides that summary judgment is only appropriate if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.”

The general rule guiding a motion for summary judgment is that genuine issues of material fact preclude such a motion on any given issue. “Summary judgment is appropriate only when the moving party is entitled to judgment as a matter of law, and no genuine issues of fact remain for trial.” Shepard v. Harrison, 100 Nev. 178, 179-80, 678 P.2d 670, 672 (1984). Furthermore, the party opposing summary judgment is entitled to have the evidence and all inferences from the evidence accepted as true. Johnson v. Steel, Incorporated, 100 Nev. 181, 182-83, 678 P.2d 676, 677 (1984).

To withstand a summary judgment motion the nonmoving party must set forth facts demonstrating a genuine issue for trial. See Wood v. Safeway, Inc., 121 Nev. Adv. Op. 73, 121 P.3d 1026 (2005). A district court may not grant summary judgment if a reasonable jury could return a verdict for the nonmoving party. Moody v. Manny's Auto Repair, 110 Nev. 320, 323 (1994).

• • •

• • •

1 “Credibility determinations, the weighing of the evidence, and the drawing of  
2 legitimate inferences from the facts are jury functions, not those of a judge, whether he is  
3 ruling on a motion for summary judgment” Anderson v. Liberty Lobby Inc., 477 U.S.  
4 242, 255 (1986).

5 **B. CASES INVOLVING CIVIL RIGHTS VIOLATIONS ARE OFTEN**  
6 **INAPPROPRIATE FOR SUMMARY JUDGMENT BECAUSE SUCH CASES**  
7 **INVOLVE QUESTIONS OF FACT FOR A JURY TO DETERMINE**

8 based on violations of constitutional rights are often inappropriate for summary  
9 judgment. Wright, Miller and Kane, *Federal Practice and Procedure Civil*, 3d § 2732.2,  
10 at 152 (1998). This is because police misconduct cases almost always turn on a jury's  
11 credibility determinations. Drummond v. City of Anaheim, 343 F.3d 1052, 1056 (9th  
12 Cir. 2003). “Further, the very nature of the claims involved often presents factual issues  
13 that require summary judgment to be denied.” Id. “Credibility determinations, the  
14 weighing of evidence and the drawing of legitimate inferences from the facts are jury  
15 functions, not those of a judge . . . the evidence of the non-movant is to be believed, and  
16 all justifiable inferences are to be drawn in her favor.” See Anderson, *supra*, 477 U.S. at  
17 255, 106 S. Ct. at 513.

18 **C. CLARK COUNTY IS LIABLE BECAUSE ITS ANIMAL CONTROL**  
19 **DEPARTMENT HAS A POLICY OR CUSTOM OF VIOLATING THE**  
20 **CONSTITUTIONAL RIGHTS OF THE COUNTY’S INHABITANTS AND**  
21 **BECAUSE THE ANIMAL CONTROL DEPARTMENT RATIFIED THE ACTIONS**  
22 **OF THE DEFENDANT OFFICERS**

23 In Monell v. Dept. of Social Services of the City of N.Y., 436 U.S. 658, 98 S.Ct.  
24 2018, 56 (1977), the Supreme Court held that municipalities are persons subject to  
25 liability under §1983 where, “action pursuant to a official municipal policy of some  
26 nature cause[s] a constitutional tort.” Id. at 691.

27 A plaintiff can establish municipal liability under 42 U.S.C. § 1983 in one of three  
28 ways. Gillette v. Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992). “First, the plaintiff may



1 prove that a city employee committed the alleged constitutional violation pursuant to a  
2 formal government policy or a longstanding practice or custom which constitutes the  
3 standard operating procedure of the local governmental entity.” Id. “Second, the plaintiff  
4 may establish that the individual who committed the constitutional tort was an official  
5 with ‘final policy-making authority’ and that the challenge action itself thus constituted  
6 an act of official governmental policy.” Id. (citing Pembaur v. City of Cincinnati, 475  
7 U.S. 469, 480-81 (1986)). “Third, the plaintiff may prove that an official with final  
8 policy-making authority ratified a subordinate’s unconstitutional decision or action and  
9 the basis for it. Id. at 1346-47 (citing City of St. Louis v. Praprotnik, 485 U.S. 112, 127  
10 (1988)). Here, Plaintiff asserts municipal liability based upon two of the above theories:  
11 (1) the existence of municipal policies that caused a constitutional harm, and (2) the  
12 City’s ratification of the Officers’ unconstitutional conduct.

13 1. Policy or Custom

14 A local government entity may be held liable pursuant to 42 U.S.C. § 1983 where  
15 the alleged constitutional tort was inflicted in the execution of the entity’s (1) policy or  
16 (2) custom. Monell v. Dept. of Social Services, 436 U.S. 658, 690-91, 98 S.Ct. 2018,  
17 2035-36 (1978). In order to avoid summary judgment, Plaintiff need only show that there  
18 is a question of fact regarding whether there is a city custom or policy that caused the  
19 constitutional deprivation. See Chew v. Gates, 27 F.3d 1432, 1444 (9th Cir. 1994)(city  
20 may be liable when its policy is the moving force behind the constitutional violation). For  
21 purposes of proving a Monell claim, a custom or practice can be supported by evidence of  
22 repeated constitutional violations which went uninvestigated and for which the errant  
23 municipal officers went unpunished. Hunter v. County Of Sacramento, 652 F.3d 1225,  
24 1236 (9th Cir. 2011). Additionally, a policy or custom of constitutional violations may be  
25 proved by subsequent acts. See Larez v. City of Los Angeles, 946 F.2d 630 (9th Cir.  
26 1991)(Court relied upon evidence of subsequent acts in holding police chief liable in his  
27 individual and official capacities) and Henry v. The County of Shasta, 132 F.3d 512 (9th  
28 Cir. 1997)( Holding, in part, that post-event evidence is not only admissible for proving

1 existence of municipal defendant's policy or custom to violate federal rights in §  
2 1983 actions, but is also highly probative to that inquiry).

3 In the case at hand, a reasonable jury could determine that Clark County had a  
4 policy or custom of violating citizen's constitutional rights based upon the County's  
5 policy of failing to adequately investigate complaints as testified to by Dawn Stockman in  
6 her deposition. As noted above, Dawn Stockman conceded that Clark County Animal  
7 Control has a policy of not ascertaining the identity of individuals whom file complaints.  
8 Additionally, Stockman testified to all of her failing during her investigation, including  
9 the failure to obtain a date of the alleged infraction, the failure to get a description of the  
10 residence, the failure to ask the alleged number of animals at the residence, the failure to  
11 investigate the background of the individual making the complaint, etc. As a result, a  
12 reasonable juror could determine that the County is liable for Mrs. Palmieri's civil rights  
13 violations as a result of the County's policy and practice of tolerating inadequate  
14 investigations and failing to adequately investigate Complaints. Therefore, there exists a  
15 genuine issue of material fact as to whether the County's policies and practices caused the  
16 violation of Mrs. Palmieri's civil rights.

## 17 2. Ratification

18 "Ordinarily, ratification is a question for the jury." Christie v. Iopa, 176 F.3d  
19 1231, 1238-39 (9th Cir. 1999). A single decision by a municipal official that ratifies  
20 unconstitutional conduct may be sufficient to trigger section 1983 liability if that official  
21 has "final policymaking authority." Pembaur, 475 U.S. at 481/83; Gillette, 979 F.2d at  
22 1347.<sup>1</sup>

23 The Ninth Circuit distinguishes between affirmative or deliberate conduct by a  
24 policymaker, which constitutes ratification, and mere acquiescence, which is insufficient  
25 to establish municipal liability by ratification. See Gillette. in Fuller v. City of Oakland,

---

26  
27 <sup>1</sup> It should be noted that the Plaintiff need not establish an existing unconstitutional  
28 municipal policy to proceed against the City on the theory of ratification. See Christie v. Iopa,  
176 F.3d 1231, 1238 (9th Cir. 1999) ("A municipality also can be liable for an isolated  
constitutional violation if the final policymaker 'ratified' a subordinate's actions.")

1 47 F.3d 1522, 1534 (9th Cir. 1995), the court found section 1983 municipal liability  
2 where a police chief ratified an unconstitutional investigation by expressly “approv[ing]  
3 both of the propriety of the investigation and the reports conclusions.” See Christie, 176  
4 F.3d at 1240 (finding municipal liability via ratification where prosecutor “affirmatively  
5 approved” of alleged constitutional violations).

6 In the case at hand there can be no doubt that the County ratified Stockman’s  
7 unconstitutional conduct because the County, in its Motion for Summary Judgment,  
8 argues that Stockman did nothing wrong and followed Animal Control’s policies.  
9 Additionally, the County ratified Stockman’s conduct by failing to discipline her or take  
10 any corrective measures. As a result summary judgement is precluded because a  
11 reasonable jury could determine that the policy ratified Stockman’s constitutional  
12 violations.

13 **D. DEFENDANT STOCKMAN IS NOT ENTITLED TO QUALIFIED IMMUNITY**

14 Government officials have no "discretion" to violate the Constitutional rights of  
15 citizens. See Owen v. City of Independence, Mo., 445 U.S. 622, 100 S.Ct.1398 (1980). A  
16 Defendant is only entitled to qualified immunity if the Defendant did not violate "clearly  
17 established rights" at the time of the conduct in question. Harlow v. Fitzgerald, 457 U.S.  
18 800, 817-818, 102 S.Ct. 2727 (1982). See Mattos v. Agarano, 661 F.3d 433 (9th Cir.  
19 2011)(holding that the law must be well settled).

20 The test for qualified immunity is objective. The Defendant's actual purpose or  
21 state of mind is not material. Whether rights were "clearly established" at the relevant  
22 time is determined in most instances by looking at controlling published court decisions  
23 as of that time. See United States v. Lanier, 520 U.S. 259, 269-71 (1997) (discussing  
24 qualified immunity in § 1983 and Bivens cases). Here, it is well settled law that an officer  
25 may not obtain a search warrant without probable cause. The County’s representations  
26 concerning Stockman’s immunity are, at best, disingenuous

27 . . .

28 . . . .

1           **E.       DEFENDANT STOCKMAN DOES NOT HAVE DISCRETIONARY IMMUNITY**

2           The Nevada Supreme Court explained in Martinez v. Maruszczak, 168 P.3d 720  
3 (Nev. 2007), that the purpose of Nevada's waiver of sovereign immunity is to  
4 "compensate victims of government negligence in circumstances like those in which  
5 victims of private negligence would be compensated." Id. at 727 (citations omitted).

6           Under Martinez, the court held the decisions of state actors are entitled to  
7 discretionary act immunity under a two prong test, if the decision (1) involves an element  
8 of individual judgment or choice and (2) is based on considerations of social, economic,  
9 or political policy. Id. at 727. The Nevada Supreme Court clarified that "decisions at all  
10 levels of government, including frequent or routine decisions, may be protected by  
11 discretionary-act immunity, if the decisions require analysis of government policy  
12 concerns." (Emphasis added) Id. at 729. The Nevada Supreme Court cautioned that  
13 "discretionary decisions that fail to meet the second criterion of this test remain  
14 unprotected by NRS 41.032(2)'s discretionary-act immunity." Id.

15           The first prong of the Martinez test is not at issue in this case. It is clear the  
16 Animal Control officers made choices and/or judgment in their decision to execute a  
17 search warrant upon Mrs. Palmieri's residence. The second prong of the test however is  
18 at issue and Defendants' actions fail to qualify for protection as there are genuine issues of  
19 material fact in question because all issues involve judgement or choice however that  
20 issue is not dispositive of whether Stockman receives immunity . The actions  
21 of the Defendant officers were not based upon considerations of social, economic or  
22 political policy but in fact amount to "bad faith" on the part of Stockman. The same  
23 reasoning applied to the doctor in Martinez should apply to Stockman. However that is  
24 not the end of the analysis, the Court must consider the analysis of Butler v. Bayer,  
25 discussed below.

26           The discretionary act exception was designed "to prevent judicial second-guessing  
27 of legislative and administrative decisions grounded in social, economic, and political  
28 policy through the medium of an action in tort." Martinez, 168 P.3d at 729 (quotation

omitted). "Thus, if the injury-producing conduct is an integral part of governmental policy-making or planning, if the imposition of liability might jeopardize the quality of the governmental process, or if the legislative or executive branch's power or responsibility would be usurped, immunity will likely attach under the second criterion." Id. Discretionary act immunity may protect decisions so long as the decisions "require analysis of government policy concerns." Id. at 729.

The Nevada Supreme Court further addressed when acts are "discretionary" and should be given immunity and when they are not protected in Butler ex rel. Biller v. Bayer, 168 P.3d 1055, 1067 (Nev. 2007). Butler involved an inmate that was attacked and beaten by other inmates resulting in severe physical and mental disabilities and impairments. The court looked at whether the government and their employees were entitled to immunity under NRS 41.032. In addressing what matters are discretionary, the court found that the Defendants in Butler who made the decision to parole the Plaintiff found the "overarching prison policies for inmate release are policy decisions that require analysis of multiple social, economic, efficiency, and planning concerns," which were entitled to discretionary immunity. Butler at 1067.

In Butler the court also found in contrast, that the Defendant's conduct in placing a severely disabled parolee in the care of an individual whose home needed and lacked sufficient accommodations required the exercise of judgment or choice, but this decision was not based on the consideration of any social, economic, or political policy. Id. Accordingly, the Defendants in Butler made the decision to leave the disabled inmate at his girlfriend's residence "despite the obvious lack of preparation" which action was not entitled to discretionary act immunity. Id. The same analysis must be applied in the case at hand because none of Stockman's decisions were made in consideration of public policy.

The Nevada Supreme Court has also held that even if NRS 41.032 provides immunity for actions taken pursuant to an abuse of discretion, it does not provide immunity for actions taken in "bad faith." Falline v. GNLV Corp., 107 Nev. 1004, 823

1 P.2d 988 (1991), citing Crosby v. SAIF, 73 Or. App. 372, 699 P.2d 198 (1985). Here it is  
2 evident that Stockman's actions were taken in "bad faith" given the lack of probable  
3 cause to enter Plaintiff's home, and Stockman's statement while executing the warrant,  
4 that "Animal Control has never been able to get anything on you until now" (Depo. of  
5 Palmieri, page 76 lines 18-22). Mrs. Palmieri understood Stockman's statement to mean  
6 that the very day that a new ordinance went into effect animal control served a warrant on  
7 Mrs. Palmieri's residence to conduct an exploratory search to try and find anything.  
8 (Depo. of Palmieri, page 76 lines 18-22).

9 **F. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND NEGLIGENT**  
10 **INFLICTION OF EMOTIONAL DISTRESS**

11 The elements of an intentional infliction of emotional distress ("IIED") claim are  
12 "(1) extreme and outrageous conduct with either the intention of, or reckless disregard  
13 for, causing emotional distress, (2) the plaintiff's having suffered severe or extreme  
14 emotional distress and (3) actual or proximate causation." Star v. Rabello, 97 Nev. 124,  
15 625 P.2d 90, 91-92 (Nev. 1981)

16 Here, the Defendant intentionally and negligently inflicted emotional distress  
17 upon Mrs. Palmieri by searching her residence based upon a warrant which was obtained  
18 without probable cause. During the search Mrs. Palmieri was forced to wait in her  
19 pajamas without underwear or shoes. Then the County seized Mrs. Palmieri's two elderly  
20 dogs and burned the skin of one of the dogs. The County had a duty to investigate  
21 complaints made to Animal Control and not execute warrants which were obtained  
22 without probable cause. Instead, the County engaged in a series of actions to vex, harass  
23 and annoy Mrs. Palmieri in an extended pattern of conduct. As a result a reasonable jury  
24 could find that the County's conduct was outrageous and engaged in reckless disregard  
25 for causing Mrs. Palmieri's emotional distress. There exists a genuine issue of material  
26 fact as to whether Stockman's statement while executing the warrant, that "Animal  
27 Control has never been able to get anything on you until now" (Depo. of Palmieri, page  
28 76 lines 18-22) demonstrates that the County acted with malice, or reckless disregard for,

1 Mrs. Palmieri's emotional well-being.

2 **G. CONSPIRACY**

3 To state a claim for conspiracy, Plaintiffs must demonstrate a combination of two  
4 or more persons who, by some concerted action, intend to accomplish an unlawful  
5 objective for the purpose of harming another, and that damage has resulted from said act  
6 or acts. See Hilton Hotels Corp. v. Butch Lewis Prods., Inc., 109 Nev. 1043, 862 P.2d  
7 1207, 1210 (Nev. 1993).

8 It is unlikely that direct evidence of a conspiracy exists. Thus the question of  
9 whether an agreement exists should not be taken from the jury so long as there is a  
10 possibility that the jury can infer from the circumstances [that the alleged conspirators]  
11 reached an understanding to achieve the conspiracy's objectives. An express agreement  
12 among all the conspirators is not a necessary element of a civil conspiracy. Hampton v.  
13 Hanrahan, 600 F.2d 600, 620-624 (7th Cir. 1979). *cert. granted in part, judgment rev'd in*  
14 *part on other grounds*, 446 U.S. 754, 100 S. Ct. 1987 (1980); See also Adickes v. S. H.  
15 Kress & Co., 398 U.S. 144, 90 S. Ct. 1598 (1970); Jones v. City of Chicago, 856 F.2d  
16 985 (7th Cir. 1988).

17 Here, Stockman and Animal Control officers conspired to deprive Mrs. Palmieri's  
18 Fourth and Fourteen Amendment rights and Mrs Palmieri suffered actual harm when Mrs  
19 Palmieri's residence was unlawfully searched and she had false criminal charges filed  
20 against her. Therefore, a reasonable juror could infer that the alleged conspirators reached  
21 an understanding to achieve the objective of depriving Mrs. Palmieri of her Fourth and  
22 Fourteen Amendment rights. Additionally, Stockman's statement that "Animal Control  
23 has never been able to get anything on you until now" (Depo. of Palmieri, page 76 lines  
24 18-22) shows that Animal Control engaged in a pattern of behavior and conspiracy to  
25 vex, harass, and annoy Mrs. Palmieri by subjecting her to excessive scrutiny in hope to  
26 "get something on her". Consequently, the question of whether an agreement exists  
27 should not be taken from the jury.

28 . . .

## H. MALICIOUS PROSECUTION

The elements of a malicious prosecution cause of action are: (1) Defendant initiated, procured the institution of, or actively participated in the continuation of a criminal proceeding against plaintiff; (2) Defendant lacked probable cause to commence that proceeding; (3) Defendant acted with malice; (4) The prior proceeding was terminated; and (5) Plaintiff sustained damages. LaMantia v. Redisi, 118 Nev. 27, 38 P.3d 877 (2002).

Want of probable cause is judged by an objective test. The Court is required to determine whether, on the facts known by the attorney, a reasonable attorney would have considered the prior action legally tenable. Jordan v. Bailey, 113 Nev. 1038, 944 P.2d 828 (1997).

Summary judgment cannot be granted on Mrs. Palmieri's claim for Malicious Prosecution because there exists a question of fact as to whether Stockman has any probable cause to swear an affidavit for criminal activity when she conducted no investigation whatsoever. The bedrock principle of a malicious prosecution claim is that one who causes or triggers a charge to be filed may be sued for malicious prosecution. In Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598, 46 L. Ed. 2d 561 (1976) the Court used the term of the "moving force" in the context of a malicious prosecution in a 42 U.S.C. 1983 action. That means that the fact that Stockman's affidavit was granted by a Judge does not insulate Stockman from liability. In Catrone v. 105 Casino Corp., 82 Nev. 166 414 P.2d 106 (1966), the Supreme Court approved the rule that a person who maliciously procures prosecution by a third person is as liable as if he had instituted the criminal proceeding himself.

Moreover, there exists a question of fact as to whether Stockman acted with malice. In Countrywide Home Loans, Inc. v. Thitchener, 192 P.3d 243, 252 (Nev. 2008) the court defined malice and oppression when they held, "[m]alice, express or implied" means conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others." "Oppression"



1 means despicable conduct that subjects a person to cruel and unjust hardship with  
2 conscious disregard of the rights of the person.” The court went on to state that both  
3 definitions utilize conscious disregard of a person's rights as a common mental element,  
4 which in turn is defined as “the knowledge of the probable harmful consequences of a  
5 wrongful act and a willful and deliberate failure to act to avoid those consequences.” (Id).  
6 At the summary judgment stage the court is required to accept Plaintiff’s contention that  
7 during the search Stockman said something to the effect that “we haven’t been able to get  
8 anything on you until now.” Accepting that statement as true and drawing reasonable  
9 inferences therefrom there can be no doubt that Stockman’s statement corroborates Mrs.  
10 Palmieri’s allegations that Animal Control had something against her and engaged in a  
11 pattern of behavior to “get her.” The County’s Motion for Summary Judgement contains a  
12 material misrepresentation of page 6 beginning at line 20 when the County argues that the  
13 “Plaintiff admitted in her deposition that there was no malice by the officer against the  
14 Plaintiff.” The Plaintiff never testified in that fashion and The County’s argument is  
15 inaccurate at best. In actuality, Plaintiff said that she did not think that Stockman had  
16 something against her personally, but that Stockman was acting as an officer who was  
17 instructed to go ahead and serve the warrant and see what she could come up with. (See  
18 Depo of Palmieri at page 68).

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 **III.**

2 **CONCLUSION**

3 Based on the forgoing reasons, Plaintiff respectfully requests that Defendants  
4 motion be denied because there exist genuine issues of material fact to be tried by a jury.

5 DATED this 13<sup>th</sup> day of November, 2012.

POTTER LAW OFFICES

6 By /s/ Cal J. Potter, III, Esq.  
7 CAL J. POTTER, III, ESQ.  
8 Nevada Bar No. 1988  
9 1125 Shadow Lane  
10 Las Vegas, Nevada 89102  
11 *Attorney for Plaintiff*

12  
13  
14  
15 **CERTIFICATE OF SERVICE**

16 I HEREBY CERTIFY that pursuant to the Amended EDCR 7.26 and to  
17 NRCP5(b) on the 13<sup>th</sup> day of November, 2012, I did serve at Las Vegas, Nevada a true  
18 and correct copy of **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION**  
19 **FOR SUMMARY JUDGMENT**, on all parties to this action by:

- 20 ☐ Facsimile  
21 ☒ U.S. Mail  
22 ☐ Hand Delivery

23 Addressed as follows:

24 Steven B. Wolfson, District Attorney  
25 Michael Foley, Deputy District Attorney  
26 500 South Grand Central Parkway  
27 Las Vegas, NV 89155-2215  
28 Ph: (702) 455-4761  
Fax: (702) 382-5178

/s/ Jenna Enrico  
An Employee of POTTER LAW OFFICES

# Exhibit 1

AFFIDAVIT OF KAITLYN NICHOLS

STATE OF NEVADA )  
COUNTY OF CLARK ) ss:

KAITLYN NICHOLS, being first duly sworn and deposed says under the penalty of perjury:

1. That Your Affiant, Kaitlyn Nichols, has become aware of a statement forwarded from the City Of Las Vegas Animal Control to the Clark County, Animal Control;

2. That Your Affiant never made the complaint and never signed the complaint;

3. That Your Affiant has never been to the home of Judy Palmieri;

4. That on the day that the statement was made on May 10, 2010 Your Affiant was working from 7:00 a.m. until 4:00 p.m. and Your Affiant did not make any telephone calls of a private nature at Your Affiant's workplace;

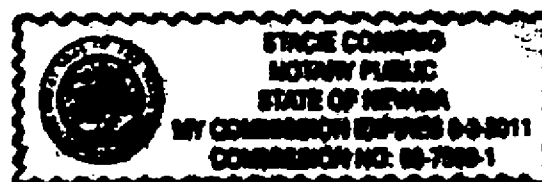
5. That Your Affiant believes that a former fellow worker Cindy Ornelas who has previously stolen my identity and forged my names on bank checks may have also filed these charges in my name without Your Affiant's knowledge;

6. Further Affiant sayeth naught.

  
KAITLYN NICHOLS

SUBSCRIBED and SWORN to before  
me this 14 day of September, 2010.

  
NOTARY PUBLIC



# Exhibit 2

DISTRICT COURT  
CLARK COUNTY, NEVADA

**CONDENSED  
TRANSCRIPT**

JUDY PALMIERI,

Plaintiff,

VS.

CASE NO.: A-11-640631-C

DEPT. NO.: XXVI

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

Defendants.

DEPOSITION OF DAWN STOCKMAN  
LAS VEGAS, NEVADA  
FRIDAY, APRIL 13, 2012

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809

LST JOB NO. 158793-A



Page 2

1 DEPOSITION OF DAWN STOCKMAN, taken at 1125  
2 Shadow Lane, Las Vegas, Nevada on FRIDAY, APRIL 13,  
3 2012 at 12:00 p.m., before Jackie Jennelle,  
4 Certified Court Reporter, in and for the State of  
5 Nevada.

## APPEARANCES:

For the Plaintiff:

10 POTTER LAW OFFICES  
11 BY: CAL J. POTTER, III, ESQ.  
12 1125 Shadow Lane  
13 Las Vegas, Nevada 89102  
14 (702) 385-1954

For the Defendants:

14 CLARK COUNTY DISTRICT ATTORNEYS OFFICE CIVIL  
15 BY: MICHAEL L. FOLEY, ESQ.  
16 500 South Grand Central Parkway  
17 Las Vegas, Nevada 89106  
18 (702) 455-4761

Page 4

1 LAS VEGAS, NEVADA  
2 FRIDAY, APRIL 13, 2012; 12:00 p.m.  
3 -o0o-

Thereupon--

5 DAWN STOCKMAN,  
6 was called as a witness, and having been first duly  
7 sworn, was examined and testified as follows:

## EXAMINATION

BY MR. POTTER:

Q. Can you state your name for the record?

A. Dawn Stockman.

Q. Have you ever had your deposition taken before?

A. No.

Q. The oath that you took here today is the same oath that you would take in a court of law.

Do you understand that?

A. Yes.

Q. And it carries the same solemnities and sanctions if you were to be shown not tell the truth.

Do you understand that?

A. Yes.

Q. And I say that not to suggest you're not going to tell the truth, but to impress upon you the

Page 3

## I N D E X

WITNESS: DAWN STOCKMAN

## EXAMINATION

PAGE

BY MR. POTTER 4

## EXHIBITS MARKED

EXHIBIT PAGE

- 1, Affidavit and Application 22
- 2, E-Mail from Veterinarian Board of 54  
the State of Nevada
- 3, Officer's Report Dated May 19th, 55  
2010
- 4, Citation/Complaint 70

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1 fact that, even though we're in a conference room in  
2 my office, it's as if we were sitting in a  
3 courtroom.

Do you understand that?

A. Yes, sir.

Q. The difference is we don't have a judge here. So if there are objections made, let us sort out the objections before you answer.

9 And you still have to the answer if there's  
10 on objection made unless your attorney tells you  
11 that you don't have to.

Do you understand that?

A. Okay.

Q. And you're here with counsel for the record, is that correct?

A. Yes.

Q. And who is your attorney?

A. Mike Foley.

19 Q. All right. And have you had an opportunity  
20 to review documents in preparation for this  
21 deposition?

22 A. I didn't review any, but we talked about a  
23 few of the documents.

24 Q. Okay. When was the last time you looked at  
25 like a case file?

1 A. It's been quite some time.  
 2 Q. Are you able to approximate the time?  
 3 A. Six months, seven months.  
 4 Q. Okay. Now, in terms of further of the  
 5 process, the court reporter is taking down  
 6 everything we're saying. Many times in  
 7 conversations say uh-huh or use some kind of hand  
 8 gestures or things of that nature.  
 9 To make sure we get clear record of what  
 10 your response is, you have to answer aloud. If for  
 11 some reason you say uh-huh or shake your head and I  
 12 interrupt you, I'm not trying to be rude, I'm just  
 13 trying to make sure we get a clear record.  
 14 Do you understand that?  
 15 A. Yes, sir.  
 16 Q. You have a right during this deposition if  
 17 you don't understand to ask me to rephrase it or  
 18 make sure you do understand it. Okay?  
 19 A. Okay.  
 20 Q. And, likewise, if you give an answer, I'm  
 21 going to assume you understood my question. Okay?  
 22 A. Okay.  
 23 Q. You'll have an opportunity to read and  
 24 review the transcript and you can make changes in  
 25 the transcript as you see fit?

1 Do you understand that?  
 2 A. Yes.  
 3 Q. If you make changes of a material nature,  
 4 meaning you change like a yes to a no, on a later  
 5 date, I would have the right to comment upon the  
 6 fact that on today's date you gave me one answer and  
 7 then call into question your ability to remember  
 8 things or even your ability to tell the truth if you  
 9 make a change of a material nature in the  
 10 transcript.  
 11 A. Okay.  
 12 Q. As you sit here today, do you have a  
 13 recollection of being at Judy Palmieri's home?  
 14 A. Yes.  
 15 Q. All right. Before we get into that, I want  
 16 to talk a little bit about your background.  
 17 Can you tell me your educational  
 18 background?  
 19 A. I finished high school and I have some  
 20 college.  
 21 Q. And where was that college at?  
 22 A. It was CCSN, here in Las Vegas.  
 23 Q. Where did you graduate?  
 24 A. Bonanza.  
 25 Q. Your year of graduation?

1 A. '90.  
 2 Q. Since graduation from -- did you attend  
 3 college right after high school?  
 4 A. No.  
 5 Q. What did you do right after high school?  
 6 A. I moved to Indiana temporarily. I came  
 7 back. I've worked in pet stores. I worked as a  
 8 wrangler with horses, fast food.  
 9 Q. Where were you a wrangler?  
 10 A. Cowboy Trail Rides and Wagons West.  
 11 Q. Have you ever been in competition, rodeos  
 12 or things of that nature?  
 13 A. I've done for fun barrel racing, team  
 14 penning stuff like that.  
 15 Q. Did you ever have hold a card with any  
 16 association?  
 17 A. No.  
 18 Q. Where all have you worked in pet stores.  
 19 A. I only worked for Judy.  
 20 Q. And do you recall the years that you worked  
 21 for Ms. Palmieri?  
 22 A. I don't remember the exact years. I know I  
 23 was a teenager the first time. I left working for  
 24 her and then I came back to work for her.  
 25 Q. And where did you work for her?

1 A. Meadows Pet Center.  
 2 Q. And what did you do there?  
 3 A. The first time I was just a sales  
 4 associate. The second time I was a manager for her.  
 5 Q. And how long were you a manager?  
 6 A. Six months, maybe eight months.  
 7 Q. Were you terminated from that job?  
 8 A. No.  
 9 Q. How did you leave?  
 10 A. On good terms.  
 11 Q. What do you mean by that?  
 12 A. Gave appropriate notice, talked to her,  
 13 told her I was getting another job and I left.  
 14 Q. During the time prior to working for  
 15 Ms. Palmieri the last time, were you ever trained as  
 16 a vet tech?  
 17 A. I'm a licensed vet tech in the State of  
 18 Nevada.  
 19 Q. And are you current?  
 20 A. Yes.  
 21 Q. Are you licensed under a different name?  
 22 A. No.  
 23 MR. FOLEY: Cal -- I think his question  
 24 was: When you were with her, did you become a vet  
 25 tech?



Page 10

1 THE WITNESS: No.  
 2 BY MR. POTTER:  
 3 Q. When did you become a vet tech?  
 4 A. I graduated in 2000 I believe.  
 5 Q. And it's your testimony that you've been  
 6 licensed under the name of Dawn Stockman?  
 7 A. When I first got licensed, it was Dawn  
 8 Stewart (phonetic). I've been married since and  
 9 it's now changed to Dawn Stockman. My current  
 10 license is under my name.  
 11 Q. Okay. Are there any restrictions on your  
 12 license currently?  
 13 A. No.  
 14 Q. What does basically that licensing enable  
 15 you to do?  
 16 A. If I was in a vet hospital, I can perform  
 17 dental, physical exams, assist with surgeries, see  
 18 clients, give vaccines with the exception of rabies.  
 19 Give medications, put IV catheters in.  
 20 Anything that the vet asked me to do. I can  
 21 perform x-rays, wound care, dressings, casts. It's  
 22 kind of like an RN for people.  
 23 Q. Have you performed all those duties in a  
 24 job capacity?  
 25 A. Yes.

Page 11

1 Q. Where all did you serve as a vet tech?  
 2 A. I worked at Sahara Pines Animal Hospital  
 3 for eight years before this job. I worked at --  
 4 where was it before -- Sunset Eastern Animal  
 5 Hospital.  
 6 Q. And did you leave those jobs voluntarily?  
 7 A. Yes, both jobs.  
 8 Q. You weren't terminated is what I'm asking?  
 9 A. No.  
 10 Q. Who were the doctors you worked for at  
 11 Sahara Pines?  
 12 A. Dr. Ziegler and Dr. Ulitchny.  
 13 Q. And who did you work for at Sunset?  
 14 A. Dr. Hoget (phonetic). I also did large  
 15 animal with Dr. Hargrave.  
 16 Q. And what was your date of hire with the  
 17 County?  
 18 A. March 21, 2007.  
 19 Q. And the reason you went to the County?  
 20 A. More money.  
 21 Q. And what was your first job with the  
 22 County?  
 23 A. Animal Control officer.  
 24 Q. And were you recruited for that job or how  
 25 did you come about to get that job?

Page 12

1 A. They had a listing online. I applied for  
 2 it, went in for the interview process background  
 3 check and was offered the job.  
 4 Q. Had you ever applied for an Animal Control  
 5 position with any other agencies?  
 6 A. Henderson.  
 7 Q. And when was that?  
 8 A. The same time I applied with the County.  
 9 Q. And did you go through the hire process,  
 10 their interview process?  
 11 A. I did.  
 12 Q. And were you offered a job in Henderson?  
 13 A. No.  
 14 Q. Do you know why?  
 15 A. I'm not sure exactly. They said I was  
 16 placed on a list.  
 17 Q. Okay. And after getting hired with Clark  
 18 County, did you have to go through any post or  
 19 academy training?  
 20 A. No. We're not post certified.  
 21 Q. Okay. How are you trained?  
 22 A. We're trained by our supervisors. We take  
 23 some continuing education classes. I've taken a  
 24 cruelty investigation class through the County.  
 25 Q. I'm sorry. What was that?

Page 13

1 A. Cruelty investigation class.  
 2 Q. Do you have any training in constitutional  
 3 law?  
 4 A. I'm sorry?  
 5 Q. Do you have any training in constitutional  
 6 law?  
 7 A. Yes. With that course, they gave us  
 8 training for that.  
 9 Q. And what kind of training, in  
 10 constitutional law, or law of search and seizure?  
 11 A. They went over search and seizure, juvenile  
 12 type law, how to prepare affidavits.  
 13 Q. Prior to the affidavit for search warrant  
 14 in this case, can you tell me how many times you had  
 15 made application for a search warrant?  
 16 A. Probably 15 to 20.  
 17 Q. And were they always for residences?  
 18 A. Yes.  
 19 Q. Is there a written policy that deals with  
 20 what you have to do in terms of a obtaining a search  
 21 warrant?  
 22 A. We're supposed to type them first. We send  
 23 them to our supervisor for review. They give us the  
 24 okay. Then we send them to the DA for review.  
 25 We go and we meet with the DA. He goes

1 over, reviews them, signs them, and then we proceed  
2 to the judge.

3 Q. And do you have a recollection in this  
4 particular case of submitting this to a supervisor,  
5 your application for search warrant?

6 A. Yes.

7 Q. Who was your supervisor?

8 A. I sent them both to Greg Wallen and to Dave  
9 March.

10 Q. And who is Greg Wallen?

11 A. He's my senior.

12 Q. What do you mean by your senior?

13 A. He's a senior officer.

14 Q. And March was the second gentleman?

15 A. Yes. He was the sergeant.

16 Q. Do they sign off on the warrants?

17 A. No. They read them and e-mail back to us  
18 with the 'yes do it,' "no, don't do it".

19 Q. All right. In this particular instance,  
20 did you physically type out the warrant or the  
21 application for the warrant?

22 A. Yes.

23 Q. As you sit here, do you recall how you  
24 obtained the information contained within your  
25 application?

1 A. I don't do the filing or put records away.  
2 That's our dispatch's job.

3 MR. POTTER: For the record, there's not  
4 been a statement by Kaitlyn Nichols produced in this  
5 case.

6 A. I've seen it and, ones it goes to dispatch,  
7 I don't know where it is.

8 Q. When you say it goes to dispatch, is that  
9 the normal course of filing a document?

10 A. Everything that comes in witness statement  
11 wise goes through dispatch, and they have files and  
12 records that they keep.

13 Q. Did you make any efforts to identify the  
14 individual that you had talked to as being Kaitlyn  
15 Nichols?

16 A. No.

17 Q. And why is that?

18 A. That's not our normal procedure. We get  
19 thousands of calls. We don't go out and investigate  
20 if the person reporting is that person.

21 Q. Okay. So your actions were pursuant to  
22 policy and practice --

23 A. Correct.

24 Q. -- of your department?

25 A. Correct.

1 A. I received a call from the City of Las  
2 Vegas from Rich Molinari stating that a Kaitlyn  
3 Nichols had called them. It wasn't in their  
4 jurisdiction so he forwarded it to the County.

5 I proceeded to call Kaitlyn Nichols. I  
6 spoke to her on the phone. I asked her if she could  
7 write down what she was stating, fax it to Animal  
8 Control on the fax line. She did so.

9 I spoke to her on the phone again letting  
10 her know that I received everything.

11 And then by her statement, I proceeded to  
12 start to write the search warrant after researching  
13 the address and stating that we had went there  
14 before.

15 I think we had only been there one other  
16 time and Judy had stated we weren't allowed on the  
17 property without a warrant.

18 So I proceeded to get a warrant because,  
19 knowing if I went there, she wouldn't let me look.

20 Q. All right. The statement that you're  
21 talking about from Kaitlyn Nichols, do you still  
22 have a copy of that?

23 A. I'm not sure if, where it's at at this  
24 time.

25 Q. What do you mean by that?

1 Q. Now, in terms of getting a warrant, you  
2 don't get a warrant on every call that you get, is  
3 that correct?

4 A. Correct.

5 Q. But there still isn't any policy, practice  
6 or procedure, written or oral, that you requires you  
7 to verify the identity of a complainant?

8 A. Correct.

9 Q. And you never met with the individual face  
10 to face --

11 A. No, sir.

12 Q. -- known as, at least represented to you to  
13 be a Kaitlyn Nichols, correct?

14 A. Correct?

15 Q. Did you know Kaitlyn Nichols?

16 A. No.

17 Q. Have you ever learned that Kaitlyn Nichols  
18 has stated that she never talked with anyone in  
19 Animal Control at the City or the County?

20 A. I was told that.

21 Q. And when did you learn that?

22 A. It was after and when I received the  
23 documentation for the being sued that I learned that  
24 she was saying that she never talked to us about it.

25 Q. Did you ever talk with a criminal district

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1 attorney where they asked you whether you had ever  
2 talked to a Kaitlyn Nichols?

3 A. Yes.

4 Q. Do you remember who you talked to?

5 A. I do not remember his name.

6 Q. Do you remember if that was before you  
7 received the paperwork concerning Judy Palmieri's  
8 lawsuit?

9 A. I believe it was after I received it. I  
10 don't recall.

11 Q. Okay. Do you remember what the  
12 conversation was?

13 A. He was calling, asking about the citations  
14 that she had, citations for court and asked if I had  
15 spoken with Kaitlyn. And I said I spoke to her on  
16 the phone.

17 He asked if I had the witness statement  
18 that she had faxed. I tried to locate it, was  
19 unable to locate it.

20 And I had spoke to him -- he asked if I  
21 could try and find Kaitlyn Nichols. I used all my  
22 resources and I was unable to locate the phone  
23 number that I talked to her on, and it kind of  
24 stopped there.

25 Q. What do you mean it stopped there?

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1 A. I couldn't give him the information that he  
2 wanted. I didn't talk to him any more after that.

3 Q. Did he advise you that a motion to suppress  
4 the search had been filed in the criminal court?

5 A. Not that I recall.

6 Q. Have you ever testified in a suppression  
7 hearing concerning any of your searches?

8 A. No.

9 Q. Have you ever been disciplined for any  
10 reason concerning this case?

11 A. No.

12 Q. Have you ever been disciplined during the  
13 course and scope of your employment with Clark  
14 County?

15 A. No.

16 Q. Have you ever discussed the search that was  
17 obtained in this case with any of your supervisors?

18 A. When I typed it up and I sent it to him and  
19 then while I was at Judy's house, I called my  
20 supervisor while I was there.

21 Q. Who was that?

22 A. Dave March.

23 Q. And what I'm talking about is after the  
24 criminal case was dismissed, did you ever talk with  
25 a supervisor about what had happened?

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1 A. I didn't know that the criminal case was  
2 dismissed until recently, so no.

3 Q. How did you learn that the criminal case  
4 had been dismissed recently?

5 A. I checked with the court records -- when I  
6 was told I was going to be doing the deposition, I  
7 checked with the records so I knew what was going  
8 on, and then I had talked to Mr. Foley about it  
9 briefly.

10 Q. And I don't want to get into what you  
11 talked to your attorney about, but what did you find  
12 out when you researched the case?

13 A. That it was I believe dismissed. I knew it  
14 didn't go. She wasn't charged with it.

15 Q. You knew that she wasn't convicted of it?  
16 Is that what you mean?

17 A. Correct, correct.

18 Q. Since the time that you've learned it was  
19 dismissed, have you made any other efforts to try  
20 and find out where the complaint was that was  
21 allegedly filed by Kaitlyn Nichols?

22 A. No, sir.

23 Q. Do you keep notes or any logs independent  
24 of what you file through dispatch?

25 A. We have a computer system called Chameleon,

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1 and any notes that I take from my cases, I put in  
2 there.

3 But anything that comes through as witness  
4 statements or veterinary statements or anything like  
5 that goes into dispatch. They file it.

6 Most of the time they scan them and they  
7 put them in the computer as well for certain witness  
8 statements. I believe that's actually a new  
9 protocol, but as of the last six months, everything  
10 gets scanned as well.

11 Q. All right. So is the warrant also filed  
12 with dispatch, the application?

13 A. Yes, sir. They have a copy of it.

14 Q. How about information that you would  
15 receive from a sister agency like Mr. Molinari, is  
16 there some kind of a formal sheet that's sent over?

17 A. No.

18 Q. This was all telephonic with him?

19 A. Yes.

20 Q. Do you know him?

21 A. I know -- I don't know him personally, but  
22 I know him professionally.

23 Q. And what do you mean by that?

24 A. I see him at the shelter, I say hi to him  
25 in passing. I know he's their sergeant I believe is

1 his rank over there. He's their lead.  
 2 Q. All right. And did you, in fact, do you  
 3 have a recollection of going to see Judge Williams  
 4 to obtain this search warrant?  
 5 A. Yes.  
 6 Q. And was anybody with you?  
 7 A. No.  
 8 Q. Were any questions asked of you?  
 9 A. He read the warrant, swore me in and I  
 10 signed it.  
 11 MR. POTTER: Okay. I'll have this marked  
 12 as Plaintiff's 1.  
 13 (Exhibit No. 1, Affidavit and Application, marked.)  
 14 BY MR. POTTER:  
 15 Q. During the time that you were trained in  
 16 doing applications for search warrants, did you ever  
 17 study the case of Franks vs. Delaware?  
 18 A. No.  
 19 Q. Do you have any knowledge of whether you're  
 20 supposed to put in exculpatory information as well  
 21 as information that supports probable cause?  
 22 A. I don't quite understand.  
 23 Q. Were you trained to put in information that  
 24 would be contrary to probable cause if there's  
 25 information that you're aware of that would be what

1 we call exculpatory, meaning it wouldn't prove what  
 2 you're trying to get at, but it's information that's  
 3 maybe relevant to what you're dealing with, were you  
 4 trained to put in what we call exculpatory  
 5 information as well as what would be inculpatory?  
 6 A. We were trained to use probable cause that  
 7 we saw or had previous history with them. I mean,  
 8 that was the gist of it.  
 9 If it was if you have probable cause and  
 10 you can detail your probable cause and you go in  
 11 with a warrant, you look, you see if it's  
 12 substantial, and then that's it.  
 13 Q. All right. So the guidelines that you use  
 14 is that you're supposed to have substantial  
 15 evidence, is that fair?  
 16 A. If we have probable cause and ones we get  
 17 in there -- I mean, I've done a warrant where I've  
 18 been in and there was no -- when I got there, it  
 19 wasn't what I thought it was at the time and -- but  
 20 there was other violations. We tend to those and  
 21 then I left.  
 22 Q. Okay. Ones you're executing the warrant?  
 23 A. Correct.  
 24 Q. Okay.  
 25 A. We go with probable cause.

1 Q. All right. The first part here is your  
 2 background --  
 3 A. Yes.  
 4 Q. -- the location?  
 5 Other than the location, are the first  
 6 parts here, are they pretty much boiler plate,  
 7 meaning this is what you put standard in your  
 8 application affidavit?  
 9 A. Yes.  
 10 Q. Then you get down to on May 10th, 2010.  
 11 Do you have any kind of log, computer or  
 12 otherwise, where you would log in this phone call  
 13 from Richard Molinari?  
 14 A. If it came in through dispatch, it would be  
 15 on a recorded line.  
 16 Q. Have you made any efforts to find out if  
 17 there is a call?  
 18 A. No, not at this time I haven't.  
 19 Q. It says he's forwarding a complaint from  
 20 Kaitlyn Nichols. You testified earlier that it was  
 21 a telephonic conversation.  
 22 Did he, in fact, forward any kind of  
 23 complaint?  
 24 A. He was forwarding it via telephone. They  
 25 received a complaint. He called and forwarded the

1 complaint over to us.  
 2 Q. All right. Do you normally have a sheet or  
 3 some kind of computer that accepts complaints, not  
 4 necessarily just for this gentleman, but when  
 5 anybody calls in, do you have a complaint form  
 6 that's taken telephonically?  
 7 A. The dispatch receives complaints. They put  
 8 it in the computer and they dispatch out the call.  
 9 Q. So they do have a process?  
 10 A. Correct.  
 11 Q. Are you familiar with what would be on that  
 12 form that dispatch receives?  
 13 A. It's not like a form. It's our computer  
 14 program. We have the same computer program in our  
 15 truck.  
 16 They call it in being if it's a confined  
 17 dog, a vicious dog or whatever it is, they put it  
 18 in, put in the address and then they dispatch off  
 19 the call.  
 20 Q. Are the calls rated by dispatch as to  
 21 priorities?  
 22 A. Correct.  
 23 Q. Do you have any recollection of what  
 24 priority this call was dispatched as or received?  
 25 A. As a health and welfare. I don't recall.

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1 They're usually two or ones. I don't recall.  
 2 Q. Meaning what?  
 3 A. One is a high priority. Two is the second  
 4 highest priority.  
 5 Q. Do you remember what this was?  
 6 A. No, I do not.  
 7 Q. Is there any way you would be able to find  
 8 out what it was?  
 9 A. I can look in the records. I'm not sure.  
 10 Q. Would that be something you would normally  
 11 put into your report?  
 12 A. No.  
 13 Q. Why is that?  
 14 A. We don't generally detail the priority of  
 15 the call.  
 16 Q. Okay. The property located at 4302  
 17 Callahan, do you remember what that looked like?  
 18 A. It has a driveway with the garage doors  
 19 over here. The front door is on the other side of  
 20 the house. I don't recall exactly what it looked  
 21 like.  
 22 I know that there was a gate that we went  
 23 through and it went to the backyard and then there  
 24 was a laundry room door.  
 25 Q. Was there a front door?

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1 A. Yes.  
 2 Q. And have you described the front door?  
 3 A. It was on the opposite side of the house of  
 4 the garage door around the corner.  
 5 Q. Okay. Had you done any surveillance on the  
 6 property prior to executing the warrant?  
 7 A. I drove by and looked at it and that was  
 8 about it.  
 9 Q. Do you recall when you went by what you  
 10 were looking for?  
 11 A. I went and I was looking -- I didn't knock  
 12 on the door because I knew she wouldn't let us in to  
 13 look. I was just ascertaining where the property  
 14 was.  
 15 Q. How did you know that?  
 16 A. From -- I didn't know 100 percent, but from  
 17 previous dealing with her, that she wouldn't let us  
 18 in.  
 19 Q. What was the prior dealing you had with  
 20 her?  
 21 A. Me personally, none. But as far as when  
 22 they went on September 15th -- excuse me, January  
 23 13th, Officer Elff went there and she told him --  
 24 Q. What year is that?  
 25 A. 2006.

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1 Q. So four years prior?  
 2 A. Correct.  
 3 Q. Where did you get that information?  
 4 A. From our Chameleon, our computer system.  
 5 Q. All right. And do you recall what the  
 6 color of the house was that you were looking for?  
 7 MR. FOLEY: Did you say color?  
 8 MR. POTTER: Yes.  
 9 A. I do not recall what color her house is.  
 10 Stucco I remember, but -- I think it's stucco, but I  
 11 don't recall.  
 12 Q. Did you have any doubt in your mind that  
 13 you were going to the right residence?  
 14 A. I was going to the residence that was  
 15 provided from the witness, and then did I an  
 16 assessor's record check on it.  
 17 Q. All right. So on May 10th -- on the second  
 18 page -- 2010, I spoke with Kaitlyn Nichols by phone  
 19 regarding her complaint.  
 20 Did the judge ask you whether you had ever  
 21 actually talked to this person?  
 22 A. No. He asked me --  
 23 Q. Face to face?  
 24 A. He asked me if everything was true that I  
 25 wrote in my affidavit. I said yes.

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1 Q. Okay. If the identity of this person isn't  
 2 correct, is everything true in that statement?  
 3 MR. FOLEY: Object to the form of the  
 4 question.  
 5 Go ahead and answer if you understand.  
 6 A. It's true to the best of my knowledge from  
 7 my complaint.  
 8 I don't understand exactly what you're  
 9 asking me.  
 10 Q. Assume for the purposes of the question  
 11 that you never talked to Kaitlyn Nichols, never  
 12 confirmed the identity of Kaitlyn Nichols and that  
 13 you did not actually talk to an individual named  
 14 Kaitlyn Nichols. I want you to assume that for  
 15 purposes of the question.  
 16 If you did not speak with a Kaitlyn Nichols  
 17 regarding a complaint by her, then this information,  
 18 is it true or false or factually incorrect?  
 19 MR. FOLEY: Are you talking about just the  
 20 information stating her name or the rest of the  
 21 information?  
 22 MR. POTTER: The name.  
 23 BY MR. POTTER:  
 24 Q. Do you understand it?  
 25 A. I believe I was speaking with Kaitlyn

1 Nichols. I believe everything to be true and  
2 correct.

3 Had this been Joe calling me, stating the  
4 same information, I'm going to believe it's true and  
5 correct to what they're telling me.

6 Q. Okay. My question though to you is: Were  
7 you trained that to get a warrant that you had to  
8 know the identity and veracity of the individual  
9 giving you the information --

10 A. No.

11 Q. -- to support your probable cause?

12 A. No.

13 Q. And if the identity of the individual is  
14 not correct and you've made no verification, then  
15 this information is not factually correct, is that  
16 fair?

17 A. I believe it to be factually correct.

18 Q. I know what you're saying.

19 What I'm asking you though, if you never  
20 talked to a Kaitlyn Nichols, then the information  
21 that you provided in the application for the warrant  
22 isn't correct?

23 MR. FOLEY: I'm going to object to the form  
24 again. I think you need to specify what  
25 information.

1 BY MR. POTTER:

2 Q. Do you understand the question?

3 A. You're saying if it's not Kaitlyn?

4 Q. Yes.

5 A. Then this wouldn't be correct?

6 Q. Yes.

7 A. I believed that I was speaking with  
8 Kaitlyn, so I believe it to be correct.

9 MR. POTTER: Move to strike your answer as  
10 being non-responsive.

11 BY MR. POTTER:

12 Q. Listen to my question. Don't reframe the  
13 question.

14 You don't know if you talked to a Kaitlyn  
15 Nichols because you made no verification, correct?

16 A. Correct.

17 Q. If you do not know the identity of the  
18 individual you're talking to, this information  
19 concerning Kaitlyn Nichols uncorroborated, is not  
20 correct?

21 MR. FOLEY: Object to the form of the  
22 question.

23 Go ahead and answer if you understand it.

24 A. If it wasn't Kaitlyn Nichols, then I  
25 suppose it wouldn't be correct because -- but I

1 believe it to be Kaitlyn Nichols because we don't  
2 have people that just call and say, this is so and  
3 so. So I believed it to be correct.

4 But what you're asking me, if it's not  
5 Kaitlyn Nichols, then this would all be fictitious,  
6 and I would agree with that.

7 Q. Okay. Your next statement is: She then  
8 told me she used to work for Ms. Palmieri at Meadows  
9 Pets.

10 You made no effort whatsoever to  
11 corroborate or determine whether that was true,  
12 isn't that correct?

13 A. Correct.

14 Q. You made no efforts to go out and search  
15 records at the Meadows Pet Store to find --

16 A. That's in the City --

17 Q. -- whether this individual --

18 A. -- so that's not our jurisdiction unless I  
19 were to called and ask. But, no, I did not. We  
20 don't have records on Meadows Pet.

21 Q. All right. Well, let's deal with that.

22 You've got a referral from Richard Molinari  
23 from the City?

24 A. Correct.

25 Q. There's nothing that prohibits you from

1 contacting him and asking to go and verify an  
2 employment of another individual, isn't that true?

3 A. Why would he know if she worked there?

4 Q. I'm asking you the questions. All right?

5 A. Okay.

6 Q. Listen to my question. Move to strike your  
7 answer as being non-responsive.

8 You have a situation where you can contact  
9 Richard Molinari?

10 A. Correct.

11 Q. You did not contact Richard Molinari and  
12 ask him for any assistance to confirm this  
13 information, did you?

14 A. No, I did not.

15 Q. You could have done that?

16 A. Sure.

17 Q. You chose not to it?

18 A. I did not do it.

19 Q. You assumed that the person that you were  
20 talking to was telling you the truth?

21 A. Correct.

22 Q. You knew nothing about Kaitlyn Nichols'  
23 background, correct?

24 A. Correct.

25 Q. You didn't make any efforts to find out

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1 Kaitlyn Nichols' background, correct?  
 2 A. Correct.  
 3 Q. She stated that she was asked to help  
 4 Mrs. Palmieri move some boxes at her place of  
 5 residence.  
 6 You made no effort to corroborate or  
 7 ascertain whether Kaitlyn Nichols had ever, the one  
 8 that was being described to you as Kaitlyn Nichols  
 9 had ever been out to Mrs. Palmieri's house to move  
 10 boxes, isn't that true?  
 11 A. True. I went by what this person was  
 12 telling me that was supposed to be Kaitlyn Nichols.  
 13 Q. You didn't ask her to describe the  
 14 residence?  
 15 A. No.  
 16 Q. You didn't ask her the color of the  
 17 residence?  
 18 A. No.  
 19 Q. Or any other information to corroborate  
 20 what she was saying to you, isn't that correct?  
 21 A. Correct.  
 22 Q. You then state that she arrived at 4302  
 23 Callahan Avenue, Las Vegas, Nevada 89120.  
 24 Now, that information wasn't given to you  
 25 by this person representing themselves to be Kaitlyn

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1 Nichols, isn't that correct?  
 2 A. I'm sorry. Can you repeat that?  
 3 Q. She did not give you the address and the  
 4 zip code?  
 5 A. She gave me the address.  
 6 Q. Did she give you the zip code?  
 7 A. No.  
 8 Q. So that information that you are purporting  
 9 to be from Kaitlyn Nichols isn't completely correct,  
 10 even assuming that the identity of whoever you're  
 11 talking to is incorrect.  
 12 Isn't that right?  
 13 MR. FOLEY: You're asking just the zip  
 14 code?  
 15 MR. POTTER: Yes.  
 16 A. I put the address into the GIS Open Door  
 17 with that address and Judy Palmieri's name, and it  
 18 gives you the zip code.  
 19 Q. Right.  
 20 So that information isn't something that  
 21 she gave to you; it's something you obtained through  
 22 another procedure.  
 23 Correct?  
 24 A. Correct.  
 25 Q. Okay. Ones Mrs. Nichols was inside the

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1 residence, did you make any request of this  
 2 purported Mrs. Nichols of the date that she was at  
 3 the residence?  
 4 A. No.  
 5 Q. And why is that?  
 6 A. She was giving me her statement that she  
 7 was in the house. She didn't give me the specific  
 8 date.  
 9 Q. And you didn't ask her?  
 10 A. Correct.  
 11 Q. And why didn't you ask her?  
 12 A. I didn't find it pertinent she didn't give  
 13 me a date. She said that she had been there  
 14 recently, but she didn't give me a date.  
 15 Q. All right. What did you believe to be  
 16 recently?  
 17 A. I would believe in the last couple weeks.  
 18 Q. Did you ever ask her whether she had been  
 19 there within the last couple of weeks?  
 20 A. No.  
 21 Q. So you're just assuming that she was there  
 22 recently?  
 23 A. Correct.  
 24 Q. Did she actually say that she was there  
 25 recently, or was it just your assumption?

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1 A. It was my assumption by the way she was  
 2 telling me.  
 3 Q. So she didn't even tell you that she had  
 4 been there recently?  
 5 A. She said she had been there helping Judy.  
 6 Q. Okay. But she didn't say that she had been  
 7 there --  
 8 A. I don't recall if she said recently.  
 9 (Thereupon, an off-the-record discussion was had.)  
 10 BY MR. POTTER:  
 11 Q. She did not tell you that she had been  
 12 there recently?  
 13 A. Correct.  
 14 Q. Ms. Nichols also told me there were several  
 15 animals in the garage in kennels.  
 16 Did you ask her what type of kennels?  
 17 A. No.  
 18 Q. What were you assuming when -- first of  
 19 all, did she actually say kennels?  
 20 A. Yes.  
 21 Q. Did you ask her or have in your mind some  
 22 type of kennels?  
 23 A. There's several different types of kennels.  
 24 I was thinking the wire kennels.  
 25 Q. Okay. By several animals, what did you

11 (Pages 38 to 41)

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1 interpret that to mean?  
 2 A. Several animals meaning ten or more.  
 3 Q. Okay. Is there any reason why you didn't  
 4 put the number of the animals?  
 5 A. No. She said several. She didn't give me  
 6 a specific number.  
 7 Q. Did you ask her where the animals were  
 8 supposed to be in the residence?  
 9 A. She said they were in the garage, several  
 10 animals in the garage.  
 11 Q. And is there a reason why you didn't  
 12 specify at that point in time whether it was in the  
 13 garage or in other parts?  
 14 A. It states it right here: There was several  
 15 animals kept in the garage in kennels.  
 16 Q. All right. And in terms of where you  
 17 actually found animals, did you find animals in the  
 18 house?  
 19 A. I found mostly in the garage and there were  
 20 a few in the house.  
 21 Q. The animals that you took were in the  
 22 house?  
 23 A. Correct.  
 24 Q. Okay. The animals that were in the garage,  
 25 you did not take?

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1 A. Correct.  
 2 Q. Okay. If the animals in the garage had  
 3 been unhealthy, would you have taken them?  
 4 A. If they had been unhealthy, yes.  
 5 Q. If they had looked very thin?  
 6 A. Yes.  
 7 Q. If they had had fecal matter all over them?  
 8 A. Yes.  
 9 Q. You did not find what is purported in this  
 10 affidavit and application for the search, isn't that  
 11 correct?  
 12 A. Correct. I found several dogs in the  
 13 garage.  
 14 Q. All right.  
 15 A. They appeared to be in good condition and I  
 16 told Ms. Palmieri that.  
 17 Q. So the next sentence: Ms. Nichols said a  
 18 lot of the animals appeared to be unhealthy.  
 19 That isn't true, is it?  
 20 A. No. They were of good health, appeared to  
 21 be.  
 22 Q. Mrs. Nichols then went on to tell me  
 23 Mrs. Palmieri breeds the dog and sells them at her  
 24 pet shop?  
 25 A. Correct.

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1 Q. You didn't find any information to  
 2 substantiate the breeding of dogs, correct?  
 3 A. From my witness, no, I did not.  
 4 Q. All right.  
 5 A. Is that what you're asking me?  
 6 MR. FOLEY: You're asking at the scene?  
 7 A. Are you asking from what I was told or what  
 8 I saw at the scene?  
 9 Q. Let's deal with the first part.  
 10 What you were told, you made no effort to  
 11 verify, correct?  
 12 A. Correct.  
 13 Q. And what you found at the scene is that  
 14 there weren't -- you didn't find any dogs being bred  
 15 at the scene?  
 16 A. I found dogs that had puppies, so they had  
 17 already been bred. She wasn't actively breeding the  
 18 dogs.  
 19 Q. And you have no knowledge as you sit here  
 20 today where those dogs came from?  
 21 A. She told me they were from her personal  
 22 dogs.  
 23 Q. She told you that they were from her  
 24 mother, isn't that correct?  
 25 A. From her dogs, she told me that they were

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1 from her own dogs.  
 2 Q. Do you have any recollection of her telling  
 3 you that those dogs were her mother's dogs?  
 4 A. No.  
 5 Q. Would that have made any difference in what  
 6 you did with the dogs?  
 7 A. No.  
 8 Q. And why is that?  
 9 A. That's when I called my Sergeant March and  
 10 asked him, due to the new ordinance that was in  
 11 play, that you are not allowed to breed or do  
 12 anything with your dogs unless you have a permit,  
 13 and if you have puppies, they are to be surrendered.  
 14 Q. Okay. Are there any guidelines in that  
 15 ordinance about the age of the dogs?  
 16 A. No, not that -- I'd have to look at the  
 17 ordinance. I don't recall.  
 18 Q. All right. What's your understanding of  
 19 how old the dogs were that you took?  
 20 A. That they were -- they were very young  
 21 still. They were puppies.  
 22 Q. They weren't weaned, were they?  
 23 A. No. They were five weeks.  
 24 Q. They weren't weaned, were they?  
 25 A. No.



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1 Q. You didn't take the mother, did you?  
 2 A. No.  
 3 Q. And why is that?  
 4 A. Because I -- we don't -- the ordinance  
 5 stated that the puppies had to be forfeited, and  
 6 that's what Sergeant March told me, just to impound  
 7 the puppies.  
 8 I took them to a vet hospital where they  
 9 were fostered and treated.  
 10 Q. So they were weaned de factoly by you and  
 11 your sergeant, is that fair?  
 12 A. Correct.  
 13 Q. You then state: Mrs. Nichols also stated  
 14 Mrs. Palmieri also houses animals that are sick or  
 15 too young for the pet shop in her house.  
 16 A. Um-hmm.  
 17 Q. Other than what you've talked about with  
 18 these five puppies, did you find any other dogs that  
 19 were too young?  
 20 A. No.  
 21 Q. Because if you had, you would have taken  
 22 them, correct?  
 23 A. Correct.  
 24 Q. After speaking with Mrs. Nichols, I did a  
 25 search on Judy Palmieri's address and name in our

1 put that information in the affidavit?  
 2 A. No.  
 3 Q. This says: The calls were always related  
 4 to health and welfare and sanitation.  
 5 Are there any other reasons that you would  
 6 receive calls as an Animal Control agent to go to a  
 7 pet store?  
 8 A. No, not that I have seen. We usually have  
 9 health and welfare sanitation calls at pet stores.  
 10 Health and welfare covers a wide variety of items.  
 11 Q. Is there any reason why you put that  
 12 information, the calls were always related to health  
 13 and welfare and sanitation?  
 14 A. Because the reason why I was going to her  
 15 house was related health and welfare.  
 16 Q. Aren't there standard checks that are  
 17 required?  
 18 Aren't there inspections that are done by  
 19 the County at commercial facilities?  
 20 A. Yes.  
 21 Q. So if, in fact, an officer goes out there  
 22 on a standard check, it isn't necessarily related to  
 23 health and welfare or sanitation?  
 24 A. We have -- when they're doing businesses or  
 25 opening a business, they go out and they do, where

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1 records and I found only one time Clark County  
 2 Animal Control had been to Mrs. Palmieri's house at  
 3 4302 Callahan.  
 4 Can you tell us the date and time they had  
 5 been there?  
 6 A. They were there on January 13th, 2006. I  
 7 don't have the specific time.  
 8 Q. All right. That is the only one time that  
 9 they were there?  
 10 A. Correct.  
 11 Q. Okay. So then it says: There were  
 12 multiple times that Clark County Animal Control have  
 13 been out to her pet shop at Bark Avenue.  
 14 What efforts did you make to determine  
 15 whether Bark Avenue at the time you sought this  
 16 application was an ongoing business?  
 17 A. I did not.  
 18 Q. Do you have any -- can you testify here  
 19 under oath whether it was open or closed at the time  
 20 you did the search?  
 21 A. I don't know. I believe they were closed,  
 22 but I'm not sure. I had only went there one time to  
 23 her pet store, and there was no violations when I  
 24 went.  
 25 Q. Okay. Is there any reason why you didn't

1 they do inspections of the kennels and everything  
 2 before the business is fully operational.  
 3 But I don't -- I've never went out and just  
 4 done a check on a pet store. I've never done those.  
 5 Q. But they are done?  
 6 A. I've done health and welfares at pet stores  
 7 but not the initial checks.  
 8 Q. Did you make any efforts to determine  
 9 whether Officer Harney had ever gone out to do  
 10 inspections at Bark Avenue Pet Shop?  
 11 A. No. It didn't matter to me which officer  
 12 went out there to do an inspection. That wasn't  
 13 pertinent to what I was doing.  
 14 Q. But you said the calls were always related  
 15 to health and welfare and sanitation, isn't that  
 16 correct?  
 17 A. Correct.  
 18 Q. And so if they go out to the scene on an  
 19 inspection, it is pertinent, isn't it?  
 20 A. Yes.  
 21 Q. So the statement here that the calls were  
 22 always related to health and welfare and sanitation  
 23 isn't entirely correct, is it?  
 24 A. The calls that I saw in the Chameleon  
 25 system were related to health and welfare calls. I

13 (Pages 46 to 49)

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1 didn't see a call for inspection.

2 Q. All right. So your testimony here under  
3 oath is that you based it upon whatever was in that  
4 Chameleon system, correct?

5 A. Correct.

6 Q. All right. You then list examples of those  
7 calls: September 15th, 2007 we had a call which was  
8 Bark Avenue Pets.

9 So at that time -- this is three years, two  
10 and a half years prior?

11 A. Correct.

12 Q. You list Mrs. Palmieri was the owner.

13 Do you have any knowledge that she was not  
14 the owner of the pet store?

15 A. No.

16 Q. Do you have any knowledge that a  
17 corporation was the owner of the pet store?

18 A. No.

19 Q. Did you make any efforts to go through the  
20 Clark County database to find out who the licensed  
21 owner of the Bark Avenue Pet Shop was?

22 A. No.

23 Q. Why is that?

24 A. Because I wasn't going to the pet store, so  
25 I didn't investigate it to that extent. I just

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1 looked at our records.

2 Q. Well, you're representing to a judge that  
3 she's the owner of a pet store, is that fair?

4 A. Correct.

5 In the notes in our Chameleon it does state  
6 that met with Judy Palmieri, the owner. So from  
7 what I'm reading in our system, she would be the  
8 owner.

9 Q. All right. So if you know that a  
10 corporation is the owner of a pet store -- assuming  
11 for this question that you know that a corporation  
12 is the owner of a pet store and somebody is  
13 affiliated with it on an individual basis, do you  
14 normally put in the computer the person's name or do  
15 you put in the corporation?

16 A. We put in the person's name that's stating  
17 that they're the owner.

18 Q. Why is that?

19 A. Because that's usually who they speak with  
20 and they say they're the owner. And that's the  
21 person, whenever they're doing something, any kind  
22 of action, it would be going towards the owner of  
23 the business.

24 Q. Did you ever determine in your records that  
25 this charge from September 15th, 2007 was dismissed

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1 because Judy Palmieri was not the owner of the  
2 premises?

3 A. No, I did not.

4 Q. Did you ever talk to Officer Harney prior  
5 to going out to do this search?

6 A. No.

7 Q. Have you ever talked to Officer Harney  
8 concerning Judy Palmieri?

9 A. No.

10 Q. You've never discussed with Officer  
11 Harney --

12 A. Not specifically about Judy Palmieri. We  
13 have talked about different pet store cases, but we  
14 do that about if we're doing rechecks for one  
15 another or anything like that.

16 Q. What are rechecks?

17 A. When one officer goes out, starts a case,  
18 and then another officer goes out and completes the  
19 case.

20 Or somebody needs to go out and check the  
21 status of we'll say a horse. You give them a month  
22 to rectify, and then another officer can go out and  
23 recheck it because it's in the notes.

24 Q. All right. On January 13, 2006, Clark  
25 County Animal Control was called to 4302 Callahan.

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1 Do you have any recollection of what they  
2 were called out on?

3 A. It says it right here -- I wasn't employed  
4 yet -- regarding a dead animal in the garage.

5 Q. All right. Do you have any information  
6 other than what you have in here about what the dead  
7 animal was?

8 A. As far as I know, he didn't find a dead  
9 animal because he didn't go into her house and look.

10 Doesn't mean that there was one, but there  
11 was none found because he wasn't able to look.

12 Q. Do you know Officer Jason Elff?

13 A. Yes.

14 Q. Did you talk to him at the time you were  
15 submitting this affidavit?

16 A. No. He works for a different department  
17 now, and I did not contact him.

18 Q. All right. On January 13, 2006, this  
19 information was approximately four years old at the  
20 time you're seeking a warrant, is that correct?

21 A. Correct.

22 Q. What information, if any, did these two  
23 examples have in submitting probable cause to a  
24 judge?

25 A. Showing that we've met with Judy before and

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1 that, when we did go to her property, she didn't let  
2 us go in and look.

3 And my warrant was to, an application to  
4 search and see if the accusation was correct and  
5 then seize.

6 So by -- I was trying to show probable  
7 cause that we had been there before and had dealt  
8 with her before, and I knew that we wouldn't be able  
9 to ascertain if the animals were in the house or  
10 not, so we needed a warrant to look.

11 Q. And my question to you is what basis this  
12 information has for purposes of the probable cause  
13 analysis on your part?

14 MR. FOLEY: Object to the form of the  
15 question.

16 A. My probable cause was what my witness  
17 stated, and by showing that we had dealt with Judy  
18 before, I was trying to show probable cause that  
19 we've had incidents being how it was four years ago  
20 that we had went to her house before and that she  
21 wouldn't let us in.

22 So that was the reason that I referred to  
23 us being at her house on a previous time -- excuse  
24 me, at a previous time.

25 Q. All right. And, ones again, all this

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1 information that you contained, is there any other  
2 information that you were aware of that you did not  
3 put into your warrant or application which you  
4 believe now would have helped substantiate your  
5 probable cause?

6 A. No.

7 Q. Have you been made aware of the fact that  
8 Cindy Ornelas was accused from Kaitlyn Nichols'  
9 information that a Cindy Ornelas who had worked at  
10 the Meadows Pet Store is the one that you were  
11 talking to?

12 A. No, I was not. I still believe I was  
13 talking to Kaitlyn Nichols.

14 Q. All right. So even though -- have you seen  
15 the affidavit from Kaitlyn Nichols that she never  
16 talked to you?

17 A. I believe I've seen an affidavit. But I'm  
18 not -- I still believe I was talking to Kaitlyn  
19 Nichols.

20 Q. Okay. And why do you still believe that?

21 A. She told me she was Kaitlyn Nichols and  
22 that's what I believe to be true.

23 Q. All right. Look at, if you can, the next  
24 page.

25 A. Where I signed? This one?

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1 Q. Yes.

2 A. I haven't seen this, no.

3 Q. All right. Read that to yourself and let  
4 me know when you finished reading it.

5 A. Okay.

6 Q. That information states that Kaitlyn  
7 Nichols -- and I'll represent to you this was done  
8 in the presence of a notary who identified her  
9 identity by a license and made a statement that  
10 after reading the affidavit for the search warrant  
11 stated that she had never been to the home of Judy  
12 Palmieri?

13 MR. FOLEY: I'm going to object to the  
14 question, just that you're assuming IDs were  
15 checked. It doesn't say that in there.

16 BY MR. POTTER:

17 Q. I'm telling you that for the purpose of the  
18 question because I personally did it. And as an  
19 officer of this court, I'm telling you that Kaitlyn  
20 Nichols came to my office and I interviewed her,  
21 looked at her identification, confirmed her  
22 identity, and she then signed this affidavit in the  
23 presence of a notary.

24 And I'm asking you for the purpose of the  
25 question that the affiant, who is Kaitlyn Nichols,

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1 said that she had never been to the home of Judy  
2 Palmieri.

3 If, in fact, that is correct, would you  
4 disbelieve that you had talked to a Kaitlyn Nichols?

5 A. Are you asking if this is correct, would I  
6 believe --

7 Q. Yes.

8 A. I still believe I spoke with Kaitlyn  
9 Nichols.

10 Q. And if, in fact, the information was  
11 correct, that on the day of the statement that's  
12 attributed in your affidavit or application of May  
13 10th, 2010 she was working from 7:00 a.m. to 4:00  
14 p.m. and your affiant, ones again, Kaitlyn Nichols,  
15 did not make any phone calls of a private nature  
16 from her workplace, would that change any of your  
17 opinions?

18 A. I still believe I was speaking with Kaitlyn  
19 Nichols.

20 Q. All right. If you knew that Cindy Ornelas  
21 had stolen Kaitlyn Nichols' identity and forged her  
22 name on bank checks, would that make any difference  
23 to you?

24 A. I believe I was speaking with Kaitlyn  
25 Nichols because that's who the person told me they

15 (Pages 54 to 57)

Page 54

1 were. I can't prove that it was her or it wasn't  
 2 her. I believe that it was her.  
 3 Q. So as you sit here today, you admit that  
 4 you can't prove the person you talked to was Kaitlyn  
 5 Nichols or was not Kaitlyn Nichols?  
 6 A. Correct.  
 7 Q. Did you provide that information at the  
 8 time to the judge, that you didn't know whether she  
 9 was or was not?  
 10 A. No. I believed it to be Kaitlyn Nichols,  
 11 so that's how I wrote it and presented it to the  
 12 judge.  
 13 MR. POTTER: Mark this as next exhibit in  
 14 order.  
 15 (Exhibit No. 2, E-Mail from Veterinarian Board of  
 16 the State of Nevada, marked.)  
 17 MR. POTTER: I only have one copy of that.  
 18 BY MR. POTTER:  
 19 Q. I'm handing you an e-mail that was sent  
 20 initially by me to the Veterinarian Board of the  
 21 State of Nevada and then asking whether in fact you  
 22 were licensed under the name of Dawn Stockman, and  
 23 the response I got was that they didn't have any  
 24 record of it.  
 25 I've since asked them under Dawn Stewart,

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1 but I don't have anything back from them at this  
 2 point.  
 3 A. I have my license in my purse in my vehicle  
 4 if you want to see it.  
 5 Q. So if, in fact -- you're testifying under  
 6 oath that you're still in good standing, is that  
 7 correct?  
 8 A. Correct.  
 9 Q. And that you were in good standing at the  
 10 time that you made the application?  
 11 A. Correct.  
 12 MR. FOLEY: Maybe it's not the real Debbie  
 13 Machen that sent that.  
 14 MR. POTTER: Mark this as the next exhibit.  
 15 (Exhibit No. 3, Officer's Report Dated May 19th,  
 16 2010, marked.)  
 17 BY MR. POTTER:  
 18 Q. I'm handing you now what's marked as the  
 19 next exhibit in order, started at page 18 of what's  
 20 been Bates stamped PALMIERI 18.  
 21 I'd ask you to read that report to yourself  
 22 and let me know when you finished.  
 23 A. Okay.  
 24 Q. The document we just looked at labeled  
 25 officer's report dated May 19th, 2010, do you recall

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1 when this was generated?  
 2 A. I wrote my report, I usually write them  
 3 within the day, the same day I issue or the next day  
 4 after.  
 5 Q. Okay. And, in this instance, it's dealing  
 6 with an incident from the 19th?  
 7 A. Correct.  
 8 Q. But, as you sit here today, do you have a  
 9 recollection of whether this was actually generated  
 10 on the 19th or whether it was the day after?  
 11 A. I typed in my notes on the day and I  
 12 believe I wrote this the day after.  
 13 Q. Okay. Would this particular report still  
 14 be in the computer?  
 15 A. It's in my computer.  
 16 Q. And by 'your computer,' what do you mean?  
 17 A. We all have our own little laptop computers  
 18 and I keep all my reports and files on my computer.  
 19 Q. Do you have a separate file, for lack of a  
 20 better term, concerning Judy Palmieri?  
 21 A. No. They just go under a set report, set  
 22 report, set report.  
 23 Q. Okay. In this particular instance, how  
 24 would you grade this search?  
 25 A. You mean like did it go well?

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1 Are you asking me as far as like other  
 2 searches I've done or --  
 3 Q. Well, let's start with that.  
 4 A. I think it went well. I mean --  
 5 Q. Okay. Prior to the search, do you have to  
 6 make a determination as to the level of security  
 7 that you believe you'll be dealing with --  
 8 A. No.  
 9 Q. -- in entering a search?  
 10 A. No.  
 11 Q. Do you have any policies, practices or  
 12 procedures to use SWAT in any of your searches?  
 13 A. No.  
 14 Q. In this particular instance you contacted  
 15 Las Vegas Metropolitan Police Officer Elam.  
 16 Do you recall if you physically contacted  
 17 him?  
 18 A. No. I call 3-1-1. I ask for a dispatcher  
 19 and ask if they can dispatch somebody out to our  
 20 location because we're going to be serving a search  
 21 warrant.  
 22 Q. Do you provide any more information than  
 23 what you already stated?  
 24 A. They'll ask me the address. I tell them  
 25 the address and then the officer comes out.

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1 Q. Did you consider this in your experience --  
2 although if my understanding is correct from what  
3 you're saying, you don't really grade the severity  
4 of the scene?

5 A. No.

6 Q. All right. Did you consider this to be a  
7 dangerous search?

8 A. No.

9 Q. Why is that?

10 A. Because I know Judy.

11 Q. All right. And did you consider the area  
12 to be secure in any respect?

13 MR. FOLEY: Secure from what?

14 BY MR. POTTER:

15 Q. Well, most time law enforcement, when they  
16 do a surveillance, they make a determination of  
17 whether there are locks on the doors, if there's  
18 barricades?

19 A. Her home was secure. I mean, she had locks  
20 and she had gates.

21 Q. So she had gates?

22 A. Correct.

23 Q. Okay. Any knowledge of any other prior  
24 searches in the area?

25 Did you make any efforts to find out if

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1 there had been searches in the area at any time?

2 A. No.

3 Q. Did Metro contact you in response -- after  
4 calling 3-1-1, did a particular officer contact you  
5 and go over the procedure?

6 A. No. They're not there to do the search and  
7 seizure. They're there just to keep the peace  
8 pretty much. I mean, they're not doing the warrant.  
9 Animal Control is doing the warrant.

10 Q. So they're there in an observation  
11 capacity?

12 A. Right.

13 Q. And we touched on it earlier, just for the  
14 record, what do you have on your duty belt?

15 A. I have an ASP, which we call a bite stick.  
16 I have a phone, a Leatherman, a flashlight, radio  
17 and at the time we did not have Tasers yet. We now  
18 have Tasers.

19 Q. All right. When did you get the Tasers?

20 A. About a year ago. I just did my renewal on  
21 my training.

22 Q. I'm sorry. You don't have a firearm?

23 A. No.

24 Q. Why is that?

25 A. We're not post certified.

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1 Q. All right. Have you been through training  
2 to serve warrants?

3 A. I had the training with the cruelty  
4 investigation, and then our supervisors go over,  
5 they give us a template and then we meet with the DA  
6 every time and we go over. So that's the base of my  
7 training.

8 Q. All right. In this particular case, did  
9 you knock and announce?

10 A. Yes.

11 Q. Where?

12 A. Knocked on the front door first. There was  
13 no answer. Then we went to the gate, which was  
14 locked. I didn't want to damage the lock. I hopped  
15 over the fence, unlocked it.

16 We came in the garage door -- not a garage  
17 door. It's a side door that goes into the laundry  
18 room. We knocked. Opened the door.

19 The police officer yelled first, stating  
20 who we were. Then I took the lead and I yelled out,  
21 and then Judy came around the corner.

22 Q. You walked in ahead of the officer?

23 A. Correct.

24 Q. Did he have his gun drawn?

25 A. No.

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1 Q. Did you have any weapons in your hands?

2 A. No.

3 Q. After knocking at the front door, what, if  
4 anything, did you say?

5 A. I said: Animal Control, we have a search  
6 warrant. And I knocked again and I repeated the  
7 same thing.

8 Then I did call a locksmith and we stood  
9 there for a little bit and I decided that we could  
10 hop over the fence. I cancelled the locksmith  
11 because we didn't need to get in that way.

12 I opened the door. Metro officer yelled,  
13 this is Metro Police, I'm here with Animal Control.  
14 And then I said: Animal control, we have a warrant.  
15 I did say, Judy and -- I said her name.

16 Q. Did you see her at that point?

17 A. I had walked in maybe three steps and then  
18 she came around through the door there.

19 Q. All right. Did you ring the doorbell at  
20 the front door?

21 A. I don't recall if I rang the bell. I don't  
22 even remember if there was a doorbell. I know I  
23 knocked.

24 Q. When you saw Mrs. Palmieri, how was she  
25 dressed?

17 (Pages 62 to 65)

Page 62

1 A. She was dressed. I don't remember what  
2 kind of clothes she was wearing.  
3 Q. Do you have any recollection that she was  
4 in her night clothes?  
5 A. I do not recall.  
6 Q. As you sit here today, can you recall  
7 whether she had shoes on?  
8 A. I think that she didn't and then she asked  
9 if she could get shoes. She only went outside for a  
10 few moments and then I said, well, she can come in  
11 and the Metro officer said, yeah, she's fine. And  
12 she came in the house while we were doing the  
13 search.  
14 Q. It's your testimony that she was inside the  
15 house at the time of the search?  
16 A. Correct.  
17 Q. Where was she?  
18 A. She was standing downstairs. She didn't  
19 follow me through the whole search process, but she  
20 was in her house.  
21 Q. And did you go upstairs to search?  
22 A. I did.  
23 Q. And what, if anything, did you find  
24 upstairs?  
25 A. There was nothing upstairs. I was just

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1 there briefly and then came downstairs.  
2 Q. All right. Where did you go then?  
3 A. We were downstairs looking around, mainly  
4 in the garage area.  
5 Q. Have you ever been trained for officer  
6 safety that you have the individuals that are in the  
7 residence taken outside of the interior of the  
8 residence?  
9 A. That would be normal protocol. Usually, I  
10 don't let the people stand there while we're  
11 searching the house.  
12 Q. But in this instance, you didn't follow  
13 normal protocol?  
14 A. It's up to our discretion, but usually they  
15 are outside. Whether they have shoes on, shirts on,  
16 they're usually outside for our safety. It's not a  
17 written protocol.  
18 Q. How long did the search take?  
19 A. I think we were only at her house for an  
20 hour. I don't know for sure exactly unless I looked  
21 at the computer. I can look up the call. Hour,  
22 hour and a half.  
23 Q. Did you remember during the time after the  
24 search that you told Judy that you thought Hal Cruz  
25 (phonetic), who was a neighbor, that that was her

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1 house across the street?  
2 Do you remember saying anything like that?  
3 A. No. I don't even know who Hal Cruz  
4 (phonetic) is.  
5 Q. Do you know what the premises looks like  
6 across the street?  
7 A. No, not off the top of my head.  
8 Q. Did you transport the dogs that you took,  
9 that were taken from the premises?  
10 A. Yes.  
11 Q. Did you give any type of return on the  
12 search warrant?  
13 A. No. I had Officer Olson do that because I  
14 forget to leave it with her. So I called her and I  
15 said you need to go back over there, and she went  
16 back over there and gave it to Judy.  
17 Q. Do you know what happened to the dogs?  
18 A. I took them to the animal hospital.  
19 Q. Which animal hospital?  
20 A. DI Animal Hospital.  
21 Q. And did you take all the puppies and the  
22 adult dogs?  
23 A. Correct.  
24 Q. All of them went to DI Animal Hospital?  
25 A. Correct.

Page 65

1 Q. And do you know what's happened to the  
2 puppies?  
3 A. I do not.  
4 Q. Why is that?  
5 A. I wasn't the one who retrieved them or if  
6 they got fostered out and adopted.  
7 Q. Who would do that?  
8 A. Either another officer or the animal  
9 hospital has the option, I believe, to adopt them  
10 out.  
11 Q. Pursuant to what authority are you aware  
12 of?  
13 A. I'm not sure.  
14 Q. Do you recall being involved with the  
15 return of the two adult dogs?  
16 A. Yes.  
17 Q. What's your recollection of that?  
18 A. I called them, let them know I would meet  
19 them at the shelter. Judy and her husband, Fred,  
20 met me at the shelter.  
21 I showed them the vet treatment and the  
22 bill. Fred wrote me a check for it, and I returned  
23 the dogs.  
24 Q. Do you have a recollection of any  
25 discussion with Fred at the return of the dogs?

Page 66

1 A. I recall -- he was being very nice. Judy  
2 was being very nice. The dogs were fine when I  
3 handed them.

4 I remember being told thank you, I'm glad  
5 it was you that came.

6 And it was a very nice conversation. The  
7 whole time that I was even at Judy's house, we were  
8 having nice conversation. It was never rude or out  
9 of line when I was talking to her.

10 Q. In her conversations with you as well as  
11 your conversations with her?

12 A. Correct.

13 Q. All right. What was the basis that you  
14 took the older dogs?

15 A. They were thin. They didn't appear to be  
16 of good health. They were very old.

17 I asked her if she had any medical records.  
18 She did not at the time.

19 I told her I needed to take them for a vet  
20 check to make sure that they were okay, and that's  
21 what I did.

22 They were found that they had -- I can't  
23 remember exactly which one without the paper in  
24 front of me -- heart murmur, and both of them had  
25 severe dental disease.

Page 67

1 But other than that, they were okay, and  
2 that's why I promptly called her and met her at the  
3 shelter and returned them to her and gave her the  
4 records from the vet.

5 Q. Were you ever made aware that one of the  
6 dogs was injured during the time that they were  
7 taken out of the house?

8 A. No.

9 Q. Or that one of the dogs had been burned?

10 A. No, nobody was injured.

11 Q. And how do you know that?

12 A. None of them appeared to be injured when  
13 I -- I didn't injure any of them.

14 Q. How did you transport them?

15 A. In my truck.

16 Q. And can you been any more specific?

17 Were they in the front? The back?

18 A. We have individual dog cages, and I put  
19 them together in a cage in my truck.

20 Q. All right. And do you recall the size of  
21 the cage that they were in?

22 A. I have -- I don't know the exact  
23 measurements of them. I can fit large dogs in them.

24 Q. Okay. What about do you have specific  
25 cages for smaller dogs?

Page 68

1 A. When I have two or more, I'll put them  
2 in -- I usually put them in a cage that's suitable  
3 to them that they can stand up, turn around in and  
4 lay down.

5 Q. The dogs here, are you able to estimate the  
6 age first of all of the Chihuahua?

7 A. Honey Bunny. She was 13 at the time.

8 Q. And from your experience and training as a  
9 vet tech, is that advanced years for a Chihuahua?

10 A. Yes.

11 Q. Do you know what the life expectancy is?

12 A. The smaller the dog, usually the longer  
13 they live with good care. I've seen them 18, 19  
14 years old.

15 Q. All right. But this was a dog that would  
16 be a senior?

17 A. Yes, he was a senior -- no she.

18 Peggy Sue is the male, right?

19 Q. And the other dog, the Pomeranian, do you  
20 recall the size of that dog?

21 A. They were both smaller dogs.

22 Q. Okay. And do you recall the age?

23 A. Sixteen.

24 Q. Okay. So they were both older dogs or  
25 seniors?

Page 69

1 A. Yes.

2 Q. All right. Is it unusual to see dental  
3 problems in dogs of that age?

4 A. Not if you keep up with the dental care,  
5 but a lot of people let it start to slide, and as  
6 they get older, it's not as likely that they get put  
7 under anesthesia.

8 Q. All right. In terms of -- anesthesia  
9 meaning to clean their teeth is a known  
10 complication --

11 A. They put them anesthesia usually to clean  
12 their teeth.

13 Q. And there can be complications from  
14 anesthesia on a senior?

15 A. Right. There can be complications on any  
16 animal at any age from anesthesia.

17 Q. Right. But the risks become incrementally  
18 greater as they get older?

19 A. Yes.

20 Q. Pursuant to your policies, practices and  
21 procedures, do you take dogs into custody on calls  
22 within you find out that someone has dental  
23 problems?

24 A. It wasn't just the dental problems.

25 Q. All right. What else was it?

19 (Pages 70 to 73)

Page 70

1 A. They were skinny. Honey Bunny -- Honey  
2 Bunny is the Chihuahua -- was in a bed. She wasn't  
3 very mobile.

4 And I believe, if I recall, the Pomeranian  
5 had some kind of a skin issue, which could have been  
6 related to older age or it could have been other  
7 issues. A lot of times heart problems can cause  
8 things.

9 So I wasn't comfortable, and due to the way  
10 that the procedures are for cruelty, health and  
11 welfare to get a veterinary opinion since I can't do  
12 that myself.

13 Q. All right. So you did it, for lack of a  
14 better term, on a prophylactic basis to make sure  
15 they were okay?

16 A. Yes.

17 Q. And ones you made that determination, you  
18 contacted Mrs. Palmieri and they were returned to  
19 her, is that fair?

20 A. Yes.

21 MR. POTTER: Okay. We'll mark this as the  
22 next exhibit.

23 (Exhibit No. 4, Citation/Complaint, marked.)

24 BY MR. POTTER:

25 Q. During the course of the criminal

Page 72

1 A. Yes.

2 Q. She didn't impede the search?

3 A. No.

4 Q. The next document that was produced by your  
5 attorney deals with --

6 A. You mean after the citation?

7 Q. Yes.

8 Do you recall running that information?

9 A. Yes.

10 Q. Is this what you used to make a  
11 determination as to the ownership of the property?

12 A. Yes.

13 Q. The information about Rory Reid and John  
14 Ensign and Harry Reid and all that, that doesn't  
15 have anything to do with what you did?

16 A. No. But it's on the picture that comes up.

17 Q. All right. The next page is something that  
18 says Stockman and then from Kaitlyn Nichols?

19 A. Correct.

20 Q. Do you know what this is?

21 A. This is the cover sheet that arrived with  
22 the fax.

23 Q. All right. And do you recall seeing this?

24 A. Yes.

25 Q. And do you know why we would have the cover

Page 71

1 investigation and that criminal prosecution as well  
2 as in this case, we've received the citation.

3 First of all, do you recognize this  
4 document?

5 A. Yes.

6 Q. And does that contain your handwriting on  
7 it?

8 A. Yes, the first one is. Only the first one.

9 Q. All right. There's a reference to another  
10 officer, Officer Olson.

11 A. Correct.

12 Q. Was she also present with you?

13 A. Yes.

14 Q. What was her capacity, if any, at the  
15 scene?

16 A. We usually take two Animal Control officers  
17 when we do our warrants.

18 Q. All right. And in this particular  
19 instance, yourself and Officer Olson.

20 Were there other officers?

21 A. Just the police officer.

22 Q. Okay. Mrs. Palmieri signed the citation at  
23 your request?

24 A. Yes.

25 Q. She was cooperative with you?

Page 73

1 sheet and not the fax?

2 A. I do not.

3 MR. POTTER: All right. Let me just take a  
4 break here and I think we're about finished.

5 (Thereupon, a break was taken.)

6 MR. POTTER: I don't have any other  
7 questions.

8 I want to put on the record that we have  
9 like a 2.34 on the reports if they don't -- the fax  
10 statements and those have never been produced. I  
11 assume that they don't exist at this point. I was  
12 going to bring a Motion to Compel.

13 MR. FOLEY: I can tell you we've been  
14 looking.

15 MR. POTTER: Okay. That's it then.

16 THE WITNESS: Thank you.

17 -----

18  
19  
20 (Proceedings concluded.)

21

22

23

24

25



Page 74

1 CERTIFICATE OF DEPONENT  
 2 PAGE LINE CHANGE REASON

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17 \* \* \* \* \*

18 I, DAWN STOCKMAN, deponent herein, do hereby  
 19 certify and declare the within and foregoing  
 20 transcription to be my deposition in said action;  
 21 under penalty of perjury; that I have read,  
 22 corrected and do hereby affix my signature to said  
 23 deposition.

24 \_\_\_\_\_  
 25 DAWN STOCKMAN, Deponent

Page 75

1 CERTIFICATE OF REPORTER  
 2 STATE OF NEVADA )

3 ) SS:

4 COUNTY OF CLARK )

5 I, Jackie Jennelle, a duly commissioned  
 6 Notary Public, Clark County, State of Nevada, do  
 7 hereby certify: That I reported the deposition of  
 8 DAWN STOCKMAN, commencing on FRIDAY, APRIL 13, 2012,  
 9 at 12:00 p.m.

10 That prior to being deposed, the witness was  
 11 Duly sworn by me to testify to the truth. That I  
 12 thereafter transcribed my said shorthand notes into  
 13 typewriting and that the typewritten transcript is a  
 14 complete, true and accurate transcription of my said  
 15 shorthand notes.

16 I further certify that I am not a relative  
 17 or employee of counsel, of any of the parties, nor a  
 18 relative or employee of the parties involved in said  
 19 action, nor a person financially interested in the  
 20 action.

21 IN WITNESS WHEREOF, I have set my hand in my  
 22 office in the County of Clark, State of Nevada, this  
 23 26th day of April, 2012.

24 \_\_\_\_\_  
 25 JACKIE JENNELLE, RPR, CCR #809

## 1 CERTIFICATE OF REPORTER

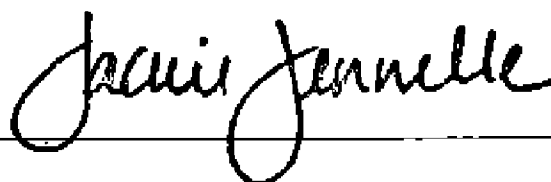
2 STATE OF NEVADA )  
3 ) SS:  
4 COUNTY OF CLARK )

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14 complete, true and accurate transcription of my said  
15 shorthand notes.

16 I further certify that I am not a relative  
17 or employee of counsel, of any of the parties, nor a  
18 relative or employee of the parties involved in said  
19 action, nor a person financially interested in the  
20 action.

21 IN WITNESS WHEREOF, I have set my hand in my  
22 office in the County of Clark, State of Nevada, this  
23 26th day of April, 2012.

24   
25

JACKIE JENNELLE, RPR, CCR #809

# Exhibit 3



  
CLERK OF THE COURT

**RPLY**  
STEVEN B. WOLFSON  
District Attorney  
**CIVIL DIVISION**  
State Bar No. 1565  
By: **MICHAEL L. FOLEY**  
Deputy District Attorney  
State Bar No. 3669  
500 South Grand Central Pkwy.  
P. O. Box 552215  
Las Vegas, Nevada 89155-2215  
(702) 455-4761  
E-Mail: [Michael.Foley@ClarkCountyDA.com](mailto:Michael.Foley@ClarkCountyDA.com)  
Attorneys for Defendant  
Clark County

DISTRICT COURT  
CLARK COUNTY, NEVADA

JUDY PALMIERI,	)	
	)	
Plaintiff,	)	Case No: A-11-640631-C
	)	Dept No: XXVI
vs.	)	
	)	
CLARK COUNTY, a political subdivision	)	Date of Hearing: 12/21/2012
of the STATE OF NEVADA; DAWN	)	
STOCKMAN, CEO96, individually and in	)	Time of Hearing: 9:00 a.m.
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.	)	

**DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION**

The Defendants filed a Motion for Summary Judgment in this case. The Plaintiff recently filed an Opposition to the Motion for Summary Judgment. This document is in reply to Plaintiff's Opposition.

The Plaintiff's case should be dismissed since there is a total lack of evidence to support any of the elements of her claims. The Plaintiff is merely relying upon the allegations of the Complaint and in the Opposition keeps restating them over and over again. However, there is just no evidence to back up the allegations.

At page 6 of the Opposition, the Plaintiff lists five items that she claims are contested matters of fact. However, all of the admissible evidence in the case clearly shows that there

1 is no genuine issue as to any of these facts. The first item listed is a statement by the  
2 Plaintiff that that there is a question of fact whether a caller identified herself as Kaitlyn  
3 Nichols who was a former employee of Judy Palmieri. This is not a genuine issue. Both the  
4 County records and the City of Las Vegas records show that there was a caller who  
5 identified herself as Kaitlyn Nichols who stated that the Plaintiff was warehousing puppies  
6 in her garage. The City of Las Vegas Animal Control records show that they referred the  
7 call to the County Animal Control because the statements made by the caller who identified  
8 herself as Kaitlyn Nichols showed that the address was out in the County. In the very  
9 beginning, prior to the County Animal Control involvement, the records show that there was  
10 a caller who identified herself as Kaitlyn Nichols who was a former employee of the  
11 Plaintiff. Listing this as an issue of fact can only be attributed to bad faith or a complete lack  
12 of familiarity with the records produced in this case.

13 The second item listed as a contested matter of fact is that Kaitlyn Nichols' affidavit  
14 states that she never filed a complaint about Judy Palmieri and that she was a victim of  
15 Cindy Ornelas stealing her identity. The first problem with the Nichols affidavit is that it is  
16 not admissible. The affidavit that the Plaintiff attached as Exhibit 1 to the Opposition was  
17 apparently filled out in September of 2010. The current action was not even filed until May  
18 of 2011. There is no foundation that would show that the affidavit was prepared or  
19 submitted in some other case. It does not fit any exception to the Hearsay rule. Since the  
20 affidavit was not prepared for this Motion or even this case, it is an out of court statement  
21 and is being submitted to establish the truthfulness of the assertions within it. As a result, it  
22 is inadmissible under the Hearsay rule and should be stricken. The second problem with the  
23 affidavit is that the Plaintiff ignores the fact that if Cindy Ornelas is the one who called  
24 claiming to be Kaitlyn Nichols, that would not render the information unreliable. The  
25 Plaintiff testified at her deposition that Cindy Ornelas was the Office Manager at the  
26 Plaintiff's pet store. Kaitlyn Nichols was only a sales person. Cindy Ornelas would have an  
27 even better knowledge of the Plaintiff's practice of warehousing puppies at her residence and  
28 all other facets of the Plaintiff's operation. As stated in the Authorities submitted with the

1 Motion for Summary Judgment and in the following Authorities, it does not matter if there is  
2 some shortcoming in the situation that leads to the warrant. The issuing Judge is to look at  
3 the totality of the circumstances and determine if there is some likelihood that there is  
4 evidence at a location. If someone called the Officer showing enough familiarity with the  
5 Plaintiff's practices and that was demonstrated to the point that the witness seemed reliable,  
6 that is good enough. An anonymous witness is still capable of providing information that  
7 can substantiate probable cause. The Affidavit of Kaitlyn Nichols is inadmissible evidence  
8 but even if you accept it, it does not change the fact that everything appeared to the Officer,  
9 as a reasonable Officer, to be exactly as she portrayed it to be.

10 The third item that is listed as a contested matter is a statement that in the absence of  
11 the statements attributed to Kaitlyn Nichols, the Officer Stockman Affidavit for a search  
12 warrant does not support probable cause. Once again, using a reasonable officer standard,  
13 the statements attributed to Kaitlyn Nichols were made and were deemed reliable because of  
14 the caller's familiarity with the operations and history of Ms. Palmieri. Ms. Palmieri even  
15 stated that the handwriting of the informant who identified herself as Kaitlyn Nichols looked  
16 exactly like Kaitlyn Nichols' writing. If the written statement by the informant could fool  
17 her former employer, the Plaintiff, then a reasonable officer could have also believed it was  
18 from Kaitlyn Nichols.

19 The fourth item listed as a contested matter of fact is a statement that the Plaintiff  
20 denies that her house was unlocked. As with the other items, there is no evidence that the  
21 Plaintiff has ever denied her house was unlocked. This is just a statement by an attorney  
22 apparently. The testimony of the Defendant was that it was not locked. More importantly, it  
23 does not matter if the house was unlocked or not. An unlocked door would still require a  
24 warrant for an officer to enter. Likewise, an officer with a valid warrant could enter through  
25 a locked door. This is a totally irrelevant item.

26 The fifth item listed as a contested matter of fact is a paragraph dealing with the  
27 procedure involved in the Justice Court. The Plaintiff mentions a motion to suppress was  
28 filed. Apparently, the State acting through the District Attorney did not respond and the case

1 was dismissed. The first problem with this is the case in Justice Court was dropped by the  
2 District Attorney but it was not at a hearing on a motion to suppress. This case involved  
3 three tickets that were issued. If the District Attorney did not want to go through contested  
4 litigation on the tickets, that does not mean they could not have done so if they felt like it.  
5 Second, and more importantly, there is no evidence to back up any of these assertions.  
6 Again, it appears to be a statement by the attorney as to what he thinks happened. Finally, if  
7 it happened as stated, that proves that the County and Officer Stockman did nothing to  
8 further the litigation and therefore were not engaged in any kind of malicious prosecution  
9 against the Plaintiff. Other than writing the citations, the County officers did nothing to  
10 continue the process against the Plaintiff. If they dropped the ball and the case was  
11 dismissed, that was to the advantage to the Plaintiff.

### 12 **The Warrant Was Valid**

13 In the case of United States v. Gourde, 440 F.3d 1065 (2006), the Ninth Circuit  
14 reiterated some of the standards for upholding or invalidating a search warrant. The case is a  
15 good read because it also sets forth a lot of the precedents set forth by the U.S. Supreme  
16 Court on these Constitutional issues. It is also instructive for our case because the Plaintiff  
17 in our case is trying to claim that a technical review of a warrant is mandated and that if  
18 there are any inaccuracies in the affidavit then everything in the affidavit should be thrown  
19 out. The Courts have turned away from such logic and have taken the position that a  
20 reviewing court, such as this, when looking at another Judge's issuance of a warrant should  
21 not look with a magnifying glass at each and every item but look at the circumstances that  
22 the officer and the Judge perceived and whether or not there was a fair probability that  
23 evidence existed at a location based upon those circumstances. The Ninth Circuit stated:

24 . . . the contours of probable cause were laid out by the Supreme  
25 Court in its 1983 landmark decision Illinois v. Gates . . . in  
26 contrast to the more exacting, technical approach to probable  
27 cause in cases before Gates . . . Gates itself marked a return to the  
28 'totality of the circumstances' test and emphasized that probable  
cause means 'fair probability,' not certainty or even a  
preponderance of the evidence. . . . In short, a Magistrate Judge  
is only required to answer the 'common sense, practical question  
whether there is probable cause to believe that contraband or



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

---

JUDY PALMIERI,

Appellant,

vs.

CLARK COUNTY, a political subdivision of the STATE OF NEVADA;  
DAWN STOCKMAN, CE096, individually,

Respondents.

---

**Appeal from the Eighth Judicial District Court for the District of Nevada  
Order Granting Motions for Summary Judgment**

Case No. A-11-640631-C

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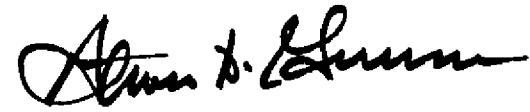
**APPELLANT'S APPENDIX - VOL. I**

---

CAL J. POTTER, III, ESQ.  
Nevada Bar No. 1988  
C. J. POTTER, IV, ESQ.  
Nevada Bar No. 13225  
POTTER LAW OFFICES  
1125 Shadow Lane  
Las Vegas, Nevada 89102  
*Attorneys for Appellant*

Electronically Filed  
Oct 20 2014 09:58 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

TITLE	VOL.	DATE	PAGE NOS.
Addendum to Opposition to Motion for Summary Judgment	II	10/24/2013	000351-000355
Answer	I	07/06/2011	000013-000016
Case Appeal Statement	II	02/27/2014	000409-000413
Complaint	I	05/04/2011	000001-000012
Motion for Summary Judgment	I	08/03/2012	000017-000138
Notice of Appeal	II	02/27/2014	000390-000408
Notice of Entry of Order	II	01/18/2013	000341-000344
Notice of Entry of Order	II	02/05/2014	000373-000389
Opposition to Motion for Summary Judgment	I	11/13/2012	000139-000182
Re-Notice of Motion for Summary Judgment	II	09/26/2013	000349-000350
Recorder's Transcript of Proceeding: Motion for Summary Judgment	II	12/21/2012	000319-000340
Recorder's Transcript of Proceeding: Motion for Summary Judgment	II	11/01/2013	000356-000372
Reply to Opposition to Motion for Summary Judgment	I	12/14/2012	000183-000196
Status Report	II	06/20/2013	000345-000348
Supplemental Record for Motion for Summary Judgment	II	12/17/2012	000197-000318



CLERK OF THE COURT

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

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**  
\* \* \* \*

JUDY PALMIERI,

Plaintiff,

v.

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

Defendants.

CASE NO.:

DEPT. NO.:

A- 11- 640631- C  
XXVI

**COMPLAINT**

(JURY DEMANDED)

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

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

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

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

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

Palmieri APP 000003

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 ///

27 ///

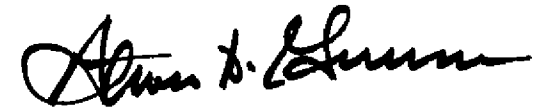
28 ///

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

2 Dated this May 4, 2011.

3 POTTER LAW OFFICES

4 By: /s: Cal J. Potter, III, Esq.  
5 CAL J. POTTER, III, ESQ.  
6 Nevada Bar No. 1988  
7 JOHN C. FUNK, ESQ.  
8 Nevada Bar No. 9255  
9 1125 Shadow Lane  
10 Las Vegas, Nevada 89102  
11 Tel: (702) 385-1954  
12 Fax: (702) 385-9081  
13 *Attorneys for Plaintiff*  
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CLERK OF THE COURT

1 **ANSC**  
2 **DAVID ROGER**  
3 **District Attorney**  
4 **CIVIL DIVISION**  
5 **State Bar No. 002781**  
6 **By: MICHAEL L. FOLEY**  
7 **Deputy District Attorney**  
8 **State Bar No. 003669**  
9 **500 South Grand Central Pkwy.**  
10 **P. O. Box 552215**  
11 **Las Vegas, Nevada 89155-2215**  
12 **(702) 455-4761**  
13 **Attorneys for Defendants**  
14 **Clark County and Dawn Stockman**

15 **DISTRICT COURT**  
16 **CLARK COUNTY, NEVADA**

17 **JUDY PALMIERI,** )  
18 )  
19 **Plaintiff,** ) **Case No: A-11-640631-C**  
20 ) **Dept No: XXVI**  
21 **vs.** )  
22 )  
23 **CLARK COUNTY, a political subdivision** )  
24 **of the STATE OF NEVADA; DAWN** )  
25 **STOCKMAN, CEO96, individually and in** )  
26 **her official capacity as an officer** )  
27 **employed by the County of Clark; JOHN** )  
28 **DOES I through X, inclusive and ROE** )  
29 **CORPORATIONS I through X, inclusive,** )  
30 **Defendant.** )

31 **ANSWER OF CLARK COUNTY AND DAWN STOCKMAN**

32 **COMES NOW, Defendants, CLARK COUNTY and DAWN STOCKMAN, through**  
33 **their attorney DAVID ROGER, District Attorney, by MICHAEL L. FOLEY, Deputy**  
34 **District Attorney, and in answer to Plaintiff's Complaint on file herein, admits, denies and**  
35 **alleges as follows:**

36 **I.**

37 **Defendants deny all relevant allegations contained in the unnumbered paragraph**  
38 **entitled "introduction".**

39 **II.**

40 **Defendants admit the allegations contained in paragraph 3 of Plaintiff's Complaint.**

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III.

Answering paragraph 4, Defendants admit the County is a political subdivision of the State and that it employed Stockman, but deny all other allegations contained in said paragraph.

IV.

Defendants deny the allegations contained in paragraphs 1, 2, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, and 42 of Plaintiff's Complaint.

V.

Answering paragraph 5, Defendants admit Stockman was employed by Clark County but deny all other allegations contained in said paragraph.

VI.

Answering paragraph 7, Defendants lack sufficient information to fully answer the allegations of said paragraphs and therefore deny all of said allegations.

VII.

Answering paragraph 22, Defendants reallege their answers to paragraphs 1 through 21 and incorporate them by reference herein.

VIII.

Answering paragraph 30, Defendants reallege their answers to paragraphs 1 through 29 and incorporate them by reference herein.

XI.

Answering paragraph 37, Defendants reallege their answers to paragraphs 1 through 36 and incorporate them by reference herein.

**AFFIRMATIVE DEFENSES**

First Affirmative Defense

Plaintiff's alleged injuries are the result of actions of private parties beyond the control of the Defendants.

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Second Affirmative Defense

Plaintiff's claims are barred by common law and statutory immunity and qualified immunity.

Third Affirmative Defense

Plaintiff's claims are barred by the doctrines of res judicata and issue preclusion.

Fourth Affirmative Defense

Plaintiff's claims are barred by the doctrine of collateral estoppel.

Fifth Affirmative Defense

Plaintiff's alleged injuries are the result of her own illegal conduct.

Sixth Affirmative Defense

Some or all of Plaintiff's claims are barred by the applicable statute of limitations.

Seventh Affirmative Defense

Plaintiff's claims are barred by NRS 41.032.

Eighth Affirmative Defense

Plaintiff's claims are barred by NRS 41.0336.

Ninth Affirmative Defense

Plaintiff's claims are barred by NRS 41.03475.

Tenth Affirmative Defense

Plaintiff's alleged damages are limited by NRS 41.035.

Eleventh Affirmative Defense

Plaintiff's alleged damages are limited by NRS 41.039.

Twelfth Affirmative Defense

Plaintiff failed to exhaust administrative remedies.

Thirteenth Affirmative Defense

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

///

///

1 WHEREFORE, Defendants pray that Plaintiff take nothing by way of her Complaint.  
2 DATED this 6<sup>TH</sup> day of July, 2011.

3 DAVID ROGER  
4 DISTRICT ATTORNEY

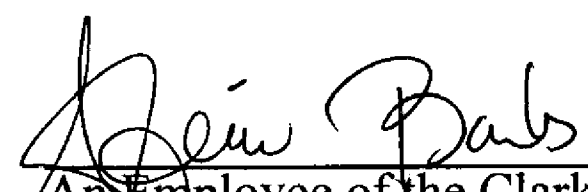
5 By: 

6 MICHAEL L. FOLEY  
7 Deputy District Attorney  
8 State Bar No. 003669  
9 500 South Grand Central Pkwy. 5<sup>th</sup> Flr.  
10 P. O. Box 552215  
11 Las Vegas, Nevada 89155-2215  
12 Attorney for Defendants  
13 Clark County and Dawn Stockman

14 **CERTIFICATE OF MAILING**

15 I hereby certify that on the 6<sup>th</sup> day of July, 2011, I deposited in the United States  
16 Mail, postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, a copy of the  
17 above and foregoing **Answer of Clark County and Dawn Stockman** addressed as follows:

18 Cal J. Potter, III, Esq.  
19 John C. Funk, Esq.  
20 1125 Shadow Lane  
21 Las Vegas, Nevada 89102  
22 *Attorneys for Plaintiff*

23   
24 An Employee of the Clark County District  
25 Attorney's Office – Civil Division  
26  
27  
28

  
CLERK OF THE COURT

1 **MSJ**  
2 **STEVEN B. WOLFSON**  
3 District Attorney  
4 **CIVIL DIVISION**  
5 State Bar No. 1565  
6 By: **MICHAEL L. FOLEY**  
7 Deputy District Attorney  
8 State Bar No. 3669  
9 500 South Grand Central Pkwy.  
10 P. O. Box 552215  
11 Las Vegas, Nevada 89155-2215  
12 (702) 455-4761  
13 E-Mail: Michael.Foley@ClarkCountyDA.com  
14 Attorneys for Defendants  
15 Clark County

DISTRICT COURT  
CLARK COUNTY, NEVADA

11 JUDY PALMIERI,

12 Plaintiff,

13 vs.

14 CLARK COUNTY, a political subdivision  
15 of the STATE OF NEVADA; DAWN  
16 STOCKMAN, CEO96, individually and in  
17 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,

18 Defendants.

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

Date of Hearing: 9/5/12

Time of Hearing: 9:00 am

19 **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

20 COMES NOW Defendants, CLARK COUNTY and DAWN STOCKMAN, through  
21 their attorney Steven B. Wolfson, District Attorney, by Michael L. Foley, Deputy District  
22 Attorney, and moves this Honorable Court for its order granting summary judgment in favor  
23 of the Defendants on the grounds that there is no genuine issue of material fact in this case  
24 and that the Defendants are entitled to judgment as a matter of law.

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1 This Motion is made pursuant to NRCP 56 and is based upon the attached Points and  
2 Authorities, attached deposition transcripts, exhibits and all other material in this case.

3 DATED this 3<sup>rd</sup> day of August, 2012.

4 STEVEN B. WOLFSON  
5 DISTRICT ATTORNEY

6 By: 

7 MICHAEL L. FOLEY  
8 Deputy District Attorney  
9 State Bar No. 3669  
10 500 South Grand Central Pkwy. 5<sup>th</sup> Flr.  
11 P. O. Box 552215  
12 Las Vegas, Nevada 89155-2215  
13 Attorney for Defendants  
14 Clark County

15 **NOTICE OF MOTION**

16 TO: Judy Palmieri; and

17 TO: Cal Potter, Esq., her Attorney:

18 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned  
19 will bring the foregoing Defendants' Motion for Summary Judgment on for hearing before  
20 the above-entitled Court on the 5 day of September, 2012, at 9:00 am, in Department  
21 No. XXVI, or as soon thereafter as counsel can be heard.

22 DATED this     day of August, 2012.

23 STEVEN B. WOLFSON  
24 DISTRICT ATTORNEY

25 By: 

26 MICHAEL L. FOLEY  
27 Deputy District Attorney  
28 State Bar No. 3669  
500 South Grand Central Pkwy. 5<sup>th</sup> Flr.  
P. O. Box 552215  
Las Vegas, Nevada 89155-2215  
Attorney for Defendants  
Clark County

29 **Memorandum of Points and Authorities**

30 This case involves claims by the Plaintiff that her rights were violated when the police  
31 and Animal Control officers searched the Plaintiff's home and issued her a citation.

1 On or about May 10, 2010, a call was received by the Animal Control supervisor for  
2 the City of Las Vegas. The caller identified herself as Kaitlyn Nichols who was a former  
3 employee of the Plaintiff in this case. The caller stated that the Plaintiff was housing over  
4 twenty dogs at her home at 4302 Callahan Avenue. Since the address was not within the city  
5 limits of Las Vegas, the Animal Control supervisor for the City called the Clark County  
6 Animal Control Division. That same day, Defendant Dawn Stockman, spoke to the woman  
7 who identified herself as Kaitlyn Nichols regarding her complaint. The caller then told  
8 Defendant Stockman that the caller used to work for Ms. Palmieri at the Meadows Mall Pet  
9 Store. She also stated that she helped Ms. Palmieri move some boxes to the residence at  
10 4302 Callahan Avenue. The caller stated that once she was inside of the residence, she saw  
11 several animals in the house and that there were several animals kept in the garage in  
12 kennels. The caller stated that the animals on the property looked very thin and several  
13 appeared to have matted fur and fecal matter all over them. The caller also reported that a  
14 lot of the animals appeared to be unhealthy. The caller also stated that the Plaintiff, Ms.  
15 Palmieri, breeds dogs and sells them at her pet shop and that Ms. Palmieri houses animals at  
16 her residence when they are too sick or too young to be at the pet shop. After speaking with  
17 the caller that identified herself as Kaitlyn Nichols, Animal Control Officer Stockman did a  
18 record search on the Plaintiff's address in the County records. She found that Animal  
19 Control had been to the residence on one previous occasion. She also found that Animal  
20 Control had been to a pet store run by the Plaintiff on several occasions for routine  
21 inspections and also inquiries related to health, welfare and sanitation. Defendant Stockman  
22 did a records check on the residence and confirmed that it was in a residential zone which  
23 would not allow over three dogs at one time without a special permit and would also not  
24 allow commercial activities including warehousing of animals. Defendant Stockman again  
25 spoke to the informant that identified herself as Kaitlyn Nichols by telephone and received a  
26 faxed statement from the informant.

27 Defendant Stockman filled out an affidavit containing the above-mentioned facts  
28 including other details. She followed her Division's standard procedures and had her

1 paperwork reviewed by her supervisors and the Deputy District Attorney assigned to the  
2 Animal Control Division. After these reviews, Defendant Stockman presented the Affidavit  
3 to the Honorable Timothy Williams who signed a search warrant.

4 On May 19, 2010 at approximately 9:15 a.m., Defendant Stockman went to the  
5 Plaintiff's residence at 4302 Callahan Avenue along with another Animal Control officer and  
6 a Metropolitan Police officer. The three of them approached the front door of the residence  
7 to execute the search warrant. They knocked on the front door but there was no answer.  
8 Officer Stockman knocked on the garage door and heard several dogs barking. The gate to  
9 the side yard was latched from the inside so Officer Stockman climbed over the wall and  
10 opened the gate. There was a side door to the house that was unlocked. The Metropolitan  
11 Police Officer entered the house and announced his presence. There was no response other  
12 than barking dogs. One of the Animal Control officers also announced their presence and  
13 that they had a warrant. At that point, the Plaintiff entered the room. The Metropolitan  
14 Police Officer took the Plaintiff outside while the Animal Control officers began their search  
15 of the property. The Animal Control officers encountered twenty-nine dogs in the house.  
16 This was an obvious violation of the County zoning and Animal Control codes. There were  
17 twenty-four adult dogs and five puppies. Two of the adult dogs appeared to be very skinny  
18 and did not appear to be in good health. One was thirteen years old and one was sixteen  
19 years old. The Animal Control officers impounded the two elderly dogs in order to take  
20 them to a veterinarian for an exam. The Animal Control officers issued citations to the  
21 Plaintiff for the violations that they observed. The citations are attached hereto as Exhibit C.  
22 No arrest was made. The Plaintiff was able to reclaim her two elderly dogs later on the same  
23 day they were taken. The citations called for the Plaintiff to appear in Justice Court on  
24 August 10, 2010. The Animal Control officers and the Metropolitan Police Officer had no  
25 further involvement regarding Ms. Palmieri. They were not subpoenaed or called to testify  
26 in the court case. The District Attorney's Office eventually dismissed the charges listed in  
27 the citation, without prejudice.

28 ///

1 The Plaintiff filed her complaint in this action claiming four causes of action. The  
2 first cause of action alleges that the individual Defendant's actions amounted to a civil rights  
3 violation because of a malicious prosecution. The second cause of action alleges that  
4 Plaintiff is entitled to compensation under state law tort claims for negligence, intentional  
5 infliction of emotional distress, false arrest, unlawful warrant, conspiracy and malicious  
6 prosecution. The third cause of action claimed that the County should be liable under a  
7 theory that they have a policy of harassing the Plaintiff. The fourth cause of action attempts  
8 to separately state that the warrant was illegal and therefore the search was illegal.

### 9 First Cause of Action

10 The Plaintiff's first cause of action attempts to allege a federal civil rights violation  
11 for malicious prosecution against the individual officer, Dawn Stockman. The latest cases  
12 dealing with malicious prosecution claims in a Federal 1983 action require the traditional  
13 five elements of the tort. The elements of a malicious prosecution action against an  
14 individual officer under 42 U.S.C. 1983 are:

- 15 1. The defendant caused the plaintiff's continued  
16 confinement or prosecution;
- 17 2. The original action terminated in favor of the plaintiff;
- 18 3. There was no probable cause to support the original arrest,  
19 continued confinement, or prosecution;
- 20 4. The defendant acted with malice; and
- 21 5. Plaintiff sustained damages.

22 McCarty v. Gilchrist, 646 F.3d 1281 (2011 10<sup>th</sup> Cir.), Holland v. City of Chicago, 643 F.3d  
23 248 (2011 7<sup>th</sup> Cir.) cert denied 132 S.Ct. 593 (2011).

24 The evidence in this case shows at least three of the elements for malicious  
25 prosecution are missing.

26 There is no evidence that Defendant Stockman had any involvement in the continued  
27 prosecution of the Plaintiff in this case. The evidence was clear that other than writing the  
28 original citation, Officer Stockman had nothing further to do with the case. The Plaintiff  
hired an attorney who had a couple of discussions with the District Attorney's Office after

1 which the case was dismissed, without prejudice to re-file. Officer Stockman was never  
2 called to testify or support the continuation of the prosecution in any way.

3 In this case, it is clear that there was probable cause to write the citations. The  
4 Animal Control Division received calls regarding a large number of dogs living at the  
5 residence. The zoning records showed that a maximum of three dogs are allowed at the  
6 residence without a permit. When the officer knocked, they heard several dogs barking from  
7 inside the garage. The caller who complained about the Plaintiff claimed to know her  
8 through her employment at the pet store that was managed by the Plaintiff. The citations  
9 issued were based upon personal observations by the officers involved. They entered the  
10 premises by authority of a valid warrant. The court is probably familiar with the ordinances  
11 involved with the citations. County Code 10.08.130 provides that a property owner needs a  
12 special permit to keep more than three dogs on the premises. The Plaintiff had twenty-nine  
13 dogs on her premises. County Code 10.08.070 requires that every dog wear a tag that shows  
14 he has been vaccinated for rabies. Most of the dogs were not wearing such tags. The  
15 Animal Control officers would have accepted receipts or certificates showing that the  
16 animals had been vaccinated, but the Plaintiff could not produce them. That's it – the  
17 Plaintiff received citations for not having the proper proof of rabies vaccination and for  
18 having too many animals on the premises without a permit and for having two dogs that  
19 needed veterinarian care.

20 The element of malice is also missing in this case. The Plaintiff admitted in her  
21 deposition that there was no malice by the officer against the Plaintiff. When the Plaintiff  
22 was asked about whether she thought Officer Stockman was involved in a conspiracy against  
23 the Plaintiff, the Plaintiff replied “no”. She went on to say that she thought Stockman came  
24 in as an officer instructed to go ahead and serve this warrant to see what she could come up  
25 with. It was then asked did the Plaintiff think Stockman had anything against the Plaintiff  
26 personally, the Plaintiff responded “no”. (Plaintiff's Deposition, pg. 68, ll. 3-10, attached  
27 hereto as Exhibit D). In regard to this incident in particular, the Plaintiff was asked about  
28 whether the citations were issued because of some malicious intent. When asked whether



1 Officer Dawn Stockman personally had any malice for the Plaintiff, the Plaintiff answered  
2 "no". (Plaintiff's Deposition, pg. 73, ln. 25 – pg. 74, ln. 8, Exhibit D). The Plaintiff went on  
3 to state that she believed another officer who was unrelated to this incident held personal  
4 malice for the Plaintiff but freely admitted that the officer named in this action did not.

5 Since the first cause of action is brought as a Federal civil rights action against an  
6 individual, it is important to remember that an action under 42 U.S.C. 1983 cannot be  
7 maintained against an individual officer for negligence. Negligence is not enough to sustain  
8 a civil rights action. There must be some intentional wrong doing by the officer or some act  
9 that would amount to a clear disregard for civil and human rights. Daniels v. Williams, 474  
10 U.S. 327 (1986); Davidson v. Cannon, 474 U.S. 344 (1986). There is absolutely no evidence  
11 in this case that Dawn Stockman did anything intentionally wrong or in disregard to a right.  
12 She acted in good faith, secured a warrant, acted on calls that were received by the Division  
13 and the public records. She only issued citations for violations that were in her plain view.  
14 There was no incarceration, no excessive force and no over charging. There were two  
15 Animal Control officers and a Metro Police officer at the scene. Another Animal Control  
16 officer issued the citations for too many animals on the premises and for lack of proper  
17 vaccination tags. All that Officer Stockman did was issue a citation under County Code  
18 10.32.130 which requires owners to supply adequate food, shelter and needed veterinary care  
19 for illness or infirmity. She issued the citation because she observed two very old dogs who  
20 seemed to be in poor medical shape. Those two dogs were taken to a veterinarian for check  
21 up and were given back to the owner that same day. There is absolutely no evidence that  
22 Officer Stockman did anything to further those charges after the date of citation.

23 The final issue to address in the first cause of action is the issue of qualified  
24 immunity. The first cause of action attempts to bring a Federal civil rights action against an  
25 individual officer. In such cases, law enforcement officers who are acting in their official  
26 capacities enjoy a qualified immunity from suit that protects them from liability for civil  
27 damages unless their conduct violates some clearly established constitutional right which  
28 any reasonable officer would have known was a violation.

1 In the case of Croom v. Balkwill, 645 F.3d 1240 (2011, 11<sup>th</sup> Cir.), a woman sued a  
2 local sheriff and other police officers as a result of a search of a residence. The Court ruled  
3 that the officers involved were entitled to qualified immunity from suit. In that case, there  
4 was a detention of the occupant for approximately two hours while the officers searched the  
5 residence but the court found the force used to complete the search and seizure was “de  
6 minis” under the circumstances. The search in the Croom case was for illegal drugs that the  
7 police suspected the Plaintiff’s son had on the premises. The Court ruled that the police had  
8 qualified immunity in the case. In that case, the Plaintiff was an elderly woman who at the  
9 time of the search was wearing a one piece bathing suit and was known by the police to be  
10 frail. The police at one point pushed her to the ground from her squatting position and held  
11 her there with a foot or knee in her back for up to ten minutes. She also claimed that she  
12 could hear the click of a gun being cocked by the officers. The cocked gun was disputed by  
13 the officers but the rest of the facts were pretty much undisputed. As in our case, the  
14 Plaintiff claimed that the search was done without probable cause. However, the Court ruled  
15 that when a search and seizure is completed with a “minimally intrusive” detention, a search  
16 and seizure can be based on less than probable cause. The Court analogized the situation  
17 with the landmark case of Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 868 (1968) and later cases. If  
18 the police had put the Plaintiff under arrest or physically injured her, there would be a  
19 different standard. However, when minimal force is exerted to carry out a search pursuant to  
20 a warrant, the claim of lack of probable cause does not take away the good faith qualified  
21 immunity that police officers get in such situations. 645 F.3d 1240, 1247.

22 In our case, the Plaintiff admits there was no force used on her. Unlike the Croom  
23 case, she was not kept at bay for two hours. She was escorted outside by the Metropolitan  
24 Police officer while the Animal Control officers established there were no other people in the  
25 house. The Plaintiff was allowed to return into the home to retrieve reading glasses so she  
26 could read the papers that were served on her. She was allowed to stay in the house during  
27 the search since it did not look as if she would interfere. According to the records, the entire

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1 process of searching and issuing citations and leaving with the two sickly looking dogs took  
2 just over one hour.

3 Since there was no personal physical injury to the Plaintiff, no hand cuffing and the  
4 intrusion was for a short period of time, the Federal civil rights cases dictate that qualified  
5 immunity should apply in this case. The officers did not engage in any conduct that the  
6 average reasonable officer would consider as a clearly established violation of the Plaintiff's  
7 civil rights.

### 8 **Second Cause of Action**

9 In the second cause of action in the Complaint, the Plaintiff attempts to set forth State  
10 law claims for negligence, intentional infliction of emotional distress, false arrest, unlawful  
11 warrant, conspiracy, and malicious prosecution. As with the first cause of action, there is no  
12 evidence to support any of the claims contained in the second cause of action.

13 As stated previously, the Defendant Dawn Stockman received a warrant prior to  
14 going to the Plaintiff's home. A copy of the Warrant and the Application are attached hereto  
15 as Exhibit A. In the Affidavit, Defendant Stockman stated that she had been employed at the  
16 Clark County Animal Control for three years and that before that she had worked as a  
17 veterinarian technician for fifteen years and is licensed by the State of Nevada as a  
18 Veterinary Technician. The Affidavit then states the address as 4302 Callahan Avenue and  
19 gives a parcel number and the ownership information. The Affidavit alleges that animals  
20 were being kept at the residence in violation of the provisions of Clark County Code Title  
21 10. The Affidavit goes on to state that there was existence of probable cause based on the  
22 above information and the following facts that were stated. The Affidavit stated that on May  
23 10, 2010 the City Animal Control supervisor for the City of Las Vegas contacted Clark  
24 County Animal Control. He stated he was forwarding a complaint from Kaitlyn Nichols on  
25 a property that was located in the County. The property was 4302 Callahan Avenue which  
26 belonged to Judy Palmieri. The Affidavit goes on to say that Officer Stockman spoke with  
27 Kaitlyn Nichols by telephone regarding her complaint. Nichols told Stockman that she was  
28 a former employee of Ms. Palmieri at the Meadows Mall Pet Shop. She stated that she was

1 asked by Ms. Palmieri to help move some boxes at the Palmieri residence. Ms. Nichols  
2 stated that while she was inside the residence she saw several more animals in the house.  
3 Ms. Nichols also stated that there were several animals that were kept in the garage in  
4 kennels. Ms. Nichols stated that the animals on the property were very thin and several  
5 appeared to have matted fur and fecal matter. She also stated that a lot of the animals  
6 appeared to be unhealthy. Additionally, Ms. Nichols stated that Ms. Palmieri breeds dogs to  
7 sell at her pet shop. She stated that Ms. Palmieri houses animals at her home that are sick or  
8 too young for the pet shop. The Affidavit goes on to state Defendant Stockman did a search  
9 on the property address in the County records. She found that Clark County Animal Control  
10 had been to her house on one previous occasion but did not enter for lack of a warrant. The  
11 Affidavit also states there were multiple times that the Animal Control Division had been to  
12 a pet store managed by the Plaintiff and that the calls were always related to health and  
13 welfare and sanitation. Two examples of those trips were listed in the Affidavit which  
14 included the trip to the Plaintiff's home where entry was denied for lack of a warrant and an  
15 occasion where the officer had found violations for sanitation, overcrowding and failing to  
16 provide medial records at the pet store. The Affidavit was signed by Officer Stockman.  
17 Judge Timothy Williams signed it as being subscribed and sworn before him, and the  
18 document was approved by Deputy District Attorney Steven Sweikert who was the advisor  
19 for the Animal Control Division. A copy of the County Code regarding keeping unhealthy  
20 animals was also attached to the Application. Judge Timothy Williams signed the  
21 Administrative Search and Seizure Warrant on May 18, 2010, attached hereto as Exhibit A.

22 Prior to doing the Application for Warrant, Officer Stockman followed the standard  
23 procedures used by the Animal Control officers when seeking a warrant. She first had the  
24 draft application and departmental records reviewed by her immediate supervisor and after  
25 he approved, they were reviewed by the Division Head. Following those approvals, the  
26 Officer took the application and proposed warrant to the District Attorney's Office for  
27 review by a deputy district attorney. The forms were reviewed and approved by Steven  
28 Sweikert on behalf of the District Attorney's Office. The Officer then again went to her

1 immediate supervisor who reviewed the matter and forwarded it to the Division Head who  
2 gave approval to apply for the warrant. Only after receiving all those approvals did Officer  
3 Stockman go to Judge Williams seeking a warrant.

4 The next day, on May 19, 2010, Officer Stockman went to execute the warrant at the  
5 Plaintiff's address. Again, she followed standard procedure and had another Animal Control  
6 officer accompany her to the residence and had a Metropolitan Police Officer there for  
7 assistance. The three stood at the front door and knocked but there was no answer. The  
8 three of them then walked around the side of the house and as they went by the garage  
9 knocked on the garage door. No humans answered the knock but they heard several dogs  
10 barking. As stated previously, the three officers entered the house through an unlocked side  
11 door through a laundry room. The three officers made several announcements that they were  
12 police and they were entering with a warrant. The Plaintiff appeared and she was given a  
13 copy of the warrant. The Metropolitan Police Officer escorted the Plaintiff through the  
14 laundry room into the side yard of the residence. The Plaintiff testified that the police officer  
15 held her by the arm but did not hurt her as he led her out. The police officer stated that he  
16 was just holding her outside while the Animal Control officers established that no one else  
17 was in the house. After a few minutes Plaintiff asked if she could go into the house to get  
18 her reading glasses so she could read the papers that had been served on her. The Metro  
19 Officer agreed and let her back into the house. As stated in the attached reports (Exhibit B),  
20 the Animal Control officers found twenty-nine dogs on the premises. Twenty-four were  
21 adults and five were puppies. There were no dog tags or any proof available on the premises  
22 that the dogs had been given rabies vaccinations. There were two older dogs which the  
23 report described as "very skinny dogs that did not appear to be in good health". Apparently  
24 one was thirteen years old and the other one was sixteen years old. The Plaintiff was asked  
25 if she had any medical records for the two elderly dogs and the Plaintiff replied no. Officer  
26 Stockman then impounded those two dogs to take for a medical exam. Following the  
27 veterinarian exam, the two dogs were reclaimed by the Plaintiff later that day. The Plaintiff  
28 received three tickets that day but the only one that was issued by Defendant Stockman was

1 the one for violating County Code 10.32.130 for having the two dogs that appeared to be in  
2 bad health and in need of medical care. The other Animal Control officer issued violation  
3 citations for failure to have the required rabies vaccination, failure to have a permit to keep  
4 more than three dogs at one residence and for failing to have a permit to keep dogs that had  
5 not been spayed or neutered.

6 At the heart of all of the Plaintiff's tort claims is the claim that the caller who  
7 complained to the Animal Control Division was an imposter. The Plaintiff believes that the  
8 person who identified herself as Kaitlyn Nichols was most likely another person known to  
9 the Plaintiff, Cindy Orneales. Both Nichols and Orneales were former employees at the  
10 Meadows Mall Pet Store which was managed by the Plaintiff. Orneales and Nichols both  
11 lived together at the same apartment with another employee. Both Nichols and Orneales had  
12 been fired by the Plaintiff for theft and other misconduct involving dishonesty or deceit.  
13 Kaitlyn Nichols and another roommate who worked at the store both signed written  
14 statements at the request of the Plaintiff stating some of the things that they did and outlining  
15 some of the activities of Ornealas. On the date that the search warrant was executed, the  
16 Plaintiff states that she asked Officer Stockman to divulge who had complained about the  
17 dogs at her residence. Apparently, the Officer at first did not want to disclose anything but  
18 apparently the Plaintiff guessed it was possibly Kaitlyn Nichols. The Plaintiff testified that  
19 she asked for a physical description of Kaitlyn Nichols and that Officer Stockman gave her a  
20 description that matched Kaitlyn Nichols exactly. Further, the Plaintiff looked at a written  
21 statement that was signed by a Kaitlyn Nichols and testified that it looked like Kaitlyn  
22 Nichols signature.

23 Sometime after the date of the search, the Plaintiff confronted Kaitlyn Nichols about  
24 the complaint. Kaitlyn Nichols, who had previously signed a confession of criminal activity  
25 and given it to the Plaintiff, denied that she was the person who called Animal Control.  
26 Kaitlyn Nichols, at the Plaintiff's request, signed a notarized statement saying that she did  
27 not call Animal Control but that she suspected it was Cindy Ornealas who made the calls and  
28 ///

1 that Ms. Ornealas apparently had been trying to steal Ms. Nichols identity for other  
2 purposes.

3 The Plaintiff testifies that she believes this other former employee was the informant  
4 and not Kaitlyn Nichols. The Plaintiff does not believe that the County Officers fabricated  
5 the statements made by the caller. She believes that the County did indeed get a  
6 complaining call from someone claiming what the Animal Control officer states. She just  
7 believes that the identity of the complaining witness is incorrect. The gist of the Plaintiff's  
8 claim is that the Animal Control officer said that all these facts were stated to her by former  
9 employee A when in fact, all these things were stated to her by employee B. Some questions  
10 come to mind when considering the Plaintiff's claims. However, the first question that  
11 comes to mind is "What's the difference?" If a former employee of the Plaintiff by the name  
12 of Cindy Ornealas called and complained and truthfully said she knew about dogs being  
13 stored at the Plaintiff's home and accurately states that these dogs are kept there because  
14 they are either too young or there are too many of them at the store, that she use to work  
15 there etc, what's the difference if she says her name is Ornealas or Nichols or keeps it  
16 anonymous. Think of all the search warrants that are executed when nothing is found. Then  
17 think about this case where the complaint is there is too many dogs and some are sick and  
18 when the search is done, the Officers find twenty-nine dogs, none of them vaccinated, two of  
19 them sickly looking. Is this condition something that a former employee of the Plaintiff  
20 would know? Well, the Plaintiff stated in her deposition that she had been keeping dogs at  
21 her house for these purposes for the past eighteen years. Obviously, employee A and  
22 employee B would both know that these violations were occurring at the Plaintiff's  
23 residence. The fact that one used the other's name when conveying the accurate  
24 information, makes no difference at all. The Defendants tried to bring in Kaitlyn Nichols  
25 under subpoena for a deposition in this case but she has since joined the Navy and is  
26 currently at the basic training station somewhere on Lake Michigan. Apparently no visitors  
27 (or process servers) are allowed on the base during their first six weeks of training.  
28 Defendant thinks the caller was Nichols. Plaintiff thinks it was Ornealas.

1 In the case of Ransdell v. Clark County, 124 Nev. 847, 192 P.3d 756 (2008), the  
2 Plaintiff was suing Clark County, its Commissioners, its County Manager, Joe Botelho, who  
3 was the head of Code Enforcement including Animal Control, and other Clark County  
4 officers. In the Ransdell case, the County officers did not just remove two sickly dogs to get  
5 a veterinarian examination and return them the same day. In the Ransdell case, the County  
6 got an Administrative Warrant and abated a nuisance by having tons of junk, trash and  
7 debris, including vehicles, removed from the Plaintiff's property. Besides this huge seizure,  
8 agents also drained an unsanitary pool and took other measures on the property. As in our  
9 case, Ransdell alleged that the County carried out their actions without a proper warrant and  
10 without following proper procedures. Mr. Ransdell filed a complaint claiming his federal  
11 constitutional rights had been violated and that he was also entitled to compensation under  
12 state tort law claims including intentional torts such as trespass, conversion, and negligence.  
13 On the State intentional and negligence tort claims, the Supreme Court held that the  
14 County's actions were protected by sovereign immunity as codified in NRS 41.032. NRS  
15 41.032 states:

16 No action may be brought under NRS 41.031 or against . . . an  
17 officer or employee of the state or any of its agencies or any of  
its political subdivisions which is: . . .

18 2. Based upon the exercise or performance or the  
19 failure to exercise or perform a discretionary function or  
duty. . . whether or not the discretion involved is abused.

20 As stated previously, Gary Ransdell sued not only the County and its policy making  
21 Board of Commissioners, it also sued the County Manager, the head of the Code  
22 Enforcement Division and a person by the name of Cindy Lucas who was an individual  
23 officer in the Code Enforcement Division. The Supreme Court, in the Ransdell case, cited  
24 its case of Martinez v. Maruszezak, 123 Nev. 433, 168 P.3d 720. In the Martinez case, the  
25 Court adopted the federal standard for looking at discretionary immunity. The two elements  
26 for finding immunity are that the action had to involve an element of individual judgment or  
27 choice and the individual's action had to be based on considerations of economic, social or  
28 political policy. In stating that standard, the Court stated:



1 Under that test, decisions that occur at all levels of government,  
2 including frequent or routine decisions, may be shielded by NRS  
3 41.032(2) discretionary act immunity, provided the decisions  
4 involved Government policy concerns. Here, as set forth below,  
5 Clark County's actions in abating Ransdell's property fits  
6 squarely within the confines of the Berkovitz - Gaubert  
7 discretionary act immunity test. 124 Nev. 847, 855, 192 P.3d  
8 756, 762.

9 As stated in the quote, the Court ruled that discretionary immunity applies to all levels  
10 of government, including routine decisions. The test is whether or not it involves some  
11 judgment or choice on the part of the person involved and that the choice is the type that  
12 involves some social, economic or political policy. In our case, the decision to take the  
13 statements of the informant to the judge for a warrant was clearly an act involving judgment  
14 or choice by the individuals involved. Likewise, deciding to execute the warrant and search  
15 for sick or overcrowded animals was again a judgment or choice that the individual officers  
16 had to make. As a result, the first prong of the test is satisfied. In fact, the Plaintiff's claims  
17 are all based upon a claim that the Defendant made wrong choices or used poor judgment.  
18 Obviously, her actions involved an element of individual judgment or choice. The second  
19 prong of the test is clearly satisfied. Enforcing the Animal Control Code is obviously  
20 something that is based upon considerations of social and political policy. The Nevada court  
21 ruled in the Ransdell case that actions of officers pursuant to County ordinances fit the test  
22 and are based on considerations of social, economic and political policy when the actions are  
23 related to health, safety and welfare. 124 Nev. 847, 857, 192 P.3 756, 763. Obviously, if the  
24 County Animal Control officers did nothing to investigate and abate nuisances such as  
25 people keeping dozens of animals in their garage or investigating reports of sick or mal-  
26 treated animals, that would go against some very sound public policy concerns and  
27 eventually actually endanger human health and welfare through over population and the  
28 spread of diseases, including rabies. Remember, the protection of Governmental Immunity  
protects the Defendants even when they are negligent. That is the nature of immunity. If a  
court makes the wrong decision and someone is horribly damaged, it does not matter if the  
judge was negligent, or even if the judge ruled a certain way to hurt someone. The judge is

1 immune. The same thing goes for Discretionary Act Immunity. Even if the Plaintiff did not  
2 have twenty-nine dogs in her garage and even if she did not have sick dogs in her garage that  
3 needed medical care, the County would still be immune from its actions because the decision  
4 to get a warrant and execute a search was based on a discretionary act in furtherance of a  
5 public policy that involves disease control, avoidance of cruelty to animals, avoiding  
6 nuisance and promoting general welfare. The Nevada Supreme Court concluded in the  
7 Ransdell case by stating:

8           Because a county's decisions and actions in declaring and  
9           abating a nuisance are discretionary in nature and are made in  
10          furtherance of public policy goals, such decisions and actions are  
11          immune from civil liability under NRS 41.032(2). Thus the  
12          district court properly dismissed or entered summary judgment  
13          on Ransdell's claims for negligence, trespass to chattels and land,  
14          conversion and nuisance. 124 Nev. 847, 861, 192 P.3d 756, 766.

15          Thus, the Nevada Supreme Court ruled that the Discretionary Act Immunity applies  
16          not only to negligence claims but to the intentional torts of trespass, conversion and nuisance  
17          that the Plaintiff was claiming against the County in that case.

18          A final note on the second cause of action is that the Plaintiff has had over a year to  
19          conduct discovery and there is absolutely no evidence of any intentional infliction of  
20          emotional distress by any County worker, no false arrest, no unlawful warrant conspiracy  
21          and no malicious prosecution. There is no evidence that the officer in this case committed  
22          any wrongs. The past of the Plaintiff came back to haunt her so to speak. She had three bad  
23          apple employees. She, as manager of the store, had to fire all three of them. They all had a  
24          motive for causing her emotional distress, or as she put it, had a laugh over it. The informant  
25          could have been either one of the two female prior employees. However, the fact that the  
26          Plaintiff claims that it was one and not the other does not change a thing. The evidence is  
27          clear that both of the former employees were very familiar with the Plaintiff's pet store  
28          operation and her practice of warehousing her inventory at home. The only evidence that  
29          has come forth of any intentional wrong doing or malicious act was potentially one of the  
30          prior employees. There has been absolutely no evidence produced that would show that

1 Office Stockman had any ill motive or did any misstep. In fact, all of the evidence has  
2 shown that she and the other officers treated this case the same as they treat any other case.

### 3 **Third Cause of Action**

4 In the third cause of action, the Plaintiff attempts to state a "Monell claim". This  
5 claim is against the County, not against the individual officer. In the case of Monell v. City  
6 of New York, 436 U.S. 658, 98 S.Ct. 2018 (1978), the Supreme Court ruled that a  
7 government entity may not be held liable under 42 U.S.C 1983 unless an official policy,  
8 practice or custom of the entity can be shown to be a moving force behind a violation of  
9 someone's constitutional rights. 436 U.S. 658, 694.

10 In order to establish liability for a governmental entity under Monell, the Plaintiff has  
11 to prove (1) the Plaintiff possessed a constitutional right that was violated, (2) that the  
12 municipality had an official policy, (3) that this policy amounts to a deliberate indifference  
13 of the Plaintiff's constitutional rights and (4) that that policy was the moving force behind  
14 the constitutional violation. Plumeau v. Yamhill School District, 130 F.3d 432, 438 (1997  
15 9<sup>th</sup> Cir.).

16 In our case, the Plaintiff tries to cite the elements of a Monell claim but there is  
17 simply no evidence to sustain a factual case under a Monell theory. There was no official  
18 County policy that could be interpreted as authorizing a violation of the Plaintiff's rights.  
19 There has been no factual showing or any evidence produced that the Plaintiff actually had a  
20 violation of any of her constitutional rights. The evidence produced so far has been very  
21 clear that an informant gave reliable information to officers who recited the information in  
22 an affidavit to a judge who issued a valid warrant. There was a search using that warrant and  
23 the evidence produced in the search proved the affidavit to be accurate.

24 The discovery in this case has demonstrated that the County policy was just the  
25 opposite of what would support a Monell claim. The Animal Control Division of the County  
26 had a set method to follow when obtaining a search warrant and executing a search warrant.  
27 The procedure was followed by the officer in this case. In the end, this Plaintiff has only  
28 been able to claim that the warrant in this case was procured by some unspecified negligence

1 and not by intentional conduct or a reckless disregard of someone's rights. The Plaintiff  
2 claims that the officer should have known that the informant was not who she said she was.  
3 However, the Plaintiff states that the informant's signature looked like the signature of her  
4 former employee and that the physical description matched that of the former employee.  
5 Under these circumstances, there is no way a court or a reasonable officer would say that the  
6 officer in this case was reckless. The depositions of three different Animal Control officers  
7 were taken by the Plaintiff in this case and all three of them recited the exact same procedure  
8 for obtaining a warrant. (Deposition of Dawn Stockman, attached hereto as Exhibit E;  
9 deposition of Danielle Harney, attached hereto as Exhibit F; and deposition of Tori Olson,  
10 attached hereto as Exhibit G). That procedure was followed by the officer in this case. The  
11 County employees received adequate training and followed that training throughout this  
12 case.

13 In the case of Dougherty v. City of Covina, 654 F.3d 892 (2011 9<sup>th</sup> Cir.), the court  
14 was reviewing a case where a police officer got a warrant to search a child molester's home.  
15 The application sought a warrant so that the police could grab the home computer and other  
16 equipment that might contain child pornography. The affidavit contained no facts that would  
17 lead to the conclusion that there was child pornography in the house, except the opinion of  
18 the signing officer who stated that in his experience child molesters almost always had child  
19 pornography in their homes. The Ninth Circuit Court of Appeals ruled that that was not  
20 enough to sustain a valid warrant. The Plaintiff in that case sued the City and the officer.  
21 The officer was held to have qualified immunity and the case against him was properly  
22 dismissed. The Court also ruled against the Plaintiff on its case against the City under its  
23 Monell claim. The Court cited the rulings in Monell and other cases for the general law  
24 providing a governmental entity may not be held liable under the Civil Rights Act unless  
25 some official policy or practice can be shown to be a moving force behind a violation of  
26 constitutional rights. They also cited the landmark case of City of Canton v. Harris, 489  
27 U.S. 378, 109 S.Ct. 1197 (1989), for the idea that a government failure to train its officers  
28 may amount to a policy of deliberate indifference but only if the need to train was obvious

1 and the failure to train made a violation of constitutional rights likely. However, the Court  
2 went on to state that "mere negligence in training or supervision, however, does not give rise  
3 to a Monell claim." 654 F.3d 892, 900. In our case, the discovery has shown that there was  
4 a policy to carefully review applications for warrants and that policy was followed in this  
5 case. As stated previously, all three officers that were deposed testified about the procedure  
6 they had to follow to get a warrant which included having the Application for Warrant  
7 reviewed by two levels of supervisors above the officer and by a deputy district attorney and  
8 than again by the supervisors before presenting the affidavit to a judge. The procedure was  
9 followed in this case.

10 When looking at a Monell claim, the Courts have been clear on standards to be  
11 applied when reviewing the warrant itself. In the case of Doughtery v. Covina, the Court  
12 recited the settled law that a reviewing court should look at a previous judge's warrant under  
13 a "totality of the circumstances test". Under the totality of circumstances test, a neutral  
14 Magistrate must make a practical, common sense decision whether, given all the  
15 circumstances set forth in the affidavit before him, including veracity and basis of  
16 knowledge of persons supplying hearsay information, there is a fair probability that  
17 contraband or evidence will be found in a particular place. The Magistrate is free to draw  
18 "reasonable inferences" from the material supplied to him by the applicant for a warrant.  
19 Neither certainty nor preponderance of the evidence is required. Rather a fair probability  
20 that evidence will be found is all that is required. The Court went on to state that the  
21 Magistrate's determination of probable cause should be paid "great deference". 654 F.3d  
22 892, 897-898 (citing Illinois v. Gates, 462 U.S. 213, 239.

23 Keeping in mind that the Magistrate signing a warrant is free to draw reasonable  
24 inferences from the materials supplied to him, there was definitely probable cause in this  
25 case under the totality of the circumstances test. We have a former employee of the Plaintiff  
26 who was familiar with the store operation and with the Plaintiff's practice of keeping pets at  
27 home that were sick or too young to be sold. The informant demonstrated knowledge of the  
28 Plaintiff, the Plaintiff's home address, the Plaintiff's place of business and the Plaintiff's

1 practices. The County records supplied evidence of the zoning and what uses were allowed  
2 on the property. This was laid before the judge with the statement of the informant that the  
3 Plaintiff was keeping numerous dogs at a residential home and that some of them appeared  
4 to be in ill health. The judge was correct in inferring in a practical, common sense decision  
5 from the evidence before him that there was a fair probability that there was evidence at the  
6 home of the too many dogs and that some of them might be unhealthy. And wouldn't you  
7 know it, the judge was right. Upon entry they found twenty-nine dogs and two of them  
8 looked unhealthy enough to where they needed to be taken to a veterinarian to be checked.  
9 Under these circumstances, there is not even a close call to be made. The evidence simply  
10 will not support a finding that there was a violation of a citizen's constitutional rights.

11 Another problem with the Plaintiff's Monell claim is that they have no evidence that  
12 there is any kind of continuing custom or practice within the County of doing searches with  
13 invalid warrants. What they have at best is a claim that is unsubstantiated that on one  
14 occasion the officer was negligent in some way. However, the single incident of  
15 unconstitutional activity by a municipal employee is not sufficient to impose liability against  
16 the supervising municipality under the Civil Rights Act. Such a single incident does not  
17 constitute a custom. In the case of Craig v. Floyd County Georgia, 643 F.3d 1306 (2011 11<sup>th</sup>  
18 Cir), a plaintiff alleged that there was a nine day delay in providing appropriate surgical  
19 treatment for a prisoner that had a fractured skull. When discussing whether or not the  
20 county was liable, the Court ruled that the Monell claim had to fail because there was no  
21 clear evidence that the county had an official policy to continue such conduct nor was there  
22 so many incidents that you could say a pattern of similar constitutional violations was  
23 shown. The Court ruled against the plaintiff in that case and ruled that a pattern of similar  
24 constitutional violations is "ordinarily necessary". A showing that once or twice a county  
25 employee had stepped out of line was not sufficient "... because a custom must be such a  
26 long standing and wide spread practice that it is deemed authorized by the policy making  
27 officials because they must have known about it and failed to stop it. . ." Craig v. Floyd  
28 County Georgia, 643 F.3d 1306, 1310. In our case, there has been no evidence produced

1 that would show that the County Animal Control officers are running amok searching homes  
2 without valid warrants or that anyone in a policy making role such as a County  
3 Commissioner would have known about it. As a result, the third cause of action based on a  
4 Monell claim has to fail.

#### 5 **Fourth Cause of Action**

6 The Complaint's fourth cause of action is entitled illegal search and illegal warrant. It  
7 does not really set forth any elements of a recognizable tort other than rehashing an  
8 allegation that there was search with an invalid warrant. As stated previously, Judge  
9 Williams properly granted the warrant as it was based upon probable cause that there were  
10 numerous dogs at the Plaintiff's residence and that some of them might be ill.

11 The application for search and seizure warrant contained ample facts to sustain the  
12 finding of probable cause. The applicant submitted facts to the judge as follows:

- 13 1. The affiant was employed by the Clark County Animal  
14 Control Division for three years.
- 15 2. Prior to being an Animal Control officer, the affiant was a  
16 veterinarian technician for fifteen years and that she was  
17 currently licensed as a veterinarian technician.
- 18 3. The residence in question was 4302 Callahan Avenue, Las  
19 Vegas, Nevada.
- 20 4. That the address in question was described as parcel  
21 number 161-322-01-041 and that the property belonged to  
22 Frederick and Judy Palmieri.
- 23 5. That animals were being held in violation of Clark County  
24 Code.
- 25 6. On May 10, 2010, Richard Molinari, Animal Control  
26 supervisor for the City of Las Vegas, contacted the Clark  
27 County Animal Control. He forwarded a complaint from  
28 Kaitlyn Nichols on property located in the County. The  
property was 4302 Callahan Avenue belonging to Judy  
Palmieri.
7. On May 10, 2010, the officer applying for the warrant  
spoke with Kaitlyn Nichols by phone regarding her  
complaint. The informant told the officer that she used to  
work for Ms. Palmieri at the Meadows Mall Pet Store.
8. The informant stated she was asked to help Ms. Palmieri  
move some boxes at Palmieri's residence.

- 1 9. The informant stated that she arrived at the 4302 Callahan  
2 Avenue residence and once inside the residence she saw  
3 several animals in the house.
- 4 10. The informant also stated that there were several animals  
5 kept in the garage in kennels.
- 6 11. The informant stated that the animals on the property  
7 looked very thin and several appeared to have mats and  
8 fecal matter all over them.
- 9 12. The informant stated that a lot of the animals appeared to  
10 be unhealthy.
- 11 13. The informant went on to state that Ms. Palmieri breeds  
12 dogs and sells them at her pet shop.
- 13 14. The informant also stated that Ms. Palmieri houses  
14 animals at her private residence that are sick or too young  
15 for the pet shop.
- 16 15. After speaking with the informant, the officer did a search  
17 on Judy Palmieri's address and name in the County  
18 records. The officer found one entry where an Animal  
19 Control agent had been to the house at 4302 Callahan  
20 Avenue. The officer also found that there were multiple  
21 times that the Animal Control Division had been to the pet  
22 shop known as Bark Avenue located in Clark County and  
23 managed by Palmieri. That these calls were related to  
24 health and welfare and sanitation.
- 25 16. The affidavit went on and gave specifics of the previous  
26 records dealing with the Plaintiff including September 15,  
27 2007 when an Animal Control officer found multiple  
28 violations for sanitation, overcrowding and failure to  
provide medical records at a pet store managed by  
Palmieri.
17. The affidavit also gave particulars on another occasion,  
January 13, 2006, when the Animal Control Division was  
called with a complaint about the possibility of dead  
animals in the garage at the Callahan Avenue residence.  
The officer stated that while a foul odor from the  
residence was detected by an Animal Control officer, he  
was unable to state with any certainty whether it was a  
dead animal or something else.

All of these things were sworn and placed before Judge Williams who found that there was probable cause and therefore signed the warrant. As far as warrants go, this one actually had a lot more facts than many others that are used by the police in more serious cases.



1 It has long been settled that the application for a warrant does not have to be in a  
2 formal fashion or recite things in a precise manner. The only thing that matters is whether or  
3 not there is enough factual statements in the application that could sustain a basis to  
4 conclude that there may be some evidence or contraband on the premises to be searched. If  
5 it is reasonable to conclude from the facts stated that the evidence is probably at the  
6 residence, that is sufficient. A landmark criminal case in Nevada was decided in Kelly v.  
7 State, 84 Nev. 332, 440 P.2d 889 (1968). In the Kelly case, the Nevada Supreme Court was  
8 comparing local practices with some of the U.S. Supreme Court decisions dealing with  
9 warrants. In the Kelly case, there was a robbery where it was believed that a gun was used.  
10 The robbery suspects left the scene in a car and went to the Silver Nugget Casino. Two of  
11 the suspects were apprehended inside the casino later. The car was still in the casino parking  
12 lot. There was also a third suspect who was arrested at her home later. So not all of the  
13 suspects rode in the same vehicle. However, the police impounded the car and sought a  
14 warrant from the district judge based on the application of a police officer. The affidavit  
15 basically set forth the facts that a robbery was committed and that a gun was allegedly used.  
16 There were three suspects arrested at different times and identified by the victim. A certain  
17 vehicle was identified as the car used by at least two of the suspects at the scene of the crime.  
18 That the two suspects that were arrested inside the Silver Nugget Casino did not have a gun  
19 in their possession when arrested. That the car was parked in the Silver Nugget's parking  
20 lot. That the two suspects who were arrested at the casino had their residence under  
21 surveillance so the police knew that they had not gone there after the robbery. And finally  
22 that the car had been impounded. Based on this information, the officer stated that it was his  
23 belief that there was probably a gun in the Kelly's car. There was certainly the possibility  
24 that the third suspect took the gun and disposed of it but the police did not mention that in  
25 the affidavit. The Kellys could have disposed of the gun while driving the car to the casino.  
26 They could have disposed of it in the casino. None of these facts were in the affidavit but  
27 they would be obvious to anyone who read the affidavit. The Nevada Supreme Court ruled  
28 ///

1 that it was perfectly reasonable to conclude from the facts that were recited in the affidavit  
2 that the weapon could be in Kelly's car. The court stated:

3           Though the affidavit does not give all the evidentiary facts, it  
4           does provide a sufficient basis for this court to sustain the  
5           Magistrate's decision to issue a search warrant. . . 84 Nev. 332,  
6           336, 440 P.2d 889, 891.

7           The court went on to cite a U.S. Supreme Court decision stating that when a search is  
8           based upon a magistrate's determination of probable cause as opposed to a police officer's  
9           determination, the reviewing courts will accept evidence of a less judicially competent or  
10          persuasive character than would have justified the officer in acting on his own without a  
11          warrant. 84 Nev. 332, 336, 440 P.2d 889, 891. The appellants in the Kelly case also  
12          contended that the affidavit was constitutionally deceptive because he did not specifically set  
13          forth with particularity the source of the police applicant's information nor did it set forth the  
14          reliability of the source. The Nevada Supreme Court ruled that "this contention is without  
15          merit". Id. The Court went on to state:

16                 . . . if the teachings of the court cases are to be followed and the  
17                 constitutional policy served, affidavits for search warrants, such  
18                 as the one involved here, must be tested and interpreted by  
19                 magistrates and courts in a common sense and realistic fashion.  
20                 They are normally drafted by non lawyers in the midst and haste  
21                 of a criminal investigation. Technical requirements of elaborate  
22                 specificity once exacted under common law pleading have no  
23                 proper place in this area. A grudging or negative attitude by  
24                 reviewing courts toward warrants will tend to discourage police  
25                 officers from submitting their evidence to judicial officers before  
26                 acting. . . 84 Nev. 332, 338, 440 P.2d 889, 893.

27          So, applying a test of looking at the warrant in a common sense and realistic fashion,  
28          the facts contained in the application for a warrant in our case clearly make it probable that  
29          the Plaintiff was housing numerous dogs at her residence against the County Code and that  
30          some of them might be ill. It certainly was enough to make it reasonable to conclude that  
31          someone needed to go search the premises and see if there were animals that needed help.  
32          Judge Williams properly interpreted the facts and decided there was probable cause and, as it  
33          turns out, the informant was correct, as was the judge. The warrant was valid. As a result,  
34          the search of the residence was valid also.

1 In the case of Ewing v. City of Stockton, 588 F.3d 1218 (2009 9<sup>th</sup> Cir.), two people  
2 who were arrested for murder and then released sued the police department, the city and  
3 several officers for an alleged illegal search warrant and for false arrest. Eventually, the  
4 Court of Appeals ruled that the search warrant was based on probable cause. However, in  
5 determining whether or not the police officers had qualified immunity in applying for the  
6 warrant and charging the defendants, the court held that on top of all the other factual issues,  
7 it was most significant that the police relied upon the advice of the deputy district attorney  
8 before going forward. The court cited previous cases and stated that an officer consultation  
9 with the lawyer is not conclusive on the issue of qualified immunity. However, it is  
10 evidence of good faith, and in that case, it tipped the scale in favor of qualified immunity for  
11 the officer. 588 F.3d 1218, 1231. As stated previously, our officer Stockman ran the  
12 warrant application by her supervisors who were not lawyers, but also had the application  
13 reviewed by Deputy District Attorney Steven Sweikert who approved and signed it. As  
14 stated by the Supreme Court in the Kelly case, we are not supposed to judge these  
15 applications as a strict pleading since they are drawn up by non lawyers. The officer  
16 gathered all the facts that she thought were relevant and that showed probable cause, had it  
17 approved by supervisors and an attorney, and then sent it to a judge who agreed that there  
18 was probable cause and issued the warrant. The warrant was obtained in good faith and the  
19 officer is entitled to qualified immunity.

20 Qualified immunity does not even come into play unless the court first finds it was an  
21 invalid warrant. In our case, it is valid. The Plaintiff's claims are based upon the assertion  
22 that the informant, Kaitlyn Nichols, now denies that she was the one who called. However,  
23 the person that Kaitlyn Nichols believes called and the one that the Plaintiff believes called  
24 is someone named Ornealas who is situated exactly the same way as the informant Kaitlyn  
25 Nichols. Ornealas is a former employee of the Plaintiff. She worked for years as a store  
26 manager for the Plaintiff and had access to all of the information that was given to the  
27 Animal Control officer. The caller demonstrated familiarity with the Plaintiff's actions. All  
28 of the information given sounded believable to the officers and, was accurate. The fact that

1 an officer gets information from a witness named John Smith who identifies himself as John  
2 Jones does not invalidate the warrant.

### 3 **Punitive Damages**

4 In some of the Plaintiff's causes of actions, she claims punitive damages against the  
5 Defendants. NRS 41.035 provides that no punitive damages are allowed against a  
6 government agency or its employees.

7 As for damages under the Civil Rights Act, as stated previously, the Plaintiff admits  
8 that the officer had no malice against the Plaintiff. At best, there is a case of negligence  
9 which does not amount to oppression or reckless disregard of someone's rights. The officer  
10 followed established procedures. The information received was believable and correct.  
11 Again, we have been conducting discover for over a year and the Plaintiff has produced no  
12 evidence that would sustain a punitive damage award. Under Rule 56, the Plaintiff cannot  
13 just rest on her allegations of the Complaint. She has to come forward with actual proof of  
14 some oppression, fraud or recklessness. No such evidence has been produced.

### 15 **Conclusion**

16 This is a case without substance. There are thousands of cases where someone  
17 received a citation and the citation was dismissed. The Plaintiff was not found not guilty. In  
18 fact, she admits that she had been illegally storing animals at her residence for over eighteen  
19 years. Someone complained about it. The Animal Control officers responded properly, got  
20 the proper paperwork, and did what they are supposed to do under the law. There was no  
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1 illegal activity and no violation of anyone's constitutional rights. As a result, summary  
2 judgment should be entered in favor of the Defendants and against the Plaintiff.

3 DATED this 3<sup>RD</sup> day of August, 2012.

4 STEVEN B. WOLFSON  
5 DISTRICT ATTORNEY

6 By:

  
MICHAEL L. FOLEY

7 Deputy District Attorney

8 State Bar No. 3669

9 500 South Grand Central Pkwy. 5<sup>th</sup> Flr.

10 P. O. Box 552215

11 Las Vegas, Nevada 89155-2215

12 Attorney for Defendants

13 Clark County

# **Exhibit A**

ADMINISTRATIVE SEARCH AND SEIZURE WARRANT

STATE OF NEVADA ]  
ss: ]  
COUNTY OF CLARK ]

The State of Nevada, to any Animal Control and Public Response Officer in Clark County, Proof by Affidavit having been made before me by Animal Control Officer Dawn Stockman, CE096, said Affidavit attached hereto and incorporate herein by reference, that there is probable cause to believe that certain property and conditions, as described further in the attached Affidavit, namely:

Any animal being held in violation of Clark County Code Title 10 and/or found into be unhealthy or being kept or abandoned in a cruel manner and photographs of the premises, persons, animals, and conditions or circumstances evidencing the same and unlawfully constructed buildings

Are presently located within the property at:

**4302 Callahan Ave Las Vegas NV 89120**

Further described as parcel number 16132201041 belonging to Frederick and Judy Palmieri

I am satisfied that there is probable cause to issue this warrant. You are commanded to search forthwith said premises for said conditions, serving this warrant between the hours of 7:00 a.m. and 7:00 p.m., and further make a return for me within ten days. Seizure is authorized of the dogs and other animals found in an unhealthy condition or kept in a cruel manner as determined during the search under this warrant. The entire premises shall be searched to determine the conditions in which the animals are kept and to examine all outbuildings. You may break locks, remove barriers, and use similar force, either upon your own or with the assistance of contractors, police or other assistance as reasonably required, to enter the property and residence thereon, if, after announcement of authority and purpose, such force is reasonably necessary for execution. All animals seized from the property will be held until further order of the court or until owner complies with the conditions that the animal regulation officer sets forth. If any animals require immediate euthanasia a licensed Veterinarian will submit the medical report for given reason.

DATED this 18<sup>th</sup> day of May, 2010.

  
JUDGE

**Exhibit A**

Palmieri APP 000045

**APPLICATION AND AFFIDAVIT FOR  
ADMINISTRATIVE SEARCH AND SEIZURE WARRANT**

STATE OF NEVADA        ]  
                          ss:        ]  
COUNTY OF CLARK        ]

Animal Control Officer Dawn Stockman, CE096, being first duly sworn, deposes and says that she is the affiant herein and that she has been employed with Clark County Animal Control for 3 years. Before that she worked as a Veterinarian Technician for 15 years, and is a Nevada Licenses Veterinary Technician.

There is probable cause to believe that certain property and conditions hereinafter described will be found within and surrounding the home at:

**4302 Callahan Ave Las Vegas NV 89120**

Further described as parcel number 16132201041 belonging to Frederick and Judy Palmieri

The property and conditions referred to consists of the following:

Any animal being held in violation of Clark County Code Title 10 and/or found into be unhealthy or being kept or abandoned in a cruel manner and photographs of the premises, persons, animals, and conditions or circumstances evidencing the same as further described below.

The property and conditions hereinbefore described constitutes evidence that one or more animals are being kept or abandoned the property in violation of CCC 10.32 attached as Exhibit "A".

CCC 10.24.060, Right of entry, provides: "The animal regulation officer and any police officer in the county while on duty, for just cause, shall have the right to enter upon private property or public property in the county in order to examine or capture any animal thereon or therein; provided, however, that no such officer or employee, shall have the right to enter a house or structure which is in use as a residence without having first secured a search warrant therefore."

In support of your affiant's assertion of the existence of probable cause, the following facts are offered:

On May 10, 2010 Richard Molinari Animal Control Supervisor for the City of Las Vegas contacted Clark County Animal Control. He was forwarding a complaint from Kaitlyn Nichols on a property located in the County. The property was 4302 Callahan Ave Las Vegas NV, 89120 belonging to Judy Palmieri.



On May 10, 2006 I spoke with Ms. Kaitlyn Nichols by phone regarding her complaint. She then told me that she used to work for Mrs. Palmieri at Meadow Pets. She was asked to help Mrs. Palmieri move some boxes at her place of residence. She arrived at 4302 Callahan Ave Las Vegas NV, 89120. Once Ms. Nichols was inside the residence she saw several animals in the house. Ms. Nichols also told me there were several animals kept in the garage in kennels. The animals on the property looked very thin and several appeared to have mats and fecal matter all over them. Ms. Nichols said a lot of the animals appeared to be unhealthy. Ms. Nichols then went on to tell me Mrs. Palmieri breeds the dogs and sells them at her pet shop. Ms. Nichols also stated Mrs. Palmieri also houses animals that are sick or too young for the pet shop in her house.

After speaking with Ms. Nichols, I did a search on Judy Palmieri's address and name in our records. I found only one time Clark County Animal Control had been to Mrs. Palmieri's house at 4302 Callahan. There were multiple times Clark County Animal Control had been out to her Pet Shop Bark Avenue. The calls were always related to health and welfare and sanitation.

Listed are two examples of those calls,

On September 15, 2007 we had a call for 4175 S. Grand Canyon, which was Bark Avenue Pets. Mrs. Palmieri was the owner of that pet store as well. The call was a complaint was for sanitation and health and welfare of the animals. Officer D. Harney responded. When she arrived she found multiple violations for sanitation, over crowding and failure to provide medical records.

On January 13, 2006 Clark County Animal Control was called out to 4302 Callahan Ave Las Vegas NV, 89120, regarding dead animals in the garage. Officer Jason Elff responded. The Resident Judy Palmieri stated to him she owns Meadows Pets at Meadows mall and advised there were no dead animals on property, she was unwilling to allow us to check garage without warrant. Mrs. Palmieri advised Officer Elff to leave the

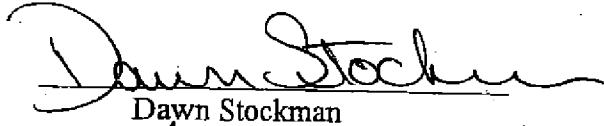
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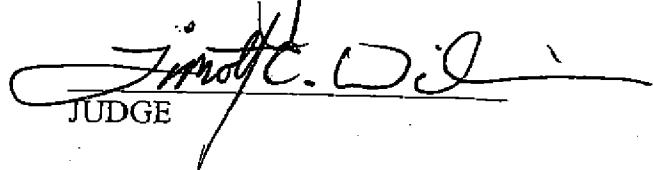
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property until such time as had a warrant. Officer Elff was able to smell foul odor from end of driveway, unable to state with any certainty it was a dead animal.

WHEREFORE, affiant requests that an Administrative Search and Seizure Warrant issue directing that the property be entered and seized as described above at the location set forth herein between the hours of 7:00 a.m. and 7:00 p.m. All animals seized from the property will be held until further order of the court or until owner complies with the conditions that the animal regulation officer sets forth. If any animals require immediate euthanasia a licensed Veterinarian will submit the medical report for given reason.

  
Dawn Stockman

SUBSCRIBED and SWORN to before me this 18<sup>th</sup> day of May, 2010.

  
JUDGE

APPROVED AS TO FORM  
BY DAVID ROGER, DISTRICT ATTORNEY

 5-18-10  
DEPUTY DISTRICT ATTORNEY

# Exhibit A

## 10.32.010 Abandonment.

It is unlawful for any person owning, possessing or having the care, custody, and control of any animal, living or dead, to abandon the same in a public place or upon the private property of himself or another. (Ord. 1023 § 9 (part), 1987)

## 10.32.020 Taking possession of animal being treated cruelly.

(A) The animal regulation officer or any police officer in the county while on duty shall, upon discovering any animal which is being treated cruelly, take possession of it and provide it with shelter and care or, upon obtaining written permission from the owner of the animal, may destroy it in a humane manner at the owner's expense.

(B) When an officer takes possession of an animal, he shall give to the owner, if the owner can be found, a notice containing a written statement of the reasons for the taking, the location where the animal will be cared for and sheltered, and the fact that there is a limited lien on the animal for the cost of shelter and care. If the owner is not present at the taking and the officer cannot find the owner after a reasonable search, he shall post the notice on the property from which he takes the animal. If the identity and address of the owner is later determined, the notice must be mailed to the owner immediately after the determination is made.

(C) An officer who takes possession of an animal pursuant to this section has a lien on the animal for the reasonable cost of care and shelter furnished to the animal and, if applicable, for its humane destruction. The lien does not extend to the cost of care and shelter for more than two weeks.

(D) Upon proof that the owner has been notified in accordance with subsection (B) of this section or, if he has not been found or identified, that the required notice has been posted on the property where the animal was found, a court of competent jurisdiction may, after providing an opportunity for a hearing, order the animal sold at auction, humanely destroyed or continued in the care of the officer for such disposition as the officer sees fit. (Ord. 1107 § 29, 1988; Ord. 1023 § 9 (part), 1987)

## 10.32.030 Poisoning.

It is unlawful for any person unjustifiably to administer any poisonous drug or substance with intent that the same shall be taken by an animal, whether such animal be the property of himself or another, or whether the drug or substance be exposed upon such person's property, the private property of another, or any public place. Provided, that nothing herein shall be construed to prevent or restrict the animal regulation officer or health officer in the exercise and performance of the powers and duties set forth in this title. Provided further, that nothing herein shall be construed to prevent or restrict the eradication of animals commonly considered to be pests which are harmful or destructive to man, other animals or property or which are otherwise defined as a "vertebrate pest" by NRS 555.005. (Ord. 1023 § 9 (part), 1987)

## 10.32.040 Injurious material.

It is unlawful for any person to wilfully and unjustifiably throw, drop, place, or cause to be placed upon any public place, or upon the private property of himself or another, any glass, nails, pieces of metal or other material calculated to wound or injure any animal. (Ord. 1023 § 9 (part), 1987)

## 10.32.050 Transporting.

It is unlawful for any person to carry or enclose, or cause to be carried or enclosed, in or upon any vehicle or conveyance, any animal in a cruel or inhumane manner. It is unlawful for any person to transport or convey any animal in the bed of an open pickup truck, or similar open vehicle, without making adequate provisions to prevent the animal from jumping or being thrown from the vehicle or conveyance. (Ord. 1023 § 9 (part), 1987)

## 10.32.060 Vehicle confinement.

No person having charge or custody of an animal, as owner or otherwise, or having dominion or control over a motor vehicle, as owner or otherwise, shall place or confine an animal or allow an animal to be placed or confined or to remain in a motor vehicle under such conditions or for such period of time as may endanger the health or well-being of such animal due to heat, cold, lack of food or drink, or such other circumstances as may be reasonably expected to cause suffering, disability or death. (Ord. 1023 § 9 (part), 1987)

## 10.32.070 Vehicle confinement--impoundment.

(A) Any animal control officer or police officer in the county, while on duty, who finds an animal in a motor vehicle under such conditions as may endanger the health or well-being of such animal due to heat, cold, lack of food or drink or such other circumstances as may be reasonably expected to cause suffering, disability or death is authorized to use reasonable force to remove the animal from the vehicle.

(B) Notice of the removal of the animal to the owner, disposition of the animal and charges for the cost of care and shelter shall be made, as nearly as possible, in the manner prescribed in Section 10.32.020.

(C) An officer who seizes an animal pursuant to this section is not liable for any action arising out of the killing or humane destruction of the animal. (Ord. 1023 § 9 (part), 1987)

#### 10.32.080 Found animal reporting.

Each person who shall take custody of any lost, abandoned animal, or animal apparently running at large, shall report the same to the animal regulation officer within twenty-four hours after taking custody thereof. (Ord. 1023 § 9 (part), 1987)

#### 10.32.090 Injury by vehicles--Motorist responsibility.

(A) Every operator of any vehicle upon the streets and ways of the county shall immediately upon injuring, striking, maiming or running down any animal give such aid as he is reasonably able to render. In the absence of the owner, he shall immediately notify the animal regulation officer and furnish him with such information as he may require relative to such injury.

(B) It is the duty of such operator to remain at or near the scene until an animal control officer or police officer arrive, and such operator shall immediately identify himself to the officer.

(C) Alternatively, in the absence of the owner, a person may give aid by taking the animal to a veterinary clinic or hospital or the animal control center, and thereafter notify the animal regulation officer. Notice of the removal of the animal to the owner, disposition of the animal and charges for the cost of care and shelter shall be made, as nearly as possible, in the manner prescribed in Section 10.32.020.

(D) Emergency vehicles shall not be required to stop and render aid to an injured animal but shall notify the animal regulation officer of the incident and furnish him with such information as he may require. (Ord. 1023 § 9 (part), 1987)

#### 10.32.100 Fighting.

(A) It is unlawful for any person to own, keep, or use, or be in any manner connected with or financially interested in the management of, or to receive money or other thing of value for the admission of any person to, a house, apartment, pit or place procured or permitted to be used or occupied for baiting or fighting of animals; or to instigate, promote, arrange, or carry on a fight between animals, or do any act as assistant, umpire, principal or otherwise in a fight between animals, or in aid of or calculated to encourage or further any fight between animals.

(B) (1) No person shall be knowingly present as a spectator, either at a house, apartment, pit or place, at an illegal baiting or fight between animals or where preparations are being made for an illegal baiting or fight between animals.

(2) "Spectator" means any individual who is present at an illegal baiting or fight between animals, or at a location where preparations are being made for such activities, for the purpose of viewing, observing, watching or witnessing the event as it progresses. (Ord. 3559 § 1, 2007; Ord. 1023 § 9 (part), 1987)

#### 10.32.110 Firing on.

It is unlawful for any person to fire upon any animal, unless:

(A) Engaged in training a dog for a field trial or hunting;

(B) Hunting pursuant to authority granted by the United States, the state of Nevada, or any agency, department or political subdivision respectively thereof;

(C) In necessary self-defense, or in defense of habitation, property or person;

(D) The animal is venomous or known as dangerous to life, limb or property;

(E) Done by the animal regulation officer, a police officer or the health officer in the performance of his public duty;

(F) The animal is killed and used for food; or

(G) To prevent unjustifiable suffering by the animal;

(H) The destruction of the animal is otherwise authorized by any provision of this code, the Nevada Revised Statutes or other applicable law. (Ord. 1023 § 9 (part), 1987)

#### 10.32.120 Injury and overwork.

It is unlawful for any person to overdrive, overload, torture or cruelly beat, or unjustifiably injure, maim, mutilate, or kill any animal whether belonging to himself or to another, and whether on or off the premises of the owner of the animal. (Ord. 1023 § 9 (part), 1987)

#### 10.32.130 Depriving of sustenance, shelter or medical care.

It is unlawful to deprive any animal of adequate sustenance, feed, water, or shelter, or expose to the elements of the weather and to the extremes of heat or cold, or refuse to obtain veterinarian medical care for illness, injury, disease or infirmity, or wilfully instigate, engage in, or in any way further an act of cruelty to any animal, or any act to produce such cruelty. (Ord. 2735 § 2, 2002; Ord. 1023 § 9 (part), 1987)

#### 10.32.140 Enclosures and restraints.

It is unlawful to confine or overcrowd an animal in any cage, coop, crate, box or any enclosure in a cruel or inhumane manner, or so as to produce torture. It shall further be unlawful to restrict any animal by leash, cord, or chain of a length which causes cruelty or torture to the animal. (Ord. 1023 § 9 (part), 1987)

**10.32.150 Crating or boxing.**

It is unlawful for any person to overcrowd any animal in any crate, box, or other receptacle or to fail to provide adequate food, water, shelter, or sanitation to such animal. (Ord. 1023 § 9 (part), 1987)

**10.32.160 Chick, duckling, baby rabbit sales or gift.**

It is unlawful for any person to sell or offer for sale, barter or give away baby chicks, ducklings, other fowl under four weeks of age or rabbits under two weeks of age, as pets or novelties. This chapter shall not be construed to prohibit the display or sale of natural chicks, rabbits, ducklings or other fowl, in the proper breeder facilities by hatcheries, or stores engaged in the business of selling the same to be raised for commercial purposes (Ord. 1023 § 9 (part), 1987)

**10.32.170 Sale or gift in public place.**

It is unlawful for any private person to display with the intent to sell or offer for sale, barter, give away, or otherwise dispose of any animal upon any street, sidewalk, public building, public park, or other public place. (Ord. 1023 § 9 (part), 1987)

**10.32.180 Promotional sale or gift.**

It is unlawful for any person, in connection with any advertising campaign or promotion, to use, give, sell, or barter, or offer to use, give, sell, or barter, any live animal in any manner by which there will be a transfer of ownership or possession. (Ord. 1023 § 9 (part), 1987)

**10.32.190 Cruel and unusual uses.**

It is unlawful for any owner, operator, or agent of any carnival, fair, or amusement park to use any live animal as or for a target or in any cruel or unusual manner. (Ord. 1023 § 9 (part), 1987)

**10.32.200 Dyeing or coloring.**

It is unlawful for any person to dye or color by any means any baby chick, rabbit, duckling or fowl, or to dye or color any animal for purposes of concealing its identity. (Ord. 1023 § 9 (part), 1987)

**10.32.210 Euthanasia--Permitted methods.**

In the event it is necessary to destroy any animal by means of euthanasia, such destruction shall be accomplished by the "sodium pentobarbital injection method" or other method recommended in the "General Statement Regarding Euthanasia Methods" (1985) published by the Humane Society of the United States, which will not subject such animal to any unnecessary pain. (Ord. 1023 § 9 (part), 1987)

**10.32.220 Euthanasia--Decompression--Nitrogen.**

No high-altitude decompression chamber or nitrogen gas cabinet may be used in the euthanasia of animals. (Ord. 1023 § 9 (part), 1987)

**10.32.230 Euthanasia--Inspection authority.**

The animal regulation officer, the health officer, an authorized representative of the Health Division of the Nevada State Department of Human Resources, a member of the Nevada State Board of Veterinary Medical Examiners, or a police officer in the county while on duty, may inspect the operation of any public or private facility used in the euthanasia of animals in the county. (Ord. 1023 § 9 (part), 1987)

**10.32.240 Euthanasia--Misdemeanor.**

Any person who fails to comply with the provisions of Sections 10.32.210 through 10.32.230 is guilty of a misdemeanor. (Ord. 1023 § 9 (part), 1987)

**10.32.250 Horse tripping.**

No person shall intentionally trip or fell any equine animal by the legs or by any means whatsoever for the purpose of entertainment or sport. (Ord. 1818 § 1, 1996)

# Southern Nevada GIS ~ OpenWeb Info Mapper



The MAPS and DATA are provided without warranty of any kind, expressed or implied.

Date Created: 5/18/2010

## Property Information

Parcel: 16132201041  
 Owner Name(s): PALMIERI FREDERICK W & JUDY A  
 Site Address: 4302 CALLAHAN AVE  
 Jurisdiction: CC Paradise - 89120  
 Zoning Classification: Rural Estates Residential [2 Units per Acre] (R-E)  
 Planned Landuse: RNP - Rural Neighborhood Preservation - Up to 2 du/ac

## Misc Information

Subdivision Name: PARCEL MAP FILE 82 PAGE 8  
 Construction Year: 1998  
 Sale Date: 02/2000  
 Sale Price: \$525,000  
 Recorded Doc Number: 2000022300950

T-R-S: 21-62-32  
 Census Tract: 2821  
 Estimated Lot Size: 0.56

## Elected Officials

Commission District: G - RORY REID  
 US Senate: JOHN ENSIGN, HARRY REID  
 State Senate: 5 - SHIRLEY BREEDEN, JOYCE WOODHOUSE  
 School District: G - SHEILA R. MOULTON  
 Board of Education: 4 - CRAIG M. WILKINSON

US Congress: 03 - DINA TITUS  
 State Assembly: 18 - MARK MANENDO  
 University Regent: 4 - MARK ALDEN  
 Minor Civil Division: Las Vegas Township

# **Exhibit B**

# Officer Report

## Clark County Animal Control

Date: 5/19/2010

Cite Number: 22430, 23050, 23051

Defendant Name: JUDY A. PALMIERI

Address: 4302 CALLAHAN, LASS VEGAS NV 89120

Relating To: 2 COUNTS FAILURE TO PROVIDE MEDICAL, 24 COUNTS FAILURE TO PROVIDE RABIES VACCINES, 24 COUNTS FAILURE TO PERMIT EXCESS DOGS AND 24 COUNTS FAILURE TO PERMIT INTACT DOGS

Summary: On May 19, 2010 at 0915 I had Officer T. Olson from Clark County Animal Control and Officer F. Elam P# 5977 with the Metropolitan Police Department meet me at 4302 Callahan to execute a warrant. We knocked on the front door and there was no answer. The three of us then walked around the house to the garage. When I knocked on the garage we heard several dogs barking. There was an iron gate that leads into the backyard. We were unable to open the latch from the outside. I then jumped over the wall and opened the gate. There was a door just off where the gate was that was unlocked. I opened the door, it opened into the laundry room. Officer F. Elam announced we were there and coming into the house. I then took the lead and yelled Clark County Animal Control we have a warrant. At that point Judy Palmieri came around the corner. Officer Elam then took Mrs. Palmieri outside so we could search the property.

Officer Olson and I counted 24 adult small breed dogs in the house. There were 5 Chihuahua puppies that were under 1 year of age that were impounded under the new ordinance 10.08.130F. The puppies were all offspring from her personal dogs. Mrs. Palmieri didn't have proof of rabies on any of the dogs on her property nor could she provide proof the animals had been spayed or neutered. The house had no sanitation issue and the dogs had adequate food and water.

There were two old very skinny dogs that didn't appear to be in good health. One dog was a female cream Chihuahua 13 years old named Honey Bunny. The other is a male 16 years old Pomeranian named Peggy Sue. I asked Mrs.

## Exhibit B

Palmieri APP 000054



Palmieri if she had any medical records on the two dogs, she replied no. I impounded the dogs to take for a medical exam. I told Mrs. Palmieri I would contact her when she could retrieve them from the shelter. I told her she would be responsible for the impound fees and medical bills.

I picked the dogs up from DI Animal Hosp. I got a copy of the bill and health statements from the vet. The owner is going to meet me to claim and pay the bill at the shelter.

I met Mrs. Palmieri and her husband at the shelter later that evening. She reclaimed her two dogs and paid the vet bill.

Officer Olson and I issued citations totaling 74 counts. She is to appear in court Aug. 10, 2010.

OFFICER: D. STOCKMAN

NUMBER: CE096

**CLARK COUNTY ANIMAL CONTROL**  
**CITATION REPORT**

---

**Date of Violation(s):** 05/19/10

**Cite Number(s):** 23050, 23051,  
22430

**Defendant Name:** Palmieri, Judy A.

**Violation(s) Occurred at:** 4302 Callahan Ave.

**Animal Violations:** 10.12.010 Rabies Vaccinations Required – x24 counts,  
10.08.130 (A) Failure to Permit – Excess Number of Dogs – x24 counts,  
10.08.130 (B) Failure to Permit – Intact Dogs – x24 counts, 10.32.130  
Failure to Provide Medical – x2

---

**Summary:** On the above date I responded to 4302 Callahan Ave. to assist officer D. Stockman CE096 with the issuance of a search warrant. Upon arrival we met with a Metro Police Officer and with the property owner/defendant Mrs. Palmieri. The complaint was for a large number of dogs that were in unsanitary conditions inside of the home, as well as dogs that were very thin, and breeding dogs. We entered the home and observed the dogs. There were 24 small breed, adult dogs on the premises, and 7 small breed puppies, although they all appeared to be in good conditions and no unsanitary conditions were present. We asked Mrs. Palmieri if she had current Rabies vaccinations for the dogs and she was not able to provide proof of current/valid Rabies vaccinations or exemption letters from a vet. She also did not possess a Dog Fancier's Permit or a Special Use Permit allowing her to have such a large amount of dogs in her home, nor did she have a permit allowing her to have intact dogs or to breed her dogs and sell the puppies. We secured the defendant's identification and both myself and officer Stockman issued multiple citations without incident. The 7 puppies were impounded in accordance with the law.

**OFFICER: T. Olson**

**NUMBER: CE121**

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# **Exhibit C**

<input checked="" type="checkbox"/> ADULT		CITATION/C PLAIN		1		2		No 22430	
NOTICE TO APPEAR				Case No. A10-0286-5		J. Code		Q	
STATE OF NEVADA COUNTY OF CLARK						Accident <input type="checkbox"/> School Zone <input type="checkbox"/>			
ss. Complaint/Affidavit									
In the Justice Court of Clark County						Issuing Officer(s) T. Olson CE121 Div. 1714 D. Stockman CE096 1714			
THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS:									
Name (Last, First, Middle)		DOB		Orig.		Sex		Ht. Wt. Hair Eyes	
Palmeri, Judy		A 6/1/48		F		5'7" 150 lb		Blk Blk	
Res. Address		City		State		Zip		Home Phone	
4302 Callahan		Las Vegas		NV		89120			
Bus. Address		City		State		Zip		Occupation	
S.S. No.		Or. Lic. No.		Class		State		Exp. Date	
		2101661931		C		NV		6/1/12	
Veh. Lic. No.		Year		State		Veh. Year		Make	
								Body Type	
								Color(s)	
Reg. Owner Name						Address			
Did unlawfully at the following (location):						Name of Business (if Applicable) Address			
4302 Callahan Ave									
Located in the unincorporated area, County of Clark, State of Nevada									
Aforesaid and did then and there commit the following offense									
Violation		NRS		CFR		County Code		Municipal Code	
Failure to Provide medical						10.32.130			
Defendant being the owner/custodian of a male Roperman did fail to provide proof of medical care.									
NO BAIL		Bail Amount		Admin Assessment		Facility Assessment		Total	
X		must appear							
Violation		NRS		CFR		County Code		Municipal Code	
Failure to Provide medical						10.32.130			
Defendant being the owner/custodian of a female chihuahua did fail to provide proof of medical care									
NO BAIL		Bail Amount		Admin Assessment		Facility Assessment		Total	
X		must appear							
Las Vegas Justice Court 208 Lewis Las Vegas, NV (702) 455-4435		Goodsprings Justice Court (702) 874-1405		Searchlight Justice Court Highway 95 & 68 Searchlight, NV (702) 297-1252		Moapa Valley Justice Court Moapa, NV (702) 397-2840		Moapa Justice Court Moapa, NV 89025 (702) 864-2333	
								Laughlin Justice Court 1575 Casino Dr Laughlin, NV (702) 298-4822	
Your signature on this complaint to appear is NOT admission of guilt. It is your written promise to appear in court. I hereby accept legal service of this complaint to appear at the said time and place and I hereby waive my right to be taken immediately before a magistrate.						Township: _____			
You are hereby ordered to appear on the _____ day of _____ at _____ at _____ a.m. / p.m.						Justice Court: _____			
10th day of Aug. 2010 at 7:30 p.m.									
Defendant's Signature		X [Signature]							
Failure to comply with this complaint will constitute a separate offense. The undersigned further states he has just and reasonable grounds to believe, and does believe, that the person named above committed the offense herein set forth, contrary to law, which occurred on the _____ day of _____ at _____ at _____ a.m. / p.m.									
19th day of May 2010 at 10:30 a.m.									
Signature of Officer / Complainant						P. No. CE096			
[Signature]									

Exhibit C

<input checked="" type="checkbox"/> ADULT		CITATION/COMPLAINT		<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> <span>1</span> <span>2</span> </div> <div style="display: flex; justify-content: space-between;"> <span>NO</span> <span>23051</span> </div> </div>	
NOTICE TO APPEAR		Case No.	A10-026-035		J. Code
STATE OF NEVADA COUNTY OF CLARK		Accident <input type="checkbox"/> School Zone <input type="checkbox"/>		Q	
ss. Complaint/Affidavit					
<input checked="" type="checkbox"/> In the Justice Court of Clark County		Issuing Officer(s)		"P" No.	
THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS:		D. Stockman CE 0916 1714		Div.	
		T. Olson CE 121 1714			
Name (Last, First, Middle)		DOB	Orig.	Sex	Ht
Palmieri, Judy A		6/1/48	F	5'7"	150 lb
Res. Address		City	State	Zip	Home Phone
4302 Callahan		Las Vegas	NV	89120	363-589
Bus. Address		City	State	Zip	Occupation
S.S. No.		Opr. Lic. No.	Class	State	Exp. Date
		21011661939	C	NV	6/1/12
Veh. Lic. No.		Year	State	Veh. Year	Make
Reg. Owner Name		Address			
Did unlawfully at the following (location):		Name of Business (if Applicable) Address			
4302 Callahan Ave.					
Located in the unincorporated area, County of Clark, State of Nevada		Alforesaid and did then and there commit the following offense			
Violation		NRS		CFR	County Code
Failure to Permit - Intact Dog					
Defendant being owner /		NRS/County/City #		10.08.130(B)x:	
Custodian of 24 dogs over 4 months of Age					
does not possess a current valid permit allow in possession of intact dog in that she was unable to provide proof of					
NO BAIL: <input type="checkbox"/>		Pen. Amount	Admin Assessment	Facility Assessment	Total
2. Violation		CODE	NRS	CFR	County Code
To Wh:		NRS/County/City #		When	
NO BAIL: <input type="checkbox"/>		Pen. Amount	Admin Assessment	Facility Assessment	Total
<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> <span>Las Vegas Justice Court 200 Lewis Las Vegas, NV (702) 455-4435</span> <span>Goodsprings Justice Court (702) 874-1405</span> <span>Searchlight Justice Court Highway 95 &amp; 68 Searchlight, NV (702) 297-1252</span> <span>Moapa Valley Justice Court Moapa, NV (702) 397-2840</span> <span>Moapa Justice Court Moapa, NV 89025 (702) 864-2333</span> <span>Laughlin Justice Court 1575 Casino Dr Laughlin, NV (702) 298-4622</span> </div> </div>		Your signature on this complaint to appear is NOT admission of guilt. It is your written promise to appear in court. I hereby accept legal service of this complaint to appear at the said time and place and I hereby waive my right to be taken immediately before a magistrate.			
You are hereby ordered to appear on the		10th day of August		20 at 10:30 a.m.	
Defendant's Signature		<input checked="" type="checkbox"/> <u>Judy Palmieri</u>			
Failure to comply with this complaint will constitute a separate offense. The undersigned further states he has just and reasonable grounds to believe, and does believe, that the person named above committed the offense herein set forth, contrary to law, which occurred on the					
the 10th day of May		20		at 10:30 a.m.	
Signature of Officer / Complainant		T. Olson		"P" No. CE 121	

☒ ADULT CITATION/ COMPLAINT Office Copy ☒

NOTICE TO APPEAR Case No. A10-028635 J. Code 1 2 No 23050

STATE OF NEVADA  
COUNTY OF CLARK

ss. Complaint/Affidavit

☒ In the Justice Court of Clark County

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS:

Issuing Officer(s) D. Stockman CE096 1714  
T. Olson CE121 1714

Name (Last, First, Middle) Palmieri, Judy A DOB 6/1/48 Orig. E Sex F HL 5'5" Wt 150 Hair brn Eyes brn

Res. Address 4302 Callahan City Las Vegas State NV Zip 89120 HomePhone 89120

Bus. Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Occupation \_\_\_\_\_

S.S. No. \_\_\_\_\_ Dir. Lic. No. 2101661939 C Class NV State 6/1/12 Exp. Date \_\_\_\_\_ Restrictions \_\_\_\_\_

Veh. Lic. No. \_\_\_\_\_ Year \_\_\_\_\_ State \_\_\_\_\_ Veh. Year \_\_\_\_\_ Make \_\_\_\_\_ Body Type \_\_\_\_\_ Color(s) \_\_\_\_\_

Reg. Owner Name \_\_\_\_\_ Address \_\_\_\_\_

Did unlawfully at the following (location): 4302 Callahan Ave. Name of Business (if Applicable) Address \_\_\_\_\_

Located in the unincorporated area, County of Clark, State of Nevada

Aforesaid and did then and there commit the following offense

Public Vaccinations ☒ NRS ☐ CFR ☒ County Code ☐ Municipal Code

To wit: Defendant being owner/custodian of 24 dogs over the age of 3 months was unable to provide proof for exemption from current/valid Rabies Vaccinations.

NO BAIL: ☒ Must Appear Must Appear

\*2. Violation Failure to permit Exemption ☒ NRS ☐ CFR ☒ County Code ☐ Municipal Code

To wit: Defendant being owner/custodian of 24 dogs over 1yr of age does not possess a current/valid permit allowing more than 3 dogs

NO BAIL: ☒ Must Appear Must Appear

Las Vegas Justice Court 200 Lewis Las Vegas, NV (702) 455-4435	Goodsprings Justice Court (702) 874-1405	Searchlight Justice Court Highway 95 & 68 Searchlight, NV (702) 287-1252	Moapa Valley Justice Court Moapa, NV (702) 397-2840	Moapa Justice Court Moapa, NV 89025 (702) 864-2333	Laughlin Justice Court 1575 Casino Dr Laughlin, NV (702) 298-4622
---	---	---	---	--	--

Your signature on this complaint to appear is NOT admission of guilt. It is your written promise to appear in court. I hereby accept legal service of this complaint to appear at the said time and place and I hereby waive my right to be taken immediately before a magistrate.

Township: \_\_\_\_\_ Justice Court: \_\_\_\_\_

You are hereby ordered to appear on the 10 day of Aug, 20 10 at 7:30 a.m. p.m.

Defendant's Signature ☒ Judy Palmieri

Failure to comply with this complaint will constitute a separate offense. The undersigned further states he has just and reasonable grounds to believe, and does believe, that the person named above committed the offense herein set forth, contrary to law, which occurred on the 19th day of May, 20 10 at 10:30 a.m. p.m.

Signature of Officer / Complainant T. Olson "P" No CE121

Rev. 01/08

# **Exhibit D**

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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. )  
 )

**Certified Copy**

CASE NO.: A640631

DEPOSITION OF JUDY PALMIERI

Taken on Tuesday, April 17, 2012

At 1:00 p.m.

At 500 South Grand Central Parkway, Fifth Floor

Las Vegas, Nevada

Reported By: Lori M. Unruh, R.D.R., C.C.R. #389



1 Other than that, everything is about the same as  
2 what we did the other day.

3 The oath you took is the same oath you get in a  
4 courtroom, has the same penalties for perjury, the same  
5 solemnity, same effects as any oath you'd take.

6 Do you understand that?

7 A Yes.

8 Q Okay. To start, I'd like to ask you what is your  
9 current address?

10 A 4302 Callahan Avenue, Las Vegas, Nevada.

11 Q And that was your address back in 2010?

12 A Yes.

13 Q When did you first move there?

14 A The year 2000.

15 Q Prior to 2000 where did you live?

16 A We lived in the Fountains off of Green Valley  
17 Parkway and Robindale.

18 Q Do you remember the address?

19 A 2331 Prometheus Court.

20 Q I know where that is.

21 Okay. Back in 2010 how many pet stores did you  
22 own?

23 A In 2010?

24 Q Yes.

25 A I believe I just had one.

1 Q Okay. Well, I guess I should first ask you, the  
2 incident that caused the complaint here was a search that  
3 happened, as I understand it, May of 2010.

4 Is that your recollection?

5 A Yes.

6 Q Okay. Do you remember how many stores you had  
7 during May of 2010?

8 A Just one.

9 Q Which one was that?

10 A Meadows Pet Center. It's called Frisky Pet  
11 Emporium.

12 Q Okay. And was that owned by you, or was it owned  
13 by a corporation?

14 A It's owned by a corporation.

15 Q Okay. What's the name of the corporation?

16 A Pacific Consolidated Corporation.

17 Q Okay. Is that still in business?

18 A Yes.

19 Q Who owns Pacific Consolidated?

20 A Fred Palmieri, Judy Palmieri.

21 Q Okay. Just you two?

22 A Yes.

23 Q Okay. And the stock was owned half by you and  
24 half by him, or is there a different --

25 A I believe Fred Palmieri owns the majority of the

1 stock.

2 Q Okay. Do you know the percentage?

3 A No, I don't.

4 Q You don't know what percentage you own of that  
5 corporation?

6 A No, I don't.

7 Q Do you have an estimate? Like is it less than a  
8 quarter, more than a quarter?

9 A Less than a quarter.

10 Q You've had other pet stores before May 2010,  
11 haven't you?

12 A Yes.

13 Q Tell me just for a minute what pet stores you've  
14 had over the years.

15 A The corporation owned Bark Avenue Pets.

16 Q That same corporation?

17 A Yes.

18 Feathers & Paws, the Frisky Pet -- Frisky's at  
19 the Boulevard Mall and Frisky's at the Galleria Mall.

20 Q And when did the corporation own Bark Avenue?  
21 When was it in operation?

22 A I believe we closed Bark Avenue Pets -- I can't  
23 remember. I -- I think it was in January of 2010.

24 Q Okay. And Frisky's, you had two locations?

25 A The Boulevard Mall and the Galleria Mall.

1 A Parakeets.

2 Q Okay. At the Feathers & Paws, is that what you  
3 sold there for birds was parakeets?

4 A Mostly parakeets.

5 Q Okay. Do you remember the name of the  
6 distributor in Arizona?

7 A I can't think of his name right now.

8 Q Okay. But all the birds you did get from  
9 suppliers, they were from that one place in Arizona?

10 A Yes.

11 Q I wanted to ask you, you were here for the  
12 depositions a couple days ago of the Animal Control  
13 agents; remember that?

14 A Yes.

15 Q There was a call or contact of some kind from a  
16 person saying they were Kaitlyn Nichols; you understand  
17 that?

18 A Yes.

19 Q What was your history with Kaitlyn Nichols?  
20 She -- I understand she used to work with you, but I don't  
21 know --

22 A She was an employee at Frisky Pet Emporium for  
23 several years off and on.

24 Q Okay. Do you remember what years those would be?

25 A She hasn't worked there for around two years,

1 so -- and it's 2012 now. So before 2010 she worked at the  
2 store.

3 Q Okay. So in May 2010 when this incident  
4 happened, she was -- she was already through, never worked  
5 with you --

6 A Yes.

7 Q -- again, right?

8 Okay. Did you first meet her through the job, or  
9 did you know her before she worked there?

10 A I met her when we hired her.

11 Q And how many -- you mentioned off and on.  
12 How many occasions did she work there?

13 A I believe she worked there three or four  
14 different times.

15 Q All right. Do you know what the total span of  
16 time was that she worked there?

17 A It could have been three years.

18 Q So roughly 2007, '8 and '9; is that what we're  
19 looking at?

20 A Yes.

21 Q I have dog fur on me too.

22 I should tell you that, we have an Eskimo dog we  
23 bought at the Meadows Mall, so --

24 A Oh.

25 Q That was in 2004. So I guess -- was that your

1 operation then?

2 A Yes.

3 MR. POTTER: Put you on the witness list.

4 MR. FOLEY: Yeah. Miniature Eskimo. Anyway...

5 Q All right. What were the -- Kaitlyn Nichols,  
6 back to her, what were the circumstances that would cause  
7 her to leave your employment? I guess she left your  
8 employment three times altogether?

9 A I believe that she was fired twice.

10 Q Fired twice?

11 A Yes.

12 Q Tell me about those. What happened?

13 A One of the times she gave a Bordetella shot, and  
14 she injected it instead of giving it in the nose. It was  
15 in her nasal. And so that was a cause to --

16 I'm sorry, this phone is ringing again. I could  
17 not turn it off.

18 (Brief interruption.)

19 Q (BY MR. FOLEY) Now was that her first firing?

20 A I believe that was her first firing.

21 Q And was she told to give the vaccination to the  
22 pet?

23 A She had been giving vaccinations, and this time  
24 she had made a horrific mistake.

25 Q Did the -- was it a dog or a cat?

1 A A dog.

2 Q Did it die?

3 A We called the vet, and the vet came down and said  
4 that that was a pretty egregious mistake and that there  
5 was not too much that we could do. And eventually yes, it  
6 did die.

7 Q Was that one straw in a camel's back, or was that  
8 the incident -- sole incident that caused her to be fired?

9 A There were other things. Probably not paying  
10 attention to her job, so a couple of things, and then it  
11 ended up in a -- a firing.

12 I think a year later she came back and applied  
13 for a job again, and she always seemed like a -- a nice  
14 young woman, and so we rehired her.

15 Q What were her job duties? Were they always the  
16 same, or did she come back in different capacities?

17 A Sales and animal care.

18 Q Both?

19 A Yes.

20 Q I'm sorry. Not both at the same time?

21 A Yes.

22 Q Then there came a day you hired her back again.  
23 Was it in the same position?

24 A Yes. It was sales but without animal care.

25 Q That makes sense.

1 All right. What precipitated the second firing?

2 A I don't quite remember. It could have been that  
3 we were short of employees, and she had applied again, so  
4 we decided to give her another opportunity, and we did.

5 Q What caused the second firing though, the  
6 termination.

7 A I had a manager, her name was Cindy Orneales, and  
8 she had been managing the store for about a -- a year, and  
9 the holiday season came, it was Thanksgiving, and my son  
10 came to visit, and so I wasn't at the store every day like  
11 I usually am.

12 And when I came over the Thanksgiving weekend to  
13 pick up the drops, I noticed in just briefly looking at  
14 the -- the cash amounts and the ATM amounts that the  
15 numbers quite didn't look right.

16 And so I started going through the drops and  
17 found that there were sales that were rung in as ATM  
18 sales, and there was -- there was nothing on the printout  
19 sheet to show that it was an ATM sale. It was marked in  
20 the register as a sale, but nothing in the machine.

21 And it turned out that she had taken a lot of the  
22 cash that came in and rang them in as ATM.

23 And then it turned out that Kaitlyn and another  
24 employee knew what was going on and turned out that they  
25 were -- Kaitlyn and Cindy and another employee by the name



1 of Javy were all living together. And apparently they had  
2 been stealing money from the store all along.

3 And so when I found that out, I had fired the  
4 manager right away, Cindy. And then I had kept Kaitlyn  
5 and Javy there for a while so that I could find out  
6 exactly what was going on.

7 And then I had them arrested at the store, and  
8 they were both dismissed as employees.

9 Q All right. When you first started telling me  
10 about the cash sales and the ATM, you said she was doing  
11 it.

12 I thought you were talking about Nichols at that  
13 point.

14 A I'm sorry. I was talking about Cindy, the  
15 manager.

16 Q That Orneales?

17 A Yes.

18 Q Okay. And I forget the third person's name.

19 A Javy.

20 Q Javy and Nichols, were they also involved in  
21 getting the money, or they were just not reporting? What  
22 was involved?

23 A They were stealing small amounts of cash.

24 Q So you had three embezzlers?

25 A Yes.

1 Q Wow. Do you think that happened while you were  
2 there managing too or just while you were away during that  
3 Christmas time?

4 A When I went back to look at sales for the past  
5 year, it had been happening for at least a year.

6 Q And all three of them were prosecuted as far as  
7 you know?

8 A I attempted -- I filed charges against Cindy, the  
9 manager. And as it proceeded, there -- they said there  
10 wasn't enough evidence to follow through, so that was  
11 dropped.

12 And then for -- I had Kaitlyn and Javy write  
13 confessions to what they did, and because they wrote  
14 confessions and tried to make good on some of the things  
15 that were stolen, I didn't file any charges against either  
16 one of them.

17 Q Do you still have those written statements?

18 A Yes.

19 Q Do you know where they are?

20 A At my home.

21 Q Would you produce them for us?

22 A Sure.

23 MR. POTTER: You have to send us a request.

24 MR. FOLEY: Okay. We're kind of up against  
25 the -- oh, well. Will do.

1 Q I was going to ask the question why did -- why  
2 would Cindy Orneales want to cause you trouble, but I  
3 guess that's the answer.

4 Do you have any other history with her that would  
5 cause her to want to make false reports?

6 A No.

7 Q Just that termination?

8 A Just the termination.

9 Q And again, that was roughly late 2009, you think?

10 A Yes. It was that Thanksgiving weekend of 2009.

11 Q Oh, and then Javy and Nichols were following  
12 that.

13 Do you know how much longer after that it was  
14 before they were fired?

15 A It was two weeks.

16 Q So December of '09, you think?

17 A Yes.

18 Q Other than that termination, have you had any  
19 relationship with Kaitlyn Nichols since December of 2009?

20 A No.

21 Q How about with Java -- or Javy?

22 A He -- he did call a couple of times asking if he  
23 could have his job back.

24 Q And you said no?

25 A And I said no.

1 Q Okay. What's his last name? I should ask that.  
2 Do you remember?

3 A I can't remember. I know -- I have it written  
4 down. Today I can't remember.

5 Q Do you remember how to spell Javy?

6 A J-a-v-y.

7 Q Oh. Did he say Javy, or did he say Javy?

8 A He liked to be called Javy.

9 Q Okay. Was Cindy Orneales -- how long had she  
10 worked there at the shop?

11 A She worked for the corporation for approximately  
12 five years, five, maybe six years.

13 Q She started as sales or what?

14 A She started in sales. She started at the time I  
15 believe before we remodeled, and it's been seven years  
16 since we remodeled. Yeah. Five -- five or six years.

17 Q When you were -- you mentioned you'd gone back in  
18 your records to try to determine how much they'd taken or  
19 for how long they'd been taking it.

20 Do you have any idea for how long she was taking  
21 money unlawfully?

22 A I could only go back the last year to see that --  
23 when I looked through the receipts to see that some  
24 people, when they came and put a dog on layaway, that they  
25 would print out a receipt for the layaway, and then they

1 would go in there and edit the layaway so that it -- it  
2 wouldn't -- it wouldn't show when they left a copy of the  
3 receipt on the actual layaway form. If I were to come in  
4 and look at it, I wouldn't be able to tell.

5 So it took quite a lot of work to do that. It  
6 was very difficult. And of course when you're not there,  
7 things -- things happen and things are rewritten.

8 It turned out that she could get into the  
9 computer and edit. And then it would change it in the  
10 computer that it was edited, so you could never find, you  
11 know, what it originally was supposed to be because they  
12 could change it -- she could change it.

13 Q As you sit here you can't tell me roughly even  
14 how far back she had been doing these irregularities?

15 A I didn't notice until that weekend. I noticed  
16 there was a problem, and then I tried to go back.

17 Q That's what I mean.

18 Now that you've looked at it, do you have any  
19 idea of how long she had been doing this?

20 A I believe it was for about a year.

21 Q Okay. Prior to that, as far as you knew, she was  
22 a good employee?

23 A Oh, I thought so.

24 Q Did you have any other problems with her  
25 performance at work? Again, I'm talking about Orneales

1     tried to steal the identity of at least one other person,  
2     Nichols?

3             A     Yes.

4             Q     I was wondering do you know of her doing that to  
5     anyone else or any other wrongful acts that she did  
6     besides --

7             A     No.

8             Q     -- this?

9             A     I don't know.

10            I remember in the process of -- of them bringing  
11   merchandise back to the store that Cindy had taken that  
12   there were checks that Kaitlyn found and some scripts of  
13   writing where someone was trying to practice writing  
14   Kaitlyn's signature.

15            Q     All right.

16            A     And I know that the three of them were living  
17   together.

18            And then they found out that the rent hadn't been  
19   paid. They had given Cindy the rent money, and lo and  
20   behold a notice was posted on their door saying they were  
21   being evicted. And also their electricity was turned off,  
22   and they said they had given this money to Cindy to pay  
23   the electric bill and their rent.

24            And this was just right at the same time -- the  
25   holiday time, and they were evicted with nowhere to live.

1 Q So that was like November or December of '09?

2 A December of '09.

3 Q Okay. Do you know if she ever tried to steal  
4 your identity or the corporate identity for credit or  
5 anything like that?

6 A As a matter of fact, I -- about a month before  
7 this incident happened I was at the store and needed my  
8 wallet for some reason, and I looked in my purse, and my  
9 wallet was missing, and I was going crazy trying to find  
10 it.

11 And Cindy said oh, don't worry, you know, I'll  
12 look for it, you probably left it here in the store  
13 somewhere. And I said I don't know why I would do that.  
14 And she said well, don't worry about it.

15 And I went home that night trying to think of  
16 where I had used my wallet last. And I remember going to  
17 Dillard's on the Friday before and that I -- that I used  
18 my Dillard's card that Friday, and so I know that I had  
19 my -- my wallet with everything in it. And this was --  
20 this was Wednesday at the store, and I hadn't had a chance  
21 to -- I didn't need my wallet for anything.

22 And she called me at home and said oh, I -- I  
23 know that you were probably at Dillard's before you came  
24 to the store, and I said no, I wasn't. And she said oh,  
25 yes, you were, you probably just forgot, but Dillard's

1 called and they found your wallet. And I said they found  
2 my wallet? And she said yes, it was in a dressing room.  
3 And she said if you go up to Dillard's now, at customer  
4 service they have your wallet.

5 So I drove very quickly from my home to the  
6 Dillard's in the Meadows Mall, and they had my wallet.

7 But the lady said -- when I was asking her  
8 where -- you know, when did you find this wallet, she told  
9 me it had just been turned in.

10 And Cindy had had Kaitlyn run up to Dillard's and  
11 gave my wallet to customer service.

12 So all my credit cards, my driver's license, was  
13 there, but all the money I had in my wallet was gone.

14 And I -- I knew that I had been at Dillard's on  
15 Friday, but I knew I hadn't just gone to Dillard's. She  
16 made quite a big deal about me going to Dillard's and  
17 probably leaving my wallet in the dressing room. I didn't  
18 think anything of it at the time. I thought, you know, I  
19 don't think that happened, but somehow I was glad that it  
20 was returned.

21 Later on when this happened I -- I just knew that  
22 Cindy was the one who did it.

23 And when I fired her, I said, you know, you --  
24 you took all this money, you rang it in as ATMs, it was  
25 cash, and you pocketed it. I said I suppose you want me



1 to believe now that you didn't take my wallet, and she  
2 didn't say anything.

3 Q How much money was missing out of the wallet, do  
4 you remember?

5 A I only had about \$250.

6 Q I think I heard you right. It sounded like you  
7 said Cindy had sent Nichols to take the wallet to  
8 Dillard's?

9 A Yes. I found that out afterwards from Kaitlyn  
10 that Cindy had her take the wallet up there.

11 Q And she told Nichols to just leave it in a  
12 dressing room?

13 A No. She told her to tell the service desk that  
14 she was in the dressing room and found it in the dressing  
15 room and was a good samaritan and was leaving it up there.

16 Q As far as you know, is that what Nichols did  
17 or...

18 A That's what she told me that she did.

19 Q Nichols told you that?

20 A Yeah.

21 Q Did she say why she went along with it or...

22 A I only can presume why she went along with it,  
23 and that was because they were tied together in a living  
24 situation and also a work situation. And I had not known  
25 at the time that they were living with each other.

1 Q Okay. Kaitlyn Nichols said in a statement she  
2 figures Orneales is the one who called Animal Control in  
3 May of 2010, called the city Animal Control and also  
4 talked to the county Animal Control.

5 Do you have any idea if it was her or not or...

6 A I believe it to be her.

7 Q Okay. What do you base that on? What do you  
8 know?

9 A I base it on the fact that she was at my house.  
10 Cindy -- every Christmas Eve we stay at the store for the  
11 last sale, and we have a Christmas party for all the  
12 employees, so we're not at home.

13 And we -- we did come home earlier than we  
14 thought, and my neighbor came out and said that there was  
15 a girl in blue scrubs that was walking around the house  
16 trying to get into -- into the yard somehow.

17 Q This was when you weren't there.

18 A Yes.

19 Q And you think she did get in your house?

20 A I don't believe she got in, no.

21 Q Oh, all right.

22 So when you said she was at your house, just on  
23 the outside?

24 A On the outside.

25 Q Do you know if she ever was inside your house?

1 (Brief interruption.)

2 THE WITNESS: Sorry. This phone will not say  
3 goodbye.

4 He worked for me off and on for about three  
5 years.

6 Q (BY MR. FOLEY) Just at the Meadows store?

7 A Just at the Meadows store.

8 Q Okay. Other than this incident, did you have any  
9 other problems with him?

10 A He did file a claim with -- I can't think of the  
11 name, I'm sorry, when you think you don't get paid the  
12 right amount. I can't think of the name. The labor  
13 board.

14 Q Oh, for wages?

15 A For -- I believe it was for wages. He felt that  
16 he was cheated on -- on some checks, and so he filed a  
17 claim.

18 And he left my employment, and then he found that  
19 he wasn't cheated. And then he wanted to come back to  
20 work, and I let him come back to work.

21 Q Following his termination, have you had any  
22 contact with him since December of 2009?

23 A Only for an -- an employment verification or  
24 recommendation.

25 Q Indirectly, not directly?

1       A     Indirectly, yeah.

2       Q     All right. Any suspicion on your part that he  
3 might have been the one who called or had someone call the  
4 Animal Control?

5       A     I just don't think it was -- there was anything  
6 in it for him to do that. He seemed like a nice kid other  
7 than getting into a little bit of trouble.

8       Q     Okay. Now was Javy living with the other two  
9 also, or that was some other person?

10      A     Javy and Kaitlyn.

11      Q     And Orneales were all living together.

12      A     Yes.

13      Q     All right. Then move forward to May of 2010, the  
14 Animal Control officers and a police officer came to your  
15 house with a warrant, correct?

16      A     Correct.

17      Q     Tell me what you remember, your first blush with  
18 them, what -- where were you, where were they, what was  
19 said?

20      A     I was upstairs on the other side of the house  
21 from the garage in the master bathroom shower taking a  
22 shower. And I remember my alarm beeping. It goes beep  
23 beep if the window is opened or a door opens. It's set to  
24 chime.

25           And I heard a beep beep, and I thought to myself

1 oh, I left the kitchen window open. And we had had some  
2 problems on the street with police cars, so I thought  
3 maybe somebody was coming in my kitchen window.

4 So I -- I hurried and put some pajamas on that I  
5 had sitting there and started creeping down the stairs.  
6 And then I -- I heard voices, and I didn't know who it  
7 was, but it was coming from the laundry room, not the  
8 direction of the kitchen window.

9 Q Right.

10 A And as I crept around the corner, I could  
11 finally see a -- a uniform, a brown uniform, and heard  
12 people talking. So I came a little closer, and I may have  
13 said, you know, what's going on?

14 Q Okay. Who was the first person you saw? Was it  
15 the policeman or...

16 A I believe it was Dawn Stockman that I saw.

17 Q Okay. You see her uniform today. You think  
18 that's the same uniform, that type --

19 A I believe so.

20 Q Okay. And where were they? They were --

21 A They were standing in the middle of the laundry  
22 room.

23 Q And is that laundry room right off of your side  
24 door to your house?

25 A It's off of the garage and the side gate.

1 Q How did they enter the laundry room? If you  
2 know.

3 A I believe a locksmith let them in.

4 Q Okay. Which door was it?

5 A It would have been the laundry room door on the  
6 side of the house next to the garage.

7 Q The laundry room door opens up to the outside?

8 A To the outside.

9 Q Okay. That's what I was wondering. I'm sorry.  
10 I should have worded that a little better.

11 All right. After you met them, what happened?

12 A I noticed that there was Dawn Stockman and  
13 another Animal Control officer and then a Metro officer.  
14 I thought I saw another person outside the window.  
15 There's a window in the laundry room door.

16 They slowly made their way in. It's a long -- a  
17 long laundry room and -- which leads to another hallway.  
18 There's a bathroom opposite it. And then next to that  
19 would be the door to the garage that's kept open with a  
20 kiddy gate in front of it.

21 They came in, I believe, and entered the family  
22 room area and said something I believe like we have a  
23 warrant to come in. And I said what -- what is this  
24 about?

25 Q Okay. And did they -- at one point someone took

1 you outside, as I heard. I don't know --

2 A The Metro officer I think then said we have a  
3 warrant, you know, come out here and you can read it.

4 And so he kind of pulled me outside. And I said  
5 well, I can't read it, I need glasses, my glasses are  
6 inside. And he said you'll have to wait. They'll have to  
7 check the house. Is there anyone else here? And I said  
8 no, I'm the only one that's here. And so finally he said  
9 I'll let you go in if you won't cause any problems and get  
10 your glasses.

11 So I came in and got my glasses, and then he took  
12 me back outside, where I was already quite anxious, and  
13 tried to read through the pages as quickly as I could to  
14 understand what was going on.

15 Q Where were you during this time, the driveway or  
16 by a side door there?

17 A No. There's a closed yard outside the laundry  
18 room door and the garage. It's all -- it's all walled  
19 off. So we were outside in a little grass area.

20 Q And how long were you out there in that area?  
21 How long did they keep you outside?

22 A To the best of my recollection 20 minutes,  
23 half-hour.

24 Q Then at that point you reentered your house?

25 A At that point I believe he said something like I

1 think they've checked out the house and they're doing  
2 things, and now you can, you know, go inside. If you  
3 don't cause any problems, you can go inside.

4 Q And they -- okay. So then you did go inside.

5 A Yes.

6 Q Okay. At what point did you finally read the  
7 warrant? Was it outside or once you went back inside?

8 A I believe it was outside.

9 Q The reason I'm asking, in the complaint there was  
10 something to the effect that you pointed out to the  
11 policeman or to the Animal Control agents that there were  
12 inaccuracies in the statements there in the affidavit  
13 attached to the warrant.

14 Do you remember when you did that? Was it  
15 outside, inside?

16 A I think that was after. I think that was after  
17 I -- I think after I -- I read the warrant and was trying  
18 to process it, trying to understand what was going on.  
19 There were things that had to sink in first. Plus, I was  
20 kind of anxious because I was in my pajamas, had no  
21 underwear on, no makeup, no shoes, and, you know,  
22 couldn't, you know, process everything right away.

23 I also wondered at that time why nobody rang the  
24 front doorbell. Our doorbell rings through our phone  
25 system, and when you're upstairs -- it's a big house.



1 air conditioned. And he said he had a little girl seven  
2 or eight years old that would just love to be in there.

3 Q Because of the puppies or...

4 A Yes.

5 Q Okay. That's a question I've been wondering all  
6 along in this case.

7 Why did you have so many dogs in your garage?

8 A I was watching some dogs for some of my family  
9 members. I also had dogs from the store there, along with  
10 my own dogs.

11 Q How many dogs were you watching for family  
12 members?

13 A I was watching my son's four dogs, my mother's  
14 three dogs, and then I had my dogs.

15 Q Okay. Who is your son?

16 A My son's name is Corey Palmieri.

17 Q Palmieri? Okay.

18 And he has -- four of those dogs were his?

19 A Yes.

20 Q And what -- was he out of town?

21 A Yes.

22 Q And your mom had three dogs, I think you said?

23 A Three dogs, yes. She had had hand surgery. My  
24 mother was 85 at the time. I was just helping out.

25 Q So you were watching her three dogs.

1 Now how many dogs were there from the store?

2 A Well, there were 21 dogs in all, seven -- three  
3 belonged to my mom, four belonged to my son, and then  
4 three were mine, and the rest were store dogs.

5 Q Okay. Were these dogs that originally were at  
6 the store and you brought them home?

7 A Yes.

8 Q Why didn't you just leave them at the store?

9 A We were at a time when we had a lot of Chihuahuas  
10 in the store, a lot of other breeds too, and they had been  
11 in the store for a while. They were -- weren't really  
12 getting proper exercise. The mall doesn't allow us to  
13 walk any dogs outside, not even in back of the store,  
14 which is our little area.

15 So sometimes I feel sorry for animals and I'll  
16 bring them home and leave them there for three or four  
17 days, or sometimes a little longer if I feel bad for them,  
18 and then I return them.

19 Q Now when you said there were 21 dogs in total,  
20 that's counting the puppies that were there or not  
21 counting them?

22 A Not counting.

23 Q How many puppies were there also?

24 A Five.

25 Q And whose puppies were those?

1 Q All right. So the only ones that were -- I don't  
2 know what to call them except your stock in trade or  
3 whatever. What do you call them?

4 I'm sorry. What do you call your dogs that you  
5 have in inventory at the store?

6 A I call them inventory.

7 Q Okay. How many dogs were your store's inventory  
8 at your house then? About 11, I think, if I counted.

9 A About 11.

10 Q How long had they been there?

11 A For about three weeks.

12 Q All of them you think for about three weeks?

13 A Maybe not all of them, but most of them.

14 Q Okay. Did you have any particular schedule on  
15 when you were going to return them to the store?

16 A No. I usually will return when it's -- it's  
17 convenient for me to carry the kennels. And sometimes  
18 I'll -- I'll run to the store, but I don't have time to  
19 actually take puppies in and out.

20 Q One thing I was wondering in this case was how  
21 strong your suspicion was that Orneales is the one who  
22 called Animal Control. And the reason I'm asking that is  
23 in your mind, is it possible a neighbor called or someone  
24 else?

25 A No. I'm on very good terms with my neighbors,

1           So I just -- I hear that from a lot of people,  
2   that they don't wear their collars, tags.

3       Q     Is that why you didn't have tags on any of these  
4   dogs?

5       A     No, that wasn't the reason.

6       Q     What was the reason?

7       A     On the dogs that came from the store, they had a  
8   rabies certificate. They didn't have a tag. They had a  
9   tag number, so they didn't have a tag.

10      Q     Did you have those certificates with you?

11      A     I had them in a folder.

12      Q     At your house?

13      A     Not all of them, but yes.

14      Q     Some of them you had at the house?

15      A     Some of them.

16      Q     The rest were at the store?

17      A     Yes.

18      Q     There was one other player I was wondering about.  
19             There's a Jeff Dubois, I guess it's pronounced,  
20   or Dubois?

21      A     Yes, Dubois.

22      Q     Do you know him?

23      A     Yes.

24      Q     What's your relationship with him?

25      A     He's a former employee.

40

1 Q Do you remember when he worked at your store?

2 A He worked at the store, oh, I think all the way

3 back to 1995 or '96.

4 Q All right. Was he still working there in 2010?

5 A No. He worked -- the last time he worked for me

6 at the Bark Avenue store -- maybe he came to work there at

7 the end of 2007, and he worked there for maybe I'd say two

8 years.

9 Q At the Bark Avenue?

10 A Yes.

11 Q And then it closed around...

12 A Well, he worked there. And he had another job

13 also. He worked at the Venetian.

14 Q What was his history -- his work history? Did he

15 leave on good terms? Was he terminated also or...

16 A No. He -- he always -- he came and he went,

17 always on -- on good terms. The last time he left it was

18 because he actually wanted to get a job with Animal

19 Control.

20 Q All right. That's when he did his ride-alongs

21 with the Animal Control --

22 A Yes.

23 Q -- people?

24 Had he ever been to your house?

25 A Yes.

1 Q Do you know if he ever went to your garage?

2 A Yes.

3 Q Had he seen animals in there?

4 A He hadn't been to my house for several years, I  
5 think the last time when he was cleaning aquariums for me.

6 Q At your house?

7 A Yes.

8 Q As far as you know he never saw dogs in your  
9 garage?

10 A Oh, he probably did, yes.

11 Q I guess I should ask that.

12 You mentioned bringing your inventory dogs home  
13 to stay with you. Have you been doing that practice for a  
14 long time?

15 A Been doing it for about 18 years.

16 Q What's the highest number of dogs you've had in  
17 your garage there?

18 A Probably this last time.

19 Q This May 2010?

20 A Yes.

21 Q Do you have any idea why he might want to have a  
22 call put in turning you in to Animal Control?

23 A I don't think that he would. I know his parents,  
24 we're friends with his parents, and I know his brothers.

25 Q And they're all friendly towards you?