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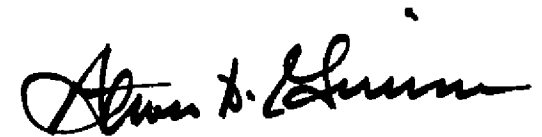
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CLERK OF THE COURT

1 **RTRAN**

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6
7 JUDY PALMIERI,

8 Plaintiff,

9 vs.

10 CLARK COUNTY, a political
11 subdivision of the STATE of Nevada,
12 et al.,

Defendants.

CASE NO. A-640631

DEPT. XXVI

13 BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

14 FRIDAY, DECEMBER 21, 2012

15 **RECORDER'S TRANSCRIPT OF PROCEEDING:**
16 **MOTION FOR SUMMARY JUDGMENT**

17 **APPEARANCES:**

18
19 For the Plaintiff:

CAL J. POTTER III, ESQ.

20
21 For the Defendants:

MICHAEL L. FOLEY, ESQ.

22
23
24 RECORDED BY: ROSALYN NAVARA, COURT RECORDER
25

1 FRIDAY, DECEMBER 21, 2012 AT 9:03 A.M.

2
3 THE COURT: So, page 1, Palmieri v. Clark County.

4 MR. POTTER: Good morning, Your Honor, Cal Potter on behalf of Judy
5 Palmieri.

6 MR. FOLEY: Good morning, Your Honor, Michael Foley for the County.

7 THE COURT: Okay. Now, I probably should disclose as Mr. – I don't
8 think this is a surprise to Mr. Potter, he knows very well. I used to represent
9 Clark County. I don't know that I ever represented anybody involved in animal
10 control but --

11 MR. POTTER: Oh, no problem, Your Honor.

12 THE COURT: Okay. All right. Well, if there's no opposition to the Court
13 continuing then we'll -- we'll continue. I did not report directly to Mr. Foley.
14 My -- I only recuse on things that I -- where -- that Ms. Barker is involved in
15 because I did report to her, but otherwise.

16 MR. POTTER: I think I actually had cases against you with them.

17 THE COURT: Oh, yeah. We -- several [laughing heard].

18 MR. FOLEY: Oh great.

19 THE COURT: So -- we all -- we all -- we've all been here before. Okay,
20 so --

21 MR. FOLEY: Oh, all right.

22 THE COURT: Then, I guess Mr. Foley it's your motion.

23 MR. FOLEY: Oh, all right. I don't have a lot to add to what we said in
24 the motion and the reply, Your Honor. And you're familiar with warrant law. I
25 mean, the standard nowadays is not -- a Reviewing Court isn't supposed to look

1 at the warrant with, you know, a magnifying glass and highly technical thing.
2 Did they oop, forget to cross this t or dot that i? You know, you look at the -- I
3 hate the term -- the Supreme Court keeps saying, "The totality of the
4 circumstances."

5 THE COURT: Right.

6 MR. FOLEY: But the, you know, you look at everything that was before
7 the cop, what did they have? What did it appear to the cop to look like at the
8 time? They fill it out, then -- is that enough for the Judge? In this case, I
9 submit there's plenty of probable cause. I've seen a lot thinner fact situations --

10 THE COURT: Uh-huh.

11 MR. FOLEY: -- sustaining a warrant. Judge Williams was correct in
12 issuing this. It was -- under the standard it's -- was it, to an average person --
13 not by preponderance of evidence, not by -- beyond a reasonable doubt, but
14 just -- did it seem likely that they'd find evidence at the scene of, you know, too
15 many dogs in this case?

16 THE COURT: No, and in this case there are a number of causes of action,
17 Mr. Foley, the --

18 MR. FOLEY: Right.

19 THE COURT: First is a Civil Rights Violation for Malicious Prosecution.
20 The second is Emotional Distress, False Arrest, Unlawful Warrant, Conspiracy,
21 Malicious Prosecution. And then, against Clark County there's the Monell
22 claims, and then the Fourth Cause of Action is Illegal Search and Seizure. Is it
23 your position that all of them go away or --

24 MR. FOLEY: In the end all of them do go away if you find it was a valid
25 warrant. I mean that's their -- their whole claim is that the wrong done -- really

1 it's -- if anything, the evidence shows -- this is after what, a year and a half or
2 so of discovery that -- Negligence, at best. And you know Civil Rights Actions,
3 Negligence's not good enough, it's got to be some intentional wrong or reckless
4 disregard. There's nothing that's ever come up about that, that the officer
5 involved was a Dawn Stockman who's an animal control officer. She gets a
6 call from the city animal control agency, because they got a call from somebody
7 who identified themselves as this Dawn Stockman who used to work for the
8 Plaintiff in her pet shop.

9 MR. POTTER: Believe it's Kaitlyn Nichols.

10 MR. FOLEY: I'm sorry, what did I say?

11 MR. POTTER: Dawn Stockman instead of --

12 MR. FOLEY: I'm sorry, Kaitlyn Nichols -- just the informant. And it gave
13 her a number. Dawn Stockman just happened to be the one who answered the
14 phone that day, you know, she's one of the officers there. So she calls this
15 person who identifies herself over phone as Kaitlyn Nichols and she tells the
16 story about how -- well there's -- I was over there at the house, they've got 20,
17 30 dogs over there. They look like they're in bad health, some of them, and/or
18 bad conditions and -- so, she didn't just take her word at that. She said, "Well,
19 will you fax me a written statement?" Or, "Come in and do a written
20 statement." So she -- she did. She faxed a written statement.

21 And again, looking at the totality of the circumstances, in front of
22 the officer, this looked like a valid statement -- someone who claimed to know
23 the things. It -- it jibbed with the other circumstances that she could verify,
24 that there was this pet store owned by this person or run by this person. This
25 house was owned by that person, it matched up the story. It was zoned for

1 just – you have to get a permit if you want more than three dogs in there.

2 THE COURT: Uh-huh.

3 MR. FOLEY: Everything jibbed, you know, the names, the residences,
4 everything. She's got a written statement in front of her. The written
5 statement, oddly enough, when she showed it at the scene to the Plaintiff, she
6 looked at it and she testified at her deposition, it looked like Kaitlyn Nichols'
7 signature and she'd be familiar with it. She also asked her for a description of
8 this Kaitlyn Nichols and the officer gave her one, and she said, "Well, that
9 sounds like her." She had that colored hair, that short hair, and so and so. So
10 to the officer, how could you say that didn't appear to be who it said it was?"

11 They are taking a claim that where the defect in this warrant is is in
12 not doing a thorough investigation to find out if Kaitlyn Nichols really was who
13 she said she was, you know. I would submit, you know, with the, again,
14 totality of the circumstances, you couldn't do that. I mean, dogs, you know,
15 somebody calls up and says they're having dog fights in this house down the
16 street, every Saturday night, and we say, "Okay, prove that you're Mr. Gomez
17 or you're Mr. Rodriguez," and we get a lot of that stuff; they're going to hang
18 up. They're not – they're not – they don't have documents, you know. I
19 mean, we can't get a passport from these people. We can't get drivers
20 licenses, you know, on a lot of them.

21 So it's -- you know, to put on us a duty that every time we get a
22 witness you must somehow scrutinize who they are. I mean, how are we going
23 to do that? That's –

24 THE COURT: So are you looking at – do you believe that there's
25 both – that there's both qualified immunity? Because it doesn't sound like this

1 was a person who was in a real high level such that –

2 MR. FOLEY: No, she's just a –

3 THE COURT: -- she would have discretionary immunity.

4 MR. FOLEY: -- an animal control officer.

5 THE COURT: She'd have qualified immunity?

6 MR. FOLEY: She was what?

7 THE COURT: She would have – your position is, she would have
8 qualified immunity?

9 MR. FOLEY: Qualified immunity. And under qualified immunity – again,
10 looking at all the circumstances, what an average cop or reasonable cop, you
11 use a subjective – I mean, an objective standard. What they have said, you
12 know, this is something no reasonable cop would have done, you know, and
13 that's the standard in civil rights cases is, you get qualified immunity if you
14 acted basically the way other officers would have acted in the same situation.
15 And this is kind of standard, I mean.

16 THE COURT: Uh-huh.

17 MR. FOLEY: You've seen that. And I would say that the only evidence,
18 really, that they put up is this affidavit of – it says it's from the informant,
19 Kaitlyn Nichols. Now when they look at our affidavit they put on this highly
20 technical thing. Oh you should do this, this – A, B, C, D, E, F, G. If you miss
21 any one of those it's an invalid affidavit, invalid warrant. But on theirs, you
22 know, they don't follow the local rules, the local -- you know, local rules that
23 says you got to put in the affidavit – was it local Rule 2.21 or 2.26? You have
24 to say it's for this motion. You have to say on whose behalf you're doing it.

25 This clearly fails. It's just a hearsay statement they pulled out of

1 the drawer from before this case was filed. And, you know, that doesn't –
2 that's not admissible but you know, even if you take it as true it's – all it says
3 is somebody else stole her identity. So if – if this person who stole her identity
4 was so good at copying her, then it's not unreasonable for a cop to believe it
5 too.

6 THE COURT: Okay.

7 MR. FOLEY: How could we have known? Anyway. Finally, just – on all
8 the intentional torts, and I think the biggest thing I've got for you is -- if you're
9 not going to go with taking them all out but I, you know, in a Rule 56 you're
10 supposed to state what facts are left. You've got to rule, basically, it was an
11 invalid warrant to sustain any other cause of actions. I don't think that's there,
12 but there's still absolutely no evidence of any malice or intentional conduct on
13 the part of this particular animal control officer, and are seeking punitive
14 damages against her which, of course, is disturbing to her.

15 Straight up questions that we asked, you know, we had it in
16 our -- attached to our motion. Ask the Plaintiff, you know, do you think Dawn
17 Stockman did this intentionally to you? No, do you think she had any malice for
18 you? No. You know, I mean, so you got direct evidence from the Plaintiff – no
19 malice, you know.

20 THE COURT: Well, as I – as I read the Complaint, I think that the Plaintiff
21 viewed that there was some history of the department – I don't know, I guess
22 for lack of a better term –

23 MR. FOLEY: Out to get her is what she kept --

24 THE COURT: -- tar – targeting, focusing on her in some way?

25 MR. FOLEY: Yeah. But –

1 THE COURT: But she didn't – she didn't ascribe that to Dawn Stockman
2 and it's Dawn Stockman –

3 MR. FOLEY: No.

4 THE COURT: -- who's being –

5 MR. FOLEY: Right. She's the one you'd be getting with personal punitive
6 damages.

7 THE COURT: Right. And it's more overall that the department was
8 somehow predisposed --

9 MR. FOLEY: Well –

10 THE COURT: -- to –

11 MR. FOLEY: -- that's what they claim but in – then again, look at –
12 there's no evidence of it. All these cases – all these claims fail because there's
13 nothing. There's just her subjective – I feel picked on.

14 THE COURT: Uh-huh.

15 MR. FOLEY: And when you ask her about it, you know, it was in there
16 she's – she got citations. They gave her tickets is all. They didn't arrest her,
17 didn't, you know -- like some of those cases we cited where they found
18 qualified immunity. They actually had one of that – that one woman on the
19 floor she thought she heard a gun click behind her and so forth.

20 THE COURT: She wasn't being restrained?

21 MR. FOLEY: You know, they cuffed her, they held her, they arrested her,
22 whatever. This case they wrote a ticket and left, you know, and that was it.

23 THE COURT: Uh-huh.

24 MR. FOLEY: And the previous occasion it was the same thing. There
25 was a – Officer Harney wrote her a ticket, you know, they didn't – didn't arrest

1 her, didn't take her into custody. I mean this is not outrageous conduct. It's
2 not the stuff punitive damages are made of it's – and again, two or three
3 incidents in several years in a regulated industry.

4 I mean, this gal runs a pet shop. She's running dogs out of
5 her garage, 20 some dogs. She's admitted she did that for years. To only get
6 tickets a couple times, I'm not sure, if anything, there's negligence in not citing
7 her enough. I mean --

8 THE COURT: Okay.

9 MR. FOLEY: -- it's an ongoing problem. Anyway. The rest of it I just --
10 is there probable cause from that warrant? And if you say yes, it pretty much
11 wipes out all the other ones, because that's the missing element.

12 THE COURT: All right. Thank you.

13 MR. FOLEY: Thank you, Judge.

14 MR. POTTER: Your Honor, the -- first of all, the facts, they're all in
15 dispute, and we've pointed those out to the Court. *Anaheim v. Drummond* is
16 the leading case out of the 9th Circuit dealing with Civil Rights Violations and
17 saying that most of them are factually oriented. What you have here is a false
18 affidavit and false in the sense that there was no effort made by Dawn
19 Stockman to confirm the identity of this Kaitlyn Nichols.

20 This isn't a situation where they're just receiving a Complaint. They
21 go to a district court judge, obtain a warrant to do a search on my client's
22 home. At the time when the search takes place she's in the shower. And I
23 would submit to you that she hears something out front. Whether it's on her
24 front door, they then enter by the side, but she comes down. She has no
25 knowledge of what was going on. They talk about Kaitlyn Nichols. She knows

1 Kaitlyn Nicholas has never been to her home, but this is after the warrant has
2 been – has been obtained.

3 *Franks v. Delaware* is the case that deals with the issue of whether
4 you remove the issues that are false in nature, and if they're false in nature and
5 removed and there's no probable cause --

6 THE COURT: Okay, so the – where's the – the false affidavit? The false
7 affidavit is Ms. Stockman's affidavit? Or it's this Kaitlyn –

8 MR. POTTER: No, it's – it's --

9 THE COURT: -- the putative Kaitlyn --

10 MR. POTTER: It's – well, it's the statement made by Dawn Stockman.
11 Dawn Stockman is the one that files the affidavit to obtain the warrant from
12 Judge Williams.

13 THE COURT: Uh-huh.

14 MR. POTTER: If you pull out those facts. I mean, she avers to His
15 Honor, Judge Williams, that, in fact, these statements have been made by this
16 individual. They're not, and there isn't any good faith exception here because
17 there was no effort made to make any type of confirmation of identity. This
18 isn't a situation where people are just calling in and giving some type of
19 complaint about a barking dog.

20 What occurs here is they go and get a warrant. And the reason
21 they go and get a warrant is because in the past they would – they had tried to
22 go into her house. And the statements made are from two and a half to four
23 years ago. So all of these questions of fact go against the County, because if
24 you pull out the statements that are attributed to Kaitlyn Nichols by Dawn
25 Stockman they don't – they don't stand.

1 And we've got a pattern, not only of representation here, but as the
2 felony charges – Rick Wright is listed as a witness here. He's the one that
3 defended her on the felony charges. I've had her on several cases in the – at
4 the misdemeanor level involving, not only the City of Las Vegas, more
5 particularly, the County.

6 And what occurred in terms of showing the pattern of vindictive
7 prosecution and retaliatory nature, is the one that counsel just talked about or
8 touched upon, prior to this, where there was one charge filed by this Harney
9 who was self-described as trying to get her and that she was a Nazi feminist or
10 whatever. But then, when she wouldn't take a plea they came with another 21
11 counts, and ultimately, all those cases have always been dismissed because
12 they're, by nature, malicious in the prosecution.

13 So what occurred here is, I filed a Motion to Suppress. They didn't
14 oppose it and the case was dismissed. And I would submit to Your Honor that
15 you not only have a violation because of the *Franks v. Delaware*, the false
16 representations made, but to Judge Williams, that were offered for probable
17 cause.

18 THE COURT: Now again, this is my -- where I'm not following because if,
19 as Mr. Foley contends, the officer got this information, she had no reason to
20 doubt that the person was Kaitlyn Nichols and that she was relying on it in
21 good faith and going and getting a warrant. Or is it your position that no –
22 nobody ever made those representations to his [indiscernible].

23 MR. POTTER: No, representations were made, at best, anonymous but in
24 the name of Kaitlyn Nichols.

25 THE COURT: Okay.

1 MR. POTTER: What Dawn Stockman testified to is, they had no policy or
2 practice to confirm the identity of the individuals, that's where the Monell claim
3 comes in. There's a failure to do basic police work. You've got to know who's
4 making the Complaint. You're basing your affidavit and your credibility and
5 reputation to a District Court Judge to obtain a warrant. And if you remove the
6 facts that are attributed to Kaitlyn Nichols, there is no probable cause; it's that
7 simple.

8 And they ratified her conduct. We took the supervisors
9 depositions. They ratified the conduct that they don't make any effort to
10 determine the identity. If you take Kaitlyn Nichols or the statements attributed
11 to Kaitlyn Nichols out of Dawn Stockman's affidavit in support of the arrest
12 warrant, the whole thing falls. And counsel is correct, there is a factual
13 question as to all of this, and it's a jury's determination as to whether, in fact,
14 there's a material misrepresentation under *Franks v. Delaware*.

15 THE COURT: Okay. Now, do we have the testimony of Ms. Nichols?

16 MR. POTTER: Kaitlyn Nichols is in the Navy and that's -- that was the
17 problem, she --

18 THE COURT: Uh-huh.

19 MR. POTTER: She was out of jurisdiction at the time. I mean, we've
20 been in contact with her. But the representations, I submit to you, were made
21 pursuant to the Motion to Suppress. And I believe that they're still valid
22 because those are -- those are the only words we have from her at this point in
23 time.

24 THE COURT: Uh-huh. Well, because that's kind of the problem that I --
25 that I have here is that if Ms. Nichols -- if somebody else called in and said: I'm

1 Kaitlyn, this is my information and it's relied on in -- and the officer had no
2 reason to disbelieve it and went and got the warrant. It's like I -- as I
3 understand what you're saying is that, Kaitlyn says that, but that wasn't me.
4 Although we don't actually have a deposition from her --

5 MR. POTTER: Right.

6 THE COURT: -- and that's kind of the concern that I have and -- so where
7 are we? This case is set for trial in April of 2014. Do we know when Ms.
8 Nichols is going to be available?

9 MR. POTTER: She's supposed to be back in the jurisdiction. Because the
10 motions were pending --

11 THE COURT: Yeah.

12 MR. POTTER: -- I haven't got back in touch with her mother but -- no,
13 she's supposed to be back in the jurisdiction from time to time.

14 MR. FOLEY: She's --

15 THE COURT: Okay.

16 MR. FOLEY: -- she joined the Navy. Before discovery's cut off we --

17 MR. POTTER: We tried to get --

18 MR. FOLEY: We tried to get her. She left.

19 THE COURT: Right.

20 MR. FOLEY: She was in the Great Lakes place for training and then she's
21 going to be on some ship somewhere so -- if she does come back we don't
22 know when or how.

23 THE COURT: Yeah. You know, I guess -- this is the problem that I have
24 with this is that on -- I -- I understand the argument that, but I don't know that
25 we have any testimony that this -- it violated standards of reasonable, you

1 know, I mean, are they – are they held to the same standard as any other police
2 agency I guess would be –

3 MR. POTTER: Right.

4 THE COURT: -- the first thing. I mean, do we have any testimony that
5 says they're held to that same standard and they're supposed to do the same
6 kind of investigation that Metro does or that the DEA does, or the, you know,
7 some police agency would do in – this is animal control.

8 MR. POTTER: It doesn't matter because they went and got a warrant and
9 they're acting in the same capacity as Metro. In fact, they had Metro with
10 them or the DEA. It's a Constitutional standard because they're going to get a
11 warrant and it implicates the 4th Amendment rights of my client, and therefore,
12 and they're held to the same standards. I mean, if you want that briefed. I
13 thought it was obvious because of the fact they're getting a warrant.

14 THE COURT: Because – because it's a warrant.

15 MR. POTTER: Yes.

16 THE COURT: Okay, so --

17 MR. POTTER: I mean if it were just the – the barking dog complaint it
18 might be a different argument.

19 THE COURT: If they'd just gone in and just given her a misdemeanor or a
20 citation but –

21 MR. POTTER: Right.

22 THE COURT: -- because they've got the warrant. Okay, now I
23 understand why you're saying –

24 MR. POTTER: Yeah.

25 THE COURT: -- they're held to that standard. That, in not having the

1 same kind of procedures that the police follow which is, are you really Kaitlyn?
2 How do I – how do I confirm this information? I – I understand Mr. – Mr.
3 Foley's argument is, you know, that's not going to happen because the kinds of
4 tips that we get are from neighbors who are unhappy and this is the standard
5 under which we operate.

6 MR. POTTER: And normally they don't go and get warrants --

7 THE COURT: Okay.

8 MR. POTTER: -- that's the problem.

9 THE COURT: Okay. This – this is my last – my last concern is that we
10 have – you know, I don't know that we could call it a stale affidavit; it's an
11 affidavit, but it does predate this whole litigation and – and Mr. Foley's not had
12 an opportunity to cross-examine Ms. Nichols. So I guess that I – I have a
13 concern about the question of fact being raised in an affidavit when he's not
14 had an opportunity --

15 MR. POTTER: Yeah, I mean we –

16 THE COURT: -- to examine.

17 MR. POTTER: -- we get to argue it on a 56(f) type argument and allow us
18 to continue the discovery. And we've both made efforts to try and get ahold of
19 her.

20 THE COURT: Just – okay. Well, let me talk to Mr. Foley a little bit more.

21 MR. FOLEY: Well, on that last –

22 THE COURT: Yeah, Mr. Foley, only because we've got until April of
23 2014 –

24 MR. FOLEY: Yeah.

25 THE COURT: -- and we haven't been able to depose Ms. Nichols and my

1 kind of –

2 MR. FOLEY: Yeah.

3 THE COURT: -- hesitating, because I [sneeze heard]. I don't – I agree
4 with you, I don't like saying that you have question of fact raised here when
5 this was an affidavit used for a different purpose, I guess to contest the
6 criminal charges --

7 MR. FOLEY: Uh-huh.

8 THE COURT: -- so I'm a little concerned about it, but on the other hand, I
9 think we should be allowed to depose her. And just because we have discovery
10 cut off but we don't have a trial date. I don't know why you're trying to --

11 MR. FOLEY: I was trying to depose her too.

12 THE COURT: -- set it so far.

13 MR. POTTER: Yeah, we – we were in agreement –

14 THE COURT: Yeah.

15 MR. FOLEY: I didn't file this until we waited until –

16 MR. POTTER: Yeah.

17 THE COURT: That's what I –

18 MR. FOLEY: -- discovery closed and –

19 THE COURT: I understand that and – and but with our trial date set a
20 whole year and almost –

21 MR. FOLEY: Yeah.

22 THE COURT: -- a year and four months out, I would be inclined – and I –
23 I guess the County doesn't have to pay. I was going to say we could continue
24 it because they usually let people have a chance to do their discovery. I don't
25 think the County pays the filing fee --

1 MR. FOLEY: Uh-huh.

2 THE COURT: -- because it's what, \$450 to file a summary judgment
3 motion. So I just -- I'm a little -- I'd like to know that we've got -- if we're -- if
4 we're not going to be able to have Ms. -- because the problem is, we're not
5 going to have her for trial.

6 MR. POTTER: But she was in boot camp at the time we were trying to
7 get her was part of the problem.

8 THE COURT: Yeah. I mean are we going to even have her for trial? I
9 mean --

10 MR. FOLEY: Yeah, but --

11 THE COURT: -- she could be on a ship at the time of trial so --

12 MR. FOLEY: Yeah, exactly.

13 THE COURT: -- if you're going to rely on her at -- for -- for a trial then --

14 MR. POTTER: Yeah.

15 THE COURT: -- you know you --

16 MR. POTTER: We can go ahead and get her deposed.

17 THE COURT: Need her deposed anyway. So that's my concern is just
18 that this -- it kind of all turns on whether Kaitlyn's, you know, how it was put
19 forward that this --

20 MR. FOLEY: Yeah.

21 THE COURT: -- was Kaitlyn and, you know --

22 MR. FOLEY: All right.

23 THE COURT: -- can we actually establish that no, this was false and that
24 some effort should have been made to confirm that it wasn't false. Because it
25 sounds to me like Ms. Stockman relied on it. I have -- I believe that she relied

1 on it, and under her policies and her procedures and her good faith, she relied
2 on it. But, you know, was it actually false? Was there somebody – what were
3 the –

4 MR. FOLEY: Right.

5 THE COURT: -- indicia that there was – that this was actually Kaitlyn?
6 That's the – kind of the concern I have –

7 MR. FOLEY: Right.

8 THE COURT: -- and when we haven't deposed her --

9 MR. FOLEY: All right. Well –

10 THE COURT: -- it makes me a little –

11 MR. FOLEY: All right. See, now our motion's based on the fact that, you
12 know, what if it is true? What if she – we take her deposition --

13 THE COURT: Right.

14 MR. FOLEY: -- and she says: No, I didn't do it it was that awful Cindy
15 that I used to work for, she was a store manager, she stole my identity, she got
16 credit cards, whatever she did.

17 THE COURT: Uh-huh.

18 MR. FOLEY: And I would – the response to that from us is, so what. I
19 mean --

20 THE COURT: So what. Uh-huh.

21 MR. FOLEY: -- under the circumstance – and that one issue you brought
22 up. We cited that case, that *Croom v. Balkwill*. It talked about when you have
23 a minimal intrusion – and again, that was the one where they had the woman
24 on the floor and everything, but it was two hours they were searching her
25 house, but they didn't arrest her at the time. They didn't, you know, beat her

1 or anything like that and they said you – you actually can get by with less than
2 probable cause if the intrusion is low .

3 Now on this one, they went into her garage, found the 25
4 dogs, whatever it was, wrote her tickets and left, I mean.

5 THE COURT: Uh-huh.

6 MR. POTTER: That's not what happened though.

7 MR. FOLEY: And –

8 THE COURT: Okay. Well --

9 MR. POTTER: They went over the fence, they went through the back
10 door –

11 MR. FOLEY: Yeah.

12 MR. POTTER: -- into her house.

13 THE COURT: Yeah, well –

14 MR. POTTER: She's upstairs.

15 MR. FOLEY: Went the side door, that's right.

16 MR. POTTER: I mean, it's like a psycho situation so –

17 THE COURT: But – well –

18 MR. POTTER: -- he can try and deminimize and minimize but –

19 THE COURT: Right.

20 MR. POTTER: -- but the factual question --

21 MR. FOLEY: Well, it's still less than –

22 MR. POTTER: -- is still there.

23 MR. FOLEY: -- cuffing her, holding her on the floor.

24 THE COURT: I – we don't really need to get into all the facts of –

25 MR. POTTER: Yeah, right.

1 THE COURT: -- how they did the search.

2 MR. POTTER: But if -- if the Court -- I would welcome the opportunity --

3 MR. FOLEY: But again it --

4 MR. POTTER: -- to try and get the deposition --

5 THE COURT: Yeah.

6 MR. POTTER: -- done.

7 MR. FOLEY: And in our reply we --

8 THE COURT: I appreciate you --

9 MR. FOLEY: -- we gave you that case of *Fabric Amp* when he said --

10 THE COURT: Right, yeah.

11 MR. FOLEY: -- you know, it doesn't matter if you're lying --

12 THE COURT: It's compelling, right.

13 MR. FOLEY: -- it's what statements were made to the cops at the time --

14 THE COURT: Right.

15 MR. FOLEY: -- and, you know, if you claim later they were lying, so

16 what, you know.

17 THE COURT: Okay, I appreciate what you're saying --

18 MR. FOLEY: All right, so --

19 THE COURT: -- Mr. Foley.

20 MR. FOLEY: I'll -- we'll --

21 THE COURT: And it may make no differ -- it may make no difference, but

22 I -- I view this as Mr. Potter having asked for a 56(f). He's given us an affidavit

23 --

24 MR. FOLEY: All right.

25 THE COURT: -- as somebody that would dispute it. Whether it's going to

1 make any difference, ultimately, I'm not -- I'm not ruling on that --

2 MR. POTTER: All right.

3 THE COURT: -- at all. I am not ruling on whether I -- I -- because Mr. --

4 MR. FOLEY: We're asking you to rule on that.

5 THE COURT: Mr. Foley's made very compelling arguments, but where
6 we've got basically a 56(f) request, you know, I'll grant it as a 56(f) request. I
7 don't -- I'm not reopening discovery, I'm just saying that --

8 MR. POTTER: Right.

9 THE COURT: -- with respect to that witness --

10 MR. POTTER: That's fine.

11 THE COURT: -- who --

12 MR. FOLEY: All right.

13 THE COURT: -- Mr. Potter believes is compelling. I have no idea if it'll
14 make a difference in the long run or not, but there is a witness out there who
15 can't be deposed for nobody's fault but just that --

16 MR. FOLEY: Uh-huh.

17 THE COURT: -- she's in -- she's in the military and she's just not
18 available. So, I don't know, do you want to put it on for a status check to
19 come back and say she's not going to be available in the next 18 months?

20 MR. FOLEY: Okay.

21 THE COURT: Continue it six months maybe to see --

22 MR. POTTER: That's fine.

23 THE COURT: -- if you're able to -- if she comes back on leave or anything
24 --

25 MR. POTTER: Yeah.

1 THE COURT: -- and can give a deposition. As I said, I'm not ruling right
2 now on whether I think it -- whether I think her testimony makes a big
3 difference or not I --

4 MR. POTTER: Okay, that's fine.

5 THE COURT: -- because Mr. Foley's got compelling arguments here. But
6 you -- basically it's a 56(f) request to do this one -- one last witness who you
7 believe will show that this was a false affidavit.

8 MR. POTTER: That's fine.

9 THE COURT: We'll see.

10 MR. POTTER: Thank you.

11 COURT CLERK: Okay. That'll be June 21st, 2013, 9 a.m., in Courtroom
12 3H.

13 THE COURT: Okay.

14 MR. POTTER: Thank you.

15 MR. FOLEY: All right.

16 THE COURT: Be on the third floor.

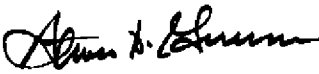
17 MR. POTTER: Congratulations on the new courtroom.

18
19 [Proceedings concluded at 9:28 a.m.]
20
21

22 ATTEST: I do hereby certify that I have truly and correctly transcribed the
23 audio/visual recording in the above entitled case to the best of my ability.

24 
25 _____
Kerry Esparza, Court Recorder/Transcriber
District Court, Department XXVI

1 **NEOJ**
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 Defendant
15 Clark County


CLERK OF THE COURT

9 DISTRICT COURT
10 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

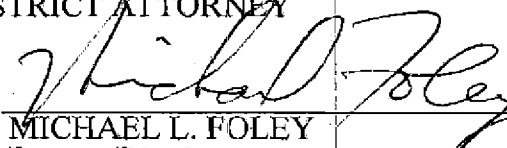
NOTICE OF ENTRY OF ORDER
REGARDING MOTION FOR
SUMMARY JUDGMENT

19 NOTICE IS HEREBY GIVEN that the attached Order Regarding Motion for
20 Summary Judgment was filed on the 17th day of January, 2013, a copy of which is attached
21 hereto.

22 DATED this 17TH day of January, 2013.

23 STEVEN B. WOLFSON
24 DISTRICT ATTORNEY

25 By:

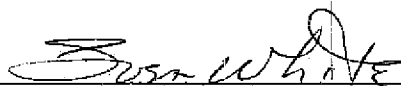

26 MICHAEL L. FOLEY
27 Deputy District Attorney
28 State Bar No. 3669
500 South Grand Central Pkwy. 5th Flr.
P. O. Box 552215
Las Vegas, Nevada 89155-2215
Attorney for Defendant
Clark County

JAN 21 2013

1 **CERTIFICATE OF MAILING**

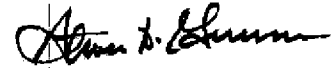
2 I hereby certify that on the 18TH day of January, 2013, I deposited in the United
3 States Mail, postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, a copy of
4 the above and foregoing **Notice of Entry of Order Regarding Motion for Summary**
5 **Judgment** addressed as follows:

6 Cal J. Potter, III, Esq.
7 John C. Funk, Esq.
8 1125 Shadow Lane
9 Las Vegas, Nevada 89102
10 *Attorneys for Plaintiff*

11 
12 _____
13 An Employee of the Clark County District
14 Attorney's Office – Civil Division
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CLERK OF THE COURT

1 **ORDR**
2 STEVEN B. WOLFSON
3 District Attorney
4 **CIVIL DIVISION**
5 State Bar No. 1563
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

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

**ORDER REGARDING MOTION FOR
SUMMARY JUDGMENT**

19 The Defendant's Motion for Summary Judgment came on for hearing December 21,
20 2012. Since one of the potential witnesses in this action was unavailable for deposition due
21 to her joining the Navy, the Court found that no decision on the Motion will be made at this
22 time and, pursuant to Rule 56(f), will give the parties more time to take the deposition.
23 Either party may re-notice the Motion if the deposition is obtained or if it appears the
24 deposition cannot be taken.

25
26
27 ///

28 ///

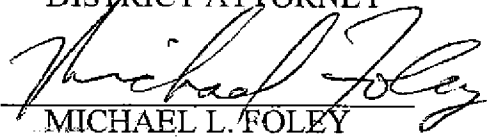
1 A status check on the matter is set for June 21, 2013 at 9:00 a.m.

2 DATED this ____ day of January, 2013.

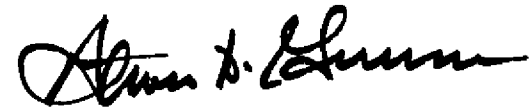
3
4 
District Court Judge

5 Respectfully submitted by:

6 STEVEN B. WOLFSON
7 DISTRICT ATTORNEY

8 By: 

MICHAEL L. FOLEY
Deputy District Attorney
State Bar No. 3669
500 South Grand Central Pkwy. 5th Flr.
P. O. Box 552215
Las Vegas, Nevada 89155-2215
Attorney for Defendants



CLERK OF THE COURT

1 **SR**
2 CAL J. POTTER, III, ESQ.
3 Nevada Bar No. 1988
4 POTTER LAW OFFICES
5 1125 Shadow Lane
6 Las Vegas, Nevada 89102
7 Ph: (702) 385-1954
8 Fax: (702) 385-9081
9 *Attorney for Plaintiff*

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

8 JUDY PALMIERI,
9
10 Plaintiff,

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

10 v.

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

15 Defendants.

16 _____ /
17 **PLAINTIFF'S STATUS REPORT**

18 TO: Eighth Judicial District Court Judge Sturman;

19 TO: Defendants, CLARK COUNTY and DAWN STOCKMAN; and

20 TO: MICHAEL FOLEY, ESQ., Deputy District Attorney, their attorney

21 COMES NOW, the Plaintiff, JUDY PALMIERI, by and through her counsel, CAL J.
22 POTTER, III, ESQ. of POTTER LAW OFFICES and hereby submits this Status Report
23 regarding the attempts to depose Kaitlyn Nichols.

24 ///

25 ///

26 ///

27 ///

28 ///

1 The Plaintiff has made two (2) attempts to serve Kaitlyn Nichols for a deposition, but
2 Kaitlyn Nichols remains in the Navy and is currently stationed in Virginia. (See, attached
3 Affidavit of Attempted Service). Plaintiff's staff has made an attempt to contact Mr. Nichols,
4 Kaitlyn's father, but at the time of filing this Status Report, has not received a response.

5 DATED on this 20th day of June, 2013.

6 POTTER LAW OFFICES

7 By /s/ Cal J. Potter, III, Esq.
8 CAL. J. POTTER, III, ESQ.
9 Nevada Bar No. 1988
10 1125 Shadow Lane
11 Las Vegas, Nevada 89102
12 *Attorney for Plaintiff*
13
14

15 **CERTIFICATE OF SERVICE**

16 I HEREBY CERTIFY that pursuant to the Amended EDCR 7.26 and to NRCP5(b) on the
17 20th day of June, 2013, I did serve at Las Vegas, Nevada a true and correct copy of
18 **PLAINTIFF'S STATUS REPORT**, on all parties to this action by:

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

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

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Sandra Savage, being duly sworn say: That at all times herein affiant was and is over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

THAT on June 1, 2012, at approximately 10:10 a.m., affiant arrived at 1325 Scenic Way, Las Vegas, Nevada. Affiant observed that there were no vehicles parked at the residence and there was no interior lighting. Affiant received no response at the residence. Affiant placed, in the frame of the front door, a business card with a message for anyone at the residence to telephone affiant. To date, affiant has not received a telephone call from any resident at this address.

THAT on this same date, at approximately 10:31 a.m., affiant arrived at 720 Chabot Dr., Las Vegas, Nevada. Affiant spoke with a female who identified herself as the grandmother of Kaitlyn Nichols. Said female was very cordial. Said female advised affiant that "about a month ago, Kaitlyn joined the Navy." Said female further advised affiant that "Kaityln is in Chicago for training." Said female stated that she had no contact information for Kaityln Nichols. Affiant gave said female a business card and asked that, in the event Kaitlyn Nichols contacted her, to please ask Ms Nichols to telephone affiant. Affiant exited the premises. To date, affiant has not received a telephone call from Kaitlyn Nichols.

THAT affiant was instructed to cease further attempts to effect service of the said documents upon Kaitlyn Nichols.

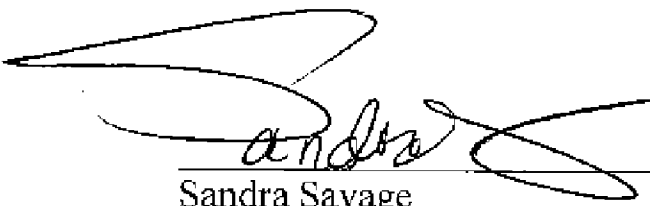
/ / / / /

1 THAT on June 18, 2013, affiant received one (1) copy of CORRESPONDENCE
2 ADDRESSED TO KAITLYN NICHOLS WITH ATTACHED AFFIDAVIT OF KAITLYN
3 NICHOLS, SUBPOENA - CIVIL, and AMENDED NOTICE OF TAKING DEPOSITION OF
4 KAITLYN NICHOLS, in CASE No. A-11-640631-C, for service upon Kaitlyn Nichols at 720
5 Chabot Dr., Las Vegas, Nevada.

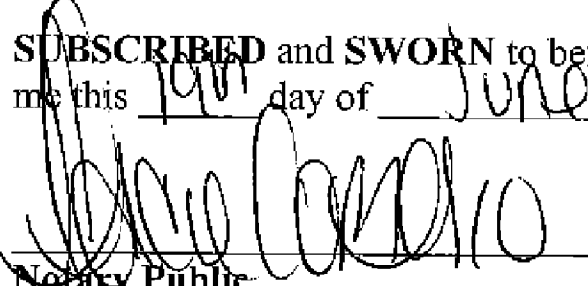
6 THAT on this same date, at approximately 2:10 p.m., affiant arrived at the said address.
7 Affiant spoke to an adult male who identified himself as the brother-in-law of Kaitlyn Nichols.
8 Said male, on his left shoulder, was wearing an ID card - Fellowes, Edwin Cohen. Mr. Cohen
9 stated that Kaitlyn was currently serving in the Navy and stationed in at the Naval Base in the
10 State of Virginia. Affiant asked Mr. Cohen for contact information for Kaitlyn Nichols. Mr.
11 Cohen stated that he had no cellular telephone number or address for Kaitlyn Nichols. Mr.
12 Cohen further stated that "Kaitlyn never calls us. She only calls her Dad." Affiant asked Mr.
13 Cohen for contact information for the father, hereinafter referred to as Mr. Nichols, of Kaitlyn
14 Nichols. Mr. Cohen asked affiant to wait and said he would "go get my cell phone". After a few
15 minutes, Mr. Cohen returned with his cellular phone. Mr. Cohen consulted the cellular telephone
16 and stated that the residence telephone number for Mr. Nichols to be 702-631-0850. Affiant
17 asked Mr. Cohen if Mr. Nichols also had a cellular telephone number. Mr. Cohen again
18 consulted his cellular telephone and stated the cellular telephone number for Mr. Nichols to be
19 702-215-2120. Mr. Cohen did not know the residential address of Mr. Nichols. Affiant gave Mr.
20 Cohen a business card, and asked Mr. Cohen, in the event that Kaitlyn Nichols contacted him,
21 to ask Kaitlyn Nichols to contact affiant. Affiant exited the premises at approximately 2:25 p.m.

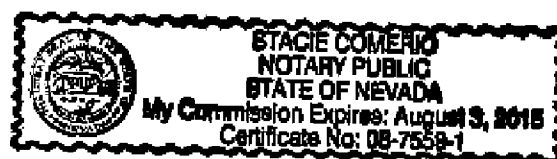
22 THAT also on this same date, affiant advised the Potter Law Offices of the results of the
23 conversation with Edwin Cohen, brother-in-law of Kaitlyn Nichols. Affiant was advised to
24 cease further attempts to serve the said documents upon Kaitlyn Nichols, pending further
25 instructions.

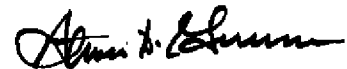
26 EXECUTED this 18th day of June, 2013.

27 
Sandra Savage
Process Server R-051664
The Advantage Group
706 S. Eighth Street
Las Vegas, NV 89101
License #631

28 SUBSCRIBED and SWORN to before
me this 18th day of June, 2013.


Notary Public




CLERK OF THE COURT

RNOT
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
Attorneys for Defendant
Clark County

DISTRICT COURT
CLARK COUNTY, NEVADA

JUDY PALMIERI,

Plaintiff,

vs.

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

Defendants.

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

**RE-NOTICE OF MOTION FOR
SUMMARY JUDGMENT**

Date of Hearing:

Time of Hearing: 9:00 a.m.

Please take notice that Defendants will bring their Motion for Summary Judgment on
for hearing in Department XXVI at the hour of 9:00 a.m. on the 1 day of ^{November}~~October~~, 2013.
At the prior hearing on the Motion, the Court granted relief under Rule 56(f) to allow more
@ 9:00 am

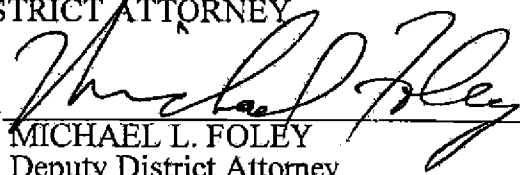
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1 time to take a deposition and ruled that either party may re-notice the Motion if the
2 deposition is obtained or if it appears that the deposition cannot be taken.

3 DATED this 25TH day of September, 2013.

4 STEVEN B. WOLFSON
5 DISTRICT ATTORNEY

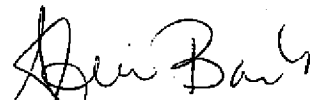
6 By: 

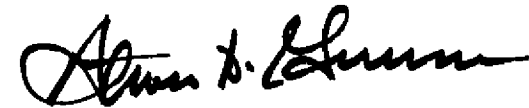
7 MICHAEL L. FOLEY
8 Deputy District Attorney
9 State Bar No. 3669
10 500 South Grand Central Pkwy. 5th Flr.
11 Las Vegas, Nevada 89155-2215
12 Attorney for Defendant
13 Clark County

14 **CERTIFICATE OF MAILING**

15 I hereby certify that on the 26 day of September, 2013, I deposited in the United
16 States Mail, postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, a copy of
17 the above and foregoing **Re-Notice of Motion for Summary Judgment** addressed as
18 follows:

19 Cal J. Potter, III, Esq.
20 John C. Funk, Esq.
21 1125 Shadow Lane
22 Las Vegas, Nevada 89102
23 *Attorneys for Plaintiff*

24 
25 An Employee of the Clark County District
26 Attorney's Office – Civil Division



CLERK OF THE COURT

1 **ADDM**
2 CAL J. POTTER, III, ESQ.
3 Nevada Bar No. 1988
4 POTTER LAW OFFICES
5 1125 Shadow Lane
6 Las Vegas, Nevada 89102
7 Ph: (702) 385-1954
8 Fax: (702) 385-9081
9 *Attorney for Plaintiff*

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**
8

8 JUDY PALMIERI,
9 Plaintiff,

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

10 v.

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

15 Defendants.

16 **PLAINTIFF'S ADDENDUM TO THE OPPOSITION TO**
17 **MOTION FOR SUMMARY JUDGMENT**

18 COMES NOW, Plaintiff, JUDY PALMIERI, by and through her attorney of record, CAL
19 J POTTER, III, ESQ. of POTTER LAW OFFICES, and hereby files an Addendum to the
20 Opposition to Motion for Summary Judgment previously filed on November 13, 2012.

21 This Addendum is filed to incorporate the Declaration of Kaitlyn Nichols as Exhibit 4 to
22 Plaintiff's Opposition to Motion for Summary Judgment.

23 DATED this 24th day of October, 2013.

24 POTTER LAW OFFICES

25 By /s/ Cal J. Potter, III, Esq.
26 CAL J. POTTER, III, ESQ.
27 Nevada Bar No. 1988
28 1125 Shadow Lane
Las Vegas, Nevada 89102
Attorney for Plaintiff

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☐ Facsimile

☒ U.S. Mail

☐ Hand Delivery

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

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Exhibit 4

Exhibit 4

DECLARATION OF KAITLYN NICHOLS

COMMONWEALTH OF VIRGINIA)
COUNTY OF NORFOLK) ss:

KAITLYN NICHOLS, declares the following under the penalty of perjury:

1. That the contents of this Declaration are based upon your Declarant's personal knowledge;

2. That your Declarant is competent to testify to the matters contained herein;

3. That your Declarant is on active duty with the United States Navy and your Declarant is presently stationed in Norfolk, Virginia;

4. That your Declarant does not currently plan to return to Las Vegas, Nevada at any time in the immediate future;

5. That this Declaration is offered on behalf of Judy Palmieri for purposes of Plaintiff's Opposition to Defendants Motion for Summary Judgment in the action styled: Palmieri v. Clark County, et. al., Nevada Eighth Judicial District Court number A-11-640631-C.

6. That your Declarant is aware of a complaint allegedly made against Judy Palmieri to the City of Las Vegas, and later forwarded to Clark County Animal Control, purportedly made by your Declarant;

7. That your Declarant never made any complaint against Judy Palmieri to the City of Las Vegas or to Clark County Animal Control;

8. That on the day the complaint was allegedly made, May 10, 2010, your Declarant was at work from approximately 7:00 a.m. until 4:00 p.m., and your Declarant did not make any personal telephone calls during that time;

9. That your Declarant has never been to Judy Palmieri's residence;

10. That your Declarant has never been contacted by City of Las Vegas concerning the alleged complaint against Judy Palmieri;

11. That your Declarant has never been contacted by Clark County Animal Control concerning the alleged complaint against Judy Palmieri;

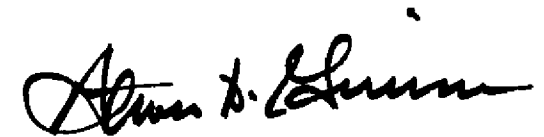
12. That a former co-worker of your Declarant, Cindy Ormelas, previously stole your Declarant's identity by forging your Declarant's signature on bank checks;

13. That it is your Declarant's opinion that Cindy Ornelas may have filed made the complaint against Judy Palmieri, if any complaint was made.

That your Declarant declares under the penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on 24 of October, 2013

Kaitlyn Nichols
KAITLYN NICHOLS



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

JUDY PALMIERI,

Plaintiff,

vs.

CLARK COUNTY, a political
subdivision of the STATE of
NEVADA, et al.,

Defendants.

CASE NO: A-640631

DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE
FRIDAY, NOVEMBER 1, 2013

***RECORDER'S TRANSCRIPT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT***

APPEARANCES:

For the Plaintiff:

CAL J. POTTER, III, ESQ.

For the Defendants:

MICHAEL L. FOLEY, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Friday, November 1, 2013 -- 9:28 a.m.

2
3 MR. POTTER: Your Honor, Cal Potter on behalf of Judy Palmieri.
4 She's also present.

5 MR. FOLEY: Good morning, Your Honor. Michael Foley for the
6 County.

7 THE COURT: Okay. Defendants' motion for summary judgment.

8 MR. FOLEY: Thanks, Your Honor. We were here last year, and the
9 Plaintiff asked for time at the hearing to depose a witness. Your Honor, I
10 know you read everything last time. I don't know if you had a chance to go
11 through it all again.

12 THE COURT: Uh-huh.

13 MR. FOLEY: I don't have a lot to add except to say basically two
14 things, two major issues in this case. One is, was it a valid warrant, you
15 know, enough probable cause for a valid warrant. And in looking at this, I
16 think it's important to remember what this case is not, you know. This is not
17 a case where they're claiming the cops went out and lied in an affidavit.
18 You've seen those before in other cases. No, this is -- they get a call from
19 somebody saying, you know, I'm Jill Jones. We don't care if it's Jill Jones or
20 Jill Smith. I mean, if they demonstrate it's a familiarity with what they're
21 saying, what's going on and everything else, it's still a valid warrant.

22 They're accusing the County of not getting -- you know, not
23 verifying, investigating this person's identity when they couldn't. I mean, half
24 the people in this town -- or not half, but 20 percent of them don't have
25 documentation. We can't have a policy where we refused to investigate

1 animal cruelty or puppy mills or things like that if somebody can't give us a
2 valid photo I.D., and that's really what they're claiming.

3 I'll just remind the Court, the standard is not preponderance of
4 the evidence, it's not -- we're not supposed to look at it hypertechnically. It's
5 supposed to be what was in front of the officer, what was in front of judge.
6 The standard, they call it the totality of the circumstances. I hate that term,
7 but, you know. Considering everything that was in front of everybody, was
8 Tim Williams wrong in signing a warrant, and he wasn't. They had -- we listed
9 in there all the facts that were listed in there in the affidavit,

10 THE COURT: Uh-huh.

11 MR. FOLEY: And they bolster -- you know, there's no way you could
12 say it doesn't show a fair likelihood that there were some evidence or
13 contraband on the premises, and that's the standard in the federal courts and
14 state courts.

15 The second big issue in this case is going to be the -- bless you.
16 The public policy issue. You know, what kind of public policy do we want to
17 set in Clark County? It's -- you know, if somebody calls up and says, you
18 know, A, B, C, D, and we've got a puppy mill out here, we've got animal
19 cruelty, whatever the problem is, do we want the Animal Control people to be
20 sitting there going, sorry, we can't do anything until we have you come in,
21 you know, have you document who you are, give us everything you know;
22 then we'll go the next witness, who are you, what do you have, prove who
23 you are. You know, but then the cockfight's over, the dogfight's over.

24 Anyway, I would just remind the Court, you know, the standard
25 for a valid warrant is, you know, is there a fair likelihood looking at everything

1 that was in front of the officer, not what did the witness secretly know , not
2 did this witness lie, but what was coming in to the officer, what was coming
3 in to the judge; was it reasonable to sign that warrant, issue a warrant, and, of
4 course, if you have a valid warrant, then all the other cause of actions go
5 away or they're there on a valid warrant. They didn't use excessive force. It
6 was -- they executed the warrant, issued two tickets and walked away. They
7 never -- they never testified after that or did anything after that.

8 THE COURT: Okay. So all the other claims fail if the warrant is valid?

9 MR. FOLEY: I believe so, Your Honor, because they're claiming, you
10 know , malicious prosecution and everything else.

11 THE COURT: Okay.

12 MR. FOLEY: They weren't involved in any prosecution. They didn't do
13 a thing.

14 THE COURT: Uh-huh. Okay.

15 MR. POTTER: Your Honor, I remind the Court because what counsel
16 advises isn't correct. We continued this for purposes of allowing the County
17 to cross-examine Kaitlyn Nichols. * * Kaitlyn Nichols is in the United States
18 Navy. She's stationed back in Virginia. And what occurred in this situation is,
19 because Mr. Foley apparently is retiring, he re-filed this motion, the deposition,
20 he decided, I guess, not to take. We have found Ms. Nichols. I submitted the
21 declaration to the Court, which totally contradicts any of the statements.

22 We also had an affidavit when the prosecution was going on in
23 the criminal case because the case didn't just stop contrary to what he's
24 saying. Ms. Palmieri stood a charge with criminal offenses in Justice Court,
25 and when we brought the motion to suppress based upon the fact that the

1 State of Nevada at that point in time as the prosecuting agency did not have
2 the property information brought before the judge, Mr. Williams, Timothy
3 Williams, Judge Williams, is not the individual. We're not suing Judge
4 Williams because the information that was provided by the County, by Dawn
5 Stockman, did not amount to probable cause. And there were no exigencies in
6 this situation. This wasn't a cockfight. This wasn't a situation where there
7 had to be some type of emergency.

8 What occurred was, there was a complaint filed with the City of
9 Las Vegas supposedly by Kaitlyn Nichols. Now, what's important in terms of
10 the testimony that was provided by Mrs. Palmieri in her deposition is that there
11 was another woman that had been terminated by the name of Ormie Alice,
12 and she was a roommate of Kaitlyn Nichols. Kaitlyn Nichols then was the
13 victim of identity theft.

14 But, more importantly, the affidavit submitting -- in support of
15 the warrant is facially invalid, it's false. And when they say, you know, there
16 are cases where you attack a facially valid warrant, that is the situation in
17 *Franks v. Delaware* in the criminal setting. If we remove the false information
18 in the affidavit, is there probable cause to support the warrant and the search
19 warrant here.

20 When you remove the statements attributed to Kaitlyn Nichols,
21 there is no probable cause for the warrant. And, more importantly, there
22 weren't any exigencies. That's why they went and got a warrant. But there
23 was no identification on the part of the City, and then there was no
24 identification on the part of Dawn Stockman, the individual that went to Judge
25 Williams to obtain the warrant.

1 So when you pull out those false statements, that she had been
2 to Ms. Palmieri's address, that she had witnessed X, Y and Z take place, that
3 is -- none of that true. And so you have then a situation where we look at the
4 other information, which is old information, not verified by anyone from Animal
5 Control in terms of prior allegations about some type of misconduct out at Ms.
6 Palmieri's home.

7 So then when the warrant is executed, they had Ms. Palmieri,
8 they pull her out. She was in the shower at the time. They don't come in
9 through a knock and announce or anything like that. They jump over the wall
10 and come into her house.

11 So these are individuals -- and they have law enforcement with
12 them, but it's the Clark County Animal Control that's involved in this. The
13 actions weren't reasonable. The charges, when she was brought in on the
14 criminal charges, arraigned in front of Judge Tobiasson, I filed a motion to
15 suppress based upon the misinformation contained within the warrant. I
16 attached the affidavit from Kaitlyn Nichols, and, indeed, we've submitted an
17 additional declaration.

18 Kaitlyn Nichols is available if, in fact, the County had any
19 interest. I've met new counsel who's supposed to be taking over this case.
20 Mr. Foley told me he had to go forward with this because he's retiring. I
21 moved my calendar to come in here, but it's just a rehash of the same motion,
22 which he didn't have a basis for before, and Your Honor said, well, I'll allow
23 him to at least cross-examine this woman to find out if the allegations and
24 representations that I'm making to you as an officer of this Court are correct.

25 And so I'm telling you that I've talked again with Kaitlyn

1 Nichols. She is an active military. She's in Virginia. Once again confirms that
2 she never did any of the things that they talked about. So when we mold this
3 into what law enforcement is supposed to be doing --

4 THE COURT: Correct.

5 MR. POTTER: -- they're supposed to have some type of basis to verify
6 identities. The argument that we can't check on people or make calls, well,
7 this wasn't just a call and you go out and do a meet and confer as a law
8 enforcement. This was a warrant. To go into her home -- in fact, one of the
9 most terrifying situations is when you're in shower and suddenly somebody is
10 in your house, and that's what occurred to Ms. Palmieri.

11 But, more importantly, there was a continuing statement to
12 them that none of this had occurred, but yet they went ahead and filed this
13 and filed it in criminal court --

14 THE COURT: Okay. Well, if you get past all that, then don't we run
15 into some immunity issues? And I know you've got a Monell here as well,
16 so --

17 MR. POTTER: Right. There's -- there's no immunity here based upon
18 the fact that they don't have any type of system in progress. What they're --
19 or a system to verify the identification in progress. They don't have any -- any
20 basis. In fact, what counsel just argued to you is, oh, as a matter of public
21 policy, we don't have to dot the I's and cross the T's like every other law
22 enforcement officer would have to do to get a warrant because, you know,
23 there could be exigencies. Well, the exigencies weren't here in this case. So
24 you have --

25 THE COURT: In other words, it wasn't the kind of thing that if we

1 don't go now, it will all be moot? There will be no more --

2 MR. POTTER: Correct.

3 THE COURT: If it's a cockfight, if we don't go in now and break it up,
4 it'll be gone and --

5 MR. POTTER: Correct. But that's -- the law allows, if you have an
6 ongoing cockfight, you don't need a search warrant. That's an ongoing crime.
7 That's a probable cause crime that you go in and do it. They recognized --
8 there's a long, long history of Mr. Wright -- Richard Wright has represented
9 Ms. Palmieri; I've represented her on other criminal cases. We can show a
10 long, long history of what the County is trying to do to this woman. They've
11 never gotten a conviction on any of the counts. She's been prosecuted
12 multiple times. She's been placed under arrest. And that is a pattern of
13 conduct that she testified to in her deposition, which is before the Court.

14 So you have -- in terms of the Monell claim, you have not only
15 all of this past, but in this particular instance, you have the statement by
16 Dawn Stockman that, we finally got you. And even though -- Dawn Stockman
17 has also worked for Judy Palmeiri's company at a certain time and then went
18 into law enforcement. She was clearly put in there because she knew Judy
19 Palmieri, and -- and she was, you know, stating in maybe a puffing type
20 situation that, indeed, this is the first time that they filed -- that they had
21 gotten her, but it was all based upon an invalid warrant. And based upon the
22 invalid warrant, they still went forward after Ms. Palmieri told them at the
23 scene all about this misinformation. Still went forward to prosecute her.

24 And just before all of this took place, she was charged with two
25 counts in front of Judge Bonaventure in Justice Court. Then they offered a

1 plea bargain. I told them we weren't going to accept it; she hadn't done
2 anything. They hit her with another 21 counts just before this incident, and
3 those were ultimately all dismissed, too, because they had charged the wrong
4 person for the conduct. She's had --

5 THE COURT: Okay. Well, I guess that since -- those kind of -- we
6 have a malicious prosecution claim, and on a malicious prosecution claim -- are
7 you saying that Ms. Stockman?

8 MR. POTTER: Yes, Ms. Stockman is the one that's -- that put this
9 engine to movement. Anytime you have a malicious prosecution, as you know
10 because I've tried a case in front of you --

11 THE COURT: We've done them together.

12 MR. POTTER: -- there was -- there was a situation where you have
13 to -- under Nevada law you have to have a criminal prosecution. In every
14 instance the District Attorney or a City attorney is the one that does the
15 prosecution. What is put into play, though, is the actions in terms of -- in this
16 instance a citation, it puts the case in movement.

17 So based upon the fact that she files it, she's the officer, she's
18 the one that goes to the judge, that does not absolve her of putting this into
19 motion in terms of the malicious prosecution. Counsel is well aware that, one,
20 you can't sue a prosecutor because they have immunity.

21 THE COURT: Right.

22 MR. POTTER: And under *Imbler v. Pachtman*, you can't do that. And
23 so the same thing, if it was against Judge Williams saying, well, you know, I
24 know this lady didn't really do this, but I'm going to go ahead and issue the
25 warrant. You can't sue the judge either. He has absolute immunity. But

1 that's not what happened here.

2 What happened here was the law enforcement officer didn't do
3 her job, and the County -- she testified they didn't even have anything in
4 place. They never checked the identity of people. Yet we all know from
5 criminal law, one of the most important things is having a verification of
6 *Aguilar v. Spinelli* (sic) type information on who is giving you the information --

7 THE COURT: Right.

8 MR. POTTER: -- but you're putting your reputation --

9 THE COURT: This is where this is a confidential informant --

10 MR. POTTER: Right.

11 THE COURT: -- I know it's a confidential informant. The confidential
12 informant is reliable.

13 MR. POTTER: Exactly. And so there's no showing of reliability
14 because there's no confirmation whatsoever as to this information. So based
15 upon all of that, she has damages from the prosecution, she has emotional
16 stress that was all involved in these situations, and the public policy argument
17 does not fly in the sense because there's no exigencies here.

18 But, more importantly, civil rights are important in this
19 courthouse as well as public policy type arguments. Civil rights are only
20 vindicated -- in *Anaheim v. Drummond* is the Ninth Circuit case that tells us
21 that we have to look to factual questions in many of these cases, and they're
22 clearly jury questions.

23 THE COURT: Okay. Well, I have a couple of them that I do have
24 questions about.

25 MR. POTTER: All right.

1 THE COURT: One is punitive damages.

2 MR. POTTER: Punitive damages are against the officer on an individual
3 basis. There is -- there are no punitive damages available against the County.

4 THE COURT: Okay. Well -- all right. So 41.035, no punitive damages
5 against a governmental agency or its employees. That's only if they're acting
6 within the course and scope of protected activity --

7 MR. POTTER: Right.

8 THE COURT: -- and it's your position that there's a claim that as to
9 this individual, she was acting outside that scope --

10 MR. POTTER: Right.

11 THE COURT: -- so there would be punitive damages as to her in her
12 individual capacity.

13 MR. POTTER: Correct, only to her. There's no against --

14 THE COURT: All right.

15 MR. POTTER: And in her official capacity, she's really the County,
16 so --

17 THE COURT: Okay. So what about conspiracy? Who did she conspire
18 with?

19 MR. POTTER: The other people in her office. She clearly got
20 permission to do this. The argument is that it was -- it was ratified by the
21 County and their supervisors.

22 THE COURT: Uh-huh.

23 MR. POTTER: Not as strong because she acted alone here in terms of
24 executing the warrant. She's the one that went -- that did the affidavit, but,
25 clearly, there's supervisors that are --

1 THE COURT: But I thought she conspired with somebody outside the
2 County. Because if she's conspiring with other people within the County, then
3 you're conspiring with yourself.

4 MR. POTTER: I understand. The argument we made previously was
5 that Metro was there with her. They did a standby. It's not as strong an
6 argument as the other because there's no other Animal Control involved in this
7 other than at the scene --

8 THE COURT: Right.

9 MR. POTTER: -- there were other Animal Control people.

10 THE COURT: I'm confused. I have trouble with conspiracy.

11 MR. POTTER: Okay.

12 THE COURT: I mean, I don't -- I wasn't clear if she was still
13 conspiring with this not really person who she said she was person.

14 MR. POTTER: Well, the City -- the City --

15 THE COURT: That might have been a conspiracy, but --

16 MR. POTTER: We can show a pattern that the City also. The City
17 refers it to them, but, you know, we didn't sue the City.

18 THE COURT: Uh-huh.

19 MR. POTTER: And we didn't sue the City because they didn't -- they
20 didn't go forward. She has a store in the city. She also has the same litany of
21 problems from the City over a number of years, but no -- no convictions on
22 any of these charges. We're ended up trying almost all of them, and then
23 there's been dismissals and acquittals either by myself and Mr. Wright in
24 handling these cases.

25 THE COURT: Uh-huh. Well, I -- yeah, you know, I don't see the

1 conspiracy cause of action. If you want me to get clarification of the punitive
2 damages, I mean, I guess if there were some allegations, she was acting -- but
3 if she's acting outside the course and scope of her duty, then it's not a 1983
4 claim.

5 MR. POTTER: It can be, Your Honor, because part of the argument is
6 in terms of what is occurring here, does she have an obligation to do
7 something legal. Clearly, she's under color of law and whether, in fact, she's
8 acting legally or not. That's one of the -- one of the case laws dealing with
9 1983. I mean, she is in a situation where she's clearly acting color of law.

10 THE COURT: Uh-huh.

11 MR. POTTER: I don't believe there's any question about that. But
12 then the issue becomes -- and I believe I actually tried that case in front of you
13 where the individual's actions are held, in this instance, on the tort claims, the
14 County would be the respondeat superior. No respondeat superior in 1983;
15 therefore, there would have to be some lack of supervision or, in this instance,
16 no policy to verify who the individuals are that are making the complaints.

17 THE COURT: Okay. And, finally, on the policy, is that kind of thing
18 that would require some sort of like expert testimony, if there is such an -- or
19 is that as a matter of law that the policy is --

20 MR. POTTER: I think it's a matter of law in the instance -- I mean,
21 certainly, we could have an expert, and we chose not because (indiscernible),
22 so obvious in terms of the admission made by Stockton --

23 THE COURT: Uh-huh.

24 MR. POTTER: -- but they do anything to verify. I mean, it's a basic
25 jury instruction at that point.

1 THE COURT: Okay.

2 MR. POTTER: All right. Thank you.

3 MR. FOLEY: Your Honor, I have just a couple of things. Number one,
4 on the deposition of Nichols, I wasn't the one looking for the deposition.

5 THE COURT: (Indiscernible).

6 MR. FOLEY: Yeah. He stood up here and said, let's see if we can find
7 her because that old declaration they had wasn't admissible, and you gave
8 them under 56(f) time to do that. He hasn't been dealing with this. His
9 secretary does. I haven't talked to her, but I'm not the one who's trying to
10 take the deposition.

11 THE COURT: Okay.

12 MR. FOLEY: Finally, all the things he said all very dramatic, all
13 wonderful, except there's no evidence of it. This is Mr. Potter testifying, they
14 did this, they did that, they did -- there's no evidence, and that's what we did
15 in our motion. They have a declaration of this gal saying, I'm not the one who
16 called. Of course, she's one who could be prosecuted by the Plaintiff for
17 embezzlement, but so what, you know.

18 Everything that was in front of the officer was this was the
19 person calling, and it was the roommate who stole her identity, probably on
20 the phone, that even identified herself as Kaitlyn Nichols. I don't know. But
21 she did have everything else in place, and it -- to the officer, to the judge it all
22 looked like the real McCoy.

23 Finally, when he talks about the policy issue, you know, that it's
24 not exigent, the allegations in this case and the complaint were that they had
25 like 25, 30 dogs in there, that it was squalor, that some of them were ill and

1 they're not being taken care of. So, you know, again, if you want to say, oh,
2 cruelty to animals is not important in this town, I think you'd be the only one
3 saying that. There is a strong policy issue there. Anyway. Again, they're just
4 resting on allegations, where's the proof? That's our motion.

5 THE COURT: Okay. Thank you.

6 MR. FOLEY: Thank you, Your Honor.

7 THE COURT: I'm going to take another look at it because it has been
8 supplemented since it was originally brought a year ago. Try to get something
9 to you in a couple weeks. I mean, I do think -- the one thing that to me just
10 appears on its face to fail is conspiracy because I don't see anything where
11 there's any allegation of conspiracy with anybody other than within the
12 County, and that's -- I've always -- I always got those dismissed when I was
13 doing this. So to me, that one fails.

14 I just have to look at some of these other ones and see if I
15 think -- you know, I just have some -- some concerns about immunity. I know
16 that Mr. Potter thinks that these are all acts that we're not -- there's no
17 immunity for, but I'm going to take another look at the immunity. But I do -- I
18 do have some concerns, though, about the policy and whether that was an
19 adequate policy. Usually we do see a little bit more information in a warrant,
20 so -- but I just want to take another look at it. But I will -- I'll let you know.
21 And I don't know -- Mr. Foley, I'll try to get this to you before your -- before
22 you leave us --

23 MR. FOLEY: Oh.

24 THE COURT: When are you leaving us?

25 MR. FOLEY: Yeah, I'm going to be doing nothing in another week.

1 Next Friday is the last day, so --

2 THE COURT: Well, I don't think I'll have it for you in a week.

3 MR. FOLEY: No, that's all right. We'll have --

4 THE COURT: So your successor -- your successor --

5 MR. FOLEY: Anything that comes into my name, they'll have
6 somebody assigned to that.

7 THE COURT: Okay. Good enough because I don't think it's going to
8 be a week. It will probably be a little bit longer than that.

9 MR. FOLEY: I understand.

10 THE COURT: But, anyway, congratulations. Good luck on your
11 retirement, and Mr. Potter and I, I assuming, will be continuing some or all of
12 this -- I mean, I --

13 MR. POTTER: I'll be here till the earth falls, Judge.

14 MR. FOLEY: Yeah.

15 THE COURT: There's some cause of action that I'm not real sure
16 about. The whole thing, I'm not convinced it should be dismissed, but there
17 are several of these causes of action that I have problems with, but -- a couple
18 of them, if there's no immunity for it, then I kind of think there's a problem,
19 so --

20 MR. FOLEY: Yeah. All right. Thank you, Your Honor.

21 MR. POTTER: Thank you, Your Honor.

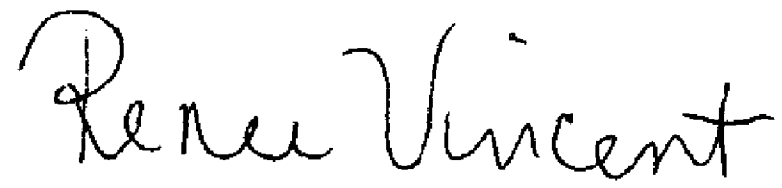
22 THE COURT: I'll get something to your successor. Okay? Thank you,
23 Mr. Potter.

24 MR. FOLEY: Thanks, Judge.

25 / / /

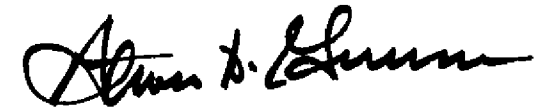
[Proceedings concluded at 9:51 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.

A handwritten signature in cursive script that reads "Renee Vincent". The signature is written in black ink and is positioned above a horizontal line.

Renee Vincent, Transcriber

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JUDY PALMIERI,
Plaintiff,

vs.

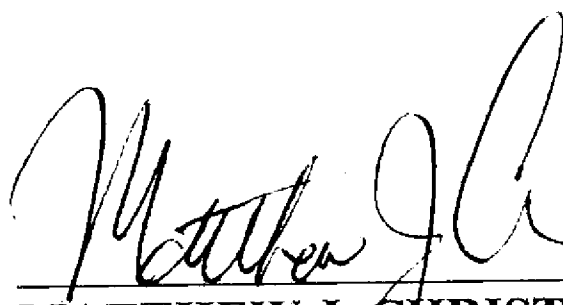
CLARK COUNTY, a political subdivision
of the STATE OF NEVADA; DAWN
STOCKMAN, CEO96, individually and in
her official capacity as an officer
employed by the County of Clark; JOHN
DOES I through X, inclusive and ROE
CORPORATIONS I through X, inclusive,
Defendants.

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

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

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

DATED this 5th day of February, 2014.

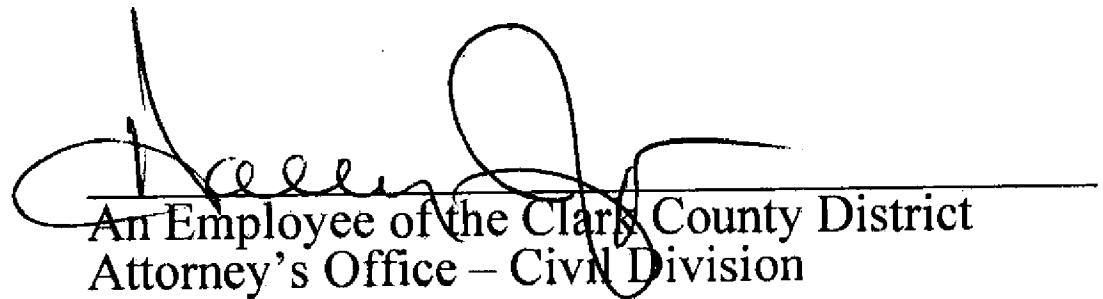

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CERTIFICATE OF MAILING

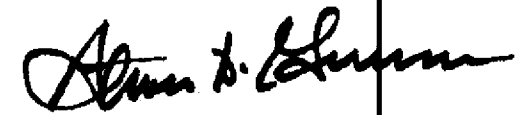
I hereby certify that on the 5th day of February, 2014, I deposited in the United States Mail, postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, a copy of the above and foregoing **Notice of Entry of Decision and Order Re: Defendant's Motion for Summary Judgment** addressed as follows:

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


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

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

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

CASE NO.: A-11-640631-C
Department 26

Decision and Order Re:
Defendant's Motion for
Summary Judgment

FILE WITH

MASTER CALENDAR

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

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

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Facts

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

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

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

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

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19 I.

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

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

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

12 Plaintiff alleged several causes of action including malicious
13 prosecution in this case. There is no evidence to establish the element
14 of malice by the officer against the Plaintiff. Further, under 1983
15 negligence against an individual officer cannot be maintained. There
16 must be a showing of intentional wrong doing by the officer or some
17 act amounting to clear disregard for civil and human rights. There is
18 no evidence that Stockman did anything intentionally wrong, but
19 acted in good faith.
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24
25 ¹ When the issuance of a search warrant is based upon information obtained from a confidential informant,
26 the proper standard for determining probable cause for the issuance of the warrant is whether, under the
27 *totality of the circumstances*, there is probable cause to believe that contraband or evidence is located in a
28 particular place. Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994).

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

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

7 Further, Defendant Stockman is entitled to qualified immunity
8 unless her conduct violates some clearly established constitutional
9 right which any reasonable officer would have known was a violation.
10 When minimal force is exerted to carry out a search warrant, the
11 claim of lack of probable cause does not take away the good faith
12 qualified immunity that police officers get in such situations.³
13 Plaintiff was allowed to return home to retrieve glasses; she was
14 allowed to stay in her house during the search, the entire process
15 taking just over an hour. There was no personal injury or hand cuffing
16 of Plaintiff. Officers did not engage in conduct that an average
17 reasonable officer would consider as a clearly established violation of
18 the Plaintiff's civil rights.
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26
27 ³ An allegation of malice is not sufficient to defeat immunity if the officer acted in an objectively
28 reasonable manner. Ortega v. Reyna, 114 Nev. 55, 59, 953 P.2d 18, 21 (1998) abrogated by Martinez v.
Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007)

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

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

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

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

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

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

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

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

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

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

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

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

17 Plaintiff's complaint also alleged claims for negligence, IIED,
18 false arrest, unlawful warrant, conspiracy, and malicious prosecution,
19 but these claims are barred by the doctrine of sovereign immunity.
20 Further, Court finds there is no evidence to support any of these
21 claims. Discretionary immunity bars Plaintiff's negligence claims,
22 intentional torts of trespass, conversion and nuisance against the
23 County in this case.
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⁶ NRS 41035 provides that no punitive damages are allowed against a government agency or its employees.

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A. Qualified Immunity Defendant Stockman:

The Nevada Supreme Court has defined qualified immunity as follows:

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

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

B. Discretionary Act Immunity Defendant Stockman

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

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

9
10 In the instant case, Defendants are entitled to immunity
11 because the issue involved judgment or choice on the part of the
12 person involved and that the choice is the type that involves some
13 social, economic or political policy. The county has a policy for
14 preventing animal abuse, and the time and effort of having to go
15 through such exhaustive measures the Plaintiff insists on is
16 unreasonably wasteful and does not compliment public policy. Since
17 criminal informants do not even need to meet such a high bar, then
18 animal control does not need to meet such an unreasonable bar. The
19 policy and custom by the county is reasonable under the
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24 ⁷ NRS 41.032. Acts or omissions of officers, employees and immune contractors

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

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

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

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

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

11 V.
12 **Malicious Prosecution**

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

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

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

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

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

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

12 VII. 13 Conspiracy

14 Nevada law defines a conspiracy as an agreement between two
15 or more persons for an unlawful purpose. Evidence of a coordinated
16 series of acts furthering the underlying offense is sufficient to infer
17 the existence of an agreement and support a conspiracy conviction.
18 However, absent an agreement to cooperate in achieving the purpose
19 of a conspiracy, mere knowledge of, acquiescence in, or approval of
20 that purpose does not make one a party to conspiracy. Bolden v.
21 State, 121 Nev. 908, 912-13, 124 P.3d 191, 194 (2005).
22
23
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25 There is absolutely no issue as to conspiracy here; the County
26 cannot conspire with itself, and there is no evidence that any other
27 person was involved to support the alleged conspiracy.
28

CONCLUSION

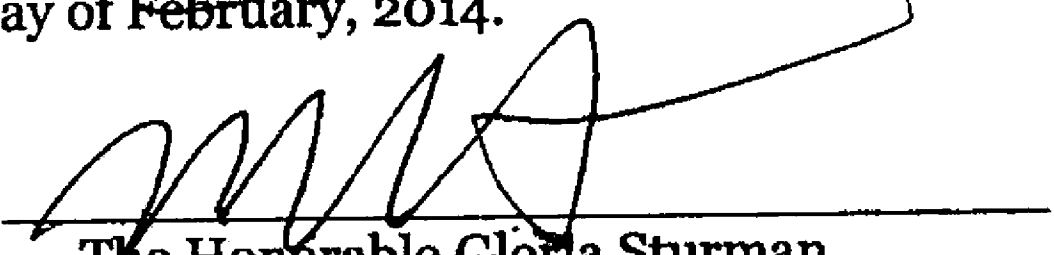
Based on the foregoing, the Court concludes that as Plaintiff has not met her burden to overcome the immunity afforded to the government, her claims are barred. Summary judgment is appropriate herein as there is no genuine issue of material fact, and Defendant is entitled to judgment as a matter of law.

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

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

IT IS SO ORDERED.

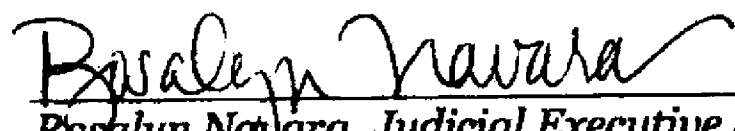
Dated this 28 day of January, 2014.


The Honorable Gloria Sturman

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

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

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


Rosalyn Navara, Judicial Executive Assistant

BROADCAST REPORT

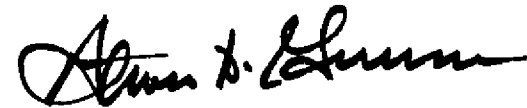
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 TEL :
 SER.# : 000B2N285625

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

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



CLERK OF THE COURT

1 NOAS
2 CAL J. POTTER, III, ESQ.
3 Nevada Bar No. 1988
4 C. J. POTTER, IV, ESQ.
5 Nevada Bar No. 13225
6 POTTER LAW OFFICES
7 1125 Shadow Lane
8 Las Vegas, Nevada 89102
9 Ph: (702) 385-1954
10 Fax: (702) 385-9081
11 Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

.....

9 JUDY PALMIERI,

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

10 Plaintiff,

11 v.

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

16 Defendants.

NOTICE OF APPEAL

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

22 DATED this 27th day of February, 2014.

POTTER LAW OFFICES

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

1 **CERTIFICATE OF SERVICE**

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

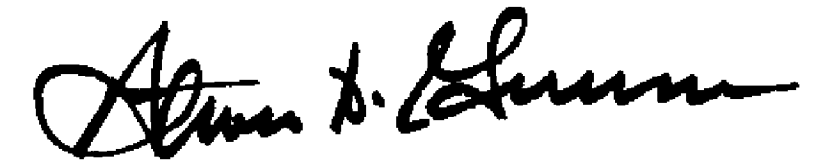
- 5 ☐ Facsimile
6 ☒ U.S. Mail
7 ☐ Hand Delivery
8 ☐ Electronic Filing Courtesy Copy

9 Addressed as follows:

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

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


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JUDY PALMIERI,
Plaintiff,

vs.

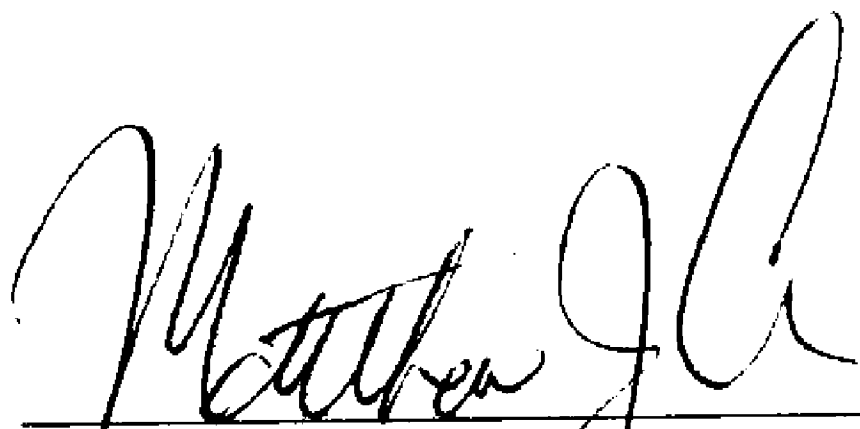
CLARK COUNTY, a political subdivision
of the STATE OF NEVADA; DAWN
STOCKMAN, CEO96, individually and in
her official capacity as an officer
employed by the County of Clark; JOHN
DOES I through X, inclusive and ROE
CORPORATIONS I through X, inclusive,
Defendants.

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

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

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

DATED this 5th day of February, 2014.

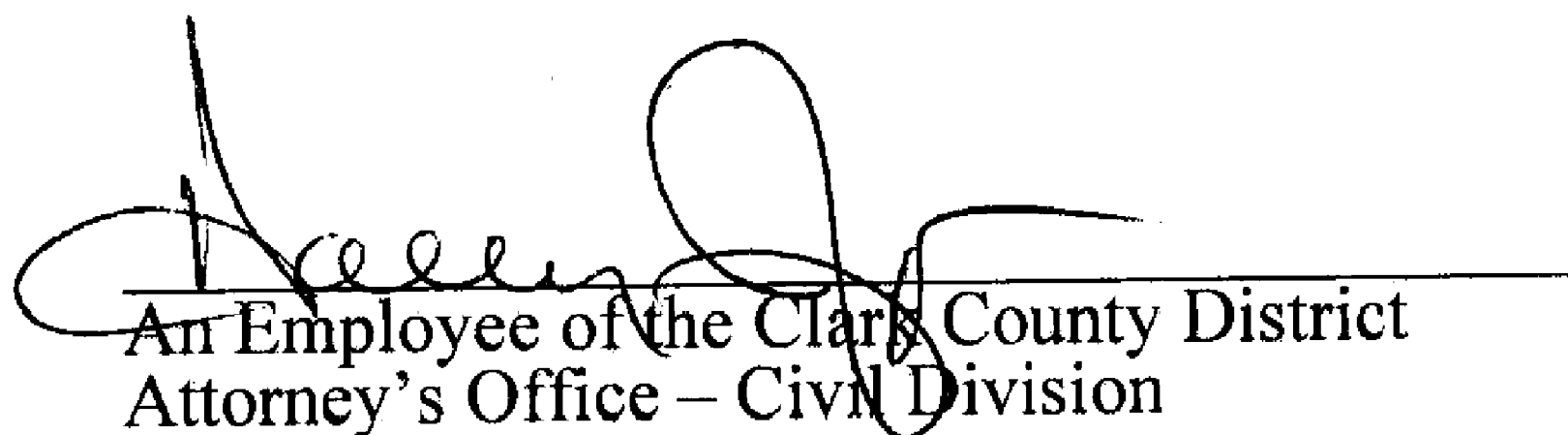

MATTHEW J. CHRISTIAN, ESQ.
Deputy District Attorney
State Bar No. 8024
500 South Grand Central Pkwy. 5th Flr.
P. O. Box 552215
Las Vegas, Nevada 89155-2215
Attorney for Defendant Clark County

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CERTIFICATE OF MAILING

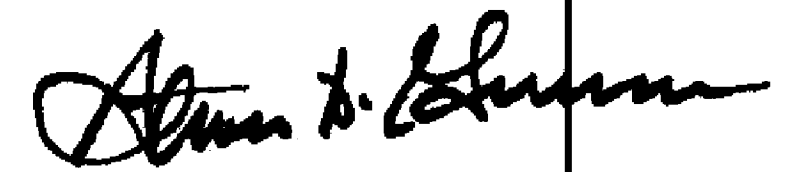
I hereby certify that on the 5th day of February, 2014, I deposited in the United States Mail, postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, a copy of the above and foregoing **Notice of Entry of Decision and Order Re: Defendant's Motion for Summary Judgment** addressed as follows:

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


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

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

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

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

FILE WITH

MASTER CALENDAR

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

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

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Facts

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

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

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

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

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19 I.

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

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

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

12 Plaintiff alleged several causes of action including malicious
13 prosecution in this case. There is no evidence to establish the element
14 of malice by the officer against the Plaintiff. Further, under 1983
15 negligence against an individual officer cannot be maintained. There
16 must be a showing of intentional wrong doing by the officer or some
17 act amounting to clear disregard for civil and human rights. There is
18 no evidence that Stockman did anything intentionally wrong, but
19 acted in good faith.
20
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23
24
25 ¹ When the issuance of a search warrant is based upon information obtained from a confidential informant,
26 the proper standard for determining probable cause for the issuance of the warrant is whether, under the
27 *totality of the circumstances*, there is probable cause to believe that contraband or evidence is located in a
28 particular place. Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994).

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

1 There is no record or proof that the past incidents involving
2 Plaintiff or her business were unfounded, frivolous, or based on bad
3 faith. Further, the officers involved in this incident were not involved
4 in the prior cases. Plaintiff has not met her evidentiary burden of
5 proof to substantiate this claim.
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7 Further, Defendant Stockman is entitled to qualified immunity
8 unless her conduct violates some clearly established constitutional
9 right which any reasonable officer would have known was a violation.
10 When minimal force is exerted to carry out a search warrant, the
11 claim of lack of probable cause does not take away the good faith
12 qualified immunity that police officers get in such situations.³
13 Plaintiff was allowed to return home to retrieve glasses; she was
14 allowed to stay in her house during the search, the entire process
15 taking just over an hour. There was no personal injury or hand cuffing
16 of Plaintiff. Officers did not engage in conduct that an average
17 reasonable officer would consider as a clearly established violation of
18 the Plaintiff's civil rights.
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28 reasonable manner. Ortega v. Reyna, 114 Nev. 55, 59, 953 P.2d 18, 21 (1998) abrogated by Martinez v.
Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007)

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

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

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

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

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

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

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

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

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

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

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

17 Plaintiff's complaint also alleged claims for negligence, IIED,
18 false arrest, unlawful warrant, conspiracy, and malicious prosecution,
19 but these claims are barred by the doctrine of sovereign immunity.
20 Further, Court finds there is no evidence to support any of these
21 claims. Discretionary immunity bars Plaintiff's negligence claims,
22 intentional torts of trespass, conversion and nuisance against the
23 County in this case.
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28 ⁶ NRS 41035 provides that no punitive damages are allowed against a government agency or its employees.

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A. Qualified Immunity Defendant Stockman:

The Nevada Supreme Court has defined qualified immunity as follows:

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

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

B. Discretionary Act Immunity Defendant Stockman

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

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

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

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

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

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

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

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

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

11 V.
12 **Malicious Prosecution**

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

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

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

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

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

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

12 VII. 13 Conspiracy

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

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

CONCLUSION

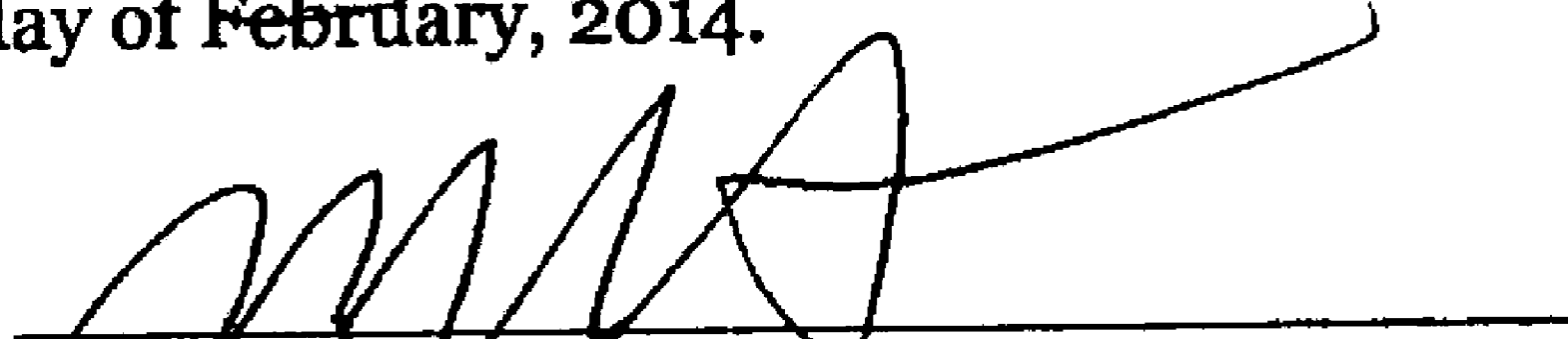
Based on the foregoing, the Court concludes that as Plaintiff has not met her burden to overcome the immunity afforded to the government, her claims are barred. Summary judgment is appropriate herein as there is no genuine issue of material fact, and Defendant is entitled to judgment as a matter of law.

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

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

IT IS SO ORDERED.

Dated this 28 day of January, 2014.


The Honorable Gloria Sturman

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

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

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


Rosalyn Navara, Judicial Executive Assistant

BROADCAST REPORT

TIME : 01/28/2014 11:11
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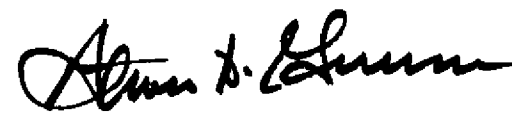
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01/28	11:07	3825178	04:07	14	OK	ECM

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

1 **ASTA**
2 CAL J. POTTER, III, ESQ.
3 Nevada Bar No. 1988
4 C. J. POTTER, IV, ESQ.
5 Nevada Bar No. 13225
6 POTTER LAW OFFICES
7 1125 Shadow Lane
8 Las Vegas, Nevada 89102
9 Ph: (702) 385-1954
10 Fax: (702) 385-9081
11 *Attorneys for Plaintiff*


CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

.....

JUDY PALMIERI,

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

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 APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Judy Palmieri

2. Identify the judge issuing the decision, judgment, or order appealed from:

Judge Gloria Sturman

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant: Judy Palmieri

Counsel for Appellants: Cal J. Potter, III, Esq.
C. J. Potter, IV, Esq.
Potter Law Offices
1125 Shadow Lane
Las Vegas, Nevada 89102
Tel: (702) 385-1954
Fax: (702) 385-9081

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

5 Respondent: Clark County

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

10 Respondent: Dawn Stockman, CE96

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

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

19 Not Applicable

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

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

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

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

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

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

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

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

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

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

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

19 Not Applicable.

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

21 This appeal does not involve child custody or visitation.

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

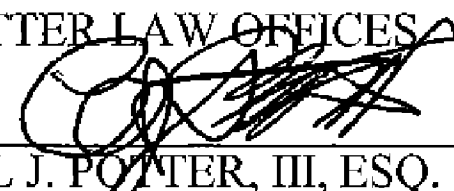
28 ...

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

3 Appellant believes there is a possibility of settlement.

4 DATED this 27th day of February, 2014.

5 POTTER LAW OFFICES

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

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Steven B. Wolfson, District Attorney
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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

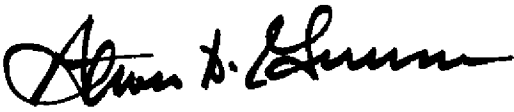
APPELLANT'S APPENDIX - VOL. II

CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
C. J. POTTER, IV, ESQ.
Nevada Bar No. 13225
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1125 Shadow Lane
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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

SUPP
STEVEN B. WOLFSON
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CIVIL DIVISION
State Bar No. 1565
By: **MICHAEL L. FOLEY**
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State Bar No. 3669
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Las Vegas, Nevada 89155-2215
(702) 455-4761
E-Mail: Michael.Foley@ClarkCountyDA.com
Attorneys for Defendant
Clark County


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JUDY PALMIERI,

Plaintiff,

vs.

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

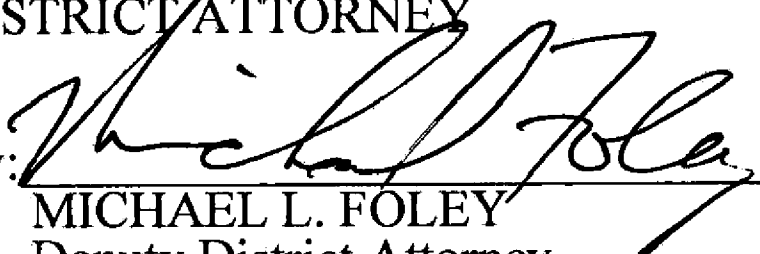
CLARK COUNTY, a political subdivision
of the STATE OF NEVADA; DAWN
STOCKMAN, CEO96, individually and in
her official capacity as an officer
employed by the County of Clark; JOHN
DOES I through X, inclusive and ROE
CORPORATIONS I through X, inclusive,
Defendants.

SUPPLEMENTAL RECORD FOR MOTION FOR SUMMARY JUDGMENT

Attached are the entire depositions of Judy Palmieri, Tori Olson and Danielle Harney.
Excerpts of these depositions were attached to the Motion for Summary Judgment.

DATED this 17TH day of December, 2012.

STEVEN B. WOLFSON
DISTRICT ATTORNEY

By: 

MICHAEL L. FOLEY
Deputy District Attorney
State Bar No. 3669
500 South Grand Central Pkwy. 5th Flr.
P. O. Box 552215
Las Vegas, Nevada 89155-2215
Attorney for Defendant
Clark County

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

JUDY PALMIERI,

Plaintiff,

vs.

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

Defendants.

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 APPEARANCES:

2 For the Plaintiff: CAL J. POTTER, III
 3 ATTORNEY AT LAW
 4 POTTER LAW OFFICES
 1125 Shadow Lane
 Las Vegas, Nevada 89102

5 For the Defendants: STEVEN B. WOLFSON
 6 DISTRICT ATTORNEY
 BY: MICHAEL L. FOLEY
 7 SENIOR DEPUTY DISTRICT ATTORNEY
 500 South Grand Central Parkway,
 8 Fifth Floor
 Las Vegas, Nevada 89106

9 Also Present: Dawn Stockman

10
 11 I N D E X

12	JUDY PALMIERI	Page
13	Examination by Mr. Foley	3
14	Examination by Mr. Potter	76
14	Further Examination by Mr. Foley	79

15
 16 EXHIBITS MARKED FOR IDENTIFICATION

17 (No exhibits marked)

1 (NRCP 30(b)(4) or FRCP 30(b)(5), as
2 applicable, was waived by the parties.)

3 Whereupon --

4 JUDY PALMIERI, having been first duly sworn to
5 tell the truth, the whole truth and nothing but the truth,
6 was examined and testified as follows:

7 * * * * *

8 EXAMINATION

9 BY MR. FOLEY:

10 Q Would you please state your name for the record.

11 A Judy Palmieri.

12 Q Okay. Now is Judy short for Judith or anything
13 like that, or is that your given name?

14 A It's just Judy.

15 Q That was your birth certificate name?

16 A Yes.

17 Q You were at the deposition of Officer Stockman
18 the other day, correct?

19 A Correct.

20 Q Okay. The format we are going to follow here
21 today is the same thing.

22 I'll ask you a series of questions. When you
23 answer, please answer it audibly, you know, yes, no or
24 whatever your answer is. Don't say uh-huh, huh-uh,
25 because the court reporter can have trouble with that.

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 Q When were each of those in operation? When was
2 the Boulevard in operation?

3 A The Boulevard Mall was purchased from someone
4 else and purchased I believe in January of '97.

5 Q Okay. Do you know when it closed?

6 A I believe in 2000.

7 Q I shouldn't say it that way.

8 Did it close, or did you sell it, or what
9 happened?

10 A We closed it.

11 Q And the other Frisky's at the Galleria, when was
12 it in operation?

13 A 2000 it was closed.

14 Q When did you open it, do you remember?

15 A It was opened by someone else, and we purchased
16 it in 1997. We closed it at the same time.

17 Q And there was one called something Paws, did you
18 say?

19 A Feathers & Paws.

20 Q Where was that located?

21 A On Maryland Parkway across from the Boulevard
22 Mall.

23 Q When was that in operation?

24 A I believe 1998.

25 Q And do you remember when it closed?

1 A I don't quite remember. It could have been 2001.

2 Q Now that was another one that you closed. You
3 didn't sell it to someone else?

4 A No.

5 Q I'm sorry. That was two questions I asked.
6 That was one you closed?

7 A I believe, yes.

8 Q Okay. You didn't sell to someone else?

9 A No.

10 Q All right. So those -- the two Frisky's and the
11 Feathers & Paws all closed within a year or so of each
12 other.

13 A Yes.

14 Q Was there a reason why? Did something happen
15 then that closed all three?

16 A I don't recall.

17 Q Just trying to remember if that was a big
18 downturn in the economy or something else.

19 A I don't recall. I think our strong store was the
20 Meadows Pet Center.

21 Q Okay. And then Bark Avenue, was there a reason
22 you closed that one?

23 A All the stores in the center started to close.
24 When we lost the Mervyn's store -- we had pretty strong
25 sales before then. And then when Mervyn's went out of

1 business, it didn't leave a lot of big stores in the area.
2 So we decided after a while to close that store.

3 Q All right. So you lost your anchor tenant there?

4 A Yes.

5 Q Okay. And so on all these stores they were all
6 closed just because of declining sales; is that it?

7 A Basically.

8 Q Okay. That's what I was wondering.

9 It wasn't because of lack of suppliers or ill
10 health or something --

11 A No.

12 Q -- of that nature.

13 Since 2010 have you operated any other stores?

14 A Frisky Pet Emporium in the Meadows Mall.

15 Q Okay. Is that different than the one he had at
16 the Meadows before?

17 A We changed the name when we remodeled seven years
18 ago.

19 Q Oh, all right.

20 So in 2010 it was called Frisky Pets?

21 A Frisky Pet Emporium.

22 Q Emporium. I'm sorry.

23 How long have you had that Meadows location?

24 A 18 years.

25 Q And you're still open now?

1 A Yes.

2 Q Any other pet stores over the years besides those
3 you mentioned?

4 A No.

5 Q Okay. Back to 2010 -- May of 2010 and the
6 months -- say six months preceding that, what was the
7 source of your animals that you sold in your store? Where
8 did you get them?

9 A We buy them from USDA breeders.

10 Q First of all, the dogs, where do you get those?

11 A USDA breeders.

12 Q Okay.

13 A We buy direct from the breeder.

14 Q What's the name of some of those breeders that
15 you used in 2010?

16 A They all have private names. I can think of some
17 of their last names. Beauchamp, Coleman.

18 Q I'm sorry. Coleman was one?

19 A Uh-huh.

20 Q It's not a company name? That's just some
21 person's name?

22 A It's their last name. Kim Coleman.

23 Q Kim Coleman? Okay.

24 And what was the other one?

25 A Beauchamp.

1 Q Okay.

2 A Ken Beauchamp.

3 Q Do you know how to spell Ken's name?

4 A B-e-a-u-c-h-a-m-p.

5 Q Any others you can remember that you purchased
6 animals from?

7 A Debra Warren.

8 Q Okay. Is that it?

9 A That's all I can recall this -- right now.

10 Q Do you know where they're located, what town?

11 A They would probably be located in Missouri or
12 Kansas or Iowa.

13 Q You don't know which or...

14 A I don't know which everyone -- exactly where
15 they're located.

16 Q Okay. What was the -- how did you purchase from
17 them? Did they ship the dogs on a truck? How did you
18 accomplish that?

19 A We buy on the Internet, and then they're shipped
20 on a truck.

21 Q All right. You buy them wholesale from them and
22 then you'd sell them for a profit here?

23 A Yes.

24 Q How about cats, where did you get your cats in
25 those days in 2010?

1 A From USDA breeders, always out of state.

2 Q Do you remember any of the names of those?

3 A KC's Amazing Pets.

4 Q Just the initial KC's?

5 A Yes.

6 Q Okay. Do you know where they're located?

7 A I don't offhand.

8 Q Okay. Any other suppliers you remember?

9 A For animals?

10 Q For cats.

11 A I don't actually write up the invoices.

12 Q Who does that?

13 A Someone in the store would do that.

14 Q You didn't select who you purchased animals from?

15 A I do. I'm the one that purchases on the
16 Internet. But when the invoices come in, somebody else
17 writes them up.

18 Q All right. Other than KC's Amazing Pets, do you
19 remember any other suppliers of cats to your organization?

20 A No, no, I don't.

21 Q How about birds, where did you get the birds?

22 A We don't buy birds. We -- we have purchased a
23 few birds through the years, some suppliers, one supplier
24 in Arizona.

25 Q What kind of birds are those?

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 here.

2 A Orneales, when she first started working, she
3 used to dress quite nicely, put makeup on. And as the
4 years went by, she didn't put makeup on and her clothes
5 became very sloppy.

6 And I have a camera in the store, and I can watch
7 the camera sequences, different parts of the store and the
8 front counter. And lots of times I could not see her on
9 the camera. She would go I'm assuming in the back to the
10 bathroom and spend a lot of time in the bathroom instead
11 of at the front counter.

12 Q Doing makeup, you think?

13 A I don't think makeup.

14 Q Okay. I'm sorry. You were mentioning makeup. I
15 thought all right.

16 She was just goofing off, you think?

17 A I think that she had a problem -- a gambling
18 problem, gambling and drug problem.

19 Q Oh, all right.

20 So she would go back to the bathroom to ingest
21 drugs, you think, or...

22 A I believe so, from rumors I heard.

23 Q Her first name is Cindy. Do you know how to
24 spell her last name, Orneales?

25 A O-r-n-e-a-l-e-s.

1 Q Do you have any idea where she is now?

2 A I believe she's still here in Las Vegas and works
3 at the 99 Cent Store on Spring Mountain and Rainbow.

4 Q What is it? Mountain and Rainbow?

5 A Spring Mountain and Rainbow.

6 Q Have you talked to her in the last two years?

7 A No, I have not.

8 Q Do you remember if she challenged the firing and
9 all? Did she apply for unemployment insurance, things
10 like that?

11 A She did not.

12 Q All right. In a statement I saw somewhere of
13 Kaitlyn Nichols, she had mentioned that Orneales had tried
14 to do wrongful things towards Nichols, that she had tried
15 to steal her identity and maybe some other things.

16 Other than this embezzling by Orneales, do you
17 know of any other things she tried to do that were
18 unlawful or irregular?

19 A The two weeks that Kaitlyn and Javy were still
20 employed by me, they recovered a lot of merchandise that
21 Cindy had taken from the store, and -- what was the
22 question again? I'm sorry.

23 Q Other than this embezzlement -- well, I'm sorry.
24 I'll start over.

25 We had heard tale that this Cindy Orneales had

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 A She was never inside my house.

2 Q Any idea why she was trying to get in your house?

3 A I think that she was trying to cause a problem.

4 Q Like just to steal stuff or what?

5 A I believe so.

6 Q Interesting person.

7 All right. But you haven't talked to her since
8 her termination.

9 A No.

10 Q Okay. Have you heard of her through others since
11 her termination? Has anyone else told you she's doing
12 this or doing that or living here or living there?

13 A I did hear from Kaitlyn once that Cindy may have
14 moved in with her ex-husband and where she was living.

15 Q All right. Do you know where that is now?

16 A I believe it's somewhere off of Charleston Avenue
17 by the Lutheran school.

18 Q The one way out west?

19 A Yes.

20 Q Okay. You don't know a street or anything?

21 A I have that information at home.

22 Q All right. Interesting collection of people.

23 On Javy, or however you pronounce it, what do you
24 remember about his history, how long did he work there
25 and...

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 When you're upstairs on the other side of the house, you
2 can't hear anything. And if my alarm hadn't beeped, I
3 would have no idea that anybody was in the house.

4 Q Now when you're in the shower with it running, do
5 you normally hear the doorbell?

6 A It rings through the phone system, and there's a
7 phone in the bathroom.

8 Q Right.

9 A And so nothing rang.

10 Q Normally you can hear it if --

11 A Oh, yes.

12 Q -- you're in the shower?

13 A Oh, yes.

14 Q As far as you remember, it never rang.

15 A Never rang.

16 Q All right. They were I guess in your house and
17 in your garage area; is that right?

18 A Yes.

19 Q Did the Metro policeman go around with the Animal
20 Control agents, do you remember?

21 A Not when he was with me outside. But I -- I
22 believe after that, when he allowed me to come in, I saw
23 him go in the garage, he made some remarks to me.

24 Q What do you remember him saying?

25 A That it was a really nice garage. And it was all

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 A They belonged to my mother.

2 Q Okay. So when you say you were watching your
3 mom's dogs, you were watching three adult dogs and five
4 puppies?

5 A Yes.

6 Q Do you know if those puppies were all from the
7 same litter or...

8 A No. They were from different litters.

9 Q Were they from those three dogs you were
10 watching?

11 A Yes.

12 Q Do you know why she was -- was she intentionally
13 breeding those dogs?

14 A My mom is -- was 85 at the time, and my dad was
15 90 at the time, and they decided to have dogs three or
16 four years before then. And they go out with a group of
17 people from Sunset Station, elderly people.

18 And my mother decided one day to take the three
19 dogs to the neighbor's house, and I guess they -- they got
20 pregnant. And so she decided that she was going to give
21 the dogs to her friends from Sunset Station.

22 Q So those puppies were never meant to be sold?

23 A They were never meant to be sold. My mother
24 lives in Henderson, and they didn't have a spay or neuter
25 ordinance at the time.

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 and they all know what I do for a living, and they've
2 never been bothered by the animals. I try to be really
3 cognizant of -- my older Pomeranian is a barker, and so
4 sometimes when I'm -- I'm upstairs or I go away, I put the
5 doggy door in so that he can't go out. He had a habit
6 of -- he does have a habit, because he's still here with
7 us, of barking at the gate.

8 Q He's more trouble for you barking than the
9 neighbors, I imagine.

10 A Yeah.

11 Q That gets irritating. Again, I have one of
12 those, that's why. My Eskimo has done that.

13 Okay. And the puppies that they took were not
14 meant to be sold at your store as far as you know.

15 A Correct.

16 Q Your mother never thought I'll let you sell these
17 at the store?

18 A My mother thought about it, but then she had
19 friends that wanted puppies. And a lot of them are just
20 on retirement incomes at that age, they're like 80 years
21 old.

22 Q So she was going to just give it away.

23 A Just give them away.

24 Q Now on the adult dogs that you had there, did any
25 of them have their rabies tags on them?

1 A No, they did not have rabies tags on them.

2 Q None of them did?

3 A I don't believe they -- they did, no.

4 Q Your three dogs usually do, your personal dogs?

5 A My one older Chihuahua never wears a collar. It
6 bothers her when she dips her head into the water dish.

7 So a lot of these tags are very bulky if you have
8 a name tag and you have a rabies tag. Then for little
9 dogs sometimes it's really difficult.

10 Q Were these dogs vaccinated for rabies?

11 A Yes.

12 Q All right. You're aware there's an ordinance
13 saying you have to have a rabies tag on the dog?

14 A Well, I don't know that it says a rabies tag on
15 the dog, but I -- since I'm in the pet business, when my
16 customers come in to talk to me, a lot of their dogs don't
17 wear collars. They have harnesses.

18 Q Right.

19 A And so I know the rabies tags that I have now for
20 the dogs go in a plastic jacket, because a lot of them --
21 you know, the tags get wet. And then if --

22 Q Discolors their fur?

23 A Discolors their fur.

24 Or a lot of customers put clothing on their dogs,
25 so it makes marks on the dogs.

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.

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?

1 A Yes.

2 Q I'm just trying to find out who the players are,
3 what they might do.

4 Okay. Other than this -- the citations you got
5 on this occasion, have you ever been arrested?

6 A I believe I was arrested once in the store for a
7 case that was coming up in which they had the wrong
8 paperwork. So they arrested me and put me in a squad car
9 and drove halfway there, till I got a hold of my attorney,
10 and then they turned around and brought me back to the
11 store.

12 Q So they had the wrong Palmieri, was that it,
13 or...

14 A No. Some -- some glitch with the paperwork as
15 far as I can remember.

16 Q That wasn't Animal Control, was it?

17 A No.

18 Q No. The Metro Police or...

19 A I believe it was a Metro officer.

20 Q Do you remember when that was? Approximately.

21 A Possibly 10 years ago.

22 Q And in that case they actually handcuffed you and
23 put you in the car?

24 A Yes.

25 Q Wow. Okay.

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 officer that was at my house in 2006.

2 Q Okay.

3 A We were at the Boulevard Mall, and we had dogs in
4 pens in the center of the store. And we were having the
5 air conditioning vents worked on. And as they took apart
6 a vent, debris fell in the dog's water dish.

7 So a salesperson took the dish and walked across
8 the room where you could see the sink and was washing out
9 the bowl of water and filling it. And just then the
10 Animal Control officer came in and said these dogs don't
11 have any water. I said yeah, we just removed it to wash
12 it. And he said I don't care, they don't have any water,
13 I'm writing a citation. And he did.

14 Q Do you remember his name?

15 A His name is the same name as the officer that
16 came to the store -- or came to my home in 2006 and said
17 he was going to get a warrant because I wouldn't let him
18 in.

19 Q Elf, does that ring a bell?

20 A Elf, yes, thank you.

21 Q Okay. So he issued you a citation at the
22 Boulevard Mall for not having water with the puppies?

23 A Yes.

24 Q Any other citations you got from the cities or
25 counties over the years?

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 potbelly pig and told the customer it wouldn't weigh over
 2 40 pounds, and it weighed 120 pounds. That was a charge.
 3 There was a charge for selling a boxer, having it come
 4 down with pneumonia 45 days after sale, selling a dog that
 5 came down with parvo.

6 Gosh, I can't remember all 18 this very second,
 7 but there was quite a select group.

8 Q So that wasn't a citation. It actually went to a
 9 grand jury?

10 A Actually went to a grand jury. She brought in
 11 former employees that testified.

12 And then the first time it went to court I had
 13 Richard Wright represent me, and it was dismissed the
 14 first time it was heard.

15 Q You mentioned the employees. Any of those that
 16 we discussed today, did they testify?

17 A I believe Jeff Dubois testified.

18 Q Do you remember what he said?

19 A He testified -- I have the transcript, it's about
 20 five inches thick, of the grand jury proceedings. But he
 21 only said nice things.

22 Q These are all over pet sales?

23 A Yes. Selling on false pretenses, I believe.

24 Q All right. Do you know if those sales were out
 25 of the -- which store were those sales out of?

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 And your husband? Okay.

2 Anyone else on the property on the title or just
3 the two of you?

4 A Just the two of us.

5 Q I may have asked you, I just can't remember, we
6 mentioned four -- five stores you've owned over the years,
7 right?

8 A Yes.

9 Q Okay. Were all those owned by the same
10 corporation, or were there different corporations?

11 A Same corporation.

12 Q Did I ask that before?

13 MR. POTTER: Yes.

14 MR. FOLEY: I think I did. I'm sorry.

15 Q On the complaint they talked about -- well, a
16 couple things for damages.

17 I was wondering if you could tell me what
18 out-of-pocket expenses you've had as a result of these
19 citations or anything to do with this case.

20 A I've had my attorneys' fees.

21 Q Do you remember how much those were?

22 A 5,000.

23 Q 5,000 even, you think?

24 A Could have been a little more, with paperwork,
25 filing fees.

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 A lot of those things weren't returned.

2 But it's gotten to the point where I don't feel
3 comfortable in my own house anymore, not knowing whether
4 somebody would just come in at any time.

5 So we gave up our apartment in Los Angeles so
6 that my husband could just be home.

7 Q Oh, all right. He was staying in Los Angeles
8 before that?

9 A Well, we have an apartment there that we've
10 maintained --

11 Q Right.

12 A -- for quite a while, and we have business in
13 California.

14 Q So the apartment down there was a rental?

15 A Yes.

16 Q All right. So that didn't cost you anything
17 giving it up. It's saving you money, isn't it? Or if
18 I'm -- I understand the inconvenience.

19 A Well, my husband works in California, so now when
20 he goes, he has to stay at a hotel.

21 Q Does he feel safer at a hotel than an apartment?

22 A It's kind of difficult because he can't keep his
23 car there, so he has to rely on taxis.

24 Q I'm not sure I got the connection though.

25 You felt unsafe at your house in Las Vegas,

1 therefore he gave up the apartment, came back here, but he
2 still goes there to Los Angeles anyway. Is that --

3 A Well, he still -- he has a job, so he still has
4 to, you know, do things in Los Angeles. It's not as
5 convenient for him. But he's home at that address now so
6 that I don't feel that I'm there all by myself if somebody
7 is -- if it's so easy to get a warrant to come in.

8 Q So I'm just trying to get what you're saying.

9 He gave up the apartment because he wanted to
10 spend more time in the Las Vegas residence instead of the
11 LA residence?

12 A Yes.

13 Q Okay. And by spending more time at the Las Vegas
14 residence, you think that police with a warrant can't come
15 into the house?

16 A No. Just that I wouldn't have to be there by
17 myself.

18 Q Now are you and your husband related to a
19 Michael Palmieri?

20 A No, not that I know of.

21 Q Any other out-of-pocket expenses you can think
22 of?

23 A Well, my older Chihuahua was injured when she was
24 picked up by Animal Control, and they seemed to have --
25 when they picked up the puppies, Officer Stockman had a

1 kennel to put them in. And if there's no kennel, it means
2 there's just, you know, this big hole in the truck that's
3 out of metal.

4 And I brought a bathmat out for my two older dogs
5 to sit on. And you have to imagine when you have an older
6 dog that's not real agile, and they're sitting two -- two
7 animals sitting on a little rug in this big area when a
8 truck is moving, it means they're probably flopping around
9 all over, because that -- that kennel -- that enclosure is
10 all metal, and it's meant to hold, you know, even a very
11 large dog.

12 My Chihuahua ended up with a big burn all the way
13 down the side from the metal. She had to be treated by my
14 veterinarian for -- for a burn on her body.

15 Q How much was that, do you remember?

16 A My veterinarian didn't charge me for it. But
17 it -- it took quite a while for -- for that to heal. It's
18 a lot of time spent with an -- with an older dog that's
19 already a pretty picky eater, that when she has any kind
20 of problem, you know, she won't eat, she won't drink.
21 It's very tough.

22 She did make it through, and she's still -- she
23 has fur staining still in that area, and -- and she's
24 still alive and well, and so is my Pomeranian.

25 But, you know, as dogs get older, it's a trauma

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 A But I do have to say that, you know, every day is
2 guided by what happened because nobody likes to have
3 somebody just enter their property.

4 So, you know, my days are different, and I'm
5 always looking to see if there's an Animal Control truck
6 when I drive into the neighborhood, out of the
7 neighborhood.

8 Q And you mentioned that they usually would give
9 you a citation personally, not in the corporation or
10 company name.

11 A Yes.

12 Q Did they ever issue any citations to the
13 corporation name, do you remember?

14 A They may have eventually.

15 Q Do you remember what that might have been for?

16 A I don't recall.

17 Q The other day we had the deposition of Officer
18 Harney. I remember she stated -- I think it was her.
19 Someone stated biannually they inspect these shops. I
20 think she meant semiannually, like twice a year.

21 Is that your recollection?

22 A Yes.

23 Q Is it twice a year?

24 A Yes.

25 Q You no longer have one in the county, right?

1 A Correct.

2 Q So all your inspections are in the city?

3 A Yes.

4 Q Do they do it twice a year also?

5 A You know, I don't recall. I only recall them

6 doing it once a year.

7 Q What do they inspect when the city people come?

8 A They basically come in and take a look around.

9 They may want to look at your vaccines, where you're

10 holding them, if you have any sick dogs in the back.

11 They'll go over some of your complaint history. Maybe

12 they'll spend about 20 minutes.

13 Q Just looking to see if there's any violations of

14 the code?

15 A Yeah.

16 Q Do they usually call you in advance to tell you

17 they're coming in or...

18 A No. It's usually a surprise visit.

19 Q All right.

20 A But it's the same time every year.

21 Q At your residence on Callahan, do you know if you

22 have any zoning or special permits that would allow more

23 than three dogs at the residence?

24 A I don't know. We're -- we're rural -- rural RR,

25 RO --

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 Q The criminal case, you mean?

2 A Yes.

3 Q Okay. So the reason you didn't sue her in this
4 case though is because you figured she's not worth any
5 money to collect.

6 A Yes. She's not worth anything on my part if
7 taking this to the district attorney's office and having
8 that not go any further about trying to find this person.

9 Q I wasn't talking about the criminal case.

10 I was wondering why you didn't sue her in this
11 civil case. Is that because you figured she doesn't have
12 enough money to where you could collect a judgment if you
13 got one?

14 MR. POTTER: To the extent it calls for a legal
15 conclusion or attorney/client privilege, I'll object.

16 Q (BY MR. FOLEY) Oh, I'm not asking what your
17 lawyer told you.

18 MR. POTTER: I'll instruct her not to answer as
19 to anything I've told you.

20 Q (BY MR. FOLEY) I'm just asking you is that the
21 reason why you didn't sue her, cause she's worthless or
22 because of some other reason?

23 A I just don't think I can gain anything from it.

24 Q That's fair.

25 Paragraph 12 of your complaint, they mention that

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 statement, then I -- I think that is malice.

2 And I think that it comes from the top, because
3 if the people in the top don't put down their criteria,
4 that they're costing the taxpayers and that person a lot.

5 MR. FOLEY: Thank you, Miss Palmieri.

6 I think that's all I have.

7 Do you have --

8 MR. POTTER: Yes.

9 EXAMINATION

10 BY MR. POTTER:

11 Q Let me ask, when Dawn Stockman was out at your
12 home, did you have any conversations with her concerning
13 the prior incidents that you've been talking about
14 involving Animal Control?

15 A Yes, yes, we did. And she said -- she made the
16 comment -- the statement saying that Animal Control has
17 never been able to get anything on you until now.

18 Q And what did you understand that to mean?

19 A To me it meant on the very day the ordinance went
20 into effect, that they waited with a warrant till that day
21 so that if they could find anything, they could add more
22 charges to it, and that this way it would be their hopes
23 of finally getting something.

24 Q And the ordinance that you're talking about is
25 what?

1 A It's the spay and neuter ordinance that went into
2 effect on that very day.

3 Q Did you have any conversations with anyone from
4 the city concerning the search warrant that was conducted
5 at your house?

6 A I did pick up the phone and talk to Officer
7 Molinari, who was head of Animal Control in the city. And
8 his comment was, you know, I got this complaint and so I
9 had to forward it, so I forwarded it. He said I didn't
10 know what they'd do with it, but I had to do it.

11 Q Do you have any knowledge of whether he did any
12 kind of investigation on the complaint?

13 A He said to me that he simply forwarded it. He
14 did no investigation.

15 Q The officer that was out at your home back in --
16 was it 2006? That is referenced in the affidavit for the
17 warrant, do you recall that incident?

18 A Yes, I recall that incident.

19 It was a Saturday evening, about 5:00 or 6:00 in
20 the evening. And we had had some work done in the house,
21 and both garage doors were wide open.

22 And he came around the corner and parked his
23 truck right in front of the driveway. And we were
24 standing on the driveway. And he said I have a complaint
25 and like to come in and take a look. And I said what's

1 the complaint? And he said someone called in and said you
2 have a dead dog on the property. And I said a dead dog.
3 And we're standing there, and both garage doors are wide
4 open. There are no cars parked in the garage. There's
5 barely anything in the garage.

6 And he said I'd -- I'd like to come in, and I
7 said I don't think so. And he said well, I'll go get a
8 warrant. And I said well, then you're going to have to go
9 get a warrant. I said, you know, what do you see here?
10 You can see in the garage. Why -- why would you need a
11 warrant to come in if you can see in the garage?

12 And then he later reported that he smelled a foul
13 odor in the -- coming -- coming I guess -- from where, I
14 don't know. But we do have a dumpster -- we have a large
15 property. We have a dumpster, we have our trash cans out
16 there right where he parked his car.

17 But I think that was a little unnecessary.

18 Q And that's Officer Elf?

19 A Yes.

20 Q Have you had any further contact with him?

21 A No. I understand he's been moved to a different
22 position. But no other contact.

23 Q Any other contact with Officer Olson?

24 A No.

25 Q Or Officer Harney?

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

COPY

CERTIFICATE OF DEPONENT

I, JUDY PALMIERI, deponent herein, do hereby
certify and declare the within and foregoing transcription
to be my deposition in said action, subject to any
corrections I have heretofore submitted; and that I have
read, corrected, and do hereby affix my signature to said
deposition.

JUDY PALMIERI, Deponent

COPY

Subscribed and sworn to before me this

_____ day of _____, _____.

STATE OF NEVADA)

SS:

COUNTY OF CLARK)

COPY

Notary Public

CERTIFICATE OF REPORTER

STATE OF NEVADA)

SS:

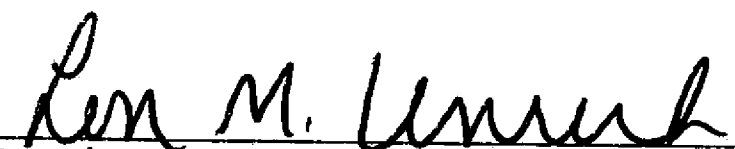
COUNTY OF CLARK)

I, Lori M. Unruh, a Certified Court Reporter
licensed by the State of Nevada, do hereby certify:

That I reported the taking of the deposition
of the witness, JUDY PALMIERI, commencing on Tuesday,
April 17, 2012, at 1:00 p.m. That prior to being examined
the witness was by me duly sworn to testify to the truth.
That I thereafter transcribed my said shorthand notes into
typewriting and that the typewritten transcript of said
deposition is a complete, true and accurate transcription
of said shorthand notes.

I further certify (1) that I am not a relative
or employee of an attorney or counsel of any of the
parties, nor a relative or employee of any attorney or
counsel involved in said action, nor a person financially
interested in the action, and (2) that transcript review
by the witness pursuant to NRCP 30(e) or FRCP 30(e), as
applicable, was requested.

IN WITNESS WHEREOF, I have hereunto set my hand
in my office in the County of Clark, State of Nevada, this
25th day of April, 2012.


Lori M. Unruh, RDR, CCR No. 389

DISTRICT COURT
CLARK COUNTY, NEVADA

CONDENSED TRANSCRIPT

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

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DEPOSITION OF TORI OLSON, taken at 1125
Shadow Lane, Las Vegas, Nevada on FRIDAY, APRIL 13,
2012 at 2:00 p.m., before Jackie Jennelle, Certified
Court Reporter, in and for the State of Nevada.

APPEARANCES:

For the Plaintiff:

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

For the Defendants:

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

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

Thereupon--

TORI OLSON,
was called as a witness, and having been first duly
sworn, was examined and testified as follows:

EXAMINATION

BY MR. POTTER:

Q. Can you state your name for the record?

A. Tori Olson.

Q. How are you currently employed?

A. I'm employed as an Animal Control officer
with Clark County, Nevada.

Q. And how long have you been employed?

A. Seven and a half years.

Q. All right. And have you ever given a
deposition?A. Years ago at a different place of
employment.Q. Okay. And just so we're on the same page,
let me go through what we call the standard
admonitions.The oath you took is the same oath as you
would take in a court of law.

Page 3

I N D E X

WITNESS: TORI OLSON

EXAMINATION
PAGE

BY MR. POTTER 4

EXHIBITS MARKED
EXHIBIT PAGE

5, Witness's Diagram 23

6, Citation Report 23

Page 5

Do you understand that?

A. Yes.

Q. Have you ever testified in court as an
Animal Control officer?

A. Yes.

Q. How many times do you think you've
testified?

A. Approximately five to six times.

Q. Over the seven and a half years?

A. Yes.

Q. Okay. This is the same oath you took in
the courtroom. The only difference is we're here
without a judge and we're in my conference room. So
I say that to impress upon you that it's still the
same oath and carries the same solemnities and
sanctions if you were to be shown not to tell the
truth.

Do you understand that?

A. Yes.

Q. The court reporter is taking down
everything we're saying, my questions as well as
your answers, so we need to get a clear record.You need to answer aloud, yes or no, or
expand the answer if you want to do that, but we
needed to it in a transactional fashion to allow me

1 to get my questions out before you give an answer.
2 And I'll do likewise, I won't interpose
3 another question on top of your answer before you've
4 given me a complete answer.

5 A. Okay.

6 Q. And if for some reason my question doesn't
7 make any sense, it's poorly formed or it just
8 doesn't make any sense, maybe I don't understand
9 what the language is in your profession and I'm
10 using the wrong words or something, tell me to
11 repeat it or clarify it because I'm going to assume
12 if you give me an answer, you understood my
13 question. Okay?

14 A. Okay.

15 Q. You have the right to read and review the
16 transcript. You can make changes in the transcript
17 if you see fit at a later date when we get a copy of
18 the transcript.

19 I would have a right, if you make a change
20 of a material nature, like changing a yes to a no or
21 completely changing the input of your answer, the
22 meaning of your answer, I could comment upon the
23 fact that you changed your answer after you read and
24 reviewed it and had time to think about the
25 questions.

1 concerning the search and, if for some reason, you
2 need to stand up or your back's hurting you or you
3 need to take a break, you have a right to ask me to
4 do that. It's not like it's a marathon session or
5 something. Okay?

6 A. All right.

7 Q. As you sit here today, do you recognize the
8 lady seated to my left and your right?

9 A. Yes.

10 Q. How do you recognize her?

11 A. I assisted on a search warrant at her
12 property.

13 Q. Okay. By 'assisted,' what do you mean?

14 A. Another officer had generated a search
15 warrant to go onto her property. And, generally,
16 when any of us Animal Control officers do that, we
17 have to take another Animal Control officer with us,
18 and we also generally have to have a police officer
19 with us as well.

20 Q. Okay. And in this particular case -- this
21 is Judy Palmieri.

22 Do you know her by that name?

23 A. Yes.

24 Q. Have you ever had any conversations with
25 her?

1 Do you understand that?

2 A. Yes.

3 Q. Now, in preparation for your deposition,
4 have you reviewed any reports, documents?

5 A. No. I tried to, but my air card for the
6 computer would not connect, so I had no chance of
7 really looking at anything.

8 Q. Okay. The other thing I didn't talk about,
9 I don't want to know anything you've discussed with
10 your attorney, but I have a right to ask you if you
11 had meetings with other people and I can get into
12 some of those things.

13 Have you discussed the deposition with any
14 of your co-workers?

15 A. They called me to tell me that I had one
16 coming up because they weren't sure if I got the
17 e-mail.

18 But other than that, we haven't discussed
19 the deposition because they're working and I'm not
20 right now, so I've been home pretty much.

21 Q. Are you on medical leave?

22 A. Yes. I hurt my back so --

23 Q. All right. Sorry to hear that.

24 What I'm going to do is ask you primarily
25 questions about the report that you generated

1 A. Just brief statements back and forth when I
2 was there, but that's the only time I had met or
3 spoken with her.

4 Q. She worked at the Bark Avenue Pet Store at
5 one time.

6 Do you have a recollection of her being at
7 that store?

8 A. I had heard that she had owned it or worked
9 there, but I had never been there for any reason or
10 done any investigations or anything at that
11 location.

12 Q. Okay. And she had also owned a store that
13 the County was involved at the Boulevard Mall.

14 Do you recall ever being at the pet store
15 at the Boulevard Mall during the time she was an
16 owner there?

17 A. I don't know if it was during the time that
18 she was the owner there, but I'm pretty sure I've
19 been in there one or two times generally for just
20 minor complaints from the public and we went in to
21 check it out and make sure everything was okay.

22 Q. But other than that, there's nothing that
23 stands out in your mind other than the time of the
24 search that you had any dealings with her?

25 A. No.

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1 Q. Okay. Were you involved in any of the
2 investigation that was conducted in obtaining the
3 search warrant for --

4 MR. FOLEY: Are you looking for No. 1?

5 MR. POTTER: Yes.

6 BY MR. POTTER:

7 Q. There's a warrant here that we've marked as
8 No. 1 in these.

9 First of all, that's the warrant that, the
10 affidavit or the application for the warrant.

11 Do you recall if you were involved in
12 drafting this in any way?

13 A. No, I was not. I hadn't seen any of the
14 paperwork until we were there.

15 Q. Okay. Taking as much time as you need, can
16 you tell me what you recall occurring when you went
17 out to the 4302 Callahan address?

18 A. I remember that I went there to assist
19 Officer Stockman. I believe that it was for a
20 possibly -- I can't be 100 percent because it was a
21 while ago, but I'm pretty sure it was probably a
22 call for somebody -- sorry.

23 Q. No problem.

24 A. I should just shut it off.

25 I believe it was a health and welfare

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1 complaint if I remember correctly with an excess
2 amount of animals in an unhealthy, unsanitary
3 condition.

4 That's just what's fresh in my mind. I'm
5 not positive 100 percent that that's exactly what
6 the whole situation was, but I do remember
7 specifically going in and checking for that type of
8 thing when we went in to check the residence.

9 Q. Do you recall prior to going to the
10 residence whether you had a discussion with a
11 Metropolitan police officer regarding serving the
12 warrant?

13 A. There was a Metro officer there -- I don't
14 recall his name -- and he did review the warrant
15 before we entered the property.

16 But I wasn't party to that conversation.
17 That was pretty much just between him and Officer
18 Stockman. I was off to the side so I don't know
19 exactly what was discussed.

20 But I know he did review the warrant before
21 we were allowed to serve it and enter the property.

22 Q. Okay. And do you recall any other
23 discussions you may have had with Officer Stockman
24 about the grade of the search that was going to be
25 conducted in terms of whether there were cameras,

Page 12

1 there was, like at my office here, there's bars on
2 the doors and windows.

3 Is that a concern that you may have
4 discussed with officer --

5 A. I don't believe so. We didn't discuss
6 anything about any kind of security cameras or
7 windows or security doors or anything like that.

8 Q. How were you dressed at the time?

9 A. In a County Animal Control uniform.

10 Q. Were you wearing a vest?

11 A. No. I chose not to. We have that option,
12 but I chose to decline it. It's too hot in Nevada
13 to be running in the heat with a vest on.

14 Q. All right. And you didn't have a firearm?

15 A. No.

16 Q. And do you recall were you concerned about
17 your safety?

18 A. Typically, when we serve a warrant, if
19 there's a party present, Metro makes the first
20 contact and then allows us in, unless there's a
21 vicious dog or something blocking their way, then
22 generally we have to go in.

23 But Metro typically makes the first contact
24 to check and see if there is anybody in the home
25 before we enter the premises. Like I said, unless

Page 13

1 there's a big dog or something blocking their way,
2 they typically go in and talk to the person or check
3 to see if anybody is even there because most of the
4 time we're there, a lot of the time there's nobody
5 at the residence. So they go in and clear it and
6 then let us enter.

7 Q. What's your first recollection of trying to
8 contact the property owner?

9 A. If I remember right, Metro knocked on the
10 door or rang the doorbell and I don't -- because I
11 wasn't in a position where I could see any
12 communication between Mrs. Palmieri and the officer,
13 but I know he did come back and say the owner is
14 inside the house and she was cooperating.

15 So I don't know what their, you know,
16 discussion was or anything between the two of them
17 because I was kind of standing off to the side just
18 waiting for them to say, come on in, go in, it's
19 clear.

20 Q. Okay. And by 'clear,' what do you mean?

21 A. No danger or no apparent danger for us to
22 go in and do what we have to do in the
23 investigation, which generally is check the welfare
24 of the animals.

25 Q. All right. What about officer safety, are

1 you clearing the house of any possible individuals
2 in there?

3 A. You're always worried about that because
4 people can hide and it's always a situation where
5 you've got to be very careful and observant.

6 When the Metro officers go in, we put a lot
7 of trust in them to go in and check areas where they
8 think somebody might be hiding and make sure that
9 there's nobody that's going to ambush us when we get
10 in there.

11 It's certainly going to always be a
12 possibility for any situation we go into that
13 somebody could be hiding someplace that they didn't
14 clear or that they didn't see. So officer safety is
15 always a concern.

16 Q. Okay. In this particular instance, do you
17 have a recollection of the Metro officer having
18 contact with Ms. Palmieri after ringing the
19 doorbell?

20 A. I assume that he did because he came back
21 and told us that the owner was inside. So I assume
22 they had made contact with her and that's how they
23 knew she was in her home.

24 Q. And by the 'contact,' is this at the front
25 door after he rang the doorbell?

1 A. I don't remember which door he was at, if
2 it was a front or a back door. I don't remember
3 exactly.

4 Q. Do you remember whether there was an knock
5 and announce?

6 A. I don't -- I'm not clear on what -- would
7 that be like a knock and then walk in and announce
8 you're there?

9 Is that what you're talking about?

10 Q. What I'm asking you, do you have an
11 understanding of that term 'knock and announce'?

12 A. I've heard that term. I've never used it
13 personally because I've never had to. So I'm
14 assuming it's when, you know, they knock on the door
15 and then they announce it's the police at the door
16 or something.

17 I don't remember clearly if that was done.

18 I know they knocked at the door because I
19 remember them knocking at the door, but I wasn't in
20 a position -- I didn't hear them announce loudly,
21 but I wasn't in a position where I could see, you
22 know, if when they knocked if somebody answered the
23 door. If I remember, I can't really recall ever
24 seeing any communication to know who they spoke
25 with.

1 Q. Do you recall how far the entrance, front
2 entrance of the house was from the street?

3 A. If I remember right, it's a circular
4 driveway. I don't know for sure, but it seemed like
5 it was a bit of walk to get to the -- because if I
6 remember right, you had to walk up an angle like
7 this to get to the -- the front door would be here.
8 You had to walk out.

9 Q. Do you mind drawing this for me? When
10 you're showing with your hands, it's difficult to
11 read this and then say, well, why didn't I ask her
12 to do that.

13 Can you draw me a picture the best you can
14 recall?

15 A. If I remember right, her home was on a
16 corner and her house would have been right here.

17 And I'm trying to remember back, I think
18 the garages were right here and then the house entry
19 was right here.

20 So when you walk in, you had to walk up
21 into the driveway and kind of curve to the front.
22 If I remember right, her -- I can't remember if it
23 was a circular drive, but for some reason I just
24 want to say it was a circular drive and I don't know
25 if any of this is correct.

1 Q. Okay. I'm going to have to have you label
2 this stuff because it's still not going to make any
3 sense.

4 A. (Witness complied.)

5 Q. And the street is Callahan?

6 A. And I don't know what the corner street is
7 though. I don't know if it's the same street or
8 not.

9 Q. And you've shown -- let's see here.
10 There's a door on the side?

11 A. Yeah, I think that's the front door. If I
12 remember right, there was a gate right here. I
13 don't remember right like clearly, but I think that
14 was a gate to the yard.

15 Q. All right. And when you say front door,
16 can you label that as front door?

17 A. (Witness complied.)

18 Q. Is that where you have a recollection of
19 the doorbell being rang?

20 A. Yes.

21 Q. All right. And the area that's in what
22 would be the closest to the street, what have you
23 labeled that?

24 A. The garage.

25 Q. So there's a garage in front?

Page 18

1 A. Yes.

2 Q. Do you have a recollection of any other
3 entrances that you saw?

4 A. Not from the front of the property, no.

5 Q. And you recall going in through a gate?

6 A. I can't remember if the gate, where the
7 gate was. I know we went into the front door when
8 we entered the house. We went in the door where
9 they had made contact, and I know there was a gate
10 there, I just don't know the exact proximity of
11 where the gate was to the front door. I can't
12 remember.

13 Q. All right. And when you've entered what
14 you described the gate to the house, what room are
15 you in in the house?

16 A. Oh, gosh. I want to say it was a hallway
17 and then off to the side, if I remember right, was
18 the garage door into the garage.

19 Q. Okay.

20 A. But I'm not positive if it was the hallway.

21 Q. When you entered, had Mrs. Palmieri, did
22 you see her at that time when you entered?

23 A. Yes, we saw Mrs. Palmieri and Officer
24 Stockman explained why we were there again to her.

25 Q. Where was the Metro police officer if you

Page 19

1 can recall?

2 A. I'm pretty sure he was with us when we went
3 into the house. I'm pretty sure he was walking with
4 us.

5 Q. All right. And he had already come out to
6 you at that time?

7 Do you recall if he had come back to you?

8 A. Well, he -- whatever communication he had
9 up in the house before we entered, he came back and
10 told us that it was okay to proceed.

11 Q. By 'us,' that was you and --

12 A. Me and Officer Stockman.

13 Q. And doing the best you can recall, what
14 exactly did he say to you and Officer Stockman?

15 A. I don't remember his exact words, but
16 basically I'm pretty sure he would have told us it
17 was okay to proceed, that we were okay to go in and
18 do what we had to do.

19 I know that it was stated that
20 Mrs. Palmieri was being cooperative when we were
21 there.

22 Q. All right. Did you have any recollection
23 of expressing any concerns about clearing the house?

24 A. I did not. I didn't express any concerns.

25 Q. In any event, you didn't clear the house?

Page 20

1 A. No. We didn't go in and look for people or
2 anything when we entered. It was just strictly to
3 see the animals.

4 Q. Okay. What did you do in terms of checking
5 out the animals?

6 A. Most of them were housed in the garage area
7 and it was very clean and it was, you know, there
8 was no sanitation issue or anything like that.
9 There were just a lot of animals, a lot of dogs.

10 But basically what we did is we just
11 checked around to make sure, you know, got a count
12 on how many dogs were there, made sure there were no
13 sick animals, nothing that needed vet care, and the
14 ones that did need vet care, you know, we logged
15 those.

16 And Officer Stockman was the one in charge
17 of making sure that they got the vet care and
18 whatnot. I was just going through and helping with
19 the count, making sure that, you know, we had an
20 accurate count, everybody was on the, you know, up
21 and up and there was nothing in dire straits or, you
22 know, going through something major at the time.

23 Q. Well, did you ever read this application
24 for the warrant?

25 A. I never got to read it, no.

Page 21

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 A. This is basically a notice, pretty much a
2 notice of impound. Basically, this is stating that
3 we took the two elderly dogs, the ones that were
4 older that we weren't sure if they were just
5 age-related issues or if it was a neglect type of
6 thing.

7 And because we took the dogs with the
8 warrant, we issue one of these forms letting them
9 know why we took the dogs and what dogs we took.

10 Q. And the seven puppies, did you give a
11 notice on that, also?

12 A. I wasn't involved in the seven puppies
13 party. I know they were impounded, but I had no --
14 I was not involved in that part at all. So I don't
15 know if Officer Stockman gave the notice or not.

16 Q. Okay. And the notice that we're looking at
17 here 21, were you involved in taking Honey Bunny and
18 Peggy Sue?

19 A. I did not transport them personally to the
20 vet, but I was involved in the dogs, in the writing
21 of the notice and I did see the dogs and verified
22 that, yeah, they had issues, and we didn't have any
23 kind of medical proof showing that they had been
24 treated and we didn't know exactly what those
25 medical issues were. We just wanted to make sure

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1 the dogs were taken care.

2 Q. Okay. What I'm trying to find out, what's
3 the distinction with the puppies?

4 A. The puppies, as far as I know, they weren't
5 taken for a medical condition, and they weren't
6 taken for a cruelty issue as far as I know.

7 Like I said, the puppies, all I can
8 remember is seeing a puppy there when I was there
9 and then seeing the seven later on, but I didn't
10 really have to deal with, you know, what the
11 reasons.

12 I'm pretty sure that it was probably
13 because of the County law saying that anybody that
14 breeds dogs in Clark County without a permit must
15 forfeit the animals to a shelter.

16 That's the reasoning behind being the
17 puppies removed I believe.

18 Q. Okay. And what evidence are you aware of
19 if any that the dogs were bred on those premises?

20 A. I don't know. Like I said, I don't know
21 for sure that they were bred there or not.

22 Q. Okay. Do you have any recollection of
23 Mrs. Palmieri stating that those were her mother's
24 dogs?

25 A. No, I don't remember that.

Page 27

1 Q. Do you have any knowledge -- the next page,
2 22, Desert Inn Animal Hospital, do you have any
3 recollection of the dogs being taken to Desert Inn
4 Animal Hospital?

5 A. I know she took the dogs to the vets.
6 They're one of Clark County Animal Control's
7 contract vets, so I'm assuming because they were the
8 closest one to us at the time that she transported
9 the dogs there at the time to be examined.

10 Q. Okay. And what do you mean by contract
11 vet?

12 A. Clark County Animal Control has certain
13 vets that contract with us to provide veterinary
14 care to animals that are picked up out in the field
15 in situations like this or if they were hit by a
16 car.

17 So instead of have to take them all the way
18 to the other side of town for the shelter, we can
19 take them to the contract vet for that medical care.

20 Q. Do you have any recollection of what
21 happened with the puppies?

22 A. Only that -- assuming Officer Stockman, she
23 transported them to the Lied Animal Shelter. After
24 that, I don't know any kind of outcome as to what
25 happened with the puppies after that.

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1 Q. Okay. The next page, 23, deals with a
2 Pomeranian 16 years old, male, six pounds, five
3 pounds -- five pounds.

4 During your experience and training, have
5 you ever seen a 16-year-old with dental disease,
6 heart murmurs and cataracts?

7 A. Oh, yeah, I mean, they can have that.

8 The heart disease and stuff, I wouldn't
9 have been able to tell in the field if it had a
10 heart condition. I'm assuming that the reason we
11 were concerned about him was because he was having
12 trouble moving around.

13 Q. Okay. The next page, 24, deals with a
14 Chihuahua listed at 13 years, cataracts, same
15 things, dental disease.

16 Anything else that this refreshes your
17 recollection about, any other problems with the dog?

18 A. No. Probably just general appearance,
19 that, you know, it might have not been moving around
20 much or been very active when we were there and we
21 were concerned about that, but I don't remember.

22 Q. Okay. There's an activity card on page 25.

23 Do you know what that document represents
24 or what that is for?

25 A. This is basically when somebody calls in

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1 and makes a complaint and we get the owner's
2 information or whatever information the dispatchers
3 take at the time or the officer puts in, they put
4 this into the screen of our computer system.

5 On this one we didn't have any caller
6 information, but we had Ms. Palmieri's information
7 and why the call was generated and the officer that
8 entered it.

9 Q. Okay. And then page 26 is another activity
10 card.

11 Have you ever seen this before?

12 A. Yeah. That's our memo screen. Basically,
13 whenever anybody, whether it's a dispatcher or an
14 officer or even a different agency needs to put a
15 memo into a call to give further information on what
16 happened at the call or why we're going to it or
17 what the concerns are, they create a memo in the
18 computer system and that's what this screen is, it's
19 a memo screen.

20 Q. Have you ever seen this before?

21 A. Yes.

22 Q. Draw your attention down about
23 three-quarters of the way to May 19th, 2010 9:15,
24 Officer Olson from Clark County Animal Control and
25 Officer F. Elam with the Metropolitan Police

1 Department meet me at 4302 Callahan to execute the
2 warrant. We knocked on the front door and there was
3 no answer.

4 Do you recall being present when there was
5 a knock on the front door and there was no answer?

6 A. There was the doorway that I showed you in
7 the picture, that would have been the front door.
8 And the garage we had to pass. I don't remember
9 them knocking on the garage, but I'm sure that it
10 was done. I just didn't recall it.

11 Q. All right. And then it says there was an
12 iron gate that led into the backyard. We were
13 unable to open the latch from the outside -- and I
14 guess this is Officer Stockman -- it says: I then
15 jumped over the wall and opened the gate.

16 Do you recall that?

17 A. No. I don't remember her jumping over the
18 wall personally.

19 Q. Okay. There was a door just off where the
20 gate was that was unlocked. I opened the door and
21 opened it into the laundry room.

22 Do you recall going into the laundry room?

23 A. That might have been the hallway area when
24 we entered. I don't remember it being a laundry
25 room off the top of my head, but it's a possibility.

1 Q. But you don't recall that?

2 A. I don't recall exactly if it was a laundry
3 room or not, no.

4 Q. I then took the lead and yelled "Clark
5 County Animal Control, we have a warrant."

6 Does that refresh your memory as to whether
7 Officer Elam or Officer Stockman doing the
8 announcement?

9 A. I don't remember that part of it, no.

10 Q. Okay. At that point Judy Palmieri came
11 around the corner.

12 Do you have a recollection of that
13 occurring?

14 A. I didn't see her come around the corner,
15 but that's when I'm assuming they made contact with
16 her and they said that she was being cooperative.

17 Q. And do you recall Officer Elam then taking
18 Mrs. Palmieri outside while the search was being
19 conducted?

20 A. I don't remember because I know that she
21 got me a book, so I know that she was allowed back
22 into the residence. I don't remember her being made
23 to stay outside the whole time.

24 He might have taken her out at first, but I
25 know when we asked her for proof of rabies, she was

1 allowed back in the house because she gave me a book
2 with vaccination information in it.

3 Q. Do you know how long she was outside?

4 A. No, I don't recall.

5 Q. Do you recall how she was dressed?

6 A. No.

7 Q. Do you recall her being in her night
8 clothes?

9 A. Not offhand, I don't remember.

10 Q. Do you recall whether she had shoes on?

11 A. No.

12 Q. Do you recall her asking to have her shoes
13 on and to change her clothes before going outside?

14 A. I don't remember that, no.

15 Q. Okay. Is that something you normally do
16 with people if you're doing a search and they're
17 cooperating with you?

18 A. That's generally left up to Metro. If they
19 want to allow somebody to get shoes or change
20 clothes, that's generally left to their discretion.

21 Q. Doesn't Metro normally take people outside
22 when they're doing a search?

23 A. It depends on circumstances. I've been in
24 areas where we've been in the house and the people
25 are sitting right there when we're searching the

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.

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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.

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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

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1 you to -- I asked you about the safety, wearing the
2 vest.

3 There's no requirements you have to wear a
4 vest?

5 A. No. That's left up to our discretion if we
6 want to or not.

7 Q. Is it also discretionary to call Metro or
8 do you have to call Metro?

9 A. I've just always done it. I've never seen
10 it written in a policy that we have to call Metro,
11 but I generally always do it because I'd rather have
12 them there with me when I'm doing something like
13 that just for my safety and for everybody involved.

14 Q. Okay.

15 A. But I don't recall there being a written
16 rule stating that we have to call them.

17 MR. POTTER: All right. I think those are
18 all the questions I have for you. Appreciate your
19 time.

20 MR. FOLEY: Thank you. I don't have any
21 questions.

22 -----

23 (Proceedings concluded.)
24
25

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1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE REASON

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17 * * * * *
18 I, TORI OLSON, 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

TORI OLSON, Deponent

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

) SS:

3 COUNTY OF CLARK)

4 I, Jackie Jennelle, a duly commissioned

5 Notary Public, Clark County, State of Nevada, do

6 hereby certify: That I reported the deposition of

7 TORI OLSON, commencing on FRIDAY, APRIL 13, 2012, at

8 2:00 p.m.

9 That prior to being deposed, the witness was

10 Duly sworn by me to testify to the truth. That I

11 thereafter transcribed my said shorthand notes into

12 typewriting and that the typewritten transcript is a

13 complete, true and accurate transcription of my said

14 shorthand notes.

15 I further certify that I am not a relative

16 or employee of counsel, of any of the parties, nor a

17 relative or employee of the parties involved in said

18 action, nor a person financially interested in the

19 action.

20 IN WITNESS WHEREOF, I have set my hand in my

21 office in the County of Clark, State of Nevada, this

22 26th day of April, 2012.

23

24

25

JACKIE JENNELLE, RPR, CCR #809

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DISTRICT COURT
CLARK COUNTY, NEVADA

**CONDENSED
TRANSCRIPT**

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

Page 2

1 DEPOSITION OF DANIELLE HARNEY, taken at 1125
2 Shadow Lane, Las Vegas, Nevada on FRIDAY, APRIL 13,
3 2012 at 1:00 p.m., before Jackie Jennelle, Certified
4 Court Reporter, in and for the State of Nevada.
5
6

APPEARANCES:

For the Plaintiff:

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

For the Defendants:

13 CLARK COUNTY DISTRICT ATTORNEYS OFFICE CIVIL
14 BY: MICHAEL L. FOLEY, ESQ.
15 500 South Grand Central Parkway
16 Las Vegas, Nevada 89106
17 (702) 455-4761
18
19
20
21
22
23
24
25

Page 4

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

Thereupon--

4 DANIELLE HARNEY,
5 was called as a witness, and having been first duly
6 sworn, was examined and testified as follows:
7

EXAMINATION

BY MR. POTTER:

Q. Can you state your name for the record?

A. Danielle Harney.

Q. And have you ever had your deposition taken before?

A. I have had a deposition taken before, yes.

Q. All right. And how long ago was it?

A. Probably two years ago I did a deposition.

Q. Was it within the course and scope of your employment?

A. Yes.

Q. And do you remember what the case was about?

A. It was involving a civil suit.

Q. All right. And do you remember what the civil suit was about?

A. Dog-on-dog attack.

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I N D E X

WITNESS: DANIELLE HARNEY

EXAMINATION

PAGE

BY MR. POTTER

4

Page 5

Q. And what capacity were you there?

A. I was just officer the took all the witness statements.

Q. Okay. Let me just go through, since it's been a couple years ago, what we're going to do here today.

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

Do you understand that?

A. Yes.

Q. Have you testified in court?

A. Yes?

Q. How many occasions?

A. Twice.

Q. And what were the occasions that you testified in court?

If you can recall, what cases did you testify?

A. Both of them were for criminal misdemeanor involving animals at large.

Q. And here in Clark County?

A. Yes.

Q. Was it in Justice Court?

A. It was in Justice Court, correct.

Q. Downtown?

1 A. Yes, 200 Lewis Street.
 2 Q. All right. This is same oath that you took
 3 in the courthouse, but we're here in my conference
 4 room, and because we're here, we don't have a judge.
 5 If Mr. Foley has an objection, allow us to
 6 kind of sort out the objection before you answer.
 7 If he makes an objection, you still have to
 8 answer.
 9 Do you understand that?
 10 A. I do.
 11 Q. Unless he instructs you that it's a
 12 privilege matter and for some reason he says you
 13 don't, then you obey your attorney. Otherwise, you
 14 have to give me your answer. Okay?
 15 A. I understand.
 16 Q. Sometimes my questions don't make any
 17 sense, and if they don't make any sense to you, ask
 18 me to repeat them, clarify them so you do
 19 understand.
 20 You understand that, right?
 21 A. I understand.
 22 Q. The court reporter is taking down
 23 everything. You have to answer aloud. Many times
 24 in depositions or conversations we assume what's
 25 going to be asked and we give an answer before the

1 other person is finished. It's called talking over
 2 one another.
 3 We're not going to do that today. We're
 4 going to do it in a transactional fashion. I'll ask
 5 you a question. Let me get my question out and I'll
 6 let you get your answer out before I give you
 7 another question.
 8 Do you understand that?
 9 A. I understand that.
 10 Q. You have a right to review the document
 11 and, if you see fit, you can make changes in what's
 12 called the transcript.
 13 If you do make changes in the transcript,
 14 change a yes to a no or further expand where it
 15 changes the meaning, I would have the right to
 16 comment on the fact that on today's date you gave
 17 testimony on one fashion and then call into question
 18 your ability to remember things correctly upon
 19 reflection or I might even call you a liar or
 20 something like that if it was in the courthouse.
 21 Do you understand that?
 22 A. I understand.
 23 Q. Okay. Now, in preparation for your
 24 deposition, have you looked at any documents?
 25 A. No, sir.

1 Q. All right. And, as you sit here today, do
 2 you know the Plaintiff, Judy Palmieri?
 3 A. Is that who is sitting next to you?
 4 Q. Yes.
 5 A. I've only met her on one previous incident,
 6 so I would not have known her if you didn't
 7 introduce her to me.
 8 Q. Okay. And the one incident that you met
 9 her on, do you recall what that was?
 10 A. Yes, sir.
 11 Q. And what was it that?
 12 A. I inspected a pet shop that she had in the
 13 County.
 14 Q. And do you remember when that was?
 15 A. I don't remember the exact date, no.
 16 Q. Are you able to approximate at all?
 17 A. Maybe four and a half, five years ago.
 18 Q. Okay. We're here concerning a different
 19 incident involving a search that was conducted at
 20 her home.
 21 Do you have any knowledge of that search?
 22 A. I knew the search happened, yes.
 23 Q. And the date was May 19th, 2010.
 24 How do the know that the search happened?
 25 A. I was just told by the officer following

1 the search.
 2 Q. And what do you mean by the officer
 3 following the search?
 4 A. I mean Officer Stockman told me following
 5 the search warrant that it occurred.
 6 Q. All right. Prior to the search, do you
 7 recall having any discussions with Officer Stockman
 8 about seeking an application for the search?
 9 A. No.
 10 Q. Do you recall ever discussing with Officer
 11 Stockman the one time that you met Mrs. Palmieri at
 12 the Bark Avenue Pet Shop?
 13 A. I don't recall.
 14 Q. All right. As you sit here today, is it
 15 you don't remember meaning you could have talked to
 16 her, or you don't think you talked to her about it?
 17 A. I may have.
 18 Q. All right. Do you recall whether you were
 19 involved in seeking the application for the search
 20 of May 19th, 2010?
 21 A. I was not involved.
 22 Q. Have you yourself ever gone and sought a
 23 search warrant from a District Court judge?
 24 A. I have.
 25 Q. On how many occasions?

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1 A. Maybe a dozen or more.
 2 Q. And if you're able to, are they generally
 3 dealing with one particular aspect of your duties?
 4 Are the searches similar in nature?
 5 Are they for commercial residents or
 6 private residents, if you can recall?
 7 A. They're all for -- in regards to --
 8 Q. The search warrants.
 9 A. Right. As far as what type of residence?
 10 MR. FOLEY: Are you asking what type of
 11 case?
 12 BY MR. POTTER:
 13 Q. Yes, what type of case?
 14 A. They all have to do with animal welfare
 15 cases.
 16 Q. And what do you mean by an animal welfare
 17 cases?
 18 A. As far as if the animals were left
 19 abandoned inside of a property, if the animals were
 20 treated cruelly on the property, those type of
 21 incidents.
 22 Q. Okay. And I might have misspoke. I might
 23 have said commercial residence.
 24 Have you sought a warrant for a commercial
 25 property?

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1 A. No.
 2 Q. Okay. The time that you were at the Bark
 3 Avenue Pet Shop, do you have a recollection of
 4 whether you had a warrant on that particular
 5 instance?
 6 A. No. I was there doing one of our biannual
 7 inspections.
 8 Q. Can you tell me what a biannual inspection
 9 is?
 10 A. Per county code, we're allowed to go in
 11 twice a year to pet stores and do a complete
 12 inspection of all records and animals on property.
 13 Q. All right. And on September 15th of 2007,
 14 did you happen to be at the Bark Avenue premises?
 15 A. I don't recall. Unless you have something
 16 stating I was there, I don't remember the exact
 17 date.
 18 Q. I have an application for search warrant
 19 that was submitted in the case that we're here on
 20 today that lists two examples of calls dealing with
 21 health and welfare and sanitation.
 22 It lists September 15th, 2007, had a call
 23 at 4175 South Grand Canyon, which was Bark Avenue
 24 pets.
 25 Mrs. Palmieri was the owner of that pet

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1 store as well. That call was a complaint for
 2 sanitation and health and welfare of the animals.
 3 Officer Harney responded.
 4 Now, what you've testified to today is that
 5 you were there on a biannual inspection, is that
 6 correct?
 7 A. I don't know if I was there on that
 8 particular date for a biannual inspection or if I
 9 was there just in response to that complaint that
 10 you just read me.
 11 Q. All right. Let me see if we can refresh
 12 your recollection.
 13 As a result of the biannual inspection, you
 14 filed multiple violations against Mrs. Palmieri, is
 15 that correct?
 16 A. Yes.
 17 Q. And do you have, as you sit here today, any
 18 recollection of filing any other violations against
 19 her?
 20 A. Yes.
 21 Q. What other violations have you filed
 22 against her?
 23 A. On separate calls other than the inspection
 24 calls, there were other complaints made as far as
 25 animal welfare and sanitation complaints previous to

Page 13

1 that. And if violations were observed by me at that
 2 time, then I filed a request for prosecution.
 3 Q. All right. If you filed them against
 4 Mrs. Palmieri, would she have signed citations?
 5 A. I did not issue her citations.
 6 Q. All right. How did you handle it.
 7 A. I filed a request for prosecution.
 8 Q. Okay. And in this particular instance
 9 dated September 15th, 2007, you don't know if it was
 10 a result of an inspection or some other kind of
 11 call?
 12 A. I would have to look at our Chameleon
 13 reports to tell you, yes, sir.
 14 Q. Are you aware that the complaints that you
 15 filed against Mrs. Palmieri were dismissed by Judge
 16 Bonaventure?
 17 A. No.
 18 Q. Were you ever called by a criminal district
 19 attorney concerning the complaints that you had
 20 filed against Mrs. Palmieri?
 21 A. No.
 22 Q. Have you ever learned that they were
 23 dismissed?
 24 A. Yes.
 25 Q. When did you learn that?

1 A. I believe in my suit with her when she sued
2 me I was advised that all of the charges were
3 dismissed.
4 Q. All right. And I'm not trying to get into
5 anything you may have discussed with counsel.
6 I'm just trying to find out if you had any
7 knowledge with the district attorney criminal
8 division about the cases.
9 Did they ever contact you?
10 MR. FOLEY: The prosecutors he's asking
11 you.
12 THE WITNESS: Oh.
13 A. While the case was still active, I may have
14 spoken to a prosecutor ones or twice. There were
15 two separate ones. I think it got passed around a
16 little bit on their side if I recall correctly.
17 Q. Do you remember who you talked to?
18 A. I don't, no.
19 Q. Okay. During the time -- if I could
20 digress a moment, what's your date of hire with the
21 County?
22 A. 7/11/06. Yes, '06.
23 Q. Okay. If I could have you look at this
24 Exhibit 1 here, if you could go back a little bit
25 there's an affidavit from a Jeff Dubois.

1 Do you know a Jeff Dubois?
2 A. Yes.
3 Q. Do you pronounce it Dubois for Dubau
4 (phonetic)?
5 A. Sure.
6 Q. Sure? Okay.
7 A. Are you referring to page 32?
8 Q. Yes, ma'am.
9 A. Okay.
10 Q. Have you ever seen that document before?
11 A. No.
12 Q. I'd ask you to read it to yourself and let
13 me know when you finished.
14 Have you had a chance to read it?
15 A. Yes, sir.
16 Q. Do you know an individual by the name of
17 Jeff Dubois?
18 A. I knew him, yes.
19 Q. And what do you mean by you knew him?
20 A. I mean he used to volunteer with Clark
21 County Animal Control and would ride with me.
22 Q. And during the time that you recall him
23 riding with you, do you know the time frame?
24 A. Probably from February or March of 2007 to
25 the same amount of time 2008 maybe, probably about a

1 year or so on and off.
2 Q. And what type of things would he do when he
3 rode along with you?
4 A. He was just a volunteer. He was allowed to
5 just ride along with us. He would help me chase
6 dogs, get cats out of traps, observe my normal
7 activities as an Animal Control officer.
8 Q. And he would assist you in performing
9 certain duties?
10 A. Minimally, yes.
11 Q. Would he go on inspections with you?
12 A. He did go on some pet shop inspections with
13 me, yes.
14 Q. All right. And what, if any, type of
15 training did he have?
16 A. He had to what?
17 Q. He had to anything as a volunteer?
18 A. I don't know how to answer that question.
19 Q. All right. Maybe you can explain to me
20 what the volunteer program is?
21 A. They're basically anyone who wants to
22 volunteer with Clark County has to pass a background
23 check, and if you pass a background check and you're
24 old enough, then you're allowed to just ride along
25 with us. You don't need necessarily any kind of

1 experience to ride along with us.
2 Q. Do they perform anything other than a
3 ride-along program?
4 Do they perform any services?
5 A. No.
6 Q. When you talked about chasing a cat or
7 something of that nature, do they have -- or maybe
8 it was getting a cat out of a trap and chasing dogs.
9 A. Yeah.
10 Q. Do they have any duties in terms
11 of capturing those animals?
12 A. No. If they chose not to do those things,
13 they don't have to. They can just sit in the truck
14 and observe everything.
15 Q. That's what I'm trying to find out.
16 Are they strictly on an observation basis,
17 or do they actually assist you?
18 A. They can be. It depends how involved the
19 person would like to be.
20 Q. All right. And during the time frame you
21 were talking about, approximately from 2007, 2008,
22 do you have any estimate of how many times he would
23 have been with you on commercial inspections?
24 A. I think he did three or four with me,
25 maybe.

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1 Q. And would he perform any type of duties in
2 the inspection?

3 A. Other than scanning documents, he did no
4 other kind of duties that I can remember.

5 Q. What do you mean by scanning documents?

6 A. I mean the documents that I would be
7 inspecting, those were scanned so that I could
8 review them later.

9 Q. All right. In his affidavit he talks about
10 that he was present on December the 27th of 2007.

11 Do you recall doing an inspection on that
12 date at the Bark Avenue?

13 A. I believe that was the date that I did my
14 biannual inspection, yes.

15 Q. All right. During the time frame in
16 question, were you also doing other calls, other
17 residential type calls?

18 A. Yes.

19 Q. And how would it come about that you would
20 be doing an inspection on December the 27th?

21 A. I did multiple pet shop inspections at the
22 end of the year. It was typically our slower calls
23 for residential time, so I did multiple pet shop
24 inspections at the end of the year.

25 Q. Okay. And do you have any recollection

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1 during the what's known as the Christmas season in
2 retail, if that's a busy time for store owners?

3 A. I'm sure it probably is.

4 Q. All right. Did you take any consideration
5 in doing inspection during the busy time of the year
6 for a store owner?

7 A. The inspection can be done biannually. It
8 doesn't specify if has to be done during a holiday
9 season or non-holiday season.

10 Q. When you did these inspections, did you
11 contact the managers of the store to find out or did
12 you just show up and do the inspection?

13 A. We just show up. You're not given any
14 notification.

15 Q. All right. And why is that?

16 A. Because it's an inspection.

17 Q. Okay.

18 A. The place should be up to standards no
19 matter when we come in.

20 Q. Okay. So they were surprise inspections,
21 is that fair?

22 A. Sure.

23 Q. Okay. And is that pursuant to a policy or
24 practice?

25 A. Yes.

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1 Q. And which is it, is it a policy or
2 practice?

3 A. Practice.

4 Q. Okay. Are there any written materials,
5 manuals governing that conduct?

6 A. It just clearly states in County code that
7 we're allowed to come in biannually to do a full
8 inspection of the business.

9 Q. Okay. And when I talk about a manual, is
10 there actually a service manual that you operated by
11 as an Animal Control officer?

12 A. You mean like a training manual?

13 Q. No. As a procedure manual.

14 A. I mean, all of our duties are basically
15 training covered to us.

16 Q. On-the-job type training?

17 A. Yeah, there's on-the-job type training and
18 also written policies for lots of things we do.

19 Q. That's what I'm trying to find out.

20 There's a written policy manual -- and I
21 don't want to get caught in like -- there are
22 written policies and I'm just trying to find out if
23 they're put together in a notebook, or are they on
24 the Internet for you?

25 How do you, if you had an issue about

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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 A. We gather our information. We call or
2 e-mail our supervisor, advise them of the
3 information that we've gathered, ask them if they
4 feel that it's good enough to move forward with a
5 warrant.

6 If we get the okay, we then compose the
7 warrant. They then review the warrant.

8 Ones the warrant has been reviewed by the
9 supervisor, we're then told we can contact the
10 district attorney.

11 We contact the district attorney. We send
12 the warrant to the district attorney who then
13 reviews the warrant.

14 If they feel it's a good warrant, then it's
15 signed by them and then we take the warrant to a
16 judge where it is then again reviewed by the judge,
17 and if they feel it's good, they will also sign it.

18 Following the signature of the judge, we
19 send it back to our supervisor for a final review.
20 They have to review the warrant and tell us that
21 they want that warrant executed.

22 Then we carry out the execution of the
23 warrant with another officer and Metropolitan Police
24 Department if deemed necessary.

25 Q. All right. Let me ask you in terms of

1 seeking a warrant or being dispatched -- strike
2 that.

3 If you're dispatched on a call, are you
4 required to some kind of investigation on the call?

5 Do you have to check back in that you
6 returned on the call?

7 Does that make any sense to you?

8 A. No.

9 Q. Say you get dispatched out on a call, do
10 you have to return to dispatch that you went out on
11 the call?

12 A. Any time we go out on any type of call,
13 it's logged into our Chameleon computer system and
14 dispatch can see that we're actually out working
15 that call.

16 And our computer system allows us to enter
17 in notes on that call, whatever those notes may be,
18 whether the person is home, whether we made contact,
19 et cetera.

20 That call is then either closed out as
21 completed or a recheck could be made if we need to
22 gather further information or talking to witnesses
23 or whatnot. So each call is, can be handled
24 differently depending on the type of call.

25 Q. Okay. And the particular call that's in

1 question here was a call made by a sister agency,
2 Mr. Molinari with the City.

3 Do you have any knowledge of that
4 individual?

5 A. I do know Rich Molinari, yes.

6 Q. All right. Do you have any knowledge of
7 his involvement in this case?

8 A. No.

9 Q. For purposes of the question, assume that
10 Mr. Molinari called to report a complaint that had
11 been made in the City, but he believed it was county
12 jurisdiction.

13 Are there any requirements that you're
14 aware of pursuant to the policies and practices of
15 the Clark County Animal Control to verify the
16 information within a complaint?

17 A. No. We take all complaints: Phone,
18 e-mail, anonymous, by letter.

19 Q. All right. And in terms of verifying
20 information, are there any requirements that you
21 verify the identity of the individual making the
22 complaints?

23 A. We do not verify the identity of any
24 individuals making complaints.

25 Q. All right. And what I'm trying to find out

1 if that's pursuant to a written policy.

2 A. I don't know if that's written policy or
3 not.

4 Q. Okay. And if I were to ask Mr. Foley to
5 produce this manual we've been talking about here
6 kind of in vague terms, what physically would it
7 look like?

8 A. The manual for what?

9 Q. For the policies and practices for your
10 day-to-day operations dealing with warrants.

11 A. I don't even know if there's one that has
12 them all connected all together, to be honest with
13 you. They're out in e-mail form. Some are already
14 in printed form. You would have to ask my
15 supervisor what it would look like.

16 Q. Who is your supervisor?

17 A. My current supervisor is Gregory Wallen.

18 Q. Okay. And he's the sergeant?

19 A. Yes.

20 Q. I didn't demote him or anything; he's a
21 sergeant, right?

22 A. He's actually a corporal now I think.

23 Q. Is so he?

24 A. We've had some changing of the ranks in the
25 last couple of months.

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1 MR. FOLEY: What he's asking is is there a
2 book of some kind? Is there a folder, book?

3 A. We have no one complete master book of
4 information that has been given to us, the officers
5 at least.

6 Q. All right.

7 A. It's been doled out in sections.

8 Q. Okay. Other information contained in here
9 was that he was present, Animal Control Officer
10 Danielle Harney never told your affiant -- meaning
11 him -- that medical sheets were missing regarding
12 any animals.

13 Do you have any recollection of having any
14 discussions with Jeff Dubois about medical sheets
15 missing?

16 A. During -- as far as -- so you're basically
17 stating that he's stating that I did not advise him
18 there were medical sheets missing.

19 Q. Yes.

20 A. I don't recall if I told him that or not.
21 There was a lot of animals at her pet shop at the
22 time of the inspection. And I didn't review all of
23 the information at that time. That's why we scanned
24 everything.

25 Q. Okay. And physically what happens with

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1 that you're an enforcer of the pet store ordinances?

2 A. We all enforce pet store ordinances being
3 an animal hospital.

4 Q. Okay. But in terms that you were the
5 enforcer, do you have any recollection of referring
6 to yourself as the enforcer?

7 A. As an enforcer, no.

8 Q. It then talks about your affiant's
9 understanding that rabies vaccinations were not given
10 by pet stores, do you recall some discussion about
11 rabies vaccinations during the inspection?

12 A. I may have told him that many pet stores
13 don't do rabies vaccines, although they should.

14 Q. Okay. And why do you say that?

15 A. Because they should. The law does not
16 exempt pet stores from giving rabies vaccines?

17 Q. But some of them don't is what you're
18 saying?

19 A. Correct. In my inspection process of doing
20 multiple pet shop inspections, many of the pet
21 stores were not giving rabies vaccines.

22 Q. Do you have any knowledge that the reason
23 they don't give rabies vaccines is because they're
24 non-transferable?

25 A. That's not true.

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1 those scans? Where do the scans go?

2 A. They're all part of our documents and they
3 were used in her request for prosecution.

4 Q. Okay. So it's scanned and it's downloaded?

5 A. Immediately into the computer, yes.

6 Q. All right. So it could be retrieved?

7 A. Yes, sir.

8 Q. Does it stay in the computer?

9 A. It's not in my computer now. Those files
10 are then --

11 Q. Purged?

12 A. -- correct, purged when they were included
13 in her request for prosecution.

14 Q. The next statement talks about: Danielle
15 Harney told affiant that she was known as the pet
16 store Nazi.

17 Any recollection of that?

18 A. No.

19 Q. Have you ever had occasion to refer to
20 yourself as in words to that effect, that you're an
21 enforcer?

22 A. Considering my ancestry is Jewish and my
23 great, great grandfather came to this country to
24 escape the Nazis, not very likely.

25 Q. What about in terms of the enforcement,

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1 Q. Are they transferable?

2 A. They are transferable.

3 MR. FOLEY: By transferable?

4 THE WITNESS: The record is transferable.

5 MR. FOLEY: I thought you meant vaccines
6 were transferable.

7 THE WITNESS: No.

8 MR. FOLEY: I didn't know what you meant.

9 BY MR. POTTER:

10 Q. Records can be transferred?

11 A. Yes.

12 Q. Are you aware of any pet stores currently
13 that transfer rabies vaccine records?

14 A. Yes.

15 Q. Can you just for the record state who they
16 are?

17 A. Prince & Princess Pet Shop. I believe
18 Puppies & Paws I think are their name. There's one
19 more on East Sunset as well.

20 Q. During the time that you've been employed
21 with the Clark County Animal Control, have you ever
22 been disciplined for any reason?

23 A. No.

24 Q. Have you ever received any awards for any
25 reason?

1 A. From the County?
 2 Q. Yes.
 3 A. No.
 4 Q. Are there awards that are available or
 5 letters of commendation?
 6 A. I take that back. I did receive some comp
 7 time in my first year of service.
 8 Q. And what was that for?
 9 A. It was for excellence as a new officer.
 10 Q. Okay. Have you ever received any letters
 11 of gratitude from any of the citizens that you
 12 serve?
 13 A. Yes.
 14 Q. What type of letters have you received?
 15 A. I've received letters of appreciation from
 16 citizens.
 17 Q. Anything you can recall specifically?
 18 A. I mean, I've gotten many of them. Most of
 19 them are for being understanding in their situation
 20 regarding a dog bite or their animal being attacked,
 21 giving aid to them when they needed, a voice to be
 22 heard.
 23 I've also gotten multiple letters from
 24 schools from children when I do educational
 25 workshops at the schools as well.

1 Q. What kind of educational workshops do you
 2 do?
 3 A. When we go to elementary schools and junior
 4 high schools for career day and dog bite awareness
 5 sessions, those types of things.
 6 Q. Now, in terms of Mrs. Palmieri, have you
 7 ever been to her store on Meadows Lane in the
 8 Meadows Mall?
 9 A. No.
 10 Q. And I'm not saying in a professional
 11 capacity because I know you don't have jurisdiction?
 12 A. Correct.
 13 Q. But have you ever been to the store?
 14 A. I may have been to her store when I was in
 15 high school. I don't shop at the Meadows Mall any
 16 more. If she owned it back then, I don't know.
 17 Q. Did you ever have occasion to visit any
 18 other stores that Mrs. Palmieri was involved with
 19 other than the Bark Avenue?
 20 A. I'm not aware if she owns any other pet
 21 stores.
 22 Q. Okay. During the time that you were
 23 involved with Clark County, did you ever work with a
 24 deputy district attorney by the name of Krisko?
 25 MR. FOLEY: Krisko?

1 MR. POTTER: Krisko.
 2 MR. FOLEY: That's his last name?
 3 MR. POTTER: It's a woman.
 4 A. I don't recall. I may have.
 5 Q. All right. In terms of the citations that
 6 you issued or the submittal that you issued to the
 7 district attorney -- I think that's what you
 8 testified to -- as a result of the inspection that
 9 was conducted at the Bark Avenue, do you have any
 10 recollection of whether you made a determination who
 11 the owner of the store was?
 12 A. On that day Ms. Palmieri came down to the
 13 store during the inspection and she advised that she
 14 was the owner of the store.
 15 Q. All right. Did you ever learn that there
 16 was a corporation that was the owner of the store?
 17 A. Yes.
 18 Q. How did you learn that?
 19 A. Through the process of turning in the
 20 request for prosecution and speaking to the district
 21 attorney.
 22 Q. All right. What did you learn? What, if
 23 anything, did you learn?
 24 A. I believe, if I recall correctly, her and
 25 her husband were both listed as owners to the

1 corporation that owned Bark Avenue pets.
 2 Q. Okay. Did you find that information out or
 3 did the district attorney?
 4 A. I don't recall. I don't recall if it was
 5 my information gathering or theirs.
 6 Q. In the package that you put together, do
 7 you have to determine like on a worksheet who owns a
 8 commercial property?
 9 A. I can look through business license.
 10 Q. Okay. What I'm trying to find out is if
 11 that's something that you normally do if you're
 12 going to charge a business with some kind of
 13 infractions.
 14 A. Yes. We check to see who the owner of the
 15 business is.
 16 Q. And why do you do that?
 17 A. So that we can cite the correct person.
 18 Q. Do you have any recollection of any
 19 requirements that you've been told about going after
 20 a manager versus a corporate officer or the
 21 corporation itself?
 22 A. Before or after?
 23 Q. At any time?
 24 A. I've been instructed since then if the
 25 owner is not present that I can cite the manager on

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property as well.

Q. Okay. Do you recall when you were doing the inspecting of Bark Avenue whether Mrs. Palmieri was there at the time the inspection was being conducted?

A. She showed up part way through the inspection.

Q. All right. And do you recall whether she cooperated with you in the inspection?

A. She did cooperate.

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

MR. FOLEY: I have nothing. Thank you very much.

(Proceedings concluded.)

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

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CERTIFICATE OF DEPONENT

PAGE LINE CHANGE REASON

I, DANIELLE HARNEY, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; under penalty of perjury, that I have read, corrected and do hereby affix my signature to said deposition.

DANIELLE HARNEY, Deponent

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