

No. _____

IN THE COURT OF APPEAL

OF THE STATE OF NEVADA

____ APPELLATE DISTRICT, DIVISION

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Elizabeth A. Brown
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PETSMART, INC.

Petitioners,

vs.

DISTRICT COURT FOR THE STATE OF NEVADA,

COUNTY OF CLARK

Respondent,

JAMES TODD and RAPHAELA TODD

Real Parties in Interest.

District Court for the State of Nevada,

County of Clark, Case No. A-19-788762-C

The Honorable Timothy D. Williams (702) 671-4406

**EXHIBITS IN SUPPORT OF PETITION FOR
PEREMPTORY WRIT OF MANDATE IN THE FIRST
INSTANCE, OR AN ALTERNATIVE WRIT OR OTHER
APPROPRIATE RELIEF
(VOLUME 4 of 5, EXHIBIT 10-continued)**

Michael L. Amaro, Esq. (Cal Bar No. 109514) (Pro Hoc Vice)

AMARO | BALDWIN LLP

180 E. Ocean Blvd., Suite 850, Long Beach, CA 90802

Telephone: (562) 912-4157 - Facsimile: (562) 912-7919

Lane S. Kay, Esq. (Bar No. 5031)

LAW OFFICES OF LANE S. KAY

819 S. 6th Street, Las Vegas, NV 89101

Telephone: 702-384-1504

Attorneys for Petitioner, PETSMART, INC.

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EXHIBIT “10” CONTINUED

EXHIBIT 6

1 A Well, basically that was the end of the
2 conversation, you know, once I told him, you know, this
3 other couple adopted him. And so with that, we hung up.

4 And I -- on the drive home -- because Dewey is
5 quite a ways from where we live, so I had a drive. I
6 started thinking, "Well, let me stop at another adoption
7 day," because it was a weekend, "and let me see what
8 else" -- "maybe I'll find another dog."

9 So I had Minnie with me. So I figured, "I
10 have her with me. Let me see what I can find
11 elsewhere." So I stopped at two other places, another
12 Petco, another PetSmart, to get the locations. I didn't
13 see anything there. So then I went to the one that I
14 wound up adopting Chip from.

15 Q So on the drive home from Dewey's, how many
16 different pet stores did you go by?

17 A It was two, but I couldn't tell you which
18 ones. I Google-mapped it to find out the nearest Petco,
19 the nearest PetSmart. I love PetSmart, so I always go
20 to them. Or I used to anyway.

21 Q Okay. So on the drive home, you went to one
22 PetSmart and one Petco?

23 A I can't remember if it was two PetSmarts, one
24 Petco, but it was those stores, because they always have
25 the adoption days on the weekends.

1 And Minnie was wagging her little stump, and he was
2 wagging his tail. And he kept nuzzling my leg.

3 Q So the dogs that were there with A Home 4
4 Spot, were they inside the store or, like, on the back,
5 like a little receiving dock area?

6 A I guess -- I don't know where the receiving
7 dock would be, but it was -- you had to go through
8 PetSmart to get to it. It was, like, in the back of the
9 store.

10 Q Right. Was it inside the building or outside
11 the building?

12 A Inside the building.

13 Q Toward the back of the PetSmart store?

14 A Yes.

15 Q And then you said somebody was holding the --
16 Chip, the dog, by the leash?

17 A Yes.

18 Q Did that -- what did that person look like?

19 A I couldn't tell you. It was female. I don't
20 know if that was Christina. I think Christina came and
21 helped after. I don't think -- I think that was
22 somebody other than Christina.

23 Q Okay. Yeah, we took Christina Detisch's
24 deposition, and then she told us that the first person
25 you interacted with at A Home 4 Spot was a young lady by

1 investigation after your husband's incident and you
2 ultimately made contact with Ms. Musolf --

3 A Right.

4 Q -- were you surprised to hear about the
5 information that Ms. Musolf provided to you?

6 A I was shocked, because this was nothing like
7 what I was told when I adopted this dog. Nobody was
8 teasing him. It wasn't a little nip. It was totally
9 different from what I was told.

10 And, you know, I adopted this dog, you know,
11 feeling warm and fuzzy, because I was in a PetSmart, and
12 I love going to PetSmart. I even got -- they give you
13 this free adoption starter kit at PetSmart with all
14 kinds of cool coupons. And I'm thinking, "Oh, this is
15 going to be a great addition to my family."

16 I'm sorry I'm rambling. I'm sorry. Let me
17 just stop.

18 Q That's okay.

19 When you were adopting this dog, you knew that
20 the dog was being adopted through A Home 4 Spot and not
21 PetSmart; correct?

22 A Yeah, as far as I knew. But I also understood
23 that, you know, PetSmart -- I thought they were
24 together. I thought -- because I know PetSmart does
25 charity things all the time, which is one of the reasons

1 occasions on Sunday where the dog was growling, showing
2 his teeth, and making those kind of aggressive behavior.

3 Were you aware of that at all that day?

4 A I had no knowledge of any of this happening
5 until after Jim got attacked. Guy didn't say a word to
6 me until after.

7 Q And then at any point in time, did your
8 husband say anything to you before he was bit, like,
9 "Hey, this dog's been showing aggressive tendencies.
10 He's growled at your brother four times"? Anything like
11 that before the incident?

12 A No, no.

13 Q All right. So at the time that your husband's
14 incident occurred, he had mentioned you were watching a
15 movie on your laptop with headphones on.

16 Is that your recollection of what happened?

17 A Yes.

18 Q What do you remember about the incident? Can
19 you kind of share that with me?

20 A I was sitting on the couch with my laptop,
21 watching a movie. And out of one corner of my vision, I
22 can see the dog laying on the floor. And Jim was
23 sitting on the lounge chair next to me. And Jim got up
24 at one point to go to the kitchen. And the dog I saw
25 get up, and I thought the dog laid down, but apparently

1 the dog followed Jim into the kitchen.

2 Jim then finished what he was doing. He came
3 back into the living room, but by then, the dog had laid
4 down in front of the chair that Jim had been sitting in.
5 And, again, I'm watching a movie. So, focused on the
6 movie, but I can kind of see.

7 Then at one point the dog started to growl at
8 Jim, and I didn't hear it initially. So Jim,
9 apparently, was calling my name to get the dog's
10 attention. So I took my earbuds out because I realized
11 Jim was trying to get my attention. And as I took my
12 earbuds out, I can hear the dog growling.

13 So I opened my mouth to call the dog's name,
14 and the dog just jumped up and grabbed Jim on the right
15 forearm. And Jim -- Jim just wedged himself between the
16 lounge chair and the dog, because the dog was trying to
17 tackle him. The dog had my husband's forearm in his
18 mouth, and he kept going like this (demonstrating). And
19 he kept trying to get my husband on the ground, but my
20 husband wedged the La-Z-Boy between him and the dog.

21 Q Were you able to pull the dog off of your
22 husband?

23 A Just a minute.

24 Q Take your time.

25 A It -- it seemed like it happened in slow

1 motion. That's the best way I can describe it to you.
2 I got up, and I initially I went to pull the dog off by
3 his collar, but I was afraid that if I did that,
4 whatever injuries Jim had would be worse. So I stuck my
5 fingers in the dog's mouth, and I pried his jaws open.
6 And I got some puncture wounds on my finger, but that
7 was nothing compared to what happened to Jim.

8 So I managed to pry his jaws open, and I
9 yelled at Jim to get out of the house, because the dog
10 was still trying to go after him. And so Jim ran
11 through the kitchen, out into the backyard.

12 And I managed to get the dog into the garage.
13 I don't know how I did it, because the dog was
14 struggling, fierce. And then I was stuck in the garage
15 with the dog for a while, because the dog kept trying to
16 force himself back in.

17 Q So were you in the garage with the dog?

18 A Yeah. The dog wouldn't let me back in,
19 because he kept trying to go back in the house after
20 Jim.

21 Q All right. But you were able to pull the dog
22 into the garage?

23 A Yeah.

24 Q And then you closed the door, but you were in
25 it there with the dog?

1 A Yeah. And I couldn't get back in the house,
2 because I wanted to see how Jim was, because I could
3 hear Jim screaming and crying and yelling at my brother
4 to call 911. And I couldn't get back in to see if he
5 was okay.

6 Q And the dog was, like, right up against the
7 door leading into the house?

8 A Every time I pushed the door to try to get
9 back into the house, the dog kept pushing alongside of
10 me to try to get in. And so my brother, Guy, was
11 nervous, and he passed a big butcher knife through the
12 crack of the door.

13 Q And then what happened next?

14 A Well, I didn't -- luckily, I didn't have to
15 use the butcher knife, but I just basically was trapped
16 in the garage. And Jim kept calling out. He was
17 outside. The paramedics had come at this point. And my
18 husband kept calling, through the vent outside, to get
19 out of the garage. And I kept telling him, "I can't."

20 Q How long would you say you were in the garage
21 for that time period?

22 A It was forever.

23 Q When the paramedics arrived, were you still in
24 the garage?

25 A Yeah. I managed to trick the dog. I

1 remembered that I had some dog treats in the garage. So
2 I got a dog treat, and I threw it to the other side of
3 the garage. And that's how I got into the house.

4 Q And then once you got into the house, what
5 happened next with the dog? Did someone come get the
6 dog, or what happened?

7 A Well, I went out with my husband, who was
8 being attended to paramedics. They tried to treat me
9 for my wound, but I -- it didn't matter. But anyway, my
10 brother was the one who called, I guess, Animal Control
11 or -- I think he did. Anyway, Animal Control eventually
12 came and took the dog away.

13 Q Was that on the same Sunday, or was it a
14 different day?

15 A No, no. It was the same night.

16 Q So the dog stayed in the garage until Animal
17 Control came?

18 A Yes.

19 Q Ultimately did you receive any medical
20 treatment from the paramedics?

21 A No. I refused treatment. I just had some
22 puncture wounds. It was nothing compared to my
23 husband's injuries. I was concerned about him.

24 Q And then did you self-treat -- you know, did
25 you put some Band-Aids or something on?

1 open the email because, like, "Oh, here's the shot
2 records." So I just saved it so I can share it with my
3 veterinarian when I was to take Chip for his
4 examination.

5 Q Okay. You were given a packet of information;
6 is that correct?

7 A It was PetSmart coupons and, like,
8 advertisements and stuff like that.

9 Q Right. That was the adoption -- like, a goody
10 bag you were given; right?

11 A That's -- yeah. But there was nothing about
12 the dog.

13 Q Right. And that goody bag, though, you didn't
14 get until after the adoption was complete; is that
15 correct?

16 A Actually, no. They gave me the coupons and
17 advertisements with the contract at the time I adopted.

18 Q Okay. But was there also a packet of
19 information you were given, a folder?

20 A No.

21 Q And you didn't leave a folder in the cart at
22 PetSmart when you left that day?

23 A No.

24 Q Okay.

25 A A folder?

1 forgive me, do I take back a file and I drop it into the
2 chat box? Is that how I -- sorry. All right.

3 So for the next exhibit in order, I'm going to
4 drop the -- my copy of the adoption agreement that I
5 referred to. I'm going to try. Sorry. I'm going to --
6 okay.

7 So for the court reporter, here is the next --
8 is the adoption agreement I referred to. And then here
9 is the PetSmart adoption release form for the next
10 exhibit in order that I referred to.

11 Okay. That's all I have. Thanks.

12

13

EXAMINATION

14 Q BY MR. ASKEROTH: I have just one question
15 just to clarify something that you stated with
16 Mr. Kenyon.

17 He showed you an adoption release form from
18 PetSmart Charities. Do you recall an employee from
19 PetSmart reviewing that document with you at any time
20 when you were there at PetSmart?

21 A I don't know. I don't think so. It was
22 largely Christina doing everything.

23 Q Okay. So you don't have a recollection of
24 having any discussions with anyone from PetSmart at the
25 time that you were reviewing the documents?

1 A No, I don't.

2 MR. ASKEROTH: Okay. No other questions.

3 MR. AMARO: Okay. So Jay is still sharing his
4 screen. Mr. Kenyon shared a screen. So what's up there
5 now is the A Home 4 Spot Animal Rescue for Mrs. Todd.
6 It's the same document as Exhibit 4, but a better copy.
7 So we're marking this as Exhibit 9, a better copy.

8 (Exhibit 9 subsequently marked.)

9 MR. AMARO: And then Exhibit 10 is the
10 adoption release, which was also made part of Exhibit 4.
11 So we're attaching that separately -- and it's a better
12 copy -- as Exhibit 10.

13 (Exhibit 10 subsequently marked.)

14 MR. AMARO: So, Jay, if you see on the bottom
15 of your screen, "unshare screen."

16 MR. KENYON: Thank you.

17 MR. AMARO: There you go. We're good to go
18 there.

19 MR. KENYON: Who knows what could have popped
20 up?

21 MR. AMARO: Yeah, we could've, like, saw all
22 your secret notes.

23 I don't have any further questions. Anybody
24 else?

25 MR. ASKEROTH: No questions from us.

EXHIBIT 7

EXHIBIT

2

Exhibit "C"

1/13/18 Chip

PETSMART

ADOPTION RELEASE FORM

PETSMART
CharitiesSTORE NO. 9445 DATE SCANNED _____ STORE INITIALS _____ GROUP NO. D144

Adopter - Please Complete: By completing this form, you agree to our Privacy Policy, which can be found at petmart.com and petmartcharities.org.

Give us your e-mail address to receive exclusive offers for your new pet.

E-Mail Address KAREN.HALL@GMAIL.COM

Adopter's Name KAREN HALL

Address 6370 S HARVEY ST

City VEGAS

State/Province NV

Phone # 702 660 9358

☐ Check box: Yes! Sign me up for Pet Perks membership!

You just need to provide your phone number on this form to enjoy exclusive in-store benefits & if you provide your email address, you will receive exclusive online benefits as a PetPerks member. Log on to petperks.com for personalized deal alerts.



Date 1/13/18

Zip/Postal Code 89123

Please read carefully and sign below.

Adoption Program

Thank you for choosing to adopt a pet. PetSmart and PetSmart Charities supports the adoption process by donating in-store space for use by qualified, pre-approved animal welfare organizations. These organizations are not affiliated with PetSmart or PetSmart Charities in any way. We cannot, and do not, guarantee the health of any of the pets available for adoption.

Your Pet's History

The animals available for adoption through the Adoption Program often come from a shelter environment and little is known about their past. Each participating animal welfare organization is concerned about the health of the animals in its care. These organizations exercise due caution to prevent disease transmission. Because health care procedures can vary by agency, please request detailed information regarding the health care administered to animals in the adoption organization's care.

Any questions regarding your pet's health should be directed to the adoption group. In addition, we strongly encourage a quarantine period for newly adopted pets. During this period, your new pet should be housed separately from other pets in the home. This will let the pet adapt to the new environment and allow monitoring for any possible signs of disease or aggression.

Important: Please read the information on the reverse side regarding Common Feline and Canine Diseases.

Your Pet's Current Health and Follow-Up Health Care

It's imperative that you make an appointment for your new pet with a veterinarian as soon as possible. The veterinarian can check your pet's health and give you valuable information regarding warning signs of illness. With any new pet, it's possible they may have been exposed to diseases that may not show symptoms for several weeks. Some of these diseases may be transmittable to other pets in your household and even to people. Veterinary fees incurred (such as diagnostics, vaccines and/or medications) are the responsibility of the pet owner.

Initial KH

Privacy Policy

For details about how we use your information (including with respect to our use of service providers located inside and outside of Canada), see our privacy policy at petmart.com or contact our Privacy Officer at the contact information below. Unless you opt-out, we may: (1) send you information and special offers by mail or e-mail regarding products or services that may be of interest to you; and/or (2) share your personal information with third-parties so they may contact you by mail and e-mail for their own marketing purposes. To opt-out call 888-839-9638 or email CustomerCare@petmart.com.

I hereby release PetSmart, Inc., PetSmart Charities, Inc., the adoption agency, and their agents of any liabilities related to the adoption of this pet from the adoption program.

Signature _____

Adoption Agency - Please Complete

Adoption Fee \$ 2.50 Altered ☒ Yes ☐ No

Adoption Agency HHHS

Pet's Name CHIPP

Year Pet Was Born _____

Pet's Age 3

Dog ☒

Puppy (<1 Year) ☐

Cat ☐

Kitten (<1 Year) ☐

Other ☐



14-HARDG-1434

SSG - Top

Store - Pink

Customer - Blue

Agency - Yellow

AHFS8:001

EXHIBIT 8



12PPI001

Exhibit 8: Injury Photos



12PPI002

Exhibit 8: Injury Photos



Exhibit 8: Injury Photos
Photo taken 06/27/2020

WRIT 305

33PPI003



Exhibit 8: Injury Photos
Photo taken 06/27/2020

WRIT 306

33PPI004



Exhibit 8: Injury Photos
Photo taken 06/27/2020

WRIT 307

33PPI005



Exhibit 8: Injury Photos
Photo taken 06/27/2020

WRIT 308

33PPI006



Exhibit 8: Injury Photos
Photo taken 06/27/2020

WRIT 309

33PPI007



Exhibit 8: Injury Photos
Photo taken 06/27/2020

WRIT 310

33PPI008



Exhibit 8: Injury Photos
Photo taken 06/27/2020

WRIT 311

33PPI009



Exhibit 8: Injury Photos
Photo taken 06/27/2020

WRIT 312

33PPI010

EXHIBIT 9

1 650,000 animals were adopted. That includes dogs, cats, and
2 small mammals.

3 Q. What -- can you estimate what percentage of those
4 animals were dogs?

5 A. We know -- larger percentage is cats. I don't
6 know offhand the exact percentage.

7 Q. A majority of the animals are cats. Would you
8 agree with that?

9 A. Correct.

10 Q. And then in second place would be dogs?

11 A. Yes.

12 Q. All right. So the lawsuit that is involved in
13 this case is involving a dog bite incident, a dog named Chip
14 that was adopted from A Home 4 Spot at an adoption charity
15 event on January 13, 2018.

16 What do -- what, if anything, do you know about
17 the dog bite incident involving Chip?

18 MR. AMARO: And let me just object to the question
19 as invading the attorney-client communication. Share with
20 him any information you obtained from a source, other than
21 through the legal team, if there is anything else.

22 THE WITNESS: It's very limited. We knew that
23 there was an adoption that took place at Petsmart. And
24 after the animal was adopted, there was an attack, that -- a
25 dog bite that took place in a person's home.

1 Q. (By Mr. Askeroth) And when did Petsmart become
2 aware of the dog bite incident?

3 A. I believe it was early 2019.

4 Q. And do you know how Petsmart became aware of the
5 incident?

6 A. I -- no, I don't.

7 Q. After the incident, did Petsmart take any action
8 against A Home 4 Spot, like suspension or anything else,
9 after it became aware of the dog bite incident?

10 A. Yes, upon learning of the incident, our customer
11 service specialist, Gail Devroy, put the organization, A
12 Home 4 Spot, on suspension while it investigated to see if
13 there had been any additional claims or any other issues
14 that we needed to be aware of that would have violated any
15 policies or procedures as a part of our adoption partner
16 agreement.

17 She also contacted the Department of Agriculture,
18 which is very common in these investigations, to review if
19 there had been any claims or anything of the like over the
20 last five years. And in that, she found nothing.

21 So after that review, it was deemed appropriate to
22 lift the suspension for A Home 4 Spot and allow them to
23 resume adoption in store.

24 Q. And as part of the investigation, did Petsmart
25 attempt to discover if Chip had been adopted prior to this

1 **complaints. Correct?**

2 A. Correct.

3 **Q. Number 3 discusses policies and procedures for**
4 **vetting potential adoption charities. Other than what**
5 **you've discussed with us already today, are there any**
6 **additional policies and procedures that Petsmart does in**
7 **regards to vetting adoption charities and qualifying them**
8 **for participation in the adoption program?**

9 A. No, as stated, it's a very reasonable procedure to
10 look into the companies through a Google search. We
11 validate their 501(c)(3) number, liability insurance, and
12 have a site visit with the -- for the organization.

13 **Q. And who performs the Google search?**

14 A. One of our, what's called, associate relationship
15 managers in Petsmart Charities.

16 **Q. All right. And take me through the steps. What**
17 **do they look for?**

18 A. On average, they look for if there's been any
19 complaints about the organization as it relates to the
20 behavior of animals, if there's been any lawsuits, if
21 there's been any bad behavior or egregious behavior by a
22 board of directors or by staff of the organization.

23 **Q. And to your knowledge, policies and procedures**
24 **regarding qualifying potential adoption charities to**
25 **participate in this program, were they followed in the -- in**

1 the case of A Home 4 Spot?

2 A. To my knowledge, yes.

3 Q. Is there a policy or procedure with Petsmart in
4 regards to following up with charities after the initial
5 application to confirm that they are still in compliance
6 with the requirements to qualify for the program?

7 A. On occasion, we will ask the organization to fill
8 out a new contract, like we did in 2013 when we switched
9 over, but -- and there's an ongoing relationship between the
10 associate relationship managers and the organizations, but
11 there's not an additional review process at this time.

12 Q. Did Petsmart -- other than the 2013 agreement that
13 was re-signed by A Home 4 Spot, did, to your knowledge,
14 Petsmart follow up with A Home 4 Spot to make sure that they
15 were still in compliance with the requirements to be part of
16 the program?

17 A. When?

18 Q. After the 2013 re-signing of the agreement?

19 A. Yes, I believe so, if there had been sort of
20 casual conversations with the organization, but there's not
21 a formal process with a new agreement or anything like that.

22 Q. Topic No. 4 addresses the adoption release form.
23 And I can -- I think I'm still sharing my screen. Right?
24 Yeah.

25 A. Yes.

1 form that happens between -- there's the organization's own
2 adoption form that they do. So they essentially have to
3 fill out two forms. There's the adoption application that
4 the organization has that is their own policies and
5 procedures, their own binding agreement between them and the
6 pet parent, and then there's this form releasing Petsmart
7 and Petsmart Charities from anything.

8 If this form doesn't get filled out, it doesn't
9 get, quote, unquote, counted by Petsmart or Petsmart
10 Charities.

11 Q. Okay. So if the form is not completed, the
12 adopter would still be able to take the pet home. However,
13 the charity -- the adoption wouldn't get counted for
14 purposes of any rewards program with the charity?

15 A. Correct.

16 Q. Is there a policy and procedure with Petsmart
17 regarding whether a Petsmart employee is required to review
18 this form with the adopter?

19 A. This form should be filled out between the pet
20 parent and the adopter. So the associates should not be
21 filling out anything here.

22 Q. What is -- I think I saw somewhere on this form
23 Pet Perks. Oh, yeah. Here it is. This box up here. Check
24 box yes. Sign me up for Pet Perks membership. You just
25 need to provide your phone number on this form to enjoy

1 exclusive in store benefits. And if you provide your e-mail
2 address, you will receive exclusive online benefits as a Pet
3 Perks member. Log on to PetPerks.com for personized deal
4 alerts. What is a Pet Perks membership?

5 A. It's Petsmart's old loyalty program. And so the
6 adopter has an opportunity to check the box to join the
7 loyalty program. It allows Petsmart to take the
8 information.

9 Q. Okay. And what does Petsmart do with that
10 information?

11 A. I honestly don't know.

12 Q. You talked about a rewards program. If there's a
13 successful adoption through the Petsmart charity, an
14 adoption release form is completed, does the charity receive
15 anything as a result of that successful adoption from --

16 A. Yes, from Petsmart Charities. They receive --
17 they receive a reward. So a monetary reward for doing the
18 adoption.

19 Q. And at the time of this adoption in January of
20 2018, do you know what the monetary reward would be for an
21 adoption of a dog?

22 A. In January of '18, I believe it was -- we were
23 still on the \$10 per adoption. And we're about to
24 transition over to a near -- a new teared reward system
25 where they weren't -- where they aren't rewarded for every

1 single adoption, but, instead, meet thresholds. And when
2 you meet a threshold of a certain number of adoptions, you
3 get a larger cash reward.

4 Q. Are the adoption -- are they allowed to claim the
5 reward more than once for the same dog? Like, for example,
6 if the charity adopts a dog through Petsmart and then it's
7 returned and then they adopt it again through Petsmart, are
8 they permitted to claim an award for adopting the same dog
9 more than once?

10 A. I -- so, theoretically, yes. If the animal is
11 returned to the organization, the organization has, again,
12 ownership of the animal, they are then allowed to adopt the
13 animal again and transfer that ownership.

14 However, if it's an adoption that takes place at
15 one store and then someone says that the same animal got
16 adopted at another store at the same time, then, no, that's
17 fraudulent, but if what this is showing is the transfer of
18 ownership from the organization to the adopter -- and so if
19 the organization does have ownership of the animal and they
20 are then transferring that ownership to the pet parent, then
21 it is valid.

22 Q. All right. And where is adoption day events --
23 where do they generally take place in regards to the
24 property?

25 A. It varies by store. So some stores, if they have

1 the real estate out front and the weather permitting -- so
2 not here in Arizona at this time frame, but they are able to
3 do adoptions in parking lots or adoptions on the sidewalk.

4 They do big tent events for small -- small
5 gatherings. They can also do adoptions inside the store.
6 Sometimes they happen in the drive aisle. We also have cat
7 centers that are inside the store. So it varies depending
8 on the store.

9 Q. And does -- these adoption days, does that
10 generally increase foot traffic at the store?

11 A. Generally there is an increase in traffic.

12 Q. There is or is not?

13 A. There is, yes.

14 Q. And in paragraph 1 of the Petsmart adoption
15 release form, under Adoption Program, it states, Thank you
16 for choosing to adopt a pet. Petsmart, Petsmart Charities
17 supports the adoption process by donating in-store space for
18 use by qualified pre-approved animal welfare organizations.

19 What does Petsmart mean by the term "qualified,
20 pre-approved animal welfare organizations"?

21 A. It's the process that I've explained before about
22 onboarding the organization. And so they are approved
23 organizations once they've gone through the vetting process
24 and signed an agreement with Petsmart Charities.

25 Q. And you stated -- I think you briefly addressed

1 Q. All right. Why don't they just say spayed or
2 neutered?

3 A. Your guess is as good as mine.

4 Q. All right. Okay. That clarifies that.

5 Topic No. 5 addresses the specific steps taken by
6 Petsmart to qualify and pre-approve A Home 4 Spot to perform
7 adoptions on -- through the program. You've covered those
8 steps. Is there anything else, in addition to what you've
9 already stated that Petsmart did to qualify and pre-approve
10 Home 4 Spot?

11 A. No.

12 Q. In -- in qualifying and pre-approving A Home 4
13 Spot, to your knowledge, is there anything that came to
14 Petsmart's attention that it was concerned about that might
15 prevent A Home 4 Spot for qualifying to be in the adoption
16 program?

17 A. No.

18 MR. ASKEROTH: Been about an hour. Everyone okay?
19 Need to take a break? Anybody?

20 Court Reporter, I'm looking at you.

21 MS. REPORTER: (Shakes head.)

22 MR. ASKEROTH: No, okay.

23 Q. (By Mr. Askeroth) All right. So the next
24 document I'd like to review with you -- we'll mark this as
25 Exhibit -- actually, you know, for -- let me just go up

1 A. Yes.

2 Q. All right. And this -- this one is signed on
3 June 14, 2013. According to your knowledge, there's no
4 other adoption or agreement to participate in the
5 Petsmart/Petsmart Charities adoption program, other than the
6 2013 agreement and the 2011 agreement. Correct?

7 A. That is correct.

8 Q. Okay. In paragraph 2, about, let's see -- one,
9 two, three -- four lines down, it states, Having a presence
10 in a Petsmart store also means that you, your employees, and
11 volunteers, as well as the adoptable pets you display may be
12 viewed by the public as representatives of Petsmart, even
13 though you are not.

14 Why is that in the agreement?

15 A. Because as outlined before, these organizations
16 are independent contractors with Petsmart Charities and
17 Petsmart. Petsmart Charities does not take dictate how they
18 run their business or how they run their adoption program,
19 what they charge, how they vet their animals.

20 Q. Do you agree that, based on this statement and
21 based on your understanding of the adoption process -- is it
22 reasonable for store patrons to view agency partners as
23 employees of Petsmart?

24 MR. AMARO: Objection. Overbroad as phrased. It
25 also calls for a legal conclusion as to the term

1 "employees." It calls for speculation in the mind of
2 individuals that come into the stores, but go ahead and
3 answer if you can without guessing.

4 THE WITNESS: Some could, yes, assume that those
5 in the store are employees.

6 Q. (By Mr. Askeroth) And this agreement talks about
7 safety of the individuals participating in the adoption
8 process, agency partners, employees store patrons. You
9 agree in this -- in the store setting, safety of all these
10 individuals is extremely important. Correct?

11 A. Correct. The health and safety of both the people
12 and the animals.

13 Q. And under Pets, about four bullets down -- trying
14 to zoom -- maybe I can -- that out a little bit -- it says,
15 Agency partner will isolate an animal at -- animal at the
16 first sign of illness or aggression and remove it from the
17 Petsmart store immediately. Pets showing signs of
18 aggression may not be brought back to the store for future
19 placement.

20 Is that Petsmart's policy regarding pets that show
21 signs of aggression? Not being able to be brought back to
22 the store for future placement, is that Petsmart's policy?

23 A. Yes, as stated there. Yes.

24 Q. Now, does this policy only pertain to animals that
25 show signs of illness or aggression at the Petsmart location

1 Civil Procedure, is still a non-expert, lay witness. And
2 it's improper to ask that type of question. I will,
3 however, allow it, subject to the objections.

4 THE WITNESS: From my perspective, I do not
5 believe it is a violation, as what this is outlining is
6 aggression in the store. If there was no aggression shown
7 in store, it's not in violation.

8 Q. (By Mr. Askeroth) Is there a document that
9 Petsmart keeps in its records after a dog is adopted through
10 the adoption process? So after a successful adoption takes
11 place, does Petsmart keep a record of that adoption.

12 A. Yes, that is the adoption release form.

13 Q. Okay. And does -- after an adoption takes place,
14 does Petsmart cross-reference that adoption release form to
15 see if the dog had been previously adopted through a
16 Petsmart adoption day event?

17 A. No.

18 Q. Under page 2, Customer Service heading, it states
19 that, Agency partner will disclose all known issues about an
20 animal to an adopter. Is it Petsmart's understanding and
21 requirement that an agency partner disclose behavioral or
22 prior aggressive issues to an adoption -- or an adopter.

23 A. Yes, it is our understanding.

24 Q. I will pull up another document here, Exhibit 4.

25 And this is --

1 Q. All right. Under Documentation Required, 3, it
2 states that -- Does your organization have insurance? In
3 parentheses, highly recommended. And then below, in
4 parentheses, Please provide a copy of your policy. And in
5 this situation, the box is checked yes. Is that correct?

6 A. Yes.

7 Q. All right. If an organization does not have
8 insurance, does that preclude them from participating in the
9 program?

10 A. No, it does not. There's typically a
11 conversation, and they are still held accountable to exact
12 same agreements.

13 Q. Okay. And if an organization does have insurance,
14 are they required to provide a copy of the policy to
15 Petsmart?

16 A. Yes, as it asks, at the point of application, to
17 please provide a copy.

18 Q. Is that a policy reviewed by Petsmart?

19 A. I do believe that the reviewer does look at it.

20 Q. And who performs that review?

21 A. At this time, it would have been the person who
22 was reviewing the application.

23 Q. And who is that person? Like --

24 A. Well, this was done in 2011, so I don't know. I
25 don't know who the person was.

1 suspension.

2 Q. And that communication was in the form of an
3 e-mail?

4 A. Yes.

5 Q. And other than that communication between Gail and
6 A Home 4 Spot, are you aware of any other documentation
7 relating to that complaint?

8 A. No, I am not.

9 Q. And you referenced the adoption partner manual
10 previously as part of the pre-qualification process.
11 What -- just briefly, what is the adoption partner manual?

12 A. It is a manual that outlines how adoptions can
13 take place in Petsmart stores and what we ask of our
14 partners to ensure, overall, the health and safety of both
15 the pets and the people while in Petsmart stores.

16 Q. And so it's a -- would you agree it's a set of
17 guidelines to instruct the partner on how to properly
18 perform an adoption at a Petsmart location?

19 MR. AMARO: Overbroad as phrased. Go ahead.

20 THE WITNESS: We do not -- we do not tell them how
21 they must run their adoption, but there are other things
22 there, such as policies and procedures, around cleaning the
23 area and some of the pieces that you had already brought up
24 in the contract. But we do not get into the operative
25 details on how they run their adoptions or their business in

1 the store.

2 Q. Does the manual provide to the agency instruction
3 or guidance on customer service training?

4 A. Recommended customer service is included, yes.

5 Q. And why does Petsmart include recommended customer
6 service guidelines in the manual?

7 A. Because we recognize that they are in the Petsmart
8 store and want to make sure that the health and safety of
9 the animals is being taken care of and that they have what
10 they need in order to process those adoptions and that the
11 customers remain safe, healthy, and, knowledge- --
12 knowledgeable as well of what's going on.

13 Q. The charity adoption program that's referenced in
14 the adoption partner manual, is that the -- what we've
15 already discussed, the monetary award for a successful
16 adoption?

17 A. Yes.

18 Q. Okay. Do you agree that the manual provides
19 guidance regarding appropriate dress for the agency
20 employees?

21 A. It does. Reasonable guidance for appropriate
22 dress, yes.

23 Q. For example, they're not permitted to wear shorts
24 on the property. Correct?

25 A. Correct.

1 **Q. What is the adoptable pet log?**

2 A. I believe it is a log that is kept by the
3 organization, as well as reviewed by a Petsmart store leader
4 to see who is on site and who -- which animals are on site
5 and which animals are adopted.

6 **Q. Okay. What's the purpose of the log?**

7 A. I believe exactly that, to monitor who is there
8 and who is adopted.

9 **Q. And are there policies and procedures involving**
10 **this log of adoptable pets?**

11 A. I believe so, but I'm not fully familiar with
12 them.

13 **Q. What is a Petsmart adoption ambassador?**

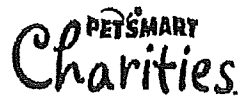
14 A. That is a Petsmart associate who is on staff of
15 Petsmart in the store to help the adoption partner with
16 anything they may need but also works with customers to
17 direct them to the area or help them with anything that they
18 may need during or after the adoption.

19 **Q. And is it accurate that the manual states that**
20 **pets that have bitten or scratched a customer associate or**
21 **adoption partner personnel may not be brought back to any**
22 **Petsmart store for adoption?**

23 A. Correct.

24 **Q. I saw, in some of the documents, reference to**
25 **Michelle Herr. Who is she?**

EXHIBIT 10

EXHIBIT**3**

A HOME 4 SPOT ANIMAL RESCUE

8258525

Organization Name

Agreement to Participate in the PetSmart/PetSmart Charities Adoption Program

The purpose of PetSmart Charities Adoption Program is to assist local animal welfare organizations to find homes for homeless pets and to help end euthanasia as a means of pet population control. Through our working together, we can achieve these goals by educating the public about responsible pet ownership, providing a superior adoption experience, and matching the right pet with the right family.

PetSmart Charities has permission to use certain space within PetSmart stores and place certain animal organizations, we call Agency Partners, in that space. Being located in a PetSmart store increases the Agency Partner's visibility providing a great advantage for the Agency Partners. Along with the benefits come certain responsibilities. Having a presence in a PetSmart store also means that you, your employees and volunteers as well as the adoptable pets you display may be viewed by the public as representatives of PetSmart even though you are not. In addition, the safety of your organization's employees and volunteers, PetSmart associates and customers and the pets are of the utmost importance. Therefore, the Agency Partner agrees to adhere to the following:

Pets

- Agency Partner shall be fully responsible for all its animals and for properly caring for them at all times.
- Agency must maintain control of its animals in the Adoption Center at all times. Pets that are displayed outside the Adoption Center must be confined either in a crate or an exercise pen, or on a lead with one handler to every dog.
- Agency Partner will offer only healthy animals for adoption in the PetSmart Charities Adoption Center or designated adoption areas.
- Agency Partner will isolate an animal at the first sign of illness or aggression and remove it from the PetSmart store immediately. Pets showing signs of aggression may not be brought back to the store for future placement.
- All animals must be vaccinated in accordance with PetSmart protocol and applicable state and local laws prior to being transported to PetSmart and placed in the Adoption Center. Vaccination of any animals in or on PetSmart premises is strictly prohibited. Dispensing medications or veterinary advice to PetSmart customers and/or adopters while on PetSmart premises is prohibited.
- Agency Partner must require that all animals be spayed or neutered. If the animal is not spayed or neutered prior to adoption, the Agency Partner must have a program in place to ensure adopter compliance.
- Agency Partners may not accept surrendered pets from the public or abandoned pets while on PetSmart premises.

The Adoption Process

- Subject to this Agreement, the Agency Partner will use its own shelter adoption policies and procedures when offering animals for adoption at the PetSmart Charities Adoption Center. The Agency Partner will explain the process that an adopter must follow to finalize an adoption.
- Agency Partner will make the final decision in the placement of a pet. If an adoption is denied, the Agency Partner will explain why it was denied and offer alternatives. Professional handling of non-match or denied adoptions is expected at all times.
- Agency Partner will require a signed PetSmart Adoption Release form with every adoption.
- Adoption results will be communicated to the PetSmart store director.

A small rectangular box containing the handwritten initials "DE".

August 2005

PetSmart, Inc. Confidential

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PETS0001

WRIT 331

- Agency Partner will adhere to the Adoption Center schedule as agreed upon by the Agency Partner and PetSmart and will promptly notify PetSmart management at least 24 hours in advance of any changes.

Customer Service

- Agency Partner will avoid discriminatory practices, or the perception of discrimination, by utilizing standardized fees for adoption, ensuring equal opportunity and fair treatment to all potential adopters and by not discriminating based on the basis of age, gender, race, ethnicity, national origin, religion, disability or sexual orientation.
- Agency Partner will disclose all known issues about an animal to an adopter.
- Agency Partner will communicate to potential adopters any of its requirements that may be conditional to an adoption.
- Subject to this agreement, the Agency Partner will use its own shelter adoption policies and procedures when offering animals for adoption. Agency Partner will explain the process that an adopter must follow to finalize an adoption.
- Agency Partner will make the final decision in the placement of a pet. If an adoption is denied, the Agency Partner will explain why it was denied and offer alternatives. Professional handling of non-match or denied adoptions is expected at all times.
- Agency Partners will work to resolve any adoption-related issues that may arise with PetSmart customers, including working with the Store Manager.
- Agency Partners will keep all information provided on an adoption application as private and confidential. PetSmart may require access in the event of a customer issue concerning the pet.

Agency Partner volunteers and/or employees

- Agency Partners are fully responsible for all actions and omissions of their employees and/or volunteers at all times.
- Agency partner volunteers must be at least 14 years old; volunteers under the age of 18 must be accompanied by and supervised by an adult at all times. All representatives must maintain a clean, neat and professional appearance at all times, and conduct themselves in a professional and courteous manner.
- Agency partner representatives' family members and/or personal pets may not be present at the Adoption Center during an Agency Partner representative's shift.
- All questions, comments and concerns shall first be directed to the PetSmart Store Manager.

Agency Partner activities while in the PetSmart store

- Agency Partners may not sell products, competitive services (for example, grooming, pet training and veterinary services) or conduct fundraising activities while in a PetSmart store. Agency Partners shall not unnecessarily interfere with or impede the conduct of business of PetSmart Charities or any tenant or occupant of the location at any time. Agency Partner may not directly solicit donations from PetSmart customers while they are present at the Adoption Center. Agency Partner is welcome to collect donations from the public while the Agency Partner is performing adoptions at the Adoption Center if they provide their own collection canister that is located where adoptions are being performed.
- Agency Partner representatives shall not disparage PetSmart, PetSmart Charities or any PetSmart products, services, Banfield the Pet Hospital, associates or the activities or reputations of any other organizations participating in the Adoptions Program.
- PetSmart provides supplies for the Adoption Center (dog food, cat food, litter, etc). However, no Agency Partner employee or volunteer is permitted to remove any product, supplies, or equipment from the sales floor for use in the Center or any other reason. The Agency Partner, their employees or volunteers, must contact a PetSmart manager for replenishment of supplies or equipment.
- The Adoption Center must be maintained in a clean and orderly fashion and precautions taken to discourage the spread of communicable diseases. The Agency Partner is responsible for ensuring that the Adoption Center is clean prior to departure.

Other Agreements and Understandings

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Nothing within this Agreement shall be construed to create a legal partnership, joint venture, landlord-tenant or employee-employer relationship between PetSmart or an adoption agency or volunteers. The Agency Partner is an independent entity responsible for itself, its employees, volunteers, subcontractors, representative, agents and animals at all times.

Agency Partner will secure and maintain all permits, certifications and/or licenses required by law to conduct its activities under this Agreement.

Agency Partner including its employees, agents, representatives, assigns, successors and subcontractors shall defend, indemnify and hold harmless for, from and against the PetSmart and PetSmart Charities, including their respective employees, agents, representatives, assigns, successors and subcontractors for, from and against all costs, claims, losses, liabilities, property damage, bodily injury or death, intellectual property infringement (including reasonable fees of attorneys) ("Claim"), incident to or arising out of the Agency Partner's: (i) breach of this Agreement; (ii) negligent act(s) or omission(s); (iii) violation of Applicable Law; and/or (iv) employees, subcontractors or agents filing of an employment and/or worker compensation claim.

Agency Partner will not use any trademarks or names, service marks, logos or other commercial or product designations of PetSmart or PetSmart Charities without PetSmart's express prior written consent. In particular, Agency Partner shall not identify or make reference to PetSmart in any advertising or other promotional modality regardless of its form without explicit prior written consent from PetSmart.

Agency Partner understands that attaining our mutual goal of finding homes for homeless pets may mean that there might be more than one Agency Partner operating in the same PetSmart store.

Agency Partner understands that an Agency Partner may terminate its participation in the PetSmart Charities Adoption Program for any reason at any time. PetSmart also reserves the right to terminate the Agency Partner from the Adoption Program for any reason at any time.

Agency understands that the final step in the Adoption program approval process is a satisfactory shelter or foster home visit, conducted by a member of PetSmart store management.

The Agency Partner's signature below indicates that the Agency Partner has read, understands, agrees to and will abide by the above terms and that the person signing on behalf of the Agency Partner is authorized to bind and sign for the Agency Partner and agree to this Agreement on its behalf.

Signature: *Diana England* Title: president
Name (print): Diana England Date: 6/14/2013

EXHIBIT 11

Exhibit 11: Petsmart's Adoption Partner Manual is
Considered Confidential and will be emailed to the
Court for an in-camera review.