

No. _____

IN THE SUPREME COURT
OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

PETSMART, INC.

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF
NEVADA,

COUNTY OF CLARK

Honorable Timothy D. Williams

Respondent,

JAMES TODD and RAPHAELA TODD

Real Parties in Interest.

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

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 5 of 5, EXHIBITS 11-15)

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CHRONOLOGICAL INDEX OF EXHIBITS

APPENDIX OF EXHIBITS, VOLUMES 1 to 5

Exhibit	Description of Documents	Volume/Page No(s).
1.	PLAINTIFFS' FIRST AMENDED COMPLAINT	Volume 1 5-16
2.	ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT	Volume 1 17-27
3.	DEPOSITION OF DIANA ENGLAND	Volume 1 28-31
4.	A HOME 4 SPOT ANIMAL RESCUE AGREEMENT	Volume 1 32-37
5.	PLAINTIFFS' RESPONSE TO DEFENDANT PETS MART, INC.'S FIRST SET OF INTERROGATORIES	Volume 1 38-56
6.	DEPOSITION OF CHRISTINA DETISCH	Volume 1 57-70
7.	DEPOSITION OF RAPHAELA TODD	Volume 1 71-84
8.	DEPOSITION OF LINDSAY DEL CHIARO	Volume 1 85-92
9.	NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES, BY DEFENDANT, PETSMART, INC.; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF MICHAEL L. AMARO AND EXHIBITS	Volume 2 97-224

10.	PLAINTIFFS' OPPOSITION TO DEFENDANT PETSMART'S SECOND MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION ON ISSUES	Volume 3 229-282 and Volume 4 287-335
11.	REPLY IN SUPPORT OF MOTION AND MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES, BY DEFENDANT, PETSMART, INC.	Volume 5 340-348
12.	ORDER DENYING DEFENDANT PETSMART, INC.'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES, WITHOUT PREJUDICE	Volume 5 349-362
13.	REPORTER'S TRANSCRIPT OF HEARING ON MOTION FOR SUMMARY JUDGMENT	Volume 5 363-406
14.	NOTICE OF ENTRY OF ORDER AND ORDER ADMITTING TO PRACTICE MICHAEL L. AMARO, ESQ.	Volume 5 407-411
15.	COURT DOCKET REPORT	Volume 5 412-439

EXHIBIT “11”



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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA, CLARK COUNTY

JAMES E. TODD, individually; RAPHAELA
TODD, individually

Plaintiffs,

v.

A HOME 4 SPOT ANIMAL RESCUE, a
Nevada Domestic Non-Profit corporation;
JANE DOE EMPLOYEE, PETSMART, INC.,
DOES I through X; and ROE
CORPORATIONS 1 through X, inclusive
jointly and severally,

Defendants.

CASE NO. A-19-788762-C

REPLY IN SUPPORT OF MOTION AND
MOTION FOR SUMMARY JUDGMENT, OR
IN THE ALTERNATIVE, SUMMARY
ADJUDICATION OF ISSUES, BY
DEFENDANT, PETSMART, INC.

DATE: February 26, 2020
TIME: 9:30 a.m.
CTRM: 03H

Defendant, PetSmart, Inc. hereby submits this Reply Brief, in response to Plaintiffs' Opposition to Defendant's Motion for Summary Judgment. Plaintiffs make a number of arguments, in the hopes that one of them "sticks", and, thus the Court denies the motion. However, each of the arguments misses the mark, and the motion should properly be granted.

LEGAL ARGUMENT**A. PLAINTIFFS ERRONEOUSLY ARGUES THAT THE COURT ALREADY
CONSIDERED AND RULED ON THE SUBSTANTIVE MERITS OF THE PRIOR MOTION**

Plaintiffs argue that the Court already considered the prior Motion for Summary Judgment, and “substantively” denied the same. However, Plaintiffs clearly mislead the Court, insomuch as the Court’s prior ruling was a denial of the motion “without prejudice”, because Plaintiffs requested NRCP 56(d) relief, and had not deposed PetSmart’s 30(b)(6) witness. Accordingly, the Court never ruled on the substantive merits of the Motion.

**B. PLAINTIFFS FALLACIOUSLY ARGUE THAT PETSMART HAD KNOWLEDGE
OF THE DOGS’ HISTORY**

Plaintiffs’ Opposition set forth, in painstaking detail, the history of the dog which attacked Plaintiff, James Todd, including all of the prior adoptions and returns, when the dog was at the Animal Foundation. Plaintiffs provide this “history” to try and argue that PetSmart “should have known” about the same.

However, Plaintiffs provide no evidentiary support that PetSmart was aware of this history, or, that PetSmart had access to any documentation which would have revealed the same. That is because the evidence in this case reflects otherwise; that PetSmart did not have any knowledge of the history of the dog, nor did PetSmart have access to any of the Animal Foundation documents before the adoption by A Home 4 Spot. As noted in the deposition of PetSmart’s 30(b)(6) witness, Lindsay Del Chiaro, she testified that PetSmart had no knowledge of the subject dog’s history. (Deposition of Lindsay Del Chiaro, Exhibit “G”, page 51. Further, at no time did PetSmart ever take possession of the dog, and, the decision about whether or not the dog was eligible for adoption in the first instance, was made by A Home 4 Sport, and not PetSmart, since PetSmart had no access to Chip’s documentation before the adoption. (Deposition of Diana England, Exhibit “B”, pages 86 – 87).

C. PLAINTIFFS CORRECTLY CITE THE PROPER LAW ON THE ISSUE OF DUTY, BUT FAIL TO SHOW THAT PETSMART HAD ANY “SPECIAL” RELATIONSHIP WITH PLAINTIFFS, SO AS TO ESTABLISH A LEGAL DUTY

On page 17 of their Opposition, Plaintiffs correctly note that whether a “duty” exists is a question of law solely to be determined by the court. *Citing Scialabba v Brandise Constr. Co., Inc.*, 112 Nev. 965, 968 (1996); (*See also Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 826, 221 P.3d 1276, 1282 (2009); *Lee v. GNLV Corp.*, 117 Nev. 291, 295, 22 P.3d 209, 212 (2001) Plaintiffs further recognize that the *Sciablabba* case holds that in order for a legal duty to exist, there must be a “special relationship” between the parties. *Id.* at 968-69.

Here, Plaintiffs Opposition hollowly argues that PetSmart exercised a sufficient amount of “control” over A Home 4 Spot, that the Court should impose a legal duty under the facts of the case. Plaintiffs’ counsel contends that “PetSmart regulated and controlled every aspect of the adoption process.” (Page 19, lines 21 – 22). Such argument, however, clearly disregards the very clear, and contradicting deposition testimony of Lindsay Del Chiaro of PetSmart. In her deposition, which Plaintiffs conveniently ignore in their Opposition, Ms. Del Chiaro testified that PetSmart did not control how A Home 4 Spot conducted its adoptions, nor how A Home 4 Spot carried on its business operations (such as what to charge, how to staff the event, etc.) (Deposition of Lindsay Del Chiaro, Exhibit “G”, page 49). Ms. Del Chiaro clearly testified that the adoption companies are independent contractors, and PetSmart did not get involved in any of the operative details of the business. (Deposition of Lindsay Del Chiaro, Exhibit “G”, page 60).

Plaintiffs further posit that the motion should be denied because the adoption partner manual sets forth “tight control”, and “the policies and procedures governing its own employees and employees of the adoption charity partners are so intertwined, that is own employees are permitted to perform the charity’s adoptions in place of the adoption charity partners employees and volunteers.” (Page 20, lines 6 – 10). This argument is completely misplaced, insomuch as the Manual which counsel speaks of (Exhibit 11, and filed under seal), has several sections, and not only pet adoptions by outside non-profit companies (like A Home 4 Spot), but also, some stores that have in-house “7-Day Adoption Centers” operated inside the store by PetSmart (page 17, paragraph 1). The subject

1 store did NOT have an in-house adoption center, and many sections of the manual simply are
2 inapplicable here. As such, at the subject store, the PetSmart employees/associates were not involved
3 in the adoption process.

4 Further, as page 1 of Exhibit 11 (Adoption Partner Manual) states “the requirements outlined
5 in this manual are critical to the health and safety of the pets in your care.” Such stated purpose is
6 consistent with what Ms. Lindsay Del Chario testified in her deposition, to wit, that the manual set
7 forth certain expectations, but only in furtherance of the health and safety of the pets; and, PetSmart
8 never told the non-profit companies how to conduct their adoptions, or the operative details of the
9 business operations. (Deposition of Lindsay Del Chiaro, Exhibit G, page 60).

10 Consistently, the Adoption Partner Manual, on pages 7 – 8, states that “safety of pets is our
11 number 1 priority”; and, in to accomplish that stated goal, some “basic” expectations were set forth
12 in that section. The manual discusses ways in which the pets should be properly cared for, that the
13 adoption company volunteers should look professional, and engage the pet parents in a courteous
14 fashion. By no stretch of the creative imagination of Plaintiffs’ counsel, does the manual set forth
15 “tight controls” of the adoption process, such that a legal duty would or should be imposed by this
16 Court.

17 Further, as stated in the Moving Papers, the Nevada Supreme Court has unequivocally stated
18 that “[n]egligence is not actionable unless, without the intervention of an intervening cause, it
19 proximately causes the harm for which the complaint was made.” *Thomas v. Bokelman*, 86 Nev. 10,
20 13, 462 P.2d 1020, 1022 (1970). An intervening cause is defined as one “which is itself the natural
21 and logical cause of the harm.” *Id.* Therefore, in Nevada, where an allegedly negligent act or
22 omission occurs that is the natural and logical cause of a plaintiff’s injury, the injured plaintiff cannot
23 sustain an action against any party for actions that took place *prior* to the intervening cause. *Id.*
24 (emphasis added). Here, PetSmart never took possession of the dog, had no knowledge of its
25 behavioral history, and was not involved in the subject adoption. As such, had no legal duty, as a
26 matter of law since there was no special relationship between Plaintiffs and the store.

27 Similarly, at common law, there is no duty to control the dangerous conduct of another or to
28 warn others of that potentially dangerous conduct. *See Mangeris v. Gordon*, 94 Nev. 400, 402,

1 580P.2d 481, 483, (1978). It is well accepted that absent some sort of well-defined special
 2 relationship, there can be found to be no legal duty owed. See *Sparks v. Alpha Tau Omega*
 3 *Fraternity, Inc.*, (2011) 127 Nev. 287, 289; *Sims v General Telephone & Electronics* (1991) 107
 4 Nev. 516, 521).

5 The only exception to that general common law rule is where "(1) a special relationship
 6 exists between the parties or between the defendant and the identifiable victim, (2) the harm created
 7 by the defendant's conduct is foreseeable. *Sanchez*, 125 Nev. at 824 (citing *Lee v. GNLV Corp.*, 117
 8 Nev. 291, 295, 22 P.3d 209, 212 (2001)).

9 Plaintiff, Mrs. Todd stated, under oath, in Plaintiffs' Responses to Interrogatories, Set One,
 10 that she never spoke with any PetSmart employee about the subject dog's adoption, prior to the
 11 adoption; and, the only two people Mrs. Todd spoke with, were "with the animal rescue group".
 12 (Attached to PetSmart's Motion for Summary Judgment as Exhibit "D").

13 Most importantly, the Adoption Form which Plaintiff signed (Exhibit "C" to the Motion,
 14 Bate stamped AHFS8:001, in the very first paragraph, states that Plaintiff Mrs. Todd unequivocally
 15 acknowledged that A Home 4 Spot was not affiliated with PetSmart or PetSmart Charities in any
 16 way." She initialed that section, which indicated that she read and understood that very clear
 17 disclosure. Plaintiffs cannot, in good faith argue that there was any special relationship here, for the
 18 Court to impose a legal duty.

19 20 **C. PLAINTIFFS ARGUMENT THAT THERE IS A TRIABLE ISSUE ABOUT** 21 **"AGENCY" SIMILARLY FAILS**

22 On page 18 of the Opposition, Plaintiffs concede when determining whether an "ostensible"
 23 agency exists, the courts look at several factors including: (1) **whether the principal engaged in**
 24 **misleading conduct that induces reliance by a third party**, (2) whether the principal selected the
 25 defendant to serve its patrons, (3) whether a plaintiff entrusted its safety to the principal, whether an
 26 individual reasonably believed that the defendant was an employee or agent of the principal, and
 27 **whether the individual was put on notice that the agent was an independent contractor.** See
 28 *McCrosky v. Carson Tahoe Reg'l Med. Ctr.*, 408 P.3d 149, 133 Nev. Adv. Rep. 115 (2017) (bold

1 added).

2 As to the first element, there is no evidence in this case that PetSmart engaged in any
3 “*misleading conduct*” that induced Plaintiff to believe that A Home 4 Spot was an agent. First,
4 Plaintiff, Mrs. Todd never interacted with a single PetSmart employee during the entire adoption
5 process. All of her interactions were with A Home 4 Spot employees. Second, Plaintiff, Mrs. Todd
6 knew that the PetSmart employees wore blue polo shirts, with name tags, and, none of the people
7 involved in the subject adoption, wore such attire. And, third, which is the death knell of her “agency
8 claim”, she specifically signed and “initialed” the following provisions in an agreement: (Exhibit
9 “C” to PetSmart's Motion for Summary Judgment).

10 “Adoption Program. PetSmart and PetSmart Charities supports the adoption process by
11 donating in-store space . . . **These organizations are not affiliated with PetSmart or**
12 **PetSmart Charities in any way.**

13 Your Pet's History. The animals available for adoption through the Adoption Program often
14 come from a shelter environment and little is known about their past. . . . Any questions
15 regarding your pet's health should be directed to the adoption group. In addition, we strongly
16 encourage a quarantine period for newly adopted pets . . . This will let the pet adapt to the
17 new environment and allow monitoring for any possible signs of . . . aggression.”

18 Therefore, PetSmart did not engage in any “misleading conduct that induced reliance by a
19 third party”. And, as noted in *McCrosky*, Plaintiff was in fact, “put on notice that the purported agent
20 was an independent contractor”.

21 Very “creatively”, Plaintiffs have argued that PetSmart received “some benefits” from the
22 adoption days in the store, since foot-traffic was increased. However, whether or not there is some
23 remote benefit is irrelevant absent misleading conduct, which, is undeniably absent here.

24
25 **D. PLAINTIFFS ARGUMENT THAT THERE THE VETTING PROCESS WAS**
26 **INADEQUATE, LIKEWISE FAILS, AS A MATTER OF LAW**

27 Plaintiffs make a half-hearted claim that the vetting process was inadequate, and “created the
28 likelihood that the adoption charity, like AH4S, with prior complaints and other inadequate safety

1 protocols, would slip through the cracks” (page 21, lines 5 – 8). However, Plaintiffs argument puts
2 the judicial cart before the horse - - insomuch as absent a special relationship (as noted above), there
3 is no legal duty in the first instance.

4 Further, there were no “prior complaints” with A Home 4 Spot, as argued, and, by making
5 that claim, Plaintiffs mislead the Court. Per Lindsay Del Chario, there were no prior Complaints with
6 this adoption agency (Deposition of Lindsay Del Chiaro, Exhibit “G”, page 39).

7 8 CONCLUSION

9 The uncontroverted facts show that PetSmart, Inc. cannot be held liable for the injuries
10 allegedly sustained when Plaintiffs' newly adopted dog bit Mr. Todd at their home after they chose
11 to adopt it. PetSmart, Inc. did not owe any legal duty to Plaintiffs, since PetSmart was not involved
12 in the adoption process, and there was no special relationship between Plaintiffs and PetSmart.
13 Further, there can be no agency relationship here, as a matter of law, as acknowledged by Plaintiff,
14 Mrs. Todd, in writing; and, nothing which PetSmart did, misled Plaintiff into thinking there was
15 such an agency relationship.

16 Accordingly, it is respectfully requested that the Motion be granted. A Home 4 Spot is still a
17 party in this case, and Plaintiffs are not without a remedy.

18 DATED: October 23, 2020

AMARO | BALDWIN LLP

19
20 By: 

MICHAEL L. AMARO
Attorneys for Defendant,
PETSMART, INC.

CERTIFICATE OF SERVICE

I certify that on this 26th day of October, 2020, the foregoing **REPLY IN SUPPORT OF MOTION AND MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES BY DEFENDANT, PETSMART, INC.** was served via the Court's Odyssey eFile NV system on the following counsel(s) of record:

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EXHIBIT “12”

Case Number: A-19-788762-C

Petsmart, Inc.'s Motion for Summary Judgment, or in the Alternative, Summary Adjudication of Issues and finds as follows:

FINDINGS OF FACT

1. On January 14, 2018, Plaintiff James Todd was attacked and mauled by a dog. Plaintiffs adopted the subject dog, "Chip," from Defendant A Home 4 Spot ("AH4S") at an adoption day event at a local Petsmart store.

2. Before AH4S took possession of Chip, he was kept at The Animal Foundation (“TAF”) and available for adoption. Based on the evidence presented to the Court, TAF unsuccessfully attempted to adopt Chip on at least two separate occasions. Ultimately, TAF deemed Chip unfit for adoption because of his various behavioral issues. Notwithstanding Chip’s prior incidents, AH4S took possession of Chip from TAF intending to put Chip up for adoption through their own adoption program, utilizing adoption day events at Petsmart locations.

3. Petsmart adoption day events provide an opportunity for adoption charity groups, like AH4S, to use Petsmart property to conduct pet adoptions to store patrons.

4. On January 12, 2018, Plaintiff Raphaella Todd went to Petsmart on West Lake Mead Boulevard in Las Vegas, Nevada. Upon arriving at the adoption day event, Ms. Todd was greeted and assisted by AH4S employees. Although Ms. Todd only interacted with AH4S employees, she believed that there existed a partnership or collaboration between Petsmart and AH4S. Plaintiffs ultimately adopted Chip at this Petsmart adoption day events.

5. Unbeknownst to Plaintiffs, at least two unsuccessful adoptions of Chip took place through Petsmart adoption charity events prior to Plaintiffs' adoption; both adoptions resulting in Chip being

1 returned.

2 6. The first of these adopters returned Chip because the dog
3 showed violent tendencies and had chased the adopter in his own house,
4 causing him to fear for his own personal safety and the safety of his family.
5 The adopter informed AH4S that he was so scared of Chip that he hid in his
6 room with a baseball bat until the dog could be picked up.

7 7. The second adoption also took place at a Petsmart adoption
8 event. In this second incident, Chip attacked the adopter's daughter
9 resulting in severe wounds and surgery to the daughter's hand. This attack
10 took place only a few weeks prior to the Todds' adoption of Chip at the
11 Petsmart adoption day event.

12 8. Based on Plaintiff's deposition testimony, she trusted and
13 relied on Petsmart and, in turn, its adoption charity partner, AH4S.
14 Moreover, the Petsmart adoption release/waiver form signed by Plaintiff
15 affirmatively states that the adoption charity partners are vetted by
16 Petsmart as "qualified, pre-approved animal welfare organizations."

17 9. Shortly after Plaintiffs brought Chip home from the Petsmart
18 adoption day event, Chip violently attacked Plaintiff James Todd. As a
19 result of the January 14, 2018, dog attack, Mr. Todd suffered severe injuries.

20 10. According to Petsmart, it vets and pre-qualifies adoption
21 partner charities, like AH4S, to ensure that the charities are qualified and
22 pre-approved to provide safe adoption services on Petsmart property.

23 11. The evidence shows that Petsmart has significant control over
24 the conduct and activity of its adoption charity partners. Because of this
25 oversight and control of the adoption day events, Petsmart acknowledges
26 that its customers might believe that the adoption charity partners'
27 employees or volunteers are actually representatives of Petsmart.

28 12. All adoption charity partner organizations must sign an

1 "Agreement to Participate" with Petsmart before qualifying as an official
2 adoption charity partner. This agreement specifically acknowledges that
3 the public might view adoption charity volunteers as Petsmart employees.
4 Petsmart further requires that their adoption charity partners agree to
5 adhere to no less than 27 provisions in the Agreement. These provisions
6 govern areas such as customer service, volunteer conduct on Petsmart
7 premises, the adoption process, and the nature, care, and presentation of
8 the pets up for adoption.

9 13. On an annual basis, approximately 650,000 animals are
10 adopted through Petsmart's adoption day program. Petsmart
11 acknowledges that customer foot traffic increases in their stores during
12 adoption day events.

13 14. Petsmart partners up with various charitable organizations to
14 perform these adoption day events. AH4S is one of these official adoption
15 charity partner organizations. Petsmart claims to use only approved
16 organizations once they've gone through the vetting process and signed an
17 agreement with Petsmart Charities.

18 15. Petsmart acknowledges that the health and safety of both the
19 people and the animals is extremely important.

20 16. Petsmart's vetting and pre-qualification process consists of
21 confirmation of the charity's 501(c)(3) status, a site visit, and a "google
22 search" of the organization by a Petsmart associate. There is no written
23 policy or procedure concerning the nature and extent of the "google
24 search."

25 17. Moreover, Petsmart does not require that its adoption charity
26 partners carry liability insurance.

27 18. The Petsmart Adoption Partner Manual (hereinafter the
28 "Manual") is then provided to adoption charity partners after they pass the

1 vetting and qualification process. The Manual provides official Petsmart
2 guidance and “outlines how adoptions can take place in Petsmart stores...”

3 19. The Manual is a set of instructions to Petsmart adoption
4 charity partners on how they must perform adoptions inside Petsmart
5 stores.

6 20. The Manual covers aspects of the adoption process. For
7 example, the Manual provides adoption charity partners with specific
8 guidance on how to perform customer service training for their employees
9 and volunteers.

10 21. The Manual governs numerous other details concerning the
11 manner in which the adoption charity partners must conduct their
12 adoptions. For example, the Manual provides direction on appropriate
13 dress for the adoption charity’s employees and volunteers. The Manual
14 states that certain attire is specifically not permitted to be worn by adoption
15 charity partners employees or volunteers. Clothing like shorts, skorts,
16 sweatpants, sweatshirts, jogging suits, jean bib overalls, leggings, lycra,
17 stirrup pants, min-skirts, spaghetti-strap dresses, tank tops, halter tops,
18 slippers and flip flops or thong sandals is prohibited.

19 22. The Manual also controls the actual adoption process,
20 including the type of information provided on cage cards for each animal,
21 the specific steps to be taken when a customer shows interest in an animal
22 for adoption, and the specific type of pets allowed for adoption.

23 23. The Manual permits employees of Petsmart to perform
24 adoptions, under certain circumstances, in place of the volunteers and
25 employees of the adoption charity. The pet return process, presentation of
26 the pets (visual appeal, scent appeal, curb appeal), pet care and safety, and
27 the demeanor of the employees and volunteers of the adoption charity
28 partners are also covered by the Manual.

24. Petsmart also reviews and maintains an “adoptable pet log” for each organization. This log tracks the date and time, and identity of each dog, adopted through adoption day events.

25. Although Petsmart tracks adoptions through the adoptable pet log and adoption release form, Petsmart does not have a policy or procedure to determine if a specific dog has been previously adopted at an adoption day event

26. Petsmart and the adoption charity partners receive several benefits through the adoption of pets on Petsmart premises. Customer foot traffic increases during adoption day events. Also, Petsmart obtains the adopter's email addresses when an adopter signs the adoption release/waiver form. The adopter is also provided with a "goody bag" of Petsmart promotional items and coupons after the completion of a successful adoption. The adopter is also encouraged to join Petsmart loyalty program, Pet Perks.

27. The adoption charity partner receives a monetary award paid by Petsmart for every successful adoption it performs in a Petsmart store. The cash award increases when the adoption charity partner reaches a certain threshold of adoptions.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate only when the moving party is entitled to judgment as a matter of law and there are no genuine issues in dispute. *Fire Ins. Exch. v. Cornell*, 120 Nev. 303, 305, 90 P.3d 979, 979 (2004).

2. When reviewing a motion for summary judgment, the evidence and all reasonable inferences drawn from the evidence, must be viewed in a light most favorable to the nonmoving party. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

1 3. Further, if the party opposing summary judgment would be
2 entitled to prevail under any reasonable construction of the evidence, and
3 any acceptable theory of law, summary judgment against that nonmoving
4 party cannot be sustained. *Harris v. Itzhaki*, 183 F.3d 1043 (9th Cir. 1999).

5 4. All doubts should be resolved against the moving party and
6 its supporting affidavits and depositions must be carefully scrutinized by
7 the court even with respect to inferences drawn from such evidence.
8 *Hoffmeister Cabinets of Nev., Inc. v. Bivins*, 87 Nev. 282, 486 P.2d 57 (1971).

9 5. Further, "a court should exercise great care in granting
10 summary judgment; a litigant has a right to trial where there is the slightest
11 doubt as to the facts." *Nehls v. Leonard*, 97 Nev. 325, 630 P.2d 258 (1981);
12 *Mullis v. Nevada National Bank*, 98 Nev. 510, 654 P.2d 533 (1982).

13 6. Courts are reluctant to grant summary judgment in the
14 context of negligence cases. Specifically, our Supreme Court has held that
15 "[t]his court is reluctant to affirm summary judgment in negligence cases
16 because negligence is ordinarily a question of fact for the jury." *Rodriguez v.*
17 *Primadonna Co., LLC*, 125 Nev. , 216 P.3d 793, 798 (2009).

18 7. "In a negligence action, summary judgment should be
19 considered with caution. In order to establish entitlement to judgment as a
20 matter of law, a moving defendant must show that one of the elements of
21 the plaintiff's prima facie case is clearly lacking as a matter of law." *Doud v.*
22 *Las Vegas Hilton Corp.*, 109 Nev. 1096, 1100, 864 P.2d 796, 798 (1993).

23 8. Summary judgment is foreclosed when there is the slightest
24 doubt as to the operative facts. *Washoe Medical Ctr., Inc. v. Churchill County*,
25 108 Nev. 622, 836 P.2d 624 (1992).

26 9. To prevail on a negligence theory, a plaintiff must generally
27 show that: (1) the defendant owed a duty of care to the plaintiff; (2) the
28 defendant breached that duty; (3) the breach was the legal cause of the

1 plaintiff's injury; and (4) the plaintiff suffered damages. *Perez v. Las Vegas*
2 *Medical Center*, 107 Nev. 1, 4, 805 P.2d 589, 590 (1991).

3 10. In a negligence action, the question of whether a "duty" to act
4 exists is a question of law to be determined by the court. *Scialabba v. Brandise*
5 *Const. Co., Inc.*, 112 Nev. 965, 968, 921 P.2d 928, 930 (1996); *see also* W. Page
6 Keeton et al., *Prosser and Keeton on the Law of Torts* § 37, at 236 (5th ed. 1984).

7 11. To find that a duty exists, Courts must first determine
8 whether "such a relation exists between the parties that the community will
9 impose a legal obligation upon one for the benefit of the other." *Lee v. GNLV*
10 *Corp.*, 117 Nev. 291, 295, 22 P.3d 209, 212, (2001).

11 12. Courts have imposed a duty where a "special relationship"
12 exists between the parties, including landowner-invitee, businessman-
13 patron, employer-employee, school district-pupil, hospital-patient, and
14 carrier-passenger. The issue of duty will turn on the extent and nature of
15 defendant's control over the third party, and whether the injury was
16 foreseeable. *Scialabba v. Brandise Constr. Co.*, 112 Nev. 965, 968-969, 921 P.2d
17 928, 930, 1996 Nev. LEXIS 129, *6.

18 13. The rationale behind the imposition of duty in these situations
19 is that:

20 Since the ability of one of the parties to provide for his own
21 protection has been limited in some way by his submission to
22 the control of the other, a duty should be imposed upon the
23 one possessing control (and thus the power to act) to take
24 reasonable precautions to protect the other one from assaults
by third parties which, at least, could reasonably have been
anticipated.

25 Thus, the element of control is the pivotal factor in the
26 determination of liability arising from certain relationships.

27 *Id.* at 969, 921 P.2d at 930.

28 14. The issue of duty will turn on the extent and nature of

1 defendant's control over the third party, and whether the injury was
2 foreseeable. *Id.*

3 15. The existence of an agency relationship is generally a
4 question of fact for the jury if the facts showing the existence of agency are
5 disputed, or if conflicting inferences can be drawn from the facts. *Schlotfeldt*
6 *v. Charter Hosp.*, 112 Nev. 42, 47, 910 P.2d 271, 274, (1996).

7 16. Courts look at several factors to determine the existence of an
8 ostensible or apparent agency relationship, including, whether the
9 principal engaged in misleading conduct that induces reliance by a third
10 party, whether the principal selected the defendant to serve its patrons,
11 whether a plaintiff entrusted its safety to the principal, whether an
12 individual reasonably believed that the defendant was an employee or
13 agent of the principal, and whether the individual was put on notice that
14 the agent was an independent contractor. See *McCrosky v. Carson Tahoe*
15 *Reg'l Med. Ctr.*, 408 P.3d 149, 133 Nev. Adv. Rep. 115 (2017).

16 17. In an agency relationship, the principal possesses the right to
17 control the agent's conduct. *Hunter Mining Lab. v. Management Assistance*,
18 104 Nev. 568, 570, 763 P.2d 350, 352, (1988). Ostensible agency exists when
19 the principal intentionally, or by want of ordinary care, causes or allows a
20 third person to believe another to be his agent. 26 Am J1st H & W § 237. A
21 party claiming apparent authority generally must prove that he
22 subjectively believed that the agent had authority to act for the principal
23 and that his subjective belief in the agent's authority was objectively
24 reasonable. *Great Am. Ins. Co. v. General Builders, Inc.*, 113 Nev. 346, 352, 934
25 P.2d 257, 261, (1997).

26 18. This Court finds *Wright v. Schum*, 05 Nev. 611, 781 P.2d 1142
27 (1989) specifically applicable in this case. In *Wright*, the Nevada Supreme
28 Court found that a landlord could be liable in a dog bite case under general

1 tort obligations because it had assumed such a duty by voluntarily taking
2 action to secure the neighborhood from harm. Thus, the Supreme Court
3 found that material questions of fact remained that precluded summary
4 judgment as to whether the landlord breached his duty of care to the public
5 where he allowed the tenant to remain with the dog and then failed to
6 repair the gate that allowed the dog to escape and injure the plaintiff when
7 it was left unchained.

8 19. Here, like in *Wright*, Petsmart took affirmative action
9 resulting in the imposition of a duty. For example, Petsmart regulated and
10 controlled many aspects of the adoption process. It maintained guidelines
11 covering the entire adoption process for customer service, presentation of
12 the animals, checklists to ensure all documentation was completed, and
13 even regulated the type of clothing that adoption charity partners could
14 wear on Petsmart property. Petsmart further affirmatively represented to
15 its patrons that the adoption agencies, like AH4S, were vetted and
16 prequalified and preapproved by Petsmart.

17 20. Moreover, like in *Wright*, Petsmart took affirmative action to
18 protect the public, as the landlord did in *Wright*, by developing and
19 enforcing safety guidelines and protocols governing the adoption process
20 on their property.

21 21. For example, Petsmart undertook a vetting and
22 prequalification process to prevent such animal attacks and ensure the
23 safety of the animals and patrons. There is a question of fact precluding
24 summary judgment regarding whether Petsmart's vetting and pre-
25 qualification was sufficient. Petsmart acknowledges that the health and
26 safety of both the people and the animals is extremely important. Petsmart's
27 vetting and pre-qualification process consists only of confirmation of the
28 charity's 501(c)(3) status, a site visit, and a "google search" of the

1 organization by a Petsmart associate. There is no written policy or
2 procedure concerning the “google search.”

3 22. Additionally, Petsmart has no policy or procedures in place
4 to review adoption charity partners for continued compliance with their
5 program. In this case, for example, Petsmart approved the application of
6 AH4S in 2011 and then again 2013. After that AH4S’s status and ongoing
7 compliance with the requirements of the program were not reviewed until
8 after the subject attack. The lack of policies or procedures regarding a
9 periodic review process to ensure compliance of the Petsmart Manual and
10 adoption charity partner Agreement creates a genuine issue of material fact
11 concerning the adequacy of Petsmart’s vetting and pre-qualification
12 procedures.

13 23. Moreover, the evidence establishes that Petsmart also
14 maintains an “adoptable pet log” for each organization. This log tracks the
15 date and time, and identity of each dog, adopted through adoption day
16 events. Although Petsmart tracks adoptions through the adoptable pet log
17 and adoption release form, Petsmart does not have a policy or procedure to
18 determine if a given dog has been previously adopted, or returned, through
19 an adoption day event. Here, the evidence shows that Chip was adopted
20 through Petsmart adoption day events on two separate occasions prior to
21 the Plaintiffs’ adoption. These previous adoptions resulted in Chip being
22 returned due to violent behavior and a separate attack and biting incident.
23 Because these prior adoptions took place at Petsmart adoption day events,
24 and Petsmart maintains a log of prior adoptions, there is sufficient evidence
25 for a jury to determine Petsmart knew, or should have known, of these prior
26 unsuccessful adoptions as a result of Chip’s violent propensities and
27 attacks, or at least investigated the reasons for Chips prior unsuccessful
28 adoptions.

1 24. There is also a genuine issue of material fact concerning an
2 agency relationship between Petsmart and AH4S. The existence of an
3 agency relationship is generally an issue for the trier of fact.

4 25. In sum, this Court finds that Petsmart owed a duty to
5 Plaintiffs under the specific facts of this case and pursuant to the cited
6 caselaw, and specifically, *Wright v. Schum*. Based on the foregoing, Petsmart
7 exerted sufficient control over AH4S in its adoption practices, and the
8 subject incident was foreseeable based on the facts as presented in this
9 particular case.

10 26. This Court further finds there are genuine issues of material
11 fact regarding the remaining elements of Plaintiffs' negligence claim
12 against Petsmart, including the issue of whether Plaintiffs waived all claims
13 relating to negligence against Petsmart.

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ORDER


IT IS HEREBY ORDERED that Defendant Petsmart, Inc.'s Motion for Summary Judgment, or in the Alternative, Summary Adjudication of Issues is DENIED.

DATED this 11th day of ~~November~~ December, 2020.


DISTRICT COURT JUDGE ZJ

Submitted by:

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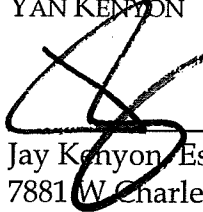

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EXHIBIT “13”

1 CASE NO. A-19-788762-C

2 DOCKET U

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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* * * * *

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JAMES TODD,

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Plaintiff,

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)

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vs.

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)

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A HOME 4 SPOT ANIMAL RESCUE,

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Defendant.

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REPORTER'S TRANSCRIPT

16

OF

17

HEARING

(TELEPHONIC HEARING)

18

19

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20

DISTRICT COURT JUDGE

21

22

DATED TUESDAY, NOVEMBER 10, 2020

23

24

25

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

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2 (ALL MATTERS IN DEPARTMENT 16 ARE BEING HEARD VIA
3 TELEPHONIC APPEARANCE)

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1 LAS VEGAS, NEVADA; TUESDAY, NOVEMBER 10, 2020

2 1:35 P.M.

3 P R O C E E D I N G S

4 * * * * *

01:21:27 5
6 THE COURT: And this is Tuesday, November 10,
7 2020, 1:30 law and motion calendar. It's my
8 understanding we only have one matter on. And that's
9 James Todd versus A Home 4 Spot et al. Let's go ahead
01:35:38 10 and place our appearances on the record.

11 MR. ASKEROTH: Yes, your Honor. Thank you.
12 Lane Kay appearing for the moving party, defendant
13 PetSmart.

14 THE COURT: Thank you, sir.

01:35:49 15 MR. ASKEROTH: This is Tom Askeroth appearing
16 for the plaintiffs, Bar No. 11513.

17 THE COURT: All right. And do either one of
18 you want to have this matter reported?

19 MR. KAY: Yes. This is Lane Kay on behalf of
01:36:02 20 PetSmart. We had already informed the court reporter
21 that we would like it reported.

22 THE COURT: Okay. And so, sir, you do have
23 the floor.

24 MR. KAY: Okay. Thank you, your Honor.

01:36:13 25 The gaining issue in this case is whether or

01:36:16 1 not PetSmart owed any duty whatsoever to the Todds.

2 Given that PetSmart's only involvement with the
3 adoption was a venue where the adoptive parents can go
4 and pick out a dog of their choice.

01:36:32 5 The facts have made it clear that PetSmart was
6 not involved in any dealings between The Animal
7 Foundation and A Home 4 Spot. PetSmart was not
8 involved in any decision making as far as whether Chip
9 the dog was adoptable or not.

01:36:53 10 PetSmart was not even aware of Chip's
11 temperament or any behavioral issues prior to the
12 adoption in question. PetSmart was not responsible for
13 the care and treatment of Chip prior to adoption in
14 question. PetSmart never took possession of Chip.

01:37:10 15 Admittedly, Mrs. Todd only dealt with employees from A
16 Home 4 Spot and no employees of PetSmart concerning the
17 adoption of Chip.

18 Any representations about Chip and Chip's
19 background would have only come from employees of A
01:37:28 20 Home 4 Spot. And Mrs. Todd actually acknowledged this.

21 The entire adoption process was done through A
22 Home 4 Spot. A Home 4 Spot was an independent
23 contractor and not affiliated with PetSmart or
24 otherwise affiliated with PetSmart.

01:37:47 25 And finally, Mrs. Todd signed paperwork

01:37:51 1 acknowledging that PetSmart was not affiliated with A
2 Home 4 Spot. And, moreover, she knew that she was just
3 dealing with employees for A Home 4 Spot regarding the
4 adoption of Chip.

01:38:04 5 By granting PetSmart's motion for summary
6 judgment, the Court would be consistent with its own
7 findings of fact conclusions of law and the order
8 issued by this Court back on March 18, 2020, whereby
9 the Court dismissed The Animal Foundation. In that
01:38:22 10 ruling the Court found that there was no duty to warn a
11 third party --

12 THE COURT: So tell me. But tell me how is
13 that true? And the reason why I ask the question
14 because The Animal Foundation was in a different
01:38:35 15 posture than PetSmart, you know, in this case. What I
16 mean by that is this: And this is what I want to
17 explain -- what I want you to explain to me. This case
18 is essentially based upon premise liability.

19 And the thrust and focus on premise liability
01:38:50 20 traditionally deals with the owners and/or occupiers of
21 real property. This -- this adoption occurred at the
22 property of PetSmart; right? And it's a retail
23 establishment. And so tell me why you think under the
24 facts of this case there would be no duty because --

01:39:11 25 MR. KAY: I --

01:39:12 1 THE COURT: -- the owner of the property -- I
2 mean, and there's a big difference. The Animal
3 Foundation didn't own PetSmart. They didn't. And
4 that's why I wanted to point that out.

01:39:21 5 MR. KAY: Sure.

6 THE COURT: That it's a different scenario.

7 MR. KAY: I'd be happy to address that issue,
8 your Honor.

9 First of all, under premise liability law if
01:39:34 10 PetSmart was aware of the dangerous propensities of the
11 animal and let's say in this particular case the animal
12 is adopted -- the adoption process is somewhere -- in
13 this particular case it was in the back of the store.
14 I've gone to plenty of PetSmart's where they have the
01:39:50 15 adoptions outside the store.

16 So if there was -- if PetSmart or its
17 employees were aware of the dangerous propensities, I
18 would say, well, yeah, under premise liability law they
19 would be responsible.

01:40:04 20 But what happens in this case is Chip the dog
21 is adopted. They're given some paperwork to sign. The
22 adoptive parents take the dog to their own home whereby
23 the dog attacks Mr. Todd.

24 Then from there, obviously, they got an issue
01:40:22 25 with Chip the dog. And now, the adoptive parents take

01:40:27 1 the dog back to A Home 4 Spot because, hey, wow, we got
2 a problem here. They're not taking it back to the
3 store. They're taking it back to A Home 4 Spot.

4 So, and the other thing I'd like to point out
01:40:41 5 is at no point in time is PetSmart made aware of the
6 dangerous propensities, but The Animal Foundation was
7 aware of the dangerous propensities. So those are the
8 differences that I see. But be that as it may, this
9 Court actually found that The Animal Foundation did not
01:41:06 10 have ownership or control of Chip, so there was no
11 voluntary undertaking.

12 THE COURT: But you -- but there's -- they
13 didn't have ownership or control of Chip, 100 percent
14 correct. But PetSmart had ownership and control of the
01:41:19 15 store where the adoption occurred.

16 MR. KAY: Okay. But, but there's nothing that
17 happens at the store to put PetSmart on notice that
18 they've got a problem with Chip. So where does the
19 duty come in? I'm just wondering where the duty comes
01:41:39 20 by -- comes around because this Court did rule that --
21 I've got to read this -- that there was no special
22 relationship between the Todds and The Animal
23 Foundation because The Animal Foundation was not
24 involved in Chip's adoption to the Todds. And The
01:42:02 25 Animal Foundation had no contact with the Todds.

01:42:04 1 This store and its employees had no
2 involvement with the Todds. That is all through A Home
3 4 Spot. A Home 4 Spot has separate employees. They're
4 the ones that determine, okay, do we have a problem
01:42:17 5 with Spot or do we not.

6 It's -- the only thing that PetSmart does is
7 provide a venue, a place for the adoptive parents --

8 THE COURT: Don't you -- I get that, but isn't
9 that a big deal, provide a venue. And the reason why I
01:42:34 10 say that is this, in premise liability cases, for
11 example, you can have a slip and fall where someone,
12 unfortunately, drops some sort of substance on the
13 floor in a supermarket; right? That doesn't mean the
14 supermarket is automatically responsible. But they --
01:42:52 15 but there is a doctrine of knew or should have known.
16 That's when you start looking at frequency of prior
17 events and if they have the sweep log; right?

18 MR. KAY: Okay.

19 THE COURT: Maybe there can be constructive
01:43:02 20 notice of it. I mean, I understand premise liability.
21 But we can't conflate The Animal Foundation with the
22 property owner.

23 MR. KAY: Okay. But the injury didn't occur
24 on the premises. Nor the mandate, the requirement for
01:43:16 25 any premise liability cases is did the owner of the

01:43:20 1 premises, did they knew -- or did they know or should
2 they have known about the dangerous propensities. If
3 the dog doesn't act up, for example, if the dog's taken
4 out of the cage and the dog's chasing around the store
01:43:33 5 other patrons, Hey, then the store is going to be
6 responsible. Hey, you guys need to do something about
7 the dog.

8 It's -- and looking at a slip and fall or a
9 trip and fall. If the owner of the premises or through
01:43:48 10 its employees is aware of the dangerous propensities,
11 and the injury occurs on the premises, you're right,
12 your Honor. There's no question that PetSmart would be
13 responsible. But that doesn't happen. So in our
14 minds, there is no duty whatsoever owed by PetSmart to
01:44:13 15 the Todds because they weren't aware of any dangerous
16 propensities of this animal.

17 And The Animal Foundation was actually aware
18 of it, and this Court dismissed The Animal Foundation.

19 THE COURT: But, no. But, see, the -- and the
01:44:31 20 only reason I push back on that it is a completely
21 different set of facts. If the event occurred at The
22 Animal Foundation's, on their real property, of course,
23 I would not have granted summary judgment.

24 And the facts and circumstances are much
01:44:46 25 different here.

01:44:46 1

Tell me about the vetting process.

2

MR. KAY: Okay. Even though you don't even get to the vetting process if there's no duty owed, but so there was discovery that was conducted on the vetting process. The vetting was initially done when contracts were signed between PetSmart and A Home 4 Spot. That was back in 2011.

01:44:57 5

6 contracts were signed between PetSmart and A Home 4 Spot. That was back in 2011.

8

In 2000- and I believe it was -13, so four years before this incident took place, you know, they

01:45:21 10

got to provide proof of insurance, they've got to sign some paperwork. And then what PetSmart does is they do a Google search to determine if there's any litigation, any injury claims where A Home 4 Spot has been named. So there was some vetting. It -- the last vetting was done in 2013.

01:45:46 15

16 So, I guess, the question comes up, Well, geez, a long time went by between 2013 and 2017. But if there's no issues with A Home 4 Pet, and literally there's hundreds of adoptions throughout the country, if there's no problems that are brought to the attention of PetSmart, there's no reason for the vetting.

01:46:07 20

23 But the vetting we don't even get to the vetting if there's no duty. It's almost like putting the cart before the horse.

01:46:23 25

01:46:26 1 And our position, PetSmart's position is no
2 duty was owed by PetSmart to the Todds.

3 THE COURT: I understand, sir. Anything else?

4 MR. KAY: No.

01:46:47 5 THE COURT: We'll hear from the plaintiff.

6 MR. ASKEROTH: Yes, your Honor. Thank you.

7 I think it's important to understand, you
8 know, even before we get to the duty issue for the
9 record a little bit of context involving the dogs.

01:47:04 10 THE COURT: Well, I get that. But we have --
11 yeah, no. I understand the dog's prior history. And
12 it's fairly significant. It's my recollection there
13 were three prior events. But I think we have to focus
14 on the duty. I really and truly do.

01:47:16 15 If you want to make a record regarding the
16 prior history of the dog, I have no problem with it.
17 But I'm aware of that. I think the record is pretty
18 clear.

19 MR. ASKEROTH: Understood. Understood, your
01:47:25 20 Honor.

21 And the only reason I bring that up is because
22 it goes to the issue of foreseeability or did -- should
23 PetSmart known or should have known about the dangerous
24 propensities of this dog. And specifically this dog --
01:47:37 25 we were able to find two individuals that, who had

01:47:42 1 adopted this dog, the same dog, from the PetSmart
2 charity event on two separate occasions.

3 And the first occasion the individual that
4 adopted the dog through A Home 4 Spot, which occurred
01:47:55 5 at a PetSmart charity event, the individual returned
6 the dog because he was so scared of the dog. It chased
7 him up into his room, and he was hiding in a room with
8 a baseball bat.

9 He told A Home 4 Spot this. A Home 4 Spot
01:48:09 10 took the dog back. And then what did they do? They
11 went right back to the PetSmart charity event and
12 attempted to adopt the dog and did adopt the dog to a
13 different individual. And this individual was actually
14 viciously attacked by this dog prior to my client's
01:48:28 15 attack, and they ended up having to have surgery.

16 Again, this happened at a PetSmart adoption charity
17 event.

18 So the issue of duty, as you correctly noted,
19 in our -- in our view turns on two things. One, was
01:48:44 20 the injury foreseeable? Did PetSmart know or should
21 they have known about the likelihood of injury? And
22 the -- and PetSmart's control over the third party, A
23 Home 4 Spot.

24 And on the issue of control, PetSmart attempts
01:49:03 25 to avoid a legal duty by saying that they did not have

01:49:07 1 control over the subject dog. And our position, your
2 Honor, this argument misses the mark. The issue is not
3 whether PetSmart had control over the subject dog.
4 It's whether PetSmart exerted control over A Home 4
01:49:20 5 Spot, especially in the agency relationship. As you
6 correctly noted, this adoption took place on their
7 property, on their premises.

8 We've -- through our briefing we've shown that
9 PetSmart certainly maintains tight control over its
01:49:36 10 adoption charity partners including A Home 4 Spot.
11 PetSmart would like this Court to believe that all they
12 do is provide a place for these adoptions to take
13 place. But the evidence shows that PetSmart regulated
14 and controlled every aspect of the adoption process.

01:49:52 15 They maintained guidelines covering the entire
16 adoption process for the customers service for the
17 charity partners. The correct way to present the
18 animals on their property. Checklists to ensure all
19 documentation was completed. Even regulated and
01:50:07 20 required that the charity partner employees wear a
21 certain type of clothing on PetSmart property.

22 So they're very much interwoven more than
23 just, you know, permitting the charity to use floor
24 space. They require the charity to sign a PetSmart
01:50:25 25 charity agreement which contains over 27 provisions.

01:50:27 1 They require the charities to abide by a lengthy and
2 extensive manual.

3 And because of this tight control, PetSmart,
4 and their 30(b)(6) witness even admitted that their
01:50:40 5 customers might mistake adoption charity partner
6 employees for PetSmart employees.

7 PetSmart exerted so much control, your Honor,
8 over this adoption process that its own employees,
9 according to its manual, are permitted to perform these
01:50:58 10 adoptions in place of the adoption charity partners
11 under certain circumstances.

12 And, of course, there's clearly a benefit from
13 the -- from these Adoption Days event. It increases
14 foot traffic as admitted by the PetSmart 30(b)(6)
01:51:16 15 witness. Adoption charity partners receive monetary
16 awards when they perform adoptions. And this -- so
17 this mutually beneficial business relationship
18 strengthens our position that there is an agency
19 relationship.

01:51:29 20 And it was certainly foreseeable for PetSmart
21 that an animal adopted by A Home 4 Spot might cause
22 harm to one of PetSmart's customers.

23 As I said, your Honor, PetSmart should have
24 known that Chip had been previously returned and
01:51:47 25 adopted through separate Adoption Days events. We know

01:51:52 1 now that PetSmart keeps records pertaining to
2 previously adopted dogs, but they do not have a policy
3 and procedures in place to cross reference the dogs to
4 determine if the dog had been previously adopted
01:52:04 5 before, and if so the reason for the dog's return.

6 They have -- they have an adoption log they
7 keep for every adoption, but in this situation, it was
8 not cross referenced.

9 So our position is that PetSmart should have
01:52:17 10 known that Chip was adopted at least twice prior to
11 this occasion, and they could have further inquired as
12 to the reason and determined that, well, he viciously
13 bit one person and scared another person so bad that he
14 returned the dog.

01:52:35 15 Also, the vetting process which we believe is
16 inadequate carries a likelihood that adoption charity
17 like A Home 4 Spot with prior complaints and other
18 inadequate safety protocols would slip through the
19 cracks and adopt dogs on its premises.

01:52:53 20 Regarding the vetting procedures, your Honor,
21 we believe that they were inadequate. As you stated in
22 our initial motion for summary judgment hearing, you
23 noted that PetSmart in -- every customer signs a form
24 that states that PetSmart adoption charity partners are
01:53:12 25 all qualified and preapproved animal welfare

01:53:17 1 organizations.

2 We now know that the entire vetting and
3 prequalification process consists of confirming the
4 501(c)(3) status, a site visit, and a Google search of
01:53:29 5 the organization by a PetSmart associate.

6 There's no written policy, PetSmart has no
7 written policy concerning the Google search. It's just
8 perform a Google search and see what comes up. They
9 don't discuss what terms to be used, who's supposed to
01:53:46 10 conduct the Google search, the extent and nature of the
11 Google search. They just do a Google search to see
12 what happens.

13 Clearly, a genuine issue of material fact
14 exists concerning whether this is a reasonable vetting
01:53:57 15 process for a national organization that adopts
16 hundreds of thousands of animals every year.

17 We know that there could be more that could
18 have been done during the vetting process. PetSmart's
19 30(b)(6) said that they could have performed a search
01:54:13 20 of the Department of Agriculture which would reveal if
21 there had been any claims against the charity and other
22 things that could have been done which they do not do.

23 So our position is that the lack of policies
24 and procedures regarding periodic review process is
01:54:29 25 another genuine issue of material fact that should be

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01:54:31 1 determined by the jury.

2 And again, you know, PetSmart said that they

3 had no actual knowledge of the dog's violent

4 propensities. That's not the issue, your Honor. It's

01:54:45 5 whether they knew or should have known. And as we know

6 they have internal methods to track and identify dogs

7 being adopted, a log that they keep. And if the dog

8 had been adopted twice and returned, that should have

9 been a red flag. But there is no written policy to

01:54:58 10 cross reference dog adoptions with prior dog adoptions.

11 So our position is that A Home 4 Spot was free

12 to return to PetSmart with Chip as many times as they

13 needed with no repercussions because there was no

14 system in place to cross reference to determine if this

01:55:14 15 dog had previously been adopted. And this allowed A

16 Home 4 Spot to benefit from the goodwill and trust that

17 PetSmart customers have. And so unless you have any

18 other questions that's all I have to say.

19 THE COURT: Not at this time, sir. We'll hear

01:55:32 20 from the moving party.

21 MR. KAY: Yes, your Honor. I just want to

22 make sure it's clear that when the injuries occur, the

23 dog is not returned to PetSmart. The dog is returned

24 to A Home 4 Spot. And the other thing I'd like to

01:55:51 25 point out is the foreseeability. In this particular

01:55:54 1 case we do have an intervening act and the intervening
2 act is that on the part of A Home 4 Spot.

3 Clearly, the evidence that has been presented
4 in this case showed that A Home 4 Spot tried to adopt
01:56:10 5 out Chip knowing of the dangerous propensities of the
6 dog, but that information -- PetSmart wasn't privy to
7 that information because it goes from the dog, no
8 issues. The dog is adopted from a PetSmart store. The
9 dog is taken by the adoptive parents. They go home.

01:56:33 10 An incident, an event, an injury occurs at the home.
11 It then goes back to A Home 4 Spot. PetSmart is not
12 involved in that process. They rely upon A Home 4 Spot
13 to do their job which determined whether Chip or any
14 other animal is adoptable.

01:56:50 15 So I think it really sends out a chilling
16 affect on the part of PetSmart or other companies that
17 hold these adoptive days to say that, Jeez, we're going
18 to hold the -- we're going to hold the owner of the
19 premises that has these adoptive days, we're going to
01:57:10 20 hold them responsible when the real culprit here is A
21 Home 4 Spot. They failed to do their job. And there
22 was no special relationship between PetSmart and the
23 Todds. And, moreover, it wasn't the conduct of
24 PetSmart, but rather the conduct of A Home 4 Spot that
01:57:37 25 created the harm.

01:57:43 1 THE COURT: Anything else, sir?

2 MR. KAY: No, your Honor.

3 THE COURT: What do I do with the agency issue

4 that was discussed on page 19 and also raised in

01:57:52 5 plaintiff's argument that he said, Look, Judge. This

6 is how I took it. He says, Judge, we have a question

7 of fact here as to whether or not A Home 4 Spot -- A

8 Home 4 Spot was the agents of PetSmart based upon the

9 relationship in the past, how they held themselves out,

01:58:13 10 the control exerted over A Home 4 Spot, et cetera,

11 et cetera.

12 MR. KAY: Well, I think --

13 THE COURT: As we know questions of agency

14 typically are questions of fact for the jury.

01:58:25 15 MR. KAY: And that was addressed in our moving

16 papers as well, your Honor. That in spite of what

17 plaintiff's counsel has to say, it was very clear to

18 Mrs. Todd who signed paperwork acknowledging that

19 PetSmart was not affiliated with A Home 4 Spot. She

01:58:41 20 knew. And she testified to this, that she knew that

21 she was only dealing with employees with A Home 4 Spot.

22 This is the best entity to know the background of Chip.

23 And she -- I believe there was testimony that

24 she worked for an attorney. So, you know, again, she's

01:59:05 25 got some legal knowledge, some background to know who

01:59:09 1 she's dealing with. She's not dealing -- she
2 acknowledged she knew she was not dealing with any
3 employees of PetSmart. They wear different color
4 shirts. And she was aware of it.

01:59:21 5 So in spite of how plaintiff's counsel and
6 plaintiff wants to paint the picture, it's not the
7 actual picture that went down during the adoption
8 process.

9 THE COURT: I have one other question about
01:59:37 10 the adoption process in general. And this is from
11 page 15 of the opposition at line 5. It says:

12 "Although PetSmart tracks adoptions through
13 the adoptable pet log and adoption release
14 forms, PetSmart does not have any policy or
01:59:59 15 procedure to determine if a dog has been
16 previously adopted or returned through an
17 Adoption Day event."

18 And the reason why I bring that up is this.
19 The facts of this case are somewhat peculiar in that
02:00:15 20 this dog was adopted at a prior PetSmart event,
21 returned based upon what appeared to be potentially
22 dangerous propensities, and then A Home 4 Spot goes out
23 and adopts the dog again at another PetSmart event.

24 And PetSmart didn't know it, but they
02:00:38 25 permitted this to occur on its property because they

02:00:41 1 didn't inquire, or they have no system in place to
2 determine some history on the dogs that are being
3 adopted on its property. What do I do with that?

4 MR. KAY: Well, I guess that gets back to
02:00:54 5 whether or not there was a special relationship there
6 for a duty. And the other component of the -- of that
7 is whether there was an intervening act, which I just
8 talked about that intervening act. Again, there's no
9 question that A Home 4 Spot when they got that dog
02:01:14 10 back, they should have not have made the decision to
11 try to adopt it out again.

12 But again, the dog is not -- the dangerous
13 propensities of the dog are, obviously, not issued when
14 the dog is back at the PetSmart store at The Best of
02:01:32 15 the West. The dog is probably on his best behavior,
16 and PetSmart doesn't know that. They don't know what's
17 going on.

18 But I just keep getting back to whether,
19 number one, there's a special relationship to create
02:01:48 20 the duty. And whether it was foreseeable that A Home 4
21 Spot would do what they did, which clearly wasn't
22 proper.

23 THE COURT: Now, I have a question for you.

24 MR. KAY: Yes.

02:01:59 25 THE COURT: When you talk about a special

02:02:01 1 relationship, what are you really talking about?
2 Because typically in special relationships in tort
3 cases, typically, when you talk about special
4 relationships you're talking about the relationship,
02:02:15 5 for example, between an insurance company and its
6 insured. And I don't care what was contained in the
7 prior order because I didn't write that order as it
8 relates to summary judgment.

9 Counsel submits that, and if I didn't catch
02:02:28 10 the special relationship language sobeit, but I'm
11 really trying to focus on what do you mean by that?
12 Because, typically, under tort law when it comes to
13 premise liability cases, we have Moody vs. Manny's
14 Auto.

02:02:41 15 And that case did away with the artificial
16 distinction between invitees, licensees, and
17 trespassers, and said there's reasonable care under all
18 circumstances. And I do realize that as a result of a
19 legislative session or two ago we carved out an
02:03:01 20 exception for trespass statutorily. So I just want to
21 make sure we're clear. What type of special
22 relationship are we talking about other than an invitee
23 or licensee on to real property?

24 MR. KAY: Well, I think your Honor was the one
02:03:17 25 that brought up, you know, under premise liability law,

02:03:21 1 obviously, the owner of the premises would have a
2 special relationship if the injury or the --
3 THE COURT: Wait, wait, wait, wait.
4 MR. KAY: And --
02:03:31 5 THE COURT: What is in the order? I'm trying
6 to push back on this special relationship.
7 MR. KAY: Well, that's --
8 THE COURT: Because the relationship -- I
9 don't care. That's in the order, but we're talking
02:03:39 10 right now. Because I understand premise liability law.
11 Are you an invitee or licensee on the property? That
12 creates the relationship.
13 MR. KAY: Well, the -- that relationship
14 didn't cause the injury. And, therefore, there is no
02:03:56 15 duty owed if the actions of PetSmart did not cause the
16 injury. There's no special relationship.
17 THE COURT: Wait, wait, wait, wait. Once
18 again, what is the special relationship in premise
19 liability? That's what I'm asking you.
02:04:10 20 You have one or two things. You have a
21 licensee or you have an invitee on to real property;
22 right? When it comes to dogs, I understand Wright vs.
23 Schum. You can have a voluntary undertaking. I get
24 that.
02:04:25 25 But I keep coming back to where does -- this

02:04:29 1 special relationship has no play. That is typically
2 fiduciary-type cases; right? And insured and its
3 insured. An insurer and its insured, a doctor and its
4 patient, a lawyer and their client. I mean, I get
02:04:40 5 that. You know, I do.

6 MR. KAY: I guess it would be different if
7 PetSmart was involved in the adoption process and
8 PetSmart was involved in the decision making of whether
9 Chip was adoptable. None of that occurred in this
02:04:56 10 case.

11 And I just --

12 THE COURT: So what you're saying there is --
13 I don't want to cut you off, but it sounds like to me
14 you're saying, Look, Judge, there's no voluntary
02:05:05 15 undertaking.

16 MR. KAY: Well, the only undertaking was done
17 between A Home 4 Spot and the Todds. That was it.

18 THE COURT: What about the screening process?
19 Is that a voluntary undertaking?

02:05:22 20 MR. KAY: Is that a voluntary undertaking?

21 THE COURT: Yes. That's discussed in Wright
22 vs. Schum --

23 MR. KAY: Yeah.

24 THE COURT: -- based on the restatement of the
02:05:33 25 torts. I forget the section, but...

02:05:35 1 MR. KAY: Well, but, again, I think that
2 before you get to that, you would have to establish
3 duty.

4 THE COURT: I'm listening.

02:05:48 5 MR. KAY: I still think that you have to
6 establish duty before you ever get to the undertaking.
7 I mean, the undertaking is the vetting process, which
8 the vetting process was a Google search, internet
9 search, which these days it's a very powerful tool.

02:06:05 10 You can learn a lot about a company or a person by
11 using this vetting process that PetSmart used.

12 But you don't even get to that vetting process
13 or undertaking if PetSmart owed no duty to the Todds.

14 THE COURT: Well, actually, isn't it --

02:06:22 15 actually, isn't it the opposite of that? There's no
16 duty unless there is a voluntary undertaking. That's
17 what they discussed in Wright vs. Schum as it relates
18 to landlord and its tenant. There was no duty on
19 behalf of the landlord. But the landlord apparently
02:06:38 20 wanted to fix the fence and make sure it was safe for
21 the tenant's dog, and the dog got out. And the Nevada
22 Supreme Court said that was a voluntary undertaking.

23 MR. KAY: Okay. I -- I guess, there is a
24 disconnect because --

02:06:51 25 THE COURT: There is. There really is.

02:06:53 1

MR. KAY: Yeah.

2

THE COURT: Because I'm trying -- I'm trying

3

to figure out because, typically -- you know, I'm not

4

saying there's no duty in this case. But in a general

02:07:01 5

sense, when they -- when a property owner has no duty,

6

and I think the clearest example of that is Wright vs.

7

Schum. I don't have it right in front of me, but I'm

8

familiar with the case. And what the Nevada Supreme

9

Court said, Look, absent a voluntary undertaking, yeah,

02:07:16 10

the landlord had no duty for the actions of the

11

tenant's dog. But they did. They did undertake to

12

make sure the yard was safe, and the dog got out.

13

That's where I'm getting that from. And

14

that's straight out of the restatement of torts.

02:07:35 15

MR. KAY: Your Honor, I just -- I just have

16

some -- some real issues with holding PetSmart

17

responsible when, in fact, the only -- the only thing

18

they did was allow a venue where adoptive parents can

19

come and pick out a dog. That's it.

02:07:53 20

And so I think by extending that duty to a

21

property owner like PetSmart to an event that happens

22

in an adoptive parent's home when they're also informed

23

when they do bring that dog, Look at, who -- these dogs

24

that get adopted, we already -- there's inherent in

02:08:18 25

that adoption process, hey, you got to be somewhat

02:08:22 1 careful. But PetSmart is not involved in that
2 business. They're not involved in the business of
3 determining whether a dog is adoptable or not. That's
4 the job of A Home 4 Spot.

02:08:32 5 And all PetSmart did is, Hey, we want -- we
6 want -- especially in a pandemic. We want animals to
7 be adopted. We want to allow a process where people
8 can have that companionship they can have -- they can
9 bring a dog home, and it's A Home 4 Spot that's the
02:08:53 10 conduit for allowing people, members of the public, to
11 go to whether it's PetSmart or other places like that
12 to adopt a pet.

13 But to extend liability for an injury that
14 occurs in someone's home and the decision of whether
02:09:12 15 that dog was adoptable was A Home 4 Spot and A Home 4
16 Spot only, I think that takes it to a level where I
17 think it would have a chilling effect on property
18 owners allowing, you know, this type of liability to
19 occur.

02:09:29 20 I -- I just think that it certainly flies in
21 the face of the order that has been previously issued
22 by this Court on March 18 of this year.

23 THE COURT: The order regarding The Animal
24 Foundation, they didn't own the dog. They didn't own
02:09:49 25 property.

02:09:50 1 MR. KAY: Well, actually, the focus was on
2 ownership and control of Chip.

3 THE COURT: Yes. That's what I'm talking
4 about. They didn't own the dog or control the dog, and
02:09:58 5 they didn't own the property.

6 MR. KAY: And the only person -- the only
7 person that owned or controlled Chip was A Home 4 Spot.

8 THE COURT: Until the adoption occurs at
9 PetSmart.

02:10:12 10 MR. KAY: But the adoption wasn't -- the
11 adoption didn't create any notice on the part of
12 PetSmart that they had a problem. You could say that
13 about any dog that gets adopted. That any dog --

14 THE COURT: Don't you -- but don't you -- but
02:10:28 15 wait. Wait a second. Let me finish. Don't you think
16 that really if you're going to permit adoptions to
17 occur on someone's property and they're coming back
18 over and over and over again there should be some sort
19 of screening process?

02:10:42 20 MR. KAY: But see --

21 THE COURT: Correlation.

22 MR. KAY: But, your Honor, they are not coming
23 back to PetSmart over and over again. They're going
24 directly to the nonprofit organization that was
02:10:53 25 responsible for the adoption. They're not going back

02:10:55 1 to PetSmart. It's not like one weekend they go and
2 adopt a dog. There's a problem on Sunday or Monday,
3 and they bring the dog back to PetSmart -- to PetSmart.
4 They bring the dog back to A Home 4 Spot or any other
02:11:10 5 charitable organization.

6 They're not bringing it back to PetSmart. The
7 Todds or any adoptive parents are not bringing it back
8 to PetSmart.

9 THE COURT: I understand your position.

02:11:25 10 Anything else from the plaintiff? And then we'll give
11 you the last word.

12 MR. ASKEROTH: Yeah, your Honor. Just a few
13 things. One, you know, obviously, this is very fact
14 specific, this case. And --

02:11:40 15 THE COURT: It is.

16 MR. ASKEROTH: And I've adopted a rescue dog.
17 I know, your Honor, you said in a prior hearing that
18 you're, you're a fellow dog lover.

19 This -- if anything, this will encourage
02:11:52 20 PetSmart and other pet stores that permit adoption on
21 their properties to have proper and appropriate systems
22 and procedures in place to make sure that the, that the
23 charity organizations that are performing these
24 adoptions are safe like they represent to their
02:12:13 25 customers.

02:12:13 1 We know now at -- once a charitable
2 organization is approved to perform adoptions, PetSmart
3 does not have a periodic review process. So once
4 you're in, you're in. And several years went by where
02:12:29 5 this adoption -- this charitable A Home 4 Spot was
6 permitted to the program until this event. And there's
7 no periodic review. There's no written policy and
8 procedure regarding cross referencing dogs.

9 And, you know, this is a very specific
02:12:44 10 situation where we've had several, several prior
11 incidents involving this specific dog and two of them
12 occurring from a PetSmart adoption.

13 And, you know, hopefully this doesn't happen
14 very often, but that at a very minimum that creates an
02:13:03 15 issue of fact that should be determined by the jury as
16 to whether or not this -- these were reasonable
17 procedures and processes in place.

18 And as your Honor correctly noted, you know,
19 we have -- we have several cases. I cited several
02:13:17 20 cases. We have the Wright vs. Schum case where the
21 Supreme Court has already imposed liability on a
22 landowner for injuries caused by a third party, their
23 tenant as a result of a dog attack because there was a
24 special relationship. And I've already gone through
02:13:35 25 all the elements of a special relationship here.

02:13:37 1 It isn't -- again, it isn't that PetSmart
2 allows these dogs -- these adoptions to take place on
3 their property. They're heavily involved in the
4 adoption process. And because they're heavily involved
02:13:48 5 in the adoption process, because they have specific
6 guidelines and processes and procedures at these --
7 that they require at these adoption charities to
8 perform, there is a special relationship.

9 And so it is reasonable to impose a duty on
02:14:04 10 PetSmart under these specific facts of these case -- of
11 this case because of what happened. Because there is
12 evidence of foreseeability because they knew or should
13 have known because of these prior adoptions that took
14 place on PetSmart property.

02:14:18 15 So there is a duty, your Honor. We feel that
16 there is a genuine issue of material fact considering
17 the vetting process. And these issues should be
18 determined by a jury.

19 Now whether or not a jury is going to say it's
02:14:29 20 enough to impose liability against PetSmart when A Home
21 4 Spot did a lot of bad faith in this case, you know,
22 that's a question for the jury that should be permitted
23 to be presented in front of a jury and have them decide
24 on the issue of negligence as to PetSmart.

02:14:48 25 THE COURT: Okay. Anything else? Then we'll

02:14:51 1 give the moving party the last word.

2 MR. ASKEROTH: That's all I have, your Honor.
3 Thank you.

4 MR. KAY: I think I'd be beating a dead horse,
02:14:59 5 your Honor. I think I've said everything I need to
6 say.

7 THE COURT: No, no. But I want to make sure I
8 understand what you're saying. I'm just not going
9 to -- I don't mind telling you. This is kind of how I
02:15:08 10 see it. And I think this case is very unique from a
11 factual perspective especially in light of the history
12 of this dog, and the fact that he had been part of an
13 adoption process earlier, and here's the thing. I
14 can't say that whether or not the processes in place at
02:15:32 15 PetSmart were adequate or not as it related to
16 screening, et cetera, et cetera, especially when you
17 have a dog that had a prior history. And I think,
18 ultimately, that's going to be up to the jury to
19 decide. And I do feel there is some application of the
02:15:50 20 principles that were set forth in Wright vs. Schum in
21 this case as far as undertaking is concerned. And
22 there's potentially application of the Restatement of
23 Torts 324A.

24 And so what I'm going to do under the facts,
02:16:04 25 the peculiar facts of this case, I'm going to deny the

02:16:10 1 motion for summary judgment because I think there is
2 issues of fact to be decided by a jury if this case
3 goes to trial as it relates to the vetting process.
4 And that will be my decision.

02:16:24 5 What I want the plaintiff to do, prepare a
6 proposed findings of fact conclusions of law. If you
7 can't agree on its content, you can submit your
8 competing orders.

9 MR. KAY: Thank you, your Honor.

02:16:34 10 MR. ASKEROTH: Will do, your Honor. Thank
11 you.

12 THE COURT: All right. Everyone enjoy your
13 day.

14 MR. KAY: You too.

02:16:38 15 MR. ASKEROTH: Thank you. Bye-bye.

16

17

18

19 (Proceedings were concluded.)

20

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* * * * *

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1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

3 :SS

4 COUNTY OF CLARK)

5 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
6 HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPH ALL OF THE
7 TELEPHONIC PROCEEDINGS HAD IN THE BEFORE-ENTITLED
8 MATTER AT THE TIME AND PLACE INDICATED, AND THAT
9 THEREAFTER SAID STENOGRAPH NOTES WERE TRANSCRIBED INTO
10 TYPEWRITING AT AND UNDER MY DIRECTION AND SUPERVISION
11 AND THE FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE
12 AND ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
13 PROCEEDINGS HAD.

14 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
15 MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
16 NEVADA.

17 _____
18 PEGGY ISOM, RMR, CCR 541
19
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21
22
23
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25

MR. ASKEROTH: [9] 4/11 4/15 12/6 12/19 30/12 30/16 33/2 34/10 34/15 MR. KAY: [37] THE COURT: [43]	7 702 [6] 2/11 2/12 2/20 2/21 3/7 3/8 702-888-0011 [1] 3/8 7881 [1] 3/4	22/11 28/12 30/2 adoptable [6] 5/9 19/14 21/13 25/9 28/3 28/15 adopted [20] 7/12 7/21 13/1 13/4 15/21 15/25 16/2 16/4 16/10 18/7 18/8 18/15 19/8 21/16 21/20 22/3 27/24 28/7 29/13 30/16 adoption [42] adoptions [13] 7/15 11/19 14/12 15/10 15/16 18/10 18/10 21/12 29/16 30/24 31/2 32/2 32/13 adoptive [10] 5/3 7/22 7/25 9/7 19/9 19/17 19/19 27/18 27/22 30/7 adopts [2] 17/15 21/23 affect [1] 19/16 affiliated [4] 5/23 5/24 6/1 20/19 again [12] 13/16 18/2 20/24 21/23 22/8 22/11 22/12 24/18 26/1 29/18 29/23 32/1 against [2] 17/21 32/20 agency [4] 14/5 15/18 20/3 20/13 agents [1] 20/8 ago [1] 23/19 agree [1] 34/7 agreement [1] 14/25 Agriculture [1] 17/20 ahead [1] 4/9 al [1] 4/9 all [14] 2/2 4/17 7/9 9/2 14/11 14/18 16/25 18/18 23/17 28/5 31/25 33/2 34/12 35/5 allow [2] 27/18 28/7 allowed [1] 18/15 allowing [2] 28/10 28/18 allows [1] 32/2 almost [1] 11/24	already [4] 4/20 27/24 31/21 31/24 also [3] 16/15 20/4 27/22 Although [1] 21/12 animal [21] 1/12 5/6 6/9 6/14 7/2 7/11 7/11 8/6 8/9 8/22 8/23 8/25 9/21 10/16 10/17 10/18 10/22 15/21 16/25 19/14 28/23 animals [3] 14/18 17/16 28/6 another [3] 16/13 17/25 21/23 any [19] 5/1 5/6 5/8 5/11 5/18 9/25 10/15 11/12 11/13 17/21 18/17 19/13 21/2 21/14 29/11 29/13 29/13 30/4 30/7 anything [5] 12/3 20/1 30/10 30/19 32/25 AOL.COM [1] 2/22 apparently [1] 26/19 APPEARANCE [1] 2/2 appearances [3] 2/1 2/22 4/10 appeared [1] 21/21 appearing [2] 4/12 4/15 application [2] 33/19 33/22 appropriate [1] 30/21 approved [1] 31/2 are [17] 2/2 8/7 10/24 11/20 15/9 16/24 20/14 21/19 22/2 22/13 23/1 23/22 24/11 29/22 30/7 30/23 30/24 argument [2] 14/2 20/5 around [2] 8/20 10/4 artificial [1] 23/15 as [26] 5/8 5/8 8/8 13/18 14/5 15/14 15/23 16/11 16/21 18/5 18/12 18/12 20/7 20/13 20/16	23/7 23/18 26/17 31/15 31/18 31/23 32/24 33/15 33/21 33/21 34/3 ask [1] 6/13 ASKEROTH [3] 2/6 2/7 4/15 ASKEROTHLAW.CO M [1] 2/13 asking [1] 24/19 aspect [1] 14/14 associate [1] 17/5 at [25] 6/21 8/5 8/17 9/16 10/8 10/21 13/5 13/16 16/10 18/19 19/10 21/11 21/20 21/23 22/14 22/14 27/23 29/8 31/1 31/14 32/6 32/7 33/14 35/7 35/9 attack [2] 13/15 31/23 attacked [1] 13/14 attacks [1] 7/23 attempted [1] 13/12 attempts [1] 13/24 attention [1] 11/21 attorney [1] 20/24 Auto [1] 23/14 automatically [1] 9/14 AVENUE [1] 2/8 avoid [1] 13/25 awards [1] 15/16 aware [10] 5/10 7/10 7/17 8/5 8/7 10/10 10/15 10/17 12/17 21/4 away [1] 23/15
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0 0000 [1] 3/7 0011 [1] 3/8 0528 [1] 2/12	:SS [1] 35/2	adoption [42] adoptions [13] 7/15 11/19 14/12 15/10 15/16 18/10 18/10 21/12 29/16 30/24 31/2 32/2 32/13 adoptive [10] 5/3 7/22 7/25 9/7 19/9 19/17 19/19 27/18 27/22 30/7 adopts [2] 17/15 21/23 affect [1] 19/16 affiliated [4] 5/23 5/24 6/1 20/19 again [12] 13/16 18/2 20/24 21/23 22/8 22/11 22/12 24/18 26/1 29/18 29/23 32/1 against [2] 17/21 32/20 agency [4] 14/5 15/18 20/3 20/13 agents [1] 20/8 ago [1] 23/19 agree [1] 34/7 agreement [1] 14/25 Agriculture [1] 17/20 ahead [1] 4/9 al [1] 4/9 all [14] 2/2 4/17 7/9 9/2 14/11 14/18 16/25 18/18 23/17 28/5 31/25 33/2 34/12 35/5 allow [2] 27/18 28/7 allowed [1] 18/15 allowing [2] 28/10 28/18 allows [1] 32/2 almost [1] 11/24	ask [1] 6/13 ASKEROTH [3] 2/6 2/7 4/15 ASKEROTHLAW.CO M [1] 2/13 asking [1] 24/19 aspect [1] 14/14 associate [1] 17/5 at [25] 6/21 8/5 8/17 9/16 10/8 10/21 13/5 13/16 16/10 18/19 19/10 21/11 21/20 21/23 22/14 22/14 27/23 29/8 31/1 31/14 32/6 32/7 33/14 35/7 35/9 attack [2] 13/15 31/23 attacked [1] 13/14 attacks [1] 7/23 attempted [1] 13/12 attempts [1] 13/24 attention [1] 11/21 attorney [1] 20/24 Auto [1] 23/14 automatically [1] 9/14 AVENUE [1] 2/8 avoid [1] 13/25 awards [1] 15/16 aware [10] 5/10 7/10 7/17 8/5 8/7 10/10 10/15 10/17 12/17 21/4 away [1] 23/15	
1 10 [3] 1/22 4/1 4/6 100 percent [1] 8/13 10785 [1] 2/8 11513 [1] 4/16 13 [1] 11/8 15 [1] 21/11 1504 [1] 2/20 16 [1] 2/2 165 [1] 3/5 18 [2] 6/8 28/22 19 [1] 20/4 1:30 [1] 4/7 1:35 [1] 4/2	A abide [1] 15/1 ABILITY [1] 35/11 able [1] 12/25 about [17] 5/18 10/2 10/6 11/1 12/23 13/21 21/9 22/8 22/25 23/1 23/3 23/4 23/22 25/18 26/10 29/4 29/13 absent [1] 27/9 according [1] 15/9 ACCURATE [1] 35/11 acknowledged [2] 5/20 21/2 acknowledging [2] 6/1 20/18 act [5] 10/3 19/1 19/2 22/7 22/8 actions [2] 24/15 27/10 actual [2] 18/3 21/7 actually [7] 5/20 8/9 10/17 13/13 26/14 26/15 29/1 address [1] 7/7 addressed [1] 20/15 adequate [1] 33/15 admitted [2] 15/4 15/14 Admittedly [1] 5/15 adopt [7] 13/12 13/12 16/19 19/4	adoption [42] adoptions [13] 7/15 11/19 14/12 15/10 15/16 18/10 18/10 21/12 29/16 30/24 31/2 32/2 32/13 adoptive [10] 5/3 7/22 7/25 9/7 19/9 19/17 19/19 27/18 27/22 30/7 adopts [2] 17/15 21/23 affect [1] 19/16 affiliated [4] 5/23 5/24 6/1 20/19 again [12] 13/16 18/2 20/24 21/23 22/8 22/11 22/12 24/18 26/1 29/18 29/23 32/1 against [2] 17/21 32/20 agency [4] 14/5 15/18 20/3 20/13 agents [1] 20/8 ago [1] 23/19 agree [1] 34/7 agreement [1] 14/25 Agriculture [1] 17/20 ahead [1] 4/9 al [1] 4/9 all [14] 2/2 4/17 7/9 9/2 14/11 14/18 16/25 18/18 23/17 28/5 31/25 33/2 34/12 35/5 allow [2] 27/18 28/7 allowed [1] 18/15 allowing [2] 28/10 28/18 allows [1] 32/2 almost [1] 11/24	ask [1] 6/13 ASKEROTH [3] 2/6 2/7 4/15 ASKEROTHLAW.CO M [1] 2/13 asking [1] 24/19 aspect [1] 14/14 associate [1] 17/5 at [25] 6/21 8/5 8/17 9/16 10/8 10/21 13/5 13/16 16/10 18/19 19/10 21/11 21/20 21/23 22/14 22/14 27/23 29/8 31/1 31/14 32/6 32/7 33/14 35/7 35/9 attack [2] 13/15 31/23 attacked [1] 13/14 attacks [1] 7/23 attempted [1] 13/12 attempts [1] 13/24 attention [1] 11/21 attorney [1] 20/24 Auto [1] 23/14 automatically [1] 9/14 AVENUE [1] 2/8 avoid [1] 13/25 awards [1] 15/16 aware [10] 5/10 7/10 7/17 8/5 8/7 10/10 10/15 10/17 12/17 21/4 away [1] 23/15	
2 2000 [1] 11/8 2011 [1] 11/7 2013 [2] 11/15 11/17 2017 [1] 11/17 2020 [4] 1/22 4/1 4/7 6/8 219 [1] 2/9 27 [1] 14/25	2 2000 [1] 11/8 2011 [1] 11/7 2013 [2] 11/15 11/17 2017 [1] 11/17 2020 [4] 1/22 4/1 4/7 6/8 219 [1] 2/9 27 [1] 14/25	adoption [42] adoptions [13] 7/15 11/19 14/12 15/10 15/16 18/10 18/10 21/12 29/16 30/24 31/2 32/2 32/13 adoptive [10] 5/3 7/22 7/25 9/7 19/9 19/17 19/19 27/18 27/22 30/7 adopts [2] 17/15 21/23 affect [1] 19/16 affiliated [4] 5/23 5/24 6/1 20/19 again [12] 13/16 18/2 20/24 21/23 22/8 22/11 22/12 24/18 26/1 29/18 29/23 32/1 against [2] 17/21 32/20 agency [4] 14/5 15/18 20/3 20/13 agents [1] 20/8 ago [1] 23/19 agree [1] 34/7 agreement [1] 14/25 Agriculture [1] 17/20 ahead [1] 4/9 al [1] 4/9 all [14] 2/2 4/17 7/9 9/2 14/11 14/18 16/25 18/18 23/17 28/5 31/25 33/2 34/12 35/5 allow [2] 27/18 28/7 allowed [1] 18/15 allowing [2] 28/10 28/18 allows [1] 32/2 almost [1] 11/24	ask [1] 6/13 ASKEROTH [3] 2/6 2/7 4/15 ASKEROTHLAW.CO M [1] 2/13 asking [1] 24/19 aspect [1] 14/14 associate [1] 17/5 at [25] 6/21 8/5 8/17 9/16 10/8 10/21 13/5 13/16 16/10 18/19 19/10 21/11 21/20 21/23 22/14 22/14 27/23 29/8 31/1 31/14 32/6 32/7 33/14 35/7 35/9 attack [2] 13/15 31/23 attacked [1] 13/14 attacks [1] 7/23 attempted [1] 13/12 attempts [1] 13/24 attention [1] 11/21 attorney [1] 20/24 Auto [1] 23/14 automatically [1] 9/14 AVENUE [1] 2/8 avoid [1] 13/25 awards [1] 15/16 aware [10] 5/10 7/10 7/17 8/5 8/7 10/10 10/15 10/17 12/17 21/4 away [1] 23/15	
3 30 [3] 15/4 15/14 17/19 324A [1] 33/23 333-0528 [1] 2/12 384-1504 [1] 2/20 384-4322 [1] 2/21	3 30 [3] 15/4 15/14 17/19 324A [1] 33/23 333-0528 [1] 2/12 384-1504 [1] 2/20 384-4322 [1] 2/21	adoption [42] adoptions [13] 7/15 11/19 14/12 15/10 15/16 18/10 18/10 21/12 29/16 30/24 31/2 32/2 32/13 adoptive [10] 5/3 7/22 7/25 9/7 19/9 19/17 19/19 27/18 27/22 30/7 adopts [2] 17/15 21/23 affect [1] 19/16 affiliated [4] 5/23 5/24 6/1 20/19 again [12] 13/16 18/2 20/24 21/23 22/8 22/11 22/12 24/18 26/1 29/18 29/23 32/1 against [2] 17/21 32/20 agency [4] 14/5 15/18 20/3 20/13 agents [1] 20/8 ago [1] 23/19 agree [1] 34/7 agreement [1] 14/25 Agriculture [1] 17/20 ahead [1] 4/9 al [1] 4/9 all [14] 2/2 4/17 7/9 9/2 14/11 14/18 16/25 18/18 23/17 28/5 31/25 33/2 34/12 35/5 allow [2] 27/18 28/7 allowed [1] 18/15 allowing [2] 28/10 28/18 allows [1] 32/2 almost [1] 11/24	ask [1] 6/13 ASKEROTH [3] 2/6 2/7 4/15 ASKEROTHLAW.CO M [1] 2/13 asking [1] 24/19 aspect [1] 14/14 associate [1] 17/5 at [25] 6/21 8/5 8/17 9/16 10/8 10/21 13/5 13/16 16/10 18/19 19/10 21/11 21/20 21/23 22/14 22/14 27/23 29/8 31/1 31/14 32/6 32/7 33/14 35/7 35/9 attack [2] 13/15 31/23 attacked [1] 13/14 attacks [1] 7/23 attempted [1] 13/12 attempts [1] 13/24 attention [1] 11/21 attorney [1] 20/24 Auto [1] 23/14 automatically [1] 9/14 AVENUE [1] 2/8 avoid [1] 13/25 awards [1] 15/16 aware [10] 5/10 7/10 7/17 8/5 8/7 10/10 10/15 10/17 12/17 21/4 away [1] 23/15	
4 4322 [1] 2/21	4 4322 [1] 2/21	adoption [42] adoptions [13] 7/15 11/19 14/12 15/10 15/16 18/10 18/10 21/12 29/16 30/24 31/2 32/2 32/13 adoptive [10] 5/3 7/22 7/25 9/7 19/9 19/17 19/19 27/18 27/22 30/7 adopts [2] 17/15 21/23 affect [1] 19/16 affiliated [4] 5/23 5/24 6/1 20/19 again [12] 13/16 18/2 20/24 21/23 22/8 22/11 22/12 24/18 26/1 29/18 29/23 32/1 against [2] 17/21 32/20 agency [4] 14/5 15/18 20/3 20/13 agents [1] 20/8 ago [1] 23/19 agree [1] 34/7 agreement [1] 14/25 Agriculture [1] 17/20 ahead [1] 4/9 al [1] 4/9 all [14] 2/2 4/17 7/9 9/2 14/11 14/18 16/25 18/18 23/17 28/5 31/25 33/2 34/12 35/5 allow [2] 27/18 28/7 allowed [1] 18/15 allowing [2] 28/10 28/18 allows [1] 32/2 almost [1] 11/24	ask [1] 6/13 ASKEROTH [3] 2/6 2/7 4/15 ASKEROTHLAW.CO M [1] 2/13 asking [1] 24/19 aspect [1] 14/14 associate [1] 17/5 at [25] 6/21 8/5 8/17 9/16 10/8 10/21 13/5 13/16 16/10 18/19 19/10 21/11 21/20 21/23 22/14 22/14 27/23 29/8 31/1 31/14 32/6 32/7 33/14 35/7 35/9 attack [2] 13/15 31/23 attacked [1] 13/14 attacks [1] 7/23 attempted [1] 13/12 attempts [1] 13/24 attention [1] 11/21 attorney [1] 20/24 Auto [1] 23/14 automatically [1] 9/14 AVENUE [1] 2/8 avoid [1] 13/25 awards [1] 15/16 aware [10] 5/10 7/10 7/17 8/5 8/7 10/10 10/15 10/17 12/17 21/4 away [1] 23/15	
5 501 [1] 17/4 541 [2] 1/25 35/17	5 501 [1] 17/4 541 [2] 1/25 35/17	adoption [42] adoptions [13] 7/15 11/19 14/12 15/10 15/16 18/10 18/10 21/12 29/16 30/24 31/2 32/2 32/13 adoptive [10] 5/3 7/22 7/25 9/7 19/9 19/17 19/19 27/18 27/22 30/7 adopts [2] 17/15 21/23 affect [1] 19/16 affiliated [4] 5/23 5/24 6/1 20/19 again [12] 13/16 18/2 20/24 21/23 22/8 22/11 22/12 24/18 26/1 29/18 29/23 32/1 against [2] 17/21 32/20 agency [4] 14/5 15/18 20/3 20/13 agents [1] 20/8 ago [1] 23/19 agree [1] 34/7 agreement [1] 14/25 Agriculture [1] 17/20 ahead [1] 4/9 al [1]		

B	21/18 27/23 28/9 30/3 30/4 bringing [2] 30/6 30/7 brought [2] 11/20 23/25 business [3] 15/17 28/2 28/2 but [52] bye [2] 34/15 34/15 Bye-bye [1] 34/15	C cage [1] 10/4 calendar [1] 4/7 can [10] 5/3 9/11 9/19 24/23 26/10 27/18 28/8 28/8 28/8 34/7 can't [3] 9/21 33/14 34/7 care [4] 5/13 23/6 23/17 24/9 careful [1] 28/1 carries [1] 16/16 cart [1] 11/25 carved [1] 23/19 case [24] 1/1 4/25 6/15 6/17 6/24 7/11 7/13 7/20 19/1 19/4 21/19 23/15 25/10 27/4 27/8 30/14 31/20 32/10 32/11 32/21 33/10 33/21 33/25 34/2 cases [7] 9/10 9/25 23/3 23/13 25/2 31/19 31/20 catch [1] 23/9 cause [3] 15/21 24/14 24/15 caused [1] 31/22 CCR [2] 1/25 35/17 certain [2] 14/21 15/11 certainly [3] 14/9 15/20 28/20 CERTIFICATE [1] 35/1 CERTIFIED [1] 35/4 CERTIFY [1] 35/5 cetera [4] 20/10 20/11 33/16 33/16 charitable [3] 30/5 31/1 31/5 charities [2] 15/1 32/7	charity [17] 13/2 13/5 13/11 13/16 14/10 14/17 14/20 14/23 14/24 14/25 15/5 15/10 15/15 16/16 16/24 17/21 30/23 CHARLESTON [1] 3/4 chased [1] 13/6 chasing [1] 10/4 Checklists [1] 14/18 chilling [2] 19/15 28/17 Chip [20] 5/8 5/13 5/14 5/17 5/18 6/4 7/20 7/25 8/10 8/13 8/18 15/24 16/10 18/12 19/5 19/13 20/22 25/9 29/2 29/7 Chip's [3] 5/10 5/18 8/24 choice [1] 5/4 circumstances [3] 10/24 15/11 23/18 cited [1] 31/19 claims [2] 11/13 17/21 CLARK [3] 1/7 35/3 35/14 clear [5] 5/5 12/18 18/22 20/17 23/21 clearest [1] 27/6 clearly [4] 15/12 17/13 19/3 22/21 client [1] 25/4 client's [1] 13/14 clothing [1] 14/21 color [1] 21/3 come [3] 5/19 8/19 27/19 comes [6] 8/19 8/20 11/16 17/8 23/12 24/22 coming [3] 24/25 29/17 29/22 companies [1] 19/16 companionship [1] 28/8 company [2] 23/5 26/10 competing [1] 34/8 complaints [1] 16/17	completed [1] 14/19 completely [1] 10/20 component [1] 22/6 concerned [1] 33/21 concerning [3] 5/16 17/7 17/14 concluded [1] 34/19 conclusions [2] 6/7 34/6 conduct [3] 17/10 19/23 19/24 conducted [1] 11/4 conduit [1] 28/10 confirming [1] 17/3 conflate [1] 9/21 considering [1] 32/16 consistent [1] 6/6 consists [1] 17/3 CONSTITUTES [1] 35/10 constructive [1] 9/19 contact [1] 8/25 contained [1] 23/6 contains [1] 14/25 content [1] 34/7 context [1] 12/9 CONTINUED [1] 3/1 contractor [1] 5/23 contracts [1] 11/6 control [14] 8/10 8/13 8/14 13/22 13/24 14/1 14/3 14/4 14/9 15/3 15/7 20/10 29/2 29/4 controlled [2] 14/14 29/7 correct [2] 8/14 14/17 correctly [3] 13/18 14/6 31/18 Correlation [1] 29/21 could [6] 16/11 17/17 17/17 17/19 17/22 29/12 counsel [3] 20/17 21/5 23/9	country [1] 11/19 COUNTY [3] 1/7 35/3 35/14 course [2] 10/22 15/12 court [15] 1/6 1/20 4/20 6/6 6/8 6/9 6/10 8/9 8/20 10/18 14/11 26/22 27/9 28/22 31/21 covering [1] 14/15 cracks [1] 16/19 create [2] 22/19 29/11 created [1] 19/25 creates [2] 24/12 31/14 cross [5] 16/3 16/8 18/10 18/14 31/8 culprit [1] 19/20 customer [1] 16/23 customers [5] 14/16 15/5 15/22 18/17 30/25 cut [1] 25/13
				D dangerous [11] 7/10 7/17 8/6 8/7 10/2 10/10 10/15 12/23 19/5 21/22 22/12 DATED [1] 1/22 day [2] 21/17 34/13 days [5] 15/13 15/25 19/17 19/19 26/9 dead [1] 33/4 deal [1] 9/9 dealing [5] 6/3 20/21 21/1 21/1 21/2 dealings [1] 5/6 deals [1] 6/20 dealt [1] 5/15 decide [2] 32/23 33/19 decided [1] 34/2 decision [5] 5/8 22/10 25/8 28/14 34/4 defendant [3] 1/13 2/15 4/12 deny [1] 33/25 DEPARTMENT [2] 2/2 17/20 DEPT [1] 1/3	

D	31/3 doesn't [5] 9/13 10/3 10/13 22/16 31/13 dog [66] dog's [5] 10/3 10/4 12/11 16/5 18/3 dogs [10] 12/9 16/2 16/3 16/19 18/6 22/2 24/22 27/23 31/8 32/2 don't [14] 9/8 11/2 11/23 17/9 22/16 23/6 24/9 25/13 26/12 27/7 29/14 29/14 29/15 33/9 done [6] 5/21 11/5 11/15 17/18 17/22 25/16 down [2] 21/7 35/5 drops [1] 9/12 during [2] 17/18 21/7 duty [27] 5/1 6/10 6/24 8/19 8/19 10/14 11/3 11/24 12/2 12/8 12/14 13/18 13/25 22/6 22/20 24/15 26/3 26/6 26/13 26/16 26/18 27/4 27/5 27/10 27/20 32/9 32/15	3/3 essentially [1] 6/18 establish [2] 26/2 26/6 establishment [1] 6/23 et [5] 4/9 20/10 20/11 33/16 33/16 et al [1] 4/9 et cetera [4] 20/10 20/11 33/16 33/16 even [8] 5/10 11/2 11/2 11/23 12/8 14/19 15/4 26/12 event [12] 10/21 13/2 13/5 13/11 13/17 15/13 19/10 21/17 21/20 21/23 27/21 31/6 events [3] 9/17 12/13 15/25 ever [1] 26/6 every [4] 14/14 16/7 16/23 17/16 Everyone [1] 34/12 everything [1] 33/5 evidence [3] 14/13 19/3 32/12 example [4] 9/11 10/3 23/5 27/6 exception [1] 23/20 exerted [3] 14/4 15/7 20/10 exists [1] 17/14 explain [2] 6/17 6/17 extend [1] 28/13 extending [1] 27/20 extensive [1] 15/2 extent [1] 17/10	faith [1] 32/21 fall [3] 9/11 10/8 10/9 familiar [1] 27/8 far [2] 5/8 33/21 Fax [2] 2/12 3/8 feel [2] 32/15 33/19 fellow [1] 30/18 fence [1] 26/20 few [1] 30/12 fiduciary [1] 25/2 fiduciary-type [1] 25/2 figure [1] 27/3 finally [1] 5/25 find [1] 12/25 findings [2] 6/7 34/6 finish [1] 29/15 first [2] 7/9 13/3 fix [1] 26/20 flag [1] 18/9 flies [1] 28/20 floor [3] 4/23 9/13 14/23 focus [4] 6/19 12/13 23/11 29/1 foot [1] 15/14 FOREGOING [1] 35/10 foreseeability [3] 12/22 18/25 32/12 foreseeable [3] 13/20 15/20 22/20 forget [1] 25/25 form [1] 16/23 forms [1] 21/14 forth [1] 33/20 found [2] 6/10 8/9 Foundation [13] 5/7 6/9 6/14 7/3 8/6 8/9 8/23 8/23 8/25 9/21 10/17 10/18 28/24 Foundation's [1] 10/22 four [1] 11/8 free [1] 18/11 frequency [1] 9/16 front [2] 27/7 32/23 FULL [1] 35/10 further [1] 16/11	27/4 genuine [3] 17/13 17/25 32/16 get [11] 9/8 11/3 11/23 12/8 12/10 24/23 25/4 26/2 26/6 26/12 27/24 gets [2] 22/4 29/13 getting [2] 22/18 27/13 give [2] 30/10 33/1 given [2] 5/2 7/21 go [5] 4/9 5/3 19/9 28/11 30/1 goes [5] 12/22 19/7 19/11 21/22 34/3 going [13] 10/5 19/17 19/18 19/19 22/17 29/16 29/23 29/25 32/19 33/8 33/18 33/24 33/25 gone [2] 7/14 31/24 goodwill [1] 18/16 Google [8] 11/12 17/4 17/7 17/8 17/10 17/11 17/11 26/8 got [11] 7/24 8/1 8/18 8/21 11/10 11/10 20/25 22/9 26/21 27/12 27/25 granted [1] 10/23 granting [1] 6/5 GROUP [1] 2/6 guess [4] 11/16 22/4 25/6 26/23 guidelines [2] 14/15 32/6 guys [1] 10/6
do [30] 4/17 4/22 9/4 9/5 10/6 11/11 12/14 13/10 14/12 16/2 17/11 17/22 17/22 19/1 19/13 19/21 20/3 20/3 22/3 22/3 22/21 23/11 23/18 25/5 27/23 33/19 33/24 34/5 34/10 35/4 DOCKET [1] 1/2 doctor [1] 25/3 doctrine [1] 9/15 documentation [1] 14/19 does [6] 8/18 9/6 11/11 21/14 24/25	E earlier [1] 33/13 effect [1] 28/17 either [1] 4/17 elements [1] 31/25 else [4] 12/3 20/1 30/10 32/25 employees [14] 5/15 5/16 5/19 6/3 7/17 9/1 9/3 10/10 14/20 15/6 15/6 15/8 20/21 21/3 encourage [1] 30/19 ended [1] 13/15 enjoy [1] 34/12 enough [1] 32/20 ensure [1] 14/18 entire [3] 5/21 14/15 17/2 ENTITLED [1] 35/6 entity [1] 20/22 especially [4] 14/5 28/6 33/11 33/16 ESQ [3] 2/7 2/17	F face [1] 28/21 fact [12] 6/7 17/13 17/25 20/7 20/14 27/17 30/13 31/15 32/16 33/12 34/2 34/6 facts [8] 5/5 6/24 10/21 10/24 21/19 32/10 33/24 33/25 factual [1] 33/11 failed [1] 19/21 fairly [1] 12/12	G gaining [1] 4/25 geez [1] 11/17 general [2] 21/10	H had [19] 4/20 8/14 8/25 9/1 12/25 14/3 15/24 16/4 17/21 18/3 18/8 18/15 27/10 29/12 31/10 33/12 33/17 35/6 35/12 happen [2] 10/13 31/13 happened [2] 13/16 32/11 happens [4] 7/20 8/17 17/12 27/21 happy [1] 7/7 harm [2] 15/22 19/25

H	18/24 33/4	11/10 23/5	1/20 20/5 20/6 25/14	LAS [4] 2/10 2/19 3/6 3/14
has [11] 9/3 11/13 17/6 19/3 19/19 20/17 21/15 25/1 27/5 28/21 31/21	I'm [15] 8/19 12/17 23/10 24/5 24/19 26/4 27/2 27/2 27/3 27/7 27/13 29/3 33/8 33/24 33/25	insured [4] 23/6 25/2 25/3 25/3 insurer [1] 25/3 internal [1] 18/6 internet [1] 26/8 intervening [4] 19/1 19/1 22/7 22/8	judgment [5] 6/6 10/23 16/22 23/8 34/1 jury [9] 18/1 20/14 31/15 32/18 32/19 32/22 32/23 33/18 34/2	last [3] 11/14 30/11 33/1 law [10] 2/6 2/16 4/7 6/7 7/9 7/18 23/12 23/25 24/10 34/6
have [68] having [1] 13/15 he [8] 13/6 13/7 13/9 16/12 16/13 20/5 20/6 33/12	I've [5] 7/14 8/21 30/16 31/24 33/5 identify [1] 18/6 if [29] 7/9 7/16 7/16 9/17 10/2 10/3 10/9 10/21 11/3 11/12 11/18 11/20 11/24 12/15 16/4 16/5 17/20 18/7 18/14 21/15 23/9 24/2 24/15 25/6 26/13 29/16 30/19 34/2 34/6	interwoven [1] 14/22 into [2] 13/7 35/8 invitee [3] 23/22 24/11 24/21 invitees [1] 23/16 involved [10] 5/6 5/8 8/24 19/12 25/7 25/8 28/1 28/2 32/3 32/4	just [15] 6/2 8/19 14/23 17/7 17/11 18/21 22/7 22/18 23/20 25/11 27/15 27/15 28/20 30/12 33/8	lawyer [1] 25/4 learn [1] 26/10 least [1] 16/10 legal [2] 13/25 20/25 legislative [1] 23/19
hear [2] 12/5 18/19 HEARD [1] 2/2 hearing [4] 1/16 1/17 16/22 30/17 heavily [2] 32/3 32/4 held [1] 20/9 here [5] 8/2 10/25 19/20 20/7 31/25 here's [1] 33/13 HEREBY [1] 35/5 HEREUNTO [1] 35/13 hey [5] 8/1 10/5 10/6 27/25 28/5 hiding [1] 13/7 him [1] 13/7 his [2] 13/7 22/15 history [5] 12/11 12/16 22/2 33/11 33/17 hold [4] 19/17 19/18 19/18 19/20 holding [1] 27/16 home [56] Honor [25] 4/11 4/24 7/8 10/12 12/6 12/20 14/2 15/7 15/23 16/20 18/4 18/21 20/2 20/16 23/24 27/15 29/22 30/12 30/17 31/18 32/15 33/2 33/5 34/9 34/10 HONORABLE [1] 1/19 hopefully [1] 31/13 horse [2] 11/25 33/4 how [5] 6/12 20/6 20/9 21/5 33/9 hundreds [2] 11/19 17/16	imposed [1] 31/21 in [83] inadequate [3] 16/16 16/18 16/21 incident [2] 11/9 19/10 incidents [1] 31/11 including [1] 14/10 increases [1] 15/13 independent [1] 5/22 INDICATED [1] 35/7 individual [4] 13/3 13/5 13/13 13/13 individuals [1] 12/25 information [2] 19/6 19/7 informed [2] 4/20 27/22 inherent [1] 27/24 initial [1] 16/22 initially [1] 11/5 injuries [2] 18/22 31/22 injury [10] 9/23 10/11 11/13 13/20 13/21 19/10 24/2 24/14 24/16 28/13 inquire [1] 22/1 inquired [1] 16/11 insurance [2]	is [86] isn't [5] 9/8 26/14 26/15 32/1 32/1 ISOM [3] 1/25 35/4 35/17 issue [15] 4/25 7/7 7/24 12/8 12/22 13/18 13/24 14/2 17/13 17/25 18/4 20/3 31/15 32/16 32/24 issued [3] 6/8 22/13 28/21 issues [6] 5/11 11/18 19/8 27/16 32/17 34/2 it [52] it's [19] 4/7 6/22 7/6 9/6 10/8 11/24 12/7 12/12 12/12 14/4 17/7 18/4 18/22 21/6 26/9 28/9 28/11 30/1 32/19 its [16] 6/6 7/16 9/1 10/10 14/9 15/8 15/9 16/19 21/25 22/3 23/5 25/2 25/3 25/3 26/18 34/7	K KAY [4] 2/16 2/17 4/12 4/19 keep [4] 16/7 18/7 22/18 24/25 keeps [1] 16/1 KENYON [2] 3/2 3/3 KENYON.COM [1] 3/9 kind [1] 33/9 knew [8] 6/2 9/15 10/1 18/5 20/20 20/20 21/2 32/12 know [29] 6/15 10/1 11/9 12/8 13/20 14/23 15/25 17/2 17/17 18/2 18/5 20/13 20/22 20/24 20/25 21/24 22/16 22/16 23/25 25/5 27/3 28/18 30/13 30/17 31/1 31/9 31/13 31/18 32/21 knowing [1] 19/5 knowledge [2] 18/3 20/25 known [9] 9/15 10/2 12/23 12/23 13/21 15/24 16/10 18/5 32/13	lengthy [1] 15/1 Let [1] 29/15 let's [2] 4/9 7/11 level [1] 28/16 liability [15] 6/18 6/19 7/9 7/18 9/10 9/20 9/25 23/13 23/25 24/10 24/19 28/13 28/18 31/21 32/20 licensee [3] 23/23 24/11 24/21 licensees [1] 23/16 light [1] 33/11 like [11] 4/21 8/4 11/24 14/11 16/17 18/24 25/13 27/21 28/11 30/1 30/24 likelihood [2] 13/21 16/16 line [1] 21/11 listening [1] 26/4 literally [1] 11/18 litigation [1] 11/12 little [1] 12/9 log [4] 9/17 16/6 18/7 21/13 long [1] 11/17 Look [4] 20/5 25/14 27/9 27/23 looking [2] 9/16 10/8 lot [2] 26/10 32/21 lover [1] 30/18 LSKESQ21 [1] 2/22
I		J	L	M
I'd [4] 7/7 8/4		JAMES [2] 1/9 4/9 JAY [2] 3/3 3/9 Jeez [1] 19/17 job [3] 19/13 19/21 28/4 JUDGE [5] 1/19	lack [1] 17/23 landlord [4] 26/18 26/19 26/19 27/10 landowner [1] 31/22 LANE [4] 2/16 2/17 4/12 4/19 language [1] 23/10	made [3] 5/5 8/5 22/10 maintained [1] 14/15 maintains [1] 14/9 make [7] 12/15

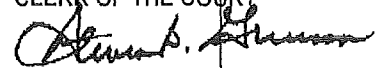
M make... [6] 18/22 23/21 26/20 27/12 30/22 33/7 making [2] 5/8 25/8 mandate [1] 9/24 Manny's [1] 23/13 manual [2] 15/2 15/9 many [1] 18/12 March [2] 6/8 28/22 March 18 [2] 6/8 28/22 mark [1] 14/2 material [3] 17/13 17/25 32/16 matter [3] 4/8 4/18 35/7 MATTERS [1] 2/2 may [1] 8/8 Maybe [1] 9/19 me [8] 6/12 6/12 6/17 6/23 11/1 25/13 27/7 29/15 mean [7] 6/16 7/2 9/13 9/20 23/11 25/4 26/7 members [1] 28/10 methods [1] 18/6 might [2] 15/5 15/21 mind [1] 33/9 minds [1] 10/14 minimum [1] 31/14 misses [1] 14/2 mistake [1] 15/5 Monday [1] 30/2 monetary [1] 15/15 Moody [1] 23/13 more [2] 14/22 17/17 moreover [2] 6/2 19/23 motion [4] 4/7 6/5 16/22 34/1 moving [4] 4/12 18/20 20/15 33/1 Mr. [1] 7/23 Mr. Todd [1] 7/23 Mrs. [4] 5/15 5/20 5/25 20/18 Mrs. Todd [4] 5/15 5/20 5/25 20/18	much [3] 10/24 14/22 15/7 mutually [1] 15/17 my [8] 4/7 12/12 13/14 34/4 35/9 35/11 35/14 35/14 N NAME [1] 35/14 named [1] 11/13 national [1] 17/15 nature [1] 17/10 need [2] 10/6 33/5 needed [1] 18/13 negligence [1] 32/24 NEVADA [6] 1/7 4/1 26/21 27/8 35/2 35/15 never [1] 5/14 no [47] None [1] 25/9 nonprofit [1] 29/24 Nor [1] 9/24 not [48] noted [4] 13/18 14/6 16/23 31/18 NOTES [1] 35/8 nothing [1] 8/16 notice [3] 8/17 9/20 29/11 NOVEMBER [3] 1/22 4/1 4/6 November 10 [1] 4/6 now [7] 7/25 16/1 17/2 22/23 24/10 31/1 32/19 number [1] 22/19 NV [4] 1/25 2/10 2/19 3/6 O obviously [4] 7/24 22/13 24/1 30/13 occasion [2] 13/3 16/11 occasions [1] 13/2 occupiers [1] 6/20 occur [5] 9/23 18/22 21/25 28/19 29/17 occurred [5] 6/21 8/15 10/21 13/4 25/9 occurring [1] 31/12 occurs [4] 10/11	19/10 28/14 29/8 off [1] 25/13 OFFICE [2] 2/16 35/14 often [1] 31/14 okay [9] 4/22 4/24 8/16 9/4 9/18 9/23 11/2 26/23 32/25 on [49] once [3] 24/17 31/1 31/3 one [11] 4/8 4/17 13/19 15/22 16/13 21/9 22/19 23/24 24/20 30/1 30/13 ones [1] 9/4 only [14] 4/8 5/2 5/15 5/19 9/6 10/20 12/21 20/21 25/16 27/17 27/17 28/16 29/6 29/6 opposite [1] 26/15 opposition [1] 21/11 or [45] order [7] 6/7 23/7 23/7 24/5 24/9 28/21 28/23 orders [1] 34/8 organization [5] 17/5 17/15 29/24 30/5 31/2 organizations [2] 17/1 30/23 other [14] 8/4 10/5 16/17 17/21 18/18 18/24 19/14 19/16 21/9 22/6 23/22 28/11 30/4 30/20 otherwise [1] 5/24 our [13] 4/10 10/13 12/1 13/19 13/19 14/1 14/8 15/18 16/9 16/22 17/23 18/11 20/15 out [16] 5/4 7/4 8/4 10/4 18/25 19/5 19/15 20/9 21/22 22/11 23/19 26/21 27/3 27/12 27/14 27/19 outside [1] 7/15 over [13] 13/22 14/1 14/3 14/4 14/9 14/25 15/8 20/10 29/18 29/18 29/18 29/23 29/23 owed [6] 5/1 10/14	11/3 12/2 24/15 26/13 own [8] 6/6 7/3 7/22 15/8 28/24 28/24 29/4 29/5 owned [1] 29/7 owner [8] 7/1 9/22 9/25 10/9 19/18 24/1 27/5 27/21 owners [2] 6/20 28/18 ownership [4] 8/10 8/13 8/14 29/2 P P.M [1] 4/2 page [2] 20/4 21/11 page 15 [1] 21/11 page 19 [1] 20/4 paint [1] 21/6 pandemic [1] 28/6 papers [1] 20/16 paperwork [4] 5/25 7/21 11/11 20/18 parent's [1] 27/22 parents [7] 5/3 7/22 7/25 9/7 19/9 27/18 30/7 part [4] 19/2 19/16 29/11 33/12 particular [3] 7/11 7/13 18/25 partner [2] 14/20 15/5 partners [5] 14/10 14/17 15/10 15/15 16/24 party [6] 4/12 6/11 13/22 18/20 31/22 33/1 past [1] 20/9 patient [1] 25/4 patrons [1] 10/5 peculiar [2] 21/19 33/25 PEGGY [3] 1/25 35/4 35/17 people [2] 28/7 28/10 percent [1] 8/13 perform [5] 15/9 15/16 17/8 31/2 32/8 performed [1] 17/19 performing [1] 30/23	periodic [3] 17/24 31/3 31/7 permit [2] 29/16 30/20 permitted [4] 15/9 21/25 31/6 32/22 permitting [1] 14/23 person [5] 16/13 16/13 26/10 29/6 29/7 perspective [1] 33/11 pertaining [1] 16/1 pet [4] 11/18 21/13 28/12 30/20 PetSmart [100] PetSmart's [7] 5/2 6/5 7/14 12/1 13/22 15/22 17/18 pick [2] 5/4 27/19 picture [2] 21/6 21/7 place [16] 4/10 9/7 11/9 14/6 14/12 14/13 15/10 16/3 18/14 22/1 30/22 31/17 32/2 32/14 33/14 35/7 places [1] 28/11 plaintiff [6] 1/10 2/4 12/5 21/6 30/10 34/5 plaintiff's [3] 20/5 20/17 21/5 plaintiffs [1] 4/16 play [1] 25/1 plenty [1] 7/14 point [4] 7/4 8/4 8/5 18/25 policies [1] 17/23 policy [6] 16/2 17/6 17/7 18/9 21/14 31/7 position [8] 12/1 12/1 14/1 15/18 16/9 17/23 18/11 30/9 possession [1] 5/14 posture [1] 6/15 potentially [2] 21/21 33/22 powerful [1] 26/9 preapproved [1] 16/25 premise [11] 6/18
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[10] 6/19 7/9 7/18 9/10 9/20 9/25 23/13 23/25 24/10 24/18</p> <p>premises [8] 9/24 10/1 10/9 10/11 14/7 16/19 19/19 24/1</p> <p>prepare [1] 34/5</p> <p>prequalification [1] 17/3</p> <p>present [1] 14/17</p> <p>presented [2] 19/3 32/23</p> <p>pretty [1] 12/17</p> <p>previously [6] 15/24 16/2 16/4 18/15 21/16 28/21</p> <p>principles [1] 33/20</p> <p>prior [16] 5/11 5/13 9/16 12/11 12/13 12/16 13/14 16/10 16/17 18/10 21/20 23/7 30/17 31/10 32/13 33/17</p> <p>privy [1] 19/6</p> <p>probably [1] 22/15</p> <p>problem [6] 8/2 8/18 9/4 12/16 29/12 30/2</p> <p>problems [1] 11/20</p> <p>procedure [2] 21/15 31/8</p> <p>procedures [6] 16/3 16/20 17/24 30/22 31/17 32/6</p> <p>Proceedings [3] 34/19 35/6 35/12</p> <p>process [31] 5/21 7/12 11/1 11/3 11/5 14/14 14/16 15/8 16/15 17/3 17/15 17/18 17/24 19/12 21/8 21/10 25/7 25/18 26/7 26/8 26/11 26/12 27/25 28/7 29/19 31/3 32/4 32/5 32/17 33/13 34/3</p> <p>processes [3] 31/17 32/6 33/14</p> <p>program [1] 31/6</p> <p>proof [1] 11/10</p> <p>propensities [12] 7/10 7/17 8/6 8/7</p>	<p>10/2 10/10 10/16 12/24 18/4 19/5 21/22 22/13</p> <p>proper [2] 22/22 30/21</p> <p>properties [1] 30/21</p> <p>property [21] 6/21 6/22 7/1 9/22 10/22 14/7 14/18 14/21 21/25 22/3 23/23 24/11 24/21 27/5 27/21 28/17 28/25 29/5 29/17 32/3 32/14</p> <p>proposed [1] 34/6</p> <p>protocols [1] 16/18</p> <p>provide [4] 9/7 9/9 11/10 14/12</p> <p>provisions [1] 14/25</p> <p>public [1] 28/10</p> <p>push [2] 10/20 24/6</p> <p>put [1] 8/17</p> <p>putting [1] 11/24</p> <p>Q</p> <p>qualified [1] 16/25</p> <p>question [10] 5/12 5/14 6/13 10/12 11/16 20/6 21/9 22/9 22/23 32/22</p> <p>questions [3] 18/18 20/13 20/14</p> <p>R</p> <p>raised [1] 20/4</p> <p>rather [1] 19/24</p> <p>read [1] 8/21</p> <p>real [6] 6/21 10/22 19/20 23/23 24/21 27/16</p> <p>realize [1] 23/18</p> <p>really [6] 12/14 19/15 23/1 23/11 26/25 29/16</p> <p>reason [8] 6/13 9/9 10/20 11/21 12/21 16/5 16/12 21/18</p> <p>reasonable [4] 17/14 23/17 31/16 32/9</p> <p>receive [1] 15/15</p> <p>recollection [1] 12/12</p> <p>record [5] 4/10</p>	<p>12/9 12/15 12/17 35/11</p> <p>records [1] 16/1</p> <p>red [1] 18/9</p> <p>reference [3] 16/3 18/10 18/14</p> <p>referenced [1] 16/8</p> <p>referencing [1] 31/8</p> <p>regarding [6] 6/3 12/15 16/20 17/24 28/23 31/8</p> <p>regulated [2] 14/13 14/19</p> <p>related [1] 33/15</p> <p>relates [3] 23/8 26/17 34/3</p> <p>relationship [23] 8/22 14/5 15/17 15/19 19/22 20/9 22/5 22/19 23/1 23/4 23/10 23/22 24/2 24/6 24/8 24/12 24/13 24/16 24/18 25/1 31/24 31/25 32/8</p> <p>relationships [2] 23/2 23/4</p> <p>release [1] 21/13</p> <p>rely [1] 19/12</p> <p>repercussions [1] 18/13</p> <p>reported [3] 1/25 4/18 4/21</p> <p>reporter [2] 4/20 35/4</p> <p>REPORTER'S [2] 1/15 34/22</p> <p>represent [1] 30/24</p> <p>representations [1] 5/18</p> <p>require [3] 14/24 15/1 32/7</p> <p>required [1] 14/20</p> <p>requirement [1] 9/24</p> <p>rescue [2] 1/12 30/16</p> <p>responsible [8] 5/12 7/19 9/14 10/6 10/13 19/20 27/17 29/25</p> <p>restatement [3] 25/24 27/14 33/22</p> <p>result [2] 23/18 31/23</p>	<p>retail [1] 6/22</p> <p>return [2] 16/5 18/12</p> <p>returned [8] 13/5 15/24 16/14 18/8 18/23 18/23 21/16 21/21</p> <p>reveal [1] 17/20</p> <p>review [3] 17/24 31/3 31/7</p> <p>right [11] 4/17 6/22 9/13 9/17 10/11 13/11 24/10 24/22 25/2 27/7 34/12</p> <p>RMR [2] 1/25 35/17</p> <p>room [2] 13/7 13/7</p> <p>rule [1] 8/20</p> <p>ruling [1] 6/10</p> <p>S</p> <p>safe [3] 26/20 27/12 30/24</p> <p>safety [1] 16/18</p> <p>said [10] 15/23 17/19 18/2 20/5 23/17 26/22 27/9 30/17 33/5 35/8</p> <p>same [1] 13/1</p> <p>say [10] 7/11 7/18 9/10 18/18 19/17 20/17 29/12 32/19 33/6 33/14</p> <p>saying [5] 13/25 25/12 25/14 27/4 33/8</p> <p>says [2] 20/6 21/11</p> <p>scared [2] 13/6 16/13</p> <p>scenario [1] 7/6</p> <p>Schum [6] 24/23 25/22 26/17 27/7 31/20 33/20</p> <p>screening [3] 25/18 29/19 33/16</p> <p>search [10] 11/12 17/4 17/7 17/8 17/10 17/11 17/11 17/19 26/8 26/9</p> <p>second [1] 29/15</p> <p>section [1] 25/25</p> <p>see [6] 8/8 10/19 17/8 17/11 29/20 33/10</p> <p>sends [1] 19/15</p> <p>sense [1] 27/5</p> <p>separate [3] 9/3 13/2 15/25</p>	<p>service [1] 14/16</p> <p>session [1] 23/19</p> <p>set [2] 10/21 33/20</p> <p>several [5] 31/4 31/10 31/10 31/19 31/19</p> <p>she [12] 6/2 6/2 20/19 20/20 20/20 20/21 20/23 20/24 21/1 21/2 21/2 21/4</p> <p>she's [3] 20/24 21/1 21/1</p> <p>shirts [1] 21/4</p> <p>SHORTHAND [1] 35/4</p> <p>should [16] 9/15 10/1 12/22 12/23 13/20 15/23 16/9 17/25 18/5 18/8 22/10 29/18 31/15 32/12 32/17 32/22</p> <p>showed [1] 19/4</p> <p>shown [1] 14/8</p> <p>shows [1] 14/13</p> <p>sign [3] 7/21 11/10 14/24</p> <p>signed [3] 5/25 11/6 20/18</p> <p>significant [1] 12/12</p> <p>signs [1] 16/23</p> <p>sir [5] 4/14 4/22 12/3 18/19 20/1</p> <p>site [1] 17/4</p> <p>situation [2] 16/7 31/10</p> <p>SIXTH [1] 2/18</p> <p>slip [3] 9/11 10/8 16/18</p> <p>so [34] 4/22 6/12 6/23 7/16 8/4 8/7 8/10 8/18 10/13 11/4 11/8 11/14 11/16 13/6 13/18 14/22 15/7 15/16 16/5 16/9 16/13 17/23 18/11 18/17 19/15 20/24 21/5 23/20 25/12 27/20 31/3 32/9 32/15 33/24</p> <p>sobeit [1] 23/10</p> <p>some [11] 7/21 9/12 11/11 11/14 20/25 20/25 22/2 27/16 27/16 29/18 33/19</p> <p>someone [1] 9/11</p>
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EXHIBIT “14”



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10 Fax: (702) 384-4322
11 Attorney for Defendant,
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13 EIGHTH JUDICIAL DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 JAMES E. TODD, individually;
16 RAPHAELA TODD, individually,
17 Plaintiffs,

Case No.: A-19-788762-C
Dept. No.: 16

18 vs.

19 A HOME 4 SPOT ANIMAL RESCUE, a Nevada
20 Domestic Non-Profit corporation; JANE DOE
21 EMPLOYEE, PETSMART, INC., DOES 1 through
22 X; and ROE CORPORATIONS 1 through X,
23 inclusive jointly and severally,
24 Defendants.

25 AND RELATED CROSS-ACTION

26 NOTICE OF ENTRY OF ORDER

27 PLEASE TAKE NOTICE that an Order in the above-entitled action was entered and filed
28 on the 29th day of August, 2019, a copy of which is attached hereto.

29 LAW OFFICES OF LANE S. KAY
30 *A Professional Corporation*

31 By: 

32 LANE S. KAY, ESQ.
33 Nevada Bar No. 5031
34 819 South Sixth Street
35 Las Vegas, Nevada 89101
36 (702) 384-1504
37 Attorney for Defendant

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A Home 4 Spot Animal Rescue

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PetSmart, Inc.

Amms
An Employee of
LAW OFFICE OF LANE S. KAY



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10 Attorney for Defendant,
11 PETSMART, INC.

12 EIGHTH JUDICIAL DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 JAMES E. TODD, individually;
15 RAPHAELA TODD, individually,

16 Plaintiffs,

17 vs.

18 A HOME 4 SPOT ANIMAL RESCUE, a Nevada
19 Domestic Non-Profit corporation; JANE DOE
20 EMPLOYEE, PETSMART, INC., DOES 1 through
21 X; and ROE CORPORATIONS 1 through X,
22 inclusive jointly and severally,

23 Defendants.

24 AND RELATED CROSS-ACTION

Case No.: A-19-788762-C
Dept. No.: 16

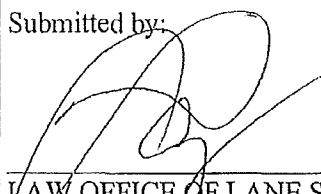
25 ORDER ADMITTING TO PRACTICE

26 **MICHAEL L. AMARO, ESQ.**, a member of the law firm of Amaro Baldwin, LLP,
27 having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together
28 with a Verified Application for Association of Counsel, a Certificate of Good Standing for the
State of California, and the State Bar of Nevada Statement; said application having been noticed,
no objections having been made, and the Court being fully apprised in the premises, and good
cause appearing, it is hereby

1 **ORDERED**, that said application is hereby granted, and **MICHAEL L. AMARO, ESQ.**
2 is hereby admitted to practice in the above entitled Court for the purposes of the above entitled
3 matter only.
4

5 DATED this 29th day of August, 2019.
6

7
8 
9 DISTRICT JUDGE

10
11 Submitted by:
12 
13

14 LAW OFFICE OF LANE S. KAY
15 *A Professional Corporation*
16 LANE S. KAY, ESQ.
17 Nevada Bar No. 5031
18 819 South Sixth Street
19 Las Vegas, NV 89101
20 Attorney for Defendant
21 PETSMART, INC.
22
23
24
25
26
27
28

EXHIBIT “15”

Case Information

A-19-788762-C | James Todd, Plaintiff(s) vs. A Home 4 Spot Animal Rescue, Defendant(s)

Case Number	Court	Judicial Officer
A-19-788762-C	Department 16	Williams, Timothy C.
File Date	Case Type	Case Status
02/04/2019	Negligence - Other Negligence	Open

Party

Plaintiff
Todd, James E

Active Attorneys ▼
Attorney
Callister, Matthew Q
Retained

Lead Attorney
Askeroth, Thomas W
Retained

Attorney
Bisson, Mitchell
Retained

Plaintiff
Todd, Raphaela

Active Attorneys ▼
Attorney
Callister, Matthew Q
Retained

Lead Attorney

Askeroth, Thomas
W
Retained

Attorney
Bisson, Mitchell
Retained

Counter Defendant
Todd, Raphaela

Active Attorneys ▼
Attorney
Callister, Matthew Q
Retained

Lead Attorney
Askeroth, Thomas
W
Retained

Attorney
Bisson, Mitchell
Retained

Defendant
A Home 4 Spot Animal Rescue

Active Attorneys ▼
Lead Attorney
Kenyon, Jay A.
Retained

Cross Defendant
A Home 4 Spot Animal Rescue

Active Attorneys ▼
Lead Attorney
Kenyon, Jay A.
Retained

Counter Claimant
A Home 4 Spot Animal Rescue

Active Attorneys ▼
Lead Attorney
Kenyon, Jay A.
Retained

Counter Claimant
A Home 4 Spot Animal Rescue

Active Attorneys ▼
Lead Attorney
Kenyon, Jay A.
Retained

Defendant
Petsmart Inc

Active Attorneys ▼
Lead Attorney
Kay, Lane S
Retained

Attorney
Amaro, Michael L.
Retained

Cross Claimant
Petsmart Inc

Active Attorneys ▼
Lead Attorney
Kay, Lane S
Retained

Attorney
Amaro, Michael L.
Retained

Counter Defendant
Petsmart, Inc

Active Attorneys ▼
Lead Attorney
Kay, Lane S
Retained

Attorney
Amaro, Michael L.
Retained

Disposition Events

12/06/2019 Judgment ▼

Judicial Officer
Williams, Timothy C.

Judgment Type
Order of Dismissal

Monetary Judgment

Debtors: A Home 4 Spot Animal Rescue (Counter Claimant)

Creditors: Raphaela Todd (Counter Defendant)

Judgment: 12/06/2019 Docketed: 12/06/2019

Comment: Certain Claim

03/18/2020 Judgment ▼

Judicial Officer
Williams, Timothy C.

Judgment Type
Order of Dismissal With Prejudice

Monetary Judgment

Debtors: James E Todd (Plaintiff), Raphaela Todd (Plaintiff)

Creditors: Animal Foundation (Defendant)

Judgment: 03/18/2020 Docketed: 03/20/2020

04/14/2020 Judgment ▼

Judicial Officer
Williams, Timothy C.

Judgment Type
Order of Dismissal With Prejudice

Monetary Judgment

Debtors: A Home 4 Spot Animal Rescue (Third Party Plaintiff)

Creditors: Dorn Inc (Third Party Defendant), Dennis Dean Dorn (Third Party Defendant), Dorn Inc (Third Party Defendant)

Judgment: 04/14/2020 Docketed: 04/15/2020

Events and Hearings

02/04/2019 Complaint ▼

Comment
Complaint

02/04/2019 Initial Appearance Fee Disclosure ▼

Comment
Initial Appearance Fee Disclosure

02/07/2019 Summons Electronically Issued - Service Pending ▼

Comment
Summons

02/07/2019 Summons Electronically Issued - Service Pending ▼

Comment
Summons

02/26/2019 Affidavit of Service ▼

Comment
Affidavit of Service

02/26/2019 Affidavit of Service ▼

Comment
Affidavit of Service

03/05/2019 Notice of Change of Address ▼

Comment
Plaintiff's Notice of Change of Firm Address

05/08/2019 Substitution of Attorney ▼

Comment
Substitution of Attorney

05/24/2019 Association of Counsel ▼

Comment
Association of Counsel

06/27/2019 Initial Appearance Fee Disclosure ▼

Comment
Initial Appearance Fee Disclosure

06/27/2019 Demand for Jury Trial ▼

Comment
Demand for Jury Trial

06/27/2019 Answer ▼

Comment
Answer to Complaint

06/27/2019 Crossclaim ▼

Comment
Cross-Claim for Indemnity, Contribution, Declaratory Relief, Express
Contractual Indemnity, and Breach of Contract

06/28/2019 Initial Appearance Fee Disclosure ▼

Comment
Initial Appearance Fee Disclosure

06/28/2019 Notice of Appearance ▼

Comment
Notice of Appearance

06/28/2019 Answer and Counterclaim ▼

Comment
Defendant A Home 4 Spot Animal Rescue s Answer To Complaint
And Counter Claim Against Raphaela Todd

07/08/2019 Request for Exemption From Arbitration ▼

Comment
Plaintiffs' Request for Exemption from Arbitration

07/17/2019 Motion to Associate Counsel ▼

Comment
Motion to Associate Counsel

07/18/2019 Clerk's Notice of Hearing ▼

Comment
Notice of Hearing

07/19/2019 Answer and Counterclaim ▼

Comment
Defendant A Home 4 Spot Animal Rescue s Answer To Petsmart,
Inc.' S Cross Claim And Counter Claim Against Petsmart, Inc.

07/22/2019 Commissioners Decision on Request for Exemption - Granted ▼

Comment
Commissioner's Decision on Request for Exemption - GRANTED

07/23/2019 Answer to Counterclaim ▼

Comment
Defendant, PetSmart, Inc.'s, Answer to Counter Claim of a Home 4
Spot Animal Rescue

07/24/2019 Motion to Dismiss ▼

Comment
Plaintiff Raphaela Todd s Partial Motion To Dismiss A Home 4 Spot
Animal Rescue s Counterclaim

07/24/2019 Notice of Early Case Conference ▼

Comment
Notice of Early Case Conference

07/25/2019 Clerk's Notice of Hearing ▼

Comment
Notice of Hearing

08/02/2019 Opposition to Motion ▼

Comment

Defendant/Counter Claimant A Home 4 Spot Animal Rescue's
Opposition To Plaintiff Raphaella Todd's Partial Motion To Dismiss A
Home 4 Spot Animal Rescue's Counterclaim

08/07/2019 Reply to Opposition ▼

Comment

Plaintiff Raphaella Todd's Reply to A Home 4 Spot Animal Rescue's
Opposition to Plaintiff's Partial Motion to Dismiss A Home 4 Spot
Animal Rescue's Counterclaim

08/15/2019 Reply to Opposition ▼

Comment

Plaintiff Raphaella Todd's Reply to A Home 4 Spot Animal Rescue's
Opposition to Plaintiff's Partial Motion to Dismiss A Home 4 Spot
Animal Rescue's Counterclaim [with Signatures]

08/29/2019 Motion to Associate Counsel ▼

Judicial Officer

Williams, Timothy C.

Hearing Time

9:00 AM

Result

Motion Granted

Comment

Defendant's Motion to Associate Counsel (Michael Amaro, Esq.)

Parties Present ▲

Plaintiff

Attorney: Askeroth, Thomas W

Defendant

Attorney: Kenyon, Jay A.

Plaintiff

Attorney: Askeroth, Thomas W

Defendant

Attorney: Kay, Lane S

Counter Defendant

Attorney: Kay, Lane S

08/29/2019 Order Admitting to Practice ▼

Comment
Order Admitting to Practice

08/29/2019 Notice of Entry of Order ▼

Comment
Notice of Entry of Order

09/16/2019 Stipulation and Order ▼

Comment
Stipulation and Order for Filing Plaintiffs' First Amended Complaint

09/16/2019 Notice of Entry of Stipulation and Order ▼

Comment
Notice of Stipulation and Order for Filing Plaintiffs' First Amended Complaint

09/24/2019 Joint Case Conference Report ▼

Comment
Joint Case Conference Report

09/30/2019 First Amended Complaint ▼

Comment
Plaintiffs' First Amended Complaint

09/30/2019 Answer to Amended Complaint ▼

Comment
Answer to Plaintiff's First Amended Complaint

10/07/2019 Order ▼

Comment
Order to Appear for Mandatory Discovery Conference

10/08/2019 Acceptance of Service ▼

Comment
Acceptance of Service

10/08/2019 Summons Electronically Issued - Service Pending ▼

Comment
Summons

10/10/2019 Motion to Dismiss ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
9:30 AM

Result
Granted in Part

Comment
Plaintiff Raphaella Todd s Partial Motion To Dismiss A Home 4 Spot Animal
Rescue s Counterclaim

Parties Present ▲

Plaintiff

Attorney: Callister, Matthew Q

Attorney: Askeroth, Thomas W

Defendant

Attorney: Kenyon, Jay A.

Plaintiff

Attorney: Callister, Matthew Q

Attorney: Askeroth, Thomas W

10/14/2019 Affidavit of Service ▼

Comment
Affidavit of Service

10/24/2019 Notice of Compliance ▼

Comment
Notice of Compliance of Exchange of 16.1 Initial Disclosures by
Defendant PetSmart, Inc.

11/05/2019 Notice of Compliance ▼

Comment
Notice of Compliance of Exchange of Initial 16.1 Disclosures by
Plaintiffs

11/11/2019 Motion to Dismiss ▼

Comment
Motion to Dismiss or in the alternative Motion for a More Definite
Statement

11/11/2019 Disclosure Statement ▼

Comment
NRCP 7.1 Disclosure Statement

11/12/2019 Clerk's Notice of Hearing ▼

Comment
Notice of Hearing

11/19/2019 Discovery Conference ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
9:00 AM

Result
Trial Date Set

Parties Present ▲
Plaintiff

Attorney: Callister, Matthew Q

Attorney: Askeroth, Thomas W

Defendant

Attorney: Kenyon, Jay A.

Plaintiff

Attorney: Callister, Matthew Q

Attorney: Askeroth, Thomas W

Defendant

Attorney: Kay, Lane S

Counter Defendant

Attorney: Kay, Lane S

11/21/2019 Scheduling and Trial Order ▼

Comment
Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial/Calendar Call

11/21/2019 Opposition to Motion to Dismiss ▼

Comment
Plaintiffs' Opposition to Defendant The Animal Foundation's Motion to Dismiss or, in the Alternative, Motion for a More Definite Statement

11/21/2019 Third Party Complaint ▼

Comment
A Home 4 Spot Animal Rescue s Third-Party Complaint

11/21/2019 Stipulation and Order ▼

Comment
Stipulation And Order For Leave For A Home 4 Spot Animal Rescue
To File A Third-Party Complaint

11/27/2019 Summons Electronically Issued - Service Pending ▼

Comment
Summons (Dorn - Inc.)

12/02/2019 Summons Electronically Issued - Service Pending ▼

Comment
Summons Dorn Inc.

12/06/2019 Order ▼

Comment
Order Granting in Part and Denying in Part Plaintiff Raphaella Todd's
Partial Motion to Dismiss A Home 4 Spot Animal Rescue's
Counterclaim

12/06/2019 Notice of Entry of Order ▼

Comment
Notice of Entry of Order Granting in Part and Denying in Part Plaintiff
Raphaella Todd's Partial Motion to Dismiss A Home 4 Spot Animal
Rescue's Counterclaim

01/17/2020 Stipulation and Order ▼

Comment
Stipulation and Order for Leave for Home 4 Spot Animal Rescue to
File Amended Third Party Complaint

01/17/2020 Notice of Entry of Stipulation and Order ▼

Comment
Notice Of Stipulation And Order For Leave For A Home 4 Spot
Animal Rescue To File Amended Third-Party Complaint

01/17/2020 Third Party Complaint ▼

Comment
A Home 4 Spot Animal Rescue's First Amended Third-Party
Complaint

01/17/2020 Summons Electronically Issued - Service Pending ▼

Comment
Summons

01/24/2020 Reply in Support ▼

Comment
Reply in Support of Defendants Motion to Dismiss, or in the
Alternative, Motion for More Definite Statement

01/24/2020 Answer to Counterclaim ▼

Comment
Counter-Defendant Raphaela Todd's Answer to Counter-Claimant A
Home 4 Spot's Counter Claim

01/24/2020 Motion for Summary Judgment ▼

Comment
Notice of Motion and Motion for Summary Judgment, or in the
Alternative, Summary Adjudication of Issues, by Defendant,
PetSmart, Inc.; Memorandum of Points and Authorities; Declarations
of Michael L. Amaro and Chris McCurdy; and Proposed Order

01/27/2020 Clerk's Notice of Hearing ▼

Comment
Notice of Hearing

01/27/2020 Exhibits ▼

Comment
Defendant, PetSmart, Inc., Compendium of Evidence in Support of
Motion for Summary Judgment, or in the Alternative, Summary
Adjudication

01/27/2020 Notice of Change of Address ▼

Comment
Notice of Change of Address

01/30/2020 Motion to Dismiss ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
9:30 AM

Result
Motion Granted

Comment
Defendant's Motion to Dismiss or In the alternative Motion for a More
Definite Statement

Parties Present ▲
Plaintiff

Attorney: Askeroth, Thomas W

Defendant

WRIT 425

Attorney: Kenyon, Jay A.

Plaintiff

Attorney: Askeroth, Thomas W

02/07/2020 Opposition to Motion For Summary Judgment ▼

Comment

Plaintiffs Opposition to Defendant Petsmart's Motion for Summary Judgment or, in the Alternative, Summary Adjudication on Issues

02/13/2020 Reply in Support ▼

Comment

Reply in Support of Defendant's Motion for Summary Judgment

02/20/2020 Proof of Service ▼

Comment

Proof Of Service Of First Amended Third-Party Complaint

02/27/2020 Motion for Summary Judgment ▼

Judicial Officer

Williams, Timothy C.

Hearing Time

9:30 AM

Result

Denied Without Prejudice

Comment

Motion for Summary Judgment, or in the Alternative, Summary Adjudication of Issues, by Defendant, Petsmart, Inc.; Memorandum of Points and Authorities; Declarations of Michael L. Amaro and Chris McCurdy; and Proposed Order

Parties Present ▲

Plaintiff

Attorney: Callister, Matthew Q

Attorney: Askeroth, Thomas W

Defendant

Attorney: Kenyon, Jay A.

Plaintiff

Attorney: Callister, Matthew Q

Attorney: Askeroth, Thomas W

Defendant

Attorney: Kay, Lane S

Counter Defendant

Attorney: Kay, Lane S

02/28/2020 Motion to Dismiss ▼

Comment

Motion to Dismiss First Amended Third-Party Complaint

02/28/2020 Initial Appearance Fee Disclosure ▼

Comment

Initial Appearance Fee Disclosure

03/02/2020 Clerk's Notice of Hearing ▼

Comment

Notice of Hearing

03/18/2020 Finding of Fact and Conclusions of Law ▼

Comment

Findings of Fact, Conclusions of Law, and Order

03/19/2020 Notice of Entry ▼

Comment

Notice of Entry of Findings of fact, Conclusions of Law, and Order

03/27/2020 Notice of Non Opposition ▼

Comment

Notice Of Non-Opposition To Motion To Dismiss Third-Party
Complaint

03/30/2020 Minute Order ▼

Judicial Officer

Williams, Timothy C.

Hearing Time

7:30 AM

Result

Minute Order - No Hearing Held

Comment

Decision: Motion to Dismiss First Amended Third-Party Complaint

04/06/2020 Minute Order ▼

Judicial Officer

Williams, Timothy C.

Hearing Time

8:00 AM

Result

Minute Order - No Hearing Held

Comment

re: 4/16/20 Hearing

04/06/2020 Motion to Extend Discovery ▼

Comment

Plaintiffs' Motion to Extend Discovery on Order Shortening Time
(First Request)

04/07/2020 Designation of Expert Witness ▼

Comment

Defendant, Petsmart Inc.'s, Designation of Expert Witnesses

04/08/2020 Declaration ▼

Comment

Declaration of Michael L. Amaro's Opposition to Plaintiff's Motion to
Extend Discovery on Order Shortening Time

04/14/2020 Motion to Dismiss ▼

Judicial Officer

Williams, Timothy C.

Hearing Time

9:30 AM

Cancel Reason

Vacated

Comment

Motion to Dismiss First Amended Third-Party Complaint

04/14/2020 Order ▼

Comment

Order Granting Motion to Dismiss First Amended Third Party
Complaint

04/16/2020 Motion to Extend Discovery ▼

Judicial Officer

Williams, Timothy C.

Hearing Time

9:00 AM

Result

Motion Granted

WRIT 428

Comment

Plaintiffs' Motion to Extend Discovery on Order Shortening Time (First Request)

Parties Present ▲

Plaintiff

Attorney: Askeroth, Thomas W

Defendant

Attorney: Kenyon, Jay A.

Plaintiff

Attorney: Askeroth, Thomas W

Defendant

Attorney: Amaro, Michael L.

Counter Defendant

Attorney: Amaro, Michael L.

04/16/2020 Notice of Entry of Order ▼

Comment

Notice of Entry of Order Granting Motion to Dismiss Third-Party Complaint

04/24/2020 Amended Order Setting Jury Trial ▼

Comment

Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call

05/01/2020 Order Granting Motion ▼

Comment

ORDER GRANTING PLAINTIFFS MOTION TO EXTEND DISCOVERY (First Request)

05/01/2020 Order Denying Motion ▼

Comment

Order Denying Defendant Petsmart Inc.'s Motion for Summary Judgment, or in the Alternative, Summary Adjudication of Issues, Without Prejudice

05/04/2020 Order Denying Motion ▼

Comment

Order Denying Defendant Petsmart, Inc.'s Motion for Summary Judgment, or in the alternative, Summary Judgment Adjudication of Issues, without Prejudice

05/04/2020 Order Granting Motion ▼

Comment
Order Granting Plaintiffs' Motion to Extend Discovery (First Request)

05/04/2020 Notice of Entry of Order ▼

Comment
Notice of Entry of Order Denying Defendant Petsmart, Inc. s Motion
for Summary Judgment, or in the Alternative, Summary Adjudication
of Issues, Without Prejudice

05/04/2020 Notice of Entry of Order ▼

Comment
Notice of Entry of Order Granting Plaintiffs Motion to Extend
Discovery (First Request)

05/27/2020 Affidavit of Service ▼

Comment
Affidavit of Service - Renee Witt

06/26/2020 Motion to Compel ▼

Comment
Plaintiffs' Motion to Compel Defendant Petsmart, Inc.'s Responses to
Requests for Production

06/29/2020 Clerk's Notice of Hearing ▼

Comment
Notice of Hearing

07/06/2020 Opposition to Motion to Compel ▼

Comment
Defendant's Opposition to Plaintiffs' Motion to Compel Responses to
Requests for Production; Declaration of Michael L. Amaro and
Michelle Herr

07/07/2020 Affidavit of Service ▼

Comment
Affidavit of Service

07/07/2020 Affidavit of Service ▼

Comment
Affidavit of Service of Deposition Subpoena of Antonio Diaz

07/07/2020 Affidavit of Service ▼

Comment
Affidavit of Service Subpoena Duces Tecum Third-Party Leader of
the Pack

07/07/2020 Acceptance of Service ▼

Comment
Acceptance of Service of Deposition Subpoenas for Chantel Cravello
and Yvonne Musolf

07/07/2020 Amended Subpoena Duces Tecum ▼

Comment
Amended Subpoena Duces Tecum Las Vegas Department of Public
Safety

07/07/2020 Amended Subpoena Duces Tecum ▼

Comment
Amended Subpoena Duces Tecum Clark County Animal Control

07/08/2020 Affidavit of Service ▼

Comment
Affidavit of Service

07/10/2020 Filing Fee Remittance ▼

Comment
Filing Fee Remittance

07/13/2020 Amended Subpoena Duces Tecum ▼

Comment
Amended Subpoena Duces Tecum for TAF

07/16/2020 Status Check: Trial Readiness ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
9:00 AM

Cancel Reason
Vacated

07/22/2020 Acceptance of Service ▼

Comment
Signed Acceptance of Service

07/23/2020 Affidavit of Service ▼

Comment
Amended Affidavit of Service

07/27/2020 Affidavit of Service ▼

Comment
Affidavit of Service

07/29/2020 Affidavit of Service ▼

Comment
Affidavit of Service

07/30/2020 Motion to Compel ▼

Judicial Officer
Truman, Erin

Hearing Time
10:00 AM

Result
Granted in Part

Comment
Plaintiffs' Motion to Compel Defendant Petsmart, Inc.'s Responses to
Requests for Production

Parties Present ▲
Plaintiff

Attorney: Askeroth, Thomas W

Plaintiff

Attorney: Askeroth, Thomas W

Defendant

Attorney: Amaro, Michael L.

Counter Defendant

Attorney: Amaro, Michael L.

08/18/2020 Discovery Commissioners Report and Recommendations ▼

Comment
Discovery Commissioner s Report and Recommendations -Originals

08/24/2020 Motion to Compel ▼

Comment
Plaintiffs Motion to Compel Defendant A Home 4 Spot's Responses
to Requests for Production of Documents

08/24/2020 Clerk's Notice of Hearing ▼

Comment
Notice of Hearing

09/02/2020 Order ▼

Comment
Order re: Discovery Commissioner's Report and Recommendations

09/10/2020 Status Check: Compliance ▼

Judicial Officer
Truman, Erin

Hearing Time
3:00 AM

Cancel Reason
Vacated

Comment
Status Check: Compliance / 7-30-2020 DCRR

09/16/2020 Minute Order ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
8:00 AM

Result
Minute Order - No Hearing Held

Comment
Minute Order re: Hearing on 9/24/20 at 9:00 a.m.

09/17/2020 Pretrial/Calendar Call ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
10:30 AM

Cancel Reason
Vacated

09/24/2020 Status Check: Trial Readiness ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
9:00 AM

Result

Trial Date Set

Comment

Status Check: Trial Readiness (viability of jury trial in January)

Parties Present ▲

Plaintiff

Attorney: Askeroth, Thomas W

Defendant

Attorney: Kenyon, Jay A.

Plaintiff

Attorney: Askeroth, Thomas W

Defendant

Attorney: Kay, Lane S

Counter Defendant

Attorney: Kay, Lane S

09/29/2020 Motion to Compel ▼

Judicial Officer

Truman, Erin

Hearing Time

9:00 AM

Cancel Reason

Vacated

Comment

Plaintiffs' Motion to Compel Defendant A Home 4 Spot's Responses to Requests for Production of Documents

10/05/2020 Jury Trial ▼

Judicial Officer

Williams, Timothy C.

Hearing Time

9:30 AM

Cancel Reason

Vacated

10/05/2020 Motion for Summary Judgment ▼

Comment

Notice of Motion and Motion for Summary judgment, or in the alternative, Summary Adjudication of Issues, by Defendnat, PetSmart, Inc.; Memorandum of Points and Authorities; Declaration of Michael L. Amaro and Exhibits

10/06/2020 Clerk's Notice of Hearing ▼

Comment
Notice of Hearing

10/07/2020 Amended Order Setting Jury Trial ▼

Comment
2nd AMENDED ORDER SETTING CIVIL JURY TRIAL, PRE-
TRIAL/CALENDAR CALL

10/08/2020 Amended Order Setting Jury Trial ▼

Comment
2nd AMENDED ORDER SETTING CIVIL JURY TRIAL, PRE-
TRIAL/CALENDAR CALL

10/19/2020 Opposition to Motion For Summary Judgment ▼

Comment
Plaintiffs Opposition to Defendant Petsmart s Second Motion for
Summary Judgment or, in the Alternative, Summary Adjudication on
Issues

10/26/2020 Reply in Support ▼

Comment
Reply in Support of Motion and Motion for Summary Judgment, or in
the Alternative, Summary Adjudication of Issues by Defendant,
PetSmart, Inc.

10/29/2020 Minute Order ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
8:00 AM

Result
Minute Order - No Hearing Held

Comment
Minute Order re: Hearing on 11/5/20 at 9:30 a.m.

11/03/2020 Status Check ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
9:00 AM

Cancel Reason
Vacated - On in Error

Comment
Status Check re Trial

11/05/2020 Motion for Summary Judgment ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
9:30 AM

Result
Matter Continued

Comment
Notice of Motion and Motion for Summary judgment, or in the alternative,
Summary Adjudication of Issues, by Defendnat, PetSmart, Inc.;
Memorandum of Points and Authorities; Declaration of Michael L. Amaro
and Exhibits

Parties Present ▲
Plaintiff

Attorney: Askeroth, Thomas W

Defendant

Attorney: Kenyon, Jay A.

Plaintiff

Attorney: Askeroth, Thomas W

Defendant

Attorney: Kay, Lane S

Counter Defendant

Attorney: Kay, Lane S

12/11/2020 Order Denying Motion ▼

Comment
ORDER DENYING DEFENDANT PETSMART, INC. S MOTION FOR
SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY
ADJUDICATION OF ISSUES, WITHOUT PREJUDICE

12/11/2020 Notice of Entry of Order ▼

Comment
Notice of Entry of Order Denying Defendant Petsmart, Inc. s Motion
for Summary Judgment, or in the Alternative, Summary Adjudication
of Issues, Without Prejudice

12/15/2020 Objection ▼

Comment
Objection to Order Denying Defendant, PetSmart, Inc.'s Motion for
Summary Judgment, or in the Alternative, Summary Adjudication of
Issues, Without Prejudice

01/07/2021 Pretrial/Calendar Call ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
10:30 AM

Cancel Reason
Vacated

01/19/2021 Jury Trial ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
1:30 PM

Cancel Reason
Vacated

03/18/2021 Status Check: Status of Case ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
9:00 AM

05/27/2021 Pretrial/Calendar Call ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
10:30 AM

06/07/2021 Jury Trial ▼

Judicial Officer
Williams, Timothy C.

Hearing Time
9:30 AM

Financial

Todd, James E				
	Total Financial Assessment			\$300.00
	Total Payments and Credits			\$300.00
2/5/2019	Transaction Assessment			\$300.00
2/5/2019	Efile Payment	Receipt # 2019-07518-CCCLK	Todd, James E	(\$300.00)
A Home 4 Spot Animal Rescue				
	Total Financial Assessment			\$493.00
	Total Payments and Credits			\$493.00
11/21/2019	Transaction Assessment			\$135.00
11/21/2019	Efile Payment	Receipt # 2019-70736-CCCLK	A Home 4 Spot Animal Rescue	(\$135.00)
1/21/2020	Transaction Assessment			\$135.00
1/21/2020	Efile Payment	Receipt # 2020-03624-CCCLK	A Home 4 Spot Animal Rescue	(\$135.00)
7/13/2020	Transaction Assessment			\$223.00
7/13/2020	Efile Payment	Receipt # 2020-37164-CCCLK	A Home 4 Spot Animal Rescue	(\$223.00)
Petsmart Inc				
	Total Financial Assessment			\$623.00
	Total Payments and Credits			\$623.00
6/27/2019	Transaction Assessment			\$223.00
6/27/2019	Efile Payment	Receipt # 2019-39387-CCCLK	Petsmart Inc	(\$223.00)

1/24/2020	Transaction Assessment			\$200.00
1/24/2020	Efile Payment	Receipt # 2020-04873- CCCLK	Petsmart Inc	(\$200.00)
10/5/2020	Transaction Assessment			\$200.00
10/5/2020	Efile Payment	Receipt # 2020-55796- CCCLK	Petsmart Inc	(\$200.00)
Dorn Inc				
	Total Financial Assessment			\$253.00
	Total Payments and Credits			\$253.00
2/28/2020	Transaction Assessment			\$253.00
2/28/2020	Efile Payment	Receipt # 2020- 12520-CCCLK	Dorn Inc	(\$253.00)