

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
LEWIS T. BABCOCK, JUDGE**

Civil Case No. 06-cv-02148-LTB-BNB

DARRELL FORTNER and  
JENNIFER FORTNER, d/b/a Diamond/Dundee Tree Service,  
Plaintiffs,

v.

ATF AGENTS DOG 1, CAT 2, AND HORSE 3,  
THE CITY OF COLORADO SPRINGS,  
MAYOR LIONEL RIVERA, individually and in his official capacity as Mayor of C/S,  
KATHRYN YOUNG, individually and in her official capacity as City Clerk of C/S,  
DARREL PEARSON, individually and in his official capacity as City Forrester of C/S,  
JAMES A. CHOATE, individually and in his official capacity as Sergeant for El Paso County  
Sheriff's Office,  
TERRY MAKETA, individually and in his official capacity as Sheriff of El Paso County,  
Colorado,  
SHANE WHITE, individually and in his official capacity as Asst. City Attorney for the City  
of Colorado Springs, CO, and  
JAMES E. MCGANNON, individually and in his official capacity as City Forrester for the  
City of Colorado Springs, CO,

Defendants.

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**ORDER**

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This case is before me on the County Defendants' Objections to the Magistrate Judge's Order (Doc 338) denying Leave to File Supplemental Motion for Summary Judgment. Plaintiffs have filed their response to the objections. I have reviewed the County Defendants' objections pursuant to Fed.R.Civ.P. 72(a) in light of the Plaintiffs' response and the file and record in this case. On such review, I conclude that the Magistrate Judge's Order was clearly erroneous and contrary to law.

I note that the City Defendants have filed no timely objections to the Magistrate Judge's Order and are therefore barred from review. Accordingly

IT IS ORDERED that the Magistrate Judge's Order (Doc 338) is REVERSED as to the County Defendants and pursuant to this Court's previous Order of Reference, the Magistrate Judge shall consider the County Defendants' Supplemental Motion for Summary Judgment (Doc 322) for preparation and submittal of a recommendation upon the motion.

BY THE COURT:

s/Lewis T. Babcock  
Lewis T. Babcock, Judge

DATED: January 25, 2010