

HON. JAMES L. ROBERT

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

<p>KENDRA L. BOSTWICK and TODD M. BOSTWICK, together with their marital community,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>WHATCOM HUMANE SOCIETY, a non-profit organization; LAURA CLARK, together with her marital community; WHATCOM COUNTY, WASHINGTON, a government entity,</p> <p style="text-align: center;">Defendants.</p>

Case No. 2:18-cv-00298 JLR

STIPULATION GRANTING LEAVE OF COURT ALLOWING DEFENDANTS WHATCOM HUMANE SOCIETY, AND LAURA CLARK TO FILE AN AMENDED ANSWER TO COMPLAINT AND ORDER THEREON [FRCP 15]

IT IS HEREBY STIPULATED by and between the parties hereto and their counsel of record that the Answer by WHATCOM HUMANE SOCIETY and LAURA CLARK be amended as follows:

Based upon discovery of a clerical/ministerial error in the filed Answer, new paragraph 11 shall be inserted as follows:

11. Admit the first sentence. The second sentence is not directed to this answering defendant, therefore no response is required.

1 The remaining paragraphs of the current Answer shall be moved down numerically
2 and resubmitted without any change. The proposed Amended Answer is appended hereto as
3 "Exhibit 1."

4 DATED this 25th day of June, 2018.

DATED this 25th day of June, 2018.

5 BULLIVANT HOUSER BAILEY PC

BUTLER BESCHEN LAW PLLC

6
7 /s/ Wilhelm Dingler

/s/ Emily C. Beschen

8 Wilhelm Dingler, WSBA #13474

Emily C. Beschen, WSBA#43813

9 1700 Seventh Ave., Ste. 1810

103 E. Holly Street, Ste. 512

11 Seattle, WA 98101-1397

Bellingham, WA 98225

12 (206) 292-8930 | Phone

(360) 734-3448 | Phone

13 E-mail: wilhem.dingler@bullivant.com

E-mail: emily@rdbutlerlaw.com

14 *Attorneys for Defendants Whatcom Humane*
15 *Society, Laura Clark and Defendant*
16 *Whatcom County*

Attorney for Plaintiffs Kendra L. Bostwick
and Todd M. Bostwick

17 DATED this 25th day of June, 2018.

18 ROY, SIMMONS, SMITH & PARSONS,
19 PS

20 /s/ Jill Smith

Jill Smith, WSBA #30645

21 1223 Commercial Street

22 Bellingham, WA 98225

23 (360) 752-2000 | Phone

24 E-mail: Jill@royandsimmons.com

25 *Attorney for Defendants Whatcom Humane*
26 *Society and Laura Clark*

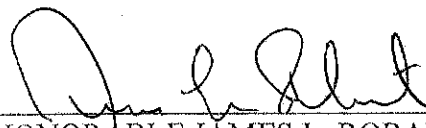
ORDER

27 This matter having come before the Court on the stipulation of the parties to permit
28 Defendants Whatcom Humane Society and Laura Clark to file an amended answer to the
29 complaint herein, and the Court being otherwise duly and fully advised in the premises, it is
30 hereby,

1 ORDERED, ADJUDGED and DECREED that the stipulation is approved and the
2 ~~Clerk is directed to accept~~ proposed Amended Answer ("Exhibit 1") ~~for filing.~~

Whatcom

3
4 June 26, 2018


HONORABLE JAMES L. ROBART
United States District Court Judge



7 Presented by:

8 BULLIVANT HOUSER BAILEY PC

BUTLER BESCHEN LAW PLLC

10 /s/ Wilhelm Dingler
11 Wilhelm Dingler, WSBA #13474
12 1700 Seventh Ave., Ste. 1810
13 Seattle, WA 98101-1397
14 (206) 292-8930 | Phone
15 E-mail: wilhem.dingler@bullivant.com

/s/ Emily C. Beschen
Emily C. Beschen, WSBA#43813
103 E. Holly Street, Ste. 512
Bellingham, WA 98225
(360) 734-3448 | Phone
E-mail: emily@rdbutlerlaw.com

16 *Attorneys for Defendants Whatcom Humane
17 Society, Laura Clark and Defendant
18 Whatcom County*

*Attorney for Plaintiffs Kendra L. Bostwick
and Todd M. Bostwick*

19 ROY, SIMMONS, SMITH & PARSONS,
20 PS

21 /s/ Jill Smith
22 Jill Smith, WSBA #30645
23 1223 Commercial Street
24 Bellingham, WA 98225
25 (360) 752-2000 | Phone
26 E-mail: Jill@royandsimmons.com

*Attorney for Defendants Whatcom Humane
Society and Laura Clark*

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, 2018, I caused to be delivered as indicated below a copy of the foregoing to the following counsel of record:

Emily C. Beschen
Robert D. Butler
BUTLER BESCHEN LAW PLLC
103 E. Holly Street, Ste. 512
Bellingham, WA 98225
(360) 734-3448 | Phone
E-mail: emily@rdbutlerlaw.com
bob@rdbutlerlaw.com

Jill Smith
ROY, SIMMONS, SMITH & PARSONS,
PS
1223 Commercial Street
Bellingham, WA 98225
(360) 752-2000 | Phone
E-mail: Jill@royandsimmons.com

Attorneys for Plaintiffs Kendra L. Bostwick and Todd M. Bostwick

Attorneys for Defendants Whatcom Humane Society, Laura Clark and Rebecca Crowley

- U.S. Mail
- E-mail
- E-service
- Messenger

/s/ Deborah Messer
Deborah Messer, Legal Assistant

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EXHIBIT 1

THE HONORABLE JAMES L. ROBART

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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KENDRA L. BOSTWICK and TODD M.
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WHATCOM HUMANE SOCIETY, a non-
profit organization; LAURA CLARK,
together with her marital community;
WHATCOM COUNTY, WASHINGTON, a
government entity,

Defendants.

No.: 2:18-cv-00298 JLR

AMENDED ANSWER OF DEFENDANT
WHATCOM HUMANE SOCIETY AND
LAURA CLARK

COMES Now Defendants Whatcom Humane Society and Laura Clark, hereinafter,
Defendants, and answers the Plaintiffs' Complaint as follows:

JURISDICTION

1. Admit.

VENUE

2. Admit.

PARTIES

3. Admit on information and belief.

1 4. Admit.

2 5. Admit.

3 6. Admit.

4 **FACTS**

5 7. Admit on information and belief.

6 8. Admit first and second sentences. Deny third and fourth sentences.

7 9. Admit first sentence. Second sentence is not directed at these answering defendants, therefore no response is required.

8
9 10. Deny. All WHS Animal Control Officers held limited commissions from the
10 Bellingham Police Department (and had these commissions at the time the
11 Bostwick incidents took place). In addition, various Whatcom Humane Society
12 Animal Control Officers had formerly held a lawful commission under RCW
13 16.52.025, from Whatcom County Superior Court, which had inadvertently lapsed
14 at the time the Bostwick incidents took place. ACO Crowley had been
15 commissioned by Bellingham and had the requisite skills, training and experience to
16 be commissioned by Whatcom County Superior Court.

17 11. Admit the first sentence. The second sentence is not directed to this answering
18 defendant, therefore no response is required.

19 12. Not directed to this answering defendant, therefore no response required. By way of
20 clarification, Whatcom Humane Society Animal Control Officers have historically
21 received their training through either the intensive two-week, 80 hour Animal
22 Control Officer Academy, instructed by Criminal Justice Training Center
23 instructors, in Burien, WA (course includes 80 hours of instruction), or National
24 Animal Control Academy (40 initial hours of instruction), both of which include
25 instruction on search and seizure law. As relevant here, ACO Crowley completed
26 the WACA 80-hour course in 2012 and has received consistent "continuing
education," including but not limited to trainings offered by Whatcom County.

13. Admit the first sentence. Deny the second sentence. In their August 11, 2016
application for a warrant, assisted by Prosecutor George Roche, and ruled on by
Commissioner Anthony Parise, ACO Jensen and ACO Crowley provided sufficient
facts and evidence to support issuance of a warrant. Constitutional safeguards
(federal and state) are met when the affidavit supporting a search warrant contains
the name and address of the citizen-informant who was a witness to criminal
activity and includes a statement of the underlying circumstances.

14. Deny the first sentence. On August 11, 2016, ACO Crowley and ACO Jensen
approached plaintiff's home, knocked, and then remained outside the garage door

1 area where they could see the emaciated dog, Bosco, in the garage through the
2 garage door window. They could hear his whining from outside the closed garage.
3 The presence of an officer within the curtilage of a residence does not amount to an
4 unconstitutional search. An officer is permitted the same license to intrude as a
5 reasonably respectful citizen. ACO Crowley and ACO Jensen did not make any
6 substantial or unreasonable departure from such an area, nor engage in any
7 particularly intrusive method of viewing. Admit second sentence. As to third
8 sentence, not directed to these answering defendants, therefore no response is
9 required.

10 15. Deny the first and second sentences. Partially admit third and fourth sentences, in
11 that, more than a week after his seizure, plaintiffs attempted to require Whatcom
12 Humane Society to feed Bosco food that was not within his veterinarian's
13 recommended diet. WHS staff veterinarian Dr. Karen Rounds had already
14 consulted with last veterinarian of record, Mountain Veterinary Clinic, regarding
15 Bosco's previous care, and formulated a treatment/feeding plan including special
16 prescription diet, raised feeder and medicine. The food provided by plaintiffs was
17 not within the recommended diet or care plan.

18 16. Admit first, second and third sentence. As to fourth sentence, Bosco's pre-existing
19 medical condition caused him, on September 3, to become lethargic, unable to rise,
20 have deeply sunken eye globes, to be dehydrated, to have an unsteady/ataxic gait, to
21 have bloody diarrhea, to have tremendously elevated liver values, and to be "clearly
22 deteriorating." As a result, he was euthanized on the recommendation of
23 independent veterinarian, Becky Callihan, DVM, of Animal Emergency Care.

24 **CLAIM I**

(Violation of Civil Rights: Unlawful Forfeiture of Property)

25 17. Answering defendants incorporate all responses to Paragraphs 1-16, above.

26 18. Deny.

CLAIM II

(Violation of Civil Rights: Unlawful Seizure of Property)

19 19. Answering defendants incorporate all responses to Paragraphs 1-18, above.

20 20. Deny.

CLAIM III

(Conversion of Dog)

21 21. Answering defendants incorporate all responses to Paragraphs 1-20, above.

22 22. Deny.

CLAIM IV

(Trespass to Chattel)

1 23. Answering defendants incorporate all responses to Paragraphs 1-22, above.

2 24. Deny.

3 **CLAIM V**

(Intentional Infliction of Emotional Distress-Outrage)

4 25. Answering defendants incorporate all responses to Paragraphs 1-24, above.

5 26. Deny.

6 **CLAIM VI**

(Negligent Infliction of Emotional Distress)

7 27. Answering defendants incorporate all responses to Paragraphs 1-26, above.

8 28. Deny,

9 **CLAIM VII**

(Trespass to Land)

10 29. Answering defendants incorporate all responses to Paragraphs 1-28, above.

11 30. Deny.

12 **CLAIM VIII**

(Negligent Training)

13 31. Answering defendants incorporate all responses to Paragraphs 1-30, above.

14 32. Deny.

15 **CLAIM IX**

(Negligent Supervision)

16 33. Answering defendants incorporate all responses to Paragraphs 1-32, above.

17 34. Deny.

18 **CLAIM X**

(Private Nuisance – RCW 7.48.150)

19 35. Answering defendants incorporate all responses to Paragraphs 1-34, above.

20 36. Deny.

21 **CLAIM XI**

(Negligent Care of Bosco / Animal Cruelty – RCW 16.52)

22 37. Answering defendants incorporate all responses to Paragraphs 1-36, above.

23 38. Deny.

24 **CLAIM XII**

(Violation of Washington State Constitution Article 1, Section 7)

25 39. Answering defendants incorporate all responses to Paragraphs 1-38, above.

26

1 40. Deny.

2 BY WAY OF FURTHER ANSWER AND AFFIRMATIVE DEFENSE, Defendants
3 allege the following:

- 4 1. As to 42 USC 1983 claims, the alleged injury was not performed under color of a
5 policy or custom or usage of the Whatcom Humane Society, nor did the Whatcom
6 Humane Society adopt a course of action tailored to this particular seizure.
- 7 2. As to 42 USC 1983 claims, no deliberate choice to follow a course of action, made
8 from among various alternatives by the official or officials responsible for
9 establishing final policy with respect to the subject matter in question.
- 10 3. As to 42 USC 1983 claims against Laura Clark, qualified immunity based on the
11 good faith of the individual officials who made the decision to proceed with the
12 seizures here at issue, as well as the euthanization.
- 13 4. Reasonable reliance upon the independent professional veterinary advice of Becky
14 Callihan, DVM, of Animal Emergency Care, as to the need for euthanization.
- 15 5. The underlying factual assertions of ACO Jensen in support of her Case
16 Summary/Probable Cause Statement of August 11, 2016 established probable cause
17 for issuance of a warrant under Cr R 2.3(c).
- 18 6. ACO Jensen and ACO Crowley held valid commissions from the City of
19 Bellingham at the time of issuance of this warrant and seizure.
- 20 7. Any procedural deficiencies in ACO Jensen/ACO Crowley's commission status
21 were cured by the August 11, 2016 participation of commissioned law enforcement
22 officers Mark Jilk and trainee Laughlin of the Whatcom County Sheriff's Office.
23 Whatcom County Sheriff's Officers made the initial contact with plaintiff Bostwick
24 by telephone on August 11, 2016 and requested her return to the residence.
- 25 8. As to conversion, lack of willfulness.
- 26 9. Probable cause for issuance of warrant.
10. Good faith belief in validity of warrant for seizure.
11. As to Intentional Infliction of Emotional Distress, failure to state a claim.
12. As to Negligent Infliction of Emotional Distress, failure to state a claim
13. As to trespass, no entry beyond the curtilage.

- 1 14. As to Washington Constitution, Article 1, Section 7, lawful vantage point.
- 2 15. Privilege to act.
- 3 16. Unclean hands.
- 4 17. Plaintiffs have unclean hands as to the medical and dietary condition of Bosco as of
- 5 August 2017.
- 6 18. Plaintiffs were contributorily negligence as to the medical and dietary condition of
- 7 Bosco as of August 2017.
- 8 19. The cause of Bosco's emergency euthanasia was due to systemic organ failure. His
- 9 condition was an intervening or supervening cause that cuts off any alleged
- 10 negligence by these answering defendants.
- 11 20. Defense of necessity.
- 12 21. The acts complained of herein may have been authorized under RCW Chapter
- 13 10.93, the Washington Mutual Aid Peace Officers Powers Act.
- 14 22. RCW 16.52.085
- 15 23. RCW 16.52.100

16 WHEREFORE, Defendants prays that Plaintiffs' Complaint be dismissed with
 17 prejudice and that Defendants be awarded judgment for their costs. Alternatively, Defendant
 18 prays for apportionment between at fault parties pursuant to RCW 4.22 et seq.

19 DATED this ____ day of _____, 2018.

20 ROY, SIMMONS, SMITH & PARSONS, BULLIVANT HOUSER BAILEY PC
 21 P.S.

22
 23 By: /s/ Jill Smith
 24 Jill Smith, WSBA #30645
 25 Attorneys for Defendants Whatcom
 Humane Society and Clark
 mail@royandsimmons.com
 Jill@royandsimmons.com

23 By: /s/ William Dingler
 24 Wilhelm Dingler, WSBA #13474
 25 Attorneys for Defendants Whatcom
 Humane Society and Clark
 Wilhelm.dingler@bullivant.cm

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CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2018, I caused to be delivered as indicated below a copy of the foregoing to the following counsel of record:

Emily C. Beschen
Robert D. Butler
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103 E. Holly Street, Ste. 512
Bellingham, WA 98225
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E-mail: emily@rdbutlerlaw.com
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Jill Smith
ROY, SIMMONS, SMITH & PARSONS,
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(360) 752-2000 | Phone
E-mail: Jill@royandsimmons.com

*Attorneys for Plaintiffs Kendra L. Bostwick
and Todd M. Bostwick*

*Attorneys for Defendants Whatcom Humane
Society and Laura Clark*

- U.S. Mail
- E-mail
- E-service
- Messenger

/s/ _____

4848-8100-1323.1