

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 16 CV 651-RBJ

SERENA CAMPBELL,

Plaintiff,

v.

CITY OF NORTHGLENN, COLORADO, and

ADAMS COUNTY, COLORADO

Defendants.

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**PLAINTIFF'S FIRST AMENDED COMPLAINT AND JURY DEMAND**

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COMES NOW, Plaintiff, Serena Campbell, by and through her counsel, Juliet Piccone of The Piccone Law Firm, LLC, and hereby files this First Amended Complaint and Jury Demand.<sup>1</sup>

Plaintiff respectfully alleges as follows:

**I. INTRODUCTION**

1. Plaintiff brings this civil rights action pursuant to 42 U.S.C. §§ 1983 and 1988, and 28 U.S.C §2201 and 28 U.S.C. §2202 for relief via declaratory relief, injunctive relief, compensatory damages and attorney's fees stemming from Defendants' violations of Plaintiff's rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States. Defendants' conduct under color of state and municipal law proximately caused the

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<sup>1</sup> Plaintiff is withdrawing the pleadings filed as ECF 33, 34 and 35 by written motion. Defendants have consented in writing to Plaintiff filing an Amended Complaint pursuant to Fed.R.Civ.P. 15 (a)(2).

deprivation of Plaintiff's federally protected rights by illegally holding her property and ordering it to be destroyed, to-wit a dog named Baby.

2. This action arises under the Constitution and laws of the United States including Article III, Section 1 of the United States Constitution and 42 U.S.C. § 1983.

3. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has authority to grant the declaratory relief requested herein pursuant to 28 U.S.C. § 2201 and 28 U.S.C. §2202. This Court has authority to grant the injunctive relief requested herein pursuant to 28 U.S.C. §§ 1661 and 2283 for a writ of prohibition and an injunction of state court proceedings in aid of its jurisdictions and agreeable to the usages and principles of law.

4. Jurisdiction supporting Plaintiff's claim for attorney's fees is conferred by 42 U.S.C. § 1988.

5. Venue is proper in the United States District Court for the District of Colorado, as all acts complained of occurred in the state. Plaintiff and Defendants reside or are located in Colorado.

## **II. PARTIES**

6. Plaintiff Serena Campbell currently resides at 9380 Utica Street Westminster, CO 80031. Plaintiff was a co-owner of a dog named Adolf a/k/a Baby along with Richard Jackson at all times relevant to this complaint until March 21, 2016 when she became his sole owner by transfer agreement.

7. Baby (formerly Adolf) is a six-year-old tan and white American Staffordshire Terrier. He is currently in Adams County Shelter at 10705 Fulton, Commerce City Colorado, animal ID A100540 and has been ordered to be destroyed by the City of Northglenn. Adams County has

refused to release him to Plaintiff since October 1, 2014 despite the fact that there is no seizure warrant or court order authorizing his impoundment.

8. Defendant City of Northglenn is a municipality incorporated under the laws of the State of Colorado for purposes of liability under 42 U.S.C. § 1983. It carries out law enforcement activities through the Northglenn Police Department, which includes an Animal Control division C.R.S. § 31-15-401 (m). It prosecutes municipal ordinance violations through the prosecutors in its City Attorney's office which are decided by its municipal court.

9. Defendant Adams County is a county incorporated under the laws of the State of Colorado for purposes of liability under 42 U.S.C. § 1983. It prosecutes state statute violations through its District Attorney's office, carries out law enforcement activities through the Adams County Sheriff Department and provides impound services for the County and other contracted agencies to hold animals pursuant to C.R.S. § 30-15-101. It has a county manager that implement the policies and priorities of the Board of County Commissioners and oversees the day to day operations of the county.

10. At all times relevant to this Complaint, Defendants acted under color of state and municipal law.

11. All of the events described herein occurred in Adams County, State of Colorado.

### **III. FACTUAL BACKGROUND**

12. Plaintiff incorporates by this reference the documents in **Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4, Exhibit 5 and Exhibit 6.**

13. Todd Leopold is, and at all times relevant to the Plaintiff's complaint, was the county manager for Defendant Adams County, Colorado. The county manager's duties include

implementing the policies and priorities of the Board of County Commissioners and overseeing the day-to-day operations of the county.

14. Heidi Miller is, and at all times relevant to the Plaintiff's complaint was, the Adams County Attorney. The County Attorney's Office serves as general counsel to the Board of County Commissioners, elected officials, county departments and such other agencies as may be authorized by the Board of County Commissioners.

15. Adams County Animal Shelter had either an executive director or acting executive director September 26, 2014 to February 10, 2015, name currently unknown by Plaintiff who was and is in charge of the operations of the Adams County Shelter.

16. Kelley Forester was at all times relevant to Plaintiff's complaint, and is a manager at the Adams County Shelter. She has the authority to draft Standard Operating Procedures for the shelter, which must be approved by an appropriate person, currently unknown to Plaintiff, and has drafted at least one on visitation of dogs in "Outlaw Alley" i.e. dogs like Baby that the shelter is holding for alleged legal reasons.

17. Commander Ian Lopez was and at all times relevant to this complaint was a police commander with the city of Northglenn.

18. Officer Michelle Soustak is and at all times relevant to this complaint was an animal control officer with the city of Northglenn.

19. Andrew Ausmus and Kristie Ausmus are attorneys with Ausmus Law Firm, who are and were at all times relevant to this complaint under contract with the city of Northglenn to prosecute municipal ordinance violations.

20. Judge Corrine Magid is and at all times relevant to this Complaint was a Municipal

Court judge for the City of Northglenn to preside over municipal ordinance violation cases.

21. Plaintiff and Richard Jackson entered into a domestic relationship in 2012. In approximately September 2012, Plaintiff and her son from a prior relationship moved into his residence at 11767 Grant Street in Northglenn, CO. When the relationship started, Mr. Jackson was the owner of the subject canine, an American Staffordshire Terrier named “Adolf”, who has since been renamed Baby. They acquired a female American Staffordshire Terrier named Eva during the relationship. During the relationship Plaintiff assumed responsibility for the dogs providing food, water, exercise, veterinary care and taking care of their needs. In late July 2014 eight puppies were born to Eva, sired by Baby. Plaintiff assumed responsibility and care for the puppies as well.

22. Plaintiff and Mr. Jackson had a son as a result of the relationship, born November 2013. Plaintiff and their son co-habitated with Mr. Jackson and the dogs until approximately mid-August 2014, when she and both her children moved out due to interpersonal conflicts. Plaintiff continued to return to the Grant Street home to care for all the dogs in the home and would buy food and supplies for them, feed, water, play with and clean up after them several times per day. After the puppies reached 8 weeks old she began to find homes for them and adopted out 3. She exercised ownership and control of the family pets by doing so.

23. Richard Jackson was a person of interest with the FBI for several years for alleged drug activity. Sometime in late summer or fall of 2014 federal and local law enforcement authorities began surveillance and evidence gathering at the Grant Street address to obtain a warrant to conduct a raid on Jackson's home. Upon information and belief, officers had been scouting at the location, going through trash, putting cameras in neighbor's yards and otherwise

hanging about collecting evidence.

24. On September 11, 2014 Baby bit a mailman. The injury was deemed not serious bodily injury by the attending physician. See **Exhibit 1**, p. 008.

25. On September 11, 2014 the City of Northglenn police department opened investigation case number 14-002686 against Richard Jackson for potential violations of the following Northglenn ordinances: NMC 14-2-4(a) (no rabies tag), NMC 14-3-6(c) (no rabies shot), NMC 14-2-6 (dog at large) and NMC 14-2-9 (vicious dog). **Exhibit 1**, p. 001.

26. On September 11, 2014, Northglenn police officer Michelle Soustek told Ms. Campbell that Mr. Jackson may be receiving a summons for vicious dog and dog at large. **Exhibit 1**, p. 006. She explained that she was not issuing the summons at that time because she needed to speak to the victim and because Mr. Jackson was not there. *Id.*

27. On September 17, 2014 Northglenn police commander Lopez sent an email to all patrol re Richard Jackson 11767 Grant Street. See **Exhibit 1**, p. 009. He discussed the upcoming FBI raid and that the police department was applying for a warrant for his arrest in regard to the “dog attack” but “we DO NOT want him arrested on those warrants until the takedown.” *Id.* He ends with “Hopefully he will be going to prison and be gone from our city soon.” *Id.*

28. On September 18, 2014 Northglenn police department submitted an application and affidavit for arrest warrant to Adams County Court for Mr. Jackson, for, inter alia, ownership of a dangerous dog, Case No. 15CN14005267. See **Exhibit B** to Northglenn’s Motion to Dismiss, ECF No. 27-2. This case became Adams County Court case 14M4635, *People v. Richard Jackson*.

29. No warrant authorizing seizure of Baby for impoundment as a dangerous dog was requested by the City of Northglenn or issued in accordance with C.R.C.P. 41b or C.R.S.

18.9.202.5(c)(III).

30. On September 24, 2014 Jeremy Phelps, Special Agent with the FBI, applied for a search warrant for Mr. Jackson's home to look for a meth lab. Federal Court Magistrate Kristen Mix issued the search warrant at 10:49 a.m. September 24, 2014. **Exhibit 1**, p. 010-012.

31. On September 24, 2014 Officer Michelle Soustek and Commander Lopez met with Ms. Campbell at the Grant Street home to take Baby off rabies quarantine. **Exhibit 1**, p. 003. Office Soustek writes in her narrative that she told Ms. Campbell that they needed to talk to Mr. Jackson about "his summons" for case 14-002686 and that they needed to serve it. *Id.* This "case" was closed on September 24, 2014 with no Municipal Summons being issued. **Exhibit 1**, p. 001.

32. On September 26, 2014, local and federal law enforcement executed the search and seizure warrant looking for a "meth lab" at Mr. Jackson's residence. See **Exhibit 1**, p. 013 and p. 016. In at least one police report, Mr. Jackson is described as a "white supremacist." **Exhibit 1**, p. 013. Richard Jackson was arrested and taken into custody at the beginning of the raid. *Id.*

33. Right before the raid, Plaintiff Serena Campbell was pulled over by Northglenn police without probable cause that she had committed a crime, detained without probable cause that she had committed a crime, arrested and taken into custody on charges unrelated to ownership of Baby. **Exhibit 1**, pp. 018-020, and 022-024.

34. During the raid, the female dog, Eva, and five puppies were taken into protective custody. **Exhibit 1**, p. 017, and p. 21. Baby escaped when the house was flash bombed and door kicked in, and was picked up several houses away and brought to the shelter. **Exhibit 1**, p. 014 and 021.

35. The animals were brought to Adams County Animal Shelter, the facility that

contracted with Northglenn to hold animals pursuant to its municipal code. Northglenn has characterized this as an “impoundment”. See **Exhibit 1**, p. 003 “all 7 dogs were impounded at Adams County Animal Shelter.” It has also characterized this as “protective custody”. Northglenn’s Motion to Dismiss, ECF. No. 27, page 4 (undisputed fact that Baby was taken into protective custody.)

36. Northglenn Municipal Code Section 14-4-5. Notice of Impoundment states, “In every case of impoundment, the animal control officer shall cause to be entered in the records of the Northglenn Police Department *within eight (8) hours after seizure, and for six consecutive days thereafter*, a description of each dog, cat, domestic animal or reptile impounded; the date, place and approximate time of seizure; and the name and address of the animal control facility in which the same is impounded. Such records shall be open to inspection by any person during regular business hours.” See **Exhibit 3**, certified copy of Northglenn Municipal Code, incorporated by this reference.

37. The City of Northglenn police department did not cause to be entered in the records of the Northglenn Police Department a notice of impoundment for any of the dogs on September 26, 2016.

38. Pursuant to state law, C.R.S. 18-9-204.5 (4) upon taking an owner into custody for an alleged violation of this section or the issuing of a summons and complaint to the owner, pursuant to the Colorado rules of criminal procedure and part 1 of article 4 of title 16, C.R.S., the owner's dangerous dog *may be* taken into custody and placed in a public animal shelter, at the owner's expense, pending final disposition of the charge against the owner. The owner is liable for the total cost of board and care for a dog placed.



39. As part of case no. 14M4635, *People v. Richard Jackson*, Adams County did not provide either Mr. Jackson or Plaintiff with the required Notice and Payment for Cost of Care of Animals described in §18-9-202.5, C.R.S. (to conform with JDF 228) which notifies the owner that the animal has been impounded, the amount that must be paid to prevent disposition of the animal and the owner's right to a probable cause hearing. Upon information and belief, this is because Adams County was not holding Baby as evidence and had not “impounded” Baby for the court case.

40. Sometime after Baby was taken into custody, Commander Lopez of the Northglenn Police Department instructed officer Michelle Soustek to place a “court hold” on Baby pending vicious dog charges. See **Exhibit 1**, p. 003. No notice of impound was filed or caused to be entered in the records of the Northglenn Police Department at this time.

41. Adams County Animal Shelter released Eva and the puppies to Mr. Jackson’s mother Michele Huffman on October 1, 2014. See **Exhibit 1**, p. 003. Plaintiff went with her to reclaim all of the dogs. Plaintiff could not reclaim them because the Grant Street home was temporarily “condemned” or otherwise off limits and not available for her to use and she did not have the means to have all the dogs at her residence. See **Exhibit 1**, p. 020 (residence “temporarily condemned”). The animal shelter staff at Adams County stated that they could not release Baby because he was "evidence".

42. On October 6, 2014 Mr. Jackson had his first court appearance in Adams County Court on the dangerous dog charge, case number 14M4635. See **Exhibit 2**, p. 006. For the next four months, October to February, Baby sat in the Adams County shelter, until Northglenn pressured Adams County to do something about it. See **Exhibit 1**, pp. 31-40.

43. On November 26, 2014 Officer Soustek emailed Dr. Meany, the Adams County Shelter veterinarian stating, “We have desperately been trying to get ahold of the DA on this case. They will not call us back regarding the matter....There is supposed to be a destruction hearing on the dog but it hasn’t gone yet. I’m honestly not sure what the hold up is. But we are actively trying to get a decision made asap.” **Exhibit 1**, p. 031.

44. On November 26, 2014 Adams County attorney Rebecca Wiggins, who was prosecuting Ms. Campbell and Mr. Jackson for dependency and neglect, emailed Commander Lopez asking about various issues she wishes to present as evidence in the dependency and neglect case including the “vicious dog” charge. **Exhibit 1**, p. 032-033. Officer Soustek responds to this email on December 11, 2014 attaching her report of animal violation issues for both individuals. She goes on to say, “We have been trying to get a hold of someone in regard to a Pit Bull named ‘Adolph’. He is the vicious dog that attacked a mail carrier. *After the swat hit, he was impounded pending a destruction hearing that is supposed to go through Adams County. Do you know if anything like that is in the works?*... He either needs to be released back to the owner or destroyed... Is this something you would handle? If not, who can I contact? How can we go about getting the hearing set up?” **Exhibit 1**, p. 034. County attorney Wiggins stated she didn’t “know anything about animal control cases but I am including our county attorney [Heidi Miller] who may be able to lead us in the right direction.

45. On the morning of January 21, 2015 Officer Soustek emailed Commander Lopez that she never heard back from the county attorney Heidi Miller or Wiggins. **Exhibit 1**, p. 036. She emailed Eva McMickeDeTolve at the shelter with several questions, and starts the email “*for some reason the warrant for the vicious dog charge has been unable to be served, and we are*

*considering the possibility of giving the dog back to the owner's mother who lives in Sterling.*

**Exhibit 1**, p. 040. Northglenn has produced no proof of any municipal summons for vicious dog being issued or served on anyone in relation to the incident, and Adams County was prosecuting Mr. Jackson for ownership of a dangerous dog.

46. In the evening of January 21, 2015 Brian Kidwell, Northglenn Community Service Officer, emailed Commander Lopez about Baby stating that Michelle Soustek had impounded Adolf (Baby), Eva and the 5 puppies following the raid. **Exhibit 1**, p. 038. Eva and the puppies were released to Ms. Campbell, but Adolf was held due to the bite. “Adolf is still at the Adams County Animal Shelter awaiting a determination due to the bite of the postal carrier. *Michelle, Detective Davidson, and myself have left voice mails with the County Attorney's Office trying to get something set up through the county courts and try to have him euthanized per a directive from commander Osgood who was the patrol commander at the time of the incident. We have not been contacted back by the County Attorney's Office...* Adolf is being held in a kennel at \$7 per day, and so far has cost Northglenn \$826...Michelle Huffman, Richard's mother, lives in Sterling CO and would be willing to take him to her house....It is in the best interest to all involved if we can get Richard's mother to get consent to have the dog humanely destroyed...If she will not, and from talking to her she is not willing to do so, we might be okay letting her take the dog....”  
Id.

47. There is no legal authority by which Northglenn could have Baby euthanized per a “directive” from a police commander. Under the dangerous dog statute, there are only two instances in which a dog can be destroyed. The first is if there is an impoundment, notice of cost of care and order for a cost of care bond to be posted and no payment made. C.R.S. Sec. 18-9-202.5 (1)(a).

Here, there was no “impoundment,” Baby was not released solely on the request of Commander Lopez. If the bond is not posted or if it is not replenished, the dog becomes the property of the impounding agency and may be disposed of unless there is a court order preventing disposition. C.R.S. Sec. 18-202.5 (1)(d)(II) and (2)(a). Otherwise, a dog cannot be euthanized until the owner has been convicted of the crime of ownership of a dangerous dog causing death or serious bodily injury to a person, or death of a domestic animal or a second conviction involving the same dog, either after a trial or by a guilty plea or deferred sentence. C.R.S. Sec. 18-9-204.5 (g)(I) and (II). Here, the offence was ownership of a dangerous dog causing bodily injury, for which the court cannot order euthanasia under the state statute.

48. On January 28, 2015 Eva McMickleDeTolve responded to Officer Soustek’s January 21, 2015 email asking for her opinion on what to do with Baby stating, *inter alia*, “I know this poor dog has been placed in a very bad situation through no fault of his own....As far as placing him back with family that is really your call and not mine....even his name [Adolf] raises red flags about his home...” **Exhibit 1**, p. 039.

49. Upon information and belief, one or more agents of Adams County notified Northglenn that it could not legally hold a disposition hearing to euthanize Baby, (see C.R.S. §18-9-202.5). At that time the city and county came up with a plan to have Baby euthanized by “releasing” him as evidence under C.R.S. Sec. 18-9-202.5, (2) (b) “A dog that is not claimed by its owner within five days after being eligible for release from impoundment for investigation of a charge of unlawful ownership of a dangerous dog as described in section 18-9-204.5 is deemed abandoned and may be disposed of as the impound agency deems proper.” **Exhibit 2**, p. 003 and **Exhibit 1**, p. 047.

50. On February 4, 2015 Adams County Chief Trial deputy, who was prosecuting Mr. Jackson for the dangerous dog case, 14M4635, emailed Commander Lopez stating he had reviewed the case against Mr. Jackson and “I hereby authorize the release of the evidence in this case...As it pertains to the release/destruction of the dog currently in impound, please follow the procedure set forth in CRS 18920.5(2)(b). Notify the defendant of the availability of release in writing. The defendant has five business days to claim the animal. Failure to exercise redemption gives the authority to the Adams County Shelter as the deem appropriate.” **Exhibit 1**, p. 047.

51. On February 4, Officer Soustek emailed Kelley Forester at the Adams County Shelter stating “this is a release of evidence. Basically, because we cannot charge the owner due to being in federal custody, they are releasing the dog “Adolph” from evidence in the case of vicious dog.” See **Exhibit 2**, p. 009. Adams County shelter staff noted, “per officer Soustek with NG, cannot get DA or Adams County to set up destruction hearing on Adolf. All agree that they don’t believe should be released back into the public, but none are willing to touch it. NG will contact owner, Richard Jackson, who is in jail to see if he will relinquish dog to Adams County animal Shelter....He will have 5 days to make arrangements for someone to pick up Adolf from the shelter. If he doesn’t Adolf will become property of the shelter in 5 days and can be euthanized. **Exhibit 2**, p. 007.

52. Commander Lopez contacted Michael Reilly at the Federal Detention Center, who provided notice to Mr. Jackson on February 6, 2015 that Baby could be picked up. **Exhibit 1**, p. 048. Mr. Reilly stated that Ms. Campbell was going to pick up Baby, and she had been informed that if she did not pick the dog up by February 10, the dog would become the property of the shelter. Id.

53. Adams County Shelter notes indicate that on February 6, 2015 Kelley Forrester, shelter manager, spoke with officer Soustek and Ms. Campbell stating she had until close of business on February 10, 2015 to reclaim the dog and pay any applicable fees. **Exhibit 2**, p. 008. No court order had been entering authorizing any charges for impoundment.

54. On February 7, 2015 Officer Soustek emailed the shelter the Animal Release Notifications which forwarded all of the emails stating Ms. Campbell would be picking up Baby. **Exhibit 1**, p. 054.

55. Plaintiff went to the Adams County Shelter to reclaim Baby on or about February 9, 2015. Adams County shelter staff refused to allow her to reclaim Baby. First she was told that staff could not help her get Baby out of his cage, so she would need to bring help. When she returned with her own help, she was told that Baby could not be released unless police officers were there to release him. On February 9, 2015, Adams County Shelter notes state “must pay all Cost of Care fees before reclaim. As of 02/10/15 owes \$50 impound, \$903.00 board for a total of \$953.00” **Exhibit 2**, p. 008. As of this date no notice of impound had been created by any agency and there were no court orders related to Cost of Care.

56. When Plaintiff returned on February 10<sup>th</sup> 2015 to reclaim Baby, Adams County shelter employees refused to release Baby to her. She had to wait until an officer arrived. At that point Northglenn Police Commander Lopez informed Plaintiff that the city of Northglenn was impounding Baby and that it was going to hold a hearing at a later date to determine Baby's disposition.

57. The City of Northglenn has produced a “Notice of Impoundment” which was a MS Word document created by Commander Lopez. It is unknown when this document was prepared.

The document states that on September 26, 2014, the dog was impounded at the 900 block of Philips drive. See **Exhibit 1**, p. 057. The City also produced an “Notice of Impoundment” that does not contain that information. See **Exhibit D**, Defendant Northglenn’s Motion to Dismiss, ECF No. 27-4.

58. Baby was not in the City of Northglenn on February 12, 2015. He was in Commerce City (or Brighton) at 10705 Fulton, the Adams County Animal Shelter.

59. On February 12, 2015 Northglenn officer Michelle Soustek noted in case 14-002686 (which had been closed on September 24, 2014 with no summons issued, that “As of 02/12/2015 The City of Northglenn has taken this case from Adams County and will be holding a hearing for disposition in regards to the tan and white Pit Bull named “Adolf”. The hearing will be held in the Northglenn City Hall in the court room on 02/24/2015 at 10:00 a.m.” **Exhibit 1**, p. 007.

60. The Adams County Court case, No. 14M4635 remained ongoing and was not “transferred” to the municipal court.

61. On February 12, 2015 the city prosecutor, Christie Ausmus of the Ausmus Law Firm, signed documents directed to Serena Campbell and Richard Jackson stating that a hearing had been scheduled regarding the disposition of their animal and they could sign relinquishments to avoid the hearing. **Exhibit 1**, pp. 058-060.

62. On February 13, 2015 Commander Lopez sent prosecutor Ausmus reports and photos for the hearing. **Exhibit 1**, 061. He stated, “Officer Soustek tried to serve Serena but she is refusing to come sign the notice. She thinks that she will be charged or held responsible or something.” *Id.* Ms. Campbell had been charged with dog at large when Eva had gotten out on October 4 and again 23, 2014, so she was aware that she could be charged with a municipal

ordinance violation of ownership of a vicious animal. **Exhibit 1**, pp. 72 and 73.

63. Approximately one week later, Plaintiff received notice from the City of Northglenn of a hearing (Disposition of Animal) to be held on February 24, 2015 at 10:30 a.m. “That a hearing has been scheduled, pursuant to Section 14-4-11 of the Northglenn Municipal Code, for the purpose of determining the disposition of the dog known as Adolph who is currently impounded in the Adams County Animal Shelter. “This hearing concerns only the disposition of the dog. *Any criminal or other ordinance violations will not be discussed at this hearing.*” See **Exhibit E**, Northglenn’s Motion to Dismiss, ECF No. 27-5. The notice further stated that the City of Northglenn has impounded Adolph and that the hearing would only concern the disposition of the dog, *not any criminal or other ordinance violations*. The notice stated “to justify an Order for disposition, the City must prove that there is a reasonable likelihood of future injury to person, property or animals by a preponderance of the evidence.” There is no case number on the document nor is there any mention that the disposition that the City was requesting was destruction of the dog.

64. Northglenn Municipal Code Section 14-4-8 Disposition of Impounded Dogs (see **Exhibit 3**) states:

(a) *If a complaint has been filed in the municipal court, an impounded dog shall not be destroyed except by order of a municipal judge.*

(b) If *a complaint has not been filed* in the municipal court, because the owner of an impounded dog is not known or cannot be located, and such dog has not been claimed within five (5) days of the date of impoundment, not counting the day of impoundment, such dog may be sold, given away or destroyed in accordance with the procedures established by the City of



Northglenn and the animal control facility. For purposes of this paragraph, "days" means days during which the pound is open to the public.

(c) *If a complaint has not been filed in the municipal court, but the owner, possessor or keeper of an impounded dog has been notified of the impoundment as provided by this ordinance and such dog has not been claimed within six days of the date of impoundment, such dog may be destroyed or otherwise disposed of in the manner provided in subsection (b) of this section.*

(d) The date on which notice of the impoundment of such dog is posted in a public place pursuant to the provisions of this ordinance shall conclusively be presumed to be the date of impoundment for all purposes of this ordinance.

65. Section 14-4-11 Authority of Municipal Court to Order Disposition of Dog or Animal, the ordinance upon which Northglenn relies to hold a "civil" hearing to destroy a dog, states as follows (see **Exhibit 3**): (1) The Municipal Court of the City of Northglenn shall have the authority:

(a) To order the destruction of *a vicious dog*, cat, domestic animal or reptile, whether or not impounded, *in accordance with the provisions of subsection (2) below.*

(b) To order the disposition of any dog, cat, domestic animal or reptile impounded and subject to disposition by order of court under the provisions of any City ordinance.

(c) To order the waiver or refund of any fee required by this ordinance when it shall appear that such fee has been unlawfully imposed or collected.

(d) To order that any dog, cat, domestic animal or reptile shall not be destroyed as permitted by this ordinance.

(e) To extend any time period provided by this ordinance.

(f) To order the confinement for rabies observation of any dog, cat or domestic animal in any circumstances in which such confinement is provided or permitted under the provisions of this article.

(g) To order the release from impoundment or confinement of any dog, cat, domestic animal or reptile impounded or confined under the provisions of this chapter.

(h) To make and enforce such orders as the judge shall deem necessary or desirable to accomplish the purposes and enforcement of this ordinance, or to correct or prevent injustice in the application of any provisions of this ordinance.

(2) ***Prior to ordering the destruction of a dog, cat, domestic animal or reptile, the court shall conduct a hearing*** at the earliest date available to the court and the parties ***to determine if the animal shall be destroyed.*** At said hearing, the Colorado Rules of Evidence shall not apply, and the court shall ensure that evidence shall be offered and questioning shall be conducted in an orderly manner and according to basic notions of fairness. At said hearing, the Court shall consider, as applicable, the following:

- (a) Any evidence presented at any ***trial*** involving the animal;
- (b) The conduct of the animal ***during the incident charged***;
- (c) Any other evidence of dangerous or violent behavior by the animal, or threats thereof;
- (d) Any ***prior violations*** by the owner, possessor, keeper or controller of the animal of this chapter or similar laws of any state or political subdivision thereof;
- (e) Any ***prior violations*** by any other owner, possessor, keeper or controller of the animal, involving the same animal, of any violation of this chapter or any similar laws of any state or political subdivision thereof;

(f) Any other conditions existing on the property where the animal has been or will be kept which would affect the likelihood of any danger to any person, animal or property;

(g) Any evidence of any ameliorative action taken by the owner, possessor, keeper or controller of the animal which would affect the likelihood of any danger to any person, animal or property;

(h) Any other evidence relevant to the issues to be determined by the court;

(i) If *the defendant* is not an owner of the animal, and if the name and address of an owner is known to the City or the court, said owner shall be notified in writing of the date, time, place and purpose of said hearing at least five days before said hearing. Notice shall be sufficient if served in compliance with C.M.C.R. 206(F);

(j) If at such hearing, the City establishes by a preponderance of the evidence, that there is a reasonable likelihood of future injury to person, property or animals, the court shall order the animal to be destroyed in a humane manner. Upon oral motion of *the defendant or an owner*, said order shall be stayed for 30 days to allow the movant to appeal said order, provided the movant pays the estimated costs of impoundment within 24 hours of the entering of the stay;

(k) If the court determines that it is not appropriate to order the animal destroyed, the court may order the animal returned and to be kept under such circumstances as will ensure the safety of persons, property or other animals. [Source: Ord. 905, 1988]

66. On February 17, 2015 Plaintiff requested discovery in person from prosecutor Andrew Ausmus. Commander Lopez was present at this meeting. Mr. Ausmus advised there was no discovery and requested that Plaintiff sign the notice of hearing.

67. On February 24, 2015 Plaintiff appeared in court at 10:30 a.m. before Northglenn

Municipal Court Judge Corinne Magid. Northglenn Criminal Prosecutor Kristie Ausmus, of Ausmus Law Firm handed Plaintiff documents she intended to introduce as evidence, including statements from animal shelter employees stating Baby is dangerous. Plaintiff made the court aware that she had requested discovery and none had been given. The judge stated the "nature of these hearings are sort of short term" but she would give Plaintiff a few minutes to read the documents and statements.

68. The jurisdiction of the Northglenn Municipal Court set forth in NMC Section 8-1-2 states, "Pursuant to City Charter, the municipal court for the City of Northglenn is created to hear and try all cases *arising out of alleged violations of ordinances* and the Charter of the City of Northglenn." (see **Exhibit 3**, emphasis added).

69. Administrative citations may be issued pursuant to NMC Section 19-1-1 for (1) Article 11 of Chapter 9 (the Northglenn Nuisance Ordinance); (2) Chapter 11; and (3) Article 2 of Chapter 20. There is no provision for administrative citations for animal control violations under Chapter 14.

70. The City of Northglenn allows animal control officers and police officers to seize and impound any dog which is in violation of any of the provisions or requirements of Chapter 14, animal control, and to institute proceedings in the Municipal Court of the City of Northglenn for the prosecution of violations of the animal control code by issuing a summons and complaint pursuant to NMC Section 14-2-11. (See **Exhibit 3**).

71. Baby was not seized and impounded for a violation of any animal control ordinance, he was taken into protective custody because his home had been raided, "condemned" and his owners were incarcerated. When Baby was "impounded" by Northglenn on February 12, 2015 he

was not in the city of Northglenn.

72. It is within the jurisdiction of the Northglenn Municipal Court to hear and try cases arising out of a summons and complaint under NMC Section 14-2-9 Vicious Dogs (a) which states, "It shall be unlawful for any person to own, possess, keep, exercise control over, maintain, harbor, transport, or sell within the City of Northglenn any vicious dog." (see **Exhibit 3**)

73. No summons and complaint for violation of NMC 14-2-9, or any ordinance, was ever issued to Richard Jackson or Serena Campbell.

74. NMC Chapter 14, Article 2 Dog Control states the following: "(a) It shall be unlawful for any person to violate any of the provisions of this ordinance, Article 2 of Chapter 14 of the Municipal Code of the City of Northglenn. (b) Proceedings for prosecution of violations of Section 14-2-6 (e) of this article shall be conducted in compliance with the applicable procedural requirements of Section 14-4-14 of this chapter." See **Exhibit 3**, NMC Section 14-2-16.

75. Because Adolph was not "impounded" on September 26, 2014 but was rather taken into protective custody, he should have been released to Ms. Huffman and Plaintiff when they went to collect Ava and the puppies. In the alternative, if Baby was "impounded" because he was outside his home, bleeding and scared, then he was impounded as an at large dog (due to the police breaking down the door of his home and flash bombing the place). Accordingly, he should have been released upon Plaintiff showing (1) Satisfactory proof of ownership; (2) Proof of compliance with the rabies vaccination requirements of this chapter; (3) Payment of all fees for impoundment or holding animals at the animal control facility shall be as established by contract between the City of Northglenn and the City's designated animal control facility. (4) Proof of Microchipping within 10 days of release pursuant to NMC 14-4-6(c). See **Exhibit 3**

76. Instead of following the procedure in NMC 14-4-6, the City caused a hearing to be held pursuant to NMC 14-4-11 which provides that "(1) The Municipal Court of the City of Northglenn shall have the authority: (a) To order the destruction of a vicious dog, cat, domestic animal or reptile, whether or not impounded, in accordance with the provisions of subsection (2) below." See **Exhibit 3**.

77. This is despite the fact that there had been no citation alleging that Baby was a vicious dog pursuant to NMC 14-2-9 and the court only has jurisdiction to "hear and try" cases arising out of alleged violations of ordinances. See **Exhibit 4**, NMC 8-1-2.

78. No case was filed for any alleged violation of any Northglenn ordinance or charter; specifically the City of Northglenn did not file a summons and complaint against either Mr. Jackson or Plaintiff. State charges were already pending against Mr. Jackson and the dog had been released per the county prosecutor.

79. There is nothing that would allow the City of Northglenn to institute a "civil" hearing on whether or not a dog should be destroyed without a criminal summons and complaint having first been issued. Furthermore, there is nothing allowing destruction of a "vicious" dog under 14-4-11 when no charge for violation of 14-2-9 ("vicious dogs") has been filed.

80. Following the hearing of February 24, 2014, in which Plaintiff was deemed to be an "owner" of Baby and thus had legal standing to contest his destruction, the municipal judge ordered that Baby be destroyed. Plaintiff was required to pay \$245 per month to stay execution of the order pending appeal until February 2016, and has to pay \$217 per month since then.

81. There was not, and still is not, an order of impoundment of Baby. The only order pertaining to Baby is the order of destruction. An order of destruction can be entered for an animal

that is or is not impounded (assuming there is jurisdiction under NMC 8-1-2.) See **Exhibit 3**, NMC 14-4-11.

82. Baby cannot be held by Adams County Animal Shelter without an order of impoundment.

83. Serena Campbell, *pro se*, appealed the February 24, 2015 Order of Destruction in Northglenn Municipal Case AC 2015-9 to the District Court of the 17<sup>th</sup> Judicial District on March 26, 2015, case number 2015CV70. This was an appeal pursuant to Rule 237 of the Rules of Municipal Court Procedure which states, “Appeals from courts of record shall be in accordance with Rule 37 of the *Colorado Rules of Criminal Procedure*.”

84. On March 27, 2015 Sherrie O’Brian, appeals specialist with the 17<sup>th</sup> judicial district, emailed Northglenn to state that “the defendant filed a notice of appeal here yesterday...” **Exhibit 1**, p. 078. Ms. Campbell was not a criminal defendant.

85. Mr. Jackson plead guilty to ownership of a dangerous dog on August 13, 2015. Pursuant to C.R.S. 18-9-204.5 (e.5) any dog subject to a conviction of a violation of this section must be kept in an escape-proof building and to be on a leash if outside the enclosure; the owner must post warning signs, immediately report to the bureau of animal protection any material change in the dangerous dog's situation, including but not limited to a change, transfer, or termination of ownership, change of address, escape, or death; license the dog with the BAP, microchip the dog and register the microchip with the BAP, to disclose to any professional or prospective owner that the dog has been subject to a dangerous dog conviction, and to pay any restitution to the victim.

86. Upon information and belief, Adams County prosecutors never requested to have

Baby destroyed, and could not have because the charge was ownership of a dangerous dog causing bodily injury. In fact they “released” him as evidence on February 4, 2015. If not for the City of Northglenn institution its own legal proceedings, Baby would have been released in February and required to abide by the state dangerous dog restrictions upon entry of the conviction in August 2015.

87. On October 9, 2015 the District Court in *Campbell v. Northglenn Municipal Court* affirmed the municipal court's order of destruction, not raising *sua sponte* the jurisdictional issue of NMC 8-2-1 which only provides jurisdiction to hear cases of violations for municipal code ordinances, of which there was never a summons and complaint issued.

88. In November 2015 Richard Jackson was released from federal prison. He and Plaintiff co-owned Baby at all times relevant to this Complaint until March 21, 2016 when Plaintiff became the sole owner pursuant to a surrender/relinquishment agreement by previous co-owner Richard Jackson.

89. Plaintiff, *pro se*, appealed the District Court's affirmance of the Municipal Court order of destruction by filing a Petition for Writ of Certiorari in the Colorado Supreme Court on December 11, 2015, case 2015 SC 889.

90. On January 15, 2015, the Northglenn municipal court judge, Corrine Magid, responded to an *ex parte* communication from officer Soustek asking for an update on the case. She explained that Baby could not be destroyed while the case was pending appeal to the Supreme Court. She said “all of the Northglenn staff knows to alert me as soon as possible if we hear anything. So as soon as I have a ruling from the Supreme Court I will let you know. I know this case has been pending for such a long time, but until we hear from the Supreme Court there’s no



other action anyone can take on the case. I promise to let everyone know as soon as I hear anything.”

**Exhibit 1**, p. 081.

91. On March 25, 2016 Ms. Campbell filed this civil action.

92. On April 18, 2016 the Colorado Supreme Court denied Ms. Campbell’s petition for cert.

93. The Order of destruction has been stayed pending the outcome of this case. In the meantime, Baby has been locked in a cage at Adams County Shelter since September 26, 2014 despite the fact that there is no order of impoundment or warrant, with no exercise, veterinary care, grooming, baths or physical contact from a human being which can only be described as inhumane. Despite this, he is still happy to see Plaintiff and his family members when they come to see him, which is as often as they can.

94. On June 14, 2016 canine behaviorist Kara Pardikes performed a limited evaluation on Baby (limited by Defendant Adams County’s restrictions.) She provided a professional opinion that Baby is not a vicious dog. She also opined that Baby needs to be placed in a more humane situation. Her report is attached as **Exhibit 5** and incorporated by this reference.

95. Ms. Pardikes report states, “Although Baby has two kennels (which can be turned into one if someone puts the guillotine door down) **his accommodations are not fit for a long duration of time. Baby is on concrete 24 hours a day, locked in a run type kennel which is approximately 3 feet wide by 18 feet long; he must eat and drink in his kennel which he also must use as a bathroom. Baby gets little to no human interaction, no exercise and no outdoor time, which also means no natural vitamins from the sunlight. Baby has little to no stimulation, no playtime and is kept in solitary confinement. Dogs are not solitary animals,**

**but are instead pack animals, be that with other dogs, animals, or human bonding. It is of my professional opinion and knowledge that his accommodations are inhumane for the duration he has been kept in them.”** See **Exhibit 5**, emphasis added.

96. Defendant’s then acting executive director Rachel Stafford confirmed over a year ago that Baby’s living conditions are inhumane and that he was declining in health. “[Baby] is frustrated in his kennel and is showing some stress-induced canine compulsive behaviors. His overall behavior is deteriorating and has gotten worse since being impounded. I have observed him spinning and jumping repeatedly, chewing on the chain link, pawing at the corners, throwing his body on the kennel doors in an effort to escape, playing in fecal matter, and frantically running from one side of the kennel to the other. He is showing many symptoms of a canine mental illness known in the industry as “Kennel Craze.” This mental illness is directly related to a lack of adequate exercise, mental stimulation and consistent interaction with people and/or other dogs.” She went on to state, “during [Baby’s] lengthy stay here I have attempted to find adequate boarding for him elsewhere.” “I do not believe it is in [Baby’s] best interest to be confined in this situation indefinitely.” See **Exhibit 2**, pp. 015-017.

97. Ms. Pardikes also evaluated two alternative placements for Baby under a receivership scenario. Her inspection report of those two locations is attached as **Exhibit 6** and incorporated by this reference.

98. Debra Brinkley, owner of Cisco’s Kidd, LLC, a Colorado licensed boarding facility, has agreed to assume care and custody of Baby during the pendency of this action under court order.

#### **IV. FIRST CLAIM FOR RELIEF**

(42 U.S.C. § 1983 Fourth and Fourteenth Amendments Violations City of Northglenn)

99. Plaintiff incorporates all proceeding paragraphs of this Complaint for purposes of this claim.

100. This Claim for Relief is brought against the City of Northglenn.

101. On September 26, 2014 the City of Northglenn acted under color of law and pursuant to official policy, custom or widespread practice knowingly, intentionally or with deliberate indifference and callous disregard of Plaintiff's rights, performed an illegal traffic stop of Plaintiff, and order her out of her vehicle at gunpoint, and detain her all without probable cause, thus violating her Fourth Amendment Rights under the U.S. Constitution.

102. Through the actions set forth above, the City of Northglenn acted under color of law and pursuant to official policy, municipal ordinance, custom or widespread practice, through its Police Department, City Attorney's Office and/or Municipal Court knowingly, intentionally or with deliberate indifference and callous disregard of Plaintiff's rights, seized property belonging to Plaintiff and without due process failed to return the property to Plaintiff.

103. Defendant City of Northglenn and its Police Department, City Attorney's Office and Municipal Court directly or indirectly, under color of law, approved or ratified the unlawful deliberate disposition of property belonging to the Plaintiff, without due process.

104. As a direct and proximate result of such conduct, Plaintiff has been damaged in various respects including, but not limited to, being deprived of the freedom of movement and her possessions, including her vehicle, which was held without a warrant for several days, and the property value and companionship of her dog Baby, without jurisdiction or the due process of law, as well as suffering severe mental and physical anguish due to the egregious nature of the taking, all attributable to the deprivation of her constitutional and statutory

rights guaranteed by the Fourth and Fourteenth Amendments of the Constitution of the United States and protected under 42 U.S.C. § 1983.

## **V. SECOND CLAIM FOR RELIEF**

(42 U.S.C. § 1983 Fourth and Fourteenth Amendments Violations Adams County)

105. Plaintiff incorporates all proceeding paragraphs of this Complaint for purposes of this claim.

106. This Claim for Relief is brought against Adams County.

107. Acting under color of law and pursuant to official policy, custom or widespread practice, Adams County, through its Animal Shelter, knowingly, intentionally or with deliberate indifference and callous disregard of Plaintiff's rights, seized property belonging to Plaintiff and without due process failed to return the property to Plaintiff.

108. There is not, and was not a warrant or order of impoundment authorizing Adams County to refuse to release to release Baby to Plaintiff.

109. Adams county did not have policies or procedures in place to ensure that state law was followed nor did Adams County, as the municipality prosecuting the charge of ownership of a dangerous dog, did not provide Ms. Campbell or Mr. Jackson, Baby's owners, with the required Notice and Payment for Cost of Care of Animals described in Sec. 18-9-202.5, C.R.S. Adams County would have been required to do so to formally "hold" Baby as evidence in that case or to make the owners pay the cost of care. See, C.R.S. Sec. 18-9-202.5, (2) (a) "Failure to pay the impoundment, care, and provision costs pursuant to subsection (1) of this section results in the forfeiture of the right to contest those costs and any ownership rights to the animal in question." Adams County did not have the legal authority to keep Baby impounded from October 1<sup>st</sup> to

February 6<sup>th</sup> because no Notice and Payment of Cost of Care pursuant to §18-9-202.5, C.R.S. had been served on either of Baby's owners, no bond paid and there was no ability for the owners to request a probable cause hearing.

110. Adams County, through its policymakers, had the choice to release Baby to the Plaintiff and/or Mrs. Huffine, Mr. Jackson's mother, on October 1, 2014 when it released the other dogs. There was no formal or official "hold" placed on Baby; only the unofficial request from Commander Lopez to keep him impounded. By making the conscious choice to keep Baby impounded on a "court hold", without a court order or a seizure warrant, Adams County violated plaintiff's Fourth Amendment rights against unreasonable seizure of her property and Fourteenth Amendment right to due process.

111. Adams County's final policymakers decided not to release Baby to Plaintiff after the Adams County Prosecutor "released" Baby as "evidence" in the Adams County Court Case. Adams County, either through the decisions of employees with final policymaking authority (Todd Leopold, county manager) or through the ratification by final policymakers of the decisions of their subordinates (Heidi Miller the county attorney, the unknown executive director and/or Kelley Forster, animal shelter manager and/or others), violated her Fourth and Fourteenth Amendment rights.

112. Adams County, thought its animal shelter policy makers including but not limited to Todd Leopold, the unknown executive director and manager Kelley Forester, again made the conscious decision to refuse to release the dog to Ms. Campbell on each occasion upon which she tried to get the dog. This decision violated her Fourth Amendment Rights against unreasonable seizure and right to due process of law. Finally, Adams County could have released Baby to the

Plaintiff any time during the pendency of this case after being shown that Northglenn violated her rights by holding an unauthorized civil hearing to find Baby vicious and order him destroyed, but the County, through Todd Leopold and Heidi Miller, has decided to side with Northglenn at every turn, and has consciously decided to continue to violate Plaintiff's Fourth Amendment rights against unreasonable seizure up to the present day.

113. Defendant Adams County and its Animal Shelter directly or indirectly, under color of law, approved or ratified the unlawful deliberate disposition of property belonging to the Plaintiff, without due process.

114. As a direct and proximate result of such conduct, Plaintiff has been damaged in various respects including, but not limited to, being deprived of the property value and companionship of her dog Baby, without the due process of law, as well as suffering severe mental and physical anguish due to the egregious nature of their loss, all attributable to the deprivation of their constitutional and statutory rights guaranteed by the Fourth and Fourteenth Amendments of the Constitution of the United States and protected under 42 U.S.C. § 1983.

## **VI. THIRD CLAIM FOR RELIEF**

(Declaratory Relief pursuant to 28 U.S.C. §2201 and §2202)

115. Plaintiff incorporates all proceeding paragraphs of this Complaint for purposes of this claim.

116. Plaintiff seeks Declaratory Relief to declare NMC 14-4-11 Impoundment-Authority of Municipal Court to Order Disposition of Dog or Animal unconstitutional on its face and/or as applied, as violating the Fourth and Fourteenth Amendments to the United States Constitution.

117. Plaintiff seeks Declaratory Relief to declare that the Northglenn Municipal Court had no jurisdictional authority under its charter and ordinances to hold a disposition hearing to determine Baby's fate, its jurisdiction being limited to hearing cases for which summons and complaints for municipal ordinance violations had been filed, and thus that the entire proceedings were a violation of Plaintiff's 4<sup>th</sup> and 14<sup>th</sup> Amendment constitutional rights.

118. Plaintiff requests that Baby be immediately released from custody at the Adams County Shelter, due to the fact that there is no warrant or order of impoundment, or in the alternative requests this Court appoint a receiver pursuant to Fed.R.Civ.P. 64 (a) and C.R.C.P. 66 to care for Baby pending resolution of this court case. Baby is currently in the possession of an adverse party, Adams County, and since he is a living being he is in danger of being lost, damaged, injured (physically and or mentally and emotionally) or even killed if he continues to be in Defendant Adam's County's possession.

119. Plaintiff asserts a practical and actual interest in this matter, as her dog Baby is imprisoned under inhumane circumstances and is facing destruction at the hands of the City of Northglenn, aided by Adams County as operator of the shelter that is holding him.

## **VI. PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in her favor and against the Defendant and grant:

- (a) Appropriate injunctive and/or equitable relief including but not limited placing the property in a receivership pursuant to Fed.R.Civ.P. 64 (a) and C.R.C.P. 66 during the pendency of the case;
- (b) Return of Plaintiff's dog Baby;

- (c) Compensatory and consequential damages, including damages for emotional distress, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- (d) All economic losses on all claims allowed by law;
- (e) Attorney's fees and the costs associated with this action, including those associated with expert witness fees, on all claims allowed by law;
- (f) Pre- and post-judgment interest at the lawful rate;
- (g) Any further relief that this court deems just and proper, and any other relief as allowed by law.

**PLAINTIFF DEMANDS A TRIAL BY JURY OF TWELVE ON ALL ISSUES TRIABLE**

Respectfully submitted this 12<sup>th</sup> day of August, 2016

THE PICCONE LAW FIRM, LLC

By: /s/ Juliet R. Piccone

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