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THE HONORABLE RICARDO S. MARTINEZ

UNITED STATE DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANNA F. DANIELI,  
Plaintiff,  
v.  
KING COUNTY, a municipal corporation;  
CITY OF BELLEVUE, a municipal  
corporation; KING COUNTY HEARING  
EXAMINER; REGIONAL ANIMAL SERVICES  
OF KING COUNTY; GENE EDWARD  
MUELLER, and marital community; TIM  
ANDERSON, and marital community; and  
DOES 1-10,  
Defendants.

Case No.: 3:21-CV-05163-RSM

DECLARATION OF JEFFREY POSSINGER IN  
SUPPORT OF MOTION FOR SANCTIONS  
UNDER RULE 11  
NOTE ON MOTION CALENDAR: FRIDAY,  
APRIL, 30, 202.  
ORAL ARGUMENT REQUESTED

I, Jeffrey Possinger, pursuant to 42 U.S.C. § 1746, hereby declare:

- 1. I am a member of the bar of the State of Washington and am admitted before this Court. I am the founder and the managing member at Possinger Law Group, PLLC., co-attorneys for the Plaintiff in this case. I have personal knowledge of the facts stated below and with the proceedings in this case.

1 2. I submit this declaration in support of Plaintiff's Motion for Sanctions Under  
2 FRCP 11 against the Defendants attorneys.

3 **A. BACKGROUND**

4 3. On April 12, 2019 Plaintiff filed with the Superior Court in Pierce County an initial  
5 Summons and Complaint against the Defendants, seeking, among others,  
6 Declaratory and Injunctive relief with respect to the King County Hearing  
7 Examiner's authority to hear animal enforcement cases involving civil  
8 infractions from the City of Bellevue. The case was assigned to the Hon. Bryan  
9 Chushcoff. On October 7, 2019 the Plaintiff filed its First Amended Complaint,  
10 which in addition to additional tort claims, retained its causes of action for  
11 Declaratory and Injunctive relief contained in the initial Complaint.

12 4. On September 25, 2020, Plaintiff and several Defendants filed four separate  
13 Motions for Summary Judgment: The Plaintiff's Motion for Partial Summary  
14 Judgment sought the Superior Court's ruling on the Plaintiff's Declaratory and  
15 Injunctive Relief contained in its First Amended Complaint; the other three  
16 Motions for Summary Judgment from several Defendants sought dismissal of  
17 all of Plaintiff's claims. A Hearing was held on October 23, 2020, where the  
18 Superior Court by oral ruling granted Plaintiff's Motion for Partial Summary  
19 Judgment on Declaratory and Injunctive Relief. On November 13, 2020, the  
20 Superior Court entered its written Order granting Plaintiff's Declaratory and  
21 Injunctive Relief, which included a finding that the King County Hearing  
22 Examiner had no authority to hear animal enforcement cases involving civil  
23 infractions from the City of Bellevue and that Danieli was the prevailing party as  
24 to these causes of action contained in her First Amended Complaint.  
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- 1 5. On November 23, 2020, the Plaintiff moved with a Motion for an Award of  
2 Attorney's Fees and Costs for prevailing on her Partial Motion for Summary  
3 Judgment. On December 11, 2020, the Superior Court denied Plaintiff's motion.
- 4 6. On January 11, 2021 Plaintiff filed a Notice of Appeal relating to the Superior  
5 Court's ruling on her Motion for an Award of Attorney's Fees and Costs  
6 ("Plaintiff's Appeal").
- 7 7. On February 1, 2021 the case was reassigned to the Hon. Timothy L. Ashcraft.
- 8 8. On February 5, 2021 Plaintiff filed a Motion for Leave to File a Second Amended  
9 Complaint in order to incorporate to the Complaint violations of the 14th  
10 Amendment under 42 U.S.C. § 1983, with a hearing noted for February 19, 2021  
11 ("Motion to Amend"). On February 17, 2021 the Plaintiff and Defendants agreed  
12 among themselves to stipulate to the filing of Plaintiff's Motion to Amend and  
13 notified the court of such requested Stipulation. However, the Court did not  
14 accept the parties' stipulation, and instead requested that the parties attend the  
15 hearing on the Plaintiff's Motion to Amend.
- 16 9. On February 19, 2021 the Hearing on the Plaintiff's Motion to Amend took place.  
17 At the hearing Hon. Ashcraft raised concern on the Superior Court's jurisdiction  
18 due the perfection notice from the Court of Appeals was filed with the Superior  
19 Court on February 16, 2021. Plaintiff's Counsel requested the Court for two  
20 weeks to present the Superior Court with legal authority to resolve the  
21 jurisdictional issue. The Superior Court did not rule on the Plaintiff's Motion to  
22 Amend.
- 23 10. Two days prior to the set-over hearing, on March 3, 2021 the Defendants filed  
24 with the Court of Appeals a joint motion to Redesignate Plaintiff's Appeal as a  
25 Discretionary Review.  
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1 11. On March 5, 2021 the set-over Hearing on the Plaintiff's Motion for Leave to  
2 Amend was held, in order to update the Superior Court on the status of the case  
3 and the actions to be taken by Plaintiff's counsel to address the issues raise by  
4 the Court two weeks before. Plaintiff's counsel updated the Superior Court on  
5 the Plaintiff's efforts to resolve the issue and the motions the Plaintiff intended  
6 to file to that end. The Defendants did not address any concerns regarding the  
7 Superior Court's jurisdiction, despite being given the opportunity by the  
8 Superior Court. At no point did legal counsel for the King County Defendants  
9 raise any issues raised for the first time in the Notice of Removal, nor did  
10 counsel for the King County Defendants reach out to ask Plaintiff's Counsel as  
11 to whether the attached exhibit was deemed "service" of a Second Amended  
12 Complaint; had that occurred it would have been immediately been made clear  
13 that this could not happen until the Superior Court had at least approved  
14 Plaintiff's pending motion. There should have been no confusion whatsoever  
15 that no Second Amended Complaint could be served until the Superior Court  
16 had approved Plaintiff's Motion for Leave to Amend.

17 12. Only few hours after the March 5, 2021 hearing, despite the fact that the  
18 Superior Court never ruled on the Plaintiff's Motion to Amend, and more  
19 importantly a Second Amended Complaint was never filed nor served, the  
20 Defendants filed their Notice of Removal. Based on the filings made by King  
21 County Defendants' counsel, Amy Montgomery, this action was consented to by  
22 all Defendants in the case. The effect of the Defendants' Notice of Removal was  
23 to immediately strip the Superior Court of jurisdiction on the case, before it  
24 could decide on the Plaintiff's Motion to Amend, and with a similar effect on the  
25 Plaintiff's pending appeal at the Court of Appeals.  
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1 13. Despite arguing in the Notice of Removal that it was filed “out of an abundance  
2 of caution” and then further advised the District Court “to reserve any action  
3 until after March 26, 2021” (the Superior Court hearing date on the Plaintiff’s  
4 Motion to Amend), the Defendants continued with the procedures for the  
5 removal of the case to Federal Court and filed a Verification of State Court  
6 records. The effect of the Notice of Removal was to strike all of the pending  
7 motions before the Superior Court and the Court of Appeals.

8 14. The King County Defendants filed no notice with the Court of Appeals regarding  
9 the actions that they had taken. With a Motion still pending in the Court of  
10 Appeals, on March 8, 2021, Plaintiff, through separate appellate counsel, filed  
11 with the Court of Appeals a Response to the Defendants Motion to Redesignate  
12 Plaintiff’s Appeal. The Court of Appeals granted the Defendants Motion to  
13 Redesignate on March 9, 2021 (two court days after the King County Defendants  
14 had filed their Notice of Removal).

15 **B. THE DEFENDANTS LEGALLY AND FACTUALLY BASELESS FILINGS**

16 15. The Defendants mislead the District Court in their Notice of Removal when they  
17 represent that the Plaintiff “served” a Second Amended Complaint upon King  
18 County Defendants (Dkt. #1, Notice of Removal, 1:23). The fact is that the  
19 Plaintiff served her Motion to Amend, which included a proposed Second  
20 Amended Complaint. At no time had the Superior Court granted Plaintiff’s  
21 Motion to Amend, and as a result no Second Amended Complaint was never  
22 filed or served – nor could it be.

23 16. The “Second Amended Complaint” the Defendants refer to in their Notice of  
24 Removal is without question a “proposed” version of the Second Amended  
25 Complaint, attached to the Plaintiff’s Motion to Amend. The attachment of a  
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proposed amended pleading, as an exhibit, is a requirement under State and Local Rules, particularly CR 15(a). This is basic civil procedure, which counsel for the King County Defendants, and the other Defendants knew or should have known.

17. The discussed a stipulation, days before the initial hearing on Plaintiff's Motion to Amend, but as was clear at the time of the Hearings on February 19, 2021 and March 5, 2021, the Superior Court was not going to accept the proposed stipulation. Even so, the proposed stipulation was only to grant the Plaintiff's Motion for Leave to Amend. Whatever the case may have been, it was clear that the Superior Court was going to grant neither until the other procedural issues were resolved, which was to require additional motions filed with the Superior Court, the framework of which was discussed in detail at the March 5, 2021 Hearing. A copy of the proposed stipulation (not approved by the Court, yet relied upon by the King County Defendants in their Notice of Removal) is attached as Exhibit A to this Motion for Sanctions.

18. Furthermore, the Defendants actions immediately following the filing the Notice of Removal revealed that they were not treating their Notice of Removal as a mere "placeholder", but rather moved forward with the case as though a proper Notice of Removal had been filed. Clearly oblivious to the legal and procedural effect of a Notice of Removal on the underlying Superior Court action. The Defendants filed a Verification of State Court records and then filed a Motion for Extension of Time to file Responsive Pleadings (where, once again the Defendants misrepresent to the District Court the Plaintiff had "served" them with a Second Amended Complaint).

1 19. The Defendants actions have caused significant and unnecessary delays in both  
2 the Superior Court and the Court of Appeals, and the Plaintiff has been required  
3 to spend significant time and costs in order to rectify the consequences of the  
4 King County Defendants' objectively frivolous and vexatious legal actions.

5 20. Only after Plaintiff put Defendants on notice that they would be seeking  
6 sanctions, including the required service of a Proposed Motion for Sanctions,  
7 served on March 15, 2021 (in a substantially similar form to the current Motion  
8 for Sanctions); and in Responding to the King County Defendant's Motion for  
9 Extension of time did the King County Defendants attempt to rectify the  
10 problems they had created by filing the legally baseless Notice of Removal.

11 21. After multiple unsuccessful attempts to unilaterally dismiss their own Notice of  
12 Removal (having again not followed the District Court's rules), the King County  
13 Defendants circulated a proposed stipulation and order to Remand the case  
14 back to Superior Court. After review of the proposed stipulation, Plaintiff's  
15 counsel could not agree to the proposed stipulation as written, as it continued  
16 in the misrepresentation of both law and facts to the District Court. Before  
17 Plaintiff's counsel could respond to the King County Defendants' proposed  
18 stipulation and order, they filed their Motion for Remand, which Plaintiff's  
19 Counsel has Responded, and requested consolidation with this Motion for  
20 Sanctions as a Cross-Motion.

21 22. Unfortunately, this is not the first time the Plaintiff has similar conduct by the  
22 Defendant's counsel in this case. In their respective Motions for Summary  
23 Judgement, the Defendants relied on certain purported acts taken by King  
24 County Defendants (namely Defendant, Tim Anderson), where at the direction  
25 of legal counsel, the King County Defendants attempted to "void" the underlying  
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civil infractions, and thereby moot the Plaintiff’s claims and deprive her of standing before the Superior Court. The fact of these purported actions “voiding” the civil infractions were never communicate to the Plaintiff or her counsel for months, and only were revealed for the first time in the Defendants’ respective Motions for Summary Judgment (though all of the Defendants were aware of these actions and relied upon them as part of their separate motions). Not only were these purported actions not disclosed for months, but were under relevant State law, illegal and official misconduct. These issues were raised to the Superior Court by Plaintiff’s Counsel in their Response to the multiple Motions for Summary Judgment brought by the Government Defendants. Although the Superior Court did not take action against the various Defendants on these underlying acts, the Superior Court disregarded this attempt to remove standing, and ultimately ruled on behalf of the Plaintiff, and granted her Declaratory and Injunctive Relief. In considering the Motion for Sanctions the District Court should consider this pattern of conduct by the Government Defendants in this case.

23. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED AT WOODINVILLE, WASHINGTON ON APRIL 12, 2021.

/s/ Jeffrey Possinger  
Jeffrey Possinger, WSBA #30854



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**CERTIFICATE OF SERVICE**

I certify that on the date shown below a copy of this Declaration in Support of Motion for Sanctions was sent as stated below.

<p>Amy E. Montgomery, WSBA #32068 Senior Deputy Prosecuting Attorney King County Prosecuting Attorney 500 Fourth Avenue, Suite 900 Seattle, Washington 98104 <a href="mailto:Amy.montgomery@kingcounty.gov">Amy.montgomery@kingcounty.gov</a> Attorney for King County Defendants</p>	<p><input type="checkbox"/> via eFiling/Email <input checked="" type="checkbox"/> via Messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via Fax</p>
<p>Cheryl A. Zakrzewski, WSBA #15906 Chad R. Barnes, WSBA #30480 Office of the City Attorney 450 110<sup>th</sup> Avenue NE P.O. Box 90012 Bellevue, Washington 98004 <a href="mailto:czakrzewski@bellevuewa.gov">czakrzewski@bellevuewa.gov</a> <a href="mailto:cbarnes@bellevuewa.gov">cbarnes@bellevuewa.gov</a> Attorneys for Defendant City of Bellevue</p>	<p><input type="checkbox"/> via eFiling/Email <input checked="" type="checkbox"/> via Messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via Fax</p>
<p>Jennifer Stacy, WSBA #30754 Senior Deputy Prosecuting Attorney King County Prosecuting Attorney King County Courthouse 516 Third Avenue, Room W400 Seattle, Washington 98104 <a href="mailto:Jennifer.stacy@kingcounty.gov">Jennifer.stacy@kingcounty.gov</a> Attorney for King County Hearing Examiner</p>	<p><input type="checkbox"/> via eFiling/Email <input checked="" type="checkbox"/> via Messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via Fax</p>

DATED this \_\_12th\_\_ day of \_\_April\_\_, 2021.

s/ David Selka  
\_\_\_\_\_  
Paralegal