

THE HONORABLE RICARDO S. MARTINEZ

**UNITED STATES 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**

**PLAINTIFF'S RESPONSE TO KING COUNTY  
DEFENDANTS' MOTION TO REMAND TO  
STATE SUPERIOR COURT**

**NOTE ON MOTION CALENDAR: Friday,  
April 16, 2021 Without Oral Argument**

**I. INTRODUCTION AND RELIEF REQUESTED**

Plaintiff, ANNA F. DANIELI, pursuant to LCR 7(d)(3) and 28 U.S.C. §1447, hereby files this Response to the King County Defendants' Motion to Remand to State Superior Court ("Motion to Remand"). The Plaintiff agrees with the King County Defendants that this case should be remanded to the Superior Court because the King County Defendants filed their Notice of Removal knowing or should have known that the District Court lacked subject matter jurisdiction over this case. Because the King County Defendants' Notice of Removal

1 was frivolous, unnecessary, lacked any legal basis, and unreasonably multiplied the  
 2 proceedings in a continued pattern of disregard for the Court's rules, even in the filing of  
 3 the Motion to Remand, the District Court should award payment of just costs and any actual  
 4 expenses, including attorney fees, incurred as a result of the improper removal, pursuant to  
 5 28 U.S.C. §1447 and/or 28 U.S.C §1927. Plaintiff is also filing a FRCP 11 Motion for  
 6 Sanctions in contemporaneously with the filing of this Response.

## 7 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND TO RESPONSE**

### 8 Initial Pleadings and First Amended Complaint

9 On April 12, 2019 Plaintiff filed with the Superior Court of Washington for Pierce  
 10 County a Summons and Complaint against the various Defendants, seeking Declaratory and  
 11 Injunctive relief with respect to the King County Hearing Examiner's authority to hear civil  
 12 infraction cases involving animal enforcement arising from the City of Bellevue. The case  
 13 was ultimately assigned to the Honorable Bryan Chushcoff. On October 7, 2019, the  
 14 Plaintiff filed her First Amended Complaint, which retained the Declaratory and Injunctive  
 15 Relief while adding tort claims against the several Defendants.

### 16 Cross-Motions for Summary Judgment and Partial Summary Judgment

17 On September 25, 2020, Plaintiff and the several Defendants filed four separate Motions  
 18 for Summary Judgment: The Plaintiff's Motion for Partial Summary Judgment sought the  
 19 Superior Court's ruling on the Plaintiff's Declaratory and Injunctive Relief contained in its  
 20 First Amended Complaint, while the other three Motions for Summary Judgment from the  
 21 several Defendants sought dismissal of all of Plaintiff's claims. A hearing was held on  
 22 October 23, 2020, wherein the Superior Court by oral ruling granted Plaintiff's Motion for  
 23 Partial Summary Judgment on Declaratory and Injunctive Relief and expressly decided not  
 24 to address the Defendants' request to dismiss Plaintiff's tort claims. The final order on  
 25 Plaintiff's Motion for Partial Summary Judgment was presented and entered on November  
 26 13, 2020. This Order on Partial Summary Judgment, among other things, determined that

the King County Hearing Examiner lacked legal authority to hear civil infraction animal enforcement cases from the City of Bellevue, and that Plaintiff was the prevailing party as to the equitable causes of action contained in her First Amended Complaint.

The primary argument in the King County Defendants' Motion for Summary Judgment rested on the surprise revelation<sup>1</sup> that, at the direction of counsel, certain King County Defendants had "voided" the underlying civil infractions against the Plaintiff. This was done in an unsuccessful attempt to moot Plaintiff's claims, deprive her of standing before the Superior Court, and before she could obtain judgment on her claims. As was fully briefed by Plaintiff's counsel, under relevant state law, the unilateral "voiding" of civil infractions would be a "gross misdemeanor" and "official misconduct" by the government Defendants who engaged in these acts. Although it did not rule on the legality of the King County Defendants' actions, the Superior Court determined that the Plaintiff did, in fact, have standing to have her claims adjudicated and then ruled in her favor, but only after great expense to Plaintiff in responding to Defendants with their time-consuming and legally questionable tactics.

#### Motion for Attorney's Fees Award and Appeal on Denial of Fees

On November 23, 2020, the Plaintiff moved forward with a Motion for an Award of Attorney's Fees and Costs for having prevailed on her Motion for Partial Summary Judgment. On December 11, 2020, the Superior Court denied Plaintiff's motion.

On January 11, 2021 Plaintiff filed a Notice of Appeal relating to the Superior Court's ruling on her Motion for an Award of Attorney's Fees and Costs (the "Plaintiff's Appeal").

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<sup>1</sup> Although King County Defendants' Attorney, Amy Montgomery, later stated that it was a "mistake" and an "oversight" (Dkt. #4, Verification of State Court Records, Document 4-2 pages 577-579 (of 796), the determination to "void" the underlying civil infractions with the purpose to deprive Plaintiff of standing was made several months before the action shared with the Plaintiff or her legal counsel, and only after the action appeared in the King County Defendants' (and other Defendants') Motions for Summary Judgment. (Dkt. #4, Verification of State Court Records, Document 4-2 pages 360-361 (of 796)).

Reassignment of Case and Motion for Leave to Amend Complaint

On February 1, 2021, the superior court case was reassigned from Judge Chushcoff to the Honorable Timothy L. Ashcraft. On February 5, 2021, Plaintiff filed a Motion for Leave to File a Second Amended Complaint in order to plead additional claims to the existing causes of action, namely violations of the Fourteenth Amendment under 42 U.S.C. § 1983 ("Section 1983 Claims"), with a hearing noted for February 19, 2021 ("Motion for Leave to Amend"). As required by relevant state and local rules, an exemplar of the proposed order and proposed amended complaint was attached as an exhibit to the Motion for Leave to Amend. None of the Defendants responded to Plaintiff's Motion for Leave to Amend, but on February 17, 2021, the Plaintiff and Defendants agreed to stipulate to the entry of a Stipulated Order on Plaintiff's Motion for Leave to Amend, and the parties notified the superior court of such proposed Stipulation and Order. However, the superior court did not agree to the parties' stipulation but instead requested that the parties attend the scheduled hearing on the Plaintiff's Motion for Leave to Amend.

On February 19, 2021, the superior court heard Plaintiff's Motion for Leave to Amend. At hearing, Judge Ashcraft raised *sua sponte* to the parties the superior court's concern that because of the Perfection Notice received from the Court of Appeals on the Plaintiff's Appeal, the Superior Court lacked jurisdiction to move forward with the Plaintiff's case. This lack of jurisdiction by the superior court would also include the entry of any order, including an order granting the Plaintiff's Motion for Leave to Amend. Until this issue was resolved, Judge Ashcraft made it clear to the parties that he was not going to grant the Plaintiff's request for leave to amend her First Amended Complaint in order to add the additional Section 1983 Claims.

The superior court set over Plaintiff's motion to March 5, 2021 with Judge Ashcraft's clear instructions that the parties were to return to superior court with relevant legal

1 authority on how to deal with the procedural and jurisdictional issues that the superior  
2 court raised.

3 On March 3, 2021 (two-days before the set-over hearing before Judge Ashcraft), the  
4 Defendants filed with the Court of Appeals a motion to redesignate Plaintiff's Appeal as a  
5 Motion for Discretionary Review ("Motion to Redesignate")

6 On March 5, 2021, at the set-over hearing on Plaintiff's Motion for Leave to Amend,  
7 Plaintiff's Counsel updated the superior court on the legal authority and procedural steps  
8 required for the superior court to be able to act upon the pending Motion for Leave to  
9 Amend. Plaintiff's Counsel then described the additional required motion that would need  
10 to be brought forward pursuant to CR 54(b) in order to obtain supplemental findings to the  
11 earlier Order on Partial Summary Judgment, and those findings would pave the way for the  
12 superior court to proceed. Attorney Amy Montgomery, representing the King County  
13 Defendants, actively participated in this discussion with the Superior Court. It was clearly  
14 understood by all present that nothing could move forward until this was done, including  
15 any order allowing the Plaintiff to amend her First Amended Complaint.<sup>2</sup> Before  
16 concluding the hearing, which was to be set over to March 26, 2021, Judge Ashcraft  
17 specifically asked the attorneys present if there were any additional procedural or other  
18 issues to be addressed. All counsel for the Defendants affirmatively indicated to the  
19 superior court that there was not. As set out further below, the King County Defendants  
20 filed their Notice of Removal with the District Court approximately four hours after  
21 addressing the superior court on March 5, 2021.

22 After the King County Defendants had filed their Notice of Removal days before, on  
23 March 8, 2021, Plaintiff (through separate counsel on the Plaintiff's Appeal) filed with the  
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25 <sup>2</sup> This universal understanding was confirmed by Attorney Montgomery in her Motion on Remand, "King County  
26 Defendants requested that [the District Court] not act on the removal until after the Motion for Leave to File the  
27 Second Amended Complaint was heard on March 26, 2021" (Dkt, #13, p.2 ln. 20-21), yet clearly not having any  
understanding of the legal or procedural consequences of filing a Notice of Removal.

1 Court of Appeals a response to the Defendants' Motion to Redesignate. The Court of  
2 Appeals granted the Defendants Motion to Redesignate on March 9, 2021 (two court days  
3 after the Notice of Removal was filed). It appears that the Court of Appeals had no notice  
4 when it ruled on the Motion to Redesignate that Defendants had removed the superior  
5 court cause to this Court.

6 Defendants' Legally Baseless Filing of Notice of Removal

7 As noted above, approximately four hours following the hearing before Judge Ashcraft,  
8 and with full knowledge that no order granting Plaintiff Leave to Amend her complaint had  
9 been signed, the King County Defendants filed a Notice of Removal with the United States  
10 District Court for the Western District of Washington, and in the Pierce County Superior  
11 Court. These pleadings were filed and signed by Senior Deputy Prosecuting Attorney Amy  
12 Montgomery, and based on her declarations, consented to by all Defendants. The  
13 immediate effect of the King County Defendants' Notice of Removal was to strip the  
14 superior court of jurisdiction on the case, before it could rule on any of the pending  
15 motions, including Plaintiff's Motion for Leave to Amend its complaint. Because the King  
16 County Defendants had failed to file any notice with the Court of Appeals of their actions in  
17 this Court, Plaintiff's Appellate Counsel filed with the Court of Appeals a Request for  
18 Instructions on March 12, 2021, as it was likely that the Defendants' premature filings had  
19 removed jurisdiction from the Court of Appeals as well and the Court of Appeals had  
20 considered the Defendant's Motion to Redesignate on March 9, 2021 (four court days after  
21 the filing of the Notice of Removal, but without having been provided notice by the King  
22 County Defendants).

23 Based on this request by Plaintiff's Appellate Counsel, the Court of Appeals stayed the  
24 appellate case on March 16, 2021, pending a decision by this Court on the status of the  
25 removal action.

1 Despite stating in the body of the Notice of Removal that the pleading was filed “out of  
2 an abundance of caution” and advised the Court to “reserve any action until after March 26,  
3 2021” (the set-over superior court hearing date on the Plaintiff’s Motion for Leave to  
4 Amend), the King County Defendants have moved forward with the required procedures  
5 consistent with a Removal of a case to Federal Court, including the filing of a Verification of  
6 State Court Records. In addition, the King County Defendants filed an additional motion on  
7 March 11, 2021, nominated a Motion for Extension of Time to File Responsive Pleadings.  
8 (Dkt. #5). These actions further complicated the proceedings that had been stayed by the  
9 very act of filing the Notice of Removal.

10 On March 15, 2021, Plaintiff’s Counsel provided Judge Ashcraft with a letter to inform  
11 the superior court of the King County Defendants’ actions and the impact these actions had  
12 had on the pending motions before the Superior Court. Exhibit B.

13 Because of the King County Defendants’ actions, on March 15, 2021, Plaintiff’s Counsel  
14 sent the Defendants’ Counsel a written notice, which included a draft Motion for Sanctions,  
15 that the Plaintiff intended to seek sanctions because of the legally baseless Notice of  
16 Removal. After attempting multiple times to unilaterally dismiss their own Notice of  
17 Removal unsuccessfully (for not following the proper procedures), on March 23, 2021,  
18 counsel for the King County Defendants circulated a proposed Stipulated Motion and Order  
19 to Remand for the other parties’ review. Plaintiff’s Counsel reviewed the proposed  
20 stipulated motion, and though Plaintiff generally agreed that the case should be remanded  
21 to the superior court, the proposed stipulation, as written, was unacceptable. The  
22 stipulation as proposed by the King County Defendants’ counsel was inaccurate, and  
23 specially misrepresented the facts and law to the District Court. Plaintiff’s Counsel had  
24 intended to respond to the Defendants’ Counsel, but was delayed, and the King County  
25 Defendants’ Counsel filed a Motion to Remand before Plaintiff could respond.



### III. ARGUMENT

#### A. The Defendants' Notice of Removal Lacked Any Factual and Legal Basis

The Court should award payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal, pursuant to 28 U.S.C. §1447 as the Notice of Removal filed on March 5, 2021 lacked a legal basis and was filed with this Court based on material misrepresentations of both law and fact.

28 U.S.C. §1447(c) provides:

*"...An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal...."*

The United States Supreme Court has held that fees under §1447(c) may be awarded when the removing party lacks "an objectively reasonable basis for seeking removal." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141, 126 S.Ct. 704, 163 L.Ed.2d 547 (2005). Here, there is no question, even by the admission of the King County Defendants' Counsel, that there was no objectively reasonable basis for seeking removal. The King County Defendants either ignored relevant legal authority or were completely oblivious to the procedural workings of removal of actions in 28 U.S.C. §1441.

The Defendants lacked any reasonable legal or factual basis when they filed their Notice of Removal. The Notice of Removal is clearly not based on pertinent law or facts. The Defendants' filing allegedly relies on the purported "service" of Plaintiff's "Second Amended Complaint" on the Defendants as the basis for the King County Defendants' removal filing in District Court, yet no actual Second Amended Complaint has either been served on any Defendant nor filed in any court. Furthermore, Counsel for the King County Defendants own admissions in other filings and the Motion for Remand itself indicate that she knew that the superior court still had to act, before any Second Amended Complaint could be



1 filed or served. The filing of the Notice of Removal prevented any such action by the  
2 superior court.

3 The King County Defendants make material misrepresentations to the District Court in  
4 both the Motion to Remand and in the Notice of Removal by stating that the Plaintiff had  
5 served the Defendants with a Second Amended Complaint on February 5, 2021. (Motion to  
6 Remand, Dkt #13 at p.2, l.17; Notice of Removal, Dkt. #1 at p.1, l.23). The Plaintiff served  
7 the various Defendants a Motion for Leave to Amend, which included a proposed order and  
8 an exemplar Second Amended Complaint as is required by the Washington Civil Rules and  
9 Pierce County Local Rules (See Exhibit 1 of the Notice of Removal, Dkt #1). At no time  
10 before the filing of the Notice of Removal did the superior court grant Plaintiff's Motion for  
11 Leave to Amend, nor was a Second Amended Complaint ever served on the Defendants or  
12 filed with the superior court. Specifically, the "Second Amended Complaint" referenced and  
13 relied upon in the Defendants' Notice of Removal, is unquestionably an "unsigned" and  
14 clearly denominated "proposed" exemplar of a Second Amended Complaint as attached as  
15 an exhibit to Plaintiff's Motion for Leave to Amend, which has not been approved by the  
16 superior court. It is a requirement under State and Local rule, specifically CR 15(a), that  
17 when a party seeks leave of court to amend a complaint, a proposed version of the  
18 amended pleading must be attached to the motion. This required procedure is known or  
19 should be known by the Defendants' counsel.

20 The Defendants' representations to the District Court that the Notice of Removal was  
21 filed "out of an abundance of caution pursuant to the 30-day provision in 28 U.S.C. § 1446  
22 (b)(3)" are baseless. (See. Notice of Removal, Dkt. #1 at p2. l.9-12). Even a casual reading of  
23 the relevant law, namely 28 U.S.C. § 1446 (b)(3), clearly indicates that the 30-days only  
24 begins after a party receives a legal document" from which it may first be ascertained that  
25 the case is one which is or has become removable." (Emphasis added). On an objective  
26

1 basis, the Defendants' Counsel failed to make a reasonable inquiry into the law before  
2 making these representations to the Court.

3 Whether the Defendants' counsel made a reasonable inquiry or not, there was no legal  
4 basis for the Defendants filing of a Notice of Removal. But, as noted above, a simple review  
5 of 28 U.S.C. § 1446 (b)(3) would have removed any concern that the 30-day deadline would  
6 start prior to Plaintiff serving the parties with and/or filing a Second Amended Complaint  
7 with the superior court.

8 The Defendants further claim that they requested the Court "not to act on the removal  
9 until after the Motion for Leave to File the Second Amended Complaint was heard on March  
10 26, 2021" (Dkt #13 at p.2 l.20-21) is also without legal basis because the legal consequence  
11 of the Defendants' Notice of Removal was to strip the superior court of jurisdiction to hear  
12 the Plaintiff's Motion for Leave to File the Second Amended Complaint.

13 The Defendants' filing of the Notice of Removal without having any legal or factual basis  
14 for this Court to have jurisdiction, and then telling this Court to wait, were objectively  
15 frivolous actions, and therefore attorney's fees and costs are appropriate.

16 "A court may award attorney fees when removal is wrong as a matter of law. *Balcorta*,  
17 208 F.3d at 1106 n. 6; see also *Moore v. Permanente Med. Group, Inc.*, 981 F.2d 443, 448  
18 (9th Cir. 1992) (holding that 'bad faith need not be demonstrated' to award fees)." *Ansley v.*  
19 *Ameriquist Mortg. Co.*, 340 F.3d 858, 864 (9th Cir. 2003).

20 Even though a finding of bad faith is not required for the District Court to award fees,  
21 facts are present in this case that indicate that the conduct of the King County Defendants  
22 here was either done intentionally or alternatively with complete disregard to following  
23 relevant legal authority.

**B. Attorney's Fees Are Necessary to Hold the Governmental Defendants Accountable to Their Actions and Consequences.**

The various Defendants in this case are either governmental entities or individuals employed by a governmental entity, and thus have at their disposal the full economic resources and legal counsel afforded to governmental entities. At key points throughout this litigation, the King County Defendants have engaged in dubious conduct, which has forced the Plaintiff, as a private citizen, to incur significant fees and costs in order to respond to the King County Defendants' questionable actions. This latest action of the King County Defendants is consistent with a pattern of costly eleventh-hour maneuvers, which have been sprung on the Plaintiff with little or no notice. In both instances, these tactics were done either lacking any legal authority, or in direct violation of the law.

Prior to the Notice of Removal, the Defendants attempted to deny the Plaintiff standing by "voiding" the underlying civil infractions. These actions had occurred months before at the direction of legal counsel for the King County Defendants, but were only first communicated to the Plaintiff when these actions by King County employees were stated in the King County Defendants' Motion for Summary Judgment (the other Defendants had been made aware of these acts by King County, as they relied on the same purported actions and made similar arguments). Yet, these actions, which were taken at the direction of legal counsel were in direct contravention of law, as the unilateral "voiding" of civil infractions is both illegal (a gross misdemeanor) and official misconduct pursuant to Washington law. All of these acts were taken with the sole purposes of attempting to wrongfully moot the case and eliminate standing for the Plaintiff.<sup>3</sup> These ultimately unsuccessful efforts to remove standing by attempting to unilaterally and wrongfully void the underlying infractions were ignored by the superior court. The superior court then

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<sup>3</sup> See. Dkt #4 "Verification Of State Court Records", Document 4-1 at Pages 428-630 (of 650).

1 ruled for the Plaintiff.<sup>4</sup> Other than losing their Motions for Summary Judgment, and the  
 2 granting of Plaintiff's Motion for Partial Summary Judgment, the government Defendants  
 3 were not held accountable for their conduct despite the significant costs incurred by the  
 4 Plaintiff directly related to the Defendants' conduct.

5 Again, the King County Defendants seek to avoid the consequences of their legally  
 6 baseless and wrongful Notice of Removal. Whether it was done knowingly or simply with  
 7 utter disregard for the consequences, the King County Defendants by filing this legally  
 8 baseless Notice of Removal have cost the Plaintiff unnecessary fees and costs.

9 The District Court has authority under both 28 U.S.C. §1447 and 28 U.S.C §1927 to grant  
 10 attorneys fees and costs to Plaintiff under the facts present in this case. The Defendants'  
 11 actions have caused unnecessary and expensive delays in the both the superior court, the  
 12 Washington court of appeals, and the United States District Court; and now the Plaintiff,  
 13 who is an individual person without unlimited resources, has spent a significant amount of  
 14 time and financial resources in order to rectify the Defendants' actions.

#### 15 IV. CONCLUSION

16 For the foregoing reasons, the Court is requested to Remand the case to the Pierce  
 17 County Superior Court, while imposing on the King County Defendants attorney's fees and  
 18 costs.

19 A Proposed Order is submitted with this Motion.

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21 ////

22 ////

23 ////

24 ////

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25  
 26  
 27 <sup>4</sup> See Dkt #4 "Verification Of State Court Records", Document 4-3 at Pages 22-29 (of 305).

1 Respectfully submitted, this April 12, 2021

2  
3 **POSSINGER LAW GROUP, PLLC**

4  
5  
6 s/ Jeffrey Possinger

7 Jeffrey Possinger, WSBA #30854  
8 Attorney for Plaintiff  
9 20250 144th Avenue, Suite 205  
10 Woodinville, WA 98072  
11 (t) 206-512-8030  
12 (f) 206-569-4792  
13 jeffrey.possinger@possingerlaw.com

14  
15 **LAW OFFICES OF JON ZIMMERMAN, PLLC**

16 s/ Jon Zimmerman

17 Jon M. Zimmerman, WSBA #36296  
18 Attorney for Plaintiff  
19 918 South Horton Street, Suite 902  
20 Seattle, WA 98134  
21 (t) 206-285-5060  
22 jon@seattletrafficattorneys.com

**CERTIFICATE OF SERVICE**

I certify that on the date shown below a copy of this Response was sent as stated below.

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	<input checked="" type="checkbox"/> via eFiling/Email <input type="checkbox"/> via Messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via Fax
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	<input checked="" type="checkbox"/> via eFiling/Email <input type="checkbox"/> via Messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via Fax
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	<input checked="" type="checkbox"/> via eFiling/Email <input type="checkbox"/> via Messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via Fax

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

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

# EXHIBIT A



THE HONORABLE TIMOTHY L. ASHCRAFT

**SUPERIOR COURT OF THE STATE OF WASHINGTON**  
**PIERCE COUNTY**

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.: **19-2-07054-0**

**STIPULATION AND AGREED ORDER RE:  
PLAINTIFF'S LEAVE TO FILE SECOND  
AMENDMENT COMPLAINT**

The Plaintiff Anna Danieli through her counsel, and the various Defendants, by and through their respective counsel of record, stipulate and agree to the granting of Plaintiff's Motion for Leave to File Second Amendment Complaint.

STIPULATION OF THE PARTIES

The Parties stipulate as follows:

1. That this Court, pursuant to Washington Civil Rule 15, enter an Order, GRANTING Plaintiff's Motion for Leave to File Second Amendment Complaint.

STIPULATION AND AGREED ORDER RE: PLAINTIFF'S  
MOTION FOR LEAVE TO FILE SECOND  
AMENDMENT COMPLAINT  
[PAGE 1 of 5]

**Possinger Law Group**  
A Professional Limited Liability Company

20250 144th Avenue NE, Suite 205  
Woodinville, Washington 98072  
206-512-8030

It is so stipulated:

[SIGNATURE PAGE TO FOLLOW]

1 /////

2 **POSSINGER LAW GROUP, PLLC**  
3 Attorney for Plaintiff

4 By: \_\_\_\_\_  
5 Jeffrey Possinger  
6 WSBA # 30854

7 Date: \_\_\_\_\_


**LAW OFFICES JON M. ZIMMERMAN, PLLC**  
Attorney for Plaintiff

By: \_\_\_\_\_  
Jon M. Zimmerman  
WSBA # 36296

Date: \_\_\_\_\_

9 **KING COUNTY PROSECUTING**  
10 **ATTORNEY**

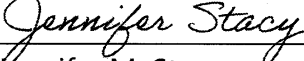
11 Attorney for Defendants King County,  
12 RASKC, Mueller, Anderson.

13 By:   
14 Amy E. Montgomery  
15 WSBA #32068

16 Date: \_\_\_\_\_

**KING COUNTY PROSECUTING**  
10 **ATTORNEY**

11 Attorney for Defendant, King County  
12 Hearing Examiner.

By:   
Jennifer M. Stacy  
WSBA #30754

Date: \_\_\_\_\_

18 **BELLEVUE CITY ATTORNEY'S OFFICE**  
19 Attorney for Defendant, City of Bellevue

20 By: \_\_\_\_\_  
21 Chad R. Barnes  
22 WSBA #30480

23 Date: \_\_\_\_\_

**BELLEVUE CITY ATTORNEY'S OFFICE**  
Attorney for Defendant, City of Bellevue

By: \_\_\_\_\_  
Cheryl Ann Zakrzewski  
WSBA #15906

Date: \_\_\_\_\_

27 \*  
28 STIPULATION AND AGREED ORDER RE: PLAINTIFF'S  
MOTION FOR LEAVE TO FILE SECOND  
AMENDMENT COMPLAINT  
[PAGE 3 of 5]

**Possinger Law Group**  
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1 /////

2 **POSSINGER LAW GROUP, PLLC**  
3 Attorney for Plaintiff

4 By: \_\_\_\_\_  
5 Jeffrey Possinger  
6 WSBA # 30854

7 Date: \_\_\_\_\_


**LAW OFFICES JON M. ZIMMERMAN,**  
**PLLC**  
Attorney for Plaintiff

By: \_\_\_\_\_  
Jon M. Zimmerman  
WSBA # 36296

Date: \_\_\_\_\_

9 **KING COUNTY PROSECUTING**  
10 **ATTORNEY**

11 Attorney for Defendants King County,  
12 RASKC, Mueller, Anderson.

13 By:   
14 Amy E. Montgomery  
15 WSBA #32068

16 Date: \_\_\_\_\_

**KING COUNTY PROSECUTING**  
**ATTORNEY**

Attorney for Defendant, King County  
Hearing Examiner.

By: \_\_\_\_\_  
Jennifer M. Stacy  
WSBA #30754

Date: \_\_\_\_\_

18 **BELLEVUE CITY ATTORNEY'S OFFICE**  
19 Attorney for Defendant, City of Bellevue

20 By: /s/ Chad Barnes  
21 Chad R. Barnes  
22 WSBA #30480

23 Date: 2/17/21

**BELLEVUE CITY ATTORNEY'S OFFICE**  
Attorney for Defendant, City of Bellevue

By: \_\_\_\_\_  
Cheryl Ann Zakrzewski  
WSBA #15906

Date: \_\_\_\_\_

ORDER

THIS COURT having reviewed the foregoing stipulation of the parties, and being otherwise fully advised; it is now hereby:

ORDERED, ADJUDGED, AND DECREED that the above-referenced stipulation of the parties is entered, and that:

1. The Plaintiff's Motion for Leave to File Second Amendment Complaint is GRANTED, and that Plaintiff may file her Second Amended Complaint in the form substantially the same as that attached as Exhibit A to the Parties Stipulation.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2021

---

The Honorable Timothy L. Ashcraft  
Superior Court Judge

**CERTIFICATE OF SERVICE**

I certify that on the date shown below a copy of this \_\_\_\_\_  
was sent as stated below.

Amy E. Montgomery, WSBA #32068 Senior Deputy Prosecuting Attorney King County Prosecuting Attorney 500 Fourth Avenue, 9 <sup>th</sup> Floor Seattle, Washington 98104 <a href="mailto:Amy.montgomery@kingcounty.gov">Amy.montgomery@kingcounty.gov</a> Attorney for King County Defendants	<input checked="" type="checkbox"/> via eFiling/Email <input type="checkbox"/> via Messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via Fax
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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

s/ \_\_\_\_\_  
[PRINTED NAME]  
Paralegal

STIPULATION AND AGREED ORDER RE: PLAINTIFF'S  
MOTION FOR LEAVE TO FILE SECOND  
AMENDMENT COMPLAINT  
[PAGE 5 of 5]

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# EXHIBIT B



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Monday, March 15, 2021

## [Filed with Court]

The Honorable Timothy L. Ashcraft  
Superior Court Judge  
Pierce County Superior Court  
930 Tacoma Ave. S.  
Tacoma, Washington 98402

Reference: *Danieli v. King County et al., Pierce Cty. Sup. Ct. # 19-2-07054-0; Update on Status of Pending Motions; Notice of Removal (Federal Claims) filed by King County Defendants (03-05-2021), WDWA Case 3:21-cv\_05164-RSM*

Your Honor:

We write to provide the Court with an update of the unexpected developments that have occurred over the last few days since our last hearing on Friday, March 5, 2021 at approximately 9:45 A.M. A few hours after this hearing, the King County Defendants<sup>1</sup> filed Notices of Removal in the United States District Court for the Western District of Washington and simultaneously in the Pierce County Superior Court<sup>2</sup>, notwithstanding the fact that to date, no amended complaint has been filed or served in this case. At this stage, any amended complaint to be filed by the Plaintiff (and later served) is entirely dependent on this Court's decision to act on a motion, and such motion and decision have been further delayed by the Defendants' legally baseless and unnecessary action.

The King County Defendants federal court filings in this case are premature; the filings are also improper for multiple reasons that we plan to address at the proper time and in the proper venues. Significantly, the filings raise serious FRCP 11 and CR 11 issues.

The effect of a premature removal has stripped the Superior Court's jurisdiction to act on issues that were before the Superior Court prior to the Notice of Removal, namely the motions for Supplemental CR 54(b) Findings as well as the Motion for Leave to file a Second

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<sup>1</sup> Attorney, Amy Montgomery, on behalf of King County, Regional Animal Control of King County ("RASKC"), Gene Edward Mueller, and Tim Anderson (the King County Defendants), filed Notices of Removal in both the Federal Court for the Western District of Washington and in Pierce County Superior Court on the afternoon of Friday, March 5, 2021.

<sup>2</sup> The United States District Court for the Western District of Washington Cause Number filed by the King County Defendants in Pierce County Superior Court (i.e. 2:21-cv-00289) is incorrect. This is because the King County Defendants filed their initial federal pleadings incorrectly and the District Court terminated the filing and refiled the federal case under a different cause number (3:31-cv-05163-RSM); the correct federal cause number has not been yet corrected in the Superior Court.

POSSINGER LAW GROUP, PLLC

Letter: Update to Court on Case Status/Notice of Removal

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Amended Complaint. In order for Plaintiff to file a Second Amended Complaint, this Court would first have to agree to grant Plaintiff leave and only then could Plaintiff file an amended complaint. Court rules do not allow this Court or the Plaintiff to ignore this sequence. For all practical purposes, the Defendants have essentially jammed a procedural and jurisdictional crowbar into the gears of two separate court systems—the United States District Court and the Superior Court of the State of Washington.

Furthermore, it also appears that the filing of this Notice of Removal may have also caused a jurisdictional and legal issue in the Washington Court of Appeals. Notice of Removal was not provided to that Court, despite the Defendants having a pending motion in the Court of Appeals at the time the removal was filed in United States District Court and the Superior Court. Subsequent orders from the Court of Appeals may now be void.

The Federal Courts do not recognize “tentative” or “provisional” Notices of Removal. Understandably, a federal district court will move forward as though it already has subject matter jurisdiction for a Removal action, based upon the representations and certification of a removing party’s (in this case the King County Defendants’) legal counsel. Based on representations contained her pleadings, the other Defendants in this case have apparently consented to this action.

Counsel for the King County Defendants, Amy Montgomery, has unfortunately created an unnecessarily expensive legal problem for our client and the courts to address and to ultimately unwind in the United States District Court before we will be able to appear before this Court again to hear the motions that this Court planned to address on Friday, March 26, 2021. It is difficult to see any reasonable or good-faith reason that Defendants took this action; though Counsel for all Defendants were given an opportunity to address any jurisdictional or procedural matters at the March 5, 2021 hearing, no indication was provided by Ms. Montgomery or other counsel that a removal would be filed hours later. This legally baseless filing has created additional delay, expense, and unnecessary litigation.

We will reach out to the Court again once the legal issues in the United States District Court have been resolved so that this Court may resume hearing and deciding issues that were appropriately before this Court prior to the Notice of Removal’s filing.

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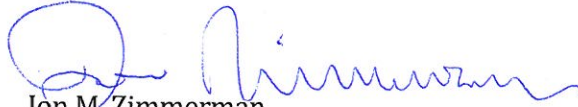
Letter: Update to Court on Case Status/Notice of Removal  
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Very truly yours,  
POSSINGER LAW GROUP, PLLC.



Jeffrey K. Possinger  
Attorney at Law

Very truly yours,  
LAW OFFICES OF JON M. ZIMMERMAN, PLLC



Jon M. Zimmerman  
Attorney at Law

c: Client  
Counsel, Amy Montgomery.  
Counsel, Jennifer Stacy.  
Counsel, Cheryl Zakrzewski  
Counsel, Chad Barnes