

**MONTGOMERY COUNTY COMMON PLEAS COURT
MONTGOMERY COUNTY, OHIO**

BARBARA E. SCHNEIDER,	:	CASE NO: 2015 CV 00730
Administrator of the Estate of Klonda S.	:	
Richey, Deceased,	:	
c/o Minnillo & Jenkins Co., LPA	:	JUDGE: MARY WISEMAN
2712 Observatory Avenue	:	
Cincinnati, Ohio 45208	:	
	:	FOURTH AMENDED COMPLAINT
Plaintiff,	:	WITH JURY DEMAND
vs.	:	
	:	
MARK KUMPF, Director of Montgomery	:	
County Animal Resource Center and	:	
Montgomery County Dog Warden, in His	:	
Individual Capacity Only	:	
6790 Webster Street	:	
Dayton, Ohio 45414	:	
	:	
Defendant,	:	
and	:	
	:	
BOARD OF COUNTY	:	
COMMISSIONERS OF MONTGOMERY	:	
COUNTY, OHIO	:	
451 W. Third Street	:	
P.O. Box 972	:	
Dayton, OH 45422-1120	:	

Defendant.

Now comes Plaintiff, Barbara E. Schneider, Administrator of the Estate of Klonda S. Richey, and for her Complaint against Defendants states and alleges as follows upon information and belief:

INTRODUCTORY STATEMENT

1. This case seeks justice for Klonda Richey, who was killed on February 7, 2014 by dangerous dogs owned by her neighbors. For many months, Klonda complained to Defendant Mark Kumpf that the dogs were an imminent threat to her safety.

2. Plaintiff herein contends that Defendant Mark Kumpf's reckless and/or willful decision to take no action on any of her numerous complaints and reckless and/or willful disregard for his statutory duties subject him to liability therefore. Plaintiff further contends that Defendant Mark Kumpf and/or Defendant Board of County Commissioners of Montgomery County, Ohio, by and through the Montgomery County Animal Resource Center, willfully and with malicious purpose destroyed highly relevant public records with the intent to disrupt Plaintiff's existing lawsuit against Defendant Mark Kumpf. Plaintiff also contends that Defendant Board of County Commissioners of Montgomery County, Ohio, by and through the Montgomery County Animal Resource Center, is liable pursuant to ORC § 149.351(B)(2) because Plaintiff has been aggrieved by the destruction of public records in violation of ORC § 149.38 (C)(3).

PARTIES

3. Plaintiff, Barbara E. Schneider, was appointed as Administrator of the Estate of Klonda S. Richey, Deceased, by the Montgomery County Probate Court on March 6, 2014. *See Exhibit 1 – Fiduciary's Acceptance.*

4. Defendant, Mark Kumpf ("Kumpf"), is director and an employee of the Montgomery County Animal Resource Center ("ARC") as defined by O.R.C. 2744.01(B), and is the appointed dog warden of Montgomery County, Ohio as defined by O.R.C. 955.12. Plaintiff sues Kumpf only in his individual capacity as an employee of Montgomery County.

5. Defendant Board of County Commissioners of Montgomery County, Ohio ("BCC") is a political subdivision as defined by O.R.C. 2744.01(F).

JURISDICTION

6. At the time of her death, Klonda Richey resided in Montgomery County, Ohio.

7. This Court has personal jurisdiction over the Defendants in this action pursuant to O.R.C. 2307.382(A)(3), and subject matter jurisdiction over the Defendants pursuant to O.R.C. 2305.01.

VENUE

8. Venue is proper in Montgomery County, Ohio because all or part of Plaintiff's claims for relief arose from injuries that occurred in Montgomery County, Ohio.

FACTS GIVING RISE TO THIS ACTION

9. At all times relevant herein, Klonda Richey was a resident of Montgomery County, Ohio and lived at 31 East Bruce Avenue, Dayton, OH.

10. Klonda worked as an employee of the Montgomery County Job & Family Services Administration Services Division for approximately 25 years. Klonda consistently received excellent performance reviews that noted her to be "a valuable asset" who was "very conscientious in her duties and following procedures," "always willing to assist," and could "always be counted on" She was commended for going back to school to obtain her Bachelor of Science in Business Administration and was recognized as an "Innovator of the Year" during the agency's awards ceremony.

11. Klonda had lived at the 31 East Bruce Avenue address for at least 24 years, and it was a home in which she had memories of spending time with her loved ones before their deaths, including her mother and father.¹

¹ Klonda also lived with and cared for approximately 20 cats. After her death, ARC received many calls from people offering to adopt the cats. Kumpf issued public statements saying that the cats were being processed for adoptions and that people needed to wait, but assured the public that "The ARC is working to make sure the cats that Klonda loved so dearly will be adopted. These cats are in no danger of euthanasia." See <http://wdtn.com/2014/02/14/mauling-victims-cats-nearly-set-for-adoption/>. However, despite Kumpf's public statements, several of Klonda's cats were euthanized.

12. In approximately March of 2011, Andrew Nason purchased the home next door to Klonda, at 35 East Bruce Avenue, for \$8,000. Mr. Nason lived at the address with Julie Custer.

13. Mr. Nason and Ms. Custer owned dogs, and Klonda began experiencing problems with the dogs no later than August 2012. The problems were severe enough that Klonda paid to have a fence installed between the two houses, and paid to have security cameras installed on her house. The cameras were pointed directly at 35 East Bruce Avenue and were intended to capture video evidence of the dogs entering her property unrestrained and while off of a leash. Portions of the video have been posted online: <http://wtdn.com/2014/02/14/mauling-victims-surveillance-video-released-to-2-news/>.

14. In 2012, after two separate attacks by Cane Corsos (the same breed that killed Klonda) resulted in the death of a woman and severe injuries to a man, Kumpf stated that “One of the future indicators of behavior is past behavior. If people have a problem with the dog, it gets out or acts aggressive, those are things that should be reported to the dog warden.”²

15. Klonda did exactly that. She made approximately 13 calls to the Montgomery County Regional Dispatch Center, and at least 11 calls to ARC, to complain about her neighbor’s dogs. In one of those calls, Klonda reported that Mr. Nason “let his aggressive pit/mastiff run loose while she was walking to work and threatened to let it have her for a treat.”

16. When Kumpf refused to act, Klonda sought a civil protection order against Nason in January 2013 from the Montgomery County Municipal Court. Magistrate Kristi Wuebben denied the request.

² <http://www.daytondailynews.com/news/news/expert-says-all-dogs-can-be-dangerous/nR99H/>

17. “She’s always been terrified of those dogs,” said coworker Tim Bridwell. “She told me, and a lot of other people, she was afraid those dogs were going to kill her.”³

18. On February 7, 2014, Klonda’s worst fears came true when she was viciously attacked and killed on her own property by the dog or dogs belonging to her neighbors while she took out her garbage.

19. The attack resulted in serious injuries, extreme and prolonged pain, suffering, emotional distress, and anguish, and ultimately Klonda’s death on February 7, 2014. *See Exhibit 2 – Death Certificate*. “The injuries were severe and multiple,” Coroner Kent Harshbarger said. “This is one of the worst that we’ve ever seen.”⁴ Coroner Harshbarger further stated that her injuries “clearly happened while she was still alive,” and that the fatal attack occurred over “a significant a [sic] period of time that she was aware and cognizant of what was happening.”⁵

20. When police responded to the scene of Klonda’s death, the dogs that attacked and killed Klonda charged at the officers. The officers shot and killed the dogs on the spot.

MARK KUMPF

21. Kumpf was hired in July 2006 to serve as the Montgomery County Dog Warden and the Director of ARC. Kumpf oversees 11 deputy animal control officers and, according to February 10, 2014 email he wrote, manages an office budget of \$3.2 million annually.⁶

22. Immediately upon his hiring as an employee of ARC, Kumpf unilaterally and recklessly and/or willfully changed the focus of ARC from one of enforcing the Ohio Revised Code to one that suited his own personal belief that education of dog owners was more effective.

³ <http://www.dailymail.co.uk/news/article-2556790/Cat-loving-woman-57-complained-police-neighbors-dogs-NINE-times-mauled-death.html#ixzz3fPVSDImB>

⁴ <http://www.springfieldnewssun.com/news/news/crime-law/dog-mauling-investigation-continues-owners-out-jai/ndJ3W/>

⁵ <http://www.whio.com/videos/news/woman-mauled-by-dog-officially-died-of-blood-loss/vCQfW6/>

⁶ In another article, Kumpf is reported as having stated that the annual budget is \$2.3 million. *See* <http://www.norwalkreflector.com/article/4236531>

23. In a 2009 article published in *Animal Control* magazine,⁷ Kumpf discussed this decision:

When Mark Kumpf was an animal control officer in Virginia back in the early 1990s, he held what he now regards as a rather dubious record: He'd issued more misdemeanor summonses than any other officer in the history of the department. "I wrote more dog tickets than I knew what to do with," says Kumpf, now president of the National Animal Control Association and director of the Montgomery County Animal Resource Center in Dayton, Ohio. "It really was very much an enforcement attitude. ... The goal was how many animals can you pick up, how fast can we get them off the street, and how many summonses can you write." He did it for years, patrolling the streets of a busy port city, a dedicated civil servant with a clear, specific job: Protect the public from dangerous animals and cite people for violations of animal control laws. He spent his days capturing strays, investigating cruelty complaints, and checking out pets for licenses and rabies vaccination compliance. His citations averaged between 100 and 150 a month, and his monthly court dates were a full docket of what Kumpf calls the citation "trifecta"—running at large, no city dog license, and failure to vaccinate against rabies. "I thought that the way to correct animal problems was to cite everyone, impound everything, and be a good little animal cop," Kumpf says. "But, I don't know, I just had one of those moments after I'd been on the job for a while and I thought, this really isn't doing anything. It was like bailing the ocean with a thimble."

For Kumpf, the educational tactic took root while he was still an officer in Virginia. The department took a new approach to fieldwork, issuing fewer summonses and focusing citations on the more serious cases. "I still issued citations and handled cases, but the ones that went to the judge were the ones that deserved to be heard, and the outcomes were consistently applied," he says. He's carried the approach to his subsequent jobs. When he began instituting his friendlier touch in Dayton, he says, at first his bosses were concerned about a drop in citation-generated revenue—but they quickly saw the advantages. "They were looking at me and saying, 'Your citations are dropping,'" Kumpf remembers. "And I'm like, 'Yeah, and do you notice I've taken in 2,000 fewer animals in the past two years, and our revenue's up, and our licensing's up, and our adoptions are up, and do you know why that is? It's because I'm not everyone's worst enemy anymore.' ... In 20 years, we really have changed the model for animal control."

24. In his 2007 performance review (his 2006 review was not provided in response to a public records request), Kumpf notes that "Citations dropped from 1492 to 1150 as the emphasis with officers has been to focus on achieving compliance through cooperation." In his

⁷http://www.animalsheltering.org/resources/magazine/jul_aug_2009/out_of_control_into_compassion.pdf

2008 performance review, Kumpf stated that “Citations dropped from 1150 to 985 as the emphasis with officers has been to focus on achieving compliance through cooperation.”

25. In other words, during Kumpf’s first two full years as Dog Warden, the number of citations issued to dog owners in Montgomery County dropped by over 33%.⁸

26. This is no accident. Kumpf has freely admitted on multiple occasions that he instructed his deputy dog wardens to write fewer citations for dog owners’ violations of Ohio law, in part because of his belief that courts were not performing their duty. For example, in his 2008 performance review, Kumpf stated: “Courts continue to be notoriously unhelpful with citation fines and enforcement; therefore, officers were encouraged to promote the Animal Awareness Program with 171 attending in 2008.” Kumpf frequently repeated this phrase (“Courts continue to be notoriously unhelpful with citation fines and enforcement; therefore, officers were encouraged to promote the Animal Awareness Program”) in his yearly performance reviews.

27. According to an article Kumpf wrote in 2009,⁹ the Animal Awareness Program is “[p]rovided as an alternative to criminal citation,” and “is offered to minor misdemeanor violators. By attending class, they avoid a trip to court. All fees realized from this program are used to fund training and learning initiatives for staff at the Animal Resource Center, bringing in over \$6,000 this year alone!”

⁸ As noted, Kumpf claims to have personally issued 100 to 150 citations a month when he was an animal control officer in Virginia. In 2008, his 11 animal control officers each issued an average of about 8 citations per month. While the number of citations issued by ARC officers went up in 2009-2011, by 2012 they were back down to 932, and by 2013, they were at 928.

⁹ http://www.mcohoio.org/Montgomery/home/docs/Sept_Oct06.pdf

28. As further evidence of Kumpf's promotion of his education over enforcement model, Dayton Daily News analysis¹⁰ of ARC records found ARC officers, under Kumpf's direction, responded to 20,293 calls in 2012 and 2013. Of those, 4,142 resulted in a warning being issued and 697 resulted in one or more citations. In other words, only 3.4% of calls resulted in a citation being issued.

29. While Kumpf may believe his "education model" is effective at preventing him from being viewed as "everyone's worst enemy," it is incredibly reckless, especially when dealing with persons like Nason and Custer.

30. In a letter submitted by Dayton Chief of Police Richard S. Biehl supporting the maximum sentence on criminal charges for Nason and Custer for their roles in Klonda's death,¹¹ Chief Biehl notes that Nason "is a convicted violent felon with a history of failing to comply with court ordered sanctions and fines." Chief Biehl also discussed the absolute lack of remorse and concern for Klonda displayed by Nason and Custer on the morning of her "extremely cruel and violent death."

31. Kumpf's reckless and/or willful insistence on employing his education model also directly conflicts with the dog law provisions of the Ohio Revised Code, which Kumpf has conceded "is mostly regulatory and provides penalties AFTER a violation occurs by a designated dog."¹²

¹⁰<http://www.mydaytondailynews.com/news/news/crime-law/penalties-rare-despite-thousands-of-dog-complaints/ngF6q/>

¹¹ <http://media.cmgdigital.com/shared/news/documents/2015/05/28/DOC.PDF>

¹² <http://www.norwalkreflector.com/article/4236531>

32. Indeed, each successive issuance of a “dog at large” citation (a violation of O.R.C. 955.22(C)¹³) increases the penalties to the owner and three such violations, whether cited or not, provide grounds for a dog warden to seek a “dangerous dog” designation.

33. By recklessly and/or willfully refusing to issue citations for the “dog at large” violations reported by Klonda, and by refusing to take action despite his knowledge of multiple documented violations of O.R.C. 955.22(C), Kumpf prevented the dogs that killed her from being designated as dangerous.

34. Kumpf told State Representative Jim Butler that had the dogs been declared dangerous they would have been removed from the property.¹⁴ “Those dogs would not have been there, and things may have turned out differently.”¹⁵

35. Therefore, had Kumpf enforced Ohio law as he was required to do, the dangerous dogs at 35 East Bruce Avenue would have been removed and would not have caused her death. And Kumpf clearly recognizes the threat posed by dangerous dogs, as he noted in an email that “Allowing people to keep dangerous dogs poses an ongoing and continuous potential threat to public safety.”

KLONDA’S COMPLAINTS TO KUMPF

36. On the morning of August 8, 2012, Klonda called ARC¹⁶ to complain that “last night the dog [at 35 East Bruce Avenue] was loose and charged her.” The ARC officer notes

¹³ ORC 955.22(C) states “Except when a dog is lawfully engaged in hunting and accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger of any dog shall fail at any time to do either of the following: (1) Keep the dog physically confined or restrained upon the premises of the owner, keeper, or harbinger by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape; (2) Keep the dog under the reasonable control of some person.

¹⁴ <http://www.norwalkreflector.com/article/4236531>

¹⁵ *Id.*

¹⁶ Despite the fact that Kumpf has repeatedly stated to reporters that Klonda’s calls were often made anonymously, an ARC publication titled “Are you a responsible pet owner?” states “Persons witnessing any violations may contact the Animal Resource Center at (937) 898-4457 or email

that Klonda “called [the police] who came out, the owners did not come to the door. After the police left the dog was loose again.” An ARC officer responded to the call on August 9, 2012, and issued a written warning¹⁷ for a violation of O.R.C. 955.22(C), which Kumpf refers to as a “dog at large” violation, for a Brown Pit Bull.

37. After Klonda’s death, Kumpf stated in an email that “The County’s Animal Care & Control Officers [of which Kumpf is one] respond to every call received and meet daily to discuss calls.” Therefore, according to Kumpf, the August 8, 2012 call and all others that are described below would have been discussed with him during daily meetings.

38. Kumpf has publicly admitted his knowledge that any large breed dog has the potential to seriously injure or kill a person.¹⁸ The dogs at 35 East Bruce Avenue have been alternatively described as Pit Bulls, Mastiffs and/or Cane Corsos, which are all clearly large breed dogs.

39. On September 25, 2012, Klonda called ARC two times to report that “the dog was loose and it is very aggressive.” An ARC officer responded the following day and issued another written warning for a violation of 955.22(C). The “Field Activity Record” states that there were no “Priors” for this owner, which was untrue.

40. On March 16, 2013, Klonda called ARC to report that the “dog is loose again ... the dog has come after her before and she states that now [her neighbor] will let his dog loose to go after her and her cats. she states the mailman will no longer deliver mail to street because of

animalshelter@mcOhio.org. Complaints may be made anonymously.” Moreover, simply because the official record of the call indicates the caller was anonymous, that does not mean ARC employees did not know Klonda was the one calling for help. After all, her complaints were always about 35 East Bruce Avenue.

¹⁷ A written “warning notice” has no legal effect. According to Kumpf, unless a citation is issued, “that closes the complaint.”

¹⁸ <http://www.whio.com/news/news/crime-law/police-respond-east-bruce-street-dayton/ndGkg/> This article states that Klonda’s death “is believed to be the third fatal incident in 17 months in Montgomery County involving dogs and people.”

this dog if it is not taken care of ... [she] states this dog has attacked her before ...” The ARC officer states “I knocked on the door, but nobody answered. I hear the dog barking inside the house. I posted a warning.” The warning was issued for violation of 955.10 (“Tags to be worn”), 955.21 (failure to register),¹⁹ 955.22(C) (dog at large), and 955.11 (because it “was reported attacking people and cats.”) Violation number V [REDACTED] was assigned.

41. On May 21, 2013, a woman called ARC to report “dogs were loose again and chased her” **Two days later**, on May 23, 2013, an ARC officer responded to the call and stated “Nobody answered the door. Did not see or hear a dog.” The Officer posted another written warning for a violation of 955.10, 955.21, and 955.22(C). Violation number V13-000503 was assigned.

42. On May 29, Klonda called ARC to report that a Pit Bull Mastiff was kept outside on a chain with no food or water “all day yesterday,”²⁰ and that the owner of the dog took the dog off the chain and told it to attack her. The Activity Card for May 29 notes “Several Priors,” and that the dog had no license.

43. On July 21, 2013, ARC received a call from the Montgomery County Sheriff’s Dispatch regarding 35 East Bruce Avenue that “2 bull mastiffs are loose and chasing caller,” which the police record identifies as “Ms. Ritchie [sic].” The ARC officer reports that he was unable to make contact with the owner of the dog.

¹⁹ The Deputy also noted that there were no current licenses on file for dogs at the 35 East Bruce Avenue address, but that there were two issued in 2012.

²⁰ Kumpf had notice that the dog was being left outside on a chain and without food and water. Chained dogs become more anxious, aggressive, and territorial than dogs kept inside and are nearly three times more likely to bite, according to a study by the Centers of Disease Control and Prevention. Kumpf understands this, and has therefore commented that “[c]haining and tethering a dog is not an appropriate way to confine the animal for a long period of time.” <http://www.daytondailynews.com/news/news/expert-says-all-dogs-can-be-dangerous/nR99H/> Additionally, a prior complaint to ARC on December 27, 2011 noted a dog at 35 East Bruce Avenue was left outside with no food or water and that the “Dog is very thin, ribs are visible.”

44. On the morning of July 22, 2013, ARC received another call about 35 East Bruce Street that “2 bull mastiffs are loose again. Several priors. Also one prior from yesterday.” **The following day**, the ARC officer responded and issued another written warning. Violation number V13-000959 was assigned.

45. On August 5, 2013, Klonda called ARC to report that “Andrew nason is now putting one of the pit/mstf in her yard to scare her[.]” The Activity Card notes “Still no lic for 2013 on file. several priors ...” The ARC officer responded and noted “Noone [sic] home did not hear or see any dogs. Posted [written warning] for 955.21 and 955.22(C).” Violation number V13-001036 was assigned.

46. On September 9, 2013, Klonda called ARC to report that “Brn pit/mastiff is loose on the street.” The Activity Card further notes “Several Priors, 2012 Licenses.”²¹ The ARC officer responded and noted, “On arrival no answered [sic] the door. no dog loose either.” The Officer issued warnings for violation of 955.21 and 955.22(C). Violation numbers V13-001283 and V13-001313 were assigned.

47. On September 12, 2013, Klonda called ARC to report “Mastiff was loose again yesterday evening.” The Activity Card notes “No current license. Several priors.” The ARC officer responded and repeated the exact same note as that used on September 9, 2013, “On arrival no answered [sic] the door. no dog loose either.” While the ARC summary database indicates that written warnings were issued, the record of what violations justified the September

²¹ According to their expired licenses from 2012, the 2 dogs at 35 East Bruce Avenue were non-neutered male dogs. Kumpf has observed that “Unaltered — those not spayed or neutered — male dogs tend to be involved in the majority of these types of instances [fatal attacks].”
<http://www.daytondailynews.com/news/news/expert-says-all-dogs-can-be-dangerous/nR99H/>

12, 2013 warnings was not provided in response to a public records request, nor was the violation number(s).²²

48. On September 24, 2013, a complaint was made about a white pit bull pup that “is running loose.” The Activity Card notes “Owner also has two brn [sic] mastifes [sic]. Several priors.” The following day, the ARC officer responded and noted “No response to my knock on the front door. I could hear a dog inside, but could not see it. I posted a [written warning] for 555.21 X 3 and 955.22C for the puppy.” Violation number V13-001429 was assigned.

KUMPF’S RECKLESS AND/OR WILLFUL FAILURE TO ACT

49. The complaints listed above demonstrate that eleven months before Klonda was killed, Kumpf had knowledge of at least three reported violations of O.R.C. 955.22(C) for one animal at 35 East Bruce Avenue.

50. Over four months before Klonda was killed, ARC had issued at least 10 written warnings to the owners of the dogs at 35 East Bruce Avenue and had assigned no fewer than 7 violation numbers for violations of O.R.C. 955.22(C) for the dog or dogs that resided there.

51. O.R.C. 955.11(A)(1)(a)(iii) states that a “Dangerous dog” includes one that has “[b]een the subject of a third or subsequent violation of division (C) of section 955.22 of the Revised Code.” Notably, this provision does not require that three or more citations have been issued, but rather that three or more violations have occurred.

²² Notably, the ARC officer who responded to this call was Torbin Peterson. Peterson stated in an interview with Kumpf that he spoke to Klonda and that Klonda handed him a zip drive which she stated showed the dogs at large. According to Kumpf, “Peterson then stated that upon viewing the file all that it showed was two individuals walking in front of the house. Peterson stated that no dogs appeared in the file on this zip drive.” Because Klonda was a detail-oriented person who was recognized by the County to be “very conscientious in her duties and following procedures,” Plaintiff strongly questions this account, particularly given how desperately she wanted help from Kumpf, and intends to request a copy of this zip drive (which would have been shared with Kumpf) in discovery.

52. O.R.C. 955.222(B) states that “If a person who is authorized to enforce this chapter has reasonable cause to believe that a dog in the person’s jurisdiction is a nuisance dog, dangerous dog, or vicious dog, the person *shall* notify the owner, keeper, or harbinger of that dog, by certified mail or in person, of both of the following:

- (1) That the person has designated the dog a nuisance dog, dangerous dog, or vicious dog, as applicable;
- (2) That the owner, keeper, or harbinger of the dog may request a hearing regarding the designation in accordance with this section. The notice shall include instructions for filing a request for a hearing in the county in which the dog’s owner, keeper, or harbinger resides. (emphasis added).

53. Because Kumpf had knowledge of at least three violations of O.R.C. 955.22(C), he had reasonable cause to believe that a dog in his jurisdiction was a dangerous dog. Nevertheless, Kumpf recklessly and/or willfully avoided his mandatory duty to enforce O.R.C. 955.222(B) and designate the dog or dogs as dangerous.²³

54. According to the Norwalk Reflector: “Montgomery County, which has registered more than 60,000 dogs in 2013, has tagged just 12 dogs with designations of nuisance or dangerous since 2012. No dog was declared vicious during that time. State Rep. Jim Butler, R-Oakwood, noted that Franklin County designated 522 dogs in 2013. In Montgomery County that same year, just six dogs were given that label.”²⁴

55. Once a dog is designated as “dangerous,” the owners of the dog must obtain additional insurance, obtain a dangerous dog registration certificate, and submit to a host of additional regulatory burdens. These burdens are often so onerous that the dog owner willingly gives up the dog rather than face the consequences of a dangerous dog designation. As Kumpf

²³ Montgomery County Prosecutor Mat Heck Jr. and Commissioner Dan Foley referenced the dogs’ lack of designation as a reason why the dogs’ owners were not indicted on homicide or felony charges. See <http://www.whio.com/news/news/crime-law/local-officials-propose-vicious-dog-law-changes-tr/nhLGD/>

²⁴ <http://www.norwalkreflector.com/article/4236531>

stated in an email, “In many cases, after Animal Control Officers explain the requirements and potential penalties, the owners choose to relinquish dogs instead of having to comply with the restrictions.”

56. Kumpf also stated in the email that his animal control officers make an effort to persuade owners to voluntarily relinquish their dog, avoiding the designation process altogether, stating “We don’t want more of these dogs in our county,” Kumpf said. “We want less, and ideally, none. Allowing people to keep dangerous dogs poses an ongoing and continuous potential threat to public safety.”

57. Even if Nason and Custer had refused to give up the dogs, Kumpf could have sought and obtained the dangerous dog designation. That designation would have resulted in significant additional protections for Klonda when, on January 31, 2014, exactly one week before Klonda’s death, Custer obtained new registrations for the 2 dogs that killed Klonda.

58. Had Kumpf obtained a dangerous dog designation for these animals, the dogs would have been more expensive to register and Custer would have had to provide evidence of additional insurance for the dangerous dogs (O.R.C. 955.22(E)(1)) and confine the dogs in a locked enclosure (O.R.C. 955.22(D)(1)), among other protections. Kumpf’s own public statements suggest that this last best chance to save Klonda was squandered when Custer was allowed to obtain regular tags for the dogs that would kill Klonda one week later.

59. Moreover, Kumpf had knowledge that Klonda had complained that an animal that was the subject of multiple violations of O.R.C. 955.22(C) had charged her, attacked her, and was preventing the mail from being delivered on her street.

60. O.R.C. 955.11(A)(2) defines “nuisance dog” as “a dog that without provocation and while off the premises of its owner, keeper, or harbinger has chased or approached a person in

either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person.”

61. Because he had knowledge of “a dog that without provocation and while off the premises of its owner, keeper, or harbinger has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person,” Kumpf had reasonable cause to believe that a dog in his jurisdiction was a nuisance dog. Nevertheless, Kumpf recklessly and/or willfully avoided his mandatory duty to enforce O.R.C. 955.222(B) and declare the dog a nuisance dog.

62. Additionally, Kumpf knew that the dog or dogs that resided at 35 E. Bruce Avenue did not have current licenses in 2013. Yet ARC issued no citations for violations of Ohio’s licensure law (O.R.C. 955.21), and Kumpf did not seek to impound the dogs for failure to comply with the licensing requirements (see O.R.C. 955.12).

KUMPF’S RECKLESSLY AND/OR WILLFULLY FLAWED

INTERPRETATION OF OHIO LAW

63. The reasons that ARC failed to act include Kumpf’s recklessly and/or willfully flawed “education model” and his recklessly and/or willfully flawed reading of Ohio law. Indeed, Kumpf ratified the inaction of the other ARC employees by stating in an email just three days after Klonda’s death that despite his and the other employees’ complete failure to do anything in response to Klonda’s repeated complaints, “I am personally proud of each and every one of you.”

64. James Straley, executive director/chief dog warden of The Humane Society Serving Clark County, Inc., said in an interview with the Norwalk Reflector Newspaper that “if a Richey-type situation happened in his county, Straley said he would have ‘beefed up my patrols.’

‘I would be waiting out there every day for the dogs to step off the property,’ he said. ‘The people would know we’re watching them.’”²⁵

65. Under Kumpf’s direction, however, there are no patrols to “beef up” because Kumpf does not have his animal control officers proactively patrol Montgomery County. The most Kumpf is willing to authorize are either 7 or 10 day patrols that are in response to what Kumpf alone determines to be extraordinary circumstances. Kumpf did not order such a patrol in response to Klonda’s complaints.

66. Moreover, since Klonda’s death, Kumpf has repeatedly stated his belief that before an animal control officer can issue a citation for a “dog at large” violation (O.R.C. 955.22(C)), “the officer must witness the dog off the property and not under the owner’s immediate control.” According to Kumpf, O.R.C. 2935²⁶ provides that a citation cannot be issued “based on a third party witnessing the event. In each of [Klonda’s] calls, our officers did not witness the dogs off the property or not in the control of their owner. We educate when possible and issue citations when we witness the violation. If no officer witnesses the conduct, the number of complaints does not allow for a citation or other action. When we received a complaint and find no violation, that closes the complaint.”

67. O.R.C. 955.12 governs the duties of Dog Wardens under Ohio law and states that “wardens and their deputies shall have the same police powers as are conferred upon sheriffs and police officers in the performance of their duties as prescribed by sections 955.01 to 955.27, 955.59 to 955.38, and 955.50 to 955.53 of the Revised Code.

68. Contrary to Kumpf’s statements, nothing in O.R.C. 2935 limits the ability of a police officer (or a dog warden or deputy dog warden) from issuing a citation for a violation of

²⁵ <http://www.norwalkreflector.com/article/4236531>

²⁶ When a reporter asked a follow up question of what Kumpf was relying on for this belief, Kumpf pointed the reporter to O.R.C. 2935.

Ohio law that they did not personally witness. To the contrary, Ohio case law acknowledges that a law enforcement officer may issue a citation without having witnessed a misdemeanor. *City of Cleveland v. Nagy*, No. 56730, 1990 WL 43653, at *3 (Ohio Ct. App. Apr. 12, 1990) (“Police officers who investigate accidents are called to the scene many times after the accident has occurred; seldom do they observe an accident in progress. After arriving at the scene of an accident, officers conduct an investigation by interviewing the parties and witnesses, if any, and gather physical evidence, if any, at the scene. Based upon their investigation, in many instances an officer will issue a citation on the spot.”); *State v. Gress*, No. C.A. 16899, 1998 WL 321014, at *3 (Ohio Ct. App. June 19, 1998) (finding “unpersuasive” the argument that a police officer “could not issue a citation for a minor misdemeanor traffic offense he did not observe,” and stating “we note our inability to locate any prohibition against an officer issuing such a citation”)

69. Moreover, Kumpf’s insistence that an officer must witness a violation conflicts with his prior public statements. When Kumpf worked to assist officials investigating allegations of dog fighting in 2007, he dismissed concerns that there were no eyewitnesses as being a hindrance to prosecution: “Having no eyewitnesses is not unusual in dog fighting prosecutions,” Kumpf said. “Most of the cases rely heavily on circumstantial evidence because the secretive nature of the crime makes catching anyone in the act difficult,” he said.²⁷

70. Similarly here, it is difficult if not impossible for an animal control officer to witness a dog at large when, under Kumpf’s direction, the officers are not patrolling the county.

71. Additionally, what Kumpf has failed to publicly acknowledge is that his ARC officers were particularly unlikely to witness active violations of O.R.C. 955.22(C) because dispatchers working under his direction, and with his knowledge, routinely refused to answer

²⁷ “As Vick case loses bite, dog’s future is uncertain,” *Virginian-Pilot*, May 23, 2007.

phone calls requesting service during business hours, instead pushing a “divert” button on the phone and sending the calls to voicemail.

72. Indeed, nearly every call logged by ARC from Klonda indicates that it went to voicemail.

73. Klonda’s experience with ARC not answering the phone was not unique. On February 25, 2014, a citizen emailed Kumpf to tell him that no one answers the phone at ARC:

“I have a complaint – not sure who to register it with as I cannot even get a person on the line at the Animal Resource Center. Just voice mail or disconnect. We have had a large dog running loose through our complex since the first part of January, 2014. It does not belong in our complex as I already checked that out. I have left three messages with the Animal Resource Center and no response. Today, February 25th – I heard that dog barking outside. I looked out and it was after one of the stray outside cats. I went out and hollered at the dog to get out of here and it looked at me for a long time and then ran on down the sidewalk. I called the Sheriff’s department and reported the animal. As the weather gets warmer, I am sure this animal will be out more and then small children and pets will also be out and I am afraid that it will attack them as they run away from it. They do not know not to run from a dog. I do not want the same problem that the woman on East Bruce Avenue had and it is starting to go that way. I do not feel safe walking to the trash, to the car for fear that I will meet up with this dog. It is time the leash laws of Ohio are enforced and the Animal Resource Center is activated to do their job. How many people attacked, maimed or killed will it take for our government to address this problem that is growing daily. Thank you for your time.” Charlene Wethington.

74. In August 2014, the Montgomery County Animal Resource Committee met (without Kumpf present). During that meeting there were multiple references to the fact that ARC did not answer or return calls, even from the Montgomery County RDC (Regional Dispatch Center).

75. Indeed, after Klonda’s death, one of the main changes Kumpf instituted to improve ARC’s operation was the “elimination of voicemail on the general info numbers and dispatch numbers ...”

76. Other changes instituted by Kumpf were described in a May 15, 2014 memo “Field Procedure Revisions,” in which Kumpf writes to Amy Wiedeman (Administrative Services Director) that “We have increased our 7 day patrol cases substantially, taken additional steps to take enforcement action versus education as we have undertaken in the past and, with few exceptions, are citing all violations regardless of the seriousness of the infraction.”

77. Sadly, these changes were too little too late for Klonda.

KUMPF IS NOT ENTITLED TO IMMUNITY

78. Plaintiff brings this suit against Kumpf in his individual capacity as an employee of Montgomery County, and specifically disclaims any attempt to sue Kumpf in his official capacity.

79. Kumpf’s acts and omissions, as described above, were done in a reckless and/or willful manner and demonstrate the conscious disregard of or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances and is substantially greater than negligent conduct. Additionally, Kumpf acted and/or intentionally failed to do an act which was in his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct created an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent. Moreover, given the history of complaints about the dogs at 35 East Bruce Avenue being repeatedly loose and aggressive, that the dog or dogs were kept on a chain and underfed, and ARC’s internal records that the dogs were large-breed unaltered male dogs, Kumpf knew and/or had reason to know that his conduct involved a high probability of injury. Accordingly, Kumpf is not entitled to immunity pursuant to O.R.C. 2744.03(A)(6).

80. However, Kumpf is entitled to be indemnified and held harmless by Montgomery County pursuant to O.R.C. 2744.07(A)(2).

BCC IS NOT ENTITLED TO IMMUNITY

81. BCC, by and through ARC, acted with malicious purpose, in bad faith, or in a wanton or reckless manner in destroying at least the 2013 and 2014 truck logs, and is not entitled to immunity pursuant to O.R.C. 2744.03(A)(5).

FIRST CAUSE OF ACTION – WRONGFUL DEATH

82. The previous paragraphs are incorporated as if fully rewritten herein.

83. Plaintiff is entitled to bring a wrongful death action against Defendant Kumpf pursuant to O.R.C. 2125.01, et seq.

84. Plaintiff brings this wrongful death action through Barbara E. Schneider, Administrator of the Estate of Klonda S. Richey, Deceased.

85. As a direct and proximate result of Defendant Kumpf's reckless and/or willful conduct, described above, Klonda Richey was brutally killed on February 7, 2014.

86. As a further direct and proximate result of Defendant Kumpf's reckless and/or willful conduct, Klonda Richey's surviving next of kin all suffered a loss of society (including but not limited to loss of companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education), loss of prospective inheritance, and mental anguish.

87. As a further direct and proximate result of Defendant Kumpf's conduct, the Estate of Klonda S. Richey, Deceased, incurred funeral and burial expenses.

SECOND CAUSE OF ACTION – PERSONAL INJURY

88. The previous paragraphs are incorporated as if fully rewritten herein.

89. Plaintiff brings this claim for personal injuries through Barbara E. Schneider, Administrator of the Estate of Klonda S. Richey, Deceased.

90. As a direct and proximate result of Defendant Kumpf's reckless and/or willful conduct as described above, Klonda Richey sustained grievous personal injuries causing her to suffer extreme and prolonged conscious pain, distress, anguish, and suffering.

THIRD CAUSE OF ACTION – O.R.C. 2307.60

91. The previous paragraphs are incorporated as if fully rewritten herein.

92. O.R.C. 955.23 provides that “[n]o county dog warden shall willfully fail to perform his duties under section 955.12 of the Revised Code or other duties required of dog wardens.” O.R.C. 955.23.

93. O.R.C. 955.99(B) provides that the violation of O.R.C. 955.23 is a criminal offense. *See* O.R.C. 955.99(B) (“Whoever violates section ... 955.23 ... of the Revised Code is guilty of a minor misdemeanor.”).

94. O.R.C. 2921.44(E) provides that “[n]o public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant’s office, or recklessly do any act expressly forbidden by law with respect to the public servant’s office.”

95. O.R.C. 2921.44(F) provides that “[w]hoever violates this section is guilty of dereliction of duty, a misdemeanor of the second degree.”

96. O.R.C. 2307.60(A)(1) provides that “[a]nyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney’s fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under

the common law of this state, and may recover punitive or exemplary damages if authorized by section 2315.21 or another section of the Revised Code.” O.R.C. 2307.60(A)(1).

97. The Ohio Supreme Court has interpreted this provision to independently authorize a civil action for damages caused by criminal acts, unless otherwise prohibited by law. *See Jacobson v. Kaforey*, 2016-Ohio-8434, ¶12 (“The decision to create a civil cause of action for any person injured by a criminal act has been definitively made by the General Assembly.”).

98. As alleged throughout this complaint, Defendant Kumpf recklessly and/or willfully failed to perform numerous duties required of dog wardens under the Revised Code, including, but not limited to, the duty to designate a dangerous dog pursuant to O.R.C. 955.222(B) upon receiving reasonable cause to believe that a dog in his jurisdiction was a dangerous dog, and the duty to patrol Montgomery County pursuant to O.R.C. 955.12.

99. Defendant Kumpf’s reckless and/or willful failure to perform his statutory duties flow from his unilateral decision to change the focus of ARC from enforcing the Revised Code to educating dog owners.

100. No provision of the Revised Code prohibits a civil action for damages against a dog warden for recklessly and/or willfully failing to perform his duties.

101. Accordingly, because Defendant Kumpf’s reckless and/or willful failure to perform his duties is a crime under O.R.C. 955.23, O.R.C. 955.99(B), and O.R.C. 2921.44(F), Plaintiff is entitled to bring a civil action to recover “full damages” caused by Defendant Kumpf’s criminal acts. *See* O.R.C. 2307.60(A)(1).

FOURTH CAUSE OF ACTION- O.R.C. 149.351 (B)

102. The previous paragraphs are incorporated as if fully rewritten herein.

103. Plaintiff brings this action for violation of O.R.C. 149.351 (B) against Defendant BCC.

104. ARC officers that responded to the complaints about the dogs at 35 E. Bruce Street were required to document their daily activities in “truck logs” or “truck sheets.”

105. In November 2017, BCC, by and through ARC, destroyed truck logs from 2013-2014, including those from the ARC officers that responded to complaints about the dogs at 35 East Bruce Avenue.

106. Under Ohio’s records retention law, R.C. 149.351, all records are considered to be the property of the public office. That statute specifically prohibits unauthorized removal, destruction, mutilation, transfer, damages, or disposal of any record or part of a record, except as provided by law or under the rules adopted by the records commissions (i.e., pursuant to approved records retention schedules).²⁸ Therefore, in the absence of a law or retention schedule permitting disposal of particular records, an office lacks the required authority to dispose of those records and must maintain them until proper authority to dispose of them is obtained.

107. ARC’s Schedule of Records Retention and Disposition (Form RC-2), signed by Mark Kumpf and approved by the records commission, provides that “Truck Sheets (Daily log records of each Dept. Truck)” must be retained for at least two years. However, it also provides that “no record will be knowingly disposed of which pertains to any pending case, claim, action or request.” Accordingly, the destruction of the truck logs in November 2017 by BCC, by and through ARC, – long after Plaintiff filed this action in February 2015 – violated ARC’s document retention schedule.

²⁸ See R.C. 149.351(A) (“All records are the property of the public office concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code....”).

108. The destruction of the truck logs by BCC, by and through ARC, also violated Montgomery County's document retention policy: "In the event of a lawsuit against *an individual or office*, all documents, including electronically stored documents, that *may relate* to the lawsuit should be preserved. If there is doubt whether a category of documents is relevant, the Assistant Prosecuting Attorney handling the case should be consulted."²⁹ The truck logs at issue clearly "may relate" to a "lawsuit against an individual or office" and therefore should have been preserved. Instead, they were destroyed.

109. Moreover, even if the destruction were permitted under the relevant approved records retention schedule – it was not – BCC, by and through ARC, should have first filed a Certificate of Records Disposal (RC-3) with the State Archives at the Ohio History Connection at least fifteen business days prior to the destruction. *See* R.C. 149.38 (C)(3). Indeed, ARC's Schedule of Records Retention and Disposition (Form RC-2), signed by Mark Kumpf and approved by the records commission, specifies that documents to be destroyed are "[s]ubject to selection upon receipt of a Certificate of Records Disposal (RC-3)." No such form was submitted before BCC, by and through ARC, destroyed the truck logs.

110. Indeed, BCC, by and through ARC, could not have submitted a Form RC-3 prior to destroying the truck logs (as required by Ohio law) even if it wanted to because that form requires the applicant to certify (1) that the records were being disposed of in accordance with an approved document retention schedule (RC-2), and (2) that "[n]o record will be knowingly disposed of which pertains to any pending case, claim, action or request." BCC, by and through ARC, satisfied neither requirement.

²⁹http://www.mcoho.org/government/other_government_and_community_agencies/records_center_and_archives/montgomery_county_e-mail_record_policy.php (emphasis added).

111. Ohio Revised Code § 149.351 (B) states “Any person who is aggrieved by the removal, destruction, mutilation, or transfer of, or by other damage to or disposition of a record in violation of division (A) of this section, or by threat of such removal, destruction, mutilation, transfer, or other damage to or disposition of such a record, may commence either or both of the following in the court of common pleas of the county in which division (A) of this section allegedly was violated or is threatened to be violated:

(1) A civil action for injunctive relief to compel compliance with division (A) of this section, and to obtain an award of the reasonable attorney's fees incurred by the person in the civil action;

(2) A civil action to recover a forfeiture in the amount of one thousand dollars for each violation, but not to exceed a cumulative total of ten thousand dollars, regardless of the number of violations, and to obtain an award of the reasonable attorney's fees incurred by the person in the civil action not to exceed the forfeiture amount recovered.

112. As described above, Plaintiff was aggrieved by the illegal destruction of the truck logs, and is therefore entitled to bring a civil action for each violation.

113. Because the truck logs that were illegally destroyed number in the thousands, Plaintiff seeks the full damages, including attorney fees, available under § 149.351(A).

FIFTH CAUSE OF ACTION- SPOILIATION OF EVIDENCE

114. The previous paragraphs are incorporated as if fully rewritten herein.

115. Plaintiff brings this action for spoliation of evidence against Defendant BCC and Defendant Kumpf.

116. On February 5, 2015, Plaintiff filed a lawsuit regarding Klonda's wrongful death against entities including Mark Kumpf and ARC.

117. On or around March 31, 2015, Plaintiff's counsel sent ARC a public records request. That public records request called for the production of, among other things, “[r]ecords of calls regarding dogs located at the residence of Andrew Nason/Julie Custer, 35 E Bruce

Avenue, Dayton, Ohio, or in the vicinity of 31 East Bruce Avenue, Dayton, Ohio from December 2011 up to and including February 7, 2014.”

118. Notably, each ARC officer is required (and was required to do so at all times relevant to this Complaint) to complete a pre-printed “truck log” (aka “truck sheet”) on a daily basis to document their activities. The information each ACCO was required to provide on a daily basis includes: the date, the truck number they were operating that day, the time of their shift, the time they arrived at work, the time they leave ARC that day, the time they arrive at each call they respond to, the call number for each call, the location of each call they respond to, the time they leave each call that they respond to, the time that they take lunch (including the location), the time that they return to ARC at the end of their shift, and their mileage for the day. Additionally, ARC officers are required to list the number of animals rescued that day, and the number of citations issued that day.

119. On or around May 26, 2015, ARC responded to the public records request.

120. Notably, ARC’s production did not include “truck logs,” otherwise known as “truck sheets,” despite the fact that a truck log would have been created for each day that an officer responded to a complaint about the dogs at 35 East Bruce Avenue.

121. On July 15, 2015, Plaintiff filed an amended complaint that named only Mark Kumpf as a defendant, in his individual capacity only.

122. Defendant moved to dismiss the Amended Complaint, and this Court granted that motion on November 23, 2015. Plaintiff appealed the dismissal to the Second District Court of Appeals, and on July 29, 2016, the Second District reversed the dismissal. Defendant filed a request for the Supreme Court of Ohio to accept jurisdiction of the appeal, which was denied.

On April 6, 2017, this Court lifted the stay of proceedings that had been in place while the jurisdictional appeal was pending, and the case was restored to the active docket.

123. That same day, April 6, 2017, Plaintiff's counsel sent an email to Counsel for Mark Kumpf that stated in relevant part: "I would like to discuss the logistics of discovery in this case given that Plaintiff sued Mr. Kumpf in his individual capacity only, yet will require discovery from both Mr. Kumpf and ARC. The obvious, if inefficient, way to proceed is to have us serve discovery on Mr. Kumpf directly and then serve subpoenas on ARC and various ARC employees as necessary. Or, if your client is agreeable, we can discuss having Mr. Kumpf's response to the discovery requests include ARC documents and information in addition to his own."

124. On April 10, 2017, Counsel for Defendant responded in relevant part: "Mike and I spoke regarding the issues you raised in your April 6 email. *** We are agreeable to having Mark Kumpf's response to your client's discovery requests include ARC documents and information in addition to his own."

125. Plaintiff served her First Set of Interrogatories and Document Requests on Defendant Mark Kumpf on April 28, 2017. Each of the following document requests fairly called for the production of the ARC officer truck logs for the calls to 35 E. Bruce Avenue:

Doc. Request No. 9: All documents relating to Violation numbers V [REDACTED], V13-000503, V13-000959, V13-001036, V13-001283, V13-001313, and V13-001429.

Doc Request No. 20: All records, communications, and other documents that address, refer to, involve, or in any way relate to the property at 35 East Bruce Avenue. This request specifically includes, but is not limited to, memos; summaries; correspondence; telephone logs and recordings; complaints; database entries; meeting agendas and minutes; analyses; emails; text messages; internet and blog posts; Facebook, Twitter, and social media posts; interview notes and transcripts; publications; articles; television segments; and audio and video recordings.

Doc. Request No. 21: All records, communications, and other documents that address, refer to, involve, or in any way relate to dogs residing at 35 East Bruce Avenue, or roaming in the vicinity of 35 East Bruce Avenue. This request specifically includes, but is not limited to, memos; summaries; correspondence; telephone logs and recordings; complaints; database entries; meeting agendas and minutes; analyses; emails; text messages; internet and blog posts; Facebook, Twitter, and social media posts; interview notes and transcripts; publications; articles; television segments; and audio and video recordings.

Doc. Request No. 24: All documents related to the September 12, 2013 dispatch of Animal Control Officer Torbin Peterson to 35 E Bruce Avenue, including but not limited to any documents created as a result of that dispatch.

Doc. Request No. 41: “Documents sufficient to identify the number of miles driven annually from July 2006 to present by vehicles that are used by ARC animal control officers in the performance of their official duties.”

126. Defendant responded to Plaintiff’s document requests on or around June 8, 2017. No truck logs were produced. In response to Document Requests No. 9, 20, 21, and 24, Defendant instructed Plaintiff to “see documents attached” or “see documents previously produced in response to public records request.” In response to Document Request No. 41, Defendant stated “None.”

127. Counsel for Plaintiff took the depositions of two ARC employees, Elizabeth Cusick and David Walthall, on November 9, 2017. Mark Kumpf attended both depositions. Both witnesses testified that truck logs are created for each day that an ARC Officer responds to calls, and that the truck logs are collected daily by Ms. Cusick and placed by her in a file cabinet. Moreover, Ms. Cusick testified that she uses the truck logs to create monthly and yearly reports that include the number of miles driven by ARC Officers.

128. Mark Kumpf, the director of ARC and an animal control officer himself, had to know that truck logs exist and that they contained information responsive to Plaintiff’s discovery requests.

129. After the depositions of Cusick and Walthall, counsel for Plaintiff and Defendant discussed the fact that the truck logs were not produced and that that based on the testimony of Mr. Walthall and Mrs. Cusick, the truck logs contained information that was at least arguably responsive to Plaintiff's discovery requests. Counsel for Defendant agreed to look into this issue.

130. On November 20, 2017, Counsel for the parties had a phone conference where the truck logs were discussed. Counsel for Defendant again agreed to look into this issue.

131. On November 21, 2017, Counsel for Plaintiff sent a letter to Counsel for Defendant confirming the November 20 phone conference and again requesting the truck logs.

132. On December 5, 2017, Counsel for Plaintiff followed up with another request for the truck logs. Counsel for Defendant responded the same day via email with a request for a phone conference, and a call was scheduled for December 6.

133. On December 6, 2017, Counsel for Defendant informed Counsel for Plaintiff that he had gone out to ARC to try and find the truck logs, but was not successful. Counsel for Plaintiff pulled up Ms. Cusick's deposition transcript on his computer and read aloud to Counsel for Defendant the relevant portions of Ms. Cusick's deposition where she discusses what truck logs are and how they are stored. Counsel for Defendant asked Counsel for Plaintiff to scan and email to him the relevant pages so he could take them with him the next time he went to ARC. Counsel for Plaintiff sent those pages to Counsel for Defendant via email on December 6 at 2:57 pm.

134. On December 23, 2017, Counsel for Defendant stated that ARC Supervisor Robert Sexton was attempting to find the truck logs.

135. On January 10, 2018, Counsel for Defendant stated, “I hope to have an update for you later this week on what additional documents can be located, as well and the Truck Logs, specifically for Brian Baker.”

136. Eventually, after significant back and forth, Counsel for Defendant produced truck logs for 2015, 2016, and 2017. However, on February 8, 2018, Counsel for Defendant confirmed that the truck logs prior to 2015 had been destroyed.

137. Because of significant problems with Defendant Kumpf’s discovery responses, including but certainly not limited to the failure to produce the truck logs, Plaintiff issued a Rule 30(b)(5) deposition notice to the ARC, primarily on ARC’s document retention and destruction policies. That deposition took place on March 7, 2018.

138. During that deposition, the ARC designee, Robert Sexton, produced a handwritten list on notebook paper that stated that the 2013 and 2014 truck logs had been destroyed in November 2017. Mr. Sexton also testified that the 2011 and 2012 truck logs had also been destroyed, but he was not aware of any written record documenting when that had happened.

Defendants’ failure to preserve the truck logs

139. Montgomery County’s document retention policy states: **Documents that should be preserved.** In the event of a lawsuit against *an individual or office*, all documents, including electronically stored documents, that may relate to the lawsuit should be preserved. If there is doubt whether a category of documents is relevant, the Assistant Prosecuting Attorney handling the case should be consulted.”³⁰

³⁰ http://www.mcoho.org/government/other_government_and_community_agencies/records_center_and_archives/montgomery_county_e-mail_record_policy.php (emphasis added).

140. ARC Supervisor Robert Sexton testified in the March 2018 deposition that he was aware of Montgomery County's document retention policy in November 2017, and had been for several years, before BCC, by and through ARC, destroyed the truck logs in November 2017.

141. The truck logs BCC, by and through ARC, destroyed clearly "may relate" to a "lawsuit against an individual or office" and therefore should have been preserved. Instead, they were destroyed.

142. Moreover, as alleged earlier, Plaintiff's counsel sent ARC a public records request on or around March 31, 2015. That public records request included the following instruction:

Notice to Preserve Records

By copy of this letter, we are placing the Montgomery County Animal Resource Center on notice of its responsibility to preserve and refrain from destroying all potentially discoverable information. We request that you ensure the preservation of all materials, records, and documents concerning or related to vicious and/or at-large dogs, communication failures, Klonda Richey, Andrew Nason, Julie Custer, and/or the dogs located at 35 Bruce Avenue, Dayton, Ohio, from December 2011 up to and including March 2015, that are in the possession or control of the Montgomery County Animal Resource Center, whether or not you consider them to be subject to disclosure under Ohio's public records statute. The potential for litigation in a related matter necessarily attaches a high degree of significance, materiality, and relevance to the preservation of all records, electronic and otherwise, relating to the dog mauling death of Klonda Richey. Accordingly, employees of the Montgomery County Animal Resource Center and its agents must not destroy, delete, alter, or otherwise damage or conceal any such information. The documents that must be preserved include all documents, tangible things, and electronically stored information (collectively referred to herein as "documents") relating in any way to the dog mauling death of Klonda Richey. Any failure to preserve these items can result in severe sanctions.

143. The truck logs that BCC, by and through ARC, destroyed concern or relate to the dogs located at 35 Bruce Avenue, Dayton, Ohio, from December 2011 up to and including March 2015, and therefore the truck logs should have been preserved pursuant to Plaintiff's request from March 2015. Instead, the truck logs were destroyed.

144. Under Ohio law, a spoliation claim contains the following elements: "(1) pending or probable litigation involving the plaintiff, (2) knowledge on the part of defendant that

litigation exists or is probable, (3) willful destruction of evidence by defendant designed to disrupt plaintiff's case, (4) disruption of the plaintiff's case, and (5) damages proximately caused by the defendant's acts[.]” *Smith v. Howard Johnson Co., Inc.*, 67 Ohio St.3d 28, 615 N.E.2d 1037, 1038 (1993).

145. At the time BCC, by and through ARC, destroyed the truck logs from 2013-2014 (and even possibly those from 2011-2012), BCC, by and through ARC, and Kumpf were aware of pending or probable litigation involving the plaintiff.

146. At the time BCC, by and through ARC, destroyed the truck logs from 2013-2014 (and even possibly those from 2011-2012), BCC, by and through ARC, and Kumpf were aware that litigation existed or was probable.

147. Plaintiff alleges, based upon information learned to date and as alleged above, and subject to further discovery, that Defendants Kumpf and/or BCC, by and through ARC, acted willfully to destroy the truck logs so as to disrupt Plaintiff’s case.

148. At the time BCC, by and through ARC, destroyed the truck logs from 2013-2014 (and even possibly those from 2011-2012), Defendants BCC, by and through ARC, and Kumpf were aware that Plaintiff was seeking to obtain these records and that the records contained highly relevant information – documented responses by ARC to the complaints made about the dogs that killed Klonda Richey. The destruction of these records has disrupted Plaintiff’s case and, to the extent Plaintiff is unable to prove her case against Defendant Kumpf, will have caused her damages.

WHEREFORE, Plaintiff demands judgment against Defendants and requests an award of damages as follows:

1. Economic and non-economic monetary damages for each of the claims for relief in an amount to be determined at trial but in excess of the jurisdictional limit of this court;

2. Funeral and burial expenses;
3. Pre-judgment interest, attorneys' fees, and all costs and expenses associated with bringing this action;
4. Full damages, including attorney fees, available under § 149.351(A);
5. Such other and further relief as to which Plaintiff is entitled, and/or which this Court deems appropriate.

Respectfully submitted,

/s/Todd B. Naylor

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Trial Attorneys for Plaintiff

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues in this action.

/s/Todd B. Naylor

Todd B. Naylor

PROBATE COURT OF MONTGOMERY COUNTY, OHIO
ALICE O. MCCOLLUM, JUDGE

ESTATE OF KLONDA S. RICHEY

CASE NO. 2014EST00253

FILED
PROBATE COURT
JUN 18 - 6 P 3:00
ALICE O. MCCOLLUM
PROBATE JUDGE
MONTGOMERY CO OHIO

FIDUCIARY'S ACCEPTANCE
(EXECUTOR/Administrator)

I, the undersigned, hereby accept the duties which are required of me by law, and such additional duties as are ordered by the Court. As executor/administrator of the estate I will:

- 1) Give notice of the admission of the will to probate to all next of kin and legatees and devisees and file a certificate of notice of probate of will form with the court within 2 months of my appointment.
- 2) Make and file any inventory of the real and personal assets of the estate within 3 months of my appointment, or within such time as extended by the Court.
- 3) Deposit funds which come into my hands in a lawful depository located within this State and keep estate funds in separate estate accounts at all times during the estate administration.
- 4) Invest all funds in a lawful manner.
- 5) Make and file a final and distributive account within 6 months of my appointment unless this time period is extended by law or order of the Court.
- 6) File all estate or income tax documents as required by law.
- 7) Maintain adequate insurance to reasonably protect any property that I hold as a fiduciary.
- 8) Obtain Court approval prior to any personal purchases or other dealings.
- 9) Obtain Court approval for the payment of attorney fees before a final account is prepared unless paid with the written consent of all beneficiaries in a solvent estate.

I acknowledge the following: 1) That I am required to notify this Court of a change in my permanent address; 2) That I may be removed as fiduciary if: a) I fail to notify this Court of a change in my permanent address or b) I fail to perform my duties or obey all orders of the Court; 3) That I may be subject to civil and criminal penalties for improper use of the property that I hold as a fiduciary.

Date

Fiduciary

Barbara E. Schneider
BARBARA E. SCHNEIDER

2014EST00253



M.C. FORM 4.8 - FIDUCIARY'S ACCEPTANCE

02/27/12

2014EST00253

Redacted Copy LIGHT TO VIEW

2014EST00253



Ohio Department of Health
VITAL STATISTICS
CERTIFICATE OF DEATH

State File No. 2014013625

1115479

014000218

1. Decedent's Name KLONDA SUE RICHEY		2. Sex Female		3. Date of Death (Use Day/Month/Year) February 07, 2014	
4. Date of Birth (Use Day/Month/Year) May 11, 1856		5. Date of Birth (Use Day/Month/Year) May 11, 1856		6. City or Town, State and Zip Code DAYTON, OHIO	
7. County MONTGOMERY		8. City or Town DAYTON		9. State OHIO	
10. Social Security Number [REDACTED]		11. Marital Status at Time of Death Divorced (and not remarried)		12. Decedent's Education ASSOCIATE DEGREE (E.G., AA)	
13. Decedent's Race White		14. Decedent's Religion None		15. Decedent's Ethnicity None	
16. Father's Name JOHN THOMAS RICHEY		17. Mother's Name (prior to last marriage) MILDRED B BALDRIDGE		18. Decedent's Relationship to Deceased Brother	
19. Decedent's Address (Street and Number) 31 East Bruce Avenue		20. Decedent's Address (Street and Number) 31 East Bruce Avenue		21. Decedent's Address (Street and Number) 31 East Bruce Avenue	
22. Place of Death Residence		23. Date of Death February 13, 2014		24. Name and Complete Address of Funeral Facility BAKER-HAZEL & SNIDER FH	
25. Place of Burial (Name of Cemetery, University, or other place) Miami Valley Crematory		26. Date of Burial February 13, 2014		27. Name and Complete Address of Funeral Facility 5555 PHILADELPHIA DR DAYTON, OH 45416	
28. Name of Person Issuing Certificate JORDAN ROY		29. Date of Issuance 2-13-2014		30. Signature of Issuer <i>Roy D Jordan</i>	
31. Date of Death 0316 ESTIMATED		32. Date Pronounced Dead (Specify Day) 02/07/2014		33. Date of Burial February 12, 2014	
34. Name (Last, First, Middle) and Address of Person who Reported Cause of Death UPTEGROVE, RUSSELL LOUIS, 361 W THIRD ST DAYTON, OH 45402		35. License Number 35,077287		36. Date of Death February 12, 2014	
37. Immediate Cause (Other than or in addition to underlying cause) Exsanguination Due To Extensive Soft Tissue Trauma		38. Underlying Cause (If known or likely that should be reported to a death) None		39. Manner of Death MINUTES	
40. Was an Autopsy Performed? Yes		41. Was an Autopsy Available Prior to Completion of Cause of Death? Yes		42. Manner of Death Accident	
43. Date of Injury (Month/Day/Year) February 07, 2014		44. Time of Injury 03:00		45. Place of Injury (e.g., Decedent's home, construction site, restaurant, wooded area) Yard	
46. Location of Injury (Street and Number or Rural Route Number, City or Town, State) 31 East Bruce Avenue, DAYTON, OHIO		47. Describe how Injury Occurred: Attacked By Dogs		48. If Transportation Injury, Specify:	

393270102
1616788

FILED
PROBATE COURT
ALICE D. MCCOLLUM
PROBATE JUDGE
2014 MAR - 6 P 3:00

FRANKLIN COUNTY
DOCUMENT RECORDING
COPY AS SHOWN TO THE PUBLIC
THE OFFICE OF THE COUNTY CLERK
FE 13-14021008
Roy D Jordan
ROYE, JAMES H. CLERK
RECEIVED 2/13/2014
COUNTY CLERK