

No. _____

**In The
Supreme Court of the United States**

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ZSUZSA BLAKELY,

Petitioner,

vs.

LOS ANGELES SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS, et al.,

Respondents.

—————◆—————
**On Petition For Writ Of Certiorari
To The California Court Of Appeal,
Second Appellate District, Division Seven**

—————◆—————
PETITION FOR A WRIT OF CERTIORARI

—————◆—————
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QUESTIONS PRESENTED FOR REVIEW

1. Is the summary judgment motion procedure in California unconstitutional under the Fourteenth Amendment where, as here, the forced euthanasia, destruction, and killing of dogs occurs in connection with the denial of an opportunity to be heard to Petitioner, who had custody of the dogs before their confiscation by respondents under color of State authority?

2. Was the act of putting the dogs to death under color of State authority, and against the protest of Petitioner, cruel and unusual punishment under the Eighth Amendment? Or, since the dogs were impounded by the respondent The Los Angeles Society for the Prevention of Cruelty to Animals (“LASPCA”), was the dogs’ euthanasia excessive bail under the Eighth Amendment?

3. Does it matter for purposes of analyzing the dogs’ rights under the two clauses of the Eighth Amendment to avoid their euthanasia, death, and destruction against the protest of Petitioner if dogs have the status of chattels and not persons under the Eighth Amendment?

PARTIES TO THE PROCEEDINGS

The Petitioner is Zsuzsa Blakely, the plaintiff and appellant in the proceedings in the California courts. (App. 2.) The respondents are LASPCA and its humane officers and employees Madeleine Bernstein, Dr. Karen Halligan, and Steven Pacheco, defendants and respondents in the proceedings below. (App. 2.)

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PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice John Roberts and Honorable Associate Justices of the Supreme Court, pursuant to United States Supreme Court Rule of Court Rule 13, Petitioner Zsuzsa Blakely prays that a Writ of Certiorari issue to the California Court of Appeal, Second Appellate District, Division Seven.

**OPINIONS AND ORDERS BELOW**

Petitioner appealed from a final judgment entered on September 24, 2009 in Los Angeles County Superior Court, Case No. BC404155, in favor of defendants LASPCA, Madeleine Bernstein, Dr. Karen Halligan, and Steven Pacheco and against petitioner on her first amended complaint against them. (App. 18-19.) In an unpublished opinion filed October 19, 2011, the California Court of Appeal, Second Appellate District, Division Seven, affirmed the judgment in Case No. B220682. (App. 1-17.) On January 25, 2012, the California Supreme Court denied petitioner's petition for review of the decision of the Court of Appeal in California Supreme Court Case No. S198653. On April 11, 2012, petitioner mailed the United States Supreme Court her first Application for Extension of Time to File Petition for Certiorari, Application No. 11A991. On April 20, 2012, the Application was presented to Justice Kennedy, who the same day extended the time to and including May 24, 2012.



JURISDICTION

The date of the decision of the highest state court to review the merits of the constitutional issues raised in this Petition for Certiorari was January 25, 2012, when in Case Number S198653, the California Supreme Court denied the petition for review of the opinion of the Court of Appeal. This Court has jurisdiction to review the decision of the California Court of Appeal under Title 28, Section 1257(a) of the United States Code.



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const., amend. XIV, § 1.

No State shall name or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1257(a) (1988).

[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may

be reviewed by the Supreme Court by writ of certiorari where the validity or treaty of a statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Cal. Code Civ. Proc., § 437c.

* * *

(h) If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.

Cal. Corp. Code, § 14502

* * *

(h)(1)(A) A level 1 humane officer is not a peace officer, but may exercise the powers of a peace officer at all places within the state in order to prevent the

perpetration of any act of cruelty upon any animal and to that end may summon to his or her aid any bystander. A level 1 humane officer may use reasonable force necessary to prevent the perpetration of any act of cruelty upon any animal.

(B) A level 1 humane officer may make arrests for the violation of any penal law of this state relating to or affecting animals in the same manner as any peace officer and may serve search warrants.

(C) A level 1 humane officer is authorized to carry firearms while exercising the duties of a humane officer, upon satisfactory completion of the training specified in subparagraph (D), if the requirements in subparagraph (F) are met.

(D) A level 1 humane officer shall, prior to appointment, provide evidence satisfactory to the appointing society that he or she has successfully completed the following requirements:

(i) At least 20 hours of a course of training in animal care sponsored or provided by an accredited postsecondary institution or any other provider approved by the California Veterinary Medical Association the focus of which shall be the identification of disease, injury, and neglect in domestic animals and livestock.

(ii) At least 40 hours of a course of training in the state humane laws relating to the powers and duties of a humane officer, sponsored or provided by an accredited postsecondary institution, law enforcement

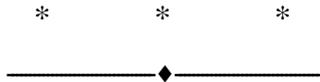
agency, or the State Humane Association of California.

(iii) The basic training for a level 1 reserve officer by the Commission on Peace Officer Standards and Training pursuant to paragraph (1) of subdivision (a) of Section 832.6 of the Penal Code.

(E) A person shall not be appointed as a level 1 humane officer until he or she meets the criteria in Sections 1029, 1030, and 1031 of the Government Code. A humane society or society for the prevention of cruelty to animals shall complete a background investigation, using standards defined by the Commission on Peace Officer Standards and Training as guidelines for all level 1 humane officer appointments.

(F)(i) Notwithstanding any other provision of this section, a level 1 humane officer may carry a firearm only if authorized by, and only under the terms and conditions specified by, his or her appointing society.

(ii) Notwithstanding any other provision of this section, a level 1 humane officer shall not be authorized to carry a firearm unless and until his or her appointing society has adopted a policy on the use of deadly force by its officers and the officer has been instructed in that policy.



STATEMENT OF THE CASE

According to her first amended verified complaint for damages, petitioner was rescuing stray dogs and providing them shelter at her home. (1 CT 96-97.) Employees of respondent LASPCA, wielding questionable search warrant and seizure powers under California Corporations Code section 14502, subdivisions (h)(1), entered her home and confiscated the dogs that petitioner had saved from abandonment. (App. 3-4.)

Petitioner's first amended complaint filed January 6, 2009, raised nine causes of action under state law, including one for "declaratory relief to restrain and enjoin [LASPCA] from euthanizing, destroying or killing any of the dogs." (App. 6.) However, the lawsuit was too late to stop the euthanasia of three of the dogs, who, according to a report by defendant Karen Halligan dated January 2, 2006, were killed while petitioner was unable to get them back from the custody of LASPCA, which had questionable authority to seize them. (App. 5.)

"On June 11, 2009, LASPCA filed a motion for summary judgment and/or adjudication of each of the causes of action." (App. 7.) Before the hearing on August 28, 2009, petitioner filed a request for a continuance along with a request for judicial notice of 17 exhibits, including a police report containing petitioner's version of events, and a separate statement of material facts. (App. 7, 21.) Petitioner's request for a continuance explained that she had

been trying since January 10, 2007 to obtain a police report of the incident and that she finally received a copy of it on August 21, 2009. (App. 8.)

The trial court denied petitioner's request for a continuance and granted LASPCA's motion for summary judgment. (App. 8, 21-22.) In so ruling, the trial court assessed whether, under California Code of Civil Procedure section 437c, subdivision (h), "facts essential to justify opposition may exist but cannot, for reasons stated, then be presented" to warrant a continuance of the hearing. (App. 23.)



REASONS FOR GRANTING THE WRIT

I. The Decision Of The California Court Of Appeal To Uphold Summary Judgment Without Providing Petitioner An Opportunity To Be Heard On Facts Essential To Oppose Summary Judgment Deprived Her Of Due Process Under The Fourteenth Amendment

California's statute authorizing motions for summary judgment, California Code of Civil Procedure section 437c(h), has a provision that permits adjudication without any hearing at all. (App. 30.) In its opinion affirming the California Superior Court's granting summary judgment to LASPCA, the California Court of Appeal relied on this provision. (App. 11-12.) The difference between a fair hearing and no

hearing at all is that the latter is a complete abrogation of the due process rights to an opportunity to be heard as guaranteed by the First Clause of the Fourteenth Amendment. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950) (observing that a fundamental requisite of due process of law is the opportunity to be heard).

The Superior Court mechanistically applied the California Evidence Code to discount the otherwise admissible evidence that petitioner lodged in support of her opposition to LASPCA's summary judgment motion. (App. 12-13.) However, state evidentiary rules "may not be applied mechanistically to defeat the ends of justice." *Green v. Georgia*, 442 U.S. 95, 97, 99 S. Ct. 2150, 60 L. Ed. 2d 738 (1979).

Summary adjudication of plaintiff's ninth cause of action for "declaratory relief to restrain and enjoin [LASPCA] from euthanizing, destroying or killing any of the dogs" (App. 6) deprived petitioner of the opportunity to be heard "at a meaningful time and in a meaningful manner," *Rabon v. City of Seattle (Rabon II)*, 107 Wash.App. 734, 743 (2001) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)). With respect to the three dogs already destroyed (App. 5), the harm suffered to petitioner was irreparable even keeping alive the ninth cause of action. However, with respect to the remaining dogs that were impounded, summary adjudication of the ninth cause of action without a hearing resulted in the loss of a meaningful

opportunity to be heard under the Fourteenth Amendment because there was still time to prevent the dogs' irreparable destruction. (See *Phillips v. San Luis Obispo County Dept.*, 228 Cal.Rptr. 101, 106 (Cal. App. Dist. 1986) ("Courtesy hearing" provided to owners of dog, after dog was seized for destruction for having bitten child, did not satisfy requirements of due process, regardless of whether pertinent issues were fairly decided or whether owners lacked defense on merits.); see also *Mansour v. King County*, 128 P.3d 1241, 1247-48 (Wash. App. 2006) (Due process required owner to have the ability to subpoena records and witnesses in his defense against orders to remove and to destroy dog.).

II. This Court Should Grant Certiorari And Rule In Its Opinion That California's Destruction Of The Dogs Against Petitioner's Protest Violated The Eighth Amendment

A. If dogs have the status of persons, then the act of putting the dogs to death under color of State authority, and against the protest of petitioner, was cruel and unusual punishment under the Eighth Amendment

If dogs have the status of persons, then the act of putting the dogs to death under color of State authority, and against the protest of petitioner, was cruel

and unusual punishment under the Eighth Amendment.

B. If dogs have the status of chattels or property, then the act of putting the dogs to death while impounded under color of State authority, and against the protest of petitioner, was excessive bail under the Eighth Amendment

Granting certiorari on the second and third questions presented would involve an inquiry about the framer's intent in amending the United States Constitution with the Excessive Bail clause of the Eighth Amendment. Petitioner believes the amendment is to protect a property owner's rights when property is confiscated by the State.

Asset forfeiture is a civil action generally done in connection with property confiscated after a criminal conviction. Here, the dogs, if having the status of chattels or property under the Eighth Amendment, were able to be prevented from being put to death if petitioner in an asset forfeiture action could show equitable title to the dogs. The Excessive Bail clause of the Eighth Amendment was violated by LASPCA's acts of destroying the dogs before petitioner could act to establish equitable title to them. As the dogs' last caretaker, petitioner had a constitutional right to decide what was best for them when in ill health.



CONCLUSION

Wherefore, it is respectfully requested that the petition for writ of certiorari be granted and the decision of the Court of Appeal be reversed.

Respectfully submitted,

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**NOT TO BE PUBLISHED IN
THE OFFICIAL REPORTS**

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IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

ZSUZSU BLAKELY,
Plaintiff and Appellant,
v.

THE LOS ANGELES SOCIETY
FOR THE PREVENTION OF
CRUELTY TO ANIMALS, et al.,
Defendants and Respondents.

B220682
(Los Angeles
County Super. Ct.
No. BC404155)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Conrad Aragon, Judge. Affirmed.

The Law Office of Stan Stern and Stan Stern for Plaintiff and Appellant.

Garrett & Tully, Ryan C. Squire and Jennifer R. Slater for Defendants and Respondents.

Zsuzsa Blakely (Blakely) appeals from the judgment entered after an order granting summary judgment in favor of defendants The Los Angeles Society for the Prevention of Cruelty to Animals, and its humane officers and employees Madeline Bernstein, Dr. Karen Halligan and Steven Pacheco (collectively SPCALA) in this action for various torts including assault and battery, conversion, trespass to chattels, theft and conversion, intentional infliction of physical injury and emotional distress, and libel. Because there are no triable issues of fact based on admissible evidence, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

1. The underlying animal cruelty case

On December 27, 2006, SPCALA Officers Steven Pacheco and Tony Manzanares arrived at Blakely's residence to investigate a report of animal cruelty which came from Blakely's neighbors. The officers attempted to contact Ms. Blakely but were unable to do

¹ The factual description is taken from SPCALA's motion for summary judgment unless otherwise indicated.

so. They detected strong odors of animal feces and urine from Blakely's property. They also heard as many as six dogs barking and noticed Blakely's side and rear yard were unkept with trash and several piles of fecal matter. The officers further discovered Blakely was on a "do not adopt" list dating back to June 2006.

Officer Pacheco determined he needed a search warrant to enter Blakely's residence safely and remove any animals in need of assistance. On January 8, 2007, Officer Pacheco obtained a search warrant signed by Judge Patricia Schnegg.

On January 10, 2007, Officer Pacheco assisted other officers from Animal Protective Services, the Pasadena Humane Society and the Southeast Area Animal Control Authority in seizing 17 dogs from Blakely's home.

Upon announcing the "knock and notice" warning, Blakely appeared in the side yard behind a chain link fence and began shouting obscenities at Officer Pacheco and the entry team. While the search warrant was being executed Officer Pacheco removed Blakely from the house and had Captain Havard take custody of her. According to declarations filed by the officers, Blakely continued to be aggressive and physical while the dogs were being removed. After the house was secured, Officer Pacheco moved Blakely to the back seat of the SPCALA vehicle while they completed collecting the dogs and items identified in the search warrant. Before leaving the property, SPCALA

officers presented Blakely with an inventory list of items seized from her home, including the 17 dogs.

Dr. Karen Halligan, director of veterinary services at SPCALA, determined the dogs were in grave condition and in need of immediate medical attention due to severe neglect. She prepared a report as follows: "On 1-10-07 I examined seventeen dogs taken from a single resident home. All of the dogs I examined were dehydrated, hungry and afflicted with at least one type of mange and numerous skin infections. Several of the dogs were in critical condition with thick green discharge from their swollen eyes; severe hair loss and thickening of the skin from chronic infestation of mites, severe itching and secondary skin infections, weakness and difficulty walking due to dehydration and overgrown nails. These dogs required immediate veterinary care to prevent them from succumbing to the numerous, overwhelming, long-standing medical conditions coupled with the fact that they were malnourished and emaciated from lack of basic care such as food and water. It is my professional opinion that several of these dogs were on the brink of dying."

Blakely was charged with 17 counts of animal cruelty under Penal Code section 597 and two counts of battery under Penal Code sections 242 and 243. Blakely, through her counsel, attempted to challenge the search warrant but the court denied Blakely's several motions to quash the search warrant finding, SPCALA had authority to enter the home and the warrant was properly obtained.

On December 12, 2008, while represented by counsel, Blakely pled nolo contendere to four counts of animal cruelty. The other 15 counts (for animal cruelty and battery on personnel) were dismissed. As part of her conviction and sentence Blakely was ordered to serve 180 days in jail (imposition of which the court suspended), she was placed on probation, ordered to pay fines, barred from owning, possessing, maintaining or harboring any animals, and she forfeited all dogs to SPCALA.

2. The civil action filed by Blakely

On December 18, 2008, Blakely filed suit against SPCALA. Thereafter, Blakely asked the court to enjoin SPCALA from euthanizing any dogs while she was appealing her criminal convictions. In order to allow Blakely to appeal her criminal convictions, the court temporarily restrained euthanization that was not necessary to prevent further pain and suffering.

On January 2, 2009, Dr. Halligan provided an updated report as follows: “There are currently eleven remaining dogs in our care from this 2-year-old animal abuse case. There were originally seventeen dogs. Two did not survive the abuse and were humanely put to sleep approximately eighteen months ago. . . . Since [December 2008] one dog was humanely put to sleep and five were successfully adopted out. . . . All eleven dogs had their serious and life threatening conditions medically resolved and are awaiting to be adopted out.” Based on this report, the court modified

the temporary restraining order to reflect the dogs may be adopted out but not euthanized unless medically necessary.

On January 6, 2009, Blakely filed her first amended complaint alleging causes of action for (1) assault and battery, (2) trespass to chattel, (3) theft and conversion, (4) intentional infliction of personal physical injury and emotional distress, (5) violation of Civil Code section 3340 for wrongful injuries to animals (mistakenly pled by Blakely as a violation of *Code of Civil Procedure* section 3340); (6) accounting, (7) libel, (8) claim and delivery to obtain possession of the dogs; and (9) declaratory relief to restrain and enjoin SPCALA from euthanizing, destroying or killing any of the dogs.

Blakely alleged defendants were not peace officers and did not satisfy statutory requirements to be able to execute search warrants. She alleged defendants broke down her door, held guns to her head including a gun with a grenade launcher, threatened to taser her, knocked her down to her knees, bashed her head into a bookcase, repeatedly sexually assaulted her, forcibly kidnapped her from her home, handcuffed her, and falsely arrested her in one of defendants' cars. She also alleged defendants looted her home, stole many items, kidnapped all of her 17 dogs, refused to show her a search warrant, and refused to give her any accounting of items taken. She further claimed she was wrongfully charged with criminal animal cruelty and pled no contest in order to settle her case.

On May 15, 2009, after a hearing, the trial court ordered Blakely to make restitution to SPCALA in the amount of \$246,480.98 based on her conviction of a crime that entitles the victim to restitution.

3. Summary Judgment Motion of SPCALA

On June 11, 2009, SPCALA filed a motion for summary judgment and/or adjudication of each of the causes of action. In its motion, SPCALA argued summary judgment was proper because Blakely failed to present evidence establishing the requisite elements of each claim. Moreover, SPCALA argued Blakely's claims were either time-barred or failed because SPCALA's conduct was privileged and/or authorized by a valid search warrant. Furthermore, the sentencing order in Blakely's criminal action precludes her demand for return of the dogs seized. The motion was supported by statements of undisputed facts submitted by SPCALA defendants and the matter was set to be heard on August 28, 2009.

On August 27, 2009, the day before the hearing date, Blakely filed an ex parte application to continue the trial date together with an appendix of exhibits, a request for judicial notice of those exhibits, and a separate statement of undisputed material facts in opposition to the summary judgment motion. Among the papers lodged by Blakely in opposition was a 12-page police report (prepared more than two years after the incident) containing her written statement to the police asserting her version of the incident.

Blakely argued, among other things, “undoubtedly one of the most important documents in establishing my case is a police report. I tried ever since January 10, 2007, to obtain a police report against defendants, but defendants convinced the LAPD of falsehoods in order to prevent me [from] obtaining a police report, as is the pattern and practice of defendants. I was finally permitted to make a police report on July 31, 2009, and the report was completed by the detective on August 7, 2009, but in attempting to get a copy of it, I discovered that it was almost impossible to get a copy of it in less than two months from the date requested or subpoenaed. However, I was finally able to get a copy of the police report on August 21, 2009. . . .” The trial court deemed Blakely’s ex parte application as one seeking to continue the trial date and the hearing date on the motion for summary judgment. The court denied Blakely’s request for continuance but read and considered all the papers lodged by Blakely in opposition to the summary judgment even though the documents were untimely filed.

On August 28, 2009, the trial court granted SPCALA’s motion for summary judgment finding there were no triable issues of material fact, and judgment was entered on September 24, 2009. Blakely filed a timely notice of appeal on November 23, 2009.

DISCUSSION

Standard of Review

The standard of review on appeal after an order granting summary judgment is well settled. “A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We review a trial court’s grant of summary judgment de novo, considering all of the evidence the parties offered in connection with the motion except that which the court properly excluded and the uncontradicted inferences the evidence reasonably supports. [Citation.] In the trial court, once a moving defendant has ‘shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,’ the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff ‘may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action. . . .’ (Code Civ. Proc., § 437c, subd. (o)(2); see *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855.)” (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476-477.)

SPCALA was entitled to summary judgment.

A party opposing summary judgment must present admissible evidence. (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at pp. 851-852.) “To avoid

summary judgment, admissible evidence presented to the trial court, not merely claims or theories, must reveal a triable, material factual issue. [Citation.] Moreover, the opposition to summary judgment will be deemed insufficient when it is essentially conclusory, argumentative or based on conjecture and speculation.” (*Wiz Technology, Inc. v. Coopers & Lybrand* (2003) 106 Cal.App.4th 1, 11.)

The police report.

Blakely contends on appeal the trial court’s refusal to admit into evidence the police report in her appendix of exhibits constituted reversible error. We disagree.

In granting the motion for summary judgment, the trial court found “Among other defects, the request for judicial notice cites to [Evidence] Code §§ 451, 452, and 453, but none of the exhibits found in the plaintiff’s appendix is properly characterized as (a) the decisional, constitutional or statutory law of any jurisdiction, or (b) and (c) the regulations or enactments or official acts of a federal or state legislative, executive or judicial body, or any public entity, or (d) and (e) the records or rules of any federal or state court of record, or (f) the law of nations, and (g) and (h) facts and propositions of common knowledge or not reasonably subject to dispute.

“At the same time, there are some exhibits many of which are collections of disparate documents found in the plaintiff’s exhibits that do fall under the

categories described in [Evidence] Code [§§]451 and 452, as, for example, the record of plaintiff's plea and conviction, but the court has already taken judicial notice of those documents in connection with defendants' request for judicial notice.

"Moreover, none of the documents found in plaintiff's appendix is properly authenticated, which prevents the court from receiving them, and their contents, into evidence, even in the absence of judicial notice.

"Finally, the court has reviewed plaintiff's arguments and her declaration in assessing whether plaintiff has made a proper showing under CCP § 437c(h) 'that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented' to warrant a continuance of the hearing upon defendants' motion. For example, at paragraph 11 of her declaration, plaintiff explains that she had difficulty obtaining the police report (Appendix, Ex. 4), that she has been financially unable to retrieve her medical records (some or all of which appear in her Appendix, Ex. 5), that she needs discovery, including testimonial evidence from 'victims' of defendants' alleged pattern and practice of killing animals. No potential witnesses are named, however, and the medical records and police report included in the appendix are neither subject to judicial notice nor authenticated. Plaintiff also states (at ¶ 14) that she has 'been able to obtain and assemble the documentation to establish my case against defendants and the evidence to prevail in trial.' But she does not describe this documentation, or attempt to demonstrate how it

will traverse, for example, defendants' testimonial evidence of the events of January 10, 2007. To the extent that the 'documentation' to which she refers is found in plaintiff's appendix, as noted above, it is neither authenticated nor subject to judicial notice."

The trial court correctly concluded the police report was not properly authenticated. The report was not authenticated by its purported author, Officer Stogsdill, or a custodian of records for the Los Angeles Police Department. Nor did Blakely's declaration in support of her opposition state she was attaching a true and correct copy of the police report.

Blakely urges on appeal the police report is self authenticating. She first claims "A duplicate, which is any copy that accurately reproduces the original . . . is secondary evidence of a writing's content [and] the content of a writing may be proved by otherwise admissible secondary evidence unless a genuine dispute arises concerning material terms of the writing or justice requires the exclusion, or admission of the secondary evidence would be unfair." Furthermore, Blakely contends "[p]ursuant to Evidence Code section 1420, a writing may be authenticated by evidence that it was received in response to a communication sent to the person claimed by the proponent to be its author, as stated above. . . . Contrary to the trial court's ruling . . . the police report . . . was in fact authenticated by virtue of appellant's August 26, 2009 declaration, which relates appellant's request for a copy of the police report and that she received one on August 21, 2009, two weeks after it was completed by

the detective, on August 7, 2009, as a result of having so requested.”

Even if authenticated, however, the police report was inadmissible hearsay offered to prove the facts recited therein. The writing was not made at or near the time of the incident in January 2007, rather it was prepared over two years later in August 2009, and the document is not trustworthy because the report contains Blakely’s own self-serving written statements describing her version of the events. Moreover, detectives determined that SPCALA personnel were serving a search warrant upon Blakely and were acting within their authority, namely the authority under section 14502 of the Corporations Code which states: “A level 1 humane officer is not a peace officer, but may exercise the powers of a peace officer at all places within the state in order to prevent the perpetration of any act of cruelty upon any animal and to that end may summon to his or her aid any bystander. A level 1 humane officer may use reasonable force necessary to prevent the perpetration of any act of cruelty upon any animal.”

Blakely’s declaration.

Blakely contends summary judgment must be reversed on her causes of action for assault and battery, intentional infliction of physical and emotional distress, theft and conversion because she filed a declaration under penalty of perjury directly asserting her version of the January 10, 2007 incident and

contradicting assertions found in respondents' supporting declarations.

However, turning to the declaration filed by Blakely in opposition to the motion for summary judgment, Blakely states: "I have ample evidence against defendants, but the sudden change in circumstances . . . has prevented me from timely being able to fully complete my opposition papers to defendants' motion for summary judgment and file them within the statutory deadline, as well as to obtain all of the necessary evidentiary documentation to support same." Blakely continues: "I currently do not have the ability, and has [*sic*] not had the ability since my temporary job began, to complete the discovery necessary to obtain all of the evidentiary documentation vital to support my opposition to the motion for summary judgment, and will not be able to do so as long as I am working in my temporary full-time current job."

The trial court concluded, and we agree, "plaintiff's declaration is fraught with argument, opinion and unsubstantiated conclusions. Nowhere in her August 26 declaration does she offer any statement directly contradicting the assertions found in the defendants' supporting declarations narrating the events of January 10, 2007."

In moving for summary judgment, plaintiff may not rely upon the mere allegations of denials of the pleadings to show that a triable issue of material fact exists but, instead, must set for the specific facts

showing that a triable issue of material fact exists as to that cause of action or a defense thereto. (Code Civ. Proc., § 437c, subd. (p)(2).) It was incumbent on Blakely to demonstrate with admissible evidence the existence of a triable issue of material fact. At the hearing on respondents' motion for summary judgment, Blakely was given the opportunity to present evidence, legal authorities, and oral argument in opposition to the motion. At that time Blakely stated "I feel that this is very unfair as far as the summary judgment decision. I clearly have a case that is very meritorious. I have federal authorities that are very strong that, unfortunately, I could not timely file because, due to exigent circumstances, I was not able to get my documents in time . . . [¶] and I am very stunned, really, frankly, because I think this is very clearly a case of persons who lack statutory authority to do any of what they did. . . . [¶] They have managed to – they not only came in and sexually assaulted me, brutalized me, held me at gunpoint with assault weapons, with grenade launchers, falsely arrested me. [¶] They served – they didn't even serve a warrant on me. They have no statutory authority to execute warrants or to have warrants issued to them. [¶] . . . I was prosecuted in the criminal case falsely. . . ."

As stated in *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th 826, 847 "[P]laintiff may not make it to trial 'by merely asserting' that a reasonable trier of fact 'might, and legally could, disbelieve' their denial 'without offering any concrete evidence from which' such a trier of fact could find in [her] favor.

“[D]iscredited testimony is not [normally] considered a sufficient basis for drawing a contrary conclusion.”” (*Id.* at p. 847.) In addition, because Blakely does not challenge defendants’ showing and the burden had shifted to her, we need not review each cause of action de novo in this court.

In sum, the search warrant lawfully permitted SPCALA and its humane officers to search Blakely’s home and seize any living or dead creature. Blakely’s challenges to the warrant and seizure were rejected by the court. Indeed, Blakely’s conviction and her numerous challenges have been considered and denied.² Furthermore, Blakely’s allegations are inconsistent with her nolo contendere plea. The trial court properly granted summary judgment based on Blakely’s failure to submit admissible evidence demonstrating triable issues of material fact.

² Blakely filed numerous writ petitions in the appellate division of the Los Angeles County Superior Court and in this court (ie. requesting among other things the court vacate her plea bargain in the criminal matter, and the court stay enforcement of the plea agreement including forfeiture of the 17 dogs), all of which were denied. Blakely filed a petition for review in the California Supreme Court which was also denied.

DISPOSITION

The judgment is affirmed. Respondents to recover costs on appeal.

WOODS, J.

We concur:

PERLUSS, P. J.

JACKSON, J.

**SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
CENTRAL DISTRICT**

ZSUZSA BLAKELY,
Plaintiff,

vs.

THE LOS ANGELES
SOCIETY FOR THE
PREVENTION OF
CRUELTY TO
ANIMALS aka
SPCALA; MADELINE
BERNSTEIN; KAREN
HALLIGAN; STEVEN A
PACHECO aka STEVEN
ADRIAN PACHECO; and
DOES 1 through 100,
Defendants.

CASE NO. BC404155
(Hon. Conrad Aragon,
Dept. 49)

**[PROPOSED] JUDG-
MENT FOLLOWING
GRANTING OF MO-
TION FOR SUMMARY
JUDGMENT IN FAVOR
OF DEFENDANTS
SPCALA, MADELINE
BERNSTEIN,
DR. KAREN HALLIGAN
AND STEVEN
PACHECO ON FIRST
AMENDED COM-
PLAINT OF PLAINTIFF
ZSUZSA BLAKELY**

(Filed Sep. 24, 2009)

DATE: August 28, 2009
TIME: 8:30 a.m.
DEPT.: 49

Action Filed:
December 18, 2008
Trial Date:
September 28, 2009

On August 28, 2009, the Court granted the motion of defendants spcaLA, Madeline Bernstein,

Dr. Karen Halligan and Steven Pacheco for summary judgment on the First Amended Complaint of plaintiff Zsuzsa Blakely. That motion disposed of the case in its entirety.

In accordance with the Court's order, and good cause appearing therefor, IT IS HEREBY ORDERED, ADJUDGED AND DECLARED as follows: judgment is hereby entered in favor of defendants spcaLA, Madeline Bernstein, Dr. Karen Halligan and Steven Pacheco and against plaintiff Zsuzsa Blakely. Plaintiff shall take nothing by way of her First Amended Complaint. Defendants spcaLA, Madeline Bernstein, Dr. Karen Halligan and Steven Pacheco to recover costs in the sum of \$_____.

DATED: SEP 24 2009

/s/ Conrad Aragon

HONORABLE CONRAD ARAGON
JUDGE OF THE SUPERIOR COURT

[Proof Of Service And Service List Omitted In Printing]

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES**

DATE: 08/28/09	DEPT. 49
HONORABLE CONRAD R. ARAGON JUDGE	P. SOLIS DEPUTY CLERK ELECTRONIC RECORDING MONITOR
HONORABLE #3 JUDGE PRO TEM	L. RAU CSR#10782 Reporter
M. LOMELI C.A. Deputy Sheriff	

8:30 am	BC404155
	ZSUZSA BLAKELY VS SPCALA ET AL
	Plaintiff Zsuzsa Blakely (x) Counsel
	Defendant Jennifer Slater (x) Counsel

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANTS AND CROSS-COMPLAINANTS, SPCLA, MADELINE BERNSTEIN, DR., KAREN HALLIGAN AND STEVEN PACHECO, FOR SUMMARY JUDGMENT;

Matter is called for hearing.

Motion is granted. Defendants and cross-complainants
The Los Angeles Society for the Prevention of Cruelty

to Animals (“SPCALA”), Madeline Bernstein, Karen Halligan and Steven Pacheco, collectively, “defendants,” move for summary judgment or, in the alternative, for summary adjudication of the claims set forth in the complaint of plaintiff and cross-defendant Zsuzsa Blakely (“Blakely”). The motion for summary judgment is granted, as is defendants’ request for judicial notice.

Based upon the record submitted, the court finds the following facts, as set forth in the separate statement of undisputed facts (“SUF”), to be undisputed: SUF ## 1-15, 28-34, 43, 44, 46 48, 52, 82, 83, 86-92, 95, 97, 98-102, 106 112, 114-116, 119-122, 132, 133. Thus the following issues are determined as without substantial controversy, Issue numbers 1-8, 10 14, 16-19.

On August 27, the day before the hearing, plaintiff appeared in court on an ex parte application seeking to continue the trial date. Among the papers lodged with the court in connection with that ex parte application were (1) an “Appendix” of exhibits consisting of seventeen separately tabbed exhibits, (2) a request for judicial notice of those seventeen exhibits, and (3) a separate statement of undisputed material facts (“SUF”) consisting of fifty-four pages and setting for one-hundred thirty-four propositions of fact. The court deemed plaintiff’s ex parte application as one not only seeking to continue the September 28, 2009 trial date, but as one also seeking to continue the hearing date on defendants’ motion for summary judgment or summary adjudication.

The court denied the request for a trial continuance but ruled that all those papers, and only those papers, lodged by plaintiff in opposition to the summary judgment, summary adjudication motion would be read and considered by the court, even though untimely; provided that those papers were personally served on defendants' counsel by 3 p.m. on August 27. The court prohibited any reply to be served and filed.

The court has now read and considered plaintiff's opposition, although there was no separately lodged memorandum of points and authorities in opposition to the motion, and finds nothing in the exhibits or in plaintiff's declaration dated August 26, 2009, which requires a different outcome than that recited above.

Among other defects, the request for judicial notice cites to Ev. Code §§451, 452, and 453, but none of the exhibits found in the plaintiff's appendix is properly characterized as (a) the decisional, constitutional or statutory law of any jurisdiction, or (b) and (c) the regulations or enactments or official acts of a federal or state legislative, executive or judicial body, or any public entity, or (d) and (e) the records or rules of any federal or state court of record, or (f) the law of nations, or (g) and (h) facts and propositions of common knowledge or not reasonably subject to dispute.

At the same time, there are some exhibits many of which are collections of disparate documents found in the plaintiff's exhibits that do fall under the categories described in Ev. Code §451 and 452, as, for

example, the record of plaintiff's plea and conviction, but the court has already taken judicial notice of those documents in connection with defendants' request for judicial notice.

Moreover, none of the documents found in plaintiff's appendix is properly authenticated, which prevents the court from receiving them, and their contents, into evidence, even in the absence of judicial notice.

In addition, plaintiff's declaration is fraught with argument, opinion and unsubstantiated conclusions. Nowhere in her August 26 declaration does she offer any statement directly contradicting the assertions found in the defendants' supporting declarations narrating the events of January 10, 2007.

Finally, the court has reviewed plaintiff's arguments and her declaration in assessing whether plaintiff has made a proper showing under CCP §437c(h) "that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented" to warrant a continuance of the hearing upon defendants' motion. For example, at paragraph 11 of her declaration, plaintiff explains that she had difficulty obtaining the police report (Appendix, Ex. 4), that she has been financially unable to retrieve her medical records (some or all of which appear in her Appendix, Ex. 5), that she needs discovery, including testimonial evidence from "victims" of defendants' alleged pattern and practice of killing animals. No potential witnesses are named, however, and the

medical records and police report included in the appendix are neither subject to judicial notice nor authenticated. Plaintiff also states at ¶14) that she has “been able to obtain and assemble the documentation to establish my case against defendants and the evidence to prevail in trial .” But she does not describe this documentation, or attempt to demonstrate how it will traverse, for example, defendants’ testimonial evidence of the events of January 10, 2007. To the extent that the “documentation” to which she refers is found in plaintiff’s appendix, as noted above, it is neither authenticated nor subject to judicial notice.

The motion for summary judgment is granted.

Post-Mediation Status Conference date of September 9, 2009, Final Status Conference date of September 21, 2009, and trial date of September 28, 2009 are all advanced to this date and vacated.

Counsel for defendants is directed to prepare and lodge a proposed judgment by September 4, 2009.

Counsel for defendants is ordered to give notice.

**CLERK’S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 8-28-09

upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 8-28-09

John A. Clarke, Executive Officer/Clerk

By: /s/ _____
P. Solis, Deputy

Jennifer Slater
Garrett & Tully
225 S Lake Ave Suite 1400
Pasadena CA 91101

Minutes Entered 08/28/09 County Clerk

App. 26

Court of Appeal, Second Appellate District,
Division Seven – No. B220682

S198653

IN THE SUPREME COURT OF CALIFORNIA

En Banc

(Filed Jan. 25, 2012)

ZSUZSA BLAKELY, Plaintiff and Appellant,

v.

THE LOS ANGELES SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS, et al.,
Defendants and Respondents.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice
