

Facsimile Transmission

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TO: Nicole Palotta
FAX NO.: 707-795-7280
FROM: Cindy McNeely
DATE: Wednesday, March 1, 2006
RE: Re: [unclear] - Porras vs. Miami Dade Animal Control

MESSAGE

The fax is long, I'm sending it in two-

- ① Cover sheet + Complaint 1-9. (10 pages)
- ② Complaint 10-15 + exhibits (4)
Answer 6 pages (18 pages)

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**TOTAL NUMBER OF PAGES INCLUDING COVER PAGE:
HARD COPY TO FOLLOW BY MAIL:**

Yes/No

1 of 2 faxes (10 pages)
2 of 2 faxes (18 pages)

34. The acts of gross negligence and carelessness alleged against the Defendants were acts done at the operational level of action, as distinguished from planning level decisions, in that the Defendants, pursuant to Miami-Dade County's charter power, undertook to render a service to the public. In undertaking to render such service the Defendants assumed the obligation to exercise reasonable care.

35. At all times material to this Complaint, the ASD was acting in its animal sheltering and adopting capacity as an agency of the MDPD and MDC. The gross negligence of the ASD occurred within the scope of its agency relationship with the MDPD and MDC. The gross negligence of the ASD occurred during an act committed in furtherance of the ASD's agency relationship with the MDPD and MDC.

COUNT I
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

36. Plaintiff, MRS. RODRIGUEZ-PORRAS, realleges the allegations in Paragraphs 1 through 35, as if fully set forth herein.

37. The ASD's actions, acting through its agents and employees within the scope of their employment, in the intentional killing of Cowboy constituted extreme and outrageous conduct.

38. The ASD's intentional killing of Cowboy constituted gross negligence as the harm to the property of MRS. RODRIGUEZ-PORRAS in the form of the dog Cowboy, was clear and present, the ASD was aware of such clear and present danger, and omitted to take any action in

the face of such danger. Moreover, the ASD's conduct in killing Cowboy was grossly reckless or demonstrated such great indifference to the property rights of MRS. RODRIGUEZ-PORRAS as to be imputedly malicious.

39. As a result of the ASD's killing of Cowboy, MRS. RODRIGUEZ-PORRAS suffered damages, including severe emotional distress.

40. MDPD is vicariously liable for the intentional infliction of emotional distress by their agent, the ASD.

41. MDC is vicariously liable for the intentional infliction of emotional distress by their agencies, the MDPD and the ASD.

WHEREFORE, MRS. RODRIGUEZ-PORRAS prays for a judgment finding the ASD, MDPD and MDC liable for intentionally inflicting emotional distress upon her. MRS. RODRIGUEZ-PORRAS demands a trial by jury.

COUNT II
CONVERSION (1)

42. MRS. RODRIGUEZ-PORRAS realleges the allegations in Paragraphs 1 through 35, as if fully set forth herein.

43. Upon learning that Cowboy was at the shelter, MRS. RODRIGUEZ-PORRAS entrusted Cowboy to the ASD under circumstances that created a bailment agreement or relationship.

44. MRS. RODRIGUEZ-PORRAS had an immediate right to possession of Cowboy while he was being sheltered by the ASD.

45. By killing Cowboy, the ASD intended to perform an affirmative act of dominion and control over him in breach of its bailment agreement with MRS. RODRIGUEZ-PORRAS, and converted to its own use the dog named Cowboy of incalculable value, which was then the property of plaintiff. This act interfered with MRS. RODRIGUEZ-PORRAS's right of possession.

46. As a result of the ASD's breach of the bailment which resulted from taking MRS. RODRIGUEZ-PORRAS's property into its control, MRS. RODRIGUEZ-PORRAS has been deprived of the use thereof. The ASD's breach proximately caused a loss or injury to MRS. RODRIGUEZ-PORRAS sufficient to constitute or cause conversion.

47. The ASD's act of killing Cowboy legally caused the interference with MRS. RODRIGUEZ-PORRAS's chattel interests in Cowboy.

48. As a direct and proximate result of the wrongful act of the defendant MRS. RODRIGUEZ-PORRAS suffered damages, including severe emotional distress.

49. The ASD's conversion of Cowboy was malicious, grossly reckless, or demonstrated such great indifference to the property rights of MRS. RODRIGUEZ-PORRAS as to be imputedly malicious.

50. MDPD is vicariously liable for the conversion of Cowboy by their agent, the ASD.

51. MDC is vicariously liable for the conversion of Cowboy by their agencies, the MDPD and the ASD.

WHEREFORE, MRS. RODRIGUEZ-PORRAS prays for a judgment finding the ASD, MDPD and MDC liable for converting Cowboy. MRS. RODRIGUEZ-PORRAS demands a trial by jury.

COUNT III
WRONGFUL DISPOSITION OF BODY

52. MRS. RODRIGUEZ-PORRAS realleges the allegations in Paragraphs 1 through 35 as if fully set forth herein.

53. The ASD's intentional and unauthorized incineration of Cowboy constituted extreme and outrageous conduct.

54. The ASD's conduct in incinerating Cowboy's body constituted gross negligence as the harm to the property of MRS. RODRIGUEZ-PORRAS in the form of the dog Cowboy was clear and present, the ASD was aware of such clear and present danger, and omitted to take any action in the face of such danger. Moreover, the ASD's conduct in incinerating Cowboy's body was grossly reckless or demonstrated such great indifference to the property rights of MRS. RODRIGUEZ-PORRAS as to be imputedly malicious.

55. As a result of the ASD's incineration of Cowboy's body, MRS. RODRIGUEZ-PORRAS suffered damages, including severe emotional distress.

56. MDPD is vicariously liable for the wrongful disposition of Cowboy's body by their agent, the ASD.

57. MDC is vicariously liable for the wrongful disposition of Cowboy's body by their agencies, the MDPD and the ASD.

WHEREFORE, MRS. RODRIGUEZ-PORRAS prays for a judgment finding the ASD, MDPD and MDC liable for intentionally inflicting emotional distress upon her. MRS. RODRIGUEZ-PORRAS demands a trial by jury.

COUNT IV
NEGLIGENCE

58. MRS. RODRIGUEZ-PORRAS realleges the allegations in Paragraphs 1 through 35 as though fully set forth herein.

59. The ASD owed a duty of care to MRS. RODRIGUEZ-PORRAS to follow its own ordinances and (a) file a missing-animal report, if it did not; (b) locate the missing-animal report; (c) contact MRS. RODRIGUEZ-PORRAS and tell her that her missing animal had been found; and (d) not kill her missing animal for at least five days thereafter.

60. The ASD owed a duty of care to MRS. RODRIGUEZ-PORRAS to isolate or take safety precautions to keep an animal with a surgically implanted identification microchip who had been telephonically claimed by his owner from being lost or killed while in the ASD's care.

61. The ASD, acting through its agents and employees within the scope of their employment, breached all of the foregoing duties of care to MRS. RODRIGUEZ-PORRAS.

62. The breach of the duty of care owed to MRS. RODRIGUEZ-PORRAS by the ASD amounts to gross negligence as the harm to the property of MRS. RODRIGUEZ-PORRAS in the form of the dog Cowboy was clear and present in that the breaches of the duties owed to MRS. RODRIGUEZ-PORRAS would probably and most likely lead to euthanasia which is fatal, the ASD was aware of such clear and present danger, and omitted to take any action in the face of such danger. Moreover, the ASD's conduct in failing to follow its own ordinances and in

failing to isolate or take safety precautions to keep Cowboy from being improperly euthanized was grossly reckless or demonstrated such great indifference to the property rights of MRS. RODRIGUEZ-PORRAS as to be imputedly malicious.

63. As a proximate result of the ASD's breach of its duties of care to MRS. RODRIGUEZ-PORRAS, she suffered damages.

64. MRS. RODRIGUEZ-PORRAS's damages include mental anguish and pain and suffering.

65. MDPD is vicariously liable for the gross negligence of their agent, the ASD.

66. MDC is vicariously liable for the gross negligence of their agencies, the MDPD and the ASD.

WHEREFORE, MRS. RODRIGUEZ-PORRAS prays for a judgment finding the ASD, MDPD and MDC liable for negligence. MRS. RODRIGUEZ-PORRAS demands a trial by jury.

Dated this 24th day of October, 2005.



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Cynthia A. McNeely
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Attorneys for Plaintiff

Exhibit 1

date picked up
↓

MIAMI-DADE POLICE ANIMAL SERVICES UNIT ACTIVITY REPORT

AGID J. GUTIERREZ • 6860 ZONE 1987 VEH. # 26608 DAY SAF DATE 8-6, 2005
 AGID 319 MILEAGE 50740 MILEAGE 50917 SHIFT 7 A.M. to 3 P.M.
 WALK-THRU RECHECK WARNING RECHECK P.G.O. RADIO # 606840

SIGNAL	TIME RECEIVED	ARRIVAL TIME	IN SERVICE	COMPLAINANT'S NAME	COMPLAINANT'S/OWNER'S ADDRESS	ENFORCEMENT REF. IMP. C.A.S. WARN. ETC.
					Unit Station	Roll Call
09	7:00	✓	7:45			41-07PER 15
13	7:45	✓	8:00	DISPATCH	22073 SW 92 PL	PUD-POI Pit Bull mix
15	8:00	8:40	8:55	MOPD	29935 SW 148 BL	PUD - THEY SAID THE DOG
13	8:55	9:05	9:15	DISPATCH	13610 SW 283 TER	PUD - THEY SAID THE DOG
15	9:15	9:35	9:50	MOPD	13400 SW 26th	PUD - POI DOG
13	9:50	9:55	10:10	DISPATCH	13743 SW 12th	PUD - POI DOG
13	10:10	10:20	10:35	DISPATCH	12000 SW 8th	PUD - G.O.A. AREA - ORV
15	10:35	10:50	11:10	MOPD	10900 SW 10th	PUD - POI DOG
13	11:10	11:25	11:40	DISPATCH	22073 SW 92 PL	41-ALOREB-REP
13	11:40	11:50	12:05	DISPATCH	11952 SW 216 ST	41- Q.N. 1 DOG
13	12:05	12:30	12:46	DISPATCH	9640 SW 9th	41- WE ALREADY Q.D. DOG
15	12:45	✓	1:15	HUSTA P.D.	1001 SE 20th	15-07 PER DESP.
12	1:15	1:15	1:45		312 ST SW 16th	REF PERSONAL
05	1:45	2:30	5:00		Unit Station	TRIP 4 DOGS
06	5:00	5:00	✓		Unit Station	TRIP 4 DOGS

11401-77 1/00

Exhibit 2

TEXT FIELD(S) :

ANIMAL_NAME	ANIMAL_SIZE	ANIMAL_TYPE	PRIMARY_COLOR	SEX	PRIMARY_BREED						
MED DOG	GOLD M	GOLDEN RETR									
FIRST_NAME	LAST_NAME	PHONE_NUMBER	STREET_NO	STREET_DIR	STREET_NAME	STREET_TYPE	CIT				
JORGE	GUTIERREZ	7401	NW 74	ST	MIAMI	33166					
FIRST_NAME	LAST_NAME	PHONE_NUMBER	STREET_NO	STREET_DIR	STREET_NAME	STREET_TYPE	CIT				
ANAYS	RODRIGUEZ-PORRAS	3865786	13363	SW	66 TER	MIAMI	33183				

ENTRY FIELD(S) :

Kennel No: N32
Status: STRAY WAIT
Tag: 226C6D0075
:
Activity No:
: 1
Animal ID: A812000
Source ID: P999319
Owner ID: P284940
Crossing/Comment: VIC OF 13400 SW 36 ST
Jurisdiction: DADE
Type: STRAY
Subtype: FIELD
OS Source:
OS Reason:
By: JG
Date: 08/06/05
Time: 14:35
Due Out: 08/17/05
Total: 1
Cond: NORMAL
Hold: Y
Request: HOLDNOTIFY
Type: EUTH
Subtype: KENNEL CO
Dose: 10.00
By: AV
Date: 08/13/05
Time: 09:30
Weight: 82.00
Receipt No:
: 2

LISTBOX (ES) :

Kennel	Animal	Type	Size	Sex	Color	Breed	Intake	Date	Intake	Type	Hold	Request	
Out	Date	Out	Type	Color2	Breed2	Collar	Color	Collar	Type	Yrs	Mon	Feet	Legs
Crossing	Markings	Kennel	Animal	Type	Size	Sex	Color	Breed	Intake	Date			
Intake	Type	Hold	Request	Out	Date	Out	Type	Color2	Breed2	Collar	Color		
Collar	Type	Yrs	Mon	Feet	Legs	Crossing	Markings						

Exhibit 3

Kennel No:N32

Animal ID: **A812000**
 Age /Sex: **MALE**
 Breed: **GOLDEN RETR MIX**
 Color: **GOLD & TAN**
 Intake Date: **08/08/2005**
 Intake Type: **STRAY**
 Due Out Date: **08/17/2005**
 Hold/Adopted? **HOLDNOTIFY**
 Tag **226C6D0075**



MALE DOG

Additional Information:
 (Markings/Identifiers)

Called 8-10-05 TALKED TO AUNT *Ryan*
M. James

- DO NOT WRITE BELOW THIS LINE - FOR ASU VETERINARIAN SECTION ONLY -

Health Problem Under Treatment Do Not Adopt!

Condition on Intake: **NORMAL**

Temperament Evaluation
 Date: _____

Friendly: _____
 Fearful/Shy: _____
 Growls: _____
 Barker: _____
 Other: _____

By: _____

Vaccination	Date
<input type="checkbox"/> DHLPP	_____
<input type="checkbox"/> RABIES	_____
<input type="checkbox"/> FVCRPC	_____
<input type="checkbox"/> Bordetella	_____
<input type="checkbox"/> Deworming	_____
<input type="checkbox"/> Sprayed/Neutered	_____
<input type="checkbox"/> Other Information	_____

Exhibit 4

Pre Euthanasia Report For 8/12/2005

C23 A811913 1 - (M) 10 YRS, TAN, COCKER SPAN DOG DUE OUT DATE: 08/12/05
 REASON: EUTH MEDICAL

M05-033091
 hold for rescue 8-12-05
 9337 rylands

B16 A811940 1 - (F) 2 MTHS, BLACK, LABRADOR RETR MIX DOG DUE OUT DATE: 08/06/05
 REASON: EUTH UPPER RESP
 HAS HOLD FOR POSS ADOPT

M05-032979
 RUBEN CATANESE
 305-282-1619
 W/P/U 08/10/05
 BETWEEN 4-6 PM
 MJ
 M05-033027
 RUBEN CATANESE
 305-282-1619
 W/P/U 08/10/05
 BETWEEN 4-6 PM
 MJ=

THE DOG IS SICK HAS NASAL DISCHARGE, HIGH FEVER (103.6), CALLED THE CUSTOMER AT 8:35 (8-9-05) HE WILL COME IN FOR ANOTHER DOG MS

N32 A812000 1 - (M) UNKNOWN AGE, GOLD / TAN, GOLDEN RETR MIX DOG DUE OUT DATE: 08/17/05
 REASON: EUTH KENNEL CO
 HAS HOLD FOR HOLD NOTIFY

M05-032941
 CHIP # 228C8D0075
 M05-033094
 CHIP # 228C8D0075

If not informed
 called owner talked to mother / will p/u dog
 9337 rylands

N23 A812068 1 - (F) UNKNOWN AGE, BLACK / WHITE, TERRIER MIX DOG DUE OUT DATE: 08/12/05
 REASON: EUTH UPPER RESP

N25 A812108 1 - (F) UNKNOWN AGE, BROWN / BLACK, SHEPHERD MIX DOG DUE OUT DATE: 08/13/05
 REASON: EUTH KENNEL CO

WW58 A812241 1 - (M) UNKNOWN AGE, BROWN / WHITE, PIT BULL DOG DUE OUT DATE: 08/08/05
 REASON: EUTH UPPER RESP

C14 A812286 1 - (F) UNKNOWN AGE, RED / BLACK, GOLDEN RETR MIX DOG DUE OUT DATE: 08/14/05
 REASON: EUTH UPPER RESP

WW29 A812363 1 - (F) UNKNOWN AGE, BLACK / WHITE, PIT BULL DOG DUE OUT DATE: 08/14/05
 REASON: EUTH MEDICAL

6

RECEIVED
DEC. 15 2005
BY: _____

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 05-17525-CA-01

ANAYS RODRIGUEZ-PORRAS,

Plaintiff,

v.

MIAMI-DADE ANIMAL SERVICES,
MIAMI-DADE POLICE DEPARTMENT,
MIAMI-DADE COUNTY,

Defendants.

ANSWER AND DEFENSES

Defendants Miami-Dade County (the "County"), Miami-Dade Police Department ("MDPD"), and Miami-Dade Animal Services ("MDAS"), collectively "Defendants," hereby file this Answer and Defenses to the Amended Complaint:

ANSWER

1. Defendants deny the allegations contained in paragraph 1 of the Amended Complaint.
2. Defendants deny the allegations contained in paragraph 2 of the Amended Complaint.
3. Defendants admit the allegations contained in paragraph 3 of the Amended Complaint.
4. Defendants deny the allegations contained in paragraph 4 of the Amended Complaint.
5. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 5 of the Amended Complaint.
6. Defendants deny the allegations contained in paragraph 6 of the Amended Complaint.
7. Defendants admit the allegations contained in paragraph 7 of the Amended Complaint.

8. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 8 of the Amended Complaint.
9. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 9 of the Amended Complaint.
10. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 10 of the Amended Complaint.
11. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 11 of the Amended Complaint.
12. Defendants deny the allegations contained in paragraph 12 of the Amended Complaint.
13. Defendants admit the allegations contained in paragraph 13 of the Amended Complaint.
14. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 14 of the Amended Complaint.
15. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 15 of the Amended Complaint.
16. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 16 of the Amended Complaint.
17. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 17 of the Amended Complaint.
18. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 18 of the Amended Complaint.
19. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 19 of the Amended Complaint.

20. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 20 of the Amended Complaint.
21. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 21 of the Amended Complaint.
22. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 22 of the Amended Complaint.
23. Defendants deny the allegations contained in paragraph 23 of the Amended Complaint.
24. Defendants deny the allegations contained in paragraph 24 of the Amended Complaint.
25. Defendants deny the allegations contained in paragraph 25 of the Amended Complaint.
26. Defendants deny the allegations contained in paragraph 26 of the Amended Complaint.
27. Defendants admit the allegations contained in paragraph 27 of the Amended Complaint.
28. Defendants deny the allegations contained in paragraph 28 of the Amended Complaint.
29. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 29 of the Amended Complaint.
30. Defendants admit the allegations contained in paragraph 30 of the Amended Complaint.
31. Defendants deny the allegations contained in paragraph 31 of the Amended Complaint.
32. Defendants admit the allegations contained in paragraph 32 of the Amended Complaint.
33. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 33 of the Amended Complaint.
34. Defendants admit the allegations contained in paragraph 34 of the Amended Complaint.
35. Defendants deny the allegations contained in paragraph 35 of the Amended Complaint.
36. In response to the allegations contained in paragraph 36 of the Amended Complaint, Defendants adopt and restate their responses to paragraphs 1 through 35 of the Amended

Complaint.

37. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 37 of the Amended Complaint.

38. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 38 of the Amended Complaint.

39. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 39 of the Amended Complaint.

40. Defendants deny the allegations contained in paragraph 40 of the Amended Complaint.

41. Defendants deny the allegations contained in paragraph 41 of the Amended Complaint.

42. In response to the allegations contained in paragraph 42 of the Amended Complaint, Defendants adopt and restate their responses to paragraphs 1 through 35 of the Amended Complaint.

43. Defendants deny the allegations contained in paragraph 43 of the Amended Complaint.

44. Defendants deny the allegations contained in paragraph 44 of the Amended Complaint.

45. Defendants deny the allegations contained in paragraph 45 of the Amended Complaint.

46. Defendants deny the allegations contained in paragraph 46 of the Amended Complaint.

47. Defendants deny the allegations contained in paragraph 47 of the Amended Complaint.

48. Defendants deny the allegations contained in paragraph 48 of the Amended Complaint.

49. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 49 of the Amended Complaint.

50. Defendants deny the allegations contained in paragraph 50 of the Amended Complaint.

51. Defendants deny the allegations contained in paragraph 51 of the Amended Complaint.

52. In response to the allegations contained in paragraph 52 of the Amended Complaint,

Defendants adopt and restate their responses to paragraphs 1 through 35 of the Amended Complaint.

53. Defendants deny the allegations contained in paragraph 53 of the Amended Complaint.

54. Defendants are without sufficient knowledge to answer, and therefore deny, the allegations contained in paragraph 54 of the Amended Complaint.

55. Defendants deny the allegations contained in paragraph 55 of the Amended Complaint.

56. Defendants deny the allegations contained in paragraph 56 of the Amended Complaint.

57. Defendants deny the allegations contained in paragraph 57 of the Amended Complaint.

58. In response to the allegations contained in paragraph 52 of the Amended Complaint,

Defendants adopt and restate their responses to paragraphs 1 through 58 of the Amended Complaint.

59. Defendants deny the allegations contained in paragraph 59 of the Amended Complaint.

60. Defendants deny the allegations contained in paragraph 60 of the Amended Complaint.

61. Defendants deny the allegations contained in paragraph 61 of the Amended Complaint.

62. Defendants are without sufficient knowledge to answer, and therefore deny, the

allegations contained in paragraph 62 of the Amended Complaint.

63. Defendants deny the allegations contained in paragraph 63 of the Amended Complaint.

64. Defendants deny the allegations contained in paragraph 64 of the Amended Complaint.

65. Defendants deny the allegations contained in paragraph 65 of the Amended Complaint.

66. Defendants deny the allegations contained in paragraph 66 of the Amended Complaint.

DEFENSES

1. The Amended Complaint must be dismissed as to MDPD because MDPD is not sui juris.

2. The Amended Complaint must be dismissed as to MDAS because MDAS is not sui juris.

3. Plaintiff's claims are barred by section 768.28(6)(c) of the Florida Statutes because Plaintiff has not provided the County or the Department of Financial Services the information required by that section.
4. Plaintiff's claims are barred by section 768.28(7) of the Florida Statutes because Plaintiff has not alleged that she served process upon the Department of Financial Services.
5. Plaintiff's claims are barred by sections 768.28(1) and (9) of the Florida Statutes to the extent that they are based on acts that were committed by persons acting outside the scope of their office or employment, in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
6. The injuries claimed by Plaintiff were caused by her own negligence, or the negligence of a third party, thereby bringing this cause within the doctrine of comparative negligence, reducing or barring a claim for Plaintiff.
7. Defendants reserve the right to assert additional defenses as appropriate.

Respectfully submitted,

MURRAY A. GREENBERG
MIAMI-DADE COUNTY ATTORNEY

By:  _____

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