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**ATTORNEYS FOR DEFENDANTS**  
**BOROUGH OF POTTSTOWN**  
**AND KEITH A. PLACE**

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DOROTHY RIVERA, et al.	:	
	:	IN THE COURT OF COMMON PLEAS
Plaintiffs,	:	MONTGOMERY COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	No. 2017-04992
BOROUGH OF POTTSTOWN, et al.	:	
	:	
Defendants.	:	

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**DEFENDANTS’ RESPONSE TO PLAINTIFF’S**  
**MEMORANDUM OF LAW IN SUPPORT OF SUMMARY JUDGMENT**

Defendants, the Borough of Pottstown (the “Borough”) and Keith A. Place (collectively the “Pottstown Defendants”), by and through their undersigned counsel, Siana Law, LLP, file this Memorandum of Law in Opposition to Plaintiffs’ Motion for Summary Judgment, and in support thereof, aver as follows:

**INTRODUCTION**

Plaintiffs’ claims and allegations fail to constitute undisputed material facts, are misstated; and otherwise violate the *Nanty-Glo* Rule. Regardless, the Pennsylvania Supreme Court has opined that rental inspections subject to administrative warrants are subject to “**reduced Fourth Amendment and Article 1, Section 8 protections.**” *Interest of Y.W.-B.*, 265 A.3d 602, 624<sup>1</sup> (Pa. 2021), requiring this Court to deny Plaintiff’s Motion for Summary Judgment and grant the Pottstown Defendants’ Motion for Summary Judgment as a matter of law.

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<sup>1</sup> Not cited by Plaintiffs. See, R.P.C. 3.3(a)(2) *Candor Toward the Tribunal*.

## I. MATTER BEFORE THE COURT

1. Admitted in part. Denied in Part. It is admitted only that the Amended Complaint speaks for itself. It is denied that Plaintiffs are entitled to relief. See, *Interest of Y.W.-B.*, *supra*.

2. Admitted in part. Denied in Part. It is admitted only that the Amended Complaint speaks for itself. It is denied that Plaintiffs are entitled to relief. See, *Interest of Y.W.-B.*, *supra*.

## II. STATEMENT OF QUESTIONS PRESENTED

1. Denied. The allegations contained in ¶1 constitute conclusions of law to which no responsive pleading is required. By way of further response, the Pennsylvania Supreme Court has tacitly held that rental inspections subject to administrative warrants are subject to “**reduced Fourth Amendment and Article 1, Section 8 protections.**” *Interest of Y.W.-B.*, *supra*.

2. Denied. The allegations contained in ¶2 constitute conclusions of law to which no responsive pleading is required. By way of further response, the Pennsylvania Supreme Court has tacitly held that rental inspections subject to administrative warrants are subject to “**reduced Fourth Amendment and Article 1, Section 8 protections.**” *Interest of Y.W.-B.*, *supra*.<sup>2</sup>

## III. PROCEDURAL HISTORY

1. Denied. The Borough has never “resisted” discovery. Voluminous documents were provided both before and after this Court’s ordering of electronic discovery. See Docket and relevant pleadings, including pleadings and Orders of this Court. By way of further response, this

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<sup>2</sup> Plaintiffs base the entirety of their motion seeking determinations that non-consensual searches violate Article 1, Section 8 of the Pennsylvania Constitution and seek a declaration to enjoin the Borough from seeking warrants on less than individualized probable cause. Although they do not appear to pursue summary judgment on an as applied basis, the Pottstown Defendants assert they are entitled to summary judgment in this regard as Plaintiff have not proven an as-applied violation; and such an alleged violation is moot considering the reduced Article 1, Section 8 protection for rental inspections.

allegation does not constitute a material fact as a necessary element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

2. Denied as stated. The Docket and related Orders speak for themselves. By way of further response, this allegation does not constitute a material fact as a necessary element to Plaintiff's claims. Pa.R.C.P. 1035(2).

3. Admitted. By way of further response, this allegation does not constitute a material fact as a necessary element to Plaintiff's claims. Pa.R.C.P. 1035(2).

4. Denied as stated. The Commonwealth Court Opinion speaks for itself, which did not reverse the merit's ruling but agreed with the Trial Court that the Motion for Judgment on the Pleadings should not have been entered. (2020 WL 57181 \*2). The Trial Court requested that the Commonwealth Court relinquish jurisdiction and remand the matter. Id. Additionally, Plaintiffs' have taken the Court's quote out of context where the quote references inspections, not discovery. (To require Tenants to endure the inspections before challenging the inspection requirement would render Tenants' Article I, Section 8 privacy rights illusory" By way of further response, this allegation does not constitute a material fact as a necessary element to Plaintiff's claims. Pa.R.C.P. 1035(2).

5. Denied as stated. The Commonwealth Court Opinion speaks for itself, and the development of the record was directed to the ripeness claim. ("Our determination of the ripeness of the as-applied challenge further underscores the need for development of a full factual record on remand.) By way of further response, this allegation does not constitute a material fact as a necessary element to Plaintiff's claims. Pa.R.C.P. 1035(2).

6. Denied as stated. The Court ordered electronic discovery after denying the Pottstown Defendants' Motion for Protective Order. (Doc. 109). Any discovery 'misconduct' is

denied. Furthermore, objections were asserted; and, on February 5, 2019 (prior to appeal), the Trial Court limited additional questing of Mr. Place to the Borough's "policy in enforcement of its Code of Ordinances, Residential Rental Licensing and Registration and Licensing of Residential Units." (Doc. 68). By way of further response, this allegation does not constitute a material fact as a necessary element to Plaintiff's claims. Pa.R.C.P. 1035(2).

7. Denied as stated. The Docket and Orders speak for themselves. By way of further response, this allegation does not constitute a material fact as a necessary element to Plaintiff's claims. Pa.R.C.P. 1035(2).

8. By way of further response, this allegation does not constitute a material fact as a necessary element to Plaintiff's claims. Pa.R.C.P. 1035(2).

9. Denied. The Pottstown Defendants are without knowledge or information to form a belief as to the truth of the averments. By way of further response, this allegation does not constitute a material fact as a necessary element to Plaintiff's claims. Pa.R.C.P. 1035(2).

10. Denied. Over 400,000 files were responsive to the electronic discovery, out of which the Pottstown Defendants designated approximately 500 files as privileged. Following review, approximately 40 documents were deemed not to be privileged. By way of further response, this allegation does not constitute an undisputed material fact as a necessary element to Plaintiff's claims. Pa.R.C.P. 1035(2).

#### **IV. STATEMENT OF UNDISPUTED MATERIAL FACTS**

Plaintiffs' introduction is denied as it fails to constitute does not constitute an undisputed material fact as a necessary element to Plaintiff's claims. Pa.R.C.P. 1035(2).

**A. The Borough Adopts a Rental Inspection Ordinance and Threatens Plaintiffs with Non-Consensual Government Searches.**

1. Denied as stated. The Joint Stipulation, and the underlying Ordinances speak for themselves. Plaintiffs have added language herein to the language provided in the Joint Stipulation.

2. Denied as stated. The Ordinances speak for themselves.

3. Denied. It is specifically denied that Mr. Camburn, a landlord, was subject to rental inspections. Furthermore, it is denied that the O'Connor Plaintiffs were subject to rental inspections. Strict proof is demanded.

**B. The Borough Obtains a Warrant to Search the Rivera Home**

4. Admitted.

5. Admitted.

6. Admitted in part. Denied in Part. It is admitted only that Mr. Camburn testified as referenced. It is denied his opinion testimony is undisputed or constitutes a material fact necessary as an element to the claim or defense. Pa.R.C.P. 1035(2). Furthermore, the "facts" set forth herein violate the *Nanty-Glo* Rule.

7. Admitted in part. Denied in Part. It is admitted only that Mr. Camburn testified as referenced. It is denied his testimony is undisputed or constitutes a material fact necessary as an element to the claim or defense. Pa.R.C.P. 1035(2). Furthermore, the "facts" set forth herein violate the *Nanty-Glo* Rule.

8. Admitted in part. Denied in Part. It is admitted only that Mr. Camburn testified as referenced. It is denied his testimony is undisputed or constitutes a material fact necessary as an element to the claim or defense. Pa.R.C.P. 1035(2). Furthermore, the "facts" set forth herein violate the *Nanty-Glo* Rule.

9. Admitted in part. Denied in Part. It is admitted only that Mr. Camburn testified as referenced. It is denied his testimony is undisputed or constitutes a material fact necessary as an element to the claim or defense. Pa.R.C.P. 1035(2). By way of further response, his testimony contains inadmissible hearsay, and the “facts” set forth herein violate the *Nanty-Glo* Rule.

10. Admitted in part. Denied in Part. It is admitted only that Mr. Camburn testified as referenced. It is denied his speculative testimony is undisputed or constitutes a material fact necessary as an element to the claim or defense. Pa.R.C.P. 1035(2). Furthermore, the “facts” set forth herein violate the *Nanty-Glo* Rule.

11. Admitted in part. Denied in Part. It is admitted only that Mr. Camburn testified as referenced. It is denied his testimony is undisputed or constitutes a material fact necessary as an element to the claim or defense. Pa.R.C.P. 1035(2). By way of further response, the Lease does not require notice for his entry as a landlord; and he would enter without notice in cases of emergency.

12. Admitted.

13. Admitted.

14. Denied as stated. Camburn testified “From what I recall, the borough probably sent me notification that they want to inspect the Rivera’s home. I approached the Rivera’s stating this and they stated we do not want an inspection. Probably something to that extent”. (Pl. Ex. A, p. 65). It is denied his testimony is undisputed or constitutes a material fact necessary as an element to Plaintiff’s claims. Pa.R.C.P. 1035(2). Furthermore, the “facts” set forth herein violate the *Nanty-Glo* Rule.

15. Denied as stated. Ms. Rivera testified “That is when --Steve told me that there was an inspection. It was 2017. I think that was the first time that there was an inspection. And I told him that I wasn't -- he told me the Borough was coming for a rental inspection. I told him I don't want that. I don't feel comfortable -- I don't want the Borough in my house, in my home” Pl. Ex. 2, p.76. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs’ claims. Pa.R.C.P. 1035(2). Furthermore, the “facts” set forth herein violate the *Nanty-Glo* Rule.

16. Denied as stated. Ms. Rivera testified “I told him I didn't feel --I feel like my privacy was being invaded, young kids and I don't --what can he --what can they do that he can't?” Pl. Ex. 2, p.78. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs’ claims. Pa.R.C.P. 1035(2). Furthermore, the “facts” set forth herein violate the *Nanty-Glo* Rule.

17. Admitted in part. Denied in Part. It is admitted only that Mr. Camburn testified as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs’ claims. Pa.R.C.P. 1035(2). Furthermore, the “facts” set forth herein violate the *Nanty-Glo* Rule. By way of further response, the testimony is speculative as no inspections of her rental unit have occurred following the enactment of the subject Rental Ordinance. Jt. Stip. ¶22.

18. Admitted in part. Denied in Part. It is admitted only that Ms. Rivera testified as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs’ claims. Pa.R.C.P. 1035(2). Furthermore, the “facts” set forth herein violate the *Nanty-Glo* Rule. By way of further response, the testimony is speculative as no inspections of

her rental unit have occurred following the enactment of the subject Rental Ordinance. Jt. Stip. ¶22.

19. Admitted in part. Denied in Part. It is admitted only that Ms. Rivera testified as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to the claim or defense. Pa.R.C.P. 1035(2). By way of further response, if she had notice before an inspector came in, she would put a letter from a hospital in a drawer. Pl. Ex. 2, p.90-91. By way of further response, the testimony is speculative as no inspections of her rental unit have occurred following the enactment of the subject Rental Ordinance. Jt. Stip. ¶22.

20. Admitted in part. Denied in Part. It is admitted only that Ms. Rivera testified as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2). By way of further response, the testimony is speculative as no inspections of her rental unit have occurred following the enactment of the subject Rental Ordinance. Jt. Stip. ¶22.

21. Admitted in part. Denied in Part. It is admitted only that Ms. Rivera testified as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2). By way of further response, the testimony is speculative as no inspections of her rental unit have occurred following the enactment of the subject Rental Ordinance. Jt. Stip. ¶22.

22. Admitted in part. Denied in Part. It is admitted only that Ms. Rivera testified as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2). By way of further response, the testimony is speculative as no inspections of her rental unit have occurred following the enactment of the subject Rental Ordinance. Jt. Stip. ¶22.

23. Admitted in part. Denied in part. It is admitted that Ms. Rivera testified as referenced. However, the referenced incident occurred prior to the enactment of the subject Rental Ordinances, noting it occurred sometime prior to 2010. (See, Pl. Ex.2, pp. 63-64. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

24. Admitted in part. Denied in Part. It is admitted only that Ms. Rivera testified as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

25. Admitted in part. Denied in Part. It is admitted only that Ms. Rivera testified as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2). By way of further response, this alleged inspection occurred prior to the enactment of the subject Rental Ordinance; and is believed to have occurred between 2005 and 2010. Pl. Ex.2, p. 24.

26. Admitted in part. Denied in Part. It is admitted only that Mr. Rivera testified as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

27. Admitted. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

28. Denied as stated. The Jt. Stip. Speaks for itself with no reference to "over the Rivera's objection". See, Jt. Stip. ¶16..

29. Admitted. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

30. Admitted. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

31. Admitted. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

32. Admitted. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

33. Admitted.

34. Admitted.

**C. The Borough Attempts a Warrantless Inspection of the O'Connor Home**

35. Denied. Katheen and Rosemarie O'Connor now reside in their deceased father's home. (cite).

36. Admitted in part. Denied in Part. It is admitted only that the O'Connor's testified as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

37. Admitted.

38. Admitted in part. Denied in Part. It is admitted only that the O'Connor's testified as referenced. Accepting it as true they are not a rental unit; they have no standing.

39. Admitted in part. Denied in Part. It is admitted only that Kathleen O'Connor testified the she witnessed a prior inspection. By way of further response, she could not state the date; and, in reference to looking in closets, she agreed there were light fixtures along with switches and pull cords inside the closets. See, Pl. Ex. 4, pp. 56-57. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2). By

way of further response, the testimony is speculative as no inspections of her rental unit have occurred following the enactment of the subject Rental Ordinance.

40. Admitted.

41. Admitted to the testimony of K. O'Connor. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

42. Admitted in part. Denied in Part. It is admitted only that Kathleen O'Connor testified as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

43. Denied as stated. Kathleen O'Connor testified she called the Institute for Justice after she had a "bad encounter with an inspector at Borough Hall..." Pl. Ex. 4 p. 14. as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

44. Admitted in part. Denied in Part. It is admitted only that Kathleen O'Connor testified as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2). Furthermore, the "facts" set forth herein violate the *Nanty-Glo* Rule.

45. Admitted in part. Denied in Part. It is admitted only that Rose O'Connor testified as referenced. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

46. Denied as stated. Rosemarie O'Connor provided the testimony in response to "what is your understanding of what this lawsuit is about?"; not, that she "challenged the inspection.". Pl. Ex. 5, p. 13. It is denied her testimony is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

**D. The Borough Adopted the Ordinance When Code Violations Were Going Down.**

47. Denied as stated. It is admitted that First Requests for Production of Documents were served. What is not stated, is that the Pottstown Defendants responded to referenced Request No. 1:

**OBJECTION:** Answering Defendants object to this Request on the basis that the Request is overly broad, unlimited in time and scope, unduly burdensome, and vague as it relates to the term “Rental Inspections.” Answering Defendants further object to this Request on the grounds that it calls for information the disclosure of which would invade the deliberative process of the Borough.

**RESPONSE:** Without waiving the aforementioned objections, see responsive Code Enforcement and Housing Ordinances, Residential Rental & Property Transfer Checklist, and related Rental Inspection and Registration documents available on the Borough’s website <https://goo.gl/N3h8ny>, attached hereto as Pottstown 000001 - 28.

It is denied that this allegation constitutes an undisputed or material fact necessary as an element to Plaintiffs’ claims. Pa.R.C.P. 1035(2).

48. Admitted in part. Denied in Part. It is admitted that Defendants served Amended Objections and Responses to Plaintiff’s First Request for Production of Documents on February 20, 2018. It is denied that the Municipal Services study was provided in response to Request Nos. 2, 5 6 and 9. See, Pl. Ex. 7. By way of further response, and by example, the Amended Objection and Response to Request Nos. 1 states:

**OBJECTION:** Answering Defendants object to this Request on the basis that the Request is overly broad, unlimited in time and scope, unduly burdensome, and vague as it relates to the term “Rental Inspections.” Answering Defendants further object to this Request on the grounds that it calls for information the disclosure of which would invade the deliberative process of the Borough.

**RESPONSE:** Without waiving the aforementioned objections, see responsive Code Enforcement and Housing Ordinances, Residential Rental & Property Transfer Checklist, and related Rental Inspection and Registration documents available on the Borough’s website <https://goo.gl/N3h8ny>, attached hereto as Pottstown 000001 - 28.

**AMENDED RESPONSE:** Without waiving the aforementioned objections, see relevant agendas and meeting minutes from Pottstown Borough Council and Pottstown Committee of the Whole for the years 2014 and 2015, attached hereto as Pottstown 000029 - 000325. See also Municipal Services Study, January 7, 2015, attached hereto as Pottstown 000326 - 471.

It is denied these allegations are undisputed or constitute a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

49. Admitted in part. Denied in part. It is admitted only that Plaintiffs attach a copy of the Municipal Services Study ("MSS"). The remainder of the allegation is denied. See, e.g. Defendants' Amended Objections and Responses to Plaintiff's Request for Production of Documents , Response No. 1 *above*, in response to Request No. 1.

**All documents related to your decision to conduct Rental Inspections, including but not limited to all communications between and among Defendants, meeting minutes, agendas, transcripts, audio or video recording of public hearings, oral and/or written testimony, and legislative findings.**

50. Admitted only that a Notice of Deposition was issued. It is denied this allegation is undisputed or constitutes a material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

51. Denied as stated. It is admitted that Keith Place was designated on behalf of the Borough but only to the extent permitted by the Rules of Court in reference to a corporate designee. In fact, Mr. Place testified:

**Q. What is your understanding of what this document is?**

**A. This is a document that was produced by Better Landlord LLC at the request of Borough council based on a -- I don't want to say sales pitch, but basically the Municipal Services Study is part of a program and package that has been done nationally, and it was requested be looked at by residents and property owners in the Borough of Pottstown as constituents to the council members**

It is denied this allegation is an undisputed material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

52. Admitted.

53. Denied as stated. Mr. Place testified:

**Q. What kind of sales pitch?**

**A. I guess sales pitch was an opinion so I really shouldn't state that.**

**Q. It's your opinions that we're asking for, your factual information how this came about?**

**A. My opinion, it was a sales pitch. How it came about is it was brought to council's attention by residents of the Borough of Pottstown that this was used in several other locations throughout the states to help promote the welfare, health and safety and fight blighted property problems and to provide information based on the facts from studies that were done in other areas and a study that can be provided to the Borough of Pottstown to show the disproportionate costs and disparity between homeowner occupied and rental properties.**

Pl. Ex. 10, p. 39-40. It is denied this allegation is an undisputed material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

54. Admitted. Also, see Minutes wherein the Borough approved the retention of the Better Landlords. It is denied this allegation is an undisputed material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

55. Denied a stated. It is admitted that Mr. Place testified "based upon the numbers presented in this document". However, he also testified the MSS was prepared by a third party, Better Landlord, LLC. It is denied this allegation is an undisputed material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

56. Denied as stated. The language referenced under the heading of "Recommendations". The word "policy" is not included. By way of further response, the MSS, which constitutes hearsay evidence as prepared by a third party, speaks for itself and does not constitute an undisputed material fact necessary as an element to Plaintiff's claims. Pa.R.C.P. 1035(2).

57. Denied as stated. There is no evidence that the purpose of the ‘sales pitch’ from Better Landlord was to suggest rental inspections. By way of further response, the MSS, which constitutes hearsay evidence as prepared by a third party, speaks for itself and does not constitute an undisputed material fact necessary as an element to Plaintiff’s claims. Pa.R.C.P. 1035(2).

58. Denied. It is denied that this allegation constitutes an undisputed material fact necessary as an element to Plaintiffs’ claims. Pa.R.C.P. 1035(2).

**E. Pottstown’s Rental Inspections are Highly Intrusive.**

59. Denied as stated. The Ordinance speaks for itself.

60. Admitted.

61. Admitted in part. Denied in part. It is admitted Mr. Place has not conducted inspections in years. The remainder of the allegation is denied as it fails to include Mr. Place’s response to the question posed which includes:

**Q. What about health issue, how does that differ from a life safety issue?**

**A. Health issue. 4 inches of dog feces matted down on the floor.**

**Q. OK. That's an example, but what about a definition of what that means?**

**A. Is there a written definition? The answer is no.**

Pl. Ex. 11, p.190.

62. Admitted in part. Denied in part. Mr. Gonzales testified as follows:

**Q. And is there any requirement, either in writing or from a meeting, that a parent or guardian be present?**

**A. Someone over the age of 18.**

**Q. So any adult? A. Yes.**

**Q. Okay. Could the adult be, let's say, a police officer?**

**A. One of ours, no.**

Pl. Ex. 12, p. 48-49. It is denied that this allegation constitutes an undisputed material fact necessary as an element to Plaintiffs’ claims. Pa.R.C.P. 1035(2).

63. Denied as stated. Mr. Gonzales responded that the property owner, maybe a relative or realtor translated; and when asked if children ever translate he responded “Yes”. It is denied that this allegation constitutes an undisputed material fact necessary as an element to Plaintiffs’ claims. Pa.R.C.P. 1035(2).

64. Denied as stated. Plaintiffs place his testimony out of context. He didn’t testify about non-consensual searches, but rather, the least favorite part of his job.

**Q. What's your least favorite part of your job?**

**A. I don't have one.**

**Q. You like every aspect of it?**

**A. Yes.**

**Q. Are there ever frustrations with it?**

**A. Yes.**

**Q. What are some of the frustrations?**

**A. The negative interactions.**

**Q. And what are the negative interactions like?**

**A. People talking down to you, or assuming that you're there for a reason that you're not.**

**Q. What kind of reasons have you had people assume?**

**MS. BROWN: Objection to form.**

**THE WITNESS: Just that we're there to make their life difficult.**

**BY MR. PECCOLA: Q. How did they express that?**

**A. By swearing and other verbal 20 communication.**

Pl. Ex. 12, pp. 84-85. It is denied that this allegation constitutes an undisputed material fact necessary as an element to Plaintiffs’ claims. Pa.R.C.P. 1035(2).

65. Admitted in part. Denied in part. Mr. Gonzales agreed with counsel’s question that there are enough stories from inspections to write a book. The remainder is denied.

**Q. Yeah. What -- so what kind of stories would you share?**

**A. Poor contracting work. Trash issues.**

**Q. So when these issues come up, do you have after work some good work stories to tell your friends?**

**MS. BROWN: Objection to form.**

**THE WITNESS: No.**

**BY MR. PECCOLA: Q. Have you ever discussed what you saw in an inspection with your family?**

**A. Yes.**

**Q. What kind of discussions did you have?**

**A. Work based on poor construction.**

**Q. What else did you tell your family about what you saw in the inspection?**

**A. That's it.**

**Q. And what about your friends, did you ever have a chance to share inspection war stories with your friends?**

**MS. BROWN: Objection to form.**

**HE WITNESS: Yes.**

**BY MR. PECCOLA: Q. And what kind of inspection war stories do you share with your friends?**

**A. The woman that they waited to call about.**

Pl. Ex. 12, pp. 95-96. It is denied that this allegation constitutes an undisputed material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

66. Denied as stated. Mr. Gonzales shared information with his wife on the condition of the premises "as far as being in a place that may be infested with fleas or bed bugs, and more just as a heads up.." as she may want to wash the clothes. Pl. Ex. 14 at p. 34. As it relates to alleged sharing of details with people employed at other townships, this is denied. Conversely, Mr. Weller testified:

**Q. Do you talk to other L&I professionals in other cities about inspections?**

**A. No. It's only because I knew her because I worked with her, and she had left to go through there, so we just kind of stayed in touch a little bit.**

Pl. Ex. 14 at p. 40. It is denied that this allegation constitutes an undisputed material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

67. Admitted in part. Denied in Part. It is admitted only that Gonzales testified as referenced. It is denied that Mr. Gonzales' testimony about a single owned home constitutes an undisputed material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

68. Admitted. It is denied that this allegation constitutes an undisputed material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

69. Denied as stated. The Checklist speaks for itself.

70. Denies as stated. Mr. Weller testified as follows:

**In the course of your inspections, are there any circumstances under which you would have to open closets?**

**A. There are circumstances -- there's an apartment building that the electric panels are in the closet.**

**Q. Mm-humm. What about cupboards?**

**A. There's a development that the water meter is in the cabinets, the kitchen cabinets, because they have no basements.**

**Q. Have you ever had to move furniture?**

**A. I don't typically move furniture, because of breaking or damaging somebody's property, but I've had to do it already to try to at least check an outlet.**

**Q. And would you have to look under a bed if an outlet were under a bed?**

**A. I don't look for anything under a bed or outlets under a bed. You know, I'm looking for the ones in the wall or anything that's in plain view.**

Pl. Ex. 28-29.

71. Denied as stated. Pl. Ex 16 at Ex. 19, a **2014** Rental Inspection Report speaks for itself. By way of further response, this inspection occurred in 2014 before the enactment of the Subject Rental Inspection Ordinances. There is likewise no context as to if this inspection was for a move in or during occupation. It is denied that this allegation constitutes an undisputed material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

72. Admitted. It is denied that this allegation constitutes an undisputed material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

73. Admitted. It is denied that this allegation constitutes an undisputed material fact necessary as an element to Plaintiffs' claims. Pa.R.C.P. 1035(2).

74. Denied as stated. Mr. Gonzales testified there are times that a person is uncomfortable, and he may try to break the ice “Only after permission is given to enter; if not, we don’t push the issue.” Pl. Ex. 12, p.14. It is denied that this allegation constitutes an undisputed material fact necessary as an element to Plaintiffs’ claims. Pa.R.C.P. 1035(2).

75. Admitted in part. Denied in Part. Ex. 17 speaks for itself. It is denied that Pottstown tracks movements of tenants and denied that Plaintiffs produced evidence to support alleged ‘tracking’. It is denied that this allegation constitutes an undisputed material fact necessary as an element to Plaintiffs’ claims. Pa.R.C.P. 1035(2).

76. Denied. It is denied that the allegations constitute a material fact necessary as an element to the claim or defense. Pa.R.C.P. 1035(2).

77. Denied as stated. §804 and §809 speak for themselves.

78. Denied as stated. Mr. Place testified “Been there almost five years, six times in five years they’ve moved.”. Pl. Ex. 10, p. 45. The context of which is not clear. It is denied that the allegations constitute a material fact necessary as an element to the claim or defense. Pa.R.C.P. 1035(2).

79. Denied as stated. Mr. Place testified that the Borough requires the names of tenants for life safety issues<sup>3</sup> and when asked how the “emergency services know the name of the tenant”, Mr. Place responded: “The police department has access to the system for tenant names. And emergency services have the ability to contact us.” Pl. Ex. 11, p. 168-169.

80. Admitted in part. Denied in Part. It is admitted only that the email speaks for itself. It is denied that the email asking questions constitutes a material fact necessary as an element to

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<sup>3</sup> For example, “if they need to remove people from the structure due to fire or some sort of life safety issue.” Pl. Ex.1, p. 169.

Plaintiff's claims. Pa.R.C.P. 1035(2). It is also denied that this email is evidence of 'inspection invasiveness' and Plaintiffs present no evidence to support the same.

81. Admitted.

82. Denied. Ex. 20 to the Phillips Report was a memorandum detailing a complaint from a tenant, which Mr. Place investigated. The tenant was allegedly told things by his landlord; and Mr. Place followed up with the Landlord.

83. Admitted in part. Denied in Part. It is admitted only that the email from Sgt. Kropp to Ms. Drobins speaks for itself. It is denied this email constitutes any policy of the Borough. See, Testimony of Chief Markovich, referencing the email: "There is no policy. That is just a conversation..." "A policy is a written document giving officers in the police department guidelines and every officer would review that and sign off on it. This email is a result of a conversation I had with Sergeant Kropp." Pl. Ex. 20, p. 28-30.

84. Admitted.

85. Admitted.

86. Denied as stated. By way of further response, see testimony of Officer Morrissey that Mr. Gonzales called as "he feared for his safety while doing that inspection." N.T. Steven Morrissey, p. 13. Also, see Police Report attached to Defendants' Memorandum of Law in Support of its Motion for Summary Judgment., Exhibit Y.

87. Admitted. It is denied the email asking questions constitutes a material fact necessary as an element to Plaintiff's claims. Pa.R.C.P. 1035(2).

88. Admitted. It is denied that the email asking questions constitutes a material fact necessary as an element to Plaintiff's claims. Pa.R.C.P. 1035(2).

89. Denied as stated. Chief Markovich testified, in full context:

**Okay. Does the Pottstown Police Department have access to Licensing and Inspection Department files?**

**A. As far as files, do you have something specific?**

**Q. Well, let's start with property address files.**

**A. We do have access to their system, and I don't remember what it's called, but we could go in and see who owns a property.**

**Q. Can you also see who the tenants are?**

**A. I don't know that that we can, no.**

**Q. Who would know that?**

**A. Keith Place would probably know that.**

...

**Q. Okay. If the police are conducting an investigation and want more information about someone who is renting in Pottstown, can they go to Licensing and Inspection to find out more?**

**A. Sure, they could.**

**Q. Okay. Have you ever found Licensing and Inspection information helpful in a criminal investigation?**

**MS. BROWN: Objection to form. Go ahead.**

**THE WITNESS: I personally haven't, no.**

**BY MR. PECCOLA: Q. Do you think there's anyone on the force who would know about that?**

**A. I don't know who would know about that. I'm sure there are people who have used it for investigations**

Pl. Ex. 20, pp. 19-21.

90. Admitted. It is denied that the email asking questions constitutes a material fact necessary as an element to Plaintiff's claims. Pa.R.C.P. 1035(2).

91. Admitted, as more specifically set forth above.

92. Denied as stated. Officer Kropp testified he could pull up a tenant list to identify who resides in a residence, there is no testimony of police officers as a whole. See, Pl. Ex. 19, p. 19.

93. Admitted in part. Denied in part. It is admitted the Inspection Reports do not reference the two police interactions. See Police Reports. It is denied that Mr. Phillips report and

opinions therein constitute a material fact necessary as an element to Plaintiff's claims. Pa.R.C.P. 1035(2). By way of further response, Mr. Phillips Report violates *Nanty-Glo*.

94. Denied. It is denied the allegation constitutes a material fact necessary as an element to the claim or defense. Pa.R.C.P. 1035(2).

95. Denied. Mr. Place testified that the criteria are different for condemnation and defining uninhabitable. The criteria are spelled out in the property maintenance code. He further stated, "Based on the criteria within this rental inspection report, there has been no condemnation of a property under my tenure, correct". Pl. Ex. 11, p. 301. It is denied that this testimony constitutes a material fact necessary as an element to Plaintiff's claims. Pa.R.C.P. 1035(2).

96. Denied. Mr. Place testified that the criteria are different for condemnation and defining uninhabitable. The criteria are spelled out in the property maintenance code. He further stated, "Based on the criteria within this rental inspection report, there has been no condemnation of a property under my tenure, correct". Pl. Ex. 11, p. 301. It is denied that this testimony constitutes a material fact necessary as an element to Plaintiff's claims. Pa.R.C.P. 1035(2).

97. Admitted.

98. Denied. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates *Nanty-Glo*.

99. Denied. The Borough does not "use the inspection program to collect debts and back taxes." Rather, Act 90 of 2010, the Neighborhood Blight and Reclamation and Revitalization Act provides tools to fight blight and take action against property owners where a property is in serious code violation or a public nuisance. The Act also provides for municipalities to deny municipal permits (included building permits and zoning approvals) to property owners who have

other property within the municipality in similar violation or who are behind in taxes or other municipal service accounts such as water, sewer or refuse collection. See, 53 Pa.C.S.A. Chapter 61 et seq.

100. Admitted. By way of further response, Act 90 of 2010, the Neighborhood Blight and Reclamation and Revitalization Act provides tools to fight blight and take action against property owners where a property is in serious code violation or a public nuisance. The Act also provides for municipalities to deny municipal permits (included building permits and zoning approvals) to property owners who have other property within the municipality in similar violation or who are behind in taxes or other municipal service accounts such as water, sewer or refuse collection. See, 53 Pa.C.S.A Chapter 61 et seq.

101. Admitted that the document speaks for itself.

102. Admitted. By way of further response, Act 90 of 2010, the Neighborhood Blight and Reclamation and Revitalization Act provides tools to fight blight and take action against property owners where a property is in serious code violation or a public nuisance. The Act also provides for municipalities to deny municipal permits (included building permits and zoning approvals) to property owners who have other property within the municipality in similar violation or who are behind in taxes or other municipal service accounts such as water, sewer or refuse collection. See, 53 Pa.C.S.A Chapter 61 et seq.

103. Denied. It is denied that Mr. Phillips report and speculative opinions therein constitute a material fact necessary as an element to Plaintiff's claims. Pa.R.C.P. 1035(2). By way of further response, Mr. Phillips Report violates *Nanty-Glo*. By way of further response, the use of functioning smoke detectors and carbon monoxide detectors is common sense. Furthermore,

‘providing’ smoke and carbon monoxide detectors does not insure the health, welfare and safety of not only those residents, but those around them, if they fail to install; or replace batteries.

104. Denied. It is denied that Mr. Phillips report and speculative opinions therein constitute a material fact necessary as an element to Plaintiff’s claims. Pa.R.C.P. 1035(2). By way of further response, Mr. Phillips Report violates *Nanty-Glo*.

105. Denied. It is denied that this testimony constitutes a material fact necessary as an element to Plaintiff’s claims. Pa.R.C.P. 1035(2).

106. Denied. It is denied that Mr. Phillips report and speculative opinions therein constitute a material fact necessary as an element to Plaintiff’s claims. Pa.R.C.P. 1035(2). By way of further response, Mr. Phillips Report violates *Nanty-Glo*.

107. Denied. Over 400,000 files were responsive to the electronic discovery, out of which the Pottstown Defendants designated approximately 500 files as privileged. Following review, approximately 40 documents were deemed not to be privileged. By way of further response, this allegation does not constitute a material fact as a necessary element to a claim or defense. Pa.R.C.P. 1035(2).

108. Admitted in part. Denied in Part. An email with Covid Policies does not constitute a material fact as a necessary element to a claim or defense. Pa.R.C.P. 1035(2).

109. Admitted in part. Denied in Part. An email with Covid Policies does not constitute a material fact as a necessary element to a claim or defense. Pa.R.C.P. 1035(2).

## **H. Experts**

110. Admitted only that expert reports produced and attached. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

111. Admitted. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

112. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

113. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

114. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

115. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the

Nanty-Glo rule. By way of further response, the Minnesota supreme court ruled.... Declining to accept Phillips. (see if referenced)

116. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

117. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

118. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

119. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

120. Denied. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

121. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of

further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule. (check his other expert reports)

122. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

123. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule. (compare this statement with other reports provided)

124. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

125. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

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131. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

132. Admitted only to the extent Mr. Phillips claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of

further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

133. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

134. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

135. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

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137. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

138. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

139. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

140. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

141. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

142. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

143. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of

further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

144. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

145. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

146. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

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150. Admitted only to the extent Dr. Benfield claims as such. It is denied that the expert opinion constitutes a material fact necessary to Plaintiff's claim Pa.R.C.P. 1035(2). By way of further response, reliance on the expert's opinion in this summary judgment motion violates the Nanty-Glo rule.

## V. LEGAL STANDARD

In ruling upon a motion for summary judgment, the trial court must examine the record in the light most favorable to the non-moving party, accept as true all well-pleaded facts in his or her pleadings, and give him or her the benefit of all reasonable inferences to be drawn therefrom. *Dansak v. Cameron Coca-Cola Bottling Co., Inc.*, 703 A.2d 489 (Pa. Super. 1997); *Ack v. Carroll Twp.*, 661 A.2d 514 (Pa. Cmwlth. 1995). To defeat summary judgment, sufficient evidence must be presented on an issue essential to their case and on which they bears the burden of proof such that a jury could return a verdict in her favor. *Ertel v. Patriot-News Co.*, 674 A.2d 1038 (Pa. 1996).

As referenced in the comments of Rule 1035.3, testimony alone, either through affidavit or depositions of the moving party's witnesses, even if uncontradicted, are generally insufficient to establish the absence of genuine issue of material fact. Citing *Nanty-Glo v. American Surety Co.*, 163 A.523 (Pa. 1932); *Penn Center House, Inc. v. Hoffman*, 553 A.2d 900 (Pa. 1989). Such documents will not afford sufficient basis for the entry of summary judgment, as credibility is a matter for the factfinder. *DeArmitt v. New York Life Ins. Co.*, 73 A.3d 578 (Pa.Super. 2013).

For the reasons set forth herein; and, in Defendants’ Motion for Summary Judgment (Doc.205), Plaintiffs’ Motion for Summary Judgment must be denied. Conversely, for the reasons set forth in Defendants’ Motion for Summary Judgment, they are entitled to judgment as a matter of law.

## VI. ARGUMENT

As the Pottstown defendants filed summary judgment, when appropriate, they will incorporate by reference the legal argument set forth therein, rather than duplicate efforts on these cross motions.

With that said, Plaintiff’s Motion for Summary Judgment must be denied as a matter of law, as the Pennsylvania Supreme Court’s 2021 decision, *In the Interest of Y.W.-B, a minor*, 265 A.3d 602 (Pa. 2021), (“Y.W.-B. Decision”) has effectively determined that rental inspections such as the ones at issue here, are subject to reduced Article 1, Section 8 protections. The Pottstown Defendants also assert that the issue of non-consensual rental inspections is not a novel issue, requiring this Court to deny Plaintiffs’ relief as a matter of law.

Plaintiffs base their entire motion on the constitutionality issue and do not address other issues such as the purported as applied challenge or the claims against Mr. place who was only sued in his official capacity. For the reasons set forth herein all claims asserted by plaintiffs should be denied and conversely, the Pottstown defendants are entitled to summary judgment as to all claims.

### A. Camera remains in effect for over 50 years

Plaintiffs undergo an analysis of the history of the 1967 *Camara v. Municipal Court* decision as set forth by the United States Supreme Court. That case undertook a *4th amendment* analysis for the very same type of rental inspections at issue here, holding that administrative

warrants for rental inspections may be issued on less than individualized probable cause. Plaintiffs argue that this Court should not follow *Camera* in its interpretations of Article 1, Section 8. As evidenced by the *Y.W.-B. Decision*, the Pennsylvania Supreme Court has already done so – approvingly, and in doing so determined that rental inspection type searches as those at issue in *Camera*, also known as “dragnet” type searches are subject to reduced Article 1, Section 8 protection.

In addition, the Pottstown Defendants assert that the issue is not novel, as based upon the *Y.W.-B. Decision*, along with *Simpson v. City of New Castle*, 740 A.2d 287 (Pa. Cmwlth. 1999); *Com. v. Tobin*, 828 A.2d 415 (Pa. Cmwlth. 2003); and *Greenacres Apartments, Inc. v. Bristol Tp.*, 482 A.2d 1356 (Pa. Cmwlth. 1984).

It should also be noted that *Camera* has been in effect for over 50 years and no Pennsylvania court has declined to follow the reasoning in it.

The Pottstown Defendants assert that considering the *Y.W.-B. Decision* an analysis under the *Edmunds* factors is not necessary. However, out of an abundance of caution, Plaintiffs’ arguments will be addressed herein; and by incorporating by reference the Pottstown Defendants’ Motion for Summary Judgment.

### **B. This is Not a Novel Constitutional Claim**

Based upon the *Y.W.-B. Decision*, along with *Simpson v. City of New Castle*, 740 A.2d 287 (Pa. Cmwlth. 1999); *Com. v. Tobin*, 828 A.2d 415 (Pa. Cmwlth. 2003); and *Greenacres Apartments, Inc. v. Bristol Tp.*, 482 A.2d 1356 (Pa. Cmwlth. 1984), the Pottstown Defendants assert this is not a novel constitutional issue.

### **1. The Text of the Article; and History of Article 1, Section 8**

The Pottstown Defendants incorporate by reference their argument as set forth in their Motion for Summary Judgment as to these first two factors.

### **2. Related Cases from Pennsylvania**

The Pottstown Defendants incorporate by reference their argument as set forth in their Motion for Summary Judgment. By way of further response, Plaintiffs continue to rely upon a litany of criminal cases all of which address individualized probable cause. See, fn 11, p. 50-51. Such argument must be disregarded as a matter of law, as these matters did not involve a ‘dragnet search’ as analyzed in the *Y.W.-B. Decision*. As more fully set forth in the Pottstown Defendants’ Motion for Summary Judgment, Pennsylvania’s Supreme Court addressed the issue of probable cause head on – explaining that a dragnet search reaches everyone in a category, rather than an individual. See, *Y.W.-B. Decision* at \*622-623. Also as discussed, favorably interpreting *Camera*, there cannot be individualized suspicion as inspections are routine and periodic. *Y.W.-B. Decision* at \*623. As the cases cited by Plaintiffs fail to apply the reasoning of the Pennsylvania Supreme Court, their analysis of other Pennsylvania case law interpreting Article 1, Section 8, under individualized probable cause (which does not include the *Y.W.-B. Decision*) fails as a matter of law.

### **3. Case Law in Other Jurisdictions**

The Pottstown Defendants incorporate by reference their argument as set forth in their Motion for Summary Judgment as to this factor. Additionally, the Pottstown Defendants assert that Plaintiffs have not been able to direct this Court to one case supporting individualized probable cause for rental inspections.

Furthermore, their argument as to why this Court should not follow the reasoning of the *Golden Vally* majority fails, considering the *Y.W.-B. Decision*. In determining that dragnet searches are subject to lessened Article 1 Section 8 protection, the Court cited *Golden Valley*.

Dragnet searches are not predicated on individualized showings of probable cause, nor indeed on **any** kind of individualized suspicion. See *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 161 (Minn. 2017) (“Administrative search warrants must be supported by probable cause; not individualized suspicion but ‘reasonable legislative or administrative standards for conducting an area inspection.’”) (quoting *Camara*, 387 U.S. at 538, 87 S.Ct. 1727);

*Y.W.-B. Decision* at \*622-623. The Court then determined that such dragnet searches are entitled to lesser Article 1, Section 8 protections.

#### 4. Policy Considerations

Plaintiffs argue that the Borough’s searches violate Plaintiffs’ privacy rights. In doing so, “Plaintiffs offer the report of Dr. Jacob Benfield, a privacy researcher.” (Plaintiff’s Brief at p. 62). At the outset, Plaintiffs’ reliance upon Dr. Benfield to prove their claims of privacy violation violate the *Nanty-Glo* Rule and should not be considered. Dr. Benfield’s ‘privacy’ opinions should likewise be discounted as he will be subject to a Motion to Exclude pursuant to Rule 207.1.

Finally, Dr. Benfield’s opinion argument should be discounted as the issue is moot, considering the ‘reduced’ Article 1, Section 8 protections provided for in *Y.W.-B. Decision*.

Likewise, Mr. Phillips opinion testimony is offered in discussing why invasive searches are not necessary. Such evidence must also be discounted to *Nanty-Glo*. Additionally, he offers speculation when claiming the searches are not necessary. As the United States Supreme Court noted (as quoted in the *Y.W.-B. Decision*):

The Court also recognized, however, that an administrative inspection for possible violations of a city’s housing code posed a unique situation, since unlike searches of a specific residence for a particular purpose (i.e., to find

evidence of a crime), the investigation programs at issue were “aimed at securing city-wide compliance with minimum physical standards for private property[,]” **and that even a single unintentional violation could result in serious hazards to public health and safety, e.g., a fire or an epidemic that could ravage a large urban area.** Camara, 387 U.S. at 535, 87 S.Ct. 1727.

*Y.W.-B. Decision* at \*621-622. Furthermore, the argument that the lack of condemnation or inhabitability has no relevance to rental inspections. It would be absurd that the only goal is to condemn properties, rather than to ensure safe living quarters of the many tenants in Pottstown. It is not the goal to evict tenants – but to ensure safe housing.

Plaintiffs also argue a violation of due process for the cooperation of police and the department of licensing and inspections. However, Plaintiffs fail to provide any evidence of record where any such violation occurred. Rather, Chief Markovich testified that they may seek tenant names for health and safety issues (e.g. occupants involved in a fire). Mr. Place likewise testified about health and safety issues providing information to emergency services.

Additionally, as referenced in response to the Plaintiffs’ statement of facts and Defendants’ Motion for Summary Judgment (including police reports, of Ex. Y); there were 2 occasions since the enactment of the 2105 Ordinance. As specifically set forth in the testimony of the officers and Mr. Gonzales, along with the supporting police report, Mr. Gonzalez was concerned for his safety considering the situation confronting him. These 2 instances do not support any violative policies or principals. (Also, see Defendants’ Motion for Summary Judgment).

The email noted is not policy; and if anything advocates for the inspector’s safety and not using the inspection process as a criminal/drug related manhunt as Plaintiffs would like to believe. Sgt. Kropp notes that if there is a minor drug infraction and you can’t reach us – ‘no further notification is required’. Pl. Ex. 18.

#### 4. The Edmunds Factors Support a Reduced Article 1, Section 8 protection

Assuming for sake of argument that the *Y.W.-B. Decision* does not constitute a specific ‘holding’ as to the reduced protections for Article 1, Section 8, the Pennsylvania Supreme Court has laid the framework that requires this Court to deny Plaintiffs’ relief, i.e. determining that individualized probable cause is required for administrative warrants for rental inspections. Therefore, Plaintiffs’ Motion must be denied in its entirety; and the Pottstown Defendants are entitled to summary judgment.

#### VII. CONCLUSION

For the reasons set forth herein; and in response to Plaintiffs’ Motion for Summary Judgment, Plaintiffs’ Motion for Summary Judgment must be denied.

Conversely, as the Pennsylvania Supreme Court has already provided that Camera type rental inspections are entitled to “reduced” Article 1, Section 8 protections, the Pottstown Defendants are entitled to summary judgment as to all claims and all parties.

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