

# EXHIBIT C

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1 NANCY O. DIX (Bar No. 129150)  
2 **DLA PIPER LLP (US)**  
3 555 Mission Street, Suite 2400  
4 San Francisco, CA 94105-2933  
5 Telephone: 415.836.2500  
6 Facsimile: 415.836.2501

7 ERIK R. FUEHRER (Bar No. 252578)  
8 KRISTA A. CELENTANO (Bar No. 279526)  
9 **DLA PIPER LLP (US)**  
10 2000 University Avenue  
11 East Palo Alto, CA 94303-2214  
12 Telephone: 650.833.2000  
13 Facsimile: 650.833.2001

14 Attorneys for Movants,  
15 ANIMAL LEGAL DEFENSE FUND  
16 EMILY BALLUS  
17 CHRISTOPHER McFALL  
18 and EILEEN McFALL, PH.D.

19 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

20 ANIMAL LEGAL DEFENSE FUND, a  
21 nonprofit organization;  
22 EMILY BALLUS, an individual;  
23 EILEEN McFALL, Ph.D., an individual;  
24 and CHRISTOPHER McFALL, an  
25 individual;

26 Plaintiffs,

27 v.

28 CITY OF STOCKTON;  
CITY OF STOCKTON ANIMAL  
SERVICES DIVISION;  
CITY OF STOCKTON ANIMAL  
SHELTER;  
PAT CLAERBOUT, in her capacity as  
Animal Services Supervisor;  
DOES 1 through 10, inclusive,

Defendants.

CASE NO.

**VERIFIED PETITION FOR WRIT OF  
MANDATE (C.C.P. § 1085, et seq.);  
COMPLAINT FOR INJUNCTIVE RELIEF  
(C.C.P. § 526a); PETITION FOR WRIT OF  
MANDATE (C.P.R.A. § 6250, et seq.)**

1 Plaintiffs and petitioners EMILY BALLUS, EILEEN McFALL, PH.D., CHRISTOPHER  
2 McFALL, and the ANIMAL LEGAL DEFENSE FUND (“Plaintiffs”), by and through their  
3 undersigned counsel, bring this action for a writ of mandate pursuant to California Code of Civil  
4 Procedure section 1085, *et seq.*, for injunctive relief pursuant to California Code of Civil  
5 Procedure section 526a, and for a writ of mandate pursuant to California Public Records Act,  
6 California Government Code section 6250, *et seq.*, (“Public Records Act”), alleging as follows  
7 against the City of Stockton (“Stockton”); the City of Stockton Animal Services Division  
8 (“Animal Services”); the City of Stockton Animal Shelter (“Shelter”); Pat Claerbout, in her  
9 capacity as Animal Services Supervisor; and DOES 1 through 10, inclusive (collectively, the  
10 “Defendants”):

11 **INTRODUCTION**

12 Petitioners allege that Defendants have engaged and continue to engage in an ongoing  
13 pattern and practice of abuse and failure to follow state and local law at the Shelter that they  
14 operate in Stockton, as detailed in this Petition and Complaint. This pattern and practice have  
15 resulted in, and continue to result in, among other things, the mistreatment and neglect of sick,  
16 wounded, and healthy animals, and the unnecessary and wrongful killing of numerous impounded  
17 animals in direct contravention of Stockton’s municipal code and the laws of the State of  
18 California. By this Petition and Complaint, Plaintiffs ask this Court to order Defendants to cease  
19 and desist from further violations of law, and to immediately begin performing their legally  
20 mandated duties to the animals entrusted to their care and to the public at large.

21 **JURISDICTION AND VENUE**

22 1. 1. This Court has jurisdiction over this action pursuant to California Code of  
23 Civil Procedure Sections 1085 and 526a, California Public Records Act, California Government  
24 Code Section 6250, and California Constitution Article 6 § 10.

25 2. Venue is proper in this court pursuant to California Code of Civil Procedure  
26 Sections 393 and 394 because Defendants and their Shelter are located in Stockton, San Joaquin  
27 County.

28 ///

**THE PARTIES**Plaintiffs

3. Plaintiff Animal Legal Defense Fund (“ALDF”) is a national nonprofit whose mission is to advance the interest of animals through the legal system. To fulfill this mission, ALDF invests considerable resources investigating and exposing the abuse of animals, including animals held at shelters, and taking action to ensure the enforcement of laws that protect animals. ALDF is supported by over 110,000 members and supporters, including many that live in Stockton, California. ALDF brings this action on behalf of itself and on behalf of its adversely affected members who are residents of the City of Stockton and who pay taxes therein. ALDF’s membership includes Emily Ballus and Eileen and Christopher McFall who are also named plaintiffs in this action. Because it is bringing this action on behalf of members who are taxpayers, ALDF has no administrative remedies to exhaust.

4. To fulfill its mission, ALDF relies on public disclosure laws, like the California Public Records Act, to gain access to information about the treatment of animals. ALDF provided the funds to access public records requested from the City of Stockton by Plaintiffs Eileen and Christopher McFall. As a result of Defendants’ unlawful failure to provide public records regarding the Stockton Animal Shelter, ALDF has been denied access to information to which they are entitled and upon which their work depends.

5. Plaintiff Emily Ballus is an ALDF member and has been a resident in the city of Stockton, California for approximately eight years. As a citizen and resident of the city of Stockton, Ms. Ballus is assessed and is liable to pay, and within one year before the commencement of this action has paid, a tax herein. As a taxpayer, Ms. Ballus has no administrative remedies to exhaust.

6. In or about February 18, 2008, Plaintiff Emily Ballus became aware that animals taken to the Shelter were being prematurely and/or wrongly euthanized by Defendants. As a result and thereafter, Plaintiff Emily Ballus distrusted the practices and policies at the Shelter and expended significant amounts of time and effort caring for and helping stray animals find homes who would have otherwise gone to the Shelter. Plaintiff Emily Ballus took all of these actions as

1 a result of her informed belief that these animals would suffer and/or perish as a result of  
2 Defendants' violations of state and local law.

3 7. Operation of the Shelter in a manner contrary to the law constitutes abuse and  
4 waste of the public funds allocated for that purpose. As a taxpayer, Ms. Ballus is injured by such  
5 management and waste.

6 8. Plaintiff Eileen McFall, Ph.D. is an ALDF member and is and has been a citizen  
7 and resident of Calaveras County, California since August 2011. Dr. McFall has worked in  
8 Stockton for the University of the Pacific as the Director of Learning and Academic Assessment  
9 since February 2010. As an employee working in the city of Stockton, Plaintiff Eileen McFall  
10 has paid local income tax of approximately \$900 per year since February 2010.

11 9. In or about September 2011, Plaintiff Eileen McFall became aware that a large  
12 number of impounded animals were being prematurely and/or wrongly euthanized by Ms.  
13 Claerbout and the Shelter. As a result and thereafter, Plaintiff Eileen McFall distrusted the  
14 practices and policies at the Shelter and expended significant amounts of money fostering,  
15 boarding, and paying the veterinary expenses for stray animals who would have otherwise gone to  
16 the Shelter, including the dogs now known as Olive, Frankie, Kerry, Hammy, and Mia, many of  
17 which she believed the Shelter would label "pit bull."<sup>1</sup> Plaintiff Eileen McFall has also rescued a  
18 number of animals from the Shelter who upon information and belief would likely have been  
19 prematurely or wrongly euthanized by the Shelter or were not receiving adequate veterinary care  
20 from the Shelter, including the dogs now known as Gracie, Xena, Siouxsie, Fiona, Luna, Ozzie,  
21 Sadie, Sebastian, and others, all of whom the Shelter had labeled "pit bull." Plaintiff Eileen  
22 McFall has also spent a significant amount of time and effort requesting animal related records  
23 from the Shelter, to which she has yet to receive a complete response as required under the law.  
24 Plaintiff Eileen McFall took all of these actions as a result of her informed belief that these  
25 animals would suffer and/or perish as a result of Defendants' violations of state and local law.

26 10. Plaintiff Christopher McFall is an ALDF member and is and has been a citizen and  
27

28 <sup>1</sup> Plaintiffs use the term "pit bull" in the Complaint even though the term is a misnomer commonly applied to dogs from various breeds that share a particular appearance and that are perceived to be dangerous.

1 resident of Calaveras County, California, since August 2011.

2 11. In or about September 2011, Plaintiff Christopher McFall became aware that a  
3 large number of impounded animals were being prematurely and/or wrongly euthanized by  
4 Defendants. As a result and thereafter, Plaintiff Christopher McFall distrusted the practices and  
5 policies at the Shelter and expended significant amounts of money fostering, boarding, and  
6 paying the veterinary expenses for stray animals who would have otherwise gone to the Shelter.  
7 Plaintiff Christopher McFall has also rescued a number of animals from the Shelter who upon  
8 information and belief would likely have been prematurely or wrongly euthanized by the Shelter  
9 or were not receiving adequate veterinary care from the Shelter. Plaintiff Christopher McFall  
10 took all of these actions as a result of his informed belief that these animals would suffer and/or  
11 perish as a result of Defendants' violations of state and local law. Plaintiff Christopher McFall  
12 also expended significant sums of money and amounts of time requesting and analyzing records  
13 from the Shelter via public records requests in continuing efforts to demonstrate to Defendants  
14 that their practices violate state and local law.

15 12. Enjoining Defendants from operating the shelter in a manner that is contrary to the  
16 law would redress Plaintiffs' injury regarding mismanagement and waste of public funds.  
17 Issuance of a writ of mandate requiring Defendant City of Stockton to comply with the law and  
18 produce complete and responsive records would redress Plaintiffs' injury regarding the public  
19 records requests.

20 Defendants

21 13. Defendant City of Stockton is a political subdivision of the State of California duly  
22 organized and existing under the laws of the State of California.

23 14. Defendant Animal Services is a division of the Stockton Police Department.  
24 Animal Services is the administrative body of Stockton charged with preserving and protecting  
25 animal and public safety and with enforcing all laws governing the Shelter.

26 15. Defendant Shelter operates under the direction of the Stockton Police Department.  
27 The Shelter is charged with holding all impounded animals who are awaiting a final disposition.  
28 The Shelter is located in the city of Stockton, the county of San Joaquin, California.

1           16. Defendant Pat Claerbout is, and at all times relevant hereto has been, the Animal  
2 Services Supervisor. In this capacity, Ms. Claerbout is, and all times relevant hereto was, the  
3 official responsible for the administrative management of Shelter and for ensuring that all Shelter  
4 subordinate officials and employees comply with all relevant and applicable state and local laws  
5 as well as Shelter policies.

6           17. Plaintiffs do not know the true names and capacities, whether individual,  
7 corporate, partnership, or otherwise, of Defendants sued herein as Does 1 through 10, inclusive.  
8 Plaintiffs therefore sue these Defendants by such fictitious names pursuant to California Code of  
9 Civil Procedure section 474. Plaintiffs are informed and believe, and based thereon allege, that  
10 Does 1 through 10, and each of them, is responsible in some manner for the violations alleged  
11 herein. When Plaintiffs ascertain the true names and capacities of Does 1 through 10, Plaintiffs  
12 will seek leave of the Court to amend this Petition and Complaint accordingly.

13           18. Plaintiffs are informed and believe, and based thereon allege, that at all times  
14 relevant hereto each of the Defendants was the agent, servant, representative, joint venturer or  
15 employee of each of the remaining Defendants and in doing the things hereinafter alleged, each  
16 Defendant was acting within the course and scope of said agency, servitude, representation, joint  
17 venture, or employment, with the advance knowledge, permission, consent, acquiescence,  
18 authorization, direction or subsequent ratification of each and every remaining Defendant.

#### 19                           **RELEVANT REQUIREMENTS OF STATE AND LOCAL LAW**

20           19. In 1998, the California Legislature enacted Senate Bill 1785 (the “Hayden Act”),  
21 which enjoyed broad bipartisan support in both houses of the California Legislature. The Hayden  
22 Act was passed in response to troubling discoveries in animal shelters throughout California,  
23 namely, that the shelters were failing to address the enormous fiscal and social cost of relying  
24 primarily on euthanasia rather than employing solutions to facilitate the return of lost animals and  
25 the adoption of animals into new homes.

26           20. The purpose of the Hayden Act was to shift California’s animal shelter system in  
27 the direction of saving, rather than taking, the lives of animals delivered to the care of the animal  
28 shelters located throughout the State. The Hayden Act addressed this goal by, among other

1 things, requiring that animal shelters throughout the State, as well as the animals held at shelters,  
2 be more accessible to the public and to animal rescue organizations, and holding animal shelters  
3 accountable for the treatment of the animals entrusted to their care. One of the primary aims of  
4 the Hayden Act is to reduce the rates of euthanasia in shelters through adoption and the  
5 reunification of lost pets with owners, in addition to increasing humane responses to over-  
6 population and encouraging fiscally responsible, effective shelters. To accomplish these goals,  
7 the Hayden Act set mandatory holding periods for stray and abandoned animals, minimum  
8 standards of care for animals entrusted to shelter care, and ordered increased accessibility of  
9 animals to individuals and nonprofit rescue organizations.

10 21. The Hayden Act is currently codified in various places throughout the California  
11 Civil Code, the California Food and Agricultural Code, and the California Penal Code. Policy  
12 sections in each of those Codes clearly express the State's goal that, whenever possible,  
13 California shelters promote adoption of healthy and reasonably treatable animals into new homes.  
14 Because of the policy sections, the interpretation of ambiguous or conflicting laws must be  
15 resolved in light of the policy preference to find homes for lost and homeless animals instead of  
16 killing them, and animal shelters must operate in consideration of the statewide public policy,  
17 especially when determining appropriate ways to fulfill their duties under the law. CAL. CIV.  
18 CODE § 1834.4; CAL. FOOD & AGRIC. CODE § 17005; CAL. PEN. CODE § 599d.

19 22. The content of the provisions of the Hayden Act that are at issue in this case that  
20 are not currently funded mandates in California are also embodied in the Stockton Municipal  
21 Code and therefore enforceable by a writ of mandate.

22 23. The City of Stockton has enacted ordinances that echo the public policy of the  
23 state and the intent of the Hayden Act, and that further specify the Shelter's duties to serve the  
24 residents of the city and to make every effort to return lost animals to their homes or allow the  
25 public to give them new homes. These ordinances call for, among other things, permitting the  
26 public as much time as possible to retrieve or adopt impounded animals, making all suitable  
27 unclaimed animals available to the public for adoption, and implementing holding periods that  
28 allow for redemption or adoption of shelter animals on weekends or weekday evenings, when



1 working people and families are able to visit the shelter. STOCKTON MUNICIPAL CODE §§  
2 6.04.250, 6.04.270.

3 24. In combination, the Stockton Municipal Code and the Hayden Act impose a series  
4 of duties on the Shelter. The following laws are applicable to Defendants:

- 5 • The Shelter must hold and make impounded animals available for adoption or owner  
6 redemption for certain periods of time. STOCKTON MUNICIPAL CODE §§ 6.04.250(A)-(C),  
7 6.04.280, 6.04.270; CAL. FOOD & AGRIC. CODE §§ 31108(a), 31752(a), 31754.
- 8 • The Shelter must hold an animal whose owner is unknown “for a minimum of six (6)  
9 business days, not including the day of impoundment; unless, the animal has been made  
10 available for owner redemption on one weekday evening until at least 7:00 p.m. or one  
11 weekend day, the holding period shall be four (4) business days, not including the day of  
12 impoundment.” STOCKTON MUNICIPAL CODE § 6.04.250(A).
- 13 • The Shelter must hold an animal whose owner is known for a minimum of seven days,  
14 including one full Saturday. STOCKTON MUNICIPAL CODE § 6.04.250(B).
- 15 • The Shelter must hold an owner-relinquished animal for a minimum of seven days,  
16 including one full Saturday. STOCKTON MUNICIPAL CODE §§ 6.04.170, 6.04.250(B); CAL.  
17 FOOD & AGRIC. CODE § 31754 (requiring owner-relinquished animals be held “for the  
18 same holding periods, with the same requirements of care, applicable to stray dogs and  
19 cats in Sections 31108 and 31752”).
- 20 • The Shelter should not euthanize adoptable or treatable animals in violation of the policy  
21 of the State. STOCKTON MUNICIPAL CODE §§ 6.04.280, 6.04.270; CAL. PEN. CODE § 599d;  
22 CAL. CIV. CODE § 1834.4; CAL. FOOD & AGRIC. CODE § 17005.
- 23 • The Shelter cannot accept animals abandoned at veterinary facilities. CAL. CIV. CODE §§  
24 1834.5, 1834.6.
- 25 • The Shelter must provide necessary and prompt veterinary care, ensuring that animals  
26 needing veterinary care are, without delay, examined, diagnosed, and treated by a licensed  
27 veterinarian. CAL. CIV. CODE §§ 1834, 1846.
- 28 • The Shelter must have all animals requiring veterinary attention examined, diagnosed, and

1 the expected outcome determined by a licensed veterinarian, and not a layperson or a  
2 technician. CAL. BUS. & PROF. CODE §§ 4826 *et seq.*, 4825.1(a), 4840(a), 4840(b),  
3 4840.2, 4840.5.

- 4 • The Shelter must cause all injured animals to be seen directly by a licensed veterinarian.  
5 CAL. PEN. CODE §§ 597f(b), 597.1(c).
- 6 • The Shelter must provide all animals with sufficient food, water, shelter, and exercise.  
7 STOCKTON MUNICIPAL CODE § 6.04.300; CAL. PEN. CODE §§ 597, 597.1; CAL. CIV. CODE  
8 §§ 1834, 1846.
- 9 • The Shelter must treat animals kindly and humanely and refrain from subjecting animals  
10 to unnecessary suffering or any manner of abuse. CAL. CIV. CODE §§ 1815, 1834, 1846,  
11 2080; CAL. PENAL CODE §§ 597(b), 597e, 597f, 599; STOCKTON MUNICIPAL CODE §  
12 6.04.300.
- 13 • The Shelter must release animals to nonprofit organizations, as defined under Section  
14 501(c)(3) of the Internal Revenue Code, if requested by the organization prior to  
15 scheduled euthanasia. CAL. FOOD & AGRIC. CODE §§ 31108(b), 31752(b).
- 16 • The Shelter must keep specified and accurate records on all impounded animals that  
17 receive veterinary care. CAL. FOOD & AGRIC. CODE §§ 31107, 31108, 31752, 32003;  
18 CAL. PENAL CODE §§ 597f, 597.1; CAL. BUS. & PROF. CODE § 4855.
- 19 • The Shelter must transport animals in a humane manner, and transport animals in a  
20 manner that does not knowingly and willfully subject any animal to unnecessary torture,  
21 suffering, or cruelty of any kind. CAL. PENAL CODE § 597a.
- 22 • The Shelter must refrain from establishing and implementing programs to regulate dogs  
23 who are potentially dangerous that are specific as to breed. CAL. FOOD & AGRIC. CODE  
24 § 31683.
- 25 • The City of Stockton has an obligation under the California Public Records Act to  
26 promptly provide public records upon receipt of a request that reasonably describes  
27 identifiable records, unless those records are covered by a statutory exception. CAL. GOV.  
28 CODE § 6253(b).

- 1 • The City of Stockton must assist any member of the public seeking information to make a  
2 focused and effective request that reasonably describes an identifiable record or records,  
3 including, but not limited to, by describing the information technology and physical  
4 location in which the records exist, and by providing suggestions for overcoming any  
5 practical basis for denying access to the records or information sought. CAL. GOV. CODE  
6 § 6253.1(a).

7  
8 **DEFENDANTS' VIOLATION OF THESE LAWS**

9 25. In violation of these and other mandatory duties imposed by law, Plaintiffs are  
10 informed and believe that Defendants:

- 11 • Routinely kill healthy and adoptable animals without first holding the animals for the  
12 minimum period of time mandated by law. For example, a review of records received  
13 pursuant to various Public Records Act requests demonstrates that between October 2012  
14 and early June 2013, Defendants prematurely killed 322 cats and dogs whom the Shelter  
15 classified upon intake as healthy, that is, without first holding those animals for the  
16 minimum periods of time, described above, that are required by state and local law. The  
17 Shelter's misinterpretation and misapplication of the law is detailed further below.
- 18 • Routinely kill animals who have minor or treatable medical or behavioral issues without  
19 first holding the animals for the minimum period of time mandated by law. For example,  
20 a review of records received pursuant to various Public Records Act requests  
21 demonstrates that between October 2012 and June 2013, Defendants prematurely killed a  
22 number of cats and dogs who were classified upon intake to have minor medical issues,  
23 such as "possible ringworm," "slight skin condition," "possible mange," and "does not  
24 like new people."
- 25 • On information and belief, accept animals abandoned at veterinary facilities in violation of  
26 the applicable law.
- 27 • Routinely kill healthy or treatable cats who have been labeled "feral" without first holding  
28 the cats for the minimum period of time mandated by law. For example, a review of

1 records received pursuant to various Public Records Act requests demonstrates that  
2 between February and June 2013 Defendants euthanized over 80 cats designated as  
3 “feral.”

- 4 • Routinely kill stray or surrendered animals whose owners are known without first holding  
5 the animals for the minimum period of time mandated by law. For example, a review of  
6 records received pursuant to various Public Records Act requests demonstrates that  
7 between October 2012 and June 2013 Defendants prematurely killed a number of cats and  
8 dogs who were either surrendered by owners or whose owners were otherwise known.
- 9 • Routinely and incorrectly reduce the holding period of animals from six business days to  
10 four when, because of the segregation of animals in the Shelter and because of the  
11 Shelter’s policies and practices limiting public access, those animals have not been made  
12 accessible and available to the public for redemption or adoption on a weekend day or a  
13 weekday evening;
- 14 • Routinely hold unweaned kittens lacking a mother overnight prior to euthanasia, a cruel  
15 and inhumane practice given that such animals cannot feed or hydrate themselves and may  
16 need to eat as frequently as every three hours. For example, a review of records received  
17 pursuant to various Public Records Act requests demonstrates that between November  
18 2012 and May 2013 Defendants euthanized over 60 cats designated as “unweaned” but  
19 waited until the day after impoundment.
- 20 • Routinely violate the spirit and purpose of the Hayden Act and local law by consistently  
21 denying public access to adoptable animals and by thwarting the public’s ability to adopt  
22 animals. For example, upon information and belief: (a) by keeping the vast majority of  
23 animals in a non-public part of the shelter where they are not available for viewing or  
24 adoption by the public, and by answering adoption inquiries with the response that all  
25 adoptable animals are in the public area of the shelter; (b) by making animals awaiting  
26 transfer to other shelters or rescue groups, sometimes for days or weeks, unavailable to the  
27 public for adoption; (c) by employing capricious and arbitrary methods for determining  
28 adoptability; (d) by denying members of the public the ability to adopt and provide the

1 needed veterinary care to sick or injured animals; and (e) by failing to take intake  
2 photographs of all impounded animals.

- 3 • Euthanize animals with rescue holds in place. For example, in September 2012, the  
4 Shelter euthanized a dog on which Plaintiff Eileen McFall had placed a rescue hold.  
5 Defendant Claerbout informed Plaintiff that “staff did not indicate a hold on the dogs [sic]  
6 record and unfortunately this dog was euthanized.” *See* Ex. \_\_\_ (Ideta Letter) at 3, Ex. 6).  
7 On information and belief, the Shelter has failed as yet to implement a reliable, robust,  
8 and cooperative mechanism for rescuers to intervene and save the lives of animals facing  
9 euthanasia.
- 10 • Routinely fail to treat animals kindly and humanely, by, for example:
  - 11 ○ Holding animals in the “quarantine room,” a room in the locked and  
12 segregated area of the Shelter that lacks ventilation and natural light and is  
13 unsuitable for holding potentially dangerous animals, or any animal, for an  
14 extended period of time.
  - 15 ○ Failing to humanely and promptly euthanize animals who are irremediably  
16 suffering. The records indicate that animals have been held for several days  
17 before undergoing an “emergency euthanasia,” indicating that these animals  
18 were not properly diagnosed upon intake.
- 19 • Routinely fail to provide all impounded animals with necessary and prompt veterinary  
20 attention as required by law, such that animals with painful illnesses and injuries are  
21 transported and/or held without treatment or pain medication, resulting in unnecessary and  
22 preventable suffering. As one example among many, on March 2, 2012, Plaintiff Eileen  
23 McFall visited the shelter and observed a dog with the animal identification number  
24 A180643 (now Gracie) with a swelling about the size of a large grapefruit on her face.  
25 While a few animals had medications or notes on their kennels or were wearing “cones,”  
26 there was no indication that Gracie had received any veterinary care. Plaintiff McFall was,  
27 with some difficulty, able to rescue Gracie and obtain her kennel card and record, and  
28 there was no record of veterinary care for what was, after rescue, diagnosed as an abscess

1 and treated with surgery to drain the wound and with a course of antibiotics.

- 2 • Maintain inadequate records of the veterinary care, prescribed treatment, and actual  
3 treatment of the sick or injured animals. The pervasive practice of substandard record-  
4 keeping at the Shelter not only lowers the number of healthy, adoptable animals who are  
5 made available and lowers the chance of reunification of injured or ill animals with their  
6 owners, but has also obscured the Shelter's unlawful practices from public scrutiny. The  
7 Shelter also refuses to provide veterinary records to the public when that information is  
8 requested pursuant to the Public Records Act. In many instances, Defendants' practice of  
9 maintaining inadequate veterinary records makes it difficult to determine if the Shelter  
10 made a correct determination of "irremediable suffering" prior to euthanizing an animal,  
11 or whether the animal was ever diagnosed by a veterinarian. On information and belief,  
12 the Shelter's own records indicate that animals have received medical diagnoses but then  
13 have not received treatments for their illnesses or injuries. Likewise, the Shelter's own  
14 records document diagnoses of specific injuries or diseases, predictions of anticipated  
15 outcomes, and decisions to perform immediate euthanasia, without any apparent  
16 involvement by a licensed veterinarian.
- 17 • Routinely keep healthy, adoptable animals in a locked, segregated area of the Shelter  
18 inaccessible to the public.
- 19 • Routinely treat dogs labeled "pit bull" in a particularly inhumane fashion, including: (a)  
20 not making these animals available to the public for adoption; (b) providing inferior  
21 treatment, including veterinary attention and care; and (c) killing these animals in striking  
22 disproportion to all other dogs impounded at the shelter. Public records for the time  
23 period from mid-October 2012 to early June 2013 reveal that unclaimed dogs labeled "pit  
24 bull" were euthanized at the Shelter at a rate of 90%, significantly higher than the overall  
25 rate of euthanasia for unclaimed dogs (approximately 58%).
- 26 • Routinely fail to make owner-relinquished animals available for adoption throughout their  
27 holding periods. Owner-relinquished animals must be held for the same holding period  
28 and with the same requirements of care as stray animals, and must be available to the

1 public for both adoption and owner-redemption during the entire holding period.

2 **DEFENDANTS' BLATANT MISINTERPRETATION AND MISAPPLICATION**  
3 **OF MANDATORY HOLDING PERIODS**

4 26. The Shelter operates under a misinterpretation of the applicable holding periods.  
5 Section 6.04.250 of the Stockton Municipal Code requires that, except for in very specific  
6 circumstances, "an animal" whose owner is unknown "shall be held for a minimum of six (6)  
7 business days, not including the day of impoundment; unless, the animal has been made available  
8 for owner redemption on one weekday evening until at least 7:00 p.m. or one weekend day, the  
9 holding period shall be four (4) business days, not including the day of impoundment." However,  
10 Defendants' counsel has stated that because the Shelter is open on Saturdays, the holding period  
11 for *all animals* is 96 hours, with no exceptions. *See Ex. \_\_\_*. In fact, the plain language of the law  
12 makes clear that the holding period for any animal is six business days, reduced to four business  
13 days only if *that specific animal* is made available to the public on a Saturday, and that Saturday  
14 is not the day of impoundment. Defendants apparently are operating under the incorrect  
15 assumption that they can shorten the holding periods for all impounded animals, whether or not  
16 they are made available to the public on a weekend day, simply because the Shelter is open on a  
17 weekend day.

18 27. Defendants' misinterpretation of the mandatory holding periods is evidenced by  
19 their practice of routinely euthanizing animals prior to the end of the holding period. Public  
20 records requests by the McFall Plaintiffs show specific instances of dogs and cats euthanized  
21 prior to the expiration of the holding periods.

22 28. These records demonstrate that the Shelter has been routinely violating state and  
23 local law, including up through June 2013.

24 29. These records further demonstrate that the premature euthanasia of animals is  
25 routine and deliberate, and in accord with a blatant misinterpretation of the mandatory holding  
26 periods.

27 **ADDITIONAL VIOLATIONS**

28 30. In addition to the above-referenced violations of law, Plaintiffs are informed and

1 believe that Defendants also violate their statutory obligation to promote life-saving alternatives  
2 to killing impounded animals by, among other things, allowing the Shelter to remain consistently  
3 understaffed, while at the same time turning away interested volunteers, leading to animals being  
4 killed unnecessarily because the Shelter fails to adequately assist the public with adoptions or  
5 with the reunification of lost animals with owners. For example, on March 27, 2013, “pit bull”  
6 dog A195612 was euthanized, with the following note to his record, “No one answers phone that  
7 can speak English ok to PTS” [put to sleep], apparently because there was no staff member or  
8 volunteer available to provide translation.

9           31. Plaintiffs are informed and believe that Defendant City of Stockton violated the  
10 law by failing to produce records pursuant to the Public Records Act. For example, on September  
11 23, 2013, Plaintiff Eileen McFall, submitted a request for records to Defendant City of Stockton,  
12 seeking complete records of all Stockton animals examined, diagnosed, and/or treated by San  
13 Francisco SPCA veterinarians, including the name of the individual veterinarian, from November  
14 1, 2012 to September 23, 2013. Dr. McFall made this request after reviewing notes made in  
15 animal records received through other Public Records Act requests, including the record for a  
16 puppy with the animal identification number A190595 with the note, “Dr K from SFSPCA saw  
17 dog agreed necessary to pts due to prolapsed rectum pc” [Pat Claerbout]. Prolapsed rectum is a  
18 treatable condition that may result from worms and is not a lawful reason for euthanasia during  
19 the legal holding period. Despite having requested the name of the treating veterinarian and other  
20 specific information required by the California Veterinary Medical Board and the California Code  
21 of Regulations, Dr. McFall did not receive that information in response to her request.

22           32. Plaintiffs Eileen McFall and Christopher McFall have made multiple other  
23 requests for records to Defendant City of Stockton, and have received only responses that are  
24 partially complete, including being vacant of detailed information about veterinary care and the  
25 providers of that care, in violation of applicable law.

#### 26                           **PLAINTIFFS’ PRE-LITIGATION ADVOCACY**

27           33. After repeatedly attempting to directly address Defendants’ violations of law with  
28 Defendants to no avail, including through complaints to elected and appointed officials with



1 responsibility for Stockton Animal Services, through provision of records and other information  
2 to Stockton Police Department investigators, and by reporting Defendants' violations to the  
3 media, on January 16, 2013, the McFall Plaintiffs, by and through their previous counsel,  
4 delivered to Defendants a letter demanding that Defendants immediately take corrective action to  
5 remedy the pattern of illegal activity at the Shelter. *See Ex. \_\_*, Letter from E. Ideta. This letter  
6 detailed six specific violations of the law: (1) improper killing of animals on intake; (2) improper  
7 killing of animals with rescue holds; (3) improper killing of animals before the end of stray holds;  
8 (4) failure to provide veterinary care; (5) restricting access to strays; and (6) failure to keep  
9 adequate records. The letter provided examples of each violation and attached Shelter records  
10 obtained as a result of public records requests. The letter also pointed out that the issue was a  
11 "widespread and methodical rejection of the Hayden Law and Municipal Code" by the Shelter  
12 under the direction of Defendant Claerbout, of which the examples provided were merely  
13 representative.

14 34. On January 24, 2013, the McFall Plaintiffs received a response from Defendants.  
15 *See Ex. \_\_*. The letter listed a number of Shelter policies and asserted that those policies  
16 conformed to state law. The letter attempted to account for each individual example violation,  
17 but failed to substantively respond to Plaintiffs' claims that the Shelter had established a pattern  
18 and practice of violating the spirit and the letter of the Hayden Act and Municipal Code, failed to  
19 acknowledge any wrongdoing on the part of the Shelter, and failed to indicate any manner in  
20 which the Shelter planned to alter its practices to comply with the state and local law.

21 35. The letter touted supposed reforms that the Shelter put into effect in October 2012,  
22 following a "comprehensive investigation" by the City into the practices and procedures at the  
23 Shelter undertaken in response to "concerns expressed by members of the Stockton community."  
24 The purported reforms included: (1) "having the Shelter open on Saturdays for at least four  
25 hours," (2) "holding all animals brought to the Shelter for at least 96 hours unless (a) a  
26 veterinarian determines the animal is too ill or too injured, (b) an animal is not weaned and its  
27 mother is not impounded, or (c) there is documentation that the animal is vicious or dangerous,"  
28 and (3) upgrading the Shelter's computer system "so that Shelter staff may input and retrieve

1 required information concerning animals that are brought to the Shelter.”

2 36. The letter dismissed some of the examples of holding-period violations listed in  
3 Mr. Ideta’s letter because they took place prior to these alleged reforms, even though the reforms  
4 resulted in holding periods that were still not in compliance with law, as described below. The  
5 letter claimed that the euthanasia of an animal with a rescue hold and the failure to provide  
6 veterinary care to an injured dog were a result of inadvertence, but gave no indication that  
7 policies and procedures at the Shelter had been improved to prevent such incidents from  
8 happening again.

9 37. Defendants took the position “that the Shelter is currently being operated in  
10 compliance with the requirements of law.” *See* Ex. \_\_\_ at \_\_\_.

11 38. The letter attached an undated press release discussing the Police Department’s  
12 investigation into whether the “Shelter was operating in compliance with the law.” “The  
13 Department found that some of the policies and procedures in effect at the Shelter, although  
14 meeting the spirit of the law, have not always met the precise letter of the law. Moreover, the  
15 Department determined these policies and procedures are long standing.” “In an effort to meet  
16 the letter and spirit of the law, the Department has implemented a number of changes to the  
17 Shelter’s policies and procedures, including [ . . . ] any animal brought to the Shelter will be held  
18 for at least 72 hours unless a veterinarian determines the animal is too ill or too injured, an animal  
19 is not weaned and its mother is not impounded or the Department has documented the animal is  
20 vicious or dangerous.” *See* Ex. \_\_\_ at \_\_\_.

21 39. Defendants’ response and the press release demonstrate Defendants’ continued  
22 disregard for the mandatory holding periods. Defendants’ letter suggests a minimum holding  
23 period of 96 hours, while the Police Department’s press release to the public indicates that  
24 animals must be held for a minimum of 72 hours. In fact, the law requires that impounded  
25 animals be held for at least *six business days not including the day of impoundment*, unless the  
26 animal is made available for owner redemption on a weekday until at least 7:00 p.m. or one  
27 weekend day *not including the day of impoundment*, in which case the animal must be held for a  
28 minimum of *four business days*. As the Shelter is never open until 7:00 p.m., there are many

1 instances in which impounded animals must be held for more than four business days. For  
2 example, an animal who is impounded on a Monday must be held on Monday (the day of  
3 impoundment), Tuesday, Wednesday, Thursday, Friday, and Saturday, and could be legally  
4 euthanized, at the earliest, on Sunday, provided the animal was made available to the public on  
5 the preceding Saturday. Under Defendants' stated policy, and as reflected in the records,  
6 Defendants routinely euthanize animals impounded on a Monday prior to the following Sunday.

7 40. After receiving Defendants' response, Plaintiffs obtained a number of records via  
8 public records requests demonstrating that Defendants had continued to violate state and local law  
9 after the reforms were purportedly implemented.

10 41. On June 7, 2013, the McFall Plaintiffs, through their previous counsel, delivered  
11 another letter to Defendants' counsel. *See Ex. \_\_\_*. This letter informed Defendants of Plaintiffs'  
12 belief, based on public records, that the Shelter continued to violate state and local law and that  
13 the Shelter's own policies remained out of compliance with the Stockton Municipal Code.

14 42. The letter requested that the City take immediate action to, among other things,  
15 implement the correct statutory holding periods for impounded animals, provide prompt and  
16 necessary veterinary care to ill or injured animals, provide public access to all impounded animals  
17 statutorily eligible for adoption or redemption, and maintain accurate and complete records as  
18 required by law.

19 43. On July 16, 2013, Defendants' counsel responded with a letter in which they  
20 maintained that the Shelter was being run in compliance with state and local law. *See Ex. \_\_\_*.  
21 However, Defendants' continued misinterpretation of and disregard for the mandatory holding  
22 periods is evident in this letter, in which they describe, about impounded stray animals, "Currently,  
23 (and for nearly a year now), the Shelter has been holding all such animals for 96 hours, consistent  
24 with the SMC and State law."

25 44. Defendants' response failed to give adequate and appropriate consideration to  
26 Plaintiffs' complaints, particularly given the documented history of unlawful practices at the  
27 Shelter under the direction of Defendant Claerbout. Defendants' second letter failed to  
28 substantively answer Plaintiffs' claims that the Shelter, even after "comprehensive" examination

1 and subsequent reforms, continued to operate in a pattern and practice of violating the Hayden  
2 Act and Municipal Code.

3 **FIRST CAUSE OF ACTION**

4 **Petition for Writ of Mandate Pursuant to California Code of Civil Procedure § 1085**

5 **(By All Plaintiffs Against All Defendants)**

6 45. Plaintiffs re-allege and incorporate by reference each and all of the allegations  
7 contained in the preceding paragraphs of this Petition and Complaint, as though fully set forth  
8 herein.

9 46. Defendants have a mandatory, nondiscretionary duty to comply with all the  
10 provisions of law set forth above, among others, regarding the proper care and treatment of  
11 impounded animals.

12 47. As set forth above, Defendants routinely violate the law by, among other things, (i)  
13 failing to hold and make animals available for adoption or owner redemption for the full holding  
14 period as required by the Stockton Municipal Code and the Hayden Act; (ii) killing animals  
15 without legal justification before expiration of the minimum holding period mandated by the  
16 Stockton Municipal Code and the Hayden Act; (iii) denying public access to adoptable animals  
17 and thwarting the public's ability to adopt animals ; (iv) segregating animals in sections of the  
18 shelter that are locked and not readily accessible to the public, frustrating the ability of potential  
19 adopters, rescuers, and owners searching for lost pets to find them; (v) failing to treat impounded  
20 animals kindly and humanely and to refrain from subjecting animals to unnecessary suffering;  
21 (vi) failing to provide impounded animals with necessary and prompt veterinary care; (vii) killing  
22 animals when rescue is available; (viii) accepting animals abandoned at veterinary facilities; (ix)  
23 failing to keep required and accurate records on impounded animals, and (x) failing to provide  
24 reasonable assistance to members of the public inquiring about reclaiming or adopting impounded  
25 animals.

26 48. Based on the facts previously described, Plaintiffs allege that the Defendants carry  
27 out a program of killing specific breeds, those dogs labeled "pit bull," in disproportionate  
28 numbers as a means of controlling potentially dangerous dogs, in violation of state law

1 prohibiting the implementation of any program to regulate potentially dangerous dogs that is  
2 specific as to breed.

3 49. As a direct and proximate result of Defendants' violations of law as set forth in  
4 detail, but without limitation, in this Petition and Complaint, Plaintiffs ALDF, Ms. Ballus,  
5 Dr. McFall and Mr. McFall have suffered injury in the form of financial and time resources  
6 expended in their efforts to remedy the ongoing violations at the shelter.

7 50. Plaintiffs ALDF, Dr. McFall and Mr. McFall have, on a number of occasions,  
8 notified Defendants of their failure to comply with their legal obligations and demanded change,  
9 including but not only by delivering to Defendants two letters from Plaintiffs' legal counsel, the  
10 first on January 16, 2013 and the second on June 7, 2013, as described in paragraphs 33-44 of this  
11 Petition and Complaint.

12 51. Defendants have failed to respond adequately to Plaintiffs' demands.

13 52. Plaintiffs have exhausted all administrative remedies available to them, or are  
14 excused from exhausting their remedies because they are seeking to enforce a public, rather than  
15 a private right, or as a result of futility of pursuing such remedies, among other things.

16 53. Plaintiffs have no administrative remedy and no plain, speedy or adequate remedy  
17 in the ordinary course of law. The only remedy provided by law for Plaintiffs to obtain relief is  
18 this Petition for Writ of Mandate pursuant to § 1085, *et seq.*, of the California Code of Civil  
19 Procedure.

20 54. Plaintiffs will suffer irreparable harm if the relief requested herein is not granted,  
21 as will the public at large.

22 55. This litigation, if successful, will result in enforcement of a public duty and of  
23 important public rights affecting the public interest, including, without limitation, the public's  
24 right to compel Defendants to comply with state laws concerning the proper care and treatment of  
25 impounded animals, and with the state policy of saving and re-homing, instead of killing, such  
26 animals.

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**SECOND CAUSE OF ACTION**

**Claim for Injunctive Relief Pursuant to Code Civ. Proc. § 526a**

**(By Plaintiffs Emily Ballus and Eileen McFall Against All Defendants)**

56. Plaintiffs re-allege and incorporate by reference each and all of the allegations contained in the preceding paragraphs of this Petition and Complaint, as though fully set forth herein.

57. By engaging in the unlawful acts and omissions set forth in this Petition and Complaint, among other violations of law pertaining to the treatment and care of impounded animals, Defendants have and continue to mismanage, misuse and waste public funds allocated for shelter operations and for the salaries of shelter staff members who fail to perform their duties mandated by law. By euthanizing animals rather than promoting adoption, Defendants forgo potential revenue from adoption fees and instead pay to kill and dispose of animals who could have been placed into new homes.

58. Plaintiff Emily Ballus as a citizen and taxpayer of the City of Stockton, is entitled pursuant to Code of Civil Procedure section 526a to a judgment in the form of a judicial injunction restraining and preventing Defendants from continuing to illegally expend and/or waste public funds in the manner described in this Petition and Complaint.

59. Plaintiff Eileen McFall as a taxpayer of the City of Stockton, is entitled pursuant to Code of Civil Procedure section 526a to a judgment in the form of a judicial injunction restraining and preventing Defendants from continuing to illegally expend and/or waste public funds in the manner described in this Petition and Complaint.

**THIRD CAUSE OF ACTION**

**Petition for Writ of Mandate Pursuant to CAL. GOV. CODE § 6250**

**(By Plaintiffs Eileen McFall, Christopher McFall and ALDF Against Defendant City of Stockton)**

60. Plaintiffs re-allege and incorporate by reference each and all of the allegations contained in the preceding paragraphs of this Petition and Complaint, as though fully set forth herein.

1 61. Plaintiffs have a fundamental right to access information regarding the business of  
2 the State pursuant to the California Public Records Act, CAL. GOV. CODE § 6250 *et seq.*

3 62. Defendant City of Stockton has an obligation under the California Public Records  
4 Act to promptly provide records upon request that reasonably describes identifiable records,  
5 unless those records are covered by a statutory exemption.

6 63. Defendant City of Stockton has provided no legally recognized justification for its  
7 refusal to fully respond to the medical records request submitted by Plaintiff Eileen McFall on  
8 September 23, 2013.

9 64. Defendant City of Stockton has provided no legally recognized justification for its  
10 failure to provide complete records in response to Plaintiffs' requests.

11 65. Based on the conduct described in paragraphs 31 through 32 above, Plaintiffs  
12 allege that Defendant City of Stockton has violated CAL. GOV. CODE § 6253(b) by failing to  
13 produce the requested records.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment on this  
16 Petition and Complaint, as follows:

17 1. On the First Cause of Action:

- 18 a. Issue a Writ of Mandate directing Defendants to immediately cease and  
19 desist from at least the following:
- 20 i. killing any animal who is not irremediably suffering from a serious  
21 illness or severe injury, an unweaned newborn taken in without its  
22 mother, or an owner-relinquished dog with a history of vicious or  
23 dangerous behavior documented by Animal Services, before  
24 expiration of the minimum statutory holding period;
  - 25 ii. holding animals in areas of the shelter that are not readily accessible  
26 to the public;
  - 27 iii. accepting animals abandoned at veterinary facilities;
  - 28 iv. holding unweaned kittens impounded without their mothers

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- overnight or longer before performing euthanasia;
- v. implementing their program regulating potentially dangerous dogs in a manner that is specific as to breed;
- b. Issue a Writ of Mandate directing Defendants to immediately begin:
  - i. complying with the provisions of the Hayden Act that remain in effect and with the Stockton Municipal Code;
  - ii. holding all animals who are not irremediably suffering from a serious illness or severe injury, or are not unweaned newborns taken in without their mother, or are not owner-relinquished dogs with a history of vicious or dangerous behavior documented by Animal Services, for the minimum statutory period;
  - iii. making owner-relinquished animals available to the public for adoption throughout their statutory holding periods;
  - iv. implementing policies and protocols for determining whether an impounded animal is truly (a) irremediably suffering from a serious illness or severe injury, (b) an unweaned newborn that cannot survive without its mother, or (c) vicious;
  - v. making animals accessible to and viewable by the public at all times that the animals are impounded at the Shelter;
  - vi. implementing policies and protocols for ensuring that all animals in the Shelter's care are treated kindly and humanely, are not subjected to unnecessary suffering, and receive adequate nutrition, water, shelter, and exercise;
  - vii. providing prompt and necessary veterinary care to all impounded animals;
  - viii. implementing a reliable and robust method for non-profit rescue groups to place holds on animals prior to euthanasia;
  - ix. implementing policies and protocols for determining whether an



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impounded animal is truly (a) unadoptable and unsuitable for placement, or (b) untreatable to become adoptable;

- x. making all adoptable animals residing in the shelter available to the public for adoption when they are statutorily eligible to be adopted;
- xi. keeping complete and accurate records on impounded animals as required by law, including but not limited to records of veterinary care provided;
- xii. providing prompt assistance to members of the public, including rescue organizations, inquiring, whether by telephone, in person, or by electronic means, about reclaiming or adopting particular animals.

2. On the Second Cause of Action:

- a. Issue an order preliminarily and permanently enjoining Defendants from at least the following:
  - i. killing any animal who is not irremediably suffering from a serious illness or severe injury, an unweaned newborn taken in without its mother, or an owner-relinquished dog with a history of vicious or dangerous behavior documented by Animal Services, before expiration of the minimum statutory holding period;
  - ii. holding animals in areas of the shelter that are not readily accessible to the public;
  - iii. accepting animals abandoned at veterinary facilities;
  - iv. holding unweaned kittens impounded without their mothers overnight or longer before performing euthanasia;
  - v. regulating potentially dangerous dogs in a manner that is specific as to breed;
- b. Issue an order preliminarily and permanently mandating that Defendants:
  - i. comply with the provisions of the Hayden Act that remain in effect

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- and with the Stockton Municipal Code;
- ii. hold all animals who are not irremediably suffering from a serious illness or severe injury, or are not unweaned newborns taken in without their mother, or are not owner-relinquished dogs with a history of vicious or dangerous behavior documented by Animal Services, for the minimum statutory period;
- iii. make owner-relinquished animals available to the public for adoption throughout their statutory holding periods;
- iv. implement policies and protocols for determining whether an impounded animal is truly (a) irremediably suffering from a serious illness or severe injury, (b) an unweaned newborn that cannot survive without its mother, or (c) vicious;
- v. make animals accessible to and viewable by the public at all times that the animals are impounded at the Shelter;
- vi. implement policies and protocols for ensuring that all animals in the Shelter's care are treated kindly and humanely, are not subjected to unnecessary suffering, and receive adequate nutrition, water, shelter, and exercise;
- vii. provide prompt and necessary veterinary care to all impounded animals;
- viii. implement a reliable and robust method for non-profit rescue groups to place holds on animals prior to euthanasia;
- ix. implement policies and protocols for determining whether an impounded animal is truly (a) unadoptable and unsuitable for placement, or (b) untreatable to become adoptable;
- x. make all adoptable animals residing in the shelter available to the public for adoption when they are statutorily eligible to be adopted;
- xi. keep complete and accurate records on impounded animals as

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required by law, including but not limited to records of veterinary care provided;

xii. provide prompt assistance to members of the public, including rescue organizations, inquiring, whether by telephone or, in person, or by electronic means, about reclaiming or adopting particular animals.

3. On the Third Cause of Action:

a. Issue a Writ of Mandate directing Defendants to provide Plaintiffs with complete copies of all records responsive to:

i. The request of September 23, 2013, regarding all Stockton animals examined, diagnosed, and/or treated by San Francisco SPCA veterinarians, including the name of the individual veterinarian.

ii. All records requests, including SCRMS numbers 142885, 1475944, 1475949, 1475951, and 1507759.

4. On Both the First and Second Causes of Action:

a. Issue an order mandating Defendants to prove to the satisfaction of the Court that Defendants are in compliance with the Court's orders in these proceedings, through audits, monitoring, review of training materials and evidence of training of employees, and/or such other procedures as the Court deems appropriate to ensure compliance with its orders;

b. Retain jurisdiction of this matter until Defendants have demonstrated to the satisfaction of the Court the modification and implementation of their internal practices, policies and procedures in accordance with the relief granted herein.

Dated: \_\_\_\_\_, 2014