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7 *Exempt From Filing Fees Pursuant to Gov't Code § 6103*

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**  
10

11 ELIZABETH HUEG, an individual; ) Case No. 30-2022-01282419-CU-WM-CJC  
SAFE RESCUE TEAM, a California )  
12 501(c)(3) non-profit corporation; CATS IN NEED ) ASSIGNED FOR ALL PURPOSES TO  
OF HUMAN CARE, a California 501(c)(3) non- ) JUDGE MATHA K. GOODING  
13 profit ) DEPT. C-31  
corporation )  
14 ) **RESPONDENTS' OPPOSITION TO**  
Petitioners, ) **PETITIONERS' SECOND EX PARTE**  
15 v. ) **APPLICATION FOR A TEMPORARY**  
16 ) **RESTRAINING ORDER AND ORDER TO**  
OC ANIMAL CARE, OC COMMUNITY ) **SHOW CAUSE RE: PRELIMINARY**  
17 RESOURCES and DOES 1 through 25, inclusive, ) **INJUNCTION**  
18 Respondents ) **Ex Parte Hearing:**  
Date: November 1, 2022  
19 Time: 8:45 a.m.  
Dept: C-31  
20 )  
21 )  
22 )

23 **TO THE HONORABLE COURT, PETITIONERS, AND PETITIONERS' ATTORNEY**  
24 **OF RECORD:**

25 **PLEASE TAKE NOTICE** that Respondents OC Animal Care and OC Community Resources  
26 ("Respondents"), hereby oppose Petitioners' Second Ex Parte Application for A Temporary  
27 Restraining Order and Order to Show Cause Re: Preliminary Injunction. This Opposition is based  
28 upon the attached Memorandum of Points and Authorities, any attached declarations and documents,

1 the pleadings, files and records in this action, and upon such additional evidence and argument that  
2 may be presented in connection with the hearing on this matter.

3

4 DATED: October 31, 2022

Respectfully submitted,

5

LEON J. PAGE, COUNTY COUNSEL  
LAURA D. KNAPP, SUPERVISING DEPUTY  
6 KAYLA N. WATSON, DEPUTY  
7 CAROLYN M. KHOUZAM, DEPUTY

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By \_\_\_\_\_ /s/\_\_\_\_\_  
9 Kayla N. Watson

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10 Attorneys for Respondents

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1 **I. INTRODUCTION**

2 “Lawyers must understand that filing an *ex parte* motion...is the forensic equivalent of standing  
3 in a crowded theater and shouting, ‘Fire!’ There had better be a fire.”

4 *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F.Supp. 488, 492 (C.D. Cal. 1995).) This Court  
5 issues the same caution to parties in its individual rules of practice and procedures and cites to *Mission*  
6 *Power, supra*, to advise all counsel against overusing the *ex parte* application process and reserving  
7 such applications for *genuine emergencies*. (Honorable Martha K. Gooding’s procedures at section  
8 III. F. [Emphasis added].) Petitioners are required to support their *ex parte* application “by affidavits  
9 or declarations whose contents would be admissible if the deponents, affiants, or declarants were  
10 testifying in court.” (*Mission Power, supra*.)

11 This is Plaintiffs’ *second* *ex parte* application in less than ten (10) days, neither of which  
12 demonstrate any current, ongoing activity that is in violation of any statute, policy or procedure and  
13 warrants emergency relief.<sup>1</sup> Petitioners’ voluntary *withdrawal* of their first *ex parte* application at the  
14 hearing on October 21, 2022 (ROA No. 37),<sup>2</sup> and waiting 10 days to refile this practically identical *ex*  
15 *parte* application for the same emergency relief, demonstrates the complete lack of any “emergency,”  
16 let alone irreparable harm. As such, this Court’s emergency intervention is not supported by the law  
17 and there is no reason why Petitioners should be allowed to “go to the head of the line in front of all  
18 other litigants and receive special treatment.” (*Mission Power, supra*.) For the reasons stated herein  
19 and the accompanying declaration, this *ex parte* application (“Application”) should be denied.

20 **II. LEGAL STANDARD**

21 An injunction “is an extraordinary remedy which requires a showing of threatened irreparable  
22 injury and the inadequacy of other remedies at law.” (*Gleaves v. Waters*, 175 Cal. App. 3d 413, 417  
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24 <sup>1</sup> Respondents ask this Court to disregard and strike the *untimely* Declaration of Debbie Robin  
25 Friedman which was served at 2:48pm on October 31, 2022, and appears to raise issues and seek relief  
that is not addressed in the *ex parte* application.

26 <sup>2</sup> Petitioners’ first *ex parte* application filed on October 19, 2022, (ROA Nos. 15-31) was over  
27 180 pages, consisted of at least 6 declarations, some of which were buried in the application with  
28 exhibits, and others attached separately with exhibits, requiring Respondents’ counsel (and this Court)  
to navigate through hundreds of pages, respond to, and prepare for an *ex parte* hearing in 24 hours,  
only to have it suddenly withdrawn at the hearing upon the case being called by this court.

1 (1985).) To obtain an injunction, a plaintiff “is required to present evidence of the irreparable injury or  
2 interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits.”  
3 (*White v. Davis*, 30 Cal. 4th 528, 554 (2003).) In determining whether to issue a preliminary  
4 injunction, the trial court considers two related factors: “(1) the likelihood that the plaintiff will prevail  
5 on the merits at trial and (2) the interim harm that the plaintiff would be likely to sustain if the  
6 injunction were denied as compared to the harm the defendant would likely suffer if the preliminary  
7 injunction were issued.” (*Smith v. Adventist Health Sys./West*, 182 Cal. App. 4th 729, 749 (2010).)  
8 The second factor “involves consideration of such things as the inadequacy of other remedies, the  
9 degree of irreparable harm, and the necessity of preserving the status quo.” (*Id.*) The moving party  
10 bears the burden. (*Casmalia Res. v. City of Santa Barbara*, 195 Cal. App. 3d 827, 831 (1987).) As  
11 discussed herein, Petitioners have not come close to making the required showing.

12 **A. The Ex Parte Should Be Denied Because There Is No Evidence of Irreparable**  
13 **Harm**

14 “[E]x parte applications are appropriate when “the tomatoes are about to spoil, or the yacht is  
15 about to leave the jurisdiction” and “all will be lost unless immediate action is taken.” (*Mission Power*,  
16 *supra*, at 491-492.)<sup>3</sup> Petitioners’ Application must be supported with evidence that they will be  
17 irreparably prejudiced if the relief they seek is not granted without a noticed motion. (*Id.*) The  
18 California Rules of Court require the same.<sup>4</sup>

19 Petitioners have not met this burden. Petitioners allege, without any supporting evidence, that  
20 “OCAC has been on a killing rampage” (App. at 13:19-20) and that “if Petitioners are forced to wait  
21 until the OSC re: preliminary injunction, in the interim, more and more animals will continue to be  
22 unlawfully euthanized instead of put up for adoption, and others will go without necessary and proper  
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24 <sup>3</sup> Irreparable harm means that a party will be hurt in a way that cannot later be repaired. (*See People ex*  
25 *rel. Gow. v. Mitchell Bros.’ Santa Ana Theater*, 118 Cal. App. 3d 863, 870-71 (1981).) “It is well established  
26 that when injunctive relief is sought, consideration of public policy is not only permissible but mandatory.  
27 [Citation.]” (*Teamsters Agricultural Workers Union v. International Brotherhood of Teamsters* (1983) 140  
28 Cal.App.3d 547, 555.) “Where, as here, the plaintiff seeks to enjoin public officers and agencies in the  
performance of their duties[,], the public interest *must* be considered. [Citation.]” (*Tahoe Keys Property*  
*Owners’ Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1472–1473.) OCAC and the  
animals at the OCAC shelter will be harmed if the Court issues an injunction here. (See Schmidt ¶ 31.)

<sup>4</sup> See, Cal. Rules of Court, rule 3.1202(c): “An ex parte applicant “must make an affirmative factual  
showing in a declaration containing competent testimony based on personal knowledge of irreparable harm,  
immediate danger, or any other statutory basis for granting relief ex parte.”

1 veterinary care and suffer due to continued neglect by OCAC...” (App. at iii:1-5.) *Yet, in the 10 days*  
2 *that have passed since Petitioners’ first ex parte application, Petitioners have not identified a single*  
3 *animal that was allegedly improperly euthanized* or provided improper veterinary care. If OCAC is in  
4 fact on a “killing rampage” Petitioners would be able to identify at least one “needless killing” since  
5 October 21, 2022. They have not, because there is not one. Petitioners have not identified a single  
6 animal that is pending euthanasia, that they have attempted to rescue from the OCAC shelter, that they  
7 were illegally denied from rescuing, and that, absent this Court’s intervention, would result in  
8 irreparable harm. Instead, Petitioners vaguely assert that “Petitioners and taxpayers suffer irreparable  
9 injury as each shelter animal is killed in violation of law or grossly neglected.” (App. at ii:23-24.)

10 Moreover, as additional “evidence” in support of their “irreparable harm”, Petitioners ask this  
11 Court to consider a ruling on a temporary restraining order issued in a pending federal case filed in the  
12 Western District of Virginia, *U.S. v. Envigo*, Case No. 6:22-cv-0028. (See Decl. of Katz at ¶¶ 3-4.)  
13 This ruling is in no way relevant to the Application before the Court and should be stricken because: 1)  
14 it is a federal case from a completely different jurisdiction, 2) it is not a published or even unpublished  
15 opinion and has no binding effect, 3) a court ruling is not “persuasive” authority, and 4) the case  
16 appears to involve federal claims (which are not alleged in this lawsuit) against a private company that  
17 holds a license to breed and sell beagles. None of the facts or claims in *U.S. v. Envigo* involve a  
18 county animal shelter which operates under a different framework and specific laws. Petitioners are  
19 grasping for “evidence” from other jurisdictions to make a claim of irreparable harm and their  
20 Application should be denied.

21 **B. Petitioners Are Not Likely to Prevail on the Merits of Any of Their Claims**

22 If the irreparable prejudice is not severe, it must be apparent that the underlying motion has a  
23 high likelihood of success on the merits. (*Mission Power*, supra, at 492.) Here, Petitioners do not have  
24 a “high likelihood” of success. Petitioners’ Application rests on a very questionable reading of the law  
25 and is not supported by any credible facts. As the declaration submitted with this Opposition  
26 demonstrates, none of what Petitioners have asserted is true. (See Declaration of Monica Schmidt  
27 (“Schmidt Decl.”) attached hereto.) Petitioners’ arguments are not supported by any legal theory, let  
28 alone “persuasive” authority. As established by *Mission Power*, there is not a “high likelihood” of

1 Petitioners' success and the Application should be denied.

2 **1. OCAC Is Not Euthanizing Healthy Adoptable Animals in Violation of the Law**

3 Petitioners cite Civil Code section 1834.4, Food and Agriculture Code ("FAC") section 17005,  
4 and Penal Code section 599d to support their conclusion that OCAC is euthanizing animals in violation  
5 of the law. (App. at 4:23-28.) These statutes were enacted as part of the Hayden Act, which indeed  
6 provides: "It is the policy of the state that no adoptable animal should be euthanized if it can be  
7 adopted into a suitable home." (Civil Code § 1834.4, FAC § 17005, Penal Code § 599d.) However,  
8 Petitioners notably omit the Act's next sentence:

9 Adoptable animals include only those animals eight weeks of age or older that, at or  
10 subsequent to the time the animal is impounded or otherwise taken into possession,  
11 have manifested no sign of a behavioral or temperamental defect that could pose a  
12 health or safety risk or otherwise make the animal unsuitable for placement as a pet, and  
13 have manifested no sign of disease, injury, or congenital or hereditary condition that  
14 adversely affects the health of the animal or that is likely to adversely affect the animal's  
15 health in the future. (FAC § 17005.)

16 Additionally, the legal holding period for stray dogs is enumerated by FAC section 31108 and  
17 for stray cats by FAC section 31752, both of which require a 6-business day holding period. (FAC §§  
18 31108(a)(1), 31752(a)(1).) In sum, for OCAC to lawfully euthanize an animal, the animal must: (1) be  
19 past the legal holding period, and (2) determined to be not adoptable by the agency in accordance with  
20 the Hayden Act. (FAC §§ 17005, 31108, 31752.)

21 A treatable animal is one "that is not adoptable but that could become adoptable with  
22 reasonable efforts." (FAC § 17005(b).) What efforts are "reasonable" depends not only on the  
23 condition of the particular animal, but also on the circumstances and resources existing within the  
24 animal control system at the time. (Cal. Att. Gen. Op. No. 18-1001, 2022 WL 988446, at \*5 (Mar. 24,  
25 2022).) "Moreover, animals that are irremediably suffering from a serious illness or severe injury are  
26 not to be held for adoption. Further, with limited exception, newborn animals that need maternal care  
27 and have been impounded without their mothers may be euthanized without being held for owner  
28 redemption or adoption." (3 Cal. Jur. 3d Animals § 113; FAC § 17006 (referring to, as exceptions,  
FAC §§ 31108(b), 31752(c); see also Schmidt Decl. ¶¶ 10, 12 - attesting that OCAC's operations are  
consistent with the law.)

First, Petitioners have presented no evidence that a single stray dog or stray cat was euthanized

1 prior to the statutory 6 business day holding period. In fact, Petitioners have presented no evidence that  
2 even a single animal was euthanized since their filing of their first ex parte application on October 19,  
3 2022.

4 Second, Petitioners have offered no evidence that a single animal was euthanized that was  
5 “adoptable” under the law.<sup>5</sup> Rather, Petitioners own papers demonstrate the contrary: “Angel” was  
6 purportedly placed at OCAC in June 2021 and euthanized one year later, on June 30, 2022, due to  
7 “chronic and unsocial fearful behavior.” (App at 5.) “Gunner” was purportedly euthanized in  
8 September 2021 for “declining behavior” and being “animal reactive.” (*Id.* at 6.) The “Pineapple  
9 Litter” was a litter of 3-week-old kittens euthanized due to being “severely injured and/or ill and were  
10 determined to be irremediably suffering.” (*Id.* at 7.)<sup>6</sup>

11 Given that all the animals identified by Petitioners were deemed “not adoptable” by OCAC and  
12 fit the definition of “not adoptable” under the statute by Petitioners’ own admission, and none were  
13 euthanized prior to the 6-day holding period, Petitioners have presented no legal authority or factual  
14 premise that demonstrates a likelihood of success on any of their claims.

## 15 **2. OCAC’s Shelter Is Open to the Public for Adoptions**

16 Petitioners’ allegations in Section II are simply false. The OCAC Shelter is open to the public  
17 seven days a week, from 8:00 a.m. to 5:00 p.m. (Schmidt Decl. ¶ 14.) Petitioners appear to take issue  
18 with the fact that members of the public are no longer allowed to walk freely through the dog kennel  
19 areas of the shelter. OCAC changed its practices finding that it was a better and safer experience for  
20 the animals, staff, and members of the public. (*Id.* ¶¶ 20-21.) Members of the public and nonprofit  
21 organizations can walk-in and ask to see any adoptable animal in the shelter or may schedule an  
22 appointment any day of the week. (*Ibid.*)<sup>7</sup> In addition, all adoptable animals are posted on OCAC’s  
23 public website. Thanks to OCAC’s adoption program, OCAC has an amazing successful save rate of

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24  
25 <sup>5</sup> Without proper Animal ID numbers, OCAC is unable to substantiate any of Petitioners’ claims about  
the animals.

26 <sup>6</sup> Newborn animals that need maternal care and have been impounded without their mothers and animals  
that are seriously ill or irremediably suffering, may be euthanized without any holding period. (FAC § 17006.)

27 <sup>7</sup> Under the current adoption procedures, members of the public are no longer allowed to walk freely  
28 through the dog kennels. However, members of the public are permitted to walk through cat kennels and exotic  
pet kennels because cats and exotic pets are of different temperaments and pose a far lower level of risk to  
potential adopters than dogs. (Schmidt Decl. ¶¶ 25.)

1 94.8% for dogs and 81.05% for cats. (*Id.* at ¶¶ 4,5,31.)

2 Petitioners also appear to take issue with OCAC’s Adoption by Appointment program.  
3 However, a mere disagreement without some showing of illegality and/or irreparable harm will not  
4 suffice for ex parte relief here. Moreover, as a result of measures taken during the COVID-19  
5 pandemic, OCAC has learned that adoption by appointment is the preferable practice, not only for  
6 OCAC staff but for the animals at the shelter and the general public. (Schmidt Decl. ¶ 19.) As stated  
7 above, this is not the only means to adopt an animal from the shelter, as walk-ins from the public are  
8 also available any day of the week from 11:00 a.m. to 5:00 p.m. (*Id.* at ¶ 14.)

9 Nevertheless, Petitioners offer no evidence that they have been harmed by OCAC’s Adoption  
10 by Appointment program, nor that they will be if this Court does not immediately intervene.  
11 Petitioners instead offer unsupported data from an unidentified, unverified source that the Adoption by  
12 Appointment system is not working. (Decl. of April Josephson at p. 15.) Petitioners further attempt to  
13 link the Adoption by Appointment programs to the animals suffering through an unknown source,  
14 “Jane Doe” who purportedly does not live or work within the State of California and has not visited the  
15 OCAC Shelter since May 2021. (Decl. of Jane Doe at ¶¶ 2, 4.) This falls well short of the standard  
16 articulated by the Court in *Mission Power, supra*, and Cal. Of Court, Rule 3.1202(c), and therefore the  
17 Application should be denied.

### 18 **3. OCAC Has Never Refused to Cooperate with Rescue Organizations**

19 Petitioners again baselessly allege that “OCAC has failed to follow and continues to follow its  
20 own established protocols to communicate with rescue organizations in connection with animals that  
21 are scheduled for euthanasia.” (App. at 10.) Petitioners never identify the “protocol” that is  
22 purportedly being violated, nor do they identify a particular rescue organization that was denied access  
23 or not given notice as required by law. Indeed, Petitioners own declarations demonstrate otherwise.  
24 (See, Second Decl. of Heather McDermott Perez attesting that “[a]s a volunteer at OCAC...I have set  
25 up video cameras and taken videos of dogs at OCAC to post on the internet with the goal to get the dog  
26 adopted or rescued.”; Decl. of Karen Vaugh at ¶ 24 attesting that she has been volunteering at the  
27 shelter for three years; Decl. of Kathy Oda at ¶¶ 12, 16 describing volunteer accounts at the OCAC  
28 shelter; Decl. of April Josephson ¶¶ 4, 35 describing her purported involvement with OCAC since

1 2007 and numerous meetings with OCAC since 2021.) Clearly, by Petitioners’ own admissions,  
2 OCAC is cooperating with rescue organizations and volunteers and allowing them to participate in the  
3 OCAC shelter. OCAC even allows volunteers to set up cameras in their facility so that they can be  
4 posted on the internet for anyone to see. It is outlandish for Petitioners to claim that OCAC refuses to  
5 cooperate with rescue organizations and their Application should be denied.

6 ***a. OCAC is Compliant with FAC sections 31108 and 31752.***

7 Petitioners allege that OCAC is violating the FAC by not updating OC Rescue Track and by  
8 refusing to respond to inquiries by rescue organizations. As summarized above and in the attached  
9 declaration, neither is true, nor a violation of the FAC.<sup>8</sup> (Schmidt Decl. at ¶ 33-41.)

10 FAC sections 31108 and 31752 provide the legal holding period for stray dogs and for stray  
11 cats, both of which require a 6-business day holding period. (FAC § 31108(a)(1), 31752(a)(1).)  
12 While FAC sections 31108(b)(1) and 31754(a) provide that an impounded dog “shall, prior to the  
13 euthanasia of that animal, be released” to a rescue group if the group so requests, FAC section 17005  
14 provides that “[i]f, during the holding period, the shelter finds any ‘sign of a behavioral or  
15 temperamental defect that could pose a health or safety risk or otherwise make the animal unsuitable  
16 for placement as a pet,’ then the shelter may decline to surrender that dog to a rescue group, under the  
17 authority of Food and Agricultural Code section 17005.” (FAC 17005(a); Att. Gen. Opp. No. 18-  
18 1011, *supra*, at \*8; see also Schmidt Decl. ¶ 33-35, attesting that OCAC properly uses OCAC Rescue  
19 Track to help find adoptable homes for sick, stray, injured or aggressive animals.) “‘Behavioral  
20 problems’ is a broad term that could refer to almost any behavior that an owner finds undesirable or  
21 unmanageable, ranging from relatively mild issues such as barking, scratching, whining, or jumping,  
22 to more severe problems such as threatening, attacking, injuring, or killing a human or another  
23 animal.” (*Id.* at \*6.)<sup>9</sup>

24 OCAC is operating consistent with these laws. Animals which have presented serious  
25

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26 <sup>8</sup> Moreover, Petitioners’ have provided no authority, and Respondents are aware none, that requires  
27 OCAC to update OC Rescue Track daily, as Petitioners pray for in their relief. (App. at ii, and 14.)

28 <sup>9</sup> While The Hayden Act explicitly encourages cooperation between county animal shelters and  
nonprofit animal rescue organizations, these relationships give county shelters more flexibility and a broader  
network of resources, which in turn may influence a shelter’s assessments as to what “reasonable effort”  
means—and, thus, which animals are “treatable.” But they do not give rescue organizations a right to adopt a  
dog that a shelter has deemed not adoptable and not treatable. (Att. Gen Op., *supra*, at \*8.)

1 behavioral or temperamental defects may be lawfully euthanized and those with less serious  
2 behavioral histories or medical concerns that could be reasonably treated are offered to rescue groups  
3 through OCAC's Rescue Track system. (Schmidt Decl. ¶ 10.) Moreover, before performing  
4 euthanasia for behavioral reasons, every dog is reviewed by the Behavior Evaluation Committee  
5 ("BEC"). (*Id.* at ¶ 11) The BEC's role is to evaluate the animal's behavior and medical information  
6 as reported by shelter, field, and veterinary staff, as well as documented history provided by the owner  
7 or the public to determine the best option for the animal while also considering public safety and the  
8 well-being of the animal. (*Id.*)

9 In fact, Petitioners' own papers concede that the animals referenced in their Application were  
10 deemed to have behavioral problems consistent with the definition under FAC section 17005. "'Max'  
11 was deemed aggressive and a public safety risk to other animals in the community.'" (App. at 11.)  
12 Accordingly, OCAC was under no legal obligation to respond or surrender the dog to "Boise Bully  
13 Breed Rescue" as Petitioners allege. Again, Petitioners have identified no irreparable harm and no  
14 likelihood of success on the merits, and their Application should be denied.

#### 15 **4. OCAC Is Properly Caring for The Shelter Animals**

16 All animals at the OCAC shelter are receiving proper care, food, water, medical attention,  
17 exercise, and socialization. (Schmidt Decl. ¶ 42.) OCAC's shelter kennels are designed to provide a  
18 larger than average footprint for each animal to ensure primary enclosures provide sufficient space to  
19 allow each animal to make normal postural adjustments, e.g., to turn freely and to easily stand, sit,  
20 stretch, move their head without touching the top of the enclosure, lie in a comfortable position with  
21 limbs extended, move about and assume a comfortable posture for feeding, drinking, urinating, and  
22 defecating. (*Ibid.*) The shelter kennels allow animals to see out, but also provide at least some  
23 opportunity to avoid visual contact with other animals, thereby reducing kennel stress. (*Ibid.*) Cat  
24 kennels feature a divided space for litter pans as well as perching shelves. (*Ibid.*) Large dog kennels  
25 feature indoor/outdoor living areas which allow for fresh air, maximizes living space, and provides  
26 room to freely move around. (*Ibid.*)

27 OCAC has 3 full time veterinarians, multiple contract veterinarians, 1 Supervising Registered  
28 Veterinary Technician, 5 licensed Registered Veterinary Technicians, and 1 Veterinary Assistant

1 providing daily evaluations and medical care. (Schmidt Decl. ¶ 43.) In addition, OCAC contracts with  
2 an after-hours emergency veterinary clinic for additional support services. (*Ibid.*) As a municipal  
3 shelter, OCAC is a waystation for animals, and as such, the trained veterinary team is experienced and  
4 knowledgeable in operating at a high volume, high quality level of care. (*Ibid.*) An emphasis is placed  
5 on working with every team across the shelter to find quickest, positive pathway out of the shelter  
6 when humanely appropriate. (*Ibid.*)

7 All animals in the shelter receive responsible and individualized care. (Schmidt Decl. ¶ 44.)  
8 Animal Care Attendants thoroughly clean every kennel each morning and continue to spot clean  
9 throughout the day. (*Ibid.*) Animals are fed a minimum of twice per day, with individualized meal  
10 plans for those that have special needs. (*Ibid.*) OCAC provides in-kennel enrichment daily for all  
11 animals and strives to have every eligible dog receive out-of-kennel time every other day. (*Ibid.*)  
12 Enrichment is critical for the dogs, but staff and volunteer safety are a priority. (*Ibid.*)

13 Moreover, OCAC has been actively trying to recruit employees for the past year. (Schmidt  
14 Decl. ¶ 45.) Just like other employers locally and nationwide, OCAC struggles to find employees to  
15 staff its shelter. Staffing issues are also exacerbated by quarantining of staff impacted by COVID-19.  
16 (*Ibid.*) Nevertheless, OCAC has been focused on filling vacancies despite the challenges faced by  
17 many employers over the last year in doing so. (*Ibid.*) While OCAC awaits to fill staff vacancies, they  
18 have contracted with a custodial temporary agency to provide contingent employees to assist with non-  
19 animal handling cleaning tasks. (*Ibid.*) Even if there was irreparable harm shown and a legal basis for  
20 any of Petitioners' claims, no order by this Court can force members of the public to work at the  
21 OCAC shelter.

## 22 **5. Petitioners' Allegations of Retaliation Are Meritless and Should Be Stricken**

23 There is no admissible or credible evidence that anyone at OCAC has retaliated against any  
24 advocate, rescue organization, or any named Petitioner for advocating for animal welfare. Quite to the  
25 contrary. In support of this allegation, Petitioners again offer testimony from an unknown source,  
26 "Jane Doe" who purportedly does not live or work within the State of California and has not been to  
27 the OCAC Shelter since May 2021. (Decl. of Jane Doe at ¶¶ 2, 4; 29.) Petitioners also offer  
28 testimony from Petitioners' counsel, baselessly speculating that volunteers "fear" their access to the

1 OCAC shelter is going to be terminated. (Decl. of Katz at ¶ 12.) There is no evidence of retaliation by  
2 anyone at OCAC, nor any evidence that volunteer access to the shelter is going to be denied. In fact,  
3 the Declaration of Monica Schmidt submitted in support of this Opposition, demonstrates that the  
4 adoption program relies on volunteers to find life-saving outcomes for the shelter animals. (Schmidt  
5 Decl. ¶¶ 7, 24.) Issuing an emergency injunction to “maintain the status quo” based on an unfounded  
6 and unsupported “fear” is not evidence and it is not a sufficient basis for ex parte relief.

7 **6. The Alleged “Killing Rampage” Is Unfounded and There Is No Legal Basis to**  
8 **Appoint A Monitor Over OCAC’s Practices**

9 Petitioners have not demonstrated a single illegal practice or act by OCAC, let alone a “killing  
10 rampage.” This repeated allegation is offensive, prejudicial, completely without merit, and false.  
11 Every animal that has unfortunately been euthanized was euthanized in accordance with the Food and  
12 Agriculture Code and Petitioners have not identified a single animal that was euthanized or pending  
13 euthanasia that warrants this Court’s intrusion, much less a monitor.

14 **III. CONCLUSION**

15 For all the reasons stated herein, Petitioners’ Ex Parte Application should be denied.

16 DATED: October 31, 2022

Respectfully submitted,

17 LEON J. PAGE, COUNTY COUNSEL  
18 LAURA D. KNAPP, SUPERVISING DEPUTY  
19 KAYLA N. WATSON, DEPUTY  
20 CAROLYN M. KHOUZAM, DEPUTY

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