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9 profit corporation; Cats in Need of Human Touch, 501(c)(3) no-profit corporation

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE - CENTRAL

Elizabeth Hueg, an individual; SAFE Rescue Team, a 501(c)(3) non-profit corporation; Cats in Need of Human Care, 501(c)(3) non-profit corporation,

Petitioners,

vs.

OC Animal Care, OC Community Resources and Does 1-25, inclusive,

Respondents.

) Case No.: 30-2022-01282419-CU-  
) WM-CJC

) EX PARTE APPLICATION FOR  
) TEMPORARY RESTRAINING ORDER  
) AND ORDER TO SHOW CAUSE RE:  
) PRELIMINARY INJUNCTION;  
) MEMORANDUM OF POINTS AND  
) AUTHORITIES; SUPPORTING  
) DECLARATIONS;[PROPOSED] ORDER

) Date: November 1, 2022  
) Time: 8:45 a.m.  
) Place: Dept. C-31  
) Hon. Martha K. Gooding

TO THIS HONORABLE COURT AND THE PARTIES HEREIN:  
PLEASE TAKE NOTICE that on November 1, 2022, at 8:45 a.m., or as soon thereafter as this matter may be heard in Department C-31 of the Orange County Superior Court, located at 700 Civic Center Drive, Santa Ana, California, Petitioners, by and through their attorney of record, M. Taylor Katz, Esq., and pursuant to California Rules of Court 3.1200-3.1207 and *California Code of Civil Procedure* §525, will move this court for a TRO and to set an OSC re Preliminary Injunction, as prayed for in the Petition on file herein, to restrain and enjoin Respondent OC Animal Care (hereafter "OCAC") from engaging in or continuing to engage in, the following conduct for the remainder of this litigation:

- 1 1) Euthanizing adoptable animals in its shelter, in violation of California law;
- 2 2) Keeping the shelter closed to the public;
- 3 3) Failing to cooperate with rescue organizations in violation of law; and
- 4 4) Failing to provide necessary and prompt medical treatment, nutrition and shelter for
- 5 animals in violation of law.
- 6

7 In order to increase adoption rates and reduce euthanasia, Petitioners request this Honorable  
8 Court Order OCAC to:

- 9 5) Reopen the shelter to the public;
- 10 6) Provide daily updates to OC Rescue Track;
- 11 7) Provide necessary and prompt veterinary care, nutrition and shelter; and
- 12 8) Maintain status quo, only as to access into OCAC and to shelter animals for the
- 13 volunteers or rescue organizations who have come forward in support of this case.
- 14

15 Lastly, Petitioners request this Honorable Court Order:

- 16 9) The appointment of a Monitor to oversee that OCAC complies with state law when
- 17 making the decision to euthanize an animal, complies with the Court's Orders and report
- 18 findings with respect to OCAC's compliance to this Honorable Court.

19 Pending a hearing on the OSC re Preliminary Injunction, Petitioners hereby apply for, on  
20 an ex parte basis, pursuant to California Rules of Court 3.1150, and submit that the interests of  
21 justice require that, a Temporary Restraining Order issue to restrain and enjoin Respondents  
22 from engaging in and continuing to engage in the aforesaid conduct.

23 This ex parte application is necessary because Petitioners and taxpayers suffer irreparable  
24 injury as each shelter animal is killed in violation of law or grossly neglected. Petitioners are all  
25 animal welfare advocates who have worked tirelessly to try to network and get the animals out  
26 alive. Petitioners and taxpayers are not deriving the benefit and services entrusted to OCAC to  
27 deliver: a shelter for lost and stray animals and shelter services performed in accordance with  
28 the law.

1 If Petitioners are forced to wait until the OSC re: preliminary injunction, in the interim,  
2 more and more animals will continue to be unlawfully euthanized instead of put up for adoption,  
3 and others will go without necessary and proper veterinary care and suffer due to the continued  
4 neglect by OCAC, which greatly outweighs any potential inconvenience to Respondents of  
5 being ordered to follow the law of properly caring for the animals in its shelter.  
6

7 The Temporary Restraining Order should issue because, as set forth herein, Petitioners  
8 are likely to win the case, because the TRO simply seeks to enforce the duties that Respondents  
9 are already required to perform under the law, which is, providing proper care to the animals in  
10 their custody. The relative interim harm to the Petitioners of the euthanization and neglect of  
11 adoptable animals if the TRO is denied greatly outweighs the harm to Respondents if the TRO is  
12 granted, which is nil.

13 The Petition in this action was filed on September 21, 2022 and served on the  
14 Respondents on October 19, 2022. Petitioners have provided a file-stamped copy of the Petition  
15 to the Court hearing this application and have requested that the court file be made available to  
16 the Judge hearing the application, pursuant to California Rules of Court 3.1150(b). Proper and  
17 timely notice of this ex parte was provided to Respondents in accordance with California Rules  
18 of Court 379. (Declaration of M. Taylor Katz)  
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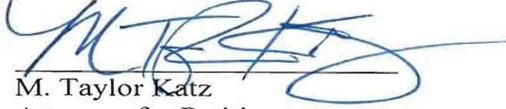
20 This Application is made on the grounds set forth in the Points and Authorities herein;  
21 the Declarations of Kathleen Oda, Heather McDermott-Perez, Romina Yamashiro, Karen  
22 Vaughn, M. Taylor Katz, April Josephson, Barbara Van Rooyan, Lauren Bickers, Petitioner  
23 Elizabeth Hueg and one Declaration filed under seal (hereinafter referred to as "Declaration of  
24 Jane Doe,") concurrently filed herewith; upon all papers and pleading on file in this action, and  
25 upon such other evidence, oral and documentary, which may be presented at the time of hearing  
26 regarding this Application or the hearing regarding the Order to Show Cause Re: Preliminary  
27 Injunction requested herein.

28 This is the second Ex Parte Application filed; the first was withdrawn on October 24,  
2022. The Declarations submitted herewith are the same Declarations filed earlier, with

1 exception of a new Declaration of M. Taylor Katz and two additional Declarations which are  
2 identified as Second Declarations of: Kathleen Oda and Heather McDermott-Perez .  
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4  
5 Dated: October 30, 2022

Respectfully submitted,

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8 M. Taylor Katz  
9 Attorney for Petitioners

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1 TABLE OF CONTENTS

2 I. GROUNDS FOR THIS APPLICATION ..... 1

3 A. A Temporary Restraining Order May Issue Where Great and Irreparable Injury Will Result to

4 the Applicant Unless the Offending Conduct is Immediately Restrained ..... 1

5 B. An Order To Show Cause Re: Preliminary Injunction Should Also Issue ..... 1

6 1. Irreparable Injury: Animals Are Being Killed Needlessly and In Violation of Law..... 3

7 2. There is No Other Remedy Available at Law..... 3

8 3. Petitioners Will Likely Prevail on the Merits of this Case ..... 3

9 C. This Honorable Court Has The Authority To Issue An Ex Parte Temporary Restraining Order

10 In A Writ Proceeding ..... 3

11 ARGUMENT ..... 4

12 Unless this Honorable Court Intervenes, OCAC will continue to operate in direct violation of

13 its duties under the law to shelter and care for stray and lost animals and adopt or return them

14 into the community it serves. . . . . 4

15 I. OCAC MUST BE ENJOINED FROM EUTHANIZING HEALTHY, ADOPTABLE

16 ANIMALS WHICH IS A VIOLATION OF LAW ..... 4

17 A. OCAC Euthanizes Adoptable and/or Treatable Animals in Violation of *California Civil Code*

18 §1834.4(a) and (b); *California Food and Agriculture Code* §17005(a) and (b); *California Penal*

19 *Code* §599d(a) and (b); There is Evidence OCAC Engages in Pretext to Justify the Killing. .... 4

20 II. OCAC REFUSES TO FACILITATE ANIMAL ADOPTIONS. OCAC MUST BE

21 ORDERED TO OPEN THE SHELTER AND COOPERATE WITH RESCUE

22 ORGANIZATIONS TO INCREASE THE CHANCES OF ADOPTION. .... 8

23 A. Respondent OCAC’s Continued Closure of the Shelter and the Appointment-to-See-a

24 Specific-Animal-Only Policy Has Plummeted Adoption Rates ..... 8

25 B. Respondent OCAC Refuses to Follow It’s Own Protocols to Cooperate With Rescue

26 Organizations that are Desperately Trying to Save Animals From Euthanasia in the Shelter ..... 9

27 C. OCAC Refuses to Cooperate With Rescue Organizations, in Violation of *California Food and*

28 *Agricultural Code* §§31108 and 31752(c)(1) ..... 10

III. PETITIONERS REQUEST THIS HONORABLE COURT MANDATE RESPONDENTS

PROVIDE NECESSARY AND PROMPT VETERINARY CARE, NUTRITION AND

SHELTER AND TREAT ANIMALS KINDLY..... 12

A. Animals Suffer as OCAC Fails to Comply with *CA Civil Code* §1834.....12

1 B. OCAC Has the Means to Care for Animals Entrusted to its Care by the Citizens of Orange  
2 County..... 12  
3 IV. PETITIONERS REQUEST THIS HONORABLE COURT ENJOIN, PREVENT, AND  
4 PROHIBIT RESPONDENTS FROM DENYING VOLUNTEERS AND RESCUE  
5 ORGANIZATIONS ACCESS TO THE SHELTER..... 13  
6 V. PETITIONERS REQUEST THIS HONORABLE COURT APPOINT MONITORS TO  
7 ENSURE RESPONDENTS COMPLY WITH THE COURT’S ORDERS AND THEIR DUTIES  
8 UNDER THE LAW..... 13  
9 VI. CONCLUSION..... 14

10 ATTACHED DECLARATIONS IN SUPPORT OF EX PARTE APPLICATION FOR TRO  
11 AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION:

- 12 1.KATHLEEN ODA
- 13 2.HEATHER MCDERMOTT- PEREZ
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Cases

*Camp v. Board of Supervisors* (1981) 123 Cal. App. 3d 334 ..... 3

*Church of Christ in Hollywood v. Superior Court* (2002), 99 Cal. App. 4th 1244, 1251, 121 Cal. Rptr. 2d 810 ..... 1

*Gray v. Bybee* (1943), 60 Cal. App. 2d 564, 571, .....13

*Trader Joe's Co. v. Progressive Campaigns* (1999) 73 Cal. App. 4th 425, 429, 86 Cal. Rptr. 2d 442..... 2

*Whyte v. Schlage Lock Co.* (2002) 101 Cal. App. 4th 1443, 1449, 125 Cal. Rptr. 2d 277..... 2

*Zurn Constructors v BF Goodrich* 685 F.Supp 1172,1181 (1988).....3

Statutes

*California Civil Code* §1834.....12

*California Civil Code* §1834.4(a) and §1834.4(b)..... 4

*California Code of Civil Procedure* § 525..... i,1,4

*California Code of Civil Procedure* § 526(a)..... 2,3,4

*California Code of Civil Procedure* §527(c)(1)..... 1

*California Code of Civil Procedure* § 1109.....4

*California Food and Agriculture Code* §17005 and §17005(b).....4

*California Food and Agricultural Code* §31108(b)(1).....10

*California Food and Agricultural Code* §31752(c)(1)..... 10

*California Penal Code* §599d(a) and§599d(b).....4

California Rules of Court 3.1150..... ii

California Rules of Court 3.1150(a). ..... 1

California Rules of Court 3.1150(b)..... iii

California Rules of Court 3.1200-3, 1207..... i

California Rules of Court 3.1202(c)..... ii

California Rules of Court 379..... iii

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4 <https://www.chargers.com/photos/chargers-doggy-draft-2022> ..... 8  
5 <https://petadoption.ocpetinfo.com/Deceased/#/list/CAT> ..... 10  
6  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. GROUNDS FOR THIS APPLICATION**

3 **A. A Temporary Restraining Order May Issue Where Great and**  
4 **Irreparable Injury Will Result to the Applicant Unless the Offending Conduct is**  
5 **Immediately Restrained**

6 A TRO may issue when "[I]t appears from the facts shown by affidavit or by the verified  
7 complaint ... that great or irreparable injury will result to the applicant before the matter can be  
8 heard on notice..." (*California Code of Civil Procedure* § 527(c)(1).) The Court should evaluate  
9 two interrelated factors when deciding whether or not to issue a temporary restraining order. The  
10 first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim  
11 harm that the plaintiff is likely to sustain if the restraining order is denied, as compared to the  
12 harm that the defendant is likely to suffer if the order is issued. *Church of Christ in Hollywood v.*  
13 *Superior Court* (2002), 99 Cal. App. 4th 1244, 1251, 121 Cal. Rptr. 2d 810.

14 **B. An Order To Show Cause Re: Preliminary Injunction Should Also Issue**

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18 Petitioners seek a temporary restraining order therefore, pursuant to California Rules of  
19 Court 3.1150(a), Petitioners seek an Order to Show Cause Re: Preliminary Injunction. Petitioners  
20 request that the instant TRO be issued based upon the evidence presented by Declarations  
21 submitted herewith and the verified Petition on file herein; request a full hearing on a  
22 Preliminary Injunction for the same reasons and under the same authorities as set forth herein;  
23 and request that an Order to Show Cause be issued along with the TRO.  
24  
25

26 "An injunction is a writ or order requiring a person to refrain from a particular act.  
27 It may be granted by the court in which the action is brought, or by a judge  
thereof; and when granted by a judge, it may be enforced as an order of the  
court." *California Code of Civil Procedure* §525.

28 A Preliminary Injunction is proper in the following circumstances:  
"(1) When it **appears by the complaint that the plaintiff is entitled to the relief**  
demanded, and such relief, or any part thereof, consists in restraining the

1 commission or continuance of the act complained of, either for a limited period or  
2 perpetually.

3 (2) When it appears by the complaint or affidavits that the commission or  
4 continuance of some act during the litigation would produce waste, or **great or**  
5 **irreparable injury**, to a party to the action.

6 (3) When it appears, during the litigation, that a party to the action is doing, or  
7 threatens, or is about to do, or is procuring or suffering to be done, **some act in**  
8 **violation of the rights of another party to the action respecting the subject of**  
9 **the action**, and tending to render the judgment ineffectual.

10 (4) **When pecuniary compensation would not afford adequate relief.**

11 (5) Where it would **be extremely difficult to ascertain the amount of**  
12 **compensation which would afford adequate relief.** *California Code of Civil*  
13 *Procedure* § 526(a) (emphasis added).

14 To obtain a preliminary injunction, the Petitioner must establish that the Respondent should be  
15 restrained from the challenged activity pending trial. *Trader Joe's Co. v. Progressive Campaigns*  
16 (1999) 73 Cal. App. 4th 425, 429, 86 Cal. Rptr. 2d 442. As with a Temporary Restraining Order,  
17 the Court weighs two interrelated factors; the likelihood the moving party will prevail on the  
18 merits, and the relative interim harm to the parties from the issuance or nonissuance of the  
19 injunction. *Whyte v. Schlage Lock Co.* (2002) 101 Cal. App. 4th 1443, 1449, 125 Cal. Rptr. 2d  
20 277.

21 As shown in the Declarations submitted herewith, sufficient grounds exist, and will be  
22 shown to exist, at the hearing on a preliminary injunction such that the Court should issue same  
23 upon the grounds and facts as alleged herein which support the issuance of a Temporary  
24 Restraining Order. Between now and the time that the OSC Re: Preliminary Injunction will be  
25 heard, numerous adoptable and treatable animals will continue to be killed by OCAC in  
26 contravention of the law and not adopted, and the animals in the shelter will continue to be  
27 neglected and not receive the care they need.

1 TRO and Injunctive relief is proper here under *California Code of Civil Procedure* §526(a).  
2 because: (1) irreparable harm will occur if relief is not granted; (2) no other adequate remedy at  
3 law is possible; and (3) Petitioners will likely prevail on the merits of the case.  
4

5 1 Irreparable Injury: Animals Are Being Killed Needlessly and In Violation of Law.

6 California's animal welfare laws cited below were intended to create parameters  
7 within which more animals can be adopted from shelters. Shelters are meant to "shelter"  
8 meaning to protect, not to kill, especially a shelter with a \$23,000,000+ annual budget. Death is  
9 irreparable. Violations of statute and flagrant disregard of numerous health protocols, placing the  
10 health of animals in serious danger and risk of death is sufficient "irreparable harm" for a Court  
11 to issue a TRO. (Dec of MTKatz ¶¶ 3-7). Herein, the foregoing facts exist, plus actual killing.  
12

13 The animal welfare community is a tightly knit group of individuals who coordinate  
14 efforts to get animals out alive. Petitioners are involved in the business of animal rescue and as  
15 each animal is killed, the harm is, among other things, a threat to the viability of Petitioners'  
16 business which constitutes "irreparable harm." *Zurn Constructors v BF Goodrich* 685 F.Supp  
17 1172,1181 (1988).  
18

19 2. There is No Other Remedy Available at Law. Clearly, the imposition of damages will  
20 not solve this problem. In fact, the Petition does not seek damages, only injunctive relief. Death  
21 cannot be reversed by a court of law. The only remedy available is an injunction.  
22

23 3. Petitioners Will Likely Prevail on the Merits of this Case. As set forth above, the relief  
24 Petitioners seek is simply an order that Respondents comply with the law and their own  
25 protocols.  
26

27 **C. This Honorable Court Has The Authority To Issue An Ex Parte Temporary Restraining  
28 Order In A Writ Proceeding**

1 Restraining orders and preliminary injunctions are appropriate in a writ of mandate  
2 proceeding (*Camp v. Board of Supervisors* (1981) 123 Cal. App. 3d 334, 356). The  
3 statutory provisions that provide for injunctive relief, *California Code of Civil Procedure*  
4 §§525-534, apply equally to writ proceedings (*California Code of Civil Procedure*,  
5 §1109; *Camp, supra*, at 356).

6 **ARGUMENT**

7 Unless this Honorable Court Intervenes, Respondent OCAC (“OCAC”) will continue to  
8 operate in direct violation of its duties under the law to shelter and care for stray and lost  
9 animals and adopt or return them into the community it serves.

10 **I. OCAC MUST BE ENJOINED FROM EUTHANIZING HEALTHY,**  
11 **ADOPTABLE ANIMALS WHICH IS A VIOLATION OF LAW.**

12 **“It is the policy of the state that no adoptable animal should be euthanized if it**  
13 **can be adopted into a suitable home...”** *California Civil Code* §1834.4(a);  
14 *California Food & Agriculture Code* §17005(a); *California Penal Code* §599d(a).

15 **“It is the policy of the state that no treatable animal should be euthanized. A**  
16 **treatable animal shall include any animal that is not adoptable but that could**  
17 **become adoptable with reasonable efforts.”** *California Civil Code* §1834.4(b);  
18 *California Food & Agriculture Code* §17005(b); *California Penal Code* §599d(b).

19 OCAC kills rather than support and promote those living beings who have been entrusted  
20 into their care. Rather than provide basic medical care for non-life-threatening conditions,  
21 promote programs which support adoption, including but not limited to, cooperating and  
22 facilitating the release of animals to rescue organizations, Respondent OCAC unlawfully elects  
23 to euthanize adoptable and treatable animals at an alarming rate.

24 **A. OCAC Euthanizes Adoptable and Treatable Animals in Violation of CA Civil**  
25 **Code §1834.4(a)and(b); CA Food & Ag Code §17005(a)and(b); CA Penal Code**  
26 **§599d(a)and(b); there is Evidence OCAC Engages in Pretext to Justify the Killing.**

27 The Declarations of Heather McDermott-Perez, Romina Yamashiro and Kathleen Oda submitted  
28 herewith, address in detail the myriad of examples of OCAC’s arbitrary and capricious election  
to euthanize adoptable animals. The contents of said Declarations in their entirety are hereby  
incorporated by reference as if set forth in full herein. OCAC’s purported reasons for  
euthanasia are contradicted by their own records and by accounts of numerous witnesses who

1 have volunteered with the animals. The following are several accounts of just some of the many  
2 animals that have given their innocent lives as victims of OCAC's unlawful practices.

3       **ANGEL** [A1728044] - "Angel" at approximately six (6) years of age was abandoned in  
4 a park and was placed at OCAC in June of 2021. As an adoptable dog, in March 2022 Angel  
5 was promoted by Respondent OCAC as "Pet of the Week." In mid-May 2022 he was selected  
6 by OCAC for the Charger's Doggy Draft. This is a program promoted by the Los Angeles  
7 Chargers to post their draft "picks" to promote dogs for adoption. Angel can still be found on  
8 the Charger's website as dog numbered 3/38 at [https://www.chargers.com/photos/chargers-](https://www.chargers.com/photos/chargers-doggy-draft-2022)  
9 [doggy-draft-2022](https://www.chargers.com/photos/chargers-doggy-draft-2022). (Dec of Kathleen Oda ¶¶ 17-24; Exhibit 2 thereto)

10  
11       Without any warning or notice to rescues, on June 30, 2022, Angel was **euthanized** by  
12 OCAC. (Dec of Kathleen Oda ¶¶ 24-26). In support of OCAC's decision to kill Angel, a dog  
13 that was previously promoted for adoption, OCAC stated, "Chronic medical +...Unsocial, fearful  
14 behavior. Not a candidate for adoption. People selective, extremely avoidant, history of dog  
15 reactivity." (Dec of Kathleen Oda ¶25.)

16       A review of Angel's records obtained by a formal Public Record Request shows a glaring  
17 absence of any serious medical condition consistent with OCAC's above stated representations.  
18 The "Chronic medical" cited is patchy alopecia (hair loss). (Dec of Kathleen Oda ¶ 28) .

19  
20       Contrary to OCAC's allegations regarding behavior cited to support killing Angel, in the  
21 31 pages of Angel's records, there are repeated entries from volunteers who walked and cared for  
22 Angel at the shelter indicating he was **an easy dog to handle, no issues with dog reactivity**  
23 **when taking him on walks, and describing him as "calm" and "sweet"**. Further, there is no  
24 mention of any behavioral issues during any of the 25 times he was examined by a veterinarian  
25 during his one-year stay at the shelter. (Decs of Kathleen Oda ¶¶ 27, 29-31 and Karen Vaughn ¶  
26 20), providing further evidence of OCAC's falsifying records.

27  
28       Assuming, *arguendo*, OCAC's manufactured reason to euthanize Angel had any support,  
it is in glaring opposition to the American Society for Prevention of Cruelty to Animals'

1 (ASPCA), one of the largest animal welfare organizations in the world, Position Statement on  
2 Shelter Dog Behavior Assessments:

3 “[T]he ASPCA maintains that euthanasia decisions should not be based solely on  
4 a dog’s behavior during an assessment or in any other single situation unless the  
5 aggression is egregious\*. If a dog shows behavior that might warrant euthanasia,  
6 we recommend that organizations only make such a decision when the behavior  
7 has been reported by multiple sources. <https://www.asPCA.org/about-us/asPCA-policy-and-position-statements/position-statement-shelter-dog-behavior-assessments>. \*”**Egregious” aggression** should be defined by the individual  
8 shelter, but some defining characteristics could be (a) **a bite** that requires medical  
9 treatment, (b) an **injurious bite** that the dog could have avoided inflicting but  
10 opted to bite rather than retreat, (c) an **injurious bite** delivered without obvious  
11 warning, or (d) an attack in which repeated **injurious bites** are delivered.”  
(emphasis added) (<https://www.asPCA.org/about-us/asPCA-policy-and-position-statements/position-statement-shelter-dog-behavior-assessments> )  
12 (A true and correct copy of a print-out from the ASPCA website with this  
13 language is attached to the Declaration of M. Taylor Katz, as Exhibit 2 thereto).

14 OCAC’s decision to euthanize Angel based on “fearful behavior... people selective,  
15 extremely avoidant, history of dog reactivity” does not even come close to meeting the ASPCA’s  
16 standard for “*egregious aggression*” that always involves an *injurious bite*. Angel was not an  
17 injurious biter. The purported reasons OCAC provided for euthanization, even if they were true,  
18 simply indicate he was fearful around strangers, which is not tantamount to injurious biting, and  
19 certainly not grounds for euthanasia.  
20

21 **GUNNER** [A1721647] - “Gunner” was a favorite with kennel personnel and volunteers.  
22 He responded very well to training and learned basic obedience such as “sit,” “stay,” “down,”  
23 etc... Notwithstanding Gunner’s positive response to training, being non-reactive to other dogs,  
24 engaging in a friendly manner with humans, and videos<sup>1</sup> which depict Gunner’s adoptability,  
25 Respondent OCAC reports Gunner suffered from “declining behavior” and was “animal  
26 reactive” and **killed** him in September 2021. (Dec of Heather McDermott-Perez, ¶¶ 8-13.) These  
27  
28

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<sup>1</sup>Please view video using link provided in Second Dec of Heather McDermott-Perez.

1 are just two cases representative of numerous more, which, due to page limit constraints, cannot  
2 be included here but are evidenced in Declarations filed herewith. See: “EVE”<sup>2</sup> [A1717384]  
3 (Dec of Heather McDermott-Perez, ¶16) “SPIRIT” (Dec of Lauren Bickers, ¶¶ 6-11) At least  
4 **70 dogs have been killed for “behavior”** in 2022 by OCAC (Dec of Kathleen Oda ¶¶8-14,  
5 Exhibit 1 thereto). Perhaps most disturbing is that the single trait of “Excessive Barking” is  
6 deemed as a “behavior” cited by OCAC to kill adoptable dogs. (Jane Doe Dec, ¶19--22).  
7

8  
9 Adoptable and treatable cats are also arbitrarily and capriciously euthanized.

10 **“The Pineapple Litter”** – A litter of kittens named the “Pineapple Litter” came into the  
11 shelter on 08/13/2022 at 11:16 am, and were assigned OCAC Animal ID’s A1778621,  
12 A1778622, A1778623. They were labeled as “Normal Intake Condition” and 3 weeks old. The  
13 intake exam lists them as friendly, with some “crusting and lichenification on ears. Scratching at  
14 ears”. (Dec of Romina Yamashiro, ¶¶10-11, Exhibit 3 thereto) The ear symptoms were a result  
15 of notoedric mange, (scabies), a non-life-threatening skin mite akin to fleas, a common, easy-to-  
16 treat condition.  
17

18  
19 Despite being a healthy litter, Respondent OCAC claimed the Pineapple litter was  
20 “irremediably suffering” and the three kittens were **euthanized** on the same day as they came in,  
21 at 6:04 pm. (Dec of Romina Yamashiro, ¶¶ 10-12)  
22

23 The Pineapple Litter was listed on the Deceased Pet List page on the OC Animal Care  
24 website: (<https://petadoption.ocpetinfo.com/Deceased/#/list/CAT>). This site lists animals that  
25 “were found deceased prior to being picked up by Respondent OCAC or were euthanized very  
26 soon after impound because they were **“severely injured and/or ill and were determined to be  
27 irremediably suffering.”** The litter was not only alive and healthy, the kittens were old enough  
28

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<sup>2</sup> Please view video using link provided in Second Declaration of Heather McDermott Perez

1 to be adopted. They were not 3 weeks old as recorded by OCAC, but closer to 6 or 7 weeks old,  
2 an important distinction, because at that age they are independent from their mother, eating,  
3 drinking, and toileting on their own. (Dec of Romina Yamashiro ¶¶ 9-12; Exhibit 4 thereto.) This  
4 is direct evidence of Respondent OCAC's deceptive record-keeping practices and unlawful  
5 euthanasia.  
6

7  
8 **II. OCAC REFUSES TO FACILITATE ANIMAL ADOPTIONS. OCAC MUST**  
9 **BE ORDERED TO OPEN THE SHELTER AND COMMUNICATE WITH**  
10 **RESCUE ORGANIZATIONS TO INCREASE THE CHANCES OF ADOPTION.**

11 The shelter has many options to facilitate animal adoptions and OCAC has systematically  
12 refused to employ them. They include but are not limited to: reopening the shelter to the public  
13 to increase all animals' exposure to potential adopters which would increase adoption rates and  
14 cooperating with rescue organizations to facilitate adoption, as well as other options which are  
15 more fully outlined in the Petition/Complaint at ¶¶ 48-52, 62 which are hereby incorporated by  
16 reference.  
17

18  
19 **A. OCAC's Continued Closure of the Shelter and the Appointment-to-See-a**  
20 **Specific-Animal-Only Policy Has Plummeted Adoption Rates**

21 OCAC remains closed to the public. Of the 18 Municipal County shelters in Southern  
22 California, it is the only shelter completely closed to the public. (Dec of April Josephson, ¶44).  
23 OCAC prohibits the public from entering the shelter grounds, from walking inside the kennel  
24 buildings to peruse adoptable animals, and from enjoying the park-like setting of the facility.  
25 The public is restricted to the lobby. Only after having made an appointment to see one specific  
26 animal is a potential adopter escorted to a side yard to meet it. (See Petition/Complaint, ¶¶21-38  
27 for a detailed description of this policy and OCAC's dishonesty that the shelter is "open to the  
28 public." Said Paragraphs of the Petition are hereby incorporated by reference as if set forth in

1 full herein.) This current appointment-to-see-a-specific-animal-only policy has caused adoption  
2 rates to plummet by 51%. (Dec of April Josephson ¶¶ 27-34, 44-47, 58-59, 63, Exhibit 4 thereto  
3 and Dec of Karen Vaughn ¶¶ 17-19).

4  
5 Respondents OCAC and OC Community Resources, as well as the OC Board of  
6 Supervisors, have continually ignored the Orange County taxpayers,' shelter volunteers,' and  
7 rescue organizations' repeated written and verbal pleas to open the shelter to the public to  
8 increase adoptions. (Decs of April Josephson ¶¶ 35, 44-48, Karen Vaughn, ¶¶ 22-23, Heather  
9 McDermott Perez ¶ 26, M. Katz¶¶ 9-11).

10  
11 The current appointment-to-see-a-specific-animal-only policy is a failure. Respondent  
12 OCAC must open the shelter so the public can get in and view all of the animals in order to  
13 promote adoption. Due to the unreasonable appointment policy, the animal attendants who  
14 should be providing food, water, exercise and kennel cleaning are forced to inefficiently spend  
15 their time one-on-one with a potential adopter for one specific animal. (Dec of Jane Doe, ¶11) As  
16 a result, kennels and cages are caked with animal waste. Animals are not being properly fed.  
17 Animals suffer from medical crises, all behind locked doors; hidden from the public. (Decs of  
18 Karen Vaughn, ¶¶4-14 Exhibit 2 attached thereto, Barbara Van Rooyan, ¶¶5-11, April Josephson  
19 ¶¶ 74-79).

20  
21  
22  
23  
24 **B. OCAC Refuses to Follow Its Own Protocols to Contact Rescue Organizations**  
25 **who work tirelessly to Save Shelter Animals From Euthanasia.**

26 Under prior management, OCAC developed an at-risk euthanasia online app  
27 using input from the rescue community, called OC Rescue Track. Said app for Rescue groups,  
28 only, gives animals a color code ranging from less to most severe medical and behavioral issues.  
Animals who have been assigned a date to be euthanized are coded in 'red', given a "rescue-by"

1 due date, and an email is supposed to be sent to rescues called “Urgent Partner Alert.” All  
2 medical and behavior notes, additional photos and videos are included in the email. If the animal  
3 is not rescued by the due date, the animal will be euthanized. (Decs of Kathleen Oda ¶¶6-7,  
4 Heather McDermott Perez, ¶ 20).

5  
6 In addition, in support of their stated “pro-life, pro-adoption policy” as a No-kill shelter,  
7 OCAC established protocols which state “OCACs Rescue Coordinator *shall contact all...rescue*  
8 *organizations...to advise them of the availability of these animals*” when an animal, due to either  
9 temperament or medical condition, is scheduled for euthanasia. [Emphasis added] (Second Dec  
10 of Kathleen Oda, Ex 1-OCAC Rule 700.15 and Exhibit 2 OCAC Rule 400.08 thereto).  
11

12 As more fully detailed below, OCAC fails to follow the above protocols to save a life.  
13  
14

15 **C. OCAC Refuses to Cooperate With Rescue Organizations, in Violation of**  
16 **California Food and Agricultural Code §§31108 and 31752(c)(1).**

17 In violation of law, OCAC elects to kill an adoptable animal rather than release an animal  
18 to rescue organizations. The law **requires** shelters to release animals to Internal Revenue Code  
19 sec. 501(c)(3) animal rescue and adoption groups that have requested an animal prior to his/her  
20 euthanasia. *California Food and Agricultural Code* §§31108 and 31752(c)(1) provide:

21 “Except as provided in Section 17006, any stray dog that is impounded pursuant to  
22 this division shall, before the euthanasia of that animal, be released to a nonprofit,  
23 as defined in Section 501(c)(3) of the Internal Revenue Code, animal rescue or  
24 adoption organization if requested by the organization before the scheduled  
25 euthanasia of that animal...” *California Food and Agricultural Code* §31108(b)(1).

26 “Except as provided in Section 17006, any stray cat that is impounded pursuant to  
27 this division shall, before the euthanasia of that animal, be released to a nonprofit,  
28 as defined in Section 501(c)(3) of the Internal Revenue Code, animal rescue or  
29 adoption organization if requested by the organization before the scheduled  
30 euthanasia of that animal.” *California Food and Agricultural Code* §31752(c)(1).

31 OCAC violates these laws by 1) failing to timely update OC Rescue Track so rescue  
32 groups have notice and can request an animal for release, 2) contact rescues as mandated by  
33 OCAC Rules 700.15 and 400.08, and 3) by refusing to respond to inquiries by rescues or stay  
34

1 euthanasia upon request by rescue organizations. (Decs of Kathleen Oda, ¶¶ 13-16, 26, 33-37,  
2 Heather McDermott-Perez, ¶¶18-22 and *OCAC* ).

3  
4 **MAX** [A1688187]-“Max” was a three-year-old American Pit Bull Terrier. Max was  
5 people-friendly and had a great temperament. On several occasions, Max was observed  
6 engaging positively or being completely neutral with other dogs at the fence between play yards  
7 and did not react to other dogs in his kennel row when walked by shelter volunteers. A video of  
8 Max<sup>3</sup> was made to show his behavior and personality to share with rescue groups and adopters to  
9 increase his chances of rescue or adoption. (Dec of Heather McDermott-Perez ¶¶14-15).

10  
11 Boise Bully Breed Rescue, an organization that has saved many dogs from OCAC,  
12 communicated their interest in Max and asked for information which they require before taking a  
13 dog into their rescue. Rather than responding to and working with said rescue, OCAC labeled  
14 Max as “Dog Aggressive” and deemed him a “public safety risk to other animals in the  
15 community”. **On June 30, 2022, OCAC killed him without any notice to rescue**  
16 **organizations.** (Decs of Heather McDermott-Perez ¶¶14-15, Dec of Kathleen Oda ¶¶13-15,  
17 Exhibit 1 thereto) During past administrations, OCAC followed the protocol listed on OC  
18 Rescue Track as well as contacting rescues. On June 30th, OCAC failed to properly follow their  
19 own protocols . As a result, several dogs that were available and not even listed on Rescue Track  
20 were euthanized. Dogs listed in yellow were **killed** without warning, including Max. (Dec of  
21 Heather McDermott-Perez, ¶21 and Dec Kathleen Oda ¶ 13, Exhibit 1 thereto).

22  
23 Rather than exercise any of the above options, Respondent OCAC insists their adoption-  
24 by-appointment policy is a winner, refuses to update OC Rescue Track or contact rescues ,  
25 reprimands employees for the efforts to promote adoption of the animals (Dec of Lauren Bickers,  
26  
27  
28

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<sup>3</sup> Please view video with link provided in Second Dec of Heather McDermott-Perez.

1 ¶¶ 5, 13-16), and euthanizes adoptable animals in violation of state law. Manual tracking of dogs  
2 continues to reveal more adoptable dogs killed without warning . Of the 70 adoptable dogs that  
3 have been killed in 2022 by OCAC, 24 were killed without warning. 18 of the 24 dogs were  
4 never listed on OC Rescue Track so rescue organizations would not have known these dogs  
5 needed to be saved. (Dec of Kathleen Oda ¶¶13-16)  
6  
7

8 **III. PETITIONERS REQUEST THIS HONORABLE COURT MANDATE**  
9 **RESPONDENTS PROPERLY CARE FOR THE SHELTER ANIMALS.**

10 *California Civil code Section 1834* requires that shelters  
11 "...**(S)hall provide the animals with necessary and prompt**  
12 **veterinary care, nutrition, and shelter and treat them kindly."**  
13

14 **A. Animals Suffer Due to OCAC's Failure to comply with CA Civil code sec 1834.**

15 The six kennels buildings were designed to have a full-time kennel attendant assigned to  
16 each one at all times. (Dec of April Josephson ¶13) Animals are not receiving proper care; they  
17 are not receiving adequate food and water, medical attention, exercise, socialization, and are  
18 living in filth. (Decs of Heather McDermott-Perez ¶¶ 5-7, Lauren Bickers ¶ 17, Karen Vaughn¶¶  
19 4-16, Exhibit 2 thereto, Barbara Van Rooyan ¶¶ 5-10, and April Josephson ¶¶ 74-79).  
20

21 Petitioners request this Honorable Court order OCAC to conform their care of the shelter  
22 animals in accordance with *CA Civil Code sec 1834* .

23 **B. OCAC Has the Means to Care for Animals Entrusted to its Care by the Citizens**  
24 **of Orange County**

25 With an annual budget of approximately 23 million dollars, OCAC refuses to allocate  
26 resources to provide basic care and necessary medical attention to the sheltered animals. A  
27 review of the budget shows Respondent OCAC currently operates with an approximate 3.6  
28 million dollar surplus, so there is plenty of money which should be used for animal welfare. (Dec  
of Elizabeth Hueg, Paragraphs 3-6, Exhibit 1 hereto)

1 **IV. PETITIONERS REQUEST THIS HONORABLE COURT ORDER OCAC**  
2 **TO MAINTAIN STATUS QUO AS IT RELATES TO ACCESS INTO OCAC AND**  
3 **THE SHELTER ANIMALS BY VOLUNTEERS AND RESCUE**  
4 **ORGANIZATIONS.**

5 Many potential witnesses have expressed fear of retaliation in their reluctance to come  
6 forward and have been chastised by OCAC for advocating for the animals and against OCAC's  
7 unlawful practices. (Decs of Lauren Bickers ¶¶5, 15-16, 18, Heather McDermott-Perez, ¶¶ 27-  
8 28, Karen Vaughn ¶24-25, Jane Doe ¶¶7-10, 29-30, M Katz ¶¶ 12-14 ). Petitioners respectfully  
9 request this Honorable Court order Respondents OCAC and OC Community Resources to  
10 maintain status quo only, as to the access into OCAC and to the animals by the volunteers and  
11 rescue organizations who participate in the prosecution of this matter. *Gray v. Bybee* (1943), 60  
12 Cal. App. 2d 564, 571,  
13

14  
15 **V. PETITIONERS REQUEST THIS HONORABLE COURT APPOINT A**  
16 **MONITOR TO ENSURE RESPONDENTS COMPLY WITH THE COURT'S**  
17 **ORDERS AND THEIR DUTIES UNDER THE LAW**

18 Respondent OCAC must be held accountable to the proper standards to invoke  
19 euthanasia. Thus far OCAC has been on a killing rampage, and it needs to stop.  
20

21 Based on a history of dishonesty in its publications of the shelter being "open to the  
22 public" and deceptive record-keeping by OCAC vis a vis its care of the animals and decisions to  
23 euthanize (Decs of Lauren Bickers, Heather McDermott-Perez, Romina Yamashiro, Jane Doe),  
24 Respondent cannot be trusted to follow the law without some accountability. To ensure  
25 Respondent OCAC governs their conduct in accordance with the law and complies with this  
26 Honorable Court's orders, Petitioners request this Honorable Court appoint an independent  
27 monitor to be physically present at the shelter to verify and sign off on each euthanasia that  
28

1 occurs henceforth and the medical or behavioral reasons for each one with the minimum  
2 qualification of being a veterinarian.

3  
4 VI. CONCLUSION

5 Based on the foregoing, Petitioners respectfully request this Honorable Court to  
6 immediately grant its Ex Parte Application for Temporary Restraining Order and issue an Order  
7 to Show Cause Re: Preliminary Injunction, enjoining, preventing and prohibiting Respondent  
8 OC Animal Care (hereafter "OCAC") from:

- 9 1) Euthanizing adoptable animals in its shelter, in violation of California law;  
10 2) Keeping the shelter closed to the public;  
11 3) Failing to cooperate with rescue organizations in violation of law; and  
12 4) Failing to provide proper care and medical treatment for animals in violation of law.

13 In order to increase adoption rates and reduce euthanasia, Petitioners request this  
14 Honorable Court Order OCAC to:

- 15 5) Reopen the shelter to the public;  
16 6) Provide daily updates to OC Rescue Track;  
17 7) Provide necessary and prompt veterinary care, nutrition, shelter, and treat them kindly; and  
18 8) to maintain status quo, only as to the access into OCAC and to the animals, to volunteers,  
19 those working with rescue organizations, and anyone who participates in the prosecution of this  
20 matter.  
21

22 Lastly, Petitioners request this Honorable Court Order:

- 23 9) The appointment of a Monitor to oversee that OCAC complies with state law when  
24 making the decision to euthanize an animal, complies with the Court's Orders and report  
25 findings with respect to OCAC's compliance to this Honorable Court.  
26

27 Dated: October 30, 2022

Respectfully submitted,

28 

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Attorney for Petitioners