



The Animal Law Office

www.animalattorney.com

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VIA ELECTRONIC MAIL, FACSIMILE AND FIRST CLASS MAIL

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**Re: Cease and Desist
CA Public Records Act Request**

Dear Mr. Kaviani, Ms. Watson and Ms. Novillo,

My name is Christine Kelly and I represent an alliance of long established Orange County based rescues and Orange County residents, more specifically defined as the groups Paw Protectors Rescue, Meowz Cat Rescue, Dream Animal Rescue and Ollie's Pack Rescue and Transport (together referred to as "Orange County Based Rescues"), and the local individual constituents and long time Orange County residents, Carol Barnes, Cheri Anderson, Deborah Fowler, Sharon Logan, Dani Ryan, Jonni Ben, and Kevin Patton (together referred to as "Orange County Residents"). As animal advocates, our main goal is to prevent animal abuse and suffering.

You may be familiar with Sharon Logan and Paw Protectors Rescue who were involved in the seminal shelter reform lawsuit entitled Sharon Logan v. Orange County Animal Care, Case No. 30-2014-00736691-CU-WM-CJC of the Superior Court of California, County of Orange.

Since 2011, Sharon Logan and Paw Protectors Rescue has worked ceaselessly, tirelessly and has fought arduously for shelter reform at OC Animal Care. This letter is written only after numerous

exhaustive attempts to resolve the issues contained herein informally and through the administrative resources available to my clients.

The purpose of this letter is serve as formal notice to cease and desist immediately from abandoning thousands of healthy adoptable cats and kittens onto the streets. The action of bringing animals out of the shelter and directly onto the streets is not “progressive animal sheltering,” but rather, is an illegal application of the Return To Field (“RTF”) program. The reason why the action is illegal, is because the practice of animal dumping on streets is not in alignment with the proposed RTF plan, nor is animal abandonment authorized by the law.

Might I suggest increasing the TNR program or using the County funds to expand its shelter to accommodate these animals if there are not alternative methods of adopting the cats out to loving homes. There are alternatives to simply abandoning thousands of healthy adoptable cats onto the streets where they endure certain dangers of abuse, neglect and starvation. (Not to mention being consumed by Coyotes which ironically seems the least cruel method of their certain death on the streets.¹) If in fact the annual budget of your shelter is \$24 million dollars, I am confident that if the funding is managed appropriately, there would be not a single homeless cat in Orange County.

Through the Return to Field (RTF) practice and demonstrated policy, Orange County Care has violated the fundamental principles of the Hayden Act as well as the CA Food and Agricultural Code, CA Penal Code and the CA Civil Code. To follow, are a few of the apparent violations of the law:

1. **CA Penal Code.** Orange County Animal Care is facilitating and directing the following actions which are violations of the CA Penal Code. It is illegal in California to purposefully abandon an animal (Cal. Penal Code § 597s)². A more general statute criminalizes leaving animals without proper care and attention in any building, enclosure, lot, street, or other public place (Cal. Penal Code § 597.1)³. In Case No. 2014-00736691-CU-WM-CJC, there was no

¹ The National Park Service released a new study and found that 20% of urban coyotes’ diets is made up of cats. See, “It’s coyote season: How people are protecting pets from Pasadena to Long Beach” San Gabriel Valley Tribune, by Steve Scauzillo, June 20, 2019. <https://www.sgvtribune.com/2019/06/20/its-coyote-season-how-people-are-protecting-pets-from-pasadena-to-long-beach/>, and see, studies by Niamh Quinn, a human wildlife interactions adviser at the University of California at Irvine, who has done similar studies at her lab. Quinn, who is not involved in the park service research, has done DNA analysis on the stomachs of more than 300 coyotes that became roadkill.

² Cal. Penal Code § 597s(a) entitled “Abandonment of domestic animals” reads in pertinent part as follows: Every person who willfully abandons any animal is guilty of a misdemeanor.

³ Cal. Penal Code § 597.1. reads in pertinent part as follows: Failure to care for animals; misdemeanor; powers and duties of local officers and veterinarians; hearings; liability for costs; forfeiture. (1) Every owner, driver,

requirement that the abandonment or neglect of Orange County Animal Care be purposeful, but in this case, it is an even stronger case which indicates that the actions of your department were purposeful, intentional and with ample notice and warning. Furthermore, CA Penal Code § 597f⁴ imposes duties upon animal shelters in connection with abandoned animals.

or keeper of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention is guilty of a misdemeanor.

⁴ CA Penal Code § 597f (a) reads in pertinent part as follows: Every owner, driver, or possessor of any animal, who permits the animal to be in any building, enclosure, lane, street, square, or lot, of any city, city and county, or judicial district, without proper care and attention, shall, on conviction, be deemed guilty of a misdemeanor. And it shall be the duty of any peace officer, officer of the humane society, or officer of a pound or animal regulation department of a public agency, to take possession of the animal so abandoned or neglected and care for the animal until it is redeemed by the owner or claimant, and the cost of caring for the animal shall be a lien on the animal until the charges are paid. Every sick, disabled, infirm, or crippled animal, except a dog or cat, which shall be abandoned in any city, city and county, or judicial district, may, if after due search no owner can be found therefor, be killed by the officer; and it shall be the duty of all peace officers, an officer of such society, or officer of a pound or animal regulation department of a public agency to cause the animal to be killed on information of such abandonment. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated; and, if the animal is not then in the custody of its owner, the officer shall give notice thereof to the owner, if known, and may provide suitable care for the animal until it is deemed to be in a suitable condition to be delivered to the owner, and any necessary expenses which may be incurred for taking care of and keeping the animal shall be a lien thereon, to be paid before the animal can be lawfully recovered.

(b) It shall be the duty of all officers of pounds or humane societies, and animal regulation departments of public agencies to convey, and for police and sheriff departments, to cause to be conveyed all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer or agency to be a veterinarian that ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment.

If the owner does not redeem the animal within the locally prescribed waiting period, the veterinarian may personally perform euthanasia on the animal; or, if the animal is treated and recovers from its injuries, the veterinarian may keep the animal for purposes of adoption, provided the responsible animal control agency has first been contacted and has refused to take possession of the animal.

Whenever any animal is transferred pursuant to this subdivision to a veterinarian in a clinic, such as an emergency clinic which is not in continuous operation, the veterinarian may, in turn, transfer the animal to an appropriate facility.

If the veterinarian determines that the animal shall be hospitalized under proper care and given emergency treatment, the costs of any services which are provided pending the owner's inquiry to the agency, department, or society shall be paid from the dog license fees, fines, and fees for impounding dogs in the city, county, or city and county in which the animal was licensed or if the animal is unlicensed the jurisdiction in which the animal was found, subject to the provision that this cost be repaid by the animal's owner. No veterinarian shall be criminally or civilly liable for any decision which he or she makes or services which he or she provides pursuant to this section.

(c) An animal control agency which takes possession of an animal pursuant to subdivision (b), shall keep records of the whereabouts of the animal for a 72-hour period from the time of possession and those records shall be available to inspection by the public upon request.

2. **Misrepresentation.** With the continuous dumping of healthy cats on the street, you open yourself up to a voluminous amount of misrepresentation claims. The tort of deceit or fraud requires: “(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.” (Engalla v. Permanente Medical Group, Inc. (1997) 15 Cal.4th 951, 974; see also Molko v. Holy Spirit Ass’n (1988) 46 Cal.3d 1092, 1108. Sometimes the tort of fraud or deceit is stated with four elements instead of five: (1) a knowingly false representation by the defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4) resulting damages. See Service by Medallion, Inc. v. Clorox Co., (1996) 44 Cal.App.4th 1807, 1816. “A misrepresentation need not be oral; it may be implied by conduct.” Thrifty-Tel, Inc. v. Bezenek (1996) 46 Cal.App.4th 1559, 1567. Moreover, false representations made recklessly and without regard for their truth in order to induce action by another are the equivalent of misrepresentations knowingly and intentionally uttered. Yellow Creek Logging Corp. v. Dare (1963) 216 Cal.App.2d 50, 55. In making the following false assertions on your website⁵, you are opening yourself up to misrepresentation claims:

“OC Animal Care strives to save the lives of all healthy, treatable and manageable dogs and cats in our community.”

“In addition, we work very closely with our nonprofit rescue adoption partners, other local animal shelters and our volunteer foster caretakers.”

“We are working to save healthy, treatable and manageable dogs and cats by: Encouraging responsible pet ownership through expanded public awareness and humane education”

The above statements are clear misrepresentations made to the public. If OC Animal Care is being educated with supported case studies that dumping cats results in abuse and death, then it is a misrepresentation to say that “OC Animal Care strives to save the lives of all healthy, treatable and manageable dogs and cats in our community.” Additionally, it is a misrepresentation that OC Animal Care is working closely with its “nonprofit rescue adoption partners” while OC Animal Care is ignoring their incessant requests to reform the RTF practice and cease the needless cruelty that awaits an animal abandoned on the street. Lastly, the statement that OC Animal Care encourages “responsible pet ownership through expanded public awareness and humane education” is a clear falsehood. The practice of animal abandonment is not an act of a responsible

(d) Notwithstanding any other provisions of this section, any officer of a pound or animal regulation department or humane society, or any officer of a police or sheriff’s department may, with the approval of his or her immediate superior, humanely destroy any abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal.

⁵ Found at <http://www.ocpetinfo.com/about/info>.

pet ownership. Most people learn by example, and if OC Animal Care believes that all responsible pet owners may abandon their animals on public and private property, then OC Animal Care needs to be educated on responsible pet ownership.

Aside from the specific misstatements on your website, the public have been misled of the situation regarding the RTF practice at OC Animal Care. RTF is presented as a preferable alternative to euthanasia, the rationale being that if they are healthy, they were doing fine where they were, so as long as they can no longer reproduce, it's fine to put them back. Program guidelines usually specify that only mature, healthy, unsocial cats be returned to field which is not being done at OC Animal Care, OC Animal Care has put 100's of healthy Adoptable non feral kittens which has been extensively documented by former and current shelter employees and shelter volunteers back into the streets so Mike Kaviani can bolster his live release rate. Colonies are not monitored or fed.

Lastly, more misinformation and misrepresentations have been released from the shelter itself. Your office has create false statistics regarding the live release rates of dogs. In December of 2018, Mr. Kaviani posted a 98% percent release rate for the dogs, now six months later, Mr. Kaviani is claiming a 95% percent live release rate for the dogs. Both live release rates are false.

3. **CA Civil Code.** CA Civil Code § 1984, states unequivocally that a depository of living animals [animal shelter] shall "provide the animals with necessary and prompt veterinary care, nutrition, shelter and treat them kindly." It is our belief that being a depository of animals and then dumping animals on the street to fend for themselves with animal abusers and the winter elements awaiting them, does not qualify as "kind" treatment. I understand that the definition of "kind" is debatable and this issue will need to be decided by a factfinding jury, but animal dumping is not a kind act from an animal shelter and is furthermore in violation of the CCC § 1984.

4. **Storm Water Pollutant Contribution.** Your office has already been informed that the cats that are methodically being dumped onto the streets are leaving their fecal matter and waste throughout Orange County which translates to polluting the County water supply which is a CA Health and Safety issue. Orange County Municipal Code § 7.01.030(W) subsection 2 and 5⁶ defines pollutants as animal fecal materials and animal waste. Your office has already been apprised⁷ of the health and immunity compromised cases which have been raised due to the amount of cat feces and waste left as a result of animal dumping.

5. **Failure to Report.** One of the roles of OC Animal Care is to take incident reports and then investigate such crimes. In this case, I do see a conflict of interest, when the perpetrator and cause of the crime includes OC Animal Care itself. This letter is not merely the result of my

⁶ POLLUTANT means any agent introduced to stormwater or non-stormwater that may cause or contribute to the degradation of receiving water quality such that public health, the environment, or beneficial uses of receiving waters may be affected.

⁷ See, electronic mail of 9/20/2019 1:11:49 PM PST, from paulaschuerger@gmail.com regarding her child.

clients opinion, but is the result of documented reports and complaints from your constituents voicing grave concerns about the policies and actions of the Orange County Animal Shelter. Most of the numerous logged complaints describe the RTF practice as “cruel, abusive, ineffective.” OC residents in Anaheim and Santa Ana have reported and witnessed cats being hung, decapitated, kicked into walls, dying from their injuries, hit by cars, and being left and tied up and bound and left as coyote bait. These cats are not capable of merely *fending for themselves*. Domestic cats, which include all cats whether feral or home raised, are rarely ever able to adequately provide for themselves through hunting.

6. **Negligence.** Other cats have been “swept up” in RTF and TNR programs include pet cats that people have abandoned, kittens born outdoors but still young enough to be fully socialized to people, loosely owned outdoor cats that no one takes full responsibility for, lost cats, and owner surrendered cats. Currently, cats living outdoors without clear owners are collectively referred to as “community cats.” OC is doing a massive dumping of healthy Adoptable cats back into the community with the thought process that the community will help take care of these cats. The problem is they are not alerting or educating the community that these healthy Adoptable cats are being dumped in their neighborhoods, they are providing no follow up or after care feeding or monitoring of these cats, the majority of cats are not feral despite what the Shelter Director, shelter staff and shelter volunteers are asserting. My clients have documented evidence that the majority of these cats are healthy adoptable cats. Neither Mike Kaviani or anyone at the shelter has assigned any members of the communities to feed or monitor the cats. Communities are not being educated about the RTF program Kaviani and OC Animal Care have implemented, the majority of these healthy adoptable cats and kittens are being dumped into the communities of Anaheim and Santa Ana.

7. **Violation of California Public Records Act -Government Code Section 6250 et seq.** My client Sharon Logan has made formal public records requests direct to your office on 5/26/19 which still remains outstanding. As you are aware, violations of this act will result in an award of attorneys fees to the prevailing party should an action be pursued.

More information regarding RTF that your office should be aware of includes the following:

- Paw Protectors Rescue has documented evidence of OC Animal Care sending two litters of 5 kittens each that are 3 months old back into the streets.
- A quick tally by a data statistician from OC Animals own documented RTF reports of the cats and kittens scheduled for RTF from OC Animal Care on 5 days in June of 2019 and July of 2019 showed that of the 96 cats, that arrived at OC Animal Care only 17 arrived at the shelter in traps.
- Of those cats that arrived at OC Animal Care At least one, was pictured in an open cardboard carrier, was not feral.

- At least 80 of the 96 cats and kittens released by OCAC on those days were tame friendly healthy adoptable cats and kittens, Friendly cats. Cats who trusted humans and OC Animal Care and that's really too bad.
- 80 of the 96 documented cats and kittens that came into OC Animal Care over the 5 day period were tame, friendly, healthy and adoptable, they were dumped back into the streets, OC Animal Care's assertion that most of the cats and kittens being dumped back into the streets are feral and not healthy adoptable animals are simply untrue and not credible based on OC Animal Care's own data and records.
- What the general public doesn't seem to understand and we are here to educate and make the general public aware of is that Under Mike Kaviani's leadership, OC Animal Care has taken advantage of the public misconception that RTF=TNRM, and is automatically humane. OC Animal Care are cutting corners to the point that they don't Mike Kaviani and OC Animal Care don't even adhere to RTF standards, much less those for TNRM.
- Trazadone: Currently at OC Animal Care there are numerous dogs being drugged with Trazadone to subdue severe behavior problems and make them appear more docile and adoptable to the public, this has been going on for many months. This practice must stop immediately as Kaviani and OC Animal Care are putting the public in danger with the practice of drugging large aggressive type dogs. Through copies obtained from OC Animal Care's own documented records we also found that that OC Animal Care ran out of the anti depressant and had to order more. We would like to know who is responsible at OC Animal Care for regulating the head veterinarian?
- Kristine Watson, Assistant Director at OC Animal Care is currently identifying herself to OC residents and members of the general public as a licensed attorney. This is misrepresentation.
- Mike Kaviani OC Animal Care's Shelter Director and shelter Employee Jessica Novillo are altering data and statistics regarding the number of shelter dog bites.
- It is imperative that OC Animal Care will not retaliate against the rescue groups by taking away the pull rights and privileges at OC Animal Care to Paw Protectors Rescue, Meowz Cat Rescue, Dream Animal Rescue and Ollie's Pack Rescue

FORMAL CPRA REQUESTS:

Pursuant to my clients' rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain a copy of the following, which I understand to be held by your agency:

1. Please provide a copy of the policy from OCAC known as RTF policy #400.05.
2. Please provide all records and reports relating to the RTF Cats and Kittens from OC Animal Care from June 1st 2019 to currently.
3. Please provide all data, records and reports showing times, dates, locations of these cats being, managed, monitored and fed.

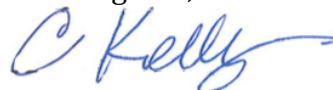
4. Please provide all records, communications and all reports relating to internal emails, internal memorandums between Steve Danley and all of the members of the Orange County Board of Supervisors, from August 2018 to current day.
5. Please provide all records, communications and all reports relating to internal emails, internal memorandums between Steve Danley and Mike Kaviani, from August 2018 to current day.
6. Please provide for all records, communications and all reports relating to internal emails, internal memorandums between Steve Danley and Kristine Watson, from August 2018 to current day.
7. Please provide all records, communications and all reports relating to internal emails, internal memorandums between Steve Danley and Dylan Wright, from August 2018 to current day.
8. Please provide all records, communications and all reports relating to internal emails, internal memorandums between Steve Danley and Cymantha Atkinson, from August 2018 to current day.

I ask for responsive documents on this request within 10 days of your receipt of it, and an even prompter reply if you can provide the documents sooner. If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you redact it for the time being and make the rest available as requested. In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed. If I can provide any clarification that will help expedite your attention to my request, please contact me. I am sending a copy of this letter to your legal advisor to help encourage a speedy determination, and I would likewise be happy to discuss my request with them at any time.

On behalf of all the plaintiffs in this matter we legally provide OC Animal Care notice of their duty to preserve the integrity of all paper, computer and electronic files or other data generated or stored on computers or other electronic storage media that may contain relevant information to the above referenced data and reports. Given OC Animal Care's previous documented history of destroying, hiding or burying evidence, the purpose of this request is to assure all relevant information, documents, materials be kept from destruction or alteration by OCAC or any of its employees and agents. Failure to comply with this request may result in immediate and swift litigation.

I understand that this letter is voluminous with complaints, notices, and requests, so I would appreciate you taking your time reviewing these outstanding issues and to cease and desist from the needless killing of animals by way of abandoning them on public property.

Best Regards,



Christine Kelly