


STATE OF NORTH CAROLINA)
UNION COUNTY)

IN THE GENERAL COURT OF
JUSTICE DISTRICT COURT DIVISION

~~08-CVS-~~

NORTH CAROLINA COALITION FOR - 7 A } 32
HUMANE EUTHANASIA and THE)
HUMANE SOCIETY OF UNION COUNTY, Inc.)

8CV00749

Plaintiffs, BY 

v.

EDDIE CATHEY, SHERIFF OF UNION)
COUNTY, NC, LT. MICHELLE STARNES,)
ANIMAL SERVICES OFFICER OF UNION)
COUNTY, NC, PHILLIP TARTE, LOCAL)
HEALTH DIRECTOR FOR UNION)
COUNTY, NC, and DEMPSEY E. BENTON,)
SECRETARY OF THE NORTH CAROLINA)
DEPARTMENT OF HEALTH AND HUMAN)
SERVICES,)

**VERIFIED COMPLAINT FOR
MANDATORY INJUNCTION AND
OTHER RELIEF**

Defendants.

Plaintiffs, North Carolina Coalition for Humane Euthanasia (“NCCHE”) and The Humane Society of Union County, Inc. (“HSUC”), each a non-profit domestic corporation, allege as follows:

SUMMARY

Plaintiffs file this Complaint to stop defendants from unlawfully killing young, geriatric, injured, sick or pregnant animals in the gas chamber in violation of North Carolina law. While plaintiffs understand that not every animal that ends up in defendants’ custody can be placed in an adoptive home and that some of them must be euthanized, defendants, as government employees charged with enforcement of the law, should themselves comply with the law. North Carolina law prohibits the use of the gas chamber to euthanize young, geriatric, injured, sick or pregnant animals. However, documents that defendants are required by law to maintain (Animal

Services Complaint Report/Impound Sheets) and which they were compelled to provide to NCCHE show that they routinely use the gas chamber to do what the law prohibits them from doing—euthanize young, geriatric, sick, injured and pregnant animals in the gas chamber.

PARTIES

1. Plaintiff NCCHE is a non-profit domestic corporation organized under the provisions of N.C. Gen. Stat. Chapter 55, with its principal place of business in Chapel Hill, North Carolina. It is dedicated to the prevention of cruelty to animals.
2. Plaintiff HSUC is a non-profit domestic corporation also organized under the provisions of N.C. Gen. Stat. Chapter 55, with its principal place of business in Monroe, Union County, North Carolina. HSUC is dedicated to preventing cruelty to animals, relieving suffering among animals, and to educating the public about the humane treatment of animals.
3. Each of the Plaintiffs is a “person” as defined by N.C. Gen. Stat. 19A-1(3).
4. Defendant, Eddie Cathey, is the duly elected Sheriff of Union County and his duties include, among others, responsibility for the Union County Animal Control Division of the Union County Sheriff’s Department. Sheriff Cathey is the commanding officer of the Union County Sheriff’s Department and is being sued in his official capacity. On information and belief, by purchase of liability insurance, Union County has waived its governmental immunity to the extent of its insurance coverage.
5. Defendant Lieutenant Michelle Starnes is an employee of Union County and reports to defendant Sheriff Cathey, who is her supervisor. Lt. Starnes’ duties include operation of the Union County Animal Control division. Lt. Starnes is being sued in her official capacity.
6. Defendant Phillip Tarte is the Local Health Director for Union County North Carolina. As the local health director, Mr. Tarte has the statutory obligation to “administer the programs of

the local health department and enforce the rules of the local board of health.” N.C. Gen. Stat. § 130A-4(a). Mr. Tarte is being sued in his official capacity.

7. Defendant Dempsey E. Benton is the Secretary of the N.C. Department of Health and Human Services (“Secretary”). As the Secretary, Mr. Benton has the statutory obligation to “administer and enforce the provisions of [Chapter 130 of the North Carolina General Statutes] and the rules of the Commission. N.C.” Gen. Stat. § 130A-4(a). Mr. Benton is being sued in his official capacity.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to N.C. Gen. Stat. §§ 19A-1 through 19A-4.

9. This Court has personal jurisdiction over defendants because each of them is a real party-in-interest pursuant to N.C. Gen. Stat. § 19A-2. Specifically, Defendants Cathey and Starnes have possession of animals in Union County by virtue of their responsibility for animal control functions in Union County, including operation of the Union County Animal Shelter.

Defendants Tarte and Benton have possession of animals and are responsible for their treatment because, among other reasons, of their statutory responsibilities to administer the provisions of Chapter 130A of the North Carolina General Statutes and the programs of the local health department, which responsibilities include the duties imposed pursuant to N.C. Gen. Stat. § 130A-192 to impound and hold for 72 hours certain animals and provide for proper disposition.

10. Venue is proper pursuant to N.C. Gen. Stat. §§ 19A-1 through 19A-4 because Union County is the county in which the Defendants cruelly treated the animals.

FACTS

Acceptable methods of euthanizing animals are dictated by statute in North Carolina.

11. N.C. Gen. Stat. 19A-23(9) provides a statutory definition of “euthanasia,” as follows:

“Euthanasia” means the humane destruction of an animal accomplished by a method that involves rapid unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness and death during such loss of consciousness.

N.C. Gen. Stat. 19A-24(5) provides that “[a]n animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association.”

12. There are many different methods of euthanizing animals. These include inhalants, such as carbon monoxide gas (CO), and non-inhalant pharmaceutical agents, such as pentobarbital.

13. Inhalants are frequently administered to multiple animals which have been placed in a gas chamber. The gas chamber is flooded with the chosen inhalant, usually CO, resulting in the eventual death from hypoxia of the animals in the gas chamber. The American Veterinary Medical Association, the Humane Society of the United States, and the American Humane Association all address the subject of gas chamber use.

14. In regard to euthanasia of young animals, the American Veterinary Medical Association Guidelines on Euthanasia provide:

Neonatal animals appear to be resistant to hypoxia, and because all inhalant agents ultimately cause hypoxia, neonatal animals take longer to die than adults. ... The panel recommended that **inhalant agents not be used alone in animals less than 16 weeks old** except to induce loss of consciousness, followed by the use of some other method to kill the animal.

See Exhibit 1.

15. Likewise, the Statement on Euthanasia Methods for Dogs and Cats published by the Humane Society of the United States provides:

It is always unacceptable to use CO for the euthanasia of dogs and cats who are:

Geriatric;

Under the age of four months;
Sick or injured; or
(Obviously) pregnant.

Old, sick, or injured animals may have poor blood pressure or weak hearts, which may delay the effects of CO, causing them to experience distress prior to unconsciousness. Animals under the age of four months may not have the lung capacity to inhale enough CO to be effective. In pregnant animals, it is likely that the mother will die from exposure to CO before the unborn puppies/kittens. Consequently, it is possible that the puppies/kittens will die as a result of the mother's death (by suffocating to death) rather than from exposure to CO. **The HSUS condemns using CO for animals meeting the above criteria.**

See **Exhibit 2** (emphasis added).

16. Finally, the American Humane Association "considers euthanasia by **injection of sodium pentobarbital (EPI) to be the only acceptable method of euthanasia** of dogs and cats in animal shelters," regardless of age. See **Exhibit 3** (emphasis in original).

17. Evidencing her understanding of the reason for the law, defendant Starnes has commented to the media that kittens and puppies should only be euthanized by injections of pentobarbital because the gas would take a cruelly long time to knock them out.

18. On information and belief, Union County uses a gas chamber and gas to euthanize almost all of the animals it euthanizes, including puppies and kittens, geriatric, injured, sick and pregnant animals.

Union County Animal Control officials have the statutory obligation to maintain certain records relating to the animals of Union County Animal Control impounds

19. N.C. Gen. Stat. § 130A-192 requires, among other things, that the county Animal Control Officer "shall maintain a record of all animals impounded under this section which shall include the date of impoundment, the length of impoundment, the method of disposal of the animal and the name of the person or institution to whom any animal has been released."

20. Subchapter 52J .0100 of the North Carolina Administrative Code (January 1, 2006) mandates that operators of all animal shelters shall maintain records on all dogs and cats showing

the: (i) origin of animals (including names and addresses of consignors) and the date animals were received; (ii) description of animals including species, age, sex, breed, and color markings; (iii) location of animal if not kept at the licensed or registered facility; (iv) disposition of animals including name and address of person to whom an animal is sold, traded or adopted and the date of such transaction; in the event of death, the record shall show the date, signs of illness, or cause of death if identified; if euthanized, the record shall show date and type of euthanasia; and (v) record of veterinary care including treatments, immunization and date, time, description of medication (including name and dosage), and initials of person administering any product or procedure.”

NCCHE requested documents relating to the Union County Animal Shelter

21. On February 14, 2007, pursuant to the North Carolina Public Records Act, N.C. Gen. Stat. 132-1 et seq. (“PRA”), Attorney Marguerite E. Huggins, acting on behalf of plaintiff NCCHE, mailed a PRA request to the following people: (i) the County Manager for Union County, (ii) the County Attorney for Union County, (iii) defendant Sheriff Cathey, and (iv) Union County Animal Control Officer Bill Tucker (collectively, the “PRA Recipients”).

22. NCCHE requested from the PRA Recipients, for the period beginning January 1, 2006 through the date of the first PRA request, copies of all animal impoundment records they are required to maintain pursuant to N.C. Gen. Stat. § 130A-192 and Subchapter 52J .0100 of the North Carolina Administrative Code.

23. In response to the first PRA request, in approximately the last week of February, 2007, Lt. Michelle Starnes produced to NCCHE over 300 pages of documents (the “PRA1 Documents”). Included among the PRA1 Documents were hundreds of Union County Sheriff’s

Office Animal Services Complaint Report/Impound Sheets (“Impound Sheets”) reflecting the disposition of animals impounded by Union County Animal Services.

24. On November 2, 2007, pursuant to the North Carolina Public Records Act, N.C. Gen. Stat. 132-1 et seq., Michele King, on behalf of plaintiff NCCHE, e-mailed a second PRA request to Union County Animal Control Officer, Captain Bill Tucker.

25. NCCHE requested from Captain Tucker, for the period beginning March 1, 2007, through the date of the second PRA request, inter alia, copies of all animal impoundment records they are required to maintain pursuant to N.C. Gen. Stat. § 130A-192 and Subchapter 52J .0100 of the North Carolina Administrative Code.

26. In response to the second PRA request, in approximately the last week of November 2007, Captain Tucker produced to NCCHE over 3000 pages of documents (the “PRA2 Documents”). Included among the PRA2 Documents were thousands of Impound Sheets reflecting the disposition of animals impounded by Union County Animal Services. Most of the Impound Sheets did not reflect the age of the animal as required by Subchapter 52J 0.100 of the North Carolina Administrative Code or the health or pregnancy status of the animal.

Union County is euthanizing neonatal, geriatric, injured, sick and pregnant animals in the gas chamber and in violation of state law.

27. As reflected on the Impound Sheets that Lt. Starnes and Captain Tucker produced in response to the PRA1 and PRA2 requests, Union County routinely euthanizes puppies and kittens under 16 weeks of age, as well as pregnant, sick, injured, and geriatric animals, by means of the gas chamber.

28. Attached hereto as **Exhibit 4** are Impound Sheets which demonstrate a pattern and practice by the Union County Sheriff’s office of euthanizing puppies and kittens under 16 weeks of age in the gas chamber. For Example:

- a. **Exhibit 4.1** is an Impound Sheet bearing reference number 72512, dated 10/2/06, and documenting the disposition of a 3-week-old “feral” kitten as “chamber.”
- b. **Exhibit 4.2** is an Impound Sheet bearing reference number 72745, dated 10/21/06, and documenting the disposition of a 2-week-old kitten as “chamber.”
- c. **Exhibit 4.3** is an Impound Sheet bearing reference number 71243, dated 6/26/06, and documenting the disposition of a one-month-old kitten as “chamber.”
- d. **Exhibit 4.4** is an Impound Sheet bearing reference number 70871, dated 5/25/06, and documenting the disposition of a 5-week-old kitten as “chamber.”
- e. **Exhibit 4.5** is an Impound Sheet bearing reference number AS07001295, dated 6/30/07, and documenting the disposition of a 2-4 month-old cat as “chamber.”
- f. **Exhibit 4.6** is an Impound Sheet bearing reference number AS07000785, dated 4/28/07, and documenting the disposition of a baby/whelping cat as “chamber.”
- g. **Exhibit 4.7** is an Impound Sheet bearing reference number AS07001056, dated 6/5/07, and documenting on p. 2 the disposition of a baby/whelping cat as “chamber.”
- h. **Exhibit 4.8** is an Impound Sheet bearing reference number AS07001101, dated 6/11/07, and documenting the disposition of an under 2-month-old dog as “chamber.”
- i. **Exhibit 4.9** is an Impound Sheet bearing reference number AS07001145, dated 6/15/07, and documenting the disposition of an under-2-month-old dog as “chamber.”
- j. **Exhibit 4.10** is an Impound Sheet bearing reference number AS07001205, dated 6/21/07, and documenting the disposition of a 2-4 month-old dog as “chamber.”

- k. **Exhibit 4.11** is an Impound Sheet bearing reference number SO07043677, dated 8/27/07, and documenting on pp. 3-4 the disposition of an under 2-month-old cat as “chamber.”
- l. **Exhibit 4.12** is an Impound Sheet bearing reference number AS07002352, dated 10/27/07, and documenting the disposition of an under-2-month-old cat as “chamber.”
- m. **Exhibit 4.13** is an Impound Sheet bearing reference number AS07002408, dated 11/01/07, and documenting the disposition of an under-2-month-old cat as “chamber.”

29. Attached here to as **Exhibit 5** are Impound Sheets which demonstrate a pattern and practice by the Union County Sheriff’s office of euthanizing old and sick animals in the gas chamber. For Example:

- a. **Exhibit 5.1** is an Impound Sheet bearing reference number 70488, dated 4/11/06, and documenting the disposition of an old, blind and sick dog as “chamber.”
- b. **Exhibit 5.2** is an Impound Sheet bearing reference number 71022, dated 6/8/06, and documenting the disposition of an old and sick dog as “chamber.”
- c. **Exhibit 5.3** is an Impound Sheet bearing reference number 70167, dated 3/9/06, and documenting the disposition of a sick dog with a possible respiratory infection as “chamber.”
- d. **Exhibit 5.4** is an Impound Sheet bearing reference number 72526, dated 10/3/06, and documenting the disposition of a very small and young, sick kitten as “chamber.”

- e. **Exhibit 5.5** is an Impound Sheet bearing reference number 71720, dated 7/29/06, and documenting the disposition of three puppies with parvo as “chamber.”
- f. **Exhibit 5.6** is an Impound Sheet bearing reference number AS07000856, dated 5/10/07, and documenting the disposition of a “senior” dog as “chamber.”
- g. **Exhibit 5.7** is an Impound Sheet bearing reference number AS07000948, dated 5/22/07, and documenting the disposition of a “senior” dog as “chamber.”
- h. **Exhibit 5.8** is an Impound Sheet bearing reference number AS07002190, dated 10/6/07, and documenting the disposition of a dog sick with parvo as “chamber.”
- i. **Exhibit 5.9** is an Impound Sheet bearing reference number AS07001363, dated 7/9/07, and documenting the disposition of a dog sick with heartworm as “chamber.”
- j. **Exhibit 5.10** is an Impound Sheet bearing reference number AS07002301, dated 10/19/07, and documenting the disposition of a cat that “does not appear healthy” as “chamber.”

30. Attached here to as **Exhibit 6** are Impound Sheets which demonstrate a pattern and practice by the Union County Sheriff’s office of euthanizing injured animals in the gas chamber.

For Example:

- a. **Exhibit 6.1** is an Impound Sheet bearing reference number 70338, dated 3/29/06, and documenting the disposition of a badly injured cat as “chamber.”
- b. **Exhibit 6.2** is an Impound Sheet bearing reference number 71213, dated 6/23/06, and documenting the disposition of an injured kitten as “chamber.”
- c. **Exhibit 6.3** is an Impound Sheet bearing reference number 71378, dated 7/11/06, and documenting the disposition of an injured puppy as “chamber.”

- d. **Exhibit 6.4** is an Impound Sheet bearing reference number 72709, dated 10/18/06, and documenting the disposition of an injured puppy as “chamber.”
- e. **Exhibit 6.5** is an Impound Sheet bearing reference number 71682, dated 1/26/06, and documenting the disposition of an old, sick and injured dog as “chamber.”
- f. **Exhibit 6.6** is an Impound Sheet bearing reference number AS07000407, dated 3/3/07, and documenting the disposition of an injured cat as “chamber.”
- g. **Exhibit 6.7** is an Impound Sheet bearing reference number AS07001231, dated 6/25/07, and documenting the disposition of a dog whose “back end is broken will not eat or drink” as “chamber.”
- h. **Exhibit 6.8** is an Impound Sheet bearing reference number AS07001409, dated 7/13/07, and documenting the disposition of an injured cat as “chamber.”

31. Attached hereto as **Exhibit 7** are Impound Sheets which demonstrate a pattern and practice by the Union County Sheriff’s office of euthanizing pregnant animals in the gas chamber. For Example:

- a. **Exhibit 7.1** is an Impound Sheet bearing reference number 70942, dated 6/1/06, and documenting the disposition of a injured and pregnant cat as “chamber.”
- b. **Exhibit 7.2** is an Impound Sheet bearing reference number 70254, dated 3/18/06, and documenting the disposition of a pregnant cat as “chamber.”
- c. **Exhibit 7.3** is an Impound Sheet bearing reference number 71963, dated 8/17/06, and documenting the disposition of a pregnant cat as “chamber.”
- d. **Exhibit 7.4** is an Impound Sheet bearing reference number 71159, dated 6/19/06, and documenting the disposition of a potentially pregnant cat as “chamber.”

FIRST CLAIM FOR RELIEF
Violations of N.C. Gen. Stat. 19A-24(5) by All Defendants

32. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs.
33. Defendants, in their capacity as public servants, were required to know, enforce, and comply with the law regarding the care and disposition of animals under their control.
34. N.C. Gen. Stat. § 19A-1(2) defines “animals” to include every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings. Cats and dogs, being non-human vertebrates, are “animals” for purposes of Chapter 19A.
35. N.C. Gen. Stat. § 19A-1(2) defines cruelty as “every act, omission, or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted.”
36. N.C. Gen. Stat. § 19A 1.1, identifies several types of conduct to which the proscriptions of Chapter 1 of Article 19A do not apply. That list includes “[t]he *lawful* destruction of any animal for the purposes of protecting the public, other animals, or the public health.” (Emphasis added.) By necessary implication, the *unlawful* destruction of any animal, even if for the purposes of protecting the public, other animals, or the public health, is not exempt from the proscriptions of Chapter 1 of Article 19A.
37. Defendants have demonstrated a pattern and practice of subjecting animals in their possession to “cruelty” and “cruel treatment” in that, through their intentional acts in their official capacities, they caused those animals to suffer unjustifiable physical pain and suffering and death.
38. Specifically,
- a. defendants are unlawfully causing the suffering and death of puppies and kittens by killing them in a gas chamber in direct contravention of N.C. Gen. Stat. 19A-24(5);

- b. defendants are unlawfully causing the suffering and death of old and sick animals by killing them in a gas chamber in direct contravention of N.C. Gen. Stat. 19A-24(5);
- c. defendants are unlawfully causing the suffering and death of injured animals by killing them in a gas chamber in direct contravention of N.C. Gen. Stat. 19A-24(5); and
- d. defendants are unlawfully causing the suffering and death of pregnant animals and their unborn offspring by killing them in a gas chamber in direct contravention of N.C. Gen. Stat. 19A-24(5).

39. Based on the foregoing evidence and the evidence that will be presented, plaintiffs request that the Court issue a preliminary injunction in accordance with the procedures set forth in N.C.G.S. § 1A-1, Rule 65 and that such preliminary injunction order defendants to comply with North Carolina law as it relates to euthanizing animals. Specifically, plaintiffs request that the Court order defendants Cathey and Starnes to require their employees to comply with the law of the state and not to employ the use of inhalants to euthanize (i) puppies, kittens or other mammals younger than 16 weeks of age, (ii) injured or sick animals, (iii) geriatric animals, or (iv) pregnant animals. Additionally, plaintiffs request that the Court order defendants Tarte and Benton to require the Union County Sheriff's Department and Union County Animal Services to comply with the law of the state and not to employ the use of inhalants to euthanize (i) puppies, kittens or other mammals younger than 16 weeks of age, (ii) injured or sick animals, (iii) geriatric animals, or (iv) pregnant animals, and to monitor the Union County Sheriff's Department and Union County Animal Services and their compliance with this Court's order.

WHEREFORE, Plaintiffs pray judgment of the Court as follows:

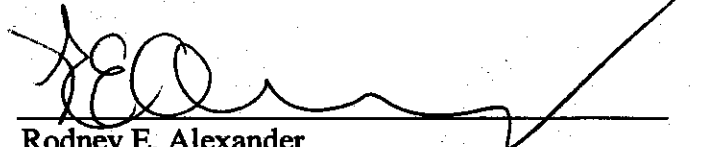
- (a) that the Court issue a Temporary Restraining Order and Preliminary Injunction restraining Defendants Cathey and Starnes, under the supervision of Defendants Tarte and Benton, from euthanizing animals under 16 weeks of age, as well as pregnant, sick, injured and geriatric animals, by use of the gas chamber;
- (b) that the Court grant their Complaint for a Mandatory Injunction directing Defendant Eddie Cathey and Defendant Michelle Starnes, under the supervision of Defendant Phillip Tarte and Defendant Dempsey E. Benton, to euthanize puppies and kittens under 16 weeks of age, pregnant, sick, injured and geriatric animals by intravenous (or where impractical or impossible, intraperitoneal) injection of a nonirritating euthanasia agent or other approved means other than the gas chamber and consistent with the guidelines set out by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association and as required by N.C. Gen. Stat. 19A-24(b)(5);
- (c) that the Court order Defendants Cathey and Starnes, under the supervision of Defendant Phillip Tarte and Defendant Dempsey E. Benton, to submit to this honorable court a plan for euthanizing all animals, including animals under 16 weeks of age, pregnant, sick, injured and geriatric animals, consistent with the guidelines set out by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association and as required by N.C. Gen. Stat. 19A-24(b)(5), including a plan to allow for monitoring the compliance therewith;
- (d) that the Court order Defendants Cathey and Starnes, under the supervision of Defendants Tarte and Benton, as part of the monitoring plan, to keep complete records of impounded animals pursuant to 02 NCAC 52J.0101, including, *inter alia*, the noting on Impound

Sheets of euthanized animals, the age of animals and the specific means, mode, and route of administration of euthanasia used; specifically, the killing agent used, other drugs administered pre-euthanasia, and the route of administration;

- (e) that the court order Defendants Cathey and Starnes, under the supervision of Defendants Tarte and Benton, to implement this plan within a reasonable time;
- (f) that the costs of this action be taxed against the Defendants; and
- (g) that Plaintiffs have such other and further relief as this honorable court may deem just and proper, as is provided for in N.C. Gen. Stat. 19A-4.

This the 7th day of March 2008.

MAYER BROWN LLP



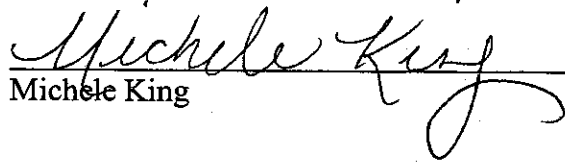
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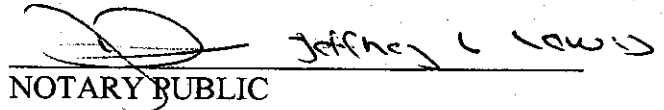
ATTORNEYS FOR PLAINTIFFS

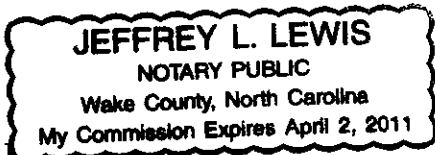
VERIFICATION

I, Michele King, Board Member of the North Carolina Coalition for Humane Euthanasia, verify under penalty of perjury that the foregoing facts in Paragraphs 21-31 in the above Verified Complaint for Mandatory Injunction and Other Relief are true and correct to the best of my knowledge and belief and are based upon my personal knowledge unless otherwise stated.


Michele King

Subscribed and sworn to before me this 1st day of March 2008.


NOTARY PUBLIC



SEAL