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LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Docket No. _____

DIANE MADDEN, LUCILLE DEFINA, and
FRANCES LUCIVERO-PELLETIER,

Plaintiffs,

CV-10 5682
COMPLAINT

-against-

(S1) WEXLER, J.

THE TOWN OF HEMPSTEAD, and
KATE MURRAY, BRUCE HALLBERT,
JILL SCHUSTER, PATRICIA HORAN,
VINCENT NAPOLI, JOANNE MIRANDA,
RUSSEL DAVIS, and ASHLEY SHERIDAN,

TOMLINSON, M

Defendants.

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Plaintiffs DIANE MADDEN, LUCILLE DEFINA, and FRANCES LUCIVERO-PELLETIER, by and through their undersigned attorneys, complaining of the Defendants herein, allege upon knowledge as to themselves and their own actions, and upon information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

1. As the old saying goes, no good deed goes unpunished. Three of the most successful volunteer animal rescuers to work with the Town of Hempstead Animal Shelter were banned from the facility on October 22, 2010, after speaking out to shelter employees and town officials about the cruel and inhuman instances of animal abuse and neglect they observed in the shelter. Plaintiffs were not only banned from doing their volunteer work

but were actually prohibited from even being able to enter the public facility as taxpaying citizens.

2. Employees of the shelter, about whom the complaints were made, retaliated against Plaintiffs by falsely claiming that Plaintiffs were “selling dogs” in an effort to have them removed from the shelter. Town officials hearing these defamatory rumors seized upon them in order to justify their action of prohibiting them from performing their rescue work at the shelter, even now going so far as to falsely claim that Plaintiffs are the subject of an “investigation” that may lead to possible criminal charges. It is nothing more than propoganda at its best, and thus far the Town, its officials and employees have gotten away with it.
3. Plaintiffs now bring suit for violations of their First Amendment rights to freedom of speech and access to the government, and their right to equal protection under the laws, pursuant to 42 U.S.C. § 1983, and under the common law of the State of New York for defamation. They seek declaratory, injunctive and compensatory relief, as well as punitive damages and attorneys fees.

JURISDICTION AND VENUE

4. This Court has original jurisdiction over Plaintiffs’ federal claims pursuant to 28 U.S.C. §§ 1331 & 1343, and supplemental jurisdiction over Plaintiffs’ state claims pursuant to 28 U.S.C. § 1367.
5. Venue is proper in this case pursuant to 28 U.S.C. § 1391.

PARTIES

6. Plaintiff DIANE MADDEN is an adult individual who resides in East Meadow, New York. For at least the last eight years, Madden has served the Town of Hempstead as a volunteer animal rescuer working with the Town of Hempstead Animal Shelter located in Wantagh, New York. Specifically, Madden would facilitate the adoptions of shelter animals through such things as reaching out to approved rescue and “no-kill” shelters to inquire whether they could rescue a dog from the town’s shelter, requesting transports to such facilities from the town, advertising adoptable animals to the public and screening potential adopters for suitability, and directing potential adopters to the town shelter after approval so they could complete the adoption. Madden would also spend a great deal of time at the shelter itself in order to successfully match adopters and dogs. In addition, shelter employees would give out Madden’s personal cellular phone number to the public in order to offer incoming callers and animal owners alternatives to turning their animal into the shelter, including but not limited to training recommendations, no-kill alternatives, or breed-specific rescue organizations. Madden would also donate her own finances to cover certain expenses for shelter animals, such as medical, training, grooming, supplies, boarding and transportation. Madden would also perform a substantial amount of follow-up work to ensure successful adoptions. On some occasions, Madden would go so far as to adopt an animal from the shelter herself when other alternatives were unavailable at the time, and then later seek to send the animal to an approved rescue or no-kill facility, or otherwise seek a private re-adoption of the animal to a member of the public.

7. Plaintiff LUCILLE DEFINA is an adult individual who resides in Merrick, New York. For at least the last 13 years, DeFina has served the Town of Hempstead as a volunteer animal rescuer working with the Town of Hempstead Animal Shelter located in Wantagh, New York. Specifically, in addition to engaging in similar rescue activities as Madden (but with respect to cats rather than dogs), DeFina would facilitate adoptions of shelter animals through communicating with the public about adoptable and unadoptable cats held by the Town by providing advertising and internet exposure to promote adoptions and/or placement to other facilities. DeFina facilitated much needed programs such as Foster Care Programs, Special Adoption Programs, Seniors for Seniors, and Adopt a Sibling Program. DeFina facilitated preventive care for shelter cats and kittens, which included vaccines at intake, deworming procedures, and intake procedures. DeFina also provided incentive to potential adopters with reassurance of medical and/or behavioral follow up and assistance if needed for high risk adoptions. DeFina provided FIV/Felv testing for adults at her own expense up until April of 2010. DeFina would provide much needed emergency medical care to shelter cats at her own expense. DeFina also facilitated a foster care program for kittens too young to be spayed and neutered so that they may leave the shelter to avoid exposure to disease, since their immune system was frail. DeFina would follow up on kittens in foster care programs up until permanent adoption at time of spay/neuter. DeFina would also remove cats from the shelter at her own expense that could not get adopted and were due to be euthanized.
8. Plaintiff FRANCES LUCIVERO-PELLETIER (“Lucivero”) is an adult individual who resides in Levittown, New York. For approximately the last two years, Lucivero has

served the Town of Hempstead as a volunteer animal rescuer working with the Town of Hempstead Animal Shelter located in Wantagh, New York. Specifically, in addition to engaging in similar rescue activities as Madden and DeFina, Lucivero was in large part responsible for implementing and carrying out the shelter's trap, neuter and release ("TNR") program at the shelter. This program was designed to trap, neuter or spay, and then release feral cats living in the community rather than catching them and forcing them to live the remainder of their lives in the shelter behind a cage. Under this program, when residents of the community would call the shelter regarding a feral or stray cat, shelter workers would have the option of providing Lucivero's personal telephone number to the resident so that she could offer the resident the option of the TNR program rather than shelter life for the animal. In addition, Lucivero served as a volunteer for Forgotten Friends of Long Island Animal Rescue, Inc., which did rescue work with the shelter. As such, Lucivero was responsible for identifying and arranging foster care for the most in-need, sick or injured cats who were housed in the garage and/or the back room of the shelter. Lucivero arranged for Forgotten Friends to remove the cat/kitten(s), provide medical care and a foster home until the animal was ready to be placed for adoption.

9. Defendant TOWN OF HEMPSTEAD ("the Town") is a municipal corporation organized and existing under the laws of the State of New York with its principal place of business located at One Washington Street, Hempstead, New York. Pursuant to the New York State Agricultural & Markets Law, the Town operates, staffs, and supervises the

employees of the Town of Hempstead Animal Shelter (“the Shelter”) located at 3320 Beltagh Avenue, Wantagh, New York.

10. Defendant KATE MURRAY is the Town Supervisor and was responsible for overseeing the operations of the Town, its departments, agencies, and employees, including the Shelter. Upon information and belief, Murray is a resident and domiciliary of the Town of Hempstead and State of New York.
11. Defendant BRUCE HALLBERT is the Commissioner of the Town’s General Services Department, which is the Department chiefly responsible for the operations of the Shelter. Hallbert directly supervised the Shelter Director, Charles Milone, and other employees of the Shelter. Upon information and belief, Hallbert is a resident and domiciliary of the Town of Hempstead and State of New York.
12. Defendant JILL SCHUSTER, at all relevant times, was an employee of the Town assigned to work in the Shelter. Upon information and belief, Schuster is a resident and domiciliary of the Town of Hempstead and State of New York.
13. Defendant PATRICIA HORAN, at all relevant times, was an employee of the Town assigned to work in the Shelter. Upon information and belief, Horan is a resident and domiciliary of the Town of Hempstead and State of New York.

14. Defendant VINCENT NAPOLI, at all relevant times, was an employee of the Town assigned to work in the Shelter. Upon information and belief, Napoli is a resident and domiciliary of the Town of Hempstead and State of New York.

15. Defendant JOANNE MIRANDA, at all relevant times, was an employee of the Town assigned to work in the Shelter. Upon information and belief, Miranda is a resident and domiciliary of the Town of Hempstead and State of New York.

16. Defendant RUSSEL DAVIS, at all relevant times, was an employee of the Town assigned to work in the Shelter. Upon information and belief, Davis is a resident and domiciliary of the Town of Hempstead and State of New York.

17. Defendant ASHLEY SHERIDAN, at all relevant times, was an employee of the Town assigned to work in the Shelter. Upon information and belief, Sheridan is a resident and domiciliary of the Town of Hempstead and State of New York.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

Plaintiffs' Rescue Work

18. Plaintiffs ("the Rescuers") have devoted a great portion of their lives to watching out for the well being of animals, particularly those animals that are unwanted, unloved and stuck behind the cage bars of municipal shelters. In this case, the Rescuers worked primarily with the Shelter, the Shelter Director, Charles Milone, and the Shelter's Adoption Coordinator, Regina Thorne, in order to enhance the quality of life of certain

Shelter animals by attempting to find citizens willing to adopt Shelter animals into their care.

19. To do so, however, required a great expenditure of time and money on the part of the Rescuers because they were not employees of the Town. Although the Town Shelter had a budget of 7.1 million dollars (upon information and belief the largest budget of all animal shelters on Long Island, and over twice as high as the next highest shelter budget), the Shelter and its employees failed to provide the Shelter animals with preventative and corrective medical care, training, behavioral assessments, and a host of other similar programs or treatments that would increase the animals' adoptability.

20. Oftentimes, adoptable animals were deemed "unadoptable" by low level Shelter employees who were not trained to make such assessments—assessments that should have been made by a veterinarian or animal behaviorist. Unadoptable animals were typically housed in a back room of the Shelter that is not generally open to the adopting public. In other words, the adopting public visiting the Shelter would be shown animals in the front room that were deemed adoptable, while the wrongly-convicted unadoptable animals were housed in a back room that was not open to the public. Because the Shelter is a "kill facility," rather than a "no-kill facility" as many other Long Island shelters are, the animals imprisoned in the back room of the Shelter were subject to a ticking clock on their life while awaiting euthanasia.

21. The Rescuers, in addition to advocating for animals in the front room, were also given access to this back room in order to do their rescue work. The Rescuers would visit the Shelter and the animals in the back room, determine whether they believed an animal there could be successfully adopted out to a loving home, and then do one of a number of things, such as placing a “do not destroy” label on the animal, taking pictures of the animal to show to potential adopters, fostering the animal for a period of time in their own care or in a boarding facility in order to provide the animal with necessary medical treatments it was not receiving from Shelter staff, or even in some cases adopting the animal themselves with the ultimate goal of re-adopting him or her to another family later.

22. The Rescuers would also spend a great deal of time searching for citizens who were willing to adopt such animals. Rescuers Madden and DeFina, for example, would devote approximately 40 hours per week or more to their rescue work. In addition to visiting the Shelter itself to look at and evaluate the animals, they would use their personal telephones in order to reach out to the adopting public and certain rescue organizations with greater resources than they had in order to find homes for the animals.

23. Further, the Rescuers did not have access to the seemingly unlimited funds the Shelter had in its budget, which could have been spent on such work; thus, they had to use their own funds in order to do so. The provision of medical care and the boarding and feeding of fostered animals required a huge financial contribution from the Rescuers. Rescuer

DeFina, for example, spent nearly \$60,000.00 per year of her own money in order to foster, board, feed and care for cats she rescued from the Shelter.

24. Although performing a slightly different type of rescue work, Rescuer Lucivero devoted a large portion of her time to the Shelter as well. As stated, in order to implement the TNR program, Rescuer Lucivero conducted community outreach to citizens who had first contacted the Shelter for information. The Shelter gave citizens Lucivero's personal cell phone number so that she could educate them about trap-neuter-release (TNR) and subsequently work with the citizen to conduct TNR. Lucivero had to go out "into the field" in order to trap feral cats, bring them to a veterinarian or the Shelter to be spayed or neutered, then recover the cats after surgery and then ensure the cats were released to a suitable place in the community where they would be safe to go on and live a better life than the other condemned Shelter animals.

25. The types of rescue work the Rescuers performed is not exclusive to the Shelter. Many shelters across Long Island, and indeed the country, rely upon rescue groups and private individuals to perform such services in order to fill the void in the care of the animals that shelter staff cannot fill itself. Such rescuers go unpaid, and many times unrecognized, for their work, but nevertheless offer their services, their time, and their out-of-pocket money in order to help save animals that may otherwise be euthanized if their care is left to the discretion of untrained shelter staff.

The Rescuers Report on Abuse and Neglect at the Shelter

26. As stated, the Rescuers worked closely with Director Milone and Adoption Coordinator Thorne in order to perform their rescue work. Milone and Thorne would oftentimes serve as the liaisons between the Rescuers and various Town officials, such as Commissioner Hallbert.
27. As a result of being in the Shelter on a regular basis to pursue their rescue efforts, the Rescuers had the opportunity to observe many different aspects of the Shelter's operation.
28. First, the Rescuers spoke out to Director Milone, Animal Coordinator Thorne, and Commissioner Hallbert on a number of topics relating to the operation of the Shelter, such as the need for a tailored adoption program, more advertising, a tailored TNR program to deal with the increasing cat population, a full-time veterinarian and animal behaviorist on the staff, a training program for Shelter staff, and a better evaluation system at the Shelter so that adoptable animals would not mistakenly be labeled unadoptable by untrained staff and then euthanized as a result.
29. The Rescuers also observed many instances of clear animal abuse and neglect by Shelter employees. They observed Shelter animals lying on cold cement floors without blankets or beds (though the animals in the front room that the public sees do have blankets and beds), animals lying in their own waste without being cleaned, a lack of air conditioning

during the hot summer months, sick animals that were not being cared for (in fact, ignored) by Shelter staff, and other much more disturbing events taking place.

30. For example, in 2007, a cat known only by Shelter staff as Case Number 2838 (the Shelter would not provide temporary names for Shelter animals despite that many other Shelters do) gave birth at the Shelter. The cat arrived at the Shelter pregnant, but young, vibrant, and in extremely good health. After a few days of giving birth, the cat's appearance began to change and her health began to decline. Despite Rescuer DeFina putting in many requests to Shelter employees to have the young mother cat examined and cared for, her requests continued to be ignored. Shelter staff would dismiss Rescuer DeFina's concerns, telling her simply that it was common for a cat that had recently given birth to appear thin and weak. Each day Rescuer DeFina observed the cat, she looked worse and worse. She continued to plead with Shelter staff, but those pleas were ignored. Rescuer DeFina then took it upon herself to rush the cat to her own veterinarian at her own expense to have the mommy examined. The veterinarian determined that an unborn fetus was still stuck in the cat's birth canal and that the cat had already become paralyzed. After a brief attempt to remove the fetus, the veterinarian determined that it would be best to lay the cat to rest. Had Shelter staff listened to Rescuer DeFina's urgent pleas and shown any concern for the well being of this cat, Case Number 2838 may still be alive today.

31. As just another example, Shelter staff would clean the floors of the animals' cages with a bleach mixture that was nearly toxic and far above acceptable levels. They would do so

without removing the animals from their cages. The Rescuers, and indeed private veterinarians who have visited the Shelter, would typically smell the bleach thick in the air. The animals subjected to such treatment suffered severe bleach burns on their paws and bellies that typically went untreated. In the worst of such cases, Rescuer Madden was informed by two Shelter employees that a dog had been intentionally bleached to death by an angry kennel attendant.

32. It is these types of concerns that the Rescuers would continually report to Shelter staff. However, the low level Shelter staff, such as kennel attendants and clerks, would ignore their concerns. Such staff consisted of civil service employees who were simply assigned to the Shelter. The Town would not even ask whether these individuals had a love for animals. It was observed many times by the Rescuers and other members of the public that the Shelter staff would talk on their cellular telephones, drink alcohol, and dance and play in the back room while sick and dying animals lay a few yards away.

33. After being ignored by the staff, the Rescuers reported their concerns to Director Milone and Adoption Coordinator Thorne. Rescuer DeFina, for example, has scores of emails she has written to Milone and Thorne going back several years reporting similar instances of abuse and neglect at the Shelter, as well as emails referencing the above-stated need for the implementation of certain adoption programs and the hiring of qualified personnel at the Shelter.

34. Unlike the Shelter staff, Thorne had a great love for animals and would genuinely listen to, and then address, the Rescuers' concerns. Thorne's involvement required her to speak to the Shelter staff in order to essentially force them to do their jobs such that their drinking and dancing would be interrupted. As a result, the Shelter staff developed a resentment and animosity toward the Rescuers such that, on several occasions, the Rescuers were told by staff members, such as Defendant Russell Davis, that the staff would "get" the Rescuers and have them kicked out of the Shelter. Defendant Davis made this comment shortly after Rescuer Madden had witnessed him beating a dog with a hose.

35. For years, other individuals have emailed and telephoned the offices of Town Supervisor Kate Murray to inform her about other instances of animal abuse and neglect at the Shelter. Nevertheless, Murray publicly proclaimed in an interview that aired on Cablevision's Channel 12 News that she was unaware of any allegations of animal abuse and neglect being made prior to those of the Rescuers.

The Banning of the Rescuers

36. The Shelter staff began to spread false rumors about the Rescuers in order to attempt to have them banned from the Shelter in retaliation for the fact that they were speaking out to Shelter officials and reporting the instances of abuse and neglect they observed at the Shelter. The most prevalent of the rumors was that the Rescuers were "selling dogs," purportedly for a profit. Nothing can be farther from the truth. Potential adopters who adopted animals from the Shelter adopted the animals directly from the Town, paid the Town's required fees to transfer the licenses, and took the animals home. In some cases,

as mentioned above, certain of the Rescuers would actually adopt an animal from the Town themselves when other efforts at adoption failed. In such cases, the Rescuer would provide medical treatment to the animals at her own expense prior to re-adopting the animal to another family. On some occasions, the family adopting the animal from the Rescuers would offer a donation to the Rescuer to help her partially recover the costs of the medical treatment she provided to the animal. Such a donation is commonplace across Long Island when shelter rescuers re-adopt an animal to the general public. In fact, in some cases, municipalities actually pay the rescuer directly in addition to the donation the rescuer receives from the ultimate adopter.

37. Upon information and belief, these false rumors made their way to various Town Officials, such as Hallbert, Murray, Town Attorney Susan Jacobs, and Town Attorney Rick Amorini.

38. First, Commissioner Hallbert called for Director Milone to write a memo outlining the Rescuers' access to and duties at the Shelter. Milone issued the memo on September 15, 2010, part of which explains that certain of the Rescuers only accepted donations when they themselves have adopted an animal from the Shelter and later re-adopted him or her to another individual. Milone concludes the memo by writing: "Our two main rescue individuals, Lucille (cats) and Diane (dogs) rescue exclusively from our shelter and are responsible for saving many lives. . . . To lose their efforts would be detrimental to our animals."

39. On October 19, 2010, Town Attorney Rick Amorini asked to meet with Madden, Milone and Thorne regarding the Rescuers' efforts at the Shelter. After reviewing the memo and engaging in discussion with Madden, Amorini said in sum and substance that everything was "fine" and to "keep on doing all you're currently doing, all of the latitude for rescue can be worked out very easily. In fact, Amorini then offered Madden a job at the Shelter. Milone spoke up and said that he thought it would be a good idea for Madden to accept the job.

40. Madden, however, declined the job. She told Amorini that she could not take a position with the Town because of the conditions in the Shelter, because the Shelter is a "kill facility" rather than a "no-kill facility," because she speaks out to the public that the Shelter is a "kill facility," thus a job for Madden could be considered hypocritical, and she relayed several examples of abuse and neglect she observed that made her not wish to accept a position at the Shelter.

41. Rescuer Madden told a story about a woman who wanted to bring a Shih Tzu to the Shelter. Madden relayed how she witnessed a desk attendant at the Shelter tell the woman that the Shih Tzu was a biter and would probably be euthanized. At this point in the meeting, Amorini appeared to be surprised that Madden was reporting such activities to him. Madden continued by reporting another instance of neglect on the part of a Shelter employee. Amorini then abruptly ended the meeting and asked Thorne and Madden to leave. However, Director Milone stayed behind to continue to speak to Amorini. Upon information and belief, Milone relayed to Amorini that the Rescuers had been reporting

such instances of abuse and neglect to him and Thorne for years, which led to the resentment of the Shelter staff that started the false rumor that the Rescuers were somehow profiting from their efforts.

42. Upon information and belief, Amorini then relayed what had been reported in this meeting by Madden and Milone to Town Attorney Susan Jacobs, who upon information and belief then relayed the report to Supervisor Murray.

43. Three days later, on October 22, 2010, the Rescuers were banned from the Shelter. The decision to ban the Shelter employees was purportedly made by Town Attorney Kate Murray and Town Attorney Susan Jacobs, whom Amorini reported his meeting with Madden to. Purportedly Jacobs informed Hallbert of the decision, who in turn informed Milone, who in turn informed Thorne to tell the Rescuers that they had been banned.

44. After being told they were banned, Rescuers Madden and DeFina went to Town Hall and spoke to Hallbert, who indicated that he “couldn’t even imagine” why the Rescuers had been banned. The only reasonable inference to be drawn is that Murray and Jacobs made the decision to ban the Rescuers in retaliation for the Rescuers’ past complaints and so that they would stop reporting the instances of animal abuse and neglect occurring at the Shelter at the hands of Town employees, questioning the Shelter’s operational policies, and questioning the allocation of funds of a 7.1 million dollar budget when other shelters run on much less money.

45. On Monday, October 25, 2010, Rescuer Madden was told that in addition to being banned from doing their rescue work, the Rescuers could not enter the building even as citizens of the Town. She was called by Thorne, who relayed to her that Jacobs had also made the decision to transfer Thorne and Milone from the Shelter as well. Thorne relayed how Hallbert and another Town attorney physically stood over Thorne while she was asked to clean out her desk, and then she, too, was escorted from the Shelter. In addition, Director Milone was transferred from the Shelter. Both Thorne and Milone now hold administrative positions with the Town and physically work out of the Town Hall.

46. On October 26, 2010, Rescuer DeFina went to the Shelter. Hallbert and Richard Hayes (a kennel supervisor employed by the Town) met DeFina at the door to the Shelter. Hallbert told DeFina that he could not let her in the building, then Hallbert and Hayes walked DeFina out of the building and into the parking lot.

47. On October 26, 2010, Rescuer Lucivero attempted to enter the Shelter. Unlike DeFina, Lucivero made it to the front desk of the Shelter. Lucivero was told by the desk attendant to wait. Richard Hayes then spoke to Lucivero, who said that she was there to check on the animals. Hayes simply responded and said that “everything’s fine.” When Lucivero asked to see for herself, Hayes shook his head indicating “no,” and then said that she should speak to Commissioner Hallbert. Lucivero reminding Hayes that she worked with the Forgotten Friends of Long Island Animal Rescue not-for-profit rescue group as well that also had a relationship with the Shelter, and Hayes responded, “yes, but you’re also with Lucille [DeFina].” Interestingly, other members of the Forgotten Friends group have

been allowed to enter the Shelter after the Rescuers were banned, to the exclusion of Lucivero. Moreover, other members of the rescue community that do substantially similar types of work as the Rescuers have also been allowed to enter the Shelter after the ban of the Rescuers.

48. On October 27, 2010, Rescuer Madden attempted to enter the Shelter. Commissioner Hallbert met Madden in the hallway and said that he could not let Madden enter the Shelter.

The Defamation (Propaganda) Campaign Against the Rescuers

49. On or about October 27, 2010, a veterinarian, Dr. Siegel, visited the Shelter to check on the animals. Dr. Siegel observed the Shelter staff celebrating the ban of the Rescuers. Defendants Miranda, Horan, Sheridan, and Schuster were falsely disparaging the Rescuers, telling Dr. Siegel that the Rescuers were banned because they were “selling dogs.” Such statements were false in all material respects. Dr. Siegel also heard staff members say, nearly unanimously, that they were “glad they got rid of them,” referring to the Rescuers.
50. On or about November 5, 2010, an attorney who was then representing the Rescuers received a call from Town Attorney Susan Jacobs. Jacobs told said attorney that the Rescuers were banned because allegations were made that the Rescuers were selling animals and diverting animals from the Shelter.

51. On November 9, 2010, at a Town Board meeting at Town Hall, the Rescuers spoke out about how they were unjustifiably banned from the Shelter and publicly relayed some of the worst instances of animal abuse they observed in the Shelter. In response to a question from a concerned citizen why the Rescuers were banned, Town Supervisor Kate Murray publicly announced to those citizens present that she could not comment on the reason because a criminal investigation was ongoing, implying that the Rescuers had done something criminal. This statement and the implication it contained were completely false in all material respects.
52. On November 19, 2010, Kim (last name unknown) from Meadowbrook Animal Hospital was told by Town Animal Control Officers that the Rescuers were banned because they were selling dogs. This statement was completely false in all material respects.
53. Similarly, at a Town Board meeting on November 23, 2010, Town Supervisor Kate Murray again stated, numerous times, to an incensed public outraged at the banishment of the volunteers, that she could not comment due to “an ongoing criminal investigation.” Murray also stated in response to a question from a citizen asking why the Rescuers were banned, Murray stated “because they are being investigated.” These statements and the implication that they contained were completely false in all material respects.
54. Other defamatory statements include, but are not limited to, the following:
 - a. Defendant Miranda told Animal Control Officer Michael Errico that the Rescuers were selling dogs and advertising them on a website for \$400. This statement was false in all material respects;

- b. Defendant Napoli reported to Town administration and Shelter staff that the Rescuers were selling and hiding dogs. This statement was false in all material respects;
- c. Theresa Kohutka, a Town Animal Control Officer, told Madden that on many occasions Defendants Miranda, Sheridan and Schuster told employees, other rescuers, and members of the public that Madden was “stealing dogs from the shelter”; and,
- d. As set forth above, Defendant Davis stated that he was going to “get” the Rescuers after he had been observed beating a dog with a hose, and in order to silence the outspoken Rescuers, he made defamatory statements to Town officials that the Rescuers were selling dogs for profit.

The Damage Caused by the Town’s Actions

- 55. Due to the banning of the Rescuers and the defamatory comments made about them, the Rescuers’ reputations have been questioned by others, they have been unable to continue to perform their volunteer work, and they have been the subject of a number of newspapers articles and television news broadcasts where Defendants’ defamatory comments have been reproduced to potentially thousands of individuals.

56. As a result, the Rescuers have suffered great emotional pain and humiliation, depression, anxiety, a loss of sleep, a loss of self-worth, damage to their reputations, and other indices of emotional trauma.

AS AND FOR A FIRST CAUSE OF ACTION

57. The above stated actions of the Defendants in banning the Rescuers as taxpaying citizens from being able to enter a public facility is unconstitutional on its face in that it is a violation of the Rescuers' First Amendment rights to access to the government.

58. The Rescuers have no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION

59. The above stated actions of the Defendants in banning the Rescuers from continuing to perform their volunteer work after they reported instances of animal abuse and neglect at the Shelter, questioning the allocation of funds in the Shelter's budget, and lobbying for the implementation of certain operational programs is unconstitutional as applied in that it is a violation of the Rescuers' First Amendment rights to be free from retaliation for having spoken out on issues relating to Shelter operations.

60. The Rescuers have been damaged in the ways set forth above.

AS AND FOR A THIRD CAUSE OF ACTION

61. The above stated actions of the Defendants in banning the Rescuers from continuing to perform their rescue work is unconstitutional as applied in that it is a violation of the Rescuers' rights to equal protection under the law because other similarly situated

rescuers have since been allowed to enter the Shelter after the banishment of the Rescuers.

62. The Rescuers have been damaged in the ways set forth above.

63. The Town has, while acting under color of state law, deprived the Rescuers of their constitutional rights, as secured by the First and Fourteenth Amendments to the United States Constitution, and all related provisions of the New York State Constitution. The Town is liable for the actions of the individually named Defendants because the Town officials intentionally committed, condoned or were deliberately indifferent to the aforementioned violations of the Rescuers' constitutional rights. Such deliberate indifference may be inferred in the following ways:
 - a. Defendants' custom or practice of discriminating and/or retaliating against individuals based on their constitutionally-protected forms of speech, expression and association. The discriminatory practices were so persistent and widespread that they constitute the constructive acquiescence of policymakers.

 - b. Supervisors failed to properly investigate and address allegations of discrimination, retaliation and/or harassment.

- c. Inadequate training/supervision was so likely to result in the discrimination, retaliation, and/or harassment that policymakers can reasonably be said to have been deliberately indifferent to the need to provide better training and supervision.
- d. Policymakers engaged in and/or tacitly condoned the discrimination/retaliation.

AS AND FOR A FOURTH CAUSE OF ACTION

- 64. The above stated defamatory comments made by the Defendants constitute libel, libel per se, slander, and slander per se under the common law of the State of New York.
- 65. The Rescuers have been damaged in the ways set forth above.

WHEREFORE, the Rescuers demand the Court enter judgment in their favor and against the Defendants as follows:

- A. Declaring the banishment of the Rescuers as taxpaying citizens from a public facility unconstitutional on its face;
- B. Issuing a permanent injunction mandating that the Defendants allow the Rescuers to re-enter the Shelter and prohibiting the Defendants from any further actions inhibiting the Rescuers' exercise of their constitutional rights;
- C. Directing the Defendants to pay to the Rescuers all compensatory, punitive, and liquidated damages to which they may be entitled;
- D. Directing the Defendants to pay the Rescuers' attorneys fees should the Rescuers be the prevailing parties to this action;

E. Directing the Defendants to pay the costs and disbursements associated with this action;
and,

F. Granting such other and further relief that to the Court seems just and proper.

Further, the Rescuers demand a trial by jury.

Dated: Garden City, New York
December 7, 2010

Yours, etc.

A handwritten signature in black ink, appearing to read 'S. Morelli', written over a horizontal line.

Steven A. Morelli
Eric S. Tilton

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