

STATE OF NORTH CAROLINA

HENDERSON COUNTY

FILED

2007 DEC -6

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO.: 07-CVD-1521

STATE OF NORTH CAROLINA, ex rel.,
NORTH CAROLINA DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES,)

HENDERSON CO., C.S.C.

Plaintiff,

ALL CREATURES GREAT AND
SMALL OF HENDERSON COUNTY, INC.,)

Defendant.)

CONSENT ORDER

This matter being heard by the undersigned Judge at the December 6, 2007 term of the District Court of Henderson County upon the stipulation of the parties for entry of a Consent Order. Upon consideration of the pleadings and supporting affidavits in which the parties consent to jurisdiction and waive entry of findings of fact and conclusions of law, it appeared to the Court that this Order should be entered in order to preserve the status quo and protect the parties' respective interests until this matter can be heard on the merits.

IT IS THEREFORE ORDERED as follows:

1. The Defendant shall continue to take those actions consistent with complying with the consent judgment entered in the Superior Court of Henderson County in the matter captioned, "All Creatures Great and Small of Henderson County, Inc., vs. the City of Hendersonville," court file number 04 CVS 1563, (Appendix A) and the terms of that judgment are hereby incorporated into this Order by reference. The parties acknowledge that the purpose of this Consent Order is to protect their respective interests, generally, and to accomplish the

following:

- a. to facilitate continued settlement negotiations in this and related litigation;
- b. to facilitate Defendant's closing of its animal shelter on Seventh Avenue in Hendersonville (the "facility") at the earliest possible date; and
- c. to require Defendant to improve conditions and animal husbandry care at the facility to bring it into compliance with the standards set forth in 02 NCAC 52J .0201 et seq.
- d. to facilitate the accelerated adoption of animals from this facility prior to defendant's relocation to a South Carolina facility no later than March 14, 2008.

The parties hereby stipulate that Defendant's voluntary dismissal of its Petition for review of Plaintiff's Cease and Desist Order, previously designated 04 DAG 1367, filed with the North Carolina Office of Administrative Hearings on October 5, 2007, constitutes a voluntary dismissal without prejudice pursuant to N.C. R.C.P. 41(a) and Defendant retains the right to re-file said action with that agency in accordance with that rule. The parties further stipulate that Defendant's voluntary withdrawal of its Petition for review does not accelerate the date upon which Defendant is obligated under the Appendix A to vacate the facility.

2. Should it be determined that Defendant is in breach of its duties or obligations set forth in Appendix A, then said breach shall likewise be considered a violation of this Order and shall entitle the Plaintiff to immediate relief in the

form of a contempt order AND such other relief as the Court deems appropriate.

3. The Defendant shall open its facility to veterinarians and animal health technicians the Plaintiff designates, listed on the attached list, (Appendix B) which is incorporated herein by reference. Said personnel ("Appendix B personnel") shall be allowed into the facility property twenty-four hours a day, seven days a week, with access to all animals, records, rooms, buildings and facilities, without regard to whether Defendant has sublet any part of the facility to any other party. Said access and the work done is subject to the following requirements and conditions:
 - a. The parties hereby agree that Plaintiff's Appendix B personnel shall include all veterinarians employed by Plaintiff on or after the effective date of this Order, all veterinarians employed by the North Carolina State University College of Veterinary Medicine, all veterinarians licensed to practice veterinary medicine in North Carolina, and all animal health technicians designated by name in Appendix B as working under the supervision of any said veterinarians.
 - b. At such times as it deems necessary and appropriate, Plaintiff may add or remove veterinarians and animal health technicians to said list by sending those names to Defendant's counsel of record who has signed below, in advance of such action.
 - c. The parties further agree that Dr. Beverly Hargus may attend the first visit and assessment conducted at Defendant's facility following the

effective date of this Order, but Dr. Hargus' presence is not a prerequisite to continuation of that initial assessment or to any subsequent assessment, inspection or visit conducted by any of the Appendix B personnel pursuant to this Order.

4. The Defendant shall accept no more animals to be kept at its facility or at any other location in North Carolina. Should any animals be found abandoned at the facility, the Defendant shall either:
 - a. transport the abandoned animals immediately to the Henderson County Animal Shelter or to another certified animal shelter; or
 - b. if Defendant lacks the ability to transport the animals, Defendant shall arrange immediately for a third party to transport the abandoned animals as soon as possible to the Henderson County Animal Shelter or to another certified animal shelter.

In no event shall Defendant allow an abandoned animal remain at the facility for more than twenty-four hours without notifying the Plaintiff.

5. Defendant shall not take, transport or transfer any of its animals from the facility to any other location without the express prior consent of the Plaintiff, except for bona fide adoptions as provided in paragraph eight. The Defendant shall give Plaintiff no less than five business days advance notice of the date upon which it intends to move any of its animals out of the facility for any reason other than adoptions or urgent veterinary care provided in accordance with this Order.
6. Defendant agrees to assign ownership of at least 350 animals from its facility

to Plaintiff's designee, as soon as possible after Plaintiff identifies and notifies the Defendant of its designee, following execution and entry of this Order.

Defendant shall have no discretion in or authority over the choice of Plaintiff's designee. Defendant shall open the facility to all persons identified as Plaintiff's designee's volunteers and/or employees. Defendant shall prepare adoption records for each animal assigned within twenty-four hours of receiving Plaintiff's request for said adoption records and all such records will include the information provided in paragraph eight except for the name of the person to receive the animal. Both parties agree that transferred animals become the property of the persons or organizations adopting the animals, without any limitation on any right to transfer ownership or to make any other disposition of said animals. Plaintiff will request that its designee offer any animal deemed as requiring euthanasia to Defendant's board members for adoption if the rationale for determining that the animal should be euthanized is other than a) a determination that the animal is an imminent threat to the health or safety of people or other animals; or b) a determination that the animal's physical condition is such that it would be more humane for the animal to end its life. The parties further understand that a) Plaintiff's designee is not obligated by this Order to comply with Plaintiff's request and b) any animals offered by the Plaintiff's designee under this provision to Defendant's board members must be adopted, not returned to the facility. Defendant shall bear the costs of preparing the adoption records. Plaintiff or its designee shall bear any costs arising from acceptance and/or transportation

of the animals. Otherwise, neither party shall charge the other or any other party any adoption or other fees or costs due to this transfer of animals under this Order.

7. In conjunction with the transfer of the animals referenced in paragraph 6 and completion of the initial assessment of all animals in the facility as referenced in paragraph 3(c), Defendant agrees to actively pursue adoption of all remaining animals at its facility, with the goal of significantly reducing the numbers of animals that will require transport from the facility before March 14, 2008. Defendant shall report, in writing, its denial of any request for adoption it receives, including the name, address and telephone number of the party requesting the animal and its reason for denying the request, to Dr. Hargus and Dr. Hunter, or their designees, on the same basis as its written reports of adoptions, but no later than within one week of denying the request for adoption, as agreed in paragraph eight, below. If, in Dr. Hargus' or Dr. Hunter's opinion Defendant's refusal to grant the adoption was arbitrary or otherwise not in the animal's best interest, Defendant shall contact the party seeking the adoption and offer him/her the animal requested. At Defendant's option it may take a request for adoption under advisement and request the advice of Dr. Hargus or an Appendix B veterinarian as to whether granting an adoption is in the animal's best interest.
8. Defendant agrees to prepare legible and complete adoption records for each animal adopted out of the facility. Defendant shall send by facsimile transmission all adoption records for any of its animals adopted out of the

facility beginning on the effective date of this Order, to the Plaintiff. All such records shall be faxed no later than the first Monday or Friday following the date of the animal's adoption. The parties agree that an adoption is deemed completed when the animal leaves the facility in the possession of the person who has adopted it, regardless of any other agreements or arrangements pertaining to payment of fees, veterinary care, etc. Adoption records shall include the name, address and telephone numbers of the person adopting the animal, the animal's name or an identifying number, the amount of any fee paid to or on behalf of the Defendant, and a full description of the animal adopted sufficient to permit easy identification of the animal by a person who has not seen the animal before. It is expressly understood that the Plaintiff shall be free to contact and communicate with any person named in adoption records it receives from the Defendant.

9. Following the initial assessments referenced in paragraph 3(c), the Plaintiff, through the its Appendix B personnel, or its agents or independent contractors, may, at its discretion, assess the health and husbandry needs of all animals in Defendant's facility in order to determine that Defendant is bringing the standards and conditions existing at the facility up to the minimum standards of animal husbandry care set forth in 02 NCAC 52J .0201 et seq.. Assessments may continue until such time as the Defendant moves all remaining animals out of its facility in accordance with Appendix A, all animals are adopted from the current facility and it is permanently closed, or until such time as the Court dissolves this Order. Defendant, its volunteers,

employees and independent contractors ("Defendant's personnel") shall follow the express directions given by the Appendix B personnel so far as Defendant's personnel are physically capable of doing so and/or to the extent that Defendant has sufficient resources on hand at the shelter facility to do so.

10. In any situation where Defendant's personnel have reason to believe that Defendant lacks the ability or resources required to carry out such directions issued for compliance with 02 N.C. Administrative Code 52J .0101 et seq., hereinafter Appendix C, which is attached hereto and incorporated herein by reference, they shall immediately inform the Appendix B personnel giving the directions in question and Dr. Hargus, and inform said individuals when Defendant shall be capable of carrying out the direction. Further, Defendant's personnel shall cooperate with Appendix B personnel and Dr. Hargus to secure the required resources and improve the facility's conditions and bring them into compliance with Appendix C. Defendant's failure to secure the required resources needed to bring the facility into compliance with Appendix C shall be deemed a material breach of this Order.

11. If Plaintiff determines:

- a. that one or more of Defendant's personnel have failed to carry out express directions as to care of specific animals or general animal husbandry directions and, in the Plaintiff's opinion;
- b. said individuals did so without regard to Defendant's capability and resources to carry out said directions; and
- c. in the Plaintiff's reasoned opinion, said failure has or can result in the

animal husbandry care or conditions in the facility falling below the standards set forth in Appendix C, or in actual harm to any of the animals at the facility

then Plaintiff shall give written notice that Defendant has committed a material breach of this Order to Defendant through its counsel of record and to one of Defendant's designated shift supervisors at the next opportunity. Said written notice shall restate the specific direction(s), cite the appropriate provision in Appendix C, and state that, unless stated corrective actions deemed satisfactory to the Plaintiff are taken within stated time period, Plaintiff may file a petition with the Court that Defendant and/or its specific identified personnel be held in civil contempt of this Consent Order and sanctioned as deemed appropriate by the Court. Likewise, Plaintiff reserves the right to petition the Court for a civil contempt order and appropriate relief upon finding credible evidence that Defendant has violated such other duties set forth in this Consent Order not directly related to animal husbandry care. Defendant's designated shift supervisors shall upon request, identify personnel who are working under his or her direction to any person listed in Appendix B.

12. It is expressly understood by the parties that the Defendant is obligated to follow the animal husbandry directions it receives from the individuals listed in Appendix B for the purpose of ensuring Defendant's compliance with the standards set forth in Appendix C. Defendant, its board members, officers, volunteers, employees and any other personnel, as defined below

(“Defendant’s personnel”), expressly agree that they shall carry out all such directions to the best of their ability in order to bring the facility’s conditions and operations into compliance with Appendix C.

13. In those instances when a licensed veterinarian listed on Appendix B, in consultation with Dr. Hargus or her designee, determines that one of Defendant’s animals needs specific veterinary care, rehabilitation or such other care due to an identifiable chronic or acute condition, and, in the opinion of that veterinarian, Defendant is either unable or unwilling to provide said care at the facility, the veterinarian shall first determine whether the care contemplated can be provided at Dr. Hargus’ veterinary facility. All veterinary care shall be provided by Dr. Hargus or her designee either on-site or at Dr. Hargus’ veterinary practice, Animals ‘R Us, when possible. If the veterinarian and Dr. Hargus agree that Dr. Hargus’ facility can not provide the prescribed care, the veterinarian shall have the full discretion and right to treat on-site or remove the animal from the facility and take it directly to a place where the animal can receive the prescribed care, treatment or other services. The veterinarians listed in Appendix B may contract with third parties for providing veterinary care to the animals at the facility or off-site following the procedure for veterinary care assessment detailed in this paragraph. Defendant shall be liable for the costs of all veterinary care, treatment and rehabilitation services rendered by Appendix B veterinarians or third parties working at the direction of any of Plaintiff’s Appendix B veterinarians, whether provided at the facility or at other locations. However, said liability shall not exceed those

sums for services currently being charged by Defendant's veterinarians (Animals 'R Us). If Plaintiff's veterinarians provide or secure services from third parties that Animals 'R Us does not provide, then the charges shall not exceed those charges for the same services charged by the nearest facility capable of providing essentially the same services. If animals are removed from the facility by Appendix B personnel or third parties working at the direction of Appendix B personnel, the Plaintiff's Animal Welfare Section shall report the animal's removal to Defendant's counsel of record within 24 hours of removal.

14. In the event that Defendant objects to specific care one of its animals receives at the direction of veterinarians listed in Appendix B and refuses to pay for said care when payment is due, said objection will be made in writing to Dr. Beverly Hargus, DVM and Dr. Lee Hunter, DVM. Drs. Hargus and Hunter may designate substitute veterinarians for the purpose of receiving such objections by notifying the counsel of record for both parties. If either Dr. Hargus, Dr. Hunter or their designees are not reasonably available, Dr. Jennifer House, DVM, shall consider and decide any objections she receives. If any of the named veterinarians shall be unavailable for a period of more than twenty-four hours for this purpose, he or she shall notify counsel for both parties and designate either Dr. House or another pre-approved veterinarian as his or her temporary substitute. The written objection may be sent by facsimile transmission to the Plaintiff's Animal Welfare Section or hand-delivered to any of the named veterinarians listed above who shall then

transmit the written objection to the other veterinarians within twenty-four hours of receipt. If Defendant fails to serve a written objection within seventy-two hours of receipt of the third party's billing statement or removal of an animal from the facility, Defendant's right to object to such action shall be deemed waived.

15. Any objection Defendant raises pursuant to paragraph 14 shall give specific reasons for the objection based upon either the animal's condition or the amount charged. No other reasons for an objection are permissible.

- a. If both veterinarians agree that the care was necessary to improve or maintain the animal's health and that the amount charged for the service was reasonable, the objection shall fail and Defendant shall be liable for the full amount charged.
- b. If Defendant's objection is sustained by both of the veterinarians by concluding that the care was not necessary, Defendant shall not be liable for the charges and Plaintiff shall direct its employees to return the animal to the facility when the animal has completed receiving the care requiring absence from the facility. If the care is determined to be necessary but the charges are determined to be unreasonable, Defendant shall be liable for only that portion of the charges the veterinarians deem to be reasonable.
- c. If Defendant's objection is overruled by both of the veterinarians, Defendant shall, upon receiving written notice of the decision, inform Plaintiff that it will surrender the animal to the Plaintiff or pay the

third party care provider's charges for care and accept the animal back at the facility.

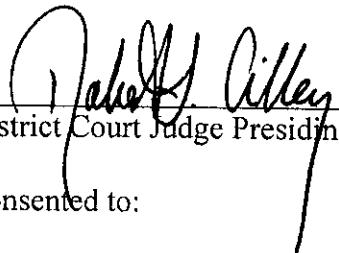
- d. If the two veterinarians, after consultation with each other, disagree upon whether Defendant's objection(s) should be sustained or upon any other issue, the Parties hereby agree to submit the issue(s) to a third neutral veterinarian agreed upon by both parties. Said veterinarian shall consult with both of the two veterinarians and render a decision affirming or overruling the Defendant's objection. Said veterinarian's decision shall be final and binding upon Parties.
- e. A party's failure to abide by the decision on Defendant's objection, whether decided by agreement between the designated veterinarians or by a third neutral veterinarian, shall be a material breach of this Order and shall entitle the petitioning party to immediate relief in the form of a civil contempt order or other relief as the Court deems appropriate.

16. Defendant shall report the death of any animal at its facility to the Plaintiff within 24 hours of discovery of the death, by written notice transmitted by facsimile (Fax) to Dr. Lee Hunter and Dr. Hargus. The dead animal's remains shall be kept in refrigeration until such time as one of the individuals listed in Appendix B can take possession of those remains. The veterinarians listed in Appendix B shall have full authority to provide or order necropsy examinations of any animals that die while being kept at the facility. Charges for such necropsy examinations shall be the sole responsibility of the Defendant. Plaintiff's Veterinary Diagnostic Laboratory in Arden, N.C., shall

provide necropsy services so long as such services are reasonably available at that laboratory. Both Plaintiff and Defendant shall receive copies of final necropsy reports.

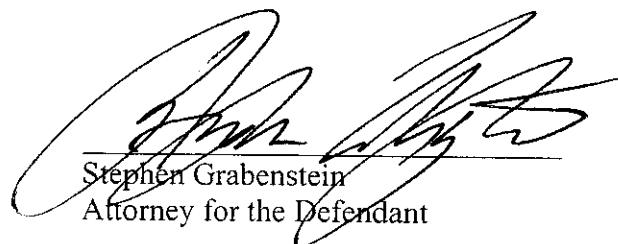
17. Any animals removed for care, treatment or other services by Plaintiff shall be returned to the facility immediately upon completion of the course of care or treatment.
18. For purposes of this Order veterinary care is that care defined by N.C. Gen. Stat. § 90-181(6)(a) and any accompanying regulations.
19. For purposes of this Order the Defendant's personnel shall include members of Defendant's board of directors, corporate officers, volunteers, and any employees, whether regular employees, independent contractors, or "day" or "casual" laborers.
20. This document may be executed in multiple counterparts that together shall constitute the original.

This the fifth day of December, 2007.



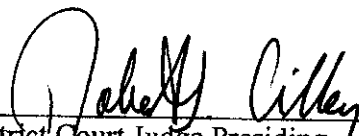
District Court Judge Presiding
Consented to:

Barry H. Bloch
Assistant Attorney General
North Carolina Department of Justice
Attorney for the Plaintiff



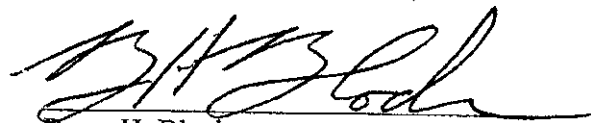
Stephen Grabenstein
Attorney for the Defendant

This the fifth day of December, 2007.



District Court Judge Presiding

Consented to:



Barry H. Bloch
Assistant Attorney General
North Carolina Department of Justice
Attorney for the Plaintiff

Stephen Grabenstein
Attorney for the Defendant