

IN THE 10<sup>th</sup> JUDICIAL DISTRICT COURT  
JOHNSON COUNTY, KANSAS  
CIVIL DIVISION

STATE OF KANSAS, *ex rel.*,  
JUSTIN SMITH, DVM  
ANIMAL HEALTH COMMISSIONER,  
KANSAS DEPARTMENT OF  
AGRICULTURE  
1320 Research Park Drive  
Manhattan, Kansas 66502

Case No.: 23CV06420  
Division 2

Plaintiff,

vs.

UNLEASHED PET RESCUE  
AND ADOPTION, INC.

Defendant,

---

UNLEASHED PET RESCUE  
AND ADOPTION, INC.  
5918 Broadmoor  
Mission, Kansas 66202

Counterclaimant,

vs.

STATE OF KANSAS, *ex rel.*,  
JUSTIN SMITH, DVM,  
ANIMAL HEALTH COMMISSIONER,  
DIVISION OF ANIMAL HEALTH,  
KANSAS DEPARTMENT  
OF AGRICULTURE  
c/o Mike Beam, Secretary, and Stephanie  
Kramer, Chief Counsel  
1320 Research Park Drive  
Manhattan, Kansas 66502

KANSAS DEPARTMENT OF  
AGRICULTURE  
c/o Mike Beam, Secretary, and Stephanie  
Kramer, Chief Counsel

**1320 Research Park Drive  
Manhattan, Kansas 66502,**

**DIVISION OF ANIMAL HEALTH  
c/o Dr. Justin Smith, DVM  
Animal Health Commissioner  
1320 Research Park Drive  
Manhattan, Kansas 66502,**

**DR. JUSTIN SMITH, DVM,  
ANIMAL HEALTH COMMISSIONER,  
officially and in his individual capacity,  
1320 Research Park Drive  
Manhattan, Kansas 66502,**

**DR. SASHA S. THOMASON, DVM,  
ANIMAL FACILITIES INSPECTION  
PROGRAM DIRECTOR,  
officially and in her individual capacity,  
1320 Research Park Drive  
Manhattan, Kansas 66502,**

**NICHOLE COSTANZO,  
ANIMAL FACILITIES INSPECTION  
PROGRAM COUNSEL,  
officially and in her individual capacity,  
1320 Research Park Drive  
Manhattan, Kansas 66502,**

**SAVANNAH BRETHER  
ANIMAL FACILITIES INSPECTION  
PROGRAM INVESTIGATOR  
officially and in her individual capacity,  
1320 Research Park Drive  
Manhattan, Kansas 66502,**

**BENJAMIN C. LANCASTER  
COMMISSIONER'S AUTHORIZED  
REPRESENTATIVE INSPECTOR,  
officially and in his individual capacity,**

**1320 Research Park Drive  
Manhattan, Kansas 66502,**

**SARA J. WASEE  
COMMISSIONER'S AUTHORIZED  
REPRESENTATIVE INSPECTOR,  
officially and in her individual capacity,  
1320 Research Park Drive  
Manhattan, Kansas 66502,**

**CHRISTOPHER A. DEMEL  
COMMISSIONER'S AUTHORIZED  
REPRESENTATIVE INSPECTOR  
officially and in his individual capacity,  
1320 Research Park Drive  
Manhattan, Kansas 66502,**

**MIKE BEAM, SECRETARY,  
KANSAS DEPARTMENT OF  
AGRICULTURE, officially and in his  
individual capacity,  
1320 Research Park Drive  
Manhattan, Kansas 66502,**

**STEPHANIE A. KRAMER  
CHIEF COUNSEL, KANSAS  
DEPARTMENT OF AGRICULTURE,  
officially and in her individual capacity,  
1320 Research Park Drive  
Manhattan, Kansas 66502,**

**CHARLES A. LAUE  
11460 Tomahawk Creek Parkway  
Suite 300  
Leawood, Kansas 66604,**

**JENNIFER LAUE  
11460 Tomahawk Creek Parkway  
Suite 300  
Leawood, Kansas 66604,**

**TERRY HUMPHREY**  
1321 S.W. Lakeside Dr.  
Topeka, Kansas 66604,

**JEFFREY C. GEBHART**  
7424 Briar St.  
Prairie Village, Kansas 66208,

**SUZANNE RAKES HIGDON**  
18208 E. 253<sup>rd</sup> Street  
Harrisonville, Missouri 64701,

and

**JOSIE L. STAMBAUGH**  
804 W. 3<sup>rd</sup> Street  
Edgerton, Kansas 66021,

**Counterclaim Defendants.**

---

**VERIFIED ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM**

**COMES NOW** Unleashed Pet Rescue and Adoption, Inc. (“Counterclaimant”) by and through the undersigned counsel, and for its answer, affirmative defenses, and counterclaims to the Amended Petition for Injunction (“Petition for Injunction”) filed by State of Kansas, *ex. rel.*, Justin Smith, DVM, Commissioner of Animal Health, Kansas Department of Agriculture (“Plaintiff”), states as follows:

**ANSWER**

1. Counterclaimant denies all allegations in Paragraphs 1 through 7 of the Petition for Injunction.
2. Counterclaimant denies all allegations in Paragraph 8 of the Petition for Injunction.

3. Counterclaimant admits all allegations in Paragraphs 9 through 11 of the Petition for Injunction.

4. Counterclaimant states that Paragraphs 12 and 13 of the Petition for Injunction contain legal conclusions and citations to which no response is required. To the extent a response is required, Counterclaimant states that the cited statutes speak for themselves and denies all allegations.

5. Counterclaimant denies all allegations in Paragraphs 8 through 18 of the Petition for Injunction.

6. In response to Paragraphs 19 through 113 of the Petition for Injunction, Plaintiff states that the Paragraphs contain legal conclusions, arguments, and citations to which no response is required. To the extent a response is required, Counterclaimant denies those allegations. Plaintiff further denies all factual allegations in those Paragraphs.

7. Defendant denies Plaintiff is entitled to any of the relief requested in the Petition for Injunction.

8. Defendant denies all allegations in the Petition for Injunction that are not specifically admitted herein.

#### **AFFIRMATIVE DEFENSES**

9. For the reasons set forth in Counts II and III of the below Verified Counterclaim Petition for Temporary Injunction or Stay, Judicial Review, Declaratory Judgment, and Monetary Damages (“Counterclaim Petition”), the “orders” the Petition for Injunction is purporting to enforce are either not orders, were entered in *ultra vires* of the authority delegated by the legislature to the author of the orders, were authored by persons having no authority or ineligible to issue orders, or were entered in violation of prescribed procedures or by use of unlawful procedures.

10. The Petition for Injunction also fails to state a claim for which relief may be granted.

11. In support of these affirmative defenses, Counterclaimant incorporates herein by reference all factual allegations set forth in its Counterclaim Petition.

**VERIFIED COUNTERCLAIM PETITION FOR TEMPORARY INJUNCTION OR  
STAY, JUDICIAL REVIEW, DECLARATORY JUDGMENT,  
AND MONETARY DAMAGES**

**Pursuant to K.S.A. § 77-601 *et seq.*, K.S.A. 60-901 *et seq.*, 42 U.S.C. § 1983, 42 U.S.C. § 1985, and Kansas Common Law**

COMES NOW Unleashed Pet Rescue and Adoption, Inc. (“Counterclaimant”) by and through the undersigned counsel, and for its causes of action against State of Kansas, *ex. rel.*, Justin Smith, DVM, Animal Health Commissioner (“State of Kansas”); Kansas Department of Agriculture (“KDA”); Division of Animal Health (“DAH”); Dr. Justin Smith, DVM, Animal Health Commissioner, in both his official and individual capacities (“Commissioner”); Dr. Sasha S. Thomason, DVM, Animal Facilities Inspection Program Director, in both her official and individual capacities (“Thomason”); Nichole Costanzo, Animal Facilities Inspection Program Counsel, in both her individual and official capacities (“Costanzo”); Savannah Brethauer, Animal Facilities Inspection Program Investigator, in both her individual and official capacities (“Brethauer”); Benjamin C. Lancaster, Commissioner’s Authorized Representative Inspector, in both his individual and official capacities (“Lancaster”); Sara J. Wasee, Commissioner’s Authorized Representative Inspector, in both her individual and official capacities (“Wasee”); Christopher A. Demel, Commissioner’s Authorized Representative Inspector, in both his individual and official capacities (“Demel”); Mike Beam, Secretary, Kansas Department of Agriculture, in both his individual and official capacities (“Secretary Beam”); Stephanie A. Kramer, Chief Counsel, Kansas Department of Agriculture, in both her individual and official

capacities (“Kramer”); Charles A. Laue (“Laue”); Jennifer Laue; Terry Humphrey (“Humphrey”); Jeffrey C. Gebhart (“Gebhart”); Suzanne Rakes Higdon (“Higdon”); and Josie L. Stambaugh (collectively, “Defendants”), states as follows:

## INTRODUCTION

1. This case was initiated by the State of Kansas and Commissioner, by and through defendant Costanzo, as the latest act in furtherance of a year and a half long conspiracy that employees of the DAH and the Commissioner’s Animal Facilities Inspection Program (“AFI Program”) engaged in among themselves and with wealthy and extreme animal rights activists, including the Laues and Humphrey, to end Counterclaimant’s over a decade long-thriving non-profit animal shelter and rescue business in retaliation for Counterclaimant engaging in constitutionally protected activity, including lawfully running a business that does not align with the conspirators’ personal views and pecuniary interests. The state actor’s private co-conspirators also included “on the ground” vocal animal rights activists Gebhart, Stambaugh, and Higdon, along connections at Fox 4 news, that were utilized to maliciously spread false and defamatory statements and innuendo online and in primetime news broadcasts to destroy Counterclaimant’s reputation, business relationships, and ultimately Counterclaimant’s business.

2. Due to the policy, practice, and custom of the State of Kansas, KDA, DAH, Commissioner, Secretary Beam, and Kramer to inadequately hire, train, supervise, and monitor the employees of the DAH and AFI Program, the Laues and Humphry were allowed to influence the DAH and AFI Program to seek the destruction of Counterclaimant and other lawful Kansas businesses in the pet rescue industry that did not align with their personal views and pecuniary interests.

3. It was also the policy, practice, and custom of the State of Kansas, KDA, DAH, Commissioner, Secretary Beam, and Kramer to allow such undue influence so long as it was not exposed and then to ratify and encourage attempts to prevent disclosure of the undue influence through dubious legal maneuvering, including Costanzo's filing of the Petition for Injunction.

4. As a result, Counterclaimant became the victim of unlawful government retaliation, retaliatory prosecution, malicious prosecution, abuse of process, government defamation, and violations of its constitutional rights to equal protection, substantive due process, and privacy at the hands of out-of-control employees of the DAH and AFI Program who directly communicated and conspired with their private co-conspirators with the admitted goal of making "every attempt" to "shut down" Counterclaimant's business, without regard to the law or facts.

5. This culminated in frivolous formal and emergency agency proceedings commenced by the DAH Commissioner in November 2022 and March 2023, at the behest of his AFI Program employees and their private co-conspirators, seeking substantial civil penalties and permanent revocation of Counterclaimant's animal shelter and rescue licenses based on falsified inspection and investigation results, violations of policies and procedures that were adopted by the Commissioner to prevent inconsistent and unfair results, and other knowingly or recklessly made false representations intended to instigate the proceedings.

6. The emergency proceedings were thrown out by Secretary Beam on April 17, 2023, after none of the employees in the AFI Program presented evidence or even made the necessary allegations to pursue such proceedings at a hearing on the emergency order that initiated the proceedings.

7. The revocation proceedings were subsequently voluntarily terminated on January 15, 2024, which upon information and belief was done at the direction of KDA leadership,

including Secretary Beam and Kramer, to avoid Counterclaimant discovering the unlawful and politically embarrassing conspiracy.

8. The emergency proceedings, as well as numerous actions taken outside of the proceedings to destroy Plaintiff's business with remarkable abuses of power, were pursued in retaliation for the Counterclaimant defending itself and repeatedly refusing the AFI Program's unenforceable demands to cease operation during the pendency of the revocation proceedings, which the AFI Program knew would be economically unsustainable and result in Counterclaimant's total economic failure despite Counterclaimant's entitlement to due process.

9. Now, while subsequent administrative proceedings are pending to challenge the latest retaliatory action, *i.e.*, refusal to renew Counterclaimant's license for 2024, the Commissioner, at the advice and behest of Costanzo and possibly Kramer or the private co-conspirators lawyers, is now plainly attempting to go well beyond his authority to manufacture an invalid March 1, 2024, order purporting to deprive Counterclaimant of its right under K.S.A. § 77-511(d) to have its licensure status continued while Counterclaimant is afforded due process in the license renewal proceedings.

10. This purported order and finding of the Commissioner is the basis for State's initiation of this present action for permanent injunction, which is plainly a transparent attempt by the AFI Program and its private co-conspirators to achieve their long sought goal of ending Counterclaimant's business without due process of law, while also protecting themselves and the KDA from disclosure of the malicious conspiracy, abuse of power, and undue influence that has been allowed to metastasize in the DAH and AFI Program since the beginning of 2022.

11. Counterclaimant has exhausted all remedies, including asking Secretary Beam and Kramer to once again intervene to stop this latest legally invalid, unreasonable, arbitrary, and capricious action, as they once did with the frivolous emergency order last April.

12. However, this time, Kramer and Secretary Beam have inexplicably refused any relief regarding the March 1, 2024, order, ignoring the Secretary's duties to review initial orders and issue final orders on requests for hearing, stay, and reconsideration as required by the Kansas Administrative Procedures Act, K.S.A. § 77-501 *et seq.* ("KAPA").

13. Indeed, as if they are trying to (a) distance themselves from what they clearly must recognize now as a remarkable abuse of government power and (a) allow Costanzo and Commissioner an opportunity to "fix" the mess the AFI Program created, Secretary Beam and Kramer have taken the position that the Commissioner is solely responsible for "all matters related to the Division of Animal Health," despite the fact the Commissioner by statute acts "under the supervision of the secretary" and is plainly ineligible to preside over his own frivolous proceedings. *See* K.S.A. § 74-5,119(a); K.S.A. § 77-514(h)(1)-(2).

14. The March 1, 2024, Order is currently causing irreparable harm to Counterclaimant in the form of both substantial economic and reputational damage, as the AFI Program and its co-conspirators have intentionally continued to spread the falsehood that Counterclaimant is not allowed to do business, both in the media and online, as well as to other government agencies and local municipalities with governance and enforcement powers of Counterclaimant.

15. Indeed, solely because of this falsehood, the co-conspirators' admitted connections in the Kansas Attorney General's Office with whom Costanzo, Brethauer, and Gebhart communicate regularly, threatened civil action seeking civil penalties of up to \$10,000, per day if Counterclaimant continues to operate.

16. Moreover, just a day ago, on March 27, 2024, one of the private co-conspirators, Higdon, publicly posted the falsehood online, along with a copy of the March 1, 2024, order, telling Counterclaimant, “you are still operating without a license” and to “grow the F up.”

17. Accordingly, Counterclaimant brings this lawsuit seeking (a) a temporary stay or injunction enjoining the invalid March 1, 2024, order from having any force or effect during the pendency of the proceedings for judicial review and declaratory judgment requested herein; (b) a finding upon judicial review that the March 1, 2024, order and any agency action related thereto is void *ab initio* as *ultra vires* and for many other reasons under K.S.A. § 77-621; (c) declaratory judgment that K.S.A. § 77-511(d) will apply during the license renewal proceedings; and (d) damages under 42 U.S.C. § 1983, 42 U.S.C. § 1985, and common law for the various violations of Plaintiff’s constitutional and common law rights that have occurred in the last one and a half years as part of the state defendants’ conspiracy with their private individual co-defendants.

### **PARTIES, JURISDICTION, AND VENUE**

18. Counterclaimant is a Kansas corporation with its principal place of business located at 5918 Broadmoor St., Mission, Kansas 66202.

19. The State of Kansas is a State of the United States of America and may be served with process through Kris W. Kobach, Kansas Attorney General at 120 SW 10<sup>th</sup> Avenue, 2<sup>nd</sup> Floor, Topeka, Kansas 66612.

20. KDA is an executive state agency of the State of Kansas and may be served with process through Secretary Beam at 1320 Research Park Drive, Manhattan, Kansas 66502 (“KDA Headquarters”).

21. DAH is a division of the KDA and may be served through the Commissioner at KDA Headquarters.

22. The Commissioner is an individual and the Commissioner of DAH, a division of the KDA, and he may be served with process at KDA Headquarters.

23. Thomason is an individual and the KDA's Animal Facilities Inspection Program ("AFI Program") Director, and she may be served with process at KDA Headquarters.

24. Costanzo is an individual and the AFI Program's Counsel, and she may be served with process at KDA Headquarters.

25. Brethauer is an individual and the AFI Program's Investigator, and she may be served with process at KDA Headquarters.

26. Lancaster is an individual and one of the Commissioner's Authorized Representative Inspectors, and he may be served with process at KDA Headquarters.

27. Wasee is an individual and one of the Commissioner's Authorized Representative Inspectors, and she may be served with process at KDA Headquarters.

28. Demel is an individual and one of the Commissioner's Authorized Representative Inspectors, and he may be served with process at KDA Headquarters.

29. Secretary Beam is an individual and the Secretary of the KDA, and he may be served with process at KDA Headquarters.

30. Kramer is an individual and KDA's Chief Counsel, and she may be served with process at KDA Headquarters.

31. Laue is an individual and may be served with process at his business office located at 11460 Tomahawk Creek Parkway, Suite 300, Leawood, Kansas 66604.

32. Jennifer Laue is an individual and may be served with process at her business office located at 11460 Tomahawk Creek Parkway, Suite 300, Leawood, Kansas 66604.

33. Humphrey is an individual and may be served with process at her residence located at 1321 S.W. Lakeside Dr., Topeka, Kansas 66604.

34. Gebhart is an individual and may be served with process at his residence located at 7424 Briar St., Prairie Village, Kansas 66208.

35. Higdon is an individual and may be served with process at her residence located at 18208 E. 253<sup>rd</sup> Street, Harrisonville, Missouri 64701.

36. Stambaugh is an individual and may be served with process at her residence located at 804 W. 3<sup>rd</sup> Street, Edgerton, Kansas 66021

37. Jurisdiction and venue are appropriate in this Court because all facts and circumstances giving rise to the claims stated herein occurred in Johnson County, Kansas.

#### **FACTS RELEVANT TO ALL COUNTS**

##### **I. Counterclaimant's Ownership and Operation of a Thriving Non-Profit Animal Shelter and Rescue that Has Saved Tens of Thousands of Animals and Employed 100s of People for Over a Decade**

38. For over a decade, Counterclaimant has owned and operated a non-profit "no-kill" animal shelter and rescue business located at 5918 Broadmoor St., Mission, Kansas 66202 ("Animal Shelter"), which Counterclaimant has lawfully operated pursuant to a license issued by the KDA, Division of Animal Health, under the provisions of the Kansas Pet rescue Act, K.S.A. § 47-1701 *et seq.* ("KPAA").

39. For much of the last decade, the Animal Shelter was saving and adopting out an average of 5,000 animals per year, employing over 20 full-time employees, and operating an annual budget of \$2.3 million. Counterclaimant also owned the Animal Shelter property, which is worth over a million dollars and costs tens of thousands of dollars to maintain every year.

40. The number of animals adopted-out by Counterclaimant from year to year was routinely more than any other licensed shelter in Johnson or Wyandotte Counties by a very wide margin, including Great Plains SPCA, which has been chaired by an extreme and very wealthy animal rights activist, defendant Laue, for at least six years.

41. Laue has also long chaired the Humane Society of the United States (“HSUS”) and the Kansas Pet Protection Coalition (“KPPC”), as well as long owned various for-profit companies involved in the pet rescue industry, including a company that sells pet insurance.

42. Remarkably, even with its comparatively low profile in the local “politics” of the Kansas pet rescue industry, Counterclaimant achieved its extraordinary annual adoption rate while also maintaining an adoption return rate well below the national average.

43. During Counterclaimant’s over a decade of operation, the Animal Shelter employed 100s people and adopted-out well over 50,000, otherwise unwanted and unloved animals saved from horrible conditions, disease, and euthanasia.

44. The animals saved by Counterclaimant include tens of thousands of animals found on the street, dumped at the front door of the business, rescued from hoarding conditions, rescued from “kill” shelters that will kill animals for space or time when overcrowded, or who were otherwise subjected to abuse or neglect by their owners.

45. The animals saved also include a very small portion that originated from commercial breeders known as “puppy mills,” which breed animals for profit to sell to pet stores, brokers, and at auction as a last resort before the animals are killed.

46. These commercial breeders often have adult or young animals they cannot sell for profit and therefore seek to dispose of them by other means, which includes either killing them or

agreeing to give them to animal shelters or rescues for no cost or in exchange for reimbursement of nominal transportation and vetting costs.

47. These animals, which in nearly all cases have been saved by other rescues looking for a safe environment for the animals, have comprised only approximately and average of less than 3% of all the animals Counterclaimant has saved.

48. In every instance, Counterclaimant provides all animals it saves with veterinary care, including spaying/neutering and often incurring thousands of dollars in emergency veterinary expenses to save the life of a single animal, cure an animal of an easily curable disease that would otherwise kill the animal, or provide necessary ongoing veterinary care for chronic medical conditions.

49. Also, being one of the few “no kill” shelters in the area, Counterclaimant provides long-term care and behavioral training to animals with severe aggressive or other emotional conditions that would likely cause the animals to be euthanized if under the care of any other person or entity.

50. Counterclaimant successfully adopts out pets with behavior issues by working with the pets to treat and prevent those behaviors, as well as working with their new potential owners on how to continue training the animals to set everyone up for success. This is reflected by Counterclaimant’s extremely low return rate compared to other shelters.

51. Several other shelters in this state do not spend the time and resources for pets with correctible behaviors and instead choose euthanasia as an alternative.

52. Like virtually all other licensed animal shelters and rescues in Kansas, Counterclaimant relies upon fundraising, volunteers, product donations, and adoption fees to continue operating and achieving the mission of saving unwanted and unloved animals.

53. Counterclaimant also relies upon a vast network of heavily vetted volunteer foster homes, which are utilized to provide a safe and comfortable home environment for many of the animals until they are adopted. This is especially important for animals that suffer anxiety or depression from being in a shelter environment after being removed from or abandoned by their owners.

54. In every instance, foster parents are required to sign and adhere to the strict provisions of a foster care agreement.

55. In 2022, it cost Counterclaimant approximately \$192,000 a month to stay open, which equates to \$6,400, a day to save an average of 5,000 animals per year.

56. These funds are spent to maintain the Animal Shelter, pay employees (including a full-time attending veterinarian), pay the mortgage for the Animal Shelter property, pay for the expenses of fundraisers and outreach, and provide necessary medical equipment and treatments for all the animals in Counterclaimant's care.

57. As any successful licensed shelter or competent state regulator should know, ceasing operation for even just weeks at a time will result in defaults of monetary obligations and potential permanent closure of the business. In Counterclaimant's case, this would include irreparable harm not only financially but also to its relationships and reputation, and ultimately to closing the business.

58. In testimony to the Kansas legislature on March 22, 2023, Secretary Beam cited statistics showing pet ownership in American has experienced unprecedented growth since 2018, which in turn resulted in a \$13.1 billion increase in pet expenditures in just two years.

59. Secretary Beam testified, “Kansas agriculture has benefited from this growth as pet food manufacturing, which uses meat products and grain [and] is now the fifth largest agricultural sector in Kansas.”

## **II. The Powers of KDA’s Division of Animal Health and AFI Program**

60. In 2011, the Kansas legislature established the DAH “within the [KDA].” *See* K.S.A. § 74-5,119(a). The DAH had formerly been known as the Kansas Animal Health Department, administered by the Livestock Commissioner. *Id.*

61. The Kansas legislature’s 2011 enactment converted the position of Livestock Commissioner to the Animal Health Commissioner, who is “the chief administrative officer” of the DAH charged with administering the DAH “under the supervision of the secretary of agriculture.” *Id.*

62. The KPAA gives the Commissioner the power to license and inspect animal shelters and rescues in Kansas, with such inspections to be conducted either by the Commissioner himself or by statutorily “authorized and trained representatives” of the Commissioner that he empowers to conduct the inspections in his place. *See* K.S.A. §§ 47-1709(a)-(e); 47-1712(a).

63. Any person acting as one of the Commissioner’s representative inspectors “shall be trained by the commissioner in reasonable standards of animal care.” K.S.A. § 47-1709(e).

64. KPAA also authorizes the Commissioner to refuse issuance or renewal of a license, or to suspend or revoke a license, under certain circumstances outlined in K.S.A. § 47-1706(a), but only after notice and opportunity to be heard are provided “in accordance with” the Kansas Administrative Procedures Act, K.S.A. § 77-501 *et seq.* (“KAPA”).

65. The Commissioner's KPAA representatives operate within a department of the KDA known as the AFI Program, which was created by the Commissioner for the purposes of carrying out his duties under the KPAA.

66. The AFI Program is also overseen by a statutorily created Kansas Pet Animal Advisory Board ("KPAAB"), which consists of 10 individuals who are appointed by the Governor and hold quarterly meetings with the AFI Program and any member of the public who chooses to attend. *See* K.S.A. § 47-1725.

67. The members of the KPAAB are to include a representative from various parts of the pet rescue industry, including animal shelters, animal research facilities, animal breeders, retail breeders, pet shop operators, animal distributors, hobby breeders, and boarding or training kennels. K.S.A. § 47-1725(a).

68. The KPAAB is also required to include a licensed veterinarian, as well as "a private citizen with no link to the industry." *Id.*

69. The AFI Program is directly supervised by a director, who is hired by the Commissioner with advice and input from the KPAAB. *See* K.S.A. § 47-1725(f).

70. The KPAAB is also authorized to recommend changes to the KPAA and associated regulations. *Id.*

### **III. Limits on the Powers of KDA's Division of Animal Health and AFI Program**

71. KAPA creates "procedural rights" and imposes "procedural duties" on state agencies and citizens alike. *See* K.S.A. § 77-503(b).

72. K.S.A. § 77-512 of KAPA provides, "A state agency may not revoke, suspend, modify, annul, withdraw, refuse to renew, or amend a license unless the state agency first gives notice and an opportunity for hearing in accordance with this act," although this section "does not

preclude a state agency from [] taking immediate action to protect the public interest” in “a situation involving an immediate danger to the public health, safety or welfare requiring immediate state action.” K.S.A. §§ 77-512;77-536.

73. Moreover, K.S.A. § 77-511(d) of KAPA provides, “If a timely and sufficient application has been made for renewal of a license with reference to any activity of a continuing nature, the existing license does not expire until the state agency has taken final action upon the application for renewal or, if the state agency’s action is unfavorable, until the last day for seeking judicial review of the state agency’s action or a later date fixed by the reviewing court.”

74. Additionally, K.S.A. § 77-415(b) of Kansas’ Rules and Regulations Filings Act, K.S.A. § 77-415 *et seq.* (KRRFA), provides, “Except as provided in this section, any standard, requirement or other policy of general application may be given binding legal effect only if it has complied with the requirements of [this Act].”

75. However, notwithstanding the above provisions, “any statement of agency policy may be treated as binding within the agency if such statement of policy is directed to [] Agency personnel relating to the performance of their duties [or the] internal management of or organization of the agency. K.S.A. § 77-415(b)(2)(B).

76. Moreover, KRRFA provides, “An agency may provide forms, the content or substantive requirements of which are prescribed by rule and regulation or statute, except that no such form may give rise to any legal right or duty or be treated as authority for any standard, requirement or policy reflected therein.” K.S.A. § 77-415(b)(2)(C).

77. “State agency” is defined as “any officer, department, bureau, division, board, authority, agency, commission or institution of this state, . . . which is authorized by law to administer, enforce or interpret any law of this state.” K.S.A. § 77-502(a).

78. “Agency action” is defined as “(1) [t]he whole or a part of a rule and regulation or an order; (2) the failure to issue a rule and regulation or an order; or (3) an agency's performance of, or failure to perform, any other duty, function or activity, discretionary or otherwise.” K.S.A. § 77-602(b).

79. A state agency is allowed to “bind parties, establish polices, and interpret statues or regulations,” but it must do so only “by order in an adjudication under [KAPA].” K.S.A. § 77-415(b)(2)(A) (emphasis added).

80. An “Order” means “a state agency action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interest of one or more specific persons.” K.S.A. § 77-502.

81. In adjudicative administrative proceedings under KAPA, the presiding officer shall be “the agency head, one or more members of the agency head or a presiding officer assigned by the office of administrative hearings.” K.S.A. § 77-514(a).

82. “Agency head” means “an individual or body of individuals in whom the ultimate legal authority of the state agency is vested by any provision of law.” K.S.A. § 77-502.

83. “For purposes of administrative proceedings of the [DAH], ‘agency head’ means the Kansas secretary of agriculture or the [DAH Commissioner], *when acting on behalf of the secretary.*” K.S.A. § 74-5,121a (emphasis added).

84. However, “Except as otherwise provided by law, in any proceeding under [KAPA], a person shall not be eligible to act as presiding officer, and shall not provide confidential legal or technical advice to a presiding officer in the proceeding, if that person (1) has served in an investigatory or prosecutorial capacity in the proceeding or a proceeding arising out of the same event or transaction; or (2) is supervised or directed by [such] person.” K.S.A. § 77-514(h)(1)-(2).

85. “If the presiding officer is the agency head or designated in accordance with subsection (g) of K.S.A. 77-514[, relating to agency heads “of a professional or occupational licensing agency [composed of] a body of individuals,] . . . the presiding officer shall render a final order.” K.S.A. § 77-526(a).

86. “If the presiding officer is neither the agency head nor designated in accordance with subsection (g) of K.S.A. 77-514[, relating to agency heads “of a professional or occupational licensing agency [composed of] a body of individuals,] . . . the presiding officer shall render an initial order, which becomes a final order unless reviewed in accordance with K.S.A. 77-527.” K.S.A. § 77-526(b).

87. “The agency head, . . . upon petition by any party . . . shall, review an initial order, except to the extent that: (1) A provision of law precludes or limits state agency review of the initial order; or (2) the agency head (A) determines to review some but not all issues, or not to exercise any review, (B) delegates its authority to review the initial order to one or more persons, unless such delegation is expressly prohibited by law, or (C) authorizes one or more persons to review the initial order, subject to further review by the agency head.” K.S.A. § 77-527(a)(1)-(2) (emphasis added).

88. “The agency head or designee shall afford each party an opportunity to present briefs and may afford each party an opportunity to present oral argument” and “shall render a final order disposing of the proceeding or remand the matter for further proceedings with instructions to the person who rendered the initial order.” K.S.A. § 77-527(e)-(f).

89. “Within 20 days after the filing of [a] petition [for reconsideration], the agency head shall render a written order denying the petition, granting the petition and dissolving or modifying

the final order, or granting the petition and setting the matter for further proceedings.” K.S.A. § 77-529.

90. No provision of Kansas law gives any state agency, let alone a single person or employee of an agency, the right to interpret, administer, determine, or enforce rights under KAPA or KRRFA except by agency *order* after *an adjudication* in compliance with the above provisions, subject to ultimate review by the District Courts. See K.S.A. § 77-415(b)(2)(A).

91. Moreover, a state agency’s interpretation of KAPA’s and KRRFA’s provisions is entitled to no deference by this Court. *See Bejar v. Kansas State Bd. of Healing Arts*, 525 P.3d 336 (Kan. Ct. App. 2023).

#### **IV. History of the KDA’s AFI Program**

92. The Commissioner’s statutory representatives inspect licensees and issue inspection reports that either “pass” or “fail” a licensee based on what the inspectors perceive to be violations of the KPAA or associated regulations.

93. In or about 2018, the AFI Program underwent an audit by the Kansas Legislative Post Audit Committee (“LPAC”), which issued a report critical of the AFI Program for lacking any policies to ensure consistent and fair inspection results, enforcement activity, and interpretation and application of the KPAA and associated regulations.

94. Through 2020, in response to the LPAC’s criticism, a former director of the AFI Program and the KDA legal department worked diligently on the development of a written AFI Program Manual, including a Legal Penalty Matrix, that contained specific instructions for the Commissioners’ inspectors on how to determine what constituted violations under the KPAA and associated regulations, how facilities should be “scored” in determining if a licensed facility passes

or fails an inspection, and under what circumstances pursuit of administrative revocation proceedings are warranted.

95. The AFI Program Manual includes numerous sensible policies one would expect from a regulatory agency, such as provisions requiring the inspectors to give a “zero” score for minor violations that are corrected during the inspection and requiring the inspection to not conclude until after an “exit briefing,” during which the inspectors are required to go over alleged violations with the licensee and “answer any questions.”

96. Moreover, in determining the “score” a violation is to receive, the AFI Program Manual directs the inspectors to consider not just the type of violation but also the number of animals “affected” as a percentage of the total number of animals in a licensee’s care.

97. A licensee passes an inspection if the ultimate score is 4 or less points.

98. The AFI Program Manual also calls for enforcement activity to suspend or revoke a license only under circumstances where there has been certain serious violations or at least two consecutive failed inspections.

99. Throughout 2020 and into 2021, lobbyists for the HSUS and the Humane Society Legislative Fund of Kansas (“HSLF”), the boards of directors of which Laue chaired, regularly attended the meetings of the KPAAB and lobbied both the KPAAB and LPAC with complaints that basing inspection scores on the number of animals “affected” as a percentage of animals in a licensee’s care was not a strict enough standard.

100. The Commissioner nonetheless formally adopted the AFI Program Manual, and he announced such at a meeting of the KPAAB in February 2021.

**V. Undue Influence Over the KDA’s AFI Program by Wealthy Individual and Organizational Animal Rights Activists with Personal and Pecuniary Reasons to End Counterclaimant’s Business for Reasons Having Nothing to Do with the Law or Facts**

101. Animal rights' organizations, including the HSUS and the HSLF, have long been passionately opposed to and seek to end commercial animal breeding or any activities they believe propagate commercial animal breeding.

102. Rather than present unbiased facts or scientific evidence for the public to consider, these organizations will often attempt to influence public opinion or the opinions of lawmakers by publishing emotionally charged – and often misleading – communications to advance their ideological view. This activity often includes, directly, or indirectly, attacks against businesses that they claim propagate commercial animal breeding, even in many instances when no such activities are occurring, and/or without regard to whether these businesses are in full compliance with all applicable statutes and regulatory rules.

103. These organizations also regularly attempt to influence policy by lobbying local municipalities or the Kansas legislature to change statutes to further their agenda.

104. If these organizations are not successful at influencing the law-making process, which tends to be the case in most municipalities and in particular the Kansas legislature, these organizations will directly lobby and seek undue influence over executive government actors, including individual state agencies, local prosecutors, police departments, and their employees to get these agencies and employees to do the organizations' bidding regardless of the law.

105. Indeed, the organizations' goal is to insert themselves into regulatory agencies to modify the behavior of the bureaucrats.

106. Counterclaimant is a victim of such undue influence in this case, including the undue influence of the Laues, Humphry, and Gebhart, all wealthy animal rights activists having both personal and pecuniary interests in seeing Counterclaimant shut down and with connections

to both the government and the media, including in the KDA, Kansas Attorney General's Office, and Fox 4 News.

**a. Influence by Money**

107. Since at least 2020, others who regularly attended KPAAB meetings included members of a well-known and powerful lobbying group, Terry Humphrey Public Affairs Group, Inc., ("THPAG"), who represented and still represents both Laue and a Kansas non-profit he founded with Humphrey and Laue's spouse, Jennifer Laue, in March 2022.

108. The name of the non-profit is Kansas Pet Protection Coalition, Inc. ("KPPC"), which recently changed its name to Kansas Pet Advocates, Inc.

109. Humphrey owns THPAG, and both she and one of the professional lobbyists associated with her group are employed, respectively, as the President and Treasurer of the KPPC.

110. Since December 2022, Laue and his wife have been the sole members of KPPC's governing board only because Humphrey ceased being on the board when she became President of the company.

111. In addition to long chairing the boards of directors for both KPPC and Great Plains SPCA, Laue has also long chaired the boards of directors for HSUS and HSLF, as well as numerous other Kansas non-profits he founded and that are also represented by Humphrey at KPAAB meetings.

112. Laue also owns several for-profit companies involved in the pet animal industry, including a for-profit pet insurance company.

113. Great Plains SPCA is a direct competitor to Counterclaimant and has long employed or associated with local and well-known individual animal rights' advocates with personal vendettas against Counterclaimant's CEO having nothing to do with animal welfare.

114. These individuals include Scott Poore (“Poore”), who is Great Plains SPCA’s Chief of Advocacy and Media Relations, and Gebhart, who is also very wealthy and has connections in both the KDA and Kansas Attorney’s General’s Office.

115. Poore and Gebhart are friends and associates.

116. Gebhart has demonstrated nothing short of a visceral personal hatred of Counterclaimant’s CEO since she refused to consider selling him the Animal Shelter or “have coffee with him,” and Poore has personally disliked Counterclaimant’s CEO for years since she refused to sell his for-profit companies’ products at the Animal Shelter.

117. The former CEO of Great Plains SPCA left her position in protest after Laue began using his platform as the board’s chair to sell pet insurance, which Counterclaimant also ceased selling or promoting in protest over a year ago.

**a. Installation of Individuals into the Animal Facilities Inspection Program that Do the Special Interests’ Bidding**

118. In November 2021, nine months after the Commissioner’s announcement of the AFI Program Manual, the former AFI Program director and two AFI Program inspectors vacated their positions.

119. One inspector left because he was told there were plans in place to have the HSUS and its affiliates “take over” the AFI Program.

120. Two well-known activists associated with the HSUS and HSLF were subsequently appointed to the KPAAB to assist in replacing the AFI Program director.

121. One of the individuals was appointed to the animal shelter representative position, and the other was appointed to the “private citizen” position.

122. Although the private citizen appointed to this position is supposed to have “no link to the industry,” the person appointed to this position had previously gained notoriety as the city

clerk of an Atlanta suburb for being instrumental in passing a local ordinance prohibiting the sale of animals acquired from commercial breeders.

123. Both these individuals have publicly rejected the notion that animals are “property” or that any animals should be bought or sold for what they determine to be a “profit motive,” including engaging in any activities they believe propagate “puppy mills,” even when animals are acquired by a pet animal shelter in exchange for reimbursement of nominal transportation and vetting expenses for the purpose of saving these animals’ lives.

124. These individuals also discussed in KPAAB meetings their anticipation that the AFI Program would be receiving a half-million dollar increase in annual funding and becoming a stand-alone division not subject to the supervision or control of the Secretary because “pets are family members and should not be considered property.”

125. These individuals also vigorously pushed to be involved in the selection of the new AFI Program director and other positions, including reviewing the applications of every candidate.

126. In the first quarter of 2022, the AFI Program hired Thomason and received the half million dollar increase in its annual budget, which also facilitated the creation of new positions in the AFI Program for an investigator and an AFI Program lawyer dedicated to solely to the AFI Program.

127. In the second quarter of 2022, Brethauer was hired as the AFI Program investigator, and Costanzo began attending the KPAAB meetings along with Humphrey.

128. Costanzo was subsequently hired in the third quarter of 2022, the announcement of which was made at the September 7, 2022, meeting of the KPAAB.

129. Prior to being hired, neither Thomason, Brethauer, nor Costazno had any experience running a regulatory program whatsoever, and Costanzo had only been licensed to practice law for a few years at the time she was hired.

130. In addition, like the more recently appointed members of the KPAAB, Thomason, Costanzo, and Brethauer are admitted ardent animal rights' activists.

131. Indeed, echoing the prior criticisms the HSUS and HSLF voiced about the AFI Program Manual in 2020 and 2021, Thomason has admitted in sworn testimony that she (a) does not believe the AFI Program Manual should be followed because it is not harsh enough on licensees and (b) advises the AFI Program inspectors to instead use their "professional judgment."

132. Thomason also admitted to relying upon standards having nothing to do with the law or AFI Program Manual, including the percentage of "complaints" and "failed inspections" a facility receives over time, despite the fact an inspection may be initiated by anonymous complaints at any time, including by the AFI Program's own employees.

## **VI. Conspiracy to Illegally Target Counterclaimant's Business**

133. In 2022, Costanzo, Thomason, and Brethauer began receiving direction and/or encouragement from the Laues and/or Humphrey to target Counterclaimant for revocation because of its percentage of alleged failed inspections over time and because Counterclaimant saved animals from breeders, which the Laues and Humphrey viewed as propagating animal breeding.

134. In turn, in mid to late 2022, Costanzo, Thomason, and Brethauer began conspiring with many local individual and organizational animal rights' activists to "shut down" Counterclaimant by any means necessary.

135. Several of these individuals were disgruntled ex-volunteers of the Animal Shelter that were asked to leave the Animal Shelter for various reasons and had personal problems with Counterclaimant's CEO.

136. One such individual, who is a prominent real estate agent in the Kansas City metro area, Heather Bauer, is friends with Gebhart and had just been asked to leave the Animal Shelter for not following regulations and causing disruption among employees.

137. In retaliation, Bauer began incessantly making complaints to the KDA and many other state agencies, stating in private text messages to another person that "it won't ever be over" because Counterclaimant's CEO "kicked out the wrong/right volunteer." Bauer also disclosed in these text messages that she had been in communication with the AFI Program inspector and that "he" also wanted to see Counterclaimant "shut down."

138. In addition, Gebhart sent a threatening text message to Counterclaimant's CEO in late 2022, stating Counterclaimant should "sell while [it] still has something left to sell." Gebhart also admitted to having contacts in the Kansas Attorney General's Office and the AFI Program, which he said he had met with to discuss administrative action against Counterclaimant.

**VII. Acts in Furtherance of the Conspiracy to Illegally Target Counterclaimant's Business**

**a. Recruiting and Encouraging Claimed Animal Rights Activists to Gin up Hatred for Counterclaimant Online and to Increase the Number of Unfounded Complaints**

139. Brethauer, with the knowledge and encouragement of Costanzo and Thomason, began engaging with Gebhart and Bauer, as well as other individual animal rights activists, to make repetitious and baseless anonymous complaints to the KDA about Counterclaimant without questioning the veracity of the facts alleged, while encouraging these individuals to enlist others to do the same.

140. These efforts resulted in a marked increase in the number of complaints received by the KDA from only 68 complaints during all of 2021, to as many as 176 complaints by December 2, 2022.

141. Individuals involved in the conspiracy included vocal animal activists Higdon and Stambaugh who, while having no personal knowledge of Counterclaimant's operation or Animal Shelter, started substantial online campaigns in which they admitted to "working hard" with the "OG five" to "make connections with the right people to shine light on" Counterclaimant and "gather proof" and statements of alleged violations for the KDA.

142. Higdon also posted on Facebook, asking "anyone who has any experience with [Counterclaimant] please contact me asap so I can send you in the right direction where to send your statements."

143. Higdon also started a folder on her Facebook page titled "Unhinged," later a Facebook "fan page," and then ultimately a private Facebook group called "Unleashed Exposed" on which she and the other members shared information about the AFI Program's investigation and administrative efforts to shut down Counterclaimant's business.

144. The group also began sifting through past negative online reviews, reposting them, and making the reviews appear to be recent complaints, which caused additional unfounded hatred towards Counterclaimant.

145. Members of this group also began making outrageous and objectively false and defamatory statements online such as: Counterclaimant operates a puppy mill, Counterclaimant misappropriated donor funds, and that numerous animals have "lost their life" due to neglect by Counterclaimant. A person also publicly posted an old video of cockroaches in a cat bowl, leaving

the impression that the video was current and from an enclosure that was being utilized to house an animal. These statements and false innuendo were all flatly untrue.

146. During this time, the group also routinely bragged about communicating with employees of the AFI Program, as confirmed by later uncovered written communications showing Brethauer regularly coordinating with the group on plans to end Counterclaimant's business, including communications with Gebhart and Stambaugh about a plan to make baseless complaints to other agencies and a plan by the HSUS "take over" the Animal Shelter.

**b. Falsifying the Results of Inspections and Investigations to Establish a False Basis for Revocation**

147. From December 2020 through September 2022, Counterclaimant was the subject of 12 inspections by the AFI Program, all of which were the result of complaints that the inspectors investigated but deemed "unfounded."

148. During this timeframe, Counterclaimant did not pass only 5 out of the 12 inspections, and there had not been a single instance of Counterclaimant receiving two consecutive failed inspections or cited for violations that would have justified the commencement of revocation proceedings under the guidelines set forth by the AFI Program Manual.

149. Also, during this timeframe, Lancaster was the Commissioner's inspector responsible for inspecting facilities in the Kansas City metro area, including the Counterclaimant's Animal Shelter.

150. After Costanzo's hiring in late August or early September 2022, Costanzo and Thomason ordered Lancaster to stop following the AFI Program Manual and falsely manufacture ways to determine Counterclaimant "failed" inspections so that they could establish a false basis for revocation proceedings.

151. These orders included no longer giving Counterclaimant “zero” points for correcting minor violations during the inspections and falsely over stating the number of animals “affected” by an alleged violation, resulting in a higher score for single violations.

152. Also, at the direction of Costanzo and Thomason, Lancaster began ignoring instructions in the AFI Program Manual concerning “how to determine” violations at the Animal Shelter, which resulted in wild misinterpretations and misapplications of the KPAA and associated regulations that he had never attempted previously.

153. On September 21, 2022, Lancaster performed an inspection of the Animal Shelter wherein, according to his orders, he intentionally deviated from the AFI Program Manual and found that Counterclaimant failed an inspection that he later admitted in sworn testimony Counterclaimant should have passed but for his not marking “zero points” for alleged minor violations that were corrected during the inspection.

154. On October 24, 2022, while the coordinated group of activists were clearly communicating with the KDA and noting that even “the inspector” wants to see Unleashed “shut down,” Lancaster returned to the Animal Shelter, but this time accompanied by Inspectors Wasec and Demel, which together comprised all of the AFI Program inspectors in the state.

155. The Inspectors appeared first thing in the morning to complete an inspection of the Animal Shelter in response to a complaint “regarding concerns about animals not receiving medical treatment while at the facility.”

156. Once again, the complaint was unfounded.

157. Nonetheless, at the direction of Costanzo and Thomason, the inspectors performed an inspection of the facility for approximately six hours, including having Counterclaimant’s staff

measure every dog in the facility to determine whether each kennel individually met spacing requirements of K.A.R. § 9-18-13(d)(1)(A)(C).

158. After spending six hours in the Animal Shelter, the Inspectors returned to their vehicle to discuss and consult with Thomason and Costanzo on their observations.

159. The resulting inspection report claimed the inspectors allegedly found numerous alleged violations that either have never been alleged issues before (*e.g.*, alleged ventilation issues), were immediately corrected (*e.g.*, containers and ventilation issues), had been corrected for some time (*e.g.*, ceasing use of the parking lot area to house animals) and/or were never previously violations based on any recognizable standard (*e.g.*, (a) interpreting regulatory provision that “*ceilings* of [the] housing facility shall be impervious to moisture *or be replaceable*” to mean that the facility can have no roof leaks whatsoever, at any time, and regardless of location, efforts at repair, or if the leaks were affecting animals; and (b) Inspector Demel’s excluding the square footage of beds when calculating floor space for each primary enclosure when the regulations are silent as to whether beds should be included or excluded from the calculation.

160. Significantly, although raised dog beds existed in these same primary enclosures for a year or more prior to the subject inspection, and were present during prior inspections, this was the first time ever Counterclaimant (or likely any shelter) was instructed that the square footage of raised dog beds should be excluded from the calculation of floor space under K.A.R. § 9-18-13(d)(1)(A).

161. Moreover, once again, at the orders of Thomason and Costanzo, the inspectors refused to give “zero” points for minor violations corrected during the inspection, grossly falsified the number of animals “affected” by alleged violations, failed to follow the AFI Program Manual’s instructions on how to determine violations, and otherwise falsified the results of the inspection,

despite the fact that knowingly falsifying the results or findings of any inspection or investigation is a class A misdemeanor under the KPAA. *See* K.S.A. § 47-1709(g).

162. In later sworn testimony, Lancaster and Wasee admitted to lacking a factual basis for many of the alleged violations, including admitting to not seeing any animals affected by alleged water intrusion into the facility and having no idea if the humidity levels in the Animal Shelter were acceptable according to the standards supposedly relied upon by the AFI Program for making such determination, *i.e.*, ASV Guidelines for Standards of Care in Animal Shelters.

163. But for these falsifications and intentional deviations from the AFI Program Manual, Counterclaimant would have also passed this October 24, 2022, inspection.

164. Nonetheless, over the next month, Costanzo, with the direction and input of Brethauer and Thomason, worked on a draft revocation order that repeated the false results of the October 24, 2022, inspection and made-up new violations that were never observed or reported by the inspectors, much less supported by any evidence.

165. These new alleged violations included that the Animal Shelter was not “structurally sound” and was “overcrowded,” which inspectors Lancaster and Wasee later admitted in sworn testimony to having no factual basis to support.

166. The draft order was otherwise based on a false allegation of “willful violations” based solely on the fact Counterclaimant’s inspection history since 2019 showed that the same regulatory provisions were cited on more than one occasion regarding completely different and separate conditions observed over the course of the inspection history, even in cases where the inspections were deemed “satisfactory.”

167. However, a close review of the inspection reports during this time undisputedly shows that the same regulatory provisions were rarely if ever cited for the same exact conduct or condition and that Unleashed had received “satisfactory” scores in 12 of its last 17 inspections.

168. Despite the falsifications and abandonment of the AFI Program Manual that supplied the basis for the draft order, Thomason and Costanzo presented it to the Commissioner for execution as if their allegations were true.

169. On November 22, 2022, the Commissioner signed the falsified order (“Original Revocation Order”) that had been drafted by Costanzo with the input and supervision of Thomason and possibly the Laues, Humphrey, or one of these defendants’ representatives.

170. In later sworn testimony, both Thomason and Wasee were coached to not answer any questions about how the alleged new violations, which had not appeared in any inspection reports, ended up in the Original Revocation Order, claiming the Order was a “legal document” they could not provide comment on and because the Commissioner ultimately “made the decision.”

**c. The AFI Program’s Retaliation Against Counterclaimant for Defending Itself Against the Original Revocation Order by Use of Extra-Judicial Means to Cause Counterclaimant’s Failure**

171. On December 6, 2022, Counterclaimant timely filed a request for a formal hearing of the Original Revocation Order, and it took over 5 months for the matter to be referred to the Office of Administrative Hearings (“OAH”) for hearing despite the requirement in K.S.A. § 77-511(a)(2)(B) for a hearing to commence within 90 days after a request for hearing has been made.

172. In the interim, Counterclaimant rightly refused unenforceable demands by Thomason and Costanzo to cease operation and adopt out all Counterclaimant’s animals during

the pendency of the proceedings, which the AFI Program plainly did not have the right to demand under KAPA, and which they knew would have caused Counterclaimant's economic failure.

173. In retaliation, Costanzo, Thomason, Brethauer, Lancaster, and Wasee engaged in a nearly four-month inexplicably aggressive investigation of thousands of Counterclaimant's records, as well as requesting records from other governmental entities and encouraging these entities to investigate Counterclaimant for violations of these agencies' own rules and regulations.

174. Costanzo, Thomason, and Brethauer engaged in a variety of retaliatory actions as evidenced by both documents and investigation, including but not limited to the following:

- a. When Counterclaimant attempted to engage a contractor to replace the roof of the Animal Shelter as a separate part of much larger project Counterclaimant had been working on to improve the Animal Shelter, Brethauer, with the knowledge and encouragement of Costanzo and Thomason, contacted the contractor pretending to be an interested customer and asked if the contractor "even does commercial roofing."
- b. Brethauer then made a baseless complaint to the Kansas Attorney General's Office accusing the general contractor of generally violating technical Kansas roofing registration requirements in its business, which caused the contractor and other contractors to reject the project, interfering with, and compromising Counterclaimant's ability to fix its roof in a timely manner.
- c. Thomason demanded that other shelters and rescues, including Midwest Kitten Coalition ("MKC"), no longer do business with Counterclaimant so that Counterclaimant would be economically damaged, which occurred due to other licensees' fear of the KDA.

- d. Costanzo, Thomason, and/or Brethauer caused Harvesters Community Food Network (“Harvesters”), from where Unleashed received all the food donations necessary to feed the animals, to cease any further food donations.
- e. Costanzo, Thomason, and/or Brethauer directly tortiously interfered with Counterclaimant’s animal control agreements with the City of Mission and other municipalities, causing the municipalities to use other licensed shelters, including one called Melissa’s Second Chances in Shawnee, Kansas.
- f. Brethauer conspired with certain City of Mission officials on how to get Counterclaimant “shut down” under local ordinances or criminal statutes, regardless of the KPAA or the AFI Program’s jurisdiction.
- g. Brethauer conspired with the City of Mission police department on how they might be able to charge and convict Counterclaimant’s CEO with false crimes related to animal abuse, neglect, or theft, which would have ended the CEO’s career and provided a basis for revocation of Counterclaimant’s license.
- h. Lancaster caused a false report to be made to Lenexa Animal Control that animals were being kept at Counterclaimant’s business office location because of “overcrowding” and were being exposed to toxic fumes, which Lenexa Animal Control in subsequent sworn deposition testimony stated there was no cause to support. Counterclaimant also learned that the false report originated from Higdon and was forwarded by Lancaster to personal friends he had within Lenexa Animal Control.

- i. Brethauer and the AFI Program ignored complaints about Melissa's Second Chances and other facilities with whom the AFI Program or its co-conspirators have relationships.
- j. Brethauer, with the knowledge and encouragement of Thomason and Costanzo, encouraged Gebhart, Stambaugh, Higdon, and other individual private co-conspirators to make baseless complaints to the Office of the Kansas Attorney General, causing that office to open an investigation of alleged consumer protection and charitable organization violations, despite the fact the individuals expressed understandable confusion about why they were making such complaints.
- k. Brethauer and Gebhart's complaints laid the framework that led the Kansas Attorney General's Office to issue subpoenas for records for use in the AFI Program's "investigation" that the AFI Program would otherwise not be entitled to receive for purposes of harassing Counterclaimant and causing it further economic damage.
- l. Thomason filed two baseless complaints with the Kansas Board of Veterinary Examiners ("KBVE") against Counterclaimant's attending veterinarian, one of which was originated as a complaint made to the KDA on a KDA form that Thomason forwarded to the KBVE with the complainant's name removed. Thomason's personal complaint was based solely on a review of medical records of Counterclaimant's animals, which allegedly caused her "concerns." However, Thomason marked the "no" box on the form when asked to acknowledge that that she understood she may be called to provide testimony to support the alleged violations. The complaints falsely accused Counterclaimant and its attending

veterinarian of practicing veterinary medicine without a license, not adequately monitoring animals after surgeries, and not maintaining sanitary conditions in the surgery room. The complaints also repeated false claims about the Counterclaimant having nothing to do with the KBVE statutes and regulations, including that Counterclaimant does not screen foster homes before utilizing them, does not adequately care for its animals in the Animal Shelter, and uses foster homes to “get around” orders “placed on them” by the KDA, “even now after the order to stop taking in animals.” Over a year later, on March 21, 2024, the KBVE issued a letter finding there was no “probable cause to believe any violations” of KBVE statutes or regulations had occurred. In the interim, on December 31, 2023, the stress of the pending investigation caused Counterclaimant’s attending veterinarian to resign, which forced Counterclaimant to close and eventually sell the veterinary clinic.

175. Upon information and belief, these actions were taken with the knowledge, encouragement, and coordination of the Laues, Humphrey, and the individual disgruntled animal rights’ activists Gebhart, Bauer, Stambaugh, Higdon, and others.

176. Indeed, when Counterclaimant asked Costanzo in the early months of 2023 what it could do to stop the overly aggressive investigative onslaught, Costanzo suggested Counterclaimant should sell the Animal Shelter and operation to Gebhart and have Counterclaimant’s CEO removed.

177. Moreover, on March 18, 2023, Gebhart had coffee with an ardent support of Counterclaimant to try and recruit her to “his side” in the quest to get Counterclaimant “shut down.” During this meeting, Gebhart made various false claims about Counterclaimant and its CEO and disclosed that he was working on a way to “take over” the Animal Shelter with a well-

known animal activist, Poore, who just days prior was appointed Great Plains SPCA's New Chief of Advocacy and Media Relations.

**d. Retaliatory Falsification of the Basis for an Emergency Order to Stop Taking in Animals and Amended Revocation Order in March 2023**

178. After collecting months' worth of Counterclaimant's medical records detailing medical treatment Counterclaimant provided to hundreds of its animals, Costanzo, Brethauer, and Thomason scoured the records for days and began contacting individuals who had adopted and/or were fostering animals from Unleashed in an attempt to falsely manufacture claims that Counterclaimant failed to provide adequate veterinary care to the animals in its care, which by itself would have provided a basis for revocation under the KPAA.

179. In the case of one puppy named Duke, Costanzo, Brethauer, and/or Thomason shamelessly encouraged the owner who adopted the puppy to contact her personal veterinarian and ask the veterinarian to issue a report finding that the animal's carpal laxity (a common condition often referred to as "Rickets") was caused by Counterclaimant even though Duke had only been in Counterclaimant's care for a matter of days after being rescued in December 2022 and could not have developed the condition during that timeframe.

180. Notes from the owner's personal veterinarian from February 3-6, 2023, show that the owner, following the AFI Program's direction, contacted her personal veterinarian "trying to *develop a complaint* against Unleashed . . . for the Department of Agriculture" (emphasis added) and that she wanted "a doctor to send some sort of official documentation that [the clinic's] belief is along those lines," *i.e.*, that Unleashed caused the condition.

181. In response, the doctor, Dr. Godsey, appropriately determined that "he can in no way give any implication this is because of the rescue organization."

182. The seized months of medical records for Counterclaimant's hundreds of animals otherwise showed that the animals were provided medical attention as necessary for the health and safety of the animals.

183. Nonetheless, even in the case of Duke, Thomason later admitted in sworn testimony that she made medical diagnosis and determinations that Duke and two other animals had received inadequate veterinary care based only on her review of medical records and photographs of the animals, without ever having examined the animals personally as required by the KBVE regulations governing her veterinarian license.

184. Thomason also admitted she dismissed, without explanation, the contradictory sworn findings of Counterclaimant's attending veterinarian, Dr. Adrienne Goodman, who had personally examined and had established a veterinarian-client-patient relationship with the animals as required by the KBVE regulations.

185. On March 2, 2023, Costanzo contacted Counterclaimant and demanded that Counterclaimant allow these animals, two of whom were with fosters homes, to be rehomed to homes or shelters unaffiliated with Counterclaimant despite these foster homes and Duke's adoptive parent having signed contracts with Counterclaimant for return of the animals if they no longer wanted the animals or if the animals required medical attention.

186. On this same day, Great Plains SPCA, chaired by Lau, stopped doing business with Counterclaimant and refused to return one of Counterclaimant's animals in Great Plains SPCA's care, "Charlie Meatball," and requested all his "medical records" because "something was wrong with him."

187. When Counterclaimant understandably asked Great Plains SPCA to simply return Counterclaimant's dog to Counterclaimant so that it could be examined by the Counterclaimant's

professional attending veterinarian, Great Plains SPCA became hostile and maintained its refusal to return the animal, despite the fact the animal did not belong to Great Plains SPCA.

188. The next day, on March 3, 2023, Counterclaimant responded to Costanzo through counsel in writing, explaining that Counterclaimant would prefer the animals Constanzo voiced concerns about, which did not include the animal stolen by Great Plains SPCA, be returned to Counterclaimant because of Counterclaimant's superior knowledge of the animals' conditions.

189. In this writing, Counterclaimant's counsel explicitly cautioned Costanzo that it appeared the AFI Program was doing the bidding of private animal activists rather than engaging in good faith regulatory activity.

190. In part, Counterclaimant wrote through counsel, "Frankly, unless there is a reason to believe there are animal welfare concerns at [the Animal Shelter] (there clearly are not), the enforcement of a private contract should not be within AFI's jurisdiction or concerns. Respectfully, it appears AFI is again going beyond its enforcement of the Pet Animal Act and regulations to . . . . effectuate the personal desires of people who simply want Unleashed shut down regardless of the circumstances or at what cost."

191. In response, Constanzo repeated her and Thomason's unenforceable demand that Unleashed "cease intaking additional animals effective immediately" because of a "concern" regarding "Unleashed's ability to identify conditions of animals that require veterinary care" before the animals are released for adoption, which echoed the implication made by a Great Plains SPCA representative just a day prior.

192. On March 7, 2023, Counterclaimant asked for clarification of "how many animals AFI believes were released for adoption without Unleashed properly observing the animals' medical conditions, as well as the animals at issue." Counterclaimant also explained, "it may be

there are sensible explanations for each instance, and Unleashed would like the opportunity to respond before being violated.”

193. However, Counterclaimant never received a response to this sensible request or offer.

194. Rather, from March 7-10, 2023, Thomason, Costanzo, Brethauer and Lancaster coordinated with their co-conspirators to falsely manufacture an alleged basis to seek an “emergency” order to cease Counterclaimant’s business under KAPA’s emergency procedures contained in K.S.A. § 77-537 *et seq.*, which allows an agency to issue emergency orders that become effective “when rendered” only when there is “a situation involving an *immediate danger* to the public health, safety or welfare requiring immediate state action.” K.S.A. § 77-536(a)(1)-(2), (d) (emphasis added).

195. Even then, the agency “may take only such action *as is necessary*: (1) *To prevent or avoid the immediate danger.*” K.S.A. § 77-536(b)(1)-(2) (emphasis added).

196. On March 6, 2023, a heartworm positive dog named “Beanie Boy” was transported to Unleashed from a Louisiana based rescue, which as a matter of course resulted in a Veterinarian Certification from a veterinarian in Louisiana being sent to the KDA as required by regulations.

197. The Vet Certificate indicated that a heartworm positive dog, Beanie Boy, was transported to Counterclaimant but had received all required treatments and was not showing any “symptoms of communicable disease.”

198. To be sure, there is a mountain of sworn testimony and science, including findings of the American Heartworm Society (“AHS”) indicating that heartworm disease is not contagious and that properly treated animals cannot spread the disease either directly or even through a vector, such as a mosquito. Moreover, the Commissioner’s own regulation relating to what he considers

“infectious or contagious animal diseases” plainly *does not* include heartworm disease. *See* K.A.R. § 9-27-1 (“Designation of Infectious or Contagious Diseases.”).

199. Moreover, transportation into Kansas and housing of heartworm positive animals is and has always been common and perfectly legal among Kansas shelters for decades.

200. Nevertheless, on March 10, 2023, Costanzo and Thomason directed Lancaster to conduct another inspection of the Animal Shelter and request all records of Beanie Boy under the false guise of “investigating a complaint” regarding a “heartworm positive animal” being transported to the Animal Shelter from Louisiana.

201. Counterclaimant complied immediately, providing Beanie Boy’s complete medical history, vet clinic form, and Vet Certificate showing that Beanie Boy had received all required medical treatments. Counterclaimant also allowed Lancaster full access to the Animal Shelter to examine any other animals and provided Lancaster with an explanation of its protocol for treating heartworm positive animals and providing other animals with preventative treatments to ensure that the disease is not spread.

202. The records showed that heartworm positive animals in Counterclaimant’s care were properly cared for and that there was no risk of heartworm spreading, much less causing an immediate danger to the health, safety, or welfare of people or animals.

203. Nevertheless, in the days leading up to March 10, 2023, Thomason and Costanzo prepared a draft emergency order that plainly lacked an adequate basis under KAPA, failed to even allege the elements necessary for obtaining such an order, and intentionally misrepresented or recklessly ignored the records they had obtained concerning Beanie Boy.

204. Instead, the draft order simply continued to complain that Counterclaimant was still refusing Costanzo’s and Thomason’s repeated unenforceable demands that Counterclaimant

immediately cease taking in animals during the pendency of the proceedings commenced by the Original Revocation Order.

205. Thomason and Costanzo then submitted the baseless draft order (“Emergency Order”) to the Commissioner and encouraged him to execute the order, which he executed in reliance upon the advice and misrepresentations of Costanzo and Thomason concerning the law and science.

206. Moreover, in the days ahead of March 15, 2023, Costanzo and Thomason worked on a draft “amended” revocation order (“Amended Revocation Order”) in which they knowingly and grossly misrepresented the contents of the medical records for Duke and the other animals that Thomason and Costanzo inquired about on March 2, 2023, knowingly disregarded the sworn affidavit testimony of these animals’ attending veterinarian, and recklessly made allegations concerning the animals’ medical conditions, diagnosis, and treatment based solely upon Thomason’s review of the records and photos without even attempting to personally examine the animals, which is a violation of the KBVE regulations that govern her license.

207. In addition, Costanzo, Thomason, and upon information and belief Lancaster, knowingly and grossly misrepresented in the Amended Revocation Order the results of Lenexa Animal Control investigation, indicating that the officers found three animals were being kept at Counterclaimant’s “T-shirt business” because of “overflow” in the Animal Shelter.

208. In no case did Costanzo, Thomason, Lancaster, or anyone else in the AFI Program ever seek explanation or other input from Counterclaimant before including these false representations in either the Emergency Order or Amended Revocation Order.

209. Moreover, Thomason would later effectively admit in sworn testimony that she did not have an adequate basis to make the medical judgements supporting the allegations of lack of

adequate veterinarian care and that one such allegation did not meet the definition of inadequate veterinary care under the regulations. Thomason was also coached to not otherwise speak about the contents of the Amended Revocation Order because it was a “legal document” and that the Commissioner ultimately “made the decision” to issue the order.

210. Counterclaimant submitted timely hearing requests on both the Emergency Order and Amended Revocation Order, with the Original Revocation Order still having not been referred to OAH for hearing in violation of K.S.A. § 77-511(b)(1).

211. Although Secretary Beam initially signed orders refusing review of the Emergency Order, he unilaterally reversed that decision to avoid judicial review and presided over an informal hearing on April 13, 2023, at which neither Costanzo, Thomason, Lancaster, nor anyone else presented any evidence in support of the baseless Emergency Order, much less adequate allegations to support an emergency proceeding.

212. Fourt days later, on April 17, 2023, pursuant to the requirements of K.S.A. § 77-527, Secretary Beam issued a final order overruling the Emergency Order, unequivocally finding that the there was no activity warranting the order in the first place, in part due to the fact heartworm positive animals in Counterclaimant’s possession have been treated appropriately and that the conditions at Counterclaimant’s facility did not justify the use of an emergency proceeding.

**e. Engaging in Frivolous Discovery Misconduct for Over a Year and Remarkably *Terminating* the Original and Amended Revocation Orders (including a Request for \$15,000, in Penalties) Solely to Avoid Disclosure of the Unlawful Conspiracy and Undue Influence that had Been Allowed to Permeate Through the DAH and AFI Program**

213. On March 13, 2023, three days after issuance of the frivolous Emergency Order, Gebhart and Stambaugh exchanged text messages wherein he stated to Stambaugh that he knew

about a plan that HSUS, chaired by Laue, “had in place” to “take [Counterclaimant] over,” which Gebhart said he had discussed with Brethauer.

214. Also on this same date, the Kansas Attorney General’s Office sent its subpoena to Counterclaimant seeking voluminous documents and information that were largely more relevant to the false claims being investigated by the AFI Program rather than to any law the Kansas Attorney General is empowered to enforce.

215. Three days later, on March 17, 2023, Gebhart bragged to Counterclaimant’s counsel that he indeed had a private meeting with both the Kansas Attorney General and “all the state inspectors,” including Thomason and/or Brethauer, to discuss Counterclaimant.

216. Although Gebhart declined to disclose the details of the conversations held during the meeting, the next day he had the above-described meeting with Counterclaimant’s ardent supporter, in which he claimed that Great Plains SPCA’s recently appointed Chief of Advocacy and Media Relations and Gebhart’s friend, Poore, was also involved in a plan to “take over” Counterclaimant.

217. On March 24, 2023, Stambaugh exchanged text messages with another individual co-conspirator, Rachel Anonsen, indicating that she had spoken to Brethauer about Brethauer’s conversations with the Kansas Attorney General’s Office concerning the co-conspirators’ complaints to the that office, that “attorney general just subpoenaed [Counterclaimant’s] attorney,” and that the conspirators were to “keep [things] quiet,” including the yet to be filed frivolous KBVE complaints that were ultimately found by the KBVE to lack “probable cause.”

218. Less than two weeks later, on April 5, 2023, Thomason filed the two frivolous KBVE complaints.

219. On April 14, 2023, the day after the hearing on the frivolous Emergency Order, Brethauer exchanged texts with Stambaugh expressing Brethauer's shared frustration with what Stambaugh described as "the main group." Brethauer responded, "I completely understand your frustration, trust me, and whatever decision is made Monday we will adjust accordingly. Yesterday's hearing was just for the emergency order, not for the revocation."

220. Also on April 14, 2023, Stambaugh sent Brethauer a text asking if she has seen that "[Counterclaimant] is calling the department of agriculture crooked," to which Brethauer responded, "It has definitely been seen . . . ." (ellipsis in original).

221. On April 21, 2023, four days after Secretary Beam overruled the frivolous Emergency Order, a high-level administrative assistant in the DAH admitted in an email to the director of the Missouri Department of Agriculture's ("MDA") sister animal facilities' inspection program that the AFI Program was "making every attempt" to shut down Counterclaimant's business.

222. In the interim, on April 7, 2023, the KDA finally referred the Original and Amended Revocation Orders to the OAH for hearing, and Administrative Law Judge Matthew Spurgin ("ALJ") was immediately assigned as the presiding officer pursuant to K.S.A. § 77-511(a).

223. After a May 4, 2023, Prehearing Conference, the ALJ issued a Prehearing Order stating the "parties will be given the opportunity to pursue discovery in this matter," which the ALJ was allowed to do under K.S.A. § 77-522(a) (allowing subpoenas and other discovery orders to be issued in "accordance with the rules of civil procedure.>").

224. In defending the revocation and civil penalty proceedings, Counterclaimant alleged the AFI Program was falsifying the results of investigations and ignoring the law on a hellbent quest to "shut down" Counterclaimant's decade long and successful animal rescue/shelter business

at the behest of individual and organizational animal rights activists with both personal and pecuniary interests in Counterclaimant's legal or financial ruin.

225. Both case law and the ALJ's rulings, as well as common sense, clearly establish this type of evidence went to the credibility of the witnesses and evidence presented by the AFI Program.

226. After Costanzo refused on behalf of the Commissioner to produce any of the AFI Program's third-party communications on the basis such communications were subject to the attorney-client privileged (even though they were clearly not privileged and Counterclaimant was not asking for confidential complaints filed with the Commissioner), Counterclaimant requested and obtained from the ALJ numerous third-party subpoenas *duces tecum* directed to Stambaugh, Gebhart, Higdon, the Commissioner, HSUS, and other suspected co-conspirators, including other members of the "Unleashed Exposed" private Facebook group.

227. After hearing and overruling three motions to quash these subpoenas and repeated attempts to prevent disclosure of third-party communications, which required the identical subpoenas' re-issuance several times, the ALJ ruled at the conclusion of a September 15, 2023, hearing that Counterclaimant was entitled to the discovery because Counterclaimant had sufficiently demonstrated the evidence goes to credibility of the witnesses and evidence presented by the Commissioner and the AFI Program.

228. Six days later, on September 21, 2023, Higdon deleted the private "Exposing Unleashed" Facebook group, suggesting she had received word of the ALJ's order.

229. From October 11 to 19, 2023, after a third re-issuance of third-party subpoenas, several of the third-party co-conspirators began coordinating to file nearly identical motions to

quash their subpoenas with the OAH, including Gebhart, Bauer, Higdon, Stambaugh, and two others named Rachel Anonsen and Denise King.

230. On October 20, 2023, Counterclaimant commenced the deposition of third-party Christine McCoy, who had not filed a motion to quash but who was another animal rights lobbyist who attended KPAAB meetings along with Humphrey, had inexplicably requested years' worth of records on Counterclaimant through KORA on January 30, 2023, was a member of the "Unleashed Exposed" group, and volunteered at Melissa's Second Chances.

231. When Counterclaimant's counsel confirmed with the witness that she was a member of the "Exposing Unleashed" group, which she reluctantly confirmed, Costanzo immediately moved to terminate the deposition on the grounds that Counterclaimant's counsel was "unreasonably annoying, embarrassing, and oppressing" the witness *and the KDA* under K.S.A. § 60-230.

232. Counterclaimant's counsel then stated on the record what additional topics he wanted to discuss with the witness, asking Costanzo to listen to the topics and decide if she wants to maintain her request to terminate.

233. The remaining topics included communications had in or among the "Exposing Unleashed" group, communications had about Counterclaimant with other attendees of the KPAAB meetings, whether the witness knows others who have communicated or shared information with the AFI Program or that maintain a database for the AFI Program, and any communications the witness may have specifically had with the Laues or Humphrey.

234. After hearing this, Costanzo maintained that Counterclaimant's counsel questions were intended to "annoy, harass, and embarrass" the KDA and the witness, which concluded the deposition as required under K.S.A. § 60-230. Costanzo also said,

235. Only five days later, in the afternoon of October 25, 2023, Higdon sent Duke's adoptive mother, Dottie Reardon, a Facebook message encouraging Reardon to file a motion to quash Reardon's subpoena, explaining that it would make Counterclaimant "jump through hoops" and stating Costanzo was "good to chat with" but that Costanzo is "prob gonna just want call you so nothing is on the record in emails or text." Higdon later reiterated, "that's why its best to talk to Nichole [Costanzo] on the phone rather than putting it in an email."

236. At 8:00 p.m. that evening, Higdon sent a follow up message to Dottie containing a template of a motion to quash and suggesting the precise text of a legal argument that would be "good to add."

237. Approximately two hours later, Costazno filed a *fourth* motion to quash on behalf of the KDA, containing nearly verbatim the same language of the argument that Higdon told Reardon would be "good to add." In the fourth motion, Costanzo once again asked the ALJ to quash all third-party subpoenas, as well as the subpoena directed to the Commissioner, making all the same arguments that had been repeatedly overruled by the ALJ.

238. On October 27, 2023, all third-party motions to quash subpoenas were dismissed by the ALJ, and Costanzo's independent fourth frivolous motion to quash all the same subpoenas was subsequently scheduled for hearing on December 6, 2023.

239. After the December 6, 2023, hearing, the ALJ once again overruled Costanzo's and the Commissioner's objections and subsequently re-issued all the same subpoenas.

240. On January 15, 2024, just moments before the re-commencement of third-party depositions, beginning with Stambaugh who was on Zoom with her counsel and Counterclaimant's counsel waiting to start the deposition, Costanzo sent Counterclaimant's counsel an order signed

by the Commissioner terminating both the Original and Amended Revocation Orders, including the Commissioner's demand for \$15,800, in civil penalties.

241. After making a record that all revocation and civil penalty proceedings have been terminated, Counterclaimant's counsel released Stambaugh from her subpoena and cancelled all other depositions on the basis that they were moot.

242. The discovery misconduct committed in the revocation proceedings, which is only partly described above, is detailed further in a pending civil enforcement action for sanctions under the civil enforcement provisions of the Kansas Act for Judicial Review, K.S.A. § 77-624 *et. seq.* See *Unleashed Pet Rescue and Adoption, Inc. v. Smith*, Shawnee County Case No. 23-CV-000459.

243. Upon information and belief, Costanzo was directed by the Commissioner, Secretary, and/or Kramer to terminate the revocation proceedings in order to avoid the disclosure of legally damaging and politically embarrassing communications showing that the AFI Program was doing the bidding of the Laues and Humphrey with "on the ground" coordinated assistance from Brethauer, Lancaster, Wasee, Gebhart, Stambaugh, Higdon, and others, all of whom were involved in a conspiracy to shut down Counterclaimant.

**f. Maliciously Harassing Counterclaimant and Falsely Manufacturing an Alleged Basis to Deny the Renewal of Counterclaimant's License and Cease Plaintiff's Business Without Due Process in Retaliation for Counterclaimant Successfully Defending Itself in the Revocation and Emergency Proceedings**

244. On May 24, 2023, *prior to the request or issuance of third-party subpoenas or commencement of any depositions in the case whatsoever*, Inspectors Demel and Lancaster conducted another inspection of the Animal Shelter in response to another complaint of "overcrowding" and that the welfare of the animals was being threatened.

245. The complaint was deemed “unfounded,” and the inspection result was “satisfactory” with Unleashed having only received one point because of a plastic board covering a wall being broken.

246. However, after a contentious deposition of Lancaster on June 22, 2023, which was the first deposition to occur in the revocation proceedings, Costanzo and Thomason ordered the AFI Program inspectors to again start aggressively inspecting Counterclaimant, ignoring the AFI Program Manual, falsely reporting the number of animals affected, and otherwise falsifying the results of inspections and investigations to create a false record for later adverse agency action.

247. During Lancaster’s deposition, Lancaster refused to answer questions, was extraordinarily evasive, but was still forced to admit he lacked a basis for many of the allegations made in the Amended Revocation Order and that Counterclaimant should have passed the September 2022 inspection.

248. In retaliation, Costanzo and Thomason not only ordered the inspectors to begin harassing Counterclaimant and falsifying inspections again, but Costanzo, Thomason, and the Commissioner also stopped voluntarily cooperating with discovery and doing everything they could to prevent discovery, including engaging in improper and unethical discovery tactics such as ignoring subpoenas and other discovery orders as described in part above.

249. The first of the harassing inspections occurred on the morning of July 21, 2023, the same date Counterclaimant’s counsel and Counterclaimant’s CEO were scheduled to be in Topeka for Wasee’s deposition, to which Costanzo agreed only after Counterclaimant’s counsel sent Costanzo a draft petition for civil enforcement and threatened to file it if Wasee did not appear.

250. Particularly, inspectors Lancaster and Demel showed up just before Counterclaimant’s counsel and Counterclaimant’s CEO were about to leave for Topeka, forcing

Counterclaimant's CEO to stay behind to address the inspection rather than being present at Wasee's deposition to assess the credibility of what Wasee ultimately testified about concerning October 24, 2022, inspection.

251. During Wasee's deposition, she lied under oath due to the absence of Counterclaimant's CEO, claiming that cockroaches were observed *on animals* while having failed to include that in her report of the October 24, 2022, inspection.

252. During the simultaneous inspection that lasted several hours, Lancaster assessed 5 points to Counterclaimant (4 points is "satisfactory") by once again refusing to give "zero" points as required by the AFI Program Manual for five alleged minor violations he claimed to find but that were all corrected during the inspection.

253. During this inspection, Demel seemed uncomfortable with Lancaster's falsification and made-up violations.

254. Indeed, Demel seemed to want to help Counterclaimant with what was clearly an attempt by Lancaster to falsify an inspection, but Demel ultimately failed to intervene and signed off on the report with Lancaster anyway.

255. On August 3, 2023, Brethauer and Lancaster conducted another inspection of an "unfounded" complaint but remarkably assessed 5 points for alleged holes and rust along the bottom of an older single exterior door, falsely alleging all the animals in the Animal Shelter were "affected" by the alleged violation, which resulted in the "failed" inspection. This was despite the fact Counterclaimant had the door replaced with proof provided to Lancaster by the end of the day.

256. On September 28, 2023, Brethauer and Lancaster performed another inspection in which they "failed" Counterclaimant because of a single "piece of feces" on the outside grounds

and a single bug seen on the interior floor, which they falsely claimed affected all the animals in the Animal Shelter and assessed 5 points, resulting in the “failure.”

257. On October 12, 2023, Brethauer and Lancaster performed another inspection during which they spent approximately three hours going through and collecting records, including a copy of Counterclaimant’s veterinary care form.

258. Counterclaimant’s CEO could not be present during the inspection because she was on a school field trip with her young son.

259. During this inspection, when Lancaster requested a copy of what was later characterized as the “licensee’s updated vet care form,” the AFI Program had already determined, wrongfully and without statutory or other legal basis, that the Counterclaimant’s so-called “veterinary care form” had expired on September 14, 2023. This was despite the fact that the only statute referencing a “documented program of disease control and prevention,” which should be “maintained under the supervision of a licensed veterinarian on a form created by the commissioner” and include a documented on-site visit by a veterinarian “once a year,” does not state that the form must be filed with the Commissioner. It also does not require that it be maintained on the premises for inspection (as opposed to by the veterinarian actually completing the inspection and signing the form) or updated annually within a year of the prior form, or even within a “license year.” *See* K.S.A. 47-1701(dd)(1)(A).

260. Nevertheless, the completed and updated form was provided by email to Lancaster and Brethauer within 10-minutes of their request, while they were still on site.

261. When the inspection was complete, Brethauer and Lancaster refused to go over any alleged violations, issue a report, or otherwise comply with the requirement in the AFI Program

Manual to perform an “exit briefing” before leaving the premises, despite the demand of Counterclaimant’s counsel who was present at the inspection.

262. Five days later, on October 18, 2023, Lancaster issued an inspection report in which he falsely claimed that the 10 minutes it took to track down and supply the “current,” so-called “veterinary care form” to Lancaster during the inspection, was somehow a severity level 5 violation for lack of adequate veterinary care. This assertion was made despite the fact that the statute merely mandates a documented on-site visit “once a year” (*e.g.*, once each calendar year), that the form was indeed provided upon request, and that a form does not equate to a lack of care.

263. Moreover, historically Counterclaimant had submitted the form to the Commissioner after renewing its license, around November 20 of each year. Remarkably, for all other shelters, a wholesale lack of having a “current” vet care form was merely a low-level severity 1 records violation; but in this instance, Counterclaimant was held to a different standard. Because this single falsified violation was deemed a severity 5 violation, it resulted in another falsified “failed” inspection.

264. Notably, Brethauer inexplicably did not sign the report.

265. On and after October 18, 2023, upon information and belief, Thomason, Costanzo, Lancaster, and Brethauer began directly communicating with the Laues, Humphry, Gebhart, and possibly also Stambaugh, Higdon, King, Anonsen, and Bauer, on alternative ways to shut down Counterclaimant after the AFI Program had received word from KDA leadership to shut down the revocation proceedings to avoid KDA the embarrassment of having the AFI Program’s conspiracy with extreme animal rights activists exposed.

266. Indeed, during the October 18, 2023 inspection, in what seemed like a real-time last gasp of the conspiracy witnessed personally by Counterclaimant’s counsel, it was evident that

Lancaster and Brethauer were not there to conduct a legitimate inspection but instead “find evidence” that Counterclaimant was “buying dogs at dog auctions” for purpose of “resale” to turn a “profit,” all in line with the baseless allegations being made online and elsewhere by animal rights activists and that the Laues, Humphrey, HSUS, HSLF, and KPCC were all passionately opposed.

267. Indeed, after spending hours going through and collecting records, Lancaster and Brethauer, after communicating with Thomason and Costanzo, hurriedly left the premises without the required exit interview and having only done a quick walk-through of the facility, refusing to say if they had found any violations despite repeated requests by Counterclaim’s counsel.

268. Moreover, on October 24, 2023, 5 days after the last harassing inspection and while Costanzo and the Commissioner were losing their frivolously fought battle to prevent third-party discovery and simultaneously, upon information and belief, getting pressure by KDA leadership to either quash the discovery or terminate the proceedings, Gebhart showed up at the Animal Shelter (while under subpoena) to “picket” on the public sidewalk with signs falsely allegeding that Unleashed was “lying” to the public about where it obtained its animals and that the “truth” was Counterclaimant was “buying animals” at “puppy mills” to “resale” them for “profit.”

269. On October 26, 2023, the day prior to the ALJ in the revocation proceedings issuing orders overruling all the third parties’ motions to quash, including Gebhart’s, Gebhart again showed up on the public sidewalk in front of the Animal Shelter with a sign asserting the same lies as were asserted two days earlier, and a day after Costanzo was communicating with Higdon on how to make Counterclaimant “jump through hoops” with frivolous motions.

270. However, during Gebhart’s second protest, one of Counterclaimant’s ardent supporters who is an elected official of Johnson County, showed up to counter-protest and confront

Defendant with the lies he was spreading to the public and government agencies about Unleashed, his pecuniary interest in owning Unleashed's business, and his coordination with the AFI Program, HSUS, and Great Plains SPCA in their quest to make every attempt to "shut down" Unleashed regardless of the truth or law.

271. During this interaction, Gebhart was smiling, laughing, taunting Counterclaimant's employees that he has "people on the inside," and occasionally stopping his picketing to claim to Counterclaimant's ardent supporter that he has "proof" of Counterclaimant's purchase of animals from "puppy mills" for "profit," which was untrue.

272. Gebhart also claimed to have obtained a private Certificate of Veterinarian Inspection, which he could have only obtained from the Costanzo, Thomason, and/or Brethauer, allegedly "proving" that Counterclaimant "buys" from "puppy mills" to "make a profit."

273. When Counterclaimant tried to explain that this was untrue, that Counterclaimant was not lying about anything, and that Counterclaimant had only reimbursed or offered to reimburse rescues for nominal transportation and vetting costs in order to save animals from dying, Gebhart remarkably admitted his real problem was the unfounded belief that the practice of acquiring animals that originated from breeders under any circumstances "propagates" animal breeding.

274. This was precisely the same argument espoused by the Laues, Humphrey, HSUS, HSLF, KPPC, and Great Plains SPCA, all of whom are, or are chaired by, extremist animal rights activists the Laues and Humphrey, who had been working exert control over the Kansas pet rescue industry via the AFI Program since early 2022, when the Laues and Humphrey founded KPPC, Thomason was hired, and the AFI Program received a half million dollar increase in its annual budget from the state general fund.

275. After Gebhart essentially once again admitted to the conspiracy in front of Counterclaimant's supporters and employees of the Animal Shelter, Gebhart did not return to further picket in front of the Animal Shelter again.

276. Upon information and belief, Gebhart was counseled to "stand down" the picketing in fear of him being confronted and cross-examined again by Counterclaimant's supporters, which risked the disclosure of information about the conspiracy.

277. A few weeks later, in mid-afternoon on Friday, November 17, 2023, Costanzo emailed a very lengthy memorandum-style PDF communication to Counterclaimant making the new argument Counterclaimant had somehow been operating as an "animal distributor" without the required license, repeating the same false claims about Counterclaimant "purchasing animals for resale" at "auctions" and not disclosing the truth to the public, which is precisely the same lies Gebhart had been spewing in front of the Animal Shelter only a few weeks prior based on alleged "evidence" he could have only received from the AFI Program.

278. In the memorandum, in addition to numerous other falsehoods, Costanzo specifically, falsely, and maliciously stated:

Unleashed has made and continues to make misrepresentations to the public with respect to its business practices, namely concealing its practice of buying dogs from animal breeders via dog auctions and reselling such dogs, under the guise of 'recusing' its dogs from 'high kill shelters' (or other sources where Unleashed represents that if Unleashed did not 'recuse' them, they would 'die') and then adopting out such dogs via an adoption fee, including facts establishing that Unleashed bought dogs via a dog auction for approximately \$50-\$100 in May of 2022.

279. Moreover, Costanzo's November 17, 2023, email falsely stated as fact that Unleashed was operating without a license because of a mistake in Counterclaimant's renewal application that somehow automatically deprived Counterclaimant of its right under K.S.A. § 77-

511(d) to continue operating while due process was afforded on Costanzo's plan to have the Commissioner deny Counterclaimant's requested license renewal.

280. Specifically, the memorandum, citing the directions set forth on the form application provided by the KDA as if they were official legal provisions, but not citing any regulation or statute for support, Costanzo argued that KAPA's license continuance provision in K.S.A. § 77-511(d) did not apply to Counterclaimant's license because Counterclaimant had mistakenly indicated in its renewal application that a current vet care form was on file with the KDA when it was not, which is neither a basis on which a renewal license may be denied under KPAA or how the AFI Program has treated similarly situated licensees in similar situations.

281. The memorandum is, by definition, not an "order," and was and could not be considered an "order" of any type authorized by anyone at the KDA with such authority.

282. Moreover, there is no statute or regulation requiring that the vet care form be on file prior to the license renewal application submission or by any specific date during the calendar year.

283. Nonetheless, Costanzo, with full intention to create an official-looking document that would be leaked to the media through her coordination with the Laues, Humphry, Gebhart, and these private co-conspirators' connections at Fox 4 News, Costanzo told them of her intention to send the letter before it was sent so that an open records request from Fox 4 News would be perfectly timed to make the leak appear legitimate and not illegal.

284. Indeed, Fox 4 news ran a story the following Monday, November 21, 2023, in which its reporters Jonathan Ketz and Morgan Cormack oddly made an effort in the written online version of the story to explain how and in what timeframe Fox 4 had received the memorandum:



288. Earlier the same day this story aired, Gebhart knowingly filed a frivolous ex-parte Petition in this Court seeking a “protection from stalking order” against Counterclaimant’s supporter that had confronted him during his October 26, 2023, demonstration about his lies and caused him to admit his collusion with Constanzo, Thomason, and Brethauer concerning the false representation about purchasing animals at auction to flip them for profit. *See Gebhart v. Prater*, Johnson County Case No. 23CV06162.

289. In his Petition, Gebhart knowingly misrepresented to the Court that “criminal charges” had been filed against Counterclaimant’s supporter and that he was “in fear of bodily harm,” resulting in the issuance of an ex-part protection order.

290. Gebhart’s frivolous filing occurred on precisely the same day that the ALJ in the revocation proceeding was to originally hear and decide Costanzo’s and the Commissioner’s frivolous motion to quash all third-party subpoenas, including the subpoena issued to Gebhart.

291. At the hearing on December 8, 2023, after Gebhart’s attempt to get a continuance of the ex-parte order was denied, he dropped the frivolous case rather than face cross-examination.

292. After the hearing, Gebhart again began smiling and laughing at Counterclaimant’s ardent supporter outside of the Courthouse.

293. In addition to this frivolous conduct, Gebhart earlier in the year frivolously threatened in writing to report Counterclaimant’s counsel in the revocation proceedings to the Kansas Disciplinary Commissioner because Gebhart’s “contacts at the KDA and AG’s office” believed Counterclaimant’s counsel had violated the Kansas Rules of Professional Conduct after Gebhart’s admission to counsel earlier in the year about him meeting with the AFI Program and the Attorney General ended up in Counterclaimant’s brief contesting the frivolous Emergency Order.

294. Moreover, on or about December 12, 2023, just a few days after Gebhart dropped his frivolous petition for a protective order, his contacts in the Kansas Attorney General's Office served subpoenas on numerous Missouri licensed animal rescues seeking all transactions of money between Counterclaimant and the rescues as part of a sham investigation he, Costanzo, and Brethauer instigated into whether Counterclaimant has falsely misrepresented where it obtains dogs from, despite the fact no such misrepresentations have ever been made.

295. Upon information and belief, Gebhart conducted his demonstrations, filed the baseless ex-parte petition for an order of protection, and engaged in the above described conduct at the behest, encouragement, and/or in coordination with his co-conspirators, including one or more members of the AFI Program and the Kansas Attorney General's Office in their coordinated attempt to "shut down" Unleashed by any means necessary and regardless of the law.

296. To date, neither the KDA nor the Kansas Attorney General's Office has issued any orders or legal claims alleging Counterclaimant has lied to the public about where it is getting its animals from, that Counterclaimant "purchases dogs at auction," or that this is done for the purpose of flipping the dogs for profit, let alone any orders or legal claims asserting that these activities were illegal even if true.

297. However, on December 22, 2023, Costanzo sent an email to Counterclaimant attempting to retroactively designate her November 17, 2023, memorandum as "final agency action" or a "determination" that Counterclaimant's license would not continue despite the anticipated administrative proceedings resulting from an appeal of an upcoming renewal denial.

298. Costanzo attempted to characterize her memorandum as official agency action determining Counterclaimant's rights, despite the fact it plainly was not an agency order, much less signed by any "officer, department, bureau, division, board, authority, agency, commission or

institution of this state . . . which is authorized by law to administer, enforce or interpret any law of this state” as required by *See* K.S.A. 77-502 (defining “State agency”).

**g. Maliciously Working Through Co-Conspirators’ Fox 4 News Connections to Destroy Counterclaimant’s Reputation and Cause Counterclaimant Permanent Economic and Reputational Harm by Spreading False and Defamatory Statements and Innuendo**

299. Shortly after it became apparent that Counterclaimant intended to contest the Original Revocation Order, Costanzo, Thomason, and Brethauer began coordinating with the Laues, Humphrey, and Gebhart to regularly feed false and defamatory information and allegations, contained in the Original Revocation Order and inspection reports or otherwise, to connections at Fox4 News in Kansas City.

300. These media connections were then encouraged to run false, defamatory, and extremely negative stories about Counterclaimant in primetime news broadcasts.

301. This began with a news story that aired on January 26, 2023, after Gebhart, Stambaugh, Higdon, and Bauer had recruited disgruntled ex-employees and volunteers to provide misleading information to Fox 4 suggesting the Animal Shelter was “always overcrowded,” that animals had been allowed to be hit by cars, and animals otherwise did not receive adequate care.

302. The very next day, on January 27, 2023, Gebhart sent his threatening text message to Counterclaimant’s CEO suggesting she sell the business to him “while [Counterclaimant] still has something left to sell.”

303. On February 1, 2023, after being fed the Original Revocation Order and October 24, 2022, inspection report, Fox 4 ran a story falsely indicating that the KDA had *already revoked* Counterclaimant’s license to operate because of the way Costazno worded the Original Revocation Order, which was picked up and spread around the co-conspirators’ social media circles. The headline on the associated online article was much later changed to accurately reflect that the KDA

was *seeking* to revoke Counterclaimant's license and that Counterclaimant was entitled to a hearing.

304. After the frivolous Emergency Order was issued on March 10, 2023, both the Order and data regarding Counterclaimant's intake numbers since 2021 were fed to Fox 4 by the AFI Program. In turn, Fox 4 ran a story suggesting the frivolous order was a "ruling," regardless of Counterclaimant's entitlement to a hearing, and again pushed false innuendo that the Animal Shelter was "overcrowded."

305. On March 20, 2023, after the issuance of the frivolous Amended Revocation Order on March 15, 2023, was also fed to Fox 4, the news organization repeated the false allegations made in the Order that Counterclaimant was using a "T-shirt business" as "overflow" for the Animal Shelter. Fox 4 also recklessly repeated false and defamatory statements that Counterclaimant relocates animals to "avoid detection" by the KDA and continued the false innuendo that the Animal Shelter was "always overcrowded."

306. On April 7, 2023, these and other false claims were repeated by Fox 4 in another news story.

307. In addition, just days prior to the hearing on the illegal Emergency Order, Gebhart showed up at another animal rescue attempting to surreptitiously "catch" Counterclaimant "violating" the frivolous Emergency Order after receiving information from Brethauer, Costanzo, and/or Thomason, concerning Unleashed's plans to transport animals to the Animal Shelter.

308. Just days later, the day of the April 13, 2023, hearing on the frivolous Emergency Order, Fox 4, on a tip from either Thomason, Costanzo, Brethauer, Gebhart, the Laues, and/or Humphrey, showed up at the Animal Shelter *with Gebhart* to "catch" Counterclaimant violating the illegal and frivolous Order. Fox 4 later that day ran a story recklessly repeating a false

suggestion by Stambaugh that Counterclaimant uses “scare tactics” to get its way and believes its “above the law.”

309. On October 5, 2023, Fox 4 ran another story reporting on the sham September 28, 2023, inspection in which Lancaster and Brethauer “failed” Counterclaimant based on the false allegation that all the animals in the facility were affected by a single roach and a single piece of feces, which Fox 4 falsely described as “waste disposal problems,” which is how it was described in the inspection report. The story also continued the knowing false and defamatory allegation that the Animal Shelter was “overcrowded” and recklessly repeated false and defamatory statements from “anonymous sources” suggesting Counterclaimant was euthanizing animals to make room for dogs purchased from auction so that they could be flipped for profit.

310. The story aired the evening after the ALJ in the proceedings on the Original and Amended Revocation Orders re-issued subpoenas to the AFI Program’s private co-conspirators, seeking documents and testimony relating to these individuals’ undue influence over the AFI Program and the lack of the AFI Program’s credibility.

311. Subsequently, after completing her intentionally official looking November 17, 2023, memorandum over the next month, the KDA provided the memorandum to Fox 4 after Costanzo gave Fox 4 a heads up through her co-conspirators the Laues, Humphrey and/or Gebhart that the memorandum would be forthcoming and that a KORA request should be sent.

312. Upon information and belief, both the attempt to make the memorandum seem official and the leaking of it to the media was done at the direction and advice of Humphrey, the Laues, and/or Gebhart.

313. Fox 4 then televised a primetime news story falsely repeating the devastatingly false and defamatory allegations that Counterclaimant no longer had a license and was violating the KPAA by purchasing dogs at auction for purposes of flipping them to make money.

314. The associated online news article still states, as it were a fact, that Counterclaimant “currently does not hold a valid state” license despite the fact no person, agency, or Court with authority to make the determination that K.S.A. § 77-511(d) does not apply has ever made such a determination.

315. In a subsequent story on December 19, 2023, Fox 4 reported false information directly from the AFI Program or Gebhart that Counterclaimant has been operating without a license for over a month because of “numerous legal filings” filed by Counterclaimant’s attorney and that Counterclaimant “continues to take in dogs from auctions to sell at a profit – even after being ordered to stop.”

316. Each and every Fox 4 report based upon and repeating false facts and conclusions specifically and in culmination with each other severely impaired and permanently damaged Counterclaimant’s reputation developed over the prior decade and caused business relationships to be strained or severed, which caused permanent financial damage to Counterclaimant.

317. Moreover, on January 4, 2024, after communicating with Thomason, Costanzo, Brethauer, and possibly Kramer, the Kansas Attorney General’s Office sent a letter to Counterclaimant demanding that Counterclaimant cease doing business based solely on Costanzo’s November 17, 2023, memorandum, which the Kansas Attorney General’s Office described as “KDA’s determination that Unleashed is no longer a licensed animal shelter under Kansas law,” despite the fact it was not an adjudicative order of any type or a determination based upon any statute or regulation.

318. In the January 4, 2024, cease and desist letter, the Attorney General's Office threatened to seek civil penalties of up to \$10,000, per day, if Counterclaimant did not stop doing business.

#### **VIII. Failure of Kramer and Secretary Beam to Intervene**

319. On January 5, 2024, as a preventative measure, Counterclaimant sent a letter to both Secretary Beam and Kramer, Chief Legal Counsel, pointing out the deficiencies in Costanzo's attempt to personally ordain Counterclaimant as unlicensed on November 17, 2023, and requested a hearing in the event Secretary Beam somehow believed the November 17, 2023, memorandum to be an adjudicative order of the agency determining Counterclaimant's rights under K.S.A. § 77-511(d).

320. In the interim, leading up to January 2, 2024, Costanzo converted the contents of her November 17, 2023, memorandum into draft summary orders denying renewal of Counterclaimant's shelter and rescue licenses ("Order Denying Renewal"), which contained several false statements of fact and law.

321. On January 2, 2024, the Commissioner executed the Order Denying Renewal at Costanzo's behest, advice, and encouragement.

322. On January 12, 2024, Counterclaimant timely sent follow up letters to Secretary Beam and Kramer requesting a stay of effectiveness and a hearing on all adverse "rulings" and "actions," whether made by the Commissioner in the Order Denying Renewal or ostensibly by Costanzo in the event she was deemed to have the power to personally issue orders, including her alleged "determination" on November 17, 2023, that Counterclaimant would be unlicensed during the pendency of the Counterclaimant's appeal of Order Denying Renewal despite K.S.A. § 77-511(d).

323. Although Kramer initially acknowledged receipt of the January 12, 2024, request for hearing on Costazno's alleged November 17, 2023, "determination" and claimed she would forward the request to OAH for hearing, she never forwarded the request.

324. Instead, on March 1, 2024, the Commissioner issued another order prepared solely by Costanzo, calling it a "Final Order" and stating therein that the order "confirms" her own alleged "final agency action" in the November 17, 2023, memorandum.

325. Also, despite the fact neither the Commissioner nor Costanzo were legally eligible to preside over a request for hearing on the alleged "determination" that Counterclaimant's license could not continue during the appeal of the Order Denying Renewal, the Final Order stated:

"KDA further confirms [Counterclaimant's] requests for administrative review, stay, and reconsideration of, and for a hearing on, the November 17, 2023, final determination of Respondent's unlicensed status were DENIED because there is no dispute of material fact that would alter the subject outcome; a stay is not in the public interest; and no provision under [KAPA], nor any other law requires a hearing prior to determining that a license issued under the [KPAA] expired by operation of law, as such determination was not a decision to "revoke, suspend, modify, annul, withdraw, refuse to renew, or amend a license" K.S.A. 77-508; K.S.A. 77-512.

*Id.*

326. This Final Order neither contained the names nor was signed by either Kramer or Secretary Beam, and it otherwise failed to meet the requirements of final orders outlined in K.S.A. § 77-526.

327. On March 3, 2024, Counterclaimant emailed Kramer asking why there has been no order from Secretary Beam or someone else eligible to make the findings in the Final Order when the requests for hearing and other relief were directed to Secretary Beam.

328. It was also highly unusual for Secretary Beam to ignore the requests when he had rightly overruled the Commissioner's frivolous Emergency Order nearly a year prior and Kramer had originally said this latest matter would be sent to the OAH.

329. On March 4, 2024, Kramer responded, claiming for the first time that the “Commissioner is an agency head in all matters related to the Division of Animal Health” and that she does “not believe the agency has improperly denied any required process.” Kramer also claimed she did not “believe an order signed by the Secretary is necessary when all authority relevant to this matter is statutorily vested in the Commissioner,” which was untrue.

330. Indeed, even if the Commissioner or Costanzo were somehow legally eligible to hear Counterclaimant’s requests for relief from the “Final Order,” (they clearly are not under K.S.A. § 77-514(h)(1)-(2) due to the fact they were engaged in the investigation and prosecution of Counterclaimant) or authorized to make the alleged determinations therein, there is no evidence in the record indicating that the Commissioner was acting “on behalf of the secretary” as would be required for the Commissioner to be the “agency head” for purposes of DAH proceedings. *See* K.S.A. § 74-5,121a. Indeed, the facts show quite the opposite.

331. On March 19, 2024, Counterclaimant sent Kramer and Secretary Beam a Request and Petition for Hearing, Reconsideration, and Stay of the March 1, 2024, “Final Order,” explaining that the Commissioner, much less Costanzo, had no power to issue the findings therein.

332. That same day, Kramer responded via email stating that the Secretary “will not issue any orders related to the March 1, 2024, final order,” which is plainly a violation of K.S.A. § 77-526(b).

#### **IX. Counterclaimant’s Damages**

333. Despite the fact nearly a year and a half has passed since the Original Revocation Order without a single finding establishing a basis for revocation under KPAA, issued by someone with authority to make such finding after notice and opportunity to be heard, the Defendants’ actions have caused Counterclaimant over \$2,300,000 in lost annual donations and other revenue,

put countless Kansas citizens' out of work, and resulted in thousands of unwanted and unloved animals to not be saved from terrible conditions, disease, and euthanasia.

334. Defendants' conduct was deliberate and/or recklessly committed without regard to the law or facts, resulting in the incurrence of well over \$250,000 in attorneys' fees to lawfully defend against and expose the Defendants' abhorrent actions.

335. To be sure, Counterclaimant would have much rather spent these fees on working with regulators to make any improvements to the Animal Shelter they requested, conducting outreach, and continuing its mission and remarkable performance of saving 5,000 animals a year.

336. However, these Defendants never gave Counterclaimant this option and, in fact, intentionally obstructed these efforts in what can only be described as a vindictive, retaliatory scheme perpetrated by an entitled collective group of wealthy extreme animal activists and their installed co-conspirators in the AFI Program when this group realized Counterclaimant intended to lawfully defend itself from the unlawful and extra-judicial attempt to shut it down.

**COUNT I – TEMPORARY STAY OR INJUNCTION**  
**(K.S.A. § 77-616 and K.S.A. § 60-901 *et seq.*)**

337. On November 17, 2023, Costanzo sent Counterclaimant a memorandum (“Memorandum”) that she intentionally attempted to make seem “official” as if she had the power to issue adjudicative orders of a state agency determining Counterclaimant’s rights under K.S.A. § 77-511(d), which was done maliciously to damage Counterclaimant’s reputation.

338. On March 1, 2023, this alleged determination was later allegedly “confirmed” in a “Final Order” prepared by Costanzo and signed by the Commissioner, with such Order stating that no opportunity to be heard would be afforded.

339. Count II below seeks judicial review of both the Memorandum and the Final Order, which allegedly collectively determine or “confirm” that Counterclaimant’s license status expired

as of November 17, 2023, and will not be allowed to continue “during the pendency of the license denial proceedings” commenced by the administrative appeal of the Order Denying Renewal issued January 2, 2024, despite the application of K.S.A. § 77-511(d).

340. Both the Memorandum and Order were based on an inconsequential mistake on Counterclaimant’s renewal application, not having any affect whatsoever on the health, safety, or welfare of people or animals.

341. Moreover, for the reasons more fully explained in Count II, neither the Memorandum nor Final Order are valid agency orders and should be overturned for one or more of the reasons set forth in K.S.A. § 77-621(c) (“Scope of Review”).

342. Counterclaimant asked the Secretary to stay the alleged effect of the Memorandum and Final Order pending judicial review, but the Secretary refused to even consider the request, although the Final Order alleges to have “confirmed” the denial of the request by the Secretary.

343. However, neither the Final Order nor the Memorandum allege that failing to stay or enjoin their affect pending judicial review would somehow be “justified to protect against a substantial threat to the public health, safety or welfare.” See K.S.A. § 77-616(c).

344. Accordingly, K.S.A. § 77-616(d) requires this Court to grant relief if it finds the agency’s action on the application for stay is “unreasonable in the circumstances” and gives the Court the power to “grant a stay on appropriate term or granting other temporary remedies.”

345. Even if either the Memorandum or Final Order alleged the denial of stay is justified to protect against a substantial threat, the Court may still grant the relief requested herein because, for the reasons explained below:

- a. Counterclaimant is likely to prevail when the Court finally disposes of the Memorandum and Final Order on judicial review.

- b. Without granting relief the Counterclaimant will suffer irreparable injury.
- c. Granting relief will not substantially harm the KDA.
- d. Any “threat to the public health, safety or welfare relied on by the agency is not sufficiently serious to justify the agency’s action in the circumstances.”

346. Alternatively, K.S.A. § 60-901 *et seq.* gives this Court the power to issue a temporary injunction during the pendency of these proceedings, which the Court should issue during the pendency of judicial review.

347. To be sure, because of the Memorandum and Final Order, Complainant has suffered and continues to suffer irreparable injury due to the fact both the media and the Kansas Attorney General’s Office believe Counterclaimant is “unlicensed” and is not allowed to remain licensed during the pendency of the administrative proceedings on the Order Denying Removal, currently pending before the KDA.

348. This is presently causing irreparable harm to Counterclaimant’s reputation, as well as the ongoing incurrence of civil penalties as determined by the Kansas Attorney General’s Office.

349. Moreover, if Counterclaimant is not allowed to operate during the pendency of judicial review, it will suffer further substantial irreparable damage by being unable to pay expenses such as utilities, mortgage, wages, and other expenses necessary to operate, which will cause Counterclaimant to default on financial obligations resulting in penalties, interests, and/or foreclosure of the Animal Shelter.

350. For the reasons set forth in Count II, there is a substantial likelihood that Counterclaimant will eventually prevail on the merits.

351. These threatened injuries to Counterclaimant far outweigh whatever damage may be caused by the injunction, because the KDA is still free to inspect the Animal Shelter to determine and enforce compliance with any KPAA statutes or regulations, and Counterclaimant would consent to same regardless.

352. Allowing Counterclaimant to continue operating during the pendency of judicial review, despite an inconsequential mistake on Counterclaimant's renewal application, would not be against the public interest considering that there has never been any finding, after notice and opportunity to be heard, that Counterclaimant is not adequately caring for the animals in its care. Indeed, the only finding that has been rendered by the KDA on this topic came from the Secretary when he found on April 14, 2023, that the Emergency Order should not have been issued because the evidence indicated that Counterclaimant properly cared for its animals and there was no immediate danger present.

353. Because the KDA will not suffer any economic or other damage from granting a temporary injunction, any requirement for a bond under K.S.A. § 60-905(b) should be waived by this Court.

**COUNT II – JUDICIAL REVIEW**  
**(K.S.A. § 77-601 *et seq.*)**

354. Both the Memorandum and Final Order should be reversed and/or found to have no effect on Counterclaimant's license for one or more of the reasons set forth in K.S.A. § 77-621(b), including but not limited to:

- a. The Memorandum and Final Order, even if enforceable, are unconstitutionally applied to Counterclaimant for the reasons set forth in the proceeding counts alleging they were issued in violation of Counterclaimant's constitutional rights.

- b.** The agency has acted beyond the jurisdiction conferred upon it by the legislature, as the Memorandum could not possibly determine “the legal rights, duties, privileges, immunities or other legal interests of Counterclaimant,” because that may only be done by an adjudicative order, which is the only vehicle through which agencies are allowed to “bind parties . . . and interpret statutes or regulations.” *See* K.S.A. § 77-415(b)(2)(A); 77-502. Indeed, the Memorandum itself states, “this letter does not itself legally compel Unleashed to cease conducting activities that would require licensure.” Moreover, even if the Memorandum were somehow an adjudicative order, Costanzo was ineligible to issue a final order, because she was neither an agency head nor eligible to preside over her own investigation or prosecution under K.S.A. § 77-514(h)(1)-(2).
- c.** Moreover, the Commissioner acted beyond his authority in issuing the Final Order, because he is not authorized by KPAA or any other provision of law to issue a Final Order due to the fact (a) he was not acting “on behalf of the secretary” as would be required for him to act as the “agency head” in DAH proceedings under K.S.A. § 74-5,121a thus giving him the power to issue a final order under K.S.A. § 77-526(a); and (b) he was ineligible to issue a final order regarding Counterclaimant’s license status, because he was presiding over his own investigation or prosecution under K.S.A. § 77-514(h)(1)-(2), or a proceeding arising out of the same event or transaction, *i.e.*, the Order Denying Renewal that was largely based on the mistake in the renewal application.
- d.** The Final Order was beyond the authority conferred by the law for the additional reason that, even if the Commissioner was eligible to render the Final Order, it was

rendered because of Costanzo's confidential legal or technical advice, which she was prohibited from doing by K.S.A. § 77-514(h)(1)-(2) considering she was serving in an investigatory or prosecutorial capacity in the proceeding or a proceeding arising out of the same event or transaction, *i.e.*, the Order Denying Renewal that was largely based on the mistake in the renewal application. *See* K.S.A. § 77-514(h)(1)-(2).

- e. The KDA also engaged in an unlawful procedure and failed to follow prescribed procedure, as all efforts to obtain notice an opportunity to be heard on the Final Order were denied despite the fact the Commissioner had no power to issue a Final Order under these circumstances and the Secretary was required to review the requests to provide a hearing, stay, or reconsideration, give Counterclaimant an opportunity to present briefs and potentially oral argument, and issue an order on the requests pursuant to K.S.A. § 77-527(e)-(f); K.S.A. § 77-527(a)(1)-(2). The Secretary was also required, as the agency head, to render a written order on the request for reconsideration. *See* K.S.A. § 77-529. The KDA failed in all these respects, based on the Final Order's plainly absurd allegation that Counterclaimant's license expired "by operation of law" without notice or a hearing on the matter and that no such notice and opportunity for hearing were necessary because the Final Order was somehow not a decision to "revoke, suspend, modify, annul , withdraw, refuse to renew, or amend a license" under K.S.A. § 77-512 ("Orders affecting licensure"). Clearly, an order by an agency finding that a license that would otherwise be deemed to continue under K.S.A. § 77-511(d) does not continue because of an inconsequential mistake on an application is an order

“affecting licensure,” whether you want to call it a “modification, annulment, or amendment.”

- f. For all the above reasons, the persons taking the alleged agency action were “improperly constituted as a decision-making body or subject to disqualification.”
- g. The agency has also erroneously interpreted and applied the law, because the requirement in K.S.A. § 77-511(d) for a “timely and *sufficient*” application does not require *perfection*, and what is “sufficient” cannot legally be dictated by the terms of the application form itself, which is what the agency is solely relying upon to create the duty to file the vet care form prior to submitting the application renewal form. Pursuant to statute, no agency provided form, including the application renewal form relied upon by the agency, “may give rise to any legal right or duty or be treated as authority for any standard, requirement or policy reflected therein.” *See* K.S.A. § 77-415(b)(2)(C) (emphasis added).
- h. Furthermore, regarding vet care forms, all the KPAA requires is that “a licensee program of disease control and prevention, euthanasia and routine veterinary care shall be established and maintained under the supervision of a licensed veterinarian, on a form provided by the commissioner, and shall include a documented on-site visit to the premises by the veterinarian at least once per year,” which is to be made available when requested, rather than filed, all of which was done in this case. The only regulation discussing the annual filing of any form is K.A.R. § 9-18-28(e), which requires animal shelters using pet animal foster homes to provide the foster homes with a “plan of veterinary care,” a copy of which is to “be filed annually

with the commissioner” which is not the vet care form that the agency claims was not on file.

- i. Even if these provisions could somehow deem what makes an application “sufficient,” which they do not, “annually” is defined by Webster’s only as “once a year,” i.e., at some point during the calendar year, which also was done in this case. There are no provisions in the KPAA or associated regulations that define “annually” or provide for a date in which a vet care form “expires” or requirement that the form must be filed on or before a certain date every year.
- j. Moreover, the term “sufficient” in K.S.A. § 77-511(d), the interpretation of which is solely within the realm of this Court, was not meant by the legislature to be a “gotcha” term, as the statutory section is plainly remedial in nature. The term plainly means “sufficient” to begin the process of making a license renewal determination, such as an identification of the licensee, the intended operation, and other necessary terms.
- k. To the extent any “determinations of fact” could have been made via the Final Order without notice and an opportunity for hearing, they were not supported to the appropriate standard of proof by substantial evidence when viewed in the light of the record as a whole. This will be demonstrated by both the agency’s record, as well as supplementary evidence as allowed by the Court.
- l. Finally, as the KDA has routinely allowed licensees to correct mistakes in their applications or to correct expired vet care forms, and even file the applications late, the attempt here by the Commissioner and Costanzo is to use a mistake in Counterclaimant’s application as an excuse to “determine” K.S.A. § 77-511(d) has

no application, an act that is plainly unreasonable, arbitrary, and capricious. Indeed, as set forth above and below, the alleged action is being taken against Counterclaimant in retaliation for it seeking redress for grievances and otherwise in violation of Counterclaimant's constitutional rights.

**COUNT III – DECLARATORY JUDGMENT**  
**(K.S.A. § 60-1701 *et seq.*)**

355. This Court has the power to declare the rights, status, and other legal relations of parties in contested proceedings.

356. There is a present dispute and controversy between the Plaintiff and Counterclaimant concerning whether Counterclaimant has a valid and continuing license under the terms of K.S.A. § 77-511(d) while Counterclaimant is afforded due process in its administrative appeal of the Order Denying Renewal.

357. For the reasons explained in the prior Count II, K.S.A. § 77-511(d) applies to Counterclaimant regardless of an inconsequential mistake in the renewal application, as argued by Plaintiff.

358. This court has the power to determine Counterclaimant's rights under K.S.A. § 77-511(d) without any deference to Plaintiff, the KDA, DAH, Costanzo, or the Commissioner.

359. To the extent the questions involves a mixed question of law or fact, Counterclaimant is entitled to discovery on same pursuant to K.S.A. § 60-1710.

**COUNT IV - GOVERNMENT RETALIATION FOR EXERCISING RIGHT TO ENGAGE IN COMMERCE AND FIRSTAMENDMENT RIGHTS TO FREE SPEECH, ASSOCIATION, AND TO SEEK REDRESS OF GRIEVANCES**

**Pursuant to Section 42 U.S.C. § 1983**

**(Against Commissioner, Thomason, Costanzo, Brethauer, Lancaster, Wasee, Demel, the Laues, Humphrey, Gebhart, Higdon, and Stambaugh)  
(Individual and Official Capacities)**

360. Counterclaimant engaged in the constitutionally protected activities of (a) engaging in lawful intra and interstate commerce for over a decade, including but not limited to acquiring animals from breeders to save them from their conditions; (b) seeking redress from the government for unlawful orders of the KDA; (c) engaging in free speech by speaking out about the unlawful actions and corruption of the AFI Program; (d) not associating or doing business with Poore, Gebhart, and the Laues; (e) not sharing in these people's viewpoints; and (f) competing with their economic interests.

361. These activities, which are constitutionally protected by the First and Tenth Amendments to the United States Constitution, occurred from Counterclaimant's inception through today.

362. In retaliation for the above described constitutionally protected activity, these defendants, retaliated against Counterclaimant by (a) illegally targeting Counterclaimant for revocation, emergency, and denial proceedings; (b) tortiously interfering with Counterclaimant's business relationships and contracts; (c) falsifying the results of inspections and investigations and otherwise harassing Counterclaimant; (d) defaming and conspiring with others to defame Counterclaimant in the media, online, and otherwise to the public; (e) filing false complaints, maliciously prosecuting, abusing process, and encouraging and/or conspiring with other agencies to end Counterclaimant's business; (f) causing, encouraging, and conspiring with others to file false complaints, abuse process, and maliciously prosecute Counterclaimant.

363. The actions taken were by these defendants as part of a conspiracy to permanently destroy Counterclaimant's business and reputation.

364. These retaliatory actions were substantially motivated as a response to Counterclaimant engaging in its constitutionally protected activity, as described above.

365. In engaging in the above retaliatory actions, these defendants were acting as part of a conspiracy, under color of law, and in gross and wanton disregard of Counterclaimant's constitutional rights.

366. These retaliatory actions caused Counterclaimant to suffer injuries, including but not limited reputational damages, economic damages, and incurrence of substantial attorney fees, that would chill a person of ordinary firmness from continuing to engage in the constitutionally protected activity of the type exercised by Counterclaimant.

**COUNT V – MALICIOUS PROSECUTION  
ARISING FROM NOVEMBER 2022 AND MARCH 2023 REVOCATION AND CIVIL  
PENALTY PROCEEDINGS  
Pursuant to Section 42 U.S.C. § 1983 and Common Law  
(Against Commissioner, Thomason, Costanzo, Brethauer, Lancaster, Wasee, Demel, the  
Laues, Humphrey, Gebhart, Higdon, and Stambaugh)  
(Individual and Official Capacities)**

367. These defendants procured, initiated, induced, participated in, and continued the November 2022 and March 2023 revocation and civil penalty proceedings against Counterclaimant without probable cause and in retaliation for the exercise of Counterclaimant's constitutional rights as described above.

368. The inspections and investigations allegedly supporting these proceedings knowingly, or recklessly in disregard for the truth, were based on false misrepresentations of fact and law.

369. The inspections and investigations also intentionally or recklessly omitted information which, if included, would have vitiated any probable cause for the prosecutions.

370. These defendants procured, initiated, induced, participated in, and continued the prosecutions primarily for malicious purposes, including but not limited to causing Counterclaimant's business to fail and destroy its reputation in the community.

371. In engaging in the above actions, these defendants were acting in furtherance of a conspiracy, under color of law, and in gross and wanton disregard of Counterclaimant's rights to property, privacy, association, equal protection, substantive due process, freedom to engage in lawful business, free speech, and to seek redress from the government for grievances.

372. These proceedings terminated in favor of Counterclaimant.

373. As a result of these malicious prosecutions, Counterclaimant suffered economic damages, including substantial legal costs and attorneys' fees, and reputational damage.

**COUNT VI – ABUSE OF PROCESS  
ARISING FROM NOVEMBER 2022 AND MARCH 2023 REVOCATION AND CIVIL  
PENALTY PROCEEDINGS  
Pursuant to Section 42 U.S.C. § 1983 and Common Law  
(Against Commissioner, Thomason, Costanzo, Brethauer, Lancaster, Wasee, Demel, the  
Laues, Humphrey, Gebhart, Higdon, and Stambaugh)  
(Individual and Official Capacities)**

374. Through the above-described conduct, these defendants knowingly made an illegal, improper, or perverted use of the administrative for purposes of harassing and causing undue hardship on Counterclaimant, causing the destruction of Counterclaimant's business, destroying Counterclaimant's reputation in the community, and causing Counterclaimant to stop lawfully defending itself in the public and in the administrative proceedings.

375. These defendants had an ulterior motive for their illegal, improper, or perverted use of the process, *i.e.*, harassing and causing undue hardship on Counterclaimant, causing the

destruction of Counterclaimant's business, destroying Counterclaimant's reputation in the community, and causing Counterclaimant to stop lawfully defending itself in the public and in the administrative proceedings.

376. In engaging in the above actions, these defendants were acting under color of law and in gross and wanton disregard of Counterclaimant's rights.

377. In engaging in the above actions, these defendants were acting under color of law and in gross and wanton disregard of Counterclaimant's rights to property, privacy, association, equal protection, substantive due process, freedom to engage in lawful business, free speech, and to seek redress from the government for grievances.

378. These proceedings terminated in Counterclaimant's favor.

379. As a result of these abuses of process, Counterclaimant suffered economic damages, including substantial legal costs and attorneys' fees, and reputational damage.

**COUNT VII – RETALIATORY PROSECUTION  
ARISING FROM NOVEMBER 2022 AND MARCH 2023 REVOCATION AND CIVIL  
PENALTY PROCEEDINGS  
Pursuant to Section 42 U.S.C. § 1983 and Common Law  
(Against Commissioner, Thomason, Costanzo, Brethauer, Lancaster, Wasee, Demel, the  
Laues, Humphrey, Gebhart, Higdon, and Stambaugh)  
(Individual and Official Capacities)**

380. These defendants participated in and induced the revocation and civil penalty proceedings commenced in November 2022 and 2023, as described above.

381. These officials had a retaliatory motive in participating in and inducing these prosecutions, *i.e.*, causing Counterclaimant's failure for (a) engaging in lawful commerce that did not align with the viewpoints of the Laues, Humphrey, Gebhart, , and other individual and organization animal rights' activists with both pecuniary and personal reasons for seeing

Counterclaimant's failure; (b) choosing not to associate or do business with these people; and (c) competing against their economic interests.

382. This prosecution lacked probable cause.

383. Counterclaimant's activities as described above are constitutionally protected by the First and Tenth Amendments to the United States Constitution.

384. These defendants' actions caused Counterclaimant to suffer injuries that would chill a person of ordinary firmness from continuing to engage in the constitutionally protected activities in which Counterclaimant engaged.

385. These defendants' actions were substantially motivated as a response to Counterclaimant's exercise of its rights under the First and Tenth Amendments.

386. As a result of this retaliatory prosecution, Counterclaimant suffered substantial economic damage, including incurring substantial attorneys' fees, as well as reputational damage.

**COUNT VIII – MALICIOUS PROSECUTION  
ARISING FROM MARCH 2023 EMERGENCY PROCEEDINGS  
Pursuant to Section 42 U.S.C. § 1983 and Common Law  
(Against Commissioner, Thomason, Costanzo, Brethauer, Lancaster, Wasee, the Laues,  
Humphrey, Gebhart, Higdon, and Stambaugh)  
(Individual and Official Capacities)**

387. These defendants procured, initiated, induced, participated in, and continued the March 2023 Emergency Proceedings against Counterclaimant without probable cause and in retaliation for the exercise of Counterclaimant's constitutional rights as described above.

388. The inspections and investigations allegedly supporting these proceedings knowingly, or recklessly in disregard for the truth, were based on false misrepresentations of fact and law.

389. The inspections and investigations also intentionally or recklessly omitted information which, if included, would have vitiated any probable cause for the prosecutions.

390. These defendants procured, initiated, induced, participated in, and continued the prosecutions primarily for malicious purposes, including but not limited to causing Counterclaimant's business to fail without due process of law and destroy its reputation in the community.

391. In engaging in the above actions, these defendants were acting in furtherance of a conspiracy, under color of law, and in gross and wanton disregard of Counterclaimant's rights to property, privacy, association, equal protection, substantive due process, freedom to engage in lawful business, free speech, and to seek redress from the government for grievances.

392. These proceedings terminated in favor of Counterclaimant.

393. As a result of this malicious prosecution, Counterclaimant suffered economic damages, including substantial legal costs and attorneys' fees, and reputational damage.

**COUNT IX – ABUSE OF PROCESS  
ARISING FROM MARCH 2023 EMERGENCY PROCEEDINGS  
Pursuant to Section 42 U.S.C. § 1983 and Common Law  
(Against Commissioner, Thomason, Costanzo, Brethauer, Lancaster, and Wasee, the  
Laues, Humphrey, Gebhart, Higdon, and Stambaugh)  
(Individual and Official Capacities)**

394. Through the above-described conduct, these defendants knowingly made an illegal, improper, or perverted use of the administrative for purposes of harassing and causing undue hardship on Counterclaimant, causing the destruction of Counterclaimant's business, destroying Counterclaimant's reputation in the community, and causing Counterclaimant to stop lawfully defending itself in the public and in the administrative proceedings.

395. These defendants had an ulterior motive for their illegal, improper, or perverted use of the process, *i.e.*, harassing and causing undue hardship on Counterclaimant, causing the destruction of Counterclaimant's business, destroying Counterclaimant's reputation in the

community, and causing Counterclaimant to stop lawfully defending itself in the public and in the administrative proceedings.

396. In engaging in the above actions, these defendants were acting under color of law and in gross and wanton disregard of Counterclaimant's rights.

397. In engaging in the above actions, these defendants were acting in furtherance of a conspiracy, under color of law, and in gross and wanton disregard of Counterclaimant's rights to property, privacy, equal protection, substantive due process, freedom to engage in lawful business, free speech, and to seek redress from the government for grievances.

398. These proceedings terminated in Counterclaimant's favor.

399. As a result of this abuse of process, Counterclaimant suffered economic damages, including substantial legal costs and attorneys' fees, and reputational damage.

**COUNT X – RETALIATORY PROSECUTION  
ARISING FROM MARCH 2023 EMERGENCY PROCEEDINGS  
Pursuant to Section 42 U.S.C. § 1983 and Common Law  
(Against Commissioner, Thomason, Costanzo, Brethauer, Lancaster, Wasee, the Laues,  
Humphrey, Gebhart, Higdon, and Stambaugh)  
(Individual and Official Capacities)**

400. These defendants participated in and induced the emergency proceedings commenced in March 2023, as described above.

401. These officials had a retaliatory motive in participating in and inducing these prosecutions, *i.e.*, causing Counterclaimant's failure for (a) engaging in lawful commerce that did not align with the viewpoints of the Laues, Humphrey, Gebhart,, and other individual and organizational animal rights' activists with both pecuniary and personal reasons for seeing Counterclaimant's failure; (b) choosing not to associate or do business with these people; (c) competing against their economic interests; and (d) exercising Counterclaimant's right to seek redress from the government for these defendants' unlawful actions and orders.

402. This prosecution lacked probable cause.

403. Counterclaimant's activities as described above are constitutionally protected by the First and Tenth Amendments to the United States Constitution.

404. These defendants' actions caused Counterclaimant to suffer injuries that would chill a person of ordinary firmness from continuing to engage in the constitutionally protected activities in which Counterclaimant engaged.

405. These defendants' actions were substantially motivated as a response to Counterclaimant's exercise of its rights under the First and Tenth Amendments.

406. As a result of this retaliatory prosecution, Counterclaimant suffered substantial economic damage, including incurring substantial attorneys' fees, as well as reputational damage.

**COUNT XI – VIOLATION OF EQUAL PROTECTION (CLASS OF ONE)**  
**Pursuant to Section 42 U.S.C. § 1983**  
**(Against Commissioner, Thomason, Costanzo, Brethauer, Lancaster, Wasee, Demel, the**  
**Laues, Humphrey, Gebhart, Higdon, and Stambaugh)**  
**(Individual and Official Capacities)**

407. In engaging in the above conduct, as detailed in the above Counts, and continuing through today, these defendants, under the color of law and in furtherance of a conspiracy, treated Counterclaimant differently in every material respect than they treated others who were similarly situated in violation of the Fourteenth Amendment to the United States Constitution.

408. For example, while engaged in its investigation and prosecution of Counterclaimant, the AFI Program received and ignored at least one complaint about Melissa's Second Chances.

409. These defendants targeted Counterclaimant over other similarly situated rescues and licensees to do the bidding of the Laues, Humphrey, Gebhart, and other individual and

organizational animal rights' activists that had personal and pecuniary reasons in procuring Counterclaimant's failure.

410. The difference in treatment was irrational and abusive.

411. The treatment was wholly unrelated to any legitimate state activity.

412. As a result of these abuses of process, Counterclaimant suffered economic damages, including substantial legal costs and attorneys' fees, and reputational damage.

**COUNT XII – VIOLATION OF SUBSTANTIVE DUE PROCESS**

**Pursuant to Section 42 U.S.C. § 1983**

**(Against Commissioner, Thomason, Costanzo, Brethauer, Lancaster, Wasee, Demel, the Laues, Humphrey, Gebhart, Higdon, and Stambaugh)  
(Individual and Official Capacities)**

413. These defendants' actions, as detailed in Counts I-X, were taken in furtherance of a conspiracy, under the color of law, and constituted arbitrary and capricious government action, which violated Counterclaimant's First, Tenth, and Fourteenth Amendment rights.

414. This conduct deprived Counterclaimant of its rights to property, privacy, association, equal protection, substantive due process, freedom to engage in lawful business, free speech, and to seek redress from the government for grievances.

415. Such deprivation of Counterclaimant's rights was irrational and abusive, and there was no legitimate justification for such action.

416. The conduct was so egregious as to shock the judicial conscious and/or was done with the purpose of causing harm that is unrelated to any legitimate interest.

417. As a result of these constitutional violations, Counterclaimant suffered substantial economic harm, including incurrence of substantial attorneys' fees, and reputational damage.

**COUNT XIII – GOVERNMENT DEFAMATION**

**Pursuant to Section 42 U.S.C. § 1983**

**(Against Commissioner, Thomason, Costanzo, Brethauer, Lancaster, and Wasee)  
(Official Capacities)**

418. Beginning in January 2023 and continuing through January 2024, these defendants, under the color of law and in furtherance of a conspiracy among themselves and with the Laues, Humphrey, Gebhart, Higdon, and Stambaugh, made numerous false and defamatory statements or innuendo to deliberately cause economic and reputational injury to Counterclaimant. These false statements and innuendo included but were not limited to the following:

- a. Counterclaimant was chronically “overcrowded.”
- b. Counterclaimant was so “overcrowded” that it was forced to hold animals at a “T-shirt business” as “overflow.”
- c. Counterclaimant bought puppies at “auctions” to sell them for profit.
- d. Counterclaimant euthanized animals at the Animal Shelter to make space for puppies bought at “auctions.”
- e. Counterclaimant failed to provide adequate veterinary care to the animals in its care.
- f. Counterclaimant allowed humidity levels at the Animal Shelter to breach the levels deemed acceptable by ASV Guidelines for Standards of Care in Animal Shelters.
- g. Alleged violations at the Animal Shelter affected all or an outrageously exaggerated number of animals in the facility when they in fact did not, even if violations were present.
- h. Counterclaimant failed inspections when Counterclaimant had not failed the inspections.
- i. Counterclaimant allowed animals to get wet and have roaches crawl on them in the Animal Shelter.
- j. Counterclaimant willfully violated KPAA and regulations.

k. Counterclaimant's license was revoked when in fact it had not been revoked.

l. The KDA had determined by order that Counterclaimant was not operating pursuant to a valid license.

419. The above-described statements were deliberately repeatedly made to people in the community, to other government entities, to the media through connections these defendants' private co-conspirators had with Fox 4, and on various online platforms from at on or about January 2023 through at least January 2024.

420. All these statements were and are provably false.

421. These defendants' actions were part of a conspiracy among themselves and their private co-conspirators to retaliate against Counterclaimant for engaging in constitutionally protected activity, as described above.

422. The conspiracy continues through today.

423. As a result, Counterclaimant experienced a burden that significantly altered its status as a result, including public embarrassment, being the subject of public accusations of false outrageous behavior, having its licensed status questioned, and being the subject of false and malicious prosecutions, retaliatory prosecutions, and abuses of processes.

424. These false and defamatory statements also caused Counterclaimant damage to its professional, public, and business reputation, and resulted in a loss of liberty and property in violation of Counterclaimant's constitutional rights.

425. As a result of this defamation, Counterclaimant suffered substantial economic damage, including incurrence of substantial attorneys' fees, as well as reputational damage.

**COUNT XIV – VIOLATION OF RIGHT OF PRIVACY**  
**Pursuant to Section 42 U.S.C. § 1983**  
**(Against Commissioner, Thomason, Costanzo, Brethauer, Lancaster, and Wasee)**  
**(Official Capacities)**

426. In conspiring with the Laues, Humphrey, Gebhart, Higdon, and Stambaugh to spread false and defamatory statements about Counterclaimant as described above, these defendants violated Counterclaimant's right to privacy under the color of law.

427. This was done maliciously and for the purpose of placing Counterclaimant before the public in a false light for purposes of furthering these defendants' and their private co-conspirators' effort to discredit Counterclaimant, cause it economic and reputational harm, and cause its economic failure in retaliation for Counterclaimant's constitutionally protected activity described above.

428. The false light in which Counterclaimant was placed would be highly offensive to a reasonable person.

429. These defendants had knowledge of the falsity of their statements and/or acted in reckless disregard as to the falsity of the publicized statements and the false light in which Counterclaimant would be placed.

430. These actions were part of a conspiracy among these defendants and their private co-conspirators to retaliate against Counterclaimant for engaging in constitutionally protected activity, as described above.

431. These defendants continued with this conduct through at least January 2024.

432. Upon information and belief, these defendants are continuing to spread these false and defamatory statements through the community even today.

433. These actions were and are part of a conspiracy among these defendants to retaliate against Counterclaimant for exercising its constitutional rights as described above.

434. As a result of these constitutional violations, Counterclaimant suffered substantial economic damages, including incurrence of substantial legal costs and attorneys' fees, and reputational damage.

**COUNT XV – FAILURE TO INTERVENE**  
**Pursuant to Section 42 U.S.C. § 1983**  
**(Against Commissioner, Thomason, Costanzo, Brethauer, Lancaster, Wasee, Demel,**  
**Kramer, and Secretary Beam)**  
**(Individual and Official Capacities)**

435. Through the above-described conduct, as detailed in Counts I through XIII, government officers were violating Counterclaimant's constitutional rights.

436. These defendants were all government actors who observed or had reason to know that these constitutional violations were occurring.

437. These defendants always had a realistic opportunity to intervene but failed to do so in nearly all occasions.

438. As a result of these failures to intervene, Counterclaimant suffered substantial economic harm, including the incurrence of substantial legal costs and attorneys' fees, and reputational damage.

**COUNT XVI – TORTIOUS INTERFERENCE WITH CONTRACTS AND**  
**RELATIONSHIPS**  
**Pursuant to Kansas Common Law**  
**(Against Thomason, Costanzo, Brethauer)**  
**(Individual and Official Capacities)**

439. Prior to November 2022, Counterclaimant had business relationships and agreements with many business partners, including several municipalities, donor sources, and other shelters and rescues that allowed Counterclaimant to operate its \$2.3 million business.

440. These defendants knew of the existence of these contracts.

441. These defendants intentionally procured the breach of these business relationships and contracts without justification, especially considering Counterclaimant has never been found guilty of any of the false allegations charged by these defendants and their co-defendants.

442. Counterclaimant suffered economic damages because of this tortious interference.

**COUNT XVII – CIVIL CONSPIRACY**  
**Pursuant to Kansas Common Law and 42 U.S.C. § 1985**  
**(Against Commissioner, Thomason, Costanzo, Brethauer, Lancaster, Wasee, Demel, the**  
**Laues, Humphrey, Gebhart, Higdon, and Stambaugh)**

443. These defendants, in committing the acts outlined in the prior Counts, acted maliciously and in coordination with the common purpose and agreement of attempting secure Counterclaimant's failure as a business in retaliation for the constitutionally protected activity described above.

444. These defendants also acted in agreement and coordination with each other, including those with personal or pecuniary reasons in wanting Counterclaimant's business to fail.

445. The primary purpose of the conspiracy was to end Counterclaimant's business for Counterclaimant engaging in the constitutionally protected activity described above.

446. The actions of the defendants constitute a conspiracy, making them all liable for the actions of each other as more specifically described in the prior Counts.

447. Moreover, all these defendants, in committing the above acts, were acting under the color of state law, which proximately caused Counterclaimant's injuries described herein.

448. Moreover, the acts of these defendants were engaged in as part of a conspiracy involving the head of the DAH, as well as the Director and Lawyer of the AFI Program.

449. For this and the other reasons described above, these defendants' actions were attributable to the enforcement of agency practice, policy, or custom.

**COUNT XVIII – *MONELL* LIABILITY**  
**Pursuant to 42 U.S.C. § 1983**  
**(Against State of Kansas, the KDA, and DAH)**

450. It was the policy, practice, and/or custom of the Commissioner, Secretary, KDA, DAH, and State of Kansas to allow undue influence over the KDA, DAH, and the AFI Program by wealthy individual and organizational animal rights activists with personal or pecuniary interests in controlling the pet rescue industry, including the Laues and Humphrey. .

451. Moreover, it was the policy, practice, and/or custom of the Commissioner, Secretary, KDA, DAH, and State of Kansas to not properly train, supervise, or monitor the employees of the KDA and DAH, including the AFI Program, such that the employees felt they could engage in the above-described conduct without being investigated or sanctioned.

452. In addition, the conduct described above was engaged in by policy makers with final authority in the AFI Program, DAH, KDA, and the State of Kansas, who all also ratified or directed the conduct of their subordinate co-defendants, to whom authority to engage in the conduct had been directed and was subject to these policy makers' review.

453. In engaging in the above actions, all Defendants were acting under color of law and in gross and wanton disregard of Counterclaimant's constitutional rights.

454. As a result of this conduct, Counterclaimant suffered substantial economic damages, including incurring substantial legal costs and attorneys' fees, and reputational damage.

**PRAYER FOR RELIEF**

WHEREFORE, Counterclaimant respectfully requests that the Court enter judgment in favor of Counterclaimant and against Defendants for (a) a temporary stay or injunction enjoining the invalid March 1, 2024, order from having any force or effect during the pendency of the proceedings for judicial review and declaratory judgment requested herein; (b) a finding upon judicial review that the March 1, 2024, order is void *ab initio* as *ultra vires* and for many other

reasons the Court can grant such relief under K.S.A. § 77-621; (c) declaratory judgment that K.S.A. § 77-511(d) will apply during the license renewal proceedings; and (d) damages under 42 § U.S.C. 1983, 42 § U.S.C. 1985, and common law in an amount exceeding twenty-five million dollars (\$25,000,000.00), plus all costs, expenses, and fees, including reasonable attorneys' fees; and for all other relief deemed just and equitable by this Court.

Respectfully submitted,

**GATES SHIELDS FERGUSON  
SWALL HAMMOND, P.A.**



By: \_\_\_\_\_

Court T. Kennedy KS # 22067  
10990 Quivira; Suite 200  
Overland Park, KS 66210-1284  
Telephone: (913) 661-0222  
Facsimile: (913) 491-6398  
[ckennedy@gatesshields.com](mailto:ckennedy@gatesshields.com)

and

**SLOAN, EISENBARTH, GLASSMAN,  
McENTIRE & JARBOE, L.L.C.**

By: /s/Tai J. Vokins

Tai "Ty" J. Vokins  
Sloan, Eisenbarth, Glassman, McEntire &  
Jarboe L.L.C.  
831 Massachusetts, Suite B  
PO Box 766  
Lawrence, KS 66044  
Phone: 785-842-6311 Ext.306  
Fax: 785-842-6312  
[tvokins@sloanlawfirm.com](mailto:tvokins@sloanlawfirm.com)


**ATTORNEYS FOR  
COUNTERCLAIMANT**

VERIFICATION


STATE OF KANSAS        )  
                                  )  
COUNTY OF JOHNSON    )        SS:

Danielle Reno, being of lawful age and first duly sworn upon her oath, deposes and states:

That she is the CEO of Unleashed Pet Rescue and Adoption Inc.; that he has read the above and foregoing; and that the statements contained therein are full, true, and correct.

  
\_\_\_\_\_  
Danielle Reno

SUBSCRIBED AND SWORN TO before me, a notary public, this 3rd day of April, 2024, by Court T. Kennedy.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 9-26-2024

**COURT T. KENNEDY**  
Notary Public-State of Kansas  
My Appt. Exp. 9-26-2024