

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE HOME STRETCH DOG HAVEN, INC.
and JOAN SAMPLE,

Plaintiffs

v.

ANIMAL CARE AND CONTROL OF NEW YORK
CITY, INC. dba ANIMAL CARE CENTER OF NYC
and RISA WEINSTOCK, in her official capacity,
the CITY OF NEW YORK and MAYOR ERIC
ADAMS, in his official capacity

Defendants.

CIVIL ACTION NO: 23-8906

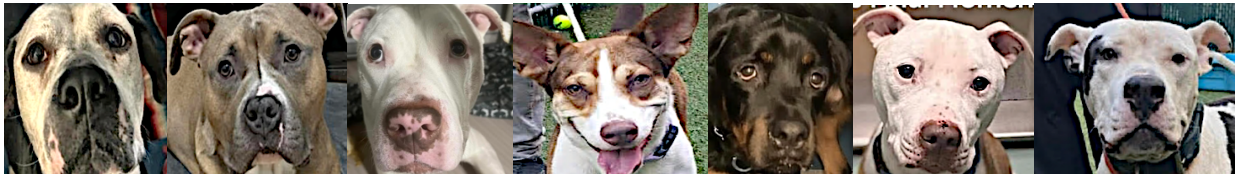
VERIFIED COMPLAINT
WITH DECLARATORY
& INJUNCTIVE RELIEF

INTRODUCTION

These are the faces of 32 lovable dogs in New York City:



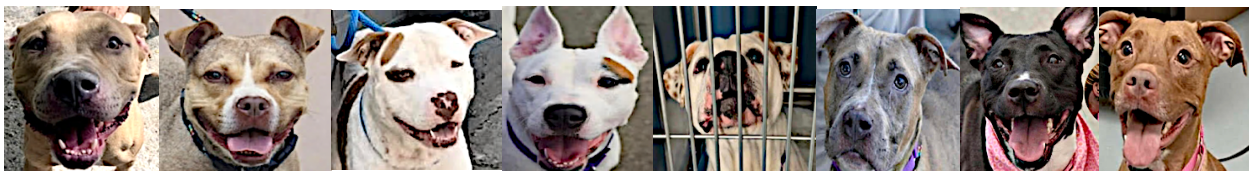
Gizelle #179138 DOD 9-1-23 Ice #180313 DOD 9-1-23 Max Keeble #179967 DOD 9-1-23 Barrett #180884 DOD 9-2-23. Archer #180895. DOD 9/5/23. Poe #178756 DOD 9-5-23. Cash #179821 DOD 9/8/23



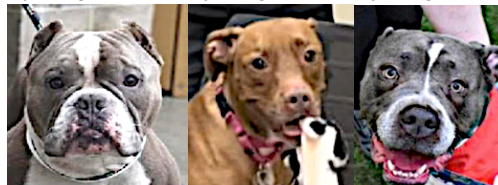
Chaos #181010 DOD 9/8/23 Astro #179308 DOD 9/9/23 Simpson #181486 DOD 9/10/23 Smitty #181335 DOD 9/13/23 Barney #181531 DOD 9/13/23. Felix #177425 DOD 9/13/23. McFlurries #181536 DOD 9/13/2



Scribble #182082 DOD 9/13/23 Bandido #181465 DOD 9/15/23 Banana Pudding #18116 DOD 9/17/23 Royal #182070 DOD 9/17/2. Buddha #168624 DOD 9/20/23 Melon #179735 DOD 9/20/23 Onyx #180507 DOD 9/20/23



Pee Wee #181983 DOD 9/22/23. Sunchip #181660 DOD 9/22/23. Connor #182101 DOD 9/24/23 Penelope #179352 DOD 9/24/23 Spot #182594 DOD 9/24/23. Velvet #182227 DOD 9/24/23. Milly #174028 DOD 9/27/23. Rudy #183028 DOD 9/27/23



Verde #183028 DOD 9/27/23. Buggy #179822 DOD 9/29/23. Obi #177241 DOD 9/30/23

They are the faces of the last days of 32 healthy, adoptable and loving dogs named and numbered then abused, drugged and killed for no reason in September, 2023¹ by Defendant Animal Care and Control of New York City, Inc. (“ACC”), a shelter funded and managed by the City to perform the City’s responsibilities of animal welfare. There are thousands more dogs just like these faces - unwittingly waiting to be killed by the ACC. None of them want to die.

Plaintiff Home Stretch is an animal rescue and Plaintiff Sample is a New York City taxpayer and animal advocate. This complaint is the voice for the voiceless thousands of dogs and cats mercilessly killed each year by the ACC that must provide them shelter, care and find them loving homes through adoptions. In fact, in 2022, the ACC listed 1,0363 dogs killed for no reason,² a number believed to be much higher. The City’s own 2015 and 2020 audits found dogs abused in small cages in dark, windowless rooms with poor ventilation, high humidity and rampant pneumonia where on intake dogs are sedated with the anti-depressant Trazodone indefinitely, then falsely labelled as behavior problems as an excuse for the ACC to kill them. The financial abuse exists as well as over \$24 Million is taken in annually, yet \$12 Million of that inexplicably goes to salaries rather than for the welfare of the dogs.³

The ACC, controlled and funded by the City, is a state actor subject to respecting the constitution, but to keep its laundry-list of abuses secret it violates the First Amendment by having animal rescues sign contracts prohibiting criticism of these conditions and deleting posts on social media criticizing its animal abuse, as Plaintiffs experienced. To the ACC's dismay, Plaintiffs, like all citizens, not only have a First Amendment right to speak out against government policies and government actors with which they disagree, but they have a

¹ DOD below each picture means dates of death

² See https://www.nycacc.org/sites/default/files/pdfs/stats/2022/ACC_2022_EOY_SAC.pdf

³ See <https://comptroller.nyc.gov/wp-content/uploads/documents/MH19-068A.pdf>

constitutionally protected right to demand that the government correct the wrongs that are identified, regardless of whether or not that actor is offended, insulted, or feels the comment is inappropriate. The Supreme Court has ruled “speech on public issues occupies the ‘highest rung of the hierarchy of First Amendment values,’ and is entitled to special protection.” *Connick v. Myers*, 461 U.S. 138, 145 (1983). Such speech lies “at the heart of the First Amendment’s protection.” *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 776 (1978).

The First Amendment exists exactly to address Plaintiffs’ grievances in this complaint against the drugging, abusing and killing of innocent dogs and cats who cannot speak for themselves. Moreover, by this complaint, changes in the law can be made. Indeed, Holland, a province in the Netherlands of over 6-Million people and the size of Maryland, has zero stray and homeless dogs and zero killings because of its animal welfare program. There is no reason why our City cannot implement the same program. This will give shelter animals a chance to be adopted, reduce shelter intake and population to manageable levels and the over 17 Million dollars of taxpayer money used to fund the dysfunctional ACC can be used on other programs such as education or repairs to the City’s infrastructure.

To protect our valuable First Amendment rights and for the animals’ lives at stake, Plaintiffs seek a declaratory judgment by this court finding that the ACC violates the First Amendment’s guarantee of free speech by (a) making animal rescues sign contracts prohibiting public criticism of the ACC and (b) deleting posts criticizing the ACC on social media.

JURISDICTION AND VENUE

1. Jurisdiction exists pursuant to (a) 28 U.S.C. §1331 as this case involves the First Amendment and (b) 28 U.S.C. §§2201–2202 for declaratory relief regarding defendant’s unconstitutional non-disclosure agreements and removal of criticism from social media.

2. Venue is proper under 28 U.S.C. §1391(b)(1) and (2). Defendant resides in this judicial district and a substantial part of the events giving rise to this claim occurred in this district.

PARTIES

3. At all relevant times herein, Plaintiff Home Stretch Dog Haven, Inc. (“Home Stretch”) was and is a registered 501(c)(3) not-for-profit charity formed under the laws of the State of New York with a principle office in Putnam County. Its charitable mission is to rescue homeless and abandoned dogs from shelters.

4. At all relevant times herein, Plaintiff Joan Sample was and is an individual domiciled in Queens County. She is a New York City taxpayer and animal advocate since 2015 who appears at animal rights meetings in the City, including open board meetings held by Defendant ACC and she testified before the City Council. A portion of her city taxes fund the operations of the ACC.

5. At all relevant times herein, Defendant Animal Care and Control of New York City, Inc. (the “ACC”) was and is a registered 501(c)(3) non-profit charity with a principal office at 11 Park Place, New York City. Its charitable mission is “to end animal homelessness in NYC”, as stated on their IRS Form 990. Pursuant to a contract with the City, it is funded by private donations City taxpayer money to operate the City’s municipal animal shelters. Defendant Risa Weinstock is named in her official capacity as president of the ACC, and not as an individual defendant.

6. Defendant City of New York is a municipally chartered organization under the City of New York City Charter. Defendant Mayor Eric Adams is the chief executive officer and elected official responsible for all contracts with the City, including the contract between its Department of Health and Mental Hygiene and the ACC, dated September 1, 2018. He is named in his official capacity as mayor and not individually.

NOTICE OF CLAIM

7. Plaintiffs challenge the constitutionality of Defendant’s policy of including a non-disparagement clause in its New Hope Program contracts with dog rescues and its policy of removing criticism of its operations on social media. Because these policies are a matter of public interest and this complaint is filed to vindicate a public interest, then Plaintiffs are exempt from serving a notice of claim on the defendants, pursuant to NY General Municipal Law § 50-e.

FACTUAL ALLEGATIONS

THE ACC CONTRACT PROVES IT IS A GOVERNMENT ENTITY FUNDED AND CONTROLLED BY THE CITY

8. To accomplish New York City’s responsibility to save and rehome homeless and abandoned animals in all five boroughs, the City and its Department of Health and Mental Hygiene (“DOH”) executed a contract with the ACC in 1995, and extended it on September 1, 2018 for a 34-year term to 2052, where taxpayer funds are paid to the ACC “to assist the Department [DOH] to carry out its animal care and control responsibilities”, while the City controls, manages and oversees its programs, advertising and donations. **Exhibit A**, p. 14-the Contract.

9. The Contract provides over a billion dollars of taxpayer funds, \$1,487,966,471 to be exact for 2022, for the ACC to provide and operate “facilities to shelter, hold, examine, test, treat, spay, neuter, place for adoption, assure humane care and disposition of and otherwise control animals which ACC or the city has seized or accepted for shelter.” Exh A, p 2.

10. Contract page 4, item 4, defines an Animal Rescue Group as a duly incorporated not-for-profit organization that finds homes for unwanted animals or “sanctuaries” approved by the DOH to take animals that are prohibited as pets under the Health Code of the City of New York.

11. Prohibited pets are dogs with behavior issues that sanctuaries should be equipped with behaviorists and trainers to care for these dogs.

12. Contract pages 15-17 confirm that the City control of the ACC extend to it prohibiting the ACC from accepting gifts or donations from a “Banned Private Entity” defined by the City, and the ACC must operate under the City’s Program Services and advertising policy. Contract page 17 further states the City must approve the ACC’s corporate offices, their rent is paid by the DOH and the DOH must be notified in advance of all ACC Board of Director meetings.

13. Contract pages 23-24 state that all revenue paid by the DOH to the ACC shall be used for programs agreed to by the DOH and the ACC, and that revenue includes salaries of ACC employees, which the DOH shall include annual cost of living increases.

14. Contract page 41 requires the ACC to maintain a Fidelity Bond naming the DOH and the City as insureds for fraudulent or dishonest acts by the ACC.

15. Pages 41-42 of the Contract direct the ACC to submit monthly reports to the DOH to prove compliance with Chapter 8, Administrative Code of the City of New York, Section 17-805, which requires the ACC to annually provide the City with a list of quantity and services performed, including “number, species, type, and origin of animals, numbers of animals adopted, transferred to animal rescue groups, euthanized, spayed or neutered, number and type of activities, length of stay, holding cases, dog licensing activities and other specific information related to the type and quantity of services provided during the report period.”

16. Contract page 36 requires all vehicles acquired by the ACC must be labeled “Financed by the City of New York and Subject to a First Priority Lien in its Favor”, and page 40 confirms that the City and ACC control a bank account together where Contract funds are maintained.

CONTRACT “EXHIBIT A” MANDATES CERTAIN CARE

17. Contract Exhibit A, page 2, mandates the ACC use properly trained employees and the DOH may augment such expertise by providing training to the ACC, page 6 mandates professional

veterinary care provided to the animals.

18. Page 4 mandates compliance with Federal, State and City laws and that proper ventilation temperature and lighting is provided as well as sufficient space in kennels for animals to stand, turn around, lie down with its limbs outstretched and sit, sleep and eat away from where they defecate and urinate. Page 4 mandates holding periods of the animals in compliance with the law.

19. Page 7 requires the ACC to provide humane for the animals there in accordance with the law, and use its best efforts to prevent the spread of communicable diseases to humans and animals, to quarantine sick animals and have adequate medical staff to care for the animals' medical needs and pain management. The DOH controls this aspect of the ACC as it shall review and approve all protocols for animal care.

20. Pages 7-8 require a behavioral assessment of each animal the ACC places for adoption. An animal will not be available for adoption when either the ACC or the DOH determine so. Then only with the approval of the DOH can that animal be adopted by a sanctuary or similar facility.

THE ACC SPENDS THE MAJORITY OF ITS \$24 MILLION DOLLAR ANNUAL INCOME ON HIGH SALARIES AND EXPENSIVE OFFICES, AND LITTLE GOES TO THE ANIMALS WELFARE

21. The ACC's Consolidated Financial Statements for 2022 and 2021, page 7, (the "Statement") lists the City as its primary source of funding for staff salaries and administrative expenses related to the contract services. **Exhibit B.**

22. Page 4 of the Statement shows the majority of its \$22,543,458.00 revenue consists of \$17,909,144.00 from the City in 2022, and page 5, at "Health and Welfare of Animals", lists \$12,860,742.00 as "Personnel Service Expenses" that is actually salaries, comprised of over \$9 Million Dollars in Salaries and over \$3 Million Dollars in Payroll Taxes and Fringe Benefits for management and employees.

23. The Statement shows little of the ACC's \$22,543,458 income goes to the welfare of the animals as over half of it, over \$12 Million Dollars, goes to its management and other salaries.

24. In 2020, Defendant ACC filed a similar tax return showing over \$21 Million Dollars in revenue of which the majority of that, over \$15 Million Dollars, went to salaries and not to the animals. **Exhibit C.** That tax return shows similar numbers for the year prior at lines 12 and 15.

25. The tax filings and Statement are vague, with items such as Occupancy at \$1,555,945 which may or may not be rent and \$512,227 of unidentified Facility Expenses. An understanding of what is actually paid for the welfare of the animals requires an audit.

**IN 2015 AND 2020, THE CITY COMPTROLLER FOUND
SERIOUS HEALTH AND FINANCIAL ABUSES AT THE ACC**

26. The City cannot deny the abuse at the ACC as its City Comptroller on April 17, 2015, issued a financial audit of the ACC finding fiscal irresponsibility leading to animal abuse at the ACC, including the ACC using expired medications for the animals, lacking oversight of controlled substances, using a poor ventilation system that makes the animals sick, and having overcrowded conditions with dogs locked in small cages in dark, windowless hallways. **Exhibit D.**

27. With the millions of dollars in income meant for the animals' welfare, the Audit found that ACC comes with an expensive Park Avenue office for its President, Risa Weinstock, and other management when rent in one of the other boroughs would be far less to allow money to be spent for the welfare of the animals rather than the posh lifestyle of the employees.

28. The Audit found that the ACC failed to utilize proper timekeeping system for employees and questionable corporate credit card charges existed. Audit page 15 found the ACC claimed it paid \$330,000 for dog and cat food and supplies in 2013, but no accounting of that existed.

29. Audit pictures show the dark, windowless rooms without proper ventilation where dogs are locked in small cages on top of each other with peeling paint falling into their cages, as follows:

Peeling Paint Above Kennels Located In the Adoption Room at the Staten Island Shelter



Kennels Located in Hallways of the Manhattan Shelter Due to Overcrowded Conditions



Kennels Located in Hallways of the Manhattan Shelter Due to Overcrowded Conditions



30. In 2020, a second audit revealed the same problems at the ACC, including peeling paint over the dog kennels, unacceptable humidity levels, noise that stresses the animals, inaccurate records for controlled substances and animals not receiving medical care while the City and DOH failed to do their job of assessing the ACC’s compliance with its Contract with the City. **Exhibit E**

TO CONCEAL ITS FINANCIAL AND ANIMAL ABUSES FROM THE PUBLIC, THE ACC UNCONSTITUTIONALLY PROHIBITS CRITICISM

THE NEW HOPE PROGRAM CONTRACT

31. The ACC operates a “New Hope Program” that contracts with registered 501(c)(3) organizations claiming they are animal rescues, which the ACC calls “partners” that can reserve dogs at the ACC to take custody of them for the purpose of finding them a loving home.

32. To qualify as a partner, the ACC requires (a) a copy of the 501(c)(3) status paper, (b) a primary and emergency veterinarian reference, (c) three professional references, (d) a list of boarding facilities and trainers and contact information, used by the partner, (e) a list of shelters the proposed partner has pulled animals from and (f) a copy of the organization’s adoption application and agreement. see <https://www.nycacc.org/get-involved/new-hope> .

33. The New Hope Program has its partners sign a contract that, at page 7, requires the ACC to conduct Quality Assurance audits afterwards and that the partners abide by a code of conduct to foster a positive relationship with the community **Exhibit F**.

34. The New Hope Program’s website lists some 304 rescues as its partners, alphabetically from “2000 Spays and Neuters” to “Zion’s Mission Animal Rescue”.⁴

35. Plaintiffs complain about the New Hope Program’s failure to inspect rescues and sanctuaries after the partner is accepted into the program. The ACC fails to check whether the paperwork is valid years later or if a partner has animal abuse complaints against it or their purported sanctuaries are compliant with the ACC Contract terms at pages 4 and 7. Such failures are exemplified with by its partner Rescue Dogs Rescue Soldiers, explained further below.

36. Furthermore, the list of 304 New Hope partners on the ACC’s website is meant to deceive the public as if that program is successful with so many partners when it is not because the majority of rescues listed are not active or refuse to pull from the ACC because of its abuses and the ACC creates sick dogs with pneumonia and other respiratory diseases.

37. In fact, the ACC’s Emergency Placement Dogs charts for 2021-2023 show the same handful of rescues pulling dogs from the ACC, and nothing close to even twenty rescues are involved, no less anything close to the 304 the ACC lists.⁵

THE UNCONSTITUTIONAL NEW HOPE PARTNERS CONTRACT IS SIGNED BY PLAINTIFF HOME STRETCH, AS ALL RESCUES MUST SIGN

38. Every rescue must sign a New Hope Agreement with Defendant that has a non-disparagement clause prohibiting speech criticizing ACC that:

”...unless required to do so by legal process, [the rescue] will not make any disparaging statements or representations, either directly or indirectly, whether orally or in writing, to any person whatsoever, about ACC or, unless directly to ACC, other New Hope Partners, or ACC clients, employees and volunteers. For purposes of this paragraph, a disparaging statement or representation is any communication which, if publicized to another, would cause or tend to cause the recipient of the communication to question the business condition, integrity, competence, good character, or product quality of the person or entity to whom the communication relates.” **Exh F**, p. 3.

⁴ <https://www.nycacc.org/get-involved/new-hope/nhpartners>

⁵ at <https://www.nycacc.org/EmergencyPlacementOutcomes>

39. That non-disparagement clause is meant to conceal the ACC's animal and financial abuses from the public.

40. On January 26, 2021, Plaintiff Home Stretch, by president Gretchen Fickeisen (now known as Gretchen Wade) signed the New Hope Agreement. **Exh F**. In 2021, Home Stretch pulled about 64 dogs from the ACC to place in loving homes for permanent adoption.⁶

41. During Home Stretch's nearly one year experience with the ACC, it discovered ongoing animal abuse at the ACC, mismanagement and other violations of the law, but Home Stretch was prohibited by the non-disparagement clause to speak out publicly about these abuses.

42. Plaintiff Home Stretch complained to the ACC that nearly every dog that arrived at the rescue was drugged with Trazodone, and some dogs appeared to be under anesthesia. For example, the ACC medical records of Buscemi and Aaravos, dogs pulled by Plaintiff, and of Bruckner, pulled by another rescue, show that on intake or soon after the ACC drugs the dogs with the sedative Trazodone "indefinitely". **Exhibits G (top of page 3), H (see p 1), I (p 1)**.

43. Plaintiff Home Stretch also complained that dogs arrived to the ACC healthy then soon suffered respiratory illnesses of kennel cough exploding into pneumonia where doxycycline and other medications are administered on top of the Trazodone. For example, Buscemi's medicals show he arrived healthy on September 12, 2021 and by September 18 he had CIRDC, a respiratory infection, sent to isolation and on Doxycycline for 10 days. Exh G, p. 5. Aaravos' medicals show he arrived July 3, 2021 and by July 15 he had CIRDC, sent to isolation and put on Doxycycline.

44. Home Stretch complained that dogs were not neutered before sending them to the rescue, the shelter's poor ventilation system caused respiratory illnesses, the ACC improperly labeled dogs as behavior problems to kill what are actually healthy and adoptable dogs, the staff was not

⁶ These statistics come from <https://www.nycacc.org/EmergencyPlacementOutcomes>

trained properly, and the ACC refused proper care, attention and medical needs for dogs. As for transport, the ACC chastised Home Stretch's transporter for allowing dogs time to urinate and defecate before entering the car for an over two-hour drive because the ACC insisted dogs must urinate and defecate in their kennel and stay in such dirty kennels the entire transport. Home Stretch also complained about ACC's own transporters abusing the dogs in front of its adopters.

45. Soon after Home Stretch's criticisms, its president Gretchen received a call from another New Hope partner informing that she had inside information from the ACC that they will ban Home Stretch because it worked with a man the ACC despised because he publicly criticizes it.

46. Soon after the complaints and that call, on November 21, 2021 the ACC retaliated against Home Stretch's complaints by banning it from the New Hope Program. An ACC employee later confirmed by phone that it did not want the rescue associating with the man who criticized it.

47. The ban was unlawfully based on an unconstitutional pretext, and absurdly undermined the ACC's mission to humanely care for dogs under its Contract with the City as the ACC next killed hundreds of dogs that Home Stretch could have saved that other New Hope partners declined.

48. Plaintiff Home Stretch suffered damages related to the unconstitutional violations and reputational and monetary losses to the rescue as the ban was public and was removed from the ACC's list of New Hope partners, making it appear unworthy as a rescue when it was not.

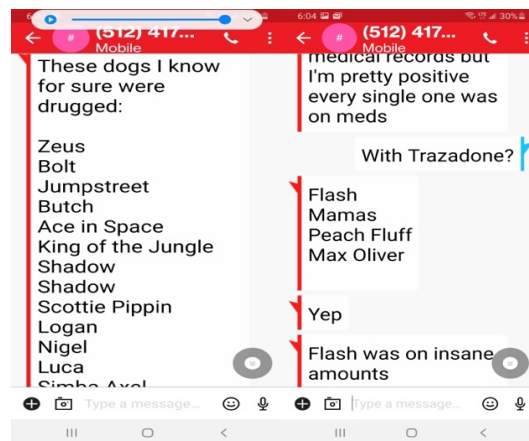
49. Moreover, the ACC's retaliation against Home Stretch is more apparent considering that it permits its other rescue partners to violate its Contract with the DOH and their New Hope Contract by violating laws, under investigation for animal abuse and purporting to be a sanctuary when they are not, such as the case of Rescue Dogs detailed further below.

**OTHER RESCUES ARE RETALIATED AGAINST BY THE ACC
WHEN SIMILAR COMPLAINTS AS HOME STRETCH ARE MADE**

50. Like Home Stretch, on August 26, 2022, Layla's Heart Ranch & Rescue president Katie

Johnson signed the same contract to become a New Hope partner. **Exhibit J.** Layla's pulled over 60 dogs in 2022 and 24 in 2023, a total of over 84 dogs, until it was banned.

51. On September 25, 2023, Johnson texted Plaintiff's counsel that many dogs pulled from the ACC were drugged with Trazodone, some on "insane amounts", see below:



52. After over a year as a partner with the ACC, Johnson also complained of the sedation and abuse of the dogs and received the same threatening call from the same rescue that called Home Stretch, now threatening that Layla's will be banned because it associated with the same man that the ACC despised because of his criticisms of it.

53. Like Home Stretch, soon after Layla's complaints of animal abuse at the ACC it was banned when Layla's could have pulled hundreds of dogs the ACC killed and continues to kill that other rescues decline to save.

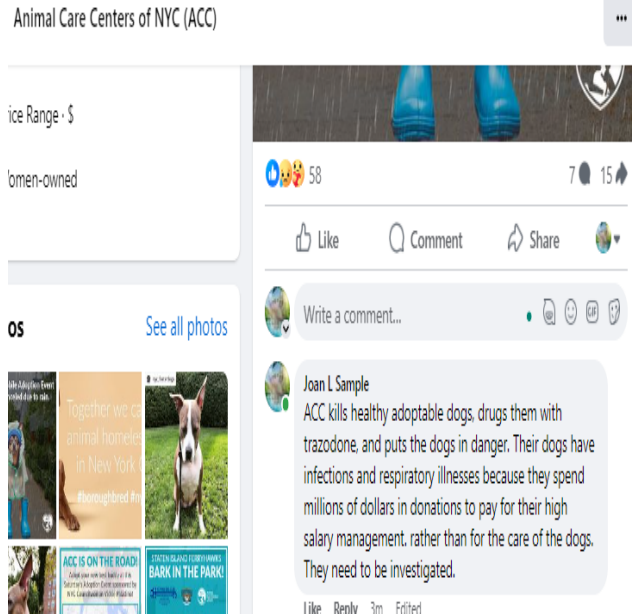
54. The ACC's bans because of criticism of it are counterintuitive to its mission to save dogs as stated in its Contract with the City and its not-for-profit charity filings with the State of New York.

UNCONSTITUTIONAL SOCIAL MEDIA RESTRICTIONS

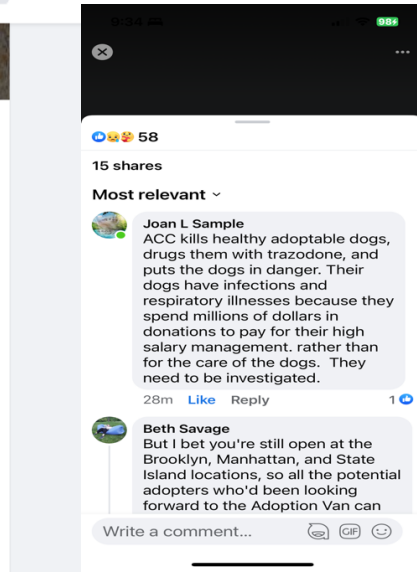
55. Plaintiff Sample also experienced restrictions upon her free speech. Outraged at the ACC's killing and abuse of dogs, she posted her criticisms of the ACC on its Facebook page at <https://www.facebook.com/NYCACC> under a September 22, 2023 post of the ACC and above a

reply post of a “Beth Savage”, where Plaintiff stated:

“ACC kills healthy adoptable dogs, drugs them with trazodone, and puts the dogs in danger. Their dogs have infections and respiratory illnesses because they spend millions of dollars in donations for their high salary management, rather than for the care of the dogs. They need to be investigated”, as shown in the below screen shots:



9/24/23 Screenshot from Plaintiff's Computer

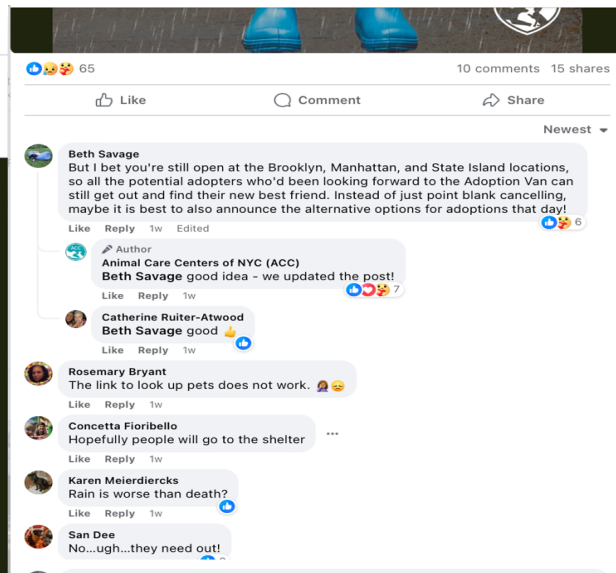


9/25/23 Screenshot from Plaintiff's Phone

56. Plaintiff Sample discovered her post was hidden from public view as the October 5, 2023 screenshot below shows it does not appear above “Beth Savage” then or before October 5:



10/5/23 Top of ACC Post



10/5/23 Reply Posts Under it

57. Upon information and belief, Defendant ACC, as the administrator of its Facebook page, moderates comments by filtering and deleting comments criticizing the ACC, such as posts using words like “kill” as Plaintiff Sample’s did. This is known as “keyword blocking”, which is a list of certain words that will automatically hide from public view any comments using such words. Page administrators may also block individual comments by “hiding” or “deleting” them.

58. The user whose comment is blocked, hidden or deleted is not notified of these moderation actions. Usually, as in Plaintiff Sample’s case, the user can see her comments but does not know it is blocked from the public so that person does not know their rights are being violated as the purpose of the comment is to criticize wrongdoing and bring attention of it to the public.

59. By Defendant ACC using these moderation features experienced by Plaintiff Sample, they are excluding particular viewpoints, types of content, or specific individuals from public discussion on its Facebook page in violation of the First Amendment.

**THE ACC PROMOTES PARTNERS WHO ARE BAD ACTORS,
USING THE DOGS AS RANSOM TO QUASH COMPLAINTS**

60. Plaintiffs further complain of the ACC’s failure to properly conduct its New Hope Program and its abuse of the program and dogs to benefit bad actors and for its own self-interests to prevent lawsuits against it.

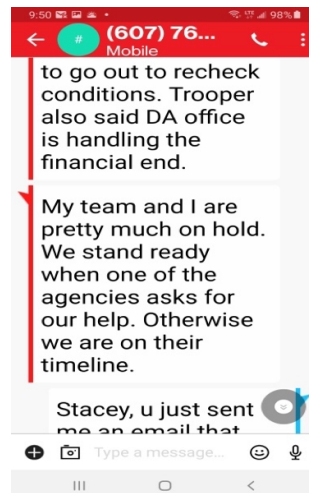
61. A recent example of such abuses involves its partner Rescue Dogs Rescue Soldiers and owner Elizabeth Keller purporting to be a “sanctuary”. Upon information and belief, the ACC has not inspected Keller’s documents or facility that she claims is a sanctuary yet it repeatedly sends dogs to Keller who fails to account to the public for their whereabouts when asked and she unlawfully administers Doxycycline to dogs without a veterinarian prescription as she admits in a late August, 2023 Facebook video about an ACC dog named Bruckner. There are also recent complaints of abuse against Keller by Stacie Haines, Executive Director of the Susquehanna

SPCA in Otsego New York and president of the New York State Animal Protection Federation.

62. On September 13, 2023, in an over half hour recorded and transcribed phone call between Plaintiffs' counsel and Haines as part of the investigation for this complaint, Haines stated that she made animal abuse complaints against Keller, that Keller is a "hoarder" and unstable and she witnessed dogs "in very small cages and in crates" without any quality of life and contrary to the "sanctuary" setting Keller advertises for donations.

63. Haines stated that in January, 2023 she saw five dogs abused by Keller keeping them in an old water bottling facility five miles in the woods, without running water or heat and no one caring for them, and that Keller disappeared after taking thousands of dollars from a female donor paid to build barns for special needs dogs that Keller never built.

64. On September 14, 2023, Haines informed Plaintiffs' counsel that the SPCA's vet tech and law enforcement were visiting Keller's property that morning to investigate, and Haines texted the DA is investigating Keller's financial issues, per the text below:



65. Haines sent Plaintiffs' counsel her FOIA request to the Sheriff for its report that Haines and the Sheriff informed Plaintiffs' counsel there was abuse at Keller's premises. **Exhibit K**

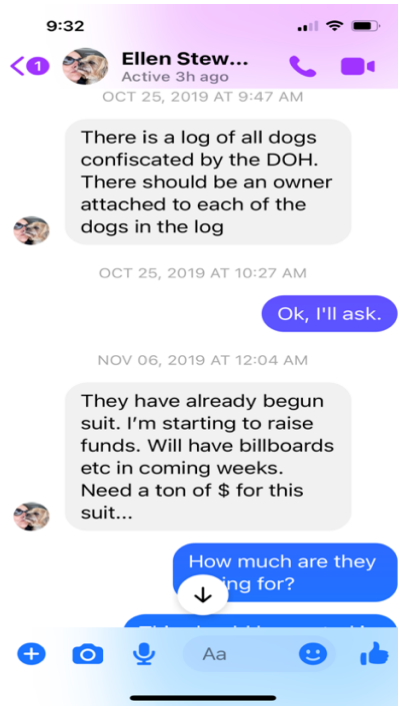
66. Haines reported that Keller threatened her by a letter from a lawyer in Bovine New York to

keep Haines quiet about the abuses she witnessed. These are the same bully tactics used by Keller and her partner Ellen Stewart to keep the public quiet after they prey on the public to extract money for their fake lawsuits against the ACC.

67. Stewart promotes herself with Rescue Dogs on Facebook and texts, and she and Keller use a for-profit corporation called “El-Liza’s Kennels, Inc.” (“El” for Ellen and “Liza’s” for Elizabeth Keller), which is located where the non-profit Rescue Dogs in Cherry Valley New York. They fraudulently advertise it as family owned since 1993 by a husband and wife when the real operators are Keller and Stewart since 2020. **Exhibit L.** This is just the start of the suspect dealings between Keller and Stewart.

68. Keller and Stewart’s other corporations include Glen Wild Animal Rescue Corp., a non-profit Keller used to buy land at 1414 County Highway 50, Cherry Valley, NY for a dog rescue that does not exist there and Stewart used 20 Contracting Corp, Inc and Milcon Construction Inc, corporations using her residential address, to obtain a phenomenal Four Million Five Hundred Thousand Dollars of PPP funds in 2020 and 2021. **Exhibit M.**

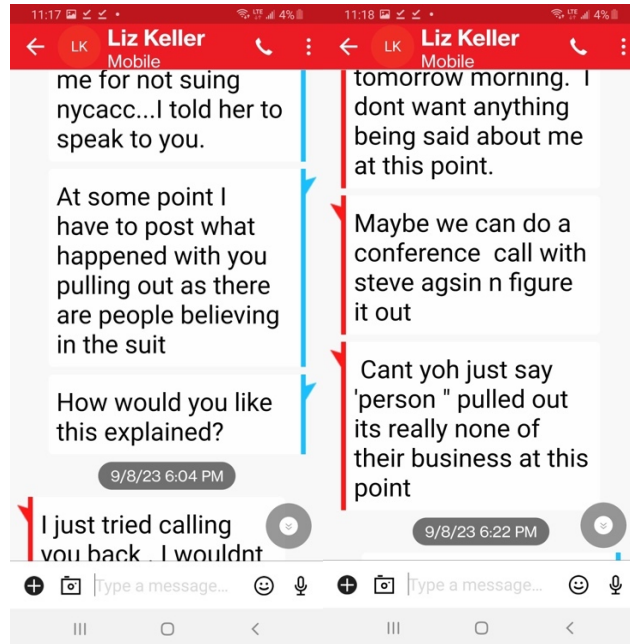
69. In 2019 through 2020, temporal to her PPP funding, Stewart used a Facebook fundraiser and texts (**Exhibits N & O**) to prey on animal advocates to extract money for a phony lawsuit and campaign against the ACC by Stewart stating she pulls ACC dogs with Keller and Stewart lying that her attorneys “have already begun suit. Im starting to raise funds. Will have billboards in coming weeks. Need a ton of \$ for this suit...” as her 2019 text to Plaintiff Sample shows:



70. Unfortunately, Sample, a senior citizen, was one of many people defrauded by Stewart and she asked how much money they were “looking for”, then sent money to Stewart’s fake campaign. After taking \$2,802.00 from the public, Stewart disappeared. See Exh N.

71. In August, 2023, Rescue Dogs resurfaced with Keller now convincing animal advocates that she was filing a lawsuit against ACC and she directed funds paid directly to her and/or her “rescue” bank account by using an ACC dog named Bruckner she pulled to be the example for her lawsuit complaining that the ACC sedates dogs and other abuses and that its New Hope contract unconstitutionally prevented rescues from criticizing the ACC.

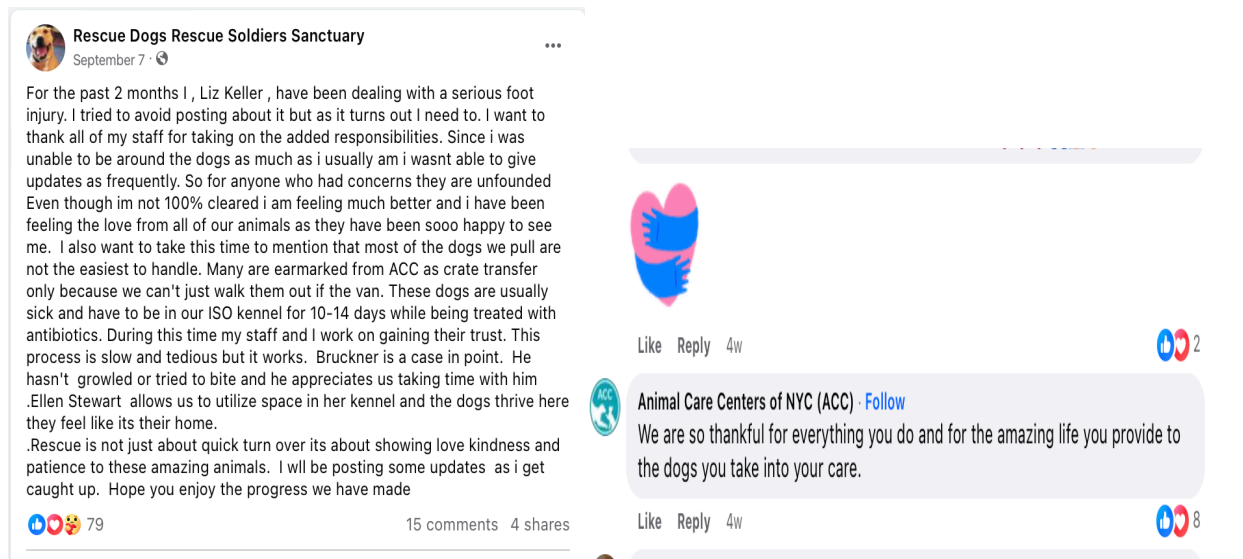
72. Like her partner Stewart, once Keller collected thousands of dollars she disappeared on or about September 6. On September 8, 2023, Plaintiffs’ counsel texted Keller for an explanation of her disappearance, and Keller retorted “ITS NONE OF THEIR BUSINESS”, as shown below:



73. On September 7, 2023, after people complained about the whereabouts of dogs Keller took from the ACC, Keller failed to respond where the dogs were but instead self-aggrandized her and Stewart on a Facebook post, even claiming Stewart allows Keller to “utilize space” at her kennels.

74. Upon information and belief, Keller and Stewart profit by using non-profit funds to pay rent and salaries to themselves and move money around as loans and other suspect dealings between the for-profit and not-for-profit, among the other complaints made by the SPCA regarding funds not used for their purpose.

75. Incredibly, the ACC immediately posts its accolade that Keller provides “an amazing life” for the dogs with no proof of that, as the following September 17, 2023 posts show:

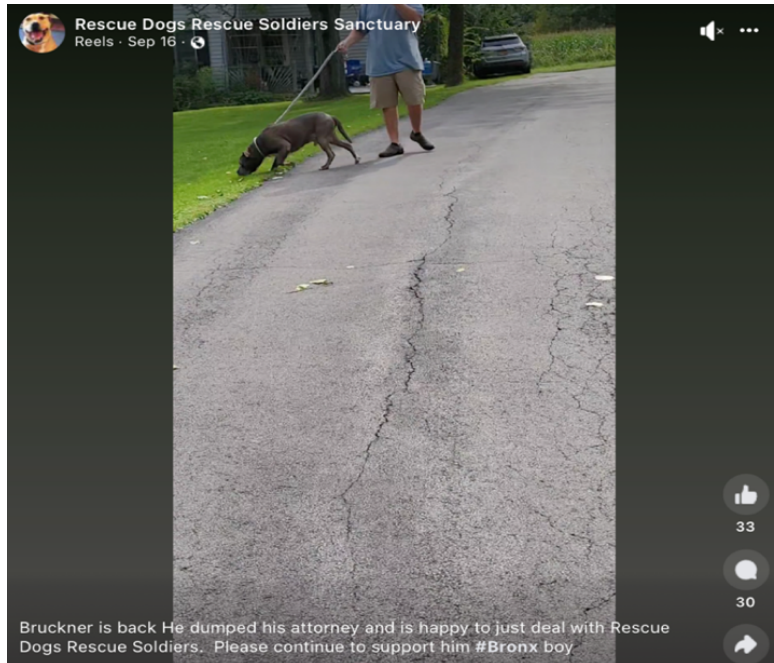


76. Upon information and belief, the ACC has not personally seen or inspected the premises or dogs at Rescue Dogs located in Cherry Valley New York to make statements that Keller provides them an “amazing life”. In fact, if the ACC did it would have found the dogs abused by Keller as recent as this year that Stacie Haines witnessed and complained about to law enforcement.

77. Upon information and belief, in exchange for Keller dumping the lawsuit against the ACC, it posts unsupported and false accolades for her and sent her many dogs as ransom after she dumped the lawsuit as the dogs each hold a value of thousands in donations and pledges from social media campaigns per dog and the ACC may also send Keller stipends for the dogs.

78. Upon information and belief, the ACC has paid Keller to stop her lawsuit publicly announced in August, 2023 as Keller made it publicly known that she sought money from the ACC to fund her “sanctuary” in a letter she wrote in the last year that the ACC ignored, yet suddenly the ACC reared its head with public accolades and sending many dogs to Keller immediately after she dumped her lawsuit against it.

79. Next, on September 16, 2023, Keller posted on her Facebook that Bruckner “dumped his attorney” and paraded him around in a video asking for money, as shown below:



80. That September 16 post is Keller's admission of her lawsuit as she affirms Bruckner had an attorney for the impending lawsuit. That post is also a patent lie by Keller to make it appear that she dumped a lawyer when it was Keller who dumped the lawsuit weeks before in exchange for not suing the ACC and retorts it is "NONE OF THEIR BUSINESS" when asked to explain her disappearance after taking money for a lawsuit.

81. Upon information and belief, Keller's lies on social media were to satisfy the ACC's desire to intimidate Plaintiffs' from filing this lawsuit and the ACC's unusual public accolades of Keller temporal to that libelous post shows its conspiracy with Keller to intimidate this filing.

82. The ACC's irresponsible conduct to promote the unscrupulous Keller and her sidekick Stewart is further evidenced by its continuing to send dogs to Keller while she admits on Facebook that her rescue is financially distressed and she had some 16 dogs posted on Adopt-a-Pet that she was dumping to anyone but the veterans that she advertises she trains ACC dogs to help them with PTSD and other problems experienced from serving in the war.

83. Upon information and belief, Keller's years-long ruse of training dogs to rescue soldiers is

meant to play on the public's sympathies to send her money for abandoned dogs and war veterans that do not exist, and, upon information and belief, Keller nor anyone on her premises is a trained behaviorist or certified to train dogs for veterans.

84. The ACC's support of these abuses by its partner Rescue Dogs, as even complained of by the SPCA, is egregious when it bans rescues such as Plaintiff Home Stretch that justifiably complain about the same abuses to prevent mistreatment of the dogs.

LAWS PROHIBITING THE ACC's ABUSE & MISCONDUCT

85. The abuse at the ACC found in the 2015 Comptroller Audit was so disturbing that soon after that a Manhattan Borough Board Resolution was passed that confirms the ACC's purpose is "for rescuing, caring for and finding loving homes for the city's homeless and abandoned animals." Nowhere does it state the ACC can indiscriminately kill dogs and call that euthanization.

86. The ACC, as a function of the City, is required to maintain animal control pursuant to the New York State Agriculture and Markets Laws. Considering those laws, nowhere does it state the purpose of a shelter is to indiscriminately kill dogs.

87. Agriculture and Markets Law section 117 requires municipalities to take into custody dogs that are strays and/or deemed to be dangerous, and they shall be properly fed and watered. N.Y. Agric. & Mkts. §117.

88. Section 117(7-a) provides for certain time periods to wait before a shelter can euthanize a dog; however, only dangerous dogs can be euthanized, which is a dog that without justification attacks a person and causes physical injury, and that is determined dangerous by a court. N.Y. Agric. & Mkts. §108(24)(a)(i).

89. The NYC Code does not direct killing stray and homeless dogs, but rather NYC Administrative Code 17-816 requires that within three days of receiving an animal the ACC must

post photos and relevant information about the animal to use its best efforts for adoption.

90. Euthanasia is the exception, not the rule in this state as euthanasia is not mandatory even for dangerous dogs since other measures such as spaying, neutering, microchipping or training by an expert are permitted. Id. §123(2)(3). As well, state laws require adoption or euthanasia, and the state and City laws are clear that euthanasia should not be indiscriminately used.

91. Euthanasia is the ACC's inappropriate fix to get rid of dogs it does not want to care for when its responsibility is to care for lives-not kill them. Euthanasia is by injection of sodium pentobarbital or sodium pentobarbital solution administered by a certified euthanasia technician, licensed veterinarian or licensed veterinary technician or by intracardiac injection of that solution by a licensed veterinarian or veterinarian technician if the animal is heavily sedated, anesthetized or comatose and only if the veterinarian or technician determine that heart injection is the most humane option available. Id. § 374.

92. Upon information and belief, the ACC is not using qualified persons to euthanize, does not use proper solutions, uses expired solutions and does not wait with the dog until the dog dies as required by law.

93. The unjustified killings and the ACC's lack of care violate Agriculture and Markets Law §353 neglect and torture prohibitions and euthanasia prohibitions as the ACC cages the dogs in small kennels and sedates them, where they are left to languish, without being walked and lack attention they need, then kills them by claiming they have kennel stress when the ACC creates the stress by its conditions of dark, windowless rooms, overcrowding, poor ventilation causing respiratory infections and sedating the dogs to create more confusion and fear. The ACC deprives them of medication and veterinarian care, behavioral training, and have untrained staff who mishandle the animals or simply ignore them to stress them more.

94. Defendant City's is responsible to insure its Contract and laws are followed, but it allows the ACC to violate all of that, and allows it to use its New Hope Program and the dogs as ransom to its partners to prevent lawsuits that could fix these problems.

95. All of these violations and abuses are exactly what Plaintiffs want to publicly complain about but for the ACC scrubbing them from social media, intimidating free speech with non-disparagement clauses in their New Hope contracts and using their partners to intimidate persons from filing lawsuits against the ACC.

Civil Rights

96. In pertinent part, § 1983 provides:

Every person who, under color of ... [state law] subjects, or causes to be subjected, any ... person within the jurisdiction [of the United States] to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law [or a] suit [in] equity....” 42 U.S.C. § 1983.

97. The First Amendment's freedom of speech is a protected right under the Constitution.

98. Defendant is funded and controlled by the City, and delegated to handle a public function of the City to provide care for homeless animals and the City, through its contract between the DOH and ACC, and under NYC law, directs the ACC to provide information regarding its work, including statistics of animals killed and placed in homes for the City to review.

99. As such, the ACC acts under color of state law and as a result of its actions to silence the Plaintiffs from criticizing the ACC it has deprived them of their First Amendment right to freedom of speech to expose the countless animal abuses and politicizing its New Hope Program to quash lawsuits to the detriment of the dogs.

100. The City is as responsible as it oversees Defendant ACC's actions under its Contract with it and under NYC Administrative Code 17-805 requiring the DOH to provide the mayor and city

council annual reports about the management and operation of the ACC, including the number of animals taken in, the number sterilized, the number euthanized, including healthy animals euthanized and other statistics.

101. NYC Charter 582 establishes an Animal Welfare committee to the Mayor that advises on animal shelters, animal population control and euthanizing, and providing outreach and education on animal welfare, among other things; however, this committee is non-functional.

102. Bringing us back to the introduction of this complaint that explains the Netherlands has zero stray and homeless dogs and does not have this issue of over-populated shelters that we have because it has a functional animal welfare committee and laws that protect the animals and creates a humane society, not the rampant illnesses and killings created by the ACC

103. The Mayor and City council are aware of the public outcry against the ACC's abuse and killings by years of complaints to them on social media, emails and the City's own audits show medical and other care is denied in violation of state and city laws and the Contract with DOH.

FIRST CAUSE OF ACTION: FIRST AMENDMENT

104. Plaintiffs re-allege each and every allegation stated above as if fully stated here.

105. The First Amendment of the U.S. Constitution states that "Congress shall make no law... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

106. Plaintiffs Home Stretch and Sample have an interest protected by the First Amendment in that Sample is an animal advocate and taxpayer who posted criticism on the ACC Facebook page that they scrubbed and Home Stretch is an animal rescue organization that discovered the ACC's abuses but feared complaining publicly due to the ACC's New Hope contract terms.

107. Defendant's scrubbing Sample's post and banning Home Stretch as a New Hope partner

after she complained were motivated or substantially caused by their exercise of their First Amendment Rights.

108. Defendant's actions effectively chilled the exercise of Free Speech by these Plaintiffs.

SECOND CAUSE OF ACTION: MONELL CLAIMS

109. Plaintiffs re-allege each and every allegation stated above as if fully stated here.

110. Defendants scrubbing social media and using non-disparagement clauses in their contracts is an official policy or custom adopted by Defendants for years, and is a deliberate indifference by the ACC and the City to Plaintiffs' First Amendment free speech rights.

111. Trial by jury is demanded

Prayer for Relief

WHEREFORE, Plaintiffs request that this Court:

- a) Declare that Defendants engage in unconstitutionally violate the First Amendment by their New Hope contract non-disparagement clause and scrubbing posts from social media;
- b) Enter an injunction requiring Defendants to remove the offensive non-disparagement terms in their contract and cease scrubbing their social media;
- c) Award Plaintiffs actual damages to be proven, nominal damages to each Plaintiff for violating their First Amendment rights, and attorneys' fees and costs and disbursements pursuant to 42 USC 1988;
- d) Reinstatement of Plaintiff Home Stretch to the New Hope Program; and
- e) such further additional relief as may be just and proper.

Dated: October 8, 2023

Respectfully submitted,
LAW OFFICES OF SUSAN CHANA LASK

/s/ Susan Chana Lask
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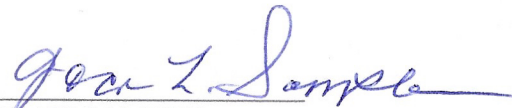
VERIFICATION OF PLAINTIFF

I, JOAN SAMPLE, verify as follows:

1. I am a Plaintiff in this case. I am over the age of 18 years old, read and write the English language and at all times alleged, I was a resident, citizen and domicile of New York.
2. I have personal knowledge of the facts set out in the foregoing *Verified Complaint*, and if called to testify I would competently testify as to the matters stated therein, and as to matters alleged upon information and belief.

Under 28 USC section §1746, I verify under penalty of perjury that the foregoing is true and correct.

Dated: October 8, 2023


JOAN SAMPLE


VERIFICATION OF PLAINTIFF

I, GRETCHEN WADE, verify as follows:

1. I am the President of the plaintiff Home Stretch in this case. I am over the age of 18 years old, read and write the English language and at all times alleged, I was a resident, citizen and domicile of New York.
2. I have personal knowledge of the facts set out in the foregoing *Verified Complaint*, and if called to testify I would competently testify as to the matters stated therein, and as to matters alleged upon information and belief.

Under 28 USC section §1746, I verify under penalty of perjury that the foregoing is true and correct.

THE HOME STRETCH DOG HAVEN, INC



By GRETCHEN WADE, president

Dated: October 8, 2023