

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

Daniel Reed Christensen,
David Reed Christensen, and
Kelly Jo Ann Christensen;

Plaintiffs,

vs.

Rosie Quinn,
Second Chance Rescue Center,
James Adamson, individually and in his official
capacity as a Turner County Commissioner,
Luverne Langerock, individually and in his
official capacity as a Turner County
Commissioner,
John Overby, individually and in his official
capacity as a Turner County Commissioner,
Steve Schmeichel, individually and in his
official capacity as a Turner County
Commissioner,
Lyle Van Hove, individually and in his official
capacity as a Turner County Commissioner,
Tiffani Landeen-Hoeke, individually and in her
official capacity as Turner County State's
Attorney,
Byron Nogelmeier, individually and in his
official capacity as Turner County Sheriff,
Jay Ostrem, individually and in his official
capacity as a Turner County Deputy,
Jim Severson, individually and in his official
capacity as a Special Agent for the Division of
Criminal Investigation,
Lara Cunningham, individually and in her
official capacity as a Revenue Agent for the
South Dakota Department of Revenue and
Regulations,
The Humane Society of the United States
a/k/a HSUS,
Wayne Pacelle,
Scottlund Haisley,

CIV. 10-4128

**ANSWER OF THE DEFENDANT
THE HUMANE SOCIETY OF THE
UNITED STATES a/k/a HSUS**

The American Society for the Prevention of *
 Cruelty to Animals a/k/a ASPCA, *
 Dr. Adam Bauknecht, *
 Emergency Animal Rescue Sanctuary a/k/a *
 EARS, *
 Dr. Dawn Dale, *
 Turner County, South Dakota, *
 *
 Defendants. *

Comes now one of the above-named Defendants, The Humane Society of the United States a/k/a HSUS, by and through its respective attorneys of record Davenport, Evans, Hurwitz & Smith, L.L.P. and Thomas M. Frankman, and for its Answer to the Complaint of the Plaintiffs states and alleges, as follows:

1. That said Complaint fails to state sufficient grounds upon which relief can be granted.
2. Denies each and every matter, allegation and thing contained therein except that which is specifically or qualifiedly admitted.
3. As to paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49, this Defendant does not have sufficient information with which to admit or deny the same.
4. As to paragraphs 50, 51 and 52, this Defendant would state that the search warrant and affidavit referenced in paragraphs 50, 51 and 52 would speak for themselves.
5. As to paragraph 53, the Return would speak for itself.
6. As to paragraph 54, Quinn contacted HSUS for assistance from HSUS, not mentioning help in “raiding” Christensen’s facility as alleged in Plaintiffs’ Complaint.

7. As to paragraph 55, this Defendant denies that it has a history of working with local humane societies to “raid” breeding facilities, but would admit that HSUS has a history of helping humane law enforcement agencies with their enforcement efforts.

8. As to paragraphs 56, 57 and 58, this Defendant denies the same at this time and would remit Plaintiffs to their strict proof.

9. As to paragraph 59, this Defendant would deny the same and remits Plaintiffs to their strict proof. Further answering paragraph 59, this Defendant would state that Wayne Pacelle is the CEO of HSUS, and further states that Scottlund Haisley is no longer employed by HSUS.

10. As to paragraphs 60, 61, 62, 63, 64, 65, 66 and 67, this Defendant does not have sufficient information with which to admit or deny the same and remits Plaintiffs to their strict proof.

11. As to paragraph 68 of said Complaint, this Defendant believes the same to be true.

12. As to paragraph 69, this Defendant does not have sufficient information with which to admit or deny the same and would rely upon Defendant Quinn’s Answer when such is filed.

13. As to paragraph 70, this Defendant would deny that it or any of its employees executed a search warrant.

14. As to paragraphs 71, 72, 73, 74, 75, 76 and 77, this Defendant does not have sufficient information with which to admit or deny the same.

15. As to paragraph 78 of said Complaint, this Defendant admits the same.

16. As to paragraph 79 of said Complaint, this Defendant denies said allegation, except would state that HSUS provided a transport vehicle.

17. As to paragraph 80, this Defendant would admit that the transport vehicle had been used for other deployments the week prior to the arrival at Daniel Christensen's facility.

18. As to paragraph 81, this Defendant does not have sufficient information with which to admit or deny that the horse trailer was borrowed.

19. As to paragraph 82, this Defendant denies that the HSUS transport vehicle was contaminated with manure and had not been cleaned out or sanitized.

20. As to paragraphs 83 and 84, this Defendant does not have sufficient information with which to admit or deny the same.

21. As to paragraph 85, this Defendant denies that HSUS executed any search or search warrant.

22. As to paragraph 86, HSUS had a videographer present to help with videos of the scene to be turned over to law enforcement and any other uses by HSUS.

23. As to paragraph 87, this Defendant does not have sufficient information with which to admit or deny what witnesses saw.

24. As to paragraph 88 of said Complaint, this Defendant would deny that it sponsors its own cable television show, but would admit that there are commercials showing abused dogs and cats which are in part used for public education, increasing public awareness about issues with which HSUS deals, soliciting donations, and inviting the viewer to take other actions. As to the remaining allegations of paragraph 88, this Defendant would deny the same.

25. As to paragraph 89 of said Complaint, this Defendant would state that the search warrant speaks for itself.

26. As to paragraphs 90 and 91, this Defendant does not have sufficient information with which to admit or deny the same.

27. As to paragraph 92, this Defendant admits the that the dogs which were seized were initially brought to a table.

28. As to paragraph 93 of said Complaint, all of the dogs were brought to a table that was physically set up by HSUS. The substantive work was organized by Quinn's staff, with HSUS staff participating.

29. As to paragraph 94, this Defendant admits the same.

30. As to paragraph 95 of said Complaint, this Defendant does not have sufficient information with which to admit or deny the same.

31. As to paragraph 96, this Defendant does not have sufficient information with which to admit or deny the same, and further alleges that if there was a television interview, that interview speaks for itself.

32. As to paragraph 97 of said Complaint, this Defendant does not have sufficient information with which to admit or deny the same, and specifically denies that it had any control over the State's evidence as alleged in paragraph 97.

33. As to paragraph 98 of said Complaint, this Defendant denies the same.

34. As to paragraph 99, this Defendant does not believe the same to be true and remits Plaintiffs to their strict proof.

35. As to paragraph 100, and particularly as to Defendant HSUS, HSUS provided transportation and not housing of the dogs, did not search or seize Christensen's dogs, and states that HSUS has been involved in previous deployments.

36. As to paragraph 101, this Defendant denies the same as a warrant was in fact issued.

37. As to paragraph 102, this Defendant states that UAN had a relationship with Dr. Bauknecht, introduced him to HSUS, and HSUS requested his deployment, and as to the remaining portions of paragraph 102, does not have sufficient information with which to admit or deny the same.

38. As to paragraphs 103, 104, 105 and 106, this Defendant does not have sufficient information with which to admit or deny the same.

39. As to paragraph 107, this Defendant denies the paragraph as it pertains to HSUS.

40. As to paragraphs 108 and 109, this Defendant does not have sufficient information with which to admit or deny the same.

41. As to paragraph 110, this Defendant believes that there were ongoing sources of food and medical supplies to sustain the dogs during the time HSUS was on the scene.

42. As to paragraph 111, this Defendant does not have sufficient information with which to admit or deny the same.

43. As to paragraph 112, this Defendant denies the same.

44. As to paragraphs 113, 114 and 115, this Defendant does not have sufficient information with which to admit or deny the same, but further alleges that when HSUS left the scene, all animals were in the shelter.

45. As to paragraph 116, this Defendant denies the same.

46. As to paragraph 117, whatever the interview shows speaks for itself as well as any medical records.

47. As to paragraph 118, this Defendant does not have any information with which to admit or deny the first sentence of paragraph 118, and as to the remaining allegations in paragraph 118, the TV interview would speak for itself.

48. As to paragraphs 119 and 120, this Defendant does not have sufficient information with which to admit or deny the same.

49. As to paragraph 121, this Defendant assumes the same to be true.

50. As to paragraphs 122, 123, 124, 125, 126 and 127, this Defendant does not have sufficient information with which to admit or deny the same.

51. As to paragraphs 128, 129 and 130, this Defendant would state that the record speaks for itself.

52. As to paragraphs 131 and 132, this Defendant does not have sufficient information with which to admit or deny the same.

53. As to paragraph 133, this Defendant would allege that the orders entered by the Court speak for themselves, and as to the remaining allegations in paragraph 133 would not have sufficient information with which to admit or deny the same.

54. As to paragraphs 134 and 135, this Defendant does not have sufficient information with which to admit or deny those allegations except would deny the same as to any allegations against HSUS.

55. As to paragraphs 136 and 137, this Defendant would not have sufficient information with which to admit or deny the same.

56. As to paragraphs 138, 139 and 140, the records would speak for themselves.

57. As to paragraphs 141, 142, 143 and 144, this Defendant would not have sufficient information with which to admit or deny the same.

58. As to paragraph 145, this Defendant would admit the same.

59. As to paragraph 146, this Defendant would state that the record speaks for itself as to what the Court found.

60. As to paragraph 147, this Defendant would deny the same.

61. As to paragraphs 148, 149, 150, 151, 152, 153, 154 and 155, this Defendant would state that the record speaks for itself.

62. As to paragraphs 156, 157, 158, 159 and 160, this Defendant does not have sufficient information with which to admit or deny the same.

63. As to Count I of said Complaint, this Defendant would reallege all previous paragraphs.

64. As to the remaining allegations contained in Count I, paragraphs 162 through 167, this Defendant would specifically deny the same.

65. Further answering Count I, and as a separate and affirmative defense to Count I, HSUS is entitled to qualified immunity.

66. As a separate and affirmative defense to Count I, HSUS acted in good faith reliance on a facially valid warrant.

67. As a separate and affirmative defense to Count I, HSUS cannot be held liable for the alleged conduct of its employees under a theory of *respondeat superior*.

68. As to Count II, there are no allegations against this Defendant and therefore no answer need be given.

69. As to Count III, this Defendant would reallege all previous paragraphs.

70. As to all the remaining allegations contained in Count III, this Defendant would deny paragraphs 176, 179 and 180.

71. As to paragraphs 175 and 178, this Defendant alleges that the record would speak for itself and as to paragraph 177, this Defendant would deny the same.

72. As to Count IV of said Complaint, this Defendant would incorporate all previous paragraphs.

73. As to paragraphs 182, 183, 184, 185 and 186, this Defendant would specifically deny the same.

74. As to Count V of said Complaint, this Defendant would incorporate all previous paragraphs.

75. As to paragraphs 188, 189 and 191, this Defendant would specifically deny the same.

76. As to paragraph 190, this Defendant does not have sufficient information with which to admit or deny the same.

77. As to Count VI of said Complaint, this Defendant would incorporate all previous paragraphs.

78. As to paragraphs 193, 194 and 195, this Defendant would deny the same.

79. As a further separate and affirmative defense to Count VI of said Complaint, SDCL §22-35-6 does not create a civil cause of action.

80. As a further separate and affirmative defense to Count VI of said Complaint, HSUS personnel were privileged to enter the property on the basis of a facially valid search warrant.

81. As to Count VII of said Complaint, this Defendant would reallege all previous paragraphs.

82. As to paragraphs 197, 198, 199, 200 and 201, this Defendant would specifically deny the same.

83. As a further separate and affirmative defense to Count VII of said Complaint, SDCL §22-34-1, SDCL §40-1-21 and SDCL §40-2-6 do not create a civil cause of action.

84. Further answering, this Defendant would deny the nature and extent of the injuries and damages alleged to have been sustained by the Plaintiffs and remits Plaintiffs to their strict proof.

85. Further answering, this Defendant denies that it in any way caused or contributed to any of the damages alleged to have been sustained by the Plaintiffs in this case.

Wherefore, the Defendant The Humane Society of the United States a/k/a HSUS prays that the Complaint of the Plaintiffs be dismissed with prejudice and on its merits, and for such other and further relief as to the Court seems just and equitable.

Dated at Sioux Falls, South Dakota, this 15th day of October, 2010.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.

/s/ Thomas M. Frankman
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DEMAND FOR JURY TRIAL

Defendant The Humane Society of the United States a/k/a HSUS demands trial by jury on all issues of fact.

Dated this 15th day of October, 2010.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.

/s/ Thomas M. Frankman
Thomas M. Frankman – *Electronically Filed*
Attorneys for Defendant The Humane Society of the
United States a/k/a HSUS

CERTIFICATE OF SERVICE

Thomas M. Frankman, one of the attorneys for Defendant, The Humane Society of the United States a/k/a HSUS, hereby certifies that a true and correct copy of the foregoing “Answer of the Defendant The Humane Society of the United States a/k/a HSUS” was served electronically upon:

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Attorneys for Defendant Dr. Dawn Dale

on this 15th day of October, 2010.

/s/ Thomas M. Frankman
Thomas M. Frankman – *Electronically Filed*